Pool/Getty Images News/Getty Images

CHAPTER 10

Elections and Campaigns

KEY OBJECTIVES OF THIS CHAPTER

- *There are many different processes at work in U.S. federal elections.*
- *The organization, finance, and strategies of national political campaigns affect the election process.*

KEY TAKEAWAYS FROM THIS CHAPTER

- Parties have adapted to candidate-centered campaigns and their role in nominating candidates has been weakened.
- Parties use communication technology and voter-data management to disseminate, control, and clarify political messages and enhance outreach and mobilization efforts.

National elections in the United States in the 21st century would be virtually unrecognizable to politicians from the early republic. As we saw in Chapter 9, political parties once determined, or powerfully influenced, who got nominated. In the 19th century, the members of Congress from a given caucus would meet to pick their presidential candidate. After the caucuses were replaced by the national nominating conventions, the real power was wielded by local party leaders, who came together (sometimes in the legendary "smoke-filled rooms") to choose the candidate, whom the rest of the delegates would then endorse. Congressional candidates were also often hand-picked by local party bosses. Most people voted a straight party ticket. This system endured until well into the 20th century.

THEN In 1968, Vice President Hubert Humphrey won the Democratic presidential nomination without competing in a single state primary. His party's bosses pretty much delivered the nomination to him. He competed in a three-way race for president without having to raise nearly as much money as candidates routinely do today. (He lost in a close race to Republican Richard M. Nixon.)

NOW In 2016, President Barack Obama could not run for reelection, as he was completing his second term in office. Early accounts suggested former Secretary of State Hillary Clinton—whom Obama narrowly beat for the Democratic nomination in 2008—would easily emerge as the party's nominee. She was eventually nominated, but only after a lengthy primary fight with Vermont Senator Bernie Sanders. The Republican race was wide open, with more than 16 candidates running to be the party's nominee. While most pundits, politicians, and political scientists initially regarded Donald Trump as little more than an amusing distraction, he quickly emerged as the frontrunner for the nomination. While some Republicans tried to stop his candidacy, he had enough support from voters to eventually become the party's nominee.

In both the primary and general election, Hillary Clinton, Donald Trump, and their various primary opponents all raised money at a feverish pace. By the end of the campaign, the presidential candidates had raised and spent more than $1.5 billion, which does not include the billions raised and spent by the parties or outside groups (let alone the money spent on other races).

Within the lifetimes of many living national political leaders, campaigns and elections have changed rather dramatically: parties went from being important to unimportant and (partially) back again, mass media—especially television and the Internet—have become more important, polling has become ubiquitous, and money—and the nonstop fundraising that keeps it coming—now matters more than ever.

Perhaps the most striking finding about contemporary elections is the amounts of money that candidates raise and spend during them. As Figure 10.1 shows, in the 2014 elections, all candidates for national office raised and spent more than $1.7 billion: more than $1 billion in House races, and about $637 million in Senate races. In the 2016 election, candidates for president raised $1.5 billion, candidates for Congress raised $1.6 billion, the party committees raised $1.6 billion, and political action committees (PACs) raised $4 billion, for a combined total of approximately $8.7 billion.

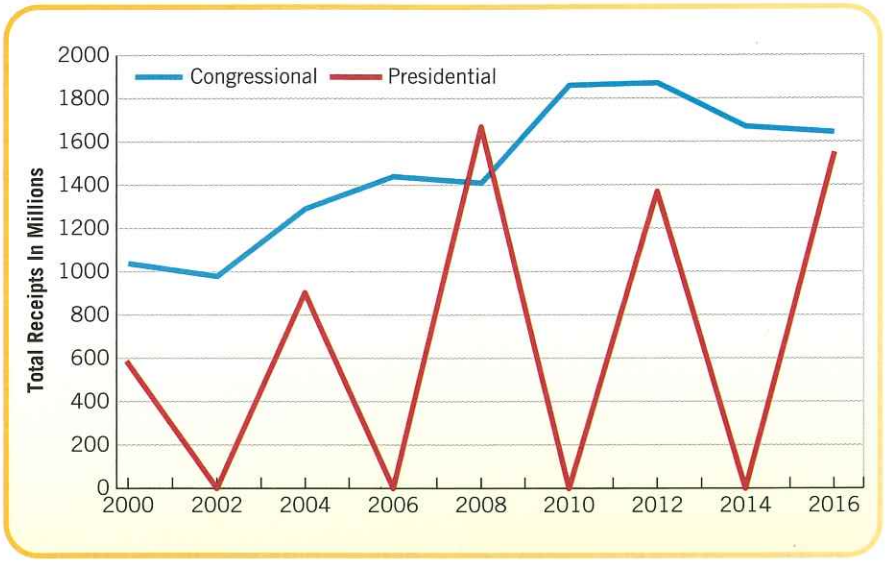
Thus, we have entered the era of the $8 billion presidential election cycle. The climb there has been steep but steady. For instance, in 1980, all presidential candidates raised about $162 million. Adjusted for inflation, the 2016 total is over three times the 1980 total. Even in the last decade and a half, the amount of money raised in presidential elections has increased sharply. In 2000, all presidential candidates raised about $578 million; adjusted for inflation, the 2016 figure is 1.8 times as much; congressional fundraising tells much the same tale. Whether we will witness the $9 billion, or more national election cycles in the future remains to be seen, but the amounts of money that candidates, parties, and PACs collect seem to increase exponentially.

Many people lament the fact that so much money is spent on elections, arguing that the consultants, media ads, and modern campaign techniques end up emphasizing ephemera and avoiding the real issues. While it is true that media reports of elections leave much to be desired (as we discuss in Chapter 12), campaigns do stress the issues, and voters respond to their messages in reasonable ways. While they are far from perfect, campaigns are ultimately the most important pathway linking voters' preferences to government policy. In this chapter we show what campaigns do, how voters respond, and what this tells us about the link between voters and government.

Here and Abroad

Unlike elections in many other democratic nations, elections in America have not one but two crucial phases: getting nominated and getting elected. Getting nominated means getting your name on the ballot. In the

FIGURE 10.1 **Campaign Receipts, 2000–2016**



Source: Federal Election Commission, FEC Statistical Summaries of the Various Election Cycles.

Note: Cell entries are in millions of dollars, not adjusted for inflation.

great majority of states, winning your party's nomination for either the presidency or Congress requires effort on your part. As we discussed in the previous chapter, the party may help to recruit you (and may even provide other services), but the candidates themselves need to staff and run their own campaigns. By contrast, in most European parliamentary democracies, winning a party's nomination for parliament involves an *organizational* decision—*the party* looks you over, *the party* decides whether to allow you to run, and *the party* puts your name on its list of candidates.

American political parties do play a role in determining the outcome of the final election, but both the candidates themselves and the party matter. By contrast, many other democratic nations conduct campaigns almost entirely as a contest between parties. In Israel and the Netherlands, the names of the candidates for the legislature do not even appear on the ballot; only the party names are listed there. And even where candidate names are listed, as in Great Britain, voters tend to vote "Conservative" or "Labour" more than they vote for Smith or Jones. European nations (except France) do not have a directly elected president; instead, the party that has won the most seats in parliament selects the head of the government, termed the *prime minister*. As we saw in the last chapter, American parties are quite different from their European counterparts, and these differences spill over into their elections as well.

Paul Marotta/WireImage/Getty Images

IMAGE 10-1 After working in the Obama administration to create the Consumer Financial Protection Bureau, Elizabeth Warren won election to the U.S. Senate from Massachusetts in 2012.

10-1 Presidential Elections: Winning the Nomination

No office in American politics is more important than the presidency, and the first step to winning it is to survive the primary process. We discussed in Chapter 9 the invisible primary, the process party elites use to narrow down the field to the candidates that they find acceptable. But even after a candidate survives the invisible primary, they have to survive the actual presidential primaries and

caucus *A meeting of party followers in which party delegates are selected.*

momentum *When a candidate wins (especially an upset win), she or he tends to do better than expected in future contests. Sometimes also called the bandwagon effect.*

caucuses (they are then actually nominated at their party's convention, as we discussed in Chapter 9).

While political scientists and journalists call this the "primary" process, perhaps we should call it the "primary and caucus" process, since some states hold causes in addition to or in place of primaries. A primary election operates as described in Chapter 9. In contrast, a **caucus** is a meeting of party followers, often lasting for hours and sometimes held in the dead of winter, in which party delegates are picked. Only the most dedicated partisans attend, and those attending caucuses do tend to be more ideological than those who vote in primaries.[1] To win the nomination, a candidate needs to succeed in both primaries and caucuses.

For most candidates, the biggest challenge in the primary is that they are largely unknown to the public, so voters' attitudes about them are quite malleable. When an incumbent president runs for reelection—as President Obama did in 2012—voters have a relatively fixed opinion of him or her, since that person has been president for four years. But many voters will never even have heard of most other candidates. For example, many Americans had no idea who Rick Perry was before he became a presidential candidate in 2012, and the same was true of Ted Cruz, Ben Carson, and Bernie Sanders before their 2016 candidacies. While many Americans knew Donald Trump as a reality TV star, they did not know him as a political candidate before his presidential run. Voters' attitudes toward these candidates changed rapidly over the course of the campaign.

Mark Wilson/Getty Images

IMAGE 10-2 Senator Ted Cruz (R-TX) shakes hands with a supporter after announcing his candidacy for the presidency in March 2015.

Indeed, in primaries, candidates frequently go from obscurity to popularity and then fade away again.[2] Initially, the candidate does something to attract media attention. This gives the candidate exposure, which in turn increases his or her name recognition and favorability.[3] This increased attention leads reporters—and opponents—to investigate the candidate's record more carefully. Invariably, this scrutiny turns up negative aspects of the person's past, causing voters to turn away from the candidate once they know both sides of the story.

For example, during the 2012 Republican primary, many considered Texas governor Rick Perry an attractive candidate, and at one point in the summer of 2011, shortly after he entered the race, he was a front-runner for the nomination. But soon after, Perry's previous statements on Social Security came to light—he'd called it a Ponzi scheme. Other Republican candidates criticized him, his numbers dipped sharply, and he exited the race.[4] The same dynamic was at play in 2016. Ben Carson surged into first place in the crowded Republican primary field in the fall of 2015. But after the terror attack in Paris that November, voters became more concerned about national security, an issue where Carson was weak. After that, Carson's numbers dropped and never recovered.[5]

This pattern highlights the crucial role of media in campaigns. One core finding (as we will discuss in Chapter 12) is that media influence is greatest when people have the least knowledge about an issue.[6] In a primary election, when voters are just getting to know a candidate, the media have a large effect. For example, one of several factors explaining Donald Trump's success in the 2016 primary season is that he received nearly $2 billion in free media coverage during the winter and spring months.[7] Trump was nearly always in the news while other candidates struggled to get airtime, giving him an advantage. By the time of the general election, when voters have a stronger impression of the candidates, the media's effect is less significant, though still very important.

But media coverage is not the only factor that matters in a primary election. Another key factor is **momentum** or the *bandwagon effect*. A candidate's win, especially in an upset victory, generates favorable press coverage, which increases name recognition and approval of the candidate. Winning once convinces voters that you can do it again, which changes the dynamics of an election.[8] Obama's 2008 campaign offers a striking example of this phenomenon. Before the 2008 campaign began, pundits and politicians alike assumed Hillary Clinton would easily walk away with the Democratic nomination. But then, early in the year, Barack Obama won a surprising upset victory in the Iowa Caucuses, and the momentum swung his way. Though Clinton won the next primary in New Hampshire, and the primary process went on for months,

Obama's victory in Iowa convinced voters that he was electable. Similarly, in 2016, when Bernie Sanders narrowly lost to Hillary Clinton in Iowa but then defeated her in New Hampshire, it was clear his campaign would mount a real challenge for the Democratic nomination. While Clinton was ultimately the party's nominee, Sanders's early success helped to propel his candidacy throughout the spring.

Any discussion of momentum points to another concern about the primary process: the front-loading of the primary calendar. Every state wants their primary to "matter," and state leaders all think the way to make that happen is to move their state's primary to the beginning of the calendar. Over time, this has greatly compressed the length of the primary season. In 1968, it took 12 weeks for the parties to award 50 percent of the delegates in the party's national conventions, but by 2004, it took only five weeks (for Republicans) and six weeks (for Democrats) to award 50 percent of the delegates.[9]

Concerned about the shortened length of the campaign, the parties have pushed back somewhat on front-loading in the last few election cycles, issuing rules about when parties can hold primaries. As a result of these changes, in 2012, it took closer to 10 weeks for 50 percent of the delegates to be awarded.[10]

Some Republicans concluded that the lengthy 2012 primary hurt Mitt Romney, the party's nominee. Therefore they voted to change the rules for 2016 to again frontload the process and make it easier for a candidate to capture the nomination early on.[11] Indeed, they put nearly half of the delegates required to win the nomination up for grabs on a single day (March 1, Super Tuesday). While Donald Trump did not clinch the nomination until late in the process, more than half of the delegates had been awarded by mid-March, six weeks after the primary season began in Iowa. While many Republicans had hoped that these rules would allow an establishment favorite to capture the nomination early—someone like, say, Jeb Bush—they actually helped Donald Trump.[12] As is often the case in politics, reforms have unintended consequences.

Such front-loading may benefit state parties, but it harms voters: they have less time to learn about the candidates. Furthermore, because so much of the campaign happens early in the season, fewer voters get to participate in the process: If the key events are the first few primaries, then those in the later states have effectively no say in the nominees.[13] That said, because states want greater say in the process, front-loading is unlikely to reverse completely—though the rules issued by the parties should limit its growth somewhat.

battleground states *The most competitive states in the presidential election that either candidate could win; also called swing states.*

10-2 How Does the Campaign Matter?

Once the candidates secure their party's nomination via the primary process, the general election begins. The modern general election campaign takes place roughly from Labor Day (or the conventions, if they come first) to Election Day.

While we like to think that the president is elected on Election Day in November, according to the Constitution, the Electoral College actually selects the president when it meets in December. Indeed, although Hillary Clinton received more popular votes than Donald Trump did—almost 3 million more—Trump became president by winning more electoral votes. We discuss the Electoral College in more detail in Chapter 14; for now, we note that it has enormous implications for campaign strategy. With the exception of Maine and Nebraska, states award their electoral votes in a winner-take-all format, so that even if one candidate receives barely more voters than the other, that candidate wins all of the state's electoral votes. For example, in 2016, Donald Trump beat Hillary Clinton in Michigan by just over 10,000 votes of nearly 5 million ballots cast, a margin of victory of 0.2 percent. Despite this razor thin margin, Trump won *all* 16 electoral votes for the state.

Given this winner-take-all allocation rule, campaigns have a large incentive to focus on the most competitive states—the so-called swing or **battleground states**—where either candidate can win the state (and hence its electoral votes). For example, although California has more electoral votes than any other state (55), few candidates spend much time there because it is so heavily Democratic. Instead, most candidates spend their time in more competitive states. In recent election cycles, those have been states such as Pennsylvania, Florida, Ohio, and North Carolina,

AP Images/Andrew Harnik

IMAGE 10-3 Candidates for the 2016 Republican presidential nomination compete in a primary election debate.

retrospective voting *Voting for a candidate because you like his or her past actions in office.*

prospective voting *Voting for a candidate because you favor his or her ideas for handling issues.*

though they can change from election to election. The candidates and their surrogates blanket these states with campaign ads and appearances, and as a result, voters in these states are better informed about the issues and the candidates.[14] This highlights a point to which we will return below: campaigns do help to inform and educate voters!

It is a truism to say that "campaigns matter." But how do they matter? How do campaigns convince voters to select a particular candidate? We argue that campaigns do this primarily through three related forces: by assigning credit or blame for the state of the nation, by activating latent partisanship, and by allowing voters to judge the qualities of the candidates' character. We take up each one below in turn.

Assigning Credit or Blame for the State of the Nation

The first thing campaigns do is help voters assign credit or blame for the state of the nation. Voters hold the president responsible for the overall state of the country: Is the economy doing well? Are we at war? Americans may have hazy, even erroneous, views about monetary policy, business regulation, and defense policy, but they likely have a very good idea about whether unemployment is up or down, prices at the supermarket are stable or rising, or Americans are dying in a foreign war. In short, the voters know whether the country is (in general) headed on the right track or the wrong track.

If things are going well, the incumbent candidate (or if the incumbent is not running, the candidate from the incumbent's party) tries to claim credit for the peace and prosperity the country is experiencing. In contrast, if the country is doing poorly, the challenger tries to pin the blame for the poor state of affairs on the incumbent. Campaigns help voters connect the state of the nation with the party in power—reelect me (or my party) because we have been good stewards, or vote out the incumbent because he has not been one.[15] This is why incumbent Ronald Reagan spoke of "Morning in America" in 1984 when the economy was doing well, but challenger Bill Clinton spoke of "It's the Economy, Stupid!" during a recession in 1992.

This idea—that elections are decided based on punishment or reward for the health of the nation—is known as **retrospective voting**. It is retrospective because voters look back on the previous administration and make a judgment about whether or not they deserve another term in office.[16] In contrast, other voters vote prospectively. *Prospective* means "forward-looking"—we vote prospectively when we examine the rival candidates' views on the issues of the day and then cast our ballots for the person we think has the best ideas for handling these matters. **Prospective voting** requires a lot of information about issues and candidates, and most who do it are political junkies who are deeply engaged in politics. As a result, prospective voting is a relatively minor factor in most elections, whereas retrospective voting is much more common.

The quintessential summary of retrospective voting came from Ronald Reagan during the 1980 election: "Are you better off than you were four years ago?" The economy had soured under Carter, and things seemed to be getting worse overseas. In that election, voters decided that they were no better off in 1980 than they were in 1976, and they voted Carter out of office. In contrast, making that same comparison in 2012, voters decided they were better off in 2012 than they were in 2008, and they reelected President Obama.

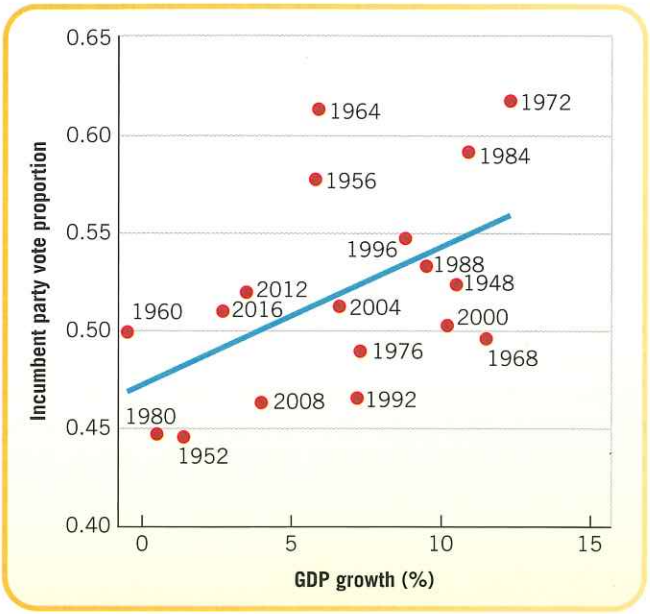
These same contrasts played out in 2016 as well. Looking back, voters recognized some improvements (though relatively modest ones) in the economy between 2012 and 2016. But perhaps more importantly, they also recognized that those gains had been distributed quite unevenly, and many people were angry that economic elites—rather than ordinary Americans—had benefitted the most.[17] Reflecting this, more than 70 percent of Americans were dissatisfied with the nation's direction in 2015 and early 2016.[18] This allowed Donald Trump to play the classic role of the opposition party, and he argued that Clinton—as the successor to President Obama—would continue policies that did little to help ordinary Americans, and would instead benefit only the wealthy and well-connected. Trump capitalized on voters' anger, and argued that he would enact policies, including policies on trade and immigration, that would benefit more middle- and working-class Americans. Ultimately, voters found that argument—among many others—persuasive.

This retrospective effect is so strong that political scientists can use the fundamentals to predict election outcomes reasonably well in advance of the campaign. Figure 10.2 shows the relationship between the health of the economy in the election year (measured by the change in GDP) to the incumbent's vote share.

Each dot in Figure 10.2 represents a presidential election (18 in all, from 1948 to 2016), and the solid line shows the relationship between the two (this is the so-called regression line). Note that the two are strongly related: the incumbent (or his party) does much better when the economy is doing better. Voters reward incumbents for a good economy and punish them for a bad one.

We should not interpret Figure 10.2 to mean that no other issues matter to the campaign beyond the economy.

FIGURE 10.2 **The Economy and the Presidential Vote, 1948–2016**



Source: GDP growth data from the Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/, as published in February 2017; election returns come from Dave Leip's Atlas of U.S. Presidential Elections, http://uselectionatlas.org.

Other issues matter a great deal: crime, foreign policy, education, and many others are hotly debated in elections. Foreign policy and terrorism in particular have long been central to many election campaigns: how the candidate would handle the threat of communism was a staple of nearly every election during the Cold War, and since 9/11, how the president would handle the threat of terrorism has been an issue in every election (especially in 2004, shortly after the United States' decision to invade Iraq). In 2016, the candidates sparred not only over the economy but also on issues of race relations, health care, trade, immigration, and responses to terrorist groups such as ISIS. The issues matter in campaigns.

But in most years, for most voters, the economy is the central issue. For many years, the Gallup organization has been asking respondents to identify the most important problem facing the nation. When asked during an election year, Americans typically say the economy is the most important problem, often by a substantial margin.[19] Just before the 2012 election, for example, 72 percent said the economy (including the economy broadly, unemployment, the budget deficit, and so on) was the most important problem; similarly, 69 percent named the economy in 2008.[20] In the cases where the economy is not the major issue, it is either typically because the economy is booming (as it was in 2000) or because we face a major foreign policy challenge (going back to the Cold War). Because the economy is so central to people's lives, and the president is seen as the primary economic steward of the nation, the economy is the core issue in almost every presidential campaign.

In 2016, the economy was, as usual, seen as the most important issue in the election. But then, only 31 percent named it as the most important problem; the remainder were split among a wide variety of issues (race relations, dissatisfaction with government, health care, etc.).[21] As we discussed above, economic considerations were an important issue in the campaign, but as we discuss below (see our "How Things Work: The 2016 Election" box on page 220), other factors also played a key role in this election.

The power of retrospective voting highlights an essential truth about elections: the fundamentals matter a great deal. A simple indicator of the health of the economy allows us to predict, with reasonable accuracy, the outcome of the election before the main part of the general election campaign even begins. The underlying health of the nation—the economy, whether we are at war or peace, the popularity of the incumbent (which is tied to the economy)—is really what drives the election.[22]

But do not interpret this to mean that campaigns do not matter. If campaigns were irrelevant, all of the points in Figure 10.2 would lie along the solid line (the regression line), and this chapter would be much shorter. Instead, we see that in some years, the points are quite close to the line, whereas in others, they are farther away, suggesting the outcomes diverged from the predictions based on the fundamentals. Just as the fundamentals matter, so does the campaign. After all, the campaign is what helps voters know how to assign credit or blame for the fundamentals. Furthermore, a well-run campaign, especially in a close election, can make the difference between winning and losing.[23] The fundamentals get us in the ballpark of the final outcome, but we need to understand the campaigns to know the eventual outcome.

Justin Sullivan/Getty Images

IMAGE 10-4 Hillary Clinton greets voters during a campaign event shortly before the 2016 election.

valence issue *An issue on which everyone agrees, but the question is whether the candidate embraces the same view.*

Activating Latent Partisanship

Campaigns do more than help voters assign credit and blame for the state of the nation. They also activate voters' latent partisanship. As we saw in Chapter 9, in recent presidential elections, more than 90% of voters supported their party's nominee. This is not just blind obedience. Rather, it reflects a process of the campaign helping voters understand *why* they should support their party's nominee. As Professor James Campbell put it, "campaigns remind Democrats why they are Democrats rather than Republicans and remind Republicans why they are Republicans rather than Democrats."[24]

Campaigns do this through a variety of methods, such as campaign appearances, advertisements, debates, and so forth; we discuss these methods later in the chapter.[25] Through all of these methods, however, candidates stress the issues that appeal to, and activate, their partisans. These are typically the issues for which the public sees them as being more competent than the other party. As we discussed in Chapter 9, for Democrats, these are social welfare issues, and for Republicans, national security issues. While both parties discuss the economy (as seen above), beyond that, they typically emphasize these types of issues.[26] This helps cue voters why they belong to one party or the other and makes them more likely to support their party's candidate.

Of course, we should not conclude from this discussion that voters never support the opposing party's candidate—clearly, they do. Even in 2016, approximately 10 percent of partisans supported the other party's nominee for president (see Chapter 9). Why do we see these defections? There are two main reasons. First, voters may be out of step with their party on an issue and therefore defect to the other party. For example, in 2004, some Republican voters were displeased that President George W. Bush put in place a ban on embryonic stem cell research, and hence supported Senator John Kerry.[27] Second, as we discussed above, if voters are unhappy with their party's stewardship of the nation, they are likely to vote for the other party. In both cases, defection, rather than party loyalty, is the likely result.

Understanding how campaigns activate partisanship also helps to clarify two other dynamics of electoral campaigns. First, the number of undecided voters declines over the course of a campaign. Much of this decline comes from partisans returning home to their party: Watching the campaign, they are reminded of why they are a Democrat or a Republican, and they move to support their candidate.[28] Many who are undecided early in the campaign just have not had their latent partisanship activated.

Second, this also reminds us that some voters do not identify with a party—they are Independents. As we saw in Chapter 9, in contemporary American presidential elections, both parties will win approximately 90 percent of their party's supporters. But we also saw that neither party has enough supporters to win by just appealing to its own base. Both parties also need to court Independent voters if they want to win elections.

Judging the Candidates' Character

A third major component of a campaign is helping voters judge the character of the candidates. Voters care about the issues, but they also care about a candidate's character. Voters not only want a candidate who takes the right positions on the issues; they also want someone who has the right traits as well—someone who provides strong leadership, has integrity and honesty, and displays empathy (i.e., cares about people like them).[29] Voters rely on these sorts of judgments because they provide clues as to how a president will behave in office. No one can know all the issues that a new president will face once in office. But if a candidate has these broad traits, then he or she will be more likely to be up to the challenge.

Contemporary campaigns often invoke these traits. Indeed, in 2016, much of the campaign focused on the candidates' character, both in the news media and in the advertisements and messages from the candidates themselves. For example, nearly 75 percent of Secretary Clinton's television ads, and nearly one-half of President Trump's, were about the candidates' character (and as we will see in Chapter 12, the media were similarly focused on character, rather than the issues).[30] Secretary Clinton's ads argued that Mr. Trump lacked the temperament to be president, and 63 percent of voters agreed with her that he did not. Among this group, Clinton won 79 percent to 19 percent. Similarly, many of President Trump's messages stressed that Secretary Clinton was dishonest; he often called her "crooked Hillary" in his speeches. Around 61 percent of voters sailed that Hillary Clinton was not honest or trustworthy, and Trump won these voters 72 percent to 20 percent.[31] Campaign messages emphasizing the candidates' character (and especially their character flaws) had a strong effect on voters in 2016. Even controlling for other factors (such as the health of the economy, issues, and partisanship), assessments of a candidate's character matter.[32]

These sorts of character evaluations are an example of a **valence issue**.[33] A valence issue is one where everyone agrees; the question is whether or not the candidate embraces that view. For example, everyone wants the president to be a strong leader, to have integrity, and to display empathy; the question is whether a particular candidate has those qualities. Likewise, everyone wants a robust economy and a strong national defense, the question

CONSTITUTIONAL CONNECTIONS | The "Natural Born" Presidents Clause

Article II, section 1, clause 5 of the Constitution states that "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 the President." During the Constitutional Convention, there was little debate on this clause. In *Federalist* No. 3, John Jay wrote of possible "dangers from *foreign arms and influence*" (emphasis in the original), but he did not specifically mention the Constitution's "natural born" presidents clause.

Eight of the 55 delegates to the Constitutional Convention were themselves foreign-born. Among them was Alexander Hamilton, born in the West Indies. In *Federalist* No. 67, the first of Hamilton's essays on the "constitution of the executive department," he answers critics who he says have depicted future presidents as "seated on a throne . . . giving audience to the envoys of foreign potentates," and have associated the office with "images of Asiatic despotism and voluptuousness." But Hamilton, like Jay, makes no specific mention of the clause requiring that all save those foreign-born citizens alive when the Constitution is ratified must be born on American soil to be eligible to serve as president. However, in the 19th century, persons associated with anti-immigrant, anti-Catholic "Nativist" groups sometimes invoked the natural born presidents clause.

The clause has come to wide public attention twice more recently. In 2003, Arnold Schwarzenegger, the Austrian-born action-movie star and former champion bodybuilder, was elected as California's governor. In 2004, persons supporting Schwarzenegger for a possible run for the presidency launched websites and rallied to repeal the clause. But the "Amend for Arnold" movement (advocating repeal of the clause through a new constitutional amendment) was short-lived. Second, Barack Obama, during his 2008 and 2012 campaigns, was subject to claims by various "birther" groups asserting that he was not born in Hawaii but in Kenya, or that he once held citizenship in Indonesia. There was no evidence in support of the argument, but that did not stop it from spreading. Donald Trump was among those questioning the president's Hawaiian birth in 2011, though the debate seemingly was settled when President Obama released a copy of his birth certificate that year. The issue resurfaced during the 2016 campaign, where Hillary Clinton used it to attack Trump's character. In the exchange, Trump falsely accused Hillary Clinton's 2008 campaign of starting the birther rumor, but he did admit that President Obama had been born in the United States. Afterward, the issue—and the clause—faded from public view.

Source: Thomas Beaumont, "AP Fact Check: Trump's Bogus Birtherism Claim about Clinton," PBS News Hour: The Rundown Blog, 21 September, 2016.

is whether a particular candidate's plan will help us get there. In contrast, there are also **positional issues**—ones in which the rival candidates have opposing views on a question that also divides the voters. Many of the issues we think about are positional issues: gun control, abortion, gay marriage, and tax cuts, to name a few. As this section has made clear, both types of issues matter in elections.

positional issues *Issues in which rival candidates have opposing views and that also divide voters.*

Which Factors Matter Most?

Throughout this section, we explained how campaigns do three important things: help assign credit or blame for the state of the nation, activate voters' latent partisanship, and allow voters to judge the character of the candidates. But which of these are most important? Obviously, all three are important, but ultimately partisanship probably takes the most important ranking, with the health of the nation second and character third. Partisanship is arguably the most central factor, and it anchors most voters to a party election after election. The health of the nation is almost equally important: voters, except for the strongest partisans, are unlikely to support their party's candidate if he or she has performed poorly in office. And for voters with weaker ties, or Independent voters, the health of the nation is paramount. These are the "fundamentals" we discussed earlier that primarily drive elections. Finally, character evaluations also matter, but less so than these other two factors. Ultimately, however, it is important to remember that all of these factors matter.

10-3 How Do Voters Learn About the Candidates?

We just reviewed what campaigns do for voters. But how do campaigns actually convey this information to voters? How do voters learn which candidate should be credited for a booming economy, or which one they don't like because he or she lacks integrity? They do so

HOW THINGS WORK | The 2016 Election

The 2016 presidential race was full of surprises from start to finish. No one predicted the rise of Donald Trump, no one predicted he would beat out 16 other candidates in the Republican primary, and no one—not even his own campaign team—predicted he would win the presidential election. Indeed, on the day of the election, most poll-based forecasts put the odds of Secretary Clinton winning at more than 90 percent. Interestingly, forecasting models based on the state of the economy (discussed earlier in this chapter; see Figure 10.2) predicted a narrow Republican win, but everyone assumed that 2016 would be an aberration and trusted the poll-based forecasts. That turned out to be a mistake.

Below, we discuss several different factors that partially help to explain Trump's surprising victory. But it is worth noting that we should avoid reading too much into any particular theory, as the election was basically a coin flip: it really came down to fewer than 78,000 votes spread across Wisconsin, Pennsylvania, and Michigan—well under 1 percent of the votes in those states. Had Clinton done just slightly better in those three states, then she—not Trump—would have become the 45th president.

Trump's surprise win also brings up the question of polling accuracy. Overall, the national polls were reasonably accurate: polling averages had Clinton ahead by approximately 3 percent, and her final margin in the popular vote was about 2.1 percent. While national polls were accurate, polls in several key swing states—most notably Wisconsin, Pennsylvania, and Michigan—were not (polls had Clinton ahead of Trump by several points in all three states). Pollsters and academics are still actively debating this miss in the polls, and there is not yet any clear answer.

What factors are the most important in explaining the outcome? Using the exit poll data, Figure 10.3 shows several important trends in voter support for Clinton and Trump in 2016. A few factors stand out. First, partisan loyalty is crucial. Clinton and Trump both received nearly 90 percent of the votes from those voters who identified with their respective parties, just slightly less than the support Romney and Obama received from their fellow partisans in 2012.

Late-deciding voters also played a crucial role in 2016. An unusually high number of undecided and third-party voters headed into Election Day. While this number had declined over the course of the campaign, it remained historically high as Election Day approached; some estimates suggest nearly twice as many voters were undecided in 2016 as in 2012. Those voters also broke for Trump—he benefitted heavily from late-deciding voters.[34] Unfortunately, we cannot say *why* these people decided to vote for Trump at the last minute. Many people suggest FBI director James Comey's letter reopening the investigation into Hillary Clinton's email server was a key reason, but no definitive evidence supports that claim.

Second, both candidates were remarkably disliked: 30 percent of voters said that they thought *both* Trump and Clinton were dishonest, and 15 percent thought that neither one was qualified to serve as president. More than 20 percent of those who supported President Trump thought that he lacked the qualifications to be president, and a similar number thought he was untrustworthy, yet they voted for him anyway. It seems that although they did not like him, they disliked Clinton even more.

Third, the Obama coalition from 2008 and 2012 did not support Clinton to the same extent that they supported President Obama. Clinton did worse with African Americans, Latinos, Asian Americans, and young people than President Obama did in 2012, in some cases by double digits. While many people argued that Trump's margin among white voters was decisive, it was not: white voters favored him by 21 percent, nearly identical to the 20-percent advantage Mitt Romney held with them in 2012. And while there was a large gender gap, Clinton's advantage with women was nearly identical to President Obama's in 2012: Obama won the votes of 53 percent of women in 2012, and Clinton won 54 percent in 2016. But Mr. Trump won the votes of 53 percent of men, a five-point gain relative to Romney in 2012.

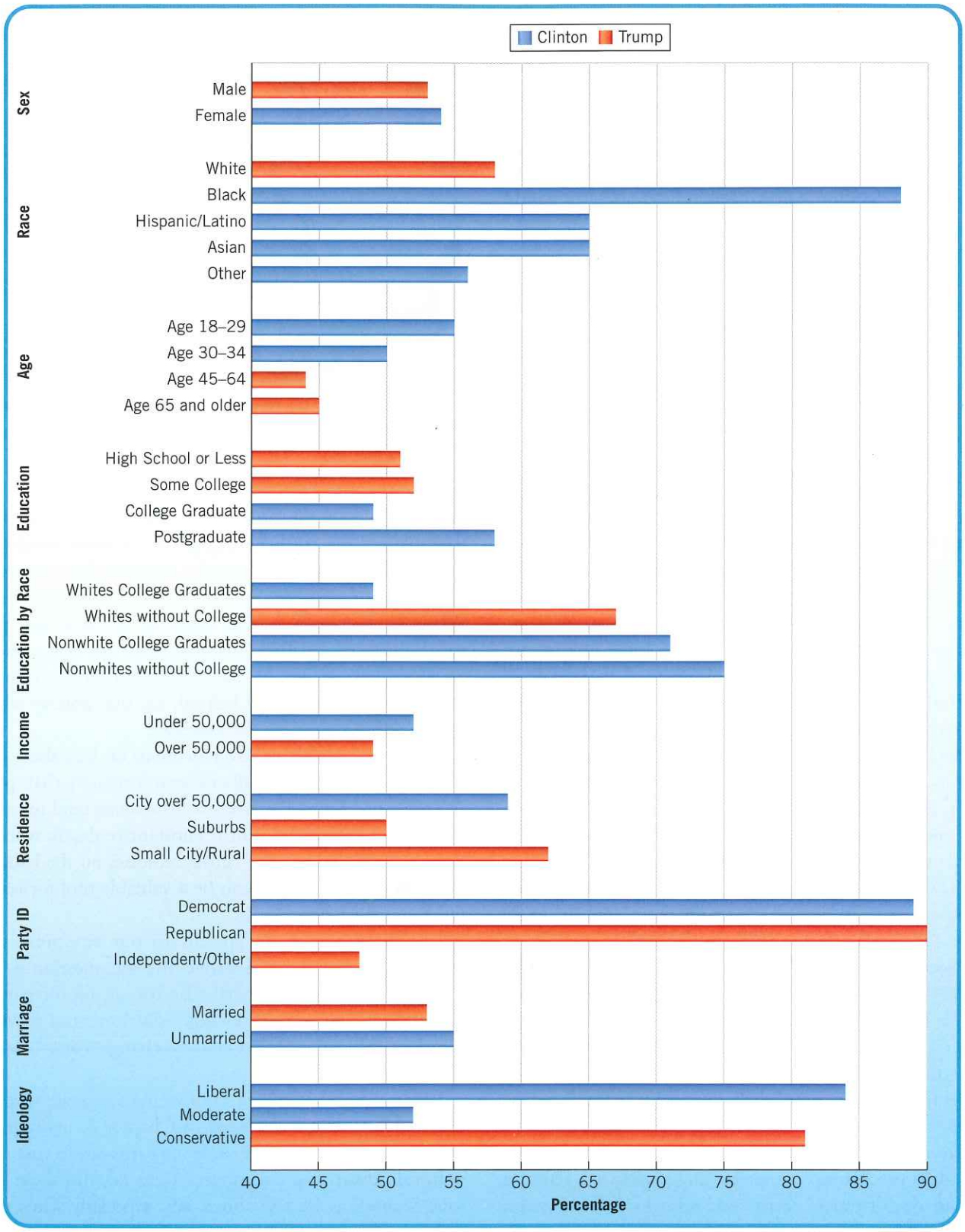
Fourth, 2016 highlighted an enormous "education gap," especially among white voters. Traditionally, college-educated white voters have strongly favored the Republican Party, but in 2016 they swung toward the Democrats by 10 percentage points. But whites without a college degree swung even more sharply toward the Republicans in this election, moving 14 percentage points toward that party. Whether this education gap will persist into the future remains to be seen.

But perhaps even more than any of these other factors was that Donald Trump embodied change for many voters. When asked about the candidate quality that mattered most, a plurality of voters (39 percent) said that they wanted a candidate who could bring change; Trump carried 82 percent of these voters. His message that he could make America great again resonated with many.

Finally, 2016 marked only the fifth time in American history—and the second time since 2000—that a candidate won the electoral college but lost the popular vote. Trump beat Clinton in the Electoral College, but she beat him by over 2.8 million votes in the national popular vote. In the wake of the election, some have called, yet again, to do away with the Electoral College and move to a national popular vote. While the Electoral College is unpopular, it is unlikely to be removed any time soon.

Scholars, the media, and politicians will continue to dissect these issues and debates for years to come. Based on these results, and what you have read elsewhere in the textbook, what would *you* recommend that the parties do to prepare for 2018, 2020, and beyond?

FIGURE 10.3 **2016 Presidential Election Results**



Source: 2016 Exit Polls, as reported by the *New York Times* and CNN.

Note: Because of third-party candidates, in some categories neither Clinton nor Trump got a majority of voters.

through campaign communication. This can take many forms, but we can think of them as usefully falling into two broad classes: campaign-created communications (e.g., advertisements, speeches) and campaign events (e.g., debates and conventions). They both help inform voters, but in somewhat different ways.

Campaign Communications

As we learned at the outset of the chapter, presidential campaigns now cost in the billions of dollars—several times what they cost even a few decades ago. In every recent election, advertising has typically been the single biggest expense for both candidates. Most notably, this would be television advertisements, though it would also include other methods such as direct mail, social media platforms, and so forth.

In every recent presidential election, both campaigns have spent lavishly on television advertisements, especially in key battleground states. In 2016, Clinton and Trump advertised heavily in states such as Florida, Ohio, Pennsylvania, Iowa, Wisconsin, and Colorado. For example, in Florida alone, Clinton and Trump spent over $110 million on television advertising in 2016.[35] Indeed, in many areas, one cannot watch TV during an election year without being bombarded by television advertisements. To see the ads that were aired in 2016 and previous elections, visit the Living Room Candidate (www.livingroomcandidate.org).

Anyone who has seen campaign advertisements on television knows that many of them, if not most, share two features: they appeal to emotions, and they make negative attacks. Emotional appeals have become ubiquitous. A comprehensive study carefully analyzed thousands of political ads.[36] A plurality, it found, was purposely designed (everything from the images used to the music playing in the background) to appeal mainly to voters' fears (impending war, losing a job, etc.). A smaller but significant fraction was more focused on stirring positive emotions (patriotism and community pride). Interestingly, such ads do not simply work on the uninformed. Instead, they have larger effects on those who are the most informed and engaged with politics, suggesting that even the most "sophisticated" among us can fall prey to such ads.[37]

Second, most political ads are negative. Simply put, a negative advertisement is an advertisement that directs viewers' attention to the downsides of a candidate (rather than their beneficial qualities); such ads are sometimes called attack ads. In 2016, negative ads from Secretary Clinton questioned President Trump's fitness for the office by attacking his character, often by repeating some of his more inflammatory comments. Negative ads from the Trump campaign suggested that Clinton was an out-of-touch elitist, one who looked down on hard-working, ordinary voters. Such ads dominated the airwaves: nearly 80 percent of ads aired in 2016 were negative. While this was down very slightly from 2012, the level in 2016 was much higher than in earlier elections like 2000 or 2004.[38]

Are such advertisements harmful? Many implicitly assume so. But this is perhaps premature because it conflates a negative ad—one that highlights a candidate's shortcomings on the issues—with a deceptive or dirty ad that distorts the truth or engages in personal attacks on a candidate. Just because an ad is negative does not mean it is dirty or deceptive: one can critique and be truthful.[39] While some negative advertisements devolve into personal attacks and falsehoods, many are ads that critique an opponent's stance on the issues or record in office.[40] While mudslinging is not helpful, ads that portray where the candidates stand on the issues are.

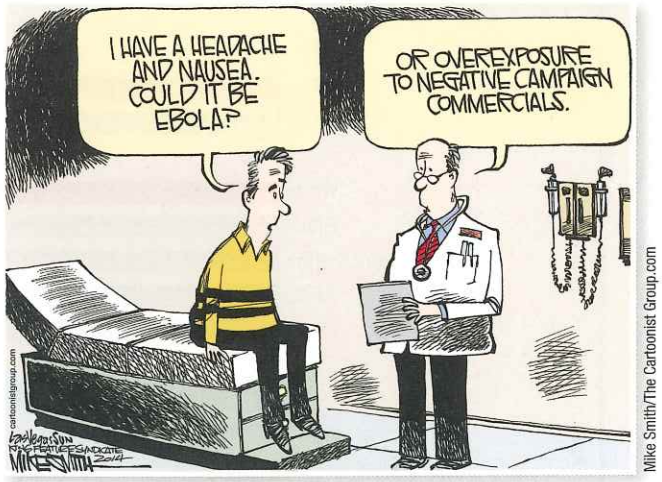


IMAGE 10-5 Many blame negative campaign ads for voters' unhappiness with campaigns, but the scholarly evidence suggests they can help voters learn about the candidates.

As a result, negative advertisements (at least those that focus on issues) are typically more informative than positive advertisements. Positive advertisements tend to traffic in happy platitudes with little substantive detail, whereas negative ads tend to offer actual critiques on the issues.[41] Negative advertisements can be a valuable tool for learning about the issues.

But whether an ad appeals to our emotions, and whether it is positive or negative, the real question is, Do advertisements work? In particular, we can ask three questions: Do advertisements change who turns out to vote? Do they inform voters? Do they change voters' assessments of the candidates?

First, advertisements do not seem to increase turnout very much.[42] As we discussed in Chapter 8, many other factors determine whether someone turns out to vote, and political advertising contributes little beyond these factors. Second, as we saw above, ads, especially when they discuss substantive issues, can inform voters and help them learn where the candidates stand on the issues of the day.[43] Finally, advertisements also shape how voters think about the candidates. Advertisements shape people's assessments of the candidates' traits (factors such as strong leadership, integrity, and empathy, discussed earlier), and they also seem to affect a candidate's overall likability.[44] It is fair to say that advertising works.

