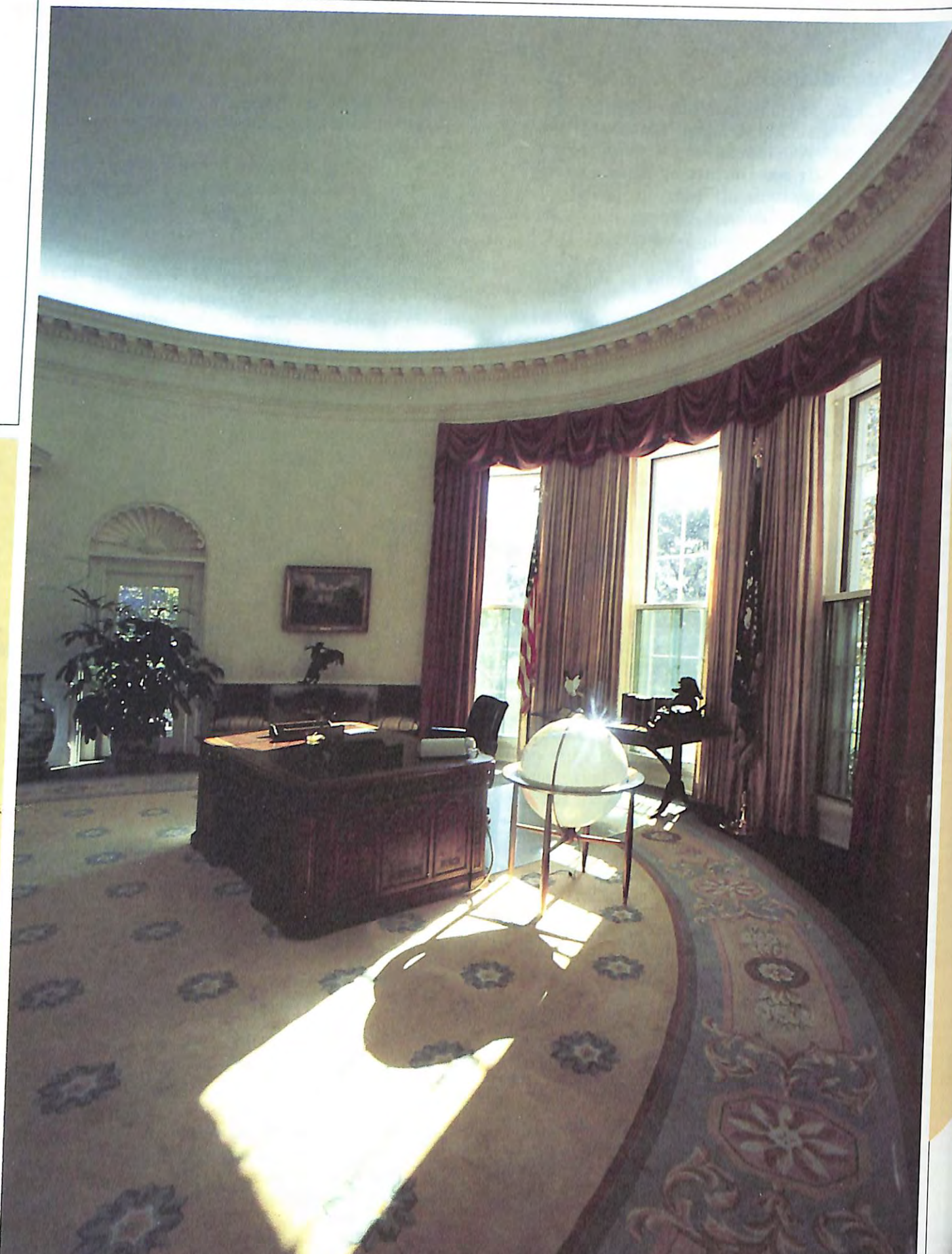




11

The Presidency

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• *The Powers of the President*

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Presidential Character

Like Jimmy Carter before him, Ronald Reagan felt deeply responsible for getting American hostages out of the Middle East. Carter had faced the Ayatollah Khomeini's refusal to release American embassy personnel held captive in Iran; now Reagan sought the release of Americans kidnapped by various terrorist factions in war-torn Beirut. Unlike Carter, Reagan was not widely criticized for his inability to deal with terrorists. Still, the president was determined to do something to free the hostages, believing their lives were in danger (one hostage, the Beirut CIA chief, William Buckley, had already been murdered by the group that seized him). Because the Iranian government was thought to have influence with a number of radical groups in Beirut, Reagan approved a secret sale of arms to Iran in the belief that Iran would make efforts to free the American hostages.

When the arms sales were revealed by a Lebanese magazine in November 1986, a fire storm of criticism began. Many Americans saw the Ayatollah Khomeini as a personification of evil; they couldn't conceive of the American government doing something to benefit him. Besides, selling arms to win the release of the hostages seemed to reward the terrorists, not punish them. Reagan heatedly denied that he was trading arms for hostages, claiming that the arms were part of a foreign policy initiative designed to win favor with Iranian "moderates" who might rule after Khomeini was gone.

The president's problems intensified. It was soon revealed that the arms were sold to Iran at an inflated price, and the excess money received was put into a secret Swiss bank account for use by the Contras, a pro-American rebel force fighting the Marxist government of Nicaragua. Although Reagan claimed that he wasn't "fully informed" of this plan to aid the Contras, his popularity dropped. One poll showed that the president's public approval rating plunged 21 percent after the Contra connection came to light.¹ And 47 percent of the public thought the president was lying when he said he didn't know about the diversion of money to the Contras.² A commission appointed to investigate the scandal condemned the president's management style.³ Reagan subsequently made a grudging acknowledgment that the dealings with Iran did in fact turn into an arms-for-hostages deal, but the public was not mollified by this late change of heart. Even after John Poindexter, the former national security adviser, told a congressional committee that he had not informed Reagan of the diversion of funds, a majority of the public still thought Reagan was lying about his involvement.⁴

Clearly, Reagan's heartfelt wish to win the release of the hostages began a series of catastrophic errors in judgment. The Iran-Contra episode put a permanent blot on a presidency studded with many successes.

Reflecting on the Iran-Contra affair may help us understand some of the conflicts surrounding the office of the president. To what degree should the president be constrained within our system of checks and balances? How should the president organize and manage the White House to maximize his effectiveness in office? What kinds of leadership styles are best suited for the presidency?

As we analyze the various facets of the presidency, bear in mind one recurring question: Is the presidency primarily an instrument of pluralist

democracy, serving small but vocal constituencies, or does the office promote majoritarian democracy, by responding to public opinion?

THE CONSTITUTIONAL BASIS OF PRESIDENTIAL POWER

When the presidency was created, the colonies had just fought a war of independence; their reaction to British domination had focused on the autocratic rule of King George III. The delegates to the Constitutional Convention were extremely wary of unchecked power; they were determined not to create a presidential office whose occupant could become an all-powerful, dictatorial figure.

The delegates' fear of a powerful presidency was counterbalanced by their desire for strong leadership. The Articles of Confederation—which did not provide for a single head of state—had failed to bind the states together into a unified nation. In addition, the governors of the individual states had generally proved to be inadequate leaders because they had few formal powers. The new nation was conspicuously weak; its congress had no power to compel the states to obey its legislation. With the failed confederation in mind, John Jay wrote to George Washington, asking him, "Shall we have a king?"⁵

Although the idea of establishing an American royalty was far from popular among the delegates, they knew that some type of executive office had to be created. Their task was to provide national leadership without allowing any opportunity for tyranny.

Initial Conceptions of the Presidency

Debates over the nature of the office began. Should there be one president or a presidential council or committee? Should the president be chosen by Congress and remain largely subservient to that body? Initial approval was given to a plan that called for a single executive, chosen by Congress for a seven-year term and ineligible for re-election.⁶ But some of the delegates continued to argue for a strong president who would be elected independently of the legislative branch.

The final shape of the presidency reflected the "checks and balances" philosophy that shaped the entire Constitution. In the minds of the delegates, important limits were imposed on the presidency through the powers specifically delegated to the Congress and the courts. Those counterbalancing powers would act as checks, or controls, on presidents who might try to expand the office beyond its proper bounds. (The separation of the executive from the legislative branch has had an effect on the type of experience our presidential candidates have; see Compared With What? 11.1.)

The Powers of the President

The requirements for the presidency are set forth in Article II of the Constitution: A president must be a natural-born citizen, at least thirty-

COMPARED WITH WHAT? 11.1

What Kind of Experience Counts?

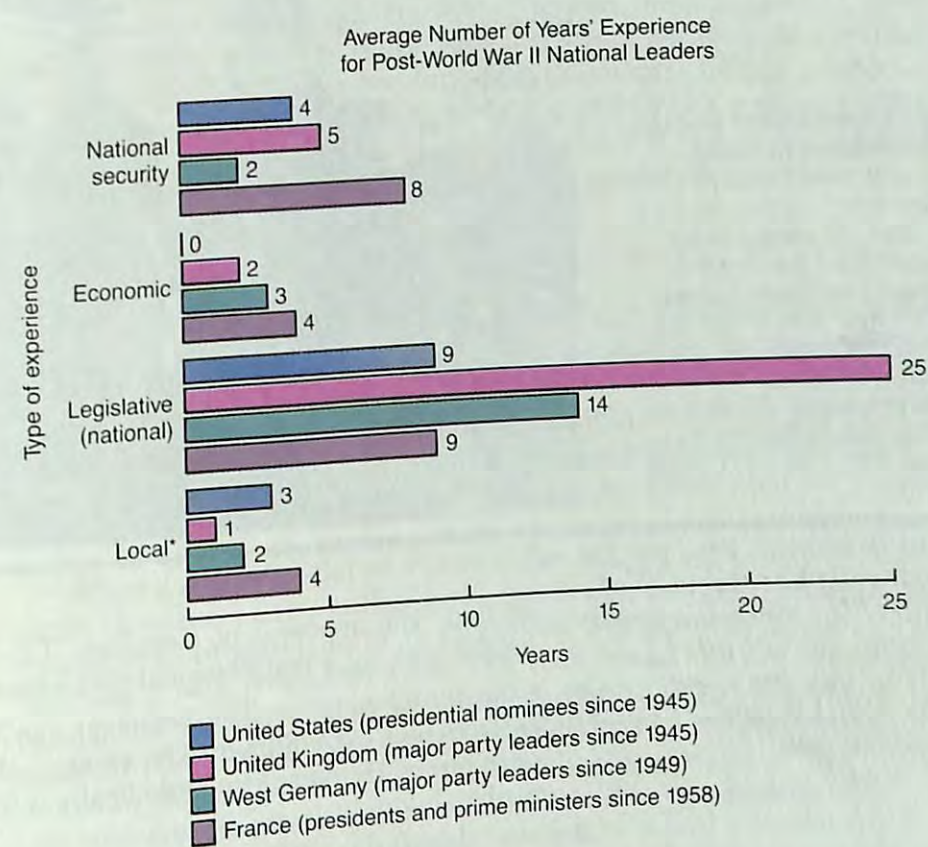
Candidates nominated for the presidency of the United States compose an impressive lot in terms of their accomplishments and political experience. Yet, their European counterparts are actually better seasoned in jobs providing valuable experience in government. Excellent campaign skills are critical to winning a presidential nomination in the United States. It is no small feat to conduct a lengthy campaign, putting together a winning coalition by convincing large numbers of voters that one would be a better nominee than the many other capable candidates competing in the primaries. Experience in office is hardly irrelevant in a candidate's ultimate appeal to the American electorate—they need to be convinced he can do the job. Still, candidates who have spent relatively modest amounts of time in governmental service and have limited ranges of experience, such as Jimmy Carter and Ronald Reagan, are able to win their party's nomination.

In European democracies, a considerably different pattern emerges. Party activists who aim for the post of prime minister in a parliamentary system must win the backing of their legislative party. As they rise in their party's hierarchy, aspiring leaders typically head major departments of state when their party is in control of the government. In Great Britain, for example, an aspiring prime minister typically has served an average of twelve years as a minister of a governmental department before he or she became a party leader in Parliament. In contrast, U.S. presidential candidates typically do not have Cabinet experience, although they may have had executive experience as a governor. As the figures below indicate, American candidates are considerably less experienced in government than European political leaders.

Source: Richard Rose, "Learning to Govern or Learning to Campaign?" in *Presidential Selection*, ed. Alexander Heard and Michael Nelson (Durham, N.C.: Duke University Press, 1987), pp. 53–73.

five years old, who has lived in the United States for a minimum of fourteen years. The responsibilities of presidents are also set forth in Article II. In view of the importance of the office, the constitutional description of the president's duties is surprisingly brief and vague. This vagueness has led to repeated conflict over the limits of presidential power.

There were undoubtedly many reasons for Article II's lack of precision. One likely reason was the difficulty of providing and at the same time limiting presidential power. Furthermore, the framers of the Constitution had no model—no existing presidency—on which to base their description of the office. And, ironically, their description of the presidency might have been more precise if they had had less confidence in George Washington, the obvious choice for the first president. According to one account of the Constitutional Convention, "when Dr. Franklin predicted on June 4 that 'the first man put at the helm will be a good one,' every delegate knew perfectly well who that first good man would be."⁷ The delegates had great trust in Washington; they did not fear that he would try to misuse the office.



The major duties and powers that the delegates listed for Washington and his successors can be summarized as follows:

- *Serve as administrative head of the nation.* The Constitution gives little guidance on the president's administrative duties. It states merely that "the executive Power shall be vested in a President of the United States of America" and that "he shall take Care that the Laws be faithfully executed." These imprecise directives have been interpreted to mean that the president is to supervise and offer leadership to various departments, agencies, and programs created by Congress. In practice, a chief executive spends much more time making policy decisions for his Cabinet departments and agencies than trying to enforce existing policies.
- *Act as commander in chief of the military.* In essence, the Constitution names the president as the highest ranking officer in the armed forces. But it gives Congress the power to *declare* war. The framers no doubt intended Congress to control the president's military power; nevertheless, presidents have initiated military action

The Commanders and the Commander in Chief

During World War II, President Franklin Roosevelt visited the troops at an American base in Sicily. There, the commander in chief met with General Dwight Eisenhower (to FDR's left), who would win the presidency himself in 1952. At the far left is the legendary General George Patton.



- without the approval of Congress. The entire Vietnam War was fought without a congressional declaration of war.
- **Convene Congress.** The president can call Congress into special session on "extraordinary Occasions," though this has been done only rarely. He must also periodically inform Congress of "the State of the Union."
- **Veto legislation.** The president can **veto** (disapprove) any bill or resolution passed by Congress, with the exception of joint resolutions that propose constitutional amendments. Congress can override a presidential veto with a two-thirds vote in each house.
- **Appoint various officials.** The president has the authority to appoint federal court judges, ambassadors, Cabinet members, other key policymakers, and many lesser officials. Many appointments are subject to Senate confirmation.
- **Make treaties.** With the "advice and consent" of at least two-thirds of those senators voting at the time, the president can make treaties with foreign powers. The president is also to "receive ambassadors," a phrase that presidents have interpreted as the right to recognize other nations.
- **Grant pardons.** The president can grant pardons to individuals who have committed "Offences against the United States, except in Cases of Impeachment."

THE EXPANSION OF PRESIDENTIAL POWER

The framers' limited conception of the president's role has given way to a considerably more powerful interpretation. In this section, we look

beyond the presidential responsibilities explicitly listed in the Constitution and examine the additional sources of power that presidents have used to expand the authority of the office. First, we look at the claims that presidents make about "inherent" powers implicit in the Constitution. Second, we turn to congressional grants of power to the executive branch. Third, we discuss the influence that comes from a president's political skills. Fourth, we analyze how a president's popular support affects his political power. And finally, we look at the tremendous expectations that the public has come to have for the office.

The Inherent Powers

Several presidents have expanded their power by taking actions that exceeded commonly held notions of the president's proper authority. These men justified what they had done by saying that their actions fell within the **inherent powers** of the office. From this broad perspective, presidential power derives not only from those duties clearly outlined in Article II, but also from inferences that may be drawn from the Constitution.

When a president claims a power that has not been considered part of the chief executive's authority, he forces the Congress and the courts to acquiesce to his claim or to restrict it. When presidents succeed in claiming a new power, they leave to their successors the legacy of a permanent expansion of presidential authority. One early use of the inherent power of the presidency occurred during George Washington's tenure in office. The British and the French were at war, and Washington was under some pressure from members of his own administration to show favoritism toward the French. Instead, he issued a proclamation of strict neutrality, angering many who harbored anti-British sentiments; the ensuing controversy provoked a constitutional debate. Washington's critics noted that the Constitution does not include a presidential power to declare neutrality. His defenders said that the president had inherent powers to conduct diplomatic relations. In the end, Washington's decision was not overturned by Congress or the courts and thus set a precedent in the area of foreign affairs.⁸

Claims of inherent powers often come at critical points in the nation's history. During the Civil War, for example, Abraham Lincoln issued a number of orders that exceeded the accepted limits of presidential authority. One of those orders increased the size of the armed forces far beyond the congressionally mandated ceiling, even though the Constitution gives only Congress the power "to raise and support armies." And because military expenditures would then have exceeded military appropriations, Lincoln clearly had also acted to usurp the taxing and spending powers constitutionally conferred on Congress. In another order, Lincoln instituted a blockade of Southern ports, thereby committing acts of war against the Confederacy without the approval of Congress.

Lincoln said the urgent nature of the South's challenge to the Union forced him to act without waiting for congressional approval. His rationale was simple: "Was it possible to lose the nation and yet preserve the Constitution?"⁹ In other words, Lincoln circumvented the Constitution

Preserving the Union

During the Civil War, Abraham Lincoln took many controversial actions that expanded the authority of the presidency. Lincoln (pictured with his generals at Antietam, Maryland) strongly influenced the nature of the office through his emergency measures.



in order to save the nation. Subsequently, Congress and the Supreme Court approved Lincoln's actions. That approval gave added legitimacy to the theory of inherent powers—a theory that over time has transformed the presidency.

Any president who lays claim to new authority runs the risk of being rebuffed by Congress or the courts and suffering political damage. After Andrew Jackson vetoed a bill reauthorizing a national bank, he ordered William Duane, his secretary of the treasury, to withdraw all federal deposits and to place them in state banks. Duane refused, claiming that he was under the supervision of both Congress and the executive branch; Jackson responded by firing him. The president's action angered many members of Congress who believed that Jackson had overstepped his constitutional bounds; the Constitution does not actually state that a president may remove his Cabinet secretaries. Although that prerogative is now taken for granted, Jackson's presidency was weakened by the controversy. His censure by the Senate was a slap in the face, and he was denounced even by members of his own party. It took many years for the president's right to remove Cabinet officers to become widely accepted.¹⁰

Congressional Delegation of Power

Presidential power grows when presidents successfully challenge Congress, but in many instances Congress willingly delegates power to the executive branch. As the American public pressures the national government to solve various problems, Congress, through a process called **delegation of powers**, gives the executive branch more responsibility to administer programs that address those problems. One example of delegation of legislative power occurred in the 1930s, during the Great Depression, when Congress gave Franklin Roosevelt's administration wide latitude to do what it thought was necessary to solve the nation's economic ills.

When Congress concludes that the government needs flexibility in its approach to a problem, the president is often given great freedom in how or when to implement policies. Richard Nixon, for example, was given discretionary authority to impose a freeze on wages and prices in an effort to combat escalating inflation. If Congress had been forced to debate the timing of this freeze, merchants and manufacturers would surely have raised their prices in anticipation of the event. Instead, Nixon was able to act suddenly, and the freeze was imposed without warning. (Congressional delegation of authority to the executive branch is discussed in more detail in Chapter 12.)

At other times, however, Congress believes that too much power is accumulating in the executive branch, and it passes legislation reasserting congressional authority. During the 1970s, many representatives and senators agreed that Congress's role in the American political system was declining, that presidents were exercising power that rightfully belonged to the legislative branch. The most notable reaction was the passage of the War Powers Resolution (1973), which was directed toward ending the president's ability to pursue armed conflict without explicit congressional approval. Congress has also moved to prevent presidents from impounding (refusing to spend) money appropriated by Congress.¹¹

The President's Power to Persuade

A president's influence in office comes not only from his assigned responsibilities, but also from his political skills, how effectively he uses the resources of his office. A classic analysis of the use of presidential resources is offered by Richard Neustadt in his book *Presidential Power*. Neustadt develops a model of how presidents gain, lose, or maintain their influence. Neustadt's initial premise is simple enough: "Presidential power is the power to persuade."¹² Presidents, for all their resources—a skilled staff, extensive media coverage of presidential actions, the great respect for the office—must depend on others' cooperation to get things done. Harry Truman echoed Neustadt's premise when he said, "I sit here all day trying to persuade people to do the things they ought to have sense enough to do without my persuading them. . . . That's all the powers of the President amount to."¹³

The abilities displayed in bargaining, dealing with adversaries, and choosing priorities, according to Neustadt, separate above-average presidents from mediocre ones. A president must make wise choices about which policies to push and which to put aside until more support can be found. He must decide when to accept compromises and when to stand on principles. He must know when to go public and when to work behind the scenes.

Often, a president faces a dilemma in which all alternatives carry some risk. After Dwight Eisenhower took office in 1953, he had to decide how to deal with Joseph McCarthy, the Republican senator from Wisconsin. McCarthy had been largely responsible for creating national hysteria over alleged communists in government. He made many wild, reckless charges, damaging a number of innocent people's careers by accusing them of communist sympathies. Many people expected Eisenhower to control McCarthy—not only because he was president, but also

because he was a fellow Republican. Yet Eisenhower, worrying about his own popularity, chose not to confront McCarthy. He used a "hidden-hand" strategy, working behind the scenes to weaken McCarthy. Politically, Eisenhower seems to have made the right choice; McCarthy soon discredited himself.¹⁴ Eisenhower's performance can be criticized, however, as weak moral leadership. If he had publicly denounced the senator, he might have ended the McCarthy witch-hunt sooner.

A president's political skills are especially important in affecting outcomes in Congress. The chief executive cannot intervene in every legislative struggle. He must choose his battles carefully, then try to use the force of his personality and the prestige of his office to forge an agreement among differing factions. Lyndon Johnson was one of the best of modern presidents at bargaining with others to get his legislation passed. Johnson once got religious leaders Billy Graham and Francis Cardinal Spellman to go for a swim in the White House pool and took the opportunity to talk them into resolving a church-state dispute that was holding up an education bill in Congress.¹⁵

Neustadt stresses that a president's influence is related to his professional reputation and prestige. When a president pushes hard for a bill that Congress eventually defeats or emasculates, the president's reputation is hurt. The public perceives him as weak or showing poor judgment, and Congress becomes even less likely to cooperate with him in the future. Jimmy Carter damaged his prestige by backing bills that proposed welfare reform, hospital cost containment, and an agency for consumer protection—none of which passed. Yet the other side of this coin is that presidents cannot easily avoid controversial bills, especially if campaign promises were made. If a president backs only sure things, he will be credited with little initiative and perceived as too cautious.

The President and the Public

Neustadt's analysis suggests that a popular president is more persuasive than an unpopular one. A popular president has more power to persuade because he can use his public support as a resource in the bargaining process. Members of Congress who know that the president is highly popular back home have more incentive to cooperate with the administration. If the president and his aides know that a member of Congress does not want to be seen as hostile to the president, they can apply more leverage to achieve a favorable compromise in a legislative struggle.

A familiar aspect of the modern presidency is the effort of its incumbents to mobilize public support for their programs. A president uses televised addresses and the press coverage that surrounds his speeches, remarks to reporters, and public appearances to speak directly to the American people and convince them of the wisdom of his policies. It may seem only sensible for a president to seek popular endorsement of particular bills or broad initiatives, but public appeals have not always been a part of the presidency. Our first fifteen presidents averaged fewer than ten speeches a year. It was not simply that the lack of modern communications made attempts to mobilize the public more difficult;

Bound for Glory

Ronald Reagan was very effective at using the symbols and pageantry of the presidency to his advantage. In this whistle-stop campaign swing through Ohio in 1984, he gave speeches from the same Pullman car that Harry Truman used in his famous come-from-behind victory over Republican Thomas Dewey in 1948.

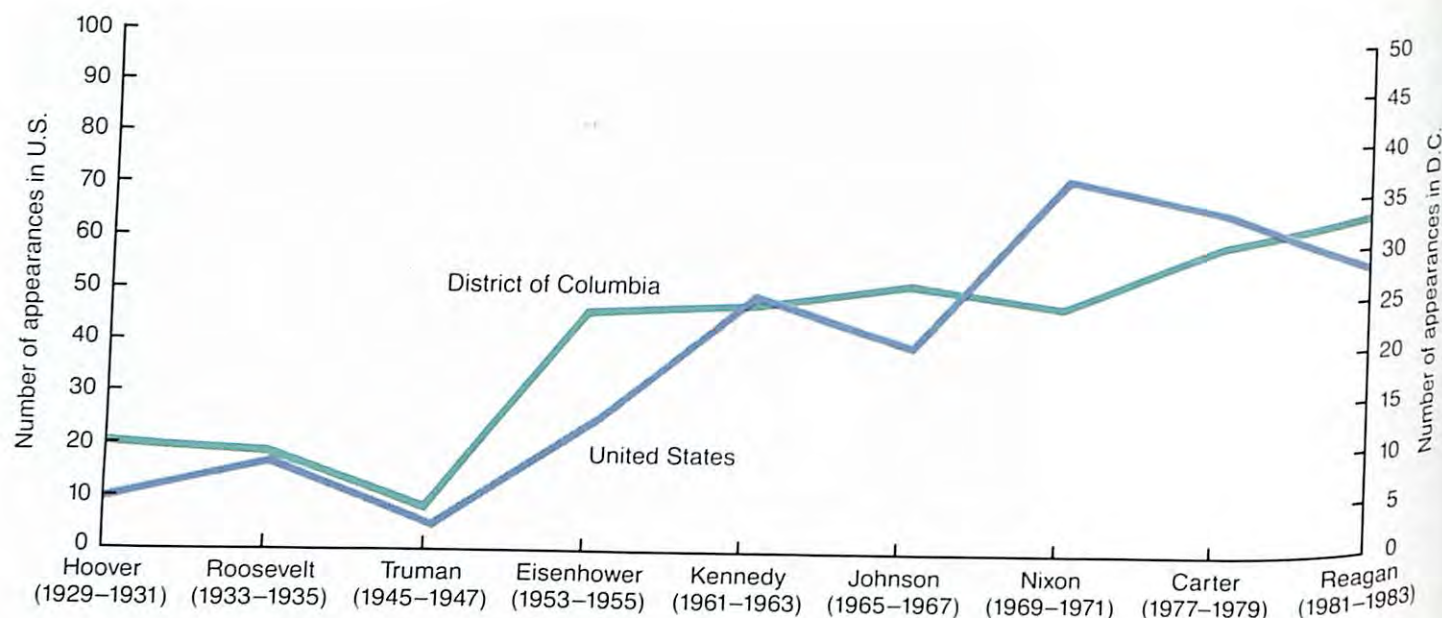


early presidents felt constrained in the way they interacted with the public. The founders' fear that the executive office might be used to inflame popular passions led early presidents to be reserved in their communications.¹⁶ Notice how President-elect Lincoln avoided the opportunity to galvanize support for his views on the secession unrest in the South.

And here, fellow citizens, I may remark that in every crowd through which I have passed of late some allusion has been made to the present distracted condition of this country. It is naturally expected that I should say something upon this subject, but to touch upon it at all would involve an elaborate discussion of a great many questions and circumstances, would require more time than I can at present command, and would perhaps unnecessarily commit me upon matters which have not yet fully developed themselves.¹⁷

Since then, presidents have increased their direct communication with the American people. As Figure 11.1 illustrates, the number of presidential public appearances has grown sharply since World War II. Obviously, modern technology has contributed to this growth. The increase in public appearances represents something more than increased visibility for the president and his views. There has also been a fundamental change in the power of the presidency. The decline of party and congressional leadership has hastened the rise of the public president; at the same time, the president's direct communication with the American people has made it more difficult for political parties and Congress to reinvigorate themselves.¹⁸

Presidential popularity is typically at its highest during a president's first year in office. This "honeymoon" period affords the president a



Going Public

These figures depict the average number of public appearances made in a year by presidents from 1929 to 1983. Only the first three years of their first terms were examined; the fourth year was not tabulated to exclude appearances arranged with an eye toward an upcoming election. Because a large portion of Gerald Ford's term was taken up by a year before an election, his time in office was excluded from analysis. (Source: Samuel Kernell, *Going Public* [Washington, D.C.: Congressional Quarterly Press, 1986], p. 94.)

Figure 11.1

particularly good opportunity to use public support to get some of his programs through Congress. During Ronald Reagan's first year in office, when he made a televised appeal for support for a legislative proposal, some congressional offices received calls and letters that ran 10 to 1 in favor of the president. At the beginning of his second term, typical congressional offices received an equal number of negative and positive responses after a Reagan appeal.¹⁹ Perhaps the positions he advocated were less attractive, but it was also clear that Reagan had lost some of his ability to mobilize public opinion.

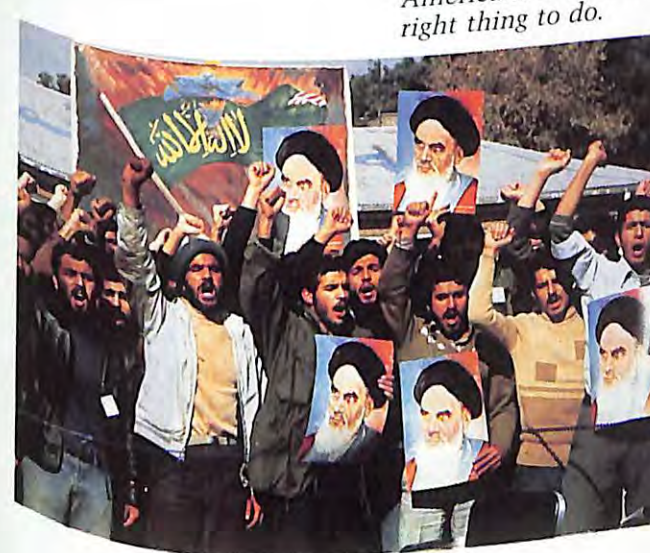
Politicians and journalists have a good "feel" for how well a president is doing, but objective evidence comes from a steady stream of national opinion surveys. The best known of these surveys is the Gallup Poll, which since 1938 has been asking samples of Americans whether they approve of the way the president is doing his job. This half-century of polling has shown two strong patterns. First, the basic trend for most presidents is to move from high popularity to low popularity. Second, every president experiences ups and downs; over time, public approval changes in response to events and presidential actions. Figure 11.2 shows that Reagan's popularity dropped sharply in response to the severe recession that overtook the country during his first term and dipped again when the Iran-Contra scandal was revealed. Still, Reagan's ratings showed more resiliency than the ratings of most presidents. Carter and Johnson were not able to revive their popularity to the extent that Reagan did.

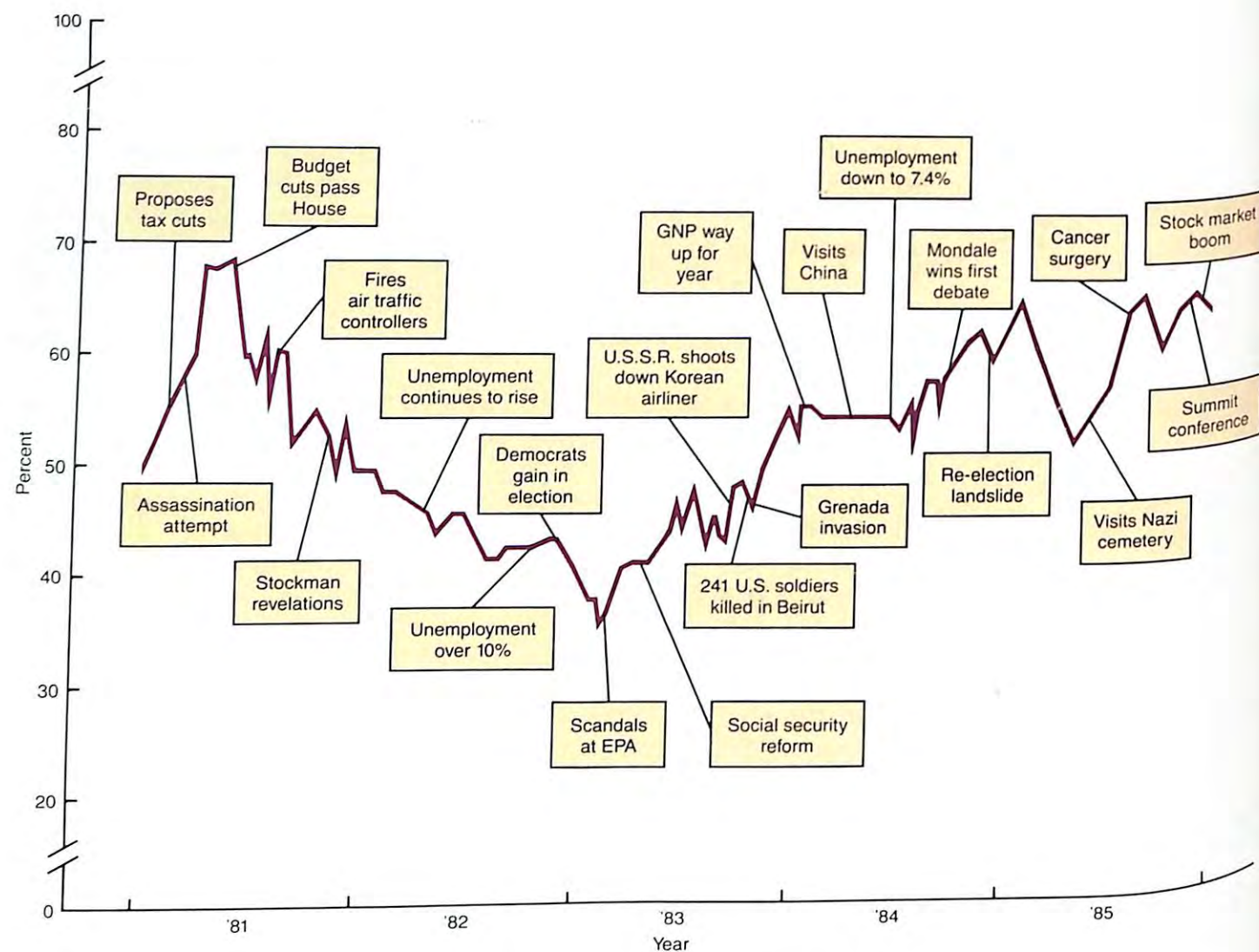
The general decline in presidential popularity throughout a term in office has been explained by the concept of a **coalition of minorities**, the idea that different groups of voters become dissatisfied with a president's handling of particular issues of concern.²⁰ While campaigning for office, a presidential candidate encourages all sectors of society to believe he will help them. After he is in office, the president cannot possibly deliver on all his promises, and the groups that fail to get what they want become disaffected. The coalition of minorities begins to criticize the president. Moreover, the president's vulnerability is exploited by other leaders for their own political gains. The result is a continuing assault on presidential popularity, and the president's level of approval drops from its initial heights.

The sharp peaks and valleys in presidential popularity (within the usual overall pattern of decline) can be explained by several factors. First, public approval of the job done by a president is affected by *economic conditions*, such as inflation and unemployment.²¹ A strong economy buoyed Eisenhower's popularity during his first term, but a recession during the middle of his second term brought his rating down. Second, a president is affected by *unanticipated events* of all types that occur during his administration. When American embassy personnel were taken hostage in Teheran by militantly anti-American Iranians, Carter's popularity soared. This "rally 'round the flag" support for the president eventually gave way to frustration with his inability to gain the hostages' release, and Carter's popularity plummeted. The third factor that affects

Score Two for the Ayatollah

On November 4, 1979, more than fifty Americans were taken hostage in Teheran, Iran. Jimmy Carter's inability to win their freedom hurt his chances for re-election. An agreement for their release was finally reached at the end of Carter's term. In 1986, the nation was shocked to learn that the Reagan administration had traded arms to Iran. Oliver North, a key player in the arms deal, testified before a congressional committee investigating the episode; during his testimony, he came across as a brave and patriotic White House aide. Even so, anger toward Iran and the Ayatollah Khomeini was still strong, and Americans remained largely unconvinced that selling arms to Iran was the right thing to do.





Presidential Popularity: The Reagan Years

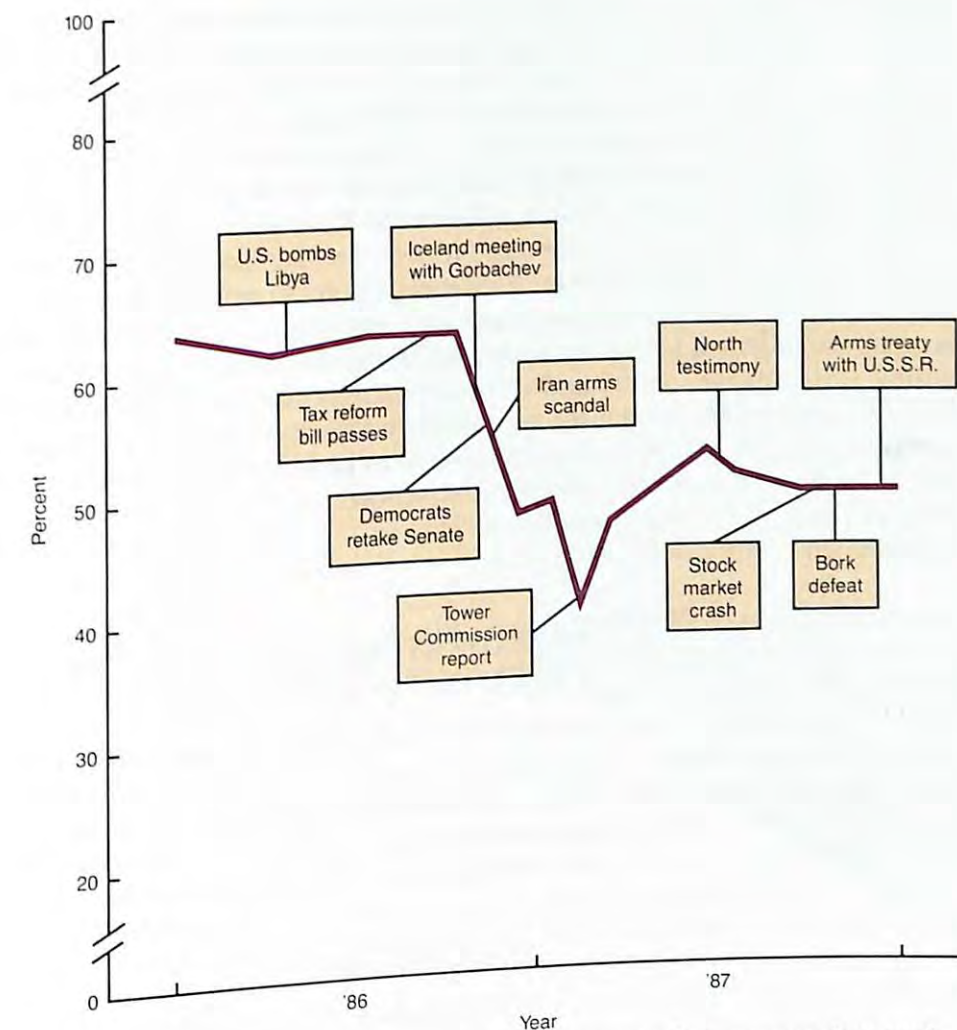
Since the late 1930s, the Gallup Poll has asked a sample of Americans, "Do you approve or disapprove of the way [the present officeholder] is handling his job as president?" Ronald Reagan enjoyed considerable popularity during his

Figure 11.2

presidential popularity is American involvement in a war, which can erode public approval. Johnson suffered a loss of popularity during his escalation of the American effort in Vietnam.²²

Great Expectations

Contemporary Americans become dissatisfied with their presidents for still one more reason: We expect so much from them. The president has come to be viewed as much more than a chief executive of our government; the president is expected to be a moral leader as well as a political one. The presidential family is regarded with reverence and subjected to intense media scrutiny. The president is part king, part savior, and part wise man. In times of crisis, he is seen as the best hope



two terms in office, although his popularity plunged when some serious problems emerged. (For a discussion of how a small sample of Americans can represent the attitude of the nation, see *Politics in the Information Age* 5.1.) (Source: (left) Gallup Opinion Index Report 182, October–November 1980; (right) Gallup Poll, Public Opinion, March–April 1988, pp. 36–37. Captions added.)

for delivering us from our enemies or even from ourselves. One observer notes that "the election of a president is an almost religious task; it intimately affects the life of the spirit, our identity. Who the man is determines in real measure who we are."²³

Why do Americans put so much faith in the presidency? One reason is the common tendency to believe that great people shape great events. This "great man" view of history is, in a sense, a shortcut in understanding the dynamics of policymaking. To the average citizen, the governing process is complex and confusing. An individual who is dissatisfied with the performance of the economy might have to spend considerable time learning about the forces that shape it—the Federal Reserve Board's money supply policy, the balance of payments with foreign countries, the government's taxing and spending policies—to

understand why the economy is acting the way it is. It is easier to believe instead that economic performance is determined by presidential judgment, that the president always makes the critical difference in the direction of public policy.

Unfortunately, the more we expect from presidents, the greater the likelihood that we will be disappointed. The growth of presidential responsibilities has also made it more likely that presidents will be measured as failures. The job has clearly become more daunting since Theodore Roosevelt's years in office; he would spend his summer months at the beach with his family, calling the White House once a day to see if he had to make any decisions.²⁴ Today, the White House is portable; staff and communications gear go wherever the president travels. But for all the resources that modern presidents have at their disposal, the problems they face seem to grow more complex and difficult to solve. Indeed, one presidential scholar argues that "the presidency has become an impossible job."²⁵

PRESIDENTIAL ELECTIONS: THE ELECTORAL CONNECTION

In the 1988 presidential election, Democrat Michael Dukakis won 46 percent of the popular vote and 112 electoral votes. Republican George Bush won 54 percent of the popular vote and 426 electoral votes. Why do we measure a president's vote in two ways? What importance does the electoral vote have?

The Electoral College

The delegates to the Constitutional Convention decided not to let individual voters choose the president directly. Instead, the delegates devised a system in which electors are chosen in their states, and those electors in turn vote for the president. The assumption was that the electors would be educated leaders and would show better judgment in their choices for president than would rank-and-file citizens. The founders did not anticipate that political parties would develop and that voters would soon cast their ballots for electors who openly supported a party candidate. One legacy that remains of the system of having electors cast ballots on behalf of voters is that electors have complete freedom; they are bound neither to a candidate nor to a party. Occasionally an elector fails to follow the voters' preference. In 1972, one elector from Virginia voted for John Hospers of the Libertarian party rather than for Republican Richard Nixon.²⁶

In the **electoral college**, each state is accorded one vote for each of its senators and representatives. California, the state with the largest population, has forty-seven electoral votes in the electoral college—a total of its forty-five representatives and two senators. Six small states qualify for only one representative and therefore have only three electoral votes each. (The Twenty-third Amendment to the Constitution awards three electoral votes to the District of Columbia, even though it elects no voting members of Congress.) After each census, the number of elec-

toral votes for each state is recalculated to reflect population changes that may reduce or increase the number of representatives the state sends to Washington.

In recent years, the greatest population growth has occurred in the so-called Sunbelt states (the South, the Southwest, and California); consequently, their proportionate share of electoral votes has grown as well. This increase has come at the expense of the Frostbelt states (the Northeast and Midwest).

If no candidate receives a majority when the electoral college votes, the election is thrown into the House of Representatives. The House votes by state, with each state casting one vote for a single presidential candidate. (This means that Delaware, for example, has the same voting strength as New York.) The top three finishers in the general election are the candidates in the House election. A presidential election has gone to the House only twice in American history, the first time in 1800 and the second in 1824. Both cases occurred before a stable two-party system had developed (see "Two Party Systems in U.S. History," in Essay C, page 345).

The most troubling aspect of the electoral college is the possibility that, despite winning a plurality or even a majority of popular votes, a candidate could lose the election in the electoral college. This could happen if one candidate wins many states by a very large amount, while the other candidate wins many states by a slim margin. Indeed, this has happened in three elections, most recently in 1888, when Grover Cleveland received 48.6 percent of the popular vote to Benjamin Harrison's 47.9 percent. Cleveland nevertheless trailed Harrison in the electoral college, 168 to 233, and Harrison was elected president. Whether a candidate wins a state by 5 or 500,000 votes, he wins *all* that state's electoral votes.*

This peculiar feature of our system has led to calls for the abolition of the electoral college. Reformers argue that it is simply wrong to have a system that allows a candidate who receives the most popular votes to lose the election. Would the next president be regarded as the legitimate "winner" by the American people if he or she received a minority of popular votes? Reform plans that call for the direct election of the president would institute a purely majoritarian means of choosing the president. Defenders of the electoral college point out that this system, warts and all, has been a stable one. It might be riskier to replace it with a new arrangement that could alter our party system or the way presidential campaigns are conducted. Tradition has in fact prevailed, and recent proposals for fundamental reform have not come close to adoption.

Winning the Presidency

In his farewell address to the nation, Jimmy Carter lashed out at the interest groups that bedeviled his presidency. Interest groups, he said, "distort our purposes because the national interest is not always the sum

* The one exception is in Maine, where two of the state's electoral votes are awarded by congressional district. The presidential candidate who carries each district wins a single electoral vote.

Mission Accomplished

In his stirring acceptance speech at the Republican National Convention in New Orleans, George Bush, a bomber pilot during World War II, said, "I am a man who sees life in terms of missions—missions defined and missions completed." On November 8, 1988, he successfully completed his mission against Michael Dukakis, winning a convincing victory over the Massachusetts governor.



of all our single or special interests." Carter noted the president's singular responsibility: "The president is the only elected official charged with representing all the people."²⁷ Carter, like all other presidents, quickly recognized the dilemma of majoritarianism versus pluralism after he took office. The president must try to please countless separate constituencies while trying to do what is best for the whole country.

It is easy to stand on the sidelines and say that presidents should always try to follow a majoritarian path—pursuing policies that reflect the preferences of most citizens. Simply by running for office, candidates align themselves with particular segments of the population. As a result of their electoral strategy, their identification with activists in their party, and their own political views, candidates come into office with an interest in pleasing some constituencies more than others.

Each candidate attempts to put together an electoral coalition that will provide at least the minimum 270 (out of 538) votes needed for election. The two major-party candidates begin with a traditional base of party support, which they then try to expand. Republican candidates know that the western states have favored their party in recent presidential elections. A Democrat looks to the industrial states of the Northeast for the foundation of an electoral coalition. A candidate does not appeal to states, of course, but to the kinds of voters concentrated in them. A Democrat, for instance, sees organized labor, which is stronger in the Northeast than the West, as a major building block of a winning coalition.

As the campaign proceeds, the candidates try to win votes from different groups of voters through their stands on various issues. They promise that once they are in office, they will take certain actions that

appeal to people holding a particular view on an issue. For example, among the many stands that Ronald Reagan took as a candidate during the 1980 campaign were positions against affirmative action, against court-ordered busing for school integration, for a constitutional amendment outlawing abortion, against "excessive" environmentalism that threatens economic growth, against gay rights ordinances, for a constitutional amendment permitting school prayer, against gun control, against a peacetime draft, for quick decontrol of oil and gas prices, for a 30 percent cut on individual income taxes, and for abolishing the Department of Education.²⁸ For Reagan and other candidates, these policy stands typically stem from long-held views about government; they are not simply expedient ways to attract voters.

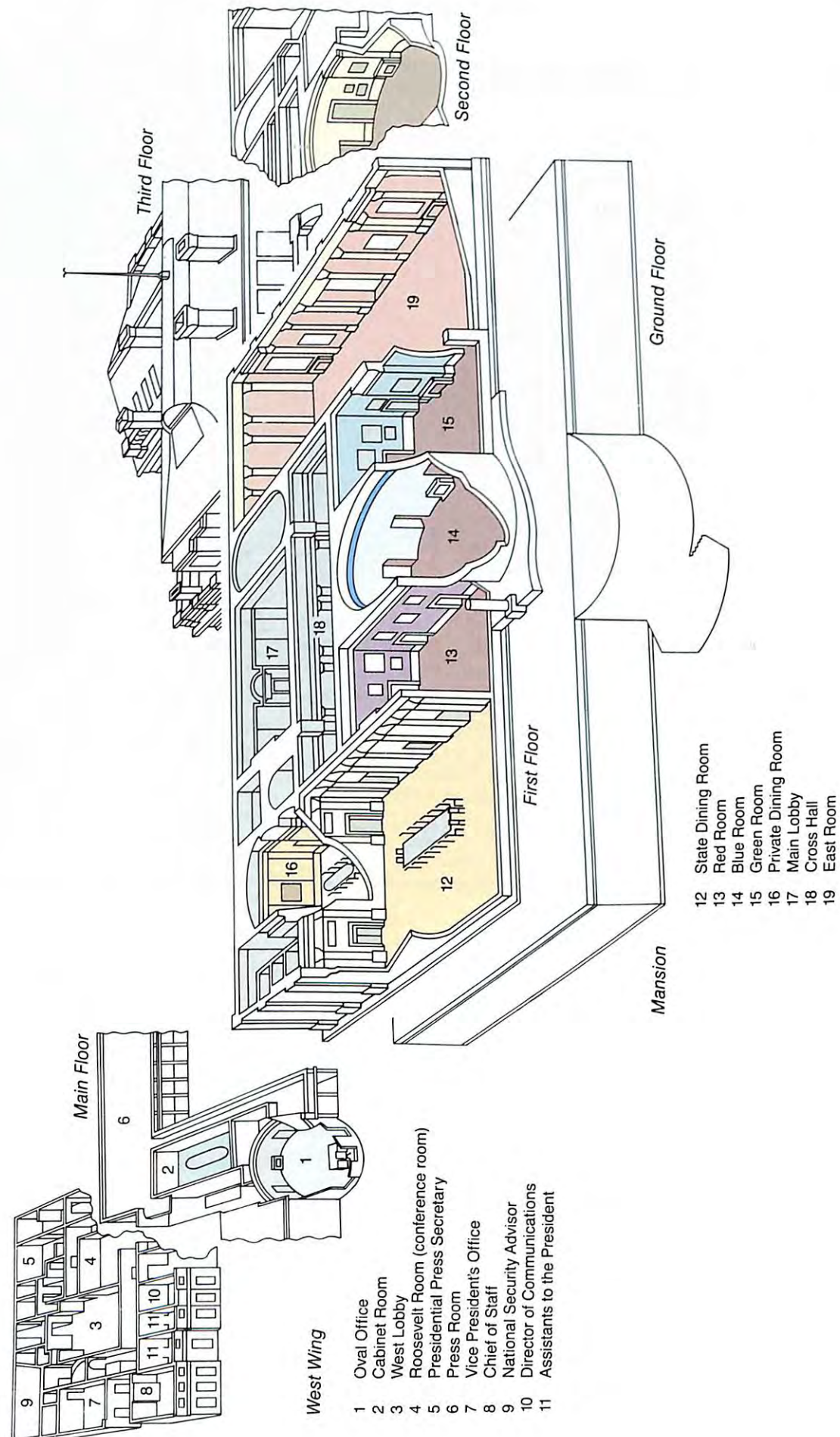
Just as each candidate attracts voters with his stand on particular issues, he offends others who are committed to the opposite side of those issues. In 1988, Bush's emphasis on sustaining economic growth, which downplayed persistent inequities in our economy, helped him win the votes of many businesspeople. On the other hand, it gave those concerned about the less privileged more reason to vote for Dukakis. Because issue stands can cut both ways—attracting some voters and driving others away—candidates may try to finesse an issue by being deliberately vague. Candidates sometimes hope that voters will put their own interpretations on ambiguous stands. If the tactic works, the candidate will attract some voters without offending others. During the 1968 campaign, Nixon said he was committed to ending the war in Vietnam, but gave few details about how he would accomplish that end. He wanted to appeal not only to those who were in favor of military pressure against the North Vietnamese but also to those who wanted quick military disengagement.²⁹

But candidates cannot be deliberately vague about all issues. A candidate who is noncommittal on too many issues appears wishy-washy, indecisive. And future presidents do not build their political careers without working strongly for and becoming associated with important issues and constituencies. As a result, presidents enter office with both a majority of voters on their side and a close identification with particular issue constituencies (see Feature 11.1).

... And Losing It

Winning the voters' support and keeping it are two different ball games. The electoral mandate that the voters give the winning candidate is a rather vague directive for presidential action, and this mandate tends to become more and more fragile over time. As noted earlier, presidential popularity can be eroded by a coalition of minorities.

Even a landslide at the polls does not ensure solid, consistent support throughout a president's term. Lyndon Johnson crushed his Republican opponent, Barry Goldwater, in the 1964 election, winning 61 percent of the popular vote and all but six states. Nevertheless, his popularity went into a steep decline because of public discontent with the war in Vietnam and Johnson's liberal social welfare programs. Even his remarkable influence with Congress began to dissipate. The Democrats lost forty-seven



branch of government. The president has a White House staff that helps him formulate policy. The vice president is another resource; his duties within the administration vary according to his relationship with the president. The president's Cabinet secretaries—the heads of the major departments of the national government—play a number of roles, including the critical function of administering the programs that fall within their jurisdiction. Finally, within the departments and agencies, operating at a level below that of the president's appointees, are the career bureaucrats. These bureaucrats (who are discussed in the next chapter) offer great expertise in program operations.

The White House Staff

A president depends heavily on his key aides. They advise him on crucial political choices, devise the general strategies the administration follows in pursuing congressional and public support, and control access to the president to ensure that he has enough time for his most important tasks. Consequently, he needs to trust and respect these top staffers; many of a president's inner circle of assistants are long-time associates. (Figure 11.4 shows the location of some staffers' offices in the White House.)

Presidents typically have a chief of staff; who may be a "first among equals" or, in some administrations, the unquestioned leader of the staff. H. R. Haldeman, Richard Nixon's chief of staff, played the stronger role. He ran a highly disciplined operation, frequently prodding staff members to work harder and faster. Haldeman also felt that part of his role was to "take the heat" for the president by assuming responsibility for many of the administration's unpopular decisions. "Every president needs a son of a bitch, and I'm Nixon's."³⁰ Hamilton Jordan, chief of staff during the Carter administration, did not dominate the White House staff in the same way. His primary job "was to settle interagency conflict and make sure that the implementation of presidential policy was well supervised."³¹

Presidents also have a national security adviser to provide daily briefings on foreign and military affairs and longer-range analyses of issues confronting the administration. A Council of Economic Advisers is also located in the White House. Senior domestic policy advisers help determine the administration's basic approach to such areas as health, education, and social services.

Below these top aides are large staffs that serve them and the president. These staffs are organized around certain specialties. Some staff members work on "political" matters, such as liaison with interest groups, relations with ethnic and religious minorities, and party affairs. One staff deals exclusively with the press, and a legislative liaison staff lobbies the Congress for the administration. The large Office of Management and Budget (OMB) analyzes budget requests, is involved in the policymaking process, and also examines agency management practices. This extended White House executive establishment is known as the **Executive Office of the President**. The Executive Office employs around sixteen hundred individuals, and it has an annual budget of around \$100 million.³²

There is no agreed-on "right way" for a president to organize his White House staff. Each president creates the structure that will work best for him. Dwight Eisenhower, for example, a former general, wanted clear lines of authority and a hierarchical structure that mirrored a military command. One factor that influences how a president uses his senior staff is the degree to which he delegates authority to them. Carter immersed himself in the policymaking process to ensure that he made all the significant decisions. Early in his administration, he told his staff, "Unless there's a holocaust, I'll take care of everything the same day it comes in."³³ (This explains in large part why Jordan's role as chief of staff was less powerful than Haldeman's during the Nixon years.) Because there is so much for a president to decide on, he may spend precious little time on some of the issues that come before him. One of the critical functions of the senior staff is to make sure that a president rations his time wisely, devoting sufficient time to the issues that warrant considerable analysis and deliberation. As Jack Watson, an aide to Carter, put it, "The most important thing that the chief of staff can do in terms of protecting against the 'damn fool decision' is to do everything within your power to see that the president is fully briefed before he does make a decision."³⁴

Despite the formal organization of the White House staff, it suffers from the same "turf wars" that plague other large organizations. These struggles over authority stem not only from personal ambition and political differences, but also from overlapping jurisdictions. Conflict frequently arises between a secretary of state (a member of the Cabinet) and a president's national security adviser; each wants primacy in shaping the administration's foreign policy. Henry Kissinger, Nixon's national security adviser, was extraordinarily shrewd in devising ways to gain advantage over Secretary of State William Rogers. One of his tactics was to create "backchannels"—information from the field would come to him secretly, bypassing the Department of State. Kissinger did this "not only to keep control of an ongoing negotiation but also to prevent his peers and subordinates from finding out what was going on."³⁵ Presidents, however, often find it more useful to hear competing policy views than depend on the views of one person.

The Vice President

The vice president's primary function is to serve as standby equipment, only a heartbeat away from the presidency itself (see Feature 11.2). Traditionally, vice presidents have not been used in any important advisory capacity. Instead, presidents tend to give them political chores—campaigning, fund raising, and "stroking" the party faithful. This is often the case because vice presidential candidates are chosen for reasons that have more to do with the political campaign than with governing the nation. One of the primary reasons Nixon chose Spiro Agnew, a relatively inexperienced governor of Maryland, as his 1968 running mate was that Agnew would not outshine the colorless Nixon. John Kennedy chose Lyndon Johnson of Texas for the vice presidential slot in 1960 because he thought Johnson would help him carry the South. Johnson was helpful in the election, but once Kennedy was in office, he made little use of his

FEATURE 11.2

Who's President When the President Can't Be?

What happens if a president dies in office? The vice president, of course, becomes the new president. But what happens if the vice president has died or left office for some reason? What happens if the president becomes senile or is disabled by illness? These are questions that the authors of the Constitution failed to resolve.

The nuclear age has made these questions more troubling. When Woodrow Wilson suffered a stroke in 1919, it meant that the country was without effective leadership for a time, but the lack of an active president during that period did not endanger the lives of all Americans. Today, with the possibility of nuclear attack, national security dictates that the nation have a commander in chief at all times. The Twenty-fifth Amendment, which was ratified in 1967, specifies a mechanism for replacing a living president in case he cannot carry out the duties of his office. A president can declare himself unable to carry on, or the vice president and the Cabinet can decide collectively that the president is incapacitated. In either case, the vice president becomes acting president and assumes all powers of the of-

fice. In 1981, when Ronald Reagan was seriously wounded in an assassination attempt and had to undergo emergency surgery, the Twenty-fifth Amendment was not invoked by the vice president and the Cabinet. Four years later, when Reagan underwent cancer surgery, he sent a letter to Vice President George Bush transferring the power of the office to him at the moment the president was anesthetized. Eight hours later, Reagan reclaimed his authority. Under the Twenty-fifth Amendment, if the president and the Cabinet disagree about whether he is able to resume his duties, Congress must ultimately decide.

The Twenty-fifth Amendment also provides that the president select a new vice president in the event that office becomes vacant; the president's choice must be approved by a majority of both houses of Congress. Gerald Ford became vice president in this manner when Spiro Agnew resigned after pleading no contest to charges of income tax evasion and accepting bribes. Later, when Richard Nixon resigned and Ford became president, he chose Nelson Rockefeller as his vice president.

vice president. After Johnson became president, he was sometimes openly contemptuous of his own vice president, Hubert Humphrey of Minnesota. One participant at a meeting recalled the following interaction:

President Johnson allotted the loquacious Hubert H. Humphrey five minutes in which to speak ("Five minutes, Hubert!"); then Johnson stood by, eyes fixed on the sweep second hand of his watch, while Humphrey spoke, and when the Vice President went over the limit, pushed him, still talking, out of the room with his own hands.³⁶

An exception to the usual pattern was Carter's vice president, Walter Mondale. Carter was wise enough to realize that Mondale's experience in the Senate could be of great value to him, especially since Carter had never served in Congress. Although the personal chemistry between Ronald Reagan and George Bush was quite good, Bush did not seem to play as major a role as Mondale.³⁷ The perception that Bush was not a central player was partly a consequence of his claims that he was "out of the loop" (the decision-making process) at crucial junctures during the planning of the arms transactions with Iran.

The Cabinet

The president's **Cabinet** is composed of the heads of the departments in the executive branch (see Table 11.1) and a small number of other key

Table 11.1
The Cabinet

Department	Created	Number of Employees
State	1789	25,254
Treasury	1789	225,082
Defense [†]	1789	1,084,549
Justice [‡]	1789	64,433
Interior	1849	77,485
Agriculture	1862	117,750
Commerce	1913	43,783
Labor	1913	18,260
Health and Human Services*	1953	223,083
Housing and Urban Development	1965	12,289
Transportation	1966	62,227
Energy	1977	16,749
Education	1979	4,889

* The Department of Health, Education, and Welfare became the Department of Health and Human Services in 1979, when an independent Department of Education was established.

† The War Department was created in 1789. The Defense Department was created in 1949. Employment figure is for civilian employees only.

‡ The attorney general was a member of the first cabinet. The Justice Department was established in 1870.

Source: Bureau of the Census, *Statistical Abstract of the United States: 1987* (Washington, D.C.: U.S. Government Printing Office, 1986), p. 311.

officials, such as the head of the Office of Management and Budget and the ambassador to the United Nations. The Cabinet has expanded greatly since George Washington formed his first Cabinet, which included an attorney general and secretaries of state, treasury, and war. Clearly, the growth of the Cabinet reflects the growth of government responsibility and intervention in areas such as energy, housing, and transportation.

In theory, the members of the Cabinet constitute an advisory body that meets with the president to debate major policy decisions. In practice, however, Cabinet meetings have been described as “vapid non-events in which there has been a deliberate non-exchange of information as part of a process of mutual nonconsultation.”³⁸ One Carter Cabinet member called meetings “adult Show-and-Tell.”³⁹ Why is this so? First, the Cabinet has become rather large. Counting department heads, other officials of Cabinet rank, and presidential aides, it is a body of at least twenty people—a size that many presidents find unwieldy for the give-and-take of political decision making. Second, most Cabinet members have limited areas of expertise and simply cannot contribute much to deliberations on areas they know little about. The secretary of defense, for example, would probably be a poor choice to help decide important issues of agricultural policy. Third, although Cabinet members have impressive backgrounds, they may not be personally close to the president or easy for him to work with. Cabinet choices are not necessarily made on the basis of personal relationships. The president often chooses

Cabinet members because of their reputations, or he may be guided by a need to give his Cabinet some racial, ethnic, geographic, sexual, or religious balance.

Finally, modern presidents do not rely on the Cabinet to make policy because they have such large White House staffs, which offer most of the advisory support they need. In contrast to Cabinet secretaries, who may be pulled in different directions by the wishes of the president and the wishes of their department’s clientele groups, White House staffers are likely to see themselves as responsible to the president alone. Thus, despite periodic calls for the Cabinet to be a collective decision-making body, Cabinet meetings seem doomed to be little more than academic exercises. In practice, presidents prefer the flexibility of ad hoc groups, specialized White House staffs, and the advisers and Cabinet secretaries with whom they feel most comfortable.

More broadly, presidents use their personal staffs and the large Executive Office of the President to centralize control over the entire executive branch. The vast size of the executive branch and the number and complexity of decisions that must be made each day pose a challenge for the White House. Reagan, for example, created a new OMB staff unit to review proposals by regulatory agencies. In sum, to fulfill more of their political goals and policy preferences, modern presidents have encouraged their various staffs to play increasingly important roles in executive branch decision making.⁴⁰

THE PRESIDENT AS NATIONAL LEADER

With an election behind him and the resources of his office at hand, a president is ready to lead the nation. Each president enters office with a general vision of how government should approach policy issues. During his term, a president spends much of his time trying to get Congress to enact legislation that reflects his general philosophy and specific policy preferences.

From Political Values . . .

Presidents differ greatly in their views of the role of government. Lyndon Johnson had a strong liberal ideology concerning domestic affairs, believing that government has a responsibility to help disadvantaged Americans. After his landslide victory in 1964, Johnson’s inaugural address contained his vision of justice:

... justice was the promise that all who made the journey would share in the fruits of the land.

In a land of wealth, families must not live in hopeless poverty. In a land rich in harvest, children just must not go hungry. In a land of healing miracles, neighbors must not suffer and die untended. In a great land of learning and scholars, young people must be taught to read and write.

For more than thirty years that I have served this nation, I have believed that this injustice to our people, this waste of our resources, was our real enemy. For thirty years or more, with the resources I have had, I have vigilantly fought against it.⁴¹

The Transfer of Power

Vice President Lyndon Johnson was with President John Kennedy during his fateful visit to Dallas. After Kennedy was pronounced dead at Parkland Hospital, federal judge Sarah Hughes (lower left) administered the presidential oath of office to Johnson on Air Force One. Standing next to Johnson were his wife, Lady Bird (left), and Kennedy's widow, Jacqueline (right). Five days after he was sworn in, Johnson gave a nationally televised address before a joint session of Congress. Johnson used a memorable phrase symbolizing the stability of the presidency: "Let us continue."



Johnson used *justice* and *injustice* as code words for *equality* and *inequality*. They were used six times in his speech; *freedom* was used only twice. Johnson used his mandate and the resources of his office to press for a "just" America, which he termed the "Great Society."

To achieve his Great Society, Johnson sent Congress an unparalleled package of liberal legislation. He launched such projects as the Job Corps (which created centers and camps offering vocational training and work experience to youths aged sixteen to twenty-one); Medicare (which provided medical care for the elderly); and the National Teacher Corps (which funded teachers to work in impoverished neighborhoods). Supported by huge Democratic majorities in Congress during 1965 and 1966, he had tremendous success in getting his proposals through. Liberalism was in full swing.

Exactly twenty years after Johnson's inaugural speech, Ronald Reagan took his oath of office for the second time, then addressed the nation. Reagan reasserted his conservative philosophy. He emphasized *freedom*, using the term fourteen times, and failed to mention *justice* or *equality* once. In the following excerpts, the term *freedom* is highlighted for easy reference:

By 1980, we knew it was time to renew our faith, to strive with all our strength toward the ultimate in individual *freedom* consistent with an orderly society. . . . We will not rest until every American enjoys the fullness of *freedom*, dignity, and opportunity as our birthright. . . . Americans . . .

turned the tide of history away from totalitarian darkness and into the warm sunlight of human *freedom*. . . . Let history say of us, these were golden years—when the American Revolution was reborn, when *freedom* gained new life, when America reached for her best. . . . *freedom* and incentives unleash the drive and entrepreneurial genius that are at the core of human progress. . . . From new *freedom* will spring new opportunities for growth. . . . Yet history has shown that peace does not come, nor will our *freedom* be preserved by good will alone. There are those in the world who scorn our vision of human dignity and *freedom*. . . . Human *freedom* is on the march, and nowhere more so than in our own hemisphere. *Freedom* is one of the deepest and noblest aspirations of the human spirit. . . . America must remain *freedom's* staunchest friend, for *freedom* is our best ally. . . . Every victory for human *freedom* will be a victory for world peace. . . . One people under God, dedicated to the dream of *freedom* that He has placed in the human heart.⁴²

Reagan turned Johnson's philosophy on its head, declaring that "government is not the solution to our problem. Government is the problem." During his presidency, Reagan worked to undo many welfare and social service programs. For example, he proposed in 1981 that funding for the Job Corps be reduced by 40 percent; Congress refused to go along. He was more successful in getting Congress to cut back on the food stamp program (started during the Kennedy administration) through reduced benefits and eligibility restrictions. Food stamp legislation called for outlays to be reduced by 14 percent over the next three years.⁴³

. . . To Policy Agenda

The roots of particular policy proposals, then, can be traced to the more general political ideology of the president. A presidential candidate surely outlines that philosophy of government during his campaign for the White House. But when the hot rhetoric of the presidential campaign meets the cold reality of what is possible in Washington, the newly elected president must make some hard choices about what he will push for during the coming term. These choices are reflected in the bills the president submits to Congress, as well as in the degree to which he works for their passage. The president's bills, introduced by his allies in the House and Senate, always receive a good deal of initial attention. In the words of one Washington lobbyist, "When a president sends up a bill, it takes first place in the queue. All other bills take second place."⁴⁴

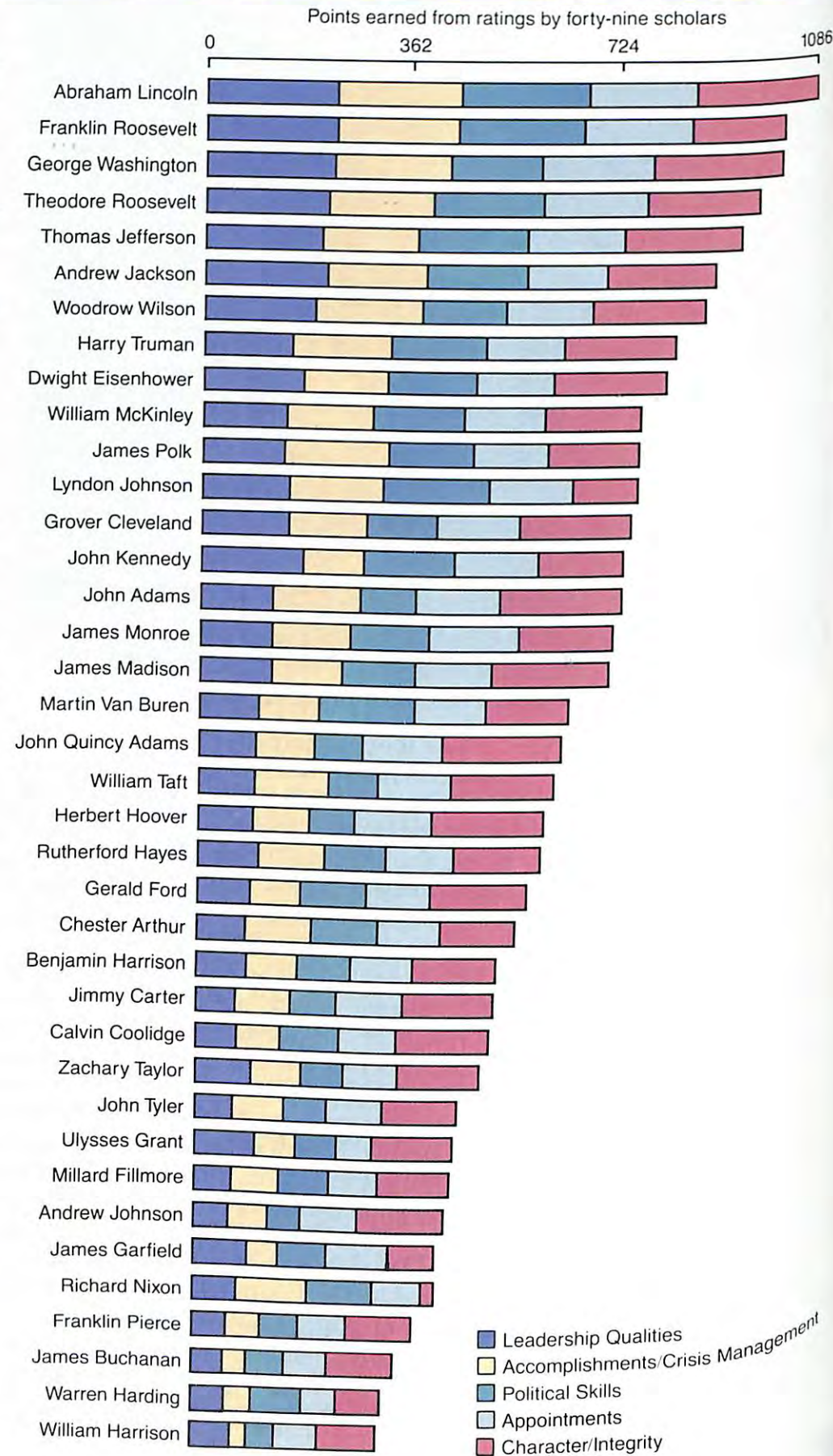
The president's role in legislative leadership is largely a twentieth-century phenomenon. Not until the Budget and Accounting Act (1921) did executive branch departments and agencies have to clear their proposed budget bills with the White House. Before this, the president did not even coordinate proposals for how much the executive branch would spend on all the programs it administered. Later, Franklin Roosevelt required that *all* major legislative proposals by an agency or department be cleared by the White House. No longer could a department submit a bill without White House support.⁴⁵

Roosevelt's impact on the relationship between the president and Congress went far beyond this new administrative arrangement. With the nation in the midst of the Great Depression, Roosevelt began his

Figure 11.5

Presidential Greatness

In 1982, the Chicago Tribune asked forty-nine leading historians and political scholars to rate all past presidents on a descending scale from 5 (best) to 0 (worst) in five categories: leadership qualities, accomplishments and crisis management, political skills, quality of appointments, and character and integrity. Lincoln ranked at the top, and Franklin Roosevelt edged out Washington for second place. Among more recent presidents, Eisenhower, Johnson, and Kennedy all rated far higher than Ford, Carter, and Nixon. Nixon's ranking suffered by his extraordinarily low score for character and integrity—the lowest that the scholars gave to any president in history. (Source: © Copyrighted 1988, Chicago Tribune Company, all rights reserved, used with permission.)



first term in 1933 with an ambitious array of legislative proposals. During the first hundred days Congress was in session, it enacted fifteen significant laws, including the Agricultural Adjustment Act, the Civilian Conservation Corps, and the National Industrial Recovery Act. Never had a president demanded—and received—so much from Congress. Roosevelt's legacy was that the president would henceforth provide aggressive leadership for Congress through his own legislative program.

A handful of presidents have entered office after a serious upheaval or a general decline of a dominant political coalition, situations that presidents can use to their advantage. The economic collapse that preceded Roosevelt's entry into office ended an era of conservative Republicanism that had steadfastly ruled the country for many years. Andrew Jackson and Abraham Lincoln also had fortuitous chances to redefine the terms of political debate and move the country toward a new political agenda.⁴⁶ Reagan found Roosevelt's New Deal coalition in serious decline when he took over, making it easier to reorient debate away from issues of equality to issues of freedom. But times of upheaval and decline merely present opportunities; presidents must be skillful enough to exploit the chances for large-scale change. And history has taught us that presidents differ greatly in their skills (see Figure 11.5).

Chief Lobbyist

When Franklin Roosevelt and Harry Truman first became heavily involved in preparing legislative packages, political scientists typically described the process as one in which "the president proposes and the Congress disposes." In other words, once the president sent his legislation to Capitol Hill, Congress decided on its own what to do with it. Over time, though, presidents have become increasingly active in all stages of the legislative process. The president is expected not only to propose legislation, but also to make sure that it passes. His role as "chief lobbyist" is illustrated by John Kennedy's first year in office, during which time he

held thirty-two Tuesday morning breakfasts with congressional leadership, ninety private conversations with congressional leaders that lasted an hour or two, coffee hours with 500 legislators, bill signing ceremonies with a similar number, and in all approximately 2,500 separate contacts with congressmen exclusive of correspondence.⁴⁷

The president's efforts to influence Congress are reinforced by the work of his legislative liaison staff. All departments and major agencies have legislative specialists as well. These department and agency people work with the White House staff to coordinate the administration's lobbying on major issues.

The **legislative liaison staff** is the communications link between the White House and Congress. As a bill slowly makes its way through Congress, liaison staffers advise the president or a Cabinet secretary on the problems that emerge. They specify what parts of a bill are in trouble and may have to be modified or dropped. They tell their boss what amendments are likely to be offered, which members of Congress need lobbying, and what the chances are for the passage of the bill with or

without certain provisions. Decisions on how the administration will respond to such developments must then be reached. For example, when the Reagan White House realized it was still a few votes short of victory on a budget bill in the House, it reversed its opposition to a sugar price-support bill. This attracted the votes of representatives from Louisiana and Florida, two sugar-growing states, for the budget bill. The White House would not call what happened a "deal" but noted that "adjustments and considerations" had been made.⁴⁸

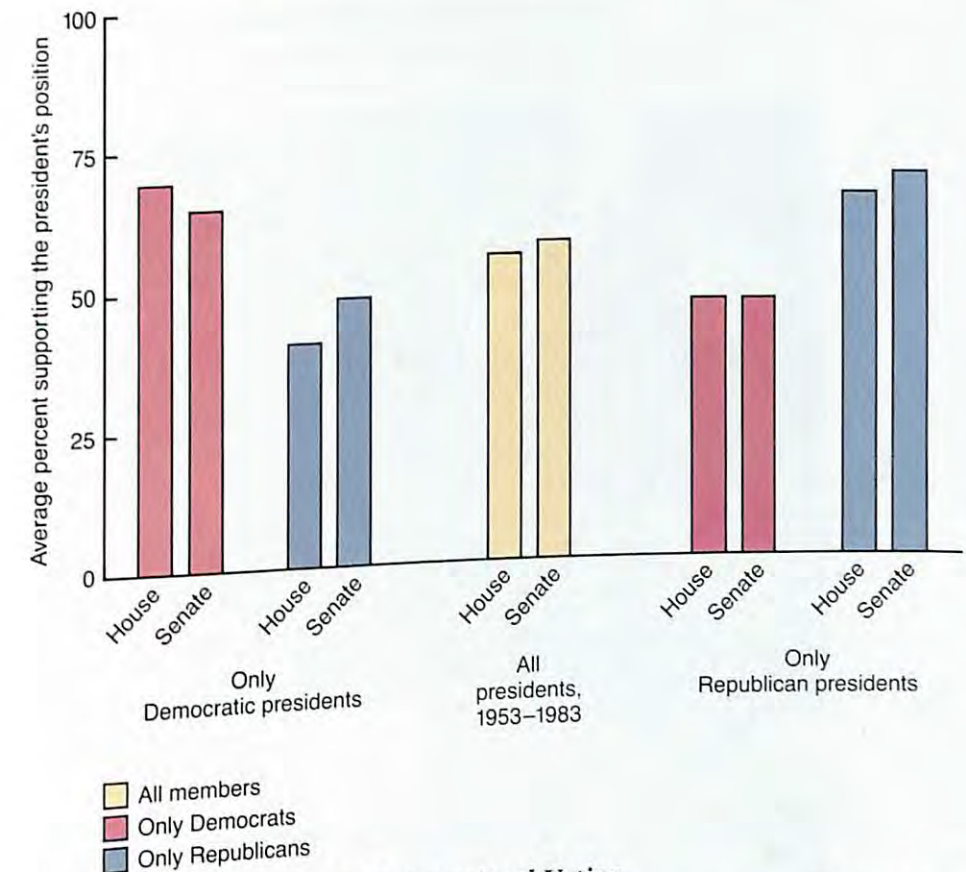
A certain amount of the president's job is stereotypical "arm twisting"—pushing reluctant legislators to vote a certain way. Yet most day in, day out interactions tend to be more subtle, as the liaison staff tries to build consensus by working cooperatively with members of Congress. When a congressional committee is working on a bill, liaison people talk to committee members individually, to see what concerns they have and to help fashion a compromise if some members differ with the president's position. As one experienced White House lobbyist put it, "I think it is important to try to develop an individual relationship with the members, to get to know their problems and what their interests are and to gain their confidence"⁴⁹ (see Figure 11.6).

The White House also works directly with interest groups in its efforts to build support for legislation. Presidential aides hope key lobbyists will activate the most effective lobbyists of all: the voters back home. Interest groups can quickly reach the constituents who are most concerned about a bill. One White House aide said with admiration, "The Realtors can send out half a million Mail grams within 24 hours."⁵⁰

Although much of the liaison staff's work with Congress is done in a cooperative spirit, agreement cannot always be reached. When Congress passes a bill the president opposes, he may veto it and send it back to Congress; as noted earlier, Congress can override a veto with a two-thirds majority of those voting in each house. Presidents use their veto power sparingly, but the threat that a president will veto an unacceptable bill increases his bargaining leverage with members of Congress. We have also seen that a president's leverage with Congress is related to his standing with the American people. The ability of the president and his liaison staff to negotiate with members of Congress is enhanced when he is riding high in the popularity polls and hindered when the public is critical of the president's performance. After Reagan vetoed a 1987 highway bill he thought was too expensive, the House and Senate overrode the veto. Before the vote in the Senate, the president took the unusual step of traveling to Capitol Hill to seek the single vote that would have prevented the necessary two-thirds margin. If Reagan had not been so damaged by the Iran-Contra scandal that had come to light six months earlier, it seems likely that he could have persuaded at least a few more senators to back his veto.⁵¹

Party Leader

Part of the president's job is to lead his party. This is very much an informal duty, with no prescribed tasks. In this respect, American presidents are considerably different from European prime ministers, who



Support for the President in Congressional Voting

The extent to which individual representatives and senators support the president in their congressional voting patterns can be measured by the presidential support score, computed by Congressional Quarterly, a Washington, D.C., publication that specializes in reporting on Congress. Congressional Quarterly reviews all the public messages and statements of the president to determine what legislation he favors and opposes. After analyzing all recorded roll call votes in a session of Congress, Congressional Quarterly assigns to each representative and senator a presidential support score, indicating the percentage of the time that the member backed the president's position during the session. The graph shows that, regardless of party, the average member of the House or Senate supported the president somewhat more than half the time. When the list is broken down by party, a clear pattern emerges: Republican members are far more likely to support Republican presidents, and Democratic members, to support Democratic presidents.

Figure 11.6

are the formal leaders of their party in the national legislature as well as the heads of government. Since political parties in Europe tend to have strong national organizations, there is more reason for prime ministers to lead the party organization. In the United States, national party committees play a relatively minor role in national politics, although the Republican party has developed a formidable fund-raising capability that has benefited its congressional candidates.

The simple fact is that presidents can operate effectively without the help of a national party apparatus. Lyndon Johnson, for example, was

contemptuous of the Democratic National Committee. He saw to it that the committee's budget was cut and refused some advisers' request that he replace its ineffectual head. Johnson thought a weak national committee would allow him to control party affairs out of the White House. Like other modern presidents, Johnson believed he would be most effective communicating directly to the American people and did not see the need for national, state, or local party officials to be intermediaries in the process of coalition building.⁵²

Work with the party may be more important for gaining the presidency than actually governing. George Bush worked tirelessly on the "rubber chicken" circuit while he was vice president and built up a hefty billfold of IOUs by campaigning for Republican candidates and appearing at their fund-raising dinners. When he and his main competitor for the 1988 Republican nomination, Senator Robert Dole, faced each other in the critical Super Tuesday primaries in 1988, Bush had enormous strength among state and local party leaders; those individuals formed the backbone of his campaign organization. Yet such party work is not absolutely essential. In 1976, Carter not only won the nomination without much of a record of party work, he campaigned as an outsider, claiming that he would be a better president without having ties to those who had long been in power.

THE PRESIDENT AS WORLD LEADER

The president's leadership responsibilities extend beyond the Congress and the nation, into the international arena. Each administration tries to further what it sees as the country's best interests in its relations with allies, adversaries, and the developing countries of the world. In this role, the president can act as diplomat or crisis manager.

Foreign Relations

Presidents like to think of themselves as leaders of the Western democracies—the noncommunist countries of Europe, Japan, Canada, Australia, and a few other nations. (As you learned in Chapter 2, there are only nineteen countries that fit the different criteria political scientists commonly use to define a democracy.) The president is the focal point for the Western bloc's relations with the two communist superpowers, the Soviet Union and China. There is no formal alliance of all the Western democracies, but the United States has entered into military alliances with many of them. The most important of these is the North Atlantic Treaty Organization (NATO), composed of the United States, Canada, and most of the countries of Western Europe. These countries depend on our nuclear shield and troop commitments as deterrents to potential aggression.

The international pre-eminence of the United States is based on this country's long-term economic and military might, but the president has



Our American Friend

As a young politician, Richard Nixon was notorious for his staunch anticommunism. As president, however, he achieved a stunning reversal of U.S. policy toward the People's Republic of China. His trip there in 1972 signaled an end to the Cold War hostility between the United States and the communist regime.

little formal diplomatic control over other democratic countries. America's allies have interests of their own and strong internal reasons for wanting to remain independent of this country. Inherent nationalism, economic necessity, differing political philosophies, and the visions of their leaders give countries like France, Italy, and England reasons to stake out their independent roles in world politics. France and West Germany, for example, have taken significant steps of their own to improve relations with the Soviet Union and with the Eastern European countries aligned with Moscow.

As in his dealings with Congress, a president must lead his allies with his powers of persuasion. He must act deftly, inducing the various heads of state to follow America's lead in foreign policy without pressuring them so much that they become resentful and uncooperative. Jimmy Carter's effort to boycott the 1980 Olympic games in Moscow illustrates the difficulty recent presidents have had in leading the allies. When the Soviet Union sent its troops into neighboring Afghanistan because it feared that a hostile regime might come to power, Carter asked the Western democracies for a joint response to the Soviet aggression. Despite widespread anger and revulsion over the invasion, many allies (among them, France and Great Britain) did not comply with Carter's request to boycott the games and sent their athletes to Moscow.

A president's diplomatic skills are tested in another way in his relations with the Soviet Union, the other great nuclear power. The president must regard the Soviet Union as an adversary but at the same time must develop a sound working relationship with its leaders. The primary concern of the president—and of his counterpart, the leader of the Communist party in the Soviet Union—is achieving the right level of armament and arms control. Each country wants to remain militarily strong, but each also has a real interest in limiting the arms race because of spiraling costs, the worry that the other country will achieve a clear weapons superiority, and a general desire to reduce international tensions.

Presidents are constrained in their direction of our relations with the Soviet Union by public opinion, Congress, and this country's long-standing anticommunist ideology. As presidents and their advisers develop policy, they anticipate the reactions of critics. Yet recent presidents have also played an important role in leading the United States out of the Cold War—the era of Soviet–American distrust and hostility that followed World War II. Richard Nixon pursued *détente*, an easing of tensions between the two countries, which resulted in an arms control agreement (SALT I). Gerald Ford and Carter pursued *détente* as well, leading to the SALT II accords during the Carter administration, although SALT II was never ratified by the Senate. Despite his harsh criticism of the Soviet Union as the “evil empire,” Reagan negotiated a missile treaty with Soviet leader Mikhail Gorbachev to remove intermediate-range nuclear missiles from Europe.

A general goal of all presidents is to pull developing countries into closer, friendlier relations with the United States. At the very least, presidents try to keep such countries from falling under communist domination. For example, the Reagan administration supported the efforts of the Contras to overthrow the Nicaraguan government because it believed that Marxist government was a threat to the rest of Central America. Presidents may also face problems with developing countries that are our allies. Over the years, the United States has supported a number of dictatorial leaders because such support suited our strategic needs. American support of the Shah of Iran caused many people of Iran to associate the Shah's repressive regime with the United States. Since the revolution that toppled the Shah, those Iranians have considered the United States a great enemy.

The Handshake of Peace

One of the crowning achievements of Jimmy Carter's presidency was his role in forging a peace treaty between Egypt and Israel. Egyptian president Anwar Sadat (left) and Israeli prime minister Menachem Begin (right) came to the presidential retreat at Camp David in Maryland. For thirteen days, Carter was a mediator in the peace negotiations. After the historic accords were reached, the three flew by helicopter to the White House, where they signed the initial agreement.



Crisis Management

Periodically the president faces a grave situation in which conflict is imminent or a small conflict threatens to explode into a larger war. Handling such episodes is a critical part of the president's job. Today, we must put enormous trust in the person who has the power to pull our nuclear trigger; voters may make the candidates' personal judgment and intelligence primary considerations in how they cast their ballots. A major reason for Barry Goldwater's crushing defeat in the 1964 election was his warlike image. Goldwater's bellicose rhetoric scared many Americans, who, fearing that he would be too quick to resort to nuclear weapons, voted for Lyndon Johnson instead.

A president must be able to exercise good judgment and remain cool in crisis situations. John Kennedy's behavior during the Cuban missile crisis has become a model of effective crisis management. When it was discovered that the Soviet Union had placed missiles containing nuclear warheads in Cuba, U.S. government leaders saw those missiles as an unacceptable threat to this country's security. Kennedy asked a group of senior aides, including top people from the Pentagon, to advise him on possible military and diplomatic actions. An armed invasion of Cuba and air strikes against the missiles were two options considered. In the end, Kennedy decided on a less dangerous response: implementing a naval blockade of Cuba. The Soviet Union thought better of prolonging its challenge to the United States and soon agreed to remove its missiles. For a short time, though, the world held its breath over the very real possibility of a nuclear war.

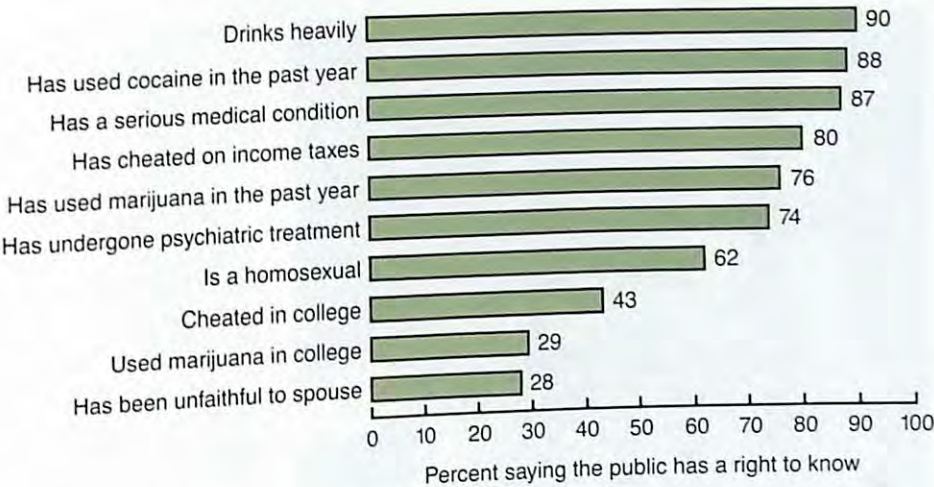
Are there guidelines for what a president should do in times of crisis or at other important decision-making junctures? Drawing on a range of advisers and opinions is certainly one.⁵³ Not acting in unnecessary haste is another. A third is rigorously examining the chain of reasoning that has led to the chosen option, ensuring that *presumptions* have not been subconsciously equated with what is *actually known* to be true. When Kennedy decided to back a CIA plan to sponsor a rebel invasion of Cuba by expatriates hostile to Fidel Castro, he never really understood that its chances for success were based on unfounded assumptions of immediate uprisings by the Cuban population.⁵⁴ Still, these are rather general rules and provide no assurance that mistakes will not be made. Almost by definition, each crisis is a unique event. Sometimes all the alternatives carry substantial risks. And almost always, time is of the essence. This was the situation when Cambodia captured the American merchant ship *Mayaguez* off its coast in 1975. Not wanting to wait until the Cambodian government moved the seamen inland, where there would be little chance of rescuing them, Ford immediately sent in the marines. Unfortunately, forty-one American soldiers were killed in the fighting, "all in vain because the American captives had shortly before the attack been released and sent across the border into Thailand."⁵⁵ Even so, Ford can be defended for making the decision he did; he did not know what the Cambodians would do. World events are unpredictable, and, in the end, presidents must rely on their own judgment in crisis situations.

PRESIDENTIAL CHARACTER

How does the public assess which presidential candidate has the best judgment and a character suitable to the office? Americans must make a broad evaluation, considering the candidates' personalities and leadership styles. Sometimes damaging revelations suggest that a candidate's character is flawed. Senator Joseph Biden of Delaware, a candidate for the 1988 Democratic nomination for president, was forced to withdraw from the campaign because of evidence that he had plagiarized parts of his campaign speeches from stirring speeches made by other politicians and that he had lied about his record in college.

Questions about Gary Hart's character also became a major issue in the 1988 race and forced him to withdraw as well. The public was disturbed not only by the allegations of adultery that followed the Democratic candidate, but also by his recklessness (see Figure 11.7). As one journalist noted, "Why would any man in his right mind defy a *New York Times* reporter who asked about his alleged womanizing to 'put a tail on me,' then cancel his weekend campaign appearances and arrange a tryst at his Washington town house with a Miami party girl?"⁵⁶

A candidate's character is clearly a valid campaign issue. A president's actions in office reflect something more than ideology and politics; they also reflect the moral, ethical, and psychological forces that comprise his character. Much of any person's character is formed in childhood, and many individual traits can be traced to early experiences. Lyndon Johnson, for example, had a troubled relationship with his father,



None of Your Business?
Although allegations of an affair with a Miami model drove Gary Hart from the 1988 presidential race, Americans are more tolerant of adultery than some other moral failings, some medical conditions, or some other personal characteristics. A national poll asked respondents, "How about whether a candidate's private life is the public's business?" On most of the items listed here, Americans seem to believe that presidential candidates do not have a right to privacy—that if there is an issue that could affect performance in office or indicates a significant failure of character, then the public's right to know is greater than the individual candidate's right to privacy. (Source: E. J. Dionne, "Reagan Influence Wanes, Poll Finds," *New York Times*, 26 January 1988, p. A1.)

Figure 11.7

who questioned his son's masculinity. Johnson recalled that when he ran away from home after wrecking his father's car, his father phoned him and said that people in town were calling Lyndon "yellow" and a coward.⁵⁷ Johnson biographer Robert Caro notes another crucial episode in a young Lyndon's life—a humiliating beating he took at the hands of a dance partner's jealous boyfriend. In front of family and friends, "blood was pouring out of Lyndon's nose and mouth, running down his face and onto the crepe-de-chine shirt."⁵⁸

Was Johnson overly concerned about his masculinity? Did this psychological problem make it difficult for him to extricate the United States from the Vietnam War? Another Johnson biographer, Doris Kearns, argues that Johnson wanted to make sure he "was not forced to see himself as a coward, running away from Vietnam."⁵⁹ Nonetheless, it is almost impossible to establish the precise roots of Johnson's behavior as president, and some might find connections between childhood humiliations and presidential policy decisions rather speculative. Others, however, feel that *psychobiography*—the application of psychological analysis to historical figures—has enormous potential as an approach to studying political leaders.

Whatever their roots, the personality characteristics of presidents clearly have an important effect on their success or failure in office. Richard Nixon had such an exaggerated fear of what his "enemies" might



A Difference in Character

The personalities of Calvin Coolidge and John F. Kennedy led to considerably different styles of presidential leadership. Coolidge's motto, "Let well enough alone," says much about his approach to the presidency. "Vigorous" was the term commonly used to describe Kennedy, and it's an apt description of his presidency as well. Historian Arthur Schlesinger, Jr., said of Kennedy, "His presidential life was instinct with action."



try to do to him that he created in the White House a climate that nurtured the Watergate break-in and cover-up. Franklin Roosevelt, on the other hand, was certainly aided in office by his relaxed manner and self-confidence.

Candidates don't come neatly labeled as having healthy or unhealthy presidential characters. Although voters make their own estimations of how presidents will behave in office, there is no guarantee that those evaluations will turn out to be accurate. And a candidate's character must still be weighed along with other factors, including ideology, party affiliation, and stances on specific issues.

SUMMARY

When the founding fathers met to design the government of this new nation, they had trouble shaping the office of the president. They struggled to find a balance between an office that was powerful enough to provide unified leadership but not so strong that presidents could use their powers to become tyrants or dictators. The initial conceptions of the presidency

have slowly been transformed over time, as presidents have adapted the office to meet the nation's changing needs. The trend has been to expand presidential power. Some of this expansion has come from presidential actions under claims of inherent powers. Congress has also delegated a great deal of power to the executive branch, further expanding the role of the president.

Because the president is elected by the entire

nation, he can claim to represent all citizens when proposing policy. This broad electoral base equips the presidency to be an institution of *majoritarian* democracy—compared with Congress's structural tendencies toward *pluralist* democracy. Whether the presidency actually operates in a majoritarian manner depends on several factors—the individual president's perception of public opinion on political issues, the relationship between public opinion and the president's political ideology, and the extent to which he is committed to pursuing his values through his office.

A president's success in getting his programs through Congress is related to his political skills and his power to persuade. Presidents increasingly go directly to the American people to build popular support for their legislative programs. Presidents have more political strength when their popularity is high, but popularity usually declines over time. Americans become dissatisfied with incumbents because presidents cannot please all constituencies.

The executive branch establishment has grown rapidly, and even the White House has become a sizable bureaucracy. New responsibilities of the twentieth-century presidency are particularly noticeable in the area of legislative leadership. Contemporary presidents are expected to be policy initiators for Congress, as well as chief lobbyists who guide their bills through the legislative process.

Key Terms

veto

inherent powers

delegation of powers

coalition of minorities

electoral college

Executive Office of the President

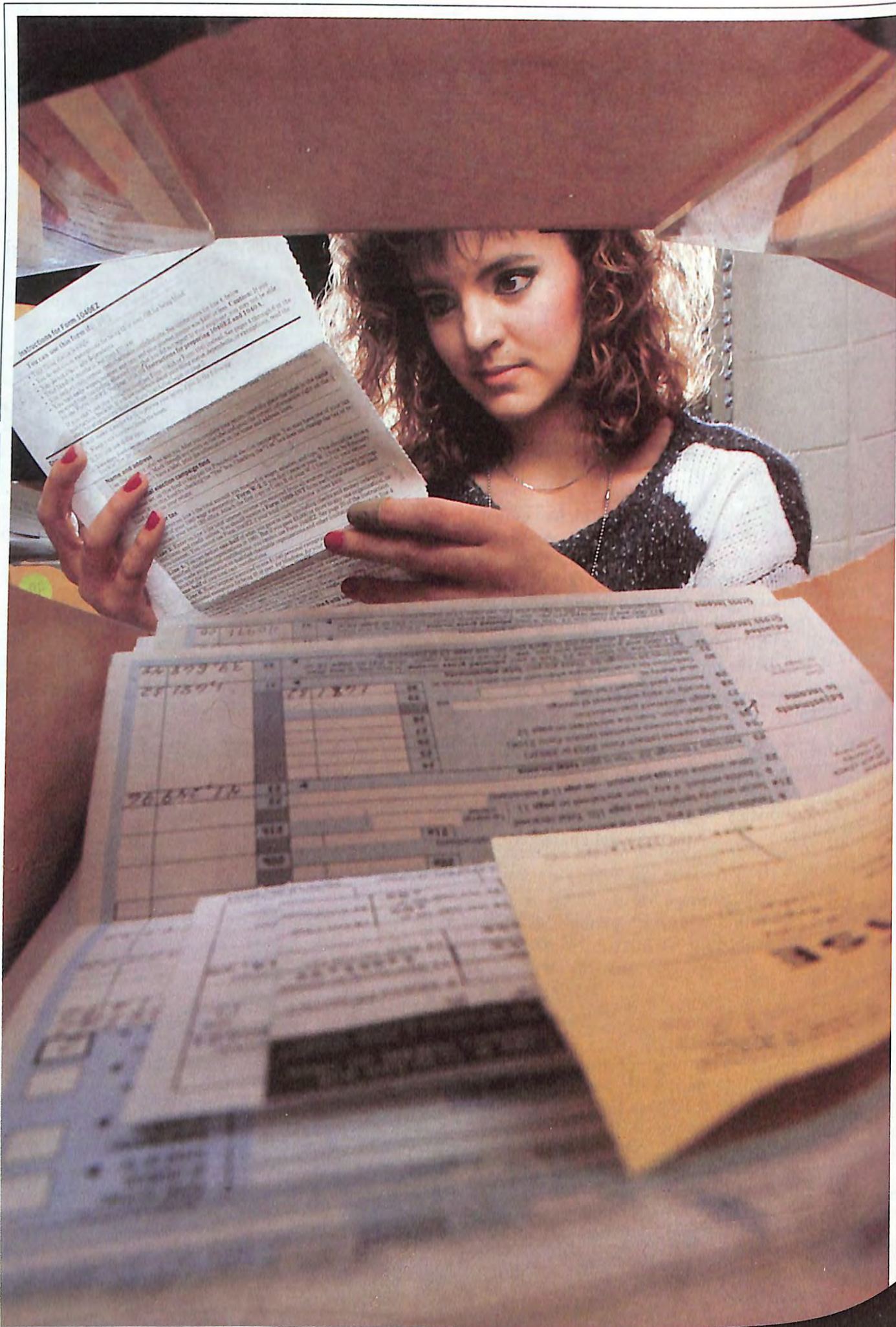
Cabinet

legislative liaison staff

presidential character

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12

The Bureaucracy

The Development of the Bureaucratic State

The Growth of American Government
• *Can We Reduce the Size of Government?*

Bureaus and Bureaucrats

The Organization of Government •
The Civil Service • *Presidential Control over the Bureaucracy*

Policymaking: The Formal Processes

Administrative Discretion • *Rule Making* • *Adjudication*

Policymaking: Informal Politics

The Science of Muddling Through •
The Culture of Bureaucracy

Problems in Implementing Policy

Vague Directives • *Faulty Coordination* • *Decentralized Authority* • *Imprecise Evaluation of Success*

Reforming the Bureaucracy

Reorganization • *Deregulation* • *Citizen Participation Programs* • *Analytical Budgeting*

The public knows her as Baby Jane Doe. She was born in October 1983 with a number of severe birth defects, including spina bifida (a failure of the spinal cord to close), an abnormally small head, and water on the brain. Her parents were told that with corrective surgery, she could live into her twenties but would be severely retarded, paralyzed from the waist down, and bedridden. Without surgery, her life expectancy was less than two years. After much anguish, the couple decided to forgo the surgery and let their baby face an early death.

The Reagan administration was not willing to let parents make this kind of decision on their own. It had recently set up a hot line in the U.S. Department of Health and Human Services to receive reports of hospitals' failing to protect the rights of handicapped infants. When administration officials were notified about Baby Doe, they went to court to obtain the child's medical records as a basis for deciding on further intervention.

The parents, Dan and Linda, bitterly disagreed with the administration's contention that it should be involved in deciding their child's future. In Dan's words, government officials "can't feel what we're feeling now. They can talk about life, but they can't feel what we feel for our baby."¹ To the administration, however, the question was straightforward: Who speaks for the baby alone? Its answer: The bureaucracy.

The fight over Baby Doe reversed the usual conservative and liberal roles. President Ronald Reagan's conservative administration was theoretically committed to reducing the bureaucracy's reach into everyday life, but here it tried to establish a new and highly controversial role for the bureaucracy. The conservative *Wall Street Journal* castigated the administration's efforts as the work of "medico-legal busybodies" dedicated to harassing parents and physicians.² The *Journal* and many liberals argued that parents must have the freedom to make these difficult decisions themselves. The administration countered with the traditional liberal argument that only a bureaucratic agency can see to it that children are treated in an equitable and fair manner. In the end, the Supreme Court sided with the parents, concluding that the law did not sanction this kind of government intervention.

The conservative-liberal role reversal, although interesting, was not the most important aspect of the Baby Doe case. At the core of the conflict was a fundamental question: To what degree should the national government use its power to promote order, in this case by protecting human life? Or, alternatively, to what degree must government respect individuals' freedom to lead their lives without interference?

In analyzing the national bureaucracy in this chapter, we focus on its potential for infringing on individual freedom in the pursuit of order and equality. We also assess the bureaucracy's contribution to democratic government according to the pluralist and majoritarian models. In addressing these broad issues, we ask—and answer—a number of related questions: How responsive is the bureaucracy to what the president wants? To what extent does the bureaucracy follow the directions of Congress in implementing the laws of the land? How are departments and agencies influenced by interest groups and ordinary citizens? In short, who controls the bureaucracy in our government?



THE DEVELOPMENT OF THE BUREAUCRATIC STATE

A nation's laws and policies are administered, or put into effect, by a variety of departments, agencies, bureaus, offices, and other government units, which together are known as its *bureaucracy*. **Bureaucracy** actually means any large complex organization in which employees have very specific job responsibilities and work within a hierarchy of authority. The employees of these government units, who are quite knowledgeable within their narrow areas, have become known somewhat derisively as **bureaucrats**.

The inevitability of bureaucracies in modern societies has not made them any less controversial. Bureaucracies make all kinds of decisions, from minor details of public policy to the fundamental nature of that policy. The basic conflict over just how far the bureaucracy should go in creating policies that promote equality of opportunity or individual freedom arises hundreds of times a day in Washington. And although Americans may hold sharply divided opinions about government's role in specific policy areas, they generally agree that government—specifically, the bureaucracy—tries to do too much.

The Growth of American Government

American government seems to have grown without limit during this century. As one observer noted wryly, "The assistant administrator for water and hazardous materials of the Environmental Protection Agency presided over a staff larger than Washington's entire first administration."³ Yet, even during Washington's time, bureaucracies were necessary. No one argued then about the need for a postal service to deliver mail or a department of the treasury to maintain a system of currency.

Government at all levels (national, state, and local) has grown enormously. As measured by employment, most growth in recent years has taken place in state and local government, while the national work force has remained relatively stable. There are a number of major reasons why our government has grown the way it has.

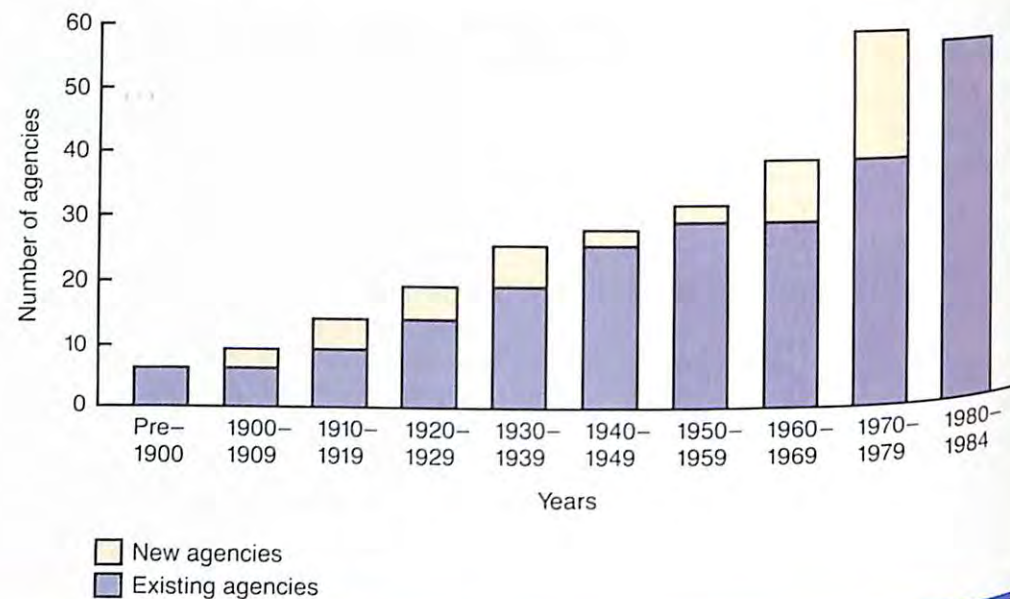
Science and technology. One reason government has grown so much is the increasing complexity of society. George Washington did not have an assistant administrator for water and hazardous materials because there was no need for one. A National Aeronautics and Space Administration (NASA) was not necessary until rockets were invented.

Even long-standing departments have had to expand the scope of their activities to keep up with technological and societal changes. Consider the changes brought about by genetic engineering, for example. The Patent Office in the U.S. Department of Commerce has had to respond to requests that new life forms be patented to protect manufacturers' interests. Under a new policy, the creators of new animals—like the geep, a species derived from the fusion of goat and sheep embryos—must receive royalties for each animal raised by a farmer.⁴

Business regulation. Another reason government has grown is that the public's attitude toward business has changed. Throughout most of

The Growth of Regulatory Agencies
The number of regulatory agencies has increased over time, as perceptions about the need for government intervention in the marketplace have changed. (Source: Center for the Study of American Business.)

Figure 12.1



the nineteenth century, there was little or no government regulation of business. Business was generally autonomous, and any government intervention in the economy that might limit that autonomy was considered inappropriate. This attitude began to change toward the end of the nineteenth century, as more Americans became aware that the end product of laissez faire was not always highly competitive markets that benefited consumers. Instead, business sometimes formed oligopolies like the infamous "sugar trust," a small group of companies that controlled virtually the entire sugar market.

Gradually, government intervention came to be accepted as necessary to protect the integrity of business markets. And if government was to effectively police unfair business practices, it needed administrative agencies. Over the course of the twentieth century, new bureaucracies were organized to regulate specific industries (see Figure 12.1). Among them are the Securities and Exchange Commission (SEC), which oversees securities trading; the Interstate Commerce Commission (ICC), which oversees surface transportation; and the Federal Communications Commission (FCC), which oversees the television, radio, and telephone industries.

Through bureaucracies like these, government has become a referee in the marketplace, developing standards of fair trade, setting rates, and licensing individual businesses for operation. As new problem areas have emerged, government has added new agencies, further expanding the scope of its activities. During the 1960s, for instance, the public became aware that certain design flaws in automobiles made them unnecessarily unsafe. For example, sharp protruding dashboard knobs caused a car's own interior to be dangerous on impact. Congress responded to public demands for change by creating the National Highway Traffic Safety Administration in 1966.* As we discuss later in this chapter, there has been significant movement in recent years toward lessening the government's role in the marketplace.

* It originally was called the National Safety Agency.

Social welfare. General attitudes about government's responsibilities in the area of social welfare have changed too. An enduring part of American culture has been a belief in self-reliance. People are expected to overcome adversity on their own, to succeed on the basis of their own skills and efforts. In years past, those who could not take care of themselves had to hope that their families or primitive local programs would help them.

People in this country were slow to accept government in the role of "brother's keeper." Only in the wake of the Great Depression did the national government begin to take steps to provide income security. In 1935, the Social Security Act became law, creating the social security fund that workers pay into, then collect income from during old age. A small part of that act was a provision for impoverished families, which evolved into Aid to Families with Dependent Children (AFDC), the nation's basic welfare program.