But it is important to point out, however, that advertising does not determine election outcomes. This is true for two reasons. First, these effects are modest, not massive. The studies cited above find that advertisements change the outcome by a few percent at most, and these effects decay very quickly. Scholars can detect the effects of an ad for a day or two after it airs, but it fades away after that.[45] Even ads that are repeated again and again have relatively small effects in the end. Simply running more advertisements will not fundamentally reshape an election. Second, at the presidential level, because the campaigns are relatively evenly matched, the effects from one campaign's advertisements cancel out the effects from the other campaign's advertisements.[46] Candidates spend so many millions of dollars on ads partly because they need to match their opponent's ads. This quickly escalates the cost without necessarily changing the outcome very much, as the ads cancel each other out. Neither side can back down, however, because that would give their opponent an edge (ads from one side that are not answered by the other side could have a larger effect). The end result is a great deal of spending without much of an effect on the overall outcome.

Campaign Events

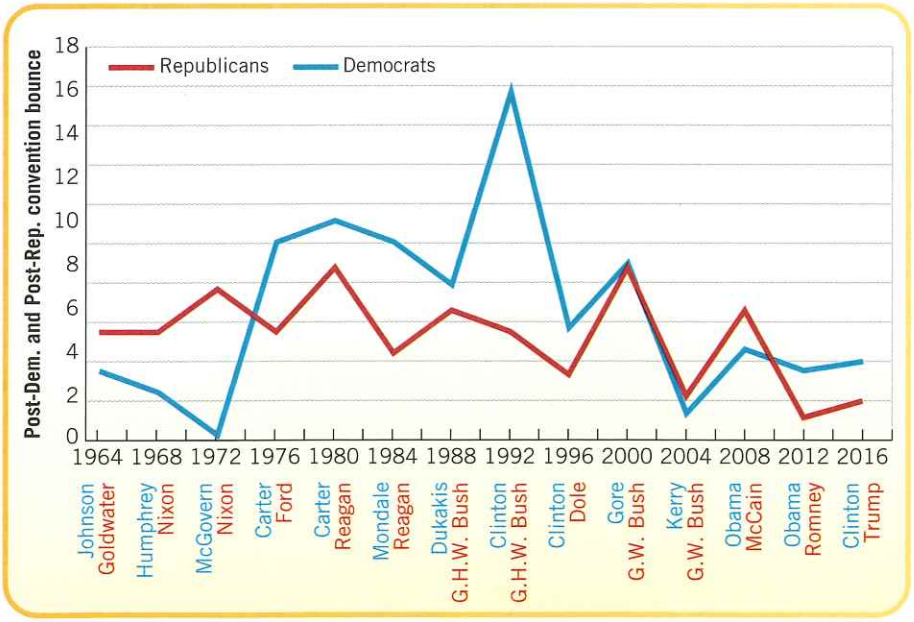
Beyond advertisements and other forms of communication from the campaigns, voters also learn about the candidates from the campaign events themselves. In particular, two campaign events are particularly important to voters: the parties' nominating conventions and the presidential debates. These events matter because they are the way in which most people actually encounter the candidates in their own words, beyond 30-second television ads. For many voters, these events are their longest sustained interactions with the candidates.

As we reviewed in Chapter 9, a party's convention is the formal mechanism used to nominate that party's candidate for president (though the decision effectively is made by the voters months earlier in the primaries). The convention is the party's chance to make its case to the voters for why their nominee should win the election. The convention culminates with the nominee giving his or her acceptance speech, but in the days leading up to it, other party luminaries and rising stars also make the case for the nominee and the party. Such events are especially valuable for the party because they get to speak directly to voters, without any rebuttal from the other side. Furthermore, not only does the party get to broadcast its message, it typically also gets highly favorable press coverage during the event, which also moves voters toward the party's nominee in the days and weeks following the convention.[47]

As a result of this sustained one-sided and favorable coverage, candidates traditionally got a sustained "bump" from the convention: their poll numbers went up following the convention (though this boost quickly dissipated in most years). Figure 10.4 shows that convention bump over time.

As we can see in Figure 10.4, in some years, there have been truly large convention bumps of 10 and even 15 points. Interestingly, however, the average size of the convention bump has decreased over time. This could

FIGURE 10.4 **Historical Convention Bounces, 1964–2016**



Source: 1964–2012, data from various Gallup Polls; 2016: data from Alan Rappeport, "New Poll Reflects a Post-Convention Bounce for Hillary Clinton," *New York Times*, 1 August, 2016.

be due to many factors, but one likely factor is the timing of the convention. The conventions were at one time held almost a month apart. But starting in 2000, they have occurred much closer together, and since 2008, the conventions occurred in back-to-back weeks. When the conventions were a month apart, each party's message had time to sink in and be absorbed by voters. But today, the conventions occurring in such rapid succession limits their potential effectiveness.[48]

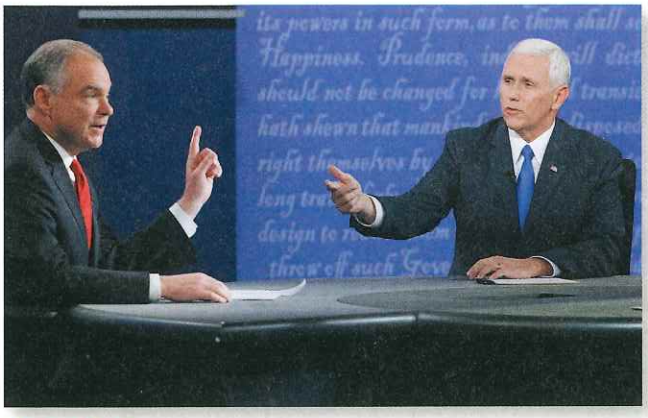
The debates also serve as an important source of voter information about the candidates. They typically are viewed by the largest audience a candidate reaches during the campaign: in 2016, over 80 million Americans watched the first presidential debate—more than double the audience for either candidate's acceptance speech. The debates also give the candidates an opportunity to show how they function under pressure, as they have to tackle questions from the moderator and audience and still get their message across.

Much like the conventions, the media's coverage of the event strongly colors how people respond to it. While millions do tune in to watch the debate itself, they also see pundits discuss it in the hours, days, and weeks that follow. Indeed, the post-debate commentary can often be just as influential for voters as the actual debate itself.[49] The media typically declares one candidate the winner, and then that candidate receives a boost in his or her standing in the polls.

This bump to the winner's poll numbers is typically quite modest, however—only a few points at most. Why do debates move opinion less than the conventions? The debates take place much later in the election season (usually in October), and by that point most viewers have made a decision and are unlikely to be swayed. Indeed, for many Americans who have picked a candidate, debates are mostly an opportunity to cheer for him or her.[50]

That does not mean, however, that debates do not matter. The evidence suggests that debates can matter for any remaining undecided voters and for wavering partisans (those who are not currently supporting their party's nominee).[51] For example, in the first debate in 2012, Mitt Romney had a stronger than expected performance and was the consensus winner according to the post-debate commentary. Perhaps not surprisingly, then, Romney's standing in the polls jumped by about four points after the debate. But much of this shift was due to undecided Republicans coming back to Romney.[52] This debate, like many other campaign events, activated latent partisanship and helped to bring wavering partisans back into the fold; it no doubt also helped undecided voters make up their minds as well.

Beyond the debates and conventions, journalists always try to claim that various events are "game changers": this rally or that speech will be the one that fundamentally alters the dynamics of an election. One study of a recent election found that over the course of the campaign, journalists called 68 different events "game changers," when most were anything but.[53] In the end, most campaign events do not really change the dynamics of the race because the dynamics are driven by the underlying fundamentals. Campaigns—and campaign events—certainly matter, but they matter more at the margins.



REUTERS/Alamy Stock Photo

IMAGE 10-6 Vice-presidential nominees Tim Kaine (left) and Mike Pence square off in the 2016 vice-presidential debate.

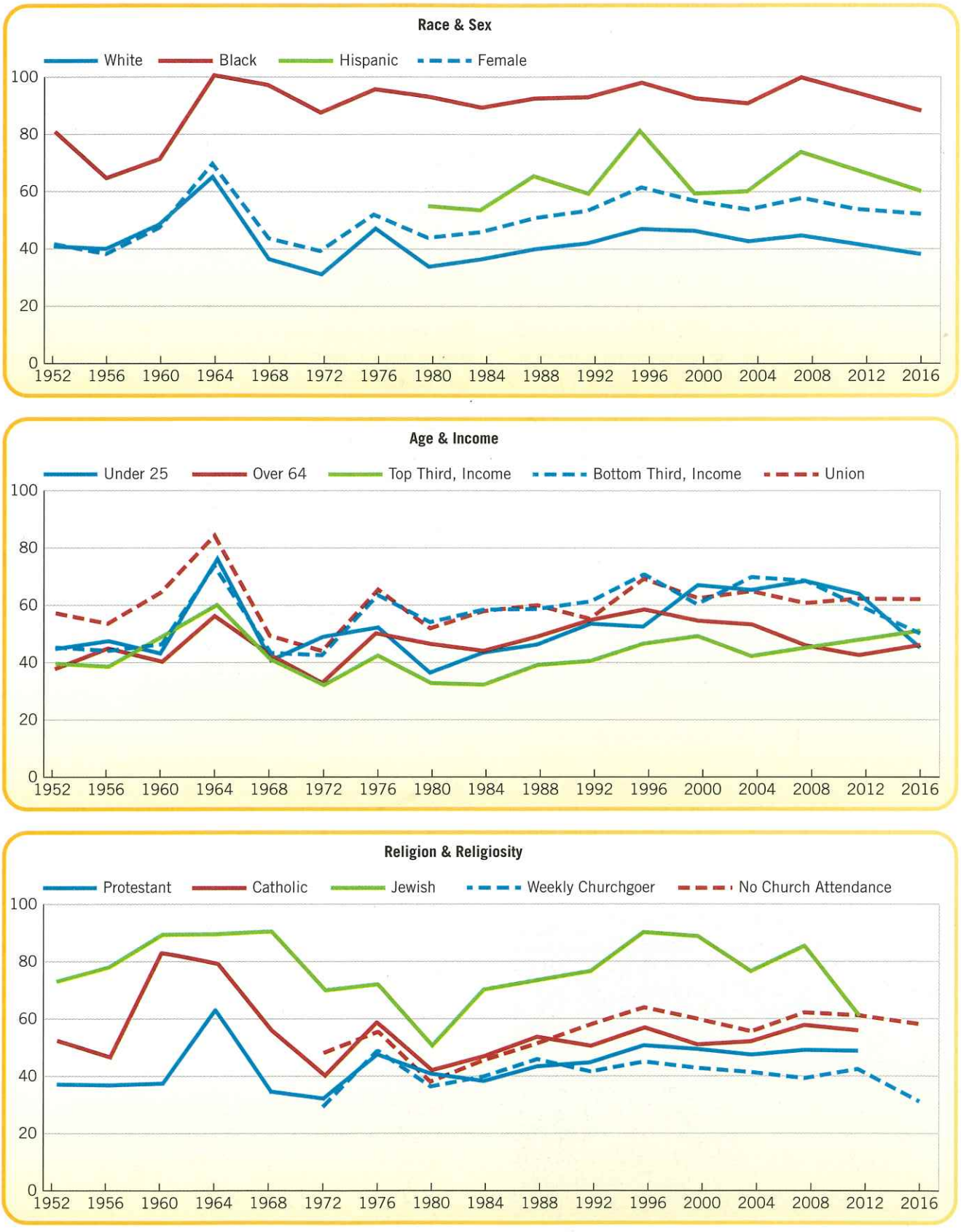
10-4 Building a Winning Coalition

Earlier in the chapter, we argued that campaigns primarily focus on three factors to persuade voters: assigning credit and blame for the state of the nation, activating voters' latent partisanship, and helping voters judge the candidates' character. As a result, these factors largely shape a voter's decision in the ballot box. If we want to understand how voters will cast their ballot, these are the factors to understand.

While valuable, however, this sort of analysis does not tell us how the parties each construct a winning coalition. Which groups are the base of support for each party? Which groups divide their support more evenly between them? Women? Young voters? Someone else? To answer these sorts of questions, we need to examine the level of support for the parties from different demographic groups over time. Figure 10.5 shows how various salient social groups have voted over the previous 60 years.

African Americans are the most loyal voters in the Democratic coalition. In every election but one since 1952, two-thirds or more of all African Americans voted Democratic; since 1964, more than four-fifths have gone Democratic. Usually, Jewish voters are almost as solidly

FIGURE 10.5 **Group Support for the Democratic Nominee, 1952–2016**



Source: ANES Guide to Public Opinion and Electoral Behavior, 1952–2012; Author's analysis of NES Cumulative data file & 2016 NES Time Series Study (Face-to-Face Respondents Only).

Democratic, although their support for President Obama fell somewhat in 2012. Most Latinos have been Democrats, though differences exist among Cuban Americans (who often vote Republican) and Mexican Americans and Puerto Ricans (who are strongly Democratic). In recent elections, turnout rates among Latino voters have begun to rise. Latino support for Democrats fell in 2016; it is unclear what will happen in future elections.

Over time, women and young people have become more important Democratic constituencies as well. Since the 1980s, women have been trending toward the Democratic Party, and in recent years they have tended to favor Democrats by a several-point margin, whereas men are increasingly Republican. Young people used to split their votes more evenly between the parties, but since the 1990s they have favored Democratic candidates (by substantial margins in recent years, though their support for the Democratic nominee dropped somewhat in 2016, partly reflecting the appeal of third-party candidates for younger voters). At the same time, older voters have begun to favor Republicans, suggesting an emerging age gap.

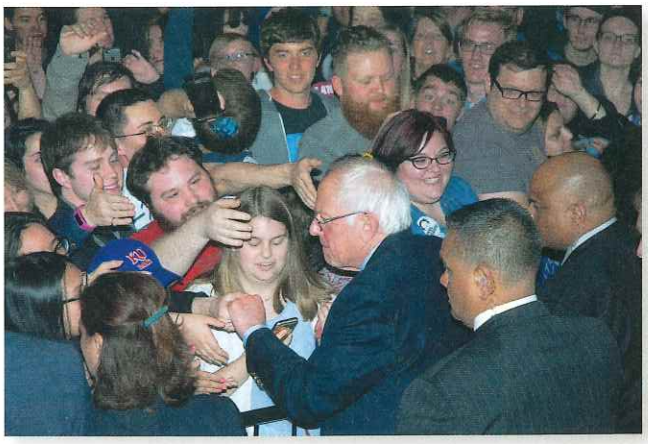
The parties also divide along income lines. Those in the bottom third of the income distribution tend to favor Democrats, whereas those in the top third favor Republicans (those in between have swung between the parties). This same general pattern held in 2016, though lower-income voters were somewhat less supportive of the Democratic nominee than in previous years. Interestingly, some have argued that low-income whites have come to heavily favor Republicans because of the party's stance on social issues such as abortion and gay marriage. The evidence, however, suggests that it is not the case, and low-income whites remain predominantly Democratic.[54]

Catholics once heavily favored Democrats, but over time they have become more of an electoral bellwether, splitting their support between the parties much more evenly. In 1960, Catholics heavily supported John F. Kennedy (a Democrat and fellow Catholic), but they also voted for Nixon and Reagan—both Republicans. Since the 1990s, Catholics have split their vote just about equally between the parties. The same is true of Protestants: Sixty years ago they were solidly Republican, but today they support Democrats and Republicans at similar levels.

incumbent *The person already holding an elective office.*

In contemporary elections, perhaps even more relevant than your religious denomination (Protestant, Catholic, Jewish, or other) is your commitment to that faith. Those who more frequently attend church (of any denomination) tend to favor Republicans, and likewise, those who do not attend church (or profess no religious affiliation) have moved more strongly toward the Democratic Party.

Looking across these various divides, however, what becomes clear is that few demographic groups overwhelmingly favor one party or the other. Yes, African Americans and Jews heavily favor the Democrats in most elections, but most other groups favor one party or the other by a relatively modest amount, often less than five percentage points. This suggests that neither party can afford to write off any demographic group, and that either party's candidate needs a broad coalition to capture the presidency.



mark reinstein/Alamy Stock Photo

IMAGE 10-7 Senator Bernie Sanders greets supporters during his run for the 2016 Democratic presidential nomination.

10-5 Congressional Elections

So far in the chapter, we have focused almost exclusively on the presidential election. But this is not the only election in American politics: We also go to the polls to elect members of the House and Senate (not to mention dozens of state and local officials). Congressional elections are very similar to presidential elections in many ways, and many of the factors we reviewed earlier—the health of the economy, partisanship, and judgments about the candidates' character—matter a great deal here as well. But a number of important differences also exist. Here we focus on three particularly key ones that give congressional elections their own unique dynamics.

The Incumbency Advantage

In presidential elections, the **incumbent** (i.e., the sitting president) typically receives 50–55 percent of the vote—most presidential elections are close, hard-fought contests, as we mentioned above. In contrast, in congressional elections, many incumbents win with an overwhelming share (often more than 60 percent) of the vote. In most election

years, the vast majority of incumbents—often more than 90 percent—are reelected to Congress. In 2014, the House reelection rate was 95 percent, and in the Senate, "only" 82 percent of incumbents were reelected; recall that several Democratic senators went down to defeat, such as Kay Hagan in North Carolina, Mark Pryor in Arkansas, and Mark Begich in Alaska. But in 2016, these figures were both at their historical levels: 97 percent of House incumbents were reelected, and 90 percent of incumbent senators were reelected (Republicans Mark Kirk of Illinois and Kelly Ayotte of New Hampshire both lost their seats). Since the mid-1960s, the incumbent reelection rate has never dropped below 80 percent in the House or 60 percent in the Senate (see Figure 13.2 in Chapter 13 for a depiction of the incumbent reelection rate over time). Not only are incumbents more likely to be reelected, they do better than an otherwise similar challenger would. Scholars estimate that House candidates today get several percent more of the vote than would a challenger who is otherwise similar (with Senate candidates getting a similar, albeit smaller, boost).[55] Clearly, incumbents do quite well in legislative elections.

Political scientists have studied this phenomenon extensively and argue that this **incumbency advantage** reflects a number of factors that favor incumbents over challengers in congressional elections. We discuss these factors in more detail in Chapter 13 on Congress, but several of the main factors are briefly reviewed here. One important factor is the members' ability to serve their constituency. Members of Congress—unlike the president—are very likely to actively provide services to those whom they represent. Members can help a constituent track down a lost Social Security check, help apply for a small business loan, or, more generally, intervene on a constituent's behalf with a federal agency. Indeed, almost every member of Congress has a section on his or her website to encourage constituents to reach out and contact them if they need help with some aspect of the federal government. Members of Congress want to be of service to those they represent.

Second, members of Congress also are able to claim credit for every bridge, road, and project in their district. They can point to their ability to help secure funds for the district as a reason to reelect them year after year. In both cases, this helps members build a reservoir of support that is not tied to partisanship, but rather to the members themselves. If a Democratic member helps a Republican constituent apply for a government program, then that constituent is more likely to vote for that member of Congress despite their partisan differences.[56]

Members of Congress also have an important name recognition advantage: they are much better known than most challengers. After all, the incumbent congressperson has already been elected once, and can more easily command media attention. Furthermore, they can use the franking privilege (the ability of members of Congress to send mail to constituents) to communicate their accomplishments in office to their constituents. Such efforts boost the name recognition and standing of incumbent members of Congress.

incumbency advantage *The tendency of incumbents to do better than otherwise similar challengers, especially in congressional elections.*

gerrymandering *Drawing the boundaries of legislative districts in bizarre or unusual shapes to favor one party.*

Finally, members enjoy an enormous fundraising advantage over challengers. Sitting members of Congress have the ability to raise funds throughout their term, and often have much more cash than their potential opponents (who typically struggle to raise money). Despite efforts to limit the influence of money in politics (discussed below), members of Congress almost always outspend their challengers. All of these reasons—and many more—help to explain why members of Congress are so frequently reelected.

Redistricting and Gerrymandering

Since 1911, the size of the House has been fixed at 435 members, except for a brief period when it had 437 members owing to the admission of Alaska and Hawaii to the Union in 1959. Once the size was decided, it was necessary to find a formula for performing the painful task of apportioning seats among the states as they gained and lost population. The Constitution requires such reapportionment every 10 years (a process also known as redistricting). A more or less automatic method was selected in 1929 based on a complex statistical system that has withstood decades of political and scientific testing. Since 1990, under this system 18 states have lost representation in the House and 11 have gained it. Florida and California posted the biggest gains, while New York, Ohio, and Pennsylvania suffered the largest losses.

When such reapportionment and redistricting takes place, many complain there has been **gerrymandering**, which means drawing a district boundary in some bizarre or unusual shape to make it easy for the candidate of one party to win election in that district. This would seem to make it much easier for incumbents to win reelection: One district can be made heavily Democratic by packing many Democratic voters into it, thereby making it easier for a Democrat to win reelection in that district. There is some truth to this claim, but only some, as many

surge and decline *Tendency for the president's party to do better in presidential years when he is at the top of the ticket (the surge), but to do worse when he is not because many voters are less enthusiastic and stay home (the decline).*

coattails *The alleged tendency of candidates to win more votes in an election because of the presence at the top of the ticket of a better-known candidate, such as the president.*

competing pressures are put on drawing districts. Many states (and the courts) mandate that districts be of roughly equal population, follow natural political boundaries (like towns), be contiguous (i.e., be able to travel from any point in the district to any other), and so forth. This puts significant constraints on what districts can be drawn. So while gerrymandering affects congressional elections, the effects are less than many claim.[57]

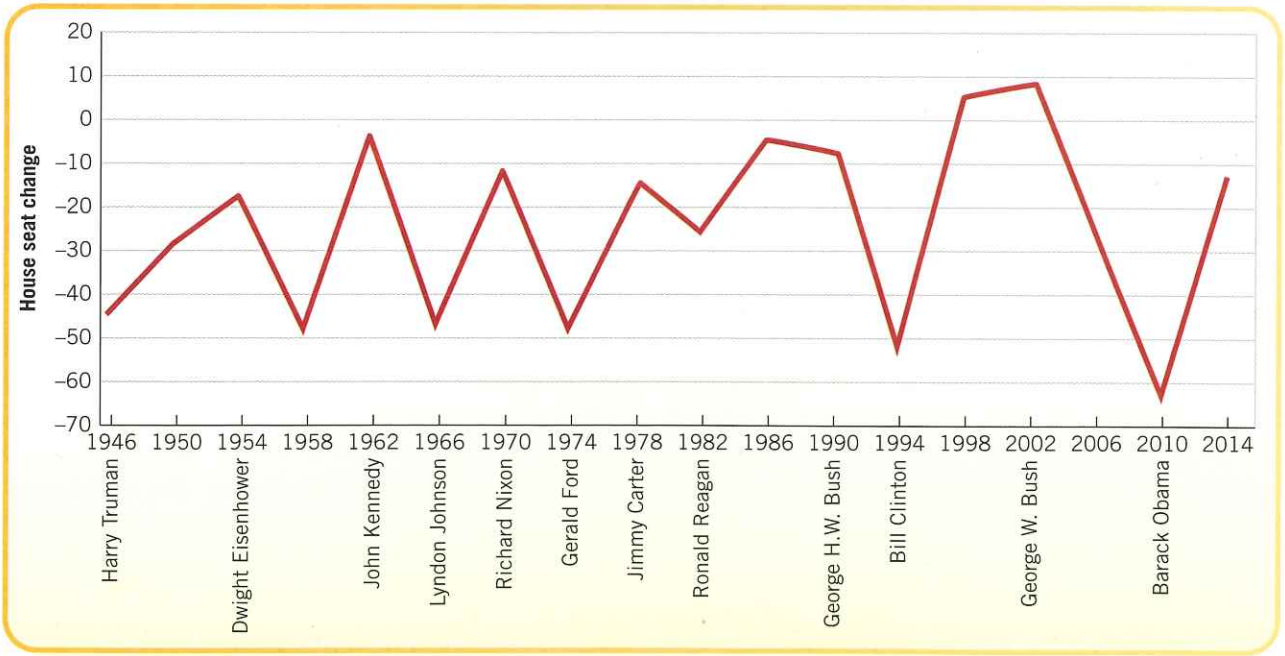
On-Year and Off-Year Elections

The U.S. holds presidential elections every four years, but congressional elections every two years. In general, the president's party loses seats in the midterm election. As we can see in Figure 10.6, the president's party has lost seats in every midterm election since 1938, except for 1998 and 2002.

What explains this striking pattern? Political scientists call this pattern **surge and decline**. In a presidential election year, the president's supporters show up at the polls to vote for the president. They also vote for other candidates from the president's party (such as members of Congress), a phenomenon known as **coattails**.[58] This generates a surge in support for the president's fellow partisans. As a result, when a new president is elected, typically he brings in to Congress more members of his own party. For example, after the 2008 elections, 21 more Democrats joined the House, and after 2012, the Democrats gained 8 more seats.

But in the subsequent midterm election, without the appeal of the president at the top of the ticket, many of those voters stay home, and support for the party's candidates declines. With the president at the top of the ticket, his partisans flock to the polls, and his party does better with Independents. But in the midterm elections, without the president running, his partisans stay home, especially those who are more marginal voters.[59] The surge in the on-year election means that the president's party picks up seats normally held by the other party, but in the off-year election, without the president at the top of the ticket, those seats are more difficult to hold. So while Obama helped bring more Democrats into office in 2008 and 2012, in the two midterm elections of 2010 and 2014, his party's fortunes declined: Democrats lost 63 seats in the House of Representatives in 2010 and 13 seats in 2014. Relative to the 2008 and 2012 electorates, those in 2010 and 2014 were more conservative and Republican, older, whiter, and more male.[60] As we discussed earlier, these groups tend to favor Republicans somewhat (see Figure 10.5), so Republicans did a bit better in Obama's two midterm elections. In the

FIGURE 10.6 **House Seats Won or Lost by the President's Party in Midterm Elections, 1946–2014**



Source: The American Presidency Project, "Seats in Congress Gained/Lost by the President's Party in Mid-Term Elections." www.presidency.ucsb.edu/data/mid-term_elections.php (accessed February 2015).

2006 midterm elections, with Bush in the White House, the electorate was more pro-Democratic, and so Democrats did better (gaining 31 seats and control of Congress). Because of this pattern of surge and decline, the party controlling the White House typically loses seats in the midterm election.

10-6 Campaign Finance: Regulating the Flow of Political Money

We opened the chapter by noting the vast sums of money that now flow through presidential and congressional elections, and throughout the chapter we have explained what this money buys and how that matters to election outcomes. But that still leaves several important questions about the effects of money on elections. Here we try to answer three questions: Where does campaign money come from? What rules govern how it is raised and spent? What has been the effect of campaign finance reform?

Sources of Campaign Money

Presidential candidates get part of their money from private donors and part from the federal government; congressional candidates get all of their money from private sources. The federal government provides matching funds, dollar for dollar, for all monies raised from individual donors who contribute no more than $250. (To prove they are serious candidates, they must first raise $5,000 from such small contributors in each of 20 states.) The government previously gave a lump-sum grant to each political party to help pay the costs of its nominating convention, though President Obama signed legislation ending that program in 2014. In the general election, the government pays all the costs (up to a legal limit) of major-party candidates and part of the costs of minor-party candidates (those winning between 5 and 25 percent of the vote).

This system of public funding of presidential elections was put in place starting with the 1976 election as a response to the Watergate scandal (see below). In recent elections, however, more and more candidates have opted out of the public funding program (by opting out, candidates are free to spend as much money as they like; candidates who accept the public funds must abide by spending limits). In 2000, George W. Bush became the first candidate to opt out of public funding in the primaries (but not the general election); in 2008, Obama became the first candidate to opt out of public funding during the general election; and in 2012, both major party nominees turned down public funding for the general election. In 2016, only one candidate accepted public financing: former Maryland Governor Martin O'Malley, who ran for the Democratic nomination. Every other candidate—including Clinton and Trump in both the primary and general election—rejected public financing. What happens with this system in the future remains to be seen.

political action committees (PACs)
Committees set up by a corporation, labor union, or interest group that raise and spend campaign money from voluntary donations.

Congressional candidates get no government funds; all their money must come out of their own pockets or be raised from individuals, interest groups (PACs), or the political parties. Contrary to what many people think, most of that money comes from—and has always come from—individual donors. Because the rules sharply limit how much any individual can give directly to candidates, most donations are relatively modest amounts ($100 or $200) given by ordinary people, rather than a few rich plutocrats.[61]

Campaign Finance Rules

During the 1972 presidential election, men hired by President Nixon's campaign staff broke into the headquarters of the Democratic National Committee in the Watergate office building. They were caught by an alert security guard. The subsequent investigation disclosed that Nixon's people had engaged in dubious or illegal money-raising schemes, including taking large sums from wealthy contributors in exchange for appointing them to ambassadorships. Many individuals and corporations were indicted for making illegal donations (since 1925, it had been against the law for corporations or labor unions to contribute money to candidates, but the law had been unenforceable). Some of the accused had given money to Democratic candidates as well as to Nixon.

When the break-in was discovered, the Watergate scandal unfolded. It had two political results: President Nixon was forced to resign, and a new campaign finance law was passed.

Under the new law, individuals could not contribute more than $1,000 to a candidate during any single election. Corporations and labor unions had for many decades been prohibited from spending money on campaigns, but the new law created a substitute: **political action committees (PACs)**. A PAC must have at least 50 members (all of whom enroll voluntarily), give to at least five federal candidates, and must not give more than $5,000 to any candidate in any election or more than $15,000 per year to any given national party committee. In addition,

independent expenditures *Spending by political action committees, corporations, or labor unions to help a party or candidate but done independent from the party or candidate.*

soft money *Funds obtained by political parties that are spent on party activities, such as get-out-the-vote drives, but not on behalf of a specific candidate.*

the law made federal tax money available to help pay for presidential primary campaigns, for all of the campaign costs of a major-party candidate, and for a fraction of the costs of a minor-party candidate in a presidential general election (though as we saw above, candidates have recently begun to opt out of this system).

The new law helped increase the amount of money spent on elections and, in time, changed the way that money was spent. As Figure 10.7 shows, since the 1970s, different types of PACs have proliferated or dropped off. In each election since 2002, PACs have given over $250 million to congressional candidates. In its April 2017 report on the 2015–2016 federal election cycle, the Federal Election Commission reported that 8,666 federal PACs had total receipts of nearly $4 billion and spent approximately $4 billion on that cycle's elections. This included significant spending from corporate PACs ($385 million), labor PACs ($331 million), and so-called super PACs, which are formally known as "Independent Expenditure Only Political Committees," which spent $1.8 billion. We discuss these super PACs in more detail below.

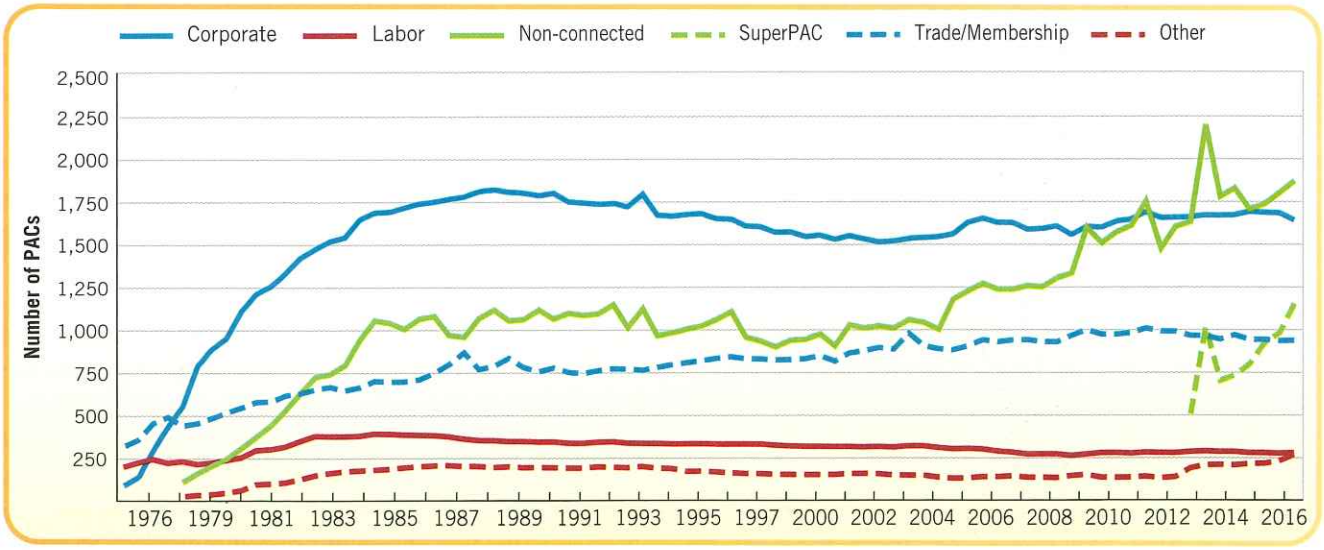
The 1973 campaign finance law produced two problems. The first was **independent expenditures**. A PAC, a corporation, or a labor union could spend whatever it wanted supporting or opposing a candidate, so long as this spending was "independent," that is, not coordinated with or made at the direction of the candidate's wishes. Simply put, independent expenditures are ordinary advertising directed at or against candidates.

The second was **soft money**. Under the law, individuals, corporations, labor unions, and other groups could give unlimited amounts of money to political parties provided the money was not used to back candidates by name. But the money could be used in ways that helped candidates, for example, by financing voter registration and get-out-the-vote drives. Many, however, saw such activities as de facto spending on candidates (for example, by showing people a photo of a candidate, encouraging people to vote for that candidate's party, but not naming that candidate, the ad could be paid for with soft money). Such activities therefore became controversial.

A Second Campaign Finance Law

Reform is a tricky word. We like to think it means fixing something gone wrong. But some reforms can make matters worse. For example, the campaign finance reforms enacted in the early 1970s helped matters in some ways by ensuring that all campaign contributors would be identified by name. But they made things worse in other ways, for example, by requiring candidates to raise small sums from many donors. This made it harder for challengers to run (incumbents are much better known and raise more money) and easier for wealthy candidates to run because, under the law as interpreted by the Supreme Court, candidates can spend as much of their own money as they want.

FIGURE 10.7 **Growth of PACs, 1976–2016**



Source: Federal Election Commission, PAC Count Data. Accessed February 2017.

After the 2000 campaign, a strong movement developed in Congress to reform the reforms of the 1970s. The result was the Bipartisan Campaign Reform Act of 2002, which passed easily in the House and Senate and was signed by President Bush. After the 1970s laws were passed, the Supreme Court, in *Buckley v. Valeo* (424 U.S. 1, 1976), upheld federal limits on campaign contributions even as it ruled that spending money to influence elections is a form of constitutionally protected free speech (hence candidates were free to give unlimited amounts of money to their own campaigns). That precedent had pretty much held, but the new law made three important changes. First, it banned soft-money contributions to national political parties from corporations and unions. After the federal elections in 2002, no national party or party committee could accept soft money. Any money the national parties get must come from "hard money"—that is, individual donations or PAC contributions as limited by federal law. Many feared this would substantially weaken parties, as they had become dependent on soft-money donations to fund their operations. But, as we discussed in Chapter 9, the parties changed their tactics and are raising more money today than ever before.

Second, the limit on individual contributions was raised from $1,000 per candidate per election to $2,000 (and indexed in order to rise with inflation; the limit for the 2017–2018 election cycle is $2,700).

Third, independent expenditures by corporations, labor unions, trade associations, and (under certain circumstances) nonprofit organizations are sharply restricted. Now none of these organizations can use their own money to refer to a clearly identified federal candidate in any advertisement during the 60 days preceding a general election or the 30 days preceding a primary contest. (PACs can still refer to candidates in their ads, but of course PACs are restricted to hard money—that is, the amount they can spend under federal law.)

Immediately after the law was signed, critics filed suit in federal court, claiming it was unconstitutional. The suit brought together a number of organizations that rarely work together, such as the American Civil Liberties Union and the National Right to Life Committee. The suit claimed that the ban on independent spending that "refers to" clearly identified candidates 60 days before an election is unconstitutional because it is an abridgement of the right of free speech. Under the law, an organization need not even endorse or oppose a candidate; it is enough that it mention a politician. This means that 60 days before an election, an organization cannot say, for example, that it "supports (or opposes) a bill proposed by Congresswoman Pelosi."

Newspapers, magazines, and radio and television stations are not affected by the law, so they can say whatever they want for or against a candidate. One way of evaluating the law is to observe that it shifts influence away from businesses and unions and toward the media.

In *McConnell v. Federal Election Commission* (2002), the Supreme Court decided to uphold almost all of the law. As we saw in Chapter 5, it rejected the argument of those who claimed that speech requires money and decided it was no violation of the free speech provisions of the First Amendment to eliminate the ability of corporations and labor unions (and the organizations that use their money) to even *mention* a candidate for federal office for 60 days before the national election. In 2007, however, the Court backed away from this view. An ad by a right-to-life group urged people to write to Senator Russell Feingold to convince him to vote for certain judicial nominees, but it did not tell people how to vote. The Court decided this was "issue advocacy" protected by the First Amendment and so could not be banned by the McCain-Feingold law (*Federal Election Commission v. Wisconsin Right to Life*).

Two more recent decisions have further relaxed campaign finance rules. In the 2010 *Citizens United* decision (*Citizens United v. Federal Election Commission*), the Court narrowly decided, in a five-to-four decision, to overturn the ban on corporate and union funding of campaign ads. The decision kept in place the limits on donations to candidates, but allows corporations, unions, and other groups to spend unlimited funds calling for the support or defeat of particular candidates (and also helped to give rise to so-called super PACs, as we explain below).

In 2014, in *McCutcheon v. Federal Election Commission*, the Court overturned the aggregate biennial limits on contributions to national parties and candidates. By law, individuals were limited in how much they can give in total to candidates, parties, and other political committees. So, before the McCutcheon ruling, individuals could give no more than $48,600 in total to all candidates, and could give no more than $2,600 to any candidate—any individual could give the federal limit to only 18 candidates. *McCutcheon* kept the limits on how much anyone could give to a particular candidate, but overturned the limit on the aggregate rules. So now an individual may give the federal limit ($2,700 in 2017–2018) to as many candidates as he or she likes. (The decision made a parallel set of rulings with respect to parties.)

If the past is any guide, neither recent changes nor the existing legal maze will do much to keep individuals, PACs, party leaders, and others from funding the candidates they favor. Nor should we be surprised if groups continue to steer contributions much as one might expect.

527 organizations *Organizations under section 527 of the Internal Revenue Code that raise and spend money to advance political causes.*

super PAC *A group that raises and spends unlimited amounts of money from corporations, unions, and individuals but cannot coordinate its activities with campaigns in any way.*

For instance, PACs dedicated to a party, a policy position, or a cause (e.g., pro-choice PACs that favor Democrats and pro-life PACs that favor Republicans) generally do not change how they give to candidates depending on who is in power. By contrast, trade and corporate PAC money tends to follow power: when Democrats control Congress, they give to Democrats, but switch to Republicans when Republicans are in control. In the 2009–2010 cycle, when Democrats were in control of Congress, the National Association of Realtors gave 55 percent of its funds to Democrats. But Republicans retook control of the House in 2010, and in 2011–2012 they gave 55 percent to Republicans. Similarly, the National Beer Wholesalers Association gave 53 percent to Democrats in 2009–2010, but then gave 59 percent to Republicans in 2011–2012—and so it went for numerous other trade or corporate PACs (see Table 10.1 for a list of the top 20 PAC contributors in 2015–2016). As we discuss in the next chapter, for most PACs, their goal is to gain access to politicians and make friends, not to support a particular ideology; hence they give more to whichever party is in power.

New Sources of Money

If money is, indeed, the mother's milk of politics, efforts to make the money go away are not likely to work. The Bipartisan Campaign Reform Act, once enforced, immediately stimulated people to find other ways to spend political money.

The most common were **527 organizations**. These groups, named after a provision of the Internal Revenue Code, are designed to permit the kind of soft-money expenditures once made by political parties. In 2004, the Democrats created the Media Fund, America Coming Together, America Votes, and many other groups. George Soros, a wealthy businessman, gave more than $23 million to organizations pledged to defeat George W. Bush. The Republicans responded by creating Progress for America, the Leadership Forum, America for Job Security, and other groups. Under the law as it is now interpreted, 527 organizations can spend their money on politics so long as they do not coordinate with a candidate or lobby directly for that person. As early as the 2004 elections, 527 organizations raised and spent over one-third of a billion dollars.

Two other outside groups have joined 527 organizations in recent years. First are the "**super PACs**" (technically known as "independent expenditure-only political committees"). These super PACs were born after the *Citizens United* decision and several other related decisions and rule changes. Super PACs can raise and spend unlimited amounts of money from corporations, labor unions, individuals, and other groups, whereas traditional PACs have strict limits on how much they can accept from any individual. Super PACs must operate independently of campaigns and candidates; they may not be "in concert or cooperation with" the candidate, his or her campaign organization, or a political party. So, for example, a super PAC's television ad for a given candidate must be funded and fashioned without that candidate, his or her campaign managers, or the candidate's party leaders being involved in any way.

Super PACs have become major sources of campaign dollars in recent elections. According to the Center for Responsive Politics, 1,322 super PACs raised over $695 million and spent about $348 million in 2014.[62]

LANDMARK CASES | Financing Elections

- ***Buckley v. Valeo* (1976):** Held that a law limiting contributions to political campaigns was constitutional but that one restricting a candidate's expenditures of his or her own money was not.
- ***McConnell v. Federal Election Commission* (2002):** Upheld 2002 Bipartisan Campaign Reform Act (popularly known as the McCain-Feingold law) prohibiting corporations and labor unions from running ads that mention candidates and their positions for 60 days before a federal general election.
- ***Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007):** Held that issue ads may not be prohibited before a primary or general election.
- ***Citizens United v. Federal Election Commission* (2010):** Overturned part of a 2002 law that had prohibited corporate and union funding of campaign ads.
- ***McCutcheon et al. v. Federal Election Commission* (2014):** Overturned aggregate limits on individual contributions to candidates and national parties.

TABLE 10.1 | Top 20 PAC Contributors to Candidates, 2015–2016

PAC Name	Total Amount	To Democrats	To Republicans
National Association of Realtors	$3,960,700	42%	58%
National Beer Wholesalers Association	$3,353,200	43%	57%
AT&T Inc.	$2,942,750	39%	61%
Honeywell International	$2,852,364	40%	60%
National Auto Dealers Association	$2,659,250	28%	72%
Blue Cross/Blue Shield	$2,567,398	36%	64%
International Brotherhood of Electrical Workers	$2,558,150	96%	4%
Lockheed Martin	$2,534,750	38%	62%
American Bankers Association	$2,432,007	21%	79%
Credit Union National Association	$2,372,850	47%	53%
Operating Engineers Union	$2,240,143	74%	26%
Comcast Corp.	$2,232,700	36%	64%
National Association of Home Builders	$2,185,625	17%	83%
Boeing Co.	$2,154,000	43%	57%
Northrop Grumman	$2,135,500	39%	61%
Majority Committee PAC	$2,086,513	0%	100%
National Association of Insurance & Financial Advisors	$2,086,450	33%	67%
American Crystal Sugar	$2,083,000	51%	49%
United Parcel Service	$2,022,256	32%	68%
Machinists/Aerospace Workers Union	$2,003,500	94%	6%

Source: Center for Responsive Politics, "PACS: Top PACs, 2015–2016" www.opensecrets.org/pacs/toppacs.php. Accessed June 2017.

To put these 2014 numbers in perspective, in that same election, the Democratic Congressional Campaign Committee and the National Republican Congressional Committee together spent only $134 million, or less than 40 percent of the spending from super PACs. In the 2015–2016 election cycle, the FEC reported that 2,722 super PACs raised and spent $1.8 billion, more than presidential candidates or parties raised in that election year.

Second, **501(c)4 groups** (also called social welfare organizations) have also emerged as important political funders. 501(c)4 Groups, named after the section of the tax code that created them, and are groups that are dedicated to promoting social welfare and have existed for many years. Many community and civic groups fall into this category, such as civic leagues and many local volunteer fire departments, not to mention groups like the Sierra Club, the AARP, and the National Rifle Association. Such groups are allowed to engage in politics so long as politics is not their focus: No more than 50 percent of their money can be spent on politics. Such groups have an attractive feature that super PACs do not. Super PACs (like regular PACs) must disclose their donors, but a 501(c)4 group does not. Such groups are therefore sometimes called "dark money" groups, since the identity of the donors is not known. Political spending by these groups is on the rise: According to the Center for Responsive Politics, spending by these groups grew from only about 5 million in 2006 to more than 300 million in 2012.[63] The ultimate impact of this money, however, remains to be seen.

501(c)4 group *A social welfare organization that can devote no more than 50 percent of its funds to politics. Sometimes referred to as "dark money" groups because they do not have to disclose their donors.*

Money and Winning

But does all of this money matter? Does money change who is elected president? At the presidential level, the answer is not really. In the primary process, it does not change the winner; after all, Sheldon Adelson spent millions in the

WHAT WOULD YOU DO?