A belief in progress. A larger, stronger central government can also be traced to Americans' firm belief in the idea of progress. Another thread that runs through the fabric of American culture is faith in our ability to solve problems. No problem is too big or too complicated. This attitude was typified by President John F. Kennedy's commitment in 1961 to put a man on the moon by 1970. As difficult as the task seemed when he made the pledge, a man walked on the moon on July 20, 1969. This same spirit leads politicians to declare war on poverty or war on cancer.

NASA in Good Times and Bad Times
For many years, NASA was a highly respected government agency, an embodiment of the "can do" spirit of America. The moon landing in 1969 fulfilled President John F. Kennedy's commitment to put a man on the moon before the decade was out. But in January 1986, the space shuttle Challenger exploded shortly after takeoff, killing all seven crew members. The Rogers Commission, charged with investigating the tragedy, revealed serious flaws in NASA's management practices, which stained the agency's image.



through massive programs of coordinated well-funded activities. Many people believe that the private sector cannot undertake large-scale programs, that government must be responsible for them. For example, when AIDS emerged as an epidemic, there was no question that it was the government's responsibility to solve the problem through its own research and the support of scientists outside of government.

Ambitious administrators. Finally, government has grown because agency officials have expanded their organizations and staffs to take on added responsibilities. Imaginative, ambitious agency administrators look for ways to serve their clients. Each new program that's developed leads to new authority. And larger budgets and staffs, in turn, are necessary to support that authority. Reagan administration Secretary of Defense Caspar Weinberger and Navy Secretary John Lehman persuaded the president to support a massive build-up of the navy to a six hundred-ship fleet. Despite the criticism that we could not afford such a large navy, the commitment remained firm until Reagan's last year in office, when the new secretary of defense, Frank Carlucci, reversed course and announced that budget restraints required that some existing ships be mothballed.

Can We Reduce the Size of Government?

When Reagan campaigned in 1980, he promised to cut bureaucracies, which he said were wasteful, and to get government "off the back" of the American people. As Figure 12.2a shows, opinion that government

Doctor/Bureaucrat/ Educator

As the AIDS epidemic grew, Surgeon General C. Everett Koop headed the Reagan administration's efforts to stem the tide of the deadly disease. Under Koop's direction, the Public Health Service sent a brochure about AIDS to every home in the United States. The brochure was unusually candid for a government publication, advising the use of condoms as a means of preventing transmission.

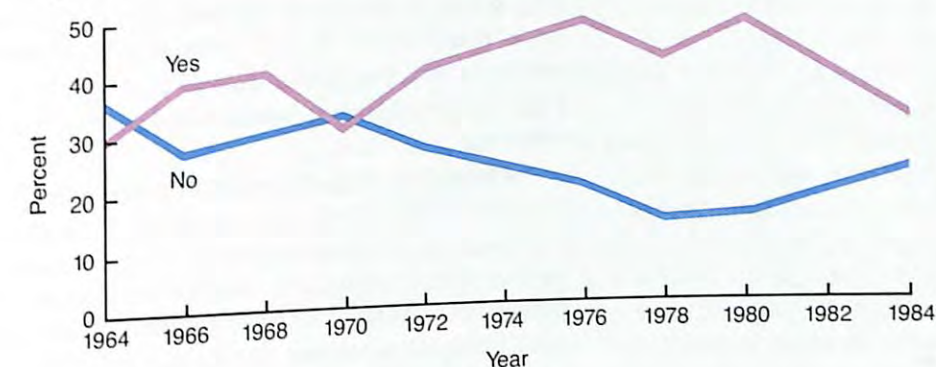


Figure 12.2

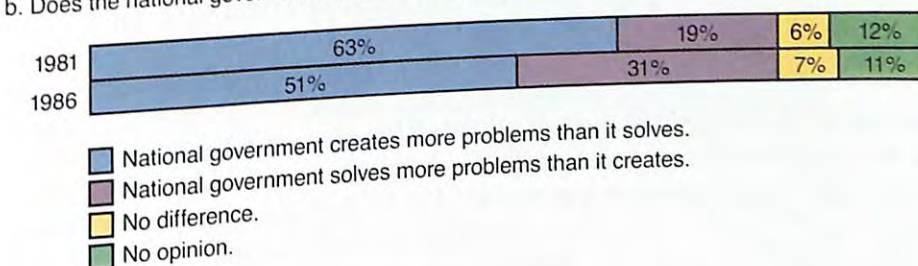
Does Government Do Too Much or Not Nearly Enough?

National surveys show that Americans feel very differently about government as a whole than they do about specific programs. (Sources: "Opinion Roundup," Public Opinion, March-April 1987, pp. 22-24; and "Opinion Roundup," Public Opinion, November-December 1987, p. 31.)

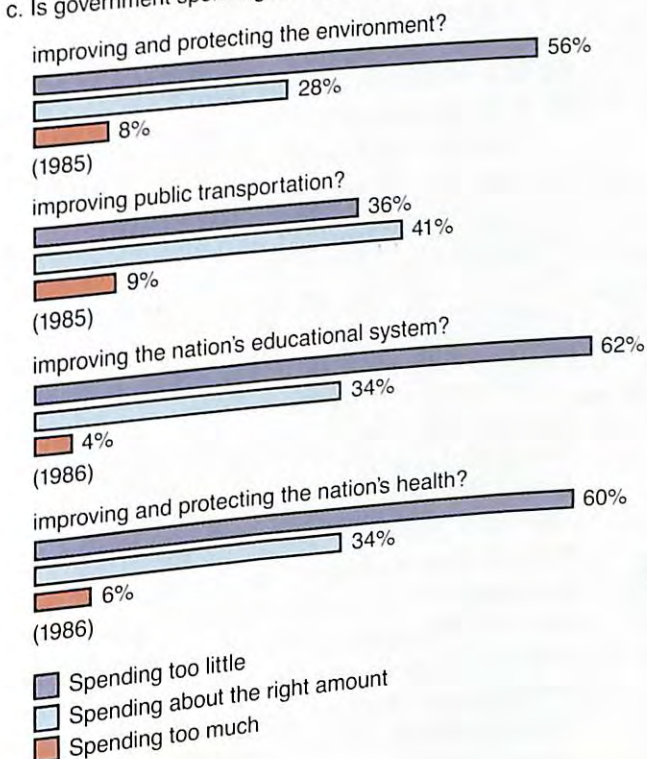
a. Is government getting too powerful for the good of the country?



b. Does the national government create more problems than it solves?



c. Is government spending too much or too little on



was too powerful had grown during the previous decade. Government was also seen as causing more problems than it solved (Figure 12.2b). The public's negative attitude toward government helped Reagan win large nondefense budget cuts at the beginning of his administration, reducing the size and range of certain bureaucratic activities. In recent years public opinion has become somewhat less hostile toward big government.

Presidents and members of Congress face a tough job when they try to reduce the size of the bureaucracy. Each government agency performs a service of value to some sector of society. As a group, bankers favor laissez-faire capitalism, the principles of a free market and minimal government intervention. Few bankers voiced those principles, however, when mismanagement at Continental Illinois, one of the nation's largest banks, led it to the brink of insolvency in 1984. A run on the bank by the holders of large uninsured deposits pushed the bank toward failure. Continental's failure would have had a destabilizing impact on the entire banking system. When that failure was imminent, the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC), two of the agencies that regulate the nation's banking industry, stepped in, put billions of dollars into the bank, and guaranteed every dollar of deposits. In this case, bankers were happy to have "big government" regulate a member of their industry out of its difficulties.⁵

Bankers are not the only group that wants to be protected by the national government. Farmers need the price supports of the U.S. Department of Agriculture. Builders profit from programs offered by the U.S. Department of Housing and Urban Development (HUD). And labor unions want a vigorous Occupational Safety and Health Administration (OSHA). Efforts to cut an agency's scope, then, are almost always resisted by interest groups that have a stake in the agency.

Despite their political support, agencies are not immune to change. It is rare for a department or agency to be completely abolished; however, it is not uncommon for one to undergo a major reorganization, in which programs are consolidated and the size and scope of activities are reduced.⁶ Programs can lose support if they are perceived to be working poorly. (This is what happened with government-sponsored job training.) And as funds are cut, bureaucratic positions are eliminated.

In sum, attitudes about the size of government are somewhat paradoxical. Many believe that government is too big, that it tries to do too much, and that it intrudes too much into our daily lives. Still, substantial reductions in the scope of government activity are unusual, because individual agencies carry out programs that protect or benefit a constituency. Today, despite large budget deficits, there is substantial support for increased spending in basic areas of domestic policy (see Figure 12.2c).

This paradox is just one more manifestation of the tension between majoritarianism and pluralism. Even when the public wants a smaller national government, that sentiment can be undermined by the strong preferences of different segments of society for government to perform some valuable function for them. Lobbies that represent these segments work strenuously to convince Congress and the administration that their agency's particular part of the budget is vital and that any cuts ought to

come out of some other agency's hide. At the same time, that other agency is also working to protect itself and garner support. Still, change is possible. Shifting national priorities can bring about reductions in an agency's scope.

There is one more paradox related to reducing the size of government. Whatever national priorities, the public is always concerned about eliminating waste, duplication, and corruption from bureaucracy. Stories that the Pentagon is spending hundreds of dollars apiece on custom-designed coffee makers when off-the-shelf models, available at a fraction of the cost, would work just as well enrage taxpayers, who feel that their hard-earned money is being squandered by a bloated bureaucracy. Yet seeing to it that money is spent honestly and cost-effectively demands that spending decisions be monitored. This means there must be bureaucrats whose job it is to review the work of other bureaucrats. And more bureaucrats means more government.⁷

BUREAUS AND BUREAUCRATS

We often think of the bureaucracy as a giant octopus with countless arms. In reality, the bureaucracy in Washington is a disjointed collection of departments, agencies, bureaus, offices, and commissions—each a bureaucracy in its own right.

The Organization of Government

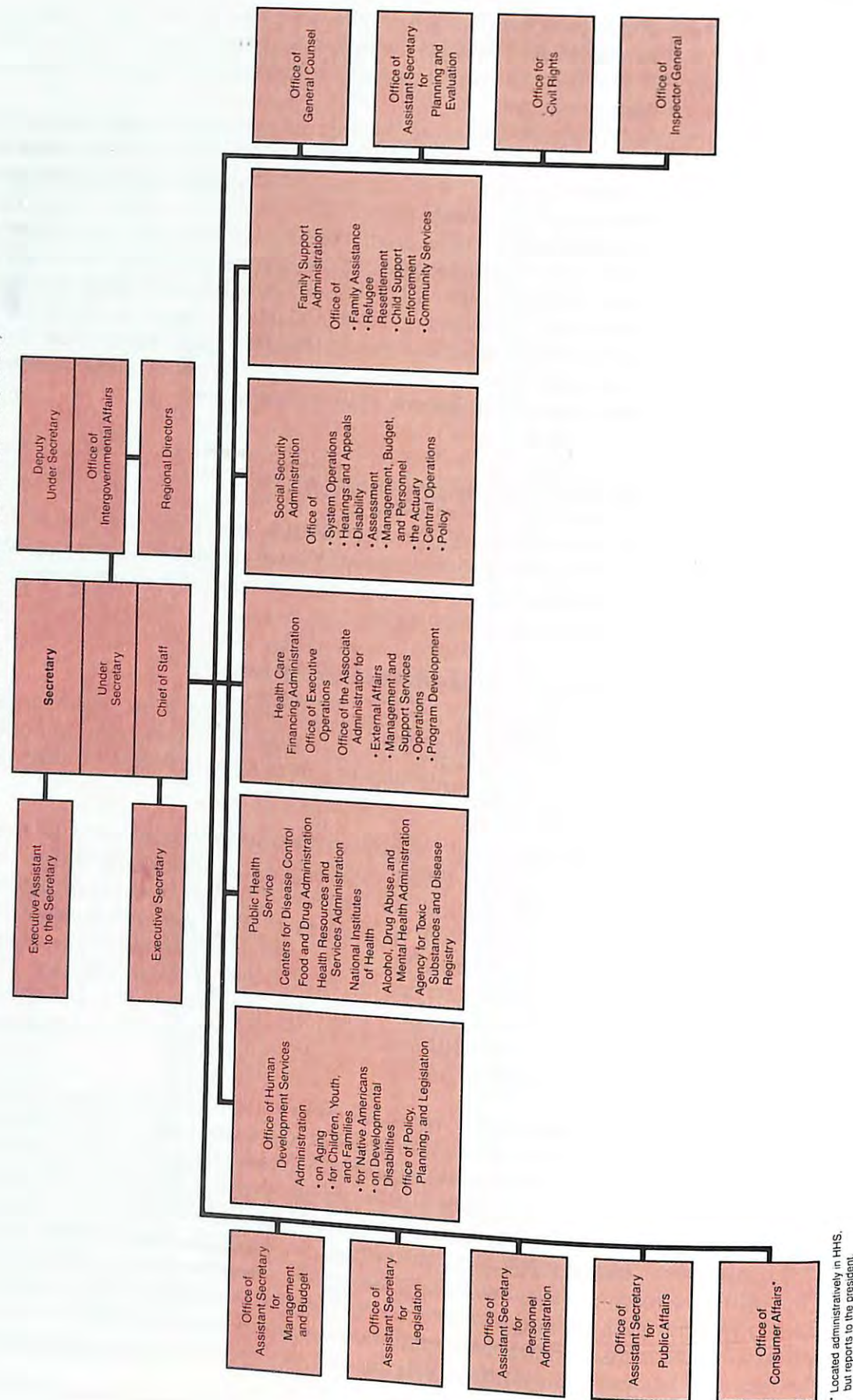
By examining the basic types of government organizations, we can better understand how the executive branch operates. In our discussion, we pay particular attention to their relative degree of independence and their relationship to the White House.

Departments. Departments are the largest units of the executive branch, covering broad areas of government responsibility. As noted in the previous chapter, the secretaries (heads) of these departments, along with a few other key officials, form the president's cabinet. The current cabinet departments are State, Treasury, Defense, Interior, Agriculture, Justice, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education. Each of these massive organizations is broken down into subsidiary agencies, bureaus, offices, and services (see Figure 12.3).

Independent agencies. Within the executive branch, there are approximately sixty independent agencies, agencies that are not a part of any cabinet department.⁸ Instead, they stand alone and are controlled in varying degrees by the president. Some, among them the Central Intelligence Agency (CIA), are directly under the president's control. Others, like the FCC, are structured as **regulatory commissions**. Each commission is run by a small number of commissioners (usually an odd number, which helps to prevent tie votes), appointed to fixed terms by the president. Some commissions were formed to guard against unfair business practices. Others were formed to police the side effects, or *externalities*,

Figure 12.3

**The U.S. Department of Health and Human Services:
An Organization Chart**
The Department of Health and Human Services is made up of many agencies and offices. (Source: U.S. Department of Health and Human Services, 1986.)



of business operations, such as polluted air emitted by a factory. Still others were formed to protect the public from unsafe products. Regulatory commissions are outside the direct control of the White House so that they are free from the pressures of the political process and the partisan considerations that shape it.

Still, regulatory commissions are not immune to political pressure. They are lobbied fervently by client groups and must take those groups' demands into account when they make policy. If the Consumer Product Safety Commission is considering safety standards for chain saws, for example, the chain saw industry will do all it can to convince the agency not to set standards or to issue them in a form the industry considers least objectionable.

The president exerts influence on these agencies through his power to appoint new commissioners when terms expire or when resignations create openings. During President Jimmy Carter's administration, his appointed chairman of the Federal Trade Commission (FTC), Michael Pertschuk, led a vigorous proconsumer commission. During the Reagan administration, however, things changed. Reagan's appointed chairman, free-market economist James Miller, gave the Reagan forces a numerical advantage on the five-member board. Under Miller's leadership, the FTC reversed its policy of industry-wide checks for false advertising in favor of investigations in response to specific complaints filed with the agency. From the viewpoint of consumer advocates, this reversal meant that the FTC would be less aggressive in protecting Americans from false advertising. From the standpoint of business, it meant that the FTC would stop its "fishing expeditions."⁹ Whatever the point of view, it's clear that a significant policy shift occurred as a direct result of presidential power.

Government corporations. Finally, Congress has also created a small number of **government corporations**. The services these executive branch agencies perform theoretically could be provided by the private sector, but Congress has decided that the public would be better served if they have some link with the government. For example, the national government maintains a postal service because it feels that Americans need low-cost, door-to-door service for all kinds of mail, not just for mail on profitable routes or mail that requires special services.

In some instances, there is not enough of a financial incentive for the private sector to provide an essential service. This is the case with the financially troubled Amtrak train line.¹⁰

The Civil Service

The national bureaucracy is staffed by around 3 million civilian employees, who account for less than 3 percent of the U.S. work force. Americans have a tendency to stereotype all government workers as faceless paper pushers, but the work force is actually quite diverse. Government workers include forest rangers, FBI agents, typists, foreign service officers, computer programmers, policy analysts, public relations specialists, security guards, librarians, administrators, engineers, plumbers, and people from literally hundreds of other occupations.

Eye on the Storm

We may think we depend on the blow-dried, impeccably dressed announcer on Channel 4 for tomorrow's forecast, but basic meteorological information is gathered and analyzed by bureaucrats. This government meteorologist is tracking a hurricane off the Gulf Coast.



An important feature of the national bureaucracy is that most of its workers are hired under the requirements of the **civil service**. The civil service was created after the assassination of President James Garfield, who was killed by an unbalanced and dejected job seeker. Congress responded by passing the Pendleton Act (1883), which established the Civil Service Commission (now the Office of Personnel Management). The act's objective was to reduce *patronage*—the practice of filling government positions with the president's political allies or cronies. The civil service fills jobs on the basis of merit and sees to it that workers are not fired for political reasons. Over the years, job qualifications and selection procedures have been developed for most government positions.

About 88 percent of the national government's workers are employed outside of Washington.¹¹ One reason for this decentralization is to make government offices accessible to the people they serve. The Social Security Administration, for example, has to have offices within a reasonable distance of most Americans, so that its many clients have somewhere to take their questions, problems, and paperwork. Decentralization is also a way to distribute jobs and income across the country. The government's Centers for Disease Control could easily have been located in Washington, but it is in Atlanta instead. Likewise, NASA's headquarters for space flights is located in Houston. Members of Congress, of course, are only too happy to place some of the "pork barrel" back home, so that their constituents will credit them with the jobs and money that government installations create.

Given the enormous variety of government jobs, it is no surprise that employees come from all walks of life. Studies of the social com-

position of the civil service as a whole indicate that it mirrors the American population on such important characteristics as father's occupation and worker's education, income, and age.¹² There is also substantial representation of minorities (26 percent) and women (48 percent) within the national work force.¹³ However, in higher-level policymaking positions, the work force is skewed sharply toward those born into families of higher socioeconomic status and white males.

Presidential Control over the Bureaucracy

Civil service and other reforms have effectively insulated the vast majority of government workers from party politics. An incoming president can appoint fewer than 1 percent of all executive branch employees. Still, presidential appointees fill the top policymaking positions in government. Each new president, then, establishes an extensive personnel review process to find appointees who are both ideologically compatible and qualified in their field. Although the president selects some people from his campaign staff, most of his political appointees have not been campaign workers. Instead, his cabinet secretaries, assistant secretaries, agency heads, and the like tend to be drawn directly from business, universities, and government itself. Only two of the eleven members of President Richard Nixon's last cabinet had extensive political experience before their appointment. Only three of Carter's original cabinet members could be described as "ambassadors from interest group constituencies," and five had Ph.D.s.¹⁴

Because so few of their own people are in each department and agency, presidents often believe that they do not have enough control over the bureaucracy. Recent Republican presidents have also worried that the civil service would be hostile to their objectives because they assumed that career bureaucrats have a liberal Democratic bias.¹⁵ Yet surveys of political appointees show that both Democratic and Republican appointees work well with career bureaucrats, developing a healthy respect for their ability and professionalism.¹⁶

Many presidents have felt frustrated by their inability to get the bureaucracy to change course. President Kennedy echoed this sentiment when he complained that the State Department was a "bowl of jelly" and that giving an instruction to State was like putting it in a dead letter box.¹⁷ A reform frequently offered as a remedy for this complaint is giving the president more positions to fill with loyalists instead of senior civil servants.

On the surface, it makes sense that increasing the number of political appointees in the bureaucracy will make the bureaucracy more responsive to the president. But caution is warranted here. More political appointees may actually make the bureaucracy more "bureaucratic." As one scholar noted, "The more layers, the more time it takes to forge positive relationships" between senior civil servants and presidential appointees.¹⁸

The general tendency in recent years has been toward greater presidential control over the bureaucracy, but there is legitimate concern about the presidency becoming too powerful. (During the 1970s, these worries led Congress to pass some important reforms aimed at restraining

the executive.) And despite the presidents' frustrations with the bureaucracy, they are hardly helpless, pitiful giants. As the example of the FTC's change in leadership shows, presidential appointees can have a substantial impact on their agencies. Recent research also shows that presidential appointees are very influential in bringing new issues onto the political agenda, whereas civil servants have comparatively little impact.¹⁹

But the question remains: Should there be more political appointments in the national government, so that presidents can make the bureaucracy more responsive to their thinking? Those who answer in the affirmative argue that presidents might be able to fulfill more of their campaign promises if they had greater control over the bureaucracy. But others point out the value of a stable experienced work force that implements policy in a consistent fashion.

POLICYMAKING: THE FORMAL PROCESS

The sprawling diversity of the executive branch leaves many Americans with the impression that the national government's bureaucracies are complex, impenetrable organizations. Bureaucratic actions and policies often appear irrational to ordinary citizens, who know little about how government officials reach their decisions. Many Americans wonder why agencies sometimes actually *make* policy rather than merely carry it out. Administrative agencies are, in fact, authoritative policymaking bodies, and their decisions on substantive issues are legally binding on the citizens of this country.

Administrative Discretion

What are executive agencies set up to do? First, Cabinet departments, independent agencies, and government corporations are creatures of Congress. Congress creates a new department or agency by passing a law that describes each organization's *mandate*, or mission. As part of that mandate, Congress grants to the agency the authority to make certain policy decisions. Congress long ago recognized that it has neither the time nor the expertise in highly technical areas to make all policy decisions. Ideally, it sets general guidelines for policy, and agencies are expected to act within those guidelines. The latitude that Congress gives agencies to make policy in the spirit of their legislative mandate is called **administrative discretion**.

The U.S. Department of Transportation has used its discretionary policymaking authority to address the problem of alcohol and drug abuse by train engineers. A departmental study showed that during an eight-year period, alcohol- or drug-impaired judgment caused a minimum of forty-five train accidents resulting in thirty-four fatalities. In response, the Transportation Department set forth policies that not only ban alcohol and drug use on the job but also require pre-employment drug screening, permit spot checks of employees for drugs, and allow workers to seek treatment without fear of losing their jobs.²⁰

Critics of bureaucracy frequently complain that agencies are granted too much discretion. In his book *The End of Liberalism*, Theodore Lowi

argues that Congress commonly gives vague directives in its initial enabling legislation, instead of truly setting guidelines.²¹ Agencies are charged with protecting the "public interest" but are left to determine on their own what policies best serve the public. Lowi and other critics believe that members of Congress assign too much of their responsibility for difficult policy choices to appointed administrators.

Congress is often vague about its intent when setting up a new agency or program. At times a problem is clear-cut, but the solution is not; yet Congress is under pressure to act. So it creates an agency or program to show that it is concerned and responsive, and leaves it to administrators to eventually develop specific solutions. For example, the enabling legislation in 1934 that established the FCC recognized a need for regulation in the burgeoning radio industry. The growing number of stations and overlapping frequencies would soon have made it impossible to listen to the radio. But Congress avoided tackling several sticky issues by leaving the FCC with the ambiguous directive that broadcasters should "serve the public interest, convenience, and necessity."²² In other cases, a number of "obvious" solutions to a problem may be available, but lawmakers cannot agree on which one is best. One compromise is to set deliberately ambiguous guidelines for the agency created to solve the problem. Its administrators are then saddled with the responsibility for turning ambiguities into specific policy decisions.²³

The wide latitude Congress gives bureaucratic agencies often leads to charges that government is out of control, a power unto itself. But these claims are frequently exaggerated.²⁴ Administrative discretion is not a fixed commodity. Congress does have the power to express its displeasure by reining agencies in with additional legislation. If Congress is unhappy with an agency's actions, it can pass laws invalidating specific policies. This method of control may seem cumbersome, but Congress does have periodic opportunities to amend the original legislation that created an agency or program. Over time, Congress makes increasingly detailed policy decisions, often affirming or modifying agency decisions.²⁵

Informal contacts with members of Congress also influence administrators. Through these communications, legislators can clarify exactly which actions they want administrators to take. And administrators listen because they are wary of offending members of the committees and subcommittees that oversee their programs and, particularly, their budgets. Contacts with legislators also let administrators explain the problems their agencies are facing, justify their decisions, and negotiate compromises on unresolved issues.

In general, then, the bureaucracy is not out of control. But there is one area in which Congress has chosen to limit its oversight—that of domestic and international security. Both the FBI and CIA have had a great deal of freedom from formal and informal congressional constraints because of the legitimate need for secrecy in their operations. During the period that J. Edgar Hoover ran the FBI (1924–1972), it was something of a rogue elephant, independent of both Congress and presidents. Politicians were afraid of Hoover, who was not above keeping files on them and using those files to increase his power. At Hoover's direction, the FBI spied on Martin Luther King, Jr., and once sent King a tape recording

The Man with the Secrets
Even presidents were afraid of what FBI Director J. Edgar Hoover had in his files. The Nixon administration wasn't fond of Hoover, but Hoover let it know that if its criticism of his agency didn't stop, he would testify before Congress about some wiretapping done by a secret White House investigation unit. Hoover remained secure in his job. The White House wiretapping was later revealed as part of the Watergate scandal.



with embarrassing revelations gathered from bugging his hotel rooms. The anonymous letter accompanying the tape suggested that King save himself further embarrassment by committing suicide.²⁶ Over the years, the CIA has also abused its need for privacy by engaging in covert operations that should never have been carried out (see Feature 12.1).

Rule Making

The policymaking discretion that Congress gives to agencies is exercised through formal administrative procedures, usually either *rule making* or *adjudication*. **Rule making** is the administrative process that results in regulations. **Regulations**, in turn, are rules that govern the operation of government programs. In administering the Clean Air Act, for example, the Environmental Protection Agency (EPA) has had to formulate regulations specifying the permissible amounts of pollutants that factories can emit. These highly technical regulations have had a major impact on industry, forcing corporations to spend millions of dollars to reduce their plants' emissions.

Because they are authorized by congressional statutes, regulations have the effect of law. In theory, the policy content of regulations follows from the intent of enabling legislation. As we've already noted, however, Congress does not always express its intent clearly. The administrative discretion available to agencies often produces political conflict when regulations are in the process of being made. One such case involved the

FEATURE 12.1

Casey's CIA: Out of Control

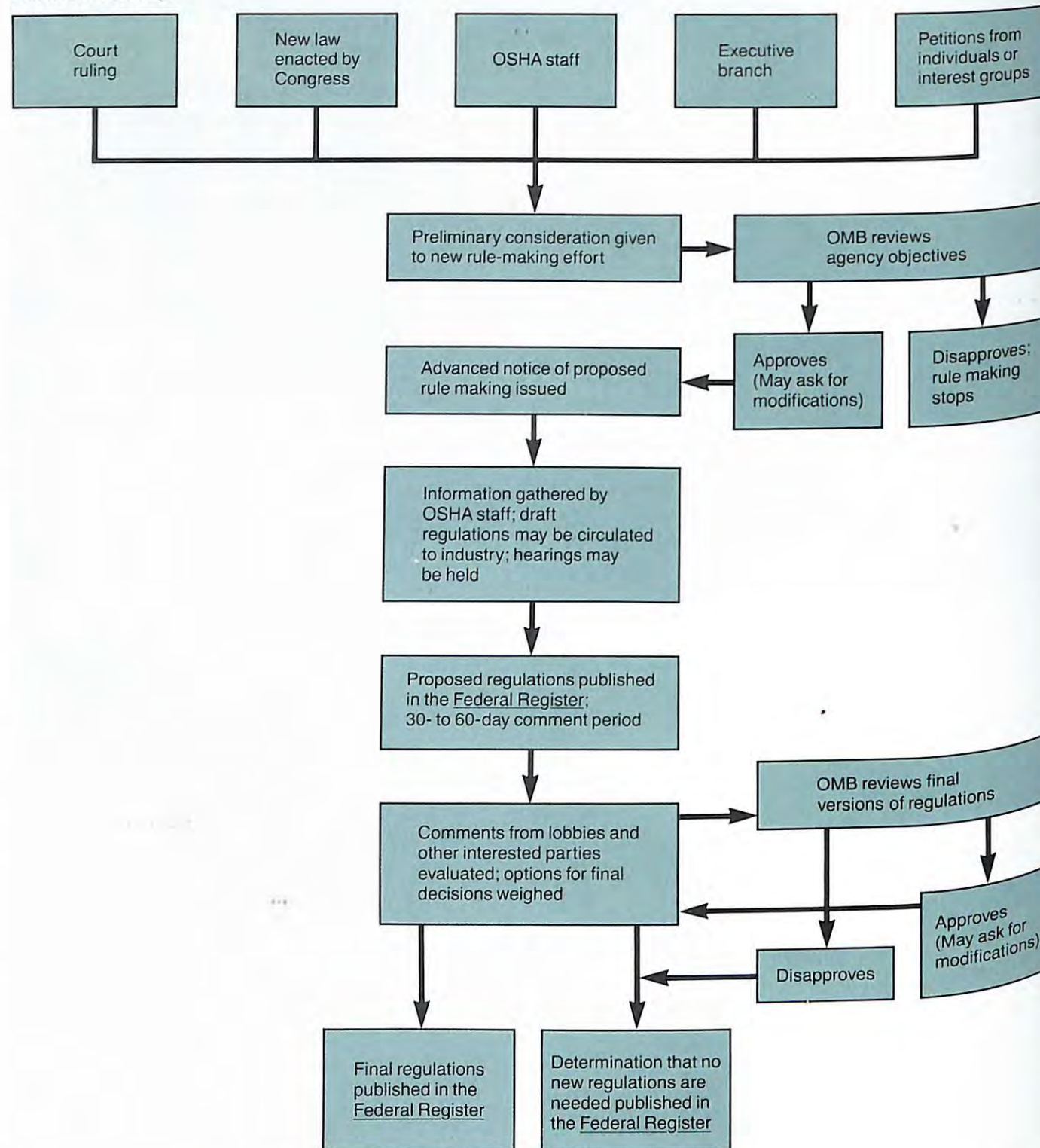
In 1984, CIA Director William J. Casey decided that the United States had to do the unthinkable: assassinate Middle Eastern terrorists before they could harm Americans. Although President Reagan told Casey to clear his plan with a small group of congressional leaders, Casey set up the plan to avoid congressional oversight. He persuaded the Saudi Arabian government to fund and to take operational control of the covert operations, enabling Casey to deny to Congress that the CIA had anything to do with any assassinations that took place.

The first covert operation was the assassination of a terrorist named Sheikh Fadlallah. Fadlallah was head of Hizbollah, the Party of God, which had been connected with bombings of American facilities in Beirut. The Saudis hired an Englishman who had experience with the British Special Air Services, a commando unit, to take control of the operation. The Lebanese government's intelligence service provided him with men to drive a car packed with explosives to Fadlallah's home in a Beirut suburb. The mission was botched. On March 8, 1985, the car was left 50 yards from Fadlallah's residence. He wasn't hurt by the massive explosion, but eighty innocent people were killed and two hundred others were wounded. Fadlallah's followers assumed that the bomb was sent by the CIA, but Congress had no evidence one way or the other because, as Casey's biographer noted, "Casey had flatly refused to tell the committees about this sensitive work."



Source: Adapted from Bob Woodward, *Veil* (New York: Simon & Schuster, 1987), pp. 393–397. Copyright © 1987 by Robert Woodward. Reprinted by permission of Simon & Schuster, Inc.

Process initiated by:



OSHA Writes a Regulation

The process of writing a federal regulation is long and complex. This flowchart shows the typical route the Occupational Safety and Health Administration (OSHA) follows in writing a regulation, although there are variations on this basic scheme. (Source: Adapted from OSHA Factsheet, 87-14. Information on the role of the OMB comes from Margaret E. Kriz, "Kibbitzer with Clout," *National Journal*, 30 May 1987, pp. 1404-1408; and Steven Kelman, *Making Public Policy* [New York: Basic Books, 1987], pp. 95-96.)

FTC's use of its general rule-making authority to regulate the funeral industry. The FTC began an investigation of the industry in 1972, acting on complaints from people who felt they had been taken advantage of during the emotional process of arranging a relative's funeral. After extensive research and numerous public hearings, a final version of the regulations was published in 1979. The rules required funeral homes to have itemized price lists and to quote prices over the phone. The National Funeral Directors Association and others in the industry launched a strong counterattack that resulted in Congress's suspending the rules to allow further analysis of them. (One member of Congress criticized the rules, claiming that once again government interference was hurting the productivity of an industry.) When the revised regulations were issued, a congressional effort to overturn them failed. After a court challenge by the industry also failed, they went into effect in 1984.²⁷

The steps in the rule-making process are set by the Administrative Procedure Act, first passed in 1946 and amended many times since. The act was meant to ensure that regulations are developed in an open, systematic manner, with a mechanism to let all affected parties voice their opinions. Rule making begins when administrators feel that a *general* rule is needed to govern some aspect of a program (see Figure 12.4). Before the process starts in earnest, the Office of Management and Budget (OMB) reviews the agency's rule-making objectives to see that they are in line with those of the White House. (Independent agencies are exempt from this review.)²⁸ After public notice is given of the rule-making effort, the agency studies the alternatives, analyzing the likely impact of each one. A draft regulation may be circulated within the affected industry, and hearings may be held to gather information from industry representatives and outside experts. The next step is for the proposed regulation to appear in the *Federal Register*. This government document is published daily and contains each newly proposed or final regulation of departments and agencies. (This collection of "legalese" has been described as "arguably the most excruciatingly boring periodical published in this country.")²⁹ Now the public has the opportunity to comment on the proposed regulation by writing letters to the agency. Administrators evaluate these comments (many of which come from interest groups) along with congressional opinion, consulting with administration officials if necessary. When they have reviewed the comments, administrators decide whether any changes should be made. OMB reviews the final draft and has the power to force the agency to make changes or even to veto the regulation if it is contrary to administration policy. Only then is the final regulation (or the fact that no new regulation is being issued) published in the *Federal Register*.

The regulatory process is controversial because regulations require individuals and corporations to act in prescribed ways, often against their own self-interest. Steel companies, for example, would certainly prefer to make their own decisions about how much, if anything, they should spend to reduce pollution. Government, however, must balance society's need for clean air with the steel companies' needs to make a profit and to compete effectively against foreign companies. When the EPA writes regulations that specify the details of that balance, it becomes the object of criticism from both those who would like government to do more and

those who would like it to do less. The EPA is in many ways taking the "heat" for Congress, because Congress has the ultimate responsibility for pollution policy—a responsibility it has delegated in part to the EPA.

Adjudication

Rule making is a quasi-legislative process because it develops *general* rules, just as Congress does when it passes a law. **Adjudication** is a quasi-judicial process; it is used to resolve *individual* conflicts, much as trials are used in a court of law. Adjudicatory proceedings in an agency determine whether a person or business is failing to comply with the law or with agency rules.

Congress delegates adjudicatory authority to certain agencies because it anticipates conflicts over the interpretation of laws and regulations and because it does not have the time to settle all the fine points of law when it writes statutes. The National Labor Relations Board (NLRB), which acts as a mediator in business-labor disputes, is an example of an agency that relies heavily on adjudication.

Adjudicatory decisions are made by administrative law judges, who are technically their agencies' employees. Yet they are strictly independent; they cannot be removed except for gross misconduct. Adjudicatory proceedings allow each party to present its side of the case and allow the judge to search for any information that will be helpful in reaching a decision. Somewhat less formal than a court trial, the proceedings are still adversarial in nature. In NLRB cases, the party that loses may appeal to the five-member board, which has set up five three-member panels to review decisions.³⁰

POLICYMAKING: INFORMAL POLITICS

The formal procedures used in rule making are only part of the policy-making process. When a new regulation is being considered and the evidence and arguments on all sides have been presented, how does an administrator reach a decision? Few important policy decisions can be calculated with the efficiency of a computer. Instead, policy decisions emerge from people's weighing and judging complex problems that often have no single satisfactory solution.

The Science of Muddling Through

Administrative decisions are subject to many influences and constraints. In a classic analysis of policymaking, "The Science of Muddling Through," Charles Lindblom compared the way policy ideally should be made with the way it is formulated in the real world.³¹ Lindblom described the ideal "rational" decision-making process. It begins with an administrator's tackling a problem by ranking values and objectives. After those objectives are clarified, all possible solutions to the problem are given thorough consideration. Alternative solutions are analyzed comprehensively, taking all relevant factors into account. The final

choice is the most effective means of achieving the desired goal and solving the problem.

Lindblom claimed that this "rational-comprehensive" model is unrealistic. To begin with, policymakers have great difficulty defining precise values and goals. Administrators at the U.S. Department of Energy, for example, want to be sure that supplies of home heating oil are sufficient each winter. At the same time, they want to reduce dependence on foreign oil. Obviously, these two goals are not fully compatible. How do administrators decide which is more important? And how do they relate them to the other goals of the nation's energy policy?

Real-world decision making parts company with the ideal in another way: The policy selected cannot always be the most effective means to the desired end. Even if a tax at the pump is the most effective way of reducing gasoline consumption during a shortage, motorists' anger would make this theoretically "right" decision politically difficult. So the "best" policy is often the one on which most people can agree. But political compromise may mean that the government is able to solve only part of a problem.

A final point critics of the rational-comprehensive model raise is that policymaking can never be based on truly comprehensive analysis. A secretary of energy could not possibly find the time to read a comprehensive study of all alternative energy sources and relevant policy considerations for the next two decades. A truly thorough investigation of the subject would produce thousands of pages of text. Instead, the secretary of energy usually relies on short staff memos outlining a limited range of feasible solutions for immediate problems. Time is of the essence, and problems often are too pressing to wait for a complete study.

In short, policymaking tends to be *incremental*, with policies and programs changing bit by bit, step by step. Decision makers are constrained by competing policy objectives, opposing political forces, incomplete information, and the pressures of time. They choose from a limited number of feasible options that are almost always modifications of existing policies rather than wholesale departures from those policies.

The Culture of Bureaucracy

How an organization makes decisions and performs its tasks is greatly affected by the people who work there—the bureaucrats. Americans often find that their interactions with bureaucrats are frustrating because bureaucrats are inflexible ("go by the book") or lack the authority to get things done. Top administrators can also become frustrated with the bureaucrats who work for them.

Why do people act "bureaucratically"? Individuals who work for large organizations cannot help but be affected by the "culture of bureaucracy," even in their everyday speech (see Feature 12.2). Modern bureaucracies develop explicit rules and standards in order to make operations more efficient and treat their clients fairly. But within each organization, *norms* (informal, unwritten rules of behavior) also develop and influence the way people act on the job. The Veterans Administration (VA), for example, for many years had an official rule that medical care

FEATURE 12.2

English as a Foreign Language

One of the most irritating characteristics of the bureaucrat is a tendency to use *jargon*, a specialized vocabulary peculiar to an occupation. (A less-than-kind definition would be "gibberish.") In the language of bureaucracy, a simple sentence, say "Based on the evidence, we decided to close the Denver office," might become "A determination was made from the decision matrix that the relevant output variables indicated that a termination of the department's regional office at Denver was necessitated at this time."

Why does jargon rear its ugly head in the bureaucracy? One reason is that some people assume that jargon is a sign of professionalism, that using specialized terms reflects a command of the subject. Another reason is that many bureaucrats receive graduate training in the social sciences, where jargon breeds and multiplies. They then bring to government all the specialized vocabulary of political science, sociology, and economics.

But the principal reason why jargon is replacing English in the bureaucracy may be a lack of writing skills. It's much easier to write several long, complex, jargon-laden sentences than it is to write one that is short and crystal clear.

If you're thinking about entering government, take the following "aptitude" test. How many of these words in "bureaucratese" can you define? (The answers appear below.)

1. Parameters
2. Interdigitate
3. Prioritize
4. GIGO
5. Interface
6. Formatting
7. Proactive
8. Window of opportunity
9. Highly scenario-dependent
10. Career deceleration

Answers

1. Boundaries
2. Work together
3. Rank
4. Garbage in, garbage out. (In other words, if the data you put into the computer are worthless, then so are the results.)
5. See Interdigitate.
6. Designing
7. Opposite of
8. The time is ripe.
9. It all depends.
10. You're fired.

was to be provided only to veterans in need of hospitalization; more routine treatment was to be left to private physicians. Doctors working for the VA thought this rule was irrational, and among them a norm developed whereby they would provide routine care under the guise that it was needed before hospital admission.³²

Bureaucracies are often influenced in their selection of policy options by the prevailing customs, attitudes, and expectations of the people working within them. Departments and agencies commonly develop a sense of mission where a particular objective or a means for achieving it is emphasized. The Army Corps of Engineers is dominated by engineers who define the bureaucracy's objective as protecting citizens from floods by means of building dams. Certainly there could be other objectives, and certainly there are other methods of achieving this one, but the engineers promote the solutions that fit their conception of what the agency should be doing. As one study concluded, "When asked to generate policy proposals for review by their political superiors, bureaucrats are tempted to bias the search for alternatives so that their superiors wind up selecting the kind of program the agency wants to pursue."³³

At first glance, bureaucrats seem to be completely negative sorts of creatures. They do have their positive side, however. Those agencies with a clear sense of mission are likely to have a strong esprit de corps

that adds to the bureaucrats' motivation. Also, bureaucrats' caution and close adherence to agency rules offer a measure of consistency. It would be unsettling if government employees interpreted rules as they pleased. Simply put, bureaucrats "go by the book" because the "book" is composed of the laws and regulations of this country, as well as the internal rules and norms of a particular agency. Americans expect to be treated equally before the law, and bureaucrats work with that expectation in mind.

PROBLEMS IN IMPLEMENTING POLICY

The development of policy in Washington is the end of one part of the policymaking cycle but the beginning of another. After policies have been developed, they must be implemented. **Implementation** is the process of putting specific policies into operation. Ultimately, bureaucrats must convert policies on paper into policies in action. For example, the Social Security Administration could issue a new set of rules designed to get people who are receiving disability payments to return to work when they are physically able. But no set of regulations can possibly anticipate all injuries suffered on the job. And medical opinion on even a single case can differ. How much can be left to the discretion of social security bureaucrats in local offices? What if they make a mistake and take benefits away from people who really cannot work?

It is important to study implementation because policies do not always do what they were designed to do. Some of the most persistent problems in implementation stem from vague directives, faulty coordination, decentralized authority, and imprecise evaluation of success.

Vague Directives

It is difficult to implement a policy when that policy is not clearly stated. Policy directives to bureaucrats in the field sometimes lack clarity and leave lower-level officials with too much discretion. The source of vague regulations is often vague legislation. Congress, for example, included in the Elementary and Secondary School Act (1965) a program of grants to meet the "special needs of educationally deprived children." But the act did not spell out who qualified as educationally deprived. The administering agency, the U.S. Office of Education, passed the money on to the states without specific eligibility criteria. As a result, the money was spent for a variety of purposes, not all of which were beneficial to deprived children.³⁴

Vague directives are a particular problem at the time a program is first put into operation. Knowing that this problem exists, however, and finding the best way to solve it are two different things.

Faulty Coordination

Programs frequently cut across the jurisdictions of a number of agencies. At times these programs are not implemented effectively because the agencies involved have trouble coordinating their efforts. An eco-

economic development program in Oakland, California, lagged badly because many agencies had jurisdiction over various parts of the project. One study found that during a seven-year period, there were thirty different stages at which decisions had to be made, requiring seventy agreements among various bureaucracies.³⁵

A turf war can break out when different agencies begin competing for leadership in a policy area. The fight against illegal drugs, for example, has been hampered by bickering over leadership and jurisdiction between the Drug Enforcement Agency and the Customs Service.³⁶

Decentralized Authority

A problem related to faulty coordination is the dispersal of authority in our federal system. Even when the objectives of the national government are clear-cut, they can be undermined by the authority of state and local governments. Sometimes the decentralization of authority within the national government itself can be a problem. Implementation of the Surface Mining Control and Reclamation Act was impeded by differences between the Office of Surface Mining (OSM) and its regional offices around the country. Individual coal firms reached what they thought was an agreement with OSM in Washington only to have it disregarded by regional offices. The regional offices did have the authority to apply the law in their area, but OSM in Washington clearly had its own ideas as to how it wanted the law implemented. The political conflict that ensued led to changes that diminished the role of the regional offices.³⁷

Decentralization does not always lead to conflict and confusion, but it usually means a tradeoff is inevitable. Decentralization is a way of tapping local imagination and initiative. But there is a risk involved: Local, state, or regional administrators may not pursue the policies that were originally envisioned by the program's designers, and squabbling among different administrative levels can reduce a program's effectiveness.

Imprecise Evaluation of Success

Sometimes a program's implementation is hampered because there is no reliable way to measure its success. If a program's effectiveness cannot be measured accurately, policymakers are operating in the dark. They do not have the necessary information to judge whether a policy is working well, needs modification, or should be scrapped altogether.

An interesting example of how important accurate evaluation is and how difficult it is to obtain comes from the Head Start program. Head Start, which was begun in the 1960s, was designed to help low-income and minority students do better in school. These students were placed in preschool enrichment programs, with the hope that this "head start" would help them do as well as those from more privileged backgrounds. The initial results were disappointing. Children who had been in Head Start programs did not do appreciably better in school than similarly deprived children who had not been in the program. Obviously, this weakened political support for Head Start; there seemed to be little justification for spending money on a program that wasn't working. Yet

longer-term studies now show that preschool enrichment programs *can* have positive effects on school performance.³⁸

Although obstacles to effective implementation create the impression that nothing succeeds, programs can and do work. Problems in the implementation process demonstrate why time, patience, and continual analysis are necessary ingredients of successful policymaking. To return to a term we used earlier, implementation is by its nature an *incremental* process, in which trial and error eventually lead to policies that work.

REFORMING THE BUREAUCRACY

American citizens do not hesitate to criticize the bureaucracy. They complain that it is too big, too intrusive, too costly, too inefficient, and too unresponsive. Presidents, members of Congress, and agency administrators are constantly trying to come up with reforms that address these complaints. In recent years, reform efforts have included reorganization, deregulation, citizen participation programs, and analytical budgeting.

Reorganization

One of the most common ways to try to improve bureaucratic performance is **reorganization**. For instance, two or three bureaus in a department might be combined to reduce overlap. Or responsibility for running a program might be taken from one agency and given to another that runs programs in the same general area. When departments or agencies are reorganized, administrators sometimes find ways of improving the delivery of services, saving money, or both. Typically, though, these improvements and savings are not as significant as proponents claim.³⁹

Reorganization lets the government adapt to new problems, responsibilities, and priorities. In the wake of the stock market crash in October 1987, a presidential task force that investigated its causes concluded that one of the problems was that regulation of financial markets was fragmented, distributed among a number of different agencies. The task force said that there was a failure to realize that the different financial markets were really tied together into one central market. With this diagnosis in mind, it proposed centralizing responsibility for stock, options, and futures markets in the Federal Reserve Board.⁴⁰

Interest groups and members of Congress who are trying to protect valued programs often oppose administrative reorganization. In addition, bureaucrats themselves can be a formidable obstacle. For example, the Pentagon has made periodic efforts to centralize such management functions as purchasing, in order to save money by eliminating overlapping jobs and by standardizing equipment. But interservice rivalries among the army, navy, and air force consistently hamper these efforts. Civilian bureaucrats in the Pentagon even failed at one point to get all the branches of the service to adopt a common belt buckle for uniforms. Although the escalating cost of high-technology weapons systems has renewed pressure for reorganization within the Pentagon, a major breakthrough has yet to come about.⁴¹

A Bull Market in Stock Market Studies

The 1987 stock market crash spawned no less than four major studies. A presidential task force chaired by Nicholas Brady (shown here), a Wall Street executive and former senator, recommended a sweeping reorganization of the regulation of financial markets. The White House then created a new group to study the study and formulate legislative proposals. This group backed away from sweeping change and suggested only modest adjustments in market regulation.



Deregulation

Many people believe that government is too involved in **regulation**, intervention in the natural workings of business markets to promote some social goal. For example, government might regulate a market to ensure that products pose no danger to consumers. Through **deregulation** the government reduces its role and lets the natural market forces of supply and demand take over. Indeed, nothing is more central to capitalist philosophy than the belief that the free market will efficiently promote the balance of supply and demand. Some important movement toward deregulation has taken place recently, notably in the airline, trucking, financial services, and telecommunications industries.⁴²

In the case of the airlines, the Civil Aeronautics Board (CAB) had been determining fares and controlling access to routes. The justification for these regulatory efforts was that they would prevent overloads, both in the sky and at airport facilities, and would ensure some service to all parts of the nation. But regulation had a side effect: It reduced competition among the airlines, and that worked to the disadvantage of consumers. Congress responded by passing a law in 1978 mandating deregulation of fares and routes, and the airlines became more competitive. New carriers entered lucrative markets, fares dropped, and price wars broke out. In smaller cities, which major carriers no longer had to serve, commuter airlines offered essential services. In retrospect, it is clear that government was overregulating the airline industry. Yet the perception that the quality of air travel has declined in terms of such factors as on-

Fly the Unfriendly Skies
With the deregulation of the airline industry, increased traffic on many routes has tested the capacity of the Federal Aviation Administration to ensure safety in the air. Air traffic controllers form the front line of the FAA's safety efforts. The responsibility of their job and the acute concentration it requires make their work extremely stressful.



time performance leads some observers to conclude that deregulation has gone too far.

The question of how much regulation (or deregulation) is enough leads to a larger question about the role of the national government (and therefore the bureaucracy) in American society. Conservatives tend to believe that government regulation of business should be minimal, giving both consumers and producers as much personal freedom as possible. Liberals, however, believe the free market does not protect citizens adequately from unfair or dangerous business practices.

What about the bureaucrats themselves? What do they think about regulation? Compared With What? 12.1 describes the attitudes of politicians and bureaucrats in six countries on the "preferred degree of state involvement in the economy and society."

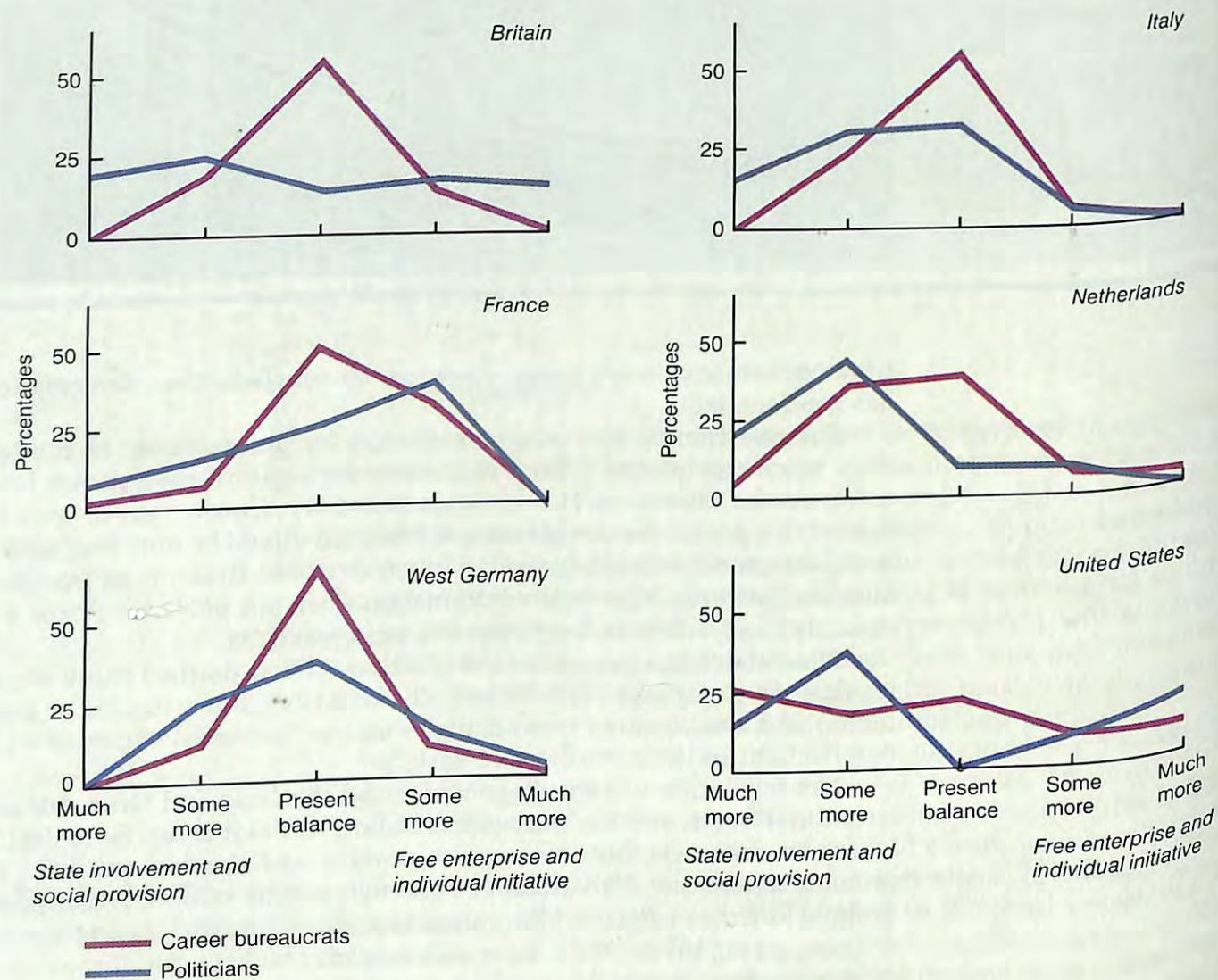
The regulation of prescription drugs by the Food and Drug Administration (FDA) is another illustration of how difficult it can be to decide where to draw the line between regulation and the free market. To promote safety, the FDA requires thorough testing of new prescription drugs before they can be sold to consumers. But while the years of testing drag on, a drug that could reduce suffering may be kept out of the hands of sick people. Drug manufacturers argue that the FDA should speed up its testing and approval process, to get new drugs out to those who need them. (Not insignificantly, earlier approval would also allow drug companies to begin recouping their investments in research and development earlier.)

The other side of the coin is that faster licensing of drugs can be

COMPARED WITH WHAT? 12.1

Bureaucrats' and Politicians' Attitudes Toward State Involvement

In all the countries surveyed, bureaucrats were more likely than politicians to occupy the middle position, favoring the "present balance." But U.S. bureaucrats were more likely than those in other countries to favor "much more" state involvement. Some readers might interpret this difference as conclusive proof of a liberal bias within the national bureaucracy. Others might explain the difference by noting that *all* of the other countries already experience a great deal more state involvement than we do in the United States, leaving bureaucrats in other countries more satisfied with the status quo.



Source: Adapted from Figure 5-1 in Joel D. Aberbach, Robert D. Putnam, and Bert A. Rockman, *Bureaucrats and Politicians in Western Democracies* (Cambridge, Mass.: Harvard University Press, 1981), p. 122.

dangerous. The harmful side effects of drugs may not come to light for years; in the intervening period, unforeseen effects can cause serious harm to users. Never far from the minds of congressional and agency officials who would have to take responsibility for deregulation is the thalidomide case. The William S. Merrill Company purchased the license to market this drug, already available in Europe, and filed an application with the FDA in 1960. The company then began a protracted fight with FDA bureaucrat Dr. Frances Kelsey, who was assigned to evaluate the thalidomide application. She demanded that the company abide by all FDA drug-testing requirements, despite the fact that the drug was already in use in other countries. She and her superiors resisted pressure from the company to bend the rules a little and expedite approval. Before Merrill had conducted all the FDA tests, news came pouring in from Europe that some women who had taken thalidomide during pregnancy were giving birth to babies without arms, legs, or ears. Strict adherence to government regulation protected Americans from the same tragic consequences.

Citizen Participation Programs

A very different kind of reform effort centers on citizen participation. **Citizen participation programs** encourage interaction between bureaucrats and their clients. For example, before Community Development Block Grant (CDBG) funds can be used in a local area, the national government requires a hearing to let citizens comment on the proposals. Ideally, citizen input then becomes an important factor in the decision making of bureaucrats administering the CDBG funds.

Citizen participation programs arose out of a belief that bureaucracies are too far removed from the people they serve. Their objective was to get policymakers to fashion policies that are more in line with what citizens really want and to make citizens feel more confident about the governmental process because they have participated in it. The citizen participation movement was set in motion by President Lyndon B. Johnson's War on Poverty. The Economic Opportunity Act (1964) stated that poverty program administrators should include "maximum feasible participation" by the poor in their policymaking deliberations. In the following ten years, more than 150 new citizen participation programs were started.

The programs themselves have had mixed results, and many are best described as "rituals."⁴³ Often citizens express their views at hearings held mainly for show, and their substantive influence is small. Because bureaucrats have not been eager to share their power with citizen groups, many comply with the letter—but not the spirit—of the programs.

There are citizen participation programs that have worked well in the past, but these programs were diminished in importance when Reagan was elected. To his administration, they represented the views of liberal environmentalists and consumers. As a result, the administration placed little value on them.⁴⁴

Currently, the most impressive citizen participation efforts can be found in a handful of cities—among them, St. Paul, Minnesota, and

Dayton, Ohio—where local governments have set up exemplary programs to involve rank-and-file citizens in policymaking.⁴⁵ Whether citizen participation at the national level will emerge as an effective administrative reform in the future remains to be seen.

Analytical Budgeting

In recent years, a reform often imposed on the bureaucracy is **analytical budgeting**. In an effort to keep bureaucracies from spending any more than necessary to meet their program goals, various administrations have sought to bring sophisticated analysis to the budgeting process. Such tools as *cost-benefit analysis* and the Carter administration's *zero-based budgeting* are examples. Although different methods have been used, the basic idea is the same: force administrators to think rigorously about alternative ways of achieving their policy objectives and to choose the most cost-effective means.

For example, if the U.S. Department of Defense wants to develop a new weapons system, how should it make its decision? Defense Department officials could simply conclude that the cruise missile is an effective weapon and therefore ought to be built. But instead of looking at strategic considerations alone, their analysis could combine cost calculations with measures of combat effectiveness. One analysis compared three types of cruise missiles (air, ground, and sea launched) with other weapons systems. On the basis of cost alone, ground- and sea-launched cruise missiles were the most expensive. But when a method of analysis called *life-cycle costing* (which takes into account long-term operating and support service expenditures) was used, ground- and sea-launched missiles emerged as the least expensive alternative per warhead.⁴⁶

Many programs are not susceptible to the type of quantitative analysis of costs and benefits that analytical budgeting requires. For example, how do we calculate the value of grants for medical research that may at some time save lives? Analytical budgeting is further compromised by political considerations. Administration officials are not eager to offend their constituents.

The national government's water reclamation projects are a case in point. These projects are especially popular with western farmers, providing them with low-cost water to irrigate their fields. Strict cost-benefit analyses of many of these projects show that they offer too little benefit at too great a cost. Stated another way, taxpayers are unnecessarily subsidizing farmers who could well afford to pay more for the irrigation water they receive. The subsidies endure, though, because the *political costs* of ending them are too great. Western politicians are not about to let analytical budgeting put an end to something their constituents want very badly.⁴⁷

Looking back on the various attempts at analytical budgeting, one scholar wrote, "Practices of both Republican and Democratic administrations indicate that nonpolitical budgets based on business practices of economy and efficiency are largely unknown outside the rhetoric of textbooks."⁴⁸

SUMMARY

As the scope of government activity has grown during the twentieth century, so has the bureaucracy. The executive branch has evolved into a complex set of departments, independent agencies, and government corporations. Through the administrative discretion granted them by Congress, these bodies make policy decisions that have the force of law. In making policy choices, agency decision makers are influenced by their external environment, especially the White House, Congress, and interest groups. Decision makers are also influenced by internal norms and the need to work cooperatively with others both within and outside their agencies.

The controversy and conflict surrounding bureaucratic policymaking reflect broader differences in the American political system and the values underlying that system. Whether policy involves the cost of funerals, clean air regulations, or standards for chain saws, one issue is fundamental: To what degree should the national government intervene to protect Americans in the name of order or to promote their welfare in the name of equality? At what point does protection for some citizens rob others of the freedom to lead their lives as they want?

There is a division between those who want administrative agencies to aggressively protect citizens from harmful or unfair business practices and those who want agencies to do less. This division also usually mirrors the line that divides the views of liberals and conservatives. But that line is not etched in stone. At times, conservatives actually support government intervention, as do businesspeople, even though they generally believe in deregulation.

Certainly there are problems stemming from government bureaucracy. Critics point to its lack of responsiveness, to waste, to faulty implementation. Reforms—among them reorganization, deregulation, citizen participation programs, and analytical budgeting—are constantly being suggested as a means of improving bureaucratic performance.

The most serious charge facing the bureaucracy is that it is out of control of the people. In fact, the White House, Congress, interest groups, and public opinion are substantial controls on the bureaucracy. Still, to many Americans, the bureaucracy seems too big, too costly, and too intrusive. It is difficult to reduce the size and scope of bureaucratic activity because pluralism characterizes our political system. The entire executive branch may appear too large, and each of us can point to agencies that we believe should be reduced or eliminated. Yet each bureaucracy has its supporters. The Department of Agricul-

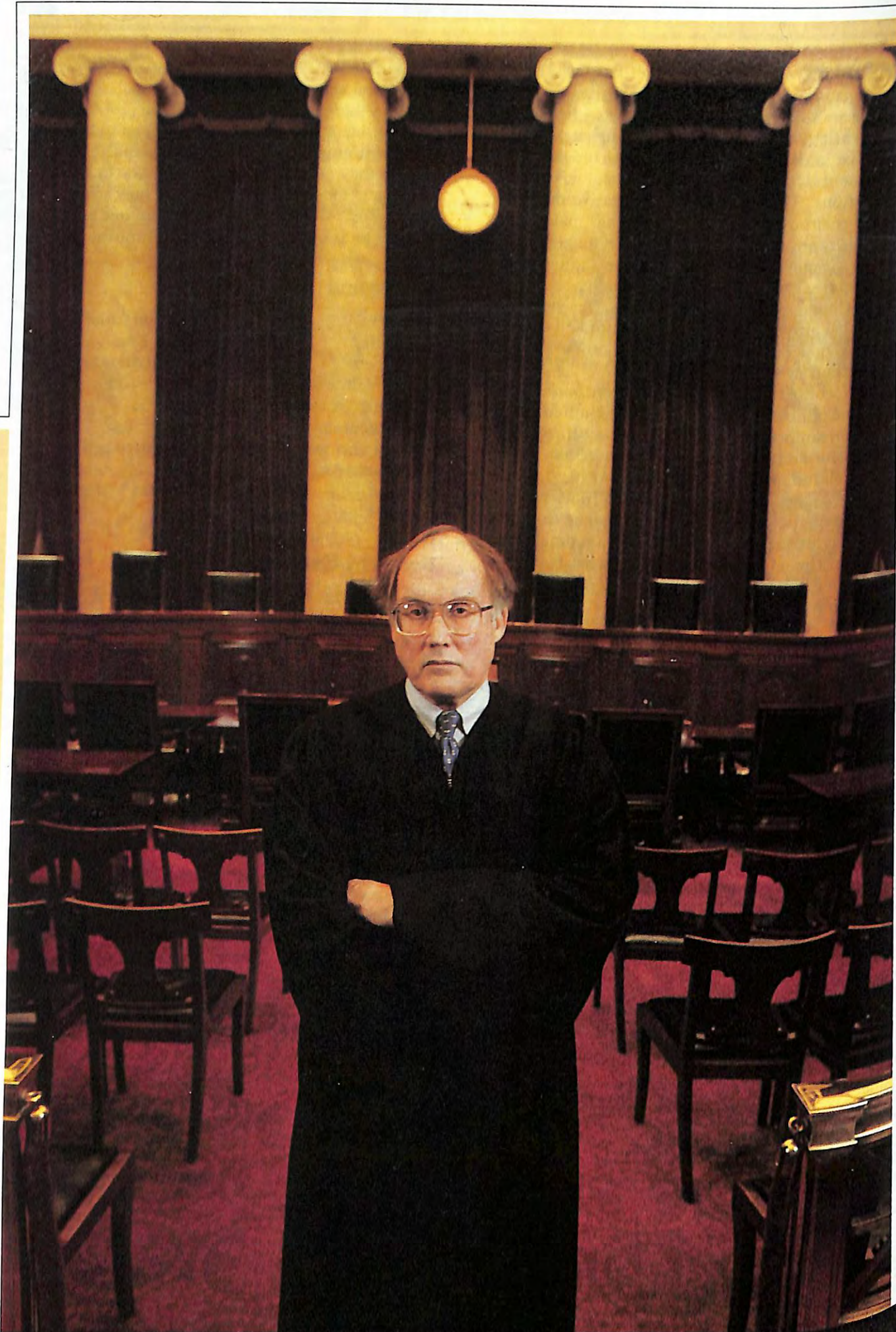
ture performs vital services for farmers. Unions care a great deal about the Department of Labor. Scholars want the National Science Foundation protected. And home builders do not want Housing and Urban Development programs cut back. Bureaucracies survive because they provide important services to groups of people, and those people—no matter how strong their commitment to less government—are not willing to sacrifice their own needs to that commitment.

Key Terms

bureaucracy	regulation (rule)
bureaucrat	adjudication
department	implementation
independent agency	reorganization
regulatory commission	regulation
government corporation	deregulation
civil service	citizen participation
administrative discretion	program
rule making	analytical budgeting

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13

The Courts

Federal Judicial Supremacy

Judicial Review of the Other Branches
• Judicial Review of State Government
• The Exercise of Judicial Review

The Organization of the Federal Courts Today

The U.S. District Courts • The U.S. Courts of Appeals

The Supreme Court

Access to the Court • The Solicitor General • Decision Making

Judicial Recruitment

The Appointment of Federal Judges • Recent Presidents and the Federal Judiciary • Appointment to the Supreme Court

The Legal Profession

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The Consequences of Judicial Decisions

Supreme Court Rulings: Implementation and Impact • Public Opinion and the Courts

The Changing Role of the Courts

When Chief Justice Fred M. Vinson died unexpectedly on September 8, 1953, Justice Felix Frankfurter commented, "This is the first solid piece of evidence I've ever had that there really is a God."¹ Frankfurter despised Vinson as a leader and disliked him as a person. Now Vinson's sudden death cast new light—and perhaps new hope—on the school segregation cases known collectively as *Brown v. Board of Education*.

The issue of segregated schools was first heard by the United States Supreme Court late in 1952. The justices were bitterly divided, with Vinson supporting racial segregation in public education. Because it was clear the justices were not ready to reach a decision, they scheduled the issue for reargument the following year.

Frankfurter's caustic remark reflected the critical role Vinson's replacement would play when the Court again tackled the desegregation issue. On September 30, 1953, in his very first appointment to the nation's highest court, President Dwight D. Eisenhower chose California Governor Earl Warren as chief justice. The president would later regret his choice.

The reargument of *Brown v. Board of Education* was heard in December 1953. The new chief justice led the Court from division to

unanimity on the issue of school segregation. Unlike his predecessor, Warren began the secret conference to decide the segregation issue with a strong statement: that segregation was contrary to the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. "Personally," remarked the new chief justice, "I can't see how today we can justify segregation based solely on race."² Moreover, if the Court were to uphold segregation, he argued, it could do so only on the theory that blacks were inherently inferior to whites. As the discussion proceeded, Warren's opponents were cast in the awkward position of appearing to support racism.

Five justices were clearly on Warren's side, making six votes; two were prepared to join the majority if Warren's opinion satisfied them. With only one clear holdout, Warren set about the task of responding to his colleagues' concerns. In the months that followed, he met with them individually in their chambers, reviewing the decision and the justification that would accompany it. Finally, in April 1954, Warren approached Justice Stanley Reed, whose vote would make the opinion unanimous. "Stan," said the chief justice, "you're all by yourself in this now. You've got to decide whether it's really the best thing for the country." Ultimately Reed joined the others. On May 17, 1954, the Supreme Court unanimously ruled against racial segregation in public schools, signaling the end of legally created or governmentally enforced segregation of the races in the United States.³

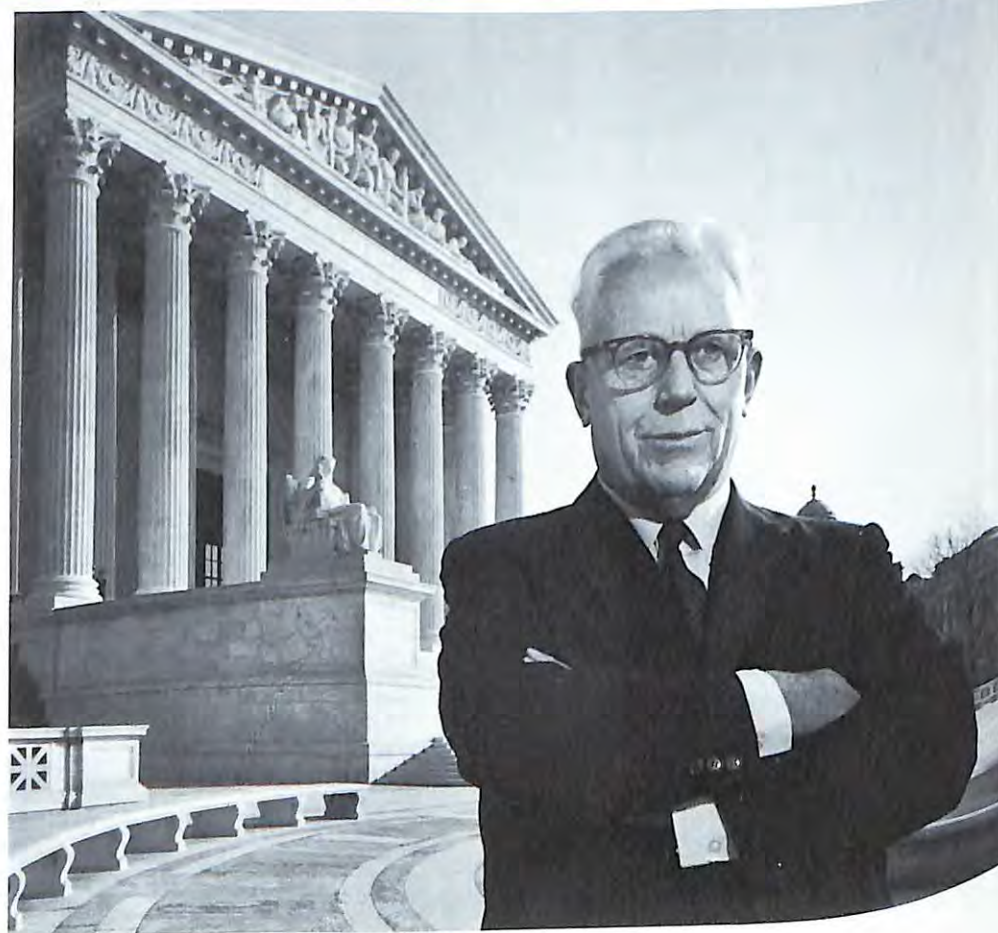
Judges confront conflicting values in the cases before them, and tough cases call for fine distinctions among those values. In crafting their decisions, judges—especially Supreme Court justices—make policy. Their decisions are the precedents other judges use to rule in similar cases. One judge in one court makes public policy to the extent that he or she influences other decisions in other courts.

The power of the courts to shape policy creates a difficult problem for democratic theory. According to that theory, the power to make law resides only in the people or in their elected representatives. Yet court rulings—especially Supreme Court rulings—extend far beyond any particular case. Judges are students of the law, but they remain human beings. They have their own opinions about the values of freedom, order, and equality. And although all judges are constrained by statutes and precedents from expressing their personal beliefs in their decisions, some judges are more prone than others to interpret laws in light of those beliefs.

America's courts are deeply involved in the life of the country and its people. Some courts, like the Supreme Court, make fundamental policy decisions vital to the preservation of freedom, order, and equality. Through checks and balances, the elected branches couple the courts to democracy, and the courts hitch the elected branches to the Constitution. But does it work? Can the courts exercise political power within the pluralist model? Or are judges simply politicians in black robes, making decisions independent of popular control? In this chapter we try to answer these questions by exploring the role of the judiciary in American political life.

Power Player on the Top Court

Earl Warren (1891–1974) served as the fourteenth chief justice of the United States. A true liberal, Warren led the Supreme Court by actively preferring equality to freedom and freedom to order. These decisions occasionally brought calls from Congress for Warren's impeachment. He retired in 1968 after sixteen years of championship (critics might say controversial) activity.



FEDERAL JUDICIAL SUPREMACY

Section 1 of Article III of the Constitution created "one supreme Court." The founders were divided on the need for other national courts, so they deferred to Congress the decision to create a federal court system. Those who opposed the creation of federal courts believed that the system would usurp the authority of the state courts.⁴ Congress considered the issue in its first session and, in the Judiciary Act of 1789, gave life to a system of federal courts that would coexist with the courts in each state but be independent of them.

In the early years of the republic, the federal judiciary was not considered a particularly powerful branch of government. It was difficult to recruit and keep Supreme Court justices. John Jay, the first chief justice, refused to resume his duties in 1801 because he concluded that the Court could not muster the "energy, weight, and dignity" to contribute to national affairs.⁵ Several distinguished statesmen refused appointments to the Court, and several others, including Oliver Ellsworth, the second chief justice, resigned. But when John Marshall, an ardent Federalist, was appointed chief justice in 1801, a period of profound change began.

Judicial Review of the Other Branches

Shortly after Marshall's appointment, the Supreme Court confronted a question of fundamental importance to the future of the new republic: If a federal law and the Constitution conflict, which should prevail? The question arose in the case of *Marbury v. Madison* (1803), which involved a controversial series of last-minute political appointments.* The ensuing litigation hinged on the concept of the Supreme Court's **original jurisdiction**, its authority to hear a case before any other court does.

Section 2 of Article III confers original jurisdiction on the Supreme Court to hear and decide "all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party." Cases falling under the Supreme Court's original jurisdiction are tried and decided in the Court itself; these cases begin and end there. The largest part of the Supreme Court's jurisdiction, then and now, extends only to cases that have been tried, decided, and re-examined as far as the law permits in other federal or state courts. These referred cases fall under the Supreme Court's **appellate jurisdiction**. The Court exercises judicial power under its appellate jurisdiction only because Congress gives it the authority to do so.

The case of *Marbury v. Madison* began on March 2, 1801, when an obscure Federalist, William Marbury, was designated as a justice of the

* Courts publish their opinions in volumes called *reporters*. Today, the United States Reports is the official reporter for the U.S. Supreme Court. For example, the Court's opinion in the case of *Brown v. Board of Education* is cited as 347 U.S. 483 (1954). This means that the opinion in *Brown* begins on page 483 of Volume 347 in the United States Reports. The citation also includes the year of the decision. The decision in *Brown* was made in 1954. Before 1875, the official reports of the Supreme Court were published under the names of private compilers. For example, the case of *Marbury v. Madison* is cited as 1 Cranch 137 (1803). This means that the case is found in Volume 1, compiled by reporter William Cranch, starting on page 137, and that it was decided in 1803.



Chief Justice John Marshall (1755–1835) clearly ranks as the "Babe Ruth" of the Supreme Court. Both Marshall and the Bambino transformed their respective games and became symbols of their institutions. Scholars now recognize both men as originators—Marshall of judicial review, and Ruth of the modern age of baseball.

peace in the District of Columbia. Marbury and several others were appointed to government posts created by Congress in the last days of John Adams's presidency. In the rush to finish up the administration's work, John Marshall, then the secretary of state, failed to deliver to Marbury and the other appointees the documents that would have made their appointments official before the end of Adams's term at midnight, March 3. The documents, known as *commissions*, had been signed by the president and affixed with the Great Seal of the United States, but they remained tucked away in the secretary of state's desk. The newly arrived Jefferson administration had little interest in delivering the commissions; there were qualified Jeffersonians who would welcome the jobs.

Marbury and three others brought suit in the Supreme Court to have their commissions delivered by the new secretary of state, James Madison. Marbury claimed that Section 13 of the Judiciary Act of 1789 gave the Court the power to issue writs of mandamus to government officials. (*Mandamus* means "we command"; a **writ of mandamus** is a court order directing an official to act.)

The Court seemed to have just two alternatives. It could issue the writ, but in all likelihood Madison would ignore it, leaving the nation's highest court open to ridicule through a rebuff over a trifling issue. Or the Court could deny the writ. But given the explicit authority in Section 13, the failure to act would be a sign of weakness from a Court that feared its actions would not be obeyed. The Court found a novel solution that avoided both ridicule and a show of weakness.

On February 24, 1803, the Court held, through the forceful argument of Chief Justice Marshall, that Marbury had a right to his commission and that it should be delivered to him. The Court concluded, however, and that it should be delivered to him. The Court concluded, however, and that it did not have the power to order the commission delivered. It was true that the Judiciary Act gave the Court the authority to issue writs of mandamus, but in doing so, the act expanded the Court's original jurisdiction beyond the limits spelled out in the Constitution. The Court was faced with an act of Congress that was in conflict with a provision of the Constitution.

Can "an act repugnant to the constitution . . . become the law of the land?" asked the chief justice. The logic in Marshall's answer was elegant. He argued that the Constitution was "the fundamental and paramount law of the nation" and that "an act of the legislature repugnant to the constitution is void." In other words, when the Constitution—the nation's highest law—conflicts with an act of the legislature, that act is invalid. The last part of Marshall's argument vested in the judiciary the power to weigh the validity of congressional acts:

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. . . . If a law be in opposition to the constitution, if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty.⁶

The decision in *Marbury v. Madison* established the Supreme Court's power of **judicial review**—the power to declare congressional acts invalid if they violate the Constitution.* Subsequent cases extended the power to presidential acts.

Marshall surely took a measure of political delight from the Court's decision. Although the ruling blocked the Adams appointments, it attacked Jefferson and Madison for their lawlessness. Then, by a "masterwork of indirection," Marshall expanded the potential power of the Supreme Court to equal or exceed that of the other branches of government. Should a congressional act or, by implication, a presidential act conflict with the Constitution, the Supreme Court claimed the power to declare the act void. The judiciary would be a check on the legislative and executive branches, consistent with the principle of checks and balances embedded in the Constitution. Although Congress and the president may wrestle with the constitutionality of their actions, judicial review gave the Supreme Court the final word on the meaning of the Constitution.

The exercise of judicial review—an appointed branch checking an elected branch in the name of the Constitution—appears to run counter to democratic theory. In two hundred years of practice, however, the Supreme Court has invalidated fewer than one hundred provisions of federal law, and only a small number have had great significance for the political system.⁷ Moreover, there are mechanisms to override judicial review (constitutional amendment) and to control the action of the justices (impeachment). In addition, the Court can respond to the continuing struggle among competing interests (a struggle that is consistent with the pluralist model) by reversing itself.

Judicial Review of State Government

The establishment of judicial review of federal laws made the Supreme Court the umpire of the national government. When acts of the national government conflict with the Constitution, the Supreme Court can declare those acts invalid. But what about state laws? If they conflict with the Constitution, federal laws, or treaties, can the Court invalidate them as well?

The Supreme Court answered in the affirmative in 1796. *Ware v. Hylton* involved a British creditor who was trying to collect a debt from the state of Virginia.⁸ Virginia law canceled debts owed British subjects, yet the Treaty of Paris (1783), in which Britain formally acknowledged the independence of the colonies, guaranteed that creditors could collect such debts. John Marshall (the future chief justice), representing Virginia in his only argument before the Court, maintained that the provision of the treaty did not apply. But the Court ruled that the Constitution's supremacy clause (Article VI) nullified the state law.

The states continued to resist the yoke of national supremacy. Although advocates of strong states' rights conceded that the supremacy

* The Supreme Court had earlier upheld an act of Congress in *Hylton v. United States*, 3 Dallas 171 (1796). By striking down a portion of the Judiciary Act of 1789, *Marbury v. Madison* stood for a component of judicial power that had never before been exercised: the power to invalidate an act of Congress.



"What's Going On Here?"

Sometimes, court opinions do not yield easily to understanding by reporters (or by judges, as this cartoon suggests). Several readings may be required to grasp the issues and the arguments, which can be embedded in the complexities of the legal process.

clause obligates state judges to follow the Constitution when it conflicts with state law, they maintained that the states were bound only by their own interpretation of the Constitution. The Supreme Court said no, ruling in *Martin v. Hunter's Lessee* that it had the authority to review state courts' decisions that called for the interpretation of federal law.⁹ National supremacy required the Supreme Court to impose uniformity on federal law; otherwise, the Constitution's meaning would vary from state to state. The people, not the states, had ordained the Constitution; and the people had subordinated state power in order to establish a viable national government.

The Exercise of Judicial Review

The decisions in *Marbury*, *Ware*, and *Martin* established the components of judicial review:

- The power of the federal courts to declare federal, state, and local laws invalid if they violate the Constitution
- The supremacy of federal laws or treaties when they conflict with state and local laws
- The role of the Supreme Court as the final authority on the meaning of the Constitution.

But this political might—the power to undo decisions of the representative branches of national and state governments—was in the hands of appointed judges, people who were not accountable to the electorate. Did judicial review square with democratic government?

Alexander Hamilton had foreseen and tackled the problem in "Federalist No. 78." Writing during the ratification debates surrounding the adoption of the Constitution (see Chapter 3), Hamilton maintained that despite the power of judicial review, the judiciary would be the weakest

of the three branches of government because it lacked "the strength of the sword or the purse." The judiciary, wrote Hamilton, had "neither FORCE nor WILL, but only judgment."

Although Hamilton was defending legislative supremacy, he argued that judicial review was an essential barrier to legislative oppression.¹⁰ He recognized that the power to declare government acts void implied the superiority of the courts over the other branches. But this power, he contended, simply reflects the will of the people declared in the Constitution as compared with the will of the legislature declared in its statutes. Judicial independence, embodied in life tenure and protected salaries, minimizes the risk of judges' deviating from the law established in the Constitution by freeing the judiciary from executive and legislative

COMPARED WITH WHAT? 13.1

Judicial Review

The U.S. Constitution does not explicitly give the Supreme Court the power of judicial review. In a controversial interpretation, the Court inferred this power from the text and structure of the Constitution. Other countries, trying to avoid political controversy over the power of the courts to review legislation, explicitly define that power in their constitutions. Japan's constitution, inspired by the American model, went beyond it in providing that "the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation, or official act."

The basic objection to the American form of judicial review is an unwillingness to place judges, who are usually appointed for life, above representatives elected by the people. The European concept of judging involves principled decision making, not "creative" interpretation of constitutions or laws. Some constitutions explicitly deny judicial review. For example, Article 28 of the Belgian constitution (1831) firmly asserts that "the authoritative interpretation of laws is solely the prerogative of the Legislative authority."

The logical basis of judicial review—that government is responsible to higher authority—can take interesting forms in other countries. In some, judges can invoke a higher authority than the constitution—God, an ideology, or a code of ethics. For example, both Iran and Pakistan provide for an Islamic review of all legislation. (Pakistan also has the American form of judicial review.)

By 1985, about sixty-five countries—mostly in Western Europe, Latin America, Africa, and the Far East—had adopted some form of judicial review.

Australia, Brazil, Burma, Canada, India, Japan, and Pakistan give their courts a full measure of judicial review power. All but Japan have federal governments. Australia and Canada come closest to the American model of judicial review. Governments with relatively consistent experience with judicial review share some common characteristics: stability, competitive political parties, distribution of power (akin to separation of powers), a tradition of judicial independence, and a high degree of political freedom. Is judicial review the cause or the consequence of these characteristics? More likely than not, judicial review contributes to stability, judicial independence, and political freedom. And separation of powers, judicial independence, and political freedom contribute to the effectiveness of judicial review.

Switzerland also has a federal form of government. However, its Supreme Federal Court is limited by its constitution to rule on the constitutionality of cantonal laws (the Swiss equivalent of our state laws). The Supreme Federal Court lacks the power to nullify laws passed by the national assembly. The Swiss people, through a constitutional initiative or a popular referendum, exercise the sovereign right to determine the constitutionality of federal law. In Switzerland, the people are truly supreme.

Source: These views are found in Henry J. Abraham, *The Judicial Process*, 5th ed. (New York: Oxford University Press, 1986), pp. 291–330; and Ivo D. Duchacek, *Power Maps: Comparative Politics of Constitutions* (Santa Barbara, Calif.: ABC-CLIO, 1973), pp. 216–219.

control.* And if judges make a mistake, the people or their elected representatives have the means to correct the error, through constitutional amendment and impeachment.

Their life tenure does free judges from the direct influence of the president and Congress. And although mechanisms to check judicial power are in place, they require extraordinary majorities and have rarely been used. When they exercise the power of judicial review, then, judges can and occasionally do operate counter to majoritarian rule by invalidating the actions of the people's elected representatives. (Compared With What? 13.1 shows the nature of judicial review in other governments, democratic and nondemocratic.) Is the Court out of line with majority sentiment? Or is the Court simply responding to pluralist demands—the competing demands of interest groups that turn to the courts to make public policy? We return to these questions later in this chapter.

THE ORGANIZATION OF THE FEDERAL COURTS TODAY

The American court system is complex, a function in part of our federal system of government. Each state runs its own court system; and no two are identical. In addition, we have a system of courts for the national government. These federal courts coexist with the state courts (see Figure 13.1). Individuals fall under the jurisdiction of two different court systems, their state courts and the federal courts. They can sue or be sued in either system, depending mostly on what their case is about. The vast majority of cases are resolved in the state courts.

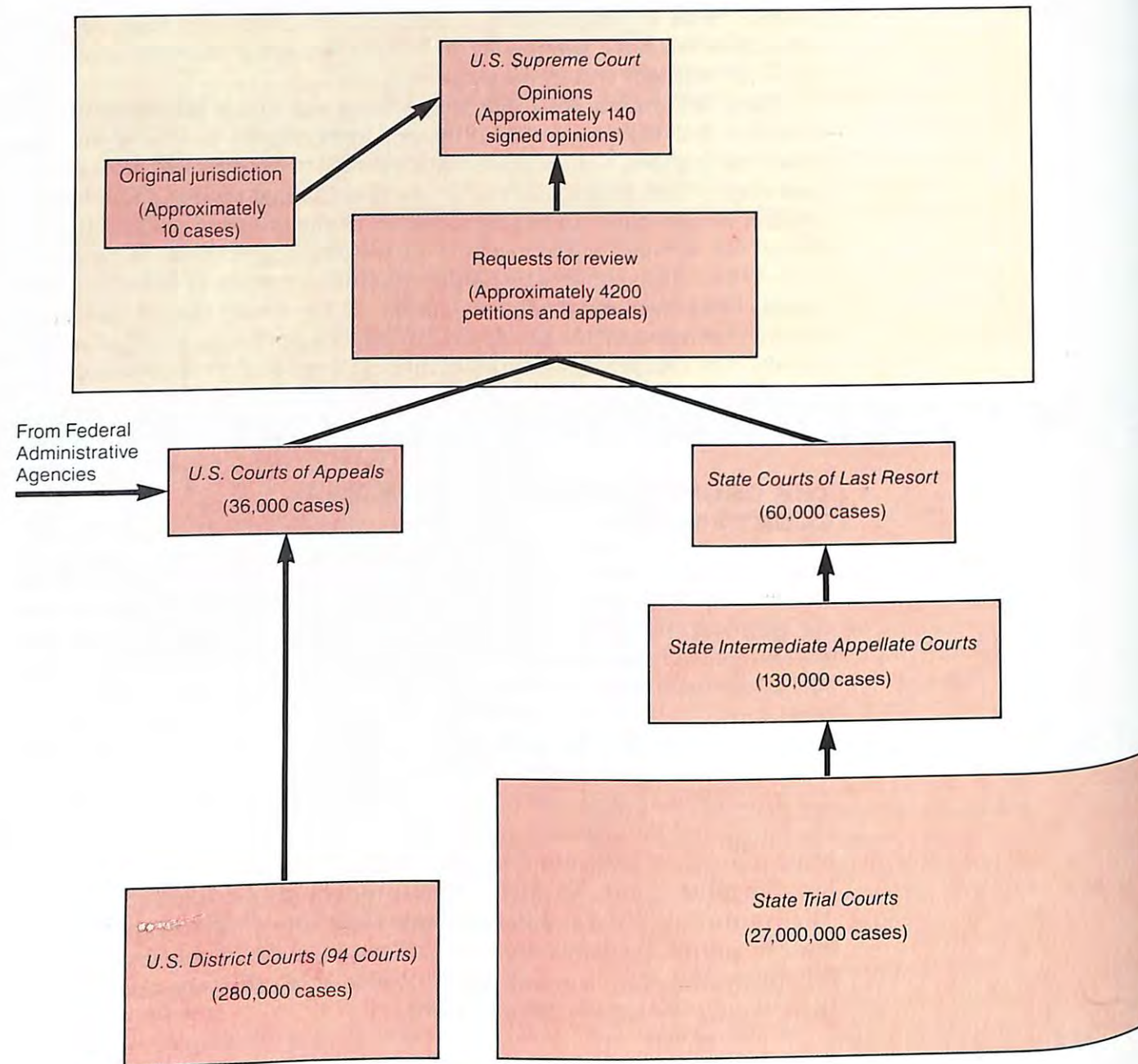
The federal courts are organized in three tiers, like a pyramid. At the bottom of the pyramid are the **U.S. district courts**, where litigation begins. In the middle are the **U.S. courts of appeals**. At the top is the U.S. Supreme Court. *To appeal* means to take a case to a higher court. The courts of appeals and the Supreme Court are appellate courts; with few exceptions, they review cases that have been decided in lower courts. Most federal courts hear and decide a wide array of cases; the judges in these courts are known as *generalists*.

The U.S. District Courts

There are ninety-four federal district courts in the United States. Each state has at least one district court, and no district straddles more than one state.¹¹ In 1987, nearly six hundred federal district court judges dispensed justice in various degrees in almost 280,000 criminal and civil cases.

The district courts are the entry point to the federal court system. When trials occur in the federal system, they take place in the federal district courts. Here is where witnesses testify, lawyers conduct cross-

* Hamilton also believed that the executive, recognizing the power stemming from judicial independence, would appoint judges with the skill and intelligence to carry out their interpretive function responsibly.



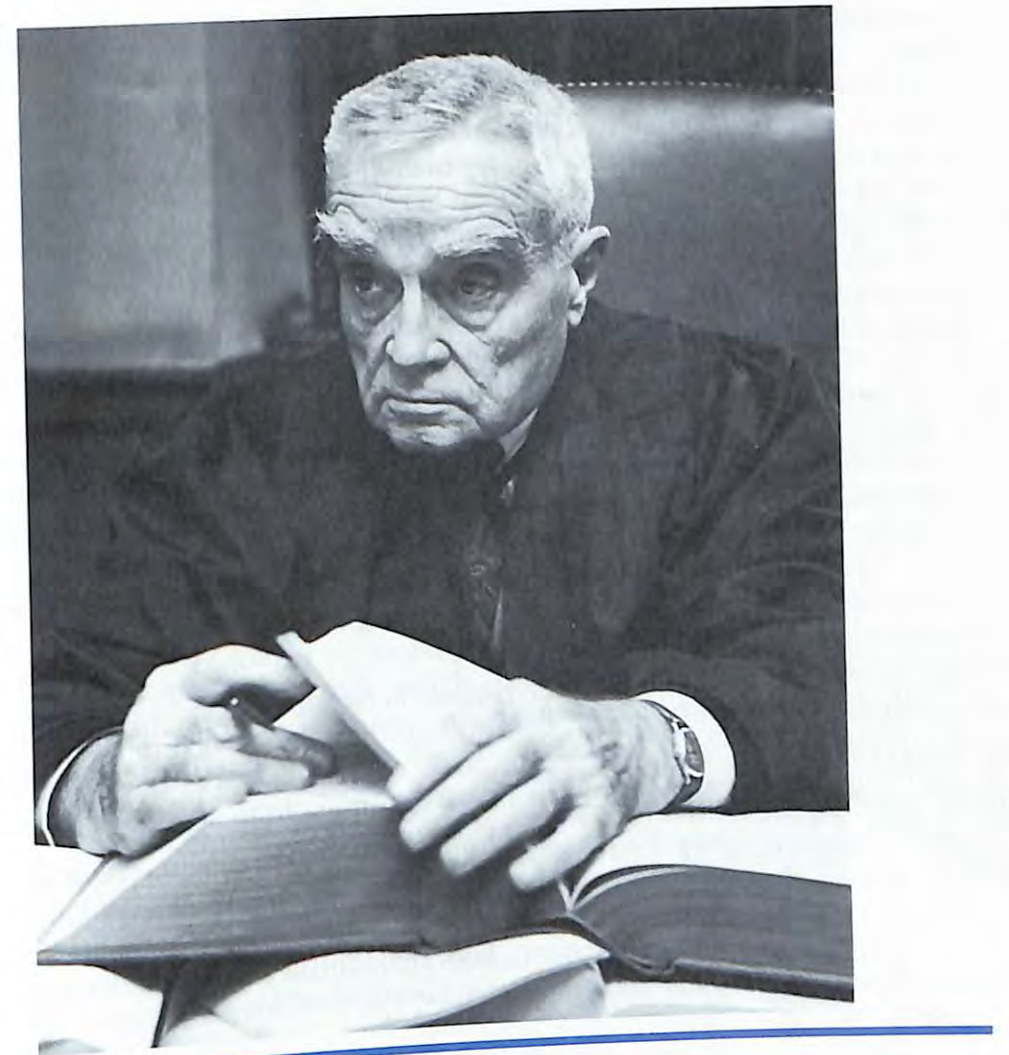
The Federal and State Court Systems

The federal courts have three tiers: district courts, courts of appeals, and the Supreme Court. The Supreme Court was created by the Constitution; all other federal courts were created by Congress. Most litigation occurs in state courts. The structure of state courts varies from state to state; usually there are minor trial courts for less serious cases, major trial courts for more serious cases, intermediate appellate courts, and courts of last resort. State courts were created by state constitutions. (Sources: State Court Caseload Statistics, Annual Report, 1986 [Williamsburg, Va.: National Center for State Courts, 1988]; Annual Report of the Director of the Administrative Office of the United States Courts [Washington, D.C.: Government Printing Office, 1987]; and Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics* [Washington, D.C.: Congressional Quarterly, 1988].)

Figure 13.1

Searching for the Law

Judge Learned Hand (1872–1961) served as a federal judge for fifty-two years, a record unequaled in the twentieth century. Although many jurists regarded Hand as a leading contender for a Supreme Court seat, he never managed to get the coveted appointment. His public reputation rested on his unusual name, his eloquent style, and his physiognomy (note the bushy eyebrows and square, strong features). Many of Hand's three thousand opinions are still cited for their lucidity and powerful reasoning. Hand was perhaps the greatest judge of his generation; his achievements stemmed from "the great way in which he dealt with a multitude of little cases."



examinations, and judges and juries decide the fate of litigants. There may be more than one judge in each district court, but each case is tried by a single judge, sitting alone.

Criminal and civil cases. Crime is a violation of a law that forbids or commands an activity. Criminal laws are defined in each state's *penal code*, as are punishments for violations. Some crimes—murder, rape, arson—are on the books of every state. Others—sodomy is one example—are considered crimes in certain states but not all. Because crime is a violation of public order, the government prosecutes **criminal cases**. Maintaining public order through the criminal law is largely a state and local function. Federal criminal cases represent only a fraction of all criminal cases prosecuted in the United States. The national penal code is very specialized. It does not cover ordinary crimes, just violations of federal laws, like tax fraud or possession of controlled substances banned by Congress.

Courts decide criminal and civil cases. **Civil cases** stem from disputed claims to something of value. Disputes arise from accidents, con-

tractual obligations, and divorce, for example. Often the parties disagree over tangible issues (the possession of property, the custody of children); but civil cases can involve more abstract issues too (the right to equal accommodations, damages for pain and suffering). The government can be a party to civil disputes, called on to defend or to allege wrongs.

Sources of litigation. Today, the authority of U.S. district courts extends to

- federal criminal cases authorized by federal law (for example, robbery of a federally insured bank or interstate transportation of stolen securities).
- civil cases brought by individuals, groups, or government for alleged violation of federal law (for example, failure of a municipality to implement pollution control regulations required by a federal agency).
- civil cases brought against the federal government (for example, enforcement of a contract between a manufacturer and a government agency).
- civil cases between citizens of different states when the amount in controversy exceeds \$50,000 (for example, when a citizen of New York sues a citizen of Alabama in an Alabama district court for damages stemming from an auto accident in Alabama).

Most of the cases scheduled for hearings in the U.S. district courts never are actually tried. One side may be using a lawsuit as a threat to exact a concession from the other. Often the parties settle their own dispute. Less frequently, cases end with **adjudication**, a court judgment resolving the parties' claims and ultimately enforced by the government. When district judges adjudicate cases, they usually offer written reasons to support their decisions. When the issues or circumstances of cases are novel, judges can publish **opinions**, explanations justifying their rulings.

The U.S. Courts of Appeals

All cases resolved by final judgments in the U.S. district courts and all decisions of federal administrative agencies can be appealed to one of the thirteen U.S. courts of appeals. These courts, with a corps of 168 full-time judges, handled approximately thirty-six thousand cases in 1987. Each appeals court hears cases from a geographic area known as a *circuit*. The U.S. Court of Appeals for the Seventh Circuit, for example, is located in Chicago; it hears appeals from the U.S. district courts in Illinois, Wisconsin, and Indiana. The United States is divided into twelve circuits. (The U.S. Court of Appeals for the Federal Circuit is not a regional court; it specializes in appeals involving patents, contract claims against the federal government, and federal employment cases.)

Appellate court proceedings. Appellate court proceedings are public, but they usually lack courtroom drama. There are no jurors, witnesses, or cross-examinations; these are features of the trial courts. Ap-

peals are based strictly on the rulings made and procedures followed in the trial courts. Suppose, for example, that in the course of a criminal trial, a U.S. district judge allows the introduction of evidence that convicts a defendant. The defendant can appeal on the ground that the evidence was obtained in the absence of a valid search warrant and so was inadmissible. The issue on appeal is the admissibility of the evidence, not the defendant's guilt or innocence. If the appellate court agrees with the trial judge's decision to admit the evidence, then the conviction stands. If the appellate court disagrees with the trial judge and rules that the evidence is inadmissible, then the defendant must be retried without the incriminating evidence or be released.

It is common for litigants to try to settle their dispute while it is on appeal. For example, when a court issued an \$11 billion judgment against the Texaco Oil Company in 1985, settlement discussions began immediately. At the same time, Texaco was planning its appeal. Occasionally, litigants abandon their appeals for want of resources or resolve. Most of the time, however, appellate courts adjudicate the cases.

The courts of appeals are regional courts. They usually convene in panels of three judges to render judgments. The judges receive written arguments known as **briefs** (which are also sometimes submitted in trial courts). Often the judges hear oral arguments and question the attorneys to probe their arguments.

Precedent and decision making. One of the three judges attempts to summarize the panel's views, although each judge remains free to disagree with the reasons or with the judgment. The influence of published appellate opinions can reach well beyond the immediate case. For example, a lawsuit turning on the meaning of the Constitution produces a ruling that then serves as a **precedent** for subsequent cases; that is, the decision becomes a basis for deciding similar cases in the same way. Although district court judges sometimes publish their opinions, it is the exception rather than the rule. At the appellate level, however, precedent requires that opinions be written.

Decision making according to precedent is central to the operation of our legal system, providing continuity and predictability. This bias in favor of existing decisions is captured by the Latin expression **stare decisis**, which means "let the decision stand." But the legal system's use of precedent and the principle of stare decisis do not make lower-court judges cogs in a judicial machine. "If precedent clearly governed," remarked one federal judge, "a case would never get as far as the Court of Appeals: the parties would settle."¹²

Judges on the courts of appeals direct their energies toward correcting errors in district court proceedings and interpreting the law (in the course of writing opinions). When judges interpret the law, they often modify existing laws or create new ones. In effect, they are making policy. Judges are politicians in the sense that they exercise political power, but the black robes that distinguish judges from other politicians signal constraints on their exercise of power.

Judges make policy in two different ways. Occasionally, in the absence of legislation, they employ rules from prior decisions. We call this

body of rules the **common** or **judge-made law**. The roots of the common law lie in the English legal system. Contracts, property, and **torts** (an injury or wrong to the person or property of another) are common-law domains. The second area of judicial lawmaking involves the application of statutes enacted by Congress. The judicial interpretation of legislative acts is called **statutory construction**. The application of a statute is not always clear from its wording. To determine how a statute should be applied, judges first look for the legislature's intent, reading reports of committee hearings and debates in Congress. If these sources do not clarify the statute's meaning, the court does. With or without legislation to guide them, judges on the courts of appeals and district courts look to the relevant opinions of the Supreme Court for authority to decide the issues before them.

Although the Supreme Court has the final say on what a law means, its decisions often fail to address the precise issue confronting lower-court judges. This means that federal judges can sometimes exercise as much political power as the High Court's justices themselves. For example, in 1955 federal judges in Alabama were called on to determine whether, in light of the Supreme Court's decision in *Brown v. Board of Education*, Alabama's racially segregated public transportation facilities violated the Constitution's equal protection clause. Because applicable Supreme Court precedents appeared to go in opposite directions, three federal judges from the Deep South had to decide which path to take (see Feature 13.1).

Uniformity of law. Decisions by the courts of appeals ensure a measure of uniformity in the application of national law. For example, when similar issues are dealt with in the decisions of different district judges, their decisions may be inconsistent. The courts of appeals harmonize the decisions within their region so that laws are applied uniformly.

The regional character of the courts of appeals undermines uniformity somewhat because the courts are not bound by the decisions of other circuits. A law in one court of appeals may be interpreted differently in another. For example, the Internal Revenue Code imposes identical tax burdens on similar individuals. But thanks to the regional character of the courts of appeals, federal tax laws may be applied differently throughout the United States. The percolation of cases up through the federal system of courts virtually guarantees that at some point two or more courts of appeals, working with a similar set of facts, are going to interpret the same law differently.

The problem of conflicting decisions in the intermediate federal courts can be corrected by review in the Supreme Court, where policymaking, not error correcting, is the paramount goal.

THE SUPREME COURT

Above the west portico of the Supreme Court Building are inscribed the words EQUAL JUSTICE UNDER LAW. At the opposite end of the building, above the east portico, are the words JUSTICE THE GUARDIAN

FEATURE 13.1

The Law and Frank Johnson

Judge Frank Johnson issued many path-breaking decisions from the federal courthouse in Montgomery, Alabama. Appointed by President Eisenhower, Johnson ordered the integration of public parks, interstate bus terminals, restaurants and restrooms, and libraries and museums. In 1964, Johnson applied the one-person, one-vote principle for the first time in state legislative apportionment. In 1971, he held that patients in state mental hospitals have a constitutional right to treatment. And in 1976, he ordered the reform of the Alabama prison system on the ground that the conditions of confinement violated the constitutional rights of prisoners.

In this selection from an interview with journalist Bill Moyers, Johnson recalls his participation in *Browder v. Gayle* (1955). The case was a direct challenge to the Supreme Court's 1896 decision in *Plessy v. Ferguson*, which had held that separate-but-equal public transportation facilities were constitutionally acceptable. The *Browder* decision desegregating the Montgomery buses was the first time (in Johnson's memory, at least) a district court had overruled a decision of the Supreme Court. It was also the first extension of the Supreme Court's decision in *Brown v. Board of Education* (1954). *Browder* was decided by a special three-judge district court. Participating with Judge Johnson were Judges Richard Rives and Seybourne H. Lynne.

Moyers: Anybody call you and say, "My God, Johnson, you don't know what you've done," or "Do you know what you've done?"

Johnson: Well, they didn't put it in those words.

M: How did they put it?

J: I don't think I was subjected to vilification. I don't think I was subjected to the feeling of hate comparable to that which Judge Rives was subjected. Judge Richard Rives and I are the ones that decided that case. (Judge Lynne dissented.) Judge Rives had grown up here in Montgomery. He had practiced law here in Montgomery. He was one of the most able—recognized as one of the most able—lawyers in the South. President Truman appointed him to the federal bench. He'd been on the bench about four years when I came on in '55. He helped swear me in in this courtroom. But Judge Rives's roots were here. He was one of them. He wasn't a foreigner that had been imported from the hills of North Alabama [where Johnson was born and raised]. And it was said

by several people, and probably in the newspapers—I think I recall—here in Montgomery, "Well, we didn't expect any more out of that fellow from up at North Alabama, but Richard Rives is one of our own, and we did expect more out of him, and he's forfeited the right to be buried in Confederate soil." And that's how strong it was.

M: When you were discussing that case in your private chambers, after it had been argued—

J: The junior member of the court votes first. The senior member of the court votes last. That's followed throughout the system. That's to keep the senior member from influencing the junior member in his vote.

M: And you voted first?

J: So, Judge Rives says, "Frank, what do you think about this case?" "I don't think segregation in any public facilities is constitutional. Violates the equal protection clause of the Fourteenth Amendment, Judge." That's all I had to say. It didn't take me long to express myself. The law was clear. And I might add this . . . the law to me was clear in practically every one of these cases that I've decided where race was involved. I had no problem with the case where we outlawed the poll tax, charging people to vote. I had no problem with the museums, the libraries, the public parks, or any public facilities. The law will not tolerate discrimination on the basis of race.

M: When you said this to Judge Rives, what did he say?

J: Well, when it came Judge Rives's time to vote, he says, "I feel the same way."

M: And that was it.

J: Absolutely. Sure. Sure. Well, well, I don't guess we deliberated over ten minutes at the outside.

M: History seems to require more dramatic moments than that.

J: There are rarely ever any dramatic moments in a judges' conference room. It's a cold, calculated, legal approach.

Source: Bill Moyers' Journal, "Judge: The Law & Frank Johnson—Part I." Transcription, pp. 8–10. © 1980 by the Educational Broadcasting Corporation. Reprinted by permission.

FEATURE 13.2

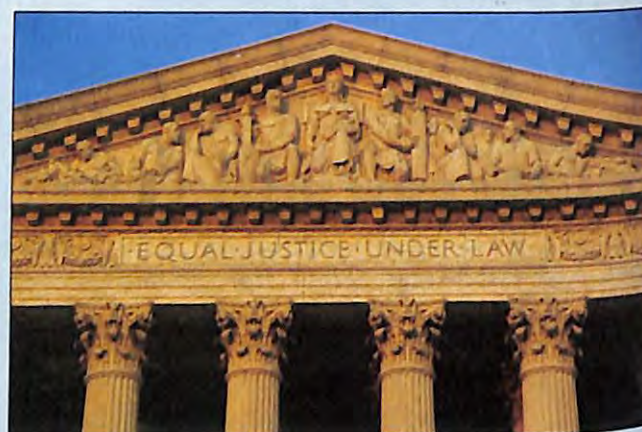
The Marble Palace

The Supreme Court of the United States sits east of the Capitol in a building designed both to embrace the majesty of the law and to elevate its occupants to the status of Platonic guardians. The Corinthian-style marble building was completed in 1935 at a cost of \$10 million. Until it settled in its permanent home, the Court had occupied makeshift, hand-me-down quarters in nearly a dozen places (including two taverns) since its first session in February 1790.

Each justice has a suite of offices, including space for several law clerks—top graduates from the nation's elite law schools, who serve for a year or two.

The courtroom is 82 feet by 91 feet, with a 44-foot-high ceiling and twenty-four columns of Italian marble. The room is dominated by marble panels, which were sculpted by Adolph A. Weinman. Directly above the mahogany bench, which is angled so that all the justices can see and hear one another, are two marble figures depicting Majesty of Law and Power of Government. A tableau of the Ten Commandments is between the figures.

The Court begins its official work year on the first Monday of October, known as the October Term. During its public sessions, when appeals are argued or the justices announce opinions, the court marshal (dressed in a cutaway) pounds the gavel at exactly 10:00 A.M., directs everyone in the courtroom to stand, and announces:



The honorable, the chief and the associate justices of the Supreme Court of the United States: Oyez. Oyez. Oyez. All persons having business before the honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this honorable Court.

Then the justices enter in black robes from behind a velvet curtain. In the front is the chief justice; the other justices follow in order of seniority.

Contrary to popular impression, most of the 170 cases that the Court hears annually do not involve provocative constitutional issues. The Con-

stitution provides for the Supreme Court to hear cases "arising under . . . the laws of the United States." These cases call for the interpretation of federal statutes, which may or may not be interesting to the public at large.



stitution provides for the Supreme Court to hear cases "arising under . . . the laws of the United States." These cases call for the interpretation of federal statutes, which may or may not be interesting to the public at large.

Oral argument is usually limited to thirty minutes for each side. Few attorneys argue appeals regularly before the Court, so the significance of the moment can overwhelm even seasoned advocates. The justices constantly question the attorneys, attempting to poke holes in every argument.

Sometimes the intensity of an argument before the court was too much for a lawyer to endure. Solicitor General Stanley Reed once fainted

while arguing a case before his brethren-to-be. One day a private practitioner completely lost the thread of his argument and began to babble incoherently. [Chief Justice Charles Evans] Hughes tried to aid him by asking simple questions about the case. Seeing that this further bewildered the lawyer, Hughes took the brief and completed the argument that counsel was unable to make. . . .