Would Banning Super PACs Enhance Democracy?

To: *Senator Brian Paul*
From: *Nicoletta Luciana, legislative analyst*
Subject: *Vote on bill to eliminate super PACs*

In the wake of the 2010 *Citizens United* and several other decisions, super PACs (independent expenditure-only committees) have become a major source of campaign financing in recent years, spending almost $350 million in the 2014 election—more than the Democratic and Republican Parties' campaign committees combined. Concerns over this record spending have led your colleagues to introduce a bill to ban such super PACs.

To Consider:

Given record levels of spending by super PACs in recent elections, some in Congress are calling for a ban on super PACs. Some argue that banning these organizations would reduce public concerns about corruption and lessen the role of the wealthy in the political process, but critics charge that such restrictions would violate the First Amendment and harm voters.

Arguments for:

1. These groups allow the wealthy (and corporations and unions) to have too much say in the political process. They can outspend other groups and shape the messages voters hear in the election.
2. There is no evidence that super PACs cause corruption, but they produce the *appearance* of corruption or a quid pro quo. This weakens citizens' trust in our government.

Arguments against:

1. Political spending is a form of political speech and is protected by the First Amendment. This includes spending by super PACs.
2. By sponsoring political ads, super PACs can inform voters and provide them with information they need to make a choice between candidates.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ Vote to ban super PACs ☐ Vote not to ban super PACs

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

2012 Republican Primary to support Newt Gingrich, to no avail (and other wealthy donors spent lavishly to support Santorum and other losing candidates). The ability of wealthy donors to keep a campaign afloat, however, could change the dynamics of a race in the future.

In the general election for president, money is typically not an issue: Both candidates are usually relatively evenly matched, and their spending tends to track one another. For example, the single largest campaign expenditure for presidents is television advertisements and, as we discussed earlier, one party's advertisements largely cancel out the other's (generating a small, but important, net effect). As we have seen, three main factors typically shape presidential elections: political party affiliation, the state of the economy, and the character of the candidates. While the candidate who spends more money typically wins, that need not be the case. In 2016, Clinton spent more than twice as much as Trump but still lost the election.

At the congressional level, however, money matters a great deal more. In many congressional elections, spending is highly uneven. As we discussed above, incumbents can raise money much more easily than challengers can, and this sets up an asymmetry. And of course there's an irony here: Challengers, not incumbents, need money if they are to be competitive. Challengers are not well known and need to spend money to spread their message to the voters. While there is some debate about how much incumbent spending helps the incumbent, the literature is clear that challenger spending greatly benefits challengers.[64] If challengers are to win, they need access to money.

Given these concerns about funding, some states have passed laws to have public financing of state legislative elections. The idea is that the state provides funding for elections, which means that potential candidates do not need to raise money on their own to be competitive candidates (and in some states, candidates are prohibited from raising private funds if they take the public money).[65] According to the National Conference of State Legislatures, 14 states offer at least some public monies, and several states such as Connecticut and Arizona offer public funding to candidates for all statewide offices and the state legislature. Studies of these systems suggest they have some important benefits; in particular, legislators and others freed from the need to raise money spend more time interacting with constituents and otherwise doing their jobs.[66] This suggests there may be upsides to public financing, though such a system is very unlikely to be implemented at the federal level.

Photographer: Victor J. Blue/Bloomberg via Getty Images

IMAGE 10-8 President Trump meets with political donor and businessman Carl Icahn during the 2016 election.

10-7 Effects of Elections on Policy

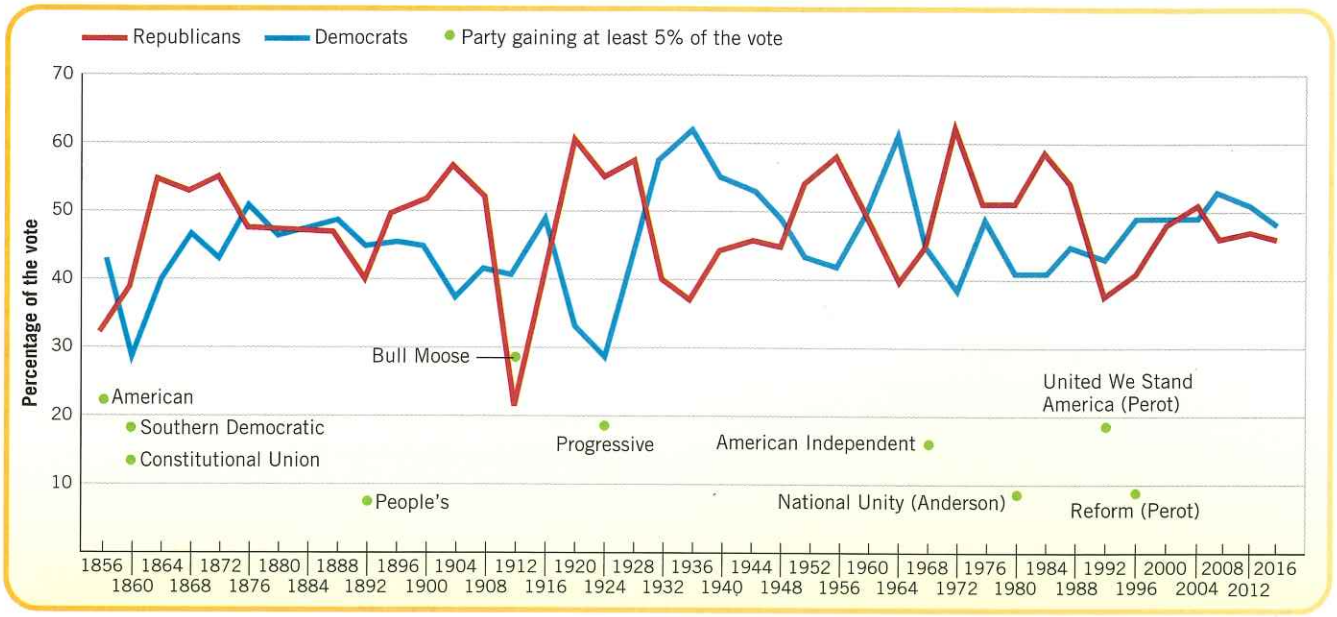
To the candidates, and perhaps to the voters, the only interesting outcome of an election is who wins. To a political scientist, the interesting outcomes are the broad trends in winning and losing and what they imply about the attitudes of voters, the operation of the electoral system, the fate of political parties, and the direction of public policy.

Figure 10.8 shows the trend in the popular vote for president since before the Civil War. From 1876 to 1896, the Democrats and Republicans were hotly competitive. The Republicans won three times, the Democrats twice in close contests. Beginning in 1896, the Republicans became the dominant party, and except for 1912 and 1916, when Woodrow Wilson, a Democrat, was able to win owing to a split in the Republican Party, the Republicans carried every presidential election until 1932. Then Franklin Roosevelt put together what has since become known as the "New Deal coalition," and the Democrats became the dominant party. They won every election until 1952, when Eisenhower, a Republican and a popular military hero, was elected for the first of his two terms. In the presidential elections since 1952, power has frequently switched hands between the parties.

Still, cynics complain that elections are meaningless: No matter who wins, crooks, incompetents, or self-serving politicians still hold office. The more charitable argue that elected officials usually are decent enough, but that public policy remains more or less the same no matter which official or party is in office.

This cynical view is, in our opinion, wrong. American public policy does change in response to the pressure of elections.

FIGURE 10.8 **Partisan Division of the Presidential Vote in the Nation, 1856–2016**



Sources: William H. Flanigan and Nancy H. Zingale, *Political Behavior of the American Electorate; World Almanac and Book of Facts 1994*; Dave Leip's Atlas of U.S. Presidential Elections.

In a parliamentary system with strong parties, such as that in the United Kingdom, an election often can have a major effect on public policy. When the Labour Party won office in 1945, it put several major industries under public ownership and launched a comprehensive set of social services, including a nationalized health-care plan. Its ambitious and controversial campaign platform was converted, almost item by item, into law. When the Conservative Party returned to power in 1951, it accepted some of these changes but rejected others (e.g., it denationalized the steel industry).

American elections, unless accompanied by a national crisis such as a war or a depression, rarely produce changes of the magnitude of those that occurred in Britain in 1945. The constitutional system within which our elections take place was designed to moderate the pace of change—to make it neither easy nor impossible to adopt radical proposals. Elections do produce changes in policy, though they are often quite modest ones in normal circumstances.

Yet with dramatic elections, even the American system can produce dramatic changes. The election of 1860 brought to national power a party committed to opposing the extension of slavery and Southern secession; it took a bloody war to vindicate that policy. The election of 1896 led to the dominance of a party committed to high tariffs, a strong currency, urban growth, and business prosperity—a commitment that was not significantly altered until 1932. The election of that year led to the New Deal, which produced the greatest single enlargement of federal authority since 1860. The election of 1964 gave the Democrats such a large majority in Congress (as well as control of the presidency) that there began to issue forth an extraordinary number of new policies of sweeping significance—Medicare and Medicaid, federal aid to education and to local law enforcement, two dozen environmental and consumer protection laws, the Voting Rights Act of 1965, a revision of the immigration laws, and a new cabinet-level Department of Housing and Urban Development.

In view of all these developments, it is hard to argue that the pace of change in our government is always slow or that elections never make a difference. Studies by scholars confirm that elections generate significant shifts in public policy. Many promises from campaigns are actually put into action, both at the presidential and congressional levels.[67] While many think that politicians do not keep their promises, this is partially a function of the fact that the media tends to focus on cases where candidates do not implement their promises (and often does not report when they do; we return to this point in Chapter 12).[68] Even in "ordinary" times, elections shape the policies produced by the government.

Another study examined the party platforms of the Democrats and Republicans from 1844 to 1968 and all the laws passed by Congress between 1789 and 1968. Through use of a complex statistical method, the author of the study was able to show that during certain periods

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

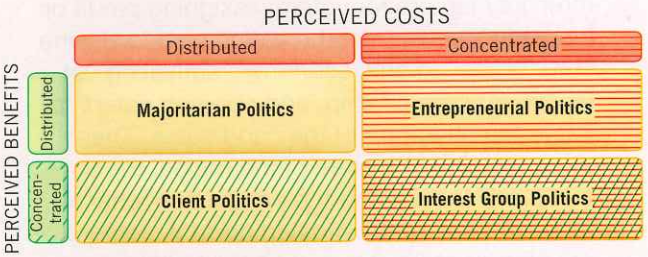
Campaign Finance Reform: Entrepreneurial Politics

In recent years, the role of money in politics has once again come to the fore, especially in light of the record-breaking spending of super PACs and other groups in recent elections. Some reformers have called for legislation to either outlaw or more tightly regulate such groups (and to regulate the flow of money in politics more generally). One such proposed reform was Senator Tom Udall's constitutional amendment that would have allowed Congress to issue more regulations on money in politics. The legislation (S.J. Res 19) was debated in September 2014 but fell short of the 60 votes needed to invoke cloture and advance to a final floor vote (the motion failed 54 to 42 to 4; see Senate Vote 261 from 2014).

Such efforts are examples of entrepreneurial politics. Reforming the system imposes concentrated costs on those who are large contributors in the status quo, since their activity is what would be most strongly limited. Furthermore, such efforts would also impose costs on political parties. As we discussed in Chapter 9, the parties have broken fundraising records in recent years in part by relying on the donations of wealthy individuals who contribute large sums. Both of these groups are well positioned to oppose reform.

In contrast, the primary benefit of reform would be to all Americans, who would benefit from a decreased perception of corruption and a greater sense of fairness. As we discuss in Chapter 11, there is little evidence that money in politics directly leads to corruption, but many Americans *think* it does, which threatens their trust in the government. However, as we discussed in Chapter 1, reforming this area would take a policy entrepreneur to mobilize the public, which has not yet happened.

The other way (as we discussed in Chapter 1) for entrepreneurial politics to succeed is for the salience of the issue to change. While many Americans report they are dissatisfied with the current system and think there is too much money in politics, few want Congress to make it a top priority. This suggests that unless opinion changes significantly, or an entrepreneur appears, the status quo is likely to remain in place.



▶ **PRACTICE POLITICAL SCIENCE** Research to find data on trends of campaign donations since the 1970s. Research to find data on trends of public trust in government institutions since the 1970s. Compare trends in these data to draw conclusions about a possible correlation.

Source: Lydia Saad, "Half in U.S. Support Publicly Financed Federal Campaigns," Gallup, June 2013.

the differences between the platforms of the two parties were especially large (1856, 1880, 1896, and 1932) and that there was at about the same time a high rate of change in the kinds of laws being passed.[69] This study supports the general impression conveyed by history that elections often can be central to important policy changes.

Why then do we so often think elections make little difference? It is because public opinion and the political parties enter a phase of consolidation and continuity between periods of rapid change. During this phase, the changes are digested, and party leaders adjust to the new popular consensus, which may (or may not) evolve around the merits of these changes. During the 1870s and 1880s, Democratic politicians had to come to terms with the failure of the Southern secessionist movement and the abolition of slavery; during the 1900s, the Democrats had to adjust again, this time to the fact that national economic policy was going to support industrialization and urbanization, not farming; during the 1940s and 1950s, the Republicans had to learn to accept the popularity of the New Deal.

Elections in ordinary times are not "critical"—they do not produce any major party realignment, they are not fought out over a dominant issue, and they provide the winners with no clear mandate. In most cases, an election is little more than a retrospective judgment on the record of the incumbent president and the existing congressional majority. If times are good, incumbents win easily; if times are bad, incumbents may lose—even though their opponents may have no clear plans for change. But even a "normal" election can produce dramatic results if the winner is a person such as Ronald Reagan, who helped give his party a distinctive political philosophy, or Barack Obama, the nation's first African American president.

LEARNING OBJECTIVES

10-1 Describe the factors that influence the presidential primaries.

In primaries, candidates are much less well known, and many briefly surge in the polls and then fade away just as quickly. Because voters do not know much about the candidates yet, media coverage plays a large role. Momentum also matters a great deal: Candidates who win early in the process often (but not always) have an advantage in later contests.

10-2 Explain how campaigns shape the outcome of presidential elections.

Campaigns shape outcomes by focusing on three key factors for voters: assigning credit or blame for the state of the nation (especially the state of the national economy), activating voters' latent partisanship, and allowing voters to judge the character of the candidates. These three factors—the state of the nation, the voters' partisanship, and the candidates' character—are three of the most important elements in shaping a voter's decision at the ballot box.

10-3 Summarize how voters learn about the candidates in elections.

Much of what voters learn about candidates comes through the media, especially through campaign advertisements (which are the single largest expense for most national campaigns). Such advertisements affect what voters know and feel about the candidates. In most elections, because advertisements are roughly equally balanced, the net effect is rather small. Citizens also learn from various campaign events, in particular, party conventions and debates.

10-4 Explain which social groups have been most loyal to the parties over time.

Since the mid-1960s, African Americans have been especially loyal to Democrats and, more recently, so have younger voters, lower-income voters, less religious voters, and women. In contrast, more religious, older, and wealthier voters have become more Republican. Because most of these differences are rather modest, however, neither party can afford to write off any group.

10-5 Describe the key differences between presidential and congressional elections.

Congressional elections have three key differences from presidential elections. First, there's the incumbency advantage: congressional incumbents typically do better because of the perks of their office. Second, because House districts are redrawn every decade, district boundaries can change, with implications for how members behave (though with fewer implications than many believe). Finally, because of the surge and decline in voter turnout, the president's party almost always does worse in midterm elections.

10-6 Summarize the history of campaign finance reform efforts, and explain the current state of campaign finance regulation.

The modern campaign finance system dates to the aftermath of the Watergate era and put in place strict limits on donations. Numerous reform efforts have been proposed and passed, but none have significantly altered the role of money in politics. Today, much of the concern centers around outside groups (such as super PACs) and their role in the process.

10-7 Describe how elections shape public policy.

When a dramatic shift occurs as a result of an election (such as 1860, 1932, or 1964), policy can change dramatically as a result. But even in more normal times, who wins elections has important implications for the policies they enact.

TO LEARN MORE

Federal Election Commission: **www.fec.gov**

Project Vote Smart: **www.votesmart.org**

Election history: **http://clerk.house.gov**

Electoral College: **www.archives.gov/federal-register/electoral-college/**

Campaign finance: **www.opensecrets.org**

CHAPTER 11

Interest Groups

KEY OBJECTIVES OF THIS CHAPTER

- *A variety of interest groups with varied resources influence elections and policymaking.*
- *Interest groups are linkage institutions.*

KEY TAKEAWAY FROM THIS CHAPTER

- Interest groups may represent very specific or more general interests and can educate voters and office holders, draft legislation, and mobilize membership to apply pressure on and work with legislators and government agencies.

You probably do not think of yourself or of people you know as belonging to an "interest group." But are you or your friends part of an effort to improve the environment? Do you have family or friends who build houses, teach school, or practice law? If the answer to any of these questions is yes, then you likely know someone who belongs to the Sierra Club or the Audubon Society, a labor union, the American Federation of Teachers, or the American Bar Association. In short, if you examine your own activities and affiliations and those of at least some people you know well, chances are that you or they belong to one or more interest groups.

An **interest group** is an organization of people sharing a common interest or goal that seeks to influence public policy. The size and diversity of our country, the decentralizing effects of our Constitution, and the vast number of nonprofit organizations make it certain that interest groups will be an important way for people to have their voices heard. But while interest groups are as old as the republic itself, the number of interest groups has grown rapidly since 1960, and the number of interest groups that have lobbyists working full time in Washington has reached new highs in just the past few decades.

THEN During the 1770s, many groups arose to agitate for American independence; during the 1830s and 1840s, the number of religious associations increased sharply, and the antislavery movement began. In the 1860s, craft-based trade unions emerged in significant numbers, farmers formed the Grange, and various fraternal organizations were born. In the 1880s and 1890s, business associations proliferated.

The great era of organization-building, however, was in the first two decades of the 20th century. Within this 20-year period, many of the best-known and largest associations with an interest in national politics were formed: the Chamber of Commerce, the National Association of Manufacturers, the American Medical Association, the National Association for the Advancement of Colored People (NAACP), the Urban League, the American Farm Bureau Federation, the Farmers' Union, the National Catholic Welfare Conference, the American Jewish Committee, and the Anti-Defamation League.

NOW The wave of interest group formation that occurred in the 1960s led to the emergence of environmental, consumer, and political reform organizations such as those sponsored by consumer activist Ralph Nader. In the 1970s, new campaign finance laws allowed the formation of political action committees (PACs), providing a way for businesses, labor unions, trade groups, and ideological groups to legally contribute to political candidates (see our discussion in Chapter 10). When most people talk about the influence of groups in Washington, they focus on the donations from such PACs. But in actuality, far more is spent on lobbying and lobbyists: in 2016, according to the Center for Responsive Politics, approximately $3.12 billion was spent on lobbying, far more than the approximately $1 billion dispersed by traditional PACs during the 2015–2016 election cycle, according to the FEC. A **lobbyist** is someone who lobbies; that is, someone who tries to influence legislation on behalf of a client, often an interest group. When most Americans think of lobbying, they think of ideological groups like the National Rifle Association or the Sierra Club. But businesses actually conduct the majority of lobbying. For instance, between 1981 and 2005, the number of full-time and part-time lobbyists in Washington representing just the S&P 500 corporations increased from 1,475 to 2,765.[1] As we will see later in the chapter, while business groups tend to dominate lobbying, they are not the only important interest groups. Many citizen movements—from the Tea Party to Black Lives Matter to the Women's March on Washington and other groups opposing policies of the Trump administration—have come to shape our politics in recent years.

interest group *An organization of people sharing a common interest or goal that seeks to influence public policy.*

lobbyist *A person who tries to influence legislation on behalf of an interest group.*

Why are associations in general and political interest groups in particular created more rapidly in some periods than in others? After all, there have always been farmers in this country, but there were no national farm organizations until the latter part of the 19th century. African Americans were victimized by various white-supremacy policies from the end of the Civil War on, but the NAACP did not emerge until 1910. Men and women worked in factories for decades before industrial unions were formed. Every political era featured activists who believed strongly in liberal or conservative ideology, but only in recent decades have ideological groups become so pervasive. Organized business interests have battled organized labor interests over public policy for more than a hundred years, but only recently has the big-business lobbying presence in Washington expanded so dramatically both in absolute terms and relative to big labor.

Four factors have helped shape how and when given interest groups arose in America. We now turn to a consideration of them.

11-1 The Rise of Interest Groups

At least four factors help explain the rise of interest groups. The first consists of broad economic developments that create new interests and redefine old ones. Farmers had little reason to become organized for political activity so long as most of them consumed what they produced. The importance of regular political activity became evident only after most farmers began to produce cash crops for sale in markets that were unstable or affected by forces (the weather, the railroads, foreign competition) that those farmers could not control. Similarly, for many decades most workers were craftspeople working alone or in small groups. Such unions as existed were little more than craft guilds interested in protecting members' jobs and in training apprentices. The impetus for large, mass-membership unions did not exist until there arose mass-production industry operated by large corporations.

Second, government policy itself helps to create interest groups. Wars create veterans, who in turn demand pensions and other benefits. The first large veterans' organization, the Grand Army of the Republic, was made up of Union veterans of the Civil War. By the 1920s, these men were receiving about a quarter of a billion dollars a year from the government, and naturally they created organizations to watch over the distribution of this money. The federal government encouraged the formation of the American Farm Bureau Federation (AFBF) by paying for county agents who would serve the needs of farmers under the supervision of local farm organizations; these county bureaus eventually came together as the AFBF. The Chamber of Commerce was launched at a conference attended by President William Howard Taft. Professional societies, such as those made up of lawyers and doctors, became important in part because state governments gave to such groups the authority to decide who was qualified to become a lawyer or a doctor.

Workers had a difficult time organizing as long as the government, by the use of injunctions enforced by the police and the army, prevented strikes. Unions, especially those in mass-production industries, began to flourish after Congress passed laws in the 1930s prohibiting the use of injunctions in private labor disputes, requiring employers to bargain with unions, and allowing a union representing a majority of the workers in a plant to require all workers to join it.[2]

AP Images/Manuel Balce Ceneta

IMAGE 11-1 Tea Party activists protest in 2013 in Washington, DC, against the Internal Revenue Service's extra scrutiny of their organizations.

Third, political organizations do not emerge automatically, even when government policy permits them and social circumstances seem to require them. Somebody must exercise leadership, often at substantial personal cost. These organizational entrepreneurs are found in greater numbers at certain times than at others. Often they are young, caught up in a social movement, drawn to the need for change, and inspired by some political or religious doctrine.

Antislavery organizations were created in the 1830s and 1840s by enthusiastic young people influenced by a religious revival sweeping the country. The period from 1890 to 1920, when so many national organizations were created, was a time when the college-educated middle class was growing rapidly: The number of men and women who received college degrees each year tripled between 1890 and 1920.[3] During this era, natural science and fundamentalist Christianity were locked in a bitter contest, with the Gospels and Darwinism offering competing ideas about personal salvation and social progress. The 1960s, when many new organizations were born, was a decade in which the civil rights and antiwar movements powerfully influenced young people and college enrollments more than doubled.

Finally, the more government does, the more interest groups will arise or expand and try to influence public policy. Most Washington offices representing corporations, labor unions, and trade and professional associations were established before 1960—in some cases many decades before—because it was during the 1930s or even earlier that the government began making policies important to business and labor. The great majority of "public-interest" lobbies (those concerned with the environment or consumer protection), social welfare associations, and

organizations concerned with civil rights, older adults, and people with disabilities established offices in Washington after major new federal laws in these respective areas were enacted.

A particularly dramatic example is what happened in the post-9/11 years, after the USA Patriot Act was enacted in 2001 and the Department of Homeland Security (DHS) was created in 2002. By 2010, with billions of dollars a year in federal funding for the purpose flowing, more than 500 new private companies specializing in work related to security and counterterrorism had come into being, and most of another 1,400 or so private companies that existed and did related work before 2001 had expanded.[4] New lobbies quickly formed to represent those firms and keep their homeland security grants and contracts coming; for example, the "full-body scanner" lobby represents firms that sell body-scanning equipment used in airports to a DHS subunit, the Transportation Security Administration.[5] Moreover, many local governments, from big cities to small towns, have hired lobbyists to work on getting or sustaining their fair share of federal homeland security money (recall the discussion of these grant programs in Chapter 3).

11-2 Kinds of Organizations

When we think of an organization, we usually think of something like the Boy Scouts or the League of Women Voters—a group consisting of individual members. In Washington, however, many organizations do not have individual members at all but are offices—corporations, law firms, public relations firms, or "letterhead" organizations that get most of their money from other organizations or from the government—out of which a staff operates. It is important to understand the differences between the two kinds of interest groups: institutional and membership.[6]

Institutional Interests

Institutional interests are individuals or organizations representing other organizations. For example, long before the government bailed it out in 2008, General Motors had representatives in Washington, and it is now not uncommon for even midsized corporations to have one or more full-time representatives plus part-time lawyers or public relations consultants working for them in Washington. Another kind of institutional interest is the trade or governmental association, such as the National Independent Retail Jewelers and the National Association of Counties.

Individuals or organizations that represent other organizations tend to be interested in bread-and-butter issues of vital concern to their clients. Some of the people who specialize in this work can earn very large fees. Top public relations experts and Washington lawyers can charge $500 an hour or more for their time. Since they earn a lot, they are expected to deliver a lot.

Just what they are expected to deliver, however, varies with the diversity of the groups making up the organization. The Manufactured Housing Institute represents those who make prefabricated (modular) homes. This group has a relatively narrow and cohesive agenda: they want to ensure policies that encourage homebuilding, especially modular homebuilding. It should come as no surprise, then, that the group has an active lobbying presence in Washington, DC, and spent $763,200 on lobbying in 2016, according to the Center for Responsive

CONSTITUTIONAL CONNECTIONS | A "Faction" or "Special Interest"?

While the Constitution does not explicitly discuss interest groups (though the First Amendment does guarantee their rights of assembly and speech), the Framers were very concerned about "factions" undermining the new republic. James Madison warned in *Federalist* No. 10 of the dangers of factions, arguing that republican (i.e., representative) democracy would control the effects of factions through elected officials and a large republic, in which groups would compete to influence policy, forcing compromise and preventing the domination of any single group. But what is a faction? Madison said any individual or group, whether a minority or majority of the whole, is a faction if it has interests that are opposed to the "permanent and aggregate interests of the community." Who defines those interests? The Framers thought our elected officials had the knowledge and expertise to do so, and those officials depend on interest groups for many resources, including information, campaign funds, and votes. A "faction" for one person may be a "special interest" for another. Madison's point about the need to limit the influence of factions remains true, but those groups also play an integral part in American democracy.

Politics. Sometimes the institute is successful, sometimes not, but it is never hard to explain what it is doing.

By contrast, the U.S. Chamber of Commerce represents thousands of different businesses in hundreds of different communities. The Chamber has led all interest groups in annual lobbying expenditures for many years. All told, from 1998 to 2016, it spent approximately $1.3 billion on lobbying (see Figure 11.1), a figure much larger than what was spent by any other organization over the same period, including corporate giants such as Exxon Mobil and membership giants such as AARP. Indeed, in 2016 alone, the Chamber spent $104 million on lobbying, roughly the total spending on lobbying by the next three largest spenders (the National Association of Realtors, Blue Cross/Blue Shield, and the American Hospital Association, respectively).[7] Its membership is so large and diverse that the Chamber in Washington can speak out clearly and forcefully on only those relatively few matters in which all, or most, businesses take the same position. Since all businesses would like lower taxes, the Chamber favors that. On the other hand, since some businesses (those that import goods) want lower tariffs and other businesses (those that face competition from imported goods) want higher tariffs, the Chamber says little or nothing about tariffs.

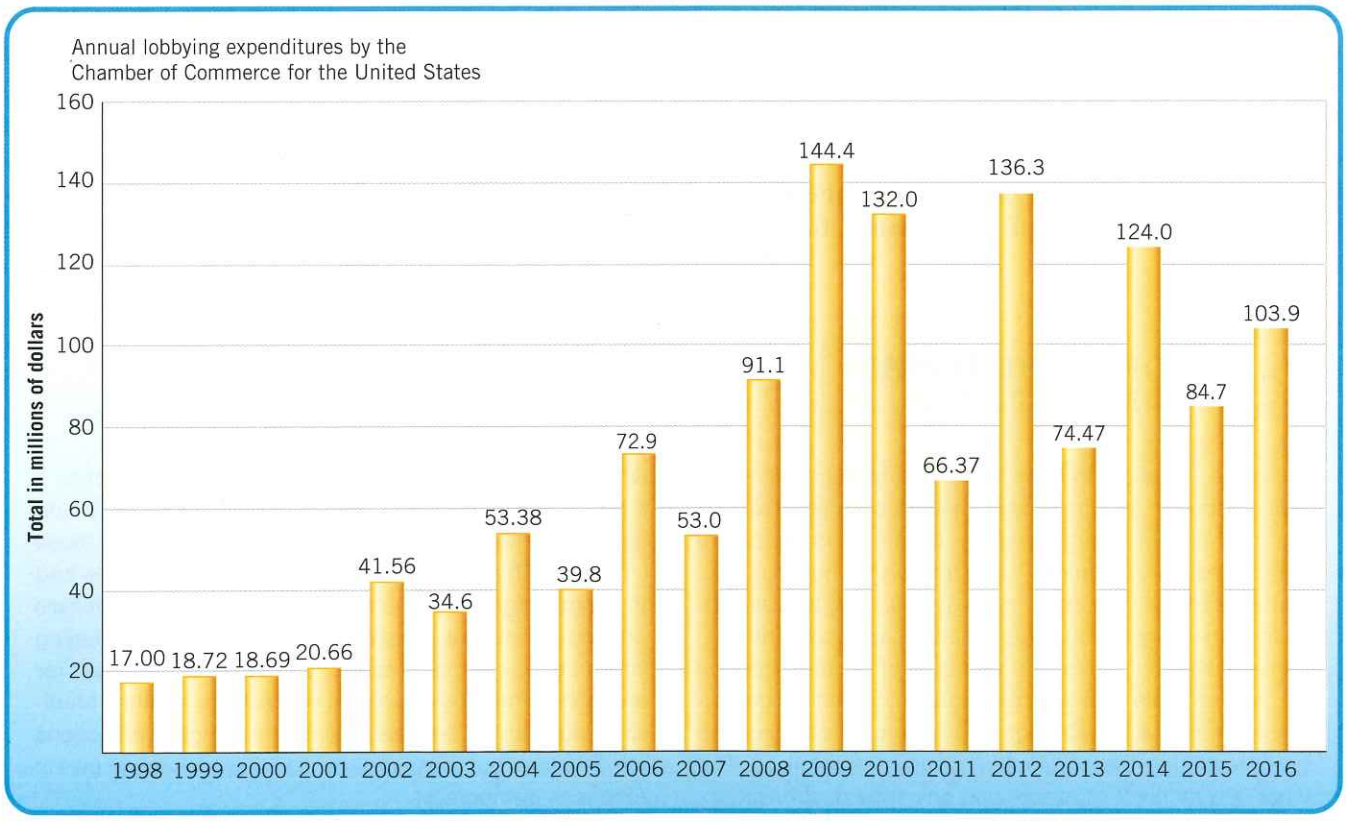
Institutional interests do not just represent business firms; they also represent governments, foundations, and universities. For example, the American Council on Education speaks for most institutions of higher education, the American Public Transit Association represents local mass-transit systems, and the National Association of Counties argues on behalf of county governments.

Membership Interests

It often is said that America is a nation of joiners, and so we take for granted the many organizations around us supported by the activities and contributions of individual citizens. But we should not take this multiplicity of organizations for granted; in fact, their existence is something of a puzzle.

Americans join only certain kinds of organizations more frequently than citizens of other democratic countries. We are no more likely than the British, for example, to join social, business, professional, veterans', or charitable organizations, and we are *less* likely to join labor unions. Our reputation as a nation of joiners arises chiefly out of our unusually high tendency to join religious and civic or political associations.

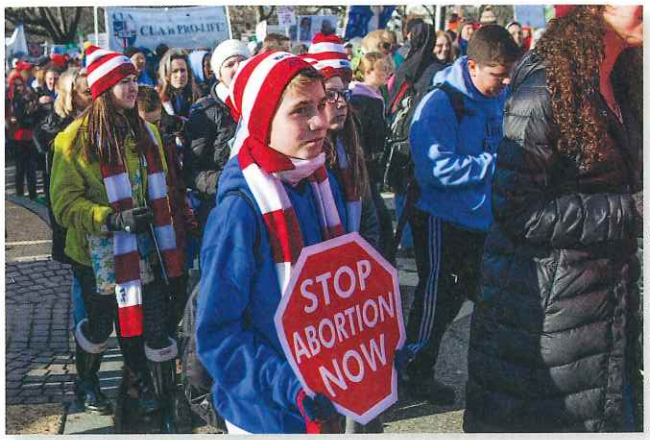
FIGURE 11.1 **What the Top Lobby Spent, 1998–2016**



Source: Center for Responsive Politics, Lobbying: Top Spenders, www.opensecrets.org/lobby/top.php?indexType=s.

LANDMARK CASES | Lobbying Congress

- ***United States v. Harriss* (1954):** The Constitution protects the lobbying of Congress, but the government may require information from groups that try to influence legislation.



Samuel Corum/Anadolu Agency/Getty Images

IMAGE 11-2 Young people participate in a pro-life rally in Washington, DC.

This proclivity of Americans to get together with other citizens to engage in civic or political action apparently reflects a greater sense of political efficacy and a stronger sense of civic duty than that found in some nations. In a classic study, Gabriel Almond and Sidney Verba asked citizens of five nations what they would do to protest an unjust local regulation; 56 percent of the Americans—but only 34 percent of the British and 13 percent of the Germans—said they would try to organize their neighbors to write letters, sign petitions, or otherwise act in concert.[8] Americans are also more likely than Europeans to think organized activity is an effective way to influence the national government, remote as that institution may seem. While Americans' tendency to join religious, cultural, and civic organizations has declined somewhat in recent years, they still outpace other democratic people at joining these groups.[9]

But explaining the American willingness to join politically active groups by saying that they feel a "sense of political efficacy" is not much of an explanation; we might as well say people vote because they think their vote makes a difference. One vote clearly makes no difference at all in almost any election; similarly, one member, more or less, in the Sierra Club, the National Rifle Association, or the NAACP clearly will make no difference in the success of those organizations.

And most people who are sympathetic to the aims of a mass-membership interest group do not join it. The NAACP, for example, enrolls as members only a tiny fraction of all African Americans. This is not because people are selfish or apathetic but because they are rational and numerous. A single African American, for example, knows that he or she can make no difference in the success of the NAACP, just as a single nature enthusiast knows that he or she cannot enhance the power of the Sierra Club. Moreover, if the NAACP or the Sierra Club succeeds, African Americans and nature lovers will benefit even if they are not members. This tendency is known as the **free rider problem**.[10] The free rider problem arises because these groups are pursuing a **public good**: something valuable for which one person's consumption does not affect another person's consumption. For example, if the Sierra Club gets passed by the legislature a law improving drinking water, everyone benefits, not just Sierra Club members (hence, we say that nonmembers free ride on the group's efforts). Likewise, if the NAACP strengthens civil rights laws, then all minorities benefit, not just those who join that group. Therefore, rational people who value their time and money would no more join such organizations than they would attempt to empty a lake with a cup—unless they got something out of joining.

free rider problem *The tendency of individuals to avoid contributing to public goods.*

public good *Something of value that all individuals share, whether or not they contribute to it (such as clean air or water).*

incentive *Something of value one cannot get without joining an organization.*

solidary incentives *The social rewards (sense of pleasure, status, or companionship) that lead people to join political organizations.*

Incentives to Join

Every interest group faces a free rider problem. To overcome this, interest groups must offer people some **incentive** to get people to join them. Three kinds of incentives exist.

Solidary incentives are the sense of pleasure, status, or companionship that arises out of meeting together in small groups. Such rewards are extremely important, but because they tend to be available only from face-to-face contact, national interest groups offering them often have to organize themselves as coalitions of small local units. For example, the League of Women Voters, the Parent Teacher Association (PTA), the NAACP, the Rotary Club, and the American Legion all consist of small local chapters that

material incentives *Money or things valued in monetary terms.*

purposive incentive *A benefit that comes from serving a cause or principle.*

ideological interest groups *Political organizations that attract members by appealing to their political convictions or principles.*

public-interest lobby *A political organization whose goals will principally benefit nonmembers.*

support a national staff. It is the task of the local chapters to lure members and obtain funds from them; the state or national staff can then use these funds to pursue political objectives.

Forming organizations made up of small local chapters is probably easier in the United States than in Europe because of the great importance of local government in our federal system. There is plenty for a PTA, an NAACP, or a League of Women Voters to do in its own community, and so its members can be kept busy with local affairs while the national staff pursues larger goals.

A second kind of incentive consists of **material incentives**—that is, money, or things and services readily valued in monetary terms. Farm organizations have recruited many members by offering a wide range of services. The Illinois Farm Bureau, for example, offers to its members—and *only* to its members—a chance to buy farm supplies at discount prices, market their products through cooperatives, and purchase low-cost insurance. These material incentives help explain why the Illinois Farm Bureau has been able to enroll nearly every farmer in the state as well as many nonfarmers who also value these rewards.

Similarly, the AARP has recruited tens of millions of members by supplying them with everything from low-cost life insurance and mail-order discount drugs to tax advice and group travel plans. Almost half of the nation's population aged 50 and older—one of every four registered voters—belongs to the AARP. With an annual operating budget of about $800 million and a yearly cash flow of several billion dollars, the AARP seeks to influence public policy in many areas, from health and housing to taxes and transportation. To gain additional benefits for members, interest groups like the AARP also seek to influence how public laws are administered and who gets government grants.

The third—and most difficult—kind of incentive is the *purpose* of the organization. Many associations rely chiefly on this **purposive incentive**—the appeal of their stated goals—to recruit members. If the attainment of those goals will also benefit people who do not join, individuals who do join will have to be those who feel passionately about the goal, who have a strong sense of duty (or who cannot say no to a friend who asks them to join), or for whom the cost of joining is so small that they are indifferent to joining or not. Organizations that attract members by appealing to their interest in a coherent set of (usually) controversial principles are sometimes called **ideological interest groups**.

When the purpose of the organization, if attained, will principally benefit nonmembers, it is customary to call the group a **public-interest lobby**. (Whether the public at large will really benefit is, of course, a matter of opinion, but at least the group members think they are working selflessly for the common good.)

One common type of public-interest lobby is an organization that advances its cause by bringing lawsuits to challenge existing practices or proposed regulations. Such a public-interest law firm will act in one of two ways. First, it will find someone who has been harmed by some public or private policy and bring suit on his or her behalf. Second, it will file a brief with a court supporting somebody else's lawsuit (this is called an amicus curiae brief; it is explained in Chapter 16). While some of these groups are more liberal—such as the American Civil Liberties Union, National Resources Defense Council, and the NAACP Legal Defense and Education Fund—others are more conservative, such as the Center for Individual Rights, the American Center for Law & Justice, and the Atlantic Legal Foundation.

Though some public-interest lobbies may pursue relatively noncontroversial goals (e.g., persuading people to vote or raising money to house orphans), the most visible of these organizations are highly controversial. It is precisely the controversy that attracts the members, or at least those members who support one side of the issue. Many of these groups can be described as having a markedly liberal or decidedly conservative outlook.

Bill Pugliano/Getty Images News/Getty Images

IMAGE 11-3 Union members hold a rally in Michigan to protest against right-to-work legislation.

Such ideological groups tend to be the dominant examples of purposive interest groups. For example, groups like NARAL Pro-Choice America (which supports abortion rights) and Operation Rescue (which opposes them) are good examples: The members work for these goals because they believe in them and the organization's mission. Likewise, many other ideological groups can best be characterized this way, including broad, umbrella ideological groups like the Public Interest Research Group on the left, and the American Conservative Union on the right.

Think Tanks—public-interest organizations that do research on policy questions and disseminate their findings in books, articles, conferences, op-ed essays for newspapers, and (occasionally) testimony before Congress—are another such example. While some are nonpartisan and strive for neutrality, many—including some of the most important ones—are more partisan and ideological. For example, organizations like the Center for American Progress or the Center for Budget and Policy Priorities try to advance liberal and Democratic causes, whereas groups like the Heritage Foundation and the Cato Institute advocate for conservative and Republican causes.

Membership organizations that rely on purposive incentives, especially appeals to deeply controversial purposes, tend to be shaped by the mood of the times. When an issue is hot—in the media or with the public—such organizations can grow quickly. When the spotlight fades, the organization may lose support. Thus, such organizations have a powerful motive to stay in the public eye. To remain visible, public-interest lobbies devote a lot of attention to generating publicity by developing good contacts with the media and issuing dramatic press releases about crises and scandals.

Because of their need to take advantage of a crisis atmosphere, public-interest lobbies often do best when the government is in the hands of an administration that is *hostile*, not sympathetic, to their views. For example, conservative interest groups were able to raise more money with the liberals Barack Obama or Bill Clinton in the White House than with the conservatives Ronald Reagan or George W. Bush there (and vice versa for liberal groups). For example, in just the first few days after President Trump's executive order temporarily banning people from seven majority-Muslim nations from entering the United States, the American Civil Liberties Union raised $24 million in donations and gained more than 150,000 new members (it had 400,000 members when Trump won the presidency in 2016, so this was nearly a 40 percent increase).[11] These groups actively cultivate the sense that their preferred policy outcome is under threat in order to motivate their members to join and contribute to the group.[12]

The Influence of the Staff

We often make the mistake of assuming that, politically, an interest group simply exerts influence on behalf of its members. That is indeed the case when all the members have a clear and similar stake in an issue. But many issues affect different members differently. In fact, if the members joined to obtain solidary or material benefits, they may not care at all about many of the issues with which the organization gets involved. In such cases, what the interest group does may reflect more what the staff wants than what the members believe.

For example, a survey of the white members of a large labor union showed that one-third of them believed the desegregation of schools, housing, and job opportunities had gone too fast; only one-fifth thought it had gone too slowly. But among the staff members of the union, *none* thought desegregation had gone too fast, and over two-thirds thought it had gone too slowly.[13] As a result, the union staff aggressively lobbied Congress for the passage of tougher civil rights laws, even though most of the union's members did not feel they were needed. The members stayed in the union for reasons unrelated to civil rights, giving the staff the freedom to pursue its own goals.

Upper-Class Bias?

Observers often believe that interest groups active in Washington reflect an upper-class bias. There are two reasons for this belief: first, well-off people are more likely than poor people to join and be active in interest groups; second, interest groups representing business and the professions are much more numerous and better financed than organizations representing minorities, consumers, or the disadvantaged.

Many scholars have shown that people with higher incomes, those whose schooling went through college or beyond, and those in professional or technical jobs are much more likely to belong to a voluntary association than people with the opposite characteristics. Just as we would expect, higher-income people can afford more organizational memberships than lower-income ones; people in business and the professions find it easier to attend meetings (they have more control over their own work schedules) and attach more importance to doing so than people in blue-collar jobs; and people with college degrees often have a wider range of interests than those without.

One study found that between 1981 and 2006, the ratio of business lobbyists to union plus public-interest lobbyists prone to oppose business interests rose from about 12 to 1 to nearly 16 to 1.[14] Some now argue that the nation's 2007–2010 economic crises were due in part to the disproportionate political influence wielded during

social movement *A widely shared demand for change in some aspect of the social or political order.*

the preceding decade by rich Wall Street executives and related business interests. There is some truth to this view. In 1999, corporate lawyers and lobbyists won a long legislative battle to repeal the Banking Act of 1933, better known as the Glass-Steagall Act, which strictly separated investment from commercial banking and imposed many other restrictions on financial companies. The repeal permitted the home mortgage business to change in ways that made it easier to offer risky loans to people with poor credit histories, and it gave birth to new financial products and services that were weakly regulated by government and incomprehensible to most consumers.

But note that the 1933 law, albeit with certain changes made in subsequent decades, remained on the books for more than 60 years before it was repealed. And, strongly opposed though it was by myriad powerful business interests, today the Wall Street Reform and Consumer Protection Act of 2010 is law. Better known as Dodd-Frank, this law did not restore the Glass-Steagall Act's strict separation between depository banking and financial trading, but it did tighten regulations on virtually all financial companies and broaden consumer protections for all, including first-time mortgage-seekers and small investors.

As this example suggests, even if it is true that financial moguls, big-business executives, and other wealthy people typically have more (high-priced) lobbyists looking out for their interests than other citizens do, the question of an upper-class bias is by no means entirely settled. Business may operate from a privileged position of wealth and power, but they only sometimes—not always—get what they want.[15]

Jay Mallin/Zuma Press/Alamy

IMAGE 11-4 After the horrific school shooting in Newtown, Connecticut, in December 2012, thousands of people participated in the March on Washington for Gun Control.

In the first place, lobbyists represent certain *inputs* into the political system; what matters are the *outputs*—that is, who wins and who loses on particular issues. For instance, even if scores and scores of groups inside the Capital Beltway are pushing to protect the oil industry and those who benefit financially from it the most, this is important only if the oil industry in fact gets protected. Sometimes it does; sometimes it does not. At one time, when oil prices were low, oil companies were able to get Congress to pass a law that sharply restricted the importation of foreign oil. A few years later, after oil prices had risen and people were worried about energy issues, these restrictions were ended.

In the second place, business-oriented interest groups often are divided among themselves. Take one kind of business: farming. Once, farm organizations seemed so powerful in Washington that scholars spoke of an irresistible "farm bloc" in Congress that could get its way on almost anything. Today, dozens of agricultural organizations operate in the capital, with some (such as the Farm Bureau) attempting to speak for all farmers and others (such as the Tobacco Institute and Mid-America Dairymen) representing particular commodities and regions.

Whenever American politics is described as having an upper-class bias, it is important to ask exactly what this bias is. Most major conflicts in American politics—over foreign policy, economic affairs, environmental protection, and equal rights for women—are conflicts *within* the upper class; that is, they are conflicts among politically active elites. As we saw in earlier chapters, profound cleavages of opinion exist among these elites. Interest-group activity reflects these cleavages.

It would be a mistake to ignore the overrepresentation of business in Washington. A student of politics should always take differences in the availability of political resources as an important clue to possible differences in the outcomes of political conflicts. Nonetheless, the differences are only clues, not conclusions, and in any given case, we need to consider many other factors to understand what happens.

11-3 Interest Groups and Social Movements

Because it is difficult to attract people with purposive incentives, interest groups using them tend to arise out of social movements. A **social movement** is a widely shared demand for change in some aspect of the social or political order. The Civil Rights movement of the 1960s was such an event, as was the environmentalist movement of the 1970s.

A social movement need not have liberal goals. In the 19th century, for example, various nativist movements sought to reduce immigration to this country or to keep Catholics or Masons out of public office. Broad-based religious revivals are social movements. In recent years, the conservative Tea Party movement, which has taken hold around issues like restraining government growth, has played a role in both local and national elections.[16]

No one is quite certain why social movements arise. At one moment, people are largely indifferent to some issue; at another moment, many of these same people care passionately about religion, civil rights, immigration, or conservation. A social movement may be triggered by a disaster (an oil spill on the Santa Barbara beaches helped launch the environmental movement), the dramatic and widely publicized activities of a few leaders (lunch counter sit-ins helped stimulate the Civil Rights movement), or the coming of age of a new generation that takes up a cause advocated by eloquent writers, teachers, or evangelists.

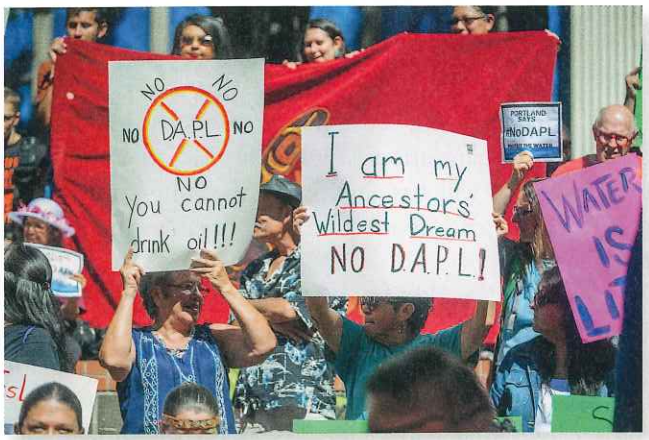
Whatever its origin, the effect of a social movement is to increase the value some people attach to purposive incentives. As a consequence, new interest groups are formed that rely on these incentives.

The Environmental Movement

The environmental movement provides a good example of how a social movement gives rise to interest groups formed from reliance on purposive incentives. In the 1890s, as a result of the emergence of conservation as a major issue, the Sierra Club was organized. In the 1930s, conservation once again became popular, and the Wilderness Society and the National Wildlife Federation were created. In the 1960s and 1970s, environmental issues again had high public interest, and we saw the emergence of the Environmental Defense Fund and Environmental Action.

The smallest of these organizations (Environmental Action and the Environmental Defense Fund) tend to have the most liberal members. This often is the case with organizations that arise from social movements. A movement will spawn many organizations. The most passionately aroused people will be the fewest in number, and they will gravitate toward the organizations that take the most extreme positions; as a result, these organizations are small but vociferous. The more numerous and less passionate people will gravitate toward more moderate, less vociferous organizations, which tend to be larger.

As happens over the years to most politically successful movements, the environmental movement has become more fragmented than it was in the 1970s. Different leading voices and organizations within it have begun to advocate somewhat different policy approaches to achieving the same basic (in this case, environmental protection and sustainability) goals.[17]



Diego G Diaz/Shutterstock.com

IMAGE 11-5 Opponents of the Dakota Access Pipeline protest its construction.

Environmental activists have recently been particularly active in two areas: climate change and domestic oil and gas production, particularly with respect to new pipelines. We discuss the politics of climate change in Chapter 17, but it is important to know that many environmental interest groups are active on this issue, pressing for action at the federal and state levels, and trying to raise public awareness on the issue. Environmentalists have also been active in debates over increased oil and natural gas production, particularly with respect to proposed pipelines to transport this oil and natural gas.

The Dakota Access Pipeline project, which would transport oil from North Dakota to other states, has proved to be especially controversial, as it would cross lands considered sacred by the Standing Rock Indian Tribe. In 2016, tribe members and environmental activists staged a lengthy protest to try to block the pipeline's construction. In December 2016, shortly before leaving office, President Obama blocked completion of the pipeline, seemingly giving a win to the protestors. Shortly after his inauguration, however, President Trump issued an executive order that permitted the project to be completed, though the battle over the pipeline continues in court.

The Feminist Movement

Several feminist social movements have occurred in this country's history—in the 1830s, the 1890s, the 1920s, and the 1960s. Each period brought about new organizations, some of which have endured to the present. For example, the League of Women Voters was founded in 1920 to educate and organize women for the purpose of effectively using their newly won right to vote. As we

discussed in Chapter 5 on civil rights, many women's rights groups have been important through American history for pressing for gender equality.

Though a strong sense of purpose may lead to the creation of organizations, each will strive to find some incentive that will sustain it over the long haul. These permanent incentives affect how the organization participates in politics.

At least three kinds of feminist organizations exist. First, there are those that rely chiefly on solidary incentives, primarily enroll upper-/middle-class women with relatively high levels of schooling, and tend to support those causes that command the widest support among women generally. The League of Women Voters and the Federation of Business and Professional Women are examples. Both supported the campaign to ratify the Equal Rights Amendment (ERA), but as Jane Mansbridge observed in her history of the ERA, they were uneasy with the kind of intense, partisan fighting displayed by some other women's organizations and with the tendency of more militant groups to link the ERA to other issues, such as abortion. The reason for their uneasiness is clear: to the extent they relied on solidary incentives, they had a stake in avoiding issues and tactics that would divide their membership or reduce the extent to which membership provided camaraderie and professional contacts.[18]

Second, some women's organizations attract members with purposive incentives. The National Organization for Women (NOW) and NARAL Pro-Choice America are two of the largest such groups, though many smaller ones exist. Because they rely on purposes, these organizations must take strong positions, tackle divisive issues, and use militant tactics. Anything less would turn off the committed feminists who make up the rank and file and contribute the funds. But because these groups take controversial stands, they are constantly embroiled in internal quarrels between those who think they have gone too far and those who think they have not gone far enough. Moreover, purposive organizations often cannot make their decisions stick at the local level (local chapters will do pretty much as they please, despite the directives of the central organization).[19]

The third kind of women's organization is groups that take on issues that have material benefits for women. For example, many professional associations of women, such as the U.S. Women's Chamber of Commerce, aim to provide networking and career advancement for women, but also advocate on various political issues important to women. Likewise, legal advocacy groups such as Legal Momentum (formerly the NOW Legal Defense Fund) work through the political system to press for outcomes that will help women politically and economically.

Photo by Dennis Brack-Pool/Getty Images

IMAGE 11-6 The Women's March on Washington brought hundreds of thousands of protesters to the nation's capital in January 2017.

Still other groups work to try to elect women to political office, providing a combination of multiple types of incentives. For example, the National Women's Political Caucus, the National Federation of Republican Women, and EMILY's List all work to elect more women to government. These groups provide solidary incentives, in that members could work together on an issue of interest (electing women to office), as well as purposive incentives (working for the goal of electing more women legislators). Like many groups, these groups offer members multiple rationales to join.

The day after President Trump's inauguration, there was a Women's March on Washington, responding to the rhetoric of the 2016 election and some of the proposed policies of the new administration. Several hundred thousand people joined the march in Washington, and hundreds of marches took place around the nation and the world, with an estimated 2.6 million people participating.[20] The effects of this march—and its consequences for the feminist movement more broadly—remain to be seen.

The Union Movement

When social movements run out of steam, they leave behind organizations that continue the fight. But with the movement dead or dormant, the organizations often must struggle to stay alive. This has happened to labor unions.

The major union movement in this country occurred in the 1930s when the Great Depression, popular support, and a sympathetic administration in Washington led to a rapid growth in union membership. In 1945, union membership peaked; at that time, nearly 36 percent of all non–farm workers were union members.

Since then, union membership has declined more or less steadily. Today, unions cover only about 11 percent

of all workers. Between 1983 and 2016, the number of union members fell by almost 3 million (from 17.7 million to 14.6 million). This decline was caused by several factors. The nation's economic life has shifted away from industrial production (where unions have traditionally been concentrated) and toward service delivery (where unions have usually been weak). But accompanying this decline, and perhaps contributing to it, has been a decline in popular approval of unions. Approval has moved down side by side with a decline in membership and declines in union victories in elections held to see whether workers in a plant want to join a union. The social movement that supported unionism has faded.

But unions will persist because most can rely on incentives other than purposive ones to keep them going. In many states, unions can require workers to join if they wish to keep their jobs; in other places, workers believe they get sufficient benefits from the union to make even voluntary membership worthwhile. And in a few industries, such as teaching and government, membership has grown as some white-collar workers have turned to unions to advance their interests.

While private-sector unions have declined, public-sector unions—unions of government employees—have not. Indeed, according to the U.S. Bureau of Labor Statistics, in 2016, the union membership rate for public-sector workers (34.4 percent) was more than five times that for private-sector workers (6.4 percent).[21] Some states—most notably Wisconsin—have passed legislation to limit public-sector unions, though the future of such efforts remains uncertain.

Still, public-sector unions, led by groups like the American Federation of State County and Municipal Employees and the American Federation of Teachers (AFT), remain robust, relatively well funded, and significant sources of campaign contributions. For example, in the 2013–2014 election cycle, the AFT gave over $2 million to candidates, making it among the largest PAC contributors to candidates in that election cycle.

Unions can more or less reliably raise at least a portion of the funds they need by charging their members dues, but many interest groups struggle with raising money; some cannot easily predict what their budget will be from one quarter to the next. This is especially true for membership organizations that rely on appeals to purpose—to accomplishing stated goals. As a result, the Washington office of a public-interest lobbying group is likely to be small, stark, and crowded, whereas that of an institutional lobby, such as the AFL-CIO or the American Council on Education, will be rather lavish.

To make ends meet and maintain such influence as they each may have, diverse interest groups attempt to fund themselves through some combination of private foundation grants, government grants, direct-mail solicitation, and online appeals and donations (some tied in to the group leaders' blogs or social media sites). After the 2007 recession began, each of those funding sources became more precarious, but so far, fundraising challenges have not led to any easily observable changes in the landscape of America's organized interest groups.

11-4 The Activities of Interest Groups

Size and wealth are no longer accurate measures of an interest group's influence—if indeed they ever were. Depending on the issue, the key to political influence may be the ability to generate a dramatic newspaper headline, mobilize a big letter-writing campaign, stage a protest demonstration, file a suit in federal court to block (or compel) some government action, or supply information to key legislators. All of these things require organization, but few of them require big or expensive organizations.

Lobbying and Providing Information

Of all these tactics, the single most important one—in the eyes of virtually every lobbyist and every academic student of lobbying—is supplying credible information. Indeed, if one were to ask what is the core of lobbying and interest-group influence, it would be providing information. Information is so valuable because to busy legislators and bureaucrats, information is in short supply. Legislators in particular must take positions on a staggering number of issues about which they cannot possibly become experts.

Much of the information lobbyists and their affiliated interest groups provide is about the consequences of a particular piece of legislation, either the policy consequences (How will this bill affect health-care policy?) or the political consequences (How will this bill affect my next reelection campaign?).[22] Because legislators want to craft good policy and win reelection (see Chapter 13), both types of information are highly valuable.

The kind of information lobbyists provide is not easily accessible online or by other means (if it was, lobbying would not be necessary). Instead, it is highly specialized, often quite technical information, which only someone with a strong stake in an issue would gather.[23] Lobbyists, for the most part, are not flamboyant, party-giving arm-twisters; they are specialists who gather

Anthony Ricci/Shutterstock.com

IMAGE 11-7 Vice-President Joe Biden chats with Senator John Kerry at a dinner in Washington, DC. Such events are often opportunities for lobbyists or donors to meet with politicians.

political cue *A signal telling a legislator what values are at stake in a vote, and how the issue fits into his or her own political views on party agenda.*

information (favorable to their clients, naturally) and present it in as organized, persuasive, and factual a manner as possible.

All lobbyists no doubt exaggerate, but few can afford to misrepresent the facts or mislead a legislator, and for a very simple reason: Almost every lobbyist must develop and maintain the confidence of a legislator over the long term, with an eye on tomorrow's issues as well as today's.[24] Because lobbyists want to develop long-term relationships with legislators, they have a strong incentive to be at least mostly truthful.

Lobbying has become ubiquitous in American politics. A vast panoply of groups lobby: interest groups ranging from the National Rifle Association to the American Automobile Association, as well as unions, businesses, and other branches of government (recall our discussion of the intergovernmental lobby in Chapter 3). It may even surprise you to learn that universities—from major private universities such as Harvard and Yale, to state universities like the University of Texas and the University of California, to for-profit colleges—also lobby the federal government. These schools lobby about regulations governing student financial aid, education policy, and for funds for research projects.

While all of these groups lobby, the dominant players in the lobbying market are business organizations. One study found that business groups and trade associations account for approximately three-quarters of all lobbying activity.[25] Why? Businesses dominate lobbying primarily because they are seeking private goods. If the Sierra Club is lobbying for a particular policy, it is most likely a public good, like cleaner drinking water or tighter air pollution rules. In contrast, much of what firms lobby for are private goods: they want a particular tax break, or a policy that will benefit their industry. If they do not lobby, they will not receive that benefit, so they have the strongest incentive to lobby (and hence are over-represented in the lobbying community).

When most people think of lobbying, they think of lobbying on highly salient issues, such as Obamacare, immigration reform, gun control, or the Keystone XL pipeline. Lobbying certainly happens on these sorts of highly visible issues, but it is not the norm. A careful study of lobbying efforts found that lobbying was extremely skewed: Hundreds of lobbyists were active on a handful of significant bills, but on most issues, only one or two lobbyists were active.[26] So we often equate lobbying with lobbying on major legislation, but this is not what most lobbying looks like. The typical example of lobbying is a small, niche effort to change some small area of government policy that is only relevant to a few actors.

Furthermore, these two types of lobbying look very different. On highly salient bills with lobbyists on both sides of the issue, lobbying is unlikely to affect the outcome very much. Advocates for both sides make their case to legislators, and their lobbying is only one of many inputs to how a legislator decides. Lobbyists can of course affect the outcome, but they are constrained by these other factors. On these salient issues, other elements—most notably, a member's own ideology and what his or her constituents want—are likely to be decisive.

However, on more narrow niche bills, far from the spotlight, lobbyists may be more influential. Typically only one side lobbies on these narrow issues, and this will be the side with more resources and advantages. Many of these issues are examples of client politics, such as when a firm tries to obtain a particularistic exemption from a regulation or tariff (recall from Chapter 1 that client politics involves a group seeking concentrated benefits at the expense of a diffuse majority). No one lobbies for those bearing the dispersed costs in these cases, but there are lobbyists for the concentrated benefits. We cannot know that lobbyists have undue influence here, but it certainly suggests that lobbyists are likely more powerful on these narrow issues.

Beyond lobbying, groups can also provide another type of valuable information: political cues. A **political cue** is a signal telling the official what values are at stake in an issue—who is for, who is against a proposal—and how that issue fits into his or her own set of political beliefs. Some legislators feel comfortable when they are on the liberal side of an issue, and others feel comfortable when they are on the conservative side, especially

when they are not familiar with the details of the issue. A liberal legislator will look to see whether the AFL-CIO, the NAACP, the Americans for Democratic Action, the Farmers' Union, and various consumer organizations favor a proposal; if so, that is often all he or she has to know. If these liberal groups are split, then the legislator will worry about the matter and try to look into it more closely. Similarly, a conservative legislator will feel comfortable taking a stand on an issue if the Chamber of Commerce, the National Rifle Association, the American Medical Association, various business associations, and Americans for Constitutional Action are in agreement about it; he or she may feel less comfortable if such conservative groups are divided. As a result of this process, lobbyists often work together in informal coalitions based on general political ideology.

One important way in which these cues are made known is by **ratings** that interest groups make of legislators. These are regularly compiled by dozens of interest groups; some of the most prominent ones include the AFL-CIO (on who is pro-labor), by the Americans for Democratic Action (on who is liberal), by the Americans for Constitutional Action (on who is conservative), by the Consumer Federation of America (on who is pro-consumer), and by the League of Conservation Voters (on who is pro-environment). These ratings are designed to generate public support for (or opposition to) various legislators. They can be helpful sources of information to both legislators and their constituents.

Earmarks

Information can be linked to influence. Lobbyists not only tell members of Congress facts, they also learn from these members what Washington is doing and then look for ways to sell that information to their clients. What often results is an **earmark**, that is, a provision in a law that provides a direct benefit to a client without the benefit having been reviewed on the merits by all of Congress.

Earmarks have always existed, but they became much more common in the 1970s and later. There are two reasons for this. First, the federal government was doing much more and thus affecting more parts of society. Second, lobbying organizations figured out that clients would pay for information about how to convert some bit of federal activity to their benefit.

One study showed how a new kind of lobbying firm was born. Cassidy and Associates prospered by helping clients get earmarks. The firm charged a flat fee ($10,000 or more per month) and devoted its energy to studying congressional laws in order to find opportunities for its clients.[27] Its first big client was a university that wanted federal money to pay for a nutrition center it hoped to build. The Cassidy firm discovered that Congress had authorized a "national" nutrition center and then set about persuading key congressional leaders that such a center should be located at the university that was paying Cassidy a fee. Soon many more universities pushed for earmarks for their pet ideas (a foreign-service school, defense software institutes, and computer centers). Not long after that, business firms joined the hunt.

ratings *Assessments of a representative's voting record on issues important to an interest group.*

earmark *A provision in a law that provides a direct benefit to a client without the benefit having been reviewed on the merits by all of Congress.*

In 2008, the Office of Management and Budget estimated that Congress had approved more than 11,000 earmarks at a cost of more than $16 billion. Many see earmarks as a classic example of wasteful spending, and they focus on the most flagrant abuses, such as the famous "Bridge to Nowhere" in Alaska. But not all earmarks are really wasteful spending, however: many earmarks support programs important to a particular community, such as a nutrition center, a job-training program, a program to hire additional police officers, or a program to pave new roads.

In 2011, amid criticism of the earmarks process, Congress agreed to ban earmarks. The desire of groups—and legislators—to direct funding to particular projects, however, was great, and they developed a way to at least partially side-step this ban. Since the earmark ban, some spending bills have contained special funds not attached to a particular program. It is up to the government agencies to decide where and how to spend these funds. While the agencies make these decisions, members of Congress try to influence them: members send letters and make telephone calls to push for projects in their own districts (hence these funds are often called "lettermarking" or "phonemarking").[28] The requests from members are not binding on the agency (unlike earmarks), but agencies are usually eager to avoid antagonizing powerful members of Congress.

Public Support: Rise of the New Politics

Once upon a time, when the government was small, Congress was less individualistic, and television was nonexistent, lobbyists mainly used an *insider strategy*: they worked closely with a few key members of Congress, meeting them

grassroots lobbying *Using the general public (rather than lobbyists) to contact government officials about a public policy.*

privately to exchange information and (sometimes) favors. Matters of mutual interest could be discussed at a leisurely pace, over dinner or while playing golf. Public opinion was important on some highly visible issues, but there were not many of these.

Following an insider strategy is still valuable, but interest groups have increasingly turned to an *outsider strategy*. The newly individualistic nature of Congress has made this tactic useful, and modern technology has made it possible. Radio, fax machines, and the Internet can now get news out almost immediately. Satellite television can be used to link interested citizens in various locations across the country. Toll-free phone numbers can be publicized, enabling voters to call the offices of their members of Congress without charge. Public opinion polls can be done by telephone, virtually overnight, to measure (and help generate) support for or opposition to proposed legislation. Mail can be directed by computers to people already known to have an interest in a particular matter.

This kind of **grassroots lobbying** is central to the outsider strategy. It is designed to generate public pressure directly on government officials. The "public" that exerts this pressure is not every voter or even most voters; it is that part of the public (sometimes called an *issue public*) directly affected by or deeply concerned with a government policy. What modern technology has made possible is the overnight mobilization of specific issue publics.

Not every issue lends itself to an outsider strategy. It is hard to get many people excited about, for example, complex tax legislation affecting only a few firms. But as the government does more and more, and as its policies affect more and more people, many more will join in grassroots lobbying efforts over matters such as abortion, Medicare, Social Security, environmental protection, gay marriage, and affirmative action. Grassroots lobbying is most common on these sorts of highly salient issues that have the potential to mobilize and appeal to a broad swath of the public.[29] For example, in 2010, both sides of the debate over Obamacare made extensive use of grassroots lobbying.[30]

Money and PACS

Contrary to popular suspicions, money is probably one of the less effective ways by which interest groups advance their causes. That was not always the case. Only a few decades ago, powerful interests used their bulging wallets to buy influence in Congress. The passage of campaign finance legislation in the early 1970s changed that. The laws had two effects. First, they sharply restricted the amount any interest group could give to a candidate for federal office. Second, they made legal the creation by organizations of political action committees (PACs) that could make political contributions (we discussed these points in some detail in Chapter 10).

Once PACs became legal, their numbers grew rapidly. Today more than 6,000 PACs exist, up from just over 4,000 in 2004 (a 50 percent increase in little more than a decade; see Figure 10.7).[31] Much of this growth comes from the expansion of leadership PACs and super PACs, which have received considerable media attention in recent years. The former type of PAC is headed by a member of Congress who raises money for other candidates, whereas the latter type of PAC is an "independent expenditure-only committee" that is not allowed to coordinate with candidates or political party leaders (see the discussion in Chapter 10). Among the best-known leadership PACs is the one formed by former House Speaker Nancy Pelosi to help fund Democratic candidates (Team Majority). Among the best-known super PACs is the one launched by Karl Rove, a former White House aide to President George W. Bush, to assist Republican candidates (American Crossroads).

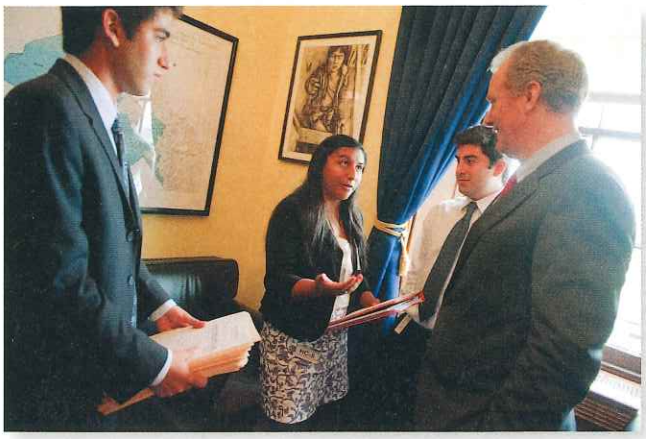
These leadership PACs are so-called nonconnected PACs. Most PACs are connected to a particular corporation, labor union, trade association, or membership organization, and can only solicit funds from individuals associated with said organization (and such contributions must be voluntary). In contrast, nonconnected PACs (like leadership PACs) are instead organized around particular ideological views or a particular personality (like a prominent member of Congress). Unlike other PACs, nonconnected PACs can solicit contributions from the general public (though all PACs are subject to certain rules, as we explained in Chapter 10). That said, while leadership PACs and others have attracted more attention in recent years, most PACs remain the traditional connected PACs, most of which represent business interests (another example of the power of business).

Some people worry that the existence of all this political money has resulted in our having, as the late Senator Edward Kennedy put it, "the finest Congress that money can buy." More likely, the increase in the number of PACs has had just the opposite effect. The reason is simple: With PACs so numerous and so easy to form, it is now probable that money will be available on every side of almost every conceivable issue. As a result, members of Congress can take money and still decide for themselves how to vote. As we shall see, there is not much scholarly evidence that money buys votes in Congress.

Indeed, some members of Congress tell PACs what to do rather than take orders from them. Members will frequently inform PACs that they "expect" money from them; grumbling PAC officials feel they have no choice but to contribute for fear of alienating the members. This is especially true in the age of leadership PACs. When Charles Rangel, a congressman from New York, was hoping to be elected whip of the Democratic Party in the House, he set up a leadership PAC and solicited many contributions from various lobbyists and PACs. He then gave funds to other members in the hope of winning their support. Setting up such a PAC is now practically required to rise up in the congressional leadership hierarchy in either party.[32] An ironic consequence of this is that groups might end up unintentionally donating money to individual politicians they dislike. For example, a conservative organization might give money to a conservative Republican's leadership PAC, which can then turn around and give it to a more moderate Republican colleague the group would never voluntarily support.

In the 2015–2016 election cycle, connected PACs gave slightly more than $1 billion to candidates running for the House and Senate. While this figure is large, it needs to be put into the proper perspective. First, individuals give more money in total than PACs do, so PACs are not the dominant figure in campaign finance that many imagine them to be.[33] Second, the average PAC contribution to a candidate is rather small, on the order of a few hundred dollars—the popular image of rich PACs stuffing huge sums into political campaigns and thereby buying the attention and possibly the favors of the grateful candidates is an exaggeration.

The typical PAC tries to support a large number of candidates with relatively modest donations. They are more likely to support incumbents than challengers, and they also typically give slightly more money to the majority party (though labor unions give almost exclusively to Democrats, and a few business PACs give predominantly to Republicans). This pattern reflects the fact that most PAC contributions are a means of gaining access to members.[34] Members have busy schedules and receive far more requests for meetings than they could ever possibly grant. A PAC contribution is a way that the organization can get its foot in the door: when they call, the member will be more likely to take their call and meet with them if they have given him or her money.[35]



Tom Williams/Getty Images

IMAGE 11-8 Citizens meet with members of Congress to promote particular programs, an example of grassroots lobbying.

While considerable evidence shows that contributions provide access, there is little evidence that PAC donations (or other types of political money) affect how legislators vote.[36] On most issues, a legislator's vote is primarily explained by their general party and ideology, as well as their constituents' preferences; factors like the amount of PAC money received are very minor considerations. This also reflects the fact that PACs tend to donate more to their friends than to fence-sitters or their opponents—PAC contributions are a form of subsidy to friendly legislators.[37] The PAC contribution is a way to help reelect a member with whom the organization has a good relationship. For example, many defense contractors give their largest contributions to members of Congress who have factories located in their districts. If we see that those members supported a bill to award that firm a contract for a new weapons system, it was likely not the PAC donation that drove their vote, but rather the prospect of new jobs in their district. In the end, a PAC donation is almost certainly not enough to sway a member of Congress's vote one way or the other.

In any event, if interest-group money makes a difference at all, it probably affects certain kinds of issues more than others. Much as with lobbying, interest-group money probably matters most on narrow issues that are best characterized as client politics (concentrated benefits but dispersed costs). While PAC contributions do not seem to matter much in the aggregate, they may well matter more on these sorts of narrow policies.[38]

The "Revolving Door"

Every year, hundreds of people leave important jobs in the federal government to take more lucrative positions in private industry. Some go to work as lobbyists, others as consultants to businesses, still others as key executives in corporations, foundations, and universities. Many people worry that this "revolving door" may give private interests a way of improperly influencing government decisions. If a federal official uses his or her government position to do something for a corporation in exchange for a cushy job after leaving government, or if a person who has left government uses his

or her personal contacts in Washington to get favors for private parties, then the public interest may suffer.

From time to time, certain incidents stir these fears. For instance, as the *Washington Post* reported, following the attempted bombing of a U.S. airliner on Christmas Day 2009, Michael Chertoff, the former secretary of the Department of Homeland Security (DHS), "gave dozens of media interviews touting the need for the federal government to buy more full body-scanners for airports"; but in that media blitz Chertoff did not always make clear what his security consulting firm, the Chertoff Group, had disclosed in a statement issued before he made the media rounds, namely, that the former DHS chief represented a client that manufactured the machines and sold them to a DHS subunit, the Transportation Safety Administration.[39]

Over the years, more than a few scandals have emerged concerning corrupt dealings between federal department officials and industry executives. Many have involved contractors or their consultants bribing procurement officials. Far more common, however, have been major breakdowns in the procurement process itself. For example, in 2006, DHS revealed the results from an internal audit.[40] In the previous year, the department had spent

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

Gun Control: Contentious Entrepreneurial Politics

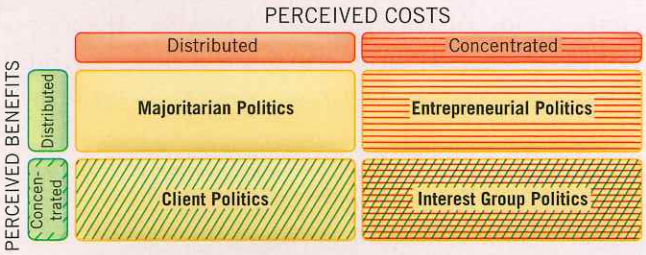
In December 2012, Adam Lanza fatally shot 20 children and 6 adult staff members at Sandy Hook Elementary School in Newtown, Connecticut. The incident ranked as one of the deadliest mass shootings in U.S. history, and afterward, numerous politicians, including President Barack Obama, called for tougher gun control legislation. Large majorities of Americans supported specific reforms, such as tougher background checks, in the aftermath of the attack. Legislation was introduced in Congress, but it did not pass. Other subsequent mass shootings similarly did not lead to tougher gun laws. If the public and many political elites support tougher gun control measures, why are they so difficult to enact?

The answer lies (in part) in the nature of the policy. Gun control is best characterized as entrepreneurial politics. If gun control measures are enacted, then all of society will benefit from increased safety (though it is important to note that some gun control opponents doubt this claim). But gun owners will pay the costs because it will be more difficult and expensive to own a gun. This means there are dispersed benefits but concentrated costs, which generates entrepreneurial politics.

Those opposed to gun control are well organized in interest groups, most notably, the National Rifle Association, which has been strongly opposed to gun control in recent years. Furthermore, as we discussed in Chapter 7, gun control opponents are also highly politically active on this issue, making them a potent constituency for members of Congress.

Consistent with our expectations of entrepreneurial politics, gun control supporters, by contrast, have not been as well organized. Gun control advocates have struggled to build effective organizations and have not found effective policy entrepreneurs, a struggle Kristin Goss documents in her book *Disarmed*. As we discussed in Chapter 1, a change in the salience of an issue can bring about change even in the absence of an entrepreneur. While Newtown did make gun control more salient, and it did increase public support for gun control, such support was temporary. By May 2013, gun control opinion had returned to its pre-Newtown levels.

While there has been little legislative or policy change nationally, gun control advocates have been far more successful at the state level. Since Sandy Hook, eight states increased background check requirements, and in 2016 several states, including California, Nevada, and Washington, all passed new gun control measures. Advocates have also begun to try to promulgate studies showing a link between tougher gun control measures and lower rates of gun violence. This reinforces a point we made in Chapter 3: one consequence of a federal system is that different actors may have more success in pressing their case with different government bodies.



▶ **PRACTICE POLITICAL SCIENCE** Explain how the reasoning of the majority, concurring, and dissenting opinions in the U.S. Supreme Court case *McDonald v. Chicago* (2010) reflect the entrepreneurial politics of those supportive and opposed to gun control regulations.

Sources: Caroll Doherty, "Did Newtown Really Change Public Opinion About Gun Control?" CNN.com, 6 December, 2013; Kristen Goss, *Disarmed: The Missing Movement for Gun Control in America.* Princeton, NJ: Princeton University Press, 2006; Eric Lichtblau, "Gun-Control Groups Push Growing Evidence that Laws Reduce Violence," *New York Times*, 11 October, 2016.

$17.5 billion on contracts for airport security, radiation detectors, and other goods and services. But records for nearly three dozen contracts were completely missing, and records for many other contracts lacked evidence that the department had followed federal rules in negotiating best prices. (The internal audit itself was performed by private consultants, presumably in compliance with all relevant rules.) However, while there are various examples like these, we lack full and systematic data on the problem more broadly, so it is difficult to draw firm conclusions about it more generally.

Agencies differ in their vulnerability to outside influences. If the Food and Drug Administration is not vigilant, people in that agency who help decide whether a new drug should be placed on the market may have their judgment affected by the possibility that, if they approve the drug, the pharmaceutical company that makes it will later offer them a lucrative position. On the other hand, lawyers in the Federal Trade Commission who prosecute businesses that violate the antitrust laws may decide that their chances for getting a good job with a private law firm later on will increase if they are particularly vigorous and effective prosecutors. The firm, after all, wants to hire competent people, and winning a case is a good test of competence.[41]

In response to concerns of undue influence, recent administrations have put new limits on the ability of former executive branch officials to work as lobbyists. Both Presidents Obama and Trump have put certain restrictions in place, including blocking former officials from serving as lobbyists for several years after leaving office.[42] Whether they will be effective at limiting such concerns remains to be seen.

Civil Disobedience

Public displays and disruptive tactics—protest marches, sit-ins, picketing, and violence—have always been a part of American politics. Indeed, they were among the favorite tactics of the American colonists seeking independence in 1776.

Both ends of the political spectrum have used display, disruption, and violence. On the left feminists, gay rights supporters, antislavery agitators, coal miners, auto workers, welfare mothers, African Americans, antinuclear power groups, public housing tenants, the American Indian Movement, the Students for a Democratic Society, and the Weather Underground have created "trouble" ranging from peaceful sit-ins at segregated lunch counters to bombings and shootings. On the right, the Ku Klux Klan has used terror, intimidation, and murder; parents opposed to forced busing of schoolchildren have demonstrated; business firms have used strong-arm squads against workers; right-to-life groups have blockaded abortion clinics; and an endless array of "anti-" groups (anti-Catholics, anti-Masons, anti-Jews, anti-immigrants, anti-saloons, anti-blacks, anti-protesters, and probably even anti-antis) have taken their disruptive turns on stage. The Tea Party and affiliated groups have most recently used protests and rallies to help spread their message. These various activities are not morally the same—a sit-in demonstration is quite different from a lynching—but politically they constitute a similar problem for a government official.

An explanation of why and under what circumstances disruption occurs is beyond the scope of this book. To understand interest-group politics, however, it is important to remember that making trouble has, since the 1960s, become a quite conventional political resource and is no longer simply the last resort of extremist groups. Making trouble is now an accepted political tactic of ordinary middle-class citizens as well as the disadvantaged or disreputable.

Of course, the use of disruptive methods by "proper" people has a long history. For example, in a movement that began in England at the turn of the 20th century and then spread to America, feminists would chain themselves to lampposts or engage in what we now call "sit-ins" as part of a campaign to win the vote for women. The object then was much the same as the object of similar tactics today: to disrupt the working of some institution so that it is forced to negotiate with you; or, failing that, to enlist the sympathies of third parties (the media, other interest groups) who will come to your aid and press your target to negotiate with you; or, failing that, to goad the police into making attacks and arrests so that martyrs are created.

The civil rights and antiwar movements of the 1960s gave experience in these methods to thousands of young people and persuaded others of the effectiveness of such methods under certain conditions. Though these movements have abated or disappeared, their veterans and emulators have put such tactics to new uses—trying to

Jim Bourg/Reuters

IMAGE 11-9 Same-sex marriage supporters celebrate after the Supreme Court ruled in their favor in 2015.

block the construction of a nuclear power plant, for example, or occupying the office of a cabinet secretary to obtain concessions for a particular group. As a result, today such techniques are common on both the left and the right. They can sometimes affect policy,[43] which helps to explain their use by groups across the political spectrum.

Which Groups and Strategies Are Most Effective?

Reviewing the various strategies interest groups use to influence the policy process, one might naturally ask two questions about interest-group power. First, which strategies are most effective? And second, which interest groups are most influential? Consider the question of strategy first. Unfortunately, this kind of question does not have an easy answer. The best strategy depends on the group and the issue in question. For some issues—especially highly salient ones that would generate significant public support—a grassroots lobbying strategy and a media campaign would be most effective. For other issues, especially more niche client politics issues, an insider lobbying campaign of key legislators would be the most efficacious strategy. Furthermore, on many issues, the best strategy isn't any one choice, it's a multitude of choices: it is not grassroots or insider lobbying, it is both.[44] For example, the Civil Rights movement not only used protests and civil disobedience, they also used a strategic series of lawsuits, as well as both insider and grassroots lobbying. Most groups use many of the tactics described in this section.

Can we say, then, which groups are most effective? Such a question is, at its core, effectively impossible to answer, as different groups will be influential for different reasons. However, one common thread connecting many of these groups is that they have the power to demonstrate clear electoral consequences to opposing their policies. For example, the Dodd-Frank reform bill put in place the Consumer Financial Protection Bureau (CFPB) to regulate lenders (among other tasks). But one group of lenders was initially largely unregulated by the CFPB: automobile lenders, especially automobile dealerships (while automobile dealers do not typically make loans themselves, they often serve as the middleman, connecting buyers with financing). Why did this group get this exemption? They got it because they engaged in a vigorous grassroots lobbying campaign. Theirs was a particularly potent grassroots campaign because there are approximately 18,000 automobile dealerships across the country that employ close to 1 million Americans.[45] Hence every congressional district in America has a number of people employed in connection with automobile dealerships and loans, and they could make a powerful case to legislators: regulating us would harm the economy. While the CFPB has issued some regulations about these lenders, even these have faced significant pushback from opponents.[46] Similarly, one reason why the National Rifle Association (NRA) has long been seen as a powerhouse interest group is that NRA members are highly politically engaged and will vote against—and campaign against—members who oppose their policy positions (see the Policy Dynamics: Inside/Outside the Box feature on page 256 in this chapter).[47] It is this activism—more than their PAC contributions—that makes them a potent force in Washington. The AARP is also widely seen as powerful because its core demographic—senior citizens—is highly politically engaged (see the discussion in Chapter 8). We can say these groups are "important" because they represent large, geographically dispersed constituencies who can impose electoral costs on members of Congress. In short, one key part of "importance" or "influence" is being able to generate electoral reward or punishment for members.

Furthermore, as we have discussed throughout the chapter, the political context also matters. Interest groups are most effective when they pursue issues best characterized as client politics. Groups that advocate for change on broad-based entrepreneurial or majoritarian politics (things like regulating the environment) face a more uphill battle because of the nature of the issue.

This highlights an important truth about American politics. Many assume that money determines policy outcomes, but the logic above shows that this is not really correct: organization, political consequences, and political context matter just as much, if not more. Studies find that the side with the most money (or that spends the most money) is only weakly correlated with policy success, and a majority of lobbying efforts—even those from well-connected, high-profile groups—fail.[48] If all it took to change the status quo was money, then neither tobacco nor oil drilling would be regulated at all (instead, both are heavily regulated). As we discussed earlier in the chapter, business often, but not always, gets what it wants in a pluralistic system like ours. To ultimately understand interest-group success and failure, we need to consider organizations and the political context in which groups operate.

11-5 Regulating Interest Groups

Interest-group activity is a form of political speech protected by the First Amendment to the Constitution: it cannot lawfully be abolished or even much curtailed. In 1946, Congress passed the Federal Regulation of Lobbying Act,

which requires groups and individuals seeking to influence legislation to register with the secretary of the Senate and the clerk of the House and to file quarterly financial reports. The Supreme Court upheld the law but restricted its application to lobbying efforts involving direct contacts with members of Congress.[49] More general "grassroots" interest-group activity may not be restricted by the government. The 1946 law had little practical effect. Not all lobbyists took the trouble to register, and there was no guarantee that the financial statements were accurate. There was no staff in charge of enforcing the law.

After years of growing popular dissatisfaction with Congress, prompted in large measure by the (exaggerated) view that legislators were the pawns of powerful special interests, Congress unanimously passed in late 1995 a bill that tightened up the registration and disclosure requirements. Signed by the president, the law restated the obligation of lobbyists to register with the House and Senate, but it broadened the definition of a lobbyist to include the following:

- People who spend at least 20 percent of their time lobbying
- People who are paid at least $5,000 in any six-month period to lobby
- Corporations and other groups that spend more than $20,000 in any six-month period on their own lobbying staffs

The law covered people and groups who lobbied the executive branch and congressional staffers as well as elected members of Congress, and it included law firms that represent clients before the government. Twice a year, all registered lobbyists were required to report the names of their clients, their income and expenditures, and the issues on which they worked.

The registration and reporting requirements did not, however, extend to grassroots lobbying. Nor was any new enforcement organization created, although congressional officials could refer violations to the Justice Department for investigation. Fines for breaking the law could amount to $50,000. In addition, the law barred tax-exempt, nonprofit advocacy groups that lobby from getting federal grants.

Just as the Republicans moved expeditiously to pass new regulations on interest groups and lobbying when they regained majorities in Congress in the November 1994 elections, the Democrats' first order of business after retaking Congress in the November 2006 elections was to adopt sweeping reforms. Beginning March 1, 2007, many new regulations took effect, including the following:

- No gifts of any value may be accepted from registered lobbyists or firms that employ lobbyists
- Travel costs may not be reimbursed by registered lobbyists or firms that employ lobbyists
- Travel costs may not be reimbursed, no matter the source, if the trip is in any part organized or requested by a registered lobbyist or firm that employs lobbyists

Strictly speaking, these and related new rules mean that a House member cannot go on a "fact-finding" trip to a local site or a foreign country and have anyone associated with lobbying arrange to pay for it. Even people who are not themselves registered lobbyists, but who work for a lobbying firm, are not permitted to take members of Congress to lunch or give them any other "thing of value," no matter how small.

But if past experience is any guide, "strictly speaking" is not how the rules will be followed or enforced. For instance, buried in the fine print of the new rules are provisions that permit members of Congress to accept reimbursement for travel from lobbyists if the travel is for "one-day trips," so long as the lobbyists themselves do not initiate the trip, make the reservations, or pick up incidental expenses unrelated to the visit. Moreover, these rules have not yet been adopted in precisely the same form by the Senate; and neither chamber has yet clarified language or closed loopholes related to lobbying registration and reporting.

Do not suppose, however, that such remaining gaps in lobbying laws render the system wide open to abuses or evasions. For one thing, the lobbying laws, loopholes and all, are now tighter than ever. For another, the most significant legal constraints on interest groups come not from the current federal lobbying law (though that may change) but from the tax code and the campaign finance laws. Nonprofit organizations—which include not only charitable groups but also almost all voluntary associations that have an interest in politics—need not pay income taxes, and financial contributions to it can be deducted on the donor's income tax return, provided that the organization does not devote a "substantial part" of its activities to "attempting to influence legislation."[50]

Many tax-exempt organizations do take public positions on political questions and testify before congressional committees. If the organization does any serious lobbying, however, it will lose its tax-exempt status (and thus find it harder to solicit donations and more expensive to operate). This happened to the Sierra Club in 1968, when the Internal Revenue Service revoked its tax-exempt status because of its extensive lobbying activities. Some voluntary associations try to deal with this problem by setting up separate organizations to collect tax-exempt money—for example, the NAACP lobbies and must

WHAT WOULD YOU DO?

Will You Support or Oppose Full Federal Financing of Presidential Campaigns?

To: *Chandra Enakshi, Senate majority leader*
From: *Brian Luce, chief of staff*
Subject: *Full federal financing of presidential campaigns*

In recent years, more and more candidates have opted out of the public funding system, with only one candidate participating in 2016. Elections have also become vastly more expensive, with presidential candidates alone raising over $1.5 billion in 2016 (not counting party committees, PACs, or outside groups). Congress needs to decide whether elections are a public investment or a political free market for citizens and candidates. We support a bill that would fully fund all major-party presidential candidates.