There were other occasions when the utmost restraint was necessary to maintain the dignity of the court. . . . A New York attorney argued so vehemently that his false teeth popped out of his mouth. With amazing dexterity he scooped up the errant dentures almost before they hit the counsel's table in front of him and flipped them back into his mouth, with scarcely a word interrupted. Not a smile ruffled the dignity of the bench, but the justices' pent-up mirth broke into gales of laughter when they reached safe havens of privacy.*

* Merlo J. Pusey, *Charles Evan Hughes*, vol. 2. (New York: Macmillan, 1951), pp. 674-675. Reprinted by permission of Macmillan Publishing Company.

Source: *Congressional Quarterly's Guide to the U.S. Supreme Court* (Washington: Congressional Quarterly, 1979), pp. 761, 769-772. Reprinted by permission.

OF LIBERTY (see Feature 13.2). These mottos reflect the Court's difficult task: achieving a just balance among the values of freedom, order, and equality. Consider how these values came into conflict in two controversial issues the Court faced in recent years.

Abortion pits the value of order—the government's responsibility for protecting life—against the value of freedom—a woman's right to decide whether or not she will give birth. In the abortion cases beginning with *Roe v. Wade* (1973), the Supreme Court extended the right to privacy (an expression of freedom) to cover a woman's right to terminate a pregnancy.¹³ The Court determined that at the beginning of pregnancy, a woman has the right to an abortion, free from government-imposed constraint. But the Court also recognized that toward the end of pregnancy, government interest in protecting the fetus's right to life normally outweighs a woman's right to abortion.

School desegregation pits the value of equality—equal educational opportunities for minorities—against the value of freedom—the rights of

parents to send their children to neighborhood schools. In *Brown v. Board of Education*, the Supreme Court carried the banner of racial equality by striking down state-mandated segregation in public schools. This decision helped launch a revolution in race relations in the United States. The justices recognized the disorder their decision would create in a society accustomed to racial bias, but in this case equality clearly outweighed freedom. Twenty-four years later, the Court was still embroiled in controversy over equality when it ruled that race could be a factor in university admissions (to diversify the student body), in the *Bakke* case.¹⁴ In securing the equality of blacks, the Court then had to confront the charge that it was denying the freedom of whites to compete for admission.

The Supreme Court makes national policy. Because its decisions have far-reaching impact on all of us, it is vital that we understand how it reaches those decisions. With this understanding, we can better evaluate how the Court fits within our model of democracy.

Access to the Court

There are rules of access that must be followed to bring a case to the Supreme Court. Also important is a sensitivity to the interests of the justices. The idea that anyone can appear before the Supreme Court is true only in theory, not fact.

The Supreme Court's cases come from two sources. A few (ten in 1986) arrive under the Court's original jurisdiction, conferred by Article III, Section 2, of the Constitution. For example, the Court is the first and only forum in which legal disputes between states are resolved. The Court hears few original jurisdiction cases today, however, usually referring them to a *special master*, often a retired judge, who reviews the parties' contentions and recommends a resolution that the justices are free to accept or reject.

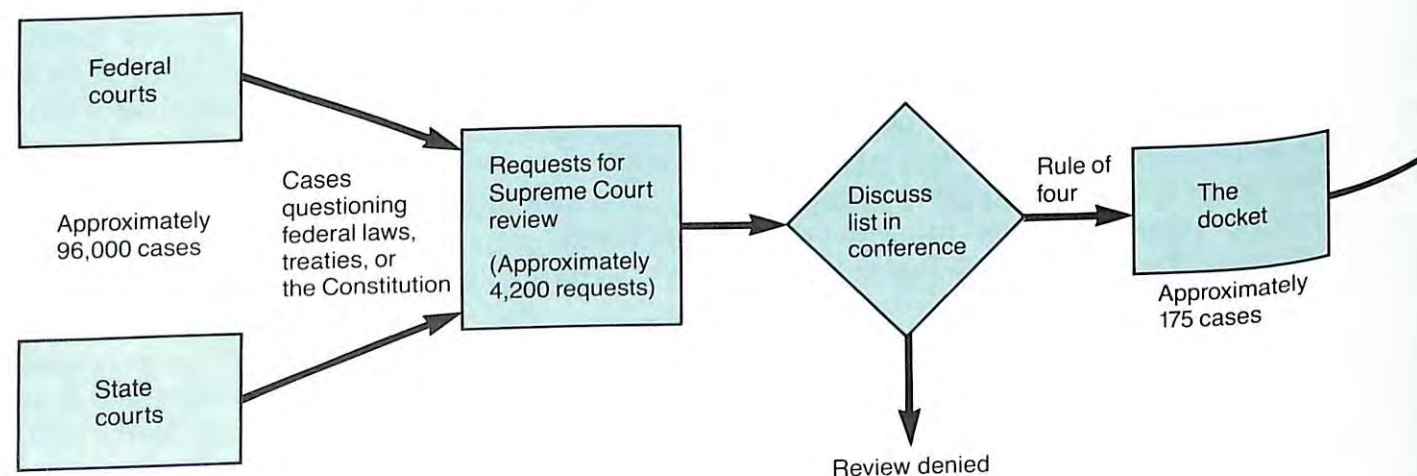
Most cases enter the Supreme Court from the U.S. courts of appeals or the state courts of last resort (see Figure 13.2).^{*} This is the Court's appellate jurisdiction. Two conditions must be met: First, the case must reach the end of the line in the state court system. Litigants cannot jump at will from state to federal arenas of justice. Second, the case must raise a **federal question**, an issue covered under the Constitution, federal laws, or treaties. But even cases that meet these conditions do not always reach the High Court. Since 1925, the Court has exercised substantial

^{*} On rare occasions, cases can be brought to the Supreme Court after judgment in a U.S. district court but before consideration by a federal court of appeals. This happened in *United States v. Nixon*, 418 U.S. 683 (1974). The urgency of an authoritative decision in the Watergate tapes case short-circuited a decision in the court of appeals. A small class of cases can be heard in the first instance before special three-judge district courts with appeals directly to the Supreme Court (see Feature 13.1).

Figure 13.2

Access to and Decision Making in the U.S. Supreme Court

State and federal appeals courts churn out thousands of decisions each year. Only a small fraction will end up on the Supreme Court's docket. This chart sketches the several stages leading to a decision from the High Court. (Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics* [Washington, D.C.: Congressional Quarterly, 1988], Table 9-7.)



(today, nearly complete) control over its **docket**, the Court's agenda. The Court selects a handful (about 170) of cases for consideration from the 4,200 requests it receives each year. For the vast majority of the cases left unreviewed by the Court, the decision of the lower court stands.

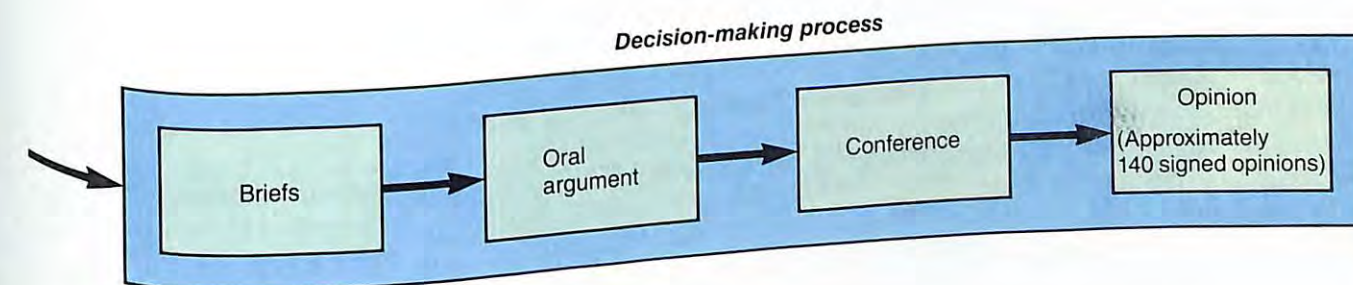
Review is not granted unless four or more justices agree that a case warrants full consideration. This unwritten rule is known as the **rule of four**. All nine justices, with advance preparation by their law clerks, make these judgments at conferences held twice a week. The justices meet by themselves to add cases to their docket and to vote on previously argued cases. The chief justice prepares and circulates to all the justices a "discuss list" of worthy petitions (cases on the discuss list are then subject to the rule of four in conference). A petition not on the list will be struck from conference consideration unless a justice wishes to add it. Most cases, even those discussed in conference, are denied review. Cases denied review carry little or no value as Court rulings, since no reasoned explanation accompanies the Court's orders denying review.

The Solicitor General

Some scholars have searched for explanations of the Court's docket decisions. One theory suggests that the justices look for clues in the requests for review, for signs of an important case.¹⁵ The most important sign is a recommendation by the solicitor general to grant or deny review.

The **solicitor general** represents the federal government before the Supreme Court. He is appointed by the president and is the third-ranking official in the U.S. Department of Justice (following the attorney general and deputy attorney general). His duties include determining whether the government should appeal lower-court decisions; reviewing and modifying, when necessary, the briefs filed in government appeals; and deciding whether the government should file an **amicus curiae brief**^{*} in any appellate court.¹⁶ His objective is to create a cohesive program for the executive branch in the federal courts.

^{*} *Amicus curiae* is Latin for "friend of the court." Amicus briefs can be filed with permission of the Court. They allow groups and individuals who are not parties to the litigation but who have an interest in it to influence the Court's thinking and, perhaps, its decision.



The solicitor general plays two different, occasionally conflicting, roles. First, he is an advocate for the president's policy preferences; second, as an officer of the Court, he traditionally defends the institutional interests of the national government. Sometimes the institutional interests prevail. For example, the Reagan administration was committed to returning power to the states. But Solicitor General Rex Lee argued for the exercise of federal power in his defense of a federal law setting wage requirements for a city-owned mass transit system. In a sharp blow to the administration, the Court held that the Constitution placed no specific limit on congressional power to interfere in state and local affairs.¹⁷

The solicitor general's office is like a specialized law firm within the Justice Department. Members of the office collectively have more experience arguing before the Supreme Court than has any other organization in the nation. In 1988, there were twenty-two lawyers analyzing lower federal court decisions to determine whether to ask for Supreme Court review. If the Court grants review in a case in which the federal government is a party, either the solicitor general himself or one of his deputies argues the government's position before the High Court.

Solicitors general usually act with considerable restraint in recommending to the Court that a case be granted or denied review. By recommending only cases of general importance, they increase their credibility and their influence. Rex E. Lee, who was solicitor general from 1981 to 1985, acknowledged in an unusually candid interview that he had refused to make arguments that members of the Reagan administration had urged on him: "I'm not the pamphleteer general; I'm the solicitor general. My audience is not 100 million people; my audience is nine people. . . . Credibility is the most important asset that any solicitor general has."¹⁸

The solicitor general's credibility came under question during the tenure of Lee's successor, Charles Fried, who was appointed by Reagan in 1985. Fried urged the Court to reverse its decisions on abortion and affirmative action at a time when the justices were not ready to do so. The Court squarely rejected Fried's arguments. His proposal to alter the law in the absence of any signal from the Court that it was ready may have cost Fried a measure of influence with the justices.

Despite his limited visibility, the solicitor general is a powerful figure in the legal system. His influence in bringing cases to the Court and arguing them there has earned him the informal title of the "tenth justice."

Decision Making

Once the Court grants review, attorneys submit written arguments (briefs). The Court imposes strict limits on the length of these documents and the time period for their submission. Oral argument follows the submission of briefs and to conserve the justices' time and energy is usually limited to thirty minutes for each side. The justices like crisp, concise, and conversational presentations; they disapprove of attorneys who read from a prepared text. Some justices are aggressive and relentless

The Supreme Court, 1988
Term: The Starting Nine
 Pictured in their team uniforms: (sitting, left to right) Thurgood Marshall, William J. Brennan Jr., Chief Justice William H. Rehnquist, Byron R. White, and Harry A. Blackmun; (standing, left to right) Antonin Scalia, John Paul Stevens, Sandra Day O'Connor, and Anthony Kennedy.



questioners; others are more subdued. The justices reach no collective decision at oral argument. They reach a tentative decision only after they have met in conference.

Our knowledge of the dynamics of decision making on the Supreme Court is all secondhand; only the justices attend the Court's Wednesday and Friday conferences. By tradition, the justices first shake hands, a gesture of harmony. The chief justice then begins the discussion by offering a brief summary of each case's merits; the other justices follow in descending order of seniority. The justices usually make their positions known in the course of discussion, so there is little need for a formal vote. Justice Antonin Scalia, who joined the Court in 1986, remarked recently that "not much conferencing goes on." By *conferencing*, Scalia meant efforts to persuade others to change their views by debating points of disagreement. "In fact," he said, "to call our discussion of a case a conference is really something of a misnomer. It's much more a statement of the views of each of the nine Justices, after which the totals are added and the case is assigned [for an opinion]."¹⁹

Judgment and argument. The voting outcome is the **judgment**, the decision on who wins and who loses. Justices often disagree, not only on winners and losers, but also on the reasons for their judgments. This should not be surprising, given nine independent minds and issues that can be approached in several ways. Voting in the conference does not end the work or resolve the disagreements. Votes remain tentative until the Court issues an opinion announcing its judgment.

After voting, the justices in the majority must draft an opinion setting out the reasons for their decision. The **argument** is the kernel of the opinion, its logical content separated from facts, rhetoric, and pro-

cedure. If all the justices agree with the judgment and the reasons supporting it, then the opinion is unanimous. A justice can agree with a judgment, upholding or striking down a claim, based on different reasons. This kind of agreement is called **concurrence**. Or a justice can **dissent** if he or she disagrees with a judgment. Both concurring and dissenting opinions may be drafted in addition to the majority opinion.

When the Court was first established, individual justices delivered their own opinions in every case, without attempting to join forces with their colleagues. This practice was abandoned after John Marshall's appointment to the Court. During his first four years as chief justice, the Court handed down twenty-six opinions in twenty-six cases. Of these, Marshall drafted and delivered twenty-four. Marshall changed the opinion practice, in the process giving coherence and power to the Court.²⁰

Opinion assignment. After the conference, the chief justice writes the majority opinion or assigns that responsibility to another justice in the majority. If the chief justice is not in the majority, the writing or assigning responsibility rests with the most senior associate justice in the majority. The assigning justice may consider several factors in allocating the crucial opinion-writing task: workload, expertise, public opinion, and, above all, the author's ability to hold the majority together. (Remember, at this point votes are only tentative.) If the drafting justice holds an extreme view on the issues in a case and is not able to incorporate the views of more moderate colleagues, those justices may withdraw their votes. On the other hand, assigning a more moderate justice to draft an opinion could weaken the argument on which the opinion rests. Opinion-writing assignments can also be punitive. Justice Harry Blackmun once commented, "If one's in the doghouse with the Chief [former Chief Justice Warren Burger], he gets the crud."²¹

Strategies on the Court. The Court is more than the sum of its formal processes. The justices exercise real political power. If we start with the assumption that the justices are attempting to stamp their own policy views on the cases they review, then we should expect typical political behavior from them. Perceptive scholars and journalists have pierced the veil that shrouds the Court from public view.²² Cases that reach the Supreme Court's docket pose difficult choices. Because the justices are grappling with conflict on a daily basis, they probably have well-defined ideologies that reflect their values.

We can locate the beliefs of most justices on our two-dimensional model of political values (see Figure 1.2). Liberal justices, like Thurgood Marshall and William J. Brennan, Jr., choose freedom over order, and equality over freedom. Conservative justices—William Rehnquist and Sandra Day O'Connor, for example—choose order over freedom, and freedom over equality. These choices translate into policy preferences as the justices struggle to win votes or retain coalitions.

We know that the justices also vary in intellectual ability, advocacy skills, social graces, temperament, and the like. For example, Chief Justice Charles Evans Hughes (1930–1941) had a photographic memory and came to each conference armed with well-marked copies of Supreme

Court opinions. Few justices could keep up with him in debate. Today, justices argue for the support of their colleagues, offering information in the form of drafts and memoranda to explain the advantages and disadvantages of voting for or against an issue. And we expect the justices make occasional, if not regular, use of friendship, ridicule, and patriotism to mold their colleagues' views.

A justice might adopt a long-term strategy of influencing the appointment of like-minded colleagues in order to marshal additional strength on the Court. Chief Justice (and former President) William Howard Taft (1921–1930) bombarded President Warren G. Harding with recommendations and suggestions whenever a Court vacancy was announced. Taft was especially determined to block the appointment of anyone who might side with the "dangerous twosome," Justices Oliver Wendell Holmes and Louis D. Brandeis. Taft said he "must stay on the Court in order to prevent the Bolsheviki from getting control."²³

Opinion writing. Opinion writing is the justices' most critical function. It is not surprising, then, that they spend much of their time drafting opinions. The justices usually call on their law clerks—top graduates of the nation's elite law schools—to help them prepare opinions and carry out other tasks.

On the occasion of his eightieth birthday, after more than thirty years of service on the Court, Justice Brennan offered a rare account of the process of preparing and exchanging memoranda and drafts that leads to a final opinion: "It's startling to me every time I read these darned things to see how much I've had in the way of exchanges and how the exchanges have resulted in changes of view both of my own and of colleagues. And all of a sudden at the end of the road, we come up with an agreement on an opinion of the Court."²⁴

The authoring justice distributes a draft opinion; the other justices read it, then circulate criticisms and suggestions. An opinion may have to be rewritten several times to accommodate colleagues who remain unpersuaded by the draft. Justice Felix Frankfurter was a perfectionist; some of his opinions went through thirty or more drafts. Justices can change their votes, and perhaps alter the judgment, up until the decision is officially announced. And the justices announce their decisions only when they are ready. Often the most controversial cases pile up in a backlog as the coalitions on the Court vie for support or sharpen their criticisms. When the Court announces decisions, the authoring justices read or summarize their opinions in the courtroom. Copies of these opinions, known as *slip opinions*, are then distributed to interested parties and the press.

Justices in the majority frequently try to muffle or stifle dissent in order to encourage institutional cohesion. The justices must be keenly aware of the slender foundation of their authority, which rests largely on public respect. That respect is tested whenever the Court ventures into areas of controversy. Banking, slavery, and Reconstruction policies embroiled the Court in controversy in the nineteenth century. Freedom of speech and religion, racial equality, and the right of privacy have led the Court into controversy in this century.

A Veteran Playmaker . . . Justice William J. Brennan Jr. was appointed to the Supreme Court in 1956. The length of his service qualifies him for Hall of Fame status, but his contribution is far greater than simple longevity. Brennan, a liberal, has been a champion of judicial activism. He has written or influenced some of the most important and controversial Court opinions. Here he reviews materials in the Louisiana creationism case (discussed in Chapter 17).



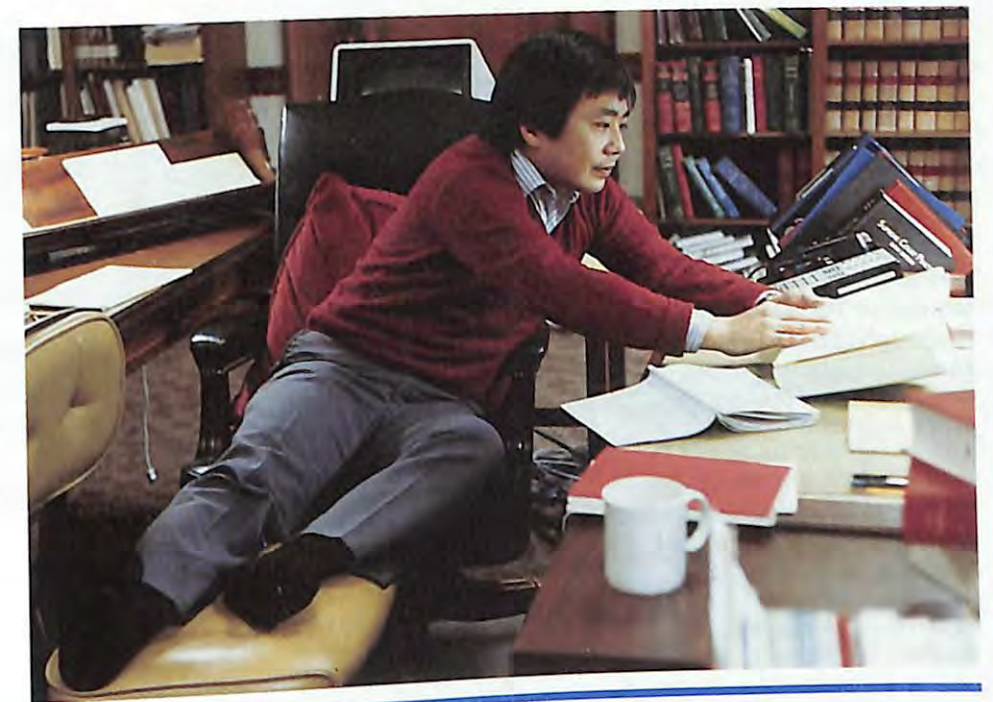
The chief justice. The chief justice is only one of nine justices, but he has several important functions based on his authority. And if he does not carry them out, someone else will.²⁵ Apart from his role in docket control decisions and his direction of the conference, the chief justice can also be a social leader, generating solidarity within the group. Sometimes, a chief justice can embody intellectual leadership. Finally, the chief justice can provide policy leadership, directing the Court toward a general policy position. Perhaps only John Marshall could lay claim to social, intellectual, and policy leadership roles. (Docket control did not exist during Marshall's time.) Warren E. Burger, who resigned as chief justice in 1986, was a lackluster leader in all three areas.

When he presides at the conference, the chief justice can exercise control over the discussion of issues, although independent-minded justices are not likely to succumb to his views. For example, at the end of the conference on *Brown v. Board of Education*, Chief Justice Warren had six firm votes for his position that segregated public schools were unconstitutional. Two other justices indicated that they would join the majority if an opinion could be written to meet their concerns. In the months that followed, Warren talked frequently with his colleagues to minimize the possibility of dissenting or concurring opinions. By April 1954, only one holdout remained, and he eventually joined the others. Warren's patriotic appeals had made both the decision and the opinion unanimous.²⁶

The chief justice's power to cast the last vote can be used to moderate the majority opinion, even if the chief justice's interest is in the minority. Suppose the vote in conference is 6 to 2 before the chief justice casts his vote. A vote with the majority gives the chief justice the power to write

. . . And a Junior Member of His Team

Supreme Court justices use recent law school graduates as short-term clerks. Here Dean Hashimoto, one of Brennan's four clerks, prepares a draft opinion in the creationism case, which served as a guide for Brennan when he wrote the majority opinion. In Brennan's office, cases are assigned to clerks through the drawing of lots. Although Hashimoto did not win the initial drawing for this case, his colleagues agreed to reassign it to him because of his keen interest in its issues.



the opinion himself or to assign a justice who is closer to the minority viewpoint, depending on where the chief justice's principles lie. In *Roe v. Wade*, for instance, Justice William O. Douglas charged that Chief Justice Burger abused his power by voting with the majority to overturn a state antiabortion statute, when Burger's true sentiments lay with the minority two votes. Douglas threatened to issue a concurrence rebuking the chief justice's use of the opinion-assignment power. His colleagues convinced Douglas that the Court's reputation would suffer by airing the dispute in public, so the opinion was never published.²⁷

JUDICIAL RECRUITMENT

Neither the Constitution nor federal law imposes formal requirements for appointment to the federal courts, except for the condition that, once appointed, district court and appeals judges must reside in the district or circuit to which they are appointed. The president appoints judges to the federal courts, and all nominees must be confirmed by the Senate.

State courts operate somewhat similarly. Governors appoint judges in nearly half the states. Other states select their judges by partisan, nonpartisan, or (rarely) legislative election.²⁸ Nominees in some states must be confirmed by the state legislature. In the rest, judges are confirmed in general elections held several years after appointment. Confirmed elections for judgeships are unusual. In Chicago, where judges are elected, even highly publicized widespread criminal corruption in the courts failed to unseat incumbents in 1987. Most voters paid no attention whatsoever.

Judge and Company

Judge Norma Johnson was appointed by President Jimmy Carter in 1980 to the United States District Court for the District of Columbia. She was the first black woman appointed to that court. Judge Johnson is assisted by two law clerks, who serve for a year or two. Although the most coveted clerkships are in the Supreme Court, clerking for other federal and state judges can pay big dividends. In 1988, some major New York law firms were offering bonuses of several thousand dollars for new recruits with prior clerkship experience in the federal courts.

**The Appointment of Federal Judges**

The Constitution states that federal judges hold their commissions "during good Behaviour," which in practice means for life*. A president's judicial appointments, then, are likely to survive his administration, a kind of political legacy. The appointment power assumes that the president is free to identify candidates and appoint judges who favor his policies.

Judicial vacancies occur when sitting judges resign, retire, or die. Vacancies also arise when Congress creates new judgeships to handle increasing caseloads. The president then nominates a candidate who must be confirmed by the Senate. The president has the help of the Justice Department, which screens candidates before the formal nomination, subjecting serious contenders to FBI investigation. The department and the Senate vie for control in the appointment of district court and appeals judges.

The "Advice and Consent" of the Senate. For district court and appeals vacancies, the appointment process hinges on the nominees' acceptability to the senior senator in the president's party from the state in which the vacancy arises. At one time, the power of these senators was so great that they could suggest a single name for a vacancy and hold out until that person was nominated.²⁹

The practice of **senatorial courtesy** forces presidents to share the

* Only five federal judges have been removed by impeachment in nearly two hundred years; nine resigned before formal impeachment charges could be lodged; and only four have ever been convicted of felonies (serious criminal conduct).

nomination power with members of the Senate. The Senate will not confirm a nominee who is opposed by the senior senator in the president's party in the nominee's state. The Senate doesn't actually reject the candidate. Instead, a form, called a "blue slip," is not returned by the senior senator. In the absence of the blue slip, the chair of the Senate Judiciary Committee, which reviews all judicial nominees, will not schedule a confirmation hearing, effectively killing the nomination.

Although the Justice Department is still sensitive to senatorial prerogatives, senators can no longer submit a single name to fill a vacancy. The department was once a passive funnel for the evaluation of candidates, but no longer. It searches for acceptable candidates and polls the appropriate senator for his or her reaction to them.

The Senate Judiciary Committee conducts a hearing for each judicial nominee. The chair exercises a measure of control in the appointment process, beyond the power of senatorial courtesy. If a nominee is objectionable to the chair, he or she can delay a hearing or hold up other appointments until the president and the Justice Department consider some alternative. This kind of behavior does not win a politician much influence in the long run, however. So committee chairs are usually loathe to place obstacles in a president's path, especially when they may want presidential support for their own policies and constituencies.

The American Bar Association. The American Bar Association (ABA), the largest organization of lawyers in the United States, has been involved in screening candidates for the federal bench since 1946.³⁰ Its role is defined by custom, not law. At the president's behest, the ABA's Standing Committee on the Federal Judiciary routinely rates prospective appointees, using a four-value scale ranging from "exceptionally well qualified" to "not qualified."

To obtain information about a candidate, the committee confidentially interviews lawyers and judges who know and are capable of evaluating the candidate. The committee's recommendation is supposed to address the candidate's "professional qualifications," which are defined as "competence, integrity, and judicial temperament." A candidate's politics and ideology should have no bearing on the committee's task. But there is a loophole: "Extreme views" that affect the candidate's temperament and integrity are considered relevant to the committee's evaluation. The committee's divided vote on Judge Robert H. Bork's nomination to the Supreme Court in 1987 strengthened the successful drive to stop his confirmation.

Presidents do not always agree with the committee's judgment, in part because its objections can mask disagreements with a candidate's political views. Although the committee claims to employ nonideological criteria, ideology can color its work. For instance, in 1985 the committee furnished lists of prospective nominees to groups seeking to challenge appointments on ideological grounds.³¹ Because the ratings are made public, a poor ABA rating can weaken a candidate's chances. Occasionally, a candidate deemed "not qualified" is nominated and even appointed, but the overwhelming majority of appointees to the federal bench since 1946 have had the ABA's blessing.

Recent Presidents and the Federal Judiciary

President Jimmy Carter had two objectives in his judicial appointments. First, Carter wanted to base judicial appointments on merit, to appoint judges of higher quality than had his predecessors. Whether he succeeded here is debatable—a question that only time and scholarship can answer. But he did meet his second objective, to make the judiciary more representative of the general population. Carter appointed substantially more blacks, women, and Hispanics to the federal bench than did any of his predecessors or his successor. Here his actions were consistent with the pluralist model, at least in a symbolic sense.

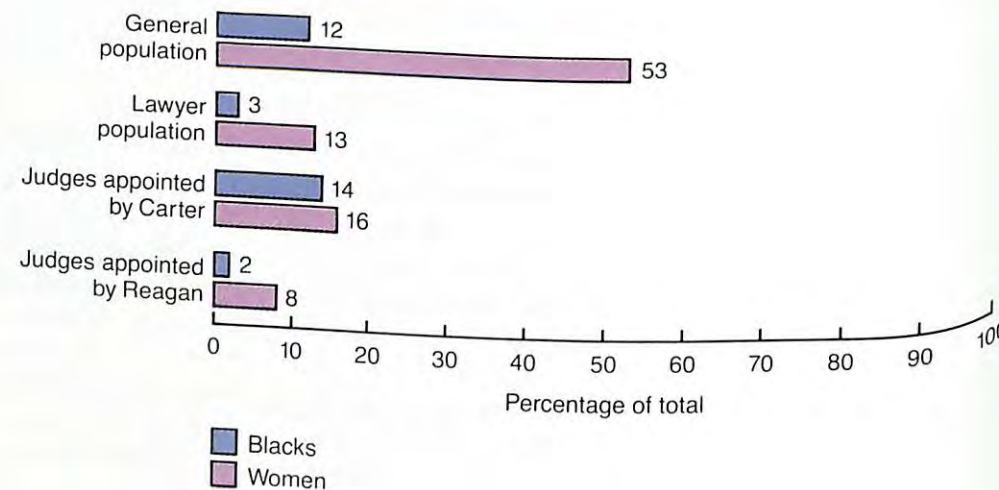
Early in his administration, it was clear that President Reagan did not share Carter's concerns. Although Reagan generally heeded senatorial recommendations for the district courts and, like Carter, held a firmer rein on appointments to the appeals courts, there were strong differences. By 1988, only 2 percent of Reagan's appointments were blacks and only 8 percent were women; in contrast, 14 percent of Carter's appointments were blacks and 16 percent were women (see Figure 13.3). A Justice Department official maintained that Reagan's appointment record reflected demographic and political reality. "We would love to find more qualified blacks," but there was "just not even a respectable small pool" of black nominees who qualified on the basis of experience and commitment to Reagan's conservative agenda.³²

It seems clear that political ideology, not demographics, was at the heart of Reagan's judicial appointments. Reagan sought out nominees

Figure 13.3

Carter Versus Reagan: Blacks and Women in the Legal System

The composition of the legal profession does not mirror the composition of the general population, especially with regard to race and gender. Jimmy Carter attempted to make the federal bench more representative by appointing more blacks and women. Ronald Reagan's appointments matched the composition of the lawyer population, but not the population at large. (Sources: Statistical Abstract of the United States 1987 [Washington, D.C.: U.S. Government Printing Office, 1987], pp. 14–15; Barbara A. Curran, *The Lawyer Statistical Report* [Chicago: American Bar Foundation, 1985]; and New York Times, 3 February 1988, p. 12.)



"It's Nothing Personal!"

Judge Robert H. Bork (right) was nominated to the Supreme Court by President Ronald Reagan in 1987. Bork's conservative record as a professor, solicitor general, and appellate judge was a lightning rod for criticism. Leading the assault was Senator Joseph R. Biden (left), a three-term Democrat from Delaware who chaired the Senate Judiciary Committee. The committee reported the nomination unfavorably to the Senate, which then rejected the nomination by the largest margin in the history of that body.



with particular policy preferences in order to leave his stamp on the judiciary well into the twenty-first century. In contrast to his predecessors, Reagan used the nation's law schools the way major league baseball managers use farm teams. With the right statistics, a professor could move to the major leagues—in this case, one of the federal district or appellate courts. Carter's liberal values led him to look for judges who were committed to equality; Reagan's conservative values led him to appoint judges who were more committed to order. Reagan surpassed Carter in reshaping the federal courts: 258 lifetime appointments for Carter compared with 367 lifetime appointments for Reagan.

Appointment to the Supreme Court

The announcement of a vacancy on the High Court usually causes quite a stir. Campaigns for Supreme Court seats are commonplace, although the public rarely sees them. Hopeful candidates contact friends in the administration and urge influential associates to do the same on their behalf. Some candidates never give up hope. Judge John J. Parker, whose nomination to the Court was defeated in 1930, tried in vain to rekindle interest in his appointment several times until he was well past the age—usually the early sixties—when appointments are made.³³

The president is not shackled by senatorial courtesy when it comes to nominating a Supreme Court justice. Appointment to the High Court attracts more intense public scrutiny than do lower-level appointments. This scrutiny limits a president's choices and focuses attention on the Senate's "Advice and Consent."

Of the 143 men and 1 woman nominated to the Court, 28—or about 1 in 5—have failed to receive Senate confirmation. Only six rejections

have come in this century, the last two during the Reagan administration. The most important factor in the rejection of a nominee is partisan politics. Thirteen candidates lost their bids for appointment because the presidents who nominated them were "lame ducks": The party in control of the Senate anticipated victory for its candidate in an upcoming presidential race and sought to deny the incumbent president an important political appointment.³⁴ The most recent nominee to be rejected, on partisan and ideological grounds, was Judge Bork.

Since 1950, seventeen of twenty-one Supreme Court nominees have had judicial experience in federal or state courts. This "promotion" from within the judiciary may be based on the idea that a judge's past opinions are good predictors of future opinions on the High Court. After all, a president is handing out a powerful lifetime appointment; it makes sense to want an individual who is sympathetic to his views. Federal or state court judges holding lifetime appointments are likely to state their views frankly in their opinions. In contrast, the policy preferences of High Court candidates who have been in legal practice or in political office must be based on the conjecture of professional associates or on the text of a speech to the local Rotary Club or on the floor of the legislature.

The resignation of Chief Justice Warren Burger in 1986 gave Reagan the chance to elevate Associate Justice William H. Rehnquist to the position of chief justice and to appoint Antonin Scalia, who was a judge in a federal court of appeals, as Rehnquist's replacement. Rehnquist faced stern questioning from liberal critics during his Senate confirmation hearings. (The testimony of Supreme Court nominees is a relatively recent phenomenon; it began in 1925 when Harlan Fiske Stone was nominated to the High Court.) But his opponents were unable to stop confirmation in the Republican-controlled Senate. Both Rehnquist and Scalia did not try to defend their judicial records; they argued that judicial independence meant that they could not be called to account before the Senate. Both judges also ducked discussing issues that might come to the Court for fear of compromising their impartiality.

In 1987, when Justice Lewis F. Powell, Jr., resigned, Reagan had an opportunity to shift the ideological balance on the Court toward a more conservative consensus. He nominated Judge Robert H. Bork, a conservative, to fill the vacancy. Unlike Rehnquist and Scalia, Judge Bork presented a detailed defense of his record as solicitor general and appellate judge at his confirmation hearings. He also outlined his views on such major issues as the right to privacy (he believes there is no constitutional protection for a *generalized* right to privacy) and civil rights (he had once opposed the 1964 Civil Rights Act but had since reversed his position). Bork advocated **judicial restraint**, which rests on the premise that legislators, not judges, should make the laws. Ironically, the legislators who opposed Bork supported the concept of **judicial activism**, which allows judges to promote desirable social goals (see Feature 13.3).

The hearings concluded after several days of televised testimony from Judge Bork and a parade of witnesses. Liberal interest groups mounted a massive media campaign to defeat the nomination, overwhelming conservative efforts to buttress Bork. At first, the public was undecided on Bork's confirmation; by the time the hearings ended, public

FEATURE 13.3

Judicial Restraint and Judicial Activism

The terms *judicial restraint* and *judicial activism* describe the assertiveness of judicial power. Judges are said to exercise judicial restraint when they hew closely to statutes and previous cases in reaching their decisions. Judges are said to exercise judicial activism when they are apt to interpret existing laws and rulings more loosely and to interject their own values in court decisions.

We can describe the theoretical extremes of judicial assertiveness. Judges acting according to an extreme model of judicial restraint would decide nothing at all, deferring to the superiority of other government institutions in construing the law.

Judges acting according to an extreme model of judicial activism would be an intrusive and ever-present force that dominated other government institutions. Actual judicial behavior lies somewhere between these two extremes.

In recent history, many activist judges have tended to trade freedom for equality in their decisions, which has linked the concept of judicial activism with liberalism. However, there is no necessary connection between judicial activism and liberalism. If judges interpret existing statutes and precedents more loosely to trade freedom for order, they are still activists—conservative activists.

opinion shifted against him. Even though his defeat was a certainty, Bork insisted that the Senate vote on his nomination, hoping for a sober discussion of his record. But the rancor never abated. Bork was defeated by a vote of 58 to 42, the largest margin by which the Senate has ever rejected a Supreme Court nominee.

Federal appeals court judge Douglas H. Ginsburg was nominated shortly thereafter. Ginsburg had strong conservative credentials and youth (he was forty-one when nominated) on his side. Nine days after the nomination, Ginsburg's plans went up in smoke when he confirmed allegations that he had used marijuana while he was a student and a Harvard Law School professor. This revelation was an embarrassment to the Reagan administration, which had made "Just Say No" to drugs a national campaign. Ginsburg withdrew his nomination.

The subsequent nomination and confirmation of federal appeals court judge Anthony M. Kennedy proved successful. The Senate examined Kennedy's views in detail, and the nominee did not duck questions that assessed his stand on constitutional issues. His winning combination of wholesomeness and ideological moderation netted him a place as the 104th justice of the Supreme Court.

Reagan's second-term appointments are sure to move the Court in a more conservative direction. Both Rehnquist and Scalia are strong articulate conservatives. They will continue to choose freedom over equality and order over freedom. Rehnquist's leadership role should strengthen the Court's conservatism in the years ahead. Kennedy's rulings as a federal appeals court judge suggest he is a moderate conservative. But it is difficult to predict how he will rule when the values of freedom, order, and equality come into conflict.

The unpredictability of Supreme Court justices has surprised presidents as well as professors. In recent political history, two presidents have found inconsistencies between their expectations and the actual performance of their appointees. Eisenhower called his appointment of

Chief Justice Warren "one of the two biggest mistakes I made in my administration."³⁵ Harry S. Truman considered his appointment of Justice Tom C. Clark the biggest mistake of his presidency. "It isn't so much that he's a *bad* man," said Truman. "It's just that he's such a dumb son of a bitch. He's about the dumbest man I think I've ever run across."³⁶

THE LEGAL PROFESSION

If the judiciary is a link in the chain that connects law and politics, then the legal profession is the raw material from which that link is forged. To better understand judges and the power they wield, we have to understand lawyers and the nature of their craft.

Growth of the Profession

Today, the number of lawyers in the United States exceeds 675,000.³⁷ This translates to 1 lawyer for every 364 people. Twenty-five years ago, there was 1 lawyer for every 700 people. The rate at which the legal profession is growing will probably continue to outpace the rate of population growth through the end of the century.

Why is a career in law so popular? Market forces account for some of the allure. We know that in 1984 the average salary of experienced lawyers was \$88,000. If we could include in this average the salaries of all lawyers, whatever their experience, the figure would probably be much lower, certainly well below the \$108,000 average salary of physicians. But lawyers' salaries are still substantially greater than those of many other professionals.³⁸ Salaries for newly minted lawyers heading for elite New York law firms exceeded \$71,000 in 1987; some firms offered additional bonuses for clerkship experience in the federal courts and state supreme courts. The glamour of legal practice strengthens the attraction of its financial rewards.

There are other reasons for the popularity of the legal profession and the unquenchable demand for legal services. Materialism and individualism in American culture encourage dispute. Federalism gives us separate legal systems for each state plus the national government. Advertising can now create demand for legal services, too. Finally, the principles of separation of powers and of checks and balances make governing difficult and sometimes impossible. When political institutions act, they often are forced to compromise, deferring critical issues to the courts. Pluralist democracy operates when groups are able to press their interests on, and even challenge, the government. The expression of group demands in a culture that encourages lawsuits thrusts on the courts all manner of disputes and interests. Is it any wonder that America needs all the lawyers it can train?³⁹

U.S. Attorneys

The Justice Department is responsible for the faithful execution of the laws under the president's authority. The main administrators of federal law enforcement are the ninety-four U.S. attorneys, appointed by

the president with the advice and consent of the Senate. Unlike federal judges, these appointees serve at the pleasure of the president and are expected to relinquish their positions when the reins of government change hands.

There is a U.S. attorney in each federal judicial district. Their staffs of assistant attorneys vary in size with the amount of litigation in the district. U.S. attorneys have considerable discretion, which makes them powerful political figures in any community. Their decision to prosecute or not affects the wealth, freedom, rights, and reputation of the individuals and organizations in the district.

U.S. attorneys are political appointees who often harbor political ambitions.⁴⁰ Their position commands media attention and can serve political goals. In 1983, President Reagan appointed Rudolph Giuliani as U.S. attorney for the Southern District of New York (covering a large portion of the New York metropolitan area). Over the next five years, Giuliani notched his briefcase with dozens of successful prosecutions of elected officials, judges, organized crime figures, and Wall Street inside traders. Giuliani's activities generated reels and reams of favorable press coverage; he even appeared on a *Newsweek* cover. This kind of public exposure can help a U.S. attorney launch a successful career in elected office. As a powerful prosecutor or potential opponent, Giuliani's name must make some politicians shudder.

THE CONSEQUENCES OF JUDICIAL DECISIONS

Lawsuits are the tip of the iceberg of disputes; most disputes never surface in the courts. Of all the lawsuits begun in the United States, the overwhelming majority end without a court judgment. Many civil cases are settled, or the parties give up, or the courts dismiss the claims because they are beyond the legitimate bounds of judicial resolution.

Most criminal cases end with a **plea bargain**, the defendant's admission of guilt in exchange for a less-severe punishment. Only about 20 percent of criminal cases in the federal district courts are tried; an equally small percentage of civil cases are adjudicated. The fact that a judge sentences a criminal defendant to ten years in prison or that a court holds a company liable for \$11 billion in damages does not guarantee that the defendant or the company will give up either freedom or assets. In the case of the criminal defendant, the grounds for appeal following trial and conviction are well traveled and, if nothing else, serve to delay the day when no alternative to prison remains. In civil cases, the immediate consequence of a judgment may also be an appeal, which delays the day of reckoning.

Supreme Court Rulings: Implementation and Impact

When the Supreme Court makes a decision, it relies on others to implement it, to translate policy into action. How a judgment is implemented rests in good measure on how it was crafted. Remember that the

justices, in preparing opinions, are working to hold their majorities together, to gain greater, if not unanimous support for their arguments. This forces them to compromise in their opinions, to moderate their arguments, and creates uncertainty in many of the policies they articulate. Ambiguous opinions affect the implementation of policy. For example, when the Supreme Court issued its order in 1955 to desegregate public school facilities "with all deliberate speed,"⁴¹ judges who opposed the Court's policy dragged their feet in implementing it. In the early 1960s, the Supreme Court struck down prayers and Bible reading in public schools. Yet state court judges and attorneys general reinterpreted the High Court's decision to mean that only *compulsory* prayer or Bible reading was unconstitutional, that state-sponsored voluntary prayer or Bible reading was acceptable.⁴²

Because the Supreme Court confronts issues freighted with deeply felt social values or fundamental political beliefs, its decisions have impact beyond the immediate parties in a dispute. The Court's decision in *Roe v. Wade* legalizing abortion generated heated public reaction. The justices were barraged with thousands of angry letters. Groups opposing abortion vowed to overturn the decision; groups favoring abortion moved to protect the right they had won. Within eight months of the decision, more than two dozen constitutional amendments had been introduced in Congress, although none managed to carry the extraordinary majority required for passage. Still, the antiabortion faction achieved a modest victory with the passage of a provision forbidding the use of federal funds for abortions except when the mother's life is in jeopardy.

Opponents of abortion have also directed efforts toward state legislatures, hoping to load the abortion law with enough regulations to discourage women from terminating their pregnancies. For example, one state required that women receive detailed information about abortions, then wait at least twenty-four hours before consenting to the procedure. The information listed every imaginable danger associated with abortion and included a declaration that fathers are liable to assist in their children's support. Most of these regulations continue to be struck down by the courts, but by increasingly narrow margins.⁴³

Public Opinion and the Courts

Democratic theorists have a difficult time reconciling a commitment to representative democracy with a judiciary that is not accountable to the electorate yet has the power to undo legislative or executive acts. This difficulty may simply be a problem for theorists, however, because the policies coming from the Supreme Court rarely seem out of line with public opinion.⁴⁴ Surveys in several controversial areas reveal that the Court seldom departs from majority sentiment or the trend toward such sentiment.

A study of Court decisions enlarging or narrowing minority rights between 1937 and 1980 shows that this was an exceptionally active period for the use of judicial review. Opinion polls for the same period indicated that the Court was not out of step with public sentiment; in fact, the Court's decisions were "surprisingly consistent with majoritar-

ian principles."⁴⁵ Decisions in the area of minority rights were supported by a growing minority of Americans and, in some cases, by a clear majority. The Court also refrained from ruling or ruled with equivocation in areas where public opinion was very strong (the use of marijuana, busing to achieve school integration, homosexual conduct).

On the question of abortion, the public was and still is sharply divided. This continuing division may explain why the issue refuses to die despite the Supreme Court's repeated enforcement of its 1973 decision. The Court has clearly defied the wishes of the majority on just one issue: school prayer. Most Americans today do not agree with the Court's position. And as long as the public continues to want prayer in schools, the controversy will continue.

THE CHANGING ROLE OF THE COURTS

The main issue in evaluating the role of the courts as policymakers in democratic government is this: How far should judges stray from the letter of existing statutes and precedents? Supporters of the majoritarian model would argue that the courts should adhere to the letter of the law, that judges must refrain from injecting their own values into their decisions. If the law places too much (or not enough) emphasis on equality or order, it is up to the elected legislature, not the courts, to change the law. In contrast, those who support the pluralist model maintain that the courts are a policymaking branch of government and that the individual values and interests of judges should reflect the different values and interests of the population at large.

The argument that our judicial system fits the pluralist model gains support from a legal procedure called **class action**. Class action is a device for assembling the claims or defenses of similarly situated individuals so that they can be tried as a single lawsuit. A class action makes it possible for people with small individual claims and limited financial resources to aggregate their claims and resources in order to make a lawsuit viable. Decisions in class action suits can have broader impact than decisions in other types of cases. Since the 1940s, class action suits have been the vehicles through which groups have asserted claims involving civil rights, legislative apportionment, and environmental problems. For example, schoolchildren have sued (through their parents) under the banner of class action to rectify claims of racial discrimination on the part of school authorities, as in *Brown v. Board of Education*.

The exercise of judicial power in new domains, coupled with the litigious character of American society, continues to attract more controversial cases into the courts. Many are outrageous, and most are dismissed, but the presence of these suits on court dockets suggests a new perception of the judiciary (see Feature 13.4). For example, the parents of a high school student brought suit in federal court stemming from a grading dispute that lowered their daughter's average from 95.478 to 95.413.⁴⁶ In another case, a dog owner sued a municipality for unconstitutional deprivation of her property: Her dog was locked up overnight in the pound.⁴⁷

FEATURE 13.4

Megadeath v. Megadeth

Courts resolve disputes, inconsistent claims to something of value. Some disputes involve groups in a struggle over fundamental values. And then there are those . . .

"A good name is better than precious ointment," says Ecclesiastes. And though *Megadeath* may not be the sort of name the Bible had in mind, it provides a case in point.

That charming appellation—a term from nuclear disaster lingo meaning "one million dead people"—is considered so good by two heavy metal rock bands that they have gone to court to fight over it.

The two groups, Megadeath and Megadeth (without the second "a"), share a taste for loud music, rude lyrics and long hair. But the first plays infrequently in Los Angeles clubs, while the second tours the world, has two records and is seen on MTV, the cable-TV music station.

To hear both groups tell it, each has good cause to consider the name essential to its self-esteem, and abundant reasons why the other doesn't deserve it.

"We're a global band," explains Dave Mustaine, lead singer for Megadeth. The others are "a joke band, (who) dress up in white wigs and look like Q-Tips."

Mr. Mustaine says his band drew its name from a paper by California Sen. Alan Cranston on the horrors of nuclear war. The phrase "arsenal of megadeath" struck them, he says, as a way to describe the power and intensity of the band we wanted to create . . . something ultra-furious."

Such appeals to logic, however, are lost on

their rivals. "We're considered the real Megadeaths around here in L.A.," says Bob Ricketts, alias Thor Gunderslau, of Megadeath. And "what difference does it make," he asks, if the others have a following of "thousands and thousands?" "We were playing around first," he says, and "have the rejection slips (from record companies) to prove it."

He adds that his band is more deserving of the name because its musical message is more sophisticated. Megadeth, he says, is "just a bunch of blockheads (who) sing about all kinds of chauvinistic stuff, which grinds against me." His band, on the other hand, explores pressing social concerns, such as in its theme song, "Megadeath: It's Going to Happen to You."

The two "shock rock" groups were scheduled in late 1987 to fight for the exclusive use of their all-but-identical names in the United States District Court for the Southern District of California when they invoked a time-honored remedy: Megadeth paid off Megadeath. Megadeath graciously agreed to drop the use of its name in return for an undisclosed megaprice.

Megadeth lives; the other is megadead. When last we heard, the group was considering some alternatives. Like?

"Leather Armpit," says Mr. Gunderslau, "but that's just a possibility."

Source: Adapted from Andrea Rothman, "Thank Goodness We Have Courts That Can Settle Issues Like This," *Wall Street Journal*, 9 July 1987, p. 29. Reprinted by permission of *The Wall Street Journal*, © Dow Jones & Company, Inc. (1987). All Rights Reserved.

The rights created by congressional acts fuel many of today's controversies. The perturbed parents and the distressed dog owner are just two examples of thousands of litigants who have relied on a Reconstruction-era statute passed by Congress to curtail the outrages perpetrated by the Ku Klux Klan. The law authorizes suits for civil damages against state or local officials by people whose rights have been abridged. From nearly total disuse, the statute has become one of the most litigated provisions of federal law.

Courts create rights in the name of the Constitution. For example, a California court held that Elizabeth Bouvia, a cerebral palsy victim, had an absolute right to refuse a life-sustaining feeding tube.⁴⁸ "A desire

to terminate one's life is probably the ultimate exercise of one's right to privacy," declared the court. One justice even suggested that Bouvia should not have to starve herself, that her doctors should help her end her life. "Fate has dealt this young woman a terrible hand," he wrote. "Can anyone blame her if she wants to fold her cards and say, 'I want out'?"

Class action suits (by making litigation more accessible) and the creation of new rights are increasing the responsibilities of the courts. They have become arenas for political conflict with litigants, either individually or in groups, vying for benefits. This vision of the courts fits the pluralist model of government.

The traditional view of litigation is a contest between two parties disputing issues arising from transpired events. The issues are contained within the circumstances of the case, and the parties initiate the dispute and control its progress.⁴⁹ Relaxation of these elements thrusts the federal courts into administrative and legislative roles. For example, federal district court judge W. Arthur Garrity, Jr., gained national attention when he assumed the administration of the Boston public school system in 1976 to ensure its desegregation. He held that role until 1985. Judge Frank Johnson supervised the administration of Alabama's mental hospitals and prisons in order to ensure enforcement of constitutionally protected rights.⁵⁰ Johnson's decree went so far as to specify the maximum number of inmates for every foot of urinal troughs.

These are just two of a growing number of disputes that pit the authority of the federal courts against representative institutions through the enforcement of constitutional or statutory rights.⁵¹ Under normal conditions, the people of Boston select their school administrators, and the people of Alabama, through their elected representatives, make policies for their state institutions. If the courts fit the pluralist model and provide access to all groups seeking redress, then the charge that judges can trump elected government officials loses its sting. Some observers contend that courts are *countermajoritarian*—that they often act against the wishes of the majority, especially when they defend freedom over order. It is clear that courts sometimes make decisions that run counter to the opinion of the majority. According to one sense of justice, this is precisely what courts are supposed to do: make difficult but fair decisions, however unpopular. Still, making decisions that conflict with public opinion can create problems for the courts.

Today, judges usually shrink from the tug of contemporary political conflict in their exercise of political power. Their power rests precisely on their legitimacy, the belief that their decisions are correct and proper. The correctness or propriety of their decisions could be called into question if judges behaved like other politicians.

Chief Justice William H. Rehnquist observed that judges in courts of last resort work in an insulated atmosphere, hearing oral arguments, reading briefs, and writing opinions. They maintain contact with the rest of the world the way most of us do, through newspapers, conversations, books, and films. But "somewhere . . . beyond the walls of the courthouse," remarked Rehnquist, "run currents and tides of public opinion which lap at the courthouse door." Tides of sufficient strength and duration must affect decision making within the courthouse.

Judges . . . can no more escape being influenced by public opinion in the long run than can people working at other jobs. And if a judge coming on the bench were to hermetically seal himself off from all manifestations of public opinion, he would accomplish very little; he would not be influenced by public opinion, but instead by the state of public opinion at the time he came on the bench.⁵²

Both judges and elected representatives feel the current of public opinion. But unlike judges, representatives can institute policies at any time regardless of the past. In contrast, judges must wait for issues and resolve them by relying on precedent. Representatives have to answer to the people at regular intervals, by running for re-election; judges need answer only to their consciences.

SUMMARY

The power of judicial review, claimed by the Supreme Court in 1803, placed the judiciary on an equal footing with Congress and the president. The principle of checks and balances can restrain judicial power through several means, such as constitutional amendment and impeachment. But restrictions on that power have been infrequent, leaving the federal courts to exercise considerable influence through judicial review and statutory construction.

The federal court system has three tiers. At the bottom are the district courts, where litigation begins and most disputes end. In the middle are the courts of appeals. At the top is the Supreme Court. The ability of judges to make policy increases as we move up from trial courts to appellate courts.

The Supreme Court, free to draft its own agenda through the discretionary control of its docket, harmonizes conflicting interpretations of national law and articulates constitutional rights. It is helped at this crucial stage by the solicitor general, who represents the executive branch of government before the High Court. His influence with the justices affects their choice of cases to review.

Once a case is placed on the docket, the parties submit briefs and the justices hear oral arguments. A tentative vote is taken in conference. Then the real work begins . . . crafting an opinion that satisfies the majority without sacrificing clarity or forcefulness.

From the nation's lawyers come the nation's judges, whose political allegiance and values are usually a necessary condition of appointment by the president. The president and senators from his party share the power of appointment of federal district and appellate judges. The president has more leeway in the nomination of Supreme Court justices, although nominees must be confirmed by the Senate.

Justice Benjamin N. Cardozo observed, "The great tides and currents which engulf the rest of men,

do not turn aside in their course, and pass the judges by."⁵³ Litigation thrusts on the courts the exigencies of modern life. Class action suits and new rights are changing the character of litigation, bringing new issues to America's courtrooms and new threats to the power and legitimacy of the judiciary. The issues confronting the nation's courts are very different from those litigated two hundred years ago. In addition to balancing freedom and order, the judges must now balance freedom and equality. And the impact of their decisions is much broader as well. Democratic theorists are troubled by the expansion of judicial power. But today's courts fit within the pluralist model and usually are in step with what the public wants.

In its marble palace, the Supreme Court of the United States faces and tries to resolve the dilemmas of government. Within the columned courtroom, the justices work to balance conflicting values, to ensure an orderly, peaceful society. We examine some of these conflicts in Chapters 17 and 18.

Key Terms

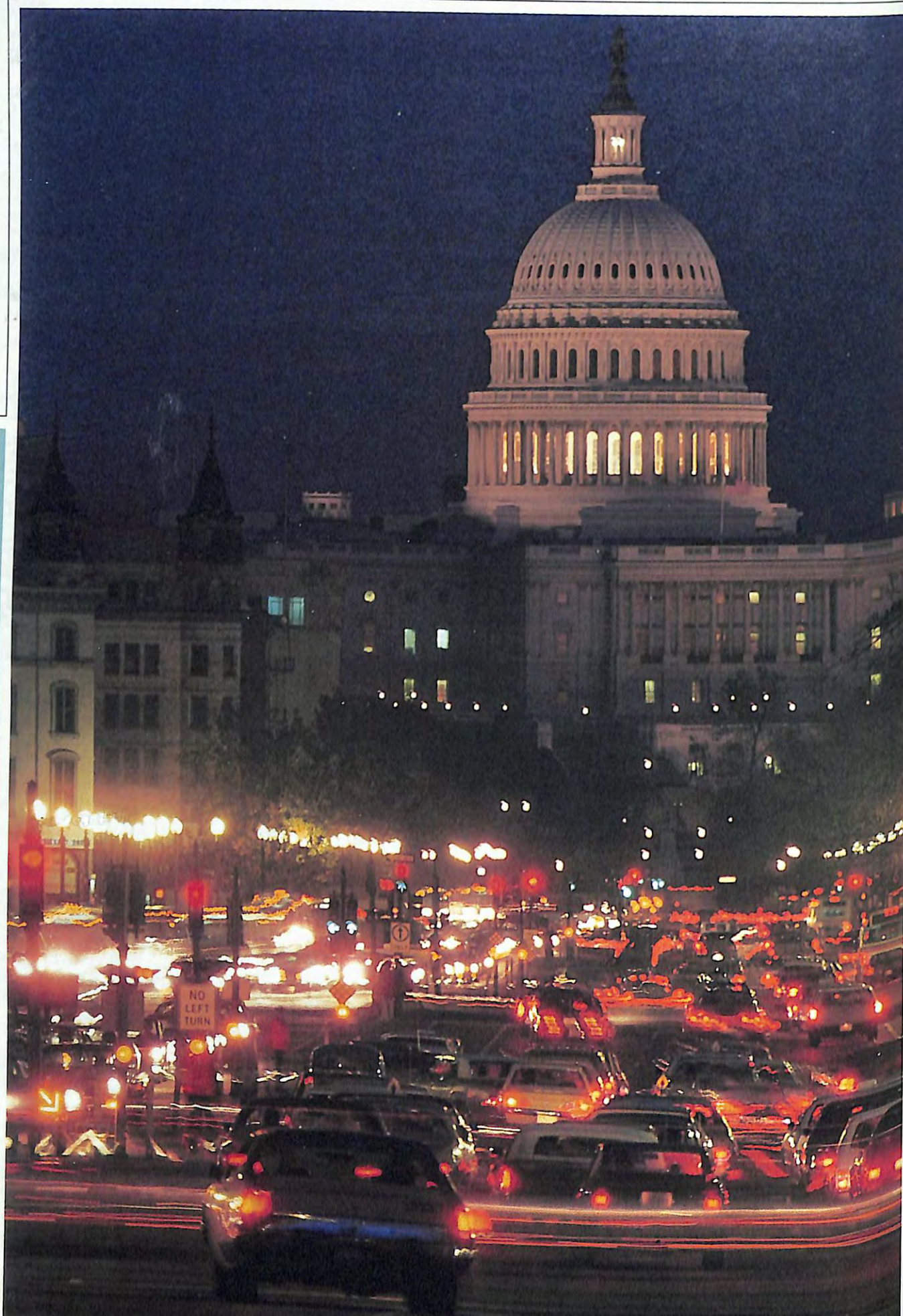
original jurisdiction
appellate jurisdiction
writ of mandamus
judicial review
U.S. district court
U.S. court of appeals
criminal case
civil case
adjudication
opinion
brief
precedent
stare decisis
common (judge-made)
law
torts

statutory construction
federal question
docket
rule of four
solicitor general
amicus curiae brief
judgment
argument
concurrence
dissent
senatorial courtesy
judicial restraint
judicial activism
plea bargain
class action

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14

The Washington Community

Washington: A City at the Center

Law Firms

Law in Washington: A Growth Industry • Specialty Law Firms

Consulting Firms

The Nature of Government Consulting • Getting the Contract

Think Tanks

The Brookings Institution • The American Enterprise Institute

Public Relations Firms

Trade Associations

Issue Networks

Government by Policy Area • Iron Triangles • The Case of Telecommunications

Policy Expertise

Issue Networks and Democracy

When Mike Deaver left the Reagan White House in 1985, he knew he was about to strike it rich. Deaver was a long-time associate of Ronald Reagan, first working for him in 1966, when Reagan was elected governor of California. At the White House, no one was personally closer to Reagan and his wife, Nancy, than Mike Deaver. Deaver knew that those who had a problem with government would pay dearly for someone who had the kind of connections he had. He created Michael K. Deaver and Associates to help clients do what he called "long-term strategic planning." This may have made him sound like a business consultant, but everybody in Washington knew that you hired Mike Deaver's firm to influence the government.

The firm immediately attracted a glittering array of clients, among them, Boeing, Rockwell International, CBS, and Philip Morris, and the governments of Singapore, Mexico, South Korea, and Canada. High fees produced staggering revenues for the new firm, which billed around \$3 million during its first six months of operation. TWA was charged \$250,000 for a single unsuccessful phone call Deaver made on its behalf to the U.S. Department of Transportation.¹ Soon Saatchi & Saatchi, a British public relations firm, was offering to buy Deaver's company for \$18 million, which would have netted Deaver a profit of \$15 million.

Deaver's crash was as spectacular as his rise. In the spring of 1986, serious allegations surfaced that Deaver had violated a government ethics law that places limits on lobbying by executive branch officials who have just left the government. With his reputation tarnished, his business began to crumble. He was indicted and convicted of perjury for lying to a congressional committee about his lobbying activities. He appealed. In the meantime, his plush offices in the Georgetown section of Washington were closed, and huge legal fees mounted. Deaver couldn't seem to understand why people were so upset about his influence peddling: "I wonder what people thought I was going to do when I left the White House—be a brain surgeon?"²

Before his new career ended so abruptly, Mike Deaver was just one of the thousands of Washingtonians who work on the government instead of for it. Despite their private-sector status, they play an active role in the governmental process. They are part of the **Washington community**—the people inside and outside of government who work on public policy issues.

In the other chapters in this part, we describe the major institutions of the national government: Congress, the presidency, the bureaucracy, and the courts. Here, we turn to private sector actors in Washington politics. We focus on five important segments of Washington's service economy: law firms, consulting firms, think tanks, public relations firms, and trade associations. Collectively, these groups are an important link between the public and government policymakers, enabling citizens and private-sector policy experts to communicate their opinions and knowledge to those in government.

After examining these segments of the Washington community, we turn to the relationships between them and government decision makers. These ongoing relationships, or *issue networks*, form a significant part

Bonfire of the Vanities

This photo of top-Reagan-aide-turned-lobbyist Michael Deaver, which appeared on the cover of Time magazine, has come to symbolize the brazenness with which high-powered Washington lobbyists flaunt their access to key policy-makers. Posing for the photographer in the back of his chauffeur-driven Jaguar, Deaver seemed to want the world to know that no one had better access than he did. Ironically, shortly after this picture was taken, allegations about the illegality of Deaver's lobbying surfaced, and his business collapsed even before he went to trial.



of the policymaking process. Our focus here is not on policymaking *within* an institution (say, Congress or the courts), but on how policy is made *across* institutions.

Finally, we look at the impact of issue networks on our democracy. What happens when well organized groups play an integral role in policymaking? How does the influence of special interests affect majority interests?

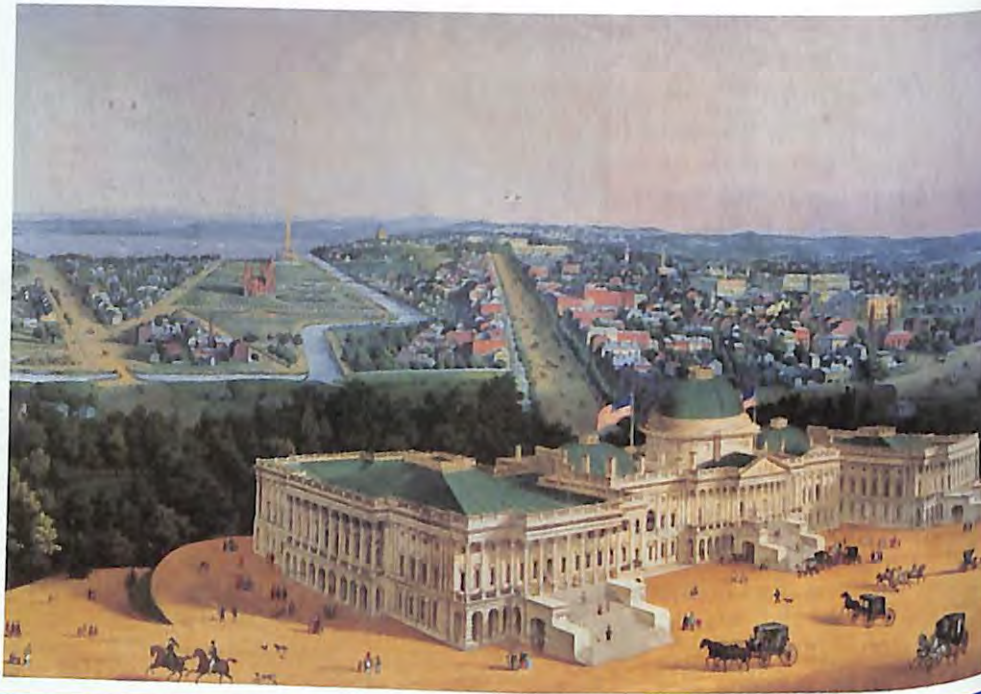
Before we turn to the private sector in Washington and its relationship with government, we take a brief look at life in the nation's capital. Washington is a unique city, some say a world in itself. What are the special qualities that give this world its character, that draw so many to live and work there?

WASHINGTON: A CITY AT THE CENTER

"Washington," said President John F. Kennedy, "is a town of northern charm and southern efficiency." Indeed, Washington is a city of contrasts: North and South, black and white, rich and poor, public sector and private sector. People outside of Washington, though, think of it not so much as a city divided within itself but as a city divided from the rest of the country. In 1976, Democratic presidential candidate Jimmy Carter proudly told campaign audiences that he was a "Washington outsider."

Washington, Then and Now

The District of Columbia has changed a great deal since the mid-1800s, as the views on these two pages show. Note the canal that originally bounded the Mall, behind the Washington Monument (pictured in the nineteenth-century lithograph, near right).



In 1980, Republican candidate Ronald Reagan spoke disparagingly of the "Washington buddy system." Both men were kinder than former presidential candidate George Wallace, who ridiculed "pointy-headed, briefcase-totin' bureaucrats" for running the government in defiance of common sense.³

Washington is different from other cities. Its major "industries" are government and the firms that try to influence government. Data from the 1980 census show that Washingtonians have the highest annual median income per family of any major city in the country: \$27,515, compared with \$19,903 nationally. And the percentage of Washingtonians who are college graduates (32 percent) is the highest in the nation and twice the national average.⁴

Beyond statistics, there is an attitude that sets the people of Washington apart, a pervasive feeling that their city is the true center of the nation. It is where the most important people live and the most important decisions are made. Washingtonians exude a smugness, a sense of being "in the know." They believe that when people from Washington speak, others listen. Yet for all their arrogance, Washingtonians have their share of insecurities. They don't like it that New Yorkers think the nation's capital is a hick town. And they have never gotten over the embarrassment of losing their baseball team twice: first to Milwaukee, then to Texas.

Despite the city's relative affluence, money is not the primary measure of social status in Washington. *Power*—the ability to influence important decisions—is. And the career goals of many Washingtonians are based on moving closer to the centers of power. For bureaucrats, this means climbing the ladder to higher and higher levels of administration;



for legislators, committee chairs and party leadership posts; for congressional aides, senior positions on personal or committee staffs.

Those outside of government have a similar objective—to become increasingly influential in the decision-making process. Their route to power is less direct, and sometimes means going back and forth between jobs in the public sector and jobs in the private sector. The key here is access to government officials. Lawyers, lobbyists, and public relations specialists know that they cannot do their jobs properly unless people in government are willing to listen to them.

Washington has changed dramatically since it became the nation's capital in 1800 (see Feature 14.1). The private-sector service industry, the public relations firms and consulting firms, did not exist then. James Sterling Young has written of Washington in its earliest years:

No national association made the government's headquarters their headquarters, and few came on errands to Washington. [Of] resident lobbyists, in the modern definition of the term, there were none. . . . Outsiders eager to assist and manipulate the operations of government were conspicuous by their absence; the drama of national politics in early Washington was played without this supporting cast of characters whom big government and a complex industrial society have since attracted to the residence of power.⁵

Today, this "supporting cast of characters" is as much a part of the Washington scene as government itself. There are 400,000 government employees in Washington; there are 700,000 employees in the private sector. Not all of the latter work at jobs having to do with influencing government, but the number of those who do is growing faster than the number of those who work for government itself. Indeed, a real economic

FEATURE 14.1

Washington's Washington

In its early years, the United States had a government without a home. After the revolutionary war, Congress shifted its meetings about among New York, Philadelphia, Trenton, Princeton, and Annapolis. With no buildings of its own in these cities, Congress had to take what it could get, often sharing offices with state or local governments. To add insult to injury, Congress was not always a welcome guest. Meeting in Philadelphia (the City of Brotherly Love) in June 1783, members of Congress were set upon by an unruly mob of militiamen, demanding payment of overdue wages. When Pennsylvania refused to provide adequate protection for the legislators, Congress secretly adjourned and fled to Princeton, New Jersey.

Feeling that a permanent home of their own would give them the respect they deserved, the legislators decided to select a capital where they would have exclusive authority. But they were unable to choose one among themselves. Finally, in 1790, they threw up their hands and delegated the decision to President George Washington. The Congress's only requirement was that the new capital be located in the center of the nation, along a 105-mile stretch of the Potomac River. Once the president selected the actual site, the government proceeded to pay \$66.50 an acre for land that was reputedly worth about one-fifth that amount.

President Washington and other national leaders hoped that the new capital would become one

of the great cities of the world. They wanted it to be like Paris or Rome, a center of culture, commerce, and national life. They were bitterly disappointed. When the government held its first auction of 10,000 parcels of land in 1791, only 35 lots could be sold. Auctions over the next two years proved to be similar failures and were subsequently suspended because of the embarrassment. It was simply the case that almost nobody wanted to move to Washington.

In 1800, when the government officially moved in, Washington was a depressing, miserable little town. It had only 109 stone or brick buildings; the rest were shanties or huts. There was virtually no private enterprise there in the early years. Excluding slaves, there were fewer than ten thousand residents as late as 1820. Those not employed by the government found little reason to move there. And those in government didn't find the city to their liking either. Supreme Court justices and members of Congress spent much of the year in their home towns, traveling to Washington only when they had to.

In retrospect, it seems that Washington failed to become an important city at first because the people of the new nation had only a limited interest in what went on there.

Source: Adapted from James Sterling Young, *The Washington Community* (New York: Columbia University Press, 1966), pp. 13–37.

boom has taken place in Washington, in large part because of the tremendous growth of firms "designed to hook the bureaucracies into their client groups."⁶

LAW FIRMS

Nothing better symbolizes the connection between Washington's private sector and the national government than the city's law firms. The practice of law in Washington is largely a matter of representing clients who have some problem with the government. This representation usually does not take place in the courts. Most Washington lawyers do their business before regulatory agencies and Congress. Typically, Washington lawyers act on behalf of a corporation or a trade association that has an interest in policies being developed by the government. For example, if

the Federal Communications Commission (FCC) is formulating regulations governing cable television, cable broadcasters want to know how those regulations will affect their business. More important, they want their interests protected.

Why use lawyers to influence the decision-making process? Why can't a corporation, for example, simply rely on its own executives to lobby the government? First, government policies (statutes, regulations, court opinions) are couched in "legalese."⁷ Clients need someone with not only a sophisticated understanding of a particular policy area but also an ability to decipher and interpret technically complex documents. Second, even though many firms are represented by a Washington trade association, at times they need more extensive representation than a trade group can provide. Lawyers in private practice are a readily available pool of talent that can offer the needed services. Third, those who want to influence policymaking need someone who is well acquainted with the committee or agency making the policy, who knows the key people on the government side, and who has a reputation as an expert in that policy area. Washington's law firms are full of these kinds of experts.

Many Washington lawyers are really **lawyer-lobbyists** because they use their background and expertise to influence government. And their services do not come cheap. The big firms bill corporate clients at rates of \$200 or more an hour for a senior partner's time. Partners—those who share in the annual profits of a firm—can expect salaries in the range of \$100,000 to \$300,000 a year.⁸

The success of Covington & Burling, Washington's largest law firm, rests in good part on its government advocacy work. Founded in 1919, it was one of the first firms in the capital to recognize the government's tentative steps toward regulation as an opportunity. Its early clients included industrial giants like DuPont and General Motors. Today, the firm has around two hundred partners and associates, and one member estimated that it has represented "twenty percent of the companies on *Fortune's* list of the five hundred top corporations."⁹

Beyond the top firms, many individuals have reached the pinnacle of success in practicing Washington law. Lawyers like Tommy Boggs (see Feature 14.2) and Joseph Califano, a former aide to President Lyndon B. Johnson and a member of President Jimmy Carter's Cabinet, attract important clients because they have a reputation for being extremely skillful in influencing government decision making. Attorneys who attract numerous clients to their firms are known as *rainmakers*. They bring business to the firm because of their professional reputations, social connections, or familiarity with clients from previous government experience. When Republican Senate Majority Leader Howard Baker of Tennessee announced his retirement from Congress in 1984, the Washington office of Vinson & Elkins hired him for around \$750,000 a year. Clearly, the partners thought that someone with Baker's exceptional connections and experience would make a lot of "rain" for the firm.¹⁰ (Money, however, was not enough to hold Baker in the private sector. In March 1987, he returned to government to serve as President Reagan's chief of staff, a post he held until his resignation in the summer of 1988.)

FEATURE 14.2

Tommy Boggs, Worth a Million

The best thing that ever happened to Tommy Boggs may have been losing his one and only race for Congress. Out of the ashes of that defeat has come an extraordinary career as a lawyer-lobbyist. Now in his mid-forties, Boggs is considered by many to be the most effective lobbyist in Washington.

Politics is in Boggs's blood. His father, Hale Boggs, was a Democratic representative from Louisiana. His mother, Lindy, took Hale's place in the House of Representatives when he died in a plane crash. After graduating from Georgetown University's night law school, Tommy was hired by James Patton to join Patton's small, four-lawyer firm. Since then, the firm has grown to eighty lawyers, and its letterhead now reads "Patton, Boggs & Blow." Around town, it's known simply as "the Boggs firm."

The *Washington Post* called Patton, Boggs & Blow "the young, swashbuckling state-of-the-art Washington lobbying house of its era," and Tommy Boggs gave it that reputation. There is no magic in his approach: He combines hard work and assiduous attention to detail with a superb understanding of the legislative process and of complex areas of public policy. Fellow lobbyist Robert McCandless described Boggs this way: "Being a good lobbyist is like running a good restaurant. You've got to spend a helluva lot of time in the kitchen. Tommy does." He also knows how important money is, and puts a lot of effort into raising and channeling campaign funds from clients to members of Congress.

Boggs's clientele reads like a *Who's Who* of American business. One of his most notable achievements was helping to get the Chrysler bailout bill through Congress. The giant auto manufac-



Tommy Boggs

turer was teetering near bankruptcy; its management felt that only federal loan guarantees would allow it to raise the cash needed to stay in business. The bill faced strong opposition but was passed; the company was kept alive and has since become highly profitable.

For his efforts, Boggs earns around a million dollars a year. But the satisfaction goes beyond the riches his work brings him. "I really enjoy playing the game," he says.

Source: Adapted from Albert R. Hunt, "Thomas Boggs Offers Full-Service Lobbying for a Diverse Clientele," *Wall Street Journal*, 23 March 1982, p. 1; Paul Taylor, "Gladiators for Hire—II," *Washington Post*, 1 August 1983, p. A1; and "Briefing," *New York Times*, 27 February 1986, p. B10.

Law in Washington: A Growth Industry

Law in Washington is one of America's great growth industries. As Figure 14.1 shows, the number of lawyers in the city has skyrocketed in recent years.

What's behind this growth? A major factor has been the regulatory spiral. In the 1970s, as new regulatory agencies, such as the Environmental Protection Agency and the Occupational Safety and Health Administration, began to issue thousands of pages of regulations a year, more and more businesses found themselves directly affected by what goes on in government. They needed both an understanding of how

Joe Califano, In and Out
Joe Califano has had an illustrious career both inside and outside of government. An attorney, Califano worked as an aide to President Lyndon Johnson. After he left the White House, he built a lucrative Washington law practice. He was lured back to government when Jimmy Carter named him secretary of health, education, and welfare. After Carter unceremoniously fired him, Califano landed on his feet by again pursuing a successful Washington law practice.



proposed changes would affect them and a means for influencing the decision-making process. One Washington attorney called the expanding federal regulation of energy a "public service employment program for lawyers."¹¹ When deregulation came to Washington in the late 1970s, some thought it spelled the end of the gravy train. But it did not turn out that way. Deregulation creates uncertainty, unanticipated problems that must be addressed, and new proposals for change, all of which create demand for lawyer-lobbyists.

The importance of legal representation in Washington has produced another interesting trend. Major law firms with headquarters in other cities have opened Washington branch offices in self-defense. In 1965, only 45 branch offices were located in Washington; today, there are around 245.¹² These firms believe that they can best serve (and hold on to) clients who are having problems with a regulatory agency by having their own lawyers in the capital.

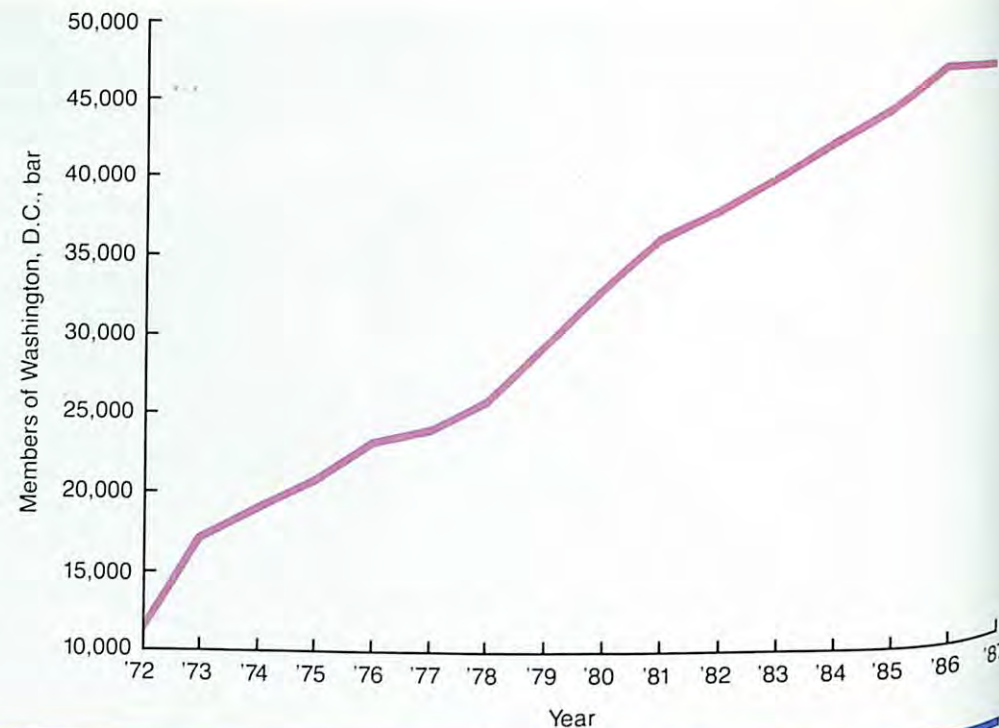
Specialty Law Firms

Despite the presence of so many large prestigious firms, the structure of the Washington legal establishment is really quite diverse. Many small and medium-sized firms do very well. One way a small firm can distinguish itself is by specializing in a particular area of law, by becoming expert in the workings of one agency or program.

Washington Lawyers

The number of lawyers in Washington, D.C., has increased sharply in recent years. Many of these lawyers represent clients who want to influence government policymaking.

Figure 14.1



The law firm of Epstein & Becker is a case in point. The firm works almost exclusively in the health care field. If, for example, a client wants to set up a health maintenance organization (HMO), a prepaid health plan for consumers, its attorneys can guide them through the administrative maze of federal laws and regulations governing HMOs.¹³

Public interest law firms form another part of the Washington bar. These firms use the courts to try to protect what they consider to be the "people's interest." They are advocacy organizations, taking on only those issues that fit their ideological perspectives. Like their counterparts in large corporate firms, these organizations handle administrative lobbying as well as lawsuits. The Public Citizen Litigation Group, one public interest law firm, has won many suits, including one that allows pharmacies to advertise prescription drug prices.

When the public interest movement emerged as a strong force in the late 1960s and early 1970s, almost all of the new public interest law firms were on the liberal side of the political spectrum. They believed that it was their responsibility to counter the influence of large corporations, which are always well represented by lawyers. In the past few years, however, some conservative public interest law firms have set up shop in Washington. One of them, the Capital Legal Foundation, sued CBS on behalf of General William Westmoreland. Westmoreland alleged that he was libeled by a network documentary on the Vietnam War. (The program claimed that he deliberately misled policymakers about estimates of enemy troop strength.) The firm took on the case because it believed that the CBS news division was both too powerful and too liberal. But after the firm had spent more than \$3 million on the case, adverse trial testimony led it and Westmoreland to agree to an out-of-court settlement that clearly favored CBS.

CONSULTING FIRMS

Not all government work is done by government workers. Federal departments and agencies spend enormous sums of money hiring people outside of government to conduct research, collect data, and perform policy and organizational analyses. These outsiders are called **consultants**. Consulting firms are profit-seeking businesses, and they are big business in Washington, where hundreds of firms compete for government contracts.

The Nature of Government Consulting

Consulting firms can be found all over the country, and many do little or no government work. Some firms, for example, work exclusively for businesses, offering market research, management studies, or other specialized services.

To understand what *government* consultants do, we should begin with the concept of *contracting out*. An agency may decide that it needs outside help to perform some job because it lacks the staff or expertise or objectivity to do the job itself. When an agency hires a consultant, both parties sign a contract that spells out the services to be provided and the amount of money to be paid for them. For example, suppose an agency needs a computer program to deal with a new, highly complex problem, and it does not have the expertise to develop the program itself. If the agency awards a contract to a computer consulting firm, once the program is developed and paid for, the agency has no further financial obligation to the consultant. This is a much more efficient way of spending agency funds than hiring a new bureaucrat who would have to be kept on the payroll indefinitely.

Much contracting out is done for technical services, such as auditing, computer work, or data collection, and seems far removed from the political process. More directly related to government decision making are studies that evaluate programs and analyze policy options. Government agencies spend hundreds of millions of dollars a year on these kinds of consulting contracts. For example, the National Institute of Education hired Abt Associates of Cambridge, Massachusetts, and Washington, D.C., to evaluate how changes in federal aid formulas would affect school districts. Under the three-year \$3.7 million contract, Abt studied thirteen districts and found that awarding money on the basis of educational performance rather than family income made little difference in either the services purchased with federal aid or their cost.¹⁴

A common criticism of this kind of research is that many studies do not warrant the expense. There is ample evidence that a significant portion of policy consulting work is simply not worth doing or paying for. One congressional study of U.S. Department of Defense consultants revealed that 17 percent of the projects they undertook were "of questionable value."¹⁵ And everyone in Washington has a favorite horror story about a consulting contract that was an outright boondoggle. A classic example was a Department of Transportation contract for \$225,000 with the Stanford Research Institute, to forecast transportation costs in the year 2025 under conditions of widespread guerrilla warfare.¹⁶

Sometimes the issues are important but the studies are not put to use. An agency might contract with skilled analysts who produce a first-rate piece of research, then disregard the study. Why? One reason is that a major study can take a year or more to complete, by which time policy or personnel changes may have reduced its urgency. Another reason is that a study's recommendations, even though well thought out, might not be politically feasible. A third reason is that the people who requested the study might not have the power to make the necessary policy changes. Finally, as one scholar noted, "the process of evaluation suggests change."¹⁷ And change is threatening. So some people—particularly those who might lose authority—fight to maintain the status quo.

Getting the Contract

Criticism of the relationship between government and consulting firms has also been directed at the way in which contracts are handed out. Even though many contracts are awarded competitively, to the lowest bidder, other contracts are offered, in the language of the Washington bureaucracy, on a "sole-source basis." An agency can choose a consulting firm without accepting competing bids on the grounds that the consultant is uniquely qualified to do the job.

Consultants' familiarity with certain programs and agency officials helps them obtain both competitive and noncompetitive contracts. Consultants who have worked inside an agency have an advantage: They know how the agency operates, the way it approaches and resolves problems. Charles Owens, who worked for the Cost of Living Council and the Federal Energy Office, drafted oil price regulations during his stay in government. When he left the bureaucracy, he founded Charles R. Owens Associates, which became a leading consulting firm in the area of oil price controls.¹⁸

Some consultants use their familiarity with their former agencies to help others get government contracts. When a major defense-contracting scandal emerged in the summer of 1988, there were accusations that some consultants had passed on illegally obtained inside information on bids to contractors who employed them.

By its very nature, consulting work is unpredictable. Firms cannot always be assured of winning enough contracts to keep all their employees. This uncertainty puts tremendous pressure on a firm's top executives to find and win consulting jobs. As one Washington consultant put it, "The people who work as consultants to the federal government generally are aggressive and competitive. You've got to be to survive. You don't sit passively and wait for people to call—it just doesn't work that way."¹⁹

THINK TANKS

A **think tank** is an institution that conducts public policy research. Think tanks are staffed largely by people who have graduate degrees in the

social sciences and strong interests in some aspect of public policy. The objective of Washington-based think tanks is to sponsor studies that are pertinent to the debate over selected issues facing the country. And they can take "their case directly to the Congress, the media, and the public—to the marketplace of ideas."²⁰

Unlike consulting firms, think tanks are nonprofit organizations. Most think tanks do not rely on government (or private) contracts for their existence. Although they may do some government work, they receive the bulk of their funding from foundation grants, their own endowments, corporate gifts, and the proceeds from sales of their publications. Because they do not have to chase after consulting jobs, think tanks have the freedom to choose their own areas of study. Most sponsor broad scholarly studies that are directed toward a large audience inside and outside of government and that may take years to complete. The results of some think tank studies are published as books.²¹

Some think tanks focus their efforts on one broad policy area. For example, the Urban Institute focuses on urban policy issues, and the Joint Center for Political Studies does research on blacks. Others, such as the left-leaning Institute for Policy Studies and the right-leaning Heritage Foundation, have distinct ideological perspectives. Still others work toward a "mainstream" point of view. Of all of them, probably the best known are the Brookings Institution and the American Enterprise Institute. Both address a broad range of policy questions and produce highly respected studies.

The Brookings Institution

The Brookings Institution is located in a large gray austere building near Washington's Dupont Circle. The institution was founded in the early part of this century by Robert Somers Brookings, a St. Louis businessman. The endowment he started continues to fund a significant part of the institution's yearly budget. Brookings sponsors and performs studies in foreign, domestic, and economic policy. The senior fellows of the institution are scholars with national reputations, and its publications often are used as texts in university political science and economics courses. It is particularly well known for its analyses of federal budgetary policy.

Although it is strictly nonpartisan, the Brookings Institution has a reputation as a Democratic think tank. Its staff members do have a liberal bent, and many have been called on when a Democrat enters the White House. When Jimmy Carter became president, for example, a number of Brookings scholars took prominent positions in his administration. Among them were Charles Schultze, who became chairman of the Council of Economic Advisers, and Henry Aaron, who filled a top position in the U.S. Department of Health and Human Services. Aaron was given responsibility for developing an administration initiative on welfare reform; not coincidentally, while at Brookings he had written a book on the difficulties of welfare reform.²² When the Democrats are not in power, Brookings is often referred to as the "government in exile."



A Forum at the American Enterprise Institute

Think tanks often sponsor conferences and forums on current issues and political developments. This forum at the American Enterprise Institute brought together leading political commentators and political scientists to discuss "Ronald Reagan and the American Dream."

The American Enterprise Institute

The American Enterprise Institute (AEI) was slower to develop its strong reputation. Started in 1943 and funded almost exclusively by corporate gifts, the institute tended to parrot whatever big business was saying at the time. Since then, AEI has become fiercely independent and employs top scholars in the social sciences. But AEI retains an overall conservative perspective; it is sometimes called the "Brookings of the Right."

Like Brookings, AEI is highly respected in Washington for the quality of its work. It produces and distributes nationally a steady stream of books, monographs, and conference proceedings. One particular area of research emphasis is regulatory practices. AEI economists tend to look for market solutions to policy problems; in line with the institute's conservative outlook, many AEI studies reflect a general goal of reducing government regulation. Foreign policy is another major focus, particularly of staffers who came to AEI from the Reagan administration.²³

All think tanks have a common purpose: to influence government policy by providing useful research studies. As the Heritage Foundation's Burton Pines put it, "We are one of those few public organizations . . . who believe that ideas have consequences, ideas count, and it's worth fighting the war of ideas."²⁴ Beyond that common ground, though, think tanks differ greatly in their political views and their areas of policy expertise. They are like little universities without students—places where scholars can quietly go about their business of trying to find

answers to this country's most pressing problems. The think tanks located in Washington have a special perch to sing from.

PUBLIC RELATIONS FIRMS

Washington-based **public relations firms** are hired by clients—usually corporations or trade associations—that want their interests promoted aggressively or their public image changed. These clients need help influencing the government or the public. In short, Washington's public relations firms combine lobbying with image building.

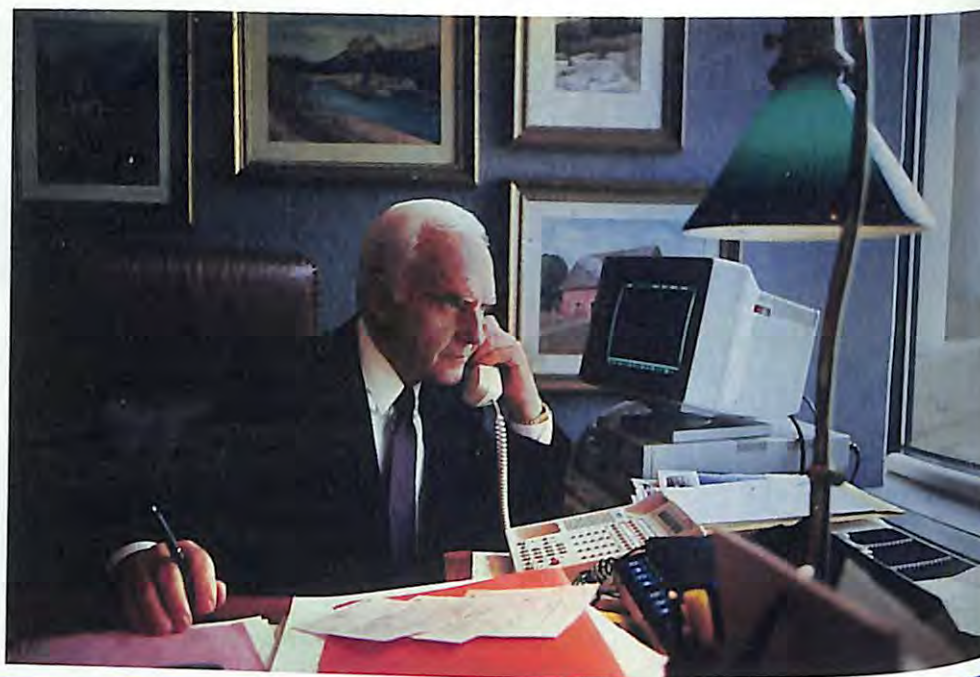
A good example of their dual function occurred when the Food and Drug Administration (FDA) banned the use of saccharin, a low-calorie artificial sweetener, after tests showed it caused cancer in rats. Companies that used saccharin in diet drinks and other diet products were faced with a serious problem. They had to fight the FDA ban and at the same time convince the public that they weren't selling bottled cancer. These manufacturers turned to a Washington public relations firm, which immediately rounded up a number of scientists who disputed the FDA's findings. An educational and promotional campaign quickly reassured the public and played a large part in eventually lifting the ban on saccharin.²⁵

Public relations firms also prepare free editorials for radio, television, and newspapers. Small-town newspapers and radio stations in particular do not have the staff to prepare enough news. They depend on the networks and wire services for most of what they broadcast or print. But independent sources also supply them with material in the form of editorials or news stories. For example, Fraser Associates prepared material on pending labor law legislation for its client, the business-backed National Action Committee on Labor Law Reform. Newspapers like the Henderson (Kentucky) *Gleaner Journal*, the Delhi (New York) *Republican-Express*, and the Mentor (Ohio) *News-Herald* all carried almost identical editorials attacking the legislation. And all were based on the material Fraser Associates sent them.²⁶

Hill and Knowlton is the largest public relations firm in Washington (and one of the largest in the country). An important trend in that firm and other large public relations firms in the capital is to offer a broad array of political services, a kind of "one-stop shopping." Many of these firms handle opinion polling, direct-mail campaigns, and political fund raising in addition to their more traditional lobbying and public relations services.²⁷ One way smaller firms compete against a giant like Hill and Knowlton is to find a particular market niche. Fenton Communications, for example, is known for its public relations work on behalf of "progressive" causes. In a typical job, Fenton arranged schedules and publicity for a group of eleven foreign notables who came to Washington to protest U.S. intervention in Central America.²⁸

Washington public relations offices tend to be heavily staffed with people who have experience working for the media or the government. Those with backgrounds in government try to use their government connections to attract and help clients. At Hill and Knowlton, employees

The Consummate Insider
Robert Gray is the capital's premier public relations specialist. He has spent a lifetime cultivating the right connections in Washington and honing his ability to build favorable impressions for his many clients. It is rumored that Gray charges the highest fees among public relations practitioners in Washington.



include Gary Hymel, a former aide to Speaker of the House Thomas P. ("Tip") O'Neill, Jr.; Daniel Murphy, a former admiral in the navy and aide to Vice President George Bush; Bruce Fein, a former counsel at the FCC; and Diana Aldridge, a former aide to Democratic Senator Edward Kennedy of Massachusetts.

The foremost public relations specialist in Washington today is Robert Gray, who became the manager of Hill and Knowlton's office there after selling it his own firm in 1986 for \$21 million. He founded Gray and Company in 1981 and built it into a firm with close to two hundred employees. Gray was a friend of Ronald Reagan and chaired his inaugural committees in 1981 and 1985. Corporate clients assume that someone who has been an intimate of a president can get a foot in the door, have phone calls returned, and exert some influence with policymakers.²⁹

Public relations firms have an image problem, however. Many people react negatively to the idea that their minds can be changed by some type of promotion or advertising. So corporate clients are looking for something more than slick advertising campaigns. Public relations firms in Washington have responded by becoming increasingly sophisticated in their operations. They offer diversified services aimed at helping clients influence issues as they develop. They know that advertising and publicity must be complemented by long-term lobbying efforts to achieve their clients' goals.

TRADE ASSOCIATIONS

As defined in Chapter 9, a *trade association* is an organization that represents companies within an industry. For example, the Grocery Manufacturers of America is a trade association that, not surprisingly, rep-

resents firms in the grocery business. Many of the activities trade associations carry out have little to do with politics. They keep members abreast of marketing and manufacturing developments in their industries, public association newsletters and magazines, and sponsor conventions and gatherings where members can meet and do business together.

But trade associations also play a political role: They represent their members' interests before government, they are the lobbying arms of individual industries. And their political role is becoming increasingly important. As we discussed in Chapter 9, the number of trade associations with headquarters in Washington increased significantly in response to the growth of regulatory agencies and federal regulations in the 1960s and 1970s. Between 1971 and 1986, the proportion of all trade associations with headquarters in Washington grew from 19 percent to 31 percent.³⁰ The more than three thousand trade groups located in Washington are a principal source of jobs in the city's private sector, now employing around eighty thousand people.³¹

Trade associations do much more than lobby Congress when an occasional vote comes up. Day in, day out, they monitor the congressional committees and administrative agencies that oversee the programs or industries with which they are concerned. Experienced trade association representatives maintain regular contact with policymakers, supplying them with relevant information and finding out about proposed legislation or possible changes in regulations that could affect their members. As one association head noted, "Every time HUD [the Department of Housing and Urban Development] hiccups, 20 construction industry associations hold a meeting."³²

ISSUE NETWORKS

All of the private-sector organizations and individuals we've been talking about are working to influence government and the policymaking process. To best serve their own and their clients' interests, they must develop reputations for excellence in intensely competitive fields. In Washington, *excellence* means, more than anything else, technical mastery of a policy area. Members of the community have to know their narrow specialties better than anyone else. But they also have to develop political relationships that will let them put their knowledge to work.

Government by Policy Area

It is easy to examine politics and policymaking in Washington by looking at the institutions of American government—Congress, the White House, the bureaucracy, the courts—as separate self-contained political bodies. Each is characterized by its own set of policymaking procedures, different patterns of personnel recruitment, and particular responsibilities that have been assigned by the Constitution or have evolved over the years. But policymaking is actually a dynamic process in which all of these institutions interact with one another and the private sector.

To understand how the process works, let's suppose that Congress is considering amendments to the Clean Air Act. Congress does not function in a vacuum. The other parts of government that will be affected by the legislation take part in the process, too. The Environmental Protection Agency (EPA) has an interest in the outcome because it will have to administer the law. The White House is concerned about any legislation that affects such vital sectors of the economy as the steel and coal industries. As a result, officials from both the EPA and the White House work with members of Congress and the appropriate committee staffs to try to make sure that their interests are protected. At the same time, lobbyists representing corporations, trade associations, and environmental groups are doing their best to influence Congress, agency officials, and White House aides. Trade associations might hire public relations firms to sway public opinion toward industry's point of view. And outside experts from think tanks and universities might be asked to testify at hearings or to serve in an informal advisory capacity concerning the technical, economic, and social impact of the proposed amendment.

The policymaking process does not end when Congress enacts the new amendments; it enters a new phase. First, administrative regulations need to be drawn up. This is the function of the bureaucracy—that is, of the EPA—but key congressional committee members and officials from the Office of Management and Budget, acting on behalf of the White House, monitor the process closely. Interest group lawyers also work to influence the regulations' content. Once the new law and its regulations are put into effect, the EPA might hire consultants to assess their impact. If an interest group's lawyers feel that the regulations harm its members and have not been drawn up to follow Congress's original intent, they might take the agency to court. And if Congress and agency officials become aware of emerging problems, then new amendments will be proposed, and the process will begin again.

Policymaking then, neither begins nor ends within a single institution. It is an ongoing process that involves many different participants, all of whom have an interest in the policy. What these participants have in common is membership in an issue network. An **issue network** is "a shared-knowledge group having to do with some aspect . . . of public policy."³³ The boundaries of an issue network are fuzzy, but in general terms they are made up of members of Congress, committee staffers, agency officials, lawyers, lobbyists, consultants, scholars, and public relations specialists who interact on an ongoing basis as they work to influence policies in a particular issue area. This makes for a large number of participants—the number of interest group organizations alone in a broad policy area is usually in the dozens.³⁴

Not all participants in an issue network have a working relationship with all others. Indeed, some may be chronic antagonists. Others tend to be allies. Environmental groups, for example, will coalesce in trying to influence the Clean Air Act and will likely be in opposition to business groups. As we discuss in more detail below, the common denominator that ties friends and foes together in an issue network is technical mastery of a particular policy area.

Iron Triangles

The idea of examining politics in Washington by looking at policy areas rather than at individual institutions is not new. Research by an earlier generation of political scientists and journalists described a system of *subgovernments*, tightly knit groups that dominated policymaking in an issue area. For example, journalist Douglass Cater wrote about the sugar subgovernment of the late 1950s:

Political power within the sugar subgovernment is largely vested in the Chairman of the House Agricultural Committee who works out the schedule of quotas. It is shared by a veteran civil servant, the director of the Sugar Division of the U.S. Department of Agriculture, who provides the necessary "expert" advice for such a complex marketing arrangement. Further advice is provided by Washington representatives of the domestic beet and cane sugar growers, the sugar refineries, and the foreign producers.³⁵

Cater's subgovernment had three components:

- Key members of the congressional committees and subcommittees responsible for the policy area (in this case, the chairman of the House Agriculture Committee)
- Officials from the agency or bureau that administers the policy (the director of a division of the U.S. Department of Agriculture)
- Lobbyists who represent the agency's clients (growers, refineries, and foreign producers)

These policymaking communities were called **iron triangles**. The term *iron* referred to a very important property of these subgovernments: They were largely autonomous and closed; outsiders had a great deal of difficulty penetrating them. Even presidents had difficulty influencing iron triangles, which endured over time and changed little when new administrations came into power. And job changes did not usually affect them. An individual who left one component of the triangle often would move to another. Iron triangles worked because participants shared similar policy views and tried to reach a consensus that would benefit all of them.³⁶

The iron triangle model was very popular with political scientists. Although some used different terms (*subgovernments*, *cozy little triangles*) and some developed more sophisticated frameworks than the simplified version we've offered here, the basic ideas were the same: Typically, a small group of individuals dominated policymaking in their issue area, these policy communities were largely autonomous, and they favored those who were well organized.³⁷ The model was used, not only to explain how American politics operated, but also to show what was wrong with our policymaking system.

The Case of Telecommunications

The telecommunications industry gives us a useful illustration of the changing nature of politics in Washington. Once an iron triangle, telecommunications today is a large issue network filled with conflict.

Until fairly recently, the telecommunications industry was dominated by AT&T. AT&T and its affiliated Bell System phone companies around the country constituted a monopoly: A customer generally had no choice but to use the phone lines and phone equipment of Ma Bell. It was easy for AT&T executives to defend their company's control of the industry. The United States had an impressive system with low-cost, reliable service to residential customers. Moreover, the AT&T network was a mainstay of our defense communications system. Within the iron triangle—a policymaking community made up of some key members of Congress, the Federal Communications Commission, and AT&T—policymaking was usually consensual and uncontroversial.

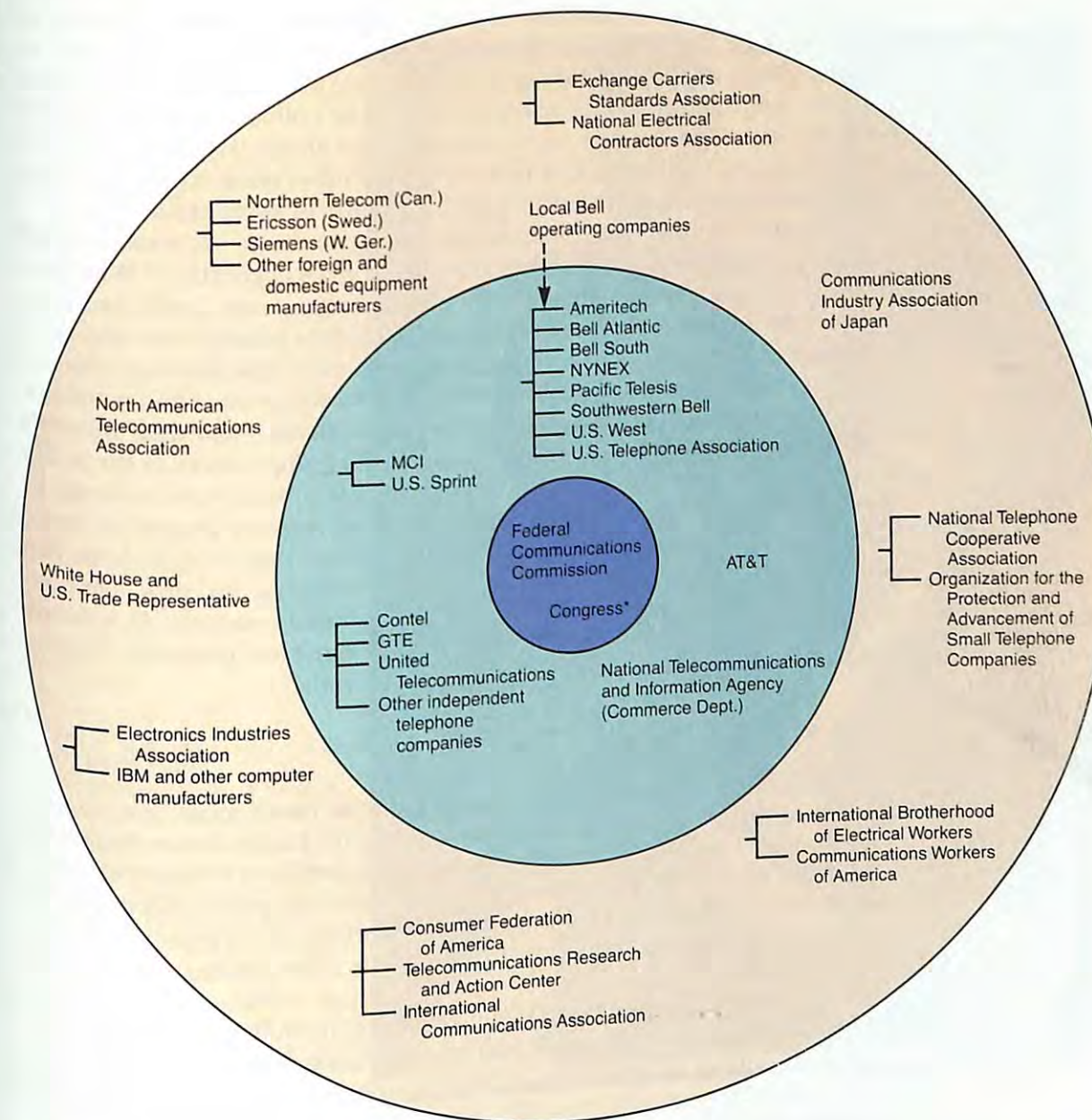
At one time, AT&T was the world's largest corporation, and it seemed invulnerable. But in 1968, the FCC ruled that other companies could compete against AT&T in the "terminal" equipment market. This meant that a customer could buy a telephone (or more complex telephone equipment) from a company other than AT&T and attach it to AT&T phone lines. This jolt of competition was followed a year later with a second blow to AT&T, when the FCC ruled that MCI, a small start-up company marketing microwave technology, could sell a limited form of long-distance service to business clients.

As significant as these changes were, the greatest challenge to AT&T lay ahead. In 1974, the U.S. Department of Justice brought a lawsuit against the corporation charging it with illegal monopolistic behavior in the telecommunications industry. The eventual outcome of the suit was an out-of-court settlement that stipulated that AT&T must divest itself of control over local operating service. The Bell System was broken up into seven regional phone companies, each independent of AT&T. AT&T was allowed to retain its long-distance service, but it would have to compete against other long-distance carriers. (AT&T did win the right to enter the computer industry, which was one of its major goals.) All in all, AT&T lost three-quarters of its assets.³⁸

Today, policymaking in telecommunications bears no resemblance to an iron triangle.³⁹ As Figure 14.2 shows, there is a large varied group of participants in this issue network. Although there is no one way to draw an issue network, here the most important policymaking bodies are within the inner ring. In the middle ring are the most frequent interest group participants and a secondary policymaking body in the U.S. Department of Commerce. Organizations that have a more limited focus on the telecommunications issues they work on are in the outer ring.

Conflict within the network is chronic. Alliances change rapidly as coalition partners on one issue become opponents on the next. The different lobbying organizations fight to protect their market share while trying to encroach on that of others. No one controls telecommunications policymaking, but a large array of organizations and individuals have a say in it.

Not all policymaking communities in Washington have evolved into issue networks. Some are still better described as iron triangles or subgovernments. For example, the Sea Grant Program, which offers grants to



Indicates primary interest group alliance.

*Primary congressional actors are the House Committee on Energy and Commerce, Subcommittee on Telecommunications and Finance, and the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications.

The Telecommunications Issue Network
Policymaking in telecommunications is characterized by a multitude of actors and a great deal of conflict. Among the interest group participants are AT&T, the regional phone companies, long distance carriers, equipment manufacturers, labor unions, consumer groups, and foreign corporations and trade associations. (Source: Jeffrey M. Berry, *The Interest Group Society*, 2d ed. [Glenview, Ill.: Scott, Foresman/Little, Brown, in press]. Copyright © 1989 Scott Foresman and Company.)

Figure 14.2

colleges to promote the study of marine resources, is closer to being an iron triangle than an issue network. There are just a small number of participants and policymaking is consensual. The only ones interested in the program outside of government are the colleges, and they are all on the same side of the issue—there are no groups trying to stop the program. It is likely that this is true of many other small uncontroversial programs that just distribute grants or benefits of some type.⁴⁰

Broader policy areas, like health and agriculture, are characterized by large numbers of participants and high degrees of conflict.⁴¹ Why have so many iron triangles rusted through and larger, more conflicted issue networks evolved? A primary force behind this change was the rapid growth in the number of interest groups. As more and more new groups set up shop in Washington, they demanded the attention of policymakers. These new groups brought with them new concerns, and their interests were usually at odds with at least some of the groups active in the policy area. (In the case of telecommunications, this process was hastened by technological change.) Part of the growth of interest groups stemmed from the public interest movement. The groups that evolved from that movement were natural adversaries of business, so new conflicts emerged in many issue areas. Change also came to Congress. As subcommittees proliferated and committee chairs became less powerful, congressional jurisdiction over programs began to overlap.

POLICY EXPERTISE

Although contemporary issue networks may be much more open to new participants than iron triangles, there is still a significant barrier to admission. One must have the necessary expertise to enter the community of activists and politicians who influence policymaking in an issue area. Expertise has always been important, but "more than ever, policy-making is becoming an intramural activity among expert issue watchers."⁴²

Oil companies are crucial to our economy, and lobbyists for the major firms have always had easy access to policymakers in government. Yet, there are lots of oil lobbyists in Washington and not all have the same influence. They compete for the attention and respect of those in government by offering solutions to problems that are technically feasible as well as politically palatable. Consider the issues addressed during a period of expanding regulation of the domestic oil industry. There was no end to seemingly obscure and complicated policy questions. How were "original costs" to be distinguished from "reproduction costs"? Was it fair for "secondary and tertiary production" to be exempted from "base-period volumes"? Did drilling that yielded "new pays" or "extensions" qualify as "new" oil or "old" oil for pricing purposes?⁴³

Those in an issue network speak the same language. They can participate in the negotiation and compromise of policymaking because they can offer concrete, detailed solutions to the problems at hand. They understand the substance of policy, the way Washington works, and one another's viewpoints.



Bipartisan Clout

Anne Wexler (left), a well-known Democrat, and Nancy Reynolds, a Republican, are two of the principals in a lobbying firm. The bipartisan nature of their firm is not unusual—public relations and lobbying firms want clients to believe they have access to important policymakers in both parties.

One reason participants in an issue network have such a good understanding of the needs and problems of others in the network is that job switches within policy communities continue to be common. When someone wants to leave his or her current position but remain in Washington, the most obvious place to look for a new job is in the same policy field. For these **in-and-outers**, knowledge and experience remain relevant to a particular issue network, no matter which side of the fence they're on.

A common pattern of job switching—one that is the focus of much criticism—is to work in government for a number of years, build up knowledge of a policy area, then take a lobbying job. Law firms, consulting firms, public relations firms, and trade associations generally pay much higher salaries than the government. And they pay, not just for

experience and know-how, but for connections with government. When the Washington lobbying firm of Black, Manafort, Stone & Kelly hired James C. Healy, a former aide to the Democratic chairman of the House Ways and Means Committee, it knew that this in-and-outer would give them better access to that critical tax-writing unit. Corporations that want to influence the committee can choose among many Washington firms. Black, Manafort, Stone & Kelly can make a convincing case to prospective clients that Healy's phone calls to the House Democratic leadership are returned.⁴⁴

Some congressional staffers and high-ranking executive branch officials, like Mike Deaver, "cash in their chips" by starting their own firms rather than going to work for an existing firm. Despite the competition, those with valuable government experience and their peers' respect can quickly establish themselves as the people with the right expertise and the right contacts in a *particular* policy field. This was certainly the case with Susan J. Williams and Terrence L. Bracy. Both served as assistant secretaries of transportation in the Carter administration. When they started Bracy Williams & Company in 1981, they had little trouble attracting clients in the transportation field, among them, the Air Line Pilots Association, the CSX railroad company, and the Quixote Corporation, which manufactures highway crash barriers.⁴⁵

One constraint on in-and-outers is the Ethics in Government Act of 1978, which specifies that senior executive branch officials cannot lobby their former agency for a year after leaving the government, and they must wait two years to lobby any agency on an issue on which they were personally and substantially involved. In 1988, former White House aide Lyn Nofziger became the first person ever convicted under the lobbying restrictions of the act. Nofziger left the Reagan White House in 1982, but within less than a year he was lobbying the White House on behalf of the Wedtech Corporation, a New York defense contractor.⁴⁶ He was convicted of violating the law on behalf of two other clients as well. (Nofziger is appealing the decision.)

Movement within a policy community also flows the other way: Individuals from the private sector are often tapped for government positions within the same issue network.⁴⁷ After President Reagan took office, he chose William Sullivan, Jr., as an associate administrator of the Environmental Protection Agency. Previously, Sullivan had headed the Steel Communities Coalition, an industry group that was fighting to have pollution control standards relaxed because they were having an adverse impact on financially ailing steel companies. At the EPA, Sullivan's job included enforcing air pollution standards.⁴⁸

ISSUE NETWORKS AND DEMOCRACY

The role of issue networks in policymaking gives rise to a set of interrelated questions. Are issue networks making the government too fragmented? Are some issue networks beyond popular control? Has the increasing complexity of public policy given technical experts too much policymaking authority?

These questions relate to the broad issues raised in Chapter 2. For many years, political scientists have described American democracy as a system in which different constituencies work energetically to influence policies that are of concern to them. Here, policymaking is seen as a response to these groups rather than to majority will. This is a considerably different conception of democracy than the more traditional view, that policies reflect what most of the people want. It is a pluralist, not a majoritarian, view of American government.

When iron triangles were considered typical of the policymaking process, they were the target of much criticism. Some argued that the type of pluralism that they represented did not promote democracy through group politics, but engendered closed systems that favored the status quo. The groups that were part of the iron triangles found government highly responsive. But these groups did not represent all the interests that should have been at the bargaining table. Consumer groups and environmental groups were not there to protect the public interest. Business groups that dominated the iron triangles used their position to try to stifle new competition through regulatory restrictions, as was the case with AT&T in the telecommunications field.

In a number of ways, issue networks are an improvement over iron triangles as a model of pluralist democracy. They are open systems, populated by a much wider range of interest groups. Decision making is not centralized in the hands of a few key players; policies are formulated in a much more participatory fashion. But there is still no guarantee that all relevant interests are represented, and those with greater financial resources have an advantage. Yet, issue networks come much closer to meeting the objectives of pluralist democracy than do iron triangles.⁴⁹

For those who prefer majoritarian democracy, though, issue networks are an obstacle to the achievement of their vision of how government should operate. Although issue networks are not autonomous and the policies they formulate can be swayed by election outcomes and the broad contours of public opinion, the technical complexity of contemporary issues makes it especially difficult for the public at large to exert control over policy outcomes. When we think of the complexity of nuclear power, toxic wastes, and air pollution, it is easy to understand why majoritarian democracy is so difficult to achieve. The more complex the issue, the more elected officials must depend on a technocratic elite for policy guidance. And technical expertise, of course, is a chief characteristic of participants in issue networks.

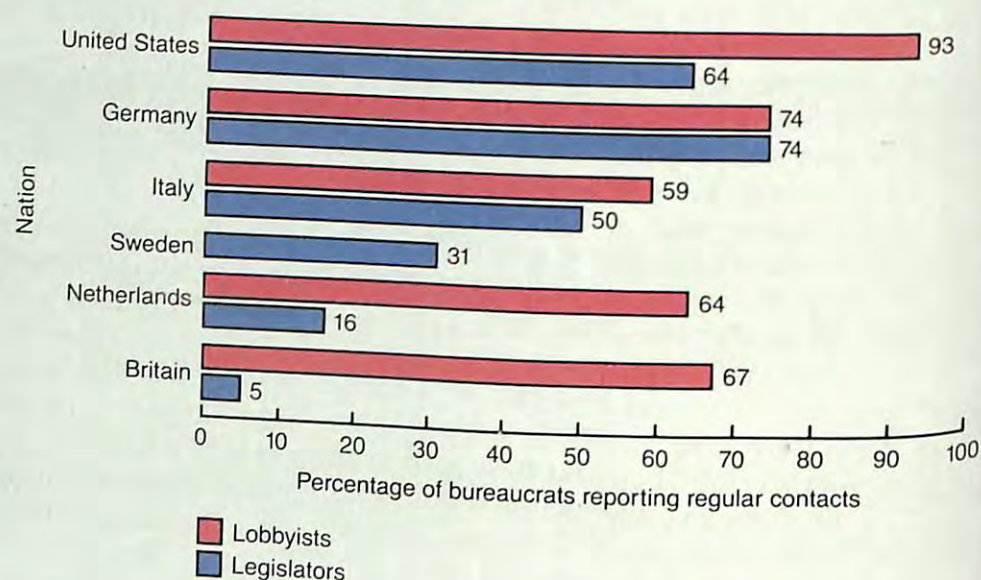
At first glance, it may seem very desirable to have policymaking highly influenced by technical experts. After all, who else but the experts should be making decisions about toxic wastes? But a dependence on technocrats works to the advantage of interest groups, who use policy experts to maximize their influence with government. Seen in this light, issue networks become less appealing. Interest groups—at least those with which we do not personally identify—are seen as selfish. They pursue policies that favor their constituents rather than the national interest.

Although expertise is an important factor in bringing interest groups and other members of the Washington community into the decision-

COMPARED WITH WHAT? 14.1

Bureaucrats, Legislators, and Lobbyists

The patterns of interaction among bureaucrats, legislators, and lobbyists differ considerably among Western democracies. The figure shows the percentage of bureaucrats in each country reporting that they have "regular" contact with legislators and representatives of client groups. Issue network politics contributes to the high level of interaction among U.S. bureaucrats, legislators, and interest group representatives.



* Because Swedish respondents were asked about five specific interest groups, those data were excluded from the figure.

Source: Adapted from Joel D. Aberbach, Robert D. Putnam, and Bert A. Rockman, *Bureaucrats and Politicians in Western Democracies* (Cambridge, Mass.: Harvard University Press, 1981), p. 230. Reprinted by permission.

making process, it is not the only one. Americans have a fundamental belief that government should be open and accessible to the people (see Compared With What? 14.1). If some constituency has a problem, they reason, government ought to listen to it. The practical consequence of this view is a government that is open to interest groups and those they hire from the Washington community.

SUMMARY

The policymaking process in Washington involves many people outside of the legislative, executive, and judicial branches of government. Washington's private sector—its law firms, consulting firms, think tanks, public relations firms, and trade associations—

is an integral part of the political system. The growth of government service industries reflects the changing nature of politics in Washington. Government expanded greatly during the 1960s and 1970s, when new regulatory agencies were created to deal with a widening variety of business and social concerns. One by-product of this growth was a surge in the number

of interest groups that established offices in Washington. And as lobbies expanded, they drew on increasing numbers of lawyers, consultants, public relations firms, and other experts to influence government policy.

Policymaking can be viewed as an ongoing process of interaction between those in government and those outside it, through issue networks. Each network is a means of communication through which information and ideas about a particular policy area are exchanged. Consultants and scholars from think tanks join experts working on behalf of interest groups, agency officials, and members of Congress in various issue networks. Generally, these contemporary policy communities are more open to new participants than were the old iron triangles.

The ever-increasing complexity of public policy issues also puts a premium on expertise. Those with expertise in a given area are in the best position to influence policy in that area.

Political scientists view issue networks with some concern. There is no question that these networks facilitate the representation of many interests in the policymaking process, but they do so at a price. They allow well-organized aggressive constituencies to prevail over the broader interests of the nation. Once again, the majoritarian and pluralist models of democracy come into conflict. It is easy to say that the majority should rule. But in the real world, the majority tends to be far less interested in issues than are the constituencies most directly affected by them. It is also easy to say that those most affected by issues should have the most influence. But experience teaches us that this kind of influence leads to policies that favor the well represented, at the expense of those who should be at the bargaining table but are not.

Key Terms

Washington community	public relations firm
lawyer-lobbyist	issue network
consultant	iron triangle
think tank	in-and-outer

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Essay D

The Transformation of Public Policy

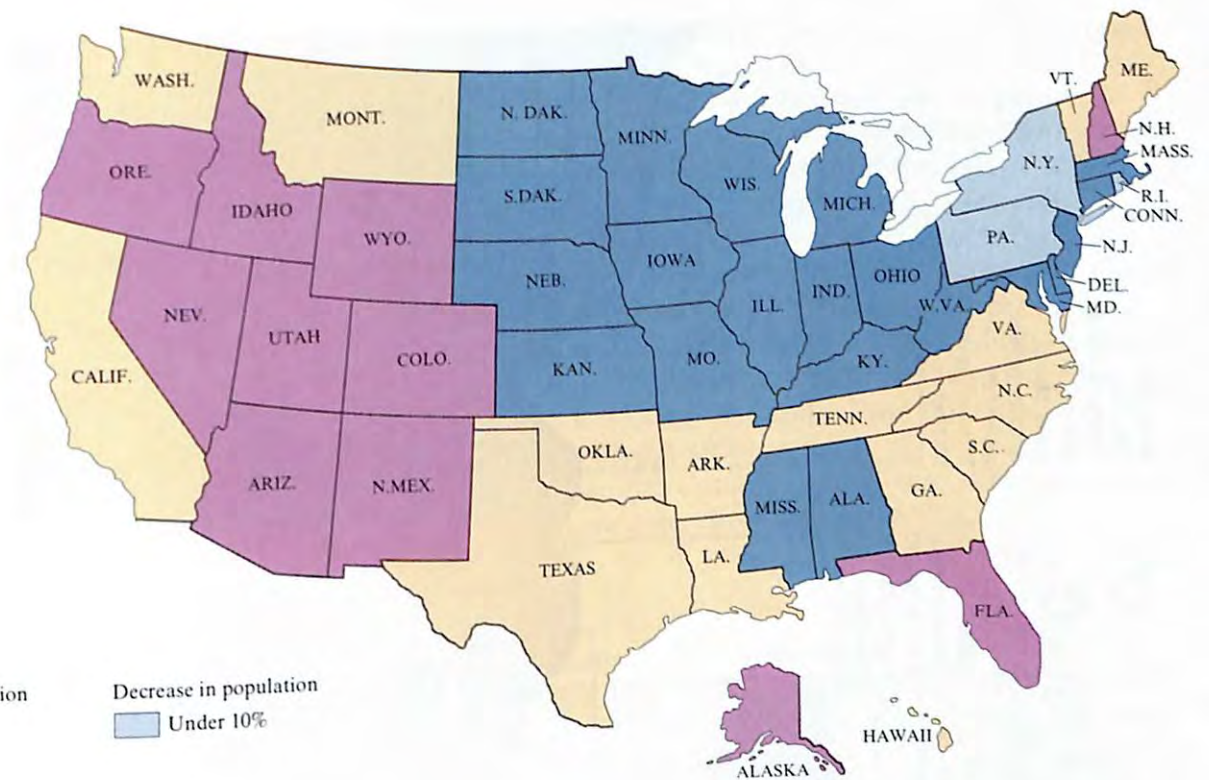
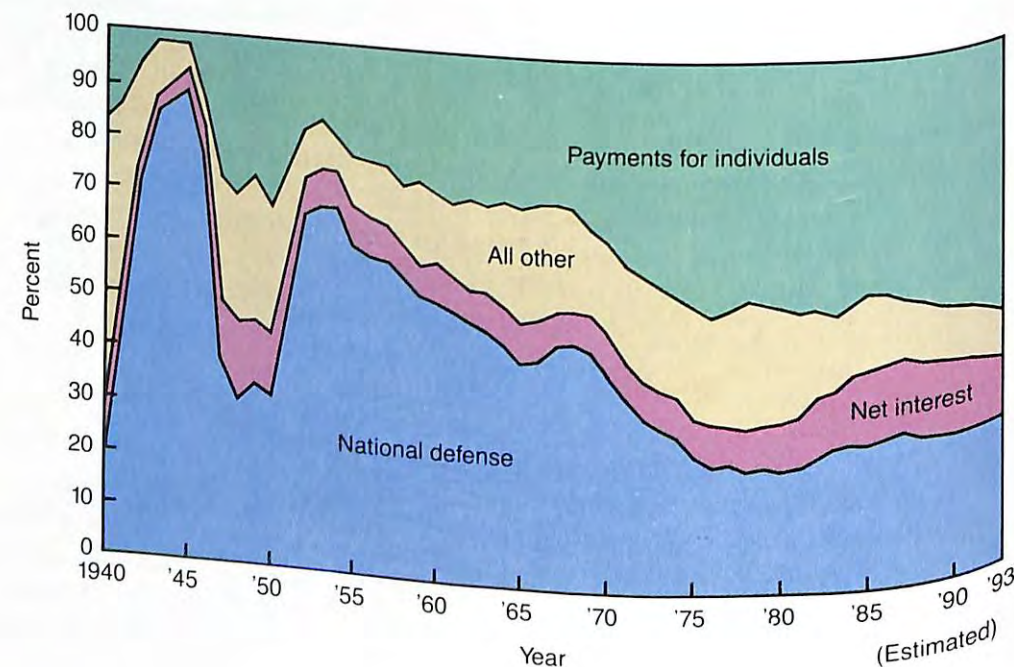
Although the U.S. government continues to fulfill the traditional functions of maintaining order and providing public goods, it has undertaken new roles as well. For example, the government now promotes equality by providing for social welfare, and it more actively protects citizens from hazards like environmental waste (promoting order by protecting safety). The following graphs and maps illustrate facets of the government's changing role as well as some of the factors that have produced these changes.

"National Government Outlays" shows the major changes that have occurred in national spending since 1940 by plotting the percentages of the annual budget devoted to four major expense categories. In the 1940s, spending for World War II consumed more than 80 percent of the national budget. Defense again accounted for most national expenditures during the Cold War in the 1950s. Since then, the military's share of expenditures has declined

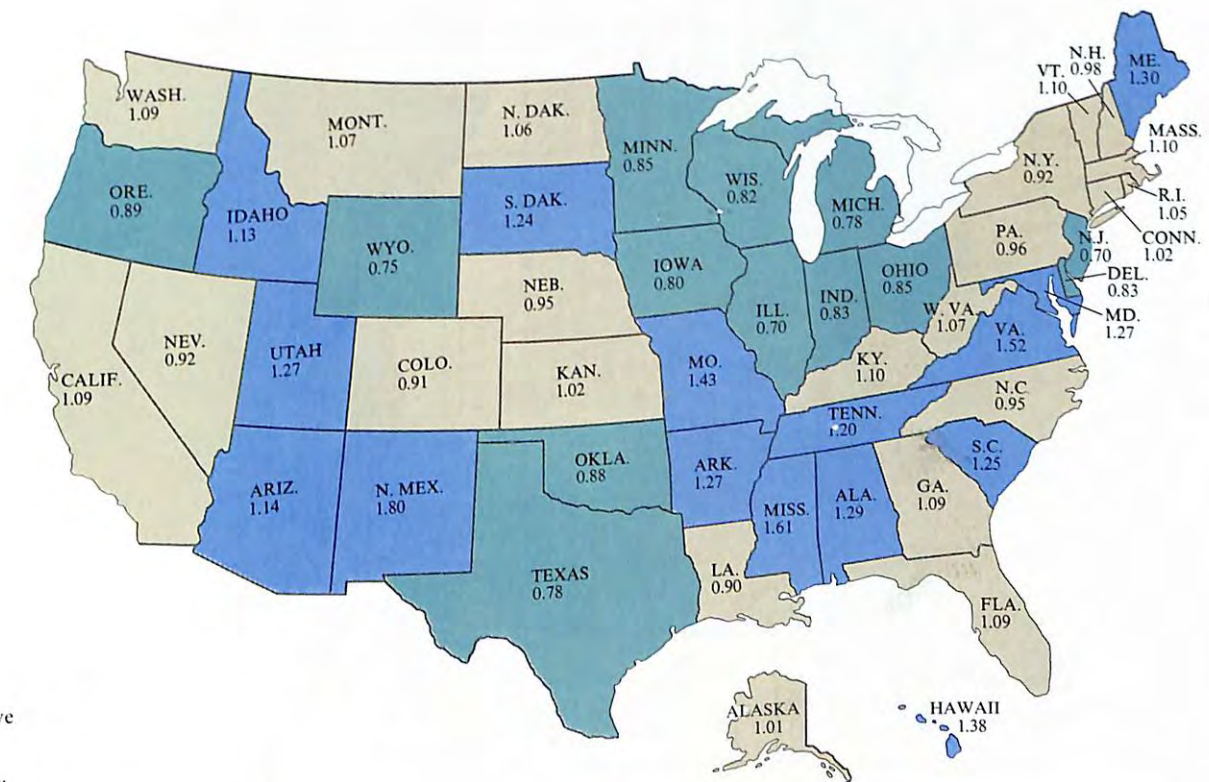
while payments to individuals (mostly in the form of social security benefits) have increased dramatically. Also, as the graph shows, the proportion of the budget paid in interest on the national debt has increased substantially since the 1970s.

The southwest experienced dramatic population growth from 1970 to 1980 as the prospect for jobs led many people away from the "rust-belt" (or "frostbelt") of the northeast and midwest toward states in the "sunbelt" (see "The Shift to the Sunbelt"). The pattern of federal funding has done little to stop this migration. "The Flow of Federal Funds" shows the relationship between the amount of taxes paid to Washington by citizens in each state and the money returned to the states through federal spending. Citizens in states with ratios below 1.00 paid more in taxes than their states received back in spending. Citizens in states with ratios over 1.00 paid less than their states received.

National Government Outlays

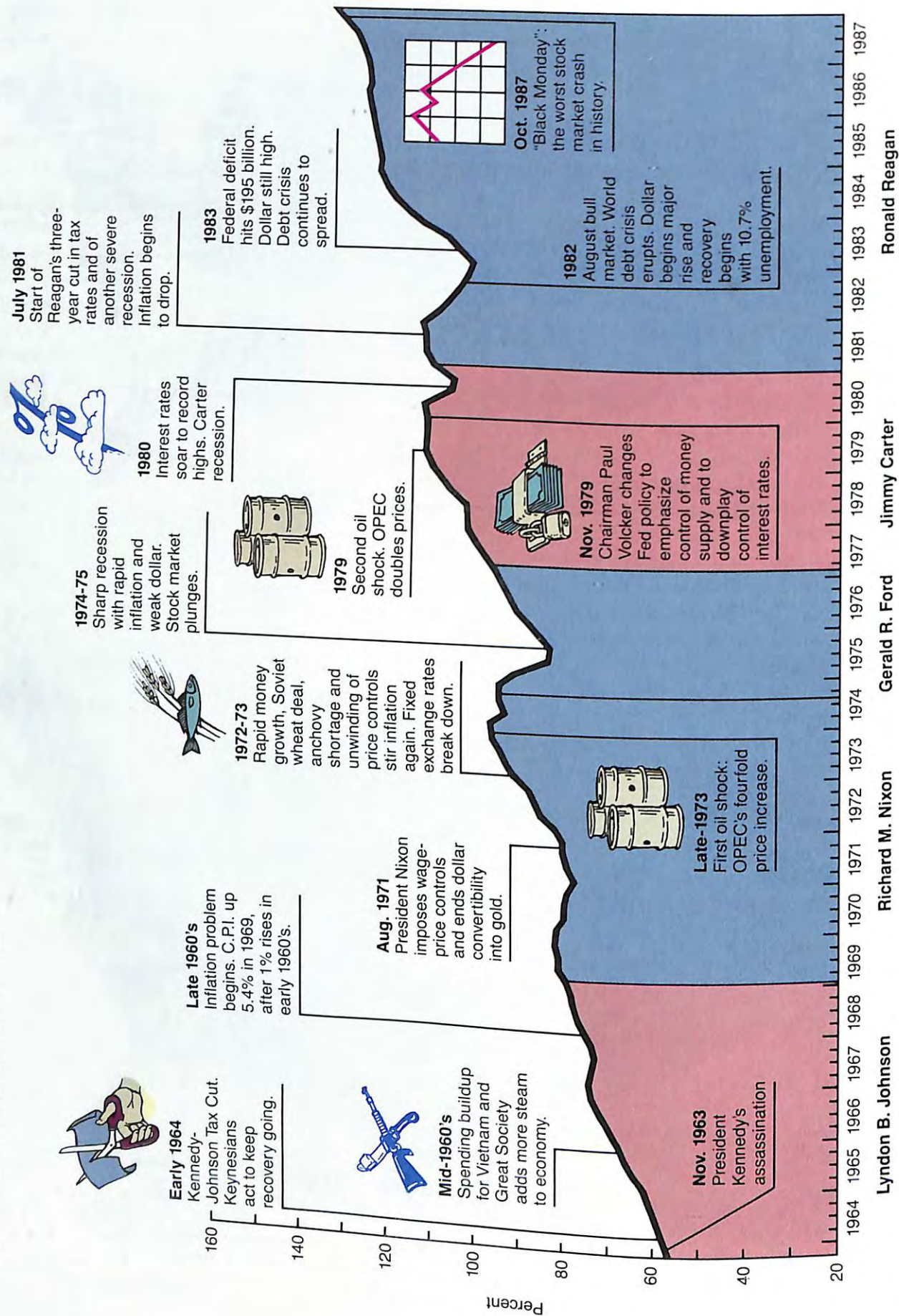


The Shift to the Sunbelt



(The estimated amount of federal expenditure in each state for each \$1.00 of federal taxes paid by residents of each state)

The Flow of Federal Funds



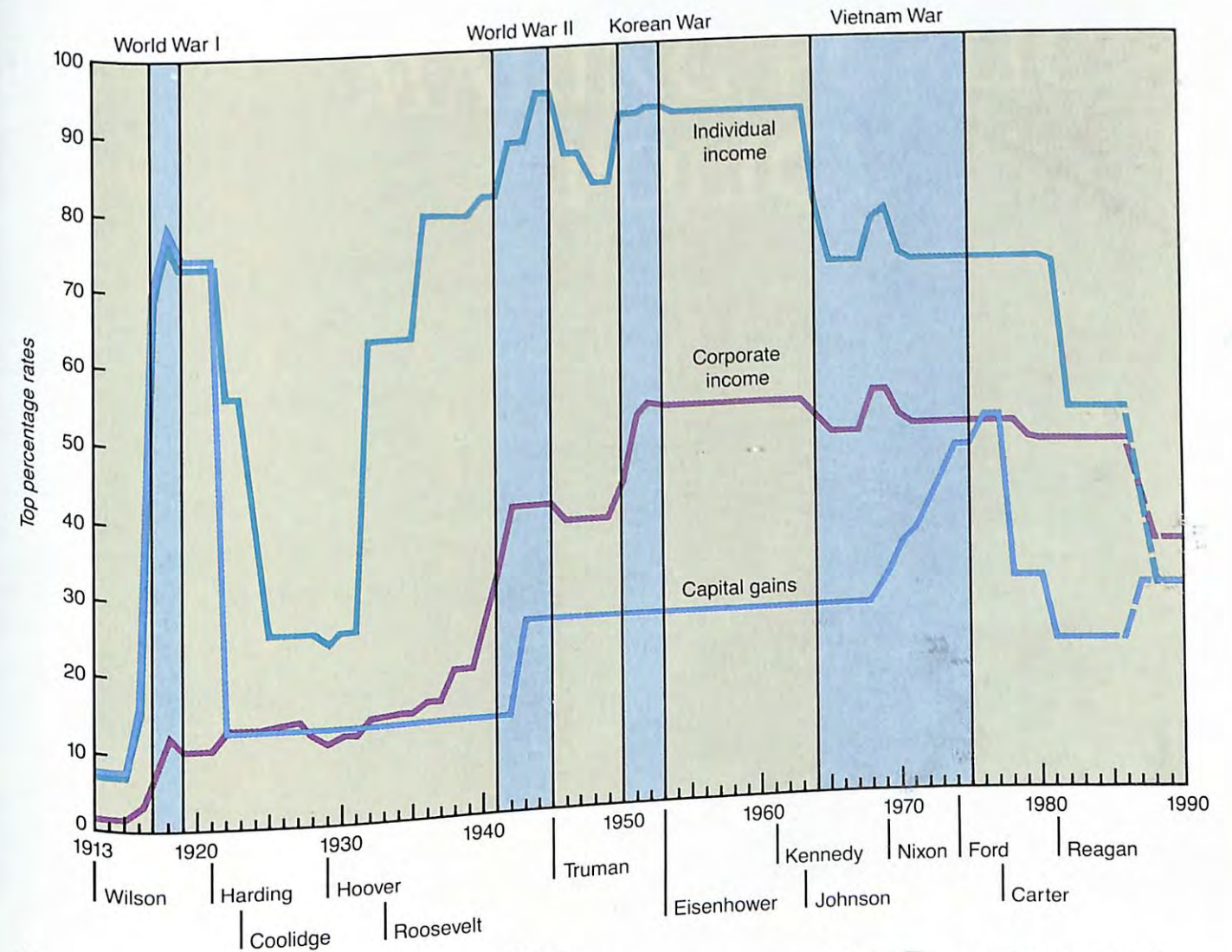
The American Economic Experience, 1964-1987

Source: Copyright © 1984 by the New York Times Company. Reprinted by permission. New data from Federal Reserve Bank statistical releases.

Keynesian economic theory was designed to control the occurrence of *business cycles*—rhythmic expansion and contraction of business activity accompanied by inflation and unemployment—through government use of fiscal and monetary economic policies. Although the national government regularly uses such policies to control the economy, the government has not eliminated business cycles, as shown by the wavy graph in "The American Economic Experience, 1964-1987." Nevertheless, no one can say how wildly the cycles might have fluctuated without government intervention in the economy.

In 1913, the Sixteenth Amendment empow-

ered the national government to collect taxes on income. Since then, the government has levied taxes on individual and corporate income and on capital gains realized by individuals and corporations from the sale of assets, such as stocks or real estate. As shown in "The Ups and Downs of Federal Income Tax Rates," these rates have fluctuated wildly over time, from under 10 percent to over 90 percent—tending to be the highest during periods of war. President Ronald Reagan pledged to lower taxes, and indeed the tax rates during his administration fell to their lowest levels since the Coolidge and Hoover administrations in the late 1920s and early 1930s.

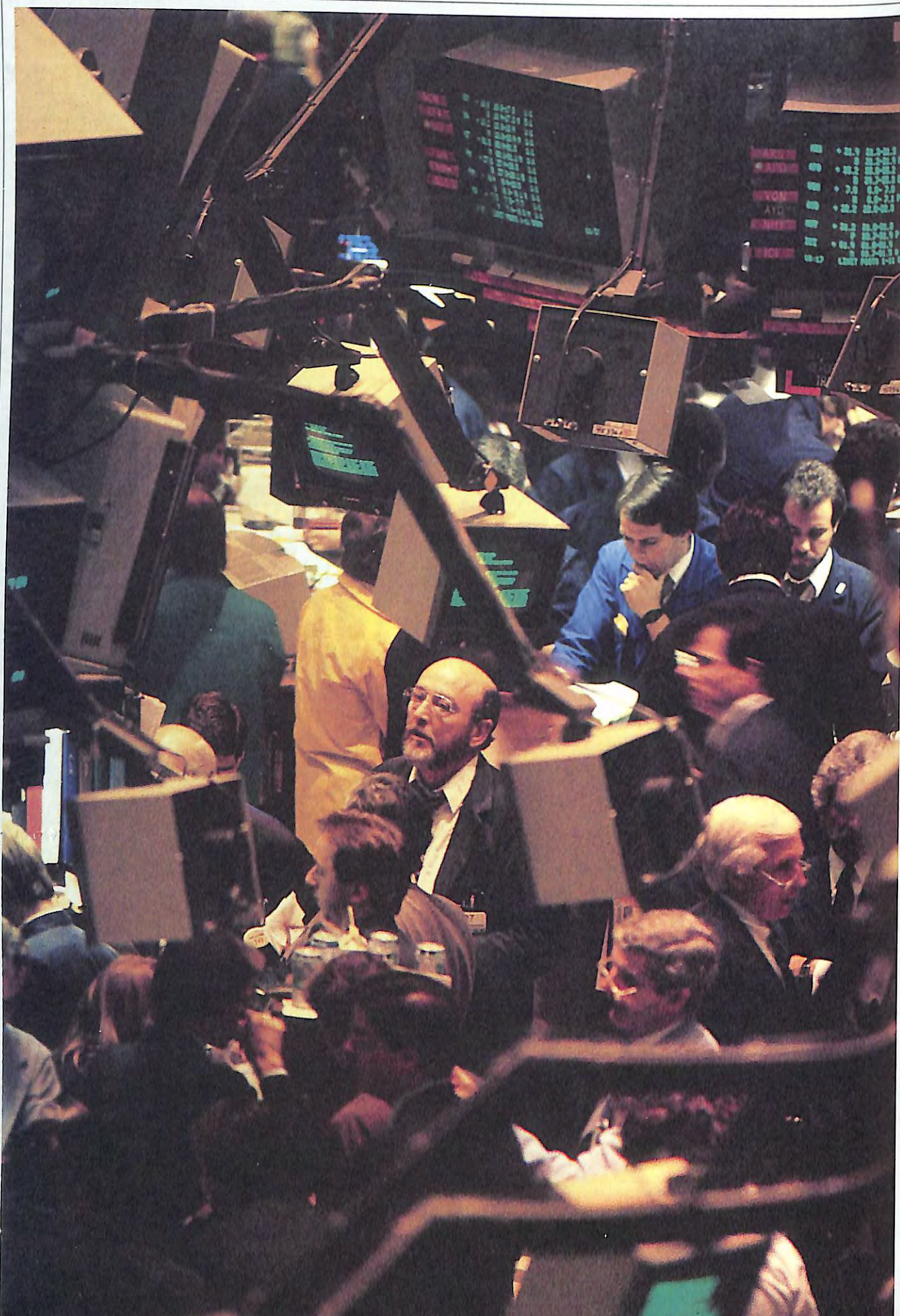


The Ups and Downs of Federal Income Tax Rates

Source: Wall Street Journal, 18 August 1986, p. 10. Reprinted by permission of the Wall Street Journal, © Dow Jones & Company, Inc. 1986. All Rights Reserved.

PART V

MAKING PUBLIC
POLICY



15

The Economics of Public Policy

Government Purposes and Public Policies

Theories of Economic Policy

Laissez-Faire Economics • Keynesian Theory • Monetary Policy • Supply-Side Economics

Public Policy and the Budget

The Nature of the Budget • Preparing the President's Budget • Passing the Congressional Budget

Tax Policies

Tax Reform • Public Opinion on Federal Taxes • Comparing Tax Burdens

Spending Policies

Incremental Budgeting And Uncontrollable Spending

Taxing, Spending, and Economic Equality

Government Effects on Economic Equality • Effects of Taxing and Spending Policies over Time • Democracy and Equality

Stockbrokers spent a restless weekend in mid-October 1987, worried about Monday's opening of the New York Stock Exchange. For most of the year, sales had boomed on the stock market. The best-known market index—the Dow Jones average of thirty industrial stocks—soared from 1,900 points in January to almost 2,750 points in August. Since then, it had dropped substantially. And the previous Friday, it showed a record loss of 108 points, closing at 2,247. When the brokers got to work on Monday, the news was bad. Markets in Melbourne, Tokyo, Hong Kong, and London were all down sharply.

On October 19, 1987, the New York Stock Exchange suffered its worst crash in history. The index plunged 508 points—closing at 1,739—as panicky investors and electronic computers combined in massive selling. In a single day—Black Monday—the Dow Jones index lost 22.6 percent of its value, almost double the loss on Black Tuesday in 1929, which signaled the Great Depression of the 1930s. In contemporary terms, the book value of the loss amounted to \$500 billion, equal to the entire gross national product of France.¹

Bad as the crash was on Monday, the market came close to a complete collapse on Tuesday. Around midday, an eerie hush settled over the stock exchange floor, stilling the frenzied activities of the specialists. Specialists trade in specific stocks (say, IBM or General Motors) and are responsible for maintaining a “fair and orderly market” in their stocks. If more investors are selling than buying a given stock, the specialist must step in to buy it. On Monday, many specialists had depleted their own resources and borrowed heavily to buy falling stocks. On Tuesday, banks were unwilling to extend them short-term loans to purchase more stock.² Without funds to buy stocks that investors wanted to sell, the specialists could not maintain a market in their stocks. As more banks refused credit, more specialists became helpless, and thought was given to closing the stock exchange itself. A presidential panel later concluded, “The financial system came close to gridlock.”³

On Tuesday afternoon, the Federal Reserve System (the national government's central banking institution) worked behind the scenes to avoid a shutdown. The Federal Reserve made more money available to the banking system, and the Federal Reserve Bank of New York contacted major banks, urging them to lend more funds to securities firms and stockbrokers. These actions helped reverse the decline, and by the market's close on Friday, the Dow Jones index had regained more than 200 of the points lost on Monday. Through the rest of the year, the market slowly recovered. At the start of 1988, the Dow Jones average was just about where it had opened the previous year. However, the volume of shares traded was down substantially; investors' confidence in the market had been thoroughly shaken.

What caused the crash? The experts could not agree on an answer. Five official investigations into the market collapse cited a variety of factors, including new computer-based trading techniques, complex trades involving current stock purchases and options to buy future stocks, and worries about the budget deficit.⁴ The experts also could not agree on the significance of the crash.⁵ The short-term impact was clear: Many investors lost a great deal of money. This hurt not only wealthy

Wall Street—the Reality, Not the Movie

The stock market crash of October 19, 1987, made headlines around the world. In Tokyo, where the market plunge on Monday helped set off the crash on Wall Street, the news from America sparked the worst stock market fall in Japanese history on October 20. The reaction was similar in most other nations. Stocks fell nearly everywhere, if trading was allowed at all.



investors but also workers nearing retirement who may not even have realized that their pension funds were based mainly on stock holdings.

Judging by the 1929 experience, the long-term effects of the crash remain to be seen. At that time, the market also recovered substantially within a few months, but the ensuing chain of failed businesses and unemployment culminated in the Great Depression of the 1930s. Trying to avoid that scenario, President Ronald Reagan and congressional leaders held a “summit” meeting in November 1987 to negotiate a two-year commitment on deficit reduction, beginning with the budget for 1989. But as the market stabilized, pressure to cut the deficit subsided, and the summit produced only modest reductions. The resulting budget pact (which we discuss later) was denounced by Wall Street as inadequate to the problem.⁶

Financial experts do agree on two things about the crash of 1987. They believe that the Federal Reserve System lessened the impact of the crash by pumping money into the banking system at a critical time. (In

1929, it had tightened credit and made conditions worse.) And they agree that the crash made investors sensitive to any negative economic news, which makes for a shaky economy.

In light of the stock market crash of 1987, how much freedom should the markets enjoy from government regulation? Apart from regulation, what can government do to control the economy? What effects do government taxing and spending policies have on the economy and on economic equality? We grapple with these and other questions in this chapter on the economics of public policy.

GOVERNMENT PURPOSES AND PUBLIC POLICIES

In Chapter 1, we noted that virtually all citizens are willing to accept limitations on their personal freedom in return for various benefits of government. We defined the major purposes of government as maintaining order, providing public goods, and promoting equality. Different governments place different values on each of these broad purposes, and those differences are reflected in their public policies. A **public policy** is a general plan of action adopted by a government to solve a social problem, counter a threat, or pursue an objective. For example, our government has formulated policies for lowering unemployment, reducing crime in cities, or negotiating with the Soviet Union.

At times, governments choose not to adopt a policy for dealing with a troublesome situation; instead, they just "muddle through" until the problem goes away or becomes too big to ignore. Government policies can be carefully developed and effective, or hastily drawn and ineffective, even counterproductive. But the reverse can also be true: Well-constructed policies may end up total disasters, and quick fixes may work just fine. Whatever their form and effectiveness, however, all policies have this in common: They are the *means* by which government pursues certain *goals* within specific *situations*. People disagree over public policies because they disagree over one or more of these elements: the goals that government should have, the means it should use to meet them, and the perception of the situation.

Consider the social problem of poverty. Everyone deplores poverty, but people disagree on whether reducing poverty should be an objective of government. Even those who think that the government ought to fight poverty are divided over the proper means. Some favor government job programs for the unemployed; others favor specific aid programs, like the food stamp program; still others favor a guaranteed minimum income for all Americans. Moreover, people disagree over the extent of poverty in the United States. How many of the nation's 230 million people do you think live in poverty? Fewer than a million? Between 10 and 20 million? More than 30 million? How you perceive the problem makes a difference in how you evaluate the alternative policies aimed at reducing poverty.

According to government figures, more than 32 million Americans were living in poverty in 1986—about 13.6 percent of the population.⁷ If you accept this finding as fact, you probably want government to do

something about the problem. But what if you think that the finding exaggerates the extent of poverty? What is *poverty* anyway? The Census Bureau defines the *poverty threshold* according to the number of people in a family. In 1986, it was \$5,572 for a single person or \$11,203 for a family of four.⁸ If you don't agree on the extent of the problem or even the definition of the problem, chances are you are not going to agree on policies to tackle the problem.

Even if you accept the fact of poverty and the need for government action, what about the policy? As we discuss in Chapter 16, it is difficult to formulate policies that effectively reduce poverty. In 1965, President Lyndon Johnson committed the nation to spending billions of dollars to win the War on Poverty. Yet today, there are about the same percentage of people below the poverty threshold as there were in the mid-1960s.

What can governments do to achieve their goals? They have four basic options:

- To demand that citizens do this or not do that
- To try to persuade citizens to behave in certain ways
- To take from individuals or give to individuals
- To perform the task itself

Unfortunately, knowing the options is not the same as understanding government's objectives in demanding, persuading, taking or giving, and performing. We need concepts that can help us analyze the purposes behind government's actions.

At the broadest level, we can analyze public policies according to whether they prohibit, protect, promote, or provide. Some policies are intended to *prohibit* behaviors that endanger society. All governments outlaw murder, robbery, and rape, for example. Governments that em-

The Law Says, "Butt Out!"

Government regulations against smoking in public areas are intended to protect the public health. Today, smoking is not completely banned. But remember that the sale and distribution of alcoholic beverages once were prohibited by the Constitution.



An Oil Rig on a Sea of Tax Benefits

The government can tailor its tax policies to promote certain business activities. The oil and gas industries have long enjoyed various tax deductions for expenses incurred in energy exploration. The cost in lost revenues to the national government was about \$2 billion in 1988.



phasize order tend to specialize in policies of prohibition, which instruct people what they must *not* do (drink liquor, have abortions, engage in homosexual relations). In the next chapter, we discuss a particularly vexing problem in contemporary public policy, prohibiting people from consuming illegal drugs—marijuana, heroin, and cocaine.

Government policies can also *protect* activities, things, or special groups of citizens. For example, taxes were once levied on colored margarine (a butter substitute) to reduce its sales and protect the dairy industry from competition. Regulations concerning the testing of new drugs are intended to protect citizens from harmful side effects; government rules about safety in the workplace are enacted to protect workers. Issues in regulatory policy were explored in Chapter 12. Although governments argue that these kinds of regulations serve the public good, some people believe that most protective legislation is unwarranted government interference. (In Chapter 16, we examine the problems in developing a regulatory policy to protect against the spread of AIDS.)

Policies can also *promote* social activities that are important to the government. Here, one way that government promotes is by persuasion. For instance, our government has used advertising to urge people to buy bonds or to be all that they can be and join the army. When the government really wants to get things done, it can be very generous. To promote railroad construction in the 1860s, Congress granted railroad companies huge tracts of public lands along the right-of-way through western states.

The government also promotes activities through favorable treatment within the tax structure. The technical term for this form of government promotion is **tax expenditure**, because it amounts to a loss of government revenue. For example, the government encourages people to buy their own homes by allowing them to deduct from their taxable income the amount of money they pay in mortgage interest. In 1987, this tax expenditure cost the national government nearly \$25 billion.⁹ And of course, churches and private educational institutions typically pay no property taxes to state and local governments.

Finally, public policies can *provide* benefits directly to citizens. These benefits can be either public or private. *Public benefits* are facilities or services that all citizens share (mail service, roads, schools, street lighting, libraries, parks). *Private benefits* go to certain groups of citizens (poor people, farmers, veterans, college students). Public benefits are more difficult to deliver because they require either the construction of facilities (roads, dams, sewer systems) or organizations to provide them (transportation agencies, power companies, sanitation departments). Private benefits are simply payments to individuals in the form of food stamps, subsidies, pensions, and loans. These payments are made because the recipients are particularly needy or politically powerful, or both.

At times, policies serve multiple purposes. For example, we could say that a policy of subsidizing farmers protects the institution of the

The Post Office on Madison Avenue

Before the days of electronic media and sophisticated Madison Avenue advertising techniques, the national government tried its hand at promoting government programs through persuasive poster art. This 1929 poster tried to convince Americans that everybody was sending letters by airmail. The government's objective was to help support the fledgling airline industry.



family farm, promotes farming, and provides private benefits. Still, most policies have a dominant underlying objective. For farm subsidies, that objective is providing private benefits simply because subsidies have neither protected the family farm nor encouraged individuals to enter farming. In fact, most farm subsidies go to large farms. (We discuss the complicated problem of agricultural policy in Chapter 16.)

Governments rely on different legislative techniques to achieve their policy objectives. Some laws simply forbid or require certain behavior. For example, the Constitution prohibits interference with the free exercise of religion, and Congress has passed laws that require employers to pay men and women equally for equal work. We examine these kinds of prohibitions and requirements more closely in Chapters 17 and 18. Here, we focus on taxing and spending, the tools with which the government carries out public policies that protect, promote, and provide.

THEORIES OF ECONOMIC POLICY

Taxing and spending are the major tools with which government implements policy. How policymakers use these tools depends on their beliefs about (1) how the economy functions and (2) the proper role of government in the economy. The American economy is so complex that no policymaker knows exactly how it works. Policymakers have to rely on economic theories to explain its functioning, and there are nearly as many theories as economists (see Feature 15.1). Unfortunately, different theories (and economists) often predict quite different outcomes. One source of difference is the assumptions that are part of every economic theory, and that differ from theory to theory. Another problem is the difference between an idealized theory and the real world. Still, despite the disagreement among economists, a knowledge of basic economics is necessary to an understanding of how government approaches public policy.

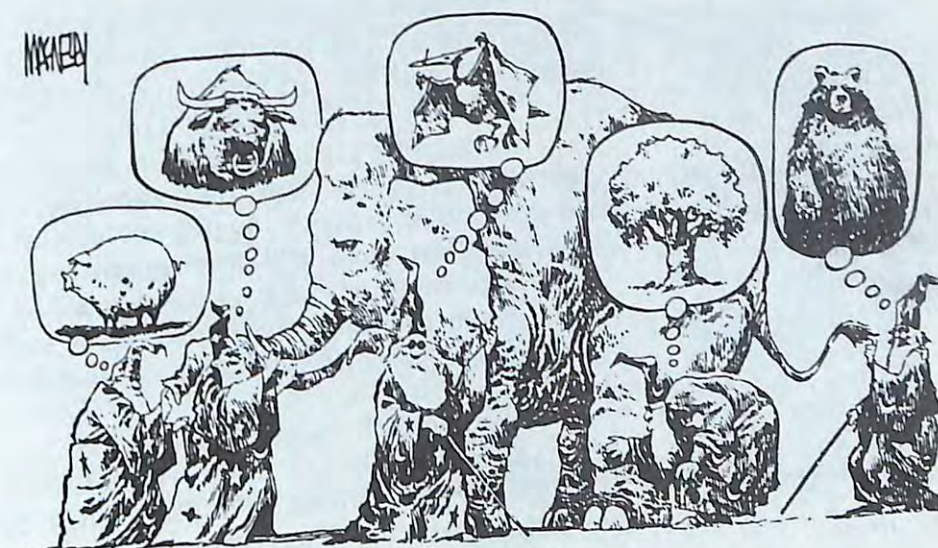
We are concerned here with economic policy in a *market economy*—one in which the prices of goods and services are determined through the interaction of sellers and buyers (that is, through supply and demand). This kind of economy is typical of the consumer-dominated societies of Western Europe and the United States. A *nonmarket economy* relies on government planners to determine both the prices of goods and the amounts that are produced. The Soviet economy was a perfect example of a nonmarket economy until Mikhail Gorbachev's policy of *perestroika*, or economic restructuring, introduced some private elements. In a nonmarket economy, the government owns and operates the major means of production. Market economies often exhibit a mix of government and private ownership. For example, Britain has considerably more government-owned enterprises (railroads, broadcasting, and housing) than the United States.

Market economies are loosely called *capitalist economies*: They allow private individuals to own property, sell goods for profit in a free, or open, market, and accumulate wealth, called capital. The competing theories of market economies differ largely on how free the market should be, on the role of government in directing the economy.

FEATURE 15.1

Economics: The Dismal Science

Thomas Carlyle, a nineteenth-century British social critic, called economics "the dismal science." Although Carlyle was speaking in a different context, his phrase has stuck. If being a science requires agreement on fundamental propositions among practitioners, then economics is certainly a dismal science. When twenty-seven standard propositions in economic theory were put to almost a thousand economists in five Western countries, they did not agree on a single one. Consider this example: "Reducing the role of regulatory authorities (for instance, in air traffic) would improve the efficiency of the economy." About 33 percent of the economists "generally disagreed," 30 percent "generally agreed," and 34 percent "agreed with provisions." When learned economists cannot agree on basic propositions in economic theory, politicians are free to choose theories that fit their views of the proper role of government in the economy.



THE ECONOMISTS

Source: Adapted from Bruno S. Frey et al., "Consensus and Dissension Among Economists: An Empirical Inquiry," *American Economic Review* 74 (December 1984):986–994.

Laissez-Faire Economics

We introduced the French term *laissez faire* in Chapter 1 and discussed it again in Chapter 12. It describes the absence of government control. The economic doctrine of *laissez faire* likens the operation of a free market to the process of natural selection. Economic competition weeds out the weak and preserves the strong. In the process, the economy prospers and everyone eventually benefits.

Advocates of *laissez-faire* economics are fond of quoting Adam Smith's *The Wealth of Nations*. In this 1776 treatise, Smith argued that each individual, pursuing his own selfish interests in a competitive market, was "led by an invisible hand to promote an end which was no part of his intention." Smith's "invisible hand" has been used for two cen-

turies to justify the belief that the narrow pursuit of profits serves the broad interests of society. Strict advocates of laissez faire maintain that government interference with business tampers with the laws of nature, obstructing the workings of the free market.

Keynesian Theory

One problem with laissez-faire economics is its insistence that government should do little about **economic depressions** (periods of high unemployment and business failures) or about raging **inflation** (when price increases decrease the value of currency). Inflation is generally measured by the *Consumer Price Index (CPI)* (see Politics in the Information Age 15.1). Since the beginning of the Industrial Revolution, capitalist economies have suffered through many cyclical fluctuations, boom then bust. The United States experienced more than fifteen of these **business cycles**—expansions and contractions of business activity, the first stage accompanied by inflation and the second stage by unemployment (see "The American Economic Experience, 1964–1987" in Essay D, page 536). No one had a theory that really explained these cycles until the Great Depression of the 1930s.

That was when John Maynard Keynes, a British economist, theorized that business cycles stem from imbalances between aggregate demand and productive capacity. **Aggregate demand** is the income available to consumers, business, and government to spend on goods and services. **Productive capacity** is the value of goods and services that can be produced when the economy is working at full capacity. The value of the goods and services *actually* produced is called the **gross national product (GNP)**.

When demand exceeds productive capacity, people pay more for available goods, which leads to price inflation. When productive capacity exceeds demand, producers cut back their output of goods, which leads to unemployment. When many people are unemployed for an extended period, the economy is in a depression. Keynes theorized that government could stabilize the economy (and flatten or eliminate business cycles) by controlling the level of aggregate demand.

Keynesian theory holds that aggregate demand can be adjusted through a combination of fiscal and monetary policies. **Fiscal policies** involve changes in government spending and taxing. When demand is too low, government should either spend more itself or cut taxes, to give people more money to spend. When demand is too great, the government should either spend less or raise taxes, giving people less money to spend. **Monetary policies** involve changes in the money supply and operate less directly on the economy. Increasing the amount of money in circulation increases demand, and thus increases price inflation, assuming full employment. Decreasing the money supply decreases aggregate demand and inflationary pressures.

Keynesian theory has been widely adopted by capitalist countries. At one time or another, virtually all have used the Keynesian technique of **deficit financing**—spending beyond tax revenues—to combat an economic slump. The objective of deficit financing is to inject extra money into the economy to stimulate aggregate demand. Most deficits are fi-

POLITICS IN THE INFORMATION AGE 15.1

The Consumer Price Index

Inflation in the United States is usually measured in terms of the Consumer Price Index. The CPI is based on prices paid for food, clothing, shelter, transportation, medical services, and other items necessary for daily living. Data are gathered from ninety-one areas across the country, from over sixty thousand housing units and twenty-one thousand businesses.

The CPI is not a perfect yardstick. One problem is that it does not differentiate between inflationary price increases and other price increases. A Ford sedan bought in 1979 is not the same as a Ford sedan bought in 1989. To some extent, the price difference reflects a change in quality as well as a change in the value of the dollar. For example, improvements in fuel economy improve the car's quality and justify a somewhat higher price. The CPI is also slow to reflect changes in purchasing habits. Wash-and-wear clothes were tumbling in the dryer for several years before the government agreed to include them as an item in the index.

These are minor issues compared with the weight given over time to the cost of housing. Until 1983, the cost of purchasing and financing a home accounted for 26 percent of the CPI. This formula neglected the facts that many people rent, rather than buy, homes and that few people buy a home every year. A better measure of the cost of shelter

is the cost of renting houses similar to those that are owned. Using this method of calculating the cost of shelter dropped the weighting given to housing in the CPI, from 26 percent to 14 percent. Before the correction, the CPI overstated the rate of inflation for the average citizen.

The government uses the CPI to make cost-of-living adjustments in civil service and military pension payments, social security benefits, and food stamp allowances. Moreover, many union wage contracts with private businesses are indexed (tied) to the CPI. Because the CPI almost always goes up each year, so do the payments that are tied to it. In a way, then, indexing payments to the CPI adds to both the growth of government spending and inflation itself. The United States is one of the few nations that also ties its tax brackets to a price index, which reduces revenues by eliminating the "bracket creep" of inflation.

Despite its faults, the CPI is at least a consistent measure of prices and is likely to go on being used as the basis for adjustments to wages, benefits, and payments affecting millions of people.

Source: Adapted from David S. Moore, *Statistics: Concepts and Controversies*, 2d ed. (New York: Freeman, 1985), pp. 238–241. Also see Bureau of the Census, *Statistical Abstract of the United States*, 1988 (Washington, D.C.: U.S. Government Printing Office, 1988), pp. 443–444.

nanced by funds borrowed through the issuing of government bonds, notes, or other securities. The theory holds that deficits can be paid off with budget surpluses after the economy recovers.

Because Keynesian theory requires government to play an active role in controlling the economy, it runs counter to laissez-faire economics. Before Keynes, no administration in Washington would undertake responsibility for maintaining a healthy economy. In 1946, the year in which Keynes died, Congress passed an employment act fixing under law "the continuing responsibility of the federal government to . . . promote maximum employment, production and purchasing power." It also created the **Council of Economic Advisers (CEA)** within the Executive Office of the President, to advise the president on maintaining a stable economy. The CEA normally consists of three economists (usually university professors) appointed by the president with Senate approval. Aided by a staff of about twenty-five people (mostly economists), the CEA helps the president prepare his annual economic report, also a provision of the 1946 act. The chair of the CEA is usually a major spokesperson for the administration's economic policy. This was not the

case under Reagan, however, primarily because Reagan's views on economics did not always coincide with those of the economists on the council.

The Employment Act of 1946, which reflected Keynesian theory, had a tremendous impact on government economic policy. Many people believe it was the primary source of "big government" in America. Even Richard Nixon, a conservative president, admitted that "we are all Keynesians now."

Monetary Policy

Although most economists accept Keynesian theory in its broad outlines, they disagree on its political utility. Some especially question the value of fiscal policies in controlling inflation and unemployment. They feel that government spending programs take too long to enact in Congress and to implement through the bureaucracy. As a result, jobs are created, not when they are needed, but years later, when the crisis may have passed and government spending needs to be reduced.

Also, government spending is easier to start than to stop because the groups that benefit from spending programs tend to defend them even when they are no longer needed. A similar criticism applies to tax policies. Politically, it is much easier to cut taxes than to raise them. In other words, Keynesian theory requires that governments be able to begin and end spending quickly, and to cut and raise taxes quickly. But in the real world, these fiscal tools are easier to use in one way than the other.

Monetarists, recognizing the limitations of fiscal policies, argue that government can control the economy's performance effectively only by controlling the nation's money supply. Monetarists favor a long-range policy of small but steady growth in the amount of money in circulation rather than frequent manipulation of monetary policies.

Major monetary policies in the United States are under the control of the **Federal Reserve System**, which acts as its central bank. Established in 1913, "the Fed" is not a single bank but a system of banks. At the top of the system is the board of governors, seven members appointed by the president for staggered terms of fourteen years. The board is directed by a chair, who serves a four-year term that overlaps the president's term of office. This complex arrangement was intended to make the board independent of the president and even Congress. An independent board, the reasoning went, would be able to make financial decisions for the nation without regard to political implications.

The Fed controls the money supply in three ways. It can change the *reserve requirement*, which is the amount of cash that member banks must keep on deposit in a regional Federal Reserve Bank. An increase in the reserve requirement decreases the amount of money a bank has available to lend. The Fed can also change its *discount rate*, the interest rate that member banks have to pay to borrow money from a Federal Reserve Bank. A lower rate encourages a member bank to borrow and lend more freely. Finally, the Fed can *buy and sell government securities* (such as U.S. Treasury notes and bonds) on the open market. When it buys securities, it pays out money, putting more money into circulation; when it sells securities, the process works in reverse.

Inside "the Fed"

The golden hue of this photograph is appropriate for a meeting of the board of governors of the Federal Reserve System. Not all seven members are pictured here, but the chairman, Alan Greenspan, is seated under the imposing eagle, his chin resting on his hand. Greenspan's appointment as chairman was confirmed by the Senate on August 3, 1987. Barely a month later, he was welcomed by the stock market crash. His actions to pump money into the system were widely credited with averting an even bigger collapse.



The Fed's activities are essential parts of the overall economic policy, but they lie outside the direct control of the president. This can create problems in coordinating economic policy. For example, the president might want the Fed to lower interest rates to stimulate the economy, but the Fed might resist for fear of inflation. These kinds of policy clashes can pit the chair of the Federal Reserve Board directly against the president. It takes a strong personality to resist the president, but few people rise to the powerful position of chair of the Federal Reserve Board by being shy. The last two chairmen clashed on occasion with presidents of both parties. The current chairman, Alan Greenspan, had been a key player in Republican party politics (which is uncharacteristic for the position) before he was appointed by President Reagan.¹⁰ Although the Fed's economic policies are not perfectly insulated from political concerns, they are sufficiently independent so that the president is not able to control monetary policy without the Fed's cooperation. This means that the president cannot be held completely responsible for the state of the economy—despite the Employment Act of 1946.

Supply-Side Economics

When Reagan came to office in 1981, he embraced a school of thought called **supply-side economics** to deal with the double-digit inflation that the nation was experiencing. Remember that Keynesian theory argues that inflation stems from an excess of aggregate demand over supply, and that the standard Keynesian solution is to reduce demand (for example, by increasing taxes). Supply-siders argued that inflation could be lowered more effectively by increasing supply. (That is, they stressed the *supply side* of the economic equation.) Specifically, they favored tax cuts to stimulate investment (which, in turn, would lead to the production of more goods) and less government regulation of business.

(again, to increase productivity—which they held would yield more, not less, government revenue).

To support their theory, supply-side economists point to a 1964 tax cut that was initiated by President Kennedy. It stimulated investment and raised the total national income. As a result, the government took in as much tax revenue under the tax cut as it had before taxes were cut. Supply-siders also argue that the rich should receive *larger* tax cuts than the poor, because the rich have more money to invest. The benefits of increased investment then “trickle down” to working people in the form of additional jobs and income.

In a sense, supply-side economics leans toward laissez-faire economics in the form of less government regulation and less taxation. Supply-siders believe that government interferes too much with the efforts of individuals to work, save, and invest. This is what Ronald Reagan thought when he was a movie star in the 1950s, with a salary in the 91 percent tax bracket. In his 1965 autobiography, he wrote that because the government took so much of his income, he quit working for a year after he moved into that bracket.¹¹ Obviously, he hadn’t changed his mind about taxation when he entered his first term in office.

Inspired by supply-side theory, Reagan proposed (and got) massive tax cuts in the *Economic Recovery Tax Act of 1981*. Individual tax rates were reduced by 23 percent over a three-year period, and the tax rate for the highest income group was cut from 70 to 50 percent. Reagan also launched a program to deregulate business. According to the theory, these actions would generate extra government revenue, making spending cuts unnecessary. Nevertheless, Reagan cut funding for some domestic programs, including Aid to Families with Dependent Children and the food stamp program. Contrary to supply-side theory, he also proposed major increases in military spending. This blend of tax cuts, deregulation, cuts

in spending for social programs, and increases in spending for defense became known, somewhat disparagingly, as *Reaganomics*.

How well did Reaganomics work? During Reagan’s administration, annual price inflation fell a whopping 11.9 percentage points—from 13.5 percent in 1980 to 1.9 percent in 1986.¹² Although many economists credit the drop to the tight-money policies of the Federal Reserve Board, which raised interest rates, the Fed did it with Reagan’s support. Higher interest rates cut back business investments, initially producing a severe recession and unemployment.¹³ However, unemployment peaked at 9.7 percent in 1982 and dropped to 7.0 percent in 1986, below the rate when Reagan took office. These were important economic accomplishments. Unfortunately, and in spite of supply-side theory, the tax cut was accompanied by a massive drop in tax revenues. Shortly after taking office, Reagan promised that his economic policies would balance the national budget by 1984, but lower tax revenues and higher defense spending produced the largest budget deficits ever (see Figure 15.1).¹⁴

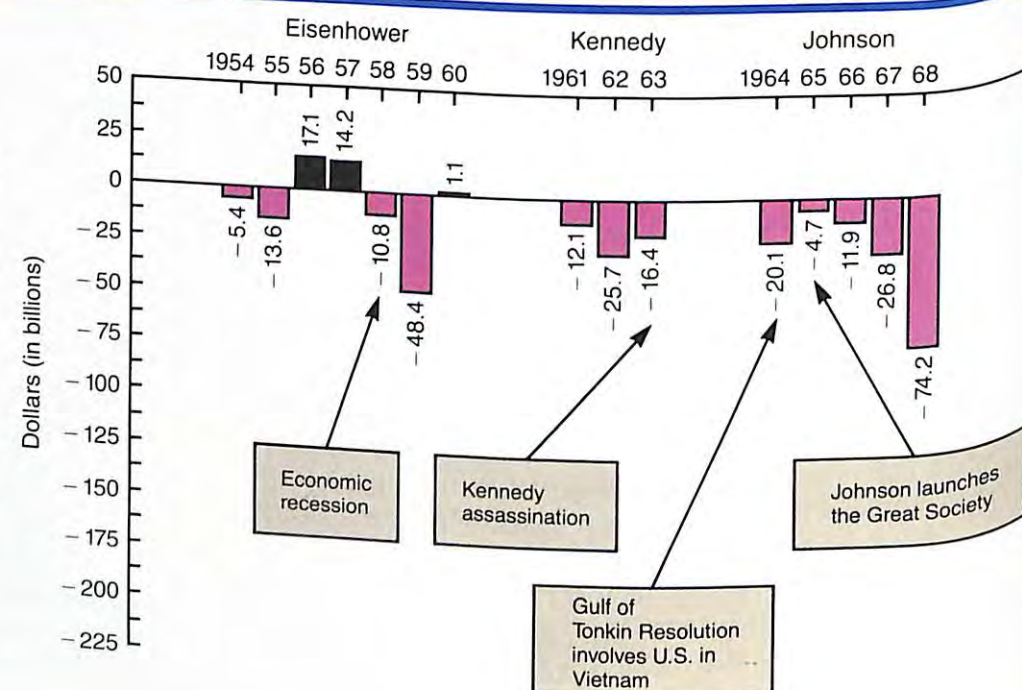
PUBLIC POLICY AND THE BUDGET

To most people—college students included—the national budget is B-O-R-I-N-G. To national politicians, it is the script for high drama. The numbers, categories, and percentages that numb normal minds have politicians’ nostrils flaring and hearts pounding. The budget is a political battlefield, on which politicians and the programs they support wage war.

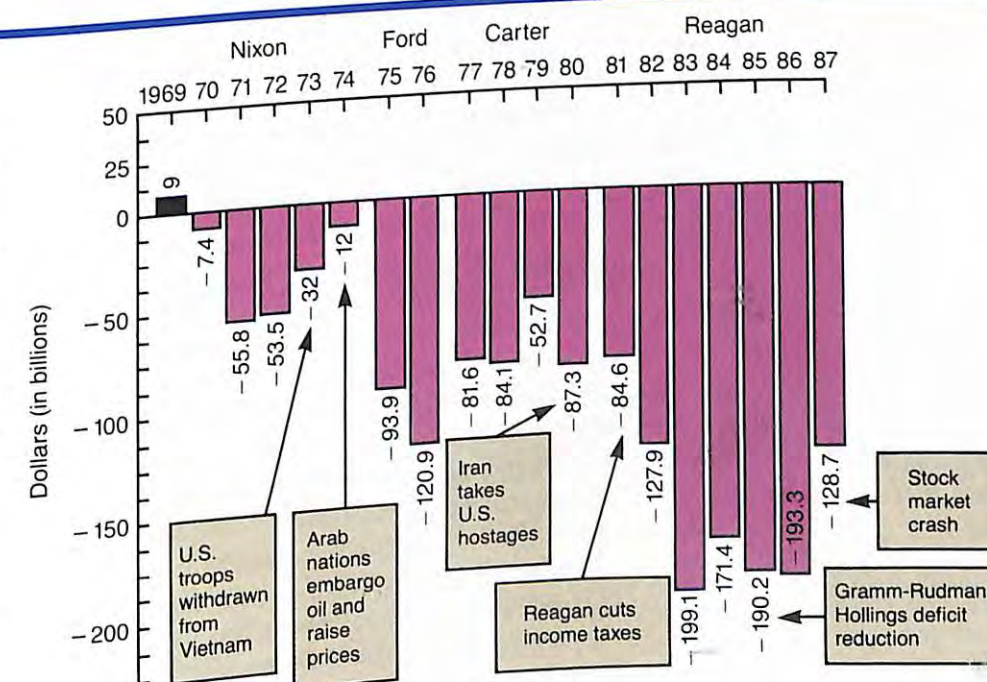
Today, the president prepares the budget and Congress approves it. This was not always the case. Before 1921, Congress prepared the budget under its constitutional authority to raise taxes and appropriate funds.

Figure 15.1
Budget Deficits over Time

In his first inaugural address, President Reagan said, “You and I, as individuals, *can*, by borrowing, live beyond our means, but only for a limited period of time. Why, then, should we think that collectively, as a nation, we’re not bound by that same limitation?” But borrow he did. Reagan’s critics charged that the budget deficits under his administration—over \$1.3 trillion—exceeded the total deficits of all previous presidents. But this charge does not take inflation into account. A billion dollars in 1989 is worth much less than it was in 1889, and vastly less than in 1789.



A fairer way to calculate budget deficits is in constant dollars—dollars whose value has been adjusted to a given year. This chart shows the actual deficits in 1982 dollars incurred under presidential administrations from Eisenhower to Reagan. Even computed this way, Reagan’s deficits were enormous—especially for a president who claimed to oppose government borrowing. (Source: Office of Management and Budget, *Historical Tables, Budget of the United States Government, 1989* [Washington, D.C.: U.S. Government Printing Office, 1988] pp. 19–20.)



The budget was formed piecemeal by enacting a series of laws that originated in the many committees involved in the highly decentralized process of raising revenue, authorizing expenditures, and appropriating funds. No one was responsible for the "big picture"—the budget as a whole. The president's role was essentially limited to approving revenue and appropriations bills, just as he approved other pieces of legislation. In fact, even executive agencies submitted their budgetary requests directly to Congress, not to the president.

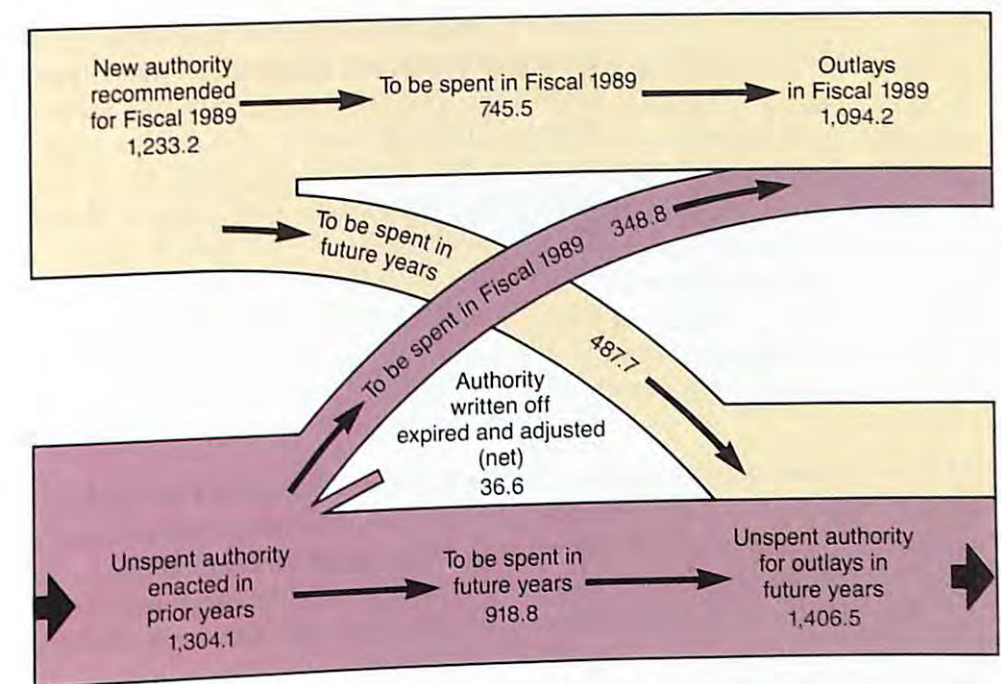
Congressional budgeting (such as it was) worked well enough for a nation of farmers, but not for an industrialized nation with a growing population and a more active government. Soon after World War I, Congress realized that the budget-making process needed to be centralized. With the *Budgeting and Accounting Act of 1921*, it thrust the responsibility for preparing the budget onto the president. The act established the Bureau of the Budget to help the president write "his" budget, which had to be submitted to Congress each January. Congress retained its constitutional authority to raise and spend funds, but now Congress would begin its work from the president's budget. And all executive agencies' budget requests had to be funneled through the Bureau of the Budget (which became the Office of Management and Budget in 1970) for review; those consistent with the president's overall economic and legislative program were incorporated into the president's budget.

The Nature of the Budget

The national budget is complex. But its basic elements are not beyond understanding. We begin with some definitions. The *Budget of the United States Government* is the annual financial plan that the president is required to submit to Congress in January of each year. It applies to the next **fiscal year (FY)**, the period the government uses for accounting purposes. Currently, the fiscal year runs from October 1 to September 30. The budget is named for the year in which it *ends*. So, the FY 1989 budget applies to the twelve months from October 1, 1988, to September 30, 1989.

Broadly, the budget defines **budget authority** (how much government agencies are authorized to spend for programs); **budget outlays** or expenditures (how much they are expected to spend); and **receipts** (how much is expected in taxes and other revenues). (The relationship of authority to outlays is diagrammed in Figure 15.2.) President Reagan's FY 1989 budget contained authority for expenditures of \$1,233 billion, but it provided for spending (outlays) of "only" \$1,094 billion. The budget anticipated receipts of \$965 billion, leaving a deficit of \$129 billion—the difference between receipts and outlays. The budget document contains more than numbers. It also explains individual spending programs in terms of national needs and agency objectives, and it analyzes proposed taxes and other receipts.

Reagan's FY 1989 budget was over five hundred pages long and weighed more than 5 pounds, including appendixes. Although its publication was anxiously awaited by reporters, lobbyists, and political analysts eager to learn the president's plan for government spending in the coming year, the drama was lessened in 1988. The pact that president



Relationship of Budget Authority to Budget Outlays

The national budget is a complicated document. One source of confusion for people studying the budget for the first time is the relationship of budget authority to budget outlay. These two figures differ because of sums that are carried over from prior years and to future years. The diagram above helps explain the relationship; all amounts are in billions of dollars. Only \$745.5 billion of the FY 1989 budget authority is expected to be spent in FY 1989, while \$487.7 billion will be carried over for spending in future years. Similarly, \$348.8 billion in funds authorized in prior years will be spent in FY 1989. (Source: Budget of the United States Government, 1989, p. 6d-4.)

Figure 15.2

and Congress struck at the budget summit in the wake of the stock market crash not only increased taxes modestly in minor areas to cut the deficit, but—in a very unusual step—also set a total budget ceiling for defense and domestic spending in FY 1989. As a result of the market crash, the broad outlines of government spending for FY 1989 were determined in advance of the president's budget.

Preparing the President's Budget

Usually, the budget that the president submits to Congress each January is the end product of a process that begins the previous spring under the supervision of the **Office of Management and Budget (OMB)**. OMB is located within the Executive Office of the President and is headed by a director who is appointed by the president with the approval of the Senate. The OMB, with a staff of over five hundred, is the most powerful domestic agency in the bureaucracy, and its director, who sits in the president's Cabinet, is one of the most powerful figures in government.

The OMB initiates the budget process each spring by meeting with the president to discuss the economic situation and his budgetary prior-

ities. It then sends broad economic guidelines to every government agency and requests their initial projections of funds needed for the next fiscal year. The OMB assembles this information and makes recommendations to the president, who settles on more precise guidelines. By the summer, the agencies are asked to prepare budgets based on the new guidelines. By the fall, they submit their formal budgets to the OMB, where budget analysts scrutinize agency requests for both costs and consistency with the president's legislative program. A lot of politicking goes on at this stage, as agency heads try to go around the OMB to plead for their pet projects with presidential advisers and perhaps even the president himself. Political negotiations may extend into the early winter—often to the last possible moment before the budget goes to the printer.

The voluminous document is carefully printed and neatly bound. It looks very much like a finished product, but it is far from final. The members of Congress are interested in the content of the president's budget, not its appearance. In giving the president the responsibility for preparing the budget, they have provided themselves with a starting point for their own work.

Passing the Congressional Budget

Congress must approve the budget. That process is a creaky conglomeration of traditional procedures overlaid with structural reforms from the 1970s and external constraints in the 1980s. Especially in recent years, the process has proved inadequate to the task of producing a budget according to Congress's own timetable.

The traditional procedure: The committee structure. Traditionally, the tasks of budget making were divided among a number of committees—a process that has been retained. There are three types of committees involved in budgeting:

- **Tax committees** are responsible for raising the revenues to run the government. The Ways and Means Committee in the House and the Finance Committee in the Senate consider all proposals for taxes, tariffs, and other receipts contained in the president's budget.
- **Authorization committees** (such as the House Armed Services Committee and the Senate Banking, Housing, and Urban Affairs Committee) have jurisdiction over particular legislative subjects. The House has nineteen committees that can authorize spending, and the Senate has sixteen. Each one pores over the portions of the budget that pertain to its area of responsibility. In recent years, however, power has shifted from the authorization committees to the appropriations committees.
- **Appropriations committees** decide which of the programs approved by the authorization committees will actually be funded (that is, given money to spend). For example, the House Armed Services Committee might decide to build a new line of tanks for the army and even get its decision enacted into law. But the tanks will never be built unless funds are appropriated for that purpose by the appro-

priations committees. Thirteen distinct appropriation bills are supposed to be enacted each year to fund the nation's spending.

Two major problems are inherent in a budgeting process that involves three distinct kinds of congressional committees. First, the two-step spending process (first *authorization*, then *appropriation*) is very complex; it offers wonderful opportunities for interest groups to get into the budgeting act. Second, because one group of legislators in each house plans for revenues and many other groups plan for spending, no one is responsible for the budget as a whole. In the 1970s, Congress added a new committee structure that combats the pluralist politics inherent in the old procedures and allows budget choices to be made in a more majoritarian manner, by votes in both chambers.

Reforms of the 1970s: The Budget Committee structure. In 1921, when Congress gave the president the responsibility to prepare the budget, it surrendered considerable authority. Previous attempts by Congress to regain control of the budgeting process failed because of jurisdictional squabbles between the revenue and appropriations committees.

Overall control of the budget is important to Congress for several reasons. First, members of Congress are politicians, and politicians want to wield power, rather than watch someone else wield it. Second, the Constitution established Congress, not the president, as the "first branch" of government and the people's representatives; this legitimated its institutional jealousy. Third, Congress as a body often disagrees with its institutional spending priorities, but it has been unable to present a coherent alternative budget. Congress as an institution has not been able to mount a serious challenge to the president's budgetary views.

After bitter spending fights with President Nixon in the late 1960s and early 1970s, Congress finally passed the Budget and Impoundment Control Act of 1974. That act fashioned a typically political solution to the problem of wounded egos and trampled jurisdictions that had frustrated previous attempts to change the budget-making procedure. All the tax and appropriations committees (and chairpersons) were retained, and the new House and Senate **Budget Committees** were superimposed on the old committee structure. The Budget Committees supervised a comprehensive budget review process, aided by the **Congressional Budget Office (CBO)**. The CBO, with a staff of over two hundred, acquired a budgetary expertise equal to that of the president's OMB, so it could prepare credible alternative budgets for Congress.

At the heart of the 1974 reforms was a timetable for the congressional budget process. The original timetable has since been modified (see Table 15.1), and its deadlines are often missed. Still, it is a useful means of guiding the process.

In March, about two months after receiving the president's budget, the Budget Committees are supposed to propose an initial budget resolution that sets overall revenue and spending levels, broken down into twenty-one different "budget functions," among them, national defense, agriculture, and health. The budget resolution also provides for the **reconciliation** of differences between amounts that the authorization committees have authorized for spending and amounts allocated in the budget functions. In effect, each authorization committee must reconcile

Table 15.1**Budget Process Timetable: Fiscal Years 1989–1993**

The Budget and Impoundment Control Act was passed in 1974. It has greatly changed the congressional budgeting process. In an effort to discipline itself, Congress created a budget timetable. Lawmakers met their deadlines relatively well from 1975 to 1980, but have done less well since. The schedule below adopted in the Gramm-Rudman-Hollings antideficit law of 1985 as amended in 1987, moved the budgetary deadline up one month to April 15 giving Congress more time to complete reconciliation and action on the thirteen annual appropriations bills. Still, Congress fell behind schedule in 1986 and 1987, and was forced to combine the separate bills in a massive omnibus bill each year.

January

First Monday after January 3 President submits his budget to Congress.

February

15 CBO issues annual report to Budget Committees.

25 Congressional committees submit proposals to Budget Committees.

March

Budget Committees formulate the budget resolution.

April

15 House and Senate take action on the budget resolution.

May

House Appropriations Committee works on appropriation bills.

June

10 Deadline for last House appropriation bills.

15 Congress reconciles appropriations with budget resolution.

30 Congress completes action on annual appropriations bills.

August

15 Revenue and spending provisions in place for deficit estimates.

20 CBO estimates the deficit against the antideficit law.

25 OMB gives official estimate and orders budget cuts, if necessary.

September

30 Old fiscal year ends.

October

1 New fiscal year begins.

10 CBO reports any changes in estimated spending and revenues.

15 OMB budget cuts become permanent if no alternative is enacted.

Source: Elizabeth Wehr, "Doubtful Congress Clears Gramm-Rudman Fix," *Congressional Quarterly Weekly Report*, 26 September 1987, pp. 2310–2311; and "The Fiscal 1989 Budget: Terms and Process," *Congressional Quarterly Weekly Report*, 20 February 1988, p. 336.

(match) the amount it has authorized for spending with the amount it has to spend. When spending is covered by an **entitlement** program—which specifies that those who qualify for benefits are legally entitled to them—the reconciliation process may require a change in law.

By April 15, both houses are supposed to have agreed on a single budget resolution to guide their work on the budget during the summer. Appropriations should be completed by June 30. Throughout, the levels of spending set by majority vote on the budget resolution act as constraints on pluralist politics.

This process (or one very much like it) was implemented in 1975 and worked reasonably well for the first few years. Congress was able to work on and structure the budget as a whole, rather than changing pieces of it. But the process broke down under the Reagan administration, as the president submitted annual budgets with huge deficits. Reagan kept to his economic game plan, resisting any tax increases to reduce the deficits, cutting social spending, and increasing military spending. For its part, a Democratic Congress reversed his spending priorities but refused to propose a tax increase to reduce the deficit without the president's cooperation.

At loggerheads with Reagan, Congress encountered increasing difficulty in enacting its budget resolutions according to its own timetable, and it never succeeded in passing its thirteen separate appropriation bills during any of the first seven years of the Reagan administration.¹⁵ Instead, Congress resorted to combining appropriations for different topics in the same bill. For FY 1987 and FY 1988, Congress desperately combined all thirteen sets of appropriations in a single massive bill—an "omnibus" bill—before the session ended. The 2,100-page bill for FY 1988 totaled \$604 billion, and Congress did not send it to the president for approval until December 22, 1987, three months into the fiscal year. No lawmaker was proud of heaping all the appropriations into one huge bill. Congresswoman Olympia Snowe, Republican from Maine, noted that the House received this bill for the first time just four days before Christmas and had one hour to discuss it, which "works out to be \$10 billion per minute, 1.8 seconds per page."¹⁶

External constraints of the 1980s: Gramm-Rudman-Hollings. Alarmed by the huge deficits in Reagan's budgets, frustrated by his

Win One for the Clipper Throughout his administration, Ronald Reagan denounced government spending, identifying Congress as the source of the problem. After a 1987 speech on the national budget and tax policies, in Port Washington, Wisconsin, Reagan used a few visual aids to get the point across. Republican Senator Bob Kasten made sure he had his hands out of the way.



refusal to raise taxes, and stymied by their own inability to eliminate the deficits, members of Congress were ready to try almost anything. Republican Senators Phil Gramm (Texas) and Warren Rudman (New Hampshire) were joined by Democrat Ernest Hollings (South Carolina) in proposing drastic action to force a balanced budget. Officially titled the *Balanced Budget and Emergency Deficit Control Act* (1985), their bill became known simply as **Gramm-Rudman-Hollings**.

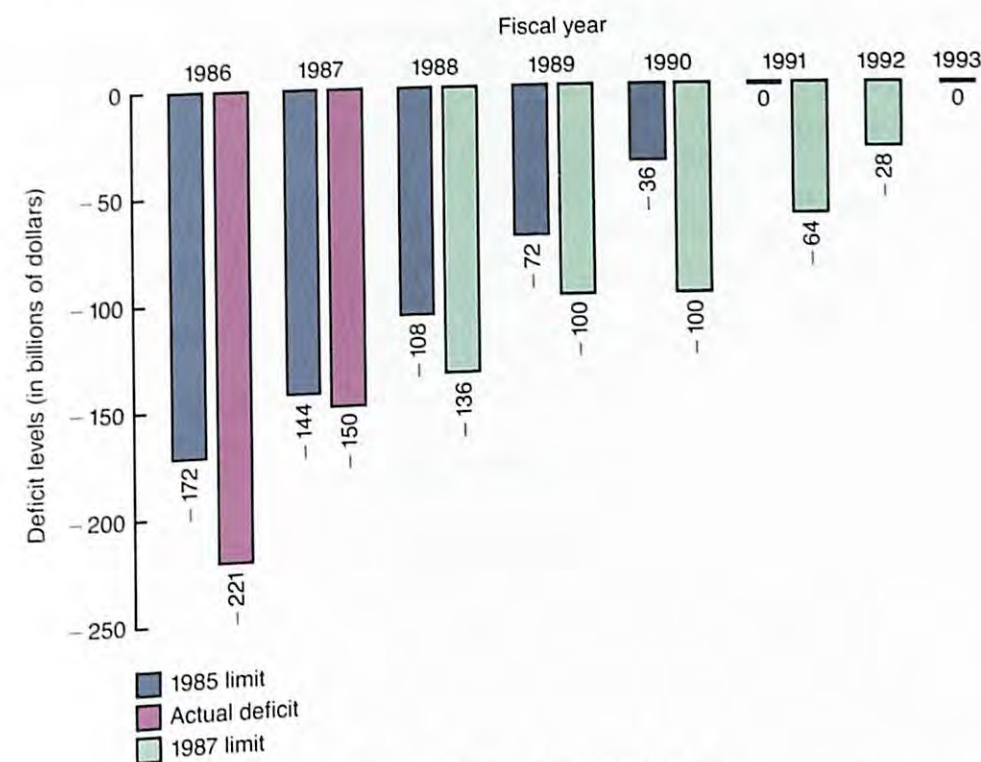
In its original form, Gramm-Rudman-Hollings mandated that the budget deficit be lowered to a specified level each year until the budget is balanced in FY 1991 (see Figure 15.3). If Congress did not meet the mandated deficit level in any year, across-the-board budget cuts were to be made automatically by the comptroller general. Senator Rudman described his own bill as "a bad idea whose time has come." Frustration with their repeated inability to cut the deficit was so great that Gramm-Rudman-Hollings sailed through both houses on a wave of exasperation. The bill was not considered by congressional committees in the usual manner; nor was it subjected to formal economic, procedural, or legal analysis. No one really knew what the legislation would do—except give Congress an out in deciding which programs to cut or whose taxes to raise so as to reduce the deficit. Republican Senator Robert Packwood from Oregon confessed to the Senate, "I pray that what we are about to undertake will work."¹⁷

President Reagan signed Gramm-Rudman-Hollings into law in December, 1985. On March 1, 1986, the comptroller general made the first series of automatic cuts under the law. He applied the cuts equally to domestic and military programs, slicing 4.3 percent from every domestic and defense program, project, and activity except those that were specifically exempted (social security, several programs for the poor, and Reagan's Strategic Defense Initiative).

Gramm-Rudman-Hollings mandated across-the-board budget cuts, reducing funding for all programs without regard for their value to the nation. Its net effect is to weaken all programs through underfunding. In this respect, Gramm-Rudman-Hollings represents a failure of the legislative process, in which elected representatives are expected to decide how public funds should be spent. Of course, we could argue that the process had failed well before Gramm-Rudman-Hollings was enacted, when Congress failed to raise revenues to pay for the government services it supported.

Soon after it became law, Gramm-Rudman-Hollings was challenged in federal court, and the Supreme Court confirmed what many expected—that it was unconstitutional to give the comptroller general functions that belong to the president. But to preserve the budget reductions already made under the law, Congress itself quickly enacted all of the cuts. In September 1987, Congress revised the antideficit law to meet the Supreme Court's objections and entrusted the OMB (an executive branch office) to make automatic cuts if the deficit targets were not reached. In addition, Congress loosened the budget deficit targets and extended the deadline for a balanced budget to 1993 (see Figure 15.3).

Adding to Gramm-Rudman-Hollings, the budget pact between the president and Congress that cut the deficit in the wake of the 1987 stock market crash contributed to the deficit's "brooding presence" over Wash-



Timetable for Gramm-Rudman-Hollings Antideficit Law
The 1985 antideficit law, known as Gramm-Rudman-Hollings, aimed at reducing the national deficit by stages, resulting in a balanced budget by FY 1991—with targets depicted by the blue bars. The red bars indicate the actual budget deficits for the fiscal years since the law was passed. Realizing that the original target was too optimistic, Congress amended the antideficit law in 1987, extending the date for a balanced budget to FY 1993—with lower yearly targets (the green bars). Most observers think that these targets are unrealistic, but they have definitely had an effect on the psychology of budgeting in Washington.

Figure 15.3

ington decision making.¹⁸ Congress and lobbies alike became more concerned with holding on to what they had than with trying to launch new programs. As a result, power has drained away from the authorizing committees to the budget and appropriations committees.¹⁹ The funding simply is not there to authorize expensive new projects.

TAX POLICIES

So far, we have been concerned mainly with the spending side of the budget, for which appropriations must be enacted each year. The revenue side of the budget is provided by overall tax policy, which is designed to provide a continuous flow of income without annual legislation. On occasion, however, tax policy is significantly changed to accomplish one or more of several objectives:²⁰

- To adjust overall revenue to meet budget outlays
- To make the tax burden more equitable for taxpayers

- To help control the economy by raising taxes (thus decreasing aggregate demand) or by lowering taxes (thus increasing demand)

In his first year in office, Reagan requested and got a significant change in tax policy. Personal income taxes were lowered by 23 percent over a three-year period, resulting in a total revenue loss of billions of dollars. According to supply-side economic theory, that massive tax cut should have stimulated the economy and yielded even more revenue than was lost—if not in the first year, then soon afterward. It didn't happen. Revenues lagged badly behind spending, and the deficit grew.

Still, Reagan would not agree to raise taxes, and few politicians dared mention a tax hike. Democratic presidential candidate Walter Mondale tried it in the 1984 election and was beaten badly. The Democratic leadership in Congress and many leading Republicans believed that taxes must be raised to cut the deficit, but no one was willing to propose an increase. For his part, Reagan remained adamant.

And Reagan went further, asking for fundamental changes in tax policy. He urged Congress to enact sweeping tax reform that would (1) lower still further the rate for those in the highest income tax bracket; (2) reduce the number of tax brackets; (3) eliminate virtually all the tax loopholes through which many wealthy people avoided paying taxes; and (4) be *revenue neutral*, in the sense that it would bring in no more and no less revenue than the existing tax policy.

Tax Reform

Tax reform proposals usually are so heavily influenced by interest groups looking for special benefits that they end up working against their original purpose. However, the basic goals of Reagan's tax reform were met with relatively few major changes.

Reagan's success was due to several factors. First, two influential Democrats, Representative Richard Gephardt of Missouri and Senator Bill Bradley of New Jersey, had proposed a tax reform plan of their own in 1982 very much along the lines of President Reagan's (see Chapter 10). Second, the Democrats were worried that Reagan would outflank them on the tax reform issue, as he had on tax increases in the 1984 presidential election, and they were determined that it would not happen again. Third, Reagan's proposals had the powerful support of Democratic Representative Dan Rostenkowski from Illinois, chairman of the Ways and Means Committee in the House (where all revenue bills must begin).

The 1986 tax reform law was one of the most sweeping in history. By eliminating many deductions, the new policy reclaimed a great deal of revenue that had been lost through tax loopholes to corporations and wealthy citizens. That revenue is supposed to pay for a general reduction in tax rates for individual citizens. By eliminating many tax brackets, the new tax policy approached the idea of a *flat tax*—one that requires everyone to pay at the same rate. A flat tax has the appeal of simplicity, but it violates the principle of **progressive taxation**, by which the rich pay proportionately higher taxes than the poor. The ability to pay has long been a standard of fair taxation, and governments can use progressive taxation to redistribute wealth and thus promote equality.

In general, the greater the number of tax brackets, the more progressive the tax can be. The 1985 tax code included fourteen tax brackets, ranging from 11 percent to 50 percent. Under the new law, effective in 1988, there are only two rates—15 and 28 percent.* Although people like the idea of reduced rates and tax simplification, polls show that they generally are not in favor of doing away with progressive taxation. When asked whether taxpayers should "pay the same rate of tax" or whether they should "pay very different rates depending on their incomes," most respondents (72 percent) choose multiple rates.²¹ Reagan pledged "to break apart the shackles and liberate America from tax bondage," but most people did not think they were in bondage.²²

Public Opinion on Federal Taxes

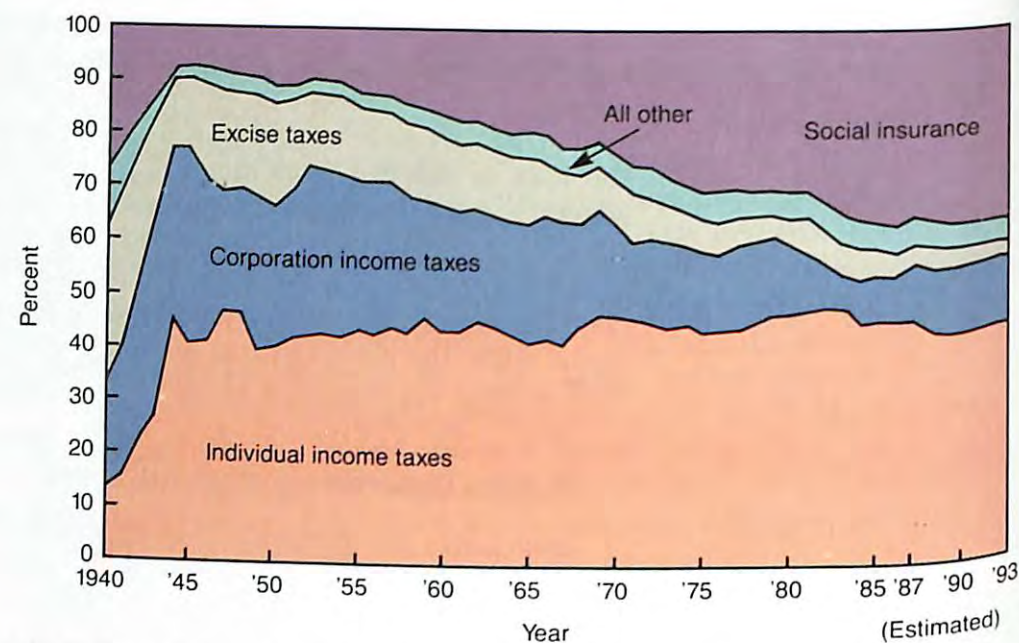
Ironically, the American public was not worked up over taxes as much as Reagan was. When asked in 1984—the year Reagan won reelection over Mondale—which of five different economic problems "was worst these days," the public ranked federal income tax rates at the *bottom* of the list (only 5 percent of a national sample of registered voters chose tax rates as the worst problem). At the top of the list was the size of the national deficit (identified by 34 percent), followed by unemployment (33 percent), high interest rates (19 percent), and inflation (9 percent).²³ Of course, people do not like to pay taxes, and they would rather pay less taxes than more. But high tax rates are not a burning public issue. In a 1985 survey, more people (51 percent) thought they paid "about the right amount" of taxes than "too much" (45 percent).²⁴ This is what pollsters usually find. Only a tiny portion of the American public believes high taxes are a major problem. However, the overwhelming majority of Americans do not want to pay more taxes, even to reduce the deficit.²⁵

Comparing Tax Burdens

One way to compare tax burdens is to examine taxes over time in the same country; another is to compare taxes in different countries at the same time. By comparing taxes over time in the United States, we find that the tax burden of U.S. citizens has indeed been growing. For the average family, the percentage of income that goes to all federal, state, and local taxes doubled to 23 percent between 1953 and 1980. During the same period, the taxes of wealthy families increased by two-thirds, to 33 percent of their income.²⁶

However, the income tax has not been the major culprit in the increasing tax bite at the federal level. As shown in Figure 15.4, which graphs the composition of federal budget receipts over time, the proportion contributed by income tax has remained fairly constant since the end of World War II. The largest increases have come in social security taxes, which have risen steadily to pay for the government's largest single social welfare program, aid to the elderly.

* Technically there are only two rates, but taxpayers with very high incomes lose the benefit of the lower rate for part of their income and thus pay taxes at an effective rate of 33 percent. (The 1986 tax law did not simplify everything.)



Percentage Composition of Federal Budget Receipts, 1940-1993

The graph shows the relative composition of federal receipts (revenues) from 1940 to 1993. It clearly indicates that the percentage obtained through income taxes has changed very little since the mid-1940s, whereas the proportion obtained through social security taxes has more than quadrupled during the same period. In fact, many lower-income people pay more in social security taxes than they do in income taxes. (Source: Office of Management and Budget, Historical Tables, Budget of the United States Government, 1989 [Washington, D.C.: U.S. Government Printing Office, 1988], p. 11.)

Figure 15.4

Another way of comparing tax burdens is to examine tax rates in different countries. As you can see in Compared With What? 15.1, Americans' taxes are quite low compared with those in nineteen other democratic nations. Only Japan (which has a very small military budget) and Spain rank below the United States. Despite talk about high taxes, the U.S. tax burden is not large compared with taxes in other democratic nations. But the disparity may shrink in the years ahead because tax planners in other countries are preparing to reduce tax rates in the top brackets and to compress the number of brackets—following America's lead.²⁷

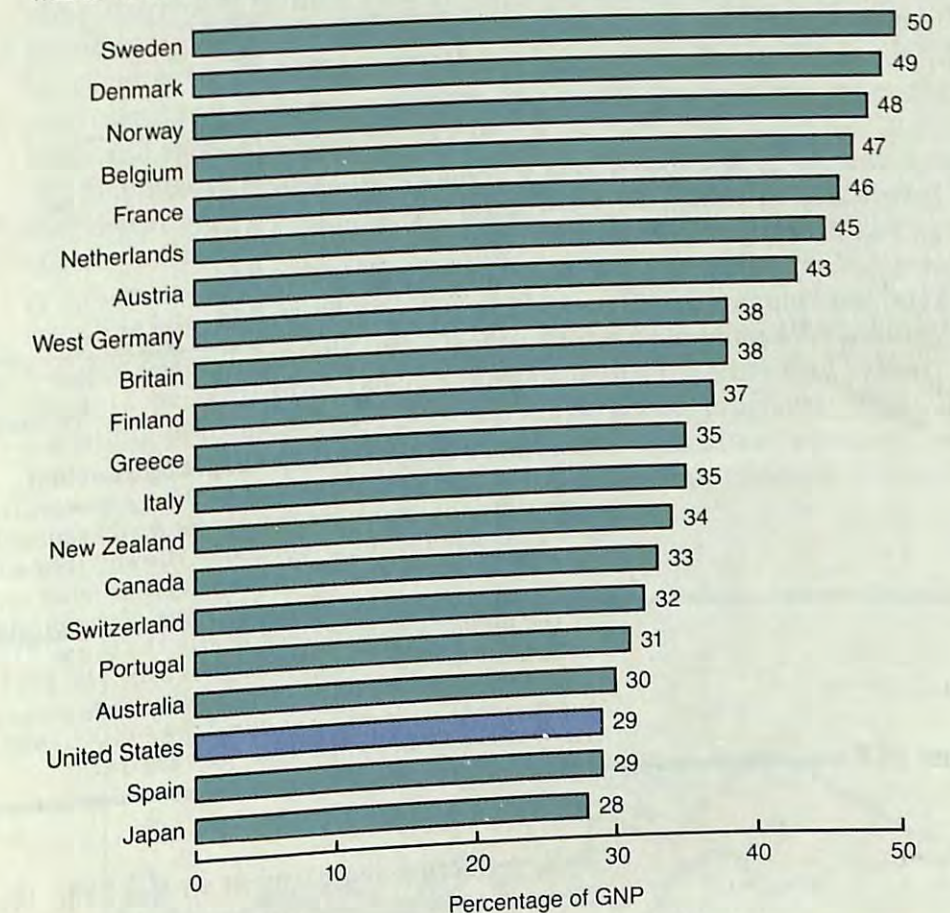
SPENDING POLICIES

The national government spends hundreds of billions of dollars every year. Where does the money go? Figure 15.5 shows the \$1 trillion in outlays in President Reagan's FY 1989 budget according to eighteen major budgetary functions. The largest amount by far (nearly 30 percent of the total budget) was earmarked for national defense. The next largest outlay was for social security; the third largest was for interest on the accumulated national debt, which alone consumes over 15 percent of all government spending.

COMPARED WITH WHAT? 15.1

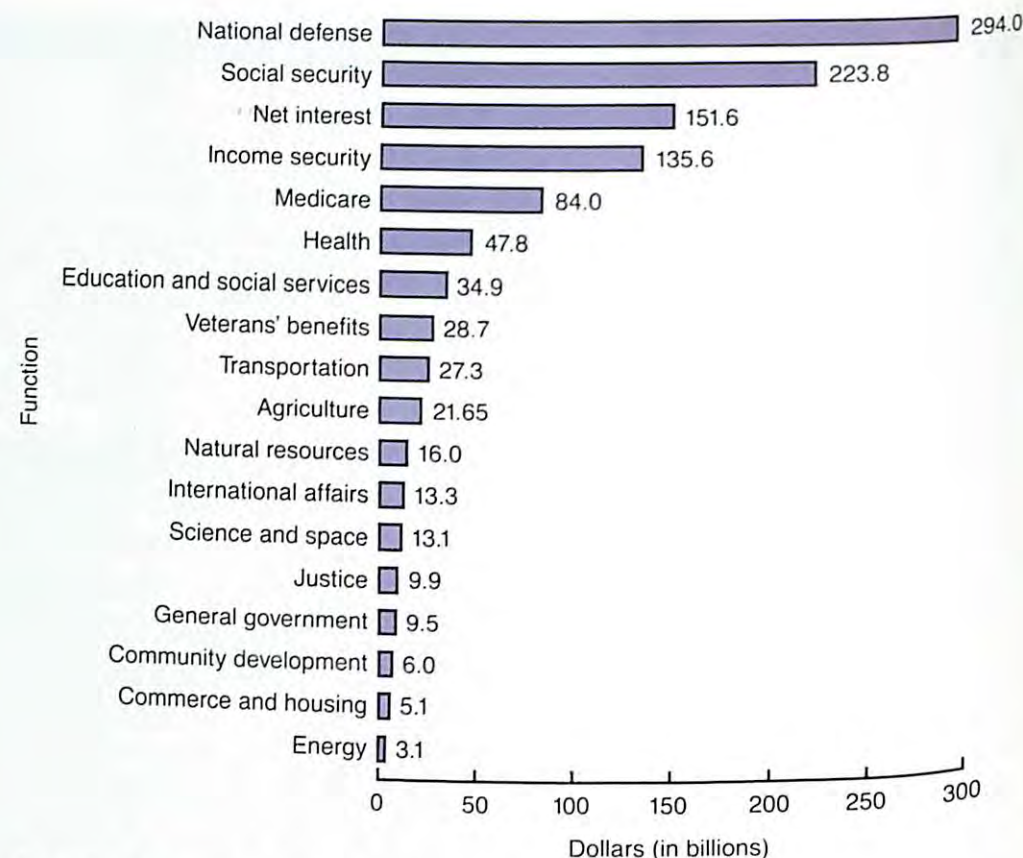
Tax Burdens in Twenty Countries

All nations tax their citizens, but some nations impose a heavier tax burden than others. This graph compares tax burdens in 1985 as a percentage of gross domestic product (GDP)—GNP minus the value of goods produced outside the country. The percentages include national, state, and local taxes and social security contributions. By this measure, the U.S. government extracts less in taxes from its citizens than the governments of most other democratic nations. At the top of the list stands Sweden, well known as a social welfare state, which consumes about 50 percent of its gross domestic product in taxes.



Source: Bureau of the Census, *Statistical Abstract of the United States 1988* (Washington, D.C.: U.S. Government Printing Office, 1988), p. 810.

To understand current expenditures, it is a good idea to examine national expenditures over time. (See "National Government Outlays" in Essay D, page 534, for an illustration of the budget outlays in four major categories since 1940 by percentage.) The effect of World War II is clear: Spending for national defense rose sharply after 1940, peaked at about 90 percent of the budget in 1945, and fell to about 30 percent in peacetime. The percentage allocated to defense rose again in the early



President Reagan's FY 1989 Budget by Function

Federal budget authorities and outlays are organized into twenty-one categories, three of which are mainly for bookkeeping purposes. The graph below shows expected outlays for each of the eighteen substantive functions in Reagan's FY 1989 budget. The final budget differed somewhat from this distribution because Congress amended some of the president's spending proposals, but the proportions remained nearly the same. The pact between the president and Congress at the budget summit after the 1987 market crash specified the outlays for defense and for certain domestic programs, so the presidential and congressional budgets were quite close in FY 1989. (Source: Congressional Quarterly Weekly Report, 28 May 1988, pp. 1439–1441.)

Figure 15.5

1950s, reflecting rearmament in the Cold War with the Soviet Union. Thereafter, the share of the budget devoted to defense decreased steadily (except for the bump during the Vietnam War in the late 1960s) until the trend was reversed by the Reagan administration in the 1980s.

Government payments to individuals consistently consumed less of the budget than national defense until 1971. Since then, payments to individuals have accounted for most of the national budget, and they have been increasing. Net interest payments also have increased substantially in recent years, reflecting the rapidly growing national debt. All other government outlays have been squeezed by pressure from payments for national defense, individuals, and interest on the national debt.

Because of continuing price inflation, we would expect government expenditures to increase steadily in dollar amounts. However, national spending has far outstripped inflation. Figure 15.6 graphs government receipts and outlays as a percentage of the GNP, which eliminates the

effect of inflation. It shows that national spending has increased from about 15 percent of the GNP soon after World War II to nearly 25 percent, most recently at the expense of the national deficit. There are two major explanations for this steady increase in government spending. One is bureaucratic; the other, political.

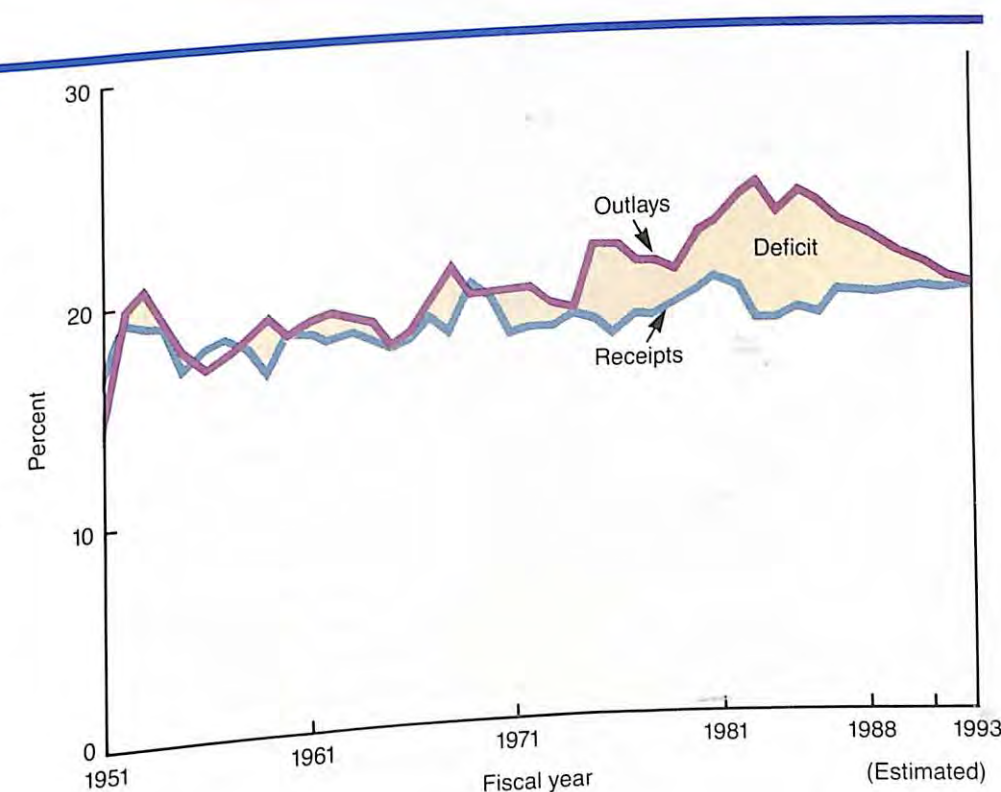
Incremental Budgeting . . .

The bureaucratic explanation for spending increases involves the concept of **incremental budgeting**: Bureaucrats, in compiling their budget funding requests for next year, ask for the amount they got this year plus some *increment* to fund new projects. Members of Congress pay little attention to the size of the agency's budget for the current year (the largest part of that budget), focusing instead on the extra money (the increment) requested for next year. As a result, few agencies are ever cut back, and spending continually goes up.

Incremental budgeting produces a sort of bureaucratic momentum that continually pushes up spending. Once an agency is established, it attracts a clientele that defends its existence and that supports the agency's requests for extra funds to do more year after year. Reagan's domestic spending cuts substantially checked the practice of incremental budgeting. For example, his FY 1987 budget proposed cutting \$9.5 billion (almost 18 percent) from the U.S. Department of Agriculture budget by most 18 percent) from the U.S. Department of Agriculture budget by curtailing housing, water, and sewer construction programs; rural electrification and telephone programs; and the agriculture extension service.²⁸ An even better example is General Revenue Sharing, a program

Figure 15.6
Government Outlays and Receipts as a Percentage of the GNP

We can see the growth of government spending—and the rising national debt—by plotting budget outlays and receipts against each other over time. In this graph, outlays and receipts are each expressed as a percentage of the GNP, to control for inflation and to demonstrate that both government spending and taxes have been taking a progressively larger share of the nation's productive output. (Source: Office of Management and Budget, Historical Tables, Budget of the United States Government, 1989 [Washington, D.C.: U.S. Government Printing Office, 1988], p. 8.)



that had existed for fourteen years and had distributed \$4 billion to thirty-nine thousand localities in 1986. It was terminated at the end of that year.

These kinds of major cuts interfere with incremental budgeting and force closer scrutiny of budgetary proposals by agencies and members of Congress alike. As a result, agencies are now more likely to engage in a form of analytical budgeting, in which existing programs are justified in terms of their effectiveness (see Chapter 12). Still, Reagan found it impossible to reduce government spending enough to balance the budget because politics had put most of the budget beyond his control.

... And Uncontrollable Spending

Certain spending programs are effectively immune to budget reductions because they have been (1) enacted into law and (2) enshrined in politics. For example, social security legislation guarantees certain benefits to participants in the program when they retire from work. The same applies for other programs, among them, Medicare and veterans' benefits—which entitle citizens to certain payments. Because these payments have to be made under existing law, they represent **uncontrollable outlays**. In Reagan's FY 1989 budget, more than 75 percent of national budget outlays were uncontrollable or relatively uncontrollable—mainly payments to individuals under social security, Medicare, public assistance, interest on debt, and farm price supports. Most of the funds remaining were earmarked for defense, which Reagan had pledged to increase. Less than 10 percent remained to absorb the cuts.

To be sure, Congress could change the laws to abolish entitlement payments, and it does make minor modifications to them through the budget reconciliation process. But politics argues against major reductions. The only major social program that escaped cutting during the Reagan administration was social security—the largest single domestic program and, according to many surveys, the most popular one. (Even Senator Gramm, coauthor of Gramm-Rudman-Hollings, admitted that trying to cut spending for the elderly is "not winnable." His mother, in her eighties, told her son to "keep your mouth shut" when it came to that part of the budget.) Reagan tried to cut social security during his first year in office, but he encountered such intense opposition that he became a staunch defender of the system.