To Consider:

A bipartisan group of senators has proposed that Congress control campaign expenses by fully funding and setting an upper limit on financing for presidential campaigns. Presidential contenders so far have refrained from taking a position on the legislation.

Arguments for:

1. Legal precedents are promising. Matching federal funds already go to presidential primary candidates who have raised at least $5,000, in contributions of $250 or less, in each of 20 states. For the general election, each major-party nominee already is eligible for federal funding if he or she agrees to spend no more than that amount.
2. The funding required would be small. Even if it cost $1 billion, that is hardly a fiscal drain in a nearly $3.8 trillion annual budget.
3. The effects would be pervasive. Candidates and party leaders would stop covertly courting big donors with phone calls, lunches, and personal visits, and would focus instead on the needs of average citizens.

Arguments against:

1. Constitutional precedent for requiring political candidates to accept public funds is weak. In *Buckley v. Valeo* (1976), the Supreme Court upheld limits on campaign contributions for candidates who accept public money, but it also defined spending money for political purposes as expression protected by the First Amendment, thereby giving individuals the right to raise and spend as much of their own money as they choose, if they forego federal funds.
2. Campaign spending would soon spiral once again. The federal government may not restrict spending by individuals or organizations working independently from the political parties, and federal funds would merely supplement, not supplant, private fundraising.
3. Less than 10 percent of taxpayers currently support public financing through voluntary federal income tax check-offs, and voters likely would view bankrolling elections as serving politicians, not the people.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ Support legislation ☐ Oppose legislation

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

pay taxes, but the NAACP Legal Defense and Education Fund, which does not lobby, is tax-exempt.

Finally, the campaign finance laws, described in detail in Chapter 10, limit to $5,000 the amount any political action committee can spend on a given candidate in a given election. These laws have sharply curtailed the extent to which any *single* group can give money, though they have increased the *total* amount that different groups can provide.

Beyond making bribery or other manifestly corrupt forms of behavior illegal and restricting the sums that campaign contributors can donate, there is probably no system for controlling interest groups that would both make a useful difference and leave important constitutional and political rights unimpaired. Ultimately, the only remedy for imbalances or inadequacies in interest-group representation is to devise and sustain a political system that gives all affected parties a reasonable chance to be heard on matters of public policy. That, of course, is exactly what the Founders thought they were doing. Whether they succeeded or not is a question to which we shall return at the end of this book.

LEARNING OBJECTIVES

11-1 Explain what an interest group is, and identify the main factors that led to their rise in America.

An interest group is an organization of people sharing a common interest or goal that seeks to influence public policy. Several factors help to explain the rise of these groups, including the growth of the market economy in America, government policy itself (by creating constituencies that receive benefits from the government), political movements that create political entrepreneurs, and the growing scope of government policy.

11-2 Detail the various types of interest groups in America, and explain the types of people who join interest groups.

Two kinds of interest groups exist: institutional and membership. Institutional groups represent other organizations (like lobbying firms that represent corporations or trade groups in Washington), whereas membership groups represent their own members and their members' policy preferences and beliefs (like the National Association for the Advancement of Colored People, a historic civil rights membership organization). People join groups for the same basic reasons that they join any organization. There are three kinds of incentives: solidary, material, and purposive.

11-3 Summarize the ways interest groups relate to social movements.

Social movements are mass movements that push for a particular type of policy change. Groups that use purposive benefits are especially likely to be linked to broad social movements.

11-4 Explain the various ways interest groups try to influence the policymaking process.

Groups use a variety of strategies, including lobbying (and more generally providing information), earmarking (though it is currently banned, there are some ways around it), donations to legislators, and civil disobedience. The most effective strategies in any given instance depend on the type of group and its goals. Whether a group is successful is determined at least in part by its organization and the political environment.

11-5 Describe the ways in which interest groups' political activity is limited.

Interest groups' activities are restricted by literally scores of laws. For example, Washington lobbyists must register with the House or Senate. All registered lobbyists must publicly divulge their client list and expenditures. There are legal limits on PAC contributions. Every new wave of campaign finance laws (see Chapter 10) has resulted in more rules regulating interest groups. The Internal Revenue Service has tightly restricted political activity by religious groups, private schools, and other organizations as a condition for their exemption from federal income tax. Finally, states and cities have their own laws regulating interest groups, and some places are more restrictive than others.

CHAPTER 12

The Media

KEY OBJECTIVE OF THIS CHAPTER

- *The media is a linkage institution.*

KEY TAKEAWAYS FROM THIS CHAPTER

- The media's use of polling results to convey popular levels of trust and confidence in government can impact elections by turning such events into "horse races" based more on popularity and factors other than qualifications and platforms of candidates.
- Increasingly diverse choices of media and communication outlets influence political institutions and behavior.

Suppose you want to influence how other people think about health, politics, sports, or celebrities. What would you do? At one time, you might write a book or publish an essay in a newspaper or magazine. But unless you were very lucky, the book or article would reach only a few people. Today, you will have a much bigger impact if you can get on television or post your findings on a popular news website or blog. Vastly more people watch *Dancing with the Stars* than read newspaper editorials; many more get opinions from blogs—such as the Daily Kos on the left or Power Line on the right—than read essays in magazines.

Television and the Internet are key parts of the New Media; newspapers and magazines are part of the Old Media. And while both still matter, new media have become more important in recent years, and will be stronger still in the years to come.

THEN In 1972–1974, the Nixon administration's efforts to cover up the burglary of Democratic National Committee headquarters at the Watergate Hotel in Washington, DC, were revealed through a series of articles published in the *Washington Post*, which gained national fame for its riveting news coverage by journalists Bob Woodward and Carl Bernstein.[1] In the summer of 1987, Congress held live, televised hearings about the Iran-Contra scandal, which captivated viewers.

NOW Television is still an important source of news, but the Internet and social media are rapidly transforming the media landscape. In 2011, reports that the United States had captured and killed Osama bin Laden first appeared on Twitter. By 2016, 66 percent of Facebook users—representing nearly 44 percent of Americans—got at least some of their news through that social media platform.[2] That statistic generated a lot of controversy when it was revealed that many fake news stories spread on Facebook and other social media sites during the 2016 presidential election. For example, a story on Facebook about Pope Francis endorsing Donald Trump for president was shared, liked, or commented on more than 960,000 times in 2016, and a story about Hillary Clinton selling weapons to ISIS generated nearly as many likes, shares, and comments.[3] Obviously, neither story was true, but these fake news stories may have influenced some voters.

The 2016 examples are not an aberration: social media is now a major source of news, rivaling even television. Nearly twice as many adults get their news online than read a print newspaper.[4] And for online news, desktops and laptops are being replaced by mobile phones and tablets, which will spur even more changes in the future. The media landscape is shifting dramatically every year.

As we will learn throughout this chapter, the mass media play a vital role in politics, but many people misunderstand their role and have a variety of misconceptions about what the media can—and cannot—do in politics. In this chapter, we hope to help you better understand the powers and the limits of the media.

12-1 The Media and Politics

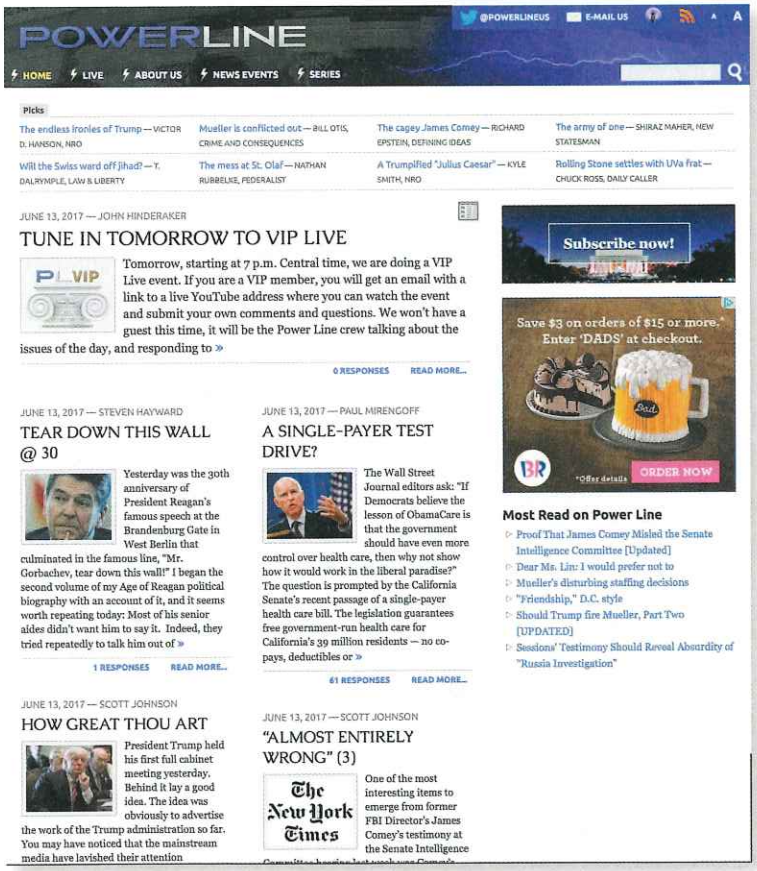
The Internet is an important new venue for politics, but it presents similar challenges for politicians as earlier technological advances in communication. From the beginning of the Republic, public officials have tried to get the media on their side while knowing that, because the media love controversy, they are as likely to attack as to praise. The Internet may strike some politicians as the solution to this problem: They think that if they put their own Web pages out there, they can reach the voters directly. They can, but so can rival politicians with their own Web pages.

All of this takes place in a country so committed to a free press that the government can do little to control the process. As we shall see, efforts have been made to control radio and television via the government's right to license broadcasters, but most of these attempts have evaporated.

Even strongly democratic nations restrict the press more than the United States. For example, the laws governing libel are much stricter in the United Kingdom than in the United States. As a result, it is easier in the United Kingdom for politicians to sue newspapers for publishing articles that defame or ridicule them. In this country, the libel laws make it almost impossible to prevent press criticisms of public figures. Moreover, England has an Official Secrets Act that can be used to punish any past or present public officials who leak information to the press.[5] In this country, information is leaked all the time, and our Freedom of Information Act makes it relatively easy for the press to extract documents from the government.

European governments can be much tougher on people who make controversial statements than the American political system. In 2006, an Austrian court sentenced a man to three years in prison for denying that the Nazi death camp at Auschwitz killed its inmates. A French court convicted a distinguished American historian for telling a French newspaper that the slaughter of Armenians may not have been the result of planned effort. An Italian journalist stood trial for writing things "offensive to Islam." In the United States, however, such statements would be

Daily Kos blog, www.dailykos.com



Source: Power Line

IMAGES 12-1 and 12-2 Blogs, both conservative and liberal, have become an important form of political communication.

protected by the Constitution even if, as with the man who denied the existence of the Holocaust, they were profoundly wrong.[6]

America has a long tradition of privately owned media. By contrast, private ownership of television has come only recently to other nations, such as France. And the Internet is not owned by anybody: Here and in many nations, people can say or read whatever they want on their computers. Newspapers in this country require no government permission to operate, but radio and television stations need licenses granted by the Federal Communications Commission (FCC). These licenses must be renewed periodically. On occasion, the White House has made efforts to use license renewals as a way of influencing station owners who were out of political favor, but of late, the level of FCC control over what is broadcast has lessened.

Two potential issues limit the freedom of privately owned newspapers and broadcast stations. First, they must make a profit. Some critics believe the need for profit will lead media outlets to distort the news in order to satisfy advertisers or to build an audience. Though there is some truth to this argument, it is too simple. Every media outlet must satisfy a variety of people—advertisers, subscribers, listeners, reporters, and editors—and balancing those demands is complicated and will be done differently by different owners.

The second problem is media bias. If most reporters and editors have similar views about politics, and if they act on those views, then the media would give us only one side of many stories. Later in this chapter, we take a close look at whether the media are actually biased.

Journalism in American Political History

Important changes in the nature of American politics have gone hand in hand with major changes in the organization and technology of the press. It is the nature of politics, essentially a form of communication, to respond to changes in how communications are carried on. This can be seen by considering five important periods in journalistic history.

The Party Press

In the early years of American democracy, politicians of various factions and parties created, sponsored, and controlled newspapers to further their interests. This was possible because circulation was of necessity small (newspapers could not easily be distributed to large audiences, owing to poor transportation) and newspapers were expensive (the type was set by hand and the presses printed copies slowly). Furthermore, few large advertisers existed to pay the bills. These newspapers circulated chiefly among the political and commercial elites who could afford the high subscription prices. Even with high prices, the newspapers often required subsidies that frequently came from the government or a political party.

During the Washington administration, the Federalists, led by Alexander Hamilton, created the *Gazette of the United States*. The Republicans, led by Thomas Jefferson, retaliated by creating the *National Gazette* and made its editor, Philip Freneau, "clerk for foreign languages" in the State Department at $250 a year (more than $6,000 in today's dollars) to help support him. After Jefferson became president, he introduced another publisher, Samuel Harrison Smith, to start the *National Intelligencer*, subsidizing him by giving him a contract to print government documents. Andrew Jackson, when he became president, aided in the creation of the *Washington Globe*. By some estimates, more than 50 journalists were on the government payroll during this era. Naturally, these newspapers were relentlessly partisan in their views. Citizens could choose among different party papers, but only rarely could they find a paper that presented both sides of an issue.

The Popular Press

Changes in society and technology made possible the rise of a self-supporting daily newspaper with a mass readership. The development of the high-speed rotary press enabled publishers to print thousands of copies of a newspaper cheaply and quickly. The invention of the telegraph in the 1840s meant that news from Washington could be flashed almost immediately to New York, Boston, Philadelphia, and Charleston, thus providing local papers with access to information that once only the Washington papers enjoyed. The creation in 1846 of the Associated Press (AP) allowed telegraphic and systematic dissemination of information to newspaper editors. Since the AP provided stories that had to be brief and that went to newspapers of every political hue, it could not afford to be partisan or biased; to attract as many subscribers as possible, it had to present the facts objectively.

Meanwhile, the nation was becoming more urbanized, with large numbers of people brought together in densely settled areas. These people could support a daily newspaper by paying only a penny per copy and by patronizing merchants who advertised in its pages. Newspapers no longer needed political patronage to prosper, and soon such subsidies began to dry up. In 1860, the Government Printing Office was established, thereby putting an end to most of the printing contracts that Washington newspapers had once enjoyed.

The mass-readership newspaper was scarcely nonpartisan, but the partisanship it displayed arose from the convictions of its publishers and editors rather than from the influence of its party sponsors. And these convictions

blended political beliefs with economic interests. The way to attract a large readership was with sensationalism: violence, romance, and patriotism, coupled with exposés of government, politics, business, and society. As practiced by Joseph Pulitzer and William Randolph Hearst, founders of large newspaper empires, this editorial policy had great appeal for the average citizen and especially for the immigrants flooding into the large cities.

Strong-willed publishers could often become powerful political forces. Hearst used his papers to agitate for war with Spain when Cubans rebelled against Spanish rule. Conservative Republican political leaders were opposed to the war, but a steady diet of newspaper stories about real and imagined Spanish brutalities whipped up public opinion in favor of intervention. At one point, Hearst sent noted artist Frederic Remington to Cuba to supply paintings of the conflict. Remington cabled back: "Everything is quiet. . . . There will be no war." Hearst supposedly replied: "Please remain. You furnish the pictures and I'll furnish the war."[7] When the battleship *USS Maine* blew up in Havana Harbor, President William McKinley felt helpless to resist popular pressure, and the United States declared war in 1898.

For all their excesses, mass-readership newspapers began to create a common national culture, to establish the feasibility of a press free of government control or subsidy, and to demonstrate how exciting (and profitable) the criticism of public policy and the revelation of public scandal could be.

Magazines of Opinion

The growing middle class often was repelled by what it called "yellow journalism" and around the turn of the century developed a taste for political reform and a belief in the doctrines of the progressive movement. To satisfy this market, a variety of national magazines appeared that—unlike those devoted to manners and literature—discussed issues of public policy. Among the first of these were *The Nation*, the *Atlantic Monthly*, and *Harper's*, founded in the 1850s and 1860s; later came the more broadly based mass-circulation magazines such as *McClure's*, *Scribner's*, and *Cosmopolitan*. They provided the means for developing a national constituency for certain issues such as regulating business (or, in the language of the times, "trust-busting"), purifying municipal politics, and reforming the civil service system. Lincoln Steffens and other so-called muckrakers were frequent contributors to the magazines, setting a pattern for what we now call "investigative reporting."

The national magazines of opinion provided an opportunity for individual writers to gain a nationwide following. The popular press, though initially under the heavy influence of founder-publishers, made certain reporters and columnists household names. In time, the great circulation wars between the big-city daily newspapers started to wane as the more successful papers bought up or otherwise eliminated their competition. This reduced the need for the more extreme forms of sensationalism, a change reinforced by the growing sophistication and education of America's readers. And the founding publishers gradually were replaced by less flamboyant managers. All of these changes—in circulation needs, audience interests, managerial style, and the emergence of nationally known writers—helped increase the power of editors and reporters.

Though writers may have been identified with social causes during the muckraking era, they became less identified with political parties. During the late 19th and early 20th centuries, overt partisanship in journalism largely faded away, as journalists and editors sought to be objective and neutral in their coverage of politics (we discuss later in the chapter whether they actually live up to that ideal). The partisan press gradually was replaced by a more mainstream nonpartisan press.[8]

Camerique Archive/Getty Images

Pixellover RM 3/Alamy Stock Photo

IMAGES 12-3 and 12-4 News used to come by radio, but today many people read news on iPads and other electronic devices.

sound bite *A radio or video clip of someone speaking.*

blog *A series, or log, of discussion items on a page of the World Wide Web.*

Electronic Journalism

Radio came on the national scene in the 1920s, television in the late 1940s. They represented a major change in the way news was gathered and disseminated, though few politicians at first understood the importance of this change. A broadcast permits public officials to speak directly to audiences without their remarks being filtered through editors and reporters. This was obviously an advantage to politicians, provided they were skilled enough to use it; they could in theory reach the voters directly on a national scale without the services of political parties, interest groups, or friendly editors.

But there was an offsetting disadvantage—people could easily ignore a speech broadcast on a radio or television station, either by not listening at all or by tuning to a different station. By contrast, the views of at least some public figures would receive prominent and often unavoidable display in newspapers, and a growing number of cities had only one daily paper. Moreover, space in a newspaper is cheap compared to time on a television broadcast.

Adding one more story, or one more name to an existing story, costs a newspaper little. By contrast, less news can be carried on radio or television, and each news segment must be quite brief to avoid boring the audience. As a result, the number of political personalities that can be covered by radio and television news is much smaller than is the case with newspapers, and the cost (to the station) of making a news item or broadcast longer often is prohibitively large.

Thus, to obtain the advantages of electronic media coverage, public officials must do something sufficiently bold or colorful to gain free access to radio and television news—or they must find the money to purchase radio and television time. The president of the United States, of course, is routinely covered by radio and television and can ordinarily get free time to speak to the nation on matters of importance. All other officials must struggle for media attention by making controversial statements, acquiring a national reputation, or purchasing expensive time.

Until the 1990s, the "big three" television networks (ABC, CBS, and NBC) together claimed 80 percent or more of all viewers. Their evening newscasts dominated electronic media coverage of politics and government affairs. When it came to presidential campaigns, for example, the three networks were the only television games in town—they reported on the primaries, broadcast the party conventions, and covered the general election campaigns, including any presidential debates.

But over the past few decades, the networks' evening newscasts have changed in ways that complicate how candidates traditionally have used them to convey messages to the public. For instance, the average **sound bite**—an audio or video clip of a presidential contender speaking—dropped from about 42 seconds in 1968 to less than 8 seconds by 2004.[9] Furthermore, the audience for these broadcasts has shrunk dramatically in recent decades: Since 1980, the audience for these programs has declined by more than half (from more than 50 million to just over 22.5 million viewers).[10]

Today, politicians have sources other than the network news for sustained and personalized television exposure. Politicians routinely appear on news magazines, Sunday talk shows, early morning television programs, late-night comedy programs, and cable news stations such as Fox News, MSNBC, and CNN. This does not even cover the vast variety of online venues where politicians can also seek to gain exposure to air their points of view. We discuss below what effect this might have on viewers and American government more broadly.

The Internet and Social Media

The Internet has transformed how Americans get their news and information. Nearly 4 in 10 American adults often get news from the Internet, both from websites and from social media. As we will see later in the chapter, in the not-too-distant future the Internet will overtake television as the most important source of news and information for adults (indeed, it is already the main source among the young).

The Internet is the ultimate free market in political news: No one can ban, control, or regulate it, and no one can keep facts, opinions, or nonsense off of it. The political news found online ranges from summaries of stories published elsewhere to original reporting to political rumors and hot gossip. For example, viewers may scan political ideas posted on a **blog**; many political blogs specialize in offering liberal, conservative, or libertarian perspectives. For example, in Images 12-1 and 12-2 we see examples of a liberal-leaning blog (Daily Kos), and a conservative-leaning blog (Power Line). As you can see in these images, both blogs discuss the debate over health care reform. But their focus in reporting that story differs. Daily Kos focuses on Senate Majority Leader Mitch McConnell and his "misdirection" on the Republicans' efforts to repeal and replace the Affordable Care Act. Power Line, by contrast, focuses on California's debate over single-payer health care. This is typical of blogs: they present one side of the story, the side that agrees with their partisan point of view. We consider the consequences of this later in the chapter.

The rise of the Internet has completed a remarkable transformation in American journalism. In the days of the party press, only a few people read newspapers. When mass-circulation newspapers arose, mass politics also arose. When magazines of opinion developed, interest groups also developed. When radio and television became dominant, politicians could build their own bridges to voters without party or interest-group influence. And now, with the Internet, voters and political activists can talk to each other. This is true in democracies like the United States, but also in authoritarian regimes as well. For example, the ability of activists to communicate through sites like Twitter and Facebook was an important factor fueling the Arab Spring revolutions in 2011. It is becoming much harder for a powerful leader to control what other people can learn.

Of course, today it is not enough to just talk about "the Internet" as an undifferentiated collection of websites. Not only can voters read the news online or go to a campaign's website, they can also follow politics via social media and on their smartphones. While Facebook (for now) is the main social media site, especially for news, Americans also receive news from other social media sites such as Twitter, YouTube, and Instagram.[11] Politicians, recognizing that this is an important way of reaching out to voters, now work to carefully craft their social media presence. For example, former President Obama had a team of people who used social media outlets to promote his policies,[12] and President Donald Trump is a prolific Twitter user. Politics, like most other activities in the 21st century, has entered the digital age.

But how do the Internet, Facebook, Twitter, and the like affect public awareness and knowledge of politics, and participation in the political process? The evidence is somewhat more mixed than you might think. First, many had hoped that the Internet would let people get access to a wider range of political information than ever before. At some level, this is no doubt true: If you can write it down, you can post it online (a search of comment sections on many online articles will convince you that people can believe the most seemingly implausible theories). However, this democratizing impact has been quite muted in practice. Most people find political news online through major search engines or by visiting leading news sites (like Yahoo! News, Google News, or the websites of major news organizations like the *New York Times*). Many of the links shared on Facebook and other social media outlets are also to these dominant sites. While people can search out different or alternative voices online, most do not. As a result, online news largely looks like offline news, just in a different format.[13]

fake news *manufactured stories typically designed to support a particular point of view or candidate.*

More troubling, however, was the spread of fake news stories, especially during the 2016 election (broadly speaking, **fake news** is news that is made up, typically to support a particular candidate or point of view). As noted at the beginning of this chapter, many such stories were posted online during the 2016 campaign, for example, alleging that Pope Francis endorsed Donald Trump, that Hillary Clinton sold weapons to ISIS, or that Mike Pence called Michelle Obama vulgar (obviously, none of these are even the least bit true). Such stories spread rapidly: one report showed that in the final three months of the campaign, the top 20 fake news stories on Facebook were liked, shared, and commented on more times than the top 20 genuine news stories from outlets like the *New York Times* or the *Washington Post*.[14] It is hard to know how many voters were influenced by such stories, though at least one analysis claims fake news is unlikely to have changed the election outcome.[15] Nevertheless, such stories are deeply troubling, as they suggest that voters may be subject to misinformation online: indeed, many Americans report being confused by fake news.[16]

In the wake of the election, Facebook and other online companies have announced a variety of steps to combat fake news, but readers should still critically assess any such story they see online.[17] They should investigate the source, determine whether it is credible, and check that the information can be verified with another source, such as a third-party fact-checking website or a major news source. They should look at the language and consider whether it's being balanced, or if it's favoring one side or the other. As with so many things in life, if something seems too good to be true, it probably is.

Second, many had hoped that the Internet would transform how much people know about politics, especially young people. But as you might suspect given what we said above, the effect has again been relatively modest. The Internet makes a world of political information available to you: If you love politics, then you have never had access to more information about politics and public affairs than you do now. However, it has also never been easier to avoid politics if you want to, by searching for sports, entertainment news, or funny cat videos. After all, political Web traffic makes up just a tiny slice of Internet traffic: About 3 percent of Web traffic goes to news sites, and about 0.12 percent (that's 12 one-hundredths of 1 percent) goes to political sites.[18] As a result, the Internet has not led most people to become much better informed about politics.[19]

trial balloon *Information leaked to the media to test public reaction to a possible policy.*

Third, many also had hoped that the Internet and social media campaigns would change political organization. Here, there is stronger evidence that the Internet has changed politics in the way people had hoped. For example, grassroots organizing for many groups, especially on the political left, has been greatly aided by the Internet.[20] The most classic group is MoveOn.org, which since its founding in 1998 has used online tools to organize for political causes, often generating significant offline activism. Other groups have used similar online techniques to facilitate organizing and mobilizing voters.

This electronic mobilization has also helped to increase voter participation and engagement, especially among young people. For example, in Chapter 8 we discussed how get-out-the-vote operations—especially in-person operations—can effectively boost turnout. But some groups are especially hard to reach through such in-person visits, especially young people, who are more likely to live in apartment buildings (where canvassers cannot gain entry) or have evening plans or jobs and so are not at home when canvassers knock on the door. Sending these voters text messages, however, can increase their turnout.[21]

Similarly, many groups are turning to online tools to mobilize young people politically, often with positive success.[22] For example, the phrase *Black Lives Matter* first emerged in a Facebook post, then spread to Twitter, and eventually became a broad-based social movement.[23] In short, the Internet may not have transformed what people know about politics, but it has changed political activism and activity.

Covering Politicians

Over time, as the media environment has changed—from a partisan press to circulation-driven papers to electronic outlets to the Internet—so has how political actors interacted with the media. No office illustrates this more than the presidency. Initially, the president was rather remote and removed from the public eye, but no longer. Theodore Roosevelt was the first president to raise the systematic cultivation of the press to an art form. From the day he took office, he made it clear that he would give inside stories to friendly reporters and withhold them from hostile ones. He made sure that scarcely a day passed without his doing something newsworthy.

In 1902, Roosevelt built the West Wing of the White House and included in it, for the first time, a special room for reporters near his office; he invited the press to view, and become fascinated by, the antics of his children. In return, the reporters adored him. Teddy's nephew Franklin Roosevelt institutionalized this system by making his press secretary (a job created by Herbert Hoover) a major instrument for cultivating and managing, as well as informing, the press.

Today, the press secretary heads a large staff that meets with reporters, briefs the president on questions he is likely to be asked, attempts to control the flow of news from cabinet departments to the press, and arranges briefings for out-of-town editors (to bypass what many presidents think are the biases of the White House press corps). All this effort is directed primarily at the White House press corps, journalists who have dedicated space in the White House where they wait for a story to break, attend the daily press briefing, or take advantage of a "photo op"—an opportunity to photograph the president with some newsworthy person.

No other nation in the world has brought the press into such close physical proximity to the head of its government. The result is that the actions of our government are personalized to a degree not found in most other democracies. Whether the president rides a horse, comes down with a cold, greets a school group, or takes a trip, the press is there. While every president has a unique relationship with the White House press corps, President Trump's stands out. While in many ways Trump is quite accessible to the press, he has also attacked it for spreading what he believes are mistruths. How this relationship will evolve over his term remains to be seen.

Of course, the president and his advisors are not fools—they give this access because they understand there are political benefits to doing so. By giving reporters access to the president, he gets his name in the press and gets to push his agenda. For example, the president or other officials may strategically leak a policy to the media to see how it plays with the public; this is called floating a **trial balloon**. If the policy is a success, the president rolls it out officially, if not, it dies a quiet death. More generally, as we will see in Chapter 14, the president can use the media strategically to appeal to public opinion to try and win support for policies.

Other political actors in Washington, DC, have learned the same lesson: cultivating the press can allow them to promulgate their messages. In every agency and cabinet department, in every House and Senate office, staff are trained to deal with the media. Even the Supreme Court—which famously bans cameras in its courtroom and works to present an image of itself as above politics—has a press office that works with the media to disseminate information about its rulings.

Bettmann/Getty Images

Mark Wilson/Getty Images

IMAGES 12-5 and 12-6 In 1939, White House press conferences were informal affairs, as when reporters gathered around Franklin Roosevelt's desk in the Oval Office. Today, they are huge gatherings held in a special conference room, as shown on the right.

Members of Congress are classic exemplars of how to use the media to promulgate a message and increase one's visibility. The power of the media to help members of Congress was first shown in 1950. Estes Kefauver was a little-known senator from Tennessee. Then he chaired a Senate committee investigating organized crime. When these dramatic hearings were televised, Kefauver became a household name. In 1952, he ran for the Democratic nomination for president and won a lot of primary votes before losing to Adlai Stevenson.

Since then, members of Congress have realized that appearing in the media—especially on TV—can help them further their careers. While television cameras were not permitted on the House and Senate floors until the late 1970s, today C-SPAN provides extensive coverage of both chambers. Even more importantly, members of Congress—especially those with presidential ambitions—seek to appear on the panoply of television news programs to increase their name recognition and profile.

The Internet further allows politicians to appeal to the public. Through social media, politicians seek to reach out to their constituents (as well as journalists) with their policy proposals. Donald Trump's 2016 campaign was an excellent example of how a candidate can use social media, especially Twitter, to drive media coverage, which helped to fuel Trump's campaign.[24] And of course, politicians try to carefully craft and control their images in the media without the interference of journalists. As we will see below, there is a tension between what politicians present to the press and what the press wants to cover. In short, politicians are not simply passive figures being covered by the media; they actively try to shape their media image.

12-2 Where Do Americans Get Their News? Does This Matter?

Above, we suggested that more Americans are turning online to find political news. But more broadly, where do Americans get their news and information about politics? Do they surf the Web, watch TV, read newspapers, or listen to the radio? And how has this changed over time?

The best over-time data on this question come from the Pew Research Center. Over the past 25 years, television has been the dominant source of news for most Americans: In every year, at least two-thirds of Americans report that TV is one of their most important sources of news. Most Americans turn to television (which would include local, network, and cable TV news) to learn about politics. However, the number doing so has fallen somewhat from the 1990s, when more than 80 percent of Americans primarily relied on television.

What has taken the place of television? The Internet. Before 2000, the Internet was not a viable option for most Americans. But with the large-scale expansion of broadband connections (and the end of slow and unreliable dial-up modems), the Internet has increasingly become a key news source. Indeed, looking at the long-term trends, it seems plausible that one day the Internet will overtake television as the main source of political news.

Newspapers, which once trailed only television as a news source, are becoming a less important source of information for many Americans (though, as we explain below,

they still have a critical role to play as journalistic watchdogs). As circulations and advertising revenues decline, and more newspapers close, this trend is likely to continue. The other sources of news—radio and magazines—were never very popular in this time period and have not really changed much over time.

These trends tell us what has happened to all Americans over time, but how do these patterns differ by age? Figure 12.2 takes similar data from 2016 and breaks it down by age cohort. This data asks respondents where they often get their news, whereas the data used in Figure 12.1 asked respondents for their main source of news, so the two Figures are not perfectly comparable. Nevertheless, this 2016 data allows us an important look at how age shapes the types of news individuals consume.

These data show a strong difference by age: for older voters (50+), strong majorities rely mostly on television for their news. But for younger voters, especially the youngest cohort (18–29), the Internet is the dominant news source. Moving forward, in the coming decades the Internet will almost certainly be the dominant news source for all Americans, not just the young.

The age profile also helps us to understand the sharp decline of newspapers. The only group still reading newspapers at a substantial level are those ages 65 and older, suggesting an even more dire picture of their health than the one given in Figure 12.1.

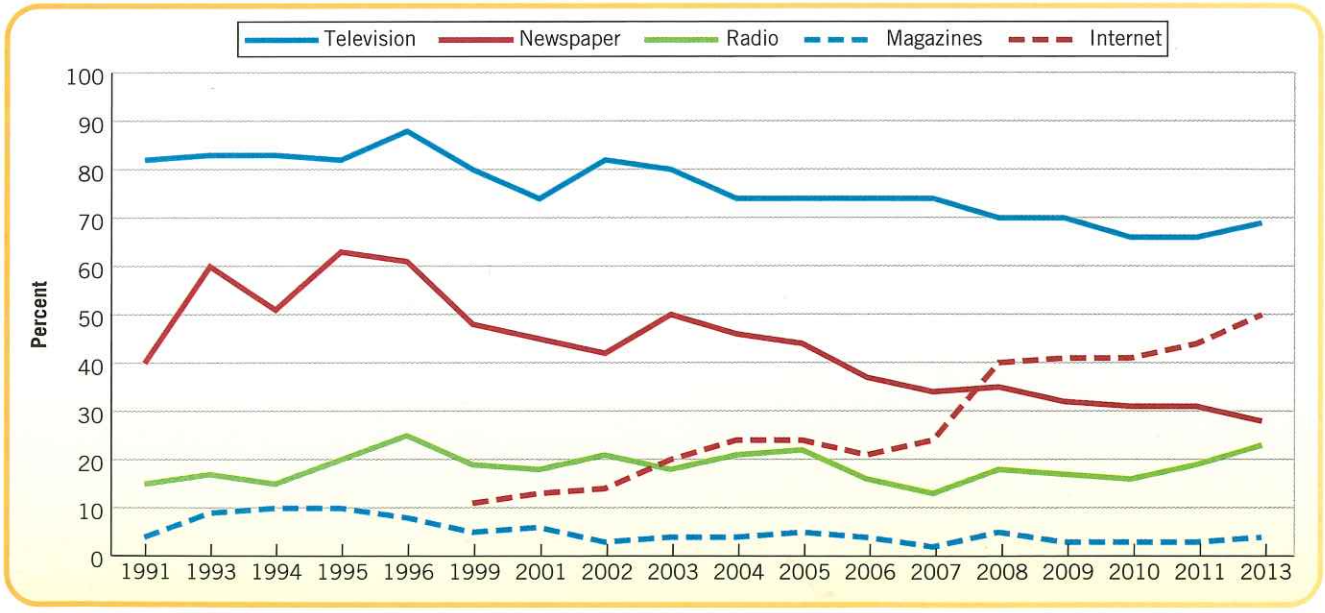
These figures illustrate that people get the news from a variety of different sources: television, the Internet, newspapers, and so forth. And within each one of those sources, there are now more choices than ever. Rather than just three main broadcast networks that dominated political coverage for much of the 20th century (ABC, CBS, and NBC), today hundreds of channels broadcast on cable, many of which cover news at least part of the time, and some of which (like Fox News, CNN, and MSNBC) cover it all of the time. Today, more information than ever is available, and people can choose which outlets they listen to.

This increased choice raises three important questions. First, how has this changed how much Americans know about politics? Second, are people wrapped in informational "echo chambers" where they only hear one side of the issues? Third, can people get *local* political information? We take up these important questions in turn.

Media Choice and Political Knowledge

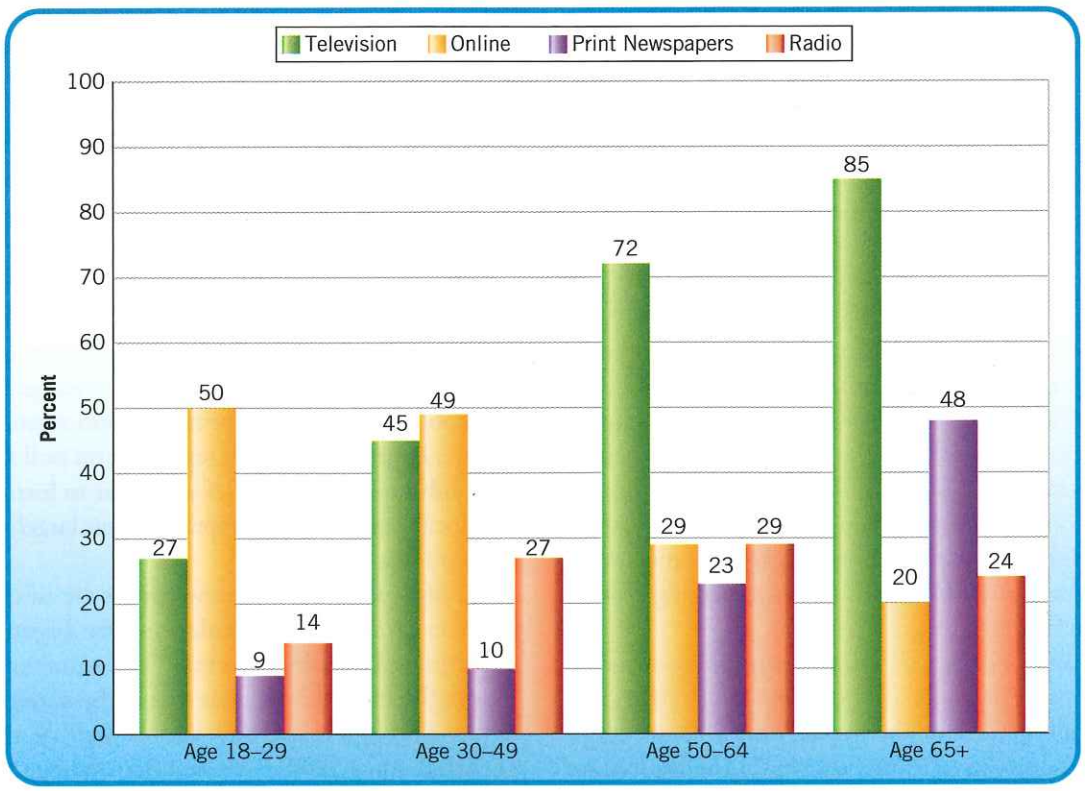
First, consider how much people know about politics. As we discussed in Chapter 7, most people have relatively low levels of political knowledge. And as we discussed above, the Internet has not led most people to become more politically informed. But the Internet, along with cable TV, has had an important stratifying effect on the electorate. If you like politics, you have access to more political information today than ever before. But if you want to avoid politics, it has never been easier. As a result, some people know more about politics, but many now know less. This, it turns out, shapes who participates in politics.[25]

FIGURE 12.1 **Over-Time Trends in News Sources**



Source: Pew Research Center, "Amid Criticisms, Support for Media's 'Watchdog' Role Stands Out," August 2013.

FIGURE 12.2 **Americans' Main Sources for News, by Age**



Source: Pew Research Center, "The Modern News Consumer," July 2016.

A generation ago, most Americans were incidentally exposed to political news and information. There were a limited number of TV channels, and if you wanted to watch television in the early evening hours, you had to watch the news (because every channel broadcast the news then). Similarly, when the president came on television to give a prime-time address, you had to watch it if you wanted to watch TV—every network would have covered it.[26] This meant that most Americans got some news about politics. As a result, they were likely to participate in politics.

But today, far fewer Americans receive such incidental exposure. If you do not want to watch the news, you can flip to a cable channel and catch a rerun of *Modern Family*, a basketball game, a cooking show, a travel show, entertainment news, or any of the hundreds of other options available (or you can watch programming saved on your DVR or log in to Netflix). The same is true of presidential speeches, the State of the Union address, or even presidential debates. Those who do not like politics are less likely to be informed about it because so many other options are available to them. Because they don't know the candidates and the issues, they are less likely to show up to the polls.[27] So, increased media choice reduces some people's propensity to participate in politics.

Ironically, then, by giving people more choice, the Internet and cable TV have helped to lead some people to be *less* politically informed and engaged. There is no easy solution to this, as it is a by-product of modern technology. While we generally think of our array of modern entertainment choices to be a good thing, it can have some unintended negative consequences for politics.

Do People Hear All Sides of the Issues?

A generation ago, when most Americans got their news from either newspapers or broadcast television, it was clear they would get multiple perspectives on political news. Most journalists strived to be objective and politically neutral (at least in theory), and they worked to present both sides of the story. Those same tendencies are true today for journalists working at mainstream media outlets like ABC News, National Public Radio, or *USA Today*.

But today, not all news comes from journalists dedicated to these norms of objectivity and balance. For example, many online bloggers, who are not journalists, feel no need to be fair and balanced. Instead, they present only one side of the issue: the side with which they agree. Many

selective exposure
Consuming only those news stories with which one already agrees.

bloggers consciously identify with one party or the other and present the news from a particular political point of view. Similarly, some cable news networks also slant the news in favor of one side or the other. Various studies have shown that Fox News generally leans right and favors Republicans, whereas MSNBC generally leans left and favors Democrats.[28] Similarly, many talk radio hosts like Rush Limbaugh, Sean Hannity, and Randi Rhodes favor one side or the other.

With the return of such partisan outlets, there is a concern about **selective exposure**, where citizens can choose to hear only one side of the issue—their side. Do people consciously avoid opposing points of view? If so, this has important consequences for American politics. Hearing both sides of the issue is an important part of being a well-informed citizen, and of knowing—and respecting—other people's beliefs and values.

There is evidence that people do engage in some selective exposure. For example, of those who watch MSNBC, 48 percent call themselves liberals and only 18 percent call themselves conservatives. For Fox News, the figures are reversed (18 percent call themselves liberals and 46 percent call themselves conservatives).[29] Similarly, blog readership tends to be highly segmented: those who read left-wing blogs don't read right-wing blogs (and vice versa), and what blogs you read is related to your ideology.[30] This suggests that people do select particular media outlets that match their general political beliefs.

But at the same time, it is important to note that there are real, and significant, limits to selective exposure. Yes, it exists, but most Americans do not get most of their news from these sources. Instead, most Americans—both online and offline—tend to get most of their news from centrist, mainstream sources.[31] The audience for most blogs is tiny, and even the most popular programs on Fox News and MSNBC attract only a few million viewers per night in a nation of over 300 million Americans. Even if people watch Fox News, or read partisan blogs, they get news from other sources as well. Even looking at social media sites, the evidence suggests that most Americans are exposed to balanced information from both sides of the political aisle.[32] In short, while most people have the option to select themselves into narrow "echo chambers," the reality is that they do not.

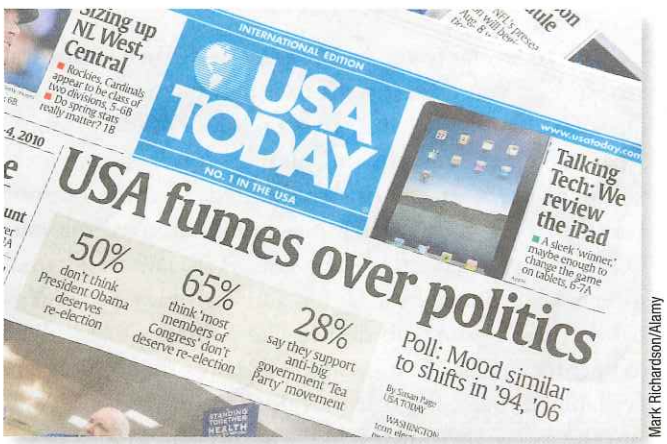
Can People Get Local News?

A generation ago, newspapers would have been second only to TV as a source of political information, whereas today they trail both television and the Internet by a large amount (see Figure 12.1). This has particular importance for how citizens learn about state and local politics. The vast variety of sources on television and the Internet ensures that citizens can—if they seek out that information—learn a great deal about *national* politics. Television, however, rarely gives much attention to state and local politics except when it is particularly salacious. Given its national scope, there simply is not enough time to cover politics in all 50 states, let alone the thousands of municipalities in the United States.

Even during election season, few gubernatorial or Senate races (and almost no House races) receive national TV attention, and very little attention from major online sources. Local TV news gives little coverage to state and local politics, and even during election season, their coverage is largely superficial (reporting on poll results rather than substantive issues).[33] If you want to learn about state and local politics and campaigns, you largely need to do so through a newspaper.

Unfortunately, local newspapers are in decline, both because of declining circulation (see Figure 12.1) and declining advertising revenue. The number of newspapers in the United States has shrunk by almost 20 percent in the past 25 years, and almost half of that loss has occurred since 2007.[34] A number of large cities—such as New Orleans and Birmingham—no longer have a daily print newspaper (and many other notable papers have also closed). Even where newspapers have remained in business, layoffs have been plentiful and journalistic budgets have shrunk. For example, the number of reporters devoted to covering state politics has declined by 35 percent since 2004.[35] While some have suggested using online sources to replace local newspapers, so far, this has not worked.[36]

As we explore later, the decline of local news sources has implications for the press's role as a political watchdog. But it also has other consequences as well. Local



Mark Richardson/Alamy

IMAGE 12-7 While newspapers have long been an important source for news, fewer Americans read them today than in the past.

newspapers are vital to promoting political engagement, especially in state and local politics. In places where a local paper has closed, citizens know less about the issues and are less politically active.[37] This suggests that the substitution of the Internet for newspapers demonstrated in Figure 12.1 does matter politically. So far, Internet news sources have not provided the same depth of coverage, especially of subnational politics, as newspapers, and, as a result, changes how citizens participate. Whether this pattern will change in the future remains to be seen.

12-3 Media Effects

So far, we have learned how the media developed over time in American politics and how Americans consume news (and some of the consequences of that consumption). But what, exactly, does the media do in politics? How do the media affect politics? At the broadest level, the media serves to inform the public about politics and public affairs. While this entails many components, three in particular are noteworthy. First, the mass media helps to set the political agenda—that is, it shapes what people think about. Second, it frames political issues and influences how people understand them. Finally, it helps serve as a watchdog to guard against corruption and to hold politicians accountable.

Setting the Public Agenda

One vital role of the media is to help set the agenda. In any given day, far more happens than any particular paper or news outlet could report. Part of the job of journalists is to decide what stories are important enough to report. This process is known as **agenda-setting** or **gatekeeping**. By covering some issues but not others, the mass media shapes the issues that are being discussed at any given point in time.[38]

How do journalists decide which stories to cover? That is not easy to answer, as journalists use a variety of different criteria to select them. But many of the stories they report on include familiar people, focus on conflict or scandal, and are timely.[39] This helps to explain why political stories often attract a great deal of attention, as they feature all of those characteristics.

Some people argue that the mass media can manipulate the agenda and cause individuals to care about problems that are not especially important. This can happen, but it is relatively uncommon. More typically, the mass media's attention to problems is largely dictated by important real-world events. For example, when the government foils a terrorist plot, there are many stories about it in the news, and people become more concerned about terrorism. Likewise, as California entered a record drought in recent years, the story received more coverage in the news, and voters viewed it as a more important problem. The media do set the agenda, but that agenda is heavily influenced by what is happening in the real world.

agenda-setting (gatekeeping) *The ability of the news media, by printing stories about some topics and not others, to shape the public agenda.*

priming *The ability of the news media to influence the factors individuals use to evaluate political elites.*

Some people read about theories like agenda-setting and assume that scholars think ordinary people are just the pawns of a powerful media: If the media tells people that issue X is important, then they think it's important. This somewhat cynical view, however, is too simplistic. Rather, ordinary people are making a more subtle judgment. They assume that if the mass media is talking about a story, then it must be important (otherwise, the media would talk about something else).[40] People use the media's discussion of a topic as a cue that said topic is important. Agenda-setting reflects engagement with the news more than blind obedience to the media.

Not only does the media help to set the political agenda, they also influence which issues the public uses to assess its political leaders. This process is known as **priming**. The basic logic of priming is an extension of agenda-setting. When the mass media covers an issue, viewers assume it is important. As a result, they rely on that issue more heavily when evaluating political elites.[41] For example, imagine you are trying to decide whether you approve of the job President Trump is doing in office. To do that, you would think about how well the president has handled all of the various issues he faces. But what issues will you consider and weigh most heavily? You will be most likely to consider the issues that have been covered in the

Dabiq/ZUMA Press/Newscom

IMAGE 12-8 News stories about terrorist groups such as ISIS have increased the salience of terrorism in recent years. This is an example of agenda setting.

Framing *The way in which the news media, by focusing on some aspects of an issue, shapes how people view that issue.*

news. For example, if the economy has been doing poorly and there have been more stories on the economy lately, you may weigh Trump's handling of the economy more heavily. Likewise, if more stories about terrorism are in the news lately, then you'll probably focus more on his performance in that area. That is the idea of priming: By the media covering a story, citizens use that issue to judge politicians.

We saw a potent example of priming during the George W. Bush presidency. Before 9/11, approval of President Bush was closely tied to perceptions of how well he was handling the economy: those who approved (disapproved) of Bush's handling of the economy tended to approve (disapprove) of him overall. But after the 9/11 attacks—and the ensuing spike in media attention to terrorism—evaluations of how well Bush handled terrorism became much more important. Similarly, after the 2008 financial crisis, evaluations of the president were much more closely tied to evaluations of his management of the economy.[42]

Much as with agenda-setting, the point of priming is not to suggest that voters are fools led by the media. Rather, viewers use the media's coverage of an issue to infer that it is important (and hence should be the basis of political judgments). In fact, it is the more informed viewers who are most susceptible to priming effects.[43] More informed viewers are the ones who understand how to take what they learned in media reports and apply it to evaluate a particular politician. Priming is not a consequence of voter ignorance; rather, it comes from voter knowledge.

Framing

Framing refers to the way in which the media presents a particular story. By presenting some aspects of an issue and ignoring others, the media influences how people think about that issue.[44] For example, suppose you are undecided about whether the United States should expand domestic production of oil and natural gas. If you watched one news report that emphasized the large number of high-paying jobs that would be created, you might be more likely to support more oil and gas production. In contrast, if you instead saw a report suggesting more drilling for oil and gas would seriously damage the environment, you might be more strongly opposed to it. The way in which the media frames the issue—as one of job creation versus environmental damage—shapes your opinion.

This makes framing a particularly important type of media effect—by influencing the way people understand an issue, framing shapes their attitudes. Framing is a key way the media works to change attitudes. But in most cases, framing effects are more modest than massive. Why? Because typically, media outlets present both sides of the story (remember the journalistic norms of balance discussed earlier). So, in our example of oil drilling, they would present both the increased jobs and the risk to the environment at the same time. As a result, the frames partially cancel each other out, and the overall effect is rather modest. Most people end up close to where they would be without the frame.[45]

But framing need not be so innocuous. In particular, some cases where the media presents a lopsided frame that favors one side of the issue, and here, larger, and more pernicious, effects can occur. For example, few issues have received more media coverage since 9/11 than the fight against terrorism, particularly how to balance the need for security with American civil liberties. This tension became especially acute in 2013, after Edward Snowden leaked classified documents detailing extensive domestic surveillance programs conducted by the National Security Agency.

A large-scale analysis of media coverage of this issue finds that the frames used lead to greater support for government surveillance. Many stories about these programs stress the successes of the programs and indicate that they have helped to keep Americans safe. Fewer stories offer a more critical take and focus more on the cases where civil liberties have been harmed. As a result, Americans tend to support expansive government surveillance more than they otherwise might.[46]

That said, of course, this argument has limits. In response to Snowden's revelations, and the ensuing public debate, Congress passed the USA Freedom Act in 2015, which did curtail the collection of phone and other records (see the discussion in Chapter 5). And public opinion has shifted on this issue over time, demonstrating that the media is merely one input into what people believe. Framing is a real effect, but as we have seen throughout the chapter, the media is not all-powerful.

Similarly, media frames for public assistance programs also weaken support for them. Media reports on these programs discuss waste and fraud in the system, and focus on individuals who abuse such programs. Such abuses are less common, however, than one would suspect from many media reports. But because the media report on the abuses in these programs (consistent with its watchdog role), people suspect waste, fraud, and abuse are more widespread than they are in reality.[47]

The point of these examples is not to suggest that there are no legitimate security threats that justify surveillance,

or that there is no abuse of public assistance programs. Obviously, there needs to be some surveillance to protect against terrorism, and there is fraud in public assistance programs. But the problem in both cases is that the media is only giving us part of the story—they are privileging one frame over another. We need to hear both sides of the story to make an informed decision. We wanted to hear about both the economic gains and the environmental risk of more drilling to make an informed decision, and these other cases are no different. When you hear news stories discussing particular issues, think carefully about what is being presented and, equally important, what is not.

The Media as Watchdog: Political Accountability

Another core function for the media is to serve as a **watchdog** to guard against fraud and abuse, and to hold politicians to account for their campaign promises. Americans see this as a vital role for the media. While they are critical of the media in many respects (especially with respect to question of bias), three-quarters of Americans think the media keeps leaders from doing things that should not be done.[48] As we discussed above, the idea of the journalist as watchdog has a long history in American politics, and it continues to be important today.

One of the most critical parts of this task is to fight against corruption in government. As we discussed in Chapter 11, there is not much evidence that interest groups "buy" policy through campaign donations. However, there is always a concern that politicians will be tempted to enter into corrupt deals, trading their political power for personal financial gain. For example, in 2014, former Virginia governor Bob McDonnell was convicted of corruption, as was former Illinois governor Rod Blagojevich in 2011. One study of corruption found that corruption was the least likely in states and localities with a vigorous press, especially investigative journalism.[49] The rationale is relatively straightforward: With more (and better) investigative journalists, politicians are more likely to be caught when they engage in misconduct. While the press presence is obviously not the only factor, it does suggest that the press serves as a critical watchdog.

The press also helps to ensure that politicians respond to public opinion. Several studies have found that when newspapers report more frequently on their local members of Congress, members are more likely to follow their constituent's wishes on legislative votes.[50] When the media reports on what politicians are doing in office, voters have more information about politicians' decisions. This makes it easier for voters to hold politicians accountable for their decisions, and hence politicians respond accordingly. Press coverage of politics helps to promote political accountability.

Of course, the challenge to this finding is that local newspapers are in decline. Local television news gives scant attention to members of Congress, and national papers and television do not have the space or time to cover individual members, so it is unclear whether online venues will have the resources to investigate members' records in this way. Whether this important watchdog function will continue into the future is unclear.

watchdog *The press's role as an overseer of government officials to ensure they act in the public interest.*

game frame *The tendency of media to focus on political polls and strategy rather than on the issues.*

horse-race (scorekeeper) journalism *News coverage that focuses on who is ahead rather than on the issues.*

Can the Media Lead Us Astray?

The functions of the mass media we discussed above—setting the public agenda, framing issues, and serving as a watchdog—suggest a (relatively) positive role for the media. But the ways in which the media covers some issues can also sometimes lead us astray. In this section, we discuss several different ways in which media coverage can mislead and distort the truth. We do this to help readers become more informed consumers of the news media.

Political Campaigns as a Political Game

In Chapter 10, we explained how the media contributes to helping inform citizens about the candidates and issues in elections. To the extent that the media report on the substantive issues of the day, the public becomes better informed. And generally speaking, as a result of such coverage, the public does learn about the issues of the day through the media. But one dimension of campaign reporting is more harmful than helpful: a focus on elections as a political game. This "**game frame**" for political reporting has two elements. First, there is a focus on where the candidates stand in the polls: who is up, and who is down? This type of poll-based coverage is known as **horse-race** (or **scorekeeper) journalism**. Second, there's a focus on tactics and strategy rather than substance: why did candidate X say Y? What does the trailing candidate need to do to get ahead? Together, they suggest to voters that style and strategy—not substance—decide elections.

IMAGE 12-9 News media coverage of elections frequently centers around polls such as this one, rather than discussion of substantive campaign issues.

Coverage of polls in elections is nothing new; it even predates the birth of modern public opinion polling. But over time, especially in the past few decades, stories about polls—and politicians' efforts to get ahead in the polls—have become strikingly more common. Over time, there has been less reporting on the substantive issues in elections.[51] In its place, journalists have substituted reports on the horse-race and candidate strategy.[52]

Such stories dominated coverage of the 2016 election. According to data gathered by Harvard University's Shorenstein Center, coverage of both the primaries and the general election focused largely on horse-race coverage. In the primary period, 56 percent of stories focused on politics as a game, versus only 11 percent that focused directly on the substantive issues of the campaign.[53] Looking at the general election, the figures improve slightly, but not by much: "only" 42 percent of stories focused on the horse race, and just 10 percent focused on the candidates' policy positions.[54] We see one such example of 2016 horse race coverage in Image 12-9, where CBS News reported on a poll showing Clinton ahead of Trump in the battleground state of Virginia 45 percent to 37 percent among likely voters. Even "elite" media outlets are not immune to these trends. An analysis of the *New York Times*' coverage of the campaign found that in one several-week stretch, a full three-quarters of the stories they published focused on the horse race.[55] Similar analyses of 2012, 2008, and other elections show the same pattern: most election coverage focuses on the horse race.

Why do journalists devote so much time and attention to these types of stories? They do so for three main reasons. First, readers like them. Reading about strategy and such is exciting, and suggests to readers that they're getting the "real scoop" behind the campaigns. Why understand what a candidate said when you can understand *why* he or she said it? Furthermore, most readers find substantive reporting rather dull. If you doubt this, sit down and read the candidates' position papers on various issues (you'll likely find it rather soporific). Unsurprisingly, given the choice, most voters opt for the horse-race and strategy coverage over detailed issue-focused coverage.[56]

Second, reporting on strategy—especially polling—is relatively easy, so it simplifies journalists' task in an era of shrinking resources. A poll result has a clear message and does not require in-depth reporting the way a detailed piece on candidates' substantive positions would.[57]

Finally, this sort of coverage reflects the press's desire to be seen as independent of political elites. Because politicians carefully control their substantive message, reporters do not want to simply report on that, as it would make them seem like patsies being duped by politicians. Instead, they want to uncover the "real" story about why a candidate does what he does, so they write stories about candidates' strategies and motives.[58]

Such coverage matters because it tends to make ordinary citizens more cynical about the political process.[59] It's not hard to see why: by promoting the idea that elections (and politics more generally) is all about strategy and tactics—and not substance—the media make politics out to be just another game. This focus makes ordinary people think elections are not about the major issues. As we discussed in Chapter 10, major issues—especially the health of the economy—are really the driver of the election, even if that message does not always come through in the media.

Luckily, there is a simple solution to combat these sorts of effects. When you see the media discussing strategy and tactics, just ignore it. When you see the media obsessing over polling data, remember the lesson from Chapter 10 that the daily fluctuation in the polls reflects noise more than true movement. Instead, seek out substantive coverage and focus there. It might be less entertaining, but it is far more helpful for casting an informed ballot.

Sensationalism and Negativity

The media also tends to focus on the negative in stories, rather than on the positive. This fits with the media's understanding of itself as a "watchdog," and the ensuing belief that they should be on the lookout for corruption and scandal. Furthermore, such stories attract more attention: finding evidence of fraud and abuse is more newsworthy than finding that government programs function effectively.

Such patterns are true of the media generally,[60] but this tendency has become especially pronounced in reporting on recent elections. In 2016, more than 70 percent of stories about Clinton and Trump were negative. Trump's

coverage was slightly more negative, but not by much: 77 percent of his stories were negative, versus "only" 64 percent for Clinton. These figures were even more lopsided when it came to stories about Trump and Clinton's fitness for office, where nearly 90 percent were negative.[61] Much like the example of horse-race coverage above, 2016 is the continuation of a long-term trend. In every election since 1988, negative coverage outpaced positive coverage, and that trend shows no sign of reversing any time soon.[62]

Another example of this bias toward negativity is how journalists report on campaign promises. Overall, politicians, once in office, generally *do* try to enact their campaign promises. Indeed, they often enact the vast majority of them, at least in part.[63] For example, during his eight years in office, President Obama fully or partially implemented approximately three-quarters of his campaign promises.[64] Why then do most voters think that politicians frequently break their promises? Part of the explanation is that the media—in keeping with its watchdog role—focuses on the cases where politicians break them.

More generally, focusing on waste, fraud, and abuse—and any area where government is not performing effectively—helps to expose corruption and abuse (as we saw above), but it also makes citizens more negative and cynical about government.[65] If citizens hear stories suggesting that government is not functioning effectively, they take those stories to heart. While trying to root out waste, fraud, and abuse is generally a good thing, too much focus here can turn off voters and make them cynical about the process.

Similarly, sensationalistic stories—ones that focus on salacious topics such as sex, drugs, or public health scares—also are overreported in the mass media. The level of coverage of these stories is grossly out of proportion to their importance to the general public. For example, in 2003, the media published more than 100,000 news articles discussing SARS and bioterrorism, though both combined killed fewer than 12 people. In contrast, smoking and physical inactivity—which killed millions—received little attention.[66] Similarly, the media went into a frenzy in the fall of 2014 discussing the threat of Ebola, though the risk to most Americans was extremely small. Stories about politicians' sex lives are similarly frequently discussed ad nauseam—see, for example, Anthony Weiner, Larry Craig, and, most famous of all, Bill Clinton.

The media focus on such stories because they attract viewers and readers.[67] The fact that there are so many more news outlets now only increases the pressure to publish salacious stories. No longer do just the three major broadcast networks (NBC, CBS, and ABC) broadcast politics, now so do several cable news channels, dozens of talk radio stations, and thousands of websites. Given this intense competition for viewers, each program has a big incentive to air salacious stories to attract viewers. While voters like these stories, they do little to inform the public. When you see the media covering a sensationalistic or salacious topic, ask yourself how relevant it actually is to becoming a better-informed citizen.

Joe Raedle/Getty Images

IMAGE 12-10 Extensive media coverage of the Ebola outbreak in the United States in 2014 is an example of sensationalism, as relatively few people were affected and there was little danger for most Americans.

After reading this section on the ways in which media can lead one astray, you might think that you can never trust the media, but that is not correct. We wrote this section not to make you cynical about the media, but rather to help point out some ways in which the media can distort your understanding of politics. Become a skeptical news consumer, but not a cynical one.

Are There Limits to Media Power?

After reading this section, you might think the media are quite powerful: they can shape the agenda, frame issues to influence opinions, and make viewers cynical with their focus on strategy and negativity. All of these effects are real, but it is important to understand that there is a very important limit to the media's effect on attitudes: people's experiences in everyday life.

In general, the media is most powerful when people know the least about an issue. As people know more and more about an issue, the media's effect gets smaller and smaller.[68] We discussed this phenomenon in Chapter 10. Early in the primary season, when voters do not know the candidates, the media's portrayal of them has a big effect. After all, the public is just being introduced to the candidates, so the media's depiction of them matters a great deal. But over the course of the campaign, as voters learn more about the candidates, how the media depicts them matters less because there is less room for the media to influence voters' attitudes.

The same pattern is true of issues more generally. For example, the media typically have less ability to move people on issues where they have more personal experience, such as the economy. If you see many of your neighbors lose their jobs—or if you lose your own—you do not need the media to tell you that the economy is struggling. By contrast, most people have less direct experience with ISIS, Ebola, or America's role in Afghanistan. On these sorts of issues more removed from voters' everyday lives, the media have a larger effect on attitudes.

Furthermore, in many situations, the media are constrained by elites. This might seem odd—we have just discussed ways, such as serving as a watchdog, that the media can act as a check on elites and prevent them from abusing power. This is certainly true. But in many cases, the media are also dependent on information from elites. For example, on foreign policy and terrorism, the media often cannot gather information on its own. Because of issues of national security, the government restricts what reporters can know, and information is leaked—typically strategically, as we will see below—by people who are trying to advance a particular political position.

Likewise, on technical or complex scientific issues such as Internet security, nuclear power, or global warming, the media typically depends on elites to explain and clarify the issues at hand. As a result, much of the time, media reports reflect the elite debate—that is, elites set the terms of the debate, and the media just pass along that debate to the mass public.[69] In short, while the media are powerful, they are often constrained in their ability to shape public opinion and public policy.

12-4 Is the Media Trustworthy and Unbiased?

Do Americans have confidence in the press? Do they think they can reliably depend on the press to get the information they need to be informed about politics and public affairs? Since the early 1970s, political scientists have been asking survey questions to gauge how much confidence individual citizens have in the press. We present these data in Figure 12.3.

The data are clear: Over time, Americans have become less confident in the press. In 1973 (the first year this question was asked), 23 percent of respondents had a great deal of confidence in the press, 62 percent had some confidence in the press, and 15 percent had hardly any confidence in the press. In 2016 (the most recent data available), respondents were far less confident in the press. Now only 8 percent have a great deal of confidence, 42 percent have some confidence, and 50 percent have hardly any confidence. Since the 1970s, the number of people with a great deal of confidence in the press has declined sharply, and the number with no confidence has risen sharply (and there has been a similar, albeit less steep, decline in those with some confidence in the press). Americans trust the press less today than they did 40 years ago.

While the data in Figure 12.3 provide the best information available over time, other data show the same pattern of declining confidence in trust in the media. For example, the Gallup Organization has been asking about trust in the media since the 1970s as well, and finds that media trust has fallen to an all-time low in recent years.[70] Likewise, recent data from the Pew Research Center finds that 39 percent of Americans think they cannot trust the information they get from national news organizations.[71] No matter what data you use, it seems that Americans do not trust the press very much.

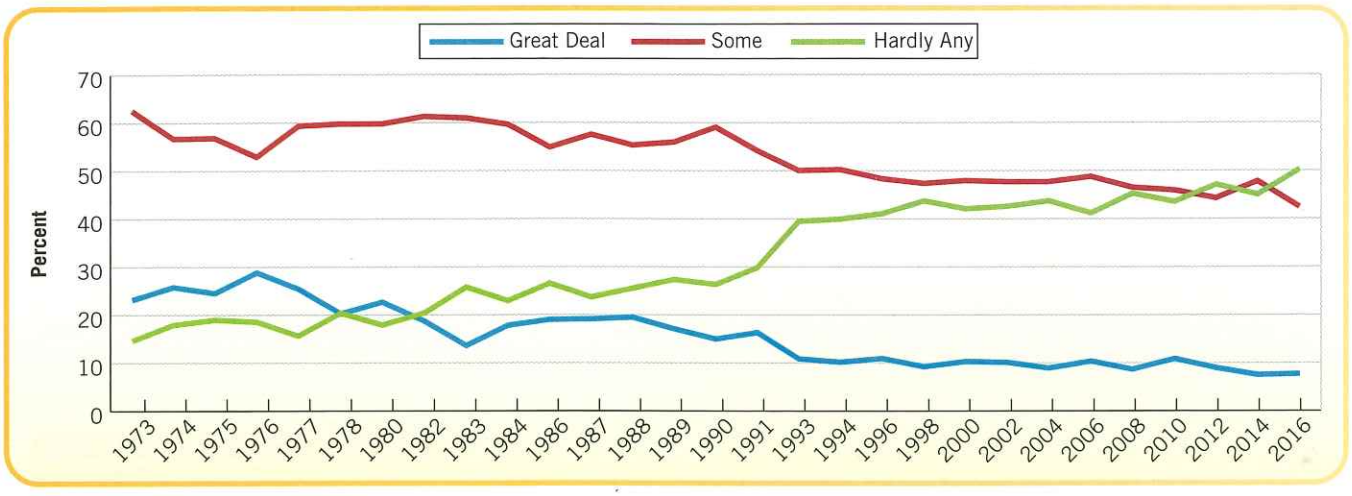
But why do Americans distrust the media? Part of the reason is undoubtedly the sorts of issues we discussed in the previous section: the emphasis on strategy and polls in election coverage, negativity, and so forth. But politicians are also partly to blame for the decline in news media trust. Democratic and Republican politicians alike criticize the press and attack it as biased and unfair. In 2016, both sides issued charges that the media was being unfair to it, and this has become standard practice in many campaigns. When politicians do that, it makes ordinary voters think that the press is biased and unfair, and hence Americans trust the media less.[72] This helps to explain why trust levels have fallen so much in the past 40 years.

We get to whether the media is actually biased next, but this suggests that by labeling the media as biased, politicians decrease trust in the media. There is, however, another lesson here in how to be an informed consumer of the news. Remember that whenever politicians accuse the media of bias, or of spreading fake news, they typically have an incentive to do so. Taking that into account is important as you decide for yourself whether media are actually biased in a particular instance.

Are the Media Biased?

Above, we saw that Americans do not trust the media. Is this because the media are actually biased? Most Americans certainly *think* so. In a recent study from the Pew Research Center, only 26 percent of Americans thought the press gets its facts straight and only 20 percent thought it was pretty independent.[73] In another study, fully three-quarters of Americans said the press tends to favor one side rather than treating both sides fairly.[74] But are Americans' beliefs accurate? The answer, as we will see in this section, is subtler and less obvious than you probably think.

FIGURE 12.3 **Confidence in the Press, 1973–2016**



Source: Authors' analysis of the General Social Survey, 1973–2016.

In any discussion of media bias, one of the first facts that most people mention is that journalists tend to be overwhelmingly liberal and Democratic. Many studies, dating back to the early 1980s, have concluded that members of the national press are more liberal than the average citizen.[75]

The public certainly believes that members of the media are liberals and that they favor Democratic candidates. A Gallup Poll done in 2014 found that 44 percent of Americans believe the media are "too liberal," versus only 19 percent who thought they were "too conservative."[76] In a poll taken in 2016 by Suffolk University and *USA Today*, nearly 8 in 10 respondents thought that the media favored Hillary Clinton over Donald Trump.[77]

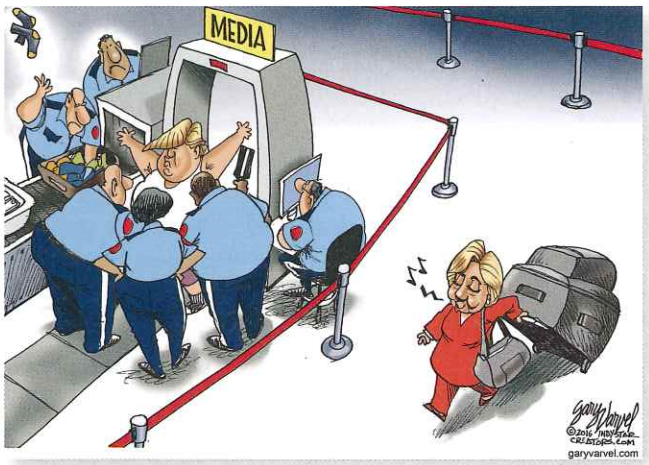
While most journalists are liberals, not all are, especially in recent years with the rise of conservative hosts on talk radio (like Rush Limbaugh or Sean Hannity), on Fox News, and in newspapers like the *Washington Times*. That said, by all accounts, it seems like most journalists do favor Democrats.

The liberal and Democratic bent of journalists, however, is not in and of itself enough evidence to conclude that the media are biased. While journalists are typically liberal, they are also committed to journalistic norms of objectivity and balance, which will counteract their personal biases.[78]

The best way to study media bias is to look at detailed content analyses of the media's coverage of politicians to determine whether any bias exists in favor of one party or another. Some studies have found evidence of a liberal, pro-Democratic bias in the media. The best of these is the work by Professor Tim Groseclose, who does identify examples of pro-Democratic media slant on some issues.[79] However, many more studies have been conducted that find that overall, media coverage is not biased in favor of one party or another.

Scholars have come to this conclusion studying patterns of coverage in campaigns,[80] as well as coverage of politicians outside of campaigns.[81] Studies find that, if anything, media outlets tend to favor incumbents, regardless of party. News outlets (especially newspapers) that endorse candidates are much more likely to endorse the incumbent,[82] and endorsed candidates receive more positive coverage in those outlets (and in turn are better liked by voters).[83] In general, then, there does not seem to be much overall evidence indicating the media slants in favor of one party or the other.

This overall lack of clear bias stems not just from journalistic norms of balance and objectivity but also from economics. Media outlets need to attract viewers and advertisers to stay in business. If media outlets are too biased or slanted, they will lose audience share.[84] Given that most Americans are relatively centrist (see Chapter 7), mainstream outlets want to cater to the typical American. If these outlets lose viewers, they will be less attractive to advertisers, who want to reach as many people as possible.[85] Given this, it makes economic sense for most outlets to be relatively politically balanced.



Gary Varvel/Cartoonist Group

IMAGE 12-11 Many claim that the media have a liberal bias. For example, some claim that the media were more critical of Trump than of Clinton during the 2016 election.

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

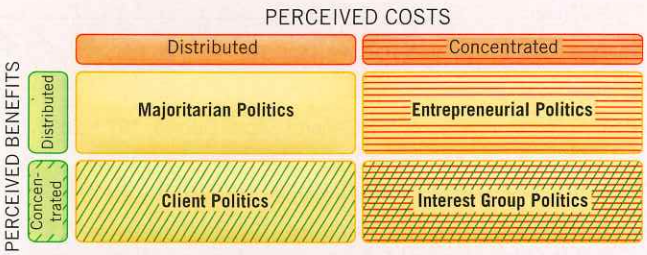
Global Warming: Majoritarian Politics and the Media

There is a growing scientific consensus that human activity is contributing to global climate change (see, e.g., the report by the Intergovernmental Panel on Climate Change). Humans produce greenhouse gases, predominantly carbon dioxide, that alter the Earth's atmosphere and generate climate change. As a result, there has been a debate in the United States, as in many other countries, about policies to reduce or reverse such emissions.

Efforts to address limiting greenhouse gas emissions are best seen as majoritarian politics. The benefits of reduced emissions—a cleaner environment—are widely dispersed to all Americans (and indeed, all citizens all over the globe). Similarly, the costs would be borne by all Americans as well: According to the Environmental Protection Agency, more than two-thirds of carbon dioxide emissions come from electricity generation and transportation, which all Americans use.

A large part of the debate in the United States, however, has centered on whether the scientific consensus about global warming is correct. The majoritarian debate has not been over what policy to pursue, but whether any policy at all is needed. There are many reasons why this debate takes this form in the United States, but one reason is how the mass media cover the issue of climate change.

While climate scientists almost all agree that human activity contributes to global warming (via greenhouse gases), the mass media portray this as a debate, rather than an area of scientific consensus. As a result, Americans are less likely to understand the degree of scientific consensus on this issue. Americans believe that the issue has two sides because it is framed that way, though nearly all climate scientists see this as a settled issue. So the media coverage of global warming (among other factors) contributes to the unique politics of this issue.



▶ **PRACTICE POLITICAL SCIENCE** Identify the author's argument about the media's role in shaping policy pertaining to global warming. Explain how the implications of the author's argument may affect global warming policies.

Source: Ariel Malka et al., "Featuring Skeptics in News Media Stories about Global Warming Reduces Public Beliefs in the Seriousness of Global Warming" (unpublished manuscript, Stanford University, June 2009); Maxwell Boykoff and Jules Boykoff, "Balance as Bias: Global Warming and the U.S. Prestige Press," *Global Environmental Change* 14, no. 2 (2004): 125–136.

12-5 Government Regulation of the Media

Ironically, the least competitive media outlets—newspapers—are almost entirely free from government regulation, whereas the most competitive ones—radio and television stations—must have a government license to operate and must adhere to a variety of government regulations. And the Internet has effectively no content regulations at all.

Newspapers and magazines need no license to publish, their freedom to publish may not be restrained in advance, and they are liable for punishment for what they do publish only under certain highly restricted circumstances. The First Amendment has been interpreted as meaning that no government, federal or state, can place "prior restraints" (i.e., censorship) on the press except under very narrowly defined circumstances.[86] When the federal government sought to prevent the *New York Times* from publishing the Pentagon Papers, a set of secret government documents stolen by an antiwar activist, the Supreme Court held that the paper was free to publish them.[87]

Once something is published, a newspaper or magazine may be sued or prosecuted if the material is libelous or obscene, or if it incites someone to commit an illegal act. But these usually are not very serious restrictions because the courts have defined *libelous*, *obscene*, and *incitement* so narrowly as to make it more difficult here than in any other nation to find the press guilty of such conduct. For example, for a paper to be found guilty of libeling a public official or other prominent person, the person must not only show that what was printed was wrong and damaging but also must show, with "clear and convincing evidence," that it was printed maliciously—that is, with "reckless disregard" for its truth or falsity.[88] When in 1984 Israeli General Ariel Sharon sued *Time* magazine for libel, the jury decided the story *Time* printed was false and defamatory but that *Time* had not published it as the result of malice, and so Sharon did not collect any damages. (See Chapter 5 for more discussion of freedom of the press.)

There are also laws intended to protect the privacy of citizens, but they do not really inhibit newspapers. In general, your name and picture can be printed without your consent if they are part of a news story of some conceivable public interest. And if a paper attacks you in print, it has no legal obligation to give you space for a reply.[89] It is illegal to use printed words to advocate the violent overthrow of the government if by your advocacy you incite others to action, but this rule has only rarely been applied to newspapers.[90]

Confidentiality of Sources

Reporters believe they should have the right to keep confidential the sources of their stories. Some states agree and have passed laws to that effect. Most states and the federal government do not agree, so the courts must decide in each case whether the need of a journalist to protect confidential sources does or does not outweigh the interest of the government in gathering evidence in a criminal investigation. In general, the Supreme Court has upheld the right of the government to compel reporters to divulge information as part of a properly conducted criminal investigation, if it bears on the commission of a crime.[91]

This conflict arises not only between reporters and law enforcement agencies but also between reporters and persons accused of committing a crime. In the 1970s, Myron Farber, a *New York Times* reporter, wrote a series of stories that led to the indictment and trial of a physician on charges he had murdered five patients. The judge ordered Farber to show him his notes to determine whether they should be given to the defense lawyers. Farber refused, arguing that revealing his notes would infringe upon the confidentiality he had promised to his sources. Farber was sent to jail for contempt of court. On appeal, the New Jersey Supreme Court and the U.S. Supreme Court decided against Farber, holding that the accused person's right to a fair trial includes the right to compel the production of evidence, even from reporters.

In another case, the Supreme Court upheld the right of the police to search newspaper offices, so long as they have a warrant. But Congress then passed a law forbidding such searches (except in special cases), requiring instead that the police subpoena the desired documents.[92]

In 2005, two reporters were sentenced to jail when they refused to give prosecutors information about who in the Bush administration had told them that a woman was in fact a CIA officer. A federal court decided they were not entitled to any protection for their sources in a criminal trial. *New York Times* reporter Judith Miller spent 85 days in jail; she was released after a government official authorized her to talk about their conversation. There is no federal shield law that protects journalists, though such laws exist in 34 states.

In recent years, discussions of source confidentiality and shield laws have once again come back into the news, particularly in the context of the War on Terror. Several major stories about the fight against terrorism—from Abu Ghirab, to CIA black site prisons, to the NSA domestic surveillance programs—have been broken by whistleblowers from inside the government. In rare cases, the person has been willing to come forward—most notably Edward Snowden—but more have wanted to remain anonymous (such individuals have often been subject to prosecution). This highlights a fundamental tension in a democratic society between freedom of the press (and freedom to investigate government abuses) and the protection of government secrets. We consider this issue more in the What Would You Do? box on page 284.

Why Do We Have So Many News Leaks?

This tension over source confidentiality and shield laws raises an important question: why are there so many leaks in American government? Why do so many insiders go to the press with their story to try to generate change? The answer lies in the Constitution. Because we have separate institutions that must share power, each branch of government competes with the others to get power. One way to compete is to try to use the press to advance your pet projects and to make the other side look bad. For example, one argument for why there were so many leaks in the early days of the Trump administration is that bureaucrats (and even some officials within the Trump administration) were unhappy with certain policies, so they strategically leaked things to the press to help press their case.[93]

AP Photo/BEBETO MATTHEWS

IMAGE 12-12 Activists urge Congress to pass a law shielding reporters from being required to testify about their sources.

WHAT WOULD YOU DO?

Will You Support or Oppose a Shield Law Bill?

To: *Senator Brian Dillon*
From: *Lucy Rae, political communication strategist*
Subject: *Protecting Journalists*

The Supreme Court has held that forcing a reporter to testify does not violate the First Amendment to the Constitution. But Congress could pass a law, similar to that in many states, banning such testimony if it reveals a confidential source.

To Consider:

Efforts by the White House to find out who is the "high-ranking official" cited in recent news stories about possible ethics violations have renewed calls by media groups for a "shield law" for journalists. Congress may hold hearings later this week.

Arguments for:

1. Thirty-four states now have shield laws similar to the one proposed by Congress.
2. Effective journalism requires protecting sources from being identified; without protection, many important stories would not be written.
3. The government should be able to collect sufficient information to prosecute cases without relying on journalists to do this work for them.

Arguments against:

1. Every person accused in a criminal trial has a right to know all of the evidence against him or her and to confront witnesses. A shield law would deprive people of this right.
2. A shield law would allow any government official to leak secret information with no fear of being detected.
3. The Supreme Court already has imposed a high barrier to forcing reporters to reveal confidential information, but that barrier should not be absolute, as situations can and do arise where a reporter is the only person who has the information necessary to investigate alleged criminal activity that threatens national security.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ **Support bill** ☐ **Oppose bill**

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

adversarial press *The tendency of the national media to be suspicious of officials and eager to reveal unflattering stories about them.*

Far fewer leaks occur in other democratic nations in part because power is centralized in the hands of a prime minister, who does not need to leak in order to get the upper hand over the legislature, and because the legislature has too little information to be a good source of leaks. In addition, we have no Official Secrets Act of the kind that exists in the United Kingdom; except for a few matters, it is not against the law for the press to receive and print government secrets.

Even if the press and the politicians loved each other, the competition between the various branches of government would guarantee plenty of news leaks. But since the Vietnam War, the Watergate scandal, and the Iran-Contra Affair, the press and the politicians have come to distrust one another. As a result, journalists today are far less willing to accept at face value the statements of elected officials and are far more likely to try to find somebody who will leak "the real story." We have, in short, come to have an **adversarial press**—that is, one that (at least at the national level) is suspicious of officialdom and eager to break an embarrassing story that will win for its author honor, prestige, and (in some cases) a lot of money.

This cynicism and distrust of government and elected officials have led to an era of attack journalism—seizing on any bit of information or rumor that might call into question the qualifications or character of a public official. Media coverage of gaffes—misspoken words, misstated ideas, clumsy moves—has become a staple of political journalism. At one time, such "events" as President Ford slipping down some stairs, Governor Dukakis dropping the ball while playing catch with a Boston Red Sox player, or Vice President Quayle misspelling the word *potato* would have been ignored, but now they are hot news items. Attacking public figures has become a professional norm, where once it was a professional taboo, reinforcing the norm of negativity we discussed earlier in the chapter.

Regulating Broadcasting and Ownership

Although newspapers and magazines by and large are not regulated, broadcasting is regulated by the government. No one may operate a radio or television station without a license from the Federal Communications Commission, renewable every seven years for radio and every five for television stations. An application for renewal is rarely refused, but until recently the FCC required the broadcaster to submit detailed information about its programming and how it planned to serve "community needs" in order to get a renewal. Based on this information or on the complaints of some group, the FCC could use its powers of renewal to influence what the station put on the air. For example, it could induce stations to reduce the amount of violence shown, increase the proportion of "public service" programs on the air, or alter the way it portrayed various ethnic groups.

Of late a movement has arisen to deregulate broadcasting, on the grounds that so many stations are now on the air that competition should be allowed to determine how each station defines and serves community needs. In this view, citizens can choose what they want to hear or see without the government shaping the content of each station's programming. For example, since the early 1980s, a station can simply submit a postcard requesting that its license be renewed, a request automatically granted unless some group formally opposes the renewal. In that case, the FCC holds a hearing. As a result, some of the old rules—for instance, that each hour on TV could contain only 16 minutes of commercials—are no longer rigidly enforced.

Radio broadcasting has been deregulated the most. Before 1992, one company could own one AM and one FM station in each market. In 1992, this number was doubled. And in 1996, the Telecommunications Act allowed one company to own as many as eight stations in large markets (five in smaller ones) and as many as it wished nationally. This trend has had two results. First, a few large companies now own most of the big-market radio stations. Second, the looser editorial restrictions that accompanied deregulation mean that a greater variety of opinions and shows can be found on the radio. There are many more radio talk shows now than would have been heard when content was more tightly controlled.

More generally, over time, the federal government has loosened rules on ownership, so that large corporations now control a larger share of media outlets (for the current

RosalreneBetancourt 1/Alamy

IMAGE 12-13 Fox News and similar outlets arose after the end of the fairness doctrine.

equal time rule *An FCC rule that if a broadcaster sells time to one candidate, it must sell equal time to other candidates.*

rules, visit the FCC's website).[94] Indeed, media ownership has become strikingly concentrated. In the 1980s, more than 50 companies controlled the majority of American media outlets. Today, only six companies control more than 90 percent of media outlets.[95] So while there are hundreds of television stations and thousands of newspapers and radio stations, they are owned by a relatively small set of actors.

This raises concerns about owners biasing the content that their stations broadcast. While studies have found that owners do not bias content in favor of one party or the other,[96] owners can bias reporting in other ways. For example, studies have found that when media outlet owners stand to benefit from a policy, that shifts the outlet's coverage in favor of that policy.[97] This sort of finding raises concerns that ownership concentration affects what gets reported, though more research is needed on this topic.

Deregulation changes not only the ownership structure of media but also government regulation of what media say. At one time, for example, a "fairness doctrine" required broadcasters that air one side of a story to give time to opposing points of view. But there are now so many radio and television stations that the FCC relies on competition to manage differences of opinion. The abandonment of the fairness doctrine permitted the rise of controversial talk radio shows and partisan cable TV news. If the doctrine had stayed in place, there would be no programs from Rush Limbaugh or Michael Savage, no MSNBC or Fox News.[98] The FCC decided that competition among news outlets protected people by giving them many different sources of news.

There still exists an **equal time rule** that obliges stations that sell advertising time to one political candidate to sell equal time to that person's opponents. When candidates wish to campaign on radio or television, the equal time rule applies.

Regulating Campaigning

During campaigns, a broadcaster must provide equal access to candidates for office and charge them rates no higher than the cheapest rate applicable to commercial advertisers for comparable time. At one time, this rule meant that a station or network could not broadcast a debate between the Democratic and Republican candidates for an office without inviting all other candidates as well—Libertarian, Prohibitionist, or whatever. Thus, a presidential debate in 1980 could be limited to the major candidates, Reagan and Carter (or Reagan and Anderson), only by having the League of Women Voters sponsor it and then allowing radio and TV to cover it as a "news event." Now stations and networks can themselves sponsor debates limited to major candidates.

Though laws guarantee that candidates can buy time at favorable rates on television, not all candidates take advantage of this. The reason is that television is not always an efficient way to reach voters. A television message is literally "broad cast"—spread out to a mass audience without regard to the boundaries of the district in which a candidate is running. Presidential candidates, of course, always use television because their constituency is the whole nation. Candidates for senator or representative, however, may or may not use television, depending on whether the boundaries of their state or district conform well to the boundaries of a television market.

A *market* is an area easily reached by a television signal; there are about 200 such markets in the country. If you are a member of Congress from South Bend, Indiana, you come from a television market based there. You can buy ads on the TV stations in South Bend at a reasonable fee. But if you are a member of Congress from northern New Jersey, the only television stations are in nearby New York City. In that market, the costs of a TV ad are very high because they reach a lot of people, most of whom are not in your district and so cannot vote for you. Buying a TV ad would be a waste of money. As a result, a much higher percentage of Senate than House candidates use television ads.

LANDMARK CASES | The Rights of the Media

- ***Near v. Minnesota* (1931):** Freedom of the press applies to state governments, so that they cannot impose prior restraint on newspapers.
- ***New York Times v. Sullivan* (1964):** Public officials may not win a libel suit unless they can prove that the statement was made knowing it to be false or with reckless disregard of its truth.
- ***Miami Herald v. Tornillo* (1974):** A newspaper cannot be required to give someone a right to reply to one of its stories.

CONSTITUTIONAL CONNECTIONS | Journalism, Secrecy, and Politics

The role of the media in American politics was not a high priority in drafting the Constitution. The First Amendment (added as part of the Bill of Rights in 1897) guaranteed freedom of the press, and the Framers appreciated the need for independent journalism in a democracy, but they did not pay significant attention to how journalists would affect governance. Yet the very ratification of the Constitution depended partly on cooperation from journalists, first in the secrecy surrounding the constitutional convention debates in Philadelphia in the summer of 1787, and second in the publication in New York newspapers of the *Federalist Papers* endorsing ratification of the Constitution (though newspapers at the time were party presses rather than independent organizations).

With the 24-hour news cycle, politicians today have fewer opportunities to engage in policymaking without media scrutiny. While media coverage provides an essential check on elected officials, it also can hinder prospects for decision making and compromise.

Nevertheless, a free press is crucial to a well-functioning democracy. Thomas Jefferson famously remarked that "were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."[99] Both the public and political scientists agree: as we learned above, the public views journalists as a vital watchdog on government, and a recent survey of political scientists found that nearly all see a free press as essential to a democracy.[100] Most politicians, in general, agree, though they also often critique the press as well. Perhaps no contemporary figure exemplifies this more than President Trump, who courts the press while also saying he is at "war" with it. While others in the Trump White House—including the vice president—have tried to walk back some of Trump's critique of the press, how this relationship will evolve throughout Trump's term remains to be seen.[101]

LEARNING OBJECTIVES

12-1 Trace the evolution of the press in America, and explain how media coverage of politics has changed over time.