What spending cuts would be popular or even acceptable to the public? After the 1984 election, voters were asked which of ten expense items in the national budget should be increased and which reduced. Most respondents favored spending either at the current level or at increased levels for *all of them*—the environment, defense, fighting crime, social security, Medicare, education, science and technology, assistance to blacks, jobs for the unemployed, even food stamps.²⁹ When voters in 1988 were asked how they felt about spending cuts in six areas—aid to the homeless, education, programs to fight AIDS, help for the poor, help for farmers, and cleaning up the environment—clear majorities of both Republicans and Democrats favored increased spending.³⁰ A perplexed Congress, trying to reduce the budget deficit, faces a public that favors funding programs at even higher levels than those favored by most law-

What You Don't Know Can Hurt You

What can government do to protect people against the effects of toxic chemicals in their environment? California voters in 1986 passed Proposition 65—a sweeping law placed on the ballot by citizens' initiative and approved by a referendum. As of February 1988, all businesses—gas stations, offices, factories, stores—must display signs that notify employees and customers of any harmful chemicals on the premises. By expanding the state's responsibility to protect citizens' health and safety, this law extends the government's role to promote order.



makers.³¹ Moreover, spending for the most expensive of these programs—social security and Medicare—is uncontrollable.

The largest *controllable* expenditure is in the area of defense. Because Reagan wanted to increase defense spending, not cut it, he had to focus his cuts on controllable civilian or domestic programs. But those programs account for less than 10 percent of the budget, and no president can substantially reduce national spending by snipping away at such a relatively small outlay. Surveys did show support for cuts in defense spending in 1986, but otherwise the public wants to have its cake and eat it too.³² Americans have grown accustomed to social security, Medicare, student loans, and farm subsidies. But they do not like the idea of raising taxes to pay for their benefits.

TAXING, SPENDING, AND ECONOMIC EQUALITY

As we noted in Chapter 1, the most controversial purpose of government is promoting equality, especially economic equality. Economic equality comes only at the expense of economic freedom, for it requires government action to redistribute wealth from the rich to the poor. One means of redistribution is government tax policy, especially the progressive income tax. The goal here is rarely equality of outcome; it is reducing inequalities by helping the poor. But as you will see, our current income tax policies do not serve even this limited objective very well.

The national government has levied an income tax every year since 1913, when the Sixteenth Amendment gave it the power to do so. (See "The Ups and Downs of Federal Income Tax Rates," in Essay D, page

537.) From 1964 to 1981, people who reported taxable incomes of \$100,000 or more paid a top tax rate of 70 percent, while those with lower incomes paid taxes at progressively lower rates. How did government spending and tax policies during this period affect economic equality in America?

Government Effects on Economic Equality

In a major study, researchers examined the effects of transfer payments and tax policies on different income groups from 1966 to 1985.³³ **Transfer payments** are payments to individuals through social security, unemployment insurance, food stamps, and other programs. The researchers found that social spending (transfer payments) had a definite effect in reducing income inequality in 1980. Families in the lowest tenth of the population in terms of income paid 33 percent of their income in federal, state, and local taxes, but they also received payments from all levels of government that almost equaled their earned income. So the lowest-income group enjoyed a net benefit from government because of transfer payments, *not* because of tax relief. Ironically, families with the top 1 percent of income paid proportionately less of their income in taxes (about 28 percent). But the rich received only 1 percent of their income in transfer payments, suffering a net loss from government.³⁴

How can people in the lowest income group pay a higher percentage of their income in taxes than those in the very highest group? The answer has to do with the combination of national, state, and local tax policies. Only the national income tax is progressive, with rates rising as income rises. The national payroll tax, which funds social security, is highly *regressive*: Its effective rate decreases as income increases beyond a certain point. Everyone pays at the same rate (7.51 percent in 1988), but the tax is levied only up to a maximum wage (\$43,800 annually in 1988). There is no payroll tax at all on wages over that amount. So the effective rate of the payroll tax is more for the lowest income group than for the very top group.

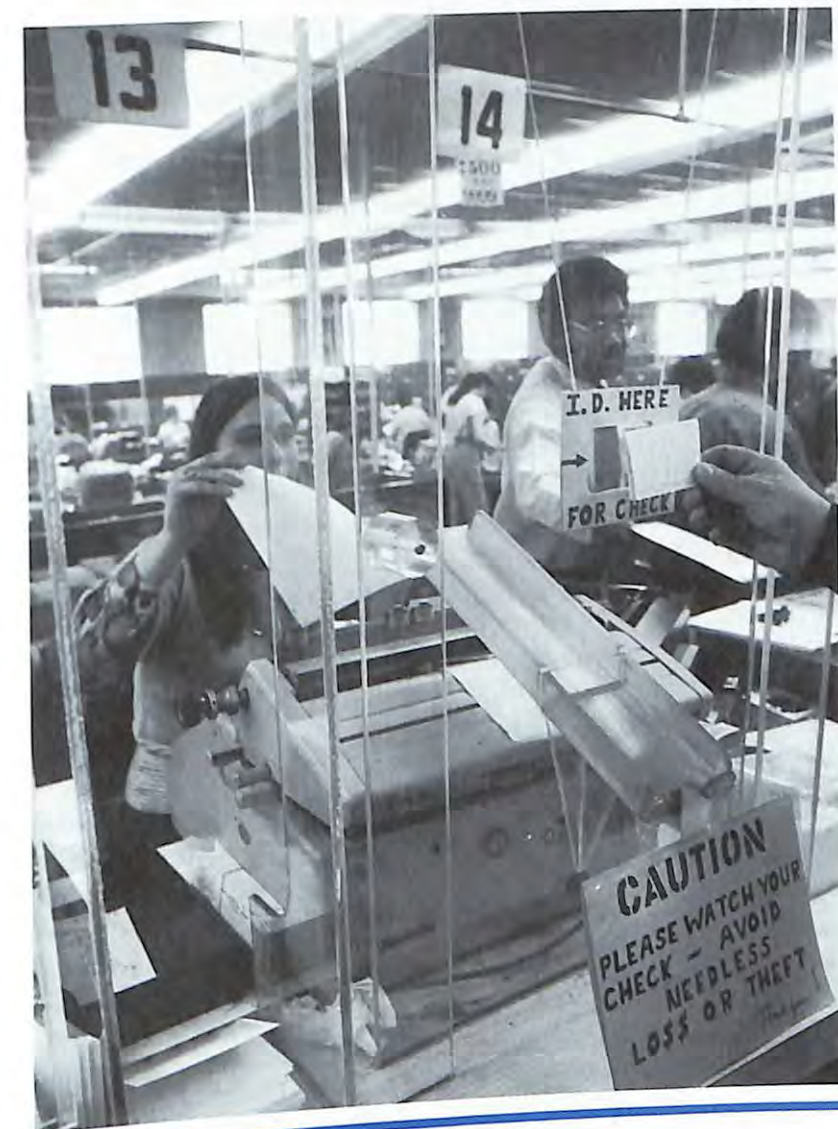
Most state and local sales taxes are equally regressive. Poor and rich usually pay the same flat rate on their purchases; but the poor spend almost everything they earn on purchases that are taxed, whereas the rich are able to save. The study showed that the effective sales tax rate for the lowest income group was around 7 percent, while that for the top 1 percent was only 1 percent.³⁵

In general, the nation's tax policies at all levels favored not only the wealthy, but also those who drew their income from capital rather than labor.³⁶ For example:

- The tax on income from the sale of real estate or stock (called *capital gains*) was typically less than the tax on income from salaries. (This was changed in the 1986 tax reform act, but there are pressures to restore the favorable treatment for capital gains.)
- The tax on *earned income* (salaries and wages) was withheld from paychecks by employers under national law; the tax on *unearned income* (interest and dividends) was not. Instead, the government depended on the good faith of investors to report all their unearned income.

Have a Nice Day

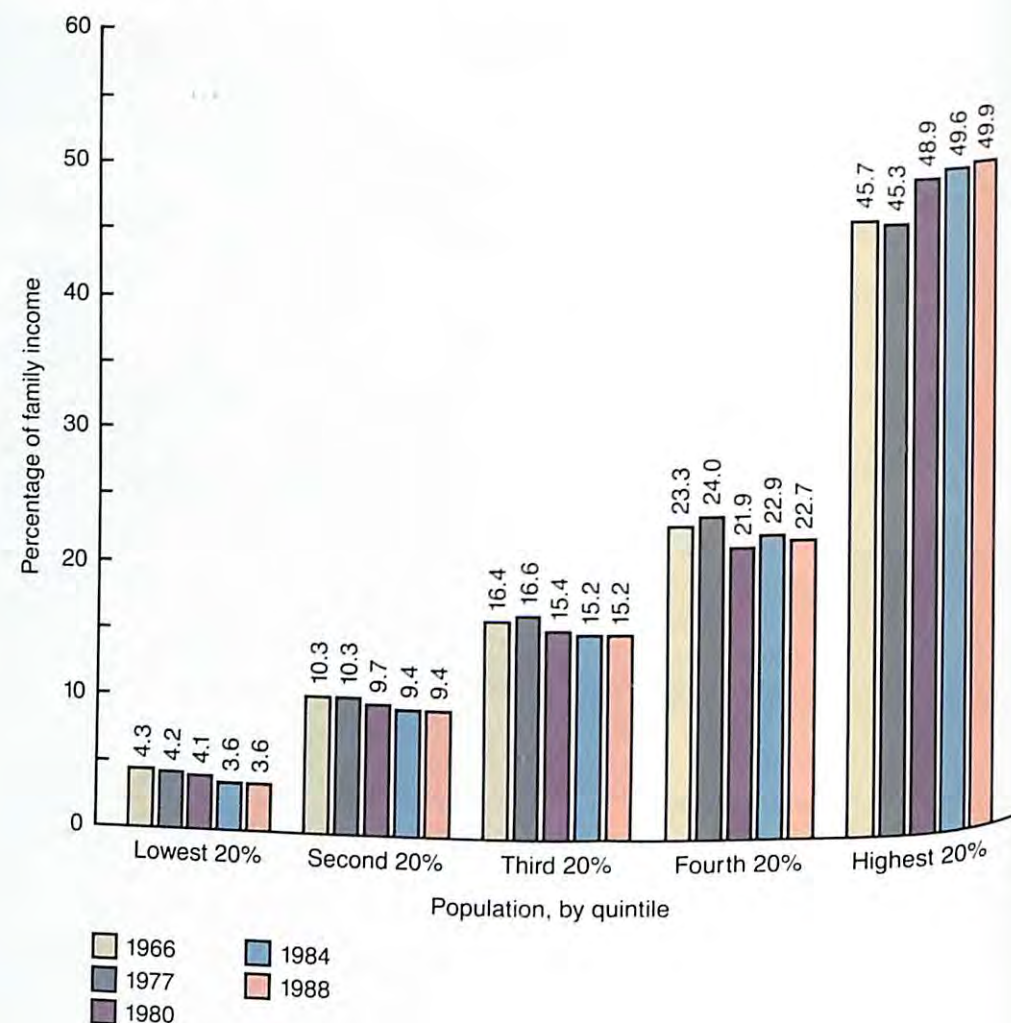
This unemployment office was not designed to be inviting; it is one way for government to discourage dependence on assistance. The office processes claims for assistance filed by people who become unemployed through no fault of their own. Under a cooperative state-national assistance plan enacted in 1935, unemployment benefits vary from state to state. In 1988, an eligible person in Massachusetts, for instance, could receive maximum weekly benefits of \$236 for a period of thirty weeks.



- There was no federal tax at all on investments in certain securities, among them, municipal bonds.

Effects of Taxing and Spending Policies over Time

In 1966, at the beginning of President Johnson's "Great Society" programs, the poorest fifth of American families had 4.3 percent of the nation's income after taxes and transfer payments, while the richest fifth had 45.7 percent. In 1980, after many billions of dollars had been spent on social programs and before Reagan's cutbacks in social spending, the poorest fifth still had 4.3 percent of the nation's income, while the richest fifth had 48.0 percent (see Figure 15.7).³⁷ In short, there was virtually no change in the distribution of income. In fact, the rich had become relatively richer, a trend that was enhanced during the Reagan administration. In 1988, the top 20 percent of the nation took in almost half of the nation's income, after taxes and transfer payments.



Distribution of Total Family Income over Time

The 20 percent of families with the highest income actually received more than 40 percent of the total income of all families in the United States (after taxes and transfer payments have been taken into account). At the bottom end of the scale, the poorest 20 percent of families received less than 5 percent of total family income. Notice that despite two decades of supposedly progressive taxation and social welfare programs, the distribution of income actually became more unequal. Of course, it would have been even more unequal without transfer payments, most of which go to the poor. (Sources: For the 1966 and 1980 data, Joseph A. Pechman, *Who Paid the Taxes, 1966-1985?* [Washington, D.C.: Brookings Institution, 1985], p. 74; for the 1977, 1984, and 1988 data, Congressional Budget Office, *The Changing Distribution of Federal Taxes: 1975-1990* [Washington, D.C.: U.S. Government Printing Office, 1987], p. 70.)

Figure 15.7

In a capitalist system, some degree of inequality is inevitable. There may be some kind of limit to economic equality, and perhaps the United States has already reached it. If so, this would prevent government policies from equalizing income no matter what was tried. To find out, we should look to other democracies to see how much equality they have been able to sustain. A study of six other countries found that only in France is as much as 46 percent of total income received by the top fifth of the population. In Canada, Italy, West Germany, Britain, and Sweden that percentage runs from 42 down to 37 percent.³⁸ The comparison

suggests that our society has measurably more economic inequality than others. The question is why?

Democracy and Equality

Although the United States is a democracy that prizes political equality for its citizens, its record in economic equality is not as good. In fact, its distribution of *wealth*—which includes not only income but ownership of savings, housing, automobiles, stocks, and so on—is strikingly unequal. According to the Census Bureau, the top 12 percent of American families control almost 40 percent of household wealth. Moreover, the distribution of wealth by ethnic groups is alarming. The typical white family—which has an annual income more than 1.7 times that of blacks and 1.5 times that of Hispanics—has more than 11 times the accumulated wealth of black families and nearly 8 times the wealth of Hispanic families.³⁹ If democracy means government “by the people,” why are the people not sharing more equally in the nation’s wealth? If one of the purposes of government is to promote equality, why are government policies not working that way?

One scholar theorizes that interest group activity in a pluralist democracy distorts government’s efforts to promote equality. His analysis of pluralism sees “corporations and organized groups with an upper-income slant as exerting political power over and above the formal one-man-one-vote standard of democracy.”⁴⁰ As you learned in Chapters 9 and 14, the pluralist model of democracy rewards those groups who are well organized and well funded.

An example: As we noted above, federal income tax is withheld by law from earned income (salaries and wages), not from unearned income (interest and dividends). Early in his first term, President Reagan surprised the financial world by proposing to withhold taxes from unearned income as part of his overall economic plan, and Congress made the plan law in the summer of 1982. Financial institutions were given a year to devise procedures for withholding 10 percent of dividend and interest payments for income tax (the withholding was to begin July 1, 1983). Led by the American Bankers’ Association, the banking interests urged their depositors to write legislators protesting the law; they even handed out sample letters that could be sent to members of Congress.

Some people, who apparently had never declared their bank interest as income, indignantly protested this “new” tax. Washington was flooded with mail stimulated by local banks and savings and loan associations. Congress had to hire temporary workers to answer letters from angry high-income taxpayers (who are also high-turnout voters). The president and many members of Congress were furious at the American Bankers’ Association, which spent more than \$300,000 in its effort to have the law repealed. Democratic Representative Thomas J. Downey of New York said that if withholding was repealed, “We send a signal that the Congress of the United States is a group of patsies to every well-organized group in America.”⁴¹ But Congress did back down, and withholding from unearned income was repealed only weeks before it was to go into effect.

What would happen if federal tax policy were determined according to principles of majoritarian rather than pluralist democracy? Perhaps

not much—if public opinion is any guide. The people of the United States are not eager to redistribute wealth by increasing the only major progressive tax, the income tax. If federal taxes must be raised, Americans strongly favor a national sales tax over increased income taxes.⁴² But a sales tax is a flat tax, paid by rich and poor at the same rate; it would have a regressive effect on income distribution, promoting inequality not equality. The public also prefers a weekly \$10 million national lottery to an increase in the income tax.⁴³ Because the poor are willing to chance more of their income on winning a fortune through lotteries than are rich people, lotteries (run by twenty-six states in 1988) also contribute to income inequality through the revenue system.⁴⁴

The newest tax on the horizon is a type of national retail sales tax called the value-added tax (VAT), which is applied to the value added to a product at each stage of production and distribution. The VAT is levied by all countries in the European economic community, and—with the potential of a 5 percent VAT raising about \$100 billion annually in revenue—it is certain to be a subject of debate in the United States.⁴⁵ But if a VAT is adopted in place of raising the income tax rate, it, like all sales taxes, will be a regressive tax.

Majoritarians might argue that most Americans fail to understand the inequities of the federal tax system. However, they *cannot* argue that the public demands “fairer” tax rates that take from richer citizens to help poorer ones. If it did, the lowest-income families might receive a greater share of the national income than they do. Instead, economic policy is determined mainly through a complex process of pluralist politics that preserves nearly half the national income in the hands of the wealthiest 20 percent of families.

SUMMARY

We can separate public policies into those that prohibit, those that promote, those that protect, and those that provide. Our typology is not absolute, but it is helpful in analyzing a complex subject. Governments use their powers to tax and spend to control the business cycles in market economies. The extent to which government intervenes in the economy is a major issue in public policy, made more critical by the stock market crash in 1987.

Laissez-faire economics holds that the government should keep its hands off the economy. Keynesian theory holds that government should take an active role in dealing with inflation and unemployment, using fiscal and monetary policies to produce desired levels of aggregate demand. Monetarists believe fiscal policies are unreliable, opting instead to use the money supply to control aggregate demand. Supply-side economists, who had an enormous influence on Reagan's economic policies, focus on controlling the supply of goods and services rather than the demand for them.

In 1921, Congress thrust the responsibility for the budget on the president. After World War II, it tried unsuccessfully to regain control of the process. Later, Congress managed to restructure the process under House and Senate Budget Committees. The new process worked well until it confronted the huge deficits in the Reagan budgets.

Because so much of the budget involves military spending and uncontrollable payments to individuals, it is virtually impossible to balance the budget by reducing what remains—mainly spending for nonentitlement domestic programs. With President Reagan firmly against a tax increase, Congress accepted the Gramm-Rudman-Hollings antideficit law in 1985. Under that law, deficits were to be reduced in stages, through automatic across-the-board cuts, if necessary, until the budget was balanced by FY 1991. The deficit problem proved so intractable that Congress had to amend the law in 1987 to extend the deadline to 1993.

Although Reagan was against a tax hike, he pushed for sweeping tax reform. The result was a simplified tax plan with fewer loopholes, fewer tax brackets, and a significantly lower rate for the top

bracket. But even with the heavily progressive tax rates of the past, the federal tax system has done little to redistribute income. Government transfer payments to individuals have helped reduce income inequalities. But the distribution of after-tax income in the United States in 1988 was *more* unequal than the distribution in 1966. Moreover, that distribution is less equal in the United States than in most major Western nations.

Pluralist democracy as practiced in the United States has allowed well-organized, well-financed interest groups to manipulate tax and spending policies to their benefit. The result is that a larger and poorer segment of society is paying the price.

Key Terms

public policy	receipts
tax expenditure	Office of Management and Budget (OMB)
market economy	tax committees
economic depression	authorization committees
inflation	appropriations committees
business cycle	Budget Committees
aggregate demand	Congressional Budget Office (CBO)
productive capacity	reconciliation
gross national product (GNP)	entitlement
Keynesian theory	Gramm-Rudman-Hollings (antideficit law)
fiscal policies	progressive taxation
monetary policies	incremental budgeting
deficit financing	uncontrollable outlay
Council of Economic Advisers (CEA)	transfer payment
monetarists	
supply-side economics	
fiscal year (FY)	
budget authority	
budget outlays	

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16

Domestic Policy

Studying Public Policies

Policies That Protect: AIDS • Policies That Prohibit: Illegal Drugs

Government Policies and Individual Welfare

The Growth of the American Welfare State • The Reduction of the Welfare State

Providing Social Insurance

Social Security • Medicare

Providing Public Assistance

Poverty and Public Assistance • Cash Assistance: AFDC • Necessary Nutrition: Food Stamps

Providing Farm Supports

The Origins of the Farm Problem • The "Traditional" Solution • Some Consequences of Farm Policy • A New Direction

Twelve-year-old Lafayette Walton regularly witnesses scenes of brutality. He lives in the Henry Horner Homes public housing project, a seven-block stretch of red-brick apartment buildings on Chicago's blighted West Side. During one recent summer, Henry Horner averaged one beating, shooting, or stabbing every three days. Even so, Henry Horner is far from the worst of Chicago's housing projects.

Lafayette lives with his mother, three brothers, and two sisters in a ground-floor apartment. It has the trappings of a fortress—dirty, cinder-block walls, iron grilles over the windows. The family talks about moving, but that's not a likely prospect, given the \$837 a month his mother receives in public assistance.

More than 5 million poor, inner-city children live lives similar to Lafayette's. Many youngsters routinely exposed to violence suffer nightmares, depression, and personality disorders. Some withdraw and give up hope; others become more aggressive. Somehow, in a land of promise and opportunity, Lafayette and his peers are living in an abyss of urban squalor and decay.¹

About 500 miles away, on Larry Baxa's farm near Belleville, Kansas, a combine chews up rows of corn. The air is fragrant with freshly cut alfalfa. The harvest season has begun. Amid this picture of plenty, Baxa and his three kids are hungry; the refrigerator and the cupboard are frequently bare. The Baxas are doing without basic needs, including food, in order to hold off bankers and creditors. The Baxas, like thousands of other farm families in the Midwest, are making desperate choices. To keep their farms, these families must seek assistance from the government, and few things are more shameful in rural Kansas.²

Although America is one of the freest and richest countries in the world, Lafayette Walton and his family take little comfort from its liberties and wealth. Although America enjoys one of the most productive "farmbelts" in the world, farmers like Larry Baxa face ruin.

Government action helped generate these contradictions; and government action aims to correct them. We call this kind of government action "public policy." You may recall our earlier definition of *public policy*: a general plan of action adopted by government to solve a social problem, counter a threat, or make use of an opportunity.

This chapter covers a wide range of issues to illustrate and analyze public policies (we examined the policymaking process in earlier chapters). We approach the study of public policies according to their purposes: to protect, to prohibit, to provide, or to promote. Sometimes policies serve multiple purposes. We begin our inquiry into domestic policy by discussing policies that *protect* Americans from disease and policies that *prohibit* the sale, distribution, and use of certain drugs. Then we analyze in detail policies that *provide* social insurance, public assistance, and farm supports. (We reserve our discussion of policies that *promote* disadvantaged groups through affirmative action programs until Chapter 18.) Our inquiry is guided by some key questions: What are the origins and politics of specific policies? What are the effects of those policies once they are implemented? Why do some policies succeed while others fail? Finally, do disagreements over values underlie disagreements over policy?

Public policies are as various as freight cars passing across a road: Their numbers sometimes seem endless to the person eager to get under way. With the wide range of policies worth exploring, you may be wondering why we spend most of the chapter discussing social insurance, public assistance, and farm support. There are three reasons why these policies are separated from the rest for special consideration. First, government expenditures in these areas represent a giant share of the national budget (see "National Government Outlays" in Essay D, page 534).³ All citizens ought to know how and why their resources are allocated. Second, one goal of these policies is to alleviate some of the consequences of economic inequality. Yet poverty remains a fixture of American life. And, third, these three areas pose some vexing problems involving the conflicts between freedom and order, and freedom and equality.

STUDYING PUBLIC POLICIES

We begin with a brief discussion of two public policy areas: the protection of health and the prohibition of controlled substances. Americans disagree over public policies because they disagree over perceptions of events (do they warrant the need for government action), the goals the government should have, or the means the government should try to fulfill those goals. In the examples that follow, we focus on perceptions, goals, and means.

Policies That Protect: AIDS

Acquired Immune Deficiency Syndrome (AIDS) is a killer. It now rivals cancer as the nation's most feared disease, and many Americans believe that everyone is susceptible to it.⁴ Estimates vary on the spread of AIDS through the population, but one fact is certain: Most of the men, women, and children who are afflicted will die from the opportunistic infections that ravage AIDS victims. So far, most victims are either intravenous drug users or male homosexuals. There is a real possibility that the disease will spread widely through the non-drug using heterosexual population.

Just about everyone agrees that government should protect the health of its citizens. In 1987, the national government spent \$700 million on AIDS research and education, up from \$30 million in 1982. By 1989, the government plans to spend \$1.7 billion.⁵ In order to protect health, what should the government do to stop the spread of AIDS?

Public health officials are fairly certain that the AIDS virus is spread only by the exchange of body fluids—blood or semen. In order to protect Americans, the Public Health Service in 1986 mounted a national campaign to educate children and young adults about the sexual practices that increase the risk of AIDS transmission. This government action infuriated many citizens, who believed that instruction about "safe sex" infringes on a parent's freedom to guide a child's sexual education.

Some public health officials also advocate the distribution of free condoms to young people in an effort to familiarize them with using condoms. Condoms are a simple and relatively effective way to lessen

The Gloved Treatment for AIDS Protesters

AIDS is today's most urgent public health problem. The fear the disease evokes was evident during this AIDS demonstration in Washington, D.C.: Local police wore rubber gloves to protect themselves against infection, even though the chances of becoming infected were miniscule. Some advocates urge the national government to outlaw discrimination against people infected with the AIDS virus so that more Americans will undergo the diagnostic test.



the spread of AIDS. However, some Americans believe the distribution of free condoms would encourage sexual activity and would undercut the moral guidance offered by parents.

Another effort to protect Americans from AIDS calls for the distribution of free needles to heroin addicts. Such a program, it is hoped, would induce addicts to avoid sharing needles, a practice linked to the transmission of the AIDS virus. Opponents to the needles-for-addicts plan maintain that the policy condones illegal drug use and would encourage a behavior that the government seeks in other ways to eliminate.

Most Americans see AIDS as a serious health problem that government should protect citizens against. A government's effort to protect life stems from the very purpose of government: maintaining order. Yet in maintaining order, government may infringe on personal freedom. AIDS policy generates controversy because it forces us to make difficult choices between freedom and order.

Policies That Prohibit: Illegal Drugs

Most Americans oppose the use of drugs such as cocaine, heroin, and marijuana. Two-thirds of Americans polled in 1986 thought that possession of small amounts of marijuana should be treated as a crime.⁶ Government prohibits the sale and possession of some drugs in an effort to stem their use. The penalties can be severe; prison terms and fines are common. But drug abuse continues despite these sanctions. One recent study estimates that Americans spend between \$15 and \$20 billion a year on cocaine alone, and that marijuana, with 18 million regular users, is still the nation's most popular illegal "high."⁷ Why is government's prohibition policy ineffective?

The market in illegal drugs, like other markets, exists because of supply and demand. In theory, the elimination of the drug supply would eliminate the market, but efforts aimed at the supply-side have been notably unsuccessful. Why? One partial answer arises from a simple observation: Drug trafficking, despite the risks, is very lucrative. It can be a shortcut to wealth and, in some communities, a quick way to gain status. Penalties such as long prison terms do not act as sufficient deterrents.

Government has also attempted to constrict or eliminate the supply and distribution network that keeps America awash in narcotics. A current government plan is trying to draw drug-producing or drug-trafficking nations into accord with U.S. drug policy. Under this plan, the president must certify whether twenty-four nations identified by Congress as major drug producers or transit points are cooperating with American drug-control efforts. If the president fails to certify a country, foreign aid and other financial assistance sent to that country are reduced substantially. The president can push for tougher sanctions, including trade embargoes, against particularly recalcitrant countries. So far, the sanctions have not dented the supply of illegal drugs entering this country.

If government policies are unsuccessful in eliminating the supply of drugs, perhaps government should concentrate on reducing or eliminating the demand for drugs. Consider the policy of mandatory drug testing for certain government employees begun by the Reagan administration.

The national government employs thousands of individuals in the area of drug enforcement. Proponents of drug testing for those employees argue that the government has a strong interest in ensuring that drug enforcement officials are not drug users themselves. Under the policy, if a urinalysis of an employee shows traces of an illegal drug, he or she is required to undergo counseling. Workers who refuse to be tested can be dismissed.

A 1986 poll reported that an overwhelming majority of Americans are willing to take drug tests.⁸ Opponents of mandatory drug testing argue, however, that testing would not be based on "reasonable suspicion" of drug use, that it would therefore interfere with personal liberty or privacy. Such testing, remarked one vocal opponent, would be "a comic exercise in Ty-D-Bol justice," flushing freedom in the process.⁹

Although most Americans agree that AIDS and illicit drugs are serious problems that warrant government action, disagreements arise

A Tough Test . . . For Some

A substantial majority of Americans are willing to submit to mandatory tests for illegal drugs. Organizations in the private sector routinely impose drug tests (professional athletes take them or lose their high-paying jobs). But government-imposed drug testing is a thornier issue: Constitutional guarantees of liberty and due process may bar testing in the absence of reasonable suspicion.



when the means selected to address these problems generate value conflicts or prove ineffective. Questionable or ineffective means have stirred debates over other large domestic policy programs, including those designed to provide income, health and welfare benefits to citizens.

GOVERNMENT POLICIES AND INDIVIDUAL WELFARE

The most controversial purpose of government is to promote social and economic equality among its citizens. To do so may conflict with the freedom of some citizens, for it requires government action to redistribute income from rich to poor. This choice between freedom and equality constitutes the modern dilemma of government; it has been at the center of many of the major conflicts in U.S. public policy since World War II. On one hand, most Americans believe that government should help the needy. On the other hand, they do not want to sacrifice their own standard of living to provide government handouts to those whom they may perceive as shiftless and lazy.

The Growth of the American Welfare State

At one time, governments confined their activities to the minimal protection of people and property—to ensuring security and order. Now, however, almost every modern nation may be characterized as a **welfare state**, a concept that stresses government's function as the provider and protector of individual well-being through economic and social programs. **Social welfare** encompasses government programs that are developed to provide the necessary minimum living standards for all citizens. Income for the elderly, health care, subsidized housing, and nutrition are among the concerns addressed by government social welfare programs.

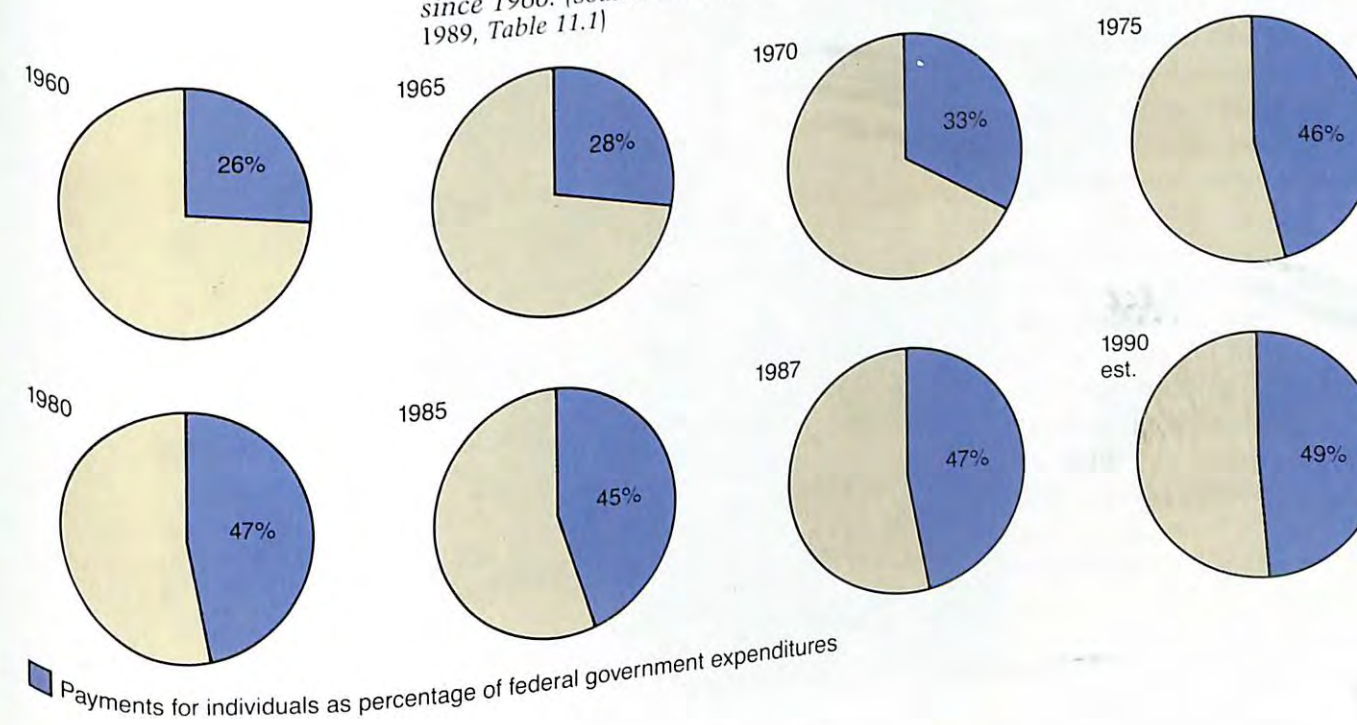
The recent history of U.S. government support for social welfare policies is illustrated in Figure 16.1. In 1960, 26 cents of every dollar of national spending went to payments for individuals. In 1970, 33 cents of every dollar went to payments for individuals. And, in 1980, slightly less than half of each dollar went to individuals. By 1985, spending for individuals fell off a few percent; but by 1987, it had returned to the 1980 level. The government estimates that by 1990, 49 percent of national spending will go to individuals. The national government clearly remains a provider of social welfare, despite changes in administrations.

The origins of social welfare as government policy go back to the Industrial Revolution, when the mechanization of production resulted in a shift from home manufacturing to large-scale factory production. As more and more people worked for wages, many more were subjected to the dreadful consequences of a loss of employment due to sickness,

Figure 16.1

Government Payments to Individuals

The national government spends a large portion of its budget on payments to individuals (for example, on social security). This spending has nearly doubled since 1960. (Source: Historical Tables, Budget of the United States Government, FY 1989, Table 11.1)



injury, old age, or economic conditions. The sick, the disabled, and the aged were tended, for the most part, by charities. The poor were confined to poorhouses or almshouses, which were little more than shacks that warehoused the impoverished. In the eighteenth and nineteenth centuries, poverty was viewed as a disgrace. Poor people were seen as lazy and incompetent. (Indeed, many Americans still hold this view.) The circumstances of relief were purposely made disagreeable to discourage dependence on outside assistance.

America today is far from being a welfare state in the same sense that Sweden or Great Britain is; those nations provide many more medical, educational, and unemployment benefits to their citizens. However, the United States does have some social welfare functions. To understand social welfare policies in the United States, you must first understand the significance of a major event—the Great Depression—and the two presidential plans that extended the scope of government—the “New Deal” and the “Great Society.”

The Great Depression. Throughout its history, the U.S. economy has experienced alternating good times and hard times, generally referred to as *business cycles*. The **Great Depression** was, by far, the longest and deepest setback that the American economy has ever experienced. It

A Human Tragedy

The Great Depression made millions of Americans idle. By 1933, when President Herbert Hoover left office, about one-fourth of the labor force was out of work. The few available jobs attracted long lines of able-bodied workers.



began with the stock market crash of 1929 (on October 29, a day known as Black Tuesday) and did not end until the start of World War II. By 1932, one out of every four U.S. workers was unemployed, and millions more were underemployed. No other event has had a greater effect on the thinking and the institutions of government in the twentieth century.

The forces that had stemmed earlier declines were no longer operating. There were no more frontiers, no growing exports, no new technologies to boost employment. Unchecked, unemployment spread like an epidemic. And the crisis fueled itself. Workers who lost their source of income could no longer buy the food, goods, and services that kept the economy going. Thus, private industry and commercial farmers tended to produce more than could be sold profitably. Closed factories, surplus crops, and idle workers were the consequences.

The Great Depression generated powerful ironies. Producers, seeking to restore profits, trimmed costs by replacing workers with machines, which only increased unemployment. People went hungry because so much food had been produced that it could not be sold profitably; dumping it was cheaper than taking it to market.

The industrialized nations of Europe were also hit hard. The value of U.S. exports fell while the value of its imports increased; this led to high tariffs, which strangled trade and fueled the Depression. From 1929 to 1932, more than 44 percent of the nation's banks failed. Farm prices fell by more than half in the same period. Marginal farmers lost their land, and tenant farmers succumbed to mechanization. The uprooted—tens of thousands of dispossessed farm families, with their possessions atop their cars and trucks—headed west in a hopeless quest for opportunity.

The New Deal. In his speech accepting the presidential nomination at the 1932 Democratic National Convention, Franklin Delano Roosevelt (then governor of New York) made a promise: “I pledge you, I pledge myself to a new deal for the American people.” Although this **New Deal** was never defined, it became the label for measures advocated by the Roosevelt administration to stem the Depression. Some scholars regard these measures as the most imaginative burst of domestic policy in the nation's history. Others see them as the source of massive government growth without matching benefits.

President Roosevelt's New Deal was composed of two phases. The first, which ended in 1935, was aimed at boosting prices and lowering unemployment. The second phase, which ended in 1938, was aimed at aiding the forgotten people: the poor, the aged, unorganized working men and women, and the farmers. The Supreme Court stymied Roosevelt's first-phase reform efforts by declaring major New Deal legislation unconstitutional, beginning in 1935. A majority of the justices maintained that in its legislation, Congress had exceeded its constitutional authority to regulate interstate commerce.

The Democrats won overwhelming popular support for their efforts at relief and recovery. The voters returned Roosevelt to office in a landslide election in 1936. But the Supreme Court continued its opposition to New Deal legislation. This prompted Roosevelt to advocate an in-

Facing the Great Depression

The despair of the Depression can be seen in the faces of this migrant mother and her children. They were unsuccessful in their search for work in Weslaco, Texas, in 1939. Uprooted farmers, forced from their land by foreclosure, trooped from town to town in search of jobs or food. The health, nutrition, and shelter of millions of Americans suffered as a consequence of the Depression.



crease in the number of justices on the Court; his goal was to appoint justices sympathetic to the legislation he endorsed. However, Roosevelt's attack on the Court, coupled with increasing labor violence, alarmed conservatives and put the New Deal on the defensive. Still, within a few months of the 1936 election, the Supreme Court began to yield to a view of expanded power for the national government; in an abrupt about-face, the Court upheld the New Deal policies that comprised the second phase. (It was, said one wag, "the switch in time that saved nine.")

The New Deal programs were opportunistic; they were not guided by, or based on, a single political or economic theory. They aimed at relief for the needy, recovery for the nation, and long-range reform for the economy. Administering the programs called for government growth; funding the programs required higher taxes. Government could no longer rely on either the decentralized political structure of federalism or the market forces of laissez-faire capitalism to bring the country out of its decline. The New Deal embodied the belief that a complex economy required centralized government control.

Poverty and unemployment remained, however, despite the best efforts of the Democrats. By 1939, 17 percent of the work force (more than 9 million people) was still unemployed. Only World War II was able to provide the economic surge needed to yield lower unemployment and higher prices, the elusive goals of the New Deal. Although the actual economic value of the New Deal reforms is still undetermined, those policies did begin long-range trends toward government expansion. And another torrent of domestic policymaking burst forth three decades later.

The Great Society. John F. Kennedy's election in 1960 brought to Washington public servants sensitive to persistent poverty and the needs of minorities. But Kennedy's narrow margin of victory was far from a mandate to improve the plight of the poor and dispossessed. At first, Kennedy proposed technical and financial aid for depressed areas and programs for upgrading the skills of workers in marginal jobs. But Kennedy and influential members of his administration were motivated by politics as well as poverty; in 1962, with the economy faltering again, the Kennedy administration proposed substantial tax breaks for middle- and upper-income groups. Many low-income Americans remained untouched by the administration's programs.

Kennedy's assassination in November 1963 provided the backdrop for new policies founded on equality, proposed by his successor, Lyndon Baines Johnson. In his 1965 State of the Union address, President Johnson offered his own version of the New Deal; his vision of the **Great Society** included a broad array of programs designed to redress political, social, and economic inequality. Some of these programs had already been enacted, whereas others were still in the planning stage. The Civil Rights Act of 1964 was aimed at erasing racial discrimination from most areas of American life. The Voting Rights Act of 1965 had as its goal the elimination of voting restrictions that discriminated against blacks and other minorities. Both statutes prohibited conduct that was inconsistent with political and social equality.

Another part of Johnson's Great Society plan was based on the traditional American belief that social and economic equality could be attained through equality of educational opportunity. The Elementary and Secondary Education Act of 1965 provided, for the first time, direct federal aid to local school districts, based on the number of low-income families in each district. Later, the national government was able to use the threat of withholding school aid (under the 1964 Civil Rights Act) to dramatically increase the pace of school integration in the South.

Still another vital element of the Great Society was the **War on Poverty**. The major weapon in this war was the Economic Opportunity Act (1964); its proponents promised that it would eradicate poverty in ten years. The act encouraged a variety of local community programs to educate and train people for employment. Among them were college work-study programs, summer employment for high school and college students, loans to small businesses, a domestic version of the Peace Corps (called VISTA, for Volunteers in Service to America), educational enrichment for preschoolers, and legal services for the poor. It offered opportunity: a hand up, rather than a handout.

The act also established the Office for Economic Opportunity (OEO), which was the administrative center of the War on Poverty. Its basic strategy was to involve the poor themselves in administering the programs, in the hope that they would know which programs would best serve their needs. Federal money was channeled directly to local community action programs to fight poverty. This approach avoided the vested interests of state and local government bureaucrats and political machines. But it also led to new local controversies by shifting the control of federal funds from local politicians to other groups. (In one

notorious example, the Blackstone Rangers, a Chicago street gang, received federal support.)

In 1967, the Johnson administration responded to pressure from established local politicians by requiring that poverty funds be distributed through certified state and local agencies. In addition, all sectors of the community (including business, labor, and local leaders) would now be represented, along with the poor, in administering community action programs.

The War on Poverty eventually sputtered and disappeared as funding was diverted to the Vietnam War. Although it had achieved little in the way of income redistribution, it did lead to one significant change: It made the poor aware of their political power. Candidates representing the poor ran for political office, and officeholders paid increased attention to the poor. The poor also found that they could use the legal system to their benefit. For example, with legal assistance from the OEO, low-income litigants were successful in striking down state laws requiring a minimum period of residency before people could receive public assistance.¹⁰

Some War on Poverty programs remain, established features of government. (Among these are the work-study program that enables many college students to finance their educations.) Yet poverty also remains; and the evidence suggests that it may once again be on the rise. Public attitudes toward poverty have changed, however, since the Great Depression. When Americans were polled recently on the reasons for poverty, they cited in about equal measure circumstances beyond the control of the poor and lack of effort. Many Americans today realize that poverty results from forces beyond the control of individuals, such as shifts in the economy.¹¹

Social welfare policy is based on the premise that society has an obligation to provide for the minimum welfare of its members. In a recent national survey, the poor and nonpoor agreed that government should protect its citizens against the risks that they are powerless to combat. Americans expressed a clear conviction that money and wealth ought to be more evenly shared by a larger percentage of the population.¹² The label *welfare state* reflects this protective role of government.

By meeting minimum needs, government welfare policies attempt to promote equality. New Deal policies were aimed at meeting the needs of the poor by redistributing income: People with greater incomes paid progressively higher taxes; the wealthy paid to alleviate poverty. Today's liberals tend to follow in the New Deal path. They are willing to curtail economic freedom somewhat to promote economic equality. As a result, their policies aim at providing direct income subsidies and government jobs. Today's conservatives avoid this government-as-provider approach, preferring economic freedom to government intervention. Their policies aim at curbing inflation and reducing government spending, on the theory that the tide of a rising economy lifts all boats.

The Reduction of the Welfare State

A spirit of equality—equality of opportunity—motivated the reforms of the 1960s, and many of these reforms carried over to the 1970s. But

Ronald Reagan's overwhelming election in 1980 and his landslide reelection in 1984 forced a re-examination of social welfare policy.

In a dramatic departure from his predecessors (Republicans as well as Democrats), Reagan shifted emphasis from economic equality to economic freedom. He questioned whether government alone should continue to be responsible for shouldering the economic and social well-being of less fortunate citizens. And, to the extent that government should bear this responsibility, he maintained that state and local governments could do so more efficiently than the national government.

Reagan professed his support of the "truly needy" and of the preservation of a "reliable safety net of social programs," by which he meant the core programs begun in the New Deal. But his administration abolished a number of national social welfare programs and redirected others. Reagan proposed sharp cutbacks in housing assistance, welfare, the food stamp program, and education and training programs. He also trimmed the most basic of American social welfare programs—social security—although cuts here were less severe than in other areas.¹³

Congress checked some of the president's proposed cutbacks; many Great Society programs remained in force, although at lower funding levels. Overall spending on social welfare programs (as a proportion of the gross national product) fell to about mid-1970s levels. But the dramatic growth in the promotion of social welfare that began with the New Deal ended with the Reagan administration. And the national budget deficit—a deficit that ballooned during the Reagan administration—will probably restrict future efforts to expand the government's social welfare role. The enormous government debt may force Congress to avoid new and costly social welfare programs until income and expenditures come nearer to balance.

PROVIDING SOCIAL INSURANCE

Insurance is a device for guaranteeing an individual against loss. Since the late nineteenth century, there has been a growing tendency for governments to offer **social insurance**, which is a government-backed guarantee against loss by individuals, without regard to need. The most common forms of social insurance guard against losses due to worker sickness, injury, and disability; due to old age; and due to unemployment. The first example of social insurance in the United States was workers' compensation. Beginning early in this century, most states provided a system of insurance that compensated workers who lost income because they were injured in the workplace.

Social insurance benefits are distributed to recipients without regard to their economic status. Old-age benefits, for example, are paid to all people—rich or poor—who reach the required age. In most social insurance programs, employees and employers contribute to a fund from which later disbursements are made to recipients.*

* Examine your next paycheck stub. It should indicate your contribution to FICA (the Federal Insurance Contribution Act). This is your social security tax; it supports disability, survivors', retirement, and Medicare benefits. In 1989, for wages up to \$45,000, the tax rate was 7.51 percent.

Social insurance programs are examples of *entitlements*—benefits to which every eligible person has a legal right, and which government cannot deny. National entitlement programs consume about half of every dollar of government spending; one of the largest entitlement programs is social security.

Social Security

Social security is social insurance that provides economic assistance to people faced with unemployment, disability, or old age; it is financed by taxes on employers and employees. Initially, social security benefits were distributed only to the aged, the unemployed, and poor people with dependent children. Today, social security also provides medical care for the elderly and income support for the disabled.

Origins of social security. The idea of social security came late to the United States. As early as 1883, Germany enacted legislation to protect workers against the hazards of industrial life. Most European nations adopted old-age insurance after World War I; many provided income support for the disabled and income protection for families after the death of the principal wage earner. In the United States, however, the needs of the elderly and the unemployed were left largely to private organizations and individuals. Although twenty-eight states had old-age assistance programs by 1934, neither private charities nor state and local governments—nor both together—could cope with the prolonged unemployment and distress that resulted from the Great Depression. It became clear that a national policy was necessary to deal with a national crisis.

The first important step came on August 14, 1935, when President Franklin Roosevelt signed the **Social Security Act**; that act is the cornerstone of the modern American welfare state. The act's framers developed three approaches to the problem of dependence. The first provided social insurance in the form of old-age and surviving-spouse benefits, and cooperative state-national unemployment assistance. A program was created to provide income to retired workers, to ensure that the elderly did not retire into poverty. This was to serve as a floor of protection against income loss for the elderly. (Most Americans associate social security with this program.) In addition, an unemployment insurance program, financed by employers, was created to provide payments for a limited time to workers who were laid off or dismissed for reasons beyond their control.

The second approach provided aid to the destitute in the form of grants-in-aid to the states. The act established the first permanent national commitment to provide financial assistance to the needy aged, needy families with dependent children, the blind, and (since the 1950s) the permanently and totally disabled.

The third approach provided health and welfare services through federal aid to the states. Included were health and family services for crippled children and orphans, and vocational rehabilitation for the disabled.

Listen to Your Elders
Democratic Representative Claude Pepper of Florida was only seventy-nine when he posed with two one-hundred-year-old constituents who testified before the House Select Committee on Aging in 1979. Still active in 1988, Pepper continues to be the driving force behind government programs that provide assistance to the nation's elderly.



How social security works. The social security old-age benefits program is administered directly by the national government through the Social Security Administration. Old-age retirement revenue goes into its own *trust fund* (there is a separate fund for each social security program), which means that this revenue can be spent only for the old-age benefits program. Benefits, in the form of monthly payments, begin when an employee reaches retirement age, which today stands at sixty-five. (People can retire as early as age sixty-two, but with reduced benefits.) The age at which full benefits are paid will increase to sixty-seven after the year 2000.

Many Americans believe that each person's social security contributions are set aside specifically for his or her retirement, like a savings account.¹⁴ But social security doesn't operate quite like that. Rather, the social security revenue generated today pays benefits to those who have already reached retirement age. Thus, social security (and social insurance in general) is not a form of savings; it is a pay-as-you-go tax system. Today's workers support today's elderly.

When the social security program began, it had few beneficiaries and many contributors. The program could provide relatively large benefits with low taxes. In 1937, for example, the tax rate was 1 percent, and there were nine workers shouldering the benefits of each retiree. As the program matured and more people retired, the ratio of workers to recipients decreased. In 1986, for example, the social security system paid benefits to 38 million people and collected revenues from 124 million. (In 1989, the tax for retirement, survivors', and disability benefits was 6.06 percent of wages up to \$45,000.)

The reason Congress doesn't touch
Social Security....

GRANBO



At one time, federal workers, members of Congress, judges, even the president were omitted from the social security system. Today, however, there are few exceptions. Universal participation is essential for the system to operate because it is a tax program, not a savings program. If participation were not compulsory, there would not be enough revenue to provide benefits to present retirees. So government, which is the only institution that can coerce, requires that all employees and their employers contribute, thereby imposing restrictions on freedom.

Those people who currently pay into the system will receive retirement benefits financed by future participants. As with a pyramid scheme or a chain letter, success depends on the growth of the base. If the birthrate remains steady or grows, future wage earners will be able to support today's contributors when they retire. If the economy expands, there will be more jobs, more income, and a growing wage base to tax for increased benefits to retirees. But suppose the birthrate falls, or unemployment rises and the economy falters. Then contributions could decline to the point at which benefits exceed revenues. The pyramidal character of social security is its Achilles' heel.

Who pays? Who benefits? "Who pays?" and "Who benefits?" are two important questions in government policymaking, and they continue to shape social security policy. In 1968, the Republican party platform called for automatic adjustments that would increase social security payments as the cost of living increased. The theory was simple: As the cost of living rises, so should retirement benefits; otherwise, benefits are paid in "shrinking dollars." Cost-of-living adjustments (COLAs) became a political football in 1969 as Democrats and Republicans tried to outdo

each other by suggesting larger increases for retirees. The result was a significant expansion of the social security program, far in excess of the cost of living. The beneficiaries were the retired, who were beginning to flex their political muscle. Politicians knew that the alienation of this constituency could change an election.¹⁵

In 1972, Congress adopted automatic adjustments in benefits and in the wage base on which contributions are assessed, so that revenue would expand as benefits grew. This approach set social security on automatic pilot. When inflation exceeds 3 percent, the automatic adjustment goes into effect. (Politicians sometimes fear retribution at the polls if there is not an annual adjustment. Even though it appeared that inflation would fall below 3 percent in 1986, Congress authorized an adjustment for that year.)

There was no assurance, however, that revenue growth would equal or exceed the growth in social security expenditures. And, in fact, when *stagflation* (high unemployment coupled with high inflation) took hold in the 1970s, the entire social security system was in jeopardy. Stagflation gripped the social security system in an economic vise: Unemployment meant a reduction in revenue; high inflation meant growing benefits. This one-two punch drained social security trust fund reserves to critically low levels in the late 1970s and early 1980s. Other troubling factors were becoming clear. A lower birthrate meant that, in the future, fewer workers would support the pool of retirees. And the number of retirees would grow, as average life spans lengthened. Higher taxes—an unpopular political move—loomed as one alternative. Another was to pay for social security out of general revenues, that is, income taxes. Social security would then become a public assistance program, like welfare.

Life Begins at Sixty-Five
Old age and impoverishment used to go hand in hand, but not any more. Because of Social Security, people sixty-five and older are the second-richest age group in the United States. Only Americans fifty-five to sixty-four are better off. One political economist recently estimated that the government spends about \$350 billion on the aged, more than on national defense. Today's elderly remain vulnerable to impoverishment in only one area: long-term nursing home care.



In 1983, shortly before existing social security benefit funds were exhausted, Congress and President Reagan agreed to a solution that called for two painful adjustments: increased taxes and reduced benefits.

The changes enacted in 1983 may have guaranteed the future of the social security system. However, although policymakers have not generally fared well in predicting future economic conditions, those conditions will determine the success or failure of the system. Despite various revenue-generating plans, higher taxes or lower benefits may be the only means for ensuring the viability of social security.¹⁶

Today, few argue against the need for social security. But debate surrounds the extent of coverage and the level of benefits. "The [Social Security] Act is the most successful program of the modern state," declared Nobel prize laureate Paul Samuelson. Yet Milton Friedman, another Nobel laureate, labeled the act "a sacred cow that no politician can criticize." How can two renowned economists maintain such dramatically different views? Samuelson is a liberal in the Keynesian tradition; he favors equality over freedom. According to his view, social security lifted the elderly from destitution by redistributing income from workers (who have growing incomes) to the elderly (who have little or no income). Friedman is a libertarian and a monetarist; he favors freedom over equality. Because social security limits freedom to provide economic equality, Friedman would no doubt prefer that the program be scaled back or even eliminated. The political risks associated with social security cutbacks are too great, however, for most politicians to bear.

As a group, older Americans exercise enormous political power. People at or near retirement age now comprise almost 30 percent of the potential electorate; and voter turnout among older Americans is reportedly about twice that of younger people.¹⁷ These facts may help explain the stability of social security and the creation and expansion of health care for the elderly.

Medicare

The social security system provides economic assistance conditioned on unemployment, disability, or old age. In 1962, the Senate considered extending social security benefits to provide hospitalization and medical care for the elderly. In opposing the extension, Democratic Senator Russell Long of Louisiana declared, "We are not staring at a sweet old lady in bed with her kimono and nightcap. We are looking into the eyes of the wolf that ate Red Riding Hood's grandma."¹⁸ Long was concerned that there would be no way to limit this new push for government assistance to the elderly. Other opponents echoed the fears of the American Medical Association (AMA), which saw virtually any form of government-provided medical care as a step toward government control of medicine. Long and his compatriots won the battle that day. Three years later, however, the Social Security Act was amended to provide **Medicare**, health care for all people sixty-five and over.

Origins of Medicare. As early as 1945, public opinion clearly supported some form of national health insurance. That idea became entan-

No Cure Yet for this Headache

The United States leads the world in health care expenditures. Americans are not the healthiest people, however. Infant mortality rates are higher and life expectancy rates lower than in many other nations. Despite vigorous competition and powerful regulation, health care costs continue to grow at almost twice the rate of inflation. Today, senior citizens pay a larger share of their income for health care than they did in 1965, before the advent of Medicare.



gled in Cold War politics, however—the growing crusade against communism in America.¹⁹ The AMA, representing the nation's physicians, mounted and financed an all-out campaign to link national health insurance (so-called socialized medicine) with socialism; the campaign was so successful that the prospect of a national health policy vanished.

Both proponents and opponents of national health insurance tried to link their positions to deeply rooted American values: Advocates emphasized equality and fairness; opponents stressed individual freedom. In the absence of a clear public mandate on the *kind* of insurance (publicly funded or private) wanted, the AMA was able to marshal political influence to prevent any national insurance at all.²⁰

By 1960, however, the terms of the debate had changed. Its focus was no longer fixed on the clash of freedom and equality. Now the issue of health insurance was cast in terms of providing assistance to the aged, and a ground swell of support forced it onto the national agenda.²¹

The Democratic victory in 1964 and the advent of President Johnson's Great Society made some form of national health policy almost

inevitable. On July 30, 1965, Johnson signed a bill that provided a number of health benefits to the elderly and the poor. Fearful of the AMA's power to punish its opponents, the Democrats had confined their efforts to a compulsory hospitalization insurance plan for the elderly. (This is known today as Part A of Medicare.) In addition, the bill contained a form of an alternative Republican plan, which called for voluntary government-subsidized insurance to cover physician's fees. (This is known today as Part B of Medicare.) A third program, added a year later, is called *Medicaid*; it provides medical aid to the poor through federally assisted state health programs. Medicaid is a need-based comprehensive medical and hospitalization program for the poor. Need is the only criterion: If you are poor, you qualify. Medicaid today covers 22.4 million people at a cost in 1986 of nearly \$41 billion.

Medicare today. Part A of Medicare is compulsory insurance that covers certain hospital services for people sixty-five and older. Workers pay a tax (in 1989, it was 1.45 percent of wages up to \$45,000). Retirees pay premiums deducted from social security payments. Payments for services are made by the national government directly to participating hospitals and other qualifying facilities; they cover the reasonable costs of necessary medical services. In 1986, 31.3 million people were enrolled in Part A, and the government paid \$49 billion in benefits.²²

Part B of Medicare is a voluntary program of medical insurance for people sixty-five and older, who pay the premiums. The insurance covers the services of physicians and other qualified providers; payments for these services are based on reasonable charges or on set fees. In 1986, almost 31 million people were enrolled; the government spent \$25 billion for Part B benefits in 1986. In 1988, the monthly premium for this insurance was \$24.80.²³

The fears that Senator Long voiced in 1962 approached reality in the 1980s: Medicare costs soared out of control. By 1986, Medicare costs exceeded \$75 billion, representing a fourfold increase in ten years. For the moment, Medicare is solvent, thanks to modest payroll tax increases and low unemployment; but the program lacks the cushion presently enjoyed by the retirement trust funds. Spending reductions (through curtailed benefits) or income increases (through raised taxes) are still viable, although politically unpalatable, alternatives.²⁴

Medicare benefits were expanded significantly in 1988 to provide the elderly with insurance against catastrophic illnesses (illnesses that require long-term hospitalization). This program was designed to alleviate the worry of impoverishment by the high costs of hospitalization. During the first five years of the program, the government expects to pay benefits exceeding \$32 billion. Funding comes from a small surtax on income taxes and \$4-a-month premiums paid by the elderly.

The idea of catastrophic health insurance was first proposed by the Reagan administration. Why would an administration committed to tax reduction and benefit curtailment make such a dramatic turnabout? Perhaps the most important reason was the political power of the elderly. In an election year, the Republicans wanted the elderly's support.

While government has expanded the Medicare program, it has also sought to contain its costs. One attempt at cost containment makes use

of economic incentives in the hospital treatment of Medicare patients. The plan seems to have had the desired economic benefits, but it raises questions about the endangerment of elderly patients' health. Medicare payments to hospitals had been based on the length of a patient's stay; the longer the stay, the more revenue the hospitals earned. This approach encouraged longer, more expensive hospital stays, because the government, as the insurer, was paying the bill. In 1985, however, the government switched to a new payment system under which hospitals are paid a fixed, preset fee based on the patient's diagnosis. If the patient's stay costs more than the fee schedule allows, the hospital pays the difference. On the other hand, if the hospital treats a patient for less than the fixed fee, then the hospital reaps the profit. This new system provides an incentive for hospitals to discharge patients sooner, in some cases perhaps before they are completely well.

PROVIDING PUBLIC ASSISTANCE

Public assistance is what most people mean when they use the term *welfare* or *welfare payments*; it is government aid to individuals who can demonstrate a need for that aid. Public assistance is directed toward those who lack the ability or the resources to provide for themselves or their families.

Public assistance programs instituted under the Social Security Act are known today as *categorical assistance programs*. They include (1) old-age assistance for the needy elderly not covered by old-age pension benefits, (2) aid to the needy blind, (3) aid to needy families with dependent children, and (4) aid to the totally and permanently disabled. Although adopted initially as stopgap measures during the Depression, these programs have now become entitlements. They are administered by the states, but the bulk of the funding comes from the national government's general tax revenues. Because the states also contribute to the funding of their own public assistance programs, the benefits tend to vary from state to state.

Poverty and Public Assistance

The national government requires that national standards be used in the administration of state welfare programs. It distributes resources to each state based on the proportion of the population living in poverty in that state. That proportion is, in turn, determined on the basis of a federal **poverty level**, or poverty threshold, which is the minimum cash income that will provide for a family's basic needs. The poverty level is calculated as three times the cost of an economy food plan, a market basket of food that provides a minimally nutritious diet. (The threshold is computed in this way because research suggests that the poor spend one-third of their income on food.)

* Although it has been the source of endless debate, today's definition of poverty retains remarkable similarity to its predecessors. As early as 1795, a group of English magistrates "decided that a minimum income should be the cost of a gallon loaf of bread, multiplied by 3, plus an allowance for each dependent." See Alvin L. Schorr, "Redefining Poverty Levels," *New York Times*, 9 May 1984, p. 27.

The poverty level is fairly simple to apply. It is also, of course, only a rough measure for distinguishing the poor and the nonpoor. Using it is like using a wrench as a hammer: It works, but not very well.

The poverty level varies with family size, and it is adjusted each year to reflect changes in consumer prices. In 1986, the poverty threshold for a family of four was \$11,203.²⁵ This is income *before* taxes. If the poverty threshold were viewed as disposable income (in other words, income *after* taxes), then the proportion of the population categorized as living in poverty would increase.

Some critics believe that other factors should be considered in computing the poverty level. The current computation fails to take into account such noncash benefits as food stamps, health benefits (Medicaid), and subsidized housing. Presumably, the inclusion of these noncash benefits would decrease the proportion of individuals seen to be living below the poverty level.

Critics notwithstanding, the poverty threshold has been calculated for many years on the basis of total cash income. At the very least, that yardstick allows us to chart our progress against poverty. Figure 16.2 shows that poverty in the United States has declined from its peak years in the late 1950s and early 1960s. The elderly have made the most progress, and blacks and whites have progressed about equally. Nevertheless, in 1985 poverty was still the economic condition of one in nine whites and one in three blacks and Hispanics. Poverty retains a tight hold on the American population. And, as Figure 16.3 shows, it is creeping back up to mid-1960s levels.

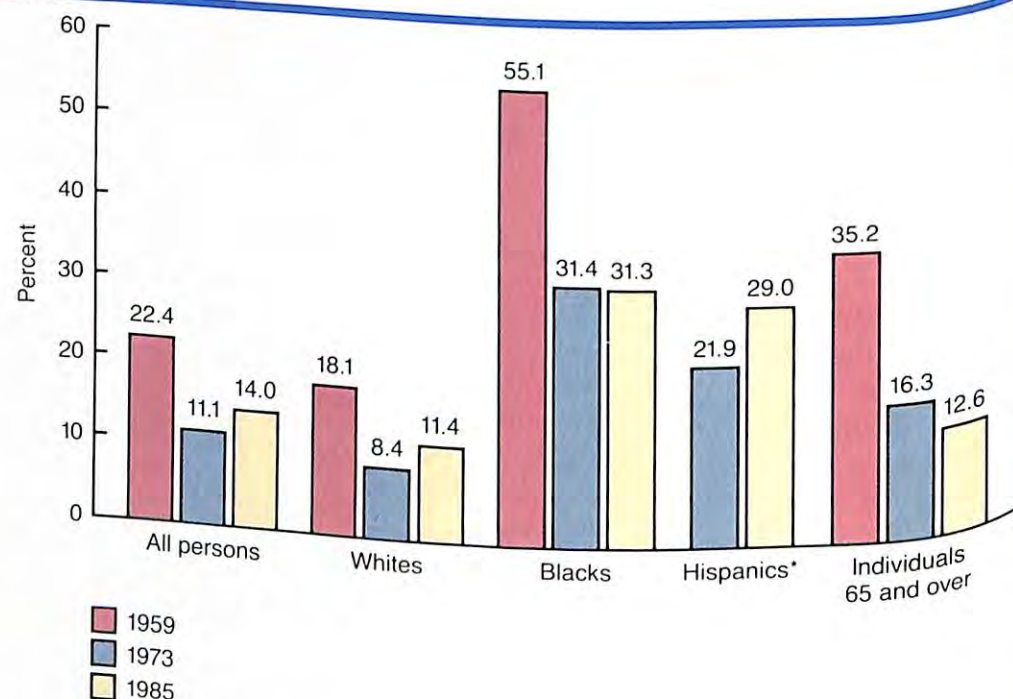
Poverty was once a condition of old age. Social security altered that

Figure 16.2

Poverty Rates by Groups

The condition of being poor affects whites, blacks, Hispanics, and the elderly unequally. A smaller percentage of all Americans live in poverty today than in 1959, when income information was first collected systematically.

(Source: Bureau of the Census, Money Income and Poverty Status of Families and Persons in the United States: 1985, Current Populations Reports, Series P-60, No. 158, Tables 1 and 2, pp. 13-15.)

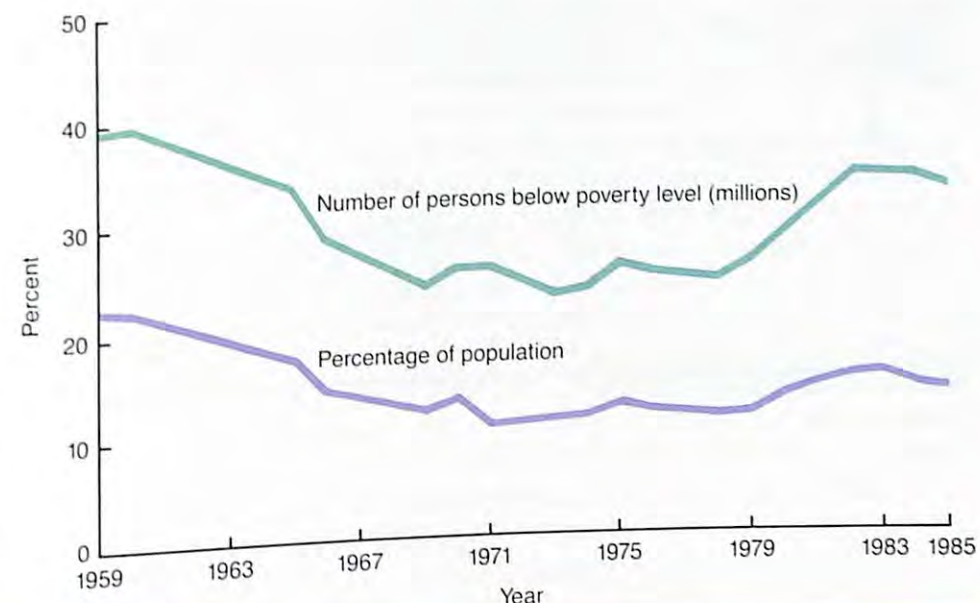


*No data available for 1959.

Poverty in the United States, 1959-1985

This graph shows the number and the percentage of the population living below the poverty level. Both figures have increased since 1978. (Source: Bureau of the Census, Money Income and Poverty Status of Families and Persons in the United States: 1985, Current Population Reports, Series P-60, No. 158, Table 1, p. 13.)

Figure 16.3



picture. Today, the likelihood of poverty is still related to age, but in the opposite direction. Poverty is largely a predicament of the young; almost half the poor are twenty-one or younger. Poverty also varies somewhat by gender. Of all the people who qualify as poor, nearly six in ten are females.²⁶ It is relatively easy to draw a portrait of the poor; it is much more difficult to craft policies that move them out of destitution.

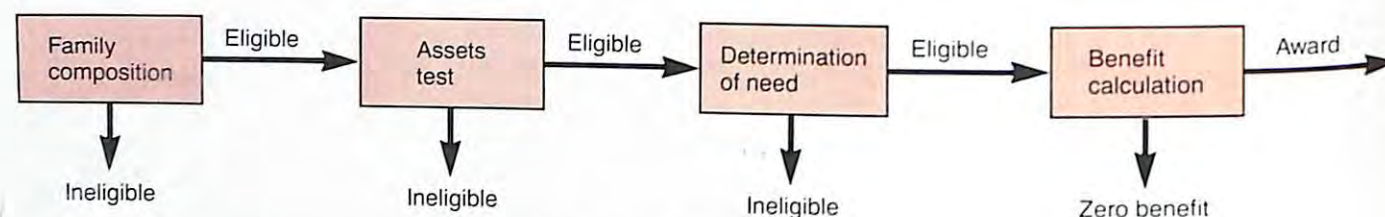
Critics of social welfare spending argue that antipoverty policies have made poverty more attractive by removing incentives to work. They believe these policies, which aim to provide for the poor, have actually promoted poverty. In short, America is losing ground in the battle against poverty.

Another explanation for the failure of government policies to reduce poverty rests on changes in racial attitudes. In the 1960s, racial barriers kept the black middle class in the same urban ghettos as the poor. The middle class's presence provided social stability, role models, and community institutions and businesses. Ironically, the decline of racial barriers prompted middle-class blacks to move out of the ghetto. As a result, the inner city became increasingly poor and increasingly dependent on welfare.²⁷

In the long run, understanding the consequences of public policy will help reduce poverty in America. For the moment, however, debates among scholars offer no comfort to Lafayette Walton and children like him, who confront the daily reality of inner-city despair and violence.

Cash Assistance: AFDC

The largest public assistance program is Aid to Families with Dependent Children (AFDC), which was created by the 1935 Social Security Act. Each month, almost 4 million families (or roughly 11 million individuals) receive benefits through AFDC; it is the major source of gov-



AFDC Qualification Process

A family seeking AFDC benefits must complete a four-step process. Some steps vary from state to state. (Source: Tom Joe and Cheryl Rogers. *By the Few, for the Few: The Reagan Welfare Legacy* [Lexington, Mass.: Lexington Books, 1985], p. 25. © 1985, Lexington Books. Reprinted by permission.)

Figure 16.4

ernment cash assistance to low-income children and their families. In 1985, the AFDC program cost \$15.2 billion: \$8.2 billion paid by the national government and \$7 billion paid by the states.²⁸

AFDC benefits are distributed in cash through the states. The typical AFDC family lives in a large urban area and consists of a mother under thirty and two children under eight. More than half of AFDC recipients are white; 40 percent are black. Eligibility for AFDC automatically qualifies recipients for Medicaid and other forms of public assistance. But recipients must first go through a complicated qualifying process, because government is very wary of giving money to people who might in any way be regarded as undeserving. The process has four parts (see Figure 16.4):

1. *Family composition test.* In general, an applicant for AFDC benefits must be a single parent living with at least one child under age eighteen. In half the states, recipients can be married, but the principal wage earner must be unemployed.

2. *Assets test* (varies from state to state). Assets are savings, clothing, and furniture. The national government sets a limit on the value of the assets an AFDC family can possess (in 1985, it was \$1,000). However, states can impose stricter limits.

3. *Determination of need* (varies from state to state). A family is considered to be in need if its income is below a "need standard" set by each state. In 1987, the typical need standard was \$428 per a month. Only families with incomes below the need standard qualify for benefits.

4. *Benefit calculation.* Each state establishes a payment standard for determining benefits. (In half the states, the payment standard is below the need standard.) For qualifying families, the difference between the payment standard and the family income is the AFDC benefit. In 1987, the typical AFDC grant for a one-parent family of three was \$354 a month (plus automatic Medicaid eligibility).

Inflation raises the poverty level, but eligibility for AFDC has remained stationary. In 1987, in order to qualify for AFDC (and Medicaid), a family's income could be, on average, no more than about half of the poverty level. So although many families are "poor" according to the

poverty level, they are not poor enough to qualify for cash assistance or medical care.²⁹

The original purpose of AFDC was to provide assistance to fatherless families, enabling mothers to rear their children full time. But a growing chorus of critics argued that AFDC policies encouraged dependence on welfare. A recipient who took a job did not have to earn very much before losing all benefits. In some states, for example, full-time employment at \$3.70 an hour meant an end to public assistance. Recently, however, researchers discovered that mandatory employment and training programs (also known as workfare) were moderately successful in ending welfare's grip on the poor. Model programs in Massachusetts, Maryland, and California increased the average earnings of female participants, assured social contributions from recipients in return for public assistance, and may have discouraged dependence on welfare.³⁰ This evidence moved Congress to overhaul the nation's welfare system in 1988.

The central provision of the new law requires most welfare recipients whose children are over the age of three to participate in state-approved work, education, or training programs. To smooth the transition between welfare and work, the states must provide child care and health insurance during the training period and continue this assistance for as much as one year after the recipient has found a job. The reforms will cost more than \$3.3 billion for the first five years; the effects of the new law will take years to materialize.

Necessary Nutrition: Food Stamps

The federal **food stamp program** aims to improve the diets of members of low-income households by supplementing their food purchasing power. The federally funded program is administered through local agencies, which distribute the stamps to needy individuals and families. The stamps are actually coupons that can be used to purchase any food meant for human consumption.

Food stamps originated in Roosevelt's New Deal years as a dual-purpose program aimed at confronting the "unsettling contradiction between unprecedented destitution and deprivation on the one hand and excessive agricultural production on the other."³¹ The program accomplished its twin goals of feeding the hungry and helping the farmers, and then became dormant when the economy rebounded in World War II. But the problem of hunger remained. Later administrations either denied that there was a substantial problem of hunger in America or instituted generally ineffective programs in which surplus commodities (lard, rice, flour, butter, and cheese) were distributed to the poor in amounts too small to ensure adequate nutrition.

The revival of the food stamp program was the top legislative priority of Democratic Representative Leonor Sullivan of Missouri during the 1950s. Sullivan's dogged determination kept the idea alive through the Eisenhower and Kennedy administrations, until Congress provided a substantially expanded program in the Food Stamp Act (1964). At first, administrators were fearful that the distribution of free stamps would encourage a black market for the stamps. That is, if the stamps provided

Food Stamps

Food stamps are misnamed. They are not lick-'em stamps; they're coupons that can be used to purchase food meant for human consumption (this rules out kitty litter and deodorants, for example). Eligibility requirements were tightened under the Reagan administration. In 1986, one out of every twelve Americans received food stamps, at an average of \$45 worth of coupons per month.



more food than recipients needed, they would be tempted to sell their excess stamps. The solution was to require recipients to purchase stamps with a portion of their incomes. In return, they would receive stamps whose value was equal to the purchase price *plus* an additional amount. As family income rose, the additional amount fell. Unfortunately, this purchase plan did not work well, because people who needed food stamps often didn't have the cash to buy them. Moreover, even the most generous food stamp allotment was not enough to ensure adequate nutrition. Meanwhile, critics continued to point to the inadequacies of government nutrition policy. The Citizens' Crusade Against Poverty, a liberal advocacy group formed in 1965, collected evidence on the extent of hunger and malnutrition in the United States. Several other public interest groups joined the so-called "hunger lobby," and the poor also lobbied on their own behalf. More than three thousand people participated in the "Poor People's March on Washington" in 1968. They camped on the Mall east of the Lincoln Memorial and presented their demands to the secretary of agriculture. A CBS television documentary called "Hunger in America" focused on the problem of government ineffectiveness in combatting hunger.

Some concessions were granted by the government, but they proved inadequate, and new advocates for the poor joined the lobbying effort. Finally, the Nixon administration introduced significant changes in the food stamp program. Food stamp allotments were increased to ensure a nutritionally adequate diet, and the purchase price of the stamps was reduced. Later, in 1977, the need to purchase food stamps was eliminated entirely. By the end of the decade, the problem of hunger appeared on the verge of being solved. But some researchers now report that hunger is again on the rise.

The AFDC and food stamp programs are structured to work jointly. AFDC benefits vary from state to state, but food stamp benefits are set nationally. In states that offer lower AFDC benefits, participants receive larger food stamp allotments. In 1986, the food stamp program cost the government \$11.7 billion. The 19 million participants (one in twelve Americans) received an average of \$45 a month in food stamps.³²

The Reagan administration tried to curtail the food stamp program and had a measure of success. More than a million people lost their food stamp benefits entirely as a result of spending cuts in 1984, and benefits were reduced for many others.³³ The administration maintained that this was not as heartless as it appeared: Most of those who lost their benefits had incomes in excess of 130 percent of the poverty level. At the same time, the Reagan administration increased its distribution of surplus food to the poor. But there is no established and workable distribution system, and the food that is given away (often 5-pound blocks of American cheese) qualifies only as a nutritional supplement, not as the basis of a nourishing diet.

Ronald Reagan once observed, "In the war on poverty, poverty won." Americans tend to agree. About half of all Americans believe the liberal welfare policies of the 1960s made things "somewhat better" for the poor; only 10 percent maintain that those policies made the poor much better off. But 90 percent of Americans seem convinced that poverty will remain a persistent problem, partly because, 70 percent believe, government doesn't know enough about how to eliminate poverty.³⁴

Government provides many Americans with benefits. According to the Bureau of the Census, 39.1 million of the nation's 83.6 million households received federal benefits in 1984. Nearly 40 percent of all households received some form of social security or other benefits for which they did not have to demonstrate need. Nearly 20 percent of those households also participated in need-based programs, including food stamps, subsidized housing, school lunch programs, and Medicaid. Is the United States generous in the benefits it confers? Do the costs seem to be in line with the benefits? Some evidence that might help you form an opinion is presented in Compared With What? 16.1.

PROVIDING FARM SUPPORTS

According to a *New York Times*/CBS News poll conducted in February 1985, the vast majority of Americans think farming is a good way of life, embodying the virtues of stability, hard work, and occasional sacrifice.³⁵

COMPARED WITH WHAT? 16.1

Social Insurance Costs and Benefits

This table compares old-age and health policy costs and benefits in five countries. Notice that Great Britain and West Germany exact the highest tax for old-age benefits while the Soviet Union imposes no tax. Retirement pensions replace about half of a retiree's last year of earnings in all these countries; but citizens in Japan and the Soviet Union start collecting old-age benefits years earlier than do citizens in the other countries.

Health insurance premiums are nonexistent in the Soviet Union; benefits are completely covered by the government. Premiums are relatively low in the United States and highest on average in West Germany. With only one exception, all the countries in this comparison offer total health care for everyone. In the United States, this care is limited to the aged and the poor. In a sense, Americans get what they pay for.

Individual Social Welfare Costs and Benefits
(all currencies converted to dollars)

COSTS (1985)	West Germany	Great Britain	United States	Japan	Soviet Union
Old Age					
Maximum employee rate	9.35%	9%	5.2%	6.2% (M) 5.35% (F)	0%
Maximum employer rate	9.35%	10.45%	5.2%	6.2% (M) 5.35% (F)	4.4–9.0%
Income ceiling for calculating payments	\$21,060	\$16,540	\$39,600	\$20,170	none
Health Insurance					
Maximum employee rate	3.5–7.5%	*	1.35%	4.2%	0%
Maximum employer payments	3.5–9.8%	*	1.35%	4.2%	*
Income ceiling for calculating payments	\$15,800	*	\$39,600	\$35,000	none
BENEFITS (1985)					
Old Age					
Age at retirement (M/F)	65/65	65/60	65/65	60/55	60/55
Replacement wage rate (percentage of last year of wages)	49%	47%	51%	**	50%
Health Insurance					
Duration	unlimited	unlimited	limited	unlimited	unlimited
Hospitalization	complete	complete	some limits	some limits	complete
Medical care	free	free	limited	free	free
Coverage	all	all	aged & poor	all	all

* Comprehensive payments covered under "Old Age."
** Not available

Sources: *Statistical Abstract of the United States*, 1987, Table 642. *Social Security Programs Throughout the World—1985*, Research Report No. 60, (U.S. Department of Health and Human Services, 1986). *Social Security Bulletin, Annual Statistical Supplement*, 1987, pp. 29, 33.

Two hundred years ago, America was a nation of farmers, but today farmers make up only 2 percent of the population. Despite their declining numbers, American farmers have managed to bring in bumper harvests. Farming remains a large industry (much larger than the automobile, banking, and publishing industries); and in 1985, agriculture accounted for nearly 10 percent of all domestic exports.³⁶ Nonetheless, this bucolic picture of performance and plenty in reality is riddled with problems.

The Origins of the Farm Problem

The national government's agricultural policies were confined to research and education until the Depression, when farm prices and income plunged. The collapse of the nation's economy brought the farming industry near to ruin. To preserve American farming and the nation's farmers, the free market in farm products—in which supply and demand determine price—had to be constrained. The result was government policies aimed at raising and stabilizing prices and at controlling production.

As part of Roosevelt's New Deal, Congress passed the Agricultural Adjustment Act (1933). The act, in an effort to boost farm prices and farmers' purchasing power, placed a tax on the processors of seven basic commodities (wheat, cotton, field corn, hogs, rice, tobacco, and dairy products). The tax proceeds were used to pay benefits to farmers who agreed to reduce their production of those commodities. The decline in production forced prices up, increasing farm income and encouraging the production of other crops. With lower but stable production of specific crops, it was hoped that supply and demand would maintain prices at a level that would avert catastrophe.

In 1936, the Supreme Court declared the act an unconstitutional exercise of congressional taxing power.³⁷ But majority sentiment would not be thwarted; the Court soon reversed its stand on New Deal policies in general and farm policy in particular. By 1938, Congress had enacted another agricultural act, which the Supreme Court upheld as a valid exercise of the legislative power to regulate interstate commerce.³⁸

Government intervention in the market for farm products since that time has moderated the effects of business cycles on farmers. But that intervention has also encouraged overproduction, which in turn has increased the cost of government farm policy. Agriculture programs cost the government more than \$31 billion in 1986. Even allowing for inflation, this is more than four times the cost just a decade earlier.³⁹ Yet farmers have come to depend on government help to absorb their bumper crops. In the absence of government assistance, many farmers would face certain ruin.

The "Traditional" Solution

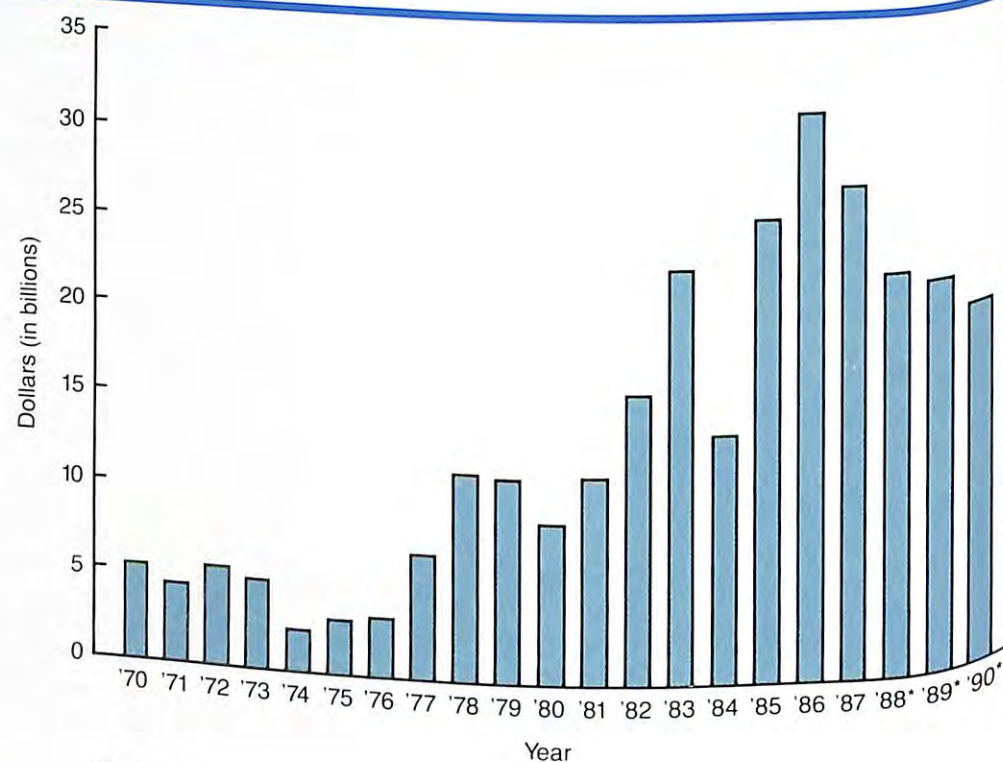
Today's agricultural policy is based on the 1938 act. It involves three concepts—price supports, direct income subsidies, and production controls—which have been translated into programs aimed at providing income to American farmers.

Price supports are the means that government uses to maintain at least a minimum price for certain commodities. The national government uses loans that are not really loans as the chief mechanism for agricultural price supports. To see how they work, suppose you are a wheat farmer. The government offers to lend you a certain amount of money, say \$3, for each bushel of wheat that you are willing to place in a government-approved granary. The crop will serve as collateral for the loan. You could, of course, sell the wheat on the open market, but there may be good reasons for putting the grain in storage—at least for a while. For example, if the market price for wheat is less than the loan rate, you would be wise to take the loan. If the market price is somewhat higher than the loan rate and all farmers were to put their wheat on the market at the same time, the glut would force the price down. You would do better to wait for the price to rise again.

Suppose you agree to place 10,000 bushels of wheat in storage; at \$3 a bushel, you receive a loan of \$30,000. Now, if the market price of the wheat rises above the \$3 loan rate, you can remove your grain from storage, sell it, repay the loan, and pocket the difference. If the market price remains below the loan rate, you simply keep the loan and the government keeps the wheat. In effect, the loan rate becomes the price floor for wheat. If *support prices* are adjusted regularly for inflation and other economic factors, they tend to act as insurance against market fluctuations. But when support prices are higher than the market price, they tend to stimulate the overproduction that government is trying to moderate (see Figure 16.5). Surpluses are common because Congress frequently sets the loan rate above the market price.

Figure 16.5
The Cost of Farm Price Supports

Government spending for the farm price-support program rose dramatically in the 1980s. Although price supports are expected to decline under the 1985 Farm Security Act, other farm program expenditures are expected to increase. These figures include spending for wheat, corn, other feed grains, rice, soybeans, peanuts, sugar, cotton, dairy products, honey, wool, and mohair. (Source: Historical Tables, Budget of the United States Government, FY 1989, Table 3.3.)



Bitter Harvest

Farming as a way of life has been declining for most of this century. Increasing farm mechanization produced bumper crops with minimal labor, forcing farm workers off the land. By 1987, only 2 percent of the population lived on farms. Small farmers were especially vulnerable to misguided government programs that encouraged overproduction and overexpansion. Nature added further hardship in 1988—the worst drought in decades. Despite new government programs and crop subsidies, the only course for some farmers is to auction the family farm.



Direct income subsidies (also called *deficiency payments*) are cash payments to farmers. Unlike price supports, they do not prop up the prices of farm products. Instead, they reimburse the farmer for the cost of producing a crop when that cost is greater than the market price or loan rate for the crop. This form of assistance guarantees farmers an adequate income when market prices fall below the cost of production. Because Congress determines the size of these income subsidies, farmers have a strong inclination to lobby for higher subsidies. Recent bumper crops in grain-importing countries reduced the world demand for American grains. Farmers held huge surpluses and could sell them only at depressed prices. Direct income subsidies protected the farmers from the effects of nature's bounty.

Let's continue with our wheat-farming example. The loan rate for a bushel of wheat is \$3. Now suppose that Congress sets the national average cost for producing a bushel of wheat at \$4; it sets that as its *target price*. You have taken a "loan" of \$30,000 from the government in exchange for 10,000 bushels of wheat. You would also receive a direct income subsidy payment from the government for the difference between the target price of \$4 per bushel and the loan rate of \$3 per bushel. This would add another \$10,000 to your bank account, to cover your costs of production and to help feed, clothe, and care for your family. Although farmers regularly complain about low market prices, the target price determines planting decisions because target prices determine income. Of course, you would not receive the subsidy if the market price rose above the target price; but then you would not have taken the government loan either. In effect, direct income subsidies protect farmers against losses that result from increased production costs; they are a

form of public assistance to farmers, paid from general tax revenues. Reflecting on his \$75,000 subsidy payment, one Oklahoma wheat farmer declared: "No two ways about it. The check's like welfare. Nobody likes to take welfare, but you got to do it to survive."⁴⁰

The same tax revenue that pays for Medicaid, food stamps, and AFDC benefits pays for price supports and direct income subsidies. A third farm program—production controls—shifts some costs from the taxpayer to the consumer.

Production controls are agreements that call for farmers to plant less of a particular crop. Smaller plantings mean smaller harvests. Demand for the crop forces the price to rise, and the higher price is paid directly by the consumer who purchases the product. Production controls are voluntary agreements, but only farmers who are willing to limit production are eligible for price supports and direct income subsidies. Freedom in this case becomes a gamble, and most farmers opt for government farm programs that provide income havens, where they are safe from the risks of the marketplace.

Some Consequences of Farm Policy

According to "Murphy's Law," if something can go wrong, it will. American agriculture in the 1980s was an apt demonstration of that truth: Everything that could go wrong, did. A world recession reduced international demand for U.S. crops. At the same time, the value of the dollar soared, making American agricultural exports more expensive and less competitive. And foreign growers produced crop surpluses, which they marketed aggressively. As a result, America's share of the world agricultural market fell sharply.

Overproduction. Congress reviews and modifies farm policy every four years. In retrospect, we can see that the price supports set by the 1981 farm policy were too high; they were much higher than the market prices for the basic farm commodities. Farmers sold much of their output to the government at the higher support prices. Huge surpluses of farm commodities bulged from government storehouses. As an example, by 1983, the government was buying 10 percent of the milk produced in the United States at a cost of \$3 billion; it was storing the equivalent of about 16 billion pounds of milk in the form of butter, cheese, and powdered milk. Even after donations to needy countries and to domestic food assistance programs, the government still held a veritable mountain of butter in reserve. Policies aimed at stemming these surpluses created new problems in the process (see Feature 16.1).

The support price establishes a price floor for farmers; it also establishes a price ceiling for foreign competitors. The biggest market for American grains is outside the United States. But if the support price is high, American farmers would rather sell their grain to the government; at the same time, foreign competitors can more easily sell their grain at a price just below the support price, which makes their product more attractive to grain-importing nations. This is exactly what happened in the 1980s: The high support price encouraged the loss of foreign markets by American farmers.

FEATURE 16.1

The Dairyman's Pail Runneth Over

Dairy farmers receive a basket of federal benefits, the first being a milk price support of \$11.10 per hundred-weight—about \$1 above what the market price would be. [In 1986,] farmers sold 12.3 billion pounds of milk, butter and cheese to the government. Taxpayer costs have been running about \$2 billion a year in the past few years.

To slow this spending, Congress is gradually lowering the [price support] rate so that consumers rather than the government will buy farmers' milk. But law-makers did not want to lower the [price support] rate sharply. So they instituted the whole-herd buyout program instead. Congress paid dairy-men \$1.1 billion from spring 1986 till summer 1987 to slaughter their herds if they promised not to go back in business for five years. Payments to individuals range up to \$10 million each; 144 farmers are getting more the \$1 million each.

As soon as the government said dairy farmers were going to slaughter 1 million cows, cattle prices

dropped 10 percent. Cattlemen lost about \$2 billion in inventory value so the government promised to buy 4 million pounds of beef to ease their loss.

There was some "slippage" in the program. Some dairymen slaughtered their oldest, least productive cows and transferred ownership of the young cows to relatives or associates. Those cows kept producing milk. So the government [in 1987] will buy 5.4 billion pounds of milk for \$1.2 billion.

... "Over the last 50 years, we just kept adding on to these things," says John R. Block, secretary of agriculture from January 1981 to February 1986. "No one in their right mind would create a dairy program the way this one is written."

Source: Carolyn Lochhead, "A Bushel and a Check," *Insight*, 7 December 1987, p. 14. Reprinted with permission from Insight. Copyright © 1987 Insight. All rights reserved.

High target prices also encouraged overproduction, because a bigger crop meant a fatter direct income subsidy check. Farmers overproduced, and their bumper crops increased the cost of the government farm program. Then, when the government stockpiles reached capacity and had to be sold, market prices fell. The government's loss from buying at high prices (from farmers) and selling low sent the actual cost of the farm policy to unexpected heights. Government economists had projected in 1981 that farm policy costs for 1983 to 1986 would be \$11 billion. The actual costs exceeded \$90 billion.

Government farm policy has encouraged overproduction to the point where farm production now far exceeds the market's ability to absorb it. It has been predicted that by 1989, American farmers will depend on the government for 70 percent of their net income, compared to about 25 percent in 1984.⁴¹ As you will see, this outpouring of federal funds forced a careful re-examination of farm policy.

Farm debt. At the same time the government was cushioning farmers from the effects of the market, it encouraged them to borrow in order to expand their operations. From 1969 to 1981, farm land use expanded by 54 million acres. Farm techniques improved as well. And the national government subsidized farm borrowing, at rates below inflation through the 1970s. There seemed to be good reason for expansion: A devaluation of the dollar made American farm products attractive and broadened foreign markets. Grain sales abroad were increasing. And economists predicted high prices and growing markets through the 1980s and beyond. Of course, farm expansion meant more debt, but larger farms held the

promise of larger incomes. For many, the gamble appeared to be worth the risk.

But many of the farmers who expanded in the 1970s faced a severe credit crunch in the 1980s. Inflation dropped sharply. The government's encouragement of cultivation brought bumper harvests. From 1972 to 1982, the nation's corn crop burgeoned from 5.6 billion bushels to 8.4 billion bushels. American farmers, dependent on foreign markets for sales of one-half to two-thirds of their products, ended up with monster surpluses and mountainous debts.

Despite their bountiful harvests, many farmers could not generate enough income to cover their loans or mortgages. The value of farm land, which depends on the income it produces, slid downward. Because they were deeply in debt, farmers had trouble getting operating loans for seed and fertilizer; their devalued land could barely serve as collateral. By the mid-1980s, the interest owed to banks by farmers had grown to \$21 billion a year, whereas total farm income reached only \$23 billion. Foreclosure and ruin seemed a certainty for many, especially younger farmers who bought land when prices were high and could no longer borrow enough money to sustain their operations. Some farmers, like the Baxa family, swallowed their pride and turned to public assistance, including food stamps, in an effort to hold on to their way of life.

A New Direction

Given the many failures of the 1981 farm policy, it was clear that Congress would carefully rethink the status quo in 1985. The prospect of a new farm policy attracted lobbies of every stripe, including groups representing chicken producers, hog farmers, pesticide manufacturers, supermarkets, and banks. Each of these groups had a farm policy to present. Even the Fertilizer Institute, which represents 292 fertilizer manufacturing and distributing companies and had never had a farm policy in its entire 102-year history, had one in 1985.

The Reagan administration's farm plan called for the immediate elimination of price supports and income subsidies. The administration believed the only way to break the spiral of government spending and overproduction, which causes more spending, was to withdraw government support for agriculture and return to a free market. At the opposite end, some farmers—a vocal minority—called for a farmer referendum to establish mandatory production controls. Prices would rise if production limits could be imposed equally on all farmers. But the only consensus that emerged from the congressional hearings, debates, and lobbying was that the 1981 policy was not working. Juggling the old programs in a new way proved to be the only politically viable approach.

The 1985 Farm Security Act, approved by Congress in December 1985, headed in a new direction. The farm bill was eleven months in gestation; it weighed in at a hefty 13 pounds. Congress took a step—but only a step—toward the free market advocated by President Reagan. First, price supports were lowered below market levels. This would ensure that farmers sold to markets, not to government. Second, income subsidies were maintained at their previous levels. Because these payments are

geared to production, more farmers would receive bigger government checks than ever. And third, farmers were required to set aside 20 to 30 percent of their land to qualify for the subsidies. (This is not likely to reduce production, because farmers usually set aside their least productive land.)

In theory, the new farm policy aims to remove all government support of farming at some point in the future. In practice, government has lowered the floor but added some pillows. Lower price supports mean that government does not have to bear the burden of the market and that American farm products are more competitive in world markets. For farmers, reduced price supports are counterbalanced by heavier direct income subsidies—at least for the time being. Crops are yielding near-record abundance, and government subsidies, which are tied to production, are flowing freely. In Iowa alone, farmers received more aid from Washington in 1987 than all the nations of Africa received from the World Bank.

The new farm policy seems to have increased sales abroad. After a five-year tumble, farm exports are on the rise, especially for wheat and several other crops. The decline of the dollar against other currencies has made American farm products especially attractive. This is not the case for corn, however. Although corn exports rose almost 25 percent from 1986 to 1987, export value remained almost the same (about \$3.7 billion) despite staggering subsidies. "It's insane to spend \$12 billion to subsidize less than \$4 billion in exports," remarked a state agricultural commissioner. "It would be cheaper to dump corn in the ocean."⁴²

One problem of the new farm policy is that it has generated distortions by favoring some commodities over others. The government provided farmers with generous subsidies for crops such as corn, wheat, and barley. Farmers who did not participate in crops favored by the new policy were exposed to greater financial risk. Not surprisingly, most farmers took shelter in the government program. For example, farmers abandoned oats and raised barley because they could earn nearly a dollar more for each bushel of barley. But the demand for oats rose while the demand for barley remained constant. It seems that groups representing less-favored commodities must fight for higher subsidies in Congress. In short, the pluralist model creates distortions and at the same time serves as the means for correcting them.⁴³

Current farm policy remains rooted in a rural past; it has not caught up with farm-population patterns and farm economics. Despite the vast infusion of government funds, the nation's farm population has continued to dwindle, from 15 percent of the population in 1950 to 2 percent in 1987. Farmers have left the land, yet the land has remained in production, generating ever-increasing yields.⁴⁴

The family farm will not be saved by today's farm policy, which indeed may even hasten its demise. The reason is that not all farms are equal. Three of every four farms are owned by part-time farmers who earn most of their income from nonfarm activities; they produce 10 percent of all farm output and receive 18 percent of all government subsidies. The remainder—one in four—are business farms, which produce 90 percent of all farm output and receive 82 percent of all govern-

ment subsidies. These huge payments to aggressive business farmers may provide them with the capital to buy out their smaller, less successful neighbors. Although the debate surrounding farm policy may be cloaked in the imagery of the family farm, it is business farmers who reap the enormous harvest of government subsidies.⁴⁵

Government farm policy has inched toward a free market. As a consequence of this shift, some farmers will be forced from a lifestyle that is envied by many Americans. Some farmers, like Larry Baxa, will accept the shame of public assistance in an effort to weather economic hardship. Some will survive; others will fail. An alternative policy is a return to government substitutes for the market, imposing order and security through government's control of prices. By all accounts, however, that policy was at the core of America's farm crisis.⁴⁶ Another alternative is to mandate equitable production limits for all farmers, in an effort to boost prices. That alternative trades freedom for order and equality. To deal responsibly with these choices is the challenge of democracy.

SUMMARY

Public policies fulfill one or more purposes: protection (e.g., against a dread disease such as AIDS), prohibition (e.g., of the sale and possession of illicit drugs), provision (e.g., of social insurance, public assistance, and farm supports), and promotion (e.g., of disadvantaged groups through affirmative action programs). Often, disagreements over public policy are disagreements over values. Choices between freedom and order are at the heart of many policies, for example, mandatory AIDS or drug testing. Choices between freedom and equality are at the heart of other policies, such as those designed to ease the poverty that Lafayette Walton confronts in Chicago.

Many domestic policies that provide benefits to individuals and promote economic equality were instituted during the Great Depression. Today, government plays an active role in providing benefits to the poor, the elderly, and the disabled. The object of these domestic policies is to alleviate conditions that individuals are powerless to prevent. This is the social welfare function of the modern state.

Government confers benefits to individuals through social insurance and public assistance. Social insurance does not require a demonstration of need; public assistance (welfare) hinges on proof of need. In one form of social insurance—old-age benefits—a tax on workers pays the elderly's benefits. Aid for the poor comes from government's general tax revenues. Programs to aid the elderly and the poor have

been transformed into entitlements, which are rights that accrue to eligible persons. Some entitlements hinge on need, which is often defined in terms of income: People with incomes below a given level satisfy the need condition. These government programs have reduced poverty among some groups, especially among the elderly. However, poverty retains a grip on the population, and it is creeping up to levels that Americans have not seen since the 1960s.

Farm policy today traces its roots to the New Deal and still involves three basic programs: price supports, direct income subsidies, and production controls. These programs provide benefits that cushion farmers from the hazards of economic cycles, overproduction, high production costs, and (to an extent) foreign competition. A recent application of these programs encouraged overproduction and expansion at the same time that foreign markets were being claimed by foreign competitors and a strong dollar made American products less competitive. As a result, government footed the bill for the nation's plenty. The most recent farm policy is an attempt to free up the market for agricultural products. That policy has been abetted by the falling dollar, spurring exports for many agricultural commodities.

The pluralist model serves as an explanation for the success and the protected status of social security and some other policies. The model also explains why some policies, among them, the 1985 farm law, create problems while solving others.

Key Terms

welfare state
social welfare
Great Depression
New Deal
Great Society
War on Poverty
social insurance
social security
Social Security Act
Medicare

public assistance
poverty level
Aid to Families with
Dependent Children
(AFDC)
food stamp program
price support
direct income subsidy
production control

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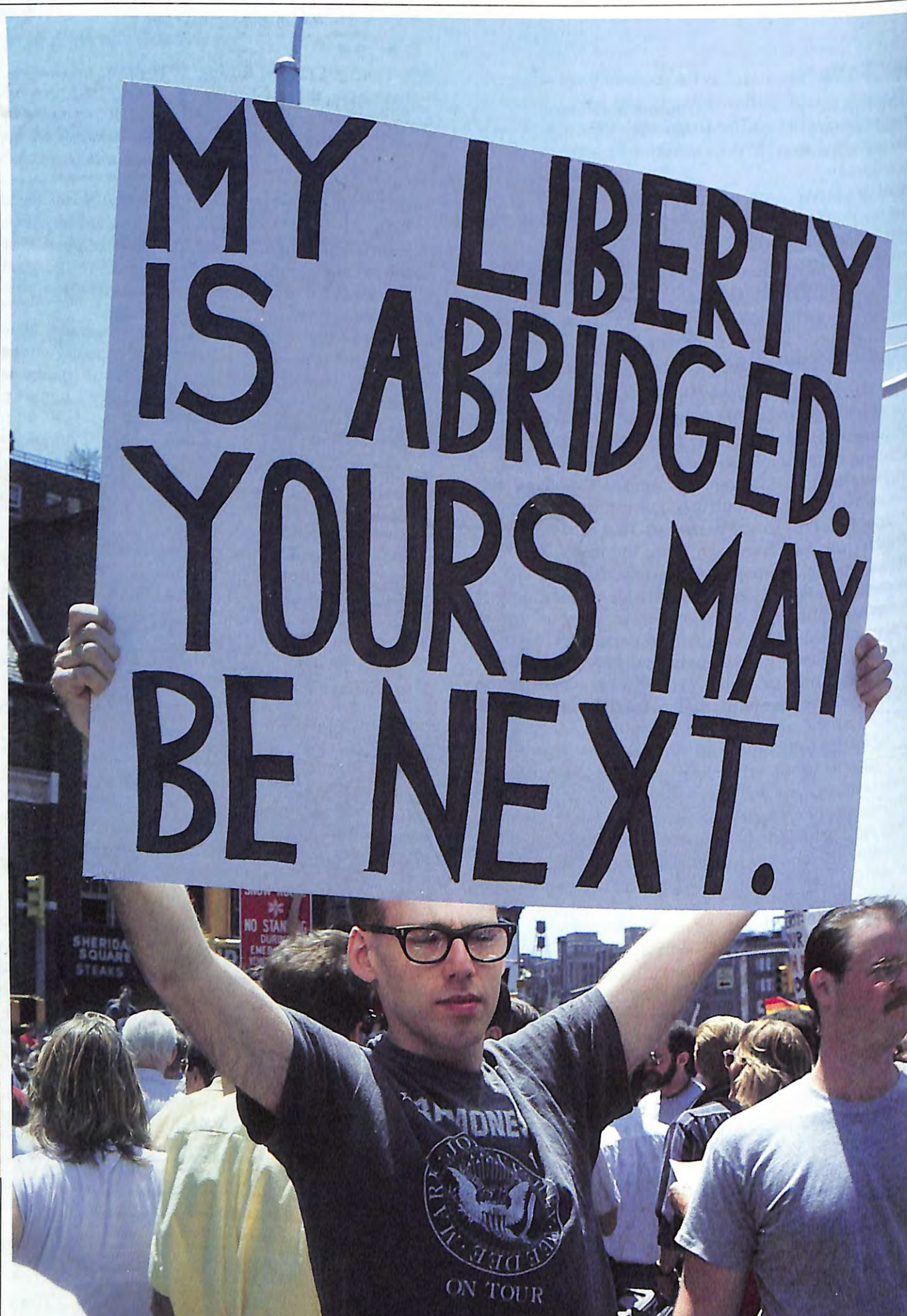
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17

Order and Civil Liberties

The Bill of Rights

Freedom of Religion

The Establishment Clause • The Free-Exercise Clause

Freedom of Expression

Freedom of Speech • Freedom of the Press • The Right to Peaceable Assembly and Petition

Applying the Bill of Rights to the States

The Fourteenth Amendment: Due Process of Law • The Fundamental Freedoms • Criminal Procedure: The Meaning of Constitutional Guarantees

The Ninth Amendment and Personal Autonomy

Controversy: From Privacy to Abortion • Personal Autonomy and Sexual Orientation

Constitutionalizing Public Policies

Joyce Brown liked her home. It was a 1-foot by 3-foot warm-air vent near an East Side New York restaurant. "I like the streets and I am entitled to live the way I want to live," she said. Brown was one of millions of homeless Americans. New York City officials saw things differently. Brown was dirty and disheveled, and she smelled. She defecated in her clothing or on the street. She burned money given her by passers-by. She was so severely mentally ill, according to city officials, that she was not even aware of her illness. The Big Apple's image was being tarnished by the plight of the homeless whose numbers there had swelled to over 30,000 by 1988. New York City was going to put its house—and Joyce Brown—in order.¹

New York's mayor, Edward I. Koch, marshalled city resources to confine Brown in a city hospital. The government of New York City expressed deep concern for the welfare of the mentally ill; it was also concerned about the sordid impression created by thousands of homeless people living on the city's streets. The city wanted to take away a measure of Joyce Brown's liberty to ensure her well-being and restore a measure of orderliness to the community.

Brown turned to the New York Civil Liberties Union for help. A civil liberties attorney, in a New York court, defended her freedom to live on the streets. Unless the city could prove that Brown was likely to harm herself or others, she should be free to live as she chooses, argued her lawyer. When and under what conditions can government restrict individual liberty for the sake of social order?

Throughout this nation's history, the values of order and individual freedom have been in conflict. Here, the New York City government had

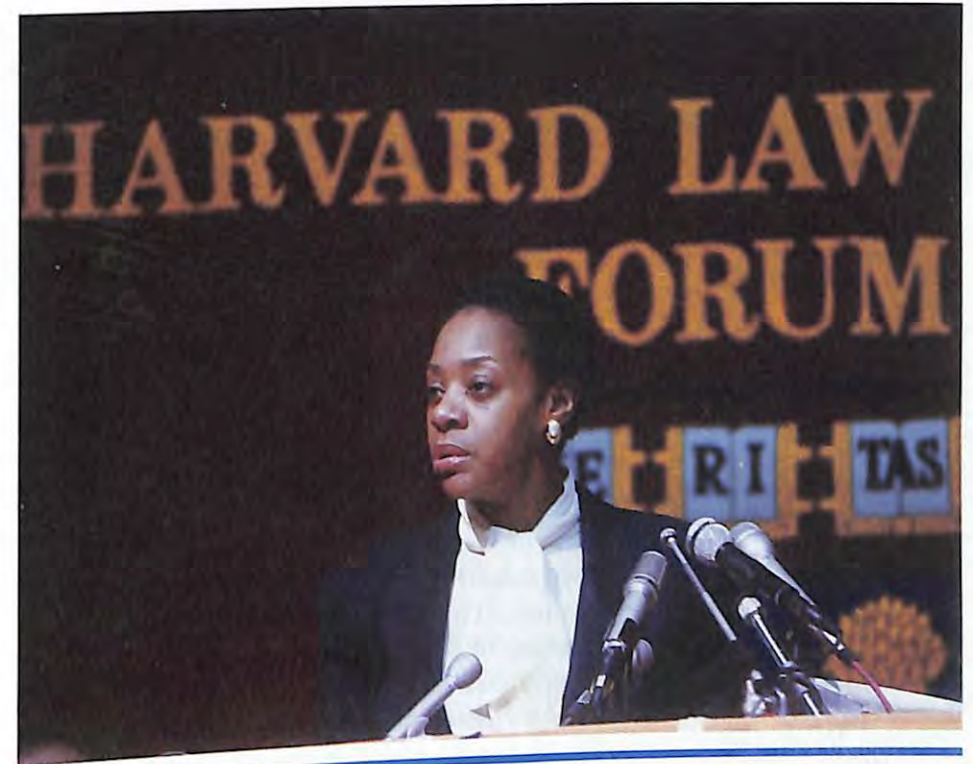
Boxed In and Boxed Out

Most observers agree that homelessness is increasing, but there is little reliable information about the scope of the problem. Some advocates for the homeless attribute the increase to the national economy and the lack of affordable housing; others cite the deinstitutionalization of the mentally ill. With nowhere to go, the homeless are always in sight.



Homeless at Harvard

Joyce Brown lived for nearly a year on a New York City street, where she exhibited bizarre behavior and refused offers of help. After her release from forced hospitalization, she was invited to address the Harvard Law School Forum; her talk was entitled "The Homeless Crisis: A Street View." Two weeks later, she was back on the street, panhandling and swearing at passers-by.



an interest in preserving social order (the established patterns of authority in society) through the control of public places—in this case, the streets and sidewalks of the city. In particular, the government had an interest in directing the use of public places in a manner consistent with the attitudes and concerns of many (perhaps a majority) of its citizens. Joyce Brown had an interest in her personal freedom and maintained that government could not restrict her unless she was likely to harm herself or others. Obviously, the exercise of one interest would infringe on the exercise of the other. And, just as obviously, both sides had merit, because each defended a value we recognize as vital to democratic rule. In the American political system, these kinds of conflicts often are resolved by the courts.