Over time, the press evolved from a partisan mouthpiece to an independent political actor. Today, through the Internet and television, politicians have more opportunity than ever before to shape their political images.

12-2 Summarize the most important sources of news for contemporary Americans, and discuss the consequences of consuming different news sources.

Today, most Americans get their news from television, though the Internet is increasingly important as well, especially for younger voters. With more media choice, however, some voters have become less informed and hence less likely to participate. Furthermore, with the decline in local newspapers, there is concern that citizens may not be getting the local information they need to participate effectively.

12-3 Explain the main political functions of the media in America, and discuss how the media both enhance and detract from American democracy.

The mass media serves to help educate the public in a democracy. Two particular ways this happens are by setting the public agenda and by serving as a watchdog to maintain political accountability. The media can also lead viewers astray, through framing, covering campaigns as a game, or relying too much on sensationalism and negativity. Viewers should be on guard to protect themselves from these tendencies.

12-4 Discuss the reasons behind lower levels of media trust today, and summarize the arguments for and against media bias.

Overall levels of trust in the media have declined sharply in recent years, both in general and for nearly all specific media outlets.

Part of the reason is that politicians from both parties attack the media as biased, leading ordinary citizens to think the media *is* biased (and hence less trustworthy). Overall, the evidence suggests that there is not much systematic bias in favor of one party or the other in the media.

12-5 Explain how government controls and regulates the media.

Government regulations control both media ownership and media content, though the First Amendment prohibits many stricter sorts of interference.

TO LEARN MORE

To search many news sources: **www.ipl.org**

Analyses of the press:

Nonpartisan view: **www.cmpa.com**

Liberal view: **www.fair.org**

Conservative view: **www.mrc.org**

Public opinion about the press:

Pew Research Center: **www.people-press.org**

National media:

New York Times: **www.nytimes.com**

Wall Street Journal: **www.wsj.com**

Washington Post: **www.washingtonpost.com**

Compilation of major daily news sources: **www.realclearpolitics.com**

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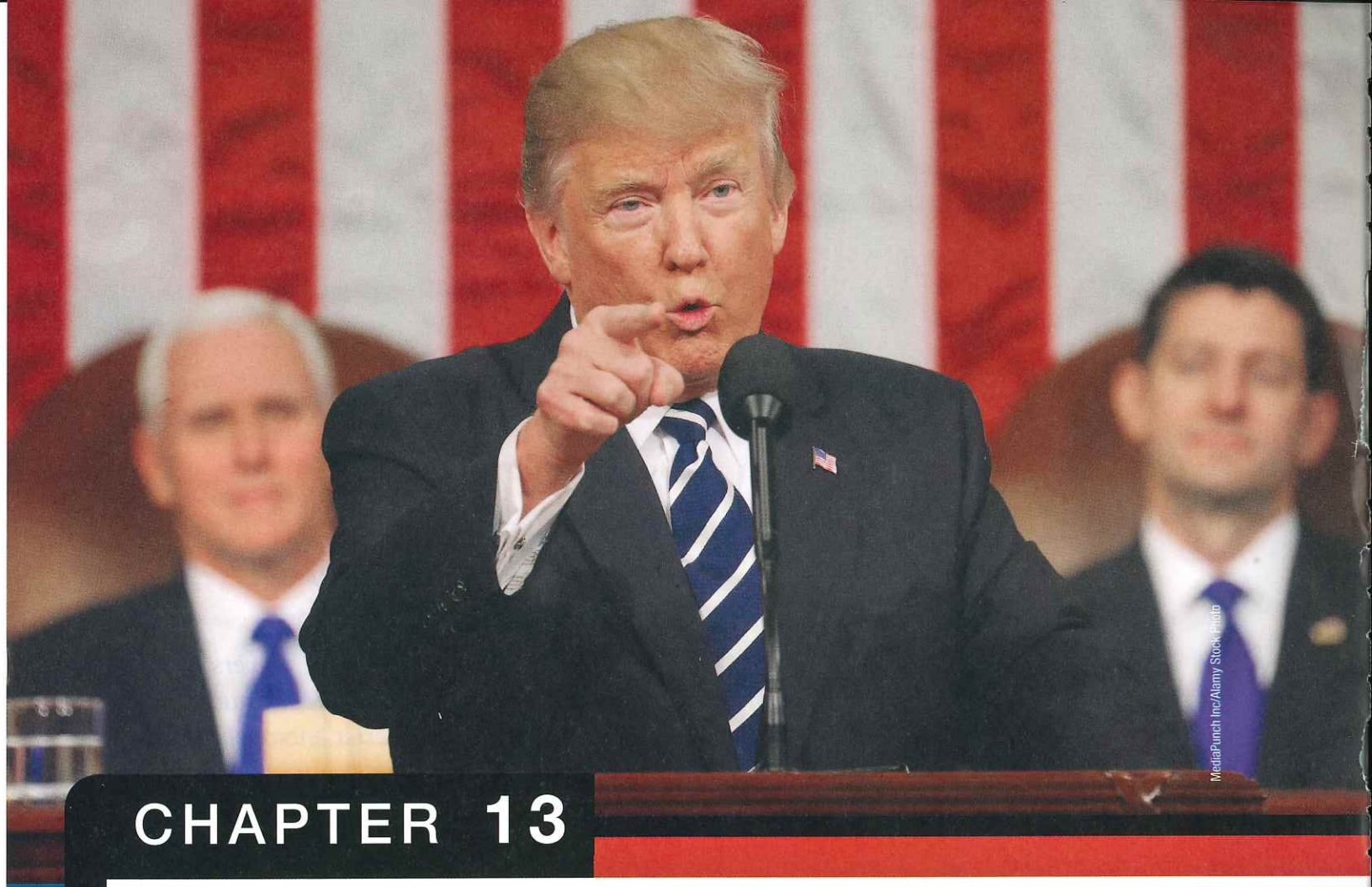

CHAPTER 13

Congress

KEY OBJECTIVES OF THIS CHAPTER

- *Congress has numerous powers and functions.*
- *The House of Representatives and the Senate have similarities and differences.*

KEY TAKEAWAY FROM THIS CHAPTER

- Both the enumerated powers and powers implied by the Constitution allow the creation of public policy by Congress, which includes: passing a federal budget, raising revenue, and coining money; declaring war and maintaining the armed forces; and enacting legislation that addresses a wide range of economic, environmental, and social issues based on the Necessary and Proper Clause.

If you are like most Americans, you trust the Supreme Court, respect the presidency—whether or not you like the president—and dislike Congress, even if you like your own representative and senators. Congress is the most unpopular branch of government, but it is also the most important one: you cannot understand the national government without first understanding Congress. Glance at the Constitution and you will see why Congress is so important: the first four and a half pages are about Congress, while the presidency gets only a page and a half and the Supreme Court about three-quarters of a page.

To the Framers of the Constitution, the bicameral (two-chamber) Congress was "the first branch." They expected Congress to wield most of the national government's powers, including its most important ones like the "power of the purse" (encompassing taxation and spending decisions) and the ultimate authority to declare war. They understood Congress as essential to sustaining federalism (guaranteeing two senators to each state without regard to state population) and maintaining the separation of powers (ensuring that no lawmaker would be allowed to serve in either of the other two branches while in Congress). They also viewed Congress as the linchpin of the system of checks and balances, constitutionally empowered as it was both to override presidential vetoes and to determine the structure and the jurisdiction of the federal judiciary, including the Supreme Court. We delineate the constitutional powers of Congress in Table 13.1, and spell out the requirements to serve in Congress in Table 13.2.

Most contemporary Americans and many experts, however, think of Congress not as the first branch but as "the broken branch," unable to address the nation's most pressing domestic, economic, and international problems in an effective way; unduly responsive to powerful organized special interests; awash in nonstop campaign fundraising and other activities that many believe border on political corruption; and unlikely to fix itself through real reforms.[1]

Consistent with this "broken branch" view, in recent decades, less than one-third of Americans typically have approved of Congress. In the late 1990s and early 2000s, ratings in the 30s and 40s were the norm. In the past decade, however, ratings have typically been one-half that earlier level (less than 20 percent), and have sometimes even tipped below 10 percent, as they did in 2013 after the government shutdown.[2]

Many academic analysts and veteran Washington journalists echo the popular discontent with Congress as the broken branch, but the experts focus on two more things, the first a paradox and the second a puzzle. The paradox is that most Americans consistently disapprove of Congress yet routinely reelect their own members to serve in it. In political scientist Richard F. Fenno's famous phrase, if "Congress is the broken branch then how come we love our congressmen so much more than our Congress?"[3] Despite public approval ratings that are frequently dismal, almost all congressional incumbents who have sought reelection have won it, most by comfortable margins.

partisan polarization *A vote in which a majority of Democratic legislators opposes a majority of Republican legislators.*

Even in elections in which "anti-incumbent" public sentiment seems rife and voters effect a change in party control of one or both chambers of Congress, incumbents prevail and dominate the institution. For example, in the 2010 midterm elections, Democrats suffered historic losses in the House, but even in that election year, 85 percent of House members who sought reelection won it (senators seeking reelection won at very similar levels). Likewise, in 2014, 2016, and every other election year, the vast majority of incumbents—typically more than 90 percent—win reelection. Americans may dislike Congress, but they rarely vote out their member of Congress. Later in the chapter, we will explore several different answers to the paradox, although none of them fully resolve it.

The puzzle is why the post-1970 Congress has become even more polarized by partisanship and divided by ideology, and whether this development reflects ever-widening political cleavages among average Americans or instead constitutes a disconnect between the people and their representatives on Capitol Hill.

THEN During 1890–1910, about two-thirds of all votes in Congress evoked a party split, and in several sessions more than half the roll calls found about 90 percent of each party's members opposing the other party.[4] But such polarization faded over the first few decades of the 20th century, and by the 1970s, such **partisan polarization** in Congress was very much the exception to the rule. Well into the 1960s, Congress commonly passed major legislation on most issues on a bipartisan basis, and liberal members and conservative members held leadership positions in both parties and in both chambers.

Such liberal and conservative voting blocs as existed typically crossed party lines, like the mid-20th-century conservative bloc featuring Republicans and Southern Democrats. Leaders in Congress in each

party were usually veteran politicians interested mainly in winning elections, dispensing patronage, obtaining tangible benefits for their own districts or states and constituents, and keeping institutional power and perks. Even members with substantial seniority did not get the most coveted committee chairmanships unless they were disposed to practice legislative politics as the art of the possible and the art of the deal. This meant forging interparty coalitions and approaching interbranch (legislative–executive) relations in ways calculated to result ultimately in bipartisan bargains and compromises, and doing so even on controversial issues and even when congressional leaders and the president were not all in the same party.

NOW When the 91st Congress ended in 1970, the more liberal half of the House had 29 Republicans and the more conservative half of the House had 59 Democrats.[5] By the time the 105th Congress ended in 1998, the more liberal half of the House had only 10 Republicans while the more conservative half of the House had zero Democrats.[6] (Zero!) In recent years, liberal Republicans and conservative Democrats became virtually extinct in both the House and the Senate—even the most liberal Republican is now to the right of the most conservative Democrat. As a result, party-line votes are increasingly common. For example, in 2010, the Patient Protection and Affordable Care Act (better known as Obamacare) proposed by Democrats passed in Congress without a single Republican voting for it.

Obamacare is not the only example of this sort of deep partisan division in Congress. In 2011, Congress hit an all-time high: Republicans in the House voted with their party's caucus 91 percent of the time, which was a new record for party unity. Sadly, the record was short-lived: in 2013, that figure crept up to 92 percent. Democrats are no less united: 94 percent of Democrats in the Senate voted with their party's caucus in 2013,[7] and party unity for both political parties has remained high since then. All of this makes it clear that members of Congress are deeply polarized. While we saw in Chapter 7 that the mass public has sorted but not polarized, the same cannot be said for our elected officials.

We will explore the reasons for this congressional polarization later in the chapter. But three things are clear. First, Congress has never perfectly embodied the Founders' fondest hopes for the first branch—not when the First Congress met in 1789–1791 (and wrangled endlessly over the Bill of Rights); not during the decades before, during, and just after the Civil War; not during the late 19th century through 1970; and certainly not since.

TABLE 13.1 | The Powers of Congress (Article 1, Section 8)

- To lay and collect taxes, duties, imposts, and excises
- To borrow money
- To regulate commerce with foreign nations and among the states
- To establish rules for naturalization (i.e., becoming a citizen) and bankruptcy
- To coin money, set its value, and punish counterfeiting
- To fix the standard of weights and measures
- To establish a post office and post roads
- To issue patents and copyrights to inventors and authors
- To create courts inferior to (below) the Supreme Court
- To define and punish piracies, felonies on the high seas, and crimes against the law of nations
- To declare war
- To raise and support an army and navy and make rules for their governance
- To provide for a militia (reserving to the states the right to appoint militia officers and to train the militia under congressional rules)
- To exercise exclusive legislative powers over the seat of government (the District of Columbia) and other places purchased to be federal facilities (forts, arsenals, dockyards, and "other needful buildings")
- 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." (*Note*: This "necessary and proper," or "elastic," clause has been generously interpreted by the Supreme Court, as explained in Chapter 16.)

TABLE 13.2 | Qualifications for Entering Congress and Privileges of Serving in Congress

Representative	• Must be 25 years of age (when seated, not when elected) • Must have been a citizen of the United States for seven years • Must be an inhabitant of the state from which elected (*Note*: Custom, but *not* the Constitution, requires that a representative live in the district that he or she represents.)
Senator	• Must be 30 years of age (when seated, not when elected) • Must have been a citizen of the United States for nine years • Must be an inhabitant of the state from which elected
Judging Qualifications	• Each house is the judge of the "elections, returns, and qualifications" of its members. Thus, Congress alone can decide disputed congressional elections. On occasion, it has excluded a person from taking a seat on the grounds that the election was improper. Either house can punish a member—by reprimand, for example—or, by a two-thirds vote, expel a member.
Privileges	• Members of Congress have certain privileges, the most important of which, conferred by the Constitution, is that "for any speech or debate in either house they shall not be questioned in any other place." This doctrine of " privileged speech" has been interpreted by the Supreme Court to mean that members of Congress cannot be sued or prosecuted for anything that they say or write in connection with their legislative duties. • When Senator Mike Gravel read the Pentagon Papers— some then-secret government documents about the Vietnam War—into the *Congressional Record* in defiance of a court order restraining their publication, the Court held that this was "privileged speech" and beyond challenge (*Gravel v. United States*, 408 U.S. 606, 1972). But when Senator William Proxmire issued a press release critical of a scientist doing research on monkeys, the Court decided the scientist could sue him for libel because a press release was not part of the legislative process (*Hutchinson v. Proxmire*, 443 U.S. 111, 1979).

James Madison envisioned members of Congress as "proper guardians of the public weal"—public-spirited representatives of the people who would govern by intelligently mediating and dispassionately resolving conflicts among the nation's competing financial, religious, and other interests.[8] Representatives or senators who might instead fan partisan passions and refuse to compromise were disparaged by Madison as selfish, unenlightened, or "theoretic politicians" (what today we might call "extremists," "hyper-partisans," or "ideologues").[9] At least if judged by the Founders' highest aspirations for the first branch and its members, Congress has always been something of a broken branch.

Second, Congress is now home to ideologically distinct political parties that seem more unified than ever with respect to how their respective members vote, but the body still does not come close to matching the near-total party unity that has been typical in the national legislatures of the United Kingdom and other parliamentary democracies.

Third, Madison and the other Framers expressly rejected a parliamentary system like Great Britain's in favor of a system featuring both a separation of powers and checks and balances. They understood the fundamental differences between a "congress" and a "parliament," and so must every present-day student who hopes to really understand the U.S. Congress.

13-1 Congress Versus Parliament

The United States (along with many Latin American nations) has a congress; the United Kingdom (along with most Western European nations) has a parliament. A hint as to the difference between the two kinds of legislatures can be found in the original meanings of the words. *Congress* derives from a Latin term that means "a coming together," a meeting, as of representatives from various places. *Parliament* comes from a French word, *parler*, which means "to talk."

There is of course plenty of talking—some critics say there is nothing *but* talking—in the U.S. Congress, and certainly members of a parliament represent to a degree their local districts. But the differences implied by the names of the lawmaking groups are real ones, with profound significance for how laws are made and how the government is run. These differences affect two important aspects of lawmaking bodies: how one becomes a member and what one does as a member.

Ordinarily, a person becomes a member of a parliament (such as the British House of Commons) by persuading a political party to put his or her name on the ballot. Though usually a local party committee selects a person to be its candidate, that committee often takes suggestions

from national party headquarters. The local group selects as its candidate someone willing to support the national party program and leadership. In the election, voters in the district choose not between two or three personalities running for office, but between two or three national parties.

By contrast, a person becomes a candidate for representative or senator in the U.S. Congress by running in a primary election. As we discussed in Chapter 9, parties may try to influence the outcome of primary elections, but they cannot determine them.

As a result of these different systems, a parliament tends to be made up of people loyal to the national party leadership who meet to debate and vote on party issues. A congress, on the other hand, tends to be made up of people who think of themselves as independent representatives of their districts or states and who, while willing to support their party on many matters, expect to vote as their (or their constituents') beliefs and interests require.

Once they are in the legislature, members of a parliament discover they can make only one important decision—whether or not to support the government. The government in a parliamentary system such as that of the United Kingdom consists of a prime minister and various cabinet officers selected from the party that has the most seats in parliament. As long as the members of that party vote together, that government will remain in power. Should members of a party in power in parliament decide to vote against their leaders, the leaders lose office, and a new government must be formed. With so much at stake, the leaders of a party in parliament have a powerful incentive to keep their followers in line. They insist that all members of the party vote together on almost all issues. If someone refuses, the penalty is often drastic: The party does not renominate the offending member in the next election.

Members of the U.S. Congress do not select the head of the executive branch of government—that is done by the voters when they choose a president. Far from making members of Congress less powerful, this makes them more powerful. Representatives and senators can vote on proposed laws without worrying that their votes will cause the government to collapse and without fearing that a failure to support their party will lead to their removal from the ballot in the next election.

Indeed, despite record levels of party unity in recent years, members of both parties have rebuked their leaders and yet remained in office. For example, conservative Republicans effectively forced Republican John Boehner to resign as Speaker of the House in 2015. While Boehner—and his successor as Speaker, Paul Ryan—may have been unhappy with this behavior, they could not remove these Republicans from office (or really do all that much to punish them).

Congress has independent powers, defined by the Constitution, that it can exercise without regard to presidential preferences. Political parties do not control nominations for office, and thus they cannot discipline members of Congress who fail to support the party leadership. Because Congress is constitutionally independent of the president, and because party discipline is highly imperfect, individual members of Congress are free to express their views and vote as they wish. They are also free to become involved in the most minute details of law-making, budget making, and supervising the administration of laws. They do this through an elaborate set of committees and subcommittees.

A real parliament, such as that in Britain, is an assembly of party representatives who choose a government and discuss major national issues. The principal daily work of a parliament is debate. A congress, such as that in the United States, is a meeting place of the representatives of local constituencies—districts and states. Members of the U.S. Congress can initiate, modify, approve, or reject laws, and they share with the president supervision of the administrative agencies of the government. The principal work of a congress is representation and action, most of which takes place in committees.

What this means in practical terms to the typical legislator is easy to see. Because members of the British House of Commons have little independent power, they get rather little in return. They are provided a modest salary, have a small staff, are allowed only limited sums to buy stationery, and can make a few free local telephone calls. Each is given a desk, a filing cabinet, and a telephone, but not always in the same place.

By contrast, a member of the U.S. House of Representatives, even a junior one, has power and is rewarded accordingly. For example, in 2017, each member earned a substantial base salary ($174,000) plus generous health care and retirement benefits, and was entitled to a large office (or "clerk-hire") allowance, to pay for about two dozen staffers. (Each chamber's majority and minority leaders earned $193,400 a year, and the Speaker of the House earned $223,500.) Each member also received individual allowances for travel, computer services, and the like. In addition, each member could mail newsletters and certain other documents to constituents for free using the "franking privilege." Senators, and representatives with seniority, received even larger benefits. Each senator is entitled to a generous office budget and legislative assistance allowance and is free to hire as many staff members as he or she wishes with the money. These examples are not given to suggest that members of Congress are


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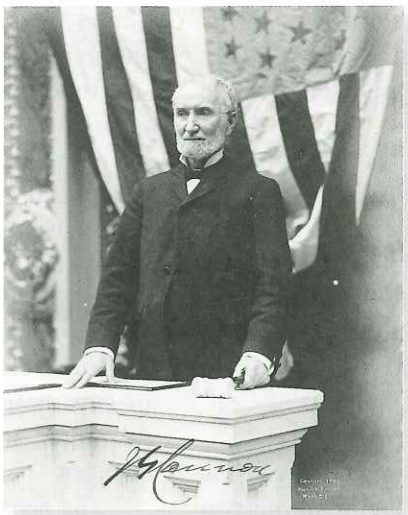
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AP Photo

IMAGES 13-1, 13-2, and 13-3 Three powerful Speakers of the House: Thomas B. Reed (1889–1891, 1895–1899) (left), Joseph G. Cannon (1903–1911) (center), and Sam Rayburn (1941–1947, 1949–1953, 1955–1961) (right). Reed put an end to a filibuster in the House by refusing to allow dilatory motions and by counting as "present"—for purposes of a quorum—members in the House even though they were not voting. Cannon further enlarged the Speaker's power by refusing to recognize members who wished to speak without Cannon's approval and by increasing the power of the Rules Committee, over which he presided. Cannon was stripped of much of his power in 1910. Rayburn's influence rested more on his ability to persuade than on his formal powers.

over-rewarded, but only that their importance as individuals in our political system can be inferred from the resources they command.

Because the United States has a congress made up of people chosen to represent their states and districts, rather than a parliament that represents competing political parties, no one should be surprised to learn that members of the U.S. Congress are more concerned with their own constituencies and careers than with the interests of any organized party or program of action. And because Congress does not choose the president, members of Congress know that worrying about the voters they represent is much more important than worrying about whether the president succeeds with his programs. These two factors taken together mean that Congress tends to be a decentralized institution, with each member more interested in his or her own views and those of his or her voters than with the programs proposed by the president.

Indeed, the Founders designed Congress in ways that almost inevitably make it unpopular with voters. Americans want government to take action and follow a clear course of action. Americans dislike political arguments, the activities of special-interest groups, and the endless pulling and hauling that often precede any congressional decision. But the people who feel this way are deeply divided about what government should do: Be liberal? Be conservative? Spend money? Cut taxes? Support abortions? Stop abortions? Because they are divided, and because members of Congress must worry about how voters feel, it is inevitable that on controversial issues Congress will engage in endless arguments, worry about what interest groups (who represent different groups of voters) think, and work out compromise decisions. When it does those things, however, many people feel let down and say they have a low opinion of Congress.

Of course, a member of Congress might explain all these constitutional facts to the people, but not many members are eager to tell their voters that they do not really understand how Congress was created and organized. Instead, they run for reelection by promising voters they will go back to Washington and "clean up that mess."

13-2 The Evolution of Congress

The Framers chose to place legislative powers in the hands of a congress rather than a parliament for philosophical and practical reasons. They did not want to have all powers concentrated in a single governmental institution, even one that was popularly elected, because they feared such a concentration could lead to rule by an oppressive or impassioned majority. At the same time, they knew the states were jealous of their independence and would never consent to a national constitution if it did not protect their interests and strike a reasonable balance between large and small states. Hence, they created a

bicameral legislature *A lawmaking body made up of two chambers or parts.*

bicameral (two-chamber) **legislature**—with a House of Representatives, whose members are elected directly by the people, and a Senate, consisting of two members from each state who are chosen by the legislatures of each state. Though "all legislative powers" were vested in Congress, those powers would be shared with the president (who could veto acts of Congress), limited to powers explicitly conferred on the federal government, and, as it turned out, subject to the power of the Supreme Court to declare acts of Congress unconstitutional.

For decades, critics of Congress complained that the body cannot plan or act quickly. They are right, but two competing values are at stake: centralization versus decentralization. If Congress acted quickly and decisively as a body, then there would have to be strong central leadership, restrictions on debate, few opportunities for stalling tactics, and minimal committee interference. If, on the other hand, the interests of individual members—and the constituencies they represent—were protected or enhanced, then there would have to be weak leadership, rules allowing for delay and discussion, and many opportunities for committee activity.

Though there have been periods of strong central leadership in Congress, the general trend for much of the 20th century was toward decentralizing decision making and enhancing the power of the individual member at the expense of the congressional leadership. That said, the recent rise in polarization has somewhat reversed that trend, though leaders today are less powerful than those of the late 19th and early 20th centuries (the apogee of the speaker's power).

This decentralization may not have been inevitable. Most American states have constitutional systems quite similar to the federal one, yet in many state legislatures, such as those in New York, Massachusetts, and Indiana, the leadership is quite powerful. In part, the position of these strong state legislative leaders may be the result of the greater strength of political parties in some states than in the nation as a whole. In large measure, however, it is a consequence of permitting state legislative leaders to decide who shall chair what committee and who shall receive what favors.

The House of Representatives, though always powerful, often has changed the way in which it is organized and led. In some periods, it has given its leader, the Speaker, a lot of power. In other periods, it has given much of that power to the chairs of the House committees. In still other periods, it has allowed individual members to acquire great influence. To simplify a complicated story, the How Things Work box starting on page 298 outlines six different periods in the history of the House.

The House faces fundamental problems: it wants to be big (it has 435 members) and powerful, and its members want to be powerful as individuals and as a group. But being big makes it hard for the House to be powerful unless some small group is given the authority to run it. If a group runs the place, however, the individual members lack much power. Individuals can gain power, but only at the price of making the House harder to run and thus reducing its collective power in government. There is no lasting solution to these dilemmas, and so the House will always be undergoing changes.

The Senate does not face any of these problems (we review important House/Senate differences in Table 13.3). It is small enough (100 members) that it can be run without giving much authority to any small group of leaders. In addition, it has escaped some of the problems the House once faced. During the period leading up to the Civil War, it was carefully balanced so that the number of senators from slave-owning states exactly equaled the number from free states. Hence, fights over slavery rarely arose in the Senate.

From the first, the Senate was small enough that no time limits had to be placed on how long a senator could speak. This meant there never was anything like a Rules Committee that controlled the amount of debate.

Finally, senators were not elected by the voters until the 20th century. Before that, they were picked instead by state legislatures. Thus senators often were the leaders of local party organizations, with an interest in funneling jobs back to their states.

The big changes in the Senate came not from any fight about how to run it (nobody ever really ran it), but from a dispute over how its members should be chosen. For more than a century after the Founding, members of the Senate were chosen by state legislatures. Though often these legislatures picked popular local figures to be senators, just as often there was intense political maneuvering among the leaders of various factions, each struggling to win (and sometimes buy) the votes necessary to become senator. By the end of the 19th century, the Senate was known as the Millionaires' Club because of the number of wealthy party leaders and businessmen in it. There arose a demand for the direct, popular election of senators.

Naturally the Senate resisted, and without its approval the necessary constitutional amendment could not pass Congress. When some states threatened to demand a new constitutional convention, the Senate feared that such a convention would change more than just the way in which

TABLE 13.3 | Comparing the House of Representatives and the Senate

House		Senate
• At least 25 years of age (when seated, not elected) • Citizen of the United States for at least seven years • Inhabit the state from which elected (it is customary but *not* required by the Constitution, that a representative live in the district he or she represents)	← Qualifications →	• At least 30 years of age (when seated, not elected) • Citizen of the United States for at least nine years • Inhabit the state from which elected
435	← Number of Members →	100
2 Years	← Length of Terms →	6 Years
• Legislative authority • Impeach • Power of the purse • Elect the president in the case of a tie in the Electoral College • Approve appointments to the vice presidency • Approve treaties that involve foreign trade • Investigation and oversight • Declare war	← Special Powers →	• Legislative authority • Conduct impeachment trials • Review and approve presidential nominees • Approve treaties made by the president (by a two-thirds vote) and amend treaties • Investigation and oversight • Declare war • Elect the vice president in case of a tie in the electoral college
• Many rules, more formal • May expel members of the House with a two-thirds vote • May censure members of the House • Decide disputed House elections	← Procedures →	• Few rules, less formal • May expel members of the Senate with a two-thirds vote • May censure members of the Senate • Filibuster and cloture • Decide disputed Senate elections
• "Privileged speech"—members of Congress cannot be sued or prosecuted for anything they say or write in connection with their legislative duties	← Privileges →	• "Privileged speech"—members of Congress cannot be sued or prosecuted for anything they say or write in connection with their legislative duties

CONSTITUTIONAL CONNECTIONS | From Convention to Congress

Article I of the Constitution (on Congress) is several times longer than Article II (on the presidency and executive branch) and Article III (on the federal judiciary) combined. The Framers treated Congress as "the first branch" of American national government. As evidenced by the records of the debates among the 55 men who convened the Constitutional Convention, the Framers had good philosophical reasons for treating the new republic's new legislature with special care. Besides, most of the delegates were themselves former legislators: 41 of the 55 had served, or at the time of the Convention were still serving, as members of the Continental Congress. Moreover, 28 of the 55 delegates would go on to serve in the new Congress created by Article I: four served in both the House and the Senate; nine served in the House only; and 15 served in the Senate only. Among those who went on to serve in the House was the Constitution's chief intellectual architect, James Madison. Madison would also go on to serve as secretary of state (under President Thomas Jefferson) and, of course, as the nation's fourth president (succeeding Jefferson).

Source: Adapted from the U.S. National Archives and Records Administration, "The Founding Fathers: A Brief Overview," 2013.

HOW THINGS WORK

House History: Six Phases

Phase One: The Powerful House

During the first three administrations—of George Washington, John Adams, and Thomas Jefferson—leadership in Congress often was supplied by the president or his cabinet officers. Rather quickly, however, Congress began to assert its independence. The House of Representatives was the preeminent institution, overshadowing the Senate.

Phase Two: The Divided House

In the late 1820s, the preeminence of the House began to wane. Andrew Jackson asserted the power of the presidency by vetoing legislation he did not like. The party unity necessary for a Speaker, or any leader, to control the House was shattered by the issue of slavery. Of course, representatives from the South did not attend during the Civil War, and their seats remained vacant for several years after it ended. A group called the Radical Republicans, led by men such as Thaddeus Stevens of Pennsylvania, produced strong majorities for measures aimed at punishing the defeated South. But as time passed, the hot passions generated by the war began to cool, and it became clear that the leadership of the House remained weak.

Phase Three: The Speaker Rules

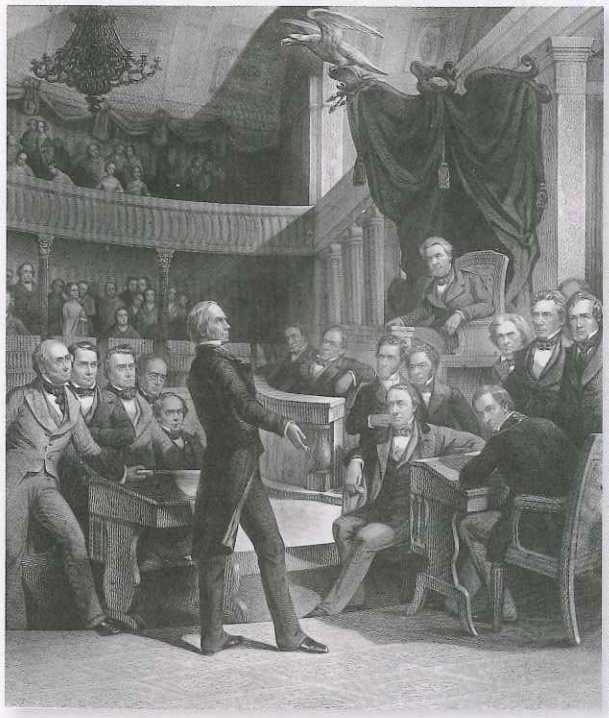
Toward the end of the 19th century, the Speaker of the House gained power. When Thomas B. Reed of Maine became Speaker in 1889, he obtained by vote of the Republican majority more authority than any of his predecessors, including the right to select the chairs and members of all committees. He chaired the Rules Committee and decided what business would come up for a vote, any limitations on debate, and who would be allowed to speak and who would not. In 1903, Joseph G. Cannon of Illinois became Speaker. He tried to maintain Reed's tradition, but he had many enemies within his Republican ranks.

Phase Four: The House Revolts

In 1910–1911, the House revolted against "Czar" Cannon, voting to strip the Speaker of his right to appoint committee chairs and to remove him from the Rules Committee. The powers lost by the Speaker flowed to the party caucus, the Rules Committee, and the chairs of the standing committees. It was not, however, until the 1960s and 1970s that House members struck out against all forms of leadership.

Phase Five: The Members Rule

Newly elected Democrats could not get the House to vote on a meaningful civil rights bill until 1964 because powerful committee chairs, most of them from the South, kept such legislation bottled up. In response, Democrats changed the rules so that chairpersons lost much of their authority. Beginning in the 1970s, committee chairs would no longer be selected simply on the basis of seniority: they had to be elected by the members of the majority party. Chairpersons could no longer refuse to call committee meetings, and most meetings had to be public. Committees without subcommittees had to create them and allow their members to choose subcommittee chairs. Individual members' staffs were greatly enlarged, and half of all majority-party members were chairs of at least one committee or subcommittee.



Library of Congress Prints and Photographs Division (LC-DIG-ppmsca-09398)

IMAGE 13-4 One of the most powerful Speakers of the House, Henry Clay, is shown here addressing the U.S. Senate around 1850.

Phase Six: The Leadership Returns

Because every member had power, it was harder for the House to get anything done. By slow steps, culminating in some sweeping changes made in 1995, there were efforts to restore some of the power the Speaker had once had. The number of committees and subcommittees was reduced. Republican Speaker Newt Gingrich dominated the choice of committee chairs, often passing over more senior members for more agreeable junior ones. But Gingrich's demise was as quick as his rise.

His decision not to pass some appropriations bills forced many government offices to close for a short period, he had to pay a fine for using tax-exempt funds for political purposes, and then the Republicans lost a number of seats in the 1998 election. Gingrich resigned as Speaker and as a member of the House and was replaced by a more moderate Speaker, Republican Dennis Hastert of Illinois, who had a penchant for accommodating his colleagues.

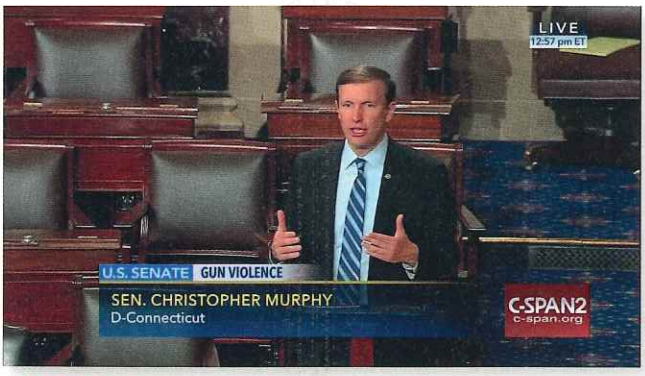
When the 110th Congress began in 2007, Democrat Nancy Pelosi of California held the Speaker's gavel. Pelosi was the 60th Speaker in House history and the first woman to lead the House. She presided over many battles with the House's GOP leaders, but her most memorable role as Speaker occurred in 2010 when she struck assorted (and some critics claimed sordid) deals with members of her own party to garner their votes for the president's sweeping health care overhaul plan. Following heavy Democratic losses in the 2010 midterm elections, in January 2011 Pelosi was succeeded as Speaker by Republican John Boehner of Ohio. Following unrest in his caucus, largely from conservatives, Boehner stepped down as Speaker in 2015, and was replaced by Paul Ryan of Wisconsin.

senators were chosen. A protracted struggle ensued, during which many state legislatures devised ways to ensure that the senators they picked would already have won a popular election. The Senate finally agreed to a constitutional amendment that required the popular election of its members, and in 1913 the Seventeenth Amendment was approved by the necessary three-fourths of the states. Ironically, given the intensity of the struggle over this question, no great change in the composition of the Senate resulted; most of those members who had first been chosen by state legislatures managed to win reelection by popular vote.

The other major issue in the development of the Senate was the filibuster. A **filibuster** is a prolonged speech, or series of speeches, made to delay action in a legislative assembly. It had become a common—and unpopular—feature of Senate life by the end of the 19th century. It was used by liberals and conservatives alike and for lofty as well as self-serving purposes. The first serious effort to restrict the filibuster came in 1917, after an important foreign policy measure submitted by President Wilson had been talked to death by, as Wilson put it, "eleven willful men." Rule 22 was adopted by a Senate fearful of tying a president's hands during a wartime crisis. The rule provided that debate could be cut off if two-thirds of the senators present and voting agreed to a "cloture" motion (it has since been revised to allow 60 senators to cut off debate). Two years later, it was first invoked successfully when the Senate voted cloture to end, after 55 days, the debate over the Treaty of Versailles.

filibuster *An attempt to defeat a bill in the Senate by talking indefinitely, thus preventing the Senate from taking action on the bill.*

Despite the existence of Rule 22, the tradition of unlimited debate remains strong in the Senate, and examples of famous filibusters abound. One—by former South Carolina Senator Strom Thurmond—lasted for more than 24 hours (Thurmond was filibustering a proposed Civil Rights Act). We discuss the contemporary effects of the filibuster later in the chapter.



AP Images

IMAGE 13-5 Several Senate Democrats led a filibuster in June 2016 to call for stronger gun control measures.

13-3 Who Is in Congress?

With power so decentralized in Congress, the kind of person elected to it is especially important. Since each member exercises some influence, the beliefs and interests of each individual affect policy. Viewed simplistically, most members of Congress seem the same: the typical representative or senator is a middle-aged white Protestant male lawyer. If all such persons usually thought and voted alike, that would be an interesting fact, but they do not, and so it is necessary to explore the great diversity of views among seemingly similar people.

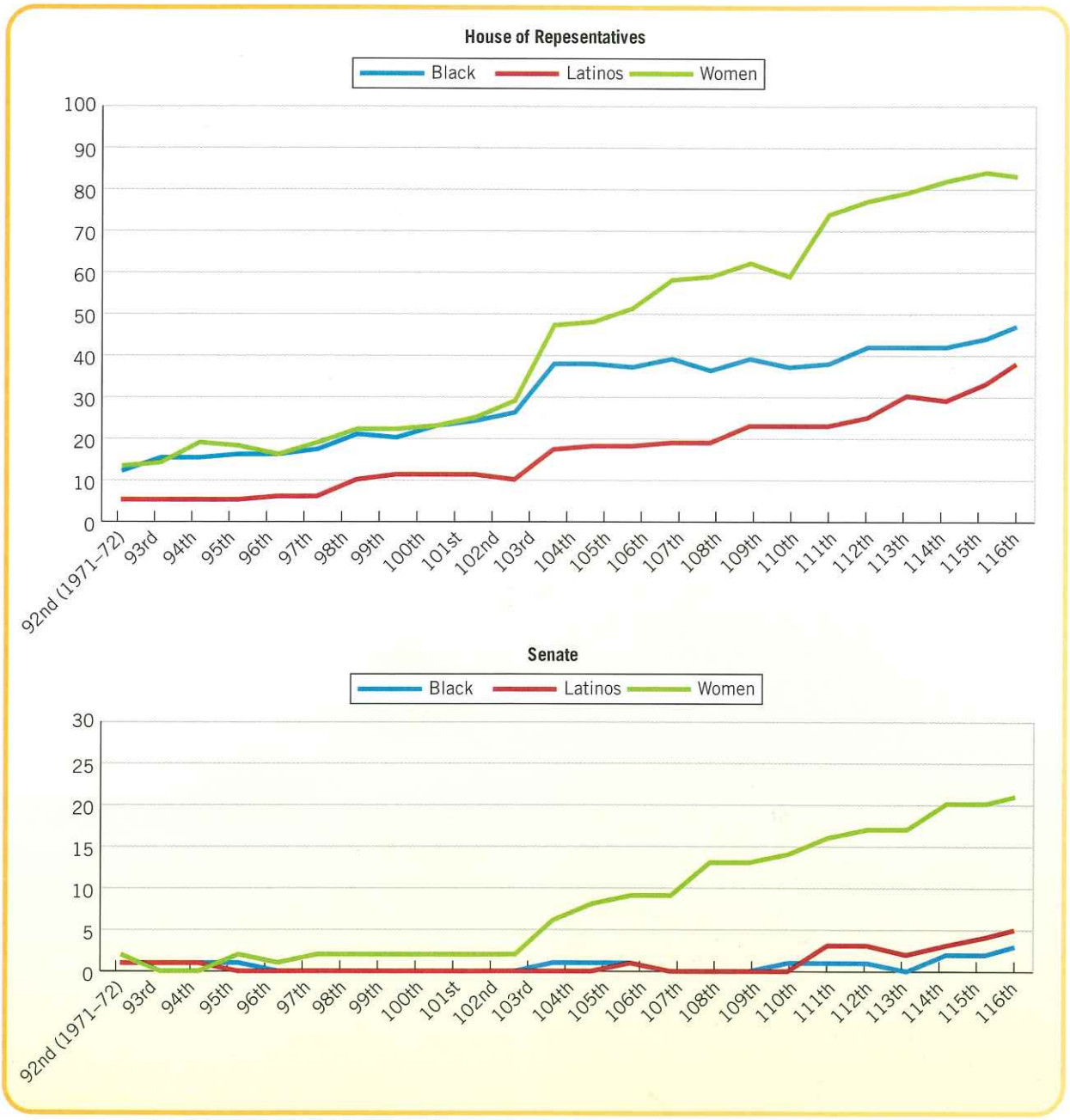
Gender and Race

Congress has gradually become less male and less white. Between 1950 and 2017, the number of women in the House increased from 9 to 83 (plus 4 delegates, who represent U.S. territories or Washington, DC, as well as the resident commissioner of Puerto Rico) and the number of African Americans increased from 2 to 47 (plus 2 delegates). There are also 38 Latino members (plus 1 delegate and the Resident Commissioner of Puerto Rico), and 2 Native American members.[10]

Until recently, the Senate changed much more slowly (see Figure 13.1). Before the 1992 election, there were no African Americans and only two women in the Senate. But in 1992, four more women, including one African American woman. Carol Mosely Braun of Illinois, were elected. These numbers have gradually increased over time, and today in the 115th Congress, 21 women, 3 African Americans, and 5 Latinos serve in the U.S. Senate.

Part of the increase in African American and Latino members of Congress comes from the creation of

FIGURE 13.1 **Blacks, Hispanics, and Women in Congress, 1971–2019**



Source: *Congressional Quarterly*, various years.

majority-minority districts. In such districts, a majority of residents are racial or ethnic minorities. These districts are designed to allow said minorities to elect candidates of choice, and were created as a result of litigation surrounding the Voting Rights Act. Most often, the candidate of choice is someone from their racial or ethnic group: for example, districts with a majority of African American voters typically, though not always, elect an African American candidate. Such districts have played a key role in bringing more racial and ethnic minorities into Congress. As a result, such districts certainly increase **descriptive representation**, when a minority officeholder represents minority constituents. Such descriptive representation is valuable because someone from a minority group will typically be best positioned to understand and represent the needs of that group.[11]

Yet some scholars claim that such districts may inadvertently harm minority interests. To create majority-minority districts, many racial and ethnic minorities need to be packed into a single district, and as a result, surrounding districts typically have fewer racial and ethnic minorities. This has two consequences. First, members in surrounding districts, because they have fewer minority constituents, have less incentive to respond to the needs of minority voters.[12] Second, these surrounding districts become less likely to elect Democrats to office.[13] This follows because these districts have fewer racial and ethnic minorities, who typically strongly support Democratic candidates.

For example, evidence shows that the creation of new majority-minority districts following the 1990 census helped to elect more Republicans to Congress.[14] Because Democrats often, but not always, support policies that are more in line with the preferences of most racial and ethnic minorities, a Congress with fewer Democrats is less likely to pass legislation favored by racial and ethnic minorities (for example, on policies such as affirmative action). This suggests that while such districts increase symbolic representation, they might decrease **substantive representation**: the ability of voters (in this case, minority voters) to elect officials who will enact policies in line with their preferences.