How well do the courts respond to clashes that pit freedom against order in some cases and freedom against equality in others? Is any one of the values we have discussed—freedom, order, or equality—ever unconditional? In this chapter, we explore some value conflicts that have been resolved by the judiciary. You should be able to judge from the decisions in these cases whether American government has met the challenge of democracy by finding the appropriate balance between freedom and order and between freedom and equality.

The value conflicts we describe in this chapter revolve around claims or entitlements that rest on law. Although we concentrate here on conflicts over constitutional issues, you should realize that the Constitution is not the only source of people's rights. Government can—and does—create rights through laws written by legislatures and regulations issued by bureaucracies. In Joyce Brown's case, she claimed that her freedom

was based on the Constitution itself: "This is the United States of America, the Constitution, freedom of choice. If that's . . . the way the person wants to live their life, and they're an adult, who am I to say that they can't do that?"² New York's claim that it could use its police power to force Brown into a hospital for her own good rested on the very purpose of government—maintaining order.

The lawsuit ended abruptly in February 1988, when the city released Brown from her involuntary hospital confinement. The city was not able to prove that Brown was mentally ill or that she was likely to harm herself or others. Her eccentricity was not enough to warrant government denial of her freedom. However, New York City has continued its controversial homeless policy, and civil libertarians hope that another Joyce Brown will emerge to champion the cause of freedom in the courts.

We begin this chapter with the Bill of Rights and the freedoms it protects. Then we take a closer look at the role of the First Amendment in the original struggle—the conflict between freedom and order. Next we turn to the Fourteenth Amendment and the limits it places on the states. Then we examine the Ninth Amendment and its relationship to issues of personal autonomy. Finally, we examine the threat to the democratic process of the constitutionalization of policy. In Chapter 18, we look at the Fourteenth Amendment's promise of equal protection, which sets the stage for the modern dilemma of government: the struggle between freedom and equality.

THE BILL OF RIGHTS

You may remember from Chapter 3 that at first the framers of the Constitution did not include a list of individual liberties—a bill of rights—in the national charter. They believed that a bill of rights was not necessary, that the extent of the national government's power was spelled out in the Constitution. But during the ratification debates, it became clear that the omission of a bill of rights was the most important obstacle to the adoption of the Constitution by the states. Eventually, twelve amendments were approved by Congress and sent to the states. In 1791 ten were ratified, and the nation had a bill of rights.

The Bill of Rights imposed limits on the national government but not on the state governments.* Over the next seventy-seven years, the Supreme Court was repeatedly pressed to extend the amendments' restraints to the states, but similar restrictions were not placed on the states until the adoption of the Fourteenth Amendment in 1868. Before then, protection from repressive state government had to come from state bills of rights.

The U.S. Constitution guarantees Americans a large constellation of liberties and rights. In this chapter we explore a number of them. We

* Congress had considered over a hundred amendments in its first session. One that was not approved would have limited the power of the states to infringe on the rights of conscience, speech, press, and jury trial in criminal cases. James Madison thought this amendment was the "most valuable" of the list, but it failed to muster a two-thirds vote in the Senate.

use two terms, *civil liberties* and *civil rights*, interchangeably in this context, although their meanings are different. **Civil liberties** are freedoms that are guaranteed to the individual. These guarantees take the form of negative restraints on government. For example, the First Amendment declares that "Congress shall make no law . . . abridging the freedom of speech." Civil liberties declare what the government cannot do; in contrast, civil rights declare what the government must do or provide.

Civil rights are powers or privileges that are guaranteed to the individual and protected from arbitrary removal at the hands of the government or other individuals. The right to vote and the right to jury trial in criminal cases are civil rights. Today, civil rights have also come to include the objectives of laws that further certain values. The Civil Rights Act of 1964, for example, furthered the value of equality by establishing the right to nondiscrimination in places of public accommodations and the right to equal employment opportunity. Civil liberties are the subject of this chapter; we discuss civil rights and their ramifications in Chapter 18.

Actually, the Bill of Rights lists both civil liberties and civil rights. When we refer to the rights and liberties of the Constitution, we mean the protections enshrined in the Bill of Rights and in the first section of the Fourteenth Amendment.³ The list includes: freedom of religion; freedom of speech and the press; the right to peaceable assembly and petition; the rights of the criminally accused; the requirement of due process; and the equal protection of the laws.

FREEDOM OF RELIGION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Religious freedom was very important to the colonies, and later to the states. That importance is reflected in its position in the Bill of Rights: first, in the very first amendment. The amendment guarantees freedom of religion in two clauses. The first, the **establishment clause**, prohibits laws establishing religion; the second, the **free-exercise clause**, prevents the government from interfering with the exercise of religion. Together they ensure that government can neither promote nor inhibit religious beliefs or practices.

The mingling of government and religion has a long history in America. Most of the American colonies had close ties to established religion on the eve of independence.⁴ By 1789, several state constitutions linked religion and government. Delaware, for example, required its citizens to affirm the doctrine of the Trinity; and four states (Connecticut, Massachusetts, New Hampshire, and South Carolina) insisted on a belief in Protestantism.⁵ Many Americans, especially in New England, maintained that government could and should foster religion, certainly Protestantism. Many more Americans were in agreement, however, that this was an issue for state governments, that the national government had no authority to meddle in religious affairs. The religion clauses were drafted in this spirit.⁶

Carting Religious Freedom

Americans are a religious people. Court cases interpreting the establishment and free exercise clauses of the First Amendment stir deep feelings. Religious and nonreligious minorities, such as the Amish and the atheists, have frequently served as standard-bearers for these two interrelated but sometimes conflicting constitutional guarantees.



As in the case of many other constitutional provisions, the Supreme Court has refused to interpret the religion clauses definitively. The effect of that refusal is an amalgam of rulings. Freedom to believe is unlimited, but freedom to practice a belief can be limited. Religion cannot benefit directly from government actions (for example, contributions to churches or synagogues), but it can benefit indirectly from those actions (for example, buying books on secular subjects for use in all schools—public, private, and parochial).

Most Americans identify with a particular religious faith. America also ranks first among eleven major industrialized nations in the proportion of citizens who maintain that religion plays an important role in their lives.⁷ Majoritarians might argue, then, that government should support religion. They would agree that the establishment clause bars government support of a single faith, but they might well maintain that government should support all faiths. This kind of support would be consistent with what the majority wants and true to the language of the Constitution. In its decisions, the Supreme Court has rejected this interpretation of the establishment clause, leaving itself open to charges of undermining democracy. Those charges may be true with regard to majoritarian democracy, but the freedom protected by the Court can be justified in terms of the basic values of democratic government.

The Establishment Clause

The provision that "Congress shall make no law respecting an establishment of religion" bars government sponsorship or support of religious activity. The Supreme Court has consistently held that the es-

tablishment clause requires government to maintain a position of neutrality toward religions and to maintain that position in cases that involve choices between religion and nonreligion. However, the clause has never been held to bar all assistance that incidentally aids religious institutions. In this section, we consider the application of the clause to public support for parochial education and for religion in general, to prayer in the public schools, and to curricula encouraging biblical instruction.

Government support of religion. In 1879 the Supreme Court contended, using Thomas Jefferson's words, that the establishment clause erected "a wall of separation between church and state."⁸ That wall was breached somewhat in 1947, when the justices upheld a local government program that provided free transportation to parochial school students.⁹ The breach seemed to widen in 1968, when the Court held constitutional a government program in which state-purchased textbooks were loaned to parochial school students.¹⁰ The objective of the program, reasoned the majority, was to further educational opportunity. The loan was made to the students, not to the schools, and the benefits were realized by the parents, not by the church.

But in 1971, in *Lemon v. Kurtzman*, the Court struck down a state program that would have funded the salaries for teachers hired by parochial schools to give instruction in secular subjects.¹¹ The justices proposed a three-pronged test for constitutionality under the establishment clause:

- The law must have a secular purpose (like lending books to parochial school students).
- Its primary effect must not be to advance or inhibit religion.
- It must not entangle the government excessively with religion.

A law missing any prong would be unconstitutional. The program in *Lemon* failed on the last ground: To be sure that they did not include religious instruction in their lessons, the state would have to constantly monitor the secular teachers. For example, the state would be required to monitor mathematics lessons to ensure that the instruction did not reinforce religious dogma. This kind of supervision would entangle the government in religious activity, violating the Constitution's prohibition.

Does the display of religious artifacts on public property violate the establishment clause? In *Lynch v. Donnelly* (1984), the Court said no, by a vote of 5 to 4.¹² At issue was a publicly funded Nativity scene on public property, surrounded by commercial symbols of the Christmas season (for example, Santa and his sleigh). While conceding that a crèche has religious significance, Chief Justice Warren E. Burger, writing for the majority, maintained that the display had a legitimate secular purpose: the celebration of a national holiday. Second, the display did not have the primary effect of benefiting religion; the religious benefits were "indirect, remote and incidental." And third, the display led to no excessive entanglement between religion and government. The justices hinted at a relaxation of the establishment clause by asserting their "unwillingness to be confined to any single test or criterion in this sensitive area." The

upshot of *Lynch* was an "acknowledgment" of the religious heritage of the majority of Americans, even though the Christmas holiday is a vivid reminder to religious minorities and the nonreligious of their separateness from the dominant Christian culture.

School prayer. The Supreme Court has consistently equated prayer in public schools with government support of religion. In 1962 it struck down the daily reading of this twenty-two-word nondenominational prayer in New York's public schools:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country.

Justice Hugo L. Black, writing for a 6-to-1 majority, held that official state approval of prayer was an unconstitutional attempt on the part of the state to establish a religion. This decision, in *Engle v. Vitale*, drew a storm of protest.¹³

The following year, the Court struck down a state law calling for daily Bible reading and recitation of the Lord's Prayer in Pennsylvania's public schools.¹⁴ The reading and recitation were defended on the grounds that they taught literature, perpetuated traditional institutions, and inculcated moral virtues. But the Court held that the state's involvement violated the government's constitutionally imposed neutrality in matters of religion. Given the degree of religious sentiment in the United States, the burden on individual children on whose behalf these unpopular suits are brought can be overwhelming (see Feature 17.1).

New challenges on the issue of school prayer continue to find their way to the Supreme Court—each a reminder of the pluralist nature of American democracy. These challenges vent widely held and strongly felt religious convictions. And the decisions are difficult. The government risks disorder when it continually frustrates strongly held majority views. The outcomes of these cases offer little immediate comfort to the majority of Americans who favor school prayer.

The Constitution bars school prayer. Does it also bar silent meditation in school? In *Wallace v. Jaffree* (1985), the Court struck down a series of Alabama statutes requiring elementary school teachers to observe a moment of silence for meditation or voluntary prayer at the beginning of each school day.¹⁵ In a 6-to-3 decision, the Court renewed its use of the *Lemon* test and reaffirmed the principle of government neutrality between religion and nonreligion. The Court found that the purpose of the statutes was to endorse religion; however, a majority of the justices hinted that a straightforward moment-of-silence statute that steered clear of religious endorsements might pass constitutional muster.

Creation-science and evolution-science. Countless generations of Sunday School students have heard the story: "In the beginning, God created the heaven and the earth." So says the Book of Genesis, in words familiar to hundreds of millions of people around the world. The sudden creation of the universe, energy, and life from nothingness is at the foundation of Judeo-Christian belief. This seems an unlikely subject for a legal battle. But in 1987, it was at the core of a dispute that pitted Louisiana's power to control its public school curriculum against the

FEATURE 17.1

The Schempp Family Gospel

At one time or another, Edward and Sidney Schempp and their three children—Donna, Roger, and Ellory—have been called every obscene, pejorative name in the book. Their sleep has been disturbed by obscene, late-night phone calls, and animal excrement has been sent to them through the mail and deposited at their doorstep. The Schempps have lost count of the times people have threatened to beat up their children or have prayed that they would contract horrible, deadly diseases. This harassment resulted from the Schempps' involvement in one of the most controversial cases in the history of the modern Supreme Court. The Schempps were plaintiffs in *Abington [PA] School District v. Schempp*, the 1963 decision that declared prayer in the public schools unconstitutional.

In 1957, a state statute required the reading of "at least 10 verses from the Holy Bible, without comment, at the opening of each public school on each school day." At Abington High School, these verses were read over the school public address system. Then the students in every classroom had to stand and recite the Lord's Prayer.

Ellory Schempp now says that "the push toward conformity at Abington had a lot to do with my decision [to protest school prayer]. It was a time of intellectual ferment for me." After discussing the matter with his parents, Ellory decided that he was going to stage a personal protest. He brought the Koran, the Islamic holy book, into school, and read it during the bible reading. He also refused to stand it during the recitation of the Lord's Prayer. Because of these infractions, Ellory's home room teacher of these infractions, Ellory's home room teacher sent him to the vice principal who says Ellory "exposed enormous confusion, and saw it all as a matter of not following the rules, going against the wishes of the majority." Despite the attitudes of the school administration, Abington decided to excuse Ellory from the daily prayer for the rest of the year. In his senior year, though, the school mandated his participation.



The Schempp Family

The Schempps were not the first family to challenge school Bible reading, but previous cases were thrown out when the children involved graduated from school before the issue reached the higher courts. With a three- and five-year difference between Ellory and his younger brother and sister, the family reasoned that this obstacle would be avoided.

The Schempps' Supreme Court victory had its price. The principal at Abington High School tried unsuccessfully to pressure Tufts University into denying admission to Ellory on the ground that he was a "troublemaker." He was admitted despite the negative recommendation.

Ellory's younger sister, Donna, experienced the greatest repercussions. "Lots of kids saw me and my brother as weird, unacceptable," she said years later. "It was real traumatic. My feelings are that it was a terrible thing to do to a 12-year-old girl. It was a real isolating thing."

Not one member of the Schempp family regrets taking on the case, and even Donna says that "I think it was real important, and that it was right."

Source: Lewis Beale, "School Prayer Ban Is Still Gospel to Schempp Family," *Chicago Tribune*, 24 June 1982, sec. 3, p. 1. © Copyrighted, Chicago Tribune Company, all rights reserved, used with permission.

constitutional provision that government "shall make no law respecting an establishment of religion."

The South has long been a stronghold of Christian fundamentalism, which adheres to a literal interpretation of the Bible and a belief in the infallibility of the Scriptures. Scientific advances, most notably Charles Darwin's theory of evolution, challenge the core of the fundamentalists' beliefs. When their efforts to legislate evolution out of the public school

curriculum proved unconstitutional, fundamentalists adopted a new strategy.¹⁶

In 1981, Louisiana enacted a law mandating that all public schools give balanced treatment to creation-science and evolution-science. *Creation-science* was defined as "the scientific evidences for creation and inferences from those scientific evidences." The law only mandated balance—when one approach was taught, the other approach must be taught too. Louisiana claimed that the purpose of the law was to protect academic freedom. The state's teachers, parents, and nonfundamentalist religious leaders challenged the law's validity in federal court, arguing that the law violated the establishment clause. The federal district court and the court of appeals agreed.

Louisiana finally appealed to the Supreme Court. In 1987, in *Edwards v. Aguillard*, the Court affirmed the lower courts' rulings by a vote of 7 to 2.¹⁷ Justice William J. Brennan, Jr., wrote the majority opinion. He applied the three-pronged *Lemon* test and concluded that the law failed to meet the first prong—the requirement that the legislation have a valid secular purpose—because the "preeminent purpose" of the law was religious. Despite its avowed secular purpose of protecting academic freedom, the law actually constrained teachers, favored creationism, and failed in its assurance to evaluate all the evidence surrounding the origin of life.

Government surely has an interest in preserving social order through the control of public institutions—in this case, the public schools. Louisiana wanted to direct the public school curriculum in a manner consistent with the religious beliefs of many (perhaps a majority) of its citizens. Parents and teachers had an interest in religious freedom, maintaining that government cannot impose any religious belief on its citizens. Obviously, the exercise of one interest would infringe on the exercise of the other. And just as obviously, both sides had merit because each defended a value we recognize as vital to a democratic society. Government interest in the preservation of order must be balanced against individual interest in religious freedom. "Families entrust public schools with the education of their children," declared Brennan, "but condition that trust on the understanding that the classroom will not be used to advance religious views that may conflict with the private beliefs of the student and his or her family."

The establishment clause creates a problem for government. Tolerance of the dominant religion at the expense of other religions risks minority discontent, but support for no religion (neutrality between religion and nonreligion) risks majority discontent. Support for all religions at the expense of nonreligion seems to pose the least risk to social order.

The Free-Exercise Clause

The free-exercise clause of the First Amendment states that "Congress shall make no law . . . prohibiting the free exercise [of religion]." The Supreme Court has struggled to avoid absolute interpretations of this restriction so as not to violate its complement, the establishment clause. An example: Suppose Congress grants exemptions from military service to individuals who have religious scruples against war. These

exemptions could be construed as a violation of the establishment clause because they favor some religious groups over others. But if Congress forces conscientious objectors to fight—to violate their religious beliefs—the government would run afoul of the free-exercise clause. In fact, Congress has granted military exemptions to people whose religious beliefs lead them to oppose participating in war. The Supreme Court avoided a conflict between the establishment and free-exercise clauses, however, by equating a religious objection to war to any deeply held humanistic opposition to war.

In free-exercise cases, the justices have distinguished religious beliefs from actions based on those beliefs. Beliefs are inviolate, beyond the reach of government control; but antisocial actions are not protected by the First Amendment.

Saluting the flag. The values of order and religious freedom clashed in 1940, when the Court considered the first of two cases involving compulsory flag saluting in the public schools. In *Minersville School District v. Gobitis*, a group of Jehovah's Witnesses challenged the law on the ground that the action forced them to worship graven images, which their faith forbids.¹⁸ Government order won in an 8-to-1 decision. The "mere possession of religious convictions," wrote Justice Felix Frankfurter, "which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities."

Three years later, however, the Court reversed itself in *West Virginia State Board of Education v. Barnette*.¹⁹ This time, the Court saw a larger issue: Can an individual be forced to salute the flag against his or her will? *Gobitis* was decided on the narrower issue of religious belief versus saluting the flag. In *Barnette*, the justices chose to focus instead on the broader issue of freedom of expression. In stirring language, Justice Robert H. Jackson argued in the majority opinion that no one could be compelled by the government to declare any belief.

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

Drugs as sacrament. The use of hallucinogenic drugs as part of a religious sacrament raises yet another type of free-exercise problem. The Supreme Court has never definitively ruled on the issue, but some guidance can be found in state court decisions. For example, the California Supreme Court held in 1964 that the use of peyote (an illegal but non-addictive hallucinogen) was central to the ritual of Navajo Indians who were members of the Native American Church of California.²⁰ Here, the court weighed the free exercise of religion against the state's interest in maintaining order and protecting the Navajo community. It found that "the scale tips in favor of the constitutional guarantee."

Other religions also use drugs in their rituals. The Rastafarians and members of the Ethiopian Zion Coptic Church smoke marijuana in the belief that it is the body and blood of Christ. Obviously, the freedom to

practice religion taken to an extreme can be used as a license for illegal conduct. But even when that conduct stems from deeply held convictions, government resistance to it is understandable. The inevitable result is a clash between religious freedom and social order.

FREEDOM OF EXPRESSION

Congress shall make no law . . . 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.

The initial versions of the **speech clause** and the **press clause** of the First Amendment were introduced by James Madison in the House of Representatives on June 8, 1789. One of these early proposals provided that "the people shall not be deprived of their right to speak, to write, or to publish their sentiments, and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." That version was rewritten several times, then merged with the religion and peaceable assembly clauses to yield the First Amendment.

The original House debates on the proposed speech and press clauses are not informative. There is no record of debate in the Senate or in the states during ratification. But careful analysis of the records of the period supports the view that the press clause prohibited only the imposition of **prior restraint**—censorship before publication. Publishers could not claim protection from punishment if works that had already been published were later deemed improper, mischievous, or illegal.

The sparse language of the First Amendment seems perfectly clear: "Congress shall make no law . . . abridging the freedom of speech, or of the press." Yet a majority of the Supreme Court has never agreed that this "most majestic guarantee" is absolutely inviolable.²¹ Historians have long debated the framers' intentions regarding the **free-expression clauses**. The dominant view is that the clauses confer the right to unrestricted discussion of public affairs.²² Other scholars, examining much the same evidence, conclude that few, if any, of the framers clearly understood the clause; moreover, they insist that prosecution for seditious statements (statements inciting insurrection) is not ruled out by the First Amendment.²³

The passage of the Sedition Act of 1798 lends credibility to the latter claim. The act punished "false, scandalous and malicious writings against the government of the United States," seemingly in direct conflict with the free-expression clauses. President John Adams's administration used the Sedition Act to punish its political opponents for expressing contempt of the government and its officials. Thomas Jefferson and his allies attacked Adams's use of the act; they supported a broad view of the protection afforded by the First Amendment. The fines imposed on Adams's critics under the Sedition Act were later repaid by an act of Congress, and Jefferson, Adams's successor, pardoned those who had been convicted and sentenced under the law.

The license to speak freely does not move multitudes of Americans to speak out on controversial issues. Subtle restrictions are sewn into

the fabric of American society. For example, the risks of criticism or ostracism by one's family, peers, or employers may confine the actual practice of free speech to individuals ready to bear the risks. As Mark Twain once remarked, "It is by the goodness of God that in our country we have three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either of them."²⁴

Jefferson's libertarian view serves as the basis for the modern perspective on the First Amendment free-expression clauses. Today, the clauses are deemed to bar most forms of prior restraint (which is consistent with the initial understanding). In addition, according to the current interpretation, they also bar after-the-fact prosecution for political and other discourse.

The Supreme Court has evolved two approaches to the resolution of claims based on the free-expression clauses. First, government can regulate or punish the advocacy of ideas, but only if it can prove that the goal is to produce lawless action and that a high probability exists that such action will occur. Second, government can impose reasonable restrictions on the flow of ideas, consequently discouraging or limiting the communication of ideas.

Suppose, for example, that a political party advocates unilateral disarmament as part of its platform. (Unilateral disarmament is a policy of arms reduction or elimination without a corresponding reduction or elimination by any other nation.) Government cannot regulate or punish that party for advocating unilateral disarmament because the standards of proof—that the act be directed to inciting or producing imminent lawless action and that the act be judged likely to produce such action—do not apply. But government can impose restrictions on the way the party's candidates communicate what they are advocating. For example, government can bar them from blaring messages from loudspeakers in residential neighborhoods at 3:00 A.M.

Freedom of Speech

The starting point for any modern analysis of free speech is the **clear and present danger test** formulated by Justice Oliver Wendell Holmes in the Supreme Court's unanimous decision in *Schenck v. United States* (1919).²⁵ Charles T. Schenck and his fellow defendants were convicted under a federal criminal statute for attempting to disrupt World War I military recruitment by distributing leaflets claiming that conscription was unconstitutional. The government believed this behavior threatened the public order. At the core of the Court's opinion, Holmes wrote:

The character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. (emphasis added)

Because the actions of the defendants in *Schenck* were deemed to create a clear and present danger to the United States at that time, the defendants' convictions were upheld. Holmes himself later frequently disagreed with a majority of his colleagues in applying the clear and present danger test. The test helps to distinguish the advocacy of ideas, which is protected, from incitement, which is not.

In an often-quoted dissent in *Abrams v. United States* (1919), Holmes revealed his deeply rooted resistance to the suppression of ideas.²⁶ The majority had upheld Jacob Abrams's criminal conviction for distributing leaflets that denounced the war and U.S. opposition to the Russian Revolution. Holmes wrote:

When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.

In 1925 the Court issued a landmark decision in *Gitlow v. New York*.²⁷ Benjamin Gitlow was arrested for distributing copies of a "left-wing manifesto" that called for the establishment of socialism through strikes and class action of any form. Gitlow was convicted under a state criminal anarchy law; *Schenck* and *Abrams* had been convicted under a federal law. The Court held, for the first time, that the First Amendment speech and press provisions applied to the states through the due process clause of the Fourteenth Amendment. Still, a majority of the justices affirmed Gitlow's conviction. Justices Holmes and Louis D. Brandeis argued in dissent that Gitlow's ideas did not pose a clear and present danger. "Eloquence may set fire to reason," conceded the dissenters. "But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration."

The protection of advocacy faced yet another challenge in 1948 when eleven members of the Communist party were charged with violating the Smith Act—a federal law making the advocacy of force or violence against the United States a criminal offense. The leaders were convicted, although the government introduced no evidence that they actually urged people to commit specific violent acts. The Supreme Court mustered a majority for its decision to uphold the convictions under the act, but it could not get a majority to agree on the reasons in support of that decision. The largest bloc of four justices announced the plurality opinion in 1951, arguing that the government's interest was substantial enough to warrant criminal penalties.²⁸ The justices interpreted the threat to government to be the gravity of the advocated action "discounted by its improbability." In other words, a single soap-box orator advocating revolution stands a low chance of success. But a well-organized, highly disciplined political movement advocating revolution in the tinderbox of world conditions stands a greater chance of success. In broadening the meaning of clear and present danger, the Court held that the government was justified in acting preventively rather than waiting until the revolution is about to occur.

By 1969, the pendulum had swung back in the other direction: The justices began to show a stronger preference for freedom. That year, in *Brandenburg v. Ohio*, a unanimous decision extended the freedom of speech to new limits.²⁹ Clarence Brandenburg, the leader of the Ohio Ku Klux Klan, had been convicted under a state law for remarks he made at a Klan rally. His comments, which had been filmed by a television crew invited to cover the meeting, included threats against government officials.

The Court reversed Brandenburg's conviction because the government failed to prove that the danger was real. The Court went even further and declared that threatening speech is protected by the First Amendment unless the government can prove that such advocacy is "directed to inciting or producing imminent lawless action" and is "likely to produce such action." The ruling offered wider latitude for the expression of political ideas than ever before in the nation's history.

Symbolic expression. Symbolic expression, or nonverbal communication, generally receives less protection than pure speech. But the Court has upheld certain types of symbolic expression. *Tinker v. Des Moines Independent County School District* (1969) involved three public school students who wore black armbands to school to protest the Vietnam War.³⁰ Principals in their school district had prohibited the wearing of armbands on the ground that such conduct would provoke a disturbance, so the students were suspended from school. The Supreme Court overturned the suspensions. Justice Abe Fortas declared for the majority that the principals had failed to show that the forbidden conduct would substantially interfere with appropriate school discipline.

**Not Exactly
Brooks Brothers**
Schools and other public institutions sometimes seek to regulate matters of personal appearance—dress, hair style, and personal adornment—arguing that such regulation is needed to maintain order. Others argue that these matters are forms of symbolic expression protected from government control by the Constitution. Courts of appeals have decided differently on issues involving personal appearance, and the Supreme Court has avoided decision in these areas.



Undifferentiated fear or apprehension is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk.

A free-speech exception: Fighting words. *Fighting words* are a notable exception to the protection of free speech. In *Chaplinsky v. New Hampshire* (1942), a Jehovah's Witness was convicted under a state statute for calling a city marshal a "God-damned racketeer" and "a damned fascist" in a public place.³¹ The Supreme Court upheld Chaplinsky's conviction on the theory that **fighting words**—words that "inflict injury or tend to incite an immediate breach of the peace"—do not convey ideas and thus are not subject to First Amendment protection.

The definition of fighting words was made much more exclusive just seven years later. Father Arthur Terminiello, a suspended Catholic priest from Alabama and a vicious anti-Semite, addressed the Christian Veterans of America, a right-wing extremist group, in a Chicago hall. The packed audience inside heard Father Terminiello call the jeering crowd of fifteen hundred angry protesters outside the hall "slimy scum," while he ranted on about the "Communistic Zionistic" Jews of America, evoking cries of "kill the Jews" and "dirty kikes" from his listeners. The crowd outside the hall heaved bottles, bricks, and rocks, while the police attempted to protect Terminiello and his listeners inside. Finally, the police arrested Terminiello for disturbing the peace.

Terminiello's speech was far more serious than Walter Chaplinsky's. Yet the Supreme Court struck down Terminiello's conviction on the ground that provocative speech, even speech that stirs people to anger, is protected by the First Amendment.³² "Freedom of speech," wrote Justice William O. Douglas in the majority opinion, "though not absolute . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest."

This broad view of protection brought a stiff rebuke in Justice Jackson's dissenting opinion:

The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.

The times seem to have caught up with the idealism that Jackson criticized in his colleagues. In *Cohen v. California* (1971), a nineteen-year-old department store worker expressed his opposition to the Vietnam War by wearing a jacket emblazoned with "FUCK THE DRAFT. STOP THE WAR."³³ The young man, Paul Cohen, was charged in 1968 under a California statute that prohibits "maliciously and willfully disturbing the peace and quiet of any neighborhood or person [by] offensive conduct." He was found guilty and sentenced to thirty days in jail. On appeal to the U.S. Supreme Court, Cohen's conviction was reversed. The Court reasoned that the expletive he used, while provocative, was not directed toward anyone; besides, there was no evidence that people in

"substantial numbers" would be provoked into some kind of physical action by the words on Cohen's jacket. In recognizing that "one man's vulgarity is another's lyric," the Supreme Court protected two elements of speech: the emotive (the expression of emotion) and the cognitive (the expression of ideas).

Another exception: Obscenity. Obscene material—words, books, magazines, films—is entirely excluded from constitutional protection. This exclusion rests on the Supreme Court's review of historical evidence surrounding freedom of expression at the time of the Constitution's adoption. The Court observed that blasphemy, profanity, and obscenity were colonial crimes, but obscenity was not a developed area of the law at the time the Bill of Rights was adopted. Difficulties arise, however, in determining what is obscene and what is not. In *Roth v. United States* (1957), Justice Brennan outlined a test for judging whether a work is obscene: "Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."³⁴ (*Prurient* means having a tendency to excite lustful thoughts.) Yet a definition of obscenity has proved elusive; no objective test seems adequate. Justice Potter Stewart will long be remembered for his solution to the problem of identifying obscene materials. He declared that he could not define it. "But," he added, "I know it when I see it."³⁵

In *Miller v. California* (1973), its last major attempt to clarify constitutional standards governing obscenity, the Court declared that a work—play, film, or book—is obscene and may be regulated by government if (1) the work taken as a whole appeals to prurient interest; (2) the work portrays sexual conduct in a patently offensive way; and (3) the work taken as a whole lacks serious literary, artistic, political, or scientific value.³⁶ Local community standards govern application of the first and second prongs of the *Miller* test.

Recently the Court addressed the standard to be applied to the third prong. Speaking for the majority, Justice Byron White declared that the proper inquiry is not whether an "average" member of any given community would find serious value in material alleged to be obscene, but "whether a reasonable person would find such value in the material, taken as a whole."³⁷ The law often uses the words *reasonable person* to denote a hypothetical person in society who exercises average care, skill, and judgment in conduct. The expectation is that a reasonable person may find serious value in works alleged to be obscene whereas an average person may not. The decision here was an attempt by the Court to escape the nagging problem of reviewing state court obscenity rulings. But the ambiguity in the reasonable-person test will continue to draw the justices into the obscenity maelstrom.

Freedom of the Press

The First Amendment guarantees that government "shall make no law . . . abridging the freedom . . . of the press." Although it was adopted as a restriction on the national government, the free-press guarantee has been held since 1931 to apply to state and local governments as well.

The ability to collect and report information without government interference was (and still is) thought to be at the core of a free society. The print media continue to use and defend their freedom, which was conferred on them by the framers. The electronic media, however, have had to accept government regulation that stems from the scarcity of broadcast frequencies.

Defamation of character. Libel is the written defamation of character.* A person who believes his or her name and character have been harmed by false statements in a publication can institute a lawsuit against the publication and seek monetary compensation for the damage. This kind of lawsuit can impose limits on freedom of expression; at the same time, false statements impinge on the rights of individuals. In a landmark decision in *New York Times v. Sullivan* (1964), the Supreme Court declared that freedom of the press takes precedence—at least when the defamed individual is a public official.³⁸ The Court unanimously agreed that the First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except when statements are made with actual malice (with knowledge that they are false or in reckless disregard of their truth or falsity). Citing John Stuart Mill's 1859 treatise *On Liberty*, the Court declared that "even a false statement may be deemed to make a valuable contribution to public debate, since it brings about the clearer perception and livelier impression of truth, produced by its collision with error."

Three years later, the Court extended this protection to include suits brought by any public figures, whether or not they are public officials. **Public figures** are people who assume roles of prominence in the affairs of society or who thrust themselves to the forefront of public controversy—including officials, actors, writers, television personalities, and others. These people must show actual malice on the part of the publisher that prints false statements about them. Few plaintiffs prevail because the burden of proof is so great. And freedom of the press is the beneficiary.

What if the damage inflicted is not to one's reputation but to one's emotional state? Government seeks to maintain the prevailing social order, which prescribes proper modes of behavior. Does the First Amendment restrict government protection of citizens from behavior that intentionally inflicts emotional distress? This issue arose in a parody of a public figure in *Hustler* magazine. The target was Reverend Jerry Falwell, a Baptist televangelist who founded the Moral Majority, organizing conservative Christians into a political force. The parody had Falwell—in an interview—discussing a drunken incestuous rendezvous with his mother in an outhouse, saying, "I always get sloshed before I go out to the pulpit." Falwell won a \$200,000 award for "emotional distress." The magazine appealed, and the Supreme Court confronted the issue of social order versus free speech in 1988.³⁹

In a unanimous decision, the Court overturned the award. In his sweeping opinion for the Court, Chief Justice William H. Rehnquist gave

* Slander is the oral defamation of character. The durability of the written word usually means that libel is a more serious accusation than slander.

Publisher Parodies

Priggish Pastor

The Reverend Jerry Falwell (right) claimed a tasteless parody that appeared in the soft-core porn magazine *Hustler*, published by Larry Flynt, caused him emotional distress. Falwell won an initial victory in the courts, with a \$200,000 judgment. When Flynt appealed to the Supreme Court, Falwell lost the case in a big way: a unanimous Court decision. The First Amendment, argued the justices, protects criticism of public figures even when that criticism is outrageous and offensive.



a wide berth to the First Amendment's protection of free speech. He observed that "graphic depictions and satirical cartoons have played a prominent role in public and political debate throughout the nation's history" and that the First Amendment protects even "vehement, caustic, and sometimes unpleasantly sharp attacks." Free speech protects criticism of public figures even if the criticism is outrageous and offensive.

Prior restraint and the press. In the United States, freedom of the press has meant primarily immunity from prior restraint, or censorship. The Supreme Court's first encounter with a law imposing prior restraint on a newspaper was in *Near v. Minnesota* (1931).⁴⁰ Jay Near—an abusive, difficult man—published a scandal sheet in Minneapolis, in which he attacked local officials, charging that they were implicated with gangsters.⁴¹ Minnesota officials obtained an injunction to prevent Near from publishing his newspaper under a state law that allowed such action against periodicals deemed "malicious, scandalous, and defamatory." The Supreme Court struck down the law, declaring that prior restraint is a special burden on a free press. The need for a vigilant unrestrained press was expressed forcefully by Chief Justice Charles Evans Hughes: "The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct." The Court recognized that prior restraint may be permissible in exceptional circumstances, but it did not specify those circumstances, nor has it yet done so. Consider two modern cases involving prior restraint.

Stamp Out Secrecy!

In 1971, Daniel Ellsberg transmitted classified documents on U.S. involvement in Vietnam to the *New York Times* and the *Washington Post*. The *Federal Employees for Peace* awarded him this "declassified" stamp. The government awarded him an indictment for theft of government property and violation of the Espionage Act. Two years later, a judge dismissed the indictment after the Watergate investigation disclosed that the government had wiretapped Ellsberg's phone and the CIA had sponsored a burglary of his former psychiatrist to obtain his files.



The first of these cases occurred in a time of war, a period when the tension between government-imposed order and individual freedom is often at a peak. In 1971, Daniel Ellsberg, a special assistant in the Pentagon's Office of International Security Affairs, delivered portions of a classified U.S. Department of Defense study to the *New York Times* and the *Washington Post*. By making the documents public, he hoped to discredit the Vietnam War and thereby end it. The highly secret study documented the history of U.S. involvement in the war. The U.S. Department of Justice sought to restrain the *Times* and the *Post* from publishing the documents, contending that publication would prolong the war and embarrass the government. The case was quickly brought before the Supreme Court, which delayed its summer adjournment to hear oral argument.

Three days later, in a 6-to-3 decision in *New York Times v. United States* (1971), the Court concluded that the government had not met the heavy burden of proving that immediate, inevitable, and irreparable harm would follow publication.⁴² The majority's view was expressed in a brief unsigned *per curiam* (Latin for "by the court") opinion, although individual and collective concurring and dissenting views added nine opinions to the decision. Two justices maintained that the First Amendment offered absolute protection against government trespass, no matter what the situation. But the other justices left the door ajar for the imposition of prior restraint in the most extreme and compelling circumstances. The result was hardly a ringing endorsement of freedom of the press; nor was it a full affirmation of the public's right to all the information that is vital to the debate of public issues.

In the second case, a Wisconsin federal district court issued an order in 1979 stopping a monthly magazine, *The Progressive*, from publishing

technical material about the production of a hydrogen bomb.⁴³ The material was far from a do-it-yourself guide to thermonuclear weaponry, and the publisher maintained that the article simply combined information that was available in public documents. Still, the district court judge found that the article contained concepts vital to the operation of a bomb, and that these concepts were not in the public domain. The nation's first imposition of prior restraint against a publication was accomplished. The judge reasoned that a mistake in ruling against the government would far outweigh a mistake in ruling against the magazine: A mistake "against the United States would pave the way for thermonuclear annihilation for us all. In that event, our right to life is extinguished and the right to publish becomes moot." The dispute never reached the Supreme Court, leaving unclear a national policy on prior restraint. The legal proceedings against the magazine were abandoned after similar information on nuclear weapons was published by other periodicals.

Freedom of expression versus maintaining order. The courts have consistently held that freedom of the press does not override the requirements of law enforcement. A Louisville, Kentucky, reporter who had researched and written an article about drug activities was called before a grand jury to identify people he had seen in possession of marijuana or in the act of processing it. The reporter refused to testify, maintaining that freedom of the press shielded him from inquiry. In a closely divided decision, the Supreme Court in 1972 rejected this position.⁴⁴ The Court declared that no exception, even a limited one, exists to the rule that every citizen has a duty to give his or her government whatever testimony he or she is capable of giving.

A divided Supreme Court maintained again in 1978 that journalists are not protected from the demands of law enforcement when the Court upheld a lower court's warrant to search a Stanford University campus newspaper office for photographs of a violent demonstration.⁴⁵ The investigation of criminal conduct seems to be a special area—an area in which the Supreme Court is not willing to provide the press with extraordinary protection of its freedom.

The Supreme Court again confronted the conflict between free expression and order in 1988.⁴⁶ The principal of a St. Louis high school deleted articles on divorce and teen-age pregnancy from the school's newspaper on the ground that the articles invaded the privacy of the students and families who were the focus of the stories. Three student editors filed suit in federal court, claiming that their First Amendment rights had been violated. They argued that the principal's censorship interfered with the newspaper's function as a public forum, a role protected by the First Amendment. The principal maintained that the newspaper was just an extension of classroom instruction, that it was not protected by the First Amendment.

In a 5-to-3 decision, the Court upheld the principal's actions in sweeping terms. Educators may limit speech that occurs in the school curriculum and might seem to bear the approval of the school provided their actions serve "any valid educational purpose." The majority justices

maintained that students in public school do not “shed their constitutional rights to freedom of expression at the schoolhouse gate.” But recent Court decisions suggest that students do lose certain rights—including elements of free expression—when they pass through the public school portals.

The Right to Peaceable Assembly and Petition

The final clause of the First Amendment states that “Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The roots of the right of petition can be traced to the Magna Carta, the charter of English political and civil liberties granted by King John at Runnymede in 1215. The right of peaceable assembly arose much later. Historically, this section of the First Amendment should read “the right of the people peaceably to assemble” *in order to* “petition the government.”⁴⁷ Today, however, the right of peaceable assembly stems from the same root as free speech and free press and is held to be equally fundamental. Government cannot prohibit peaceful political meetings and cannot brand as criminals those who organize, lead, and attend such meetings.⁴⁸

The rights of assembly and petition have merged with the guarantees of free speech and a free press under the more general freedom of expression. Having the right to assemble and to petition the government implies having the freedom to express one’s thoughts and beliefs.

The clash of interests in cases involving these rights illustrates a continuing effort to define and apply fundamental principles. The concept of freedom has been tempered by the need for order and stability. And when there is a confrontation between freedom and order, the justices of the Supreme Court, who are responsible only to their consciences, strike the balance. These kinds of clashes are certain to occur again and again. Freedom and order conflict when public libraries become targets for community censors, when religious devotion interferes with military service, when individuals and groups express views or hold beliefs at odds with majority sentiment. Conflicts between freedom and order, and between minority and majority viewpoints, are part and parcel of politics and government here and abroad. How do other nations rank on the degree of civil liberties they guarantee their citizens? Is freedom increasing or declining in the world? For some answers, see Compared With What? 17.1.

APPLYING THE BILL OF RIGHTS TO THE STATES

Remember that the major purpose of the Constitution was to structure the division of power between the national government and the state governments. Even before it was amended, the Constitution did set some limits on both the nation and the states with regard to citizens’ rights.

Both governments were barred from passing **bills of attainder**, laws that make an individual guilty of a crime without a trial. They were also prohibited from enacting **ex post facto laws**, laws that declare an action a crime after it has been performed. And both nation and states were barred from impairing (and where necessary required to enforce) the **obligation of contracts**, the obligation of the parties in a contract to carry out its terms. Although initially the Bill of Rights seemed to apply only to the national government, various litigants pressed the claim that its guarantees reached beyond the national government to the states.

For example, in the case of *Barron v. Baltimore* (1833), two wharf owners sued the city of Baltimore because their property had been made useless when Baltimore diverted some streams.⁴⁹ The owners maintained that the Fifth Amendment provision that private property should not be taken for public use “without just compensation” applied to the states with the same force as to the national government. Chief Justice John Marshall affirmed what seemed plain from the Constitution’s language and “the history of the day” (the events surrounding the Constitutional Convention): The provisions of the Bill of Rights served only to limit national authority. “Had the framers of these amendments intended them to be limitations on the powers of the state governments,” wrote Marshall, “they would have . . . expressed that intention.”

Many similar—and similarly unsuccessful—claims were pressed on the Supreme Court, despite the clarity of Marshall’s rejection. Change would not come, however, until the Fourteenth Amendment was adopted in 1868. The due process clause of that amendment has served as the linchpin that holds the states to the provisions of the Bill of Rights.

The Fourteenth Amendment: Due Process of Law

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

Most freedoms protected in the Bill of Rights today apply as limitations on the states. And many of the standards that limit the national government serve equally to limit state governments. These changes have been achieved through the Supreme Court’s interpretation of the due process clause of the Fourteenth Amendment: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” Think of the due process clause as a sponge, absorbing or incorporating the specifics of the Bill of Rights and applying them to the states. Due process cases show that constitutional guarantees are often championed by unlikely litigants and that freedom is not always the victor.

The Fourteenth Amendment was first interpreted in the *Slaughterhouse Cases* (1873).⁵⁰ Some New Orleans butchers who had been excluded from a state-chartered slaughterhouse monopoly sought to break

COMPARED WITH WHAT? 17.1

Civil Liberties Around the World

Raymond D. Gastil has been analyzing freedom around the world for several years. One of his objectives is to produce a comparative assessment of civil liberties. He uses a 7-point scale, ranking nations from 1 (the greatest degree of freedom) to 7 (the least degree of freedom). Nations with lower ratings, then, are freer than nations with higher ratings. Of course, no nation is absolutely free or unfree.

In countries rated 1, the expression of political opinion has an outlet in the press, especially when the intent of that expression is to affect the legitimate political process. In addition, in these countries no major medium of expression serves as a simple conduit for government propaganda. The courts protect the individual; people cannot be punished for their opinions; there is respect for private rights and wants in education, occupation, religion, and residence; and law-abiding citizens do not fear for their lives because of their political activities.

Moving down the scale from 2 to 7, we see a steady loss of civil freedoms. Compared with nations rated 1, the police and courts in nations rated 2 have more authoritarian traditions or, as is the case in Greece and Portugal, a less institutionalized

or secure set of liberties. Nations rated 3 or higher may have political prisoners and varying forms of censorship. Often, their security services torture prisoners. States rated 6 almost always have political prisoners. Here the legitimate media usually are completely under government supervision; there is no right to assembly; and often, narrow restrictions apply to travel, residence, and occupation. However, at level 6 there may still be relative freedom in private conversations, especially at home; illegal demonstrations can or do occur; and underground literature circulates. At 7 on the scale, there is pervasive fear; little independent expression, even in private; and almost no public expression of opposition to the government. Imprisonment and execution here are swift and sure.

The degree of freedom within a nation varies with shifts in the political regime. The states in **boldface type** have experienced a decline in civil liberties from 1987 to 1988; the states in *italic boldface type* have experienced an increase in civil liberties from 1987 to 1988. Notice the changes for Haiti, Nicaragua, South Korea, and the USSR. What events might explain these changes?

Rating of Nations by Civil Liberties, 1988

Most Free 1	Argentina	Canada	Italy	Sweden
	Australia	Costa Rica	Japan	Switzerland
	Austria	Denmark	Luxembourg	Trinidad and Tobago
	Barbados	Grenada	Netherlands	Tuvalu
	Belgium	Iceland	New Zealand	United Kingdom
	Belize	Ireland	Norway	United States
	Brazil	Greece	Nauru	St. Vincent
	Cyprus (G)	Israel	Papua New Guinea	Solomons
	Dominica	Jamaica	Philippines	Spain
	Finland	Kiribati	Portugal	Uruguay
2	France	Malta	St. Kitts-Nevis	Venezuela
	Germany (W)	Mauritius	St. Lucia	

the monopoly with a new weapon, the Fourteenth Amendment. Justice Samuel F. Miller, speaking for a sharply divided Supreme Court, denied their appeal. The core of his argument was that the overwhelming purpose of the Civil War amendments (the Thirteenth, Fourteenth, and Fifteenth Amendments) was the freedom, security, and protection of emancipated blacks. The Court gutted the "privileges and immunities clause" when it upheld the theory that fundamental rights stem from

Rating of Nations by Civil Liberties, 1988

3	Antigua and Barbados	Colombia	Gambia	Peru
	Bahamas	Cyprus (T)	Guatemala	Thailand
	Bolivia	Dominican Republic	Honduras	Tonga
	Botswana	Ecuador	India	Western Samoa
4	<i>China (T)</i>	Korea (S)	Sri Lanka	Vanuatu
	Egypt	Mexico	Suriname	
	El Salvador	Nepal	Turkey	
	Hungary	Senegal	Uganda	
5	Bahrain	Haiti	Nicaragua	Sudan
	Bangladesh	Jordan	Nigeria	Tunisia
	Bhutan	Kuwait	Pakistan	United Arab Emirates
	Brunei	Lebanon	Panama	Yemen (N)
	Chile	Liberia	Poland	Yugoslavia
	Cote d'Ivoire	Madagascar	Qatar	Zambia
	Fiji	Malaysia	Sierra Leone	
	Guyana	Morocco	Singapore	
	Algeria	Cuba	Lesotho	South Africa
	Burkina Faso	Czechoslovakia	Libya	Swaziland
6	Burundi	Djibouti	Maldives	Tanzania
	Cameroon	Gabon	Mali	Togo
	Cape Verde	Germany (E)	Mauritania	Transkei
	Central African Republic	Ghana	Niger	USSR
	China (M)	Guinea	Oman	Zimbabwe
	Comoros	Indonesia	Paraguay	
	Congo	Iran	Rwanda	
		Kenya	Seychelles	
	Afghanistan	Chad	Malawi	Syria
	Albania	Equatorial Guinea	Mongolia	Vietnam
7	Angola	Ethiopia	Mozambique	Yemen (S)
	Benin	Guinea-Bissau	Romania	Zaire
	Bulgaria	Iraq	Sao Tome and Principe	
	Burma	Korea (N)	Saudi Arabia	
	Cambodia	Laos	Somalia	

Source: *Freedom at Issue* 100 (January–February 1988):29. Reprinted with permission of Freedom House.

state, not national, citizenship. In brief, the Court argued that the Fourteenth Amendment imposed no additional restrictions on the states. This position was short-lived, however. The justices had two options in their effort to apply the provisions of the Bill of Rights to the states. They could overrule the *Slaughter-House* decision, but this was unlikely given their commitment to *stare decisis*. (This Latin phrase means "let the decision stand.") It refers to a principle that guides judges and lawyers

to agree with decisions that have been made previously unless compelling reasons call for new precedents.) Instead, the justices searched for another constitutional provision to carry the weight; they found it nearly thirty years later in the due process clause.

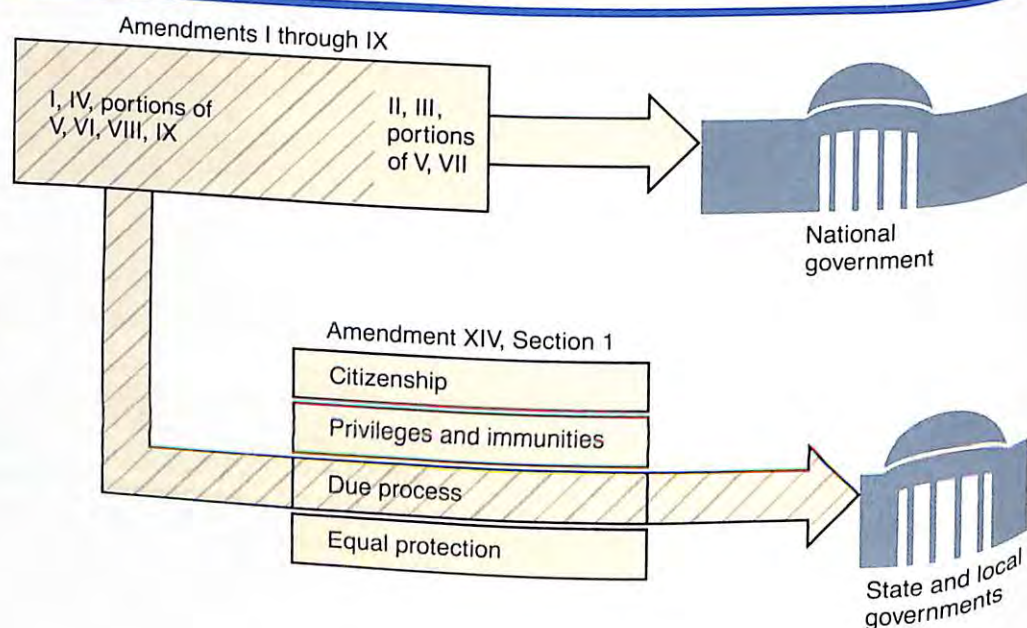
The Fundamental Freedoms

In 1897, without fanfare, the Supreme Court reversed the position it had taken in *Barron v. Baltimore*. The states, the Court said, are limited by the Fifth Amendment's prohibition on taking of private property without just compensation.⁵¹ The Court accomplished its goal by absorbing that prohibition into the due process clause of the Fourteenth Amendment, which applies to the states. Now one Bill of Rights protection—but only that one—limited both the states and the national government (see Figure 17.1).

The inclusion of other Bill of Rights guarantees within the due process clause faced a critical test in *Palko v. Connecticut* (1937).⁵² Frank Palko had been charged with first-degree murder. He was convicted instead of second-degree murder and sentenced to life imprisonment. The state of Connecticut appealed and won a new trial; this time Palko was found guilty of first-degree murder and sentenced to death. Palko appealed the second conviction on the ground that it violated the protection against double jeopardy guaranteed to him by the Fifth Amendment. This protection applied to the states, he contended, because of the Fourteenth Amendment's due process clause.

The Supreme Court upheld Palko's second conviction. In his opinion for the majority, Justice Benjamin N. Cardozo formulated principles that were to direct the Court's actions for the next three decades. He noted that some Bill of Rights guarantees—such as freedom of thought and speech—are fundamental, and that these fundamental rights are absorbed by the Fourteenth Amendment's due process clause and are applicable

Figure 17.1
The Incorporation of the Bill of Rights
The Supreme Court has used the due process clause of the Fourteenth Amendment as a sponge, absorbing many—but not all—of the provisions in the Bill of Rights and applying them to state and local governments. All of the provisions in the Bill of Rights apply to the national government.



to the states. These rights are essential, argued Cardozo, because "neither liberty nor justice would exist if they were sacrificed." Trial by jury and other rights, although valuable and important, are not essential to liberty and justice, and therefore are not absorbed by the due process clause. "Few would be so narrow or provincial," Cardozo claimed, "as to maintain that a fair and enlightened system of justice" would be impossible without these other rights. In other words, only some provisions of the Bill of Rights—the "fundamental" provisions—were absorbed into the due process clause and made applicable to the states. Because protection against double jeopardy was not one of them, Palko died in Connecticut's gas chamber in April 1938.

The next thirty years constituted a period of slow but perceptible change in the standard for determining whether or not a Bill of Rights guarantee was fundamental. The reference point was transformed from the idealized "fair and enlightened system of justice" in *Palko* to the more realistic "American scheme of justice" outlined in the decision in *Duncan v. Louisiana* (1968).⁵³ During this period, in case after case, as guarantees were tested they were found to be fundamental. By 1969, the *Palko* decision was an empty shell; most of the Bill of Rights guarantees had been found applicable to the states (see Table 17.1).

The Supreme Court finally overturned *Palko* on June 23, 1969, Chief Justice Earl Warren's last day on the Court. He and a majority of his colleagues had come to recognize that "*Palko's* roots had been cut away years ago."⁵⁴ Although nearly all the guarantees of the Bill of Rights apply today to government at all levels, the controversy over these safeguards continues.

Criminal Procedure: The Meaning of Constitutional Guarantees

"The history of liberty," remarked Justice Frankfurter, "has largely been the history of observance of procedural safeguards."⁵⁵ The safeguards embodied in the Fourth through Eighth Amendments to the Constitution specify how government must behave in criminal proceedings. Their application to the states has reshaped American criminal justice in the last thirty years.

That application has come in two steps: The first step requires the judgment that a guarantee asserted in the Bill of Rights also applies to the states. The second step requires that the judiciary give specific meaning to the guarantee. The courts cannot allow the states to define guarantees themselves without risking different definitions from state to state—and differences among citizens' rights. If the rights are fundamental, their meaning cannot vary. But life is not quite so simple under the U.S. Constitution. The concept of federalism is sewn into the constitutional fabric, and the Supreme Court recognizes that there may be more than one way to prosecute the accused while heeding fundamental rights.

Consider, for example, the right to a jury trial in criminal cases, which is guaranteed by the Sixth Amendment. This right was made obligatory on the states in *Duncan v. Louisiana* (1968). The Supreme Court later held that the right applied to all nonpetty criminal cases—those in which the penalty for conviction was more than six months'

Table 17.1
Cases Applying the Bill of Rights to the States

Amendment	Case	Date
1. 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.	<i>Everson v. Board of Education</i>	1947
	<i>Cantwell v. Connecticut</i>	1940
	<i>Gitlow v. New York</i>	1925
	<i>Near v. Minnesota</i>	1931
	<i>DeJonge v. Oregon</i>	1937
	<i>DeJonge v. Oregon</i>	1937
2. 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.		
3. 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.		
4. 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.	<i>Wolf v. Colorado</i>	1949
	<i>Aguilar v. Texas</i>	1964
5. 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.	<i>Benton v. Maryland</i>	1969
	<i>Malloy v. Hogan</i>	1964
	<i>Chicago B. & Q. R. v. Chicago</i>	1897
	<i>Klopfer v. North Carolina</i>	1967
	<i>In re Oliver</i>	1948
	<i>Parker v. Gladden</i>	1966
6. 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.	<i>Duncan v. Louisiana</i>	1968
	<i>Lanzetta v. New Jersey</i>	1939
	<i>Pointer v. Texas</i>	1965
	<i>Washington v. Texas</i>	1967
	<i>Gideon v. Wainwright</i>	1963
7. In Suits at common law, where the value of the controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.		
8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.	<i>Robinson v. California</i>	1962
	<i>Griswold v. Connecticut</i>	1965
9. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.		

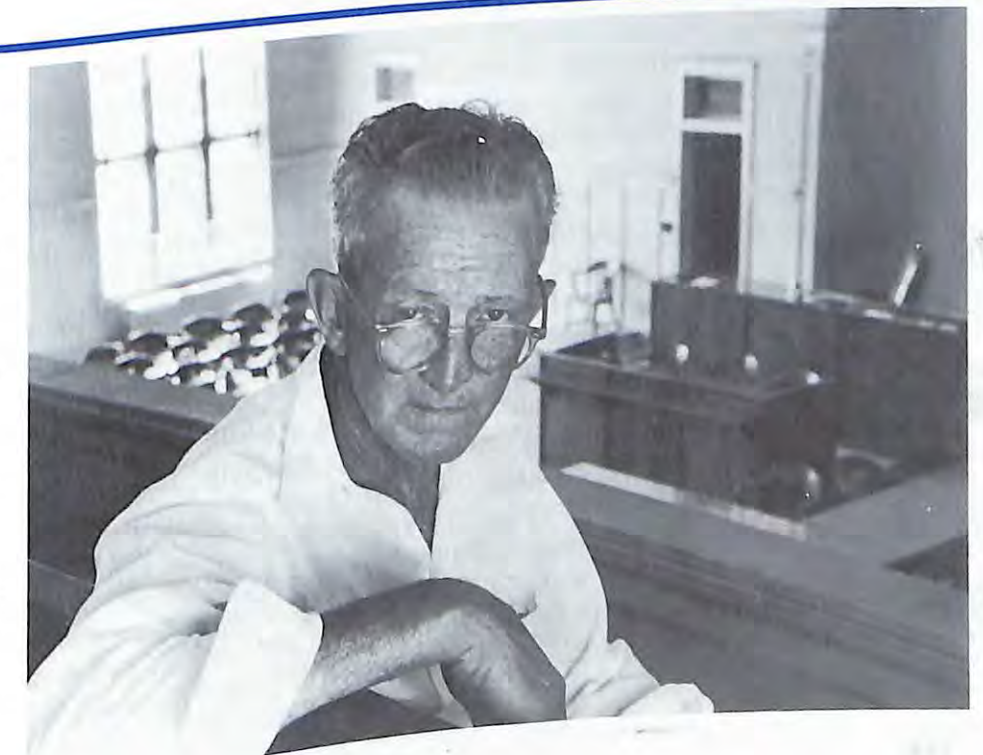
imprisonment.⁵⁶ But the Court did not require that state juries have twelve members, the number required for federal criminal proceedings. Jury size was permitted to vary from state to state, although the minimum number was set at six. Furthermore, the federal requirement of a unanimous jury verdict was not imposed on the states. As a result, even today many states do not require unanimous verdicts for criminal convictions. Some observers question whether criminal defendants in these states enjoy the same rights of defendants in unanimous-verdict states.

In contrast, the Court left no room for variations in its definition of the fundamental right to an attorney, also guaranteed by the Sixth Amendment. Clarence Earl Gideon was a penniless vagrant accused of breaking into and robbing a pool hall. (His "loot" was mainly change taken out of vending machines.) Because Gideon could not afford a lawyer, he asked the state to provide him with legal counsel for his trial. The state refused, and Gideon was subsequently convicted and sentenced to five years in the Florida State Penitentiary. From his cell, Gideon appealed to the U.S. Supreme Court, claiming that his conviction should be struck down because his Sixth Amendment right to counsel had been denied. (Gideon was also without counsel in this appeal; he filed a handwritten "pauper's petition" with the Court, after studying law texts in the prison library. When the Court agreed to consider his case, he was assigned a prominent Washington attorney, Abe Fortas, who later became a Supreme Court justice.)⁵⁷

In its landmark decision in *Gideon v. Wainwright* (1963), the Court set aside Gideon's conviction and extended to the states the Sixth Amendment right to counsel.⁵⁸ Gideon was retried, but this time, with the assistance of a lawyer, he was found not guilty.

A Pauper's Plea

Clarence Earl Gideon, penniless and without a lawyer, was convicted and sent to prison for breaking into and robbing a pool hall. At his trial, Gideon pleaded with the judge: "Your Honor, the U.S. Constitution says I am entitled to be represented by counsel." The judge was required by state law to deny Gideon's request. Undaunted, Gideon continued his quest for recognition of his Sixth Amendment right to counsel. On the basis of his penciled petition, the Supreme Court agreed to consider his case, ultimately granting Gideon the right he advocated with such conviction.



In subsequent rulings that stretched over more than a decade, the Court specified at what points a defendant was entitled to a lawyer in the course of criminal proceedings (from arrest to trial, appeal, and beyond). All states were bound by these pronouncements. In state as well as federal proceedings, legal assistance had to be furnished to those who did not have the means to hire their own attorney.

During this period the Court also came to grips with another issue involving procedural safeguards: informing suspects of their constitutional rights. Without this knowledge, safeguards are useless. Ernesto Miranda was arrested in Arizona for kidnapping and raping an eighteen-year-old woman. After the police questioned him for two hours and the woman identified him, Miranda confessed to the crime. He was convicted in an Arizona court on the basis of that confession—although he was never told he had the right to counsel and the right not to incriminate himself. Miranda appealed his conviction, which was overturned by the Supreme Court in 1966.⁵⁹

The Court based its decision in *Miranda v. Arizona* on the Fifth Amendment privilege against self-incrimination. According to the Court, the police had forced Miranda to confess during in-custody questioning, not with physical force but with the coercion inherent in custodial interrogation. Warnings were required, the Court argued, to dispel that coercion. Warnings were not necessary if a person was only in custody or if a person was only subject to questioning without arrest. But the combination of custody and interrogation was sufficiently intimidating to require warnings before questioning. These statements are known today as the **Miranda warnings**. Among them:

- You have the right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer of your own choice before questioning.
- If you cannot afford to hire a lawyer, a lawyer will be provided without charge.

In each area of criminal procedure, the justices have had to grapple with the two steps in the application of constitutional guarantees to criminal defendants: the extension of a right to the states and the definition of that right. In *Duncan*, the issue was the right to jury trial, and variation was allowed from state to state. In *Gideon*, the right to counsel was applied uniformly from state to state. Finally, in *Miranda*, the Court declared that all governments—national, state, and local—have a duty to inform suspects of the full measure of their constitutional rights.

The problems of balancing freedom and order can be formidable. A primary function of government is to maintain order. What happens when individual freedom is infringed on for the sake of order? Consider the guarantee in the 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." This right was made applicable to the states in *Wolf v. Colorado* (1949).⁶⁰ Following the reasoning in *Palko*, the Court found that the core of the amendment—security against arbitrary police intrusion—was a fundamental right, that citizens

must be protected from illegal searches by state and local government. But how? The federal courts had long followed the **exclusionary rule**, which holds that evidence obtained from an illegal search and seizure cannot be used in a trial. And of course, if that evidence is critical to the prosecution, the conviction is lost. But the Court refused to apply the exclusionary rule to the states. Instead, it allowed the states to decide on their own how to handle the fruits of an illegal search. The upshot of *Wolf* was a declaration that the evidence used to convict the defendant was obtained illegally, but his conviction on the basis of that illegal evidence was affirmed.

The justices considered the exclusionary rule again twelve years later, in *Mapp v. Ohio* (1961).⁶¹ Dolree Mapp had been convicted of possessing obscene materials after an admittedly illegal search of her home for a fugitive. Her conviction was affirmed by the Ohio Supreme Court, and she appealed to the U.S. Supreme Court. Mapp's attorneys argued for a reversal based on freedom of expression, contending that the confiscated materials were protected by the First Amendment. However, the Court elected to use the decision in *Mapp* to give meaning to the constitutional guarantee against unreasonable search and seizure. In a 6-to-3 decision, the justices declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court." Mapp had been convicted illegally.

The decision was historic. It placed the exclusionary rule within the confines of the Fourth Amendment and required all levels of government to operate according to the provisions of that amendment. Failure to do so could result in the dismissal of criminal charges against otherwise guilty defendants.

Mapp launched a divided Supreme Court on a troubled course of determining how and when to apply the exclusionary rule. For example, the Court continues to struggle with police use of sophisticated electronic eavesdropping devices and the search of movable vehicles. In each case, the justices confront a rule that appears to handicap the police while it offers freedom to people whose guilt has been established by the illegal evidence. In the Court's most recent pronouncements, order has triumphed over freedom.

The struggle over the exclusionary rule took a new turn in 1984, when the Court reviewed *United States v. Leon*.⁶² In this case, the police obtained a search warrant from a judge on the basis of a tip from an anonymous informant. The judge made a mistake; and the police, relying on the warrant, discovered large quantities of illegal drugs. The Court, by a vote of 6-to-3, established the **good faith exception** to the exclusionary rule. The justices held that evidence seized on the basis of a mistakenly issued search warrant could be introduced at trial. The exclusionary rule, argued the majority, is not a right but a remedy justified by its ability to deter illegal police conduct. In *Leon*, the costs of the exclusionary rule outweighed the benefits. The exclusionary rule is costly to society: Guilty defendants go unpunished and people lose respect for the law. The benefits of the exclusionary rule are uncertain: The rule cannot deter police in a case like *Leon*, where they act in good faith on a warrant issued by a judge.

In 1988, the justices ruled 6-to-2 that police may search through garbage bags and other containers that people leave outside their houses. The case resulted from an investigation of a man who was suspected of narcotics trafficking. The police obtained his trash bags from the local garbage collector; the bags contained evidence of narcotics, which served as the basis for a search warrant of his house. That search revealed quantities of cocaine and hashish and led to criminal charges. The lower courts dismissed the drug charges on the grounds that the warrant was based on an unconstitutional search. By overturning that ruling, the Supreme Court further eroded the Fourth Amendment's protection of individual privacy.⁶³

Mapp and all the cases that followed it forced the Court to confront the classic dilemma of democracy: the choice between freedom and order. If the justices tipped the scale toward freedom, guilty parties would go free, perhaps to break the law again. If they chose order, they would be giving government approval to police conduct in violation of the Constitution.

THE NINTH AMENDMENT AND PERSONAL AUTONOMY

The adoption of the Bill of Rights in 1791 made explicit those rights that the national government could not abridge. But did it carry with it the assumption that the rights not specified in the amendments could be abridged by government?⁶⁴ An answer to this question may be found in the ambiguous language of the Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The amendment and its history remain an enigma. The evidence supports two different views. The amendment may protect rights that are not enumerated, or it may simply protect state governments against the assumption of power by the national government.⁶⁵ The meaning of the amendment was not an issue until 1965, when the Supreme Court used it to protect privacy, a right that is not enumerated in the Constitution.

Controversy: From Privacy to Abortion

In *Griswold v. Connecticut* (1965), the Court struck down, by a vote of 7 to 2, a seldom-used Connecticut statute that made the use of birth control devices a crime.⁶⁶ Justice Douglas, writing for the majority, asserted that the "specific guarantees in the Bill of Rights have penumbras [areas of partial illumination]" that give "life and substance" to specific guarantees in the Bill of Rights. Several specific guarantees in the First, Third, Fourth, and Fifth Amendments create a zone of privacy, Douglas argued, and this zone is protected by the Ninth Amendment and is applicable to the states by the due process clause of the Fourteenth Amendment (see Feature 17.2).

Three of the justices gave added emphasis to the relevance of the Ninth Amendment, which, they contended, protected fundamental

FEATURE 17.2

The Birth of a New Right

In 1965, in *Griswold v. Connecticut*, the Supreme Court confronted a state criminal statute that prohibited the use of birth control devices and giving medical advice in their use. Prosecutions were rare under the 1879 statute. Two people—a doctor and a family planning counselor—had been convicted under the law for giving birth control advice to married couples and for prescribing contraceptives. In the conference following argument, the justices were divided 7 to 2 in favor of declaring the law unconstitutional but were unable to articulate a clear theory on which to base their decision. Justice William O. Douglas stated the simplest rationale on which the statute could be invalidated. He claimed the law violated the First Amendment's guarantee of freedom of association. This right, which was officially recognized by the Court in 1958, protected the advancement of beliefs and ideas. The problem was that the right of association did not appear to protect *conjugal* association. Justice Hugo L. Black spoke sarcastically of Douglas's position in the conference. To Black, the right of association meant the right of assembly, and the right of husband and wife to assemble in bed seemed to him to be an entirely new interpretation of that right.

Douglas nevertheless drafted his opinion along right-of-association lines. Within a day of the opinion's distribution, however, Justice William J. Brennan, Jr., urged Douglas to abandon the right-of-association argument because it had little to do with the advocacy protected by that right. Instead, Brennan suggested that Douglas use the same approach but rest the decision on the right to privacy. Douglas followed Brennan's suggestion and circulated a new draft opinion, which recognized a constitutional right to privacy formed by the *penumbras*, or "partial shadows," cast by specific guarantees in the Bill of Rights. Thus the right to privacy was officially born.

The constitutional right to privacy created by the Court in 1965 would spawn one of the most controversial decisions of the modern Supreme Court. In *Roe v. Wade*, decided in 1973, the Court struck down state antiabortion laws on the ground that they violate the right of privacy, which was now held to include the right of women to terminate pregnancies.

The right to privacy has limits, however. In 1986, in a 5-to-4 decision, the Court in *Bowers v. Hardwick* refused to extend the right to privacy to cover the decision of two consenting adults to engage in homosexual acts. Choices fundamental to heterosexual life—whether to marry, to conceive a child, to carry a pregnancy to term—are still protected by the zone of privacy.

Source: Adapted from Bernard Schwartz, *The Unpublished Opinions of the Warren Court* (New York: Oxford University Press, 1985), chap. 7. Copyright © 1985 by Oxford University Press, Inc. Reprinted by permission.

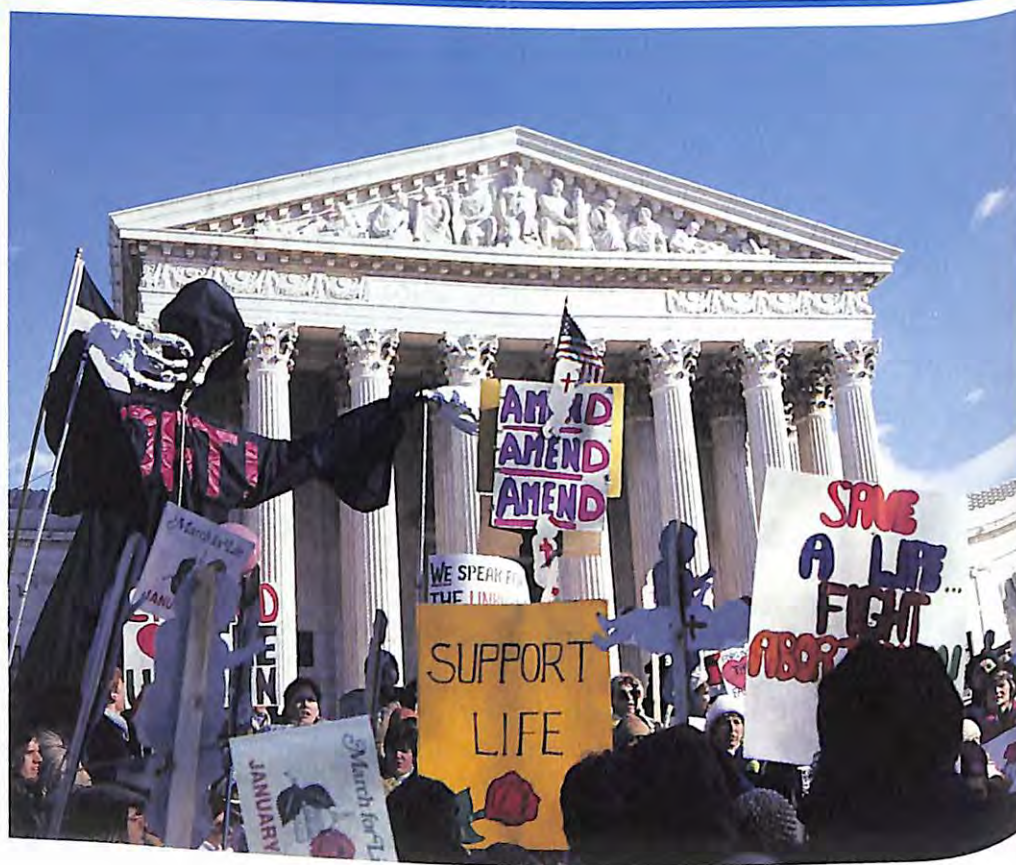
rights derived from those specifically enumerated in the first eight amendments. This view was in sharp contrast to the position that was expressed by the two dissenters, Justices Black and Stewart. They argued that, in the absence of some specific prohibition, the Bill of Rights and the Fourteenth Amendment do not license judicial annulment of state legislative policies, even if those policies are abhorrent to a judge or justice.

Griswold established the principle that the Bill of Rights as a whole creates a right to make certain intimate personal choices, including the right of married people to engage in sexual intercourse for reproduction or pleasure. This zone of personal autonomy, protected by the Constitution, gave comfort in 1973 to litigants who sought to invalidate state antiabortion laws. But rights are not absolute, and in weighing the interests of the individual against the interests of the government, the Supreme Court found itself caught in a flood of controversy that has yet to ebb.

In *Roe v. Wade* (1973), the Court in a 7-to-2 decision declared unconstitutional a Texas law making it a crime to obtain an abortion except for the purpose of saving the mother's life.⁶⁷ Justice Harry A. Blackmun, who authored the majority opinion, could not point to a specific constitutional guarantee to justify the Court's ruling. Instead, he based the decision on the right to privacy protected by the Fourteenth Amendment's due process clause. The Court declared that in the first three months of pregnancy, the abortion decision must be left to the woman and her physician. In the interest of protecting the mother's health, states may restrict but not prohibit abortions in the second three months of pregnancy. Finally, in the last three months of pregnancy, states may regulate or even prohibit abortions to protect the life of the fetus except when medical judgment determines that an abortion is necessary to save the mother's life. In all, the laws of forty-six states were affected by the Court's ruling.

A Grim View of Personal Choice

The 1973 Supreme Court decision *Roe v. Wade* made abortions legal in the United States by ruling that the government lacked the power to prohibit them during the first three months of pregnancy. This freedom of personal choice was heralded by some groups as a landmark for women's rights and denounced by others as tantamount to murder. More than fifteen years later, the controversy has yet to ebb.



The dissenters—Justices White and Rehnquist—were quick to point out what critics have frequently repeated since the decision: The Court's judgment was directed by its own dislikes, not by any constitutional compass. In the absence of guiding principles, they asserted, the majority justices simply substituted their views for the views of the state legislatures whose abortion regulations they invalidated.⁶⁸

The decision in *Roe* raised the freedom-versus-order dilemma. Antiabortion laws abridge freedom, the ability to make fundamental personal choices without interference. But they also meet the need for order, the protection of life (including unborn life) and the safety of citizens. In balancing freedom and order, the Supreme Court stirred up a controversy that centered around the Court's own political power.

In the years following the landmark decision in *Roe*, political controversy continued to churn. In 1976, Congress severely restricted the use of federal funds for abortions. The Supreme Court sustained this restriction, known as the **Hyde Amendment**, in 1980. But the Court strongly reaffirmed its decision in *Roe* when it struck down government-imposed restrictions on abortion procedures in 1983. This reaffirmation has not deterred the opponents of abortion, healed the divisions within the Court, or resolved the difficult issues that loom ahead as the medical risks of various abortion procedures decrease.

President Ronald Reagan's nomination in 1981 of Sandra Day O'Connor as the Court's 102d justice focused attention on the strength of the abortion issue. It dominated public debate on O'Connor's fitness for judicial office. She was roundly condemned by antiabortion groups, although their opposition was not enough to stop her appointment as the first woman to the High Court. As if to prove his commitment to an antiabortion policy, in 1982 Reagan endorsed a constitutional amendment that would have reversed the Court's decision in *Roe*. No such amendment has passed the proposal stage.

The Court continues to struggle with the abortion issue. In 1986, the justices held unconstitutional a Pennsylvania law that required doctors to provide detailed information about risks and alternatives to women seeking abortions. The law also required that two doctors be present at late-term abortions and that the procedures most likely to produce live births be used as long as women were not put at significantly greater risk. These provisions were designed to deter women from having abortions and to require doctors to risk the health of pregnant women in order to save late-term fetuses. The Court concluded that the law had invaded the private sphere of individual liberty protected by the Constitution.⁶⁹ Although antiabortion groups denounced it, advocates of abortion rights hailed the decision as a victory. The real significance of the ruling, however, was the depth of division registered within the Court. The justices split 5 to 4, and three of the dissenters, Justices Rehnquist, White, and O'Connor, each authored unusually harsh opinions. Chief Justice Burger voted for the first time in dissent, urging a re-examination of *Roe*.

The composition of the Court shifted under President Reagan. His elevation of William Rehnquist to chief justice in 1986 and his appointments of Antonin Scalia in 1986 and Anthony Kennedy in 1988 raised

new hope among abortion foes and old fears among abortion advocates. The showdown on abortion, and on the right to privacy in general, is sure to come as the Court charts a new course between freedom and order.

Personal Autonomy and Sexual Orientation

The right to privacy cases may have opened a Pandora's box of divisive social issues. Does the right to privacy embrace private homosexual acts between consenting adults? Consider the case of Michael Hardwick, who was arrested in his Atlanta bedroom while having sex with a man. In a standard approach to prosecuting homosexuals, he was charged under a state criminal statute with the crime of sodomy, which means any oral or anal intercourse. The police said that they had gone to his home to arrest him for failing to pay a fine for drinking in public. Although the prosecutor dropped the charges, Hardwick sued to challenge the law's constitutionality. He won in the lower courts.

The conflict between freedom and order lies at the core of the case. "Our legal history and our social traditions have condemned this conduct uniformly for hundreds and hundreds of years," argued Georgia's attorney. Constitutional law, he continued, "must not become an instrument for a change in the social order." Hardwick's attorney, a noted constitutional scholar, said that government must have a more important reason than "majority morality to justify regulation of sexual intimacies in the privacy of the home." He maintained that the case involved two precious freedoms: the right to engage in private sexual relations and the right to be free from government intrusion in one's home.⁷⁰

More than half the states have removed criminal penalties for private homosexual acts between consenting adults. The rest still outlaw homosexual sodomy, and many outlaw heterosexual sodomy as well. As a result, Hardwick's case was closely followed by homosexual rights groups and some civil liberties groups. Fundamentalist Christian groups and defenders of traditional morality expressed deep interest in the outcome, too.

In a bitterly divided ruling in 1986, the Court held in *Bowers v. Hardwick* that the Constitution does not protect homosexual relations between consenting adults, even in the privacy of their own homes.⁷¹ The logic of the privacy cases in the areas of contraception and abortion seemed to compel a right to personal autonomy—to make one's own choices unconstrained by government. But the 5-to-4 majority maintained that only heterosexual choices—whether and whom to marry, whether to conceive a child, whether to have an abortion—fall within the zone of privacy advanced by the Court in its earlier rulings. "The judiciary necessarily takes to itself further authority to govern the country without express constitutional authority" when it expands the list of fundamental rights "not rooted in the language or design of the Constitution," wrote Justice White, the author of the majority opinion.

The march toward increased personal freedom seems to have come to a halt; a new concern for social order—for established patterns of authority—is on the rise. And all the evidence, short of their actual

Out of the Closet and Into the Streets

The quest for constitutional protection of homosexual rights halted with the Supreme Court's 1986 decision upholding state laws against sodomy. Gay and lesbian activists have shifted their efforts from the national level to state and local levels. More than half the states no longer make sodomy between consenting adults of the same sex a crime. The remaining states will follow suit if activists can muster enough support from state legislatures to repeal existing sodomy laws.



participation in cases, suggests that the most recent Reagan appointees strongly support the new balance.

Most likely, the march toward personal autonomy will shift to the states, where groups can continue to assert their political power. The pluralist model, then, gives us one solution to dissatisfaction with Court rulings. If state legislatures can enact laws making certain acts punishable, then they can also repeal those laws. Opponents to the Georgia statute now must mobilize support and force a change that more than half the states have already adopted. However, this kind of solution offers little comfort to Americans who believe the Constitution protects them in their most intimate decisions and actions.

CONSTITUTIONALIZING PUBLIC POLICIES

The issues embedded in *Griswold* and *Roe* are more fundamental and disturbing for democracy than the surface issues of privacy and personal autonomy. By enveloping a policy in the protection of the Constitution, the Court removes that policy from the legislative arena, where the people's will can be expressed through the democratic process. Specific constitutional guarantees pose little threat of usurping the democratic process because there are inherent safeguards in the Constitution. But the abortion controversy demonstrates to many critics that the courts can place under the cloak of the Constitution a host of public policies that were once debated and resolved by the democratic process. By giving a policy constitutional protection (as the Court did with abortion), judges assume responsibilities that have traditionally been left to the elected

branches to resolve. If we trust appointed judges to serve as guardians of democracy, then our fears for the democratic process may be illusory. But if we believe that democratic solutions are necessary to resolve these kinds of questions, our fears may well be grounded. The controversy will continue as the Supreme Court strikes a balance between freedom and order. But in holding the balance, the justices must wrestle among themselves and with their critics over whether the Constitution authorizes them to fill the due process clause with fundamental values that cannot easily be traced to constitutional text, history, or structure.

Although the courts may be "the chief guardians of the liberties of the people," they ought not have the last word, argued the great jurist Learned Hand:

A society so riven that the spirit of moderation is gone, no court can save; . . . a society where that spirit flourishes, no court need save; . . . in a society which evades its responsibilities by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish.⁷²

SUMMARY

In establishing a new government, the framers were compelled to assure the states and the people, through the Bill of Rights, that their freedoms would be protected. In their interpretation of these ten amendments, the courts, especially the Supreme Court, have taken on the task of balancing freedom and order.

The First Amendment protects several freedoms: of religion, of speech and press, of peaceable assembly and petition. The establishment clause demands government neutrality toward religions and between the religious and nonreligious. According to judicial interpretations of the free-exercise clause, religious beliefs are inviolate, but antisocial actions in the name of religion are not protected by the Constitution. Extreme interpretations of the religion clauses could bring them into conflict with each other.

Freedom of expression encompasses freedom of speech and of the press, and the right to peaceable assembly and petition. Freedom of speech and freedom of the press have never been held to be absolute, but they have been given far greater protection than other freedoms in the Bill of Rights. Exceptions to free-speech protections include some forms of symbolic expression, fighting words, and obscenity. Press freedom has had broad constitutional protection because a free society depends on the ability to collect and report information without government interference. The rights of peaceable assembly and petition stem from the same freedom protecting speech and

press. Each of these freedoms is equally fundamental, but their exercise is not absolute.

The adoption of the Fourteenth Amendment in 1868 extended the guarantees of the Bill of Rights to the states. The due process clause became the vehicle for absorbing or incorporating specific provisions of the Bill of Rights, one at a time, case after case, and applying them to the states. The designation of a right as fundamental also called for a definition of that right. The Supreme Court has tolerated some variation from state to state in the meaning of certain constitutional rights. The Court has also imposed a duty on government to inform citizens of their rights so that they are able to exercise them.

As it fashioned new fundamental rights from the Constitution, the Supreme Court has become embroiled in controversy. The right to privacy served as the basis for the right of women to terminate a pregnancy, which in turn suggested a right to personal autonomy. The abortion controversy is still raging, and the justices have called a halt to the extension of personal privacy in the name of the Constitution.

In the meantime, judicial decisions raise a basic issue. By offering constitutional protection to public policies, the courts may be threatening the democratic process, the process that gives the people a say in government through their elected representatives. One thing is certain, however: The challenge of democracy requires the constant balancing of freedom and order.

Key Terms and Cases

civil liberties	<i>Cohen v. California</i>
civil rights	libel
establishment clause	<i>New York Times v. Sullivan</i>
free-exercise clause	public figures
<i>Lemon v. Kurtzman</i>	<i>New York Times v. United States</i>
<i>West Virginia State Board of Education v. Barnette</i>	bill of attainder
speech clause	ex post facto law
press clause	obligation of contract
prior restraint	<i>Palko v. Connecticut</i>
free-expression clauses	<i>Gideon v. Wainwright</i>
clear and present danger test	Miranda warnings
<i>Gitlow v. New York</i>	exclusionary rule
<i>Brandenburg v. Ohio</i>	<i>Mapp v. Ohio</i>
symbolic expression	<i>United States v. Leon</i>
<i>Tinker v. Des Moines Independent County School District</i>	good faith exception
fighting words	<i>Griswold v. Connecticut</i>
	<i>Roe v. Wade</i>
	Hyde Amendment
	<i>Bowers v. Hardwick</i>

Selected Readings

- Baker, Liva. *Miranda: Crime, Law and Politics*. New York: Atheneum, 1983. Baker uses *Miranda* as a vehicle for explaining the American legal system. She traces the case from its origin to its landmark resolution.
- Berns, Walter. *The First Amendment and the Future of Democracy*. New York: Basic Books, 1976. Berns contends that the Supreme Court is steadily eroding the conditions of civil liberty.
- Brigham, John. *Civil Liberties and American Democracy*. Washington, D.C.: Congressional Quarterly Press, 1984. A survey of U.S. civil rights and liberties organized around basic concepts (privacy, entitlements).
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Levy, Leonard W. *The Establishment Clause: Religion and the First Amendment*. New York: Macmillan, 1986. This searching study of the establishment clause claims that the view that government can assist all religions is historically groundless. Levy argues that it is unconstitutional for government to provide aid to any religion.

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Polenberg, Richard. *Fighting Faiths*. New York: Knopf, 1987. By focusing on the famous case of *Abrams v. United States*, a noted historian examines anarchism, government surveillance, freedom of speech, and the impact of the Russian Revolution on American liberals.



18

Equality and Civil Rights

The Civil War Amendments

Congress and the Supreme Court:
Lawmaking versus Interpretation •
The Roots of Racial Segregation

The Dismantling of School Segregation

Pressure for Equality... • ...And
Pressure for Desegregation

The Civil Rights Movement

Civil Disobedience • The Civil Rights
Act of 1964 • From Restriction to Res-
toration • Racial Violence and Black
Nationalism

Civil Rights for Other Minorities

Native Americans • Hispanic-
Americans

Gender and Equal Rights: The Women's Movement

Protectionism • Political Equality for
Women • Prohibiting Sex-Based Dis-
crimination • Stereotypes Under Scr-
tiny • The Equal Rights Amendment

Affirmative Action: Equal Opportunity or Equal Outcome?

Reverse Discrimination • Victims of
Discrimination • Two Conceptions of
Equality

Diane Joyce and Paul Johnson worked hard patching holes, shoveling asphalt, and opening culverts for the Santa Clara County Transportation Agency. In 1980, a skilled position as road dispatcher opened up; it meant less strenuous work and higher pay. Joyce and Johnson competed along with ten other applicants for the job. At the time, all of the agency's 238 skilled positions were held by men.

Seven of the applicants—including Joyce and Johnson—passed an oral exam. Next, the agency conducted a round of interviews. Johnson tied for second with a score of 75; Joyce ranked third with a score of 73. After a second round of interviews with the top contenders, the agency gave the job to Johnson.

Joyce didn't let the matter rest. With the help of a county employee, she filed a complaint with the head of the agency, invoking the county government's affirmative action policy. **Affirmative action** is a commitment by an employer, school, or other institution to expand opportunities for women, blacks, Hispanics, and members of other minority groups. Affirmative action embraces a wide range of policies from special recruitment efforts at one end to numerical goals and quotas at the other.

The county was trying to remedy the effects of former practices, intentional or not, that had restricted work opportunities for women, minorities, and handicapped people. Its goal was the representation of these groups in upper-level jobs in proportion to their representation in the area's total work force. The county enacted an affirmative action policy to consider the sex, race, and handicapped status of qualified applicants in employment decisions.

After reviewing its decision in light of the county's policy, the agency took the job away from Johnson and gave it to Joyce. A government-imposed equality policy thwarted Johnson's freedom to climb the ladder of success. Angered by the lost promotion, he sued.

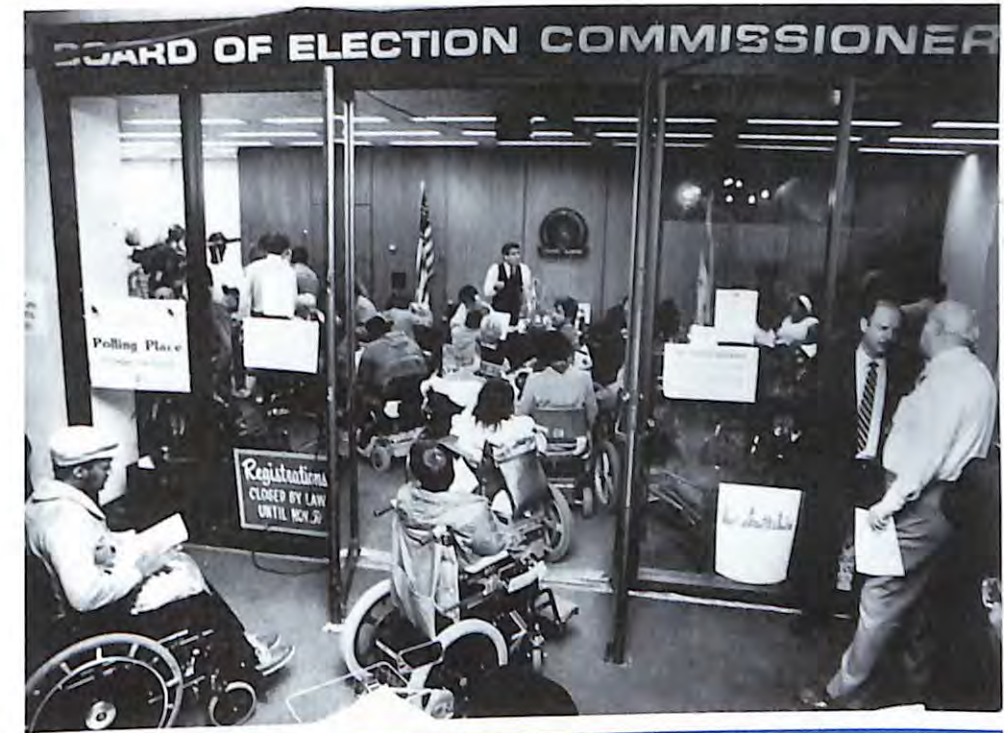
Johnson argued that he was the victim of sex discrimination. **Discrimination** is an act of irrational suspicion or hatred of a specific group of people. The national government has enacted policies to prohibit different kinds of discrimination. Johnson invoked Title VII of the 1964 Civil Rights Act, which bars employment discrimination based on race, religion, national origin, or sex. He won the first round in a federal district court; Joyce appealed and won a reversal. The final round was fought in the Supreme Court in 1987.¹ Joyce emerged the victor.

At issue here were the values of equality and freedom. Laws and policies that promote equality inevitably come into conflict with demands for freedom. To understand the ways government resolves this conflict, we have to understand the development of civil rights in this country.

The history of civil rights in the United States is primarily the story of the search for social and economic equality. This search has gone on for more than a century, and is still going on today. It began with the civil rights of black citizens, whose subjugation roused the passions of a nation and brought about its bloodiest conflict, the Civil War. The struggle of blacks has been a beacon lighting the way for Native Americans, Hispanic-Americans, and women. Each of these groups has confronted discrimination, sometimes subtle, sometimes overt. And each has

Wheel Rights

Although voting is a fundamental civil right, physical obstacles can deter some Americans from exercising that right. The everyday life of many handicapped Americans contains difficult barriers that other people don't notice, such as revolving doors and flights of stairs. In 1986, some handicapped Chicagoans occupied the offices of the Board of Elections, claiming that 80 percent of the city's precincts were inaccessible to handicapped voters. National law requires that polling places be accessible to the handicapped. The city responded by dispatching mobile voting units.



achieved a measure of success by pressing its interests on government, even challenging government. These challenges and government's responses to them have helped shape our democracy.

Remember that **civil rights** are powers or privileges that are guaranteed to the individual and protected from arbitrary removal at the hands of the government or other individuals. (Rights need not be confined to humans. Some advocates claim that animals have rights too.) In this chapter, we concentrate on the rights guaranteed by the constitutional amendments adopted after the Civil War and by laws passed to enforce those guarantees. Prominent among them is the right to equal protection of the laws. This right remained a promise rather than a reality well into the twentieth century.

THE CIVIL WAR AMENDMENTS

The Civil War amendments were adopted to provide freedom and equality to black Americans. The Thirteenth Amendment, which was ratified in 1865, provided the freedom:

Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction.

The Fourteenth Amendment was adopted three years later. It provides first that freed slaves are citizens:

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.

Next, as we discussed in Chapter 17, it prohibits the states from abridging the "privileges or immunities of citizens of the United States" or depriving "any person of life, liberty, or property, without due process of law." The amendment then goes on to protect equality under the law, declaring that no state shall

deny to any person within its jurisdiction the equal protection of the laws.

The Fifteenth Amendment, adopted in 1870, added a measure of political equality:

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.

American blacks were free and politically equal—at least according to the Constitution. But it would be many years before these constitutional rights were protected.

Congress and the Supreme Court: Lawmaking versus Interpretation

In the years following the Civil War, Congress went to work to protect the rights of black citizens. In 1866, lawmakers passed a civil rights act that gave the national government some authority over the treatment of blacks by state courts. This was a response to the **black codes**, laws enacted by the former slave states that restricted the freedom of blacks. For example, vagrancy and apprenticeship laws forced blacks to work and denied them a free choice of employers. One section of the 1866 act that still applies today grants all citizens—white and black—the right to make and enforce contracts, sue or be sued, give evidence, and inherit, purchase, lease, sell, hold, or convey property. Later, in the Civil Rights Act of 1875, Congress attempted to guarantee blacks equal access to public accommodations (streetcars, inns, parks, theaters).

While Congress was passing laws to protect the civil rights of black citizens, the Supreme Court seemed intent on weakening those rights. In Chapter 17, we talked about the *Slaughter House Cases* (1873).² There the Court ruled that the Civil War amendments had not changed the relationship between the state and national governments. In other words, state citizenship and national citizenship remained separate and distinct; the Fourteenth Amendment did not enlarge the rights guaranteed by U.S. citizenship. In effect, the Court stripped the amendment of its power to secure the Bill of Rights guarantees for black citizens.

In the following years, the Court continued to shrink constitutional protections for blacks. In 1876, in *United States v. Cruikshank*, the justices crippled congressional attempts to enforce the rights of blacks.³ A group of Louisiana whites had used violence and fraud to prevent blacks from exercising their basic constitutional rights, including the right of peaceable assembly. The justices held that the rights allegedly infringed on were not federally protected rights and that therefore Congress was powerless to punish those who violated them. On the very same day, the Court ruled that the Fifteenth Amendment did not guarantee all citizens the right to vote; it simply listed grounds that could

not be used to deny that right.⁴ And in the *Civil Rights Cases* (1883), the Court struck down the public accommodations section of the Civil Rights Act of 1875.⁵ The justices declared that the national government could prohibit only government action (also known as *state action*) discriminating against blacks; private acts of discrimination or acts of omission by a state were beyond the reach of federal power. For example, a state law excluding blacks from jury service was an unlawful abridgment of individual rights. A private person's discrimination excluding blacks from service in a private club was outside the control of the national government because the discrimination was a private—not a government—act. The Court refused to see racial discrimination as a badge of slavery that the national government could prohibit. In case after case, the justices tolerated racial discrimination, in the process abetting **racism**, a belief that human races have distinct characteristics and that one's own race is superior to and has a right to rule others.

The Court's decisions gave the states ample room to maneuver around civil rights laws. In the matter of voting rights, for example, states that wanted to bar black men from the polls simply used nonracial means to do so. One popular tool was the **poll tax**, first imposed by Georgia in 1877. This was a tax of \$1 or \$2 on every citizen who wanted to vote. The tax was not a burden on most whites. But many blacks were tenant farmers, deeply in debt to white merchants and landowners; they just did not have any extra money for voting. Other bars to black suffrage included literacy tests, minimum education requirements, even a grandfather clause that required proof that the voter had a grandfather who was eligible to vote before 1867 (three years before the Fifteenth Amendment declared that race could not be used to deny the right to vote).⁶ Intimidation and violence were also used to keep blacks from the polls.

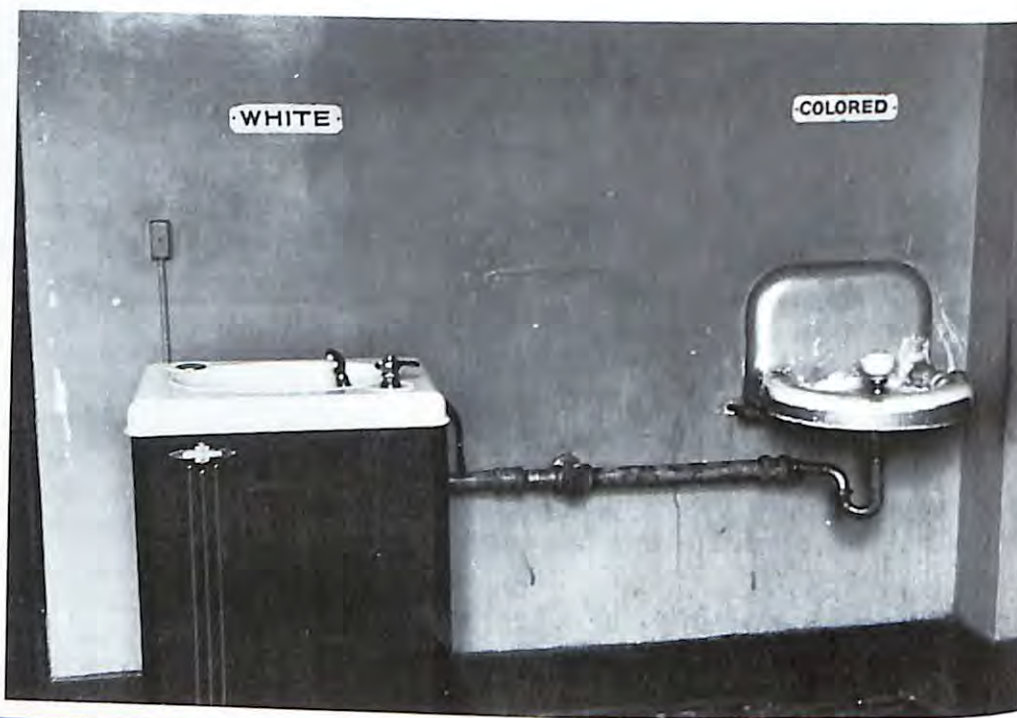
The Roots of Racial Segregation

Well before the Civil War, **racial segregation** was a way of life in the South: Blacks lived and worked separately from whites. After the war, southern states began to enact Jim Crow laws that *enforced* segregation. (*Jim Crow* is a derogatory term for a black person.) Once the Supreme Court nullified the Civil Rights Act of 1875, these kinds of laws proliferated. Blacks were required to live in separate and generally inferior areas; they were restricted to separate and inferior sections of hospitals, separate cemeteries, separate drinking and toilet facilities, and separate sections of streetcars, trains, schools, jails, and parks. Each day, in countless ways, they were reminded of the inferior status accorded them by white society.

In 1892, Homer Adolph Plessy—who was seven-eighths Caucasian—took a seat in a "whites only" car of a Louisiana train. He refused to move to the car reserved for blacks and was arrested. Plessy argued that Louisiana's law mandating racial segregation on its trains was an unconstitutional infringement on both the privileges and immunities, and the equal protection clauses of the Fourteenth Amendment. The Supreme Court disagreed. The majority in *Plessy v. Ferguson* (1896) upheld state-imposed racial segregation.⁷ They based their decision on the **separate-but-equal doctrine**, that separate facilities for blacks and whites satisfied

Separate and Unequal

The Supreme Court gave constitutional protection to racial separation on the theory that states could provide "separate but equal" facilities for blacks. But racial separation meant unequal facilities, as these two water fountains dramatically illustrate. The Supreme Court struck a fatal blow against the "separate but equal" doctrine in its landmark 1954 ruling, *Brown v. Board of Education*.



the Fourteenth Amendment so long as they were equal. The lone dissenter was John Marshall Harlan (the first of two distinguished justices with the same name). Harlan, who envisioned a "color-blind Constitution," wrote:

We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens—our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done.

Three years later, the Supreme Court extended the separate-but-equal doctrine to the schools.⁸ The justices ignored the fact that black educational facilities (and most other "colored only" facilities) were far from equal to those reserved for whites.

By the end of the nineteenth century, racial segregation was firmly and legally entrenched in the American South. Although constitutional amendments and national laws to protect equality under the law were in place, the Supreme Court's interpretation of those amendments and laws limited their effectiveness. Several decades would pass before there was any discernible change.

THE DISMANTLING OF SCHOOL SEGREGATION

Denied the right to vote and be represented in government, blacks sought access to power in other parts of the political system. The National Association for the Advancement of Colored People (NAACP) was at the

forefront of the campaign for black civil rights. It was founded in 1909 by W. E. B. Du Bois and others, both black and white, with the goal of ending racial discrimination and segregation. The plan was to launch legal and lobbying attacks on the separate-but-equal doctrine in two parts: first by pressing for fully equal facilities for blacks, then by proving the unconstitutionality of segregation. The process would be a slow one, but the strategies involved did not require a large organization or heavy financial backing . . . and, at the time, the NAACP had neither.*

Pressure for Equality . . .

By the 1920s, the separate-but-equal doctrine was so deeply ingrained in American law that no Supreme Court justice would dissent from its continued application to racial segregation. But a few Court decisions offered hope that change would come. In 1935, Lloyd Gaines graduated from Lincoln University, a black college in Missouri, and applied to the state law school. He was rejected because he was black. Missouri refused to admit blacks to its all-white law school; instead, the state's policy was to pay the costs of blacks who were admitted to out-of-state law schools. With the support of the NAACP, Gaines appealed to the courts for admission to the University of Missouri Law School. In 1938, the Supreme Court ruled that he be admitted.⁹ Under the *Plessy* doctrine, Missouri could not shift its responsibility to provide an equal education onto other states.

Two later cases helped reinforce the requirement that segregated facilities must be equal in all major respects. One was brought by Heman Sweatt, again with the help of the NAACP. Sweatt had been denied entrance to the all-white University of Texas Law School because of his race. A federal court ordered the state to provide a black law school for him; the state responded by renting a few rooms in an office building and hiring two black lawyers as teachers. Sweatt refused to attend the school and took his case to the Supreme Court.¹⁰

George McLaurin had been refused admission to a doctoral program in education at the all-white University of Oklahoma because he was black. There was no equivalent program for blacks in the state. McLaurin sought a federal court order for admission, but under pressure from the decision in *Gaines*, the university amended its procedures and admitted McLaurin "on a segregated basis." The sixty-eight-year-old McLaurin was restricted to hastily designated "colored-only" sections of a few rooms. He appealed this obvious lack of equal facilities to the Supreme Court under the direction of the NAACP.¹¹

The Court ruled on *Sweatt* and *McLaurin* in 1950. The justices unanimously found that the facilities in each case were inadequate: The separate "law school" provided for Sweatt did not approach the quality of the white state law school; and the restrictions placed on McLaurin, through his segregation from other students within the same institution, would result in an inferior education. Both Sweatt and McLaurin had to

* In 1939, the NAACP established an offshoot, the NAACP Legal Defense and Education Fund, to work on legal challenges, while the main organization concentrated on lobbying as its principal strategy.

be given full student status at their respective state universities. But the Court avoided re-examination of the separate-but-equal doctrine.

... And Pressure for Desegregation

These decisions—especially in *McLaurin*—seemed to indicate that the time was right for an attack on segregation itself. In addition, public attitudes toward race relations were slowly changing from the predominant racism of the nineteenth and early twentieth centuries. Black troops had fought with honor—albeit in segregated military units—in World War II. Blacks and whites were working together in unions and in service and religious organizations. Social change and court decisions suggested that government-imposed segregation was assailable.

President Harry S. Truman risked his political future with his strong support of black civil rights. In 1947, he established the President's Committee on Civil Rights. The committee's report, issued later that year, became the agenda for the civil rights movement over the next two decades. It called for federal laws prohibiting racially motivated brutality, segregation, and poll taxes, and for guarantees of voting rights and equal employment opportunity. In 1948, Truman ordered the **desegregation** (the end of authorized racial segregation) of the armed forces.

In 1947, the U.S. Department of Justice had begun to submit briefs to the courts in support of civil rights. Perhaps the department's most important intervention was in *Brown v. Board of Education*.¹² This case was the culmination of twenty years of planning and litigation on the part of the NAACP to invalidate racial segregation in schools.

Linda Brown was a black child whose father tried to enroll her in a white public school in Topeka, Kansas. The school was close to Linda's home and the walk to the black school required that she cross a dangerous set of railroad tracks. Brown's request was refused because of Linda's race. A federal district court found that the black public school was, in all major respects, equal in quality to the white school; therefore, by the *Plessy* doctrine, Linda was required to go to the black public school. Brown appealed the decision.

Brown v. Board of Education reached the Supreme Court in 1952, along with four similar cases brought in Delaware, South Carolina, Virginia, and the District of Columbia. Each case was brought as a class action, a device for combining the claims or defenses of similar individuals so that they can be tried in a single lawsuit (see Chapter 13). And all were supported by the NAACP and coordinated by Thurgood Marshall, who would later become the first black justice of the Supreme Court.

These five cases squarely challenged the separate-but-equal doctrine. By all tangible measures (standards for teacher licensing, teacher-pupil ratios, library facilities), the two school systems in each case—one white, the other black—were equal. The issue was legal separation of the races.

The cases were argued in 1952; but they were set for reargument at the request of the justices. On May 17, 1954, Chief Justice Earl Warren, who had joined the Court less than a year before, delivered a single opinion covering four of the cases. (In Chapter 13, we described how he



Anger Erupts in Little Rock

The school board in Little Rock, Arkansas, attempted to implement court-approved desegregation. The first step called for admitting nine blacks to Central High School on September 3, 1957, but when they appeared for classes, the governor sent in the national guard to bar their attendance. Police escorts could not control the mobs that gathered at the school on September 23, when the black students again attempted entry. Two days later, under the protection of federal troops ordered by President Dwight Eisenhower to enforce the court order, the students were admitted. Hostility and mob violence led the school board to seek a postponement of the desegregation plan, but the Supreme Court, meeting in special session in the summer of 1958, affirmed the *Brown* decision and ordered the plan to proceed.

approached the cases after the reargument.) Warren spoke for a unanimous Court when he declared that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal, depriving the plaintiffs of the equal protection of the laws." Segregated facilities generate in black children "a feeling of inferiority . . . that may affect their hearts and minds in a way unlikely ever to be undone." In short, state-imposed public school segregation was found to violate the Fourteenth Amendment's equal protection clause.

A companion case to *Brown* challenged the segregation of public schools in Washington, D.C.¹³ Segregation here was imposed by Congress. The equal protection clause protected citizens only against state violations; there was no equal protection clause restraining the national government. It was unthinkable for the Constitution to impose a lesser duty on the national government than on the states. In this case, the Court decided that the racial segregation requirement was an arbitrary

deprivation of liberty without due process of law, a violation of the Fifth Amendment.

The Court deferred implementation of the school desegregation decisions until 1955. Then, in *Brown v. Board of Education II*, it ruled that school systems must desegregate "with all deliberate speed," and placed the process of desegregation under the direction of the lower federal courts.¹⁴

Some states quietly implemented the *Brown* decree. Others did little to desegregate their schools. And many communities in the South defied the Court, sometimes violently. Some white business and professional people formed "white citizens councils." These councils used their economic power against blacks who asserted their rights by foreclosing on mortgages and denying blacks credit at local stores. Georgia and North Carolina resisted desegregation by paying the tuition of white students who attended private schools. Virginia and other states, ordered that desegregated schools be closed.

This resistance, along with the Supreme Court's "all deliberate speed" order, placed a heavy burden on federal judges to dismantle what were by now fundamental social institutions in many communities.¹⁵ Gradual desegregation under *Brown* was in some cases no desegregation at all. By 1969, a unanimous Supreme Court ordered that the operation of segregated school systems must stop "at once."¹⁶

Two years later, the Court approved several remedies to achieve integration, including busing, racial quotas, and the pairing or grouping of noncontiguous school zones. In *Swann v. Charlotte-Mecklenburg County Schools*, the Supreme Court affirmed the right of lower courts to order the busing of children to ensure school desegregation.¹⁷ But these remedies applied only to **de jure segregation**, government-imposed segregation (for example, government assignment of whites to one school and blacks to another within the same community). Court-imposed remedies did not apply to **de facto segregation**, segregation that is not the result of government influence (for example, racial segregation resulting from residential patterns).

The busing of schoolchildren came under heavy attack in both the North and the South. Busing was seen as a possible remedy in many northern cities, where schools had become segregated as white families left the cities for the suburbs. This "white flight" left inner-city schools predominantly black and suburban schools almost all white. Increasingly, busing became the target of legislative politics. Public opinion strongly opposed the busing approach. Congress sought limits on busing as a remedy. In 1974, a closely divided Court ruled in *Milliken v. Bradley* that lower courts could not order busing across school district boundaries to achieve racial balance unless each district had practiced racial discrimination, or unless school district lines had been drawn to achieve racial segregation.¹⁸ This case reversed the trend started by *Brown*, using any and all means to end segregation in the public schools. It meant an end to extensive school desegregation in metropolitan areas. And a growing call for "Freedom now!" signaled black frustration with the idea that equality, for many, still remained just a promise.

THE CIVIL RIGHTS MOVEMENT

Although the NAACP concentrated on school desegregation, it also made headway in other areas. The Supreme Court responded to the NAACP's efforts of the middle to late 1940s by outlawing the whites-only primary elections that were being held in the South and by declaring them to be in violation of the Fifteenth Amendment. The Court also declared segregation on interstate bus routes to be unconstitutional and desegregated restaurants and hotels in the District of Columbia. Despite these and other decisions that chipped away at existing barriers to equality, black citizens were still being denied political power, and segregation remained a fact of daily life (see Feature 18.1).

Dwight D. Eisenhower, who became president in 1953, was not as concerned about civil rights as his predecessor. He chose to stand above the battle between the Supreme Court and those who resisted the Court's decisions. He even refused to reveal whether he agreed with the Court's decision in *Brown v. Board of Education*. "It makes no difference," Eisenhower declared, because "the Constitution is as the Supreme Court interprets it."¹⁹

Eisenhower did enforce school desegregation when the safety of schoolchildren was involved, but he appeared unwilling to do much more to advance racial equality. That goal seemed to require the political mobilization of the people—black and white—into what is now known as the **civil rights movement**.

FEATURE 18.1

American Racism: An International Handicap

In August 1955, the ambassador from India, G. L. Mehta, walked into a restaurant at the Houston International Airport, sat down and waited to order. But Texas law required that whites and blacks be served in separate dining facilities. The dark-skinned diplomat, who had seated himself in a whites-only area, was told to move. The insult stung deeply and was not soon forgotten. From Washington, Secretary of State John Foster Dulles telegraphed his apologies for this blatant display of racism, fearing that the incident would injure relations with a nation whose allegiance the United States was seeking in the Cold War.

Such embarrassments were not uncommon in the 1950s. Burma's minister of education was denied a meal in a Columbus, Ohio, restaurant; and the finance minister of Ghana was turned away from a Howard Johnson's restaurant just outside the nation's capital. Secretary Dulles complained that segregationist practices were becoming a "major inter-

national hazard," a threat to U.S. efforts to gain the friendship of Third World countries. Americans stood publicly condemned as a people who did not honor the ideal of equality.

Thus when the attorney general appealed to the Supreme Court to strike down segregation in public schools, his introductory remarks took note of the international implications. "It is in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination must be viewed," he warned. The humiliation of dark-skinned diplomats in Washington D.C., "the window through which the world looks into our house," was damaging to American interests. Racism "furnished grist for the Communist propaganda mills."

Source: Mary Beth Norton et al., *A People and a Nation: A History of the United States*, vol.2, 2d ed. (Boston: Houghton Mifflin, 1986), p. 867.

Civil Disobedience

The call to action was first sounded by Rosa Parks, a black woman living in Montgomery, Alabama. In December 1955, Parks boarded a city bus on her way home from work. The city's Jim Crow ordinances required blacks to sit in the back of the bus and, when asked, to give up their seats to whites. Tired after the day's work, Parks took an available seat in the front of the bus; she refused to give up her seat when asked to do so by the driver and was arrested and fined \$10 for violating the city ordinance.

Montgomery's black community responded to Parks's arrest with a boycott of the city's bus system. A **boycott** is a refusal to do business with a firm or individual, as an expression of disapproval or as a means of coercion. Blacks walked or car-pooled or simply did not make trips that were not absolutely necessary. As the bus company moved closer to bankruptcy and downtown merchants suffered from the loss of black business, city officials began to harass blacks, hoping to frighten them into ending the boycott. But Montgomery's black citizens now had a leader—a charismatic twenty-seven-year-old Baptist minister named Martin Luther King, Jr.

King urged the people to hold out, and they did. A year after the boycott began, the federal courts ruled that segregated transportation systems violated the equal protection clause of the Constitution (see Feature 13.1, page 481). The boycott proved to be an effective weapon.

In 1957, King helped organize the Southern Christian Leadership Council (SCLC) to coordinate civil rights activities. He was totally committed to nonviolent action to bring racial issues into the light. To that end, he advocated **civil disobedience**, the willful but nonviolent violation of unjust laws.

One nonviolent tactic was the *sit-in*. On February 1, 1960, four black students from North Carolina Agricultural and Technical College in Greensboro sat down at a white lunch counter. They were refused service and, when they would not leave, were abused verbally and physically. Still, they would not move. Finally, they were arrested. Soon there were similar sit-in demonstrations throughout the South, and then in the North. The Supreme Court upheld the actions of the demonstrators, but the unanimity that had characterized the earlier decisions of the Court was gone (see Feature 18.2).

The Civil Rights Act of 1964

In 1961, a new administration came to power headed by President John F. Kennedy. At first, Kennedy did not seem to be committed to civil rights. This changed as the movement gained momentum, as more and more whites became aware of the abuse being heaped on sit-in demonstrators, freedom riders (who tested unlawful segregation on interstate bus routes), and those who were trying to help blacks register to vote in southern states. Volunteers were being jailed, beaten, and killed for advocating activities that whites took for granted.

King Galvanizes a Nation

Martin Luther King, Jr., was a Baptist minister who believed in nonviolent peaceful protest in the spirit of India's Mahatma Gandhi. More than 250,000 people—whites as well as blacks—gathered in August 1963 at the Lincoln Memorial to demonstrate their support for civil rights. King gave a spellbinding oration. "I have a dream," he told the crowd, "that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident, that all men are created equal.'" King was assassinated in 1968 in Memphis, Tennessee.



In the fall of 1962, President Kennedy ordered federal troops to ensure the safety of James Meredith, the first black to attend the University of Mississippi. In early 1963, he enforced the desegregation of the University of Alabama. In April 1963, television viewers were shocked to see marchers in Birmingham, Alabama, attacked with dogs, fire hoses, and cattle prods. (The idea of the march was to provoke confrontations with white officials in an effort to compel the federal government to intervene on behalf of blacks.) Finally, in June 1963, Kennedy asked Congress for legislation that would outlaw segregation in public accommodations.

Two months later, Martin Luther King, Jr., organized and led a march on Washington, D.C., to show support for the civil rights movement. More than 250,000 people, black and white, gathered peaceably at the Lincoln Memorial to hear King speak. "I have a dream," he told them, "that my little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."²⁰

Kennedy's public accommodations bill had not yet been passed by Congress when he was assassinated, on November 22, 1963. His succes-

FEATURE 18.2

A Right to Discriminate?

The Supreme Court led by Chief Justice Earl Warren did more to vindicate civil rights than any other government institution. But it came perilously close to depriving the civil rights movement of a powerful weapon: the sit-in. The justices were divided over the vital issues of freedom and equality.

The Court confronted four sit-in cases in 1964. In each case, blacks sat down in restaurants or at lunch counters and refused to leave without being served. In the principal case, *Bell v. Maryland*, the sit-in took place in Baltimore. The demonstrators were arrested, then convicted for violating state trespass laws.

At the conference to decide the merits of the case, the chief justice urged his colleagues to "get to the 'raw' of the problem. His position was that the convictions violated the equal protection clause of the Fourteenth Amendment. Said Warren: "As long as the demonstrators behave themselves, the owner can't have police to help to throw them out. The state then unconstitutionally enforces discrimination."

The justices were deeply divided. Warren gathered only three votes in addition to his own. The majority sided with Justice Hugo L. Black, who delivered an emotional statement in which he recalled his "Pappy," who ran a general store in Alabama: Surely, he had the right to decide whom he would serve or would not serve. Black had been in the vanguard of Fourteenth Amendment protections in the relatively easy cases like *Brown v. Board of*

Education. But when the conflict pitted freedom (even freedom to discriminate) against equality, the majority chose freedom.

The division brought several exchanges of opinions, some brimming with emotion. Justice William J. Brennan, Jr., expressed his fear that affirmation of the sit-in convictions might cripple the Civil Rights Act. Title II, barring discrimination in places of public accommodation, was then the subject of a Senate filibuster. Brennan counseled delay until the legislative outcome was clear, urging the justices to put off dealing with the constitutional question before them. Instead, he argued that the sit-in convictions should be overturned on the basis of a Baltimore public accommodations law enacted after the demonstrators were convicted. The convictions were still pending when the city law was adopted. This had the effect, argued Brennan, of nullifying the trespass violations.

Ultimately, Brennan's view prevailed, and his majority opinion was announced shortly before passage of the Civil Rights Act of 1964. Had Black's opinion prevailed, the history of American civil rights might have been different. That opinion could have weakened, if not defeated, the nation's most comprehensive effort to erase racial discrimination from American life.

Source: Bernard Schwartz, *The Unpublished Opinions of the Warren Court* (New York: Oxford University Press, 1985), pp. 143–190.

sor, Lyndon B. Johnson, considered civil rights his top legislative priority. Within months, Congress passed the Civil Rights Act of 1964. It contained several parts, including a vital provision barring segregation in most public accommodations. Quick passage of the act was, in part, a reaction to Kennedy's death. But it was also almost surely a reaction to the brutal treatment of blacks throughout the South.

Civil rights laws had been passed by Congress in 1957 and 1960, but they dealt primarily with voting rights. The 1964 act was the most comprehensive legislative effort ever to erase racial discrimination in the United States. It was enacted after the longest debate in Senate history, and only after the first successful use of cloture to end a civil rights filibuster.

The bill had to avoid the grip of Southern conservatives in the House and the Senate. Because it was grounded in both Section 5 of the Fourteenth Amendment (which gives Congress the power to enforce that

amendment) and the commerce clause of Article I, the bill was sent to two committees in each chamber. The House Judiciary Committee and the Senate Commerce Committee were chaired by supporters of the bill, so it was certain to be brought to the floor of each chamber for a vote.

Among its many provisions, the act

- entitled all persons to "the full and equal enjoyment" of goods, services, and privileges in places of public accommodation without discrimination on the ground of race, color, religion, or national origin.
- established the right to equality in employment opportunities.
- strengthened voting rights legislation.
- created the Equal Employment Opportunity Commission (EEOC), charging it to hear and investigate complaints of job discrimination.*
- provided that funds could be withheld from federally assisted programs that were administered in a discriminatory manner.

The last of these provisions had a powerful impact on school desegregation when Congress passed the Elementary and Secondary Education Act in 1965. That act provided for billions of federal dollars in aid for the nation's schools; the threat of losing those funds spurred local school boards to formulate and implement new plans for desegregation.

The 1964 act faced an immediate constitutional challenge. Its opponents argued that the Constitution does not forbid acts of private discrimination. But a unanimous Supreme Court upheld the law in *Heart of Atlanta Motel v. United States* (1964), declaring that acts of discrimination impose substantial burdens on interstate commerce and thus are subject to congressional control.²¹ In a companion case, *Katzbach v. McClung* (1964), the owners of a small restaurant had refused to serve blacks.²² Ollie McClung maintained that he had the freedom to serve who he wanted to serve in his own restaurant. The justices, however, upheld the government's prohibition of McClung's racial discrimination on the ground that a substantial portion of the food served in his restaurant had moved in interstate commerce. The Civil Rights Act of 1964 was vindicated by reason of the congressional power to regulate interstate commerce, rather than on the basis of the Fourteenth Amendment.

Johnson's goal was a "Great Society." Soon a constitutional amendment and a series of civil rights laws were in place to help him meet his goal.

- The Twenty-fourth Amendment, ratified in 1964, banned poll taxes in primary and general elections for national office.
- The Economic Opportunity Act of 1964 focused on education and training to combat poverty.
- The Voting Rights Act of 1965 empowered the attorney general to send voter registration supervisors to areas in which fewer than half the eligible minority voters had been registered. This act has been

* Since 1972, the EEOC has had the power to institute legal proceedings on behalf of employees who allege that they have been victims of illegal discrimination.

credited with doubling black voter registration in the South in only five years.

- The Fair Housing Act of 1968 banned discrimination in the rental or sale of most housing.

From Restriction to Restoration

Civil rights on the books do not ensure civil rights in action. What happens when an institution continues to practice illegal discrimination? This was the case in 1984, when the Supreme Court was called on to interpret a law that forbids sex discrimination in schools and colleges receiving financial assistance from the federal government.

In *Grove City College v. Bell*, the Court ruled that only the specific department or program receiving federal funds, not the whole institution, was barred from discriminating.²³ Athletic departments rarely receive federal funds; so colleges were released from the obligation to provide equal opportunity for women in their sports programs.

The decision in *Grove City* had widespread effects. Three other important civil rights laws were worded similarly. The implication was that laws barring discrimination on the basis of race, sex, age, and handicapped status would be confined to *programs* that discriminate, not to *institutions* that discriminate. So a university laboratory that received federal research grants could not discriminate; but other departments that did not receive federal money could. The effect of *Grove City* was to frustrate enforcement of civil rights laws.

Congress reacted immediately, exercising its lawmaking power to check the law-interpreting power of the judiciary. Legislators bellowed that the Court had misinterpreted the intent of the antidiscrimination laws, and forged a bipartisan effort to make that intent crystal clear: If any part of an institution gets federal money, no part can discriminate. Their work developed into the Civil Rights Restoration Act, which became law in 1988 despite a presidential veto.

While Congress was restoring civil rights enforcement in 1988, the Supreme Court seemed to be on the verge of dismantling it again. In a decision that took everyone by surprise, the justices voted to reconsider a twelve-year-old precedent, *Runyon v. McCrary*, which held that the Civil Rights Act of 1866 forbids all racial discrimination in the making and enforcement of contracts. Normally, an unwilling party cannot be forced to enter a contract whatever the reasons for refusing.

The *Runyon* decision greatly expanded the rights of racial minority groups to sue private parties for discrimination if they refuse to enter contracts on racial grounds. The Court acknowledged that private individuals and clubs can discriminate on the basis of race, but federal law forbids the enforcement of private contracts that discriminate.

The Court's decision to reconsider *Runyon* leaves the initial ruling open to reversal. (The justices will decide in 1989.) A reversal would allow private schools to practice racial discrimination and would enable those schools to enforce that discrimination in court. A reversal also would substantially reduce the potency of legal remedies for racial bias in employment, too.

Racial Violence and Black Nationalism

The middle and late 1960s were marked by increased violence on the part of those who demanded their civil rights and those who refused to relinquish them. Violence against civil rights workers was confined primarily to the South, where volunteers continued to work for desegregation and to register black voters. Among the atrocities that incensed even complacent whites were the bombings of dozens of black churches; the murder of three young civil rights workers in Philadelphia, Mississippi, in 1964 by a group of whites, among them deputy sheriffs; police violence against a group of demonstrators who had started out on a peaceful march from Selma, Alabama, to Montgomery in 1965; and the assassination of Martin Luther King, Jr., in Memphis in 1968.

Black violence took the form of rioting in the black ghettos of northern cities. Civil rights gains had mainly been focused on the South. Northern blacks had the vote and were not subject to Jim Crow laws. Yet most lived in poverty. Unemployment was high, work opportunities at skilled jobs were limited, and earnings were low. The segregation of blacks in inner-city ghettos, although not sanctioned by law, was nevertheless real; their voting power was of little moment because they constituted a small minority of the northern population. The solid gains made by southern blacks added to their frustration. Beginning in 1964, northern blacks took to the streets, burning and looting. Riots in 168 cities and towns followed King's assassination in 1968.

The lack of progress toward equality for northern blacks was an important factor in the rise of a black nationalist movement in the 1960s. The Black Muslims, led by Malcolm X until his assassination in 1965, called for separation from whites rather than integration, and for violence in return for violence. The Black Panthers denounced the values of white America. In 1966, Stokely Carmichael, then chairman of the Student Nonviolent Coordinating Committee (SNCC), called on blacks to assert "black power" in their struggle for civil rights. Organizations that previously had espoused integration and nonviolence now began to argue that blacks needed power more than they needed the friendship of whites.

The movement had several positive effects. Black nationalism promoted and instilled pride in black history and culture. By the end of the decade, colleges and universities were beginning to institute black studies programs for their students. More black citizens were voting than ever before, and their voting power was evident: Increasing numbers of blacks were being elected to public office. In 1967, Cleveland's voters elected Carl Stokes the first black mayor of a major American city. And by 1969, black representatives were able to form the Congressional Black Caucus. These achievements were incentives for other groups who also faced barriers to equality.

CIVIL RIGHTS FOR OTHER MINORITIES

The civil rights won by black Americans apply to all Americans. Recent civil rights laws and court decisions protect members of all minority groups.

Righting a Wrong

In World War II, Congress authorized the quarantine of Japanese residents in the western United States. More than 110,000 men, women, and children—including native-born U.S. citizens—were incarcerated and dispossessed simply because they were of Japanese heritage. Laws prejudicial to racial and other minorities are ordinarily forbidden, yet the Supreme Court upheld the law in 1944. This episode was the only occasion on which the Court gave constitutional protection to an explicit legislative act of racial inequality. In 1988, Congress passed legislation offering apologies and \$20,000 tax-free to each remaining internment survivor. The cost to the government: \$1.25 billion.



The Supreme Court underscored the breadth of this protection in an important decision in 1987.²⁴ The justices ruled unanimously that a post-Civil War law offered broad protection against discrimination to all minorities. Heretofore, the law could not be invoked by members of white ethnic groups in bias suits. Under the decision, members of *any* ethnic group—Italian, Iranian, Chinese, Norwegian, or Vietnamese, for example—can recover money damages if they prove they have been denied jobs, excluded from rental housing, or subjected to other forms of discrimination prohibited by the law. The 1964 Civil Rights Act offers similar protections to these ethnic groups, but the 1964 act has strict procedures for filing suits. These procedures tend to discourage litigation. Moreover, the remedies in most cases are limited. In job discrimination, for example, back pay and reinstatement are the only remedies. The post-Civil War statute, on which the 1987 Court ruling was based, has fewer pitfalls and allows litigants to seek *punitive damages* (damages awarded by a court as additional punishment for a serious wrong). In some respects, then, the older law is a more potent weapon than the newer one in fighting discrimination.

Clearly the civil rights movement has had an impact on all minorities. In the United States, however, equality has been granted most slowly to nonwhite minorities. Here we examine the civil rights struggles of two minorities—Native Americans and Hispanic-Americans.

Native Americans

During the eighteenth and nineteenth centuries, the U.S. government took Indian lands, isolated Native Americans on reservations, and denied them political and social rights. The government's dealings with the Indians were often marked with violence and riddled with broken promises. The agency system for administering Indian reservations kept Native Americans poor and dependent on the national government.

It was not until 1924 that Indians were given U.S. citizenship. Until that time, they were considered members of tribal nations whose relations with government were subject to treaties made with the United States. The Native American population suffered badly during the Depression, primarily because the poorest people were affected most, but also because of the inept administration of Indian reservations. Poverty remained on the reservations well after the Depression was over, and Indian lands continued to shrink through the 1950s and into the 1960s—in spite of signed treaties and the religious significance of portions of those lands. In the 1960s, for example, a part of the Hopi Sacred Circle, which is considered the source of all life in tribal religion, was strip-mined for coal.

Anger bred of poverty, unemployment, and frustration with an uncaring government exploded into militant action in November 1969, when several American Indians seized Alcatraz Island, an abandoned island in San Francisco Bay. The group cited an 1868 Sioux treaty that entitled them to unused federal lands; they remained on the island for a year and a half. In 1973, armed members of the American Indian Movement seized eleven hostages at Wounded Knee, South Dakota—the site

Big Trouble on Big Mountain

The national government's effort to develop the mineral-rich deserts in the Southwest has aggravated conflict between the Navajo and Hopi who live in the area of Arizona known as Big Mountain. Many Navajo were forced to leave the Hopi land they lived on, wrenched from their traditional ways. The family pictured here is typical of the Navajo families in the area; they raise livestock and practice subsistence farming. The relocation cost the government \$50,000 for each of the ten thousand Navajos it moved.



of an 1890 massacre of the Sioux by U.S. cavalry troops. They remained there, occasionally exchanging gunfire with federal marshals, for seventy-one days.

In 1946, Congress had passed legislation establishing an Indian claims commission to compensate Native Americans for land that had been taken from them. In the 1970s, the Native American Rights Fund and other groups used that legislation to win important victories. Lands were returned to tribes in the Midwest and in the states of Oklahoma, New Mexico, and Washington. In 1980, the Supreme Court ordered the national government to pay the Sioux \$117 million plus interest for the Black Hills of South Dakota, which had been stolen from them a century before. Other cases, involving land from coast to coast, are still pending.

Throughout American history, Native Americans have been coerced physically and pressured economically to assimilate into the mainstream of white society. The destiny of Native Americans as viable groups with separate identities depends in no small measure on curbing their dependence on the national government.²⁵

Hispanic-Americans

Many Hispanic-Americans have a rich and deep-rooted heritage in America, but until the 1920s, that heritage was largely confined to the southwestern states and California. Then, large numbers of Mexican and Puerto Rican immigrants came to the United States in search of employment and a better life. They were welcomed by businesspeople who saw in them a source of cheap labor. Many of the Mexicans became farm workers, but both groups settled mainly in crowded, low-rent inner-city districts: the Mexicans in the Southwest; the Puerto Ricans, primarily in New York City. Both groups formed their own *barrios*, or communities, within the cities, where they maintained the customs and values of their homelands.

Like blacks who had migrated to northern cities, most of the new Hispanic immigrants found poverty and discrimination. And, again like poor blacks and Native Americans, they were hit hard by the Depression. About one-third of the Mexican-American population (mainly those who had been migratory farm workers) returned to Mexico during the 1930s.

World War II gave rise to another influx of Mexicans, who this time were courted to work farms primarily in California. But by the late 1950s, most farm workers—blacks, whites, and Hispanics—were living in poverty. Those Hispanic-Americans who lived in cities were faring little better. Yet millions of Mexicans continued to cross the border into the United States, both legally and illegally. The effect was to depress the value of farm labor in California and the Southwest.

In 1965, Cesar Chavez led a strike of the United Farm Workers Union against growers in California (see Chapter 9). The strike lasted several years but eventually, in combination with a boycott, resulted in somewhat better pay, working conditions, and housing for workers.

In the 1970s and 1980s, the Hispanic-American population continued to grow. The 20 million Hispanics living in the United States in the 1970s were mainly Puerto Rican and Mexican-American, but they had

been joined by immigrants from the Dominican Republic, Colombia, Cuba, and Ecuador. Although recent civil rights legislation helped them to an extent, they were among the poorest and least educated groups in the United States. Their problems were like those faced by other non-whites; but, in addition, most had to overcome the further difficulty of learning and using a new language.

Voter registration and voter turnout among Hispanics is lower than among other groups. Language is an impediment here. With few or no Spanish-speaking voting officials, low registration levels may be inevitable. Voter turnout depends on effective political advertising, and Hispanics are not targeted as often as other groups with political messages that they can understand. Despite these stumbling blocks, however, Hispanics have started to exercise a measure of political power. Hispanic-Americans have been elected mayors in San Antonio, Denver, and Miami. They have also gained some access to political power through their representation in coalitions that dominate policymaking on minority-related issues.²⁶

Some Hispanic leaders believe that the problems of low voter registration and turnout will not be solved until Hispanics exercise greater political clout—"brown power." Although many of America's Hispanics speak the same language, they came here from different countries, from different backgrounds. They need strong leadership to pull them together. "We need a Spanish Bobby Kennedy or Martin Luther King," observed one leader. "Right now he's just not here."²⁷

GENDER AND EQUAL RIGHTS: THE WOMEN'S MOVEMENT

The ballot box and the lawsuit have brought minorities in America a measure of equality. The Supreme Court—once an institution for perpetuating inequality for blacks—has expanded the array of legal weapons in the hands of all minorities to achieve social equality. Women, too, have benefited from this change.

Protectionism

Until the early 1970s, laws that affected the civil rights of women were based on traditional views of the relationship between men and women. At the heart of these laws was **protectionism**—the idea that women must be sheltered from life's cruelties. Thomas Jefferson, author of the Declaration of Independence, believed that "were our state a pure democracy there would still be excluded from our deliberations women, who, to prevent deprivation of morals and ambiguity of issues, should not mix promiscuously in gatherings of men."²⁸ And protected they were, through laws that discriminated against them in employment and other areas. With few exceptions, women were also "protected" from voting until early in the twentieth century.

The demand for women's rights arose out of the abolitionist movement and later was based primarily on the Fourteenth Amendment's

prohibition of laws that "abridge the privileges or immunities of citizens of the United States." However, the courts consistently rebuffed challenges of state protectionist laws. In 1873, the Supreme Court upheld an Illinois statute that prohibited women from practicing law. The justices maintained that the Fourteenth Amendment did not affect a state's authority to regulate admission of members to the bar.²⁹ In a concurring opinion, Justice Joseph P. Bradley articulated the common protectionist belief that women were unfit for certain occupations: "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

Protectionism reached a peak in 1908, when the Court upheld an Oregon law limiting the number of hours that women were allowed to work.³⁰ The decision was rife with sexist assumptions about the nature and role of women, and it gave wide latitude to laws that protected the "weaker sex." It also led to protectionist legislation that barred women from working more than forty-eight hours a week and from jobs that required workers to lift more than 35 pounds. In effect, women were locked out of jobs that called for substantial overtime (and overtime pay); instead, they were shunted to jobs that men believed suited their abilities.

Political Equality for Women

With a few exceptions, women were not allowed to vote in this country until 1920.* In 1869, Francis and Virginia Minor sued a St. Louis, Missouri, registrar for not allowing Virginia Minor to vote. In its decision in *Minor v. Happersett* (1875), the Supreme Court held that the Fourteenth Amendment privileges and immunities clause did not confer the right to vote on all citizens or require that the states allow women to vote.³¹

The decision in *Minor* clearly slowed the movement toward women's suffrage, but it did not stop it. In 1878, Susan B. Anthony, a women's rights activist, convinced a U.S. senator from California to introduce a constitutional amendment requiring that "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." The amendment was introduced and voted down a number of times over the next twenty years. However, a number of states—primarily in the Midwest and West—did grant limited suffrage to women.

The movement for women's suffrage now became a political battle to amend the Constitution. In 1917, 218 women from twenty-six states were arrested when they picketed the White House demanding the right to vote. Nearly 100 went to jail—some for days, others for months. Hunger strikes and forced feedings followed. The movement culminated in the adoption in 1920 of the **Nineteenth Amendment**, which gave women the right to vote in the wording first suggested by Anthony.

* The Fifteenth Amendment (as interpreted by the Supreme Court), which was passed in 1870, prohibited the use of race in denying a person the right to vote. It said nothing about gender.

Meanwhile, the Supreme Court continued to act as the benevolent protector of women. Women had entered the work force in significant numbers during World War I, and they did so again during World War II; but they received lower wages than the men they replaced. Again the justification was the "proper" role of women as mothers and homemakers. Because men were expected to be the principal providers, it followed that women's earnings were less important to the family's support. This thinking perpetuated inequalities in the workplace. Because women were expected to stay at home, they needed—and obtained—less education than men. And because they lacked education, they tended to qualify only for low-paying low-skill jobs with little chance of advancement. Economic equality was closely tied to social attitudes.

Prohibiting Sex-Based Discrimination

The movement to provide equal rights to women advanced a step with the passage of the Equal Pay Act of 1963. That act requires equal pay for men and women doing similar work. However, state protectionist laws still had the effect of restricting women to jobs that were not usually taken by men. Where employment was stratified by sex, equal pay was an empty promise. To free them from the restrictions of protectionism, women needed equal opportunity for employment. They got it in the Civil Rights Act of 1964 and later legislation.

The objective of the Civil Rights Act of 1964 was to eliminate racial discrimination in America. In its proposed form, Title VII of the act prohibited employment discrimination based on race, color, religion, and national origin—but not gender. In an effort to scuttle this provision during House debate, Democrat Howard W. Smith of Virginia proposed an amendment barring job discrimination based on sex. Smith's intention was to make the law unacceptable; his effort to ridicule the law brought gales of laughter to the debate. But Democrat Martha W. Griffiths of Michigan used Smith's strategy against him. With her support, Smith's amendment carried, as did the act.³² The jurisdiction of the Equal Employment Opportunity Commission was extended to cover cases of sex discrimination, or **sexism**.

Subsequent women's rights legislation was motivated by the pressure for civil rights, as well as a resurgence of the women's movement, which had subsided after the adoption of the Nineteenth Amendment. One particularly important law was Title IX of the Education Amendments Act of 1972, which prohibited sex discrimination in federally aided education programs. Another boost to women came from the Revenue Act of 1972, which provided tax credits for child care expenses. In effect, the act subsidized parents with young children so that women could enter or remain in the work force. However, the high-water mark in the effort on behalf of women's rights was the Equal Rights Amendment, which we discuss shortly.

Stereotypes Under Scrutiny

After nearly a century of broad deference to protectionism, the Supreme Court began to take a closer look at gender-based distinctions. In

1971, it struck down a state law that gave men preference over women in administering the estate of a person who died without naming an administrator.³³ The state maintained that the law reduced court workloads and avoided family battles; however, the Court dismissed those objectives because they were not important enough to sustain the use of gender distinctions. Two years later, the justices declared that the paternalism of earlier ages operated to "put women not on a pedestal, but in a cage."³⁴ They then proceeded to strike down several gender-based laws that either prevented or discouraged departures from "proper" sex roles. In *Craig v. Borden* (1976), the Court finally developed a workable standard for reviewing these kinds of laws: Gender-based distinctions are justified only if they serve some important government purpose.³⁵

The objective here is to dismantle sexual stereotypes while fashioning public policies that acknowledge relevant differences between men and women. Perhaps the most controversial issue in the 1980s is the idea of "comparable worth," which would require employers to pay comparable wages for different jobs that are of about the same worth to an employer, even if one job might be filled predominantly by women and another mainly by men. The goal is a job standard that takes into account both the legal equality of men and women and their relevant physiological differences.³⁶

The Equal Rights Amendment

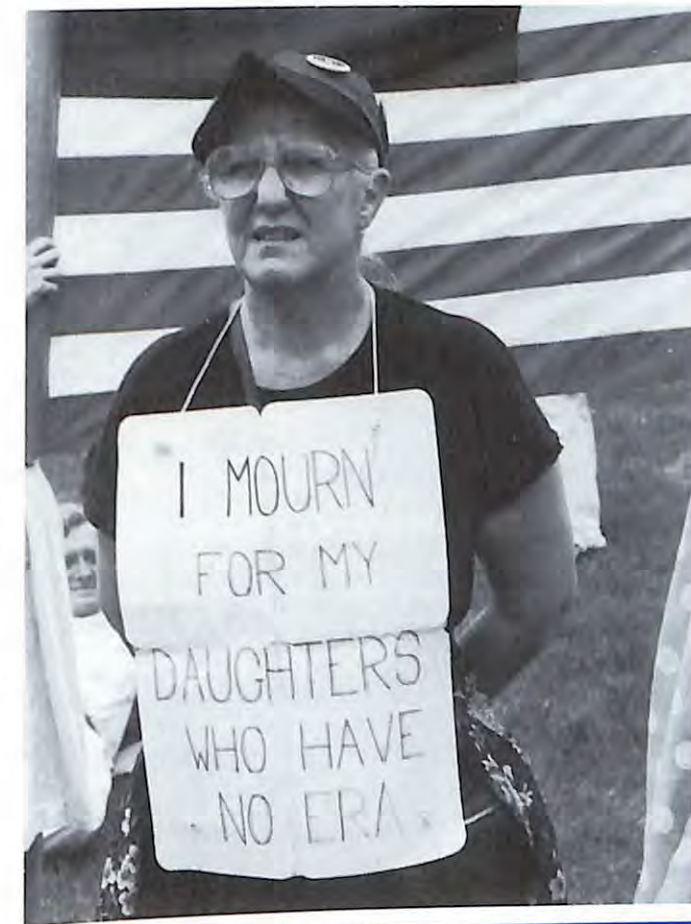
Women have not enjoyed the same rights as men. Policies protecting women, based largely on sexual stereotypes, have been woven into the legal fabric of American life. That protectionism limited the freedom of women to compete with men socially and economically on an equal footing. The Supreme Court has been hesitant to extend the principles of the Fourteenth Amendment beyond issues of race. If constitutional interpretation imposes such a limit, then it can be overcome only by a constitutional amendment.

The **Equal Rights Amendment (ERA)** was first introduced in 1923 by the National Women's party, one of the few women's groups that did not disband after the Nineteenth Amendment was passed. The ERA declared that "equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." It remained bottled up in committee in every Congress until 1970, when Representative Martha Griffiths filed a discharge petition to report it to the House floor for a vote. The House passed the ERA, but the Senate scuttled it by attaching a section calling for prayer in the public schools.

A national coalition of women's rights advocates generated enough support to get the ERA through the proposal stage in 1972. Its proponents now had seven years in which to get the amendment ratified by thirty-eight state legislatures, as required by the Constitution. By 1977, they were three states short of that goal, and three states had rescinded earlier ratification. For some reason, the national coalition that had worked so effectively to move through the proposal stage seemed to lack the political strength to jump the ratification hurdle. Then, in an unprecedented action, Congress extended the ratification deadline. It didn't help. The ERA died on July 1, 1982, still three states short of adoption.

The End of an Era

The death knell for a national Equal Rights Amendment (ERA) pealed on July 1, 1982, three votes short of ratification. Despite its failure, the ERA movement produced real benefits, which include the increased participation of women in politics. Proponents of an equal rights amendment continue to press their cause, but its adoption as part of the Constitution is still a long way from reality.



Why did the ERA fail? The amendment quickly acquired opposition, including many women who had supported women's rights legislation. By 1973, ERA opponents had begun a strong campaign to fight ratification. As the opposition grew stronger, especially from women who wanted to maintain their traditional role, state legislators began to realize that there were risks involved in supporting the amendment. It takes an extraordinary majority to amend the Constitution, which is equivalent to saying that it takes only a committed minority to thwart the majority's will (see Compared With What? 18.1).

Despite its failure, the movement to ratify the ERA produced real benefits. It raised the consciousness of women about their social position; it spurred the formation of the National Organization of Women (NOW) and other large organizations; it contributed to women's participation in politics; and it influenced major legislation affecting women.³⁷

The failure to ratify the ERA stands in stark contrast to the quick passage of many laws that now protect women's rights. But in fact there was little audible opposition to women's rights legislation. If years of racial discrimination called for government redress, then so did years of gender-based discrimination. Furthermore, laws protecting women's rights required only the amending of civil rights bills or the passage of similar bills.

In constitutional terms, the effects of an equal rights amendment are unclear. It would certainly raise gender to the same status as race in

COMPARED WITH WHAT? 18.1

Barriers for Women Fall

Feminist activism has had an impact on American perceptions of gender distinctions in politics. In 1974, more than one-third of the public agreed with the statement "Women should take care of running their homes and leave running the country up to men." That attitude has changed; by 1982, just about one-fourth of the public agreed with the same statement.

How do attitudes in America compare with public attitudes in other countries? This kind of comparison is not an easy one because it is difficult to find an exact match to the question posed to the American public. But one survey question asked in 1983 of people in four European countries comes very close: "It is sometimes said that 'politics should be left to men.' How far would you agree or disagree?" The results of that survey appear in the table at the right.

To the extent that the questions posed are comparable, American attitudes about women in politics fall roughly between those in the United Kingdom (with the lowest approval) and those in West Germany (with the highest approval). In fact, Americans come closest to Italians in their attitudes toward women—at least in politics.

Country	Percent Agreeing That "Politics Should Be Left to Men"
United Kingdom	18
France	22
Italy	25
West Germany	40

* Euro-Barometer 19: Gender Roles in the European Community, April 1983.

evaluating the validity of government policies. The courts have ruled that policies based on race are valid only when they are essential to achieve a compelling goal. Presumably, under an equal rights amendment, government policies based on gender classifications would be valid only when they are essential to achieve a compelling goal. Today, for example, many government policies concerning the armed services make gender distinctions. The validity of these policies would be open to question with the passage of an equal rights amendment.

For practical purposes, argue some scholars, the Supreme Court has implemented the ERA through its decisions. It has struck down distinctions based on sex and held that stereotyped generalizations of sexual differences must fall.³⁸ In recent rulings, the Court has held that states may require employers to guarantee job reinstatement to women returning from maternity leave and that sexual harassment in the workplace is illegal.

But Court decisions can be reversed and statutes can be repealed. Without an equal rights amendment, argue some feminists, the Constitution will continue to bear the sexist imprint of a document written by men, for men. At the moment, said veteran feminist Betty Friedan, "We are at the mercy of a Supreme Court that will interpret equality as it sees fit."³⁹

AFFIRMATIVE ACTION: EQUAL OPPORTUNITY OR EQUAL OUTCOME?

In his vision of the Great Society, President Johnson linked economic rights with civil rights, and equality of outcome with equality of oppor-

tunity. "Equal opportunity is essential, but not enough," he declared. "We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result." This commitment led to programs that were meant to overcome the effects of past discrimination, to affirmative action programs to expand opportunities for women, minorities, and the handicapped (see Feature 18.3).

Affirmative action programs run the gamut, from recruitment of to preferential treatment and quotas for women, minorities, and the handicapped in job training and professional education, employment, and the placement of government contracts. The goal of these programs is to move beyond equality of opportunity to equality of outcome—very much as busing was used to ensure the desegregation of schools. Numerical goals (a specific number of places in a law school reserved for minority

FEATURE 18.3

Helping the Handicapped

Many of you may remember the story "The Little Engine That Could." With hard work and determination, the little engine carried the freight over the mountain. Here is the story "The Little Statute That Could." With the hard work and determination of organized groups, the little statute has transformed the rights of the handicapped.

It started almost unnoticed, with a few well-intentioned words. But now, an obscure little paragraph in a 1973 law has been blown up, twisted and turned into a potent legal weapon for a lot of unexpected, unintended—and costly—purposes.

The sentence, known as Section 504 of the Rehabilitation Act of 1973, says simply, "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance."

The Supreme Court ruled in 1987 that because of Section 504, a Florida school board could not simply fire a teacher who had active tuberculosis. The Court will rule shortly in another case in which two Army veterans claim that, as recovered alcoholics, they are handicapped and entitled to extra time to use veterans' educational benefits.

The Reagan administration used Section 504 as legal authority to try to require all-out medical efforts to save infants born with severe and potentially fatal birth defects. And, inevi-

tably, the Supreme Court will be asked to hear a case involving AIDS victims claiming that Section 504 gives them special legal protections.

Section 504 had a humble beginning. It was slipped into the Rehabilitation Act by Sen. Hubert Humphrey and Rep. Charles Vanik after most of the committee work had been completed. No hearings were held on the provision. No one in Congress paid attention to it. It seemed like a little pro forma civil rights gesture and nothing more.

Soon after the passage of the Act, organizations representing the disabled realized that Section 504 could be used to demand barrier-free public transportation. They began filing lawsuits charging that inaccessible transit systems were illegal. Section 504 has been used by hundreds of other groups demanding that billions of tax dollars be spent to upgrade schools, day-care centers, libraries, colleges and hospitals to help the handicapped.

Lawsuits now pending are attempting to stretch the definition of "handicapped" to embrace a variety of conditions, all in the name of civil rights.

The Little Statute has accomplished far more than its drafters contemplated. Such is the character of American politics.

Source: Joan Beck, "Obscure Bit of Law Creates Legal Snarl for 'Handicapped,'" *Chicago Tribune*, 12 March 1987, p. 23. © Copyrighted 1987, Chicago Tribune Company, all rights reserved, used with permission.

candidates, a government contract that specifies that 10 percent of the work must be subcontracted to minority-owned firms) are the most aggressive forms of affirmative action, and they generate the most hostility within the majority.

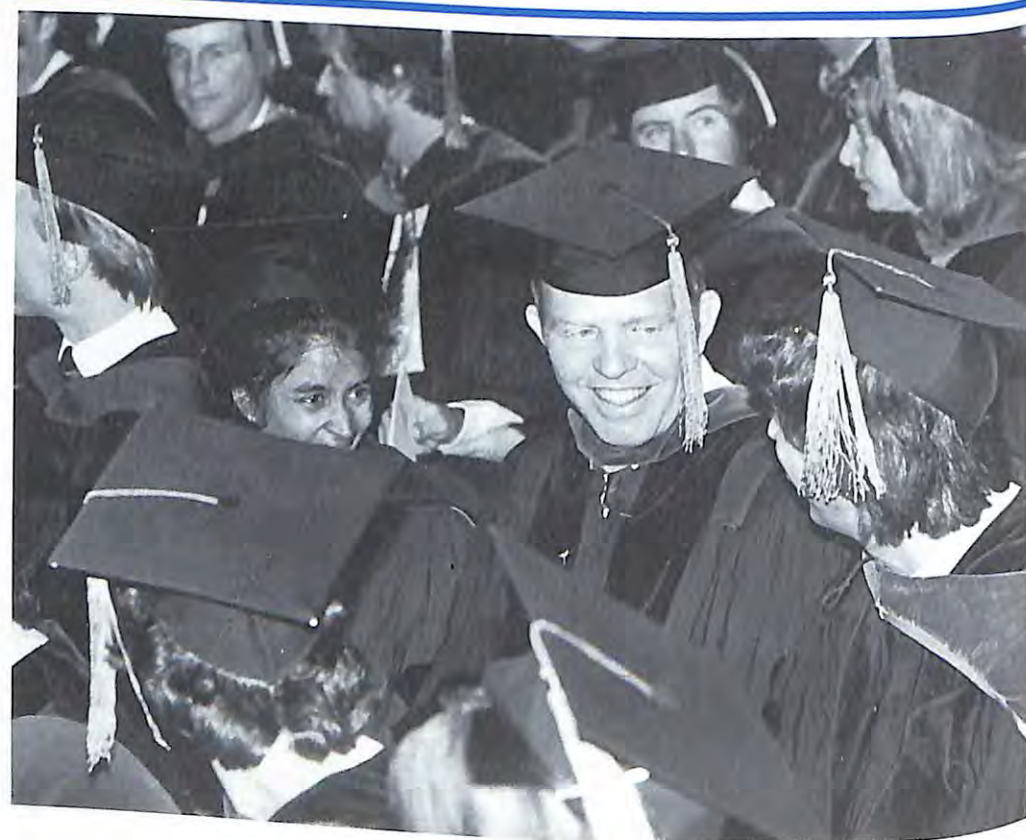
Reverse Discrimination

The Supreme Court confronted an affirmative action quota program for the first time in *Regents of the University of California v. Bakke* (1978).⁴⁰ Allan Bakke, a thirty-five-year-old white man, had twice applied for admission to the University of California Medical School at Davis. He was rejected both times. The school had reserved sixteen places in each entering class of one hundred for "qualified" minorities, as part of the university's affirmative action program. Bakke's qualifications (college grade point average and test scores) exceeded those of any of the minority students admitted in the two years Bakke's applications were rejected. Bakke contended, first in the California courts, then in the Supreme Court, that he was excluded from admission solely on the basis of race. He argued that this reverse discrimination was prohibited by the Fourteenth Amendment's equal protection clause and by the Civil Rights Act of 1964.

The Court's decision in *Bakke* contained six opinions and spanned 154 pages. But even after careful analysis of the decision, it was difficult to discern what the Court had decided: There was no majority opinion. Four of the justices contended that any racial quota system supported by

Rights Affirmed; Dreams Fulfilled

Allan Bakke, a thirty-eight-year-old engineer, was rejected twice by the Medical School of the University of California at Davis, despite his having scored well above most candidates admitted under a special minority admissions program. Bakke filed a lawsuit, which eventually forced the Supreme Court to examine the constitutionality of affirmative action programs. Bakke won his admission in 1978. In a complicated opinion, however, the justices upheld the use of race as a permissible criterion in admissions programs, among others. Bakke was awarded his degree in 1982.



government violated the Civil Rights Act of 1964. Justice Lewis F. Powell, Jr., agreed, casting the deciding vote ordering the medical school to admit Bakke. However, in his opinion, Powell argued that the rigid use of racial quotas as employed at the school violated the equal protection clause of the Fourteenth Amendment. The remaining four justices held that the use of race as a criterion in admissions decisions in higher education was constitutionally permissible. Powell joined that opinion as well, contending that the use of race was permissible as one of several admission criteria. So, the Court managed to minimize white opposition to the goal of equality (by finding for Bakke) while extending gains for racial minorities through affirmative action.

Other cases followed. Through collective bargaining, the United Steelworkers of America and the Kaiser Aluminum and Chemical Corporation introduced a voluntary plan for affirmative action in 1974. The plan gave blacks preference for admission to training programs. Brian Weber, a white applicant, was rejected from a training program despite the fact that he had more seniority than any of the minority applicants. Weber charged that he was the victim of reverse discrimination, citing the Civil Rights Act of 1964. In a 5-to-2 decision, the Supreme Court upheld the voluntary affirmative action plan.⁴¹ A year later, in 1980, the Court upheld, by a vote of 6 to 3, a federal law that set aside 10 percent of public works funds for minority businesses.⁴² Then, in 1984, the Court confronted a difficult choice between traditional values in employment and efforts to eradicate the effects of discrimination.

The city of Memphis, Tennessee, had agreed to an affirmative action order to increase the proportion of minority employees in its fire department. Later, the city was forced to lay off workers. Traditional work rules specify that the last employees hired are the first fired. The question arose as to whether affirmative action exempted the minority firefighters (who were the last ones hired) from the seniority rule. In a 6-to-2 decision, the Court held that layoffs must proceed by seniority, unless minority employees can demonstrate that they are actual victims of discrimination.⁴³ This meant that the minority firefighters targeted for layoffs would have to prove that they would have been employed if not for the city's discriminatory actions. Because this kind of proof is difficult, perhaps impossible, to establish in most cases, the decision upheld layoffs based on seniority.

Victims of Discrimination

The Memphis decision raised a troublesome question: Do all affirmative action programs, not just layoffs, apply solely to actual victims of past discrimination? The Supreme Court delivered a partial answer in May 1986, when it struck down a school board layoff plan giving preference to members of minority groups. The decision in *Wygant v. Jackson Board of Education* was a complicated one, with five separate opinions.⁴⁴ The suit was brought by white teachers who had been laid off by the school board. The board layoff plan favored black teachers in an effort to redress general social discrimination and to maintain sufficient role models for black students. But the Supreme Court ruled that these objectives were insufficient to force certain individuals to shoulder the

severe impact of layoffs. Hiring goals impose a diffuse burden on society, argued Justice Powell for the Court. But layoffs of innocent whites, he continued, "impose the entire burden of achieving racial equality on particular individuals."

Remedies for general racial discrimination had to avoid harming innocent whites. Could remedies for repeated and outrageous forms of specific discrimination confer benefits on individuals who were not themselves the victims of that discrimination? The local chapter of a construction union in New York City practiced egregious racial discrimination for more than seventy-five years, barring most blacks and Hispanics at every turn. The list of ruses to block the entry of nonwhites seemed endless. The local required special examinations and a high school diploma for entrance; neither had any bearing on job performance. Union funds were used to provide special tutoring for members' friends and relatives who were taking the entrance exams. The local refused to keep records on the racial composition of its membership, in an attempt to avoid charges of discrimination.

In 1975, a federal court concluded that the local had violated Title VII of the Civil Rights Act of 1964, which bars employment discrimination on account of race, color, religion, sex, or national origin. After years of dragging its feet, the court required the local to accept equal numbers of white and nonwhite apprentices to achieve a 29 percent nonwhite membership goal, based on the percentage of nonwhites in the New York City labor pool. The decision was justified, said the court, by the local's long, persistent pattern of discrimination. But the union failed to institute employment programs that would boost minority membership; and it continued to erect new barriers as quickly as the courts struck them down.

The union took its case to the Supreme Court. It argued that the membership goal ordered by the lower courts was unlawful because it extended race-conscious preferences to individuals who were not identified victims of the local's admittedly unlawful discrimination. In *Local 28 v. EEOC*, the Court voted 6 to 3 in support of affirmative action that would benefit individuals who were not the actual victims of discrimination.⁴⁵ The majority held that the courts may order unions to use quotas to overcome a history of egregious discrimination, and that black and Hispanic applicants can benefit from affirmative action even if they themselves were not the victims of earlier bias.

Must affirmative action policies be limited to concerns over racial inequality? All the cases we've been discussing here addressed affirmative action to correct racial inequalities. But what about the conflict between Diane Joyce and Paul Johnson that we described at the beginning of this chapter? Johnson took his case all the way to the Supreme Court. He argued that he was the victim of sex discrimination under Title VII of the Civil Rights Act of 1964, the provision that employers cannot "limit, segregate or classify" workers so as to deprive "any individual of employment opportunities."

The justices decided *Johnson v. Transportation Agency, Santa Clara County* in 1987. They ruled, 6 to 3, that if women and minorities are underrepresented in the workplace, employers can act to remedy the imbalance. The decision was significant for at least two reasons. First,

Joyce Dispatches Johnson
Diane Joyce gained a promotion from laborer to road dispatcher by invoking a government affirmative action policy. Paul Johnson, who had been given the dispatcher job initially, sued; he claimed he was the victim of sex discrimination, which the Civil Rights Act of 1964 forbids. Johnson lost his case in the Supreme Court in 1987.



employers with affirmative action plans do not have to admit to a history of past discrimination. And second, employees who are passed over for promotions are nearly powerless to sue for reverse discrimination. The upshot of the decision is to encourage the adoption of affirmative action programs.

In a scathing dissent, Justice Antonin Scalia focused on two familiar themes: values in conflict and models of democracy. Scalia declared that the majority converted "a guarantee that race or sex will *not* be the basis for employment determination, to a guarantee that it often *will*." The Court, continued Scalia, replaced the goal of a society free from discrimination with the incompatible goal of proportionate representation by race and by sex in the workplace. In simpler terms, equality trumped freedom.

Scalia then offered his observations about pluralism. The Court's decision would be pleasing to elected officials, he said, because it "provides the means of quickly accommodating the demands of organized groups to achieve concrete, numerical improvement in the economic status of particular constituencies." "The only losers in the process," he concluded, are the Paul Johnsons of the country, "predominantly unknown, unaffluent, unorganized—[who] suffer this injustice at the hands of a Court fond of thinking itself the champion of the politically impotent."

The conflict between Paul Johnson and Diane Joyce is over, but the conflict between freedom and equality continues as other individuals and groups press their demands through litigation and legislation. Americans want equality, but they disagree on the extent to which government should provide it.⁴⁶ In part, this ambivalence stems from confusion over equal opportunities and equal outcomes.

Two Conceptions of Equality

Most Americans support **equality of opportunity**. This is the idea that people should have an equal chance to develop their talents, and that effort and ability should be rewarded. This form of equality offers all individuals the same chance to get ahead; it glorifies personal achievement through free competition and allows everyone to climb the ladder of success starting at the first rung. Special recruitment efforts aimed at identifying qualified minority or female job applicants ensure that everyone has the same chance starting out. The competition for the promotion between Joyce and Johnson illustrates equality of opportunity.

Americans are less committed to **equality of outcome**, which means greater uniformity in social, economic, and political power. Equality of outcome can occur only if we restrict the free competition that forms the basis of equality of opportunity. One restriction comes by way of a limit on personal achievement. Preferential treatment in hiring is an apt example. That treatment prevented Johnson from climbing the ladder of success.

Quota policies generate the most opposition because they deny any competition whatsoever. Quotas limit advancement for some individuals and ensure advancement for others. They alter positions on the ladder of success. Policies that benefit minorities and women at the expense of innocent white men create strong opposition because they bring individual initiative into conflict with equal outcomes. In other words, freedom clashes with equality.

SUMMARY

The Civil War amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments—were adopted to provide full civil rights to black Americans. Yet, in the late nineteenth century, the Supreme Court interpreted the amendments very narrowly, declaring that they did not restrain individuals from denying civil rights to blacks and that they did not apply to powers that were reserved to the states. The Court's rulings had the effect of denying the vote to most blacks and of institutionalizing racial segregation, making racism a facet of daily life.

Through a series of court cases spanning two decades, segregation in the schools was slowly dismantled. The battle for desegregation culminated in the *Brown* cases in 1954 and 1955, in which a now-supportive Supreme Court declared segregated schools to be inherently unequal and therefore unconstitutional. The Court also ordered the desegregation of all schools and upheld the use of busing to do so.

Gains in other civil rights areas came more slowly. The motivating force here was the civil rights movement, which was led by Martin Luther King, Jr., until his death in 1968. King believed strongly in civil

disobedience and nonviolence, strategies that helped secure for blacks equality in voting rights, public accommodations, higher education, housing, and employment opportunity.

Civil rights activism and the civil rights movement worked to the benefit of all minority groups, in fact, of all Americans. Native Americans obtained some redress for past injustices. Hispanic-Americans came to recognize the importance of group action to achieve economic and political equality. And civil rights legislation removed the protectionism that was, in effect, legalized discrimination against women in education and employment.

Despite legislative advances in the area of women's rights, the Equal Rights Amendment was not ratified. Still, the struggle for ratification produced several positive results, heightening the awareness of the role of women and mobilizing the political power of women through group activity. And legislation and judicial rulings implemented much of the amendment in practice, if not fact.

Affirmative action programs were instituted to counteract the results of past discrimination. They provide preferential treatment for women, minorities, and the handicapped in a number of areas that affect economic opportunity and well-being. In effect, they

advocate discrimination to remedy earlier discrimination, with the support of the Supreme Court.

Americans want equality, but they disagree on the extent to which government should provide it. At the heart of this conflict is the distinction between equal opportunities and equal outcomes. Equality of opportunity is the idea that people should have an equal chance to develop their talents, and that effort and ability should be rewarded. This form of equality offers all individuals the same chance to get ahead. And it has the support of most Americans. Equality of outcome means greater uniformity in social, economic, and political power. We can guarantee equal outcomes only if we restrict the free competition that is an integral part of equal opportunity. And this is an idea that many Americans object to. They strongly oppose quotas and policies that restrict individual freedom, that arbitrarily change positions on the ladder of success. The challenge of pluralist democracy is to balance these conflicting values.

Key Terms and Cases

affirmative action	civil rights movement
discrimination	boycott
civil rights	civil disobedience
black codes	protectionism
racism	Nineteenth Amendment
poll tax	sexism
racial segregation	Equal Rights
<i>Plessy v. Ferguson</i>	Amendment (ERA)
separate-but-equal doctrine	<i>Regents of the University of California v. Bakke</i>
desegregation	<i>Wygant v. Jackson Board of Education</i>
<i>Brown v. Board of Education</i>	<i>Local 28 v. EEOC</i>
<i>Brown v. Board of Education II</i>	<i>Johnson v. Transportation Agency, Santa Clara County</i>
<i>Swann v. Charlotte-Mecklenburg County Schools</i>	equality of opportunity
de jure segregation	equality of outcome
de facto segregation	
<i>Milliken v. Bradley</i>	

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19

Foreign and Defense Policy

America's World-View: Two Policy Paradigms

The Munich Paradigm • The Vietnam Paradigm

U.S. Values and Interests: The Historical Context

From Isolationism to Globalism • Containment and Korea • Cold War Commitments Under Eisenhower and Kennedy • Vietnam: The Challenge to America's Foreign Policy Consensus • Carter's Search for a New Foreign Policy • Foreign Policy Under Reagan • Conflicting Policy Paradigms and America's Foreign Policy Goals

Foreign Policymaking: The Constitutional Context

The Formal Division of Power • Sidestepping the Constitution

Foreign Policymaking: The Administrative Machinery

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Fawn Hall prided herself on being a good secretary and a good citizen. One day in November 1986, her boss at the National Security Council (NSC), Lieutenant Colonel Oliver North, asked her to help him alter some official memos. She felt uneasy about the request, but helped anyway. After all, she thought of Colonel North as a patriotic American who had the best interests of the country at heart. She assumed he must have a good reason for what he was doing. Later that day, she helped him destroy other documents—lots of them. By her estimate, the stack of material she shredded reached 1½ feet, so much paper that the shredding machine broke down under the load.

A few days later, Hall and the rest of the nation knew the reason behind this flurry of activity. On November 25, Attorney General Edwin Meese revealed that the United States had sold arms to Iran, then used the proceeds to supply the anticommunist Contras in Nicaragua. Many of the documents destroyed or altered by North and Hall concerned details of this operation, which took place during a period in which the president had branded Iran a terrorist nation and Congress had prohibited aid to the Contras. (See Feature 19.1 for a chronology of U.S. involvement in Nicaragua.)

Colonel North, a principal architect of the Iran-Contra operation, emerged at the center of a breaking scandal involving U.S. foreign policy. He was removed from his job at the NSC and reassigned to duty with the Marine Corps. But Hall's faith in her boss did not waver. After the news broke, while the NSC staff was securing North's office, she helped him remove more documents by concealing them in her clothing. Months later, when she appeared before a joint congressional committee investigating the matter, Hall justified her actions, claiming that "sometimes you have to go above the written law." Former NSC adviser and key Iran-Contra player John Poindexter made a similar argument when he testified before the same committee. Both Hall and Poindexter believed that the laws of the land could somehow undermine the nation's foreign policy goals. They believed that foreign policy is different from domestic policy, that it should not be subject to the same rules.

Is there a difference between foreign policy and other forms of public policy? Like domestic policy, foreign policy consists of the means by which government pursues certain goals within specific situations. And, as they do with domestic policy, people disagree over foreign policy because they disagree on the goals government should have, the means it should use to meet them, and the nature of the situation it faces (see Chapter 16). Yet the tension Hall and Poindexter felt between the methods of democratic government and the requirements of foreign policy is not new. Alexis de Tocqueville had described this conflict back in 1837:

Foreign politics demand scarcely any of those qualities which are peculiar to a democracy; they require, on the contrary, the perfect use of almost all those in which it is deficient. . . . A democracy can only with great difficulty regulate the details of an important undertaking, persevere in a fixed design, and work out its execution in spite of severe obstacles. It cannot combine its measures with secrecy or await their consequences with patience.¹

FEATURE 19.1

From the Canal to the Contras: A Brief Chronology of U.S. Involvement in Nicaragua in the Twentieth Century

1909 The United States sponsors a revolution against Nicaraguan leader José Zelaya over rights to the construction of a canal across the Isthmus of Panama. U.S. troops intervene and are not withdrawn until 1925.

1926 U.S. troops are reintroduced in Nicaragua and remain there until 1933. They fight sporadically with guerrilla forces led by Augusto Sandino.

1934 Sandino is assassinated by national guardsmen under the command of Anastasio Somoza.

1936 Somoza becomes president of Nicaragua. His family rules the country dictatorially for the next forty-three years.

1978 Strikes and terrorist attacks mount in opposition to the Somoza government. President Carter calls on the Somozas to negotiate with the opposition.

1979 The United States suspends all aid to Nicaragua. Guerilla forces take Managua (the capital), and the Somozas flee the country. The FSLN (Sandinista National Liberation Front) gains control. President Carter renews U.S. aid to Nicaragua and asks Congress for an additional \$75 million for the war-ravaged nation. This aid is delayed as conservatives complain that the United States had abandoned a long-time friend and is now supporting a Marxist regime. Meanwhile, in Nicaragua, the new rulers condemn the United States for its long-time support of Somoza.

1981 The Reagan administration charges that the Sandinistas are attempting to establish a Marxist state and are supporting leftist guerrillas in neighboring El Salvador. Reagan suspends Carter's program of economic aid and begins to back the Contras against the Sandinistas. He authorizes the CIA to recruit Nicaraguan exiles to harass the government and block arms shipments to El Salvador.

1982 Limited covert action blossoms into full-

scale war. When U.S. support for the Contras becomes public knowledge, Congress passes the first of several Boland Amendments. This particular amendment prohibits the CIA from attempting to overthrow the Nicaraguan regime.

1983 The House votes twice to cut off aid to the Contras. Finally, however, Congress authorizes assistance of no more than \$24 million, roughly half the amount the administration is looking for.

1984 The Senate Intelligence Committee reveals that the CIA had supervised the mining of Nicaraguan harbors without notifying Congress. President Reagan and the Contra leaders insist their objective was to pressure the Sandinistas to hold elections. Congress votes to halt all aid to the Contras by the CIA, the Pentagon, or other intelligence agencies. In November, elections are held.

1985 In the absence of funds from the U.S. government, the Contras rely on support from private American sources and from other governments. Later, the public learns that U.S. officials played key roles in providing these funds. In August, Congress authorizes \$27 million in nonmilitary "humanitarian" aid to the Contras.

1986 October, Congress agrees to appropriate \$100 million in aid to the Contras. A month later, the details of the Iran-Contra affair begin to emerge. Despite a presidential arms embargo and a campaign to convince other countries not to sell arms to terrorist nations, the NSC had arranged to transfer missiles and antiaircraft weapons to Iran. In exchange, it received money and the release of three American citizens who had been taken hostage in Lebanon. (During the same period, at least three more U.S. citizens were abducted and held in Lebanon.) Profits from the arms sales had been funneled to the Contras, despite the Boland Amendments.

As Tocqueville predicted, at times the workings of foreign policy have seriously challenged democratic government. Can a democracy achieve its goals in the world arena without compromising the integrity of its domestic political process? Can a democracy pursue freedom and order abroad without undermining these values at home?

Freedom Fighters?

American involvement in Nicaraguan affairs is not new; it began near the turn of the century. Throughout his administration, Ronald Reagan referred to the Nicaraguan rebels (the *Contras*) fighting against the Marxist Sandinista government as "freedom fighters," comparing them to colonists fighting in the American Revolution. Here, young Contra troops in the Nicaraguan hills show their enthusiasm for battle.



In this chapter, we focus on the nature of the foreign policymaking process, and the tension between that process and democratic government. We look at America's view of the world situation, and at its foreign policy goals and the means that are available to reach those goals. And we examine the way in which responsibility for foreign policy is divided between the branches of government and the effect that division has on the foreign policymaking process.

AMERICA'S WORLD-VIEW: TWO POLICY PARADIGMS

In the two decades following World War II, it made sense to talk about an American foreign policy consensus. There was widespread agreement among policymakers concerning the international situation. Today, there is no single answer to the question "How does America view the world situation?" Since the Vietnam War, Americans have come to see the world from two very different perspectives: the Munich paradigm and the Vietnam paradigm.*

The Munich Paradigm

The first perspective, sometimes called the **Munich paradigm**, reflects the influence of the events that led to World War II. At Munich,

* A paradigm is a distinctive pattern or model.

Germany, in 1938, British Prime Minister Neville Chamberlain made concessions to Adolph Hitler, concessions he believed would ensure peace "in our time." He was wrong. The Germans were set on a course of territorial expansion. Within months of the Munich settlement, Europe was engulfed in war.

To those Americans whose perspective on world politics has been shaped by the lessons of Munich, Soviet expansionism has replaced German expansionism as the central threat to world peace. The split between East and West has become the most important division in world politics. These people believe that all communists are fundamentally the same and that the hand of the Soviet Union is behind communist activity everywhere in the world. They argue that the primary goal of U.S. foreign policy must be to promote order by containing communist expansion. To this end, America must maintain a strong military force.

From the perspective of the Munich paradigm, the Vietnam War was fought in a "noble cause": to overcome communist aggression. America and its South Vietnamese allies could have won in Vietnam if this country had had the will to prevail and had allowed the military to do the job it was trained to do.

The Vietnam Paradigm

The second view, the **Vietnam paradigm**, takes as its point of departure the Vietnam War, not World War II. Its adherents believe that American involvement in Vietnam was the product of a tragic failure—the failure to realize that all left-wing revolutionary movements are not necessarily directed by Moscow but may instead be the product of internal forces. Although the Kremlin is always willing to exploit unrest, it cannot create it out of nothing. Revolutions in Third World countries are more likely to spring from poverty and nationalism than the involvement of the Soviet Union. Here, the division between rich nations and poor nations is much more important than the division between East and West.

This emphasis changes the methods used to "win the hearts and minds" of people in other countries. It rejects military solutions, the role of the United States as "world policeman." Instead, it suggests new tools: diplomacy rather than military force, *détente* (the relaxation of tensions between East and West), disarmament and arms control, and development aid to overcome the inequalities that breed disorder and that allow communist movements to thrive.

When the Vietnam War ended, political scientists suggested that a new foreign policy consensus might form around the Vietnam paradigm.² Some expected this world-view would eventually dominate, as those clinging to the Munich paradigm either converted or died. Today, the idea that the Vietnam experience might serve as the core of this kind of consensus seems doubtful. For one thing, it is not at all clear that members of the Vietnam generation share a single world-view.³ For another, the liberalism that marked the Vietnam era is competing with a new conservatism, which values order more than freedom and equality.

The 1980s have brought crises in the Middle East, South Africa, and Central and South America. What is at stake for the United States in these areas? What are the root causes of turmoil? How should the United States deal with these problems? To answer these kinds of questions, citizens and policymakers draw on their political orientation and values as well as their past experience. And because these things are complex and multidimensional, it is unwise to expect easy agreement on America's role in the world. Perhaps the pluralism that characterizes American domestic politics should be expected to carry over into foreign politics as well. The essential agreement that existed during the period between World War II and Vietnam may have been an exception rather than the rule.

U.S. VALUES AND INTERESTS: THE HISTORICAL CONTEXT

When we ask "What is at stake for the United States in Central America, South Africa, the Middle East, or anywhere else?" we are asking how events there affect America's national interests. The primary goal of American foreign policy is to preserve our national security. The difficult part of foreign policymaking is interpreting just what *national security* means and deciding exactly what is necessary to preserve it. Does protecting our national security mean we must stop the spread of communism at all costs, everywhere in the world?

From Isolationism to Globalism

Americans have not always thought of their national security in global terms. Throughout most of the nineteenth century, the limits of national security were those staked out by the Monroe Doctrine of 1823. The United States rejected European efforts to intervene in the Western Hemisphere and agreed not to involve itself in European politics. **Isolationism** protected Americans from Old World entanglements.

As the nineteenth century wore on, however, the United States did become increasingly involved in the affairs of non-European nations. For example, the nation expanded its power in the Pacific, acquiring the Hawaiian Islands and the Philippines. And U.S. foreign policy toward Latin America showed strong interventionist tendencies. But America's defense establishments and foreign commitments were still small.

World War I marked the United States' first serious foray into European politics. In 1917, the rhetoric of our entry into that war—"to make the world safe for democracy"—underscored the moralistic and idealistic tone of America's approach to international politics at that time. At the Versailles Peace Conference in 1919, President Woodrow Wilson championed the League of Nations as a tool for preventing future wars. When the Senate refused to ratify the Treaty of Versailles, blocking America's entry into the league, the brief moment of internationalism ended. For the next two decades, the United States maintained its fa-



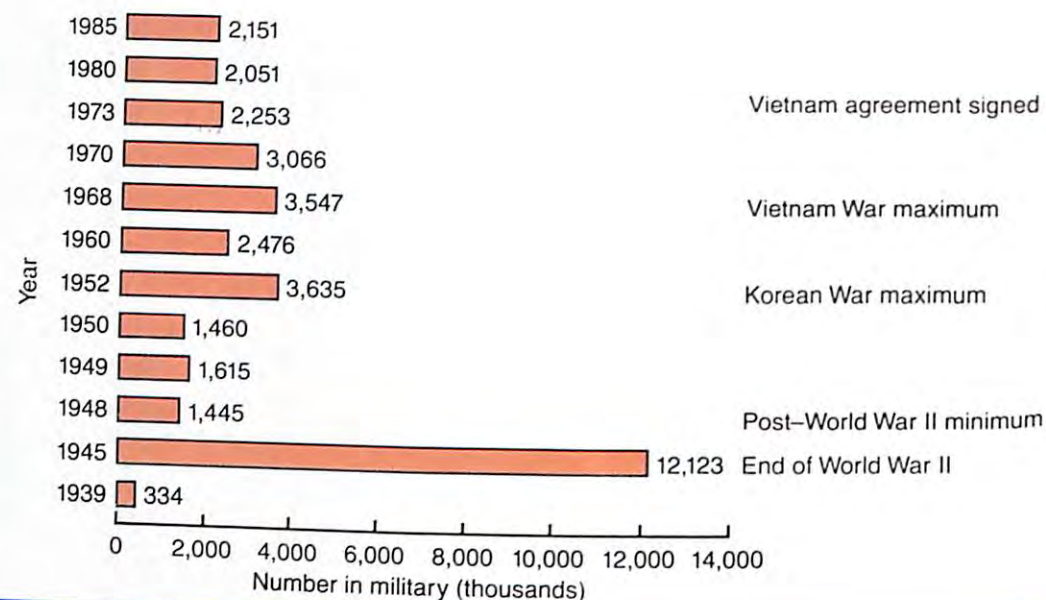
The Same in Any Language
These three World War I posters (from Germany, Italy, and the United States) were used to persuade men to join the army. They all employed the same psychological technique of pointing at passers-by to make each individual personally feel the appeal. With no war to threaten or inspire us, today's appeals to sign up play on different themes and employ different devices.

miliar isolationist posture, except for one intervention in Latin America—in Nicaragua (see Feature 19.1).

In 1939, America's security interests continued to be narrowly defined, and the military establishment needed to defend those interests remained very small. At the outbreak of World War II (September 1939), the United States had no draft or compulsory military service; there were 334,473 men in the armed forces (see Figure 19.1), and defense expenditures amounted to about \$1.3 billion, roughly 1.5 percent of the gross national product (GNP) at that time.⁴ No American troops were garrisoned abroad, and the country was not party to any military alliance. The oceans were America's first line of defense.

But World War II brought a dramatic change in America's orientation toward the world. In 1949, four years after the war ended, 1,615,360 people were on active duty with the U.S. military and approximately 5.5 percent of the GNP was being spent on the armed forces.⁵ That same year, the United States concluded the first of many peacetime alliances: the North Atlantic Treaty, which created the North Atlantic Treaty Organization (NATO). Under the terms of the treaty, America permanently committed itself to the defense of Western Europe. Western Europe, not the Atlantic Ocean, became America's first line of defense to the east. To reinforce its commitment, American troops stayed on in

U.S. Military on Active Duty in Selected Years, 1939–1985
As America assumed an active role in world affairs, there was a corresponding buildup in its armed forces.
 (Source: Statistical Abstract of the United States, annual.)
Figure 19.1



Europe, and the draft was continued to provide the necessary manpower. In addition, the U.S. attitude toward international organizations changed after World War II. Americans accepted the idea that these institutions provided the basis for world order. America was the driving force behind the United Nations (UN) and supported the establishment of the World Court. American isolationism seemed to have vanished, replaced by a new **globalism**. The United States had become a superpower, and its national security interests were now global in scope.

Containment and Korea

Superpower status carried a price: a new emphasis on defense spending. Not only would Americans have to spend more money on defense during peacetime, but they would also have to give defense spending a higher priority than domestic spending. The foreign policy consensus being forged at the end of the 1940s was clearly internationalist, with a strong militarist flavor. The Soviet Union, America's wartime ally, was now the principal threat to order. The Soviets dominated Eastern Europe and their ideology was spreading. America feared the growth of Soviet power. European conflicts had drawn the United States into war twice in twenty-five years; the Soviets, left unchecked, might well do it again.

In this view (heavily shaped by the recent experience with Hitler's Germany), the Soviets wanted world domination and were bent on extending the communist system into "every nook and cranny" of the globe. To frustrate the Kremlin's plans, Americans would have to be prepared to cut budgets for nondefense spending, even if this meant important domestic programs had to be put off.⁶ For the first time ever in peacetime, Americans were called on to give priority to defense spending over domestic spending, to guns over butter. America was not in an actual shooting war, or "hot war," with the Soviets, but the adversarial

nature of U.S.-Soviet relations was clear. A new term was coined to describe the situation: **Cold War**.

The Cold War would require commitment and sacrifice. The American course of action was "long-term, patient but firm and vigilant containment."⁷ **Containment** meant holding Soviet power in check. A return to isolationism was impossible, as President Harry Truman had proclaimed in a 1947 speech justifying aid to Greece and Turkey, because "totalitarian regimes imposed upon free peoples, by direct or indirect aggression, undermine the foundations of international peace and hence the security of the United States."⁸

Truman's foreign policy had two dimensions: One was military preparedness; the other was an economic program that would thwart Soviet expansion. Secretary of State George Marshall recognized that war-weakened European nations offered a good target for Soviet expansion. He proposed a European recovery plan, commonly known as the **Marshall Plan**, to make Europe economically viable again. Over four years, this foreign aid program sent approximately \$12 billion to European countries.

While a clear American policy toward Europe was taking shape, new crises emerged in Asia. Mao Ze-dong (Mao Tse-tung) succeeded in installing a communist regime in China. Because Americans thought of international politics as a **zero-sum game**—a situation in which one superpower's loss was the other's gain—America's "loss" of China to

Polishing the Coneheads
 War often stimulates social change. During World War II, more than 6 million women entered the labor force, many doing jobs—such as making tailgunner cones for bombers—that had previously been done by men.



Mao and communism was interpreted as a victory for the Soviets. Some American policymakers favored a more conciliatory position toward the Chinese and suggested that all communism might not be Soviet communism. But their voices were drowned out when, on June 25, 1950, communist North Korea invaded noncommunist South Korea. The United States used the United Nations to intervene in the conflict to push the North Koreans out. The bulk of the UN force sent to Korea consisted of Americans.

The Korean War presented a stark contrast to the American image of what a war should be. World War II had been a "total war," and the United States had fully committed all its economic, human, and military resources to the war. The goal of the Allies in that war was total victory. After the fighting had begun, the time for political solutions was past. Only military solutions were possible.

In contrast, U.S. economic and manpower commitments to the Korean conflict were much lower. General Douglas MacArthur, the American who commanded the UN force in Korea, was not allowed to use atomic weapons, nor was he allowed to push an offensive into China after the Chinese communists entered the fighting. Policymakers on both sides were looking for political solutions, trying to limit hostilities in order to avoid the outbreak of another world war. The conflict finally ended with an agreement that essentially restored the original north-south boundary. The United States had successfully contained communism in Korea, but a Pandora's box had been opened, and the problems that it released would beset the United States again in Vietnam. America's inability to translate its enormous military and economic strength into consistent political success was proof that its power had limits.

Cold War Commitments Under Eisenhower and Kennedy

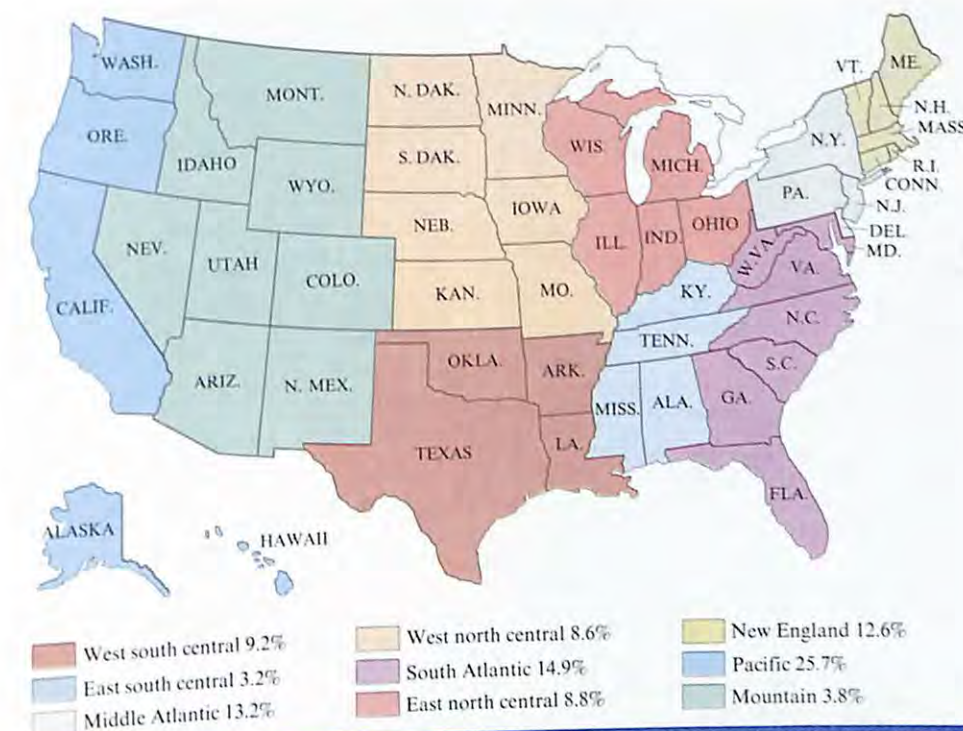
For the most part, President Dwight Eisenhower carried on Truman's Cold War policies. But he realized that domestic political realities meant that defense spending had to have limits. He also expressed concern about the ways in which the pursuit of global interests might affect America's democratic institutions. Although a former general, Eisenhower warned against the power of the **military-industrial complex**, the "conjunction of an immense military establishment and a large arms industry," both lobbying for increased military spending. The growth of the military-industrial complex threatened pluralist democracy because it created an extremely powerful group united by two common interests—war and military spending. Eisenhower warned that its "total influence—economic, political, even spiritual—is felt in every city, every statehouse, every office of the federal government."⁹ (For an example of the pervasiveness of the military-industrial complex in the 1980s, see Figure 19.2, which shows the distribution of defense contracts among the states.)

During the Eisenhower years, the U.S. defense policy relied chiefly on the deterrent power of nuclear weapons, rather than on the strength

The Flow of Defense Dollars

The West and East Coasts are the regions that are most successful in obtaining defense contracts. California leads the nation in per capita share, followed by New England. This coastal/central split can also be seen in the economic profile of the United States. The central states have been hurt by the nation's decline as an exporter of agricultural goods, raw materials, and manufactured goods. The coastal states, on the other hand, have benefited from the concentration there of high-technology firms and the growth of the service sector.

Figure 19.2



of conventional (nonnuclear) forces. Guided by the theory of **deterrence**, American strategists believed that the Soviets would hesitate to take aggressive action knowing they risked nuclear annihilation. Toward the late 1950s, however, the Russians built up their own nuclear strength, and the two superpowers faced the possibility of **mutual assured destruction (MAD)** in a nuclear conflict. Against this background, deterrence was less credible as a means of limiting Soviet expansion. It didn't seem likely that a president would risk nuclear destruction in America in order to stop a Soviet advance into Western Europe, for example. To restore credibility to deterrence, analysts argued that America should develop the strategies and weapons needed to fight a limited nuclear war.¹⁰ And they called for America to beef up its conventional forces, so that the country would be able to select from a range of defense options. The idea of **flexible response** became a cornerstone of the defense policy during the Kennedy administration. John F. Kennedy shared the commitment to the Cold War of his two predecessors. In his inaugural address, he pledged to "pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and success of liberty."¹¹

To Kennedy, the struggle against Soviet communism was paramount. The two most dramatic foreign policy incidents of his administration were the Bay of Pigs invasion, a debacle in which U.S.-supported Cuban exiles tried to invade Castro's communist Cuba, and the Cuban missile crisis, in which an American naval blockade of the island forced the Soviets to remove missiles they had placed there. Both were attempts to

combat the perceived Soviet threat to U.S. security in the Western Hemisphere.*

In the wake of the Cuban missile crisis, the United States and the Soviet Union took steps to reduce the tension between them. Most notably, they concluded a nuclear test ban treaty that outlawed the testing of nuclear weapons above ground and they installed a Washington-Moscow communications link, nicknamed the "hotline."

The Kennedy administration also pursued a series of **nation-building policies**, aimed at shoring up Third World countries economically and promoting democratic reforms, making them less attractive targets for Soviet opportunism. These policies included the Alliance for Progress, a ten-year program that gave \$20 billion in economic aid to Latin America; the Peace Corps, through which Americans volunteered to help Third World countries with problems of development; and Food for Peace, a program that sold American agricultural commodities to less-developed countries on generous credit terms and that provided emergency food relief.

Kennedy's commitment to nation building in Third World countries did not outweigh his commitment to the Cold War, however. Once, while speaking about the Dominican Republic, he made clear his hierarchy of preferred regime types: "There are three possibilities in descending order of preference: a decent democratic regime, a continuation of the [right-wing dictatorship under the] Trujillo [family], or a Castro regime. We ought to aim at the first but we really can't renounce the second until we are sure that we can avoid the third."¹²

Threats to freedom and equality from the right seemed preferable to threats to freedom and equality from the left. The Soviets were the real enemy, the threat to America's concept of order.

One of Kennedy's policies involved both nation building and resistance to communist expansion. It would have a critical impact on American foreign policy. Fearing a communist takeover by forces from North Vietnam, America had been sending military aid and advisers to non-communist South Vietnam for years. Kennedy stepped up the program. At his death in 1963, sixteen thousand American military advisers were stationed in South Vietnam. During Lyndon Johnson's presidency, the price of the Vietnam commitment would rise drastically in terms of both dollars and American lives.

Vietnam: The Challenge to America's Foreign Policy Consensus

In November 1963, just three weeks before President Kennedy's assassination, the United States tacitly permitted a coup in South Vietnam. President Ngo Dinh Diem's regime was racked with instability, undermining America's ability to contain the communist North Vietnamese and their allies in South Vietnam (a force known as the Vietcong).

* It was during the Cuban missile crisis that Kennedy's willingness to "pay any price" seemed likely to be tested. Kennedy himself estimated the chances of nuclear war at that time as one in three.

Honoring the Dead

The Vietnam Veterans Memorial in Washington, D.C., is a place of national sorrow. The long chevron of black granite is etched with the names of 58,156 American soldiers who died in the nation's longest conflict. The Vietnam War cost the United States more than \$3.3 trillion, divided the American people, and fragmented the Cold War foreign policy consensus.



Diem's overthrow and death did not bring political stability to South Vietnam. Over the next few years, one government succeeded another, but none proved capable of maintaining control for long. Meanwhile, the military situation continued to deteriorate. By early 1964, the Vietcong controlled almost half of South Vietnam.

In August 1964, Congress passed the Gulf of Tonkin Resolution, which gave President Johnson a virtual blank check to carry out his policies in Vietnam. He ordered American bombing raids on the North; but by early 1965, the military situation had become so bad that he sent in U.S. ground troops. Eventually, the United States had more than 500,000 troops in Vietnam. Casualties mounted, and no end to the conflict was in sight. Opposition to the undeclared war grew on college campuses and elsewhere. An antiwar candidate, Senator Eugene McCarthy from Minnesota, challenged Johnson in the Democratic presidential primaries. On March 31, 1968, Johnson ordered a halt to the bombing of North Vietnam. In the same speech, he bowed out of the presidential race. By August, a majority of Americans surveyed in a Gallup Poll claimed the United States had made a mistake sending troops to Vietnam. This feeling did not change through the rest of the time America was involved in the conflict.

Richard Nixon, who succeeded Johnson, was well aware of public opinion on the war. He campaigned on a pledge to end the war through what came to be known as his "secret plan."*

* Cynics have noted that the plan was so secret that Nixon did not let it out until after he had been re-elected in 1972.

"peace with honor" rested on a strategy called **Vietnamization**, which meant turning more and more of the fighting over to the South Vietnamese. Gradually, American forces were pulled out, casualties fell, and draft calls grew smaller. A peace agreement was signed in 1973, and the remaining American troops left Vietnam. In April 1975, the communists took South Vietnam. The economic costs of the war were high, both in terms of direct military expenditures and indirect costs (like veterans' benefits and disability payments). Other costs, however, cannot be counted so easily. The conflict deeply divided the American people and fragmented the Cold War consensus on American foreign policy.

Even while the war dragged on, President Nixon and his chief foreign policy adviser, Henry Kissinger, were making important changes in American foreign policy. They attempted to redefine America's overseas commitments through the **Nixon Doctrine**, an effort to "steer a course between the past danger of overinvolvement and the new temptation of underinvolvement."¹³ In a clear contrast to the rhetoric of Kennedy's inaugural address, Nixon stated that America would no longer "conceive all the plans, design all the programs, execute all the decisions and undertake all the defense of the free nations of the world." Instead, the United States would intervene only where "it makes a real difference and is considered in our interest."¹⁴

The United States was in a period of détente with the Soviet Union. Nixon visited Moscow for a summit meeting. The United States and the Soviet Union negotiated and signed the Strategic Arms Limitation Treaties (SALT), which limited the growth of their nuclear arsenals and recognized the Soviet claim to "strategic parity" with the United States. Trade between the two countries increased, and a joint U.S.-Soviet space mission was planned.

Nixon also ended decades of U.S. hostility toward the People's Republic of China. Although that country was not accorded full diplomatic recognition until 1979 by the Carter administration, both Nixon and Kissinger visited China and helped open political and economic negotiations.

The theory of détente emphasized the value of order—order based not only on military might but also on the mutual interests of the superpowers. Kissinger believed that if the Soviets and the Chinese were treated as legitimate participants in the international system, they would have a vested interest in supporting world order. And the two countries would have less incentive to promote revolutionary challenges to international stability. If the Soviets and the Chinese were bound to the United States through economic and political agreements, they would realize that their own interests would best be served through cooperation. Kissinger practiced **linkage**; he tried to use rewards and benefits in one area to promote Soviet compliance in other areas.

Did the Soviets share Kissinger's vision? Some insist that Soviet involvement in the Middle East, Angola, and later Afghanistan was evidence that their view of détente was not the same as Kissinger's. On the other hand, after Watergate weakened the Nixon presidency, Kissinger was unable to deliver on his promises to the Soviets. Specifically, he

was unable to secure legislative approval of provisions granting the Soviet Union a "most favored nation" trading status.*

Critics have noted that neither détente nor attention to U.S.-Soviet relations brought about a successful end to the Vietnam War or a solution to the problem of the 1973 Arab oil embargo. In fact, Nixon's concentration on East-West politics might have made him less able to deal with these concerns. Opponents of Nixon-Kissinger (and later Ford-Kissinger) foreign policy also fault those policies for being too cynical—for paying too much attention to power and interests and not enough to basic American ideals and human rights.

Carter's Search for a New Foreign Policy

Initially, President Jimmy Carter's stance on foreign policy was very different from that of his predecessors. For example, he emphasized human rights, leveling criticism—and sometimes even sanctions—at both friends and enemies with poor human rights records. And Carter tended to downplay the Soviet threat throughout most of his administration. He did not believe the hand of the Soviet Union was behind the revolutions in Nicaragua and Iran; instead, he saw these events as largely the products of internal forces. However, he did not hesitate to fault the Soviets for their lack of attention to human rights.

Where Nixon and Kissinger faced charges of cynicism, Carter was sometimes criticized for being too idealistic. He usually leaned toward "open" (rather than secret) diplomacy. Yet, his greatest foreign policy achievement, the Camp David Accords, which brought about peace between Egypt and Israel, was the product of closed negotiation between Egyptian President Anwar Sadat and Israeli Premier Menachem Begin. And, while UN Ambassador Andrew Young was working on economic and political development in the Third World, National Security Adviser Zbigniew Brzezinski was addressing more traditional U.S.-Soviet issues.¹⁵ Toward the end of Carter's term, after the Soviet invasion of Afghanistan, the president's own attitude toward the Russians hardened.

Foreign Policy Under Reagan

Carter's successor, Ronald Reagan, came to the Oval Office with the firm belief that the Soviets were responsible for most of the evil in the world. Reagan attributed the instability in Central America (specifically in El Salvador and Nicaragua) to the actions of the Soviets and their surrogates, the Cubans and the Sandinistas. He believed the best method of combating the Soviet threat was to renew and project American military strength. The Reagan years witnessed a huge increase in defense spending and a new willingness to use American military muscle.

The administration argued that its massive military buildup was both a deterrent and a bargaining chip to use in talks with the Soviets.

* "Most favored nation" status grants terms regarding tariffs, duties, import limits, and other trade concessions, equal to the best terms granted any other nation.

Toward the end of his administration, Reagan managed to conclude agreements with the Soviets outlawing intermediate-range nuclear forces (INF) and providing for the pullout of Soviet troops from Afghanistan.

Critics have charged that, with the exception of its anti-Soviet focus, the Reagan administration had a difficult time pursuing consistent foreign policy goals. Two examples of this problem were its antiterrorist policies and antidrug policies.

Antiterrorism and the Iran-Contra scandal. From its earliest days, the Reagan administration used tough rhetoric against terrorists and sometimes, as in the bombing raid on Libya, took forceful action. Yet terrorism continued, with many more American lives lost than during the preceding administration. Furthermore, as the Iran-Contra affair showed, despite tough talk, administration policy was far from consistent. As part of their antiterrorist policy, administration officials asserted that America would make no deals with terrorists or nations that supported terrorism. One target of that policy was Iran. The administration blocked arms sales to Iran and tried to convince other governments to do the same.

Despite these public pronouncements, some members of the Reagan foreign policy team followed a very different policy. In what they claimed was an effort to strengthen ties to Iranian moderates, members of the NSC staff, including Robert MacFarlane, John Poindexter, and Oliver North, arranged for the delivery of weapons shipments to Iran. In exchange, Iran paid for the weapons and effected the release of Americans

FEATURE 19.2

Just Say No . . . Passport?

In the 1980s, Americans declared war on drugs, but by 1988, drugs appeared to be winning. Many Americans saw the drug problem as a greater threat than communism to the nation's security. In March of that year, in an attempt to fight illegal narcotics, the U.S. Customs Service announced that it would take new tougher measures against American travelers who tried to bring drugs into the country. Customs head, William von Raab, outlined a plan to seize the passports of citizens entering the United States with illegal narcotics. Previous policy had been to confiscate the materials and levy relatively light fines against those carrying small quantities of drugs meant mainly for personal consumption. Customs officials had found that these offenders risked little else in the way of legal penalties because the courts were so backlogged.

Raab's policy immediately came in for criticism. There were bureaucratic turf problems. State Department officials had already scotched an earlier

plan to stamp the passports of offenders; they took a dim view of the new proposal as well. Civil libertarians also complained. By revoking passports to enforce order, Raab was limiting freedom. Usually a passport can be revoked only by a court order. For customs agents to seize passports summarily at the border denied people due process of law. Democratic Representative Don Edwards of California claimed that the policy deprived "people of a constitutional right, the right to travel, before the conviction of any crime."

Ultimately, the Customs Service backed off. But Raab was vocal about the lack of support he received from officials he described as "conscientious objectors in the war on drugs."

* Quoted in "Customs Chief Warns Tourists on Illicit Drugs," *New York Times*, 3 March 1988, p. 1.

** Ibid.

Sniffing Out Trouble

Most of the illegal drugs used in the United States come from abroad. Here, a specially trained Customs Service dog and its handler hunt for drugs on a Colombian plane in Miami's international airport. The Coast Guard and the Customs Service are in the front line of the government's effort to staunch the flow of drugs into the United States. Both agencies came under criticism from some quarters in 1988 for their aggressive antidrug policy of confiscating boats, motor vehicles, and even planes, in which trivial amounts of drugs had been found.



held hostage by pro-Iranian terrorists in Lebanon. Whatever the legal implications of the Iran-Contra operation, it wreaked havoc on efforts to formulate a coherent antiterrorist policy for ourselves and our allies.

Drugs and foreign policy. With First Lady Nancy Reagan acting as a strong spokesperson, the Reagan administration pledged itself to fight drug abuse. There are many fronts in the war on drugs: educational programs, drug treatment facilities, and the strict enforcement of drug laws. These are all matters of domestic policy. But the drug problem is not simply a matter of domestic policy. According to State Department estimates, 95 percent of all illegal drugs used in the United States are imported from abroad. So the fight against drugs has become a foreign policy problem as well, and one in which the government and its agencies must choose between conflicting goals (see Feature 19.2).

As part of U.S. antidrug efforts abroad, the State Department has supported crop eradication programs, provided law enforcement assistance to other nations, and found alternative crops for farmers who supported themselves by growing coca (the source of cocaine), opium, and marijuana. In 1986, Congress passed the Antidrug Abuse Act, which allows the president to cut off half the aid received by a drug-producing nation if that nation does not try to limit the production or export of drugs. In practice, however, the act was invoked only against Afghanistan, Iran, Syria, and Laos—nations that do not receive U.S. aid—and Panama, in an attempt to force the ouster of General Manuel Noriega. In general, the Reagan administration was unwilling to cut off aid to drug-supplying nations that were otherwise friendly and anticommunist.

Nor was it clear that cutting off aid would accomplish the administration's objective. Some argue that the drug problem can only be solved domestically. They believe the most effective solution lies in cutting American demand for drugs rather than cutting foreign supplies.

Conflicting Policy Paradigms and America's Foreign Policy Goals

Our review of the history of U.S. foreign policy points to several goals this country has set for itself. First among these is preserving American freedom and independence. For much of our history, this meant staying away from the political tangle of and commitments to international alliances. The nation remained free to pursue the development of its own territory and to intervene, when necessary, in the affairs of other countries in the hemisphere. Since World War II, most policymakers have believed that protecting America's freedom and international peace means controlling the threat of communism. In the last four decades, then, much of American foreign policy has been directed toward the goal of creating or preserving a "stable world order." In recent years, however, the search for stability and order has been complicated by new problems—terrorism and drug trafficking, for example—problems that are not tied to the communist threat.

In its pursuit of order, the United States has used both cooperation and conflict. On one hand, the country's search for stability has led to periods of détente with China and the Soviet Union. On the other, America has sometimes found itself containing communism by opposing, undermining, and intervening against revolutionary movements in Third World countries. The nation has also tried to contain the expansion of Soviet communism by entering into a web of alliances around the globe. But alliances forged in the defense of freedom may also limit U.S. freedom, as this country discovered most painfully in Vietnam. Under Nixon, American commitments abroad were redefined in terms of American interests.

The question of order is linked to the question of freedom. An important U.S. goal has been to spread American-style free institutions at both the national and the international levels. To this end, America backed the establishment of the United Nations and the World Court, and supports the development of capitalist economies and liberal political systems, with free elections and guarantees of basic human rights. Although some policymakers, particularly during the Carter administration, pressed American standards of human rights even on friendly governments, policymakers have more often been willing to overlook violations of freedom by regimes that proclaim themselves to be anticommunist.

The question of order is linked, not only to freedom, but also to equality. The East-West split still dominates many foreign policy decisions, but some observers attach increasing importance to the division of the world into rich versus poor nations (industrialized nations versus Third World nations). Supporters of this position argue that the real

threat to international stability has its source in economic and political inequality, and that poverty creates opportunities for communism to take hold. More recently, citizens of some Third World countries have found a way out of poverty, not through communism, but through drugs. The influence and prosperity enjoyed by the new drug barons has undermined order both in the United States and elsewhere. These complicated issues suggest the need for a foreign policy that relies heavily on economic development, interdependence, the redistribution of wealth, and access to the political process, rather than on conflict and military might.

The Munich paradigm and the Vietnam paradigm generally agree on the priority of the first goal—order—but they disagree sharply on how best to bring about order and how to weight the other two goals—freedom and equality. As Tocqueville suggested, a lack of consensus here could seriously undermine the conduct of foreign policy. The dilemma becomes even greater in a system like the American system, where the power over foreign policy is split among the branches of government and executive department and agencies.

FOREIGN POLICYMAKING: THE CONSTITUTIONAL CONTEXT

The Constitution clearly puts the president in charge of American foreign policy. However, the framers also included checks and balances to prevent the president from conducting foreign policy without substantial cooperation from Congress. Still, presidents have found ways to sidestep these provisions when they have felt it important to do so.

The Formal Division of Power

The Constitution gives the president four significant foreign policymaking powers:

- The president is commander in chief of the armed forces.
- The president has the power to make treaties (subject to the consent of the Senate).
- The president appoints U.S. ambassadors and the heads of executive departments (also with the advice and consent of the Senate).
- The president receives (and may refuse to receive) ambassadors from other countries.

The Congress also has specific powers in the foreign policy arena:

- Congress alone may declare war.
- Congress has the legislative power.
- Congress controls the nation's purse strings.
- Congress is charged with raising, supporting, and maintaining the army and navy.
- Congress may call out the militia to repel invasions.

The most important foreign policy power the Constitution gives to Congress is the power to declare war, a power it has used only five times. But Congress has become involved in foreign policy in other ways. Through its legislative power, it has established programs of international scope and imposed legal limits on the actions of the executive branch. The Arms Control Export Act (1988), which restricted arms transfers, is one example; the Antidrug Abuse Act (1986) is another. In addition, Congress has used its power of the purse to provide funds for activities it supports and to withhold funds for programs it does not.

Finally, there are certain foreign policy functions that belong to the Senate alone:

- The Senate consents to treaties.
- The Senate gives its advice and consent to the appointment of ambassadors and various other public officials.

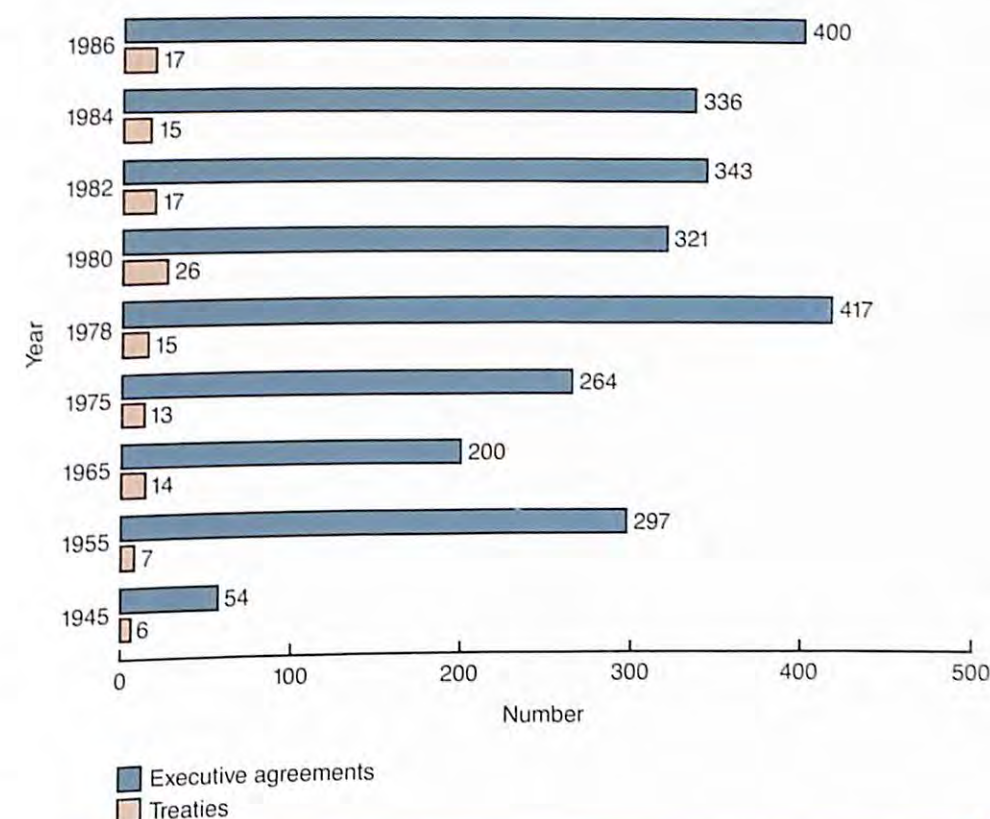
The Senate has not been shy about using these powers. We have already noted that it refused to ratify the Treaty of Versailles. More recently, the US-Soviet SALT II agreement, an arms limitation treaty negotiated under the Carter administration, was introduced into the Senate but not brought to a vote because its supporters feared defeat. In 1988, some Senate conservatives geared up to oppose the INF treaty President Reagan signed with Soviet leader Mikhail Gorbachev. They succeeded in delaying Senate approval for a short while, but eventually the treaty was passed.

Sidestepping the Constitution

Although the Constitution gives the executive enormous power in the foreign policy arena, it also places limits on that power. Presidents and their advisers often have found ingenious ways around these constitutional limitations. Among the innovative devices they have used are executive agreements, discretionary funds, transfer authority and reprogramming, excess stock disposal, undeclared wars, and special envoys. Since the Vietnam War, however, Congress has attempted to assert control over the use of these presidential tools. To a large extent, the Iran-Contra affair was the product of administration efforts to get around congressional controls.

An **executive agreement** is a pact between the heads of two countries. Initially, these agreements were used to work out the tedious details of day-to-day international affairs. In *U.S. v. Curtiss-Wright* (1936), the Supreme Court ruled that executive agreements are within the inherent powers of the president and have the legal status of treaties.¹⁶ This ruling gave the president an enormously powerful tool. Although they are not subject to senatorial approval, executive agreements, like treaties, have the force of law. Until 1972, the texts of executive agreements did not even have to be reported to Congress. Legislation passed that year now requires the president to send copies to the House and Senate Foreign Relations Committees.

This requirement has not seriously affected the use of executive agreements, which has escalated dramatically since World War II. In the



Executive Agreements versus Treaties: How the Numbers Stack Up

This graph shows that the number of executive agreements concluded dwarfs the number of treaties approved. (Source: Editorial Research Reports, 29 January 1988, p. 41.)

Figure 19.3

years from 1945 to 1986, executive agreements have vastly outnumbered treaties (see Figure 19.3). And presidents have used these agreements to make substantive foreign policy. In fact, senators have complained that the treaties now submitted for Senate approval deal with petty, unimportant matters, whereas serious issues are handled by executive agreement. Moreover, executive agreements are subject to very few limits. One observer noted that "the principal limitation on their use is political in nature—the degree to which it is wise to exclude the Senate from [its] constitutional foreign policy role."¹⁷

Presidents can use several devices to circumvent congressional control of the nation's finances. One is **discretionary funds**—large sums of cash that can be spent on unpredicted needs to further the national interest. President Kennedy used discretionary funds to run the Peace Corps in its first year; President Johnson used \$1.5 billion of his funds in Southeast Asia in 1965 and 1966.¹⁸

The president's **transfer authority** or the **reprogramming** of funds allows him to take money that Congress has approved for one purpose and to spend it on something else. Reprogramming is one way the Reagan administration might have sent military aid to Nicaragua, except that Congress had specifically prohibited any redirection of funds for military use there. Finally, the executive branch has control over the disposal of excess stocks, which include surplus or infrequently used equipment. The Central Intelligence Agency (CIA) has been an important beneficiary of **excess stock disposal**. As part of the Iran-Contra arrangement, NSC staffers used excess-stock provisions as the source of the arms sold to

Iran. Before they were specifically barred from doing so by Congress, administration officials were able to offer excess stock directly to the Contras.

The Constitution makes the president commander in chief of the armed forces. In this role, he has claimed the right to involve the United States in **undeclared wars**, to commit American troops in emergency situations. America's undeclared wars, police actions, and other interventions have outnumbered formal (congressionally declared) wars by more than 30 to 1. Since the last declared war ended in 1945, over 100,000 American troops have died in locations ranging from Korea and Vietnam to Lebanon, Grenada, the Dominican Republic, Cuba, El Salvador, Libya, and the Persian Gulf.

During the Vietnam War, congressional opponents of that conflict passed the **War Powers Resolution** to limit the president's ability to wage undeclared wars. Under this resolution, a president must "consult" with Congress in "every possible instance" before involving U.S. troops in hostilities. In addition, the president is required to notify Congress within forty-eight hours of committing troops to a foreign intervention, and he is prohibited from keeping troops there for more than sixty days without congressional approval (although he may take up to an additional thirty days to remove troops "safely"). President Nixon vetoed the War Powers Act as an unwarranted restriction on the president's constitutional authority, but Congress overrode his veto. Some critics have charged that the legislation does not limit presidential power, but instead allows the president to wage war at will for up to sixty days.* By the end of that period, Congress might find it very difficult to force the president to bring troops home. The actual impact of the War Powers Act is debatable. Nixon's successors in the White House have all questioned its constitutionality, and no president has ever been "punished" for violating its provisions.

Although the Senate rarely rejects a president's choice, senators have used appointment confirmation hearings as an opportunity to investigate the president's foreign policy activities. For example, while he served as national security adviser, Henry Kissinger claimed that executive privilege protected him from being summoned to testify before congressional committees. When President Nixon nominated him to be secretary of state, however, senators were able to ask him, in the course of the confirmation process, about a variety of subjects, including his role in the secret bombing of Cambodia and in the wiretapping of various news reporters and public officials.

One way presidents get around the Senate's power over appointments is to rely heavily on the White House staff, whose members are accountable to no one but the president, or to use **special envoys** (personal representatives), to perform a wide variety of foreign policy tasks. For example, Philip Habib was Reagan's special envoy in the Middle East, the Philippines, and, while Reagan was trying to win congressional sup-

* These critics included both conservative Republican Senator Barry Goldwater of Arizona and liberal Democratic Senator Thomas Eagleton of Missouri. The latter's feelings were succinctly summarized in the title of his book, *War and Presidential Power: A Chronicle of Congressional Surrender* (New York: Liveright, 1974).

port for his Nicaraguan aid package, in Central America. During the Iran-Contra operation, administration officials relied on private individuals to carry out significant portions of the mission. The use of private citizens in the conduct of foreign policy came in for severe criticism by the committee that investigated the matter.¹⁹

FOREIGN POLICYMAKING: THE ADMINISTRATIVE MACHINERY

Although American foreign policy is developed and administered by the executive branch, it requires the approval and funding of Congress and is subject to congressional oversight. When America assumed a larger role in world affairs after World War II, the old foreign policy machinery was inadequate to the demands of superpower status. In 1947, Congress overhauled the system, passing the National Security Act, which established three new organizations with important foreign policy roles: the Department of Defense, the National Security Council, and the CIA. These organizations joined the other department within the executive branch that shares major foreign policymaking power and responsibility, the Department of State.

The Department of State

The department most concerned with the overall conduct of foreign affairs is the Department of State. It helps formulate, then executes and monitors the outlines and details of American policy throughout the world. Its head, the secretary of state, is the highest-ranking official in the cabinet; he is also, supposedly, the president's most important foreign policy adviser. But different presidents have used the office of secretary of state in very different ways. Dwight Eisenhower chose a strong individual, John Foster Dulles. John Kennedy chose to act as his own secretary of state and appointed a relatively weak figure to the post. During his first term, Richard Nixon planned to control foreign policy from the White House. He appointed William Rogers as secretary of state but took much of his advice from Henry Kissinger, whose office was located in the White House.

Like other executive departments, the State Department is made up of political appointees and permanent employees selected under the civil service system. The former include deputy secretaries and undersecretaries of state and some—but not all—ambassadors; the latter include about thirty-five hundred foreign service officers who alternate assignments between home and abroad. The department staffs U.S. embassies and consulates throughout the world. It has primary responsibility for representing America to the world and caring for American citizens and interests abroad. Although the foreign service is highly selective (fewer than two hundred of the fifteen thousand who take the annual examination are appointed), the State Department often is charged with a lack of initiative and creativity. Critics claim that bright young foreign service officers quickly realize that conformity is the best path to career advancement. As one observer put it: "There are old foreign service officers;

and there are bold foreign service officers; but, there are no old, bold foreign service officers."²⁰ And at times, presidents have complained that the department's foreign policy machinery is too slow and unwieldy. President Kennedy once remarked, "Bundy [Kennedy's national security adviser] and I get more done in one day in the White House than they do in six months in the State Department. . . . They never have any ideas over there, never come up with anything new."²¹ The Reagan administration showed the same disdain for the State Department in its handling of the Iran-Contra operation. That operation ran counter to official State Department policies; it was conducted by people who were not affiliated with the State Department; and the secretary of state, who had opposed elements of the plan, was not kept informed of its progress.

Probably the most important problem facing the State Department today is its lack of a strong domestic constituency to exert pressure in support of its policies. This is in marked contrast with, say, the Department of Education, which can mobilize teachers to support its activities; the Department of Agriculture, which can call on farmers; or the Department of Defense, which can look for help from defense industries or veterans' groups. In a pluralist democracy, the lack of a natural constituency is a serious drawback for an executive department.

The Department of Defense

The Department of Defense replaced two cabinet-level departments: the War Department and the Department of the Navy. It was created to provide the modern bureaucratic structure needed to manage America's much-increased peacetime military strength and to promote greater unity and coordination among the armed forces. At the same time, in keeping with the U.S. tradition of civilian control of the military, the new department was given a civilian head—the secretary of defense—a cabinet member who has authority over the military establishment. Successive reorganizations of the department (in 1949 and 1958) have increased the secretary's greater budgetary powers, control of defense research, and authority to transfer, abolish, reassign, and consolidate functions among the military services. These powers enabled Robert McNamara, secretary of defense under Kennedy and Johnson, to make sweeping changes in military management procedures. Among other things, he attempted to involve the services in joint programs to avoid duplication, inefficiency, and waste. In addition, during McNamara's tenure, the Pentagon's Office of International Security Affairs began to develop the department's own foreign policy positions based on both military and political factors.

The power available to defense secretaries often depends on the secretary's own vision of the job and willingness to use the tools available. Strong secretaries of defense, including McNamara, Melvin Laird (under Nixon), James Schlesinger (under Nixon and Ford), and Caspar Weinberger (under Reagan), have wielded tremendous power.

Below the secretary are the civilian secretaries of the army, navy, and air force; below them are the military commanders of the individual branches of the armed forces. These military leaders make up the Joint Chiefs of Staff (JCS). In addition to their roles as heads of their respective

services, the JCS meet to coordinate military policy; they are also the primary military advisers to the president, the secretary of defense, and the National Security Council. As advisers, the JCS have broad responsibilities for developing positions on such matters as alliances, plans for nuclear and conventional war, and arms control and disarmament.

The CIA and the Intelligence Community

Before World War II, the United States had no permanent agency specifically charged with gathering intelligence (that is, information) about the actions and intentions of foreign powers. Partly in response to intelligence failures of the sort that led to the Pearl Harbor disaster and partly in recognition of America's new international role, Congress created the Central Intelligence Agency in 1947.

The agency's charter charges the agency with (1) coordinating the information and data-gathering activities of various other government departments; and (2) collecting, analyzing, evaluating, and circulating its own intelligence relating to national security matters. Most of these activities are relatively uncontroversial. By far the bulk of material obtained by the CIA comes from readily available sources: statistical abstracts, books, newspapers, and the like. The agency's Intelligence Directorate is responsible for these overt (open) information-processing activities.

The charter also empowers the CIA "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council shall direct." This vague clause has been used by the agency to justify covert (secret) activities undertaken by its Operations Directorate. These activities have included espionage, coups (in Iran in 1953, in Guatemala in 1954), plots to assassinate foreign leaders (Muammar Qaddafi, Fidel Castro), experiments exposing unsuspecting American citizens to mind-altering drugs, wiretaps, interception of mail, and infiltration of antiwar groups. Until Congress limited its activities, the CIA provided military support and assistance to the Contras, including help in mining Nicaraguan harbors.

Critics sometimes point out that the CIA has not ended major foreign policy "surprises" for the United States. Some gaffes have been the result of faulty intelligence (as was the case in the Bay of Pigs), but others were more the result of policymakers' failure to accept or interpret analyses properly. The CIA told President Johnson that bombing North Vietnam would not bring the North Vietnamese into submission. Johnson responded: "Policymaking is like milking a fat cow. You see the milk coming out, you press more and the milk bubbles and flows and just as the bucket is full the cow with its tail whips the bucket and all is spilled. That's what the CIA does to policymaking."²² The usual response to intelligence failures is to investigate, then propose structural changes in institutions, but at least one analyst claims that "intelligence failure is political and psychological more often than it is institutional."²³ Even the best-designed intelligence network could not prevent the United States from being caught by surprise some of the time.

The basic dilemma posed by the CIA and the intelligence community, though, concerns the role of covert activities. Covert operations

raise both moral and legal questions for a democracy. Are they, as Allen Dulles, Eisenhower's CIA director, believed "an essential part of the free world's struggle against communism"? Or are they antithetical to a democracy that espouses open government, free elections, and the principle of self-determination? And if covert activities are deemed necessary and appropriate, how do we reconcile them with the basic principles of American government? For example, should the principle of checks and balances be applied to secret operations? Although the CIA's covert activities are supposed to be approved by an NSC subcommittee, the president himself is not always briefed about them.

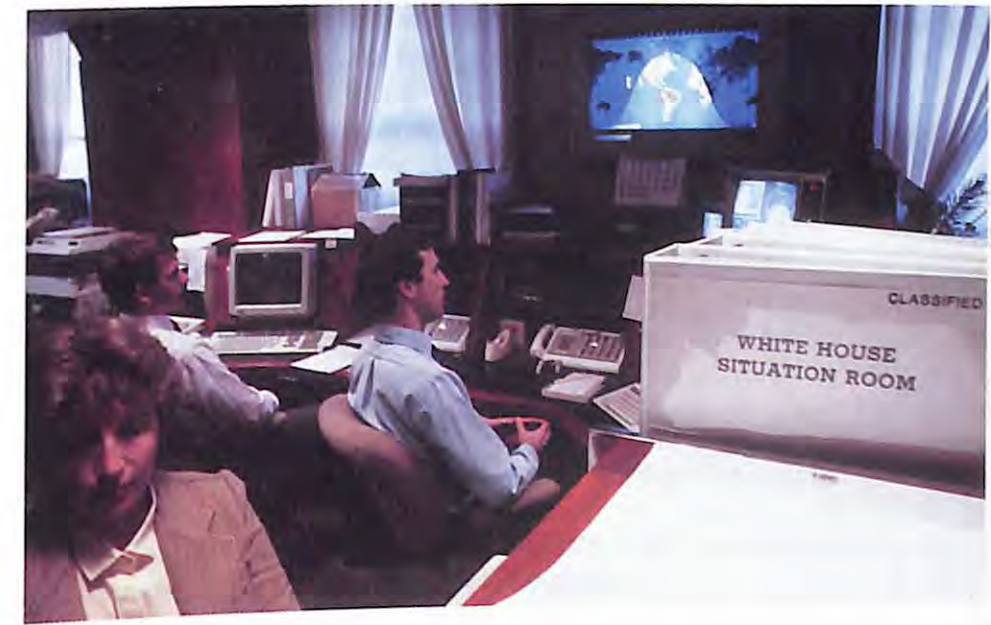
Congress has wrestled with the problem of the secrecy necessary for successful operations for more than a decade. In 1975, it passed the Hughes-Ryan Amendment, which required all covert activities of the CIA to be reported to the appropriate congressional committees. In 1981, in the Intelligence Authorization Act, Congress required all intelligence agencies to inform appropriate committees, not only of current covert operations, but also of "significant anticipated operations." That act also reduced from eight to two the number of committees that must be informed of secret activities. Yet policymakers intent on conducting covert operations outside the view of Congress have also turned to vehicles other than the CIA. In the Iran-Contra affair, for example, the National Security Council became heavily involved in secret missions.

The National Security Council

The National Security Council is a permanent group of advisers created to help the president integrate and coordinate the details of domestic, foreign, and military affairs as they relate to national security. The NSC consists of the president, the vice president, the secretaries of state and defense, and the chairman of the Joint Chiefs of Staff, and others appointed by the president. NSC discussions can cover a wide range of issues, including, for example, U.S. support for the Contras in Nicaragua or revisions of U.S. policy in the Middle East. In theory, at least, NSC discussions offer the president an opportunity to solicit advice, while allowing key participants in the foreign policymaking process to keep abreast of the policies and capabilities of other departments.

In practice, the role played by the NSC has varied considerably under different presidents. Truman and Kennedy seldom met with the NSC; Eisenhower and Nixon brought it into much greater prominence. During the Nixon administration, the NSC was critically important in making foreign policy. Much of this importance derived from the role played by Henry Kissinger, Nixon's assistant for national security affairs (the title of the head of the NSC staff). Under Nixon and Kissinger, the NSC staff ballooned to over one hundred—in effect, a little state department in the White House. Kissinger also used his staff for direct diplomacy and covert operations.

During the Reagan administration, the NSC itself engaged in covert operations, including the Iran-Contra affair. By keeping the Iran-Contra matter within the NSC, which has been almost completely exempt from outside scrutiny, staffers hoped to preserve secrecy, and, more important, to avoid the possibility that Congress would prohibit the operation.



Situation: Top Secret

The National Security Council (NSC) is the committee that advises the president by integrating domestic, foreign, and military affairs related to national security. It operates from the White House Situation Room, located in the super-secure basement of the White House West Wing. NSC staff members daily assemble a world intelligence briefing from thousands of sources, including satellite photos, spy reports, and news reports. From here, Lieutenant Colonel Oliver North, with the approval of National Security Adviser John Poindexter, launched a covert plan to trade arms with Iran in exchange for Americans held hostage in Lebanon.

THE PUBLIC, THE MEDIA, AND FOREIGN POLICY

A great difficulty Tocqueville predicted for democracies in foreign affairs stemmed from the changeable views of the mass electorate. He believed foreign relations required patience and persistence in the pursuit of long-term goals. But the public could be fickle, unwilling to set aside short-term gains for long-term security. In response to domestic pressures, leaders could be forced to act in ways that are harmful to foreign policy interests. Their democratic responsiveness might well be detrimental to the long-term success of their foreign policy.

The Public and the Majoritarian Model

Americans as a group know very little about politics but are still very willing to express their opinions about political issues (see Chapter 5). These findings hold for foreign affairs as well as (and perhaps even more than) domestic politics. Only about 15 percent of Americans pay attention to foreign affairs.

Americans are quick to tell policymakers what should be done, but they rarely can provide guidance on how to do it. Consider the public's response to a March 1969 poll on the Vietnam War. Of those polled, 52

percent—a clear majority—believed that our involvement in Vietnam was a mistake. When asked what the United States should do next in terms of the war, 32 percent advised all-out war; 26 percent wanted American troops pulled out of Vietnam; 19 percent agreed with the current policy; and another 19 percent wanted to end the war as soon as possible.* Obviously, Americans were unhappy about the policies being pursued in Vietnam. However, they were unable to reach a consensus on how to change those policies.

The public's opinions on foreign policy issues are also extremely volatile. The American people have historically been willing to "rally 'round the flag" and back presidential foreign policies, particularly in crisis situations. But they are willing to do so only for relatively short periods of time. President Carter enjoyed increased public approval following the seizure of American hostages in Iran. That added support helped him win a victory over Senator Edward Kennedy of Massachusetts in the 1980 Democratic primaries. But Carter's inability to resolve the hostage situation contributed to his defeat by Ronald Reagan a few months later.

President Reagan's commitment of troops to Lebanon dragged on for over a year with little popular support, until a terrorist bombing claimed 241 American lives. When that slight increase in support waned and his policy in Lebanon threatened to become an election issue, the president withdrew the marines. Reagan found more support for the invasion of Grenada in 1983 and the American bombing in Libya in 1986. But both of these operations were over quickly. The moral here is clear: A president had better be able to produce a short-term success or expect to lose his constituency—exactly what Tocqueville would have predicted.

Those who support the majoritarian model of democracy might argue that the people are capable of evaluating the benefits and costs of a foreign policy. But this does not mean that the public can make foreign policy. The idea that American foreign policy is a reflection of mass opinion is crude and simplistic because "policy formulation does not derive from the simple preferences of an uninformed, uninterested, unstable, acquiescent and manipulable 'public voice'."²⁴ In short, policymakers must look elsewhere for their cues. In foreign affairs, as in other areas of American politics, the majoritarian model does not really seem to describe American democracy.

Interest Groups and the Pluralist Model

Most people take an interest in foreign policy issues when they believe those issues affect them directly. Most auto workers and manufacturers favor import restrictions on Japanese cars. Many Jewish citizens pay close attention to America's relationship with Israel. These individuals often join unions or other organizations that present their policy positions to policymakers.

On foreign affairs issues, two of the most prominent kinds of lobbies include businesses and unions, often seeking trade protection, and ethnic groups, looking for support for their fellows in the "old country." More

* The remaining 4 percent made other responses.

recently, and in keeping with the current lobbying boom in Washington, foreign governments have begun to hire high-powered Washington lobbying firms to represent their interests (see Feature 9.1, page 324).

In general, the impact of these groups varies with the issue. But lobbying seems to be more effective when it takes place behind the scenes and deals with noncrisis issues that are not considered important by the public at large. Interest groups generally are more effective in maintaining support for the status quo than in bringing about policy changes.²⁵

As with domestic issues, there is a tendency for foreign policy interest groups to counterbalance each other. The Turkish lobby tries to offset the Greek lobby; the Arms Control Association or the Federation of American Scientists may oppose the American Legion or the Veterans of Foreign Wars on issues of détente and military spending. The result is that "foreign policy making resembles a taffy-pull: every group attempts to pull policy in its own direction while resisting the pulls of

Arabs versus Israelis

Rock-throwing Palestinians confront Israeli troops in the Israeli-occupied West Bank territory. Israel's swift and harsh response to the 1987 Palestinian uprising weakened its wide popular support among Americans. The uprising continued through 1988 as presidential candidates Michael Dukakis and George Bush dodged offering specific solutions to an intractable problem.



others, with the result that policy fails to move in any discernible direction. The process encourages solutions tending toward the middle of the road and maintenance of the status quo."²⁶

The Media and Foreign Policy

A potentially powerful source of influence on both public attitudes and policymakers' actions is the media—television, radio, newspapers, and magazines. Do the media shape foreign policy? Television coverage of the Vietnam War is often cited as one reason why people turned against that war (see Politics in the Information Age 19.1). Media attention to the Iranian hostage crisis kept the issue in the public eye for over a year. News of the Iran-Contra affair filled newspapers, magazines, and television screens for months. But the media's impact on the public is limited. Most people simply do not follow foreign affairs or care much about foreign policy.

The media themselves try to cater to their audience and generally do not devote very much space or time to foreign policy issues. When they do, however, their impact on the general public tends to be more

POLITICS IN THE INFORMATION AGE 19.1

Press Coverage of Combat: Three Models

One area in which the requirements of democracy run headlong into the requirements of national security is the press coverage of military operations. Freedom of the press is one of the fundamental rights of citizens in a democracy, who must have access to accurate information to be able to evaluate their government's performance. In a democracy, the government responds to the people's will; it doesn't create that will. But the safety of soldiers and the success of military operations could be jeopardized if too much information were available to the public—and potentially to the enemy—too soon. But how much is too much, and who is the judge?

During World War II, war correspondents accompanied invading troops (after signing waivers releasing the U.S. government from any responsibility for their safety). The stories they filed were subject to military censorship and delay, ostensibly to protect the lives of American troops. In Vietnam, by contrast, reporters were able to shoot film that appeared immediately on television news, with virtually no military censorship. Many people credit the erosion of popular support for the war to the graphic portrayal of horrors on the nightly news. Some also argue that reduced domestic support for the war made it harder for American troops in the field. Indirectly, then, press coverage of the war in

Vietnam may have undermined the safety of American troops.

In 1983, during the invasion of Grenada, news reporters were not allowed to land with the marines. Only after several days were they given access to the island, and then only on a restricted basis. Ignoring a long tradition of war correspondents working in battle zones, the Department of Defense claimed reporters were excluded for their own safety. Journalists, however, charged that the department was motivated far less by concern for reporters' safety than by its own interest in public relations—that is, in making sure that the official version of the Grenada invasion was the one the American people received. The first films of the invasion shown on network television were produced by the Department of Defense and did not show fighting; they dealt with the justification for the invasion by focusing on a cache of Cuban arms stored on Grenada. Obviously, the reporters argued, the Defense Department wanted to be sure that the invasion would be portrayed in a favorable light so that the public would support it.

Which, if any, of the three press coverage models—World War II, Vietnam, or Grenada—puts democratic values and security demands in the proper balance?

indirect than direct. One observer called it a "two-step" process.²⁷ The foreign policymakers and the "attentive public" obtain most of their information from the media. This information eventually filters down to the general public through their communications with clergy, teachers, union officials, and other opinion leaders.

The media also set the foreign policy agenda (see Chapter 6). By giving play to a particular issue, policy, or crisis, they are able to capture the public's consciousness and to focus attention on it. The media "may not tell us what to think, but they tell us what to think about."²⁸ When details of the Iran-Contra affair began to unfold, the media devoted enormous amounts of attention to it, and the public generally approved of the media coverage.²⁹ Yet when Colonel North appeared before the televised sessions of the congressional committee investigating the operation, a new word, *Olliemania*, was coined to describe his sudden popularity.

The agenda-setting role of the media can have an impact on foreign policymaking in another way. Remember that interest groups tend to be most effective in noncrisis situations that are not of general concern. By calling attention to a particular issue, then, the media can dilute some of the influence of organized special interest groups. And in a crisis situation in which quick action is called for, media attention can work to the detriment of an interest group. On the other hand, by keeping an issue before the public, the media can increase the likelihood that it will become the focus of some interest group's lobbying efforts.³⁰

THE FOREIGN POLICYMAKING PROCESS

Now that we have looked at the historical context of American foreign policy and the cast of characters, we examine the policymaking process itself. How is foreign policy made?

Sources of Information for the Executive Branch

By constitutional provision and practical control of resources, the president is the lead actor in the foreign policymaking process. A president comes to the job with a world-view that helps him interpret and evaluate international events. And as chief executive, he commands tremendous resources, including information and personnel. The Pentagon, the State Department, and the CIA are among his main sources of information about the outside world, and their staffs both advise him on foreign policy and implement that policy.

Often, presidential advisers present conflicting information or offer different, even contradictory, advice. Their views on issues can be influenced by their positions in the bureaucracy. For example, the secretary of state might lean more toward diplomacy, while the secretary of defense might push for a show of force. Advisers often compete for the president's ear or bargain among themselves to shape administration policy. During the Iran-Contra matter, NSC staffers won out over others in the administration, including Secretary of State George Shultz.

A president's sources of foreign policy advice are not limited to executive branch officials. Members of Congress can try to pressure the White House into a particular course of action. And foreign governments also can attempt to move an administration in a certain direction. For example, the Israelis, who wanted to prolong the Iran-Iraq war, were eager to convince American policymakers to make arms available to the Iranians.

The president's most important task in the foreign policymaking process is figuring out who to believe—those who agree with his policy predispositions or those who challenge them. The wrong choice can be extremely costly. Some observers argue that President Johnson's tendency to surround himself with yes-men prevented him from hearing critical analyses of the Vietnam War until very late. President Reagan claimed that he was unaware of important dimensions of the Iran-Contra operation, including the critical fact that funds from the sale of arms to Iran were being used to resupply the Contras. His management style was blamed for these lapses. He was further hampered by the fact that NSC staffers shielded him from the responsibility for decisions. They called this **deniability**, devising methods (among them, shredding documents) that made it impossible to trace decisions to the president. In addition, they made decisions on their own that should have been made by the president himself. Reagan was also criticized for relying too heavily on the NSC and ignoring the intelligence and advice of the foreign policy professionals in the CIA and the Departments of State and Defense, and the members of his cabinet.

Congress and the President

Once a president has decided on a policy, he may be able to carry it out without congressional approval if he has a clear constitutional mandate (for example, recognizing another government or putting the marines on alert). When his constitutional authority is shaky and congressional approval appears unlikely, he may use one or more of the techniques discussed on pages 710–713. A president's third alternative is to ask Congress for the funds or authority to carry out a program.

The president's command of information and personnel gives him a considerable advantage over Congress. Although legislators have ample access to independent sources of information on domestic issues, their sources on foreign affairs are much more limited. Although members of Congress may go on fact-finding tours or get information from lobbyists, they don't begin to have a fraction of the president's sources of information. So they are forced to rely heavily on the executive branch for information.

The president can use his information advantage to swing votes. Just two days after the House vote against Contra aid in March 1986 (and shortly before the Senate voted 53 to 47 in favor of it), the White House announced that fifteen hundred Nicaraguan troops had invaded Honduras in pursuit of the Contras. This release of information embarrassed House members who had voted against the president and may have helped him win support in the Senate.



Lonely at the Top

Being commander in chief of the armed forces is an awesome responsibility. Stunned by a resurgence of enemy activity during the Vietnam War in early 1968, President Lyndon Johnson decided not to seek re-election. Here in July 1968, the president listens to a tape-recorded message from his son-in-law, who was serving in Vietnam.

In addition, the chief executive's personnel resources give him considerable ability to influence events. Many analysts argue, for example, that the attacks on American vessels that sparked the Gulf of Tonkin Resolution during the Vietnam War were pretexts that President Johnson seized on to expand American involvement. The House of Representatives imposed limits on the use of American personnel in Nicaraguan combat areas.

Another potential disability for Congress in the foreign policy process is its fragmented authority over international issues. Different congressional committees have authority for the armed services, for foreign relations, for intelligence oversight, for foreign trade, and for development. There is no congressional equivalent of the National Security Council to mold a coherent approach to foreign policy. Granted, there are often disagreements within the executive branch, and these can spill over into the congressional arena. For example, a Pentagon official

might quietly appeal to friendly members of the Armed Services Committees to restore defense cuts made in the president's proposed budget. Disaffected officials might leak information. But by and large, the executive is much better equipped to offer a unified approach to foreign policy.

Faced with its disadvantages in terms of information, personnel, and organization, the general tendency is for Congress to accede to the president's foreign policy programs.

Lobbies and the "Lobbyist in Chief"

When Congress considered aid to the Contras in June 1986, supporters and opponents of the measure made enormous lobbying efforts. Those in favor of aid included the leaders of the United Nicaraguan Opposition (the Contra group that the United States backs) and various conservative organizations, among them, the National Endowment for the Preservation of Liberty, which launched its own \$2 million pro-Contra campaign and hired a professional public relations and lobbying firm to represent the Contra cause. Arrayed on the other side were many members of the clergy and peace groups, who publicized the human rights abuses of the Contras. The opponents of aid also had their own professional publicity firm.

The single most effective lobbyist on the issue was not really a lobbyist at all; it was the president. Back in March, White House staffers had used inflammatory rhetoric to brand those who opposed the administration as procommunist. This incensed many members of Congress. By June, the administration had toned down its rhetoric, and Ronald Reagan began to use his influence to generate support for his cause. He made a conciliatory speech calling for a return to the kind of bipartisanship that had supported President Truman's request for aid to Greece and Turkey almost forty years earlier. He worked hard on the sixteen Republicans who had voted against him in March, assuring them that the aid was necessary. He was able to convince five, including Chalmers Wylie of Ohio, who acknowledged that he had difficulty naming the countries of Central America and had decided to defer to the president's judgment, pointing out that "he's a very persuasive fellow."³¹ Reagan was also able to convince three Democrats to change their votes, giving him a majority.

If Ronald Reagan was the best lobbyist for his own policy, Daniel Ortega, leader of the Sandinista government, was probably the worst for his cause. Opponents of Contra aid found Ortega's ideological orientation increasingly difficult to defend. His trip to Moscow and a Nicaraguan incursion into Honduras made it difficult for wavering representatives to refuse Reagan's request.

Policy Implementation

A president may decide on a course of action, and Congress may authorize it, but the policy still must be carried out. The question of who should carry out a particular policy is not always easy to answer. Although the basic functions of each department and agency are spelled

out, at times they overlap. When they do, organizations may squabble over which should perform a particular mission. During the Cuban missile crisis, for example, there were disputes between the CIA and the military concerning who should fly reconnaissance flights over Cuba.

When new provisions for Contra aid were approved in 1986, some potentially divisive disputes over implementation surfaced after the bill had cleared the House. They concerned the division of responsibility for the aid package. Although technically the State Department administered the aid program, control over the newly authorized funding seemed to pass to the military and the CIA.

Congress, of course, is responsible for overseeing the implementation of programs. This means, among other things, monitoring the use of funds and evaluating the effectiveness of programs. Of course, Congress cannot monitor what it does not know about, and a major attraction of the Iran-Contra plan for NSC staffers was that it allowed them to avoid Congressional oversight. Indeed, when called to testify before Congress about arms sales to Iran and covert actions in Nicaragua, North and other officials lied repeatedly to Congress—according to North's later testimony. And he destroyed official documents that might have detailed his activities. North and others justified their actions as necessary to protect against leaks. Members of Congress complained that they could not fulfill their legislative function if NSC staffers provided information to a wide range of foreign officials and private citizens in Iran, Israel, and Nicaragua while simultaneously denying it to American officials who had both a legal right and a responsibility to know.

DEFENSE POLICY

At the beginning of this chapter, we noted that adherents to the Munich and Vietnam paradigms have very different attitudes about how and when to use the tools of American foreign policy. It would be far too simplistic to say that those influenced by the Munich paradigm see military force as the only choice, and that those influenced by the Vietnam paradigm would never resort to force. But the two groups do differ significantly in the emphasis they place on the country's military, economic, and diplomatic resources. In this section and the next, we examine the military and economic tools available to policymakers and some of the ways in which adherents to each of the two paradigms think they should be used.

How Much Should We Spend?

Most people agree that in order to protect national interests, the United States needs an adequate defense. But beyond this point, agreement breaks down. What constitutes an adequate defense? To what extent should defense spending take priority over other kinds of spending?

Ronald Reagan came to office committed to a strong national defense. He also pledged to cut the national budget. During his administration, the national government did trim back expenditures for domestic

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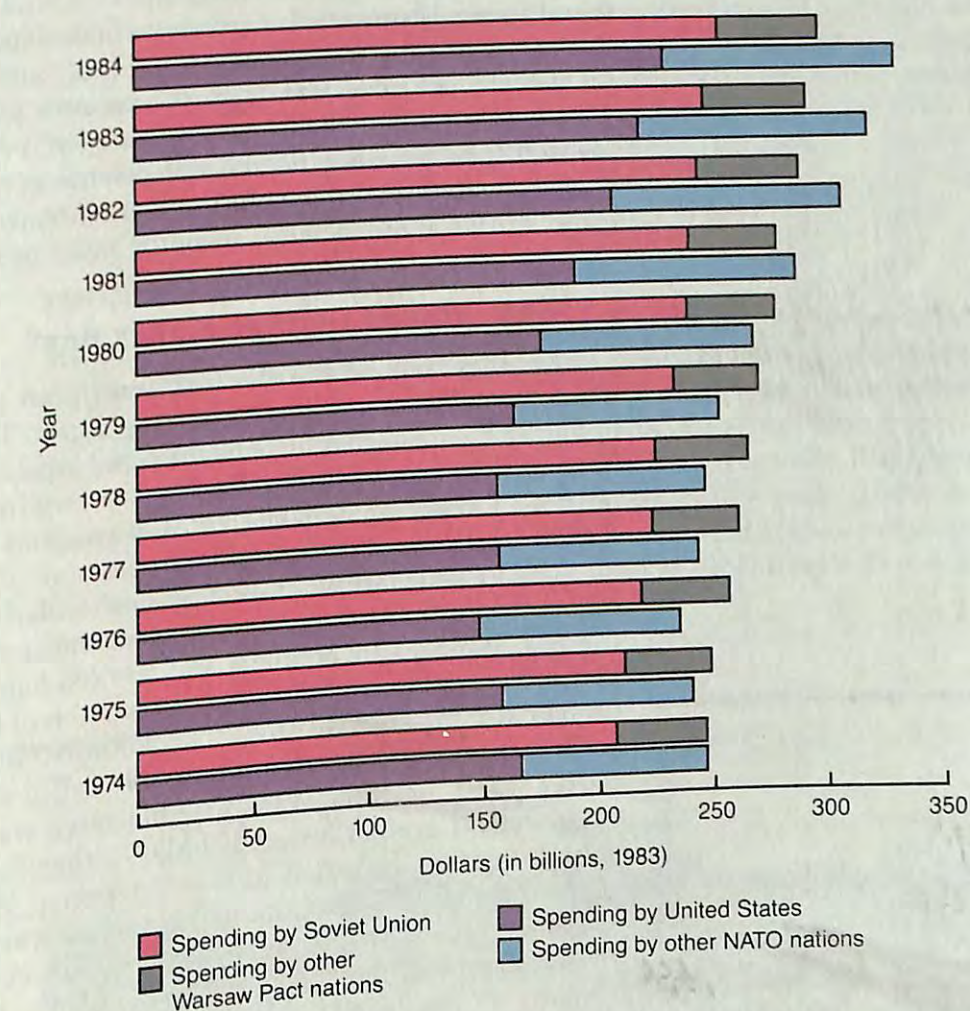
programs, but defense spending increased enormously. The president maintained that the level of the defense budget was not really under his control—that it was established in Moscow. He claimed that the only way to gauge the adequacy of American defense is by comparing our military spending with that of the Soviet Union (see Compared With What? 19.1).

Critics of large defense budgets ask if the United States can defend itself adequately by investing huge amounts in sophisticated military hardware while cutting back on funds to develop “human capital”—that is, funds to prepare people to do the job. Without programs for children's nutrition and education, we threaten a valuable resource. Other critics insist that high levels of defense spending throw the entire national budget out of line, creating deficits that could endanger the overall performance of the U.S. economy. A weak economy, in turn, could make

COMPARED WITH WHAT? 19.1

Defense Spending, 1974–1984

President Reagan argued that the level of U.S. defense spending is set in Moscow. In other words, America's military spending must keep pace with that of the Soviet Union. This graph compares the total defense expenditures for the United States and the Soviet Union. It shows that the Soviet Union consistently outspends the United States. The picture changes, however, when we add the defense spending of NATO nations and the Soviet bloc (the Warsaw Pact nations).



Source: Data from U.S. Arms Control and Disarmament Agency, *World Military Expenditures and Arms Transfers* (Washington, D.C.: U.S. Government Printing Office, 1986).

the nation more vulnerable to outside pressures. By increasing defense outlays, then, we may actually be making the United States less secure. And they point to the experience of other great powers in modern history. Nations that achieved great strength through economic or technological advantages have tended to channel vast resources into protecting their position through military means. As the military sector of a nation grows, however, the other areas of society tend to stagnate, and the nation loses the creative edge that was once the source of its advantage.³²

Finally, there are critics who object to enormous defense spending on moral and political grounds. Eisenhower's warning about the military-industrial complex is a case in point. In a kind of vicious circle, military spending feeds powerful interests, which depend on that spending and in turn exert pressure to increase it. Huge amounts of money are spent for defense, and every state in the country profits from that spending. The close relationships among Pentagon personnel, elected and appointed government officials, and defense contractors has led to widespread corruption in the military procurement process. To break the cycle, critics argue, defense spending must be cut.

What Should Defense Money Buy?

Another important issue involved in our defense policy is deciding what the defense budget should be spent on. There are many important options here in terms of personnel and equipment. One is whether to have a volunteer military force or to require service by some or all citizens. Others concern the kinds of weapons systems to build and the mix of nuclear and conventional forces.

The Reagan administration was particularly supportive of high-technology weapons systems, both nuclear and conventional. It championed the B-1 and Stealth bombers and worked hard to secure congressional authorization for the MX, a new generation of land-based intercontinental ballistic missiles (ICBMs). The administration also launched a large-scale research and development effort called the **Strategic Defense Initiative (SDI)**, or "Star Wars." Its objective was to build a system that could defend against Soviet ICBMs. In the absence of that defense, the only protection against ICBMs is deterrence, the fear of retaliation that keeps the superpowers from using nuclear weapons.

Some critics oppose weapons expenditures, not because they oppose all forms of military spending, but because they believe that certain systems do not meet the nation's defense needs. They faulted SDI, for example, as being both unworkable and far too expensive. Even a system that could defend perfectly against ICBMs would not halt the threat of nuclear extermination. The technology would not be effective against sea-launched missiles fired from offshore submarines or cruise missiles flying close to the ground. Cutbacks in defense budgets have forced the Pentagon to rethink its priorities as well, to think more carefully about which weapons systems to purchase. Faced with the necessity of making a choice, many Pentagon officials favored alternatives to the SDI.

Critics also make a persuasive case against expenditures for large, costly high-technology weapons. They argue that bigger and more expensive is not always better. Lower-technology weapons break down less

often and require less maintenance. They are cheaper to repair and operate. This means troops are able to gain more training experience with them and can become more proficient at using them, experience that could be critical in a combat situation.³³

Defense Policy and Foreign Policy

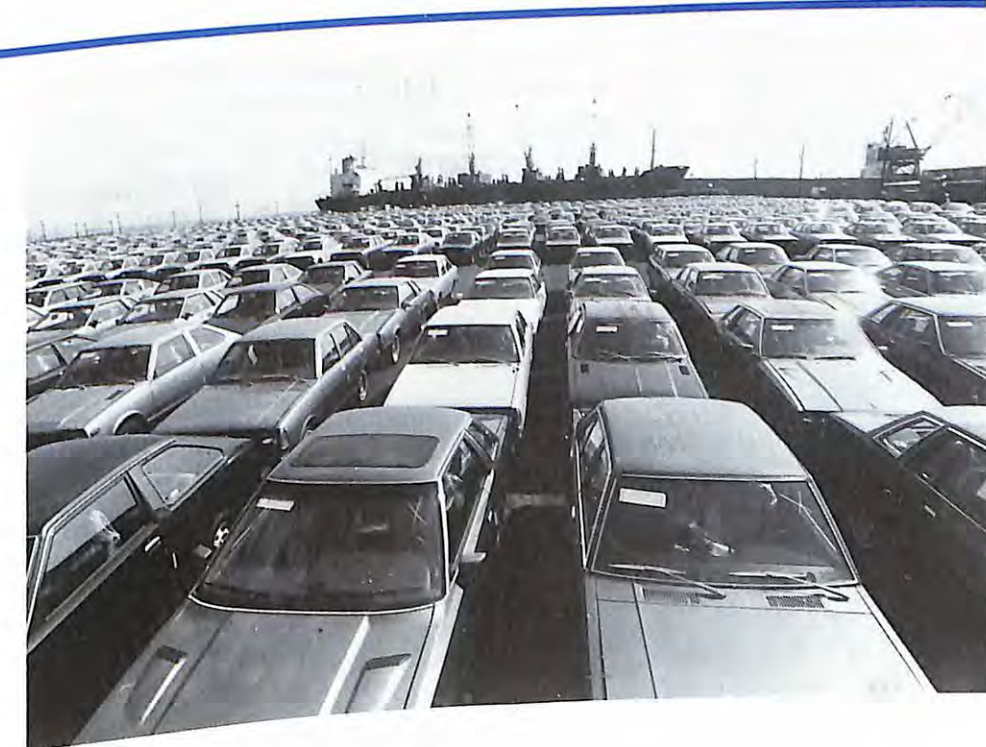
What is the relationship between defense policy and foreign policy? Although some believe that a strong defense is the cornerstone of foreign policy, others recognize that not every foreign policy objective can be achieved through the application of military force alone. The use of force may have helped the United States meet its objectives in Grenada and Libya, but conditions in more complicated situations (Lebanon, Central America) demand the use of other foreign policy tools. From another perspective, our weapons arsenal can be used as a bargaining chip to exact concessions in our negotiations with foreign powers.

ECONOMIC POLICY

Just as it would be wrong to say that Vietnam-paradigm adherents oppose all use of force, it would also be wrong to imply that Munich-paradigm supporters reject all methods short of force. The Reagan administration did provide substantial economic aid to Latin American countries, for example. This kind of aid is one of many economic tools the United States has at its disposal in meeting its foreign policy goals. These economic tools—including development aid, preferential trade agreements, and loans on favorable credit terms—are used as incentives and rewards for nations that support U.S. policies.

Japanese Compete for U.S. Markets

Japanese cars captured a growing share of the American market in the 1970s and 1980s. Spurred by the U.S. auto industry, the government imposed import quotas on Japanese cars, forcing prices up. The Reagan administration, preferring freedom of the marketplace, opposed such protectionism. When the quotas were lifted, the Japanese imposed their own restraints in order to keep their prices (and profit margins) high. The soaring value of the Japanese yen against the U.S. dollar pushed Japanese car prices to new heights in 1988.



Economic tools like these may also be used as sanctions. When the United States wanted to oust Noriega, it used its substantial control over the banking and currency system of Panama as a means of pressuring him. **Embargoes** and **boycotts** are used to punish nations whose policies we do not approve of. In recent years, under the Carter administration, the United States imposed a grain embargo against the Soviet Union—that is, the United States stopped wheat shipments to the Soviet Union—to convince the Russians to leave Afghanistan. Shortly after Castro took power in Cuba, the United States imposed a boycott on Cuban products; it refused to allow American citizens to import Cuban sugar, cigars, and other goods.

Neither the grain embargo nor the Cuban boycott has proved particularly effective in furthering foreign policy goals. The Soviets stayed in Afghanistan to the end of Reagan's presidency, and Castro's power in Cuba is still secure. The two policies did have somewhat different effects at home. American pluralist democracy helps explain why one was dropped and the other remains in effect. American grain farmers were seriously hurt by the Soviet grain embargo. They were caught without a market for huge amounts of wheat that originally were destined for the Soviet Union. They were a vocal minority, and the nation heard them. When the embargo became generally unpopular, it was lifted by President Reagan. In contrast, the boycott of Cuban sugar has helped America's domestic sugar industry. Any attempt to lift the boycott would be resisted, not only by the large community of anti-Castro Cubans now living in this country, but also by the sugar industry, which would suddenly have to compete with cheaper Cuban sugar. Because there is no strong pressure to remove the boycott, it remains in place. And pluralist politics triumph.

In addition to embargoes and boycotts, import restrictions (tariffs, quotas, nontariff barriers) are another "negative" economic tool.* As we pointed out in Chapter 9, there can be strong domestic pressure to adopt import restrictions. Essentially, unions and manufacturers want to keep foreign goods from flooding the American market and driving them out of business. But protectionism is a double-edged sword. The countries whose products are kept out of the United States retaliate by refusing to import American goods. And protectionism complicates the foreign policymaking process enormously. It is a distinctly unfriendly move to make toward nations that may be our allies.

SUMMARY

When America emerged as a superpower following World War II, the common experience of that war forged a consensus on foreign policy: Communism was the threat, and that policy focused on containing Soviet expansion. The Vietnam War challenged that world-view and shattered the consensus. Some of the

pluralism characteristic of other aspects of our political system began to characterize foreign policy. Military force was not the only tool at hand to protect American interests; both economic aid and diplomacy began to play a part in the policymaking process.

Responsibility for foreign policy is shared by the president, Congress, and several executive depart-

* Nontariff barriers (NTBs) limit imports by setting product specifications for imported goods.

ments and agencies. In the absence of widespread consensus, foreign policy can become a political football in contests between the executive and Congress and among the bureaucracies. These contests are frequently played before a mass audience on live television. It was exactly the potential for this sort of conflict that led Tocqueville to his conclusion that democracies are not very good at foreign politics. And it was exactly this sort of conflict that led NSC staffers to skirt the law, to replace accountability with deniability.

We began this chapter by asking whether foreign policy is different from other kinds of policy. Certainly the nature of democracy—the public's right to know—at times conflicts with the planning and implementation of foreign policy. But when government officials circumvent the safeguards—the system of checks and balances that protect American freedom—they risk domestic order in their pursuit of world order. Can Americans find a way to support freedom, order, and equality abroad while preserving these values at home? This may be the ultimate challenge of democracy.

Key Terms

Munich paradigm
Vietnam paradigm
détente
isolationism
globalism
Cold War
containment
Marshall Plan
zero-sum game

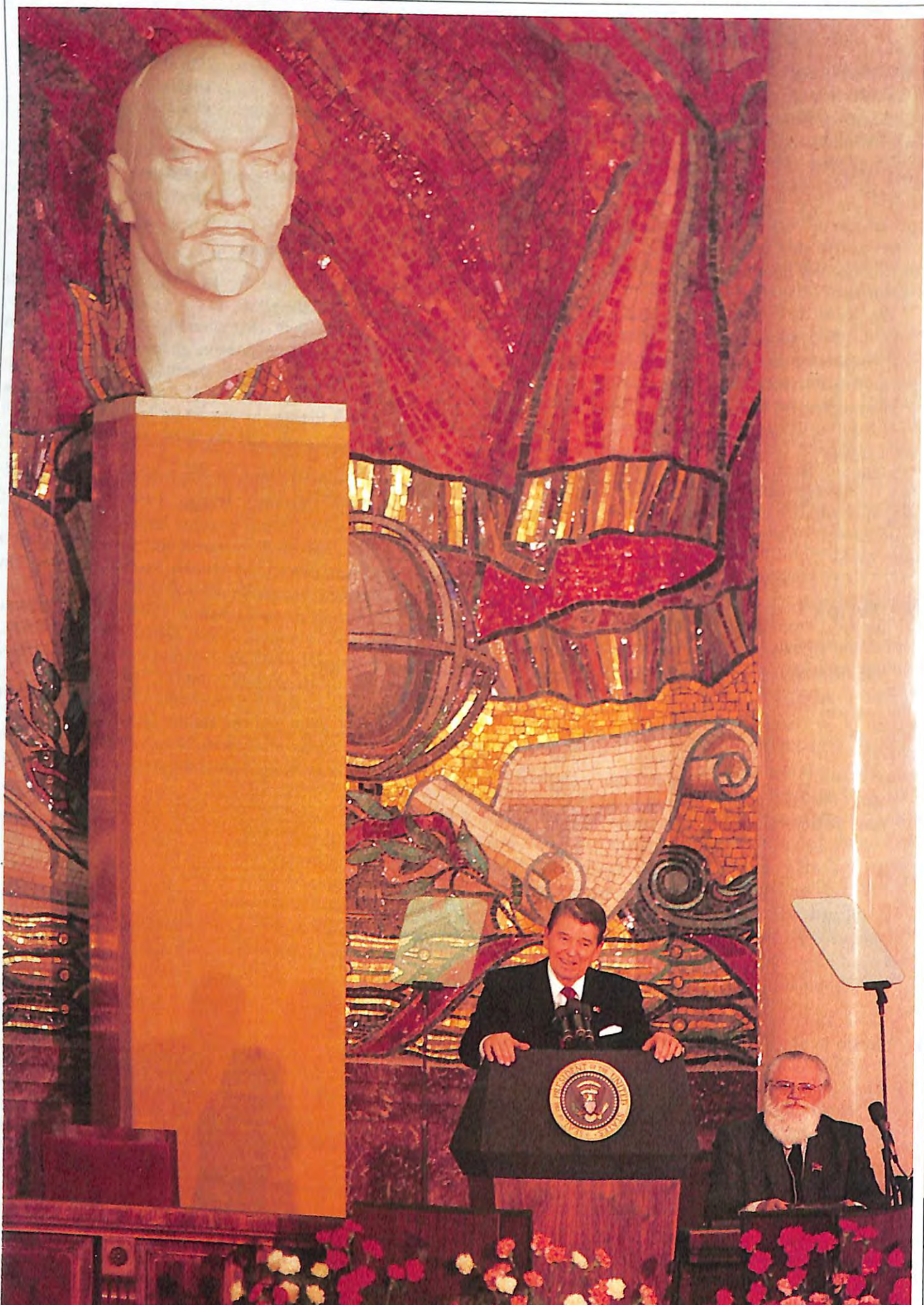
military-industrial
complex
deterrence
mutual assured
destruction (MAD)
flexible response
nation-building policy
Vietnamization
Nixon Doctrine

linkage
executive agreement
discretionary funds
transfer authority
reprogramming
excess stock disposal
undeclared war

War Powers Resolution
special envoy
deniability
Strategic Defense
Initiative (SDI)
embargo
boycott

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Epilogue

Who would have thought it? There was President Ronald Reagan at Moscow State University on May 31, 1988, speaking under a colossal bust of Lenin, leader of the Bolshevik Revolution! This was the same arch anticommunist president who, just five years earlier, had called the Soviet Union an "evil empire." Asked about that statement, Reagan replied, "I was talking about another time, another era." Soon after leaving Moscow, Reagan praised Mikhail Gorbachev, general secretary of the Communist party of the Soviet Union, as "a serious man seeking serious reform."¹

Reagan's description was apt. Gorbachev had undertaken major political reforms: a program of *perestroika* to restructure the economy of the Soviet Union and a policy of *glasnost* to open political life there. The impact of *glasnost* was already evident. In the summer of 1988—a month after Reagan left Moscow—the Communist party of the Soviet Union held an extraordinary conference. Nearly five thousand delegates gathered in Moscow's Palace of Congresses to debate Gorbachev's policies. For four days, they spoke their minds about Soviet economic and political life with unprecedented candor, while microphones and television cameras broadcast the proceedings.

Speakers criticized the bureaucracy's performance, the quality and supply of goods, the treatment of the environment, even the benefits of Gorbachev's economic restructuring. Top Party and government leaders were not immune to criticism. Delegate Vladimir I. Melnikov, a minor Party official, charged: "People who in previous times actively conducted the policy of stagnation cannot now be on, or work in, central party or Soviet organs in the period of restructuring." Gorbachev interrupted, saying, "We're sitting here and don't know. Is he talking about me or somebody else?"² Melnikov promptly replied, "I would refer first of all to Comrade Solmentsev, and to Comrades Gromyko, Afanasyev, Arbatov and others."³ The shocked delegates recognized the names of a senior member of the ruling politburo, the president of the Soviet Union, the editor of *Pravda*, and the powerful head of the Institute for the Study of Canada and the United States.

The Soviet people were stunned when they saw and heard the exchange on television news that evening. Natalaya Bachkova, a twenty-five-year-old music teacher, said, "My family's been watching all this and holding our breath." Nail Abdulin, a thirty-two-year-old worker at an electrical power plant, shook his head in amazement "that such a thing could be on television."⁴ A Muscovite artist in her forties said, "I am hearing things on television that weeks ago I would never have whispered over the telephone."⁵

Gorbachev in his closing speech characterized the conference as a "major event" in the history of the Communist party:

This was a truly open party talk about the principal things that concern today the Communists, Soviet people, an attempt to find answers to questions that worry them. This [Palace of Congresses] has not known such discussions, comrades, and, I think, we will not err from the truth by saying that nothing of the kind has occurred in this country for nearly six decades.⁶

And Gorbachev admitted that his policy of *glasnost*, which he equated with democratization, would provide a "serious test" to the Party.⁷

Gorbachev had already encountered problems with *glasnost*. In 1987, citizens in Leningrad formed an environmental action group to protest the construction of a dam outside the city. Wrapping themselves in Gorbachev's call for more democracy, they organized rallies and lobbied government officials, arguing that the dam was an environmental hazard and that the funds could be spent better elsewhere.⁸ Although citizen action groups are common in the United States, they are not in the Soviet Union, where formation of public policy had been determined by the Communist party.

As more groups with political objectives sprouted across the country, the Soviet government had trouble drawing the line between those that supposedly showed a healthy sign of civic interest under *glasnost* and those that promoted anti-Soviet views. *Pravda* cautioned against groups that advocated opposition political parties, independent trade unions, and nationalism. A front-page editorial noted the "clearly illegal character" of their activities: "Without the permission of the authorities, they organize demonstrations, even disturbances. They illegally print and disseminate literature hostile to socialism." *Pravda* dismissed the concept of "pluralism on the Western model" in favor of "the deepening and spreading of socialist democracy."⁹

But it is difficult to contain pluralism, especially in an ethnically heterogeneous society like the Union of Soviet Socialist Republics. Shortly after the Party conference ended, the Soviet Republic of Armenia boldly sought to annex a region populated by Christian Armenians in adjacent Azerbaijan. In turning down the Armenian request, a frustrated Gorbachev sided with law-and-order conservatives in the Soviet legislature, saying: "*Perestroika* requires democratization and *glasnost*, but we can see in this case how under the banner of democratization shameless pressure is being applied by irresponsible people on worker collectives and on the population of the republics and how bodies of power, including the Presidium of the Supreme Soviet of the Soviet Union, are coming under pressure as well."¹⁰

DEMOCRACY: THE CHALLENGE

Democracy is not an easy mode of government, even in countries where it's long established. As Gorbachev is finding out, when citizens are allowed to participate in government decisions from which they previously were excluded, their choices often conflict with existing policies. You remember that in Chapter 1 we noted that public policy in the Soviet Union traditionally has favored order over freedom. By increasing political freedom, *glasnost* inevitably promises some degree of disorder. In Chapter 1 we also talked about the communist government's preference for equality over economic freedom. By relaxing economic controls, *perestroika* sacrifices equality for the economic freedom and growth of private business.

According to capitalist theory, genuine economic freedom will bring more than economic growth to the Soviet Union; it will bring democracy. This theory holds that capitalism brings democracy by decentralizing power among a great number of individuals who have sufficient resources to challenge the government's actions.¹¹ Indeed, most research supports the relationship between capitalism and democracy—certainly the Western model of democracy.¹² Recent research also suggests, ironically, that capitalism even works to further the communist goal of economic equality.¹³ According to this theory, capitalism promotes equality in two ways: (1) by increasing economic growth for the entire society and (2) through democratic processes that invite people who are at the lower end of the income scale to demand and get larger shares of the growing wealth.¹⁴

You have been raised under capitalism and probably accept this theory. But think of people raised under communism. They have been taught that the profit motive produces unfair accumulation of wealth, which violates the principle of socialist equality. Many Soviet citizens strongly oppose private business, the symbol of capitalism. And early reports charged that the new private sectors in the Soviet Union had brought a "general rise in the level of greed," with symptoms of price gouging, profiteering, and scheming to cash in before *perestroika* disappeared.¹⁵ Describing the burning of a private jewelry booth after its owner refused to pay protection money, the weekly *Moscow News* said: "Little by little we are catching up with America. Now we have protection rackets to boast about."¹⁶

When he launched *perestroika*—the most significant change in Soviet economic policy in decades—Mikhail Gorbachev was certainly not responding to public opinion. But we do not expect Soviet policy to respond to public opinion. The Soviet Union, despite *glasnost*, is still far from a democracy. Even the U.S. government, as we have seen, does not always respond to public opinion. Still we call it a democracy. In so doing, we relax the requirement of the majoritarian model of democracy—that government should respond to the people—in favor of an alternative criterion—that government should allow private interests to organize and press their competing claims openly in the political system. This is the model of democracy that the United States presents to the world.¹⁷

DOES GOVERNMENT DO
WHAT PEOPLE WANT?

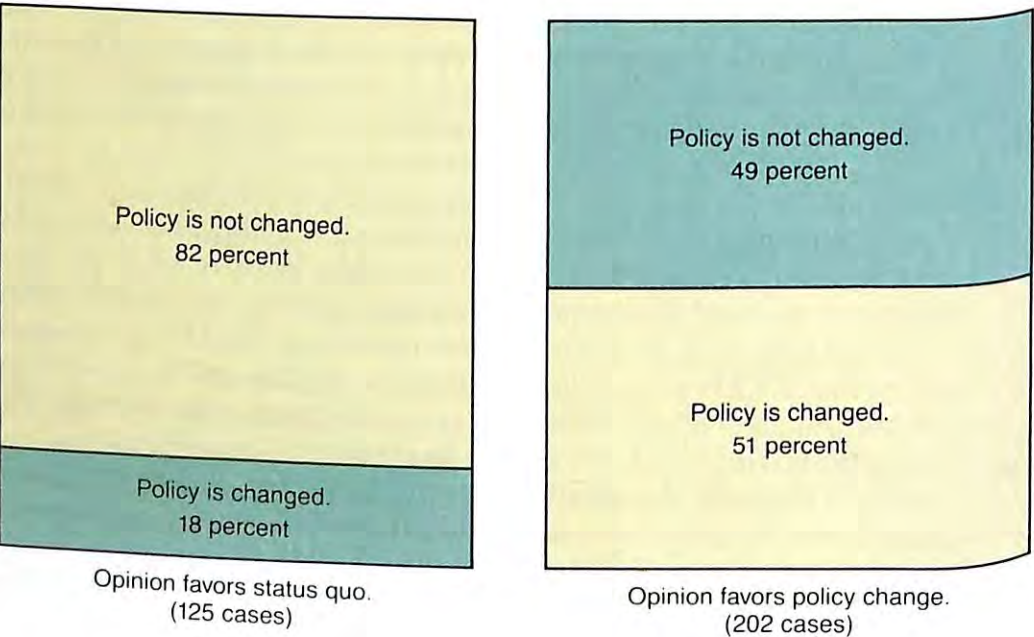
Of course, even if the United States fits more closely to the pluralist than the majoritarian model of democracy, we nevertheless should expect the government to respond to public opinion. But does it? How often? And on what issues?

In assessing whether the U.S. government does what the people want, we rely heavily on two major studies. In one, Alan Monroe compared public opinion on public issues with government policy outcomes for 327 cases from 1960 through 1980.¹⁸ He first asked whether the public favored a change in policy on the issue or preferred the status quo. He then classified subsequent government action as manifesting a "change" or the "status quo." If the public favored a change, and government policy changed accordingly, the policy was judged to be *consistent* with public opinion. Similarly, if the public favored the status quo and government policy continued as before, the policy was also scored as consistent. Obviously, when government policy did not reflect public opinion, the case was counted as *inconsistent*.

Overall, Monroe found that government policy conformed to public opinion on 63 percent of all 327 cases. Although this may seem reassuring for majoritarian democracy, understand that about 50 percent of the cases would be consistent if government policy were decided purely by chance. More interesting, there were important differences in policy outcomes when the public favored a change instead of the status quo. As shown in Figure E.1, government policy was far more likely (82

Figure E.1

Relationship Between Majority Opinion and Policy Outcome for 327 Cases, 1960–1980
The darker color denotes inconsistencies between policy and opinion. (Source: Alan D. Monroe, "Does the U.S. Government Do What the People Want?" [Paper delivered at the Arts and Sciences Lecture, Illinois State University, Normal, 26 October 1987], table 2.)



percent) to match public opinion if the people liked things as they were. If the public favored a policy change, government policy was almost as likely to remain the same as to change.

The other major study proceeded somewhat differently. Benjamin Page and Robert Shapiro pored over thousands of questions asked in national surveys between 1935 and 1979, looking for cases of opinion change.¹⁹ They found 231 instances when opinion moved up or down at least 6 percentage points between two surveys *and* when government policy changed in keeping with opinion. Their study—done independently of Monroe's, covering a longer period, and with different objectives—produced a similar finding: Policy changes were consistent with opinion changes in 66 percent of the cases.²⁰ Looking at it the other way, policies changed contrary to opinions 34 percent of the time. (Remember, about a 50–50 split would be expected by chance anyway.)

Is there enough congruence between public opinion and policymaking to validate the United States' claim to be a democracy? To approach an answer, we have to examine these two studies more closely. When Page and Shapiro calculated consistency between opinion change and policy change for different levels of opinion change, they found that very large changes in public opinion (20 points or more) produced consistent policy changes more than 90 percent of the time.²¹ This suggests that the government responds to major shifts of opinion. Moreover, the authors defend the rationality of the opinion shifts: "When opinion shifts occurred, they were not random or capricious; they were usually related to important changes in citizens' social and economic environments."²²

To learn which policy areas showed more consistency between public opinion and government action, Monroe analyzed his cases by issue type. He found that consistency was greatest on foreign policy issues and least on issues of political reform. He explained that foreign policy is most nearly under the control of the executive and that the public is more apt to accept presidential leadership in foreign rather than domestic affairs. In contrast, issues of political reform—by definition—require policy change, and many reforms—such as abolishing the electoral college or lowering the voting age—require adoption of a constitutional amendment. Monroe concluded that the most important finding from his data is the bias against change in our political process:

An all too typical pattern is for the President to propose some new program which enjoys public support and is favorably received by Congressional leaders, but the bill then languishes in committee, passes one house, but not the other, and is eventually rendered irrelevant by the passage of time. It is not that political leaders are not inclined to favor the same positions as public majorities, for they are. The difficulty lies with the complexity of the institutional structure of both Congress and the bureaucracy, the political power of those representing minority positions, and the effects of lobbying by organized groups.²³

We could argue that government officials should lead rather than follow public opinion. When the U.S. Navy accidentally shot down a civilian Iranian airplane in the Persian Gulf in July 1988, killing 290 passengers, a quick poll found Americans opposed to paying compensation to the victims' families, 49 to 36 percent.²⁴ Yet President Reagan

later announced that the United States would compensate the families. Clearly the president was acting against public opinion. Even if you accept his actions and reject the idea that government should always respond to public opinion, are you satisfied with government that responds to public opinion only about 65 percent of the time?

Monroe believes—as do Page and Shapiro—that the quality of government in America would improve if public opinion played a more important role, if government became more majoritarian. Monroe in particular thinks that stronger political parties—in line with the responsible party model described in Chapter 8—are the key to making the government more majoritarian.²⁵ But you should not accept what they (or we) believe is the better model of democracy. You must think through what *you* know about American government and politics—about the relationships among freedom, order, and equality and about alternative models of democratic government—and formulate your own views as you grapple with the challenge of democracy.

As we said at the beginning of this book, good government often means making tough choices. By looking beyond specifics to underlying normative principles, you should be able to identify these choices and thus make more sense out of politics. As the years pass and the facts fade (perhaps after the final examination in this course), you should still be able to understand politics by focusing on the underlying conflicts among freedom, order, and equality. Questions about democracy—whether and how to change it—can be interpreted through the majoritarian and pluralist models. Armed with these five key concepts—freedom, order, equality, majoritarianism, and pluralism—you will be better prepared to make political choices. The direction of American government rests in your hands.

Appendices

The Declaration of Independence in Congress
July 4, 1776

The Constitution of the United States of
America

Federalist No. 10 1787

Federalist No. 51 1788

Presidents of the United States

Twentieth-Century Justices of the Supreme
Court

Party Control of the Presidency, Senate, and
House of Representatives 1901–1991

THE DECLARATION OF INDEPENDENCE IN CONGRESS JULY 4, 1776

*The unanimous declaration of the thirteen
United States of America*

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

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among

these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its power in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

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

He has refused to pass other laws for the accommodation of large districts of people, unless those

people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

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

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

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasions from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

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

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

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

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for

introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

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

He has abdicated government here, by declaring us out of his protection and waging war against us.

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

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

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

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

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

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

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Col-

onies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK
and fifty-five others

THE CONSTITUTION OF THE UNITED STATES OF AMERICA*

(Preamble outlines goals and effect)

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.

Article I (The legislative branch)

(Powers vested)

Section 1 All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

(House of Representatives: selection, term, qualifications, apportionment of seats, census requirement, exclusive power to impeach)

Section 2 The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, *which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.* The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; *and until such enumeration shall be made, the State of New Hampshire shall be entitled to 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.*

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

(Senate: selection, term, qualifications, exclusive power to try impeachments)

Section 3 The Senate of the United States shall be composed of two Senators from each State, *chosen by the legislature thereof*, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

* Passages no longer in effect are printed in italic type.

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

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

The Senate shall 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 President of the United States.

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

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

(Elections)

Section 4 The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

(Powers and duties of the two chambers: rules of procedure, power over members)

Section 5 Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

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

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy;

and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

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

(Compensation, privilege from arrest, privilege of speech, disabilities of members)

Section 6 The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been 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.

(Legislative process: revenue bills, approval or veto power of president)

Section 7 All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with objections to that house in which it 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 adjourn-

ment prevent its return, in which case it shall not be a law.

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

(Powers of Congress enumerated)

Section 8 The Congress shall have power

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of 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 erection of forts, magazines, arsenals, dockyards, and other needful buildings;—and

(Elastic clause)

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.

(Powers denied Congress)

Section 9 The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding \$10 for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office 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.

(Powers denied the states)

Section 10 No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of 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.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II *(The executive branch)*

(The president: power vested, term, electoral college, qualifications, presidential succession, compensation, oath of office)

Section 1 The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each: which list they shall sign and certify, and transmit sealed to the seat of 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 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 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.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In cases of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully exe-

cute 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."

(Powers and duties: as commander in chief, over advisers, to pardon, to make treaties and appoint officers)

Section 2 The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

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

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

(Legislative, diplomatic, and law-enforcement duties)

Section 3 He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

(Impeachment)

Section 4 The President, Vice-President and all civil officers of the United States shall be removed from

office on impeachment for, and on conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III *(The judicial branch)*

(Power vested; Supreme Court; lower courts; judges)

Section 1 The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

(Jurisdiction; trial by jury)

Section 2 The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where 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.

(Treason: definition, punishment)

Section 3 Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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

Article IV (States' relations)

(Full faith and credit)

Section 1 Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

(Interstate comity; rendition)

Section 2 The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor 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 labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

(New states)

Section 3 New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any state be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

(Obligations of the United States to the states)

Section 4 The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and

on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Article V (Mode of amendment)

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 amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI (Prior debts; supremacy of Constitution; oaths of office)

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

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

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII (Ratification)

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON
and thirty-seven others

Amendments to the Constitution

(The first ten amendments—the Bill of Rights—were adopted in 1791.)

Amendment I (Freedom of religion, speech, press, assembly)

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

Amendment II (Right to 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.

Amendment III (Quartering 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.

Amendment IV (Searches and seizures)

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

Amendment V (Rights of persons: grand juries; double jeopardy; self-incrimination; due process; eminent domain)

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.

Amendment VI (Rights of accused in criminal prosecutions)

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.

Amendment VII (Civil trials)

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.

Amendment VIII (Punishment for crime)

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

Amendment IX (Rights retained by the people)

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

Amendment X (Rights reserved to the states)

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

Amendment XI (Suits against the states; adopted 1798)

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

Amendment XII (Election of the president; adopted 1804)

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of 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 the case of the death or other constitutional disability of the President.

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

Amendment XIII (Abolition of slavery; adopted 1865)

Section 1 Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2 Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV (Adopted 1868)

(Citizenship rights; privileges and immunities; due process; equal protection)

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

(Apportionment of representation)

Section 2 Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and cit-

izens 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.

(Disqualification of Confederate officials)

Section 3 No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. Congress may, by a vote of two-thirds of each house, remove such disability.

(Public debts)

Section 4 The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

(Enforcement)

Section 5 The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV (Extension of right to vote; adopted 1870)

Section 1 The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2 The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI (Income tax; adopted 1913)

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

Amendment XVII (Popular election of senators; adopted 1913)

Section 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 [voters for] the most numerous branch of the State legislatures.

Section 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.

Section 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.

Amendment XVIII (Prohibition of intoxicating liquors; adopted 1919, repealed 1933)

Section 1 After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes, is hereby prohibited.

Section 2 The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided by the Constitution, within seven years from the date of the submission thereof to the States by the Congress.

Amendment XIX (Right of women to vote; adopted 1920)

Section 1 The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Section 2 The Congress shall have power to enforce this article by appropriate legislation.

Amendment XX (Commencement of terms of office; adopted 1933)

Section 1 The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2 The Congress shall assemble at least once in every year, and such meetings shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

(Extension of presidential succession)

Section 3 If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect 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 persons shall act accordingly until a President or Vice-President shall have qualified.

Section 4 The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Section 5 Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI (Repeal of Eighteenth Amendment; adopted 1933)

Section 1 The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2 The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of submission thereof to the States by the Congress.

Amendment XXII (Limit on presidential tenure; adopted 1951)

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

Section 2 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII (Presidential electors for the District of Columbia; adopted 1961)

Section 1 The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

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

Section 2 The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXIV (Poll tax outlawed in national elections; adopted 1964)

Section 1 The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2 The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXV (Presidential succession; adopted 1967)

Section 1 In case of the removal of the President from office or of his death or resignation, the Vice-President shall become President.

(Vice-presidential vacancy)

Section 2 Whenever there is a vacancy in the office of the Vice-President, the President shall nominate a Vice-President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3 Whenever the President transmits to the President pro tempore of the Senate and the speaker of the House of Representatives his written declaration

that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

(Presidential disability)

Section 4 Whenever the Vice-President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

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

Amendment XXVI (Right of eighteen-year-olds to vote; adopted 1971)

Section 1 The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2 The Congress shall have power to enforce this article by appropriate legislation.

FEDERALIST NO. 10 1787

To the People of the State of New York: Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labour have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common

impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

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

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

It could never be more truly said, than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of action are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well as of speculation as of practice; an attachment to different leaders ambitiously contending for preeminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to cooperate for their common good. So strong is this propensity of mankind, to fall into mutual animosities, that where no substantial occasion pre-

sents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of the party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause; because his interest will certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the right of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction, must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice and the public good. The apportionment of taxes, on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act, in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling, with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor, in many cases, can such an adjustment be made at all,

without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought is, that the causes of faction cannot be removed; and that relief is only to be sought in the means of controlling its effects.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence, it is, that such democracies have ever been spectacles of turbulence and contention; 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. Theoretic politicians, who have patronized this species of government, have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

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

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

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interest of the people. The question resulting is, whether small or extensive republics are most favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations.

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice?

It will not be denied that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase the security? Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states; a religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.

JAMES MADISON

FEDERALIST NO. 51 1788

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 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 should be as little dependent as possible on those of the others, for the emoluments 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 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. While 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 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 form, 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 proportionally 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 dis-

played 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; and there being thus less danger to a minor from the will of the 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 practicable 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*.

JAMES MADISON

Presidents of the United States

	Party	Term
1. George Washington (1732–1799)	Federalist	1789–1797
2. John Adams (1735–1826)	Federalist	1797–1801
3. Thomas Jefferson (1743–1826)	Democratic-Republican	1801–1809
4. James Madison (1751–1836)	Democratic-Republican	1809–1817
5. James Monroe (1758–1831)	Democratic-Republican	1817–1825
6. John Quincy Adams (1767–1848)	Democratic-Republican	1825–1829
7. Andrew Jackson (1767–1845)	Democratic	1829–1837
8. Martin Van Buren (1782–1862)	Democratic	1837–1841
9. William Henry Harrison (1773–1841)	Whig	1841
10. John Tyler (1790–1862)	Whig	1841–1845
11. James K. Polk (1795–1849)	Democratic	1845–1849
12. Zachary Taylor (1784–1850)	Whig	1849–1850
13. Millard Fillmore (1800–1874)	Whig	1850–1853
14. Franklin Pierce (1804–1869)	Democratic	1853–1857
15. James Buchanan (1791–1868)	Democratic	1857–1861
16. Abraham Lincoln (1809–1865)	Republican	1861–1865
17. Andrew Johnson (1808–1875)	Union	1865–1869
18. Ulysses S. Grant (1822–1885)	Republican	1869–1877
19. Rutherford B. Hayes (1822–1893)	Republican	1877–1881
20. James A. Garfield (1831–1881)	Republican	1881
21. Chester A. Arthur (1830–1886)	Republican	1881–1885
22. Grover Cleveland (1837–1908)	Democratic	1885–1889
23. Benjamin Harrison (1833–1901)	Republican	1889–1893
24. Grover Cleveland (1837–1908)	Democratic	1893–1897
25. William McKinley (1843–1901)	Republican	1897–1901
26. Theodore Roosevelt (1858–1919)	Republican	1901–1909
27. William Howard Taft (1857–1930)	Republican	1909–1913
28. Woodrow Wilson (1856–1924)	Democratic	1913–1921
29. Warren G. Harding (1865–1923)	Republican	1921–1923
30. Calvin Coolidge (1871–1933)	Republican	1923–1929
31. Herbert Hoover (1874–1964)	Republican	1929–1933
32. Franklin Delano Roosevelt (1882–1945)	Democratic	1933–1945
33. Harry S Truman (1884–1972)	Democratic	1945–1953
34. Dwight D. Eisenhower (1890–1969)	Republican	1953–1961
35. John F. Kennedy (1917–1963)	Democratic	1961–1963
36. Lyndon B. Johnson (1908–1973)	Democratic	1963–1969
37. Richard M. Nixon (b. 1913)	Republican	1969–1974
38. Gerald R. Ford (b. 1913)	Republican	1974–1977
39. Jimmy Carter (b. 1924)	Democratic	1977–1981
40. Ronald Reagan (b. 1911)	Republican	1981–1989
41. George Bush (b. 1924)	Republican	1989–

Twentieth-Century Justices of the Supreme Court

Justice*	Term of Service	Years of Service	Life Span	Justice*	Term of Service	Years of Service	Life Span
Oliver W. Holmes	1902–1932	30	1841–1935	James F. Byrnes	1941–1942	1	1879–1972
William R. Day	1903–1922	19	1849–1923	Robert H. Jackson	1941–1954	13	1892–1954
William H. Moody	1906–1910	3	1853–1917	Wiley B. Rutledge	1943–1949	6	1894–1949
Horace H. Lurton	1910–1914	4	1844–1914	Harold H. Burton	1945–1958	13	1888–1964
Charles E. Hughes	1910–1916	5	1862–1948	<i>Fred M. Vinson</i>	1946–1953	7	1890–1953
Willis Van Devanter	1911–1937	26	1859–1941	Tom C. Clark	1949–1967	18	1899–1977
Joseph R. Lamar	1911–1916	5	1857–1916	Sherman Minton	1949–1956	7	1890–1965
<i>Edward D. White</i>	1910–1921	11	1845–1921	<i>Earl Warren</i>	1953–1969	16	1891–1974
Mahlon Pitney	1912–1922	10	1858–1924	John Marshall Harlan	1955–1971	16	1899–1971
James C. McReynolds	1914–1941	26	1862–1946	William J. Brennan, Jr.	1956–	—	1906–
Louis D. Brandeis	1916–1939	22	1856–1941	Charles E. Whittaker	1957–1962	5	1901–1973
John H. Clarke	1916–1922	6	1857–1945	Potter Stewart	1958–1981	23	1915–1985
<i>William H. Taft</i>	1921–1930	8	1857–1930	Byron R. White	1962–	—	1917–
George Sutherland	1922–1938	15	1862–1942	Arthur J. Goldberg	1962–1965	3	1908–
Pierce Butler	1922–1939	16	1866–1939	Abe Fortas	1965–1969	4	1910–1982
Edward T. Sanford	1923–1930	7	1865–1930	Thurgood Marshall	1967–	—	1908–
Harlan F. Stone	1925–1941	16	1872–1946	<i>Warren E. Burger</i>	1969–1986	17	1907–
<i>Charles E. Hughes</i>	1930–1941	11	1862–1948	Harry A. Blackmun	1970–	—	1908–
Owen J. Roberts	1930–1945	15	1875–1955	Lewis F. Powell, Jr.	1972–1987	15	1907–
Benjamin N. Cardozo	1932–1938	6	1870–1938	William H. Rehnquist	1972–1986	14	1924–
Hugo L. Black	1937–1971	34	1886–1971	John P. Stevens, III	1975–	—	1920–
Stanley F. Reed	1938–1957	19	1884–1980	Sandra Day O'Connor	1981–	—	1930–
Felix Frankfurter	1939–1962	23	1882–1965	<i>William H. Rehnquist</i>	1986–	—	1924–
William O. Douglas	1939–1975	36	1898–1980	Antonin Scalia	1986–	—	1936–
Frank Murphy	1940–1949	9	1890–1949	Anthony M. Kennedy	1988–	—	1936–
<i>Harlan F. Stone</i>	1941–1946	5	1872–1946				

*The names of chief justices are printed in italic type.

Party Control of the Presidency, Senate, and House of Representatives 1901–1991

Congress	Years	President	Senate			House		
			D	R	Other*	D	R	Other*
57th	1901–1903	McKinley	31	55	4	151	197	9
58th	1903–1905	T. Roosevelt	33	57	—	178	208	—
59th	1905–1907	T. Roosevelt	33	57	—	136	250	—
60th	1907–1909	T. Roosevelt	31	61	—	164	222	—
61st	1909–1911	Taft	32	61	—	172	219	—
62d	1911–1913	Taft	41	51	—	228	161	1
63d	1913–1915	Wilson	51	44	1	291	127	17
64th	1915–1917	Wilson	56	40	—	230	196	9
65th	1917–1919	Wilson	53	42	—	216	210	6
66th	1919–1921	Wilson	47	49	—	190	240	3
67th	1921–1923	Harding	37	59	—	131	301	1
68th	1923–1925	Coolidge	43	51	2	205	225	5
69th	1925–1927	Coolidge	39	56	1	183	247	4
70th	1927–1929	Coolidge	46	49	1	195	237	3
71st	1929–1931	Hoover	39	56	1	167	267	1
72d	1931–1933	Hoover	47	48	1	220	214	1
73d	1933–1935	F. Roosevelt	60	35	1	319	117	5
74th	1935–1937	F. Roosevelt	69	25	2	319	103	10
75th	1937–1939	F. Roosevelt	76	16	4	331	89	13
76th	1939–1941	F. Roosevelt	69	23	4	261	164	4
77th	1941–1943	F. Roosevelt	66	28	2	268	162	5
78th	1943–1945	F. Roosevelt	58	37	1	218	208	4
79th	1945–1947	Truman	56	38	1	242	190	2
80th	1947–1949	Truman	45	51	—	188	245	1
81st	1949–1951	Truman	54	42	—	263	171	1
82d	1951–1953	Truman	49	47	—	234	199	1
83d	1953–1955	Eisenhower	47	48	1	211	221	—
84th	1955–1957	Eisenhower	48	47	1	232	203	—
85th	1957–1959	Eisenhower	49	47	—	233	200	—
86th**	1959–1961	Eisenhower	65	35	—	284	153	—
87th**	1961–1963	Kennedy	65	35	—	263	174	—
88th	1963–1965	Kennedy	67	33	—	258	177	—

Sources: Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States* (Washington, D.C.: U.S. Government Printing Office, 1980), p. 509, and *Members of Congress Since 1789*, 2d ed. (Washington, D.C.: Congressional Quarterly, 1981), pp. 176–177. Adapted from Barbara Hinckley, *Congressional Elections* (Washington, D.C.: Congressional Quarterly Press, 1981), pp. 144–145.

*Excludes vacancies at beginning of each session.

**The 437 members of the House in the 86th and 87th Congresses is attributable to the at-large representative given to both Alaska (January 3, 1959) and Hawaii (August 2, 1959) prior to redistricting in 1962.

Party Control of the Presidency, Senate, and House of Representatives 1901–1991 (continued)

Congress	Years	President	Senate			House		
			D	R	Other*	D	R	Other*
89th	1965–1967	Johnson	68	32	—	295	140	—
90th	1967–1969	Johnson	64	36	—	247	187	—
91st	1969–1971	Nixon	57	43	—	243	192	—
92d	1971–1973	Nixon	54	44	2	254	180	—
93d	1973–1975	Nixon	56	42	2	239	192	1
		Ford	60	37	2	291	144	—
94th	1975–1977	Ford	61	38	1	292	143	—
95th	1977–1979	Carter	58	41	1	276	157	—
96th	1979–1981	Carter	46	53	1	243	192	—
97th	1981–1983	Reagan	45	55	—	267	168	—
98th	1983–1985	Reagan	47	53	—	252	183	—
99th	1985–1987	Reagan	54	46	—	257	178	—
100th	1987–1989	Reagan	55	45	—	262	173	—
101st	1989–1991	Bush						

Glossary

adjudication The settling of a case judicially. More specifically, formal hearings in which persons or businesses under government agency scrutiny can present their position with legal counsel present. (12,13)

administrative discretion The latitude that Congress gives agencies to make policy in the spirit of their legislative mandate. (12)

affirmative action Programs through which businesses, schools, and other institutions expand opportunities for women and members of minority groups. (18)

agenda building The process by which new issues are brought into the political limelight. (9)

aggregate demand The money available to be spent for goods and services by consumers, businesses, and government. (15)

Aid to Families with Dependent Children (AFDC) A federal public assistance program that provides cash to low-income families with children. (16)

amicus curiae brief A brief filed (with the permission of the court) by an individual or group that is not a party to a legal action but has an interest in it. (13)

analytical budgeting The use of sophisticated analytical procedures in budgeting, to enable administrators to find the most cost-effective means of achieving their program goals. (12)

anarchism A political philosophy that opposes government in any form. (1)

appellate jurisdiction The authority of a court to hear cases that have been tried, decided, or re-examined in other courts. (13)

appropriations committees Committees of Congress that decide which of the programs passed by the authorization committees will actually be funded. (15)

argument The heart of a judicial opinion; its logical

content separated from facts, rhetoric, and procedure. (13)

aristocracy Literally, "rule by the best" citizens. Today, a "ruling elite," made up of individuals who head a nation's key institutions, is sometimes said to govern that nation as the aristocracy ruled traditional societies. (2)

Articles of Confederation The compact among the thirteen original states that established the first government of the United States. (3)

attentive policy elites Leaders who follow news in specific policy areas. (6)

authorization committees Committees of Congress that can authorize spending in their particular areas of responsibility. (15)

autocracy A system of government in which the power to govern is concentrated in the hands of one individual. Also called *monarchy*. (2)

bicameral Having two legislative chambers, as the Senate and House in the U.S. Congress. (3,10)

bill A formal proposal for a new law. (10)

Bill of Rights The first ten amendments to the Constitution. They prevent the national government from tampering with fundamental rights and civil liberties, and emphasize the limited character of national power. (3)

bill of attainder A law that pronounces an individual guilty of a crime without a trial. (17)

bimodal distribution A distribution (of opinions) that shows two responses being chosen about as frequently as each other. (5)

black codes Legislation enacted by former slave states to restrict the freedom of blacks. (18)

blanket primary A primary election in which voters receive a ballot containing both parties' potential nominees and can help nominate candidates for all offices for both parties. (8)

block grant A grant-in-aid awarded for general purposes, allowing the recipient great discretion in spending the grant money. (4)

bolter party A political party formed from a faction that has split off from one of the major parties. (8)

boycott A refusal to do business with a firm or individual as an expression of disapproval or as a means of coercion. (18,19)

brief A written argument submitted to a judge. (13)

broadcast media Mass media that transmit information electronically. (6)

budget authority The amounts that government agencies are authorized to spend for their programs. (15)

Budget Committees One committee in each house of Congress that supervises a comprehensive budget review process. (15)

budget outlays The amounts that government agencies are expected to spend in the fiscal year. (15)

bureaucracy A large, complex organization in which employees have very specific job responsibilities and work within a hierarchy of authority. (12)

bureaucrat An employee of a bureaucracy, usually meaning a government bureaucracy. (12)

business cycle Expansions and contractions of business activity, the first accompanied by inflation and the second by unemployment. (15)

cabinet A group of presidential advisers composed of the heads of the executive departments and other key officials. (11)

capitalism The system of government that favors free enterprise (privately owned businesses operating without government regulation), based on the belief that free enterprise is necessary for free politics. (1)

casework Solving problems for constituents, especially problems involving government agencies. (10)

categorical grant A grant-in-aid targeted for a specific purpose. (4)

caucus A closed meeting of the members of a political party to decide upon questions of policy and the selection of candidates for office. (8)

checks and balances A government structure that gives each branch some scrutiny and control over the other branches. (3)

citizen group An interest group whose basis of organization is a concern for issues unrelated to the members' vocations. (9)

citizen participation program A program that encourages interaction between bureaucrats and their clients. (12)

civil case A court case that involves a private dispute arising from such matters as accidents, contractual obligations, and divorce. (13)

civil disobedience The willful but nonviolent violation of laws that are regarded as unjust. (18)

civil liberties Freedoms guaranteed to individuals. (17)

civil rights Powers or privileges guaranteed to individuals and protected from arbitrary removal at the hands of government or individuals. (17,18)

civil rights movement Political mobilization of the people—black and white—to promote racial equality. (18)

civil service The system by which most appointments to the federal bureaucracy are made, to ensure that government jobs are filled on the basis of merit and that employees are not fired for political reasons. (12)

class action See *class-action suit*.

class-action suit A legal action brought by a person or group on behalf of a number of people with similar claims or defenses. (7,13)

clear and present danger test A means by which the Supreme Court has distinguished between speech as the advocacy of ideas, which is protected by the First Amendment, and speech as incitement, which is not protected. (17)

closed primary A primary election in which voters must declare their party affiliation before they are given the primary ballot containing that party's potential nominees. (8)

cloture The mechanism by which a filibuster is cut off in the Senate. (10)

coalition building The banding together of several interest groups for the purpose of lobbying. (9)

coalition of minorities The various groups of voters that, at one time or another, become dissatisfied with the president's handling of particular issues of concern; said to account for a general decline in presidential popularity through a term in office. (11)

Cold War In the 1950s, a period of increased tension that stopped short of outright military conflict, during which the adversarial nature of U.S.-Soviet relations was clear. Americans were called upon to give priority to defense spending over domestic spending. (19)

commerce clause The third clause of Article I, Section 8, of the Constitution, which gives Congress the power to regulate commerce among the states. (4)

common (judge-made) law Legal precedents derived from previous judicial decisions. (13)

- communication** The process of transmitting information from one individual or group to another. (6)
- communism** A political system in which, in theory, ownership of all land and productive facilities is in the hands of the people, and all goods are equally shared. The production and distribution of goods is controlled by an authoritarian government. (1)
- concurrence** The agreement of a judge with the court's majority decision, for a reason other than the majority reason. (13)
- confederation** A loose association of independent states that agree to cooperate on specified matters. (3)
- conference committee** A temporary committee created to work out differences between the House and Senate versions of a specific piece of legislation. (10)
- Congressional Budget Office (CBO)** The budgeting arm of Congress, which prepares alternative budgets to those prepared by the president's OMB. (15)
- congressional campaign committee** An organization maintained by a political party to raise funds to support its own candidates in congressional elections. (8)
- conservative coalition** The temporary joining of a (conservative) majority of southern Democrats with a majority of Republicans to vote against a (more liberal) majority of northern Democrats. (10)
- conservatives** Generally, those people whose political ideology favors a narrow scope for government. Also, those who value freedom more than equality but would restrict freedom to preserve social order. (1)
- constituents** People who live and vote in a government official's district or state. (10)
- consultant** A person from outside the government who is hired by a government agency to conduct research, collect data, or perform policy analysis. (14)
- containment** The idea that the Soviets have to be prevented from expanding further. (19)
- Continental Congress** A political assembly called to speak out and act collectively for the people of all the colonies. The First Continental Congress met in 1774 and adopted a statement of rights and principles; the Second Continental Congress adopted the Declaration of Independence in 1776 and the Articles of Confederation in 1777. (3)
- conventional participation** Relatively routine political behavior that uses institutional channels and is acceptable to the dominant culture. (7)
- cooperative federalism** A view that holds that the Constitution is an agreement among people who are citizens of both state and nation, so there is little distinction between state powers and national powers. (4)
- Council of Economic Advisers (CEA)** A group that works within the executive branch to provide advice on maintaining a stable economy. (15)
- county government** The governmental unit that administers a county. (4)
- criminal case** A court case involving a crime, or violation of public order. (13)
- critical election** An election that produces a sharp change in the existing pattern of party loyalties among groups of voters. (8)
- Declaration of Independence** Drafted by Thomas Jefferson, the document that proclaimed the right of the colonies to separate from Great Britain. (3)
- de facto segregation** Segregation that is not the result of government influence. (18)
- deficit financing** The Keynesian technique of spending beyond government income to combat an economic slump. Its purpose is to inject extra money into the economy to stimulate aggregate demand. (15)
- de jure segregation** Government-imposed segregation. (18)
- delegate** A legislator whose primary responsibility is to represent the majority view of his or her constituents, regardless of his or her own view. Also, to transfer authority. (10,11)
- delegation of powers** The process by which Congress gives the executive branch the additional authority needed to address new problems. (11)
- democracy** A system of government in which, in theory, the people rule, either directly or indirectly. See *polyarchy*. (2)
- democratic socialism** A socialist form of government that guarantees civil liberties such as freedom of speech and religion. Citizens determine the extent of government activity through free elections and competitive political parties. (1)
- deniability** The effect desired by the National Security Council staffers who attempted to shield President Reagan from responsibility for decisions. (19)
- department** The largest unit of the executive branch, covering a broad area of government responsibility. The heads of the departments, or secretaries, form the president's cabinet. (12)
- deregulation** A bureaucratic reform by which the government reduces its role as a regulator of business. (12)
- desegregation** The ending of authorized segregation, or separation by race. (18)
- détente** The reduction of tension between nations. (19)

- deterrence** The defense policy of American strategists during the Eisenhower administration, who believed that the Soviets would not take aggressive action knowing that they risked nuclear annihilation. (19)
- direct action** Unconventional participation that involves assembling crowds to confront businesses and local governments to demand a hearing. (7)
- direct democracy** A system of rule in which all members of the group meet to make decisions according to the principles of political equality and majority rule. (2)
- direct income subsidy** A cash payment to reimburse a farmer for the cost of producing a crop when that cost is greater than the market price or loan rate for the crop. (16)
- direct lobbying** Attempts to influence a legislator's vote through personal contact with the legislator. (9)
- direct mail** Advertising via the mails; more specifically, a method of attracting new members to an interest group by sending letters to people in a carefully targeted audience. (9)
- direct primary** A preliminary election, run by the state government, in which the voters choose each party's candidates for the general election. (7)
- discretionary funds** Sums of money that may be spent on unpredicted needs to further national interests. (19)
- discrimination** Acts of irrational suspicion or hatred, directed toward a specific group of people. (18)
- dissent** The disagreement of a judge with a majority decision. (13)
- docket** A court's agenda. (13)
- dual federalism** A view that holds that the Constitution is a compact among sovereign states, so that the powers of the federal government are fixed and limited. (4)
- economic depression** A period of high unemployment and business failures; a severe, long-lasting downturn in a business cycle. (15,16)
- elastic clause** See *necessary and proper clause*.
- election** A formal procedure for voting. (7)
- electoral campaign** An organized effort to persuade voters to choose one candidate over others competing for the same office. (8)
- electoral college** A body of electors who are chosen by voters to cast ballots for president and vice president. (3,8,11)
- electoral dealignment** A lessening of the importance of party loyalties in voting decisions. (8)
- electoral realignment** The change in voting patterns that occurs after a critical election. (8)
- elite theory** The view that a small group of people actually makes most of the important government decisions. (2)
- embargo** A government freeze on the movement of goods or vessels to or from a specific country, as a means of coercion or of expressing disapproval. (19)
- entitlement** A benefit to which every eligible person has a legal right, and that the government cannot deny. (15)
- enumerated powers** The powers explicitly granted to Congress by the Constitution. (3)
- equality of opportunity** The idea that each person is guaranteed the same chance to succeed in life. (1,18)
- equality of outcome** The concept that society must ensure that people are equal, and governments must design policies to redistribute wealth and status so that economic and social equality are actually achieved. (1,18)
- equal opportunities rule** Under the Federal Communications Act of 1934, the requirement that if a broadcast station gives or sells time to a candidate for any public office, it must make available an equal amount of time under the same conditions to all other candidates for that office. (6)
- Equal Rights Amendment (ERA)** A failed constitutional amendment first introduced by the National Women's Party in 1923, declaring that "equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." (18)
- establishment clause** The first clause in the First Amendment, which forbids the establishment of a national religion. (17)
- excess stock disposal** The selling of excess government stocks, such as surplus or infrequently used equipment. (19)
- exclusionary rule** The judicial rule that states that evidence obtained in an illegal search and seizure cannot be used in trial. (17)
- executive agreement** A pact between the heads of two countries. (19)
- executive branch** The law-enforcing branch of a government. (3)
- Executive Office of the President** The president's executive aides and their staffs; the extended White House executive establishment. (11)
- ex post facto law** A law that declares an action to be criminal *after* it has been performed. (17)
- extraordinary majorities** Majorities greater than that required by majority rule, that is, greater than 50 percent plus one. (3)
- fairness doctrine** An FCC regulation that obligated broadcasters to discuss public issues and to provide

fair coverage to each side of those issues; repealed in 1987. (6)

farmer-labor party A political party that represents farmers and urban workers who believe that the working class does not get its share of society's wealth. (8)

Federal Communications Commission (FCC) An independent federal agency that regulates interstate and international communication by radio, television, telephone, telegraph, cable, and satellite. (6)

Federal Election Commission (FEC) A federal agency that oversees the financing of national election campaigns. (8)

federalism The division of power among a central government and regional governments. (3,4)

federal question An issue covered by the Constitution, national laws, or U.S. treaties. (13)

fighting words Speech that is not protected by the First Amendment because it inflicts injury or tends to incite an immediate disturbance of the peace. (17)

filibuster A delaying tactic, used in the Senate, that involves speechmaking to prevent action on a piece of legislation. (10)

fiscal policies Economic policies that involve government spending and taxing. (15)

fiscal year (FY) The twelve-month period from October 1 to September 30 used by the government for accounting purposes. A fiscal-year budget is named for the year in which it ends. (15)

flexible response The basic defense policy of the Kennedy administration, involving the ability to wage both nuclear and conventional war. (19)

food stamp program A federally funded program that increases the purchasing power of needy families by providing them with coupons that they can use to purchase food. (16)

formula grant A grant-in-aid distributed according to a particular formula, which specifies who is eligible for the grants and how much each eligible applicant will receive. (4)

franchise The right to vote. (7)

franking privilege The right of members of Congress to send mail free of charge. (10)

freedom Immunity, as in freedom from want; also, an absence of constraints on behavior, as in freedom of religion. (1)

free-exercise clause The second clause in the First Amendment, which prevents the government from interfering with the exercise of religion. (17)

free-expression clauses The press and speech clauses of the First Amendment. (17)

free-rider problem The situation in which people benefit from the activities of an organization (such

as an interest group) but do not contribute to those activities. (9)

gatekeepers Media executives, news editors, and prominent reporters who direct the flow of news. (6)

general election A national election held, by law, in November of every even-numbered year. (8)

general revenue sharing Part of a federal program introduced by President Nixon that returned tax money to state and local governments to be spent largely as they wished. (4)

gerrymandering Redrawing a congressional district to intentionally benefit one political party. (10)

globalism A policy of global, or worldwide, involvement, as is current U.S. foreign policy. (19)

good faith exception Established by the Supreme Court, an exception to the exclusionary rule maintaining that evidence seized on the basis of a mistakenly issued search warrant can be introduced at trial. (17)

government The legitimate use of force to control human behavior within territorial boundaries; also, the organization or agency authorized to exercise that force. (1)

government corporation A government agency that performs services that might be provided by the private sector, but which either involve insufficient financial incentive or are better provided when they are somehow linked with government. (12)

Gramm-Rudman-Hollings (antideficit law) An act passed by Congress in September 1985 that seeks to lower the federal deficit to a specified level each year until the federal budget is balanced in FY 1991. (15)

grant-in-aid Money provided by one level of government to another, to be spent for a specific purpose. (4)

grassroots lobbying Lobbying activities performed by rank-and-file interest-group members and would-be members. (9)

Great Compromise Submitted by the Connecticut delegation to the Constitutional Convention of 1787 and thus also known as the Connecticut Compromise, a plan calling for a bicameral legislature in which the House of Representatives would be apportioned according to population while the states would be represented equally in the Senate. (3)

Great Depression The longest and deepest setback the American economy has ever experienced. It began with the stock market crash on October 12, 1929, and did not end until the start of World War II. (16)

Great Society President Lyndon Johnson's broad array of programs designed to redress political, social, and economic inequality. (16)

gross national product (GNP) The total value of the goods and services produced by a country during a year or part of a year. (15)

home rule The right to enact and enforce legislation locally. (4)

horse race journalism Election coverage by the mass media that focuses on which candidate is ahead, rather than on national issues. (6)

Hyde Amendment A 1976 decision by Congress to restrict severely the use of federal funds for reimbursement of abortion costs; upheld by the Supreme Court in 1980. (17)

impeachment The formal charging of a government official with "treason, bribery, or other high crimes and misdemeanors." (10)

implementation The process of putting specific policies into operation. (12)

implied powers Those powers that Congress requires in order to execute its enumerated powers. (3)

in-and-outer A participant in an issue network who has a good understanding of the needs and problems of others in the network and can easily switch jobs within the network. (14)

incremental budgeting A method of budget making that involves adding new funds (an increment) onto the amount previously budgeted (in last year's budget). (15)

incumbent A current officeholder. (8,10)

independent agency An executive agency that is not part of a cabinet department. (12)

indirect democracy A system of rule in which citizens participate by electing public officials to make government decisions for them. Also called *representative government*. (2)

inflation An economic condition characterized by price increases linked to a decrease in the value of the currency. (15)

influencing behavior Behavior that seeks to modify or reverse government policy to serve political interests. (7)

information campaign An organized effort to gain public backing by bringing a group's views to public attention. (9)

inherent powers Authority claimed by the president that is not clearly specified in the Constitution. Typically, these powers are inferred from the Constitution. (11)

initiative A procedure by which voters can propose an issue to be decided by the legislature or by the

people in a referendum. It requires gathering a specified number of signatures and submitting a petition to a designated agency. (2,7)

institutional mechanisms Established procedures and organizations that translate public opinion into government policy. (2)

interest group An organized group of individuals that seeks to influence public policy. Also called a *lobby*. (2,9)

interest-group entrepreneur An interest-group organizer or leader. (9)

intergovernmental relations The interdependence and relationships among the various levels of government and government personnel. (4)

iron triangles The members of congressional committees, federal agencies or bureaus, and lobbies who work toward policy ends in a specific area. (14)

isolationism The policy of noninvolvement, as was the foreign policy of the United States during most of the nineteenth century. (19)

issue network A shared-knowledge group consisting of representatives of various interests involved in some particular aspect of public policy. (14)

joint committee A committee made up of members of both the House and the Senate. (10)

judgment The judicial decision in a court case. (13)

judicial activism A judicial philosophy whereby judges interpret existing laws and precedents loosely and interject their own values in court decisions. (13)

judicial branch The branch of government that interprets laws. (3)

judicial restraint A judicial philosophy whereby judges adhere closely to statutes and precedents in reaching their decisions. (13)

judicial review The power to declare congressional (and presidential) acts invalid because they violate the Constitution. (3,13)

Keynesian theory A theory of the economy that states that demand can be adjusted through a combination of fiscal and monetary policies. (15)

laissez faire An economic doctrine that opposes any form of government intervention in business. (1)

lawyer-lobbyist A Washington lawyer who uses his or her training and expertise to influence government. (13)

legislative branch The law-making branch of government. (3)

legislative liaison staff Those people who comprise the communications link between the White House and Congress, advising the president or cab-

inet secretaries on the status of pending legislation. (11)

libel Written defamation of character. (17)

liberals Generally, those people whose political ideology favors a broad scope for government; those who value freedom more than order but not more than equality. (1)

libertarianism A political ideology that is opposed to all government action except as necessary to protect life and property. (1)

libertarians Those who advocate minimal government action; those who subscribe to libertarianism. (1)

linkage In international relations, the idea of using rewards and advantages in one area of negotiation to promote another country's compliance in other areas of negotiation. (19)

lobby See *interest group*.

lobbyist A representative of an interest group. (9)

logrolling Legislative bargaining typified by members agreeing to vote for each others' bills. (10)

majoritarian model of democracy The classical theory of democracy in which government by the people is interpreted as government by the majority of the people. (2)

majority leader The head of the majority party in the Senate; the second highest ranking member of the majority party in the House. (10)

majority party A political party that regularly enjoys the support of the most voters. (8)

majority rule The principle—basic to procedural democratic theory—that the decision of a group must reflect the preference of more than half of those participating. (2)

market economy An economy in which the prices of goods and services are determined through the interaction of buyers and sellers (that is, through supply and demand). (15)

markup session A meeting of congressional committee or subcommittee members to amend and prepare legislation for floor debate. (10)

Marshall Plan A post-World War II plan to restore European economic viability. The plan sent approximately \$12 billion in aid to Europe over a four-year period. (19)

mass communication The process by which individuals or groups transmit information to large, heterogeneous, and widely dispersed audiences. (6)

mass media The means employed in mass communication, often divided into print media and broadcast media. (6)

media event A situation that is so "newsworthy" that the mass media are compelled to cover it;

candidates in elections often create such situations to garner media attention. (6)

Medicare A health-insurance program for all persons over the age of sixty-five. (16)

military-industrial complex The combined interests of the military establishment and the large arms industry. The two groups are united by two common interests: war and military spending. (19)

minority party A political party that does not have the support of the most voters. (8)

minority rights The benefits of government that cannot be denied to any citizens by majority decisions. (2)

Miranda warnings Statements concerning rights that police are required to make to a person before he or she is subjected to in-custody questioning. (17)

monarchy See *autocracy*.

monetarists Those who argue that government can effectively control the performance of an economy only by controlling the supply of money. (15)

monetary policies Economic policies that involve control of, and changes in, the supply of money. (15)

muckrakers Writers who practiced an early form of investigative reporting, replete with unsavory details. (6)

Munich paradigm The foreign policy view that the United States must be willing to intervene, militarily if necessary, anywhere on the globe to put down a major threat to world order and freedom. (19)

municipal government The government unit that administers a city or town. (4)

mutual assured destruction (MAD) The capability of the two great superpowers—the United States and the Soviet Union—to destroy each other, ensuring that there will be no winner of a nuclear war. (19)

national committee A committee of a political party composed of party chairpeople and party officials from every state. (8)

national convention A gathering of delegates of a single political party from across the country to choose candidates for president and vice president and to adopt a party platform. (8)

nation-building policy A policy intended to shore up Third World countries economically and democratically, thereby making them less attractive targets for Soviet opportunism. (19)

necessary and proper clause The last clause in Section 8 of Article I of the Constitution, which gives Congress the means to execute its enumerated

powers. This clause is the basis for Congress's implied powers. Also called the *elastic clause*. (3)

New Deal The measures advocated by the Roosevelt administration to alleviate the Depression. (16)

"new" ethnicity The newer outlook on the people comprising America's "melting pot," with focus on race and color. (5)

New Jersey Plan Submitted by the head of the New Jersey delegation to the Constitutional Convention of 1787, a set of nine resolutions that would have, in effect, preserved the Articles of Confederation by amending rather than replacing them. (3)

newsworthiness The degree to which a news story is important enough to be covered in the mass media. (6)

Nineteenth Amendment The amendment to the Constitution, adopted in 1920, that assures women of the right to vote. (18)

Nixon Doctrine An attempt to reduce America's foreign involvement by calling for U.S. intervention only where it made a "real difference" and was considered to be in our interest. (19)

nominate To designate as an official candidate of a political party. (8)

normal distribution A symmetrical bell-shaped distribution (of opinions) centered on a single *mode*, or most frequent response. (5)

nullification The declaration by a state that a particular action of the national government is not applicable to that state. (4)

obligation of contracts The obligation of the parties to a contract to carry out its terms. (17)

Office of Management and Budget (OMB) The budgeting arm of the Executive Office; prepares the president's budget. (15)

"old" ethnicity An older outlook on the people comprising America's "melting pot," with focus on religion and country of origin. (5)

oligarchy A system of government in which power is concentrated in the hands of a few people. (2)

open primary A primary election in which voters need not declare their party affiliation but must choose one party's primary ballot to take into the voting booth. (8)

opinion An explanation written by one or more judges, justifying their ruling in a court case. (13)

opinion schema A network of organized knowledge and beliefs that guides a person's processing of information regarding a particular subject. (5)

order The rule of law to preserve life and protect property. Maintaining order is the oldest purpose of government. (1)

original jurisdiction The authority of a court to hear a case before any other court does. (13)

oversight The process of reviewing the operations of an agency to determine whether it is carrying out policies as Congress intended. (10)

parliamentary system A system of government in which the chief executive is the leader whose party holds the most seats in the legislature after an election or whose party forms a major part of the ruling coalition. (10)

party caucus Part of the process of choosing delegates to a party convention: a local meeting of party supporters to choose people to attend a subsequent meeting, usually at the county level. (8)

party identification A voter's sense of psychological attachment to a party. (8)

party machine A centralized party organization that dominates local politics by controlling elections. (8)

party of ideological protest A political party that rejects prevailing doctrines and proposes radically different principles, often favoring more government activism. (8)

party platform The statement of policies of a national political party. (8)

picket-fence federalism A view of federalism that stresses the interactions and interrelationships among interest groups and the various levels of government. (4)

plea bargain A defendant's admission of guilt in exchange for a less severe punishment. (13)

pluralism A view of modern society as a collection of groups of people who share religious, economic, and cultural interests. (2)

pluralist model of democracy An interpretation of democracy in which government by the people is taken to mean government by people operating through competing interest groups. (2)

pocket veto A means of killing a bill that has been passed by both houses of Congress, in which the president does not sign the bill within ten days of Congress's adjournment. (10)

police power The authority of a government to maintain order and safeguard citizens' health, morals, safety, and welfare. (1)

political action committee (PAC) An organization that pools campaign contributions from group members and donates those funds to candidates for political office. (9)

political agenda A list of issues that need government attention. (6)

political equality Equality in political decision making.

ing: one vote per person, with all votes counted equally. (1,2)

political ideology A consistent set of values and beliefs about the proper purpose and scope of government. (1)

political participation Actions of private citizens by which they seek to influence or support government and politics. (7)

political party An organization that sponsors candidates for political office under the organization's name. (8)

political socialization The complex process by which people acquire their political values. (5)

political sophistication The depth and scope of a person's knowledge of public affairs. (5)

political system A set of interrelated institutions that link people with government. (8)

poll tax A tax of \$1 or \$2 on every citizen who wished to vote, first instituted in Georgia in 1877. Although it was no burden on white citizens, it effectively disenfranchised blacks. (18)

polyarchy A system of rule in which power is held by many people. See *democracy*. (2)

populists Those people whose political ideology favors government action both to reduce inequality and to ensure social order. (1)

poverty level The minimum cash income that will provide for a family's basic needs; calculated as three times the cost of a market basket of food that provides a minimally nutritious diet. (16)

precedent A judicial ruling that serves as the basis for the ruling in a subsequent case. (13)

presidential character The personality characteristics of presidents and those who would be president. (11)

presidential primary A special primary election used to select delegates to attend the party's national convention, which in turn nominates the presidential candidate. (8)

president pro tempore The person elected by the majority party to chair the Senate in the vice president's absence. By custom, this constitutional position is entirely honorary. (10)

press clause The First Amendment guarantee of freedom of the press. (17)

price support The means used by the national government to maintain a minimum price for certain farm commodities. (16)

primary election A preliminary election conducted within a political party to select candidates who will run for public office in a subsequent election. (8)

print media Mass media that transmits information through the publication of the written word. (6)

prior restraint Censorship before publication. (17)

procedural democratic theory A view of democracy as being embodied in a decision-making process that involves universal participation, political equality, majority rule, and responsiveness. (2)

production control An agreement that calls for farmers to plant less of a particular crop. (16)

productive capacity The total value of goods and services that can be produced when the economy works at full capacity. (15)

program monitoring Keeping track of government programs, usually by interest groups. (9)

progressive taxation A system of taxation whereby the rich pay proportionately higher taxes than the poor; used by governments to redistribute wealth and thus promote equality. (3,15)

progressivism A philosophy of political reform based upon the goodness and wisdom of the individual citizen as opposed to special interests and political institutions. (7)

project grant A grant-in-aid awarded on the basis of competitive applications submitted by prospective recipients. (4)

proportional representation An electoral system that awards legislative seats to political parties in proportion to the number of votes won in an election. (8)

proposal The first of two stages in amending the Constitution: an amendment may be proposed, or offered, either by the Congress or by a national convention summoned by Congress. (3)

proposition An issue to be voted on in a referendum. (7)

protectionism The idea that women must be protected from life's cruelties; until the 1970s, the basis for laws affecting women's civil rights. (18)

public assistance Government aid to individuals who can demonstrate a need for that aid. (16)

public figures People who assume roles of prominence in society or thrust themselves to the forefront of public controversy. (17)

public goods Goods and services, such as parks and sanitation, that benefit all citizens but are not likely to be produced voluntarily by individuals. (1)

public interest group A citizen group that generally is considered to have no economic self-interest in the policies it pursues. (9)

public opinion The collected attitudes of citizens concerning a given issue or question. (5)

public policy A general plan of action adopted by the government to solve a social problem, counter a threat, or pursue an objective. (15)

public relations firm A firm that combines lobbying

with image building. The firm may help its clients influence the government, the public, or both. (14)

racial segregation Separation from society because of race. (18)

racism A belief that human races have distinct characteristics such that one's own race is superior to, and has a right to rule, others. (18)

ratification The second of two stages in amending the Constitution: a proposed amendment can be ratified, or accepted, either by the legislatures of the states or by constitutional conventions held in the states. (3)

reapportionment Redistribution of representatives among the states, based on population movement. Congress is reapportioned after each census. (10)

reasonable access rule An FCC rule that requires broadcast stations to make their facilities available for the expression of conflicting views or issues by all responsible elements in the community. (6)

recall The process of removing an elected official from office. (7)

receipts For a government, the amount expected or obtained in taxes and other revenues. (15)

reconciliation Matching the amount a congressional committee has been authorized to spend with the money it has been given to spend. (15)

redistricting Redrawing congressional districts after census-based reapportionment. (10)

referendum An election on a policy issue. (2,7)

regulation Government intervention in the workings of business to promote some socially desired goal. Also, an administrative rule that guides the operation of a government program. (12)

regulatory commission An agency of the executive branch of government that controls or directs some aspect of the economy. (12)

reorganization An attempt to improve the performance of the government bureaucracy by changing it. (12)

representative government See *indirect democracy*.

reprogramming The use for one purpose of money that Congress has approved for some other purpose. (19)

republic A government without a monarch; a government rooted in the consent of the governed, whose power is exercised by elected representatives responsible to the governed. (3)

republicanism A form of government in which power resides in the people and is exercised by their elected representatives. (3)

responsible party government A set of principles formalizing the ideal role of parties in a majoritarian democracy. (8)

responsiveness A decision-making principle, necessitated by representative government, which implies that elected representatives should respond to public opinion—that they should do what the majority of people want. (2)

rights The benefits of government to which every citizen is entitled. (1)

rulemaking The administrative process that results in the issuance of regulations by government agencies. (12)

rule of four An unwritten rule that requires at least four justices to agree that a case warrants consideration before it is reviewed by the Supreme Court. (13)

ruling elite The few individuals who head a nation's key financial, industrial, and communications institutions. (2)

school district An area for which a local government unit administers elementary and secondary school programs. (4)

select committee A temporary congressional committee created for a specific purpose and disbanded after that purpose is fulfilled. (10)

self-interest principle The implication that people choose what benefits them personally. (5)

senatorial courtesy A practice whereby the Senate will not confirm a nominee for a lower federal court judgeship who is opposed by the senior senator in the president's party in the nominee's state. (13)

seniority Years of consecutive service on a particular congressional committee. (10)

separate-but-equal doctrine The concept that providing separate but equivalent facilities for blacks and whites satisfies the equal protection clauses of the Fourteenth Amendment. (18)

separation of powers The assignment of law-making, law-enforcing, and law-interpreting functions to separate branches of government. (3)

sexism Sex discrimination. (18)

Shays's Rebellion A revolt led by Daniel Shays in 1786 and 1787 in Massachusetts, against the foreclosure of farms resulting from high interest rates and high state taxes. The rebellion dramatized the weakness of the newly created national government. (3)

single-issue party A political party formed to promote one principle rather than a general philosophy of government. (8)

single-member district A part of a state that elects one representative to Congress; a congressional district. (8)

skewed distribution An asymmetrical but generally

bell-shaped distribution (of opinions) whose *mode*, or most frequent response, lies off to one side. (5)

social contract theory The belief that the people agree to set up rulers for certain purposes and thus have the right to resist or remove rulers who act against those purposes. (3)

social equality Equality in wealth, education, and status. (1)

social insurance A government-backed guarantee against loss by individuals without regard to need. (16)

socialism A form of rule in which the central government plays a strong role in regulating existing private industry and directing the economy, although it does allow some private ownership of productive capacity. (1)

social security Social insurance that provides economic assistance to persons faced with unemployment, disability, or old age. It is financed by taxes on employers and employees. (16)

Social Security Act The law that provided for social security and is the basis of modern American social welfare. (16)

social welfare Government programs that provide the necessary minimum living standards for all citizens. (16)

socioeconomic status Position in society, based on a combination of education, occupational status, and income. (5)

solicitor general The third highest ranking official of the U.S. Department of Justice, and the one who represents the national government before the Supreme Court. (13)

sovereignty The power of self-rule. (3)

Speaker of the House The presiding officer of the House of Representatives. (10)

special district A government unit created to perform particular functions, especially when those functions are best performed across jurisdictional boundaries. (4)

special envoy A personal representative of the president to a foreign government. (19)

special revenue sharing Part of a federal program, introduced by President Nixon, which was to consolidate existing categorical grant programs. (4)

speech clause The part of the First Amendment that guarantees freedom of speech. (17)

split ticket In voting, candidates from different parties for different offices. (8)

stable distribution A distribution (of opinions) that shows little change over time. (5)

standard socioeconomic model A relationship between socioeconomic status and conventional political involvement: People of higher status and

more education are more likely to participate than those of lower status. (7)

standing committee A permanent congressional committee that specializes in a particular legislative area. (10)

stare decisis Literally "let the decision stand"; decision making according to precedent. (13)

states' rights The idea that all rights not specifically conferred on the national government by the Constitution are reserved for the states. (4)

statutory construction Judicial interpretation of legislative acts. (13)

straight ticket In voting, a single party's candidates for all the offices. (8)

Strategic Defense Initiative (SDI) A large-scale research and development effort to build a system that will defend the United States against Soviet missiles. Also called "Star Wars." (19)

substantive democratic theory The view that democracy is embodied in the substance of government policies rather than in the policymaking procedure. (2)

suffrage The right to vote. Also called the *franchise*. (7)

supply-side economics Economic policies intended to counter extreme inflation by increasing the supply of goods to match demand. (15)

supportive behavior Actions that express allegiance to government and country. (7)

supremacy clause The clause in Article VI of the Constitution that asserts that national laws take precedence over state and local laws when they conflict. (3)

symbolic expression Nonverbal communication. (17)

tax committees The two committees of Congress responsible for raising the revenue with which to run the government. (15)

tax expenditure The promotion of socially beneficial activities by government through the granting of favorable tax treatment. (15)

think tank An institution in which scholars engage in public policy research. (14)

torts Injuries or wrongs to the person or property of another. (13)

totalitarianism A political philosophy that advocates unlimited power for the government to enable it to control all sectors of society. (1)

trade association An organization that represents firms within a particular industry; may also represent members' interests before the government. (9)

transfer authority The president's power to use for

one purpose money that Congress has approved for some other purpose. (19)

transfer payment A payment by government to an individual, mainly through social security or unemployment insurance. (15)

trustee A representative who is obligated to consider the views of constituents but is not obligated to vote according to those views if he or she believes they are misguided. (10)

two-party system A political system in which two major political parties compete for control of the government. Candidates from a third party have little chance of winning office. (8)

two-step flow of communication The process in which a few policy elites gather information and then inform their more numerous followers, mobilizing them to apply pressure to government. (6)

uncontrollable outlay A payment that government must make by law. (15)

unconventional participation Relatively uncommon political behavior that challenges or defies government channels and thus is personally stressful to participants and their opponents. (7)

undeclared war Military action, usually directed by the president, without benefit of a declaration of war from Congress. (19)

unitary government A form of government in which all power is vested in a central authority. (3)

universal participation The concept that everyone in a democracy should participate in governmental decision making. (2)

U.S. court of appeals A court within the second tier of the three-tiered federal court system, to which decisions of the district courts and federal agencies may be appealed for review. (13)

U.S. district court A court within the lowest tier of the three-tiered federal court system; a court where litigation begins. (13)

veto The president's disapproval of a bill that has been passed by both houses of Congress. Congress can override a veto with a two-thirds vote in each house. (10,11)

Vietnamization President Nixon's plan for turning over more and more of the fighting in the Vietnam War to the South Vietnamese. This tactic finally led to the peace agreement in 1973. (19)

Vietnam paradigm The foreign policy view that not all left-wing revolutionary movements are necessarily directed from Moscow, but instead can be a product of internal nationalist forces. Proponents of this paradigm also argue that military force is not the most effective way to "win the hearts and the minds" of people in other countries. (19)

Virginia Plan A set of proposals for a new government, submitted to the Constitutional Convention of 1787; included separation of the government into three branches, division of the legislature into two houses, and proportional representation in the legislature. (3)

voting The act that individuals perform when they formally choose among alternatives in an election. (7)

War on Poverty A part of President Johnson's Great Society program, intended to eradicate poverty in ten years. (16)

War Powers Resolution An act of Congress that limits the president's ability to wage undeclared war. (19)

Washington community The public- and private-sector employees who work on public policy issues. (14)

welfare state A nation in which the government assumes responsibility for the welfare of its citizens, redistributing income to reduce social inequality. (16)

writ of mandamus A court order directing an official to act. (13)

yellow journalism The distorted, sensationalist reporting of stories that became popular toward the end of the nineteenth century. (6)

zero-sum game In international politics, a situation in which one superpower's gain is the other's loss. (19)

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