In the end, then, which is preferable? Is it better to elect more racial and ethnic minorities to Congress, even if it means also passing fewer policies supported by racial and ethnic minorities? Or instead should we aim to elect fewer racial and ethnic minorities to Congress, but disperse minority voters across more districts to elect members who (on average) are more supportive of policies favored by minorities? The answer is unclear, and depends on how one views the relative importance of descriptive and substantive representation.

majority-minority districts *Congressional district where a majority of voters are racial/ethnic minorities.*

descriptive representation *When citizens are represented by elected officials from their same racial/ethnic background.*

substantive representation *Ability of citizens to elect officials who will enact into law policies that the citizens favor.*

However one feels about descriptive versus substantive representation, majority-minority districts have increased the power of African American and Latino members in another way. Because such districts are typically quite electorally safe, their members often become senior leaders in Congress, especially on committees. For example, in 1994, African Americans chaired four House committees and Latinos chaired three. When the Democrats retook control of Congress in 2007, African Americans chaired five committees and Latinos chaired two more. Some of the committee chairpersons—such as Charles Rangel and John Conyers—have become very powerful members of Congress.

Similarly, the first woman to become Speaker (Nancy Pelosi in 2007) was a Democrat, and the increase of women in Congress after 1970 has been led by Democrats: in the 115th Congress that began in 2017, 16 of the 21 women in the Senate, and 62 of the 83 women in the House, were Democrats (plus three delegates). Among the most notable members first elected in 2016 is Senator Tammy Duckworth of Illinois, a disabled Iraq War Veteran who is one of two Asian American women elected in 2016 (the other is Senator Kamala Harris of California; three Asian American women, all Democrats, now serve in the U.S. Senate). The year 2016 also saw the election of the first Latina Senator, Democrat Catherine Cortez Mastro of Nevada.

Middle-aged white men with law degrees are still prevalent in Congress, but as Table 13.4 shows, compared with the makeup of the 102nd Congress that began in 1991, the 115th Congress that began in 2017 had not only more women, blacks, and Latinos, but also fewer lawyers, fewer persons who had served in the armed forces, more businesspeople, more people over the age of 55, and more members (about one in six overall) serving their first term.

Incumbency

The recent spike in first-termers in Congress is interesting, but the most important change that has occurred in the composition of Congress has been so gradual that most people have not noticed it. In the 19th century,

TABLE 13.4 | Who's in Congress, 1991–1992 versus 2017–2018

	102nd Congress (1991–1992)	115th Congress (2017–2018)
Average Age		
House	53	58
Senate	57	62
Occupation		
Law	244	218
Business	189	208
Had served in the military	277	102
Serving a first term	44	59

Source: 102nd Congress data adapted from chart based on Congressional Research Service and Military Officers Association data in John Harwood, "For New Congress, Data Shows Why Polarization Abounds," *New York Times*, 6 March, 2011. 115th Congress data from Congressional Research Service, "Membership of the 115th Congress: A Profile," 17 February, 2017.

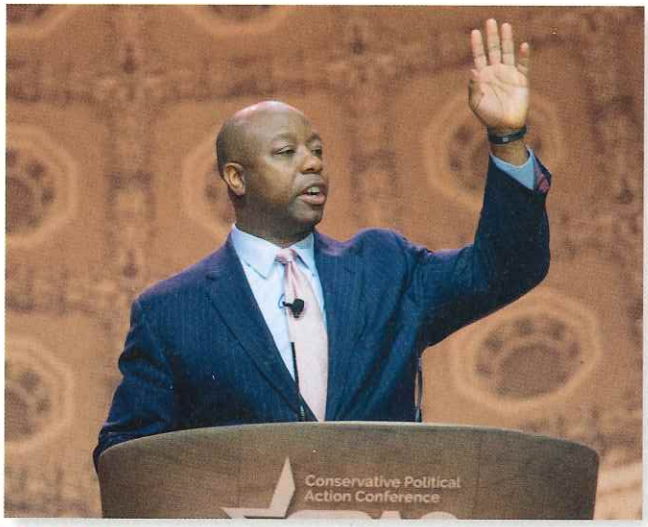
a large fraction—often a majority—of congressmen served only one term. In 1869, for example, more than half the members of the House were serving their first term in Congress. Being a congressman in those days was not regarded as a career. This was in part because the federal government was not very important (most of the interesting political decisions were made by the states); in part because travel to Washington, DC, was difficult and the city was not a pleasant place in which to live; and in part because being a congressman did not pay well. Furthermore, many congressional districts were highly competitive, with the two political parties fairly evenly balanced in each.

By the 1950s, however, serving in Congress had become a career. Between 1863 and 1969, the proportion of first-termers in the House fell from 58 percent to 8 percent.[15] As the public took note of this shift, people began to complain about "professional politicians" being "out of touch with the people," and some pushed for term limits. The issue had a brief burst of popularity in the mid-1990s, and numerous states passed laws to limits the terms of members of Congress. In 1995, however, the Supreme Court ruled that any such term limits on federal legislators could only be imposed by a constitutional amendment,[16] and efforts to pass one in Congress failed (some states do have term limits for state legislators, however). The issue largely vanished from popular discussion until Donald Trump resurrected the issue during the 2016 election. After Trump's win, several legislators introduced constitutional amendments to impose term limits, but the issue faces a long and uphill battle.[17]

Term limits remain popular with the public: a 2013 Gallup poll found that 75 percent of the public would impose term limits if given the chance.[18] Scholars who have studied state legislative term limits have found that they have little effect on who gets elected to office (i.e., they do not increase citizen legislators).[19] Second, if anything, they find that term limits *decrease* politicians' responsiveness to public opinion (since term-limited legislators know they cannot run for reelection) and tend to shift power to the executive branch and the bureaucracy.[20] As in many areas, reforms designed to solve one problem can create others!

In more recent years, political forces did what legislation could not—they brought new faces to the capital. In 1994, Republicans retook the House majority from the Democrats, who had held it since 1952. In so doing, they brought many new members to power who had not previously held elected office. Recent elections have continued this pattern. The November 2012 elections brought 75 first-term members to the House, 58 new House members won election in November 2014, and 59 new members won in 2016. In the 115th Congress (2017–2019), 50 percent of members had less than 8 years of experience.[21]

But these periodic power shifts accompanied by the arrival of scores of new faces in Congress should not obscure an important fact that was documented decades ago by political scientists and is still true today: Even in elections that result in the out party regaining power, most incumbent House members who seek reelection not only win, but win big, in their districts.[22] And while Senators have been somewhat less secure than House members, most Senate incumbents who have sought reelection have won it by a comfortable margin.



Christopher Halloran/Shutterstock

IMAGE 13-6 Senator Tim Scott (R-SC) is one of three African Americans currently serving in the Senate. He is the first African American to be elected to both the House and the Senate.

Figure 13.2 shows the 1964–2016 reelection rates for incumbent House and Senate members who sought reelection. Over that span of more than two dozen elections, the average reelection rate for House incumbents was 93 percent and the average reelection rate for Senate incumbents was 82 percent. As Figure 13.2 demonstrates, reelection rates have been consistently high throughout this period. Even in years characterized by an anti-incumbent mood, the vast majority of House and Senate incumbents were typically reelected.

In the 2010 midterm election, despite polls showing mass disaffection with Congress and a strong "anti-incumbent" mood, 85 percent of House incumbents who sought reelection won it (53 House incumbents who sought reelection lost), and 84 percent of Senate incumbents who sought reelection won it (4 Senate incumbents who sought reelection lost, 2 in primary elections and 2 in the general election). And 2014 was another year characterized by anti-incumbent sentiments. The largest-ever number of voters told pollsters that their own member did not deserve reelection (35 percent), which many took to mean a deeply dissatisfied electorate would vote many members out of office.[23] While some highly notable incumbents were defeated, such as Senator Kay Hagan in North Carolina, 95 percent of House members who sought reelection won, as did more than 80 percent of Senators. In 2016, 97 percent of House incumbents, and 87 percent of Senate incumbents, who sought reelection won. Year in and year out, most members of Congress are reelected.

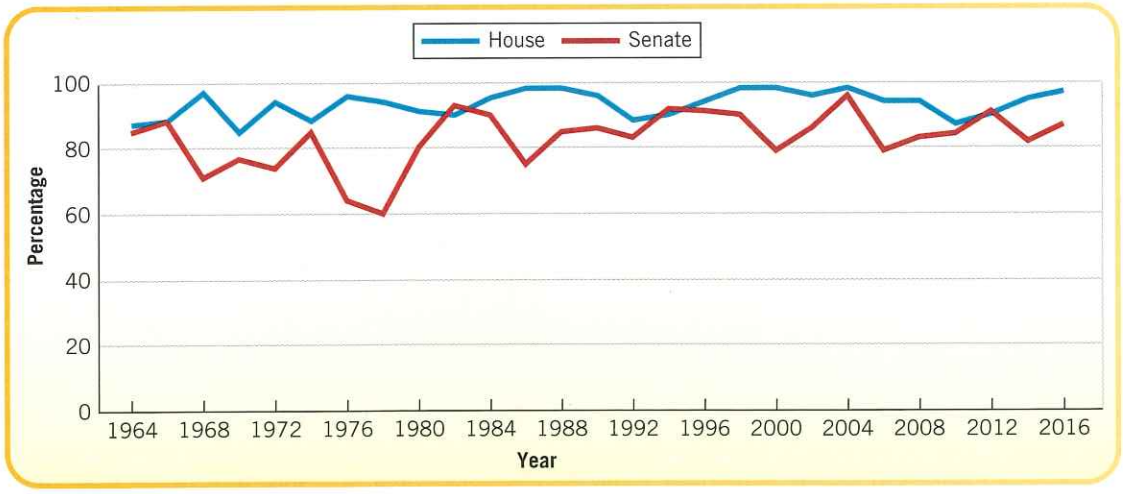
House incumbents who seek reelection normally beat their opponents by 10 points or more. Political scientists call districts that have close elections (when the winner gets less than 55 percent of the vote) **marginal districts** and districts where incumbents win by wide margins (55 percent or more) **safe districts**. By this standard, in the 2014 election, only 11 percent of House seats were marginal.[24] But perhaps we should use a stricter definition of safety: winning with 60 percent or more of the vote. Even here, the majority of incumbents would be considered safe. Since the 1970s, more than 60 percent of House members—in some years as high as 80 percent—have been reelected with at least 60 percent of the major-party vote.[25] By contrast, over the same period, less than half of all Senate incumbents who won reelection did so by such a wide margin. Safe states are far less common than safe districts.

marginal districts *Districts in which candidates elected to the House of Representatives win in close elections (typically, less than 55 percent of the vote).*

safe districts *Districts in which incumbents win by a comfortable margin.*

Why congressional seats have become less marginal—that is, safer—is not entirely clear, and a number of factors have been proposed. Some of the most prominent ones focus on the resources of incumbents. Incumbents, as we explained in Chapter 10, have a large fundraising advantage over challengers. Further, incumbents are simply much better known than challengers, so they have a built-in advantage in terms of name recognition. Incumbents also do much to deluge the voters with free mailings, they can travel frequently (and at public expense) to meet constituents, and they can get their names in the

FIGURE 13.2 **Reelection Rates for House and Senate Incumbents, 1964–2016**



Source: Center for Responsive Politics, "Reelection Rates Over the Years," www.opensecrets.org/overview/reelect.php.

conservative coalition *An alliance between Republicans and conservative Democrats.*

headlines by sponsoring bills or conducting investigations. Simply having a familiar name is important in getting elected, and incumbents find it easier than challengers to make their names known.

Further, incumbents can use their power to get programs passed or funds spent to benefit their districts—and thereby to benefit themselves.[26] They can help keep an army base open, support the building of a new highway (or block the building of an unpopular one), take credit for federal grants to local schools and hospitals, make certain a particular industry or labor union is protected by tariffs against foreign competition, and so on.

They can also provide individual services to their constituents, helping them locate a lost Social Security check or provide help with a federal agency, such as the IRS or the Department of Veterans Affairs. If a member helps out a voter this way, then that voter is more likely to support the member in his or her next election.[27]

Finally, incumbents over time have learned to behave as if they are at risk even when they are not.[28] No one thought Eric Cantor, then House Majority Leader, would lose his primary to a virtually unknown economics professor in 2014, but he did. While losses like Cantor's are relatively rare, close elections are not—many members have had an uncomfortably narrow election win, and even if they have not, they know someone who has. These sorts of unexpected losses and near-losses lead members to always be wary, and to act as if they are not safe, even if they are. So members work hard to raise money, increase their name recognition, and provide services to their constituents, which increases their safety.

Probably all of these factors make some difference and help to explain why districts are so safe today. This has two important implications. First, as we discussed in Chapter 10, there is an incumbency advantage, whereby incumbents do better than challengers (for all of the reasons we discussed above). Second, this incumbent advantage means that in ordinary times no one should expect any dramatic changes in the composition of Congress. Even when elections effect a change in party control in one or both chambers, even when new leaders are in charge and new members abound, many old hands will still be on hand in Congress.

Party

Forty-three Congresses convened between 1933 and 2017 (a new Congress convenes every two years). The Democrats controlled both houses in 27 of these Congresses and at least one house in 31 of them, and they controlled the House continuously from 1952 to 1994. Few scholars predicted the 1994 Republican victory, and many at the time thought that Democrats would control the House well into the future. Since 1994, Republicans have been in power more often than Democrats: Democrats controlled the House from 2006 to 2010, but otherwise it has been in Republican hands. What explains these patterns of control? In particular, why did Democrats control the House for so long, and why has the House become more competitive in recent years?

A key part of the reason that the Democrats controlled the House for so long is that the Democratic Party, throughout much of the 20th century, was really two separate parties operating under a common name: a more liberal Northern wing and a more conservative Southern wing. While they did not agree on many policies, they did share a common party label and hence formed a large partisan bloc, which allowed them to be the majority party in the House for many decades.

While Northern and Southern Democrats aligned to maintain majority control of the chamber (and with it, control of congressional committees and the legislative process), they typically parted ways when it came to policy. Southern Democrats often would vote with the Republicans in the House or Senate, thereby forming what came to be called the **conservative coalition**. During the 1960s and 1970s, that coalition came together in about one-fifth of all roll-call votes. When it did, it usually won, defeating Northern Democrats. But since the 1980s, and especially since the watershed election of 1994, the conservative coalition has become much less important. The reason is simple: Many Southern Democrats in Congress have been replaced by Southern Republicans, and the Southern Democrats who remain (many of them African Americans) are as liberal as Northern Democrats. This change was an important contributor to the growing levels of polarization we observe in Congress today.

But this factor alone does not explain why the Democrats controlled the House for so long, or why the process is now more competitive. One popular theory among the public, though not really among scholars, is that gerrymandering is to blame. As we discussed in Chapter 10, gerrymandering is the process of drawing districts to favor one party or the other. Those who favor this explanation suggest that when Democrats are in power, they tend to draw districts favoring Democrats and vice versa when Republicans are in power. As we discussed in Chapter 10, gerrymandering does influence congressional elections, and it has contributed to electoral safety. But its effect is modest rather than massive. Several studies of recent elections, such as 2006 and 2012, note that redistricting affected the outcome, but only to a modest degree.[29]

Summing up much of the scholarly literature, one study found that "Virtually all the political science evidence to date indicates that the electoral system has little or no partisan bias, and that the net gains nationally from redistricting for one party over another are very small."[30]

Further, gerrymandering's effects have several practical limits as well. First, drawing congressional districts is the duty of the states, most typically, of the state legislature (though some states use some sort of commission). So for one party to really stack the deck in its favor, it needs to control the state legislature of many states, which is difficult to do. Many commissions are nonpartisan, or receive input from the governor. Because of the political sensitivity of congressional districts, many district boundaries are ultimately decided by the courts, which adds another layer of complexity to the process. Many different actors contribute to drawing congressional boundaries, making it hard for one party to really gain an advantage solely due to redistricting.

The effects of gerrymandering are also constrained by relevant state and federal laws. Federal law requires that districts have equal population, and the courts have interpreted this rather strictly, rejecting even modest deviations in population across congressional districts.[31] Further, as we discussed above, the Voting Rights Act established majority-minority districts, which requires many states to have districts predominantly comprising racial/ethnic minorities. Many states also have relevant state laws that require districts to be contiguous and geographically compact, as well as to respect political boundaries and communities of interest. Even when legislators want to engage in gerrymandering, their ability to do so is constrained by other factors. Even if there were no gerrymandering, many members of Congress would easily be reelected to Congress.

While redistricting alone typically does not give an advantage to one party or the other, the Republicans do have a small but persistent advantage in contemporary House elections that stems from geography. Simply put, Republican voters are more evenly spread across districts, whereas Democratic voters are more heavily concentrated in certain districts. Democrats win a large share of voters from racial and ethnic minorities, young people, and liberals, who tend to be clustered in cities. As a result, Democrats tend to carry overwhelmingly districts located in urban areas. While Republicans currently do better in mostly rural districts, those districts are not as skewed toward Republicans because even rural areas tend to have pockets of Democrats (in, say, a college town or a former industrial city).

For example, Philadelphia, Pennsylvania (the nation's fifth-largest city), contains two congressional districts (PA-1 and PA-2), both of which the Democratic incumbents won with more than 80 percent of the vote in 2016. But even in the most rural parts of the state, Republicans do not win so overwhelmingly. Democrats have more votes that are "wasted" by being packed into overwhelmingly Democratic urban districts. As a result, Democrats must win a larger share of the vote to win the same number of seats as Republicans.[32] While this is a boost to Republicans in contemporary elections, Democrats certainly can overcome it, as they did when they recaptured the House in 2006. Today, unlike in earlier generations, there is strong competition between the parties for control of Congress.

Representation and Polarization

In a decentralized, individualistic institution such as Congress, it is not obvious how its members will behave. They could be devoted to doing whatever their constituents want or, because most voters are not aware of what their representatives do, act in accordance with their own beliefs, the demands of interest groups, or the expectations of congressional leaders. You may think it would be easy to figure out whether members are devoted to their constituents by analyzing how they vote, but that is not quite right. Members can influence legislation in many ways other than by voting: they can conduct hearings, help mark up bills in committee meetings, and offer amendments to the bills proposed by others. A member's final vote on a bill may conceal as much as it reveals; some members may vote for a bill that contains many things they dislike because it also contains a few things they value.

There are at least three theories about how members of Congress behave: representational, organizational, and attitudinal. The *representational* explanation is based on the reasonable assumption that members want to get reelected, and therefore they vote to please their constituents. The *organizational* explanation is based on the equally reasonable assumption that because most constituents do not know how their legislator has voted, it is not essential to please them. But it is important to please fellow members of Congress, whose goodwill is valuable in getting things done and in acquiring status and power in Congress. The *attitudinal* explanation is based on the assumption that the many conflicting pressures on members of Congress cancel one another out, leaving the members virtually free to vote on the basis of their own beliefs. Political scientists have studied, tested, and argued about these (and other) explanations for decades, and nothing like a consensus has emerged. Some facts have been established, however, in regard to these three views.

Representational View

The representational view has some merit under certain circumstances—namely, when constituents have a clear view on some issue and a legislator's vote on that issue is likely to attract their attention. Such is often the case for civil rights laws: representatives of districts with significant numbers of black voters are not likely to oppose civil rights bills; representatives of districts with few African Americans are comparatively free to oppose such bills. Until the late 1960s, many Southern representatives were able to oppose civil rights measures because the African Americans in their districts were prevented from voting. On the other hand, many representatives without black constituents have supported civil rights bills, partly out of personal belief and partly perhaps because certain white groups in their districts—organized liberals, for example—have insisted on such support.

From time to time, an issue arouses deep passions among voters, and legislators cannot escape the need either to vote as their constituents want, whatever their personal views, or to anguish at length about which side of a divided constituency to support. Gun control has been one such question and the use of federal money to pay for abortions has been another. Some fortunate members of Congress get unambiguous cues from their constituents on these matters, and no hard decision is necessary. Others get conflicting views, and they know that whichever way they vote, it may cost them dearly in the next election. Occasionally, members of Congress in this fix will try to be out of town when the matter comes up for a vote.

AP Images/Marco Garcia

IMAGE 13-7 U.S. Representative Tulsi Gabbard is the first American Samoan, first Hindu, and one of the first female combat veterans to serve in Congress. She won election in 2012 from Hawaii.

You might think that members of Congress who won a close race in the last election—who come from a "marginal" district—would be especially eager to vote the way their constituents want. Research so far has shown that is not generally the case. There seem to be about as many independent-minded members of Congress from marginal as from safe districts.[33] Perhaps it is because opinion is so divided in a marginal seat that one cannot please everybody; as a result, the representative votes on other grounds.

The limit to the representative explanation is that public opinion is not strong and clear on most measures on which Congress must vote. Many representatives and senators face constituencies that are divided on key issues. Some constituents go to special pains to make their views known (these interest groups were discussed in Chapter 11). But as we indicated, the power of interest groups to affect congressional votes depends, among other things, on whether a legislator sees them as united and powerful or as disorganized and marginal.

But when public opinion is strong and clear, members do respond to it. A recent study nicely illustrates this point. The researchers gave some legislators—but not others—information about public opinion in their districts toward a proposed spending bill. Those who received the information were much more likely to support the position favored by their constituents.[34] This fits with broader studies that show that legislators are highly attuned to public sentiment in their districts, and try to vote in ways that reflect their constituents' views.[35]

Why does constituent opinion exert such a strong effect on member behavior? Because voting counter to the wishes of your constituents put members at grave risk of being voted out of office. If a member is repeatedly out of step with public opinion in his or her district, then challengers will leap on this pattern of votes in the next election. While most voters do not know how their member of Congress voted on various pieces of legislation, challengers will pounce and exploit votes taken by a member that many constituents would oppose. If a member is too liberal or conservative for their district, they will typically be defeated.[36] Indeed, even one vote against the constituency's wishes can be fatal, especially if it is on a highly salient piece of legislation such as Obamacare.[37] Those members who vote against the district's wishes typically find themselves out of a job.

Organizational View

When voting on matters where constituency interests or opinions are not vitally at stake, members of Congress respond primarily to cues provided by their colleagues.

This is the organizational explanation of their votes. The principal cue is party—no other factor explains as much of a member's behavior in office. Even when a Democrat and a Republican represent the same district, with the exact same voters, they will often vote differently (note the parallel to the power of party in shaping voters' views, as we discussed in Chapter 7).

But do not think that members blindly adopt their party's position on the issues with little or no thought—far from it. Nor does the power of party simply reflect the power of party leaders to whip members into adopting the party line. While leaders do have some powers to reward and punish members,[38] those powers are relatively constrained.[39] Rather, the effect of party reflects different values of Democratic and Republican members. A member's party reflects his or her beliefs about how the government should be run—in today's Congress, those who want to see a more active role for government are by and large Democrats, and those who want to see the government do less are typically Republicans. Further, Democratic (Republican) members of Congress have similar constituencies to other Democratic (Republican) members, and similar interest groups support them. It is the power of these other influences—the constituents, supporting interest groups, and political values—that lead Democrats and Republicans to vote differently in Congress.

Another influence—closely related to party—could be the view of an important ideological group within the House. A number of groups on both sides of the aisle represent various points of view in the various ideological debates in Congress. On the left are groups like the Congressional Progressive Caucus, and on the right, the House Freedom Caucus.

But party and other organizations do not have clear positions on all matters. For the scores of votes that do not involve the "big questions," a representative or senator is especially likely to be influenced by the members of his or her party on the sponsoring committee. It is easy to understand why. Suppose you are a Democratic representative from Michigan who is summoned to the floor of the House to vote on a bill to authorize a new weapons system. You may well not understand the bill in any detail, since you are not a member of the authorizing committee. There is no obvious liberal or conservative position on this matter. How do you vote? Simple. You take your cue from several Democrats on the House Armed Services Committee that handled the bill. Some are liberal; others are more moderate. If both liberals and moderates support the bill, you vote for it unhesitatingly. If they disagree, you vote with whichever Democrat is generally closest to your own political ideology. If the matter is one that affects your state, you can take your cue from members of your state's delegation to Congress.

Attitudinal View

Finally, members' own ideologies influence their behavior. This should hardly be surprising. As we saw in Chapter 7, political elites think more ideologically than the public. And as we saw above, it is a member's personal views—their ideology and values—that shapes why party is such a powerful influence. But, as we suggested at the start of this chapter, Congress has become an increasingly ideological organization, that is, its members are more sharply divided by political ideology than they once were. Today, all of Congress's most liberal members are Democrats, and all of its most conservative ones are Republicans.

Why attitudes have hardened along ideological and partisan lines in Congress is a topic of much scholarly debate. Many different factors have contributed to Congress becoming more polarized, and we lack the space to discuss all of them. We discussed a crucial factor above—conservative Southern Democrats gradually became conservative Southern Republicans over the second half of the 20th century. Another factor is that those who are the most involved in politics (the activists) tend to be those with the strongest views, as we discussed in Chapter 7. Most Americans, unlike members of Congress, remain relatively moderate and nonideological. But among those who participate the most, there tends to be more division and ideological thinking.

This division in the electorate supports congressional polarization. As we discussed in earlier chapters, members of Congress respond to those who participate. If those who vote, donate money, and volunteer for campaigns are more extreme, this influences the positions taken by members of Congress. Further, while most voters prefer compromise and bipartisanship, these activists do not; they instead want their members to stand firm for his or her ideological principles,[40] adding further fuel to the polarization fire.

This stands in stark contrast to most ordinary Americans, who are moderate, are largely nonideological, and like compromise and consensus. Unfortunately, most ordinary Americans are also not terribly politically interested, and are less likely to turn out and vote or to participate in politics in other ways. For example, one study found that, of political moderates, only about 20 percent are politically attentive, while the rest are largely disengaged from politics.[41] Given this, members of Congress tend to pay these voters less heed, unless someone organizes them to make their voice heard. While overall district sentiment

majority leader *The legislative leader elected by party members holding the majority of seats in the House or the Senate.*

minority leader *The legislative leader elected by party members holding a minority of seats in the House or the Senate.*

whip *A senator or representative who helps the party leader stay informed about what party members are thinking.*

Speaker *The presiding officer of the House of Representatives and the leader of his or her party in the House.*

matters (as we discussed above), those who vote end up being the most influential—politicians respond to those who make their voices heard.

This helps us to understand the puzzle from the beginning of the chapter. We see that congressional polarization reflects both deep divisions in the public and a disconnect from ordinary Americans. The deep divisions are among political activists; the disconnect is from the rest of the electorate.[42] How this situation will change—if at all—in the years to come remains to be seen.

13-4 The Organization of Congress: Parties and Interests

Congress is not a single organization; it is a vast and complex collection of organizations by which the business of Congress is carried on and through which members of Congress form alliances. Unlike the British Parliament, in which the political parties are the only important kind of organization, parties are only one of many important units in Congress (though they are one of the most important).

Party Organizations

The Democrats and Republicans in the House and the Senate are organized by party leaders, who in turn are elected by the full party membership within the House and Senate.

The Senate

The majority party chooses one of its members—usually the person with the greatest seniority—to be president pro tempore of the Senate. This is usually an honorific position, required by the Constitution so that the Senate will have a presiding officer when the vice president of the United States (according to the Constitution, the president of the Senate) is absent. In fact, both the president pro tem and the vice president usually assign the tedious chore of presiding to a junior senator.

The real leadership is in the hands of the majority and minority leaders. The principal task of the **majority leader** is to schedule the business of the Senate, usually in consultation with the **minority leader**. A majority leader who has a strong personality and is skilled at political bargaining (such as Lyndon Johnson, the Democrats' leader in the 1950s) may also acquire much influence over the substance of Senate business.

A **whip**, chosen by each party, helps party leaders stay informed about what the party members are thinking, rounds up members when important votes are taken, and attempts to keep a count of how voting on a controversial issue is likely to go. Several senators assist each party whip.

Each party also chooses a policy committee comprising a dozen or so senators who help the party leader schedule Senate business, choosing what bills will be given major attention and in what order.

For individual senators, however, the key party organization is the group that assigns senators to the Senate's standing committees: for the Democrats, the Steering and Outreach Committee; for the Republicans, the Committee on Committees. For newly elected senators, their political careers, opportunities for favorable publicity, and chances for helping their states and constituents depend in great part on the committees to which they are assigned. Achieving ideological and regional balance is a crucial—and delicate—aspect of selecting party leaders, making up important committees, and assigning freshmen senators to committees.

The House of Representatives

The party structure is essentially the same in the House as in the Senate, though the titles of various posts are different. But leadership carries more power in the House than in the Senate because of the House rules. Being so large (435 members), the House must restrict debate and schedule its business with great care; thus leaders who manage scheduling and determine how the rules shall be applied usually have substantial influence.

The **Speaker**, who presides over the House, is the most important person in that body and is elected by whichever party has a majority. Unlike the president pro tem of the Senate, this position is anything but honorific, for the Speaker is also the principal leader of the majority party. Though Speakers as presiders are expected to be fair, Speakers as party leaders are expected to use their powers to help pass legislation favored by their party.

In helping his or her party, the Speaker has some important formal powers. He or she decides who shall be recognized to speak on the floor of the House, rules whether a motion is relevant and germane to the business

Xinhua/Alamy Stock Photo

IMAGE 13-8 Paul Ryan was first elected as Speaker of the House in 2015.

at hand, and decides (subject to certain rules) the committees to which new bills shall be assigned. He or she influences what bills are brought up for a vote and appoints the members of special and select committees. Since 1975, the Speaker has been able to select the majority-party members of the Rules Committee, which plays an important role in the consideration of bills. The Speaker also has some informal powers. He or she controls some patronage jobs in the Capitol building and the assignment of extra office space. Though now far less powerful than some of his or her predecessors, the Speaker is still an important person to have on one's side.

In the House, as in the Senate, the majority party elects a floor leader, called the *majority leader*. The other party chooses the minority leader. Traditionally, the majority leader becomes Speaker when the person in that position dies or retires—provided, of course, that his or her party is still in the majority. Each party also has a whip, with several assistant whips in charge of rounding up votes. For the Democrats, committee assignments are made and the scheduling of legislation is discussed in a Steering and Policy Committee chaired by the Speaker (or minority leader, depending on which party is in the majority on the committee). The Republicans have divided responsibility for committee assignments and policy discussion between two committees. Each party also has a congressional campaign committee to provide funds and other assistance to party members running for election or reelection to the House.

party vote *A vote where most Democrats are on one side of the bill, and most Republicans are on the other.*

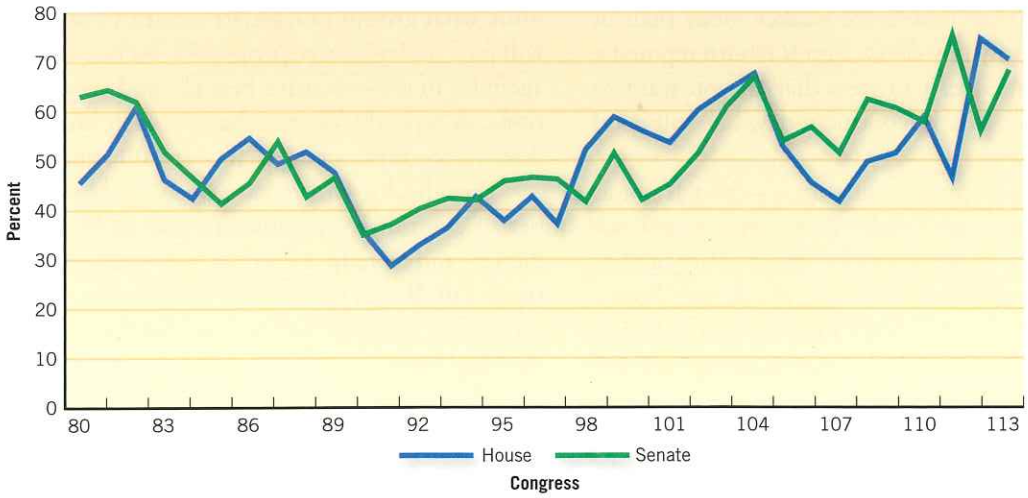
Party Voting

The effect of this elaborate party machinery can be crudely measured by the extent to which party members vote together in the House and the Senate. A **party vote** can be defined in various ways; naturally, the more stringent the definition, the less party voting will occur.

Figure 13.3 shows party voting in the House of Representatives since the end of World War II. Most scholars say a party vote occurs when at least 50 percent of the Democrats vote together against 50 percent of the Republicans; this is the definition we use in Figure 13.3 (though some insist on a stricter definition, when 90 percent of Democrats vote against 90 percent of Republicans; by this definition, there are obviously fewer party votes). Figure 13.3 shows a striking trend: since the 1970s, there have been

FIGURE 13.3 **Party Unity Votes in House and Senate, 80th to 113th Congresses (1947–2014)**

Percentage of votes in which a majority of voting Democrats opposed a majority of voting Republicans.



Source: Keith Poole and Howard Rosenthal, "Party Unity Scores," voteview.com. (Accessed January 2016).

caucus *An association of congressional members created to advance a political ideology or a regional, ethnic, or economic interest.*

standing committees *Permanently established legislative committees that consider and are responsible for legislation within a certain subject area.*

select committees *Congressional committees appointed for a limited time and purpose.*

more and more party unity votes as a fraction of all votes cast. That is, more votes (today, nearly 7 in 10 votes) are party unity votes.

Given that political parties as organizations do not tightly control a legislator's ability to get elected, this high level of party voting is surprising. Congressional members of one party sometimes do vote together against a majority of the other party, for several reasons. First, members of Congress do not randomly decide to be Democrats or Republicans; at least for most members, these choices reflect some broad policy agreements. By tabulating the ratings that several interest groups give members of Congress for voting on important issues, it is possible to rank each member of Congress from most to least liberal in many policy areas, including economic affairs, social issues, and foreign and military affairs. Democrats in the House and Senate are much more liberal than Republicans across nearly all issues. This has been true for many years, and as we discussed elsewhere in the chapter, the gap between Democrats and Republicans on the issues has been increasing.

In addition to their personal views, members of Congress have other reasons for supporting their party's position at least some of the time. On many matters that come up for vote, members of Congress often have little information and no opinions. It is only natural that they look to fellow party members for advice. Furthermore, supporting the party position can work to the long-term advantage of a member interested in gaining status and influence in Congress. Though party leaders are weaker today than in the past, they are hardly powerless. Sam Rayburn reputedly told freshman members of Congress that "if you want to get along, go along." That is less true today, but still good advice.

In short, party *does* make a difference—though not as much as it did at the turn of the 20th century and not as much as it does in a parliamentary system. Party affiliation is still the single most important thing to know about a member of Congress. Because party affiliation in the House today embodies strong ideological preferences, the mood of the House is often testy and strident. Members no longer get along with each other as well as they did 40 years ago. Many liberals and conservatives dislike each other intensely, despite their routine use of complimentary phrases.

Caucuses

Congressional caucuses are another set of important organizations in Congress. A **caucus** is an association of members of Congress created to advocate a political ideology or to advance a regional, ethnic, or economic interest. In 1959, only four such caucuses existed; by the early 1980s, there were more than 70. There are several types of caucuses in Congress. First, there are the ideological caucuses that unite members around a set of beliefs; examples of these include the Congressional Progressive Caucus on the left and the House Freedom Caucus on the right. Second, there are regional caucuses, which bring together members from a common geographic region to work together on issues of concern to that area. One example is the Northeast-Midwest Congressional Coalition, which brings members from 18 Northeastern and Midwestern states from both parties to discuss areas of common concern to their districts. Third, there are caucuses devoted to particular issues, such as the Congressional Diabetes Caucus, which seeks to address diabetes-related issues. Finally, there are caucuses that advocate for those from particular racial or ethnic groups; the most famous of these is the Congressional Black Caucus. The activity level of these caucuses varies widely, with some being very active and pressing an agenda on many issues, whereas others remain more behind the scenes.

The Organization of Congressional Committees

The most important organizational feature of Congress beyond the parties is the set of legislative committees of the House and Senate. Most of the power of Congress is found in the chairmanship of these committees, and their subcommittees. The number and jurisdiction of these committees are of the greatest interest to members of Congress because decisions on these subjects determine what groups of legislators with what political views will pass on legislative proposals, oversee the workings of agencies in the executive branch, and conduct investigations. A typical Congress has, in each house, about two dozen committees and well over 100 subcommittees.

Periodically, efforts have been made to cut the number of committees in order to give each a broader jurisdiction and to reduce conflict between committees over a single bill. But as the number of committees declined, the number of subcommittees rose, leaving matters much as they had been.

Three kinds of committees exist: **standing committees** (more or less permanent bodies with specific legislative responsibilities), **select committees** (groups appointed for a limited purpose, which do not introduce

legislation and which exist for only a few years), and **joint committees** (on which both representatives and senators serve). An especially important kind of joint committee is the **conference committee**, made up of representatives and senators appointed to resolve differences in the Senate and House versions of a bill before final passage. Though members of the majority party could in theory occupy all the seats on all the committees, in practice they take the majority of the seats, name the chairperson, and allow the minority party to have the remainder of the seats. The number of seats varies from about 6 to more than 50.

Usually the ratio of Democrats to Republicans on a committee roughly corresponds to their ratio in the House or Senate. Standing committees are more important because, with a few exceptions, they are the only committees that can propose legislation by reporting a bill out to the full House or Senate. Each member of the House usually serves on two standing committees, but members of the Appropriations, Rules, Ways and Means, Energy and Commerce, or Financial Services Committees are limited to one committee. Each senator may serve on two major committees and one minor committee (see Table 13.5), but this rule is not strictly enforced.

joint committees *Committees on which both senators and representatives serve.*

conference committee *Joint committees appointed to resolve differences in the Senate and House versions of the same bill.*

TABLE 13.5 | Standing Committees of the House and Senate

House	Senate
Exclusive Committees: *Members may not serve on any other committee except for Budget.*	**Major Committees:** *No senator serves on more than two, though this rule may be ignored.*
Appropriations	Agriculture, Nutrition, and Forestry
Rules	Appropriations
Ways and Means	Armed Services
Energy and Commerce*	Banking, Housing, and Urban Affairs
Financial Services**	Budget
Major Committees: *Members may serve on only one major committee.*	Commerce, Science, and Transportation
Agriculture	Energy and Natural Resources
Armed Services	Environment and Public Works Finance
Education and Labor	Foreign Relations
Foreign Affairs	Health, Education, Labor, and Pensions
Homeland Security	Homeland Security and Governmental Affairs
Judiciary	Judiciary
Transportation and Infrastructure	**Minor Committees:** *No senator is supposed to serve on more than one.*
Nonmajor Committees: *Members may serve on one major and two nonmajor committees.*	Rules and Administration
Budget	Small Business and Entrepreneurship
House Administration	Veterans' Affairs
Natural Resources	**Select Committees**
Oversight and Government Reform	Aging
Science and Technology	Indian Affairs
Small Business	Intelligence
Standards and Official Conduct (Ethics)	Ethics
Veterans' Affairs	**Joint Committees**
Select Committees	Printing
Intelligence	Taxation
Benghazi	Library
	Economic

*For Democrats, the Energy and Commerce Committee is an exclusive committee for those who first served on the committee in the 104th House or later.

**For Democrats, the Financial Services Committee is an exclusive committee for those who first served on the committee in the 109th Congress or later.

In the past, when party leaders were stronger, committee chairs were picked on the basis of loyalty to the leader. When this leadership weakened, seniority on the committee came to govern the selection of chairpersons. While the seniority system still largely governs which members become committee chairs, seniority is no longer sacrosanct. In 1971, House Democrats decided in their caucus to elect committee chairs by secret ballot; four years later, they used that procedure to remove three committee chairs who held their positions by seniority. Between 1971 and 1992, the Democrats replaced a total of seven senior Democrats with more junior ones as committee chairs. When Republicans took control of the House in 1995, Speaker Newt Gingrich ignored seniority in selecting several committee chairs, picking instead members who he felt would do a better job. In this and other ways, Gingrich enhanced the speaker's power to a degree not seen since 1910.

Throughout most of the 20th century, committee chairs dominated the work of Congress. In the early 1970s, their power came under attack, mostly from liberal Democrats upset at the opposition by conservative Southern Democratic chairs to civil rights legislation. The liberals succeeded in getting the House to adopt rules that weakened the chairs and empowered individual members. Some of the key changes included electing committee chairs by secret ballot within the majority party, banning committee chairs from blocking legislation by refusing to refer it to a subcommittee, requiring public meetings in all committees and subcommittees (unless the committee has voted to close them), and electing subcommittee chairs by a vote of committee members.

When the Republicans took control of the House in 1995, they made further changes. They eliminated some committees, and they also changed the powers of committee chairs. Some of these reforms strengthened the power of the committee chairs—for example, chairs were allowed to hire subcommittee staff—while others limited chairs in other significant ways, such as imposing term limits on committee and subcommittee chairs (three consecutive terms, or six years), and banning proxy voting (i.e., allowing the chair to cast an absent member's vote by proxy).

The Senate has seen fewer such changes, in large part because individual senators have always had more power than their counterparts in the House. That said, in 1995, senators also imposed six-year term limits on their committee chairs and voted to elect chairpersons by secret ballot of the committee members.

Despite these new rules, the committees remain the place where the real work of Congress is done. These committees tend to attract different kinds of members. Some, such as the committees that draft tax legislation (the Senate Finance Committee and the House Ways and Means Committee) or that oversee foreign affairs (the Senate and House Foreign Relations Committees), have been attractive to members who want to shape public policy, become experts on important issues, and have influence with their colleagues. Others, such as the House and Senate committees dealing with public lands, small business, and veterans' affairs, are attractive to members who want to serve particular constituency groups.[43]

For example, a member from a district with a great deal of agricultural land might want to serve on the House Committee on Agriculture, or a member from a district with a large military base might want to serve on the House Armed Services Committee. Doing so will allow those members to gain expertise on policy areas relevant to their districts, as well as to provide benefits to their constituents. Such knowledge and benefits in turn further a member's reelection chances.[44] Indeed, many members choose to serve on committees that are relevant to their districts' economic interests.

Anadolu Agency/Getty Images

IMAGE 13-9 Deputy Attroney General Sally Yates and FBI Director James Comey testify before Congress.

The Organization of Congress: Staffs and Specialized Offices

In 1900, representatives had no personal staff, and senators averaged fewer than one staff member each. By 1979, the average representative had 16 assistants and the average senator had 36; the total number of individuals employed by Congress as staff persons was nearly 27,000 (that number includes member's personal staffs, plus committee staffs, the staff for support agencies, and other miscellaneous staff). Today, despite the world, and the federal government, growing more complex, Congress has reduced its overall staff to around

19,600, a decline of more than one-quarter.[45] Starting in the mid-1990s, Congress began to reduce its staff as a cost-cutting measure. Later in the chapter, we will see that some have argued that was a penny wise but pound foolish decision.

Regardless of the number of staff, they perform a variety of important tasks. Some staff persons work in a member's home district, meeting with constituents and fulfilling requests for assistance with the government (this is a component of the incumbency advantage we discussed earlier in the chapter). The legislative function of congressional staff members is also important. With each senator serving on an average of more than two committees and seven subcommittees, it is virtually impossible for members of Congress to become familiar with the details of all the proposals that come before them or to write all the bills that they feel ought to be introduced.[46] The role of staff members has expanded in proportion to the tremendous growth in Congress's workload.

The orientation of committee staff members differs. Some think of themselves as—and to a substantial degree they are—politically neutral professionals whose job it is to assist members of a committee, whether Democrats or Republicans, in holding hearings or revising bills. Others see themselves as partisan advocates, interested in promoting Democratic or Republican causes, depending on who hired them.

Those who work for individual members of Congress, as opposed to committees, see themselves entirely as advocates for their bosses. They often assume an entrepreneurial function, taking the initiative in finding and selling a policy to their boss—a representative or senator—who can take credit for it. Lobbyists and reporters understand this completely and therefore spend a lot of time cultivating congressional staffers.

The increased reliance on staff has changed Congress, mainly because the staff has altered the environment within which Congress does its work. In addition to their role as entrepreneurs promoting new policies, staffers act as negotiators: Members of Congress today are more likely to deal with one another through staff intermediaries than through personal contact. Congress has thereby become less collegial, more individualistic, and less of a deliberative body.[47]

In addition to increasing the number of staff members, Congress also has created a set of staff agencies that work for Congress as a whole. These have come into being in large part to give Congress specialized knowledge equivalent to what the president has by virtue of his or her position as chief of the executive branch. One of these, the *Congressional Research Service (CRS)*, is part of the Library of Congress and employs about 600 people; it is politically neutral, responding to requests by members of Congress for information and giving both sides of arguments. The *Government Accountability Office (GAO)*, once merely an auditing agency, now has about 3,000 employees and investigates policies and makes recommendations on almost every aspect of government; its head, though appointed by the president for a 15-year term, is very much the servant of Congress rather than the president. The *Congressional Budget Office (CBO)*, created in 1974, advises Congress on the likely impact of different spending programs and attempts to estimate future economic trends.

13-5 How a Bill Becomes a Law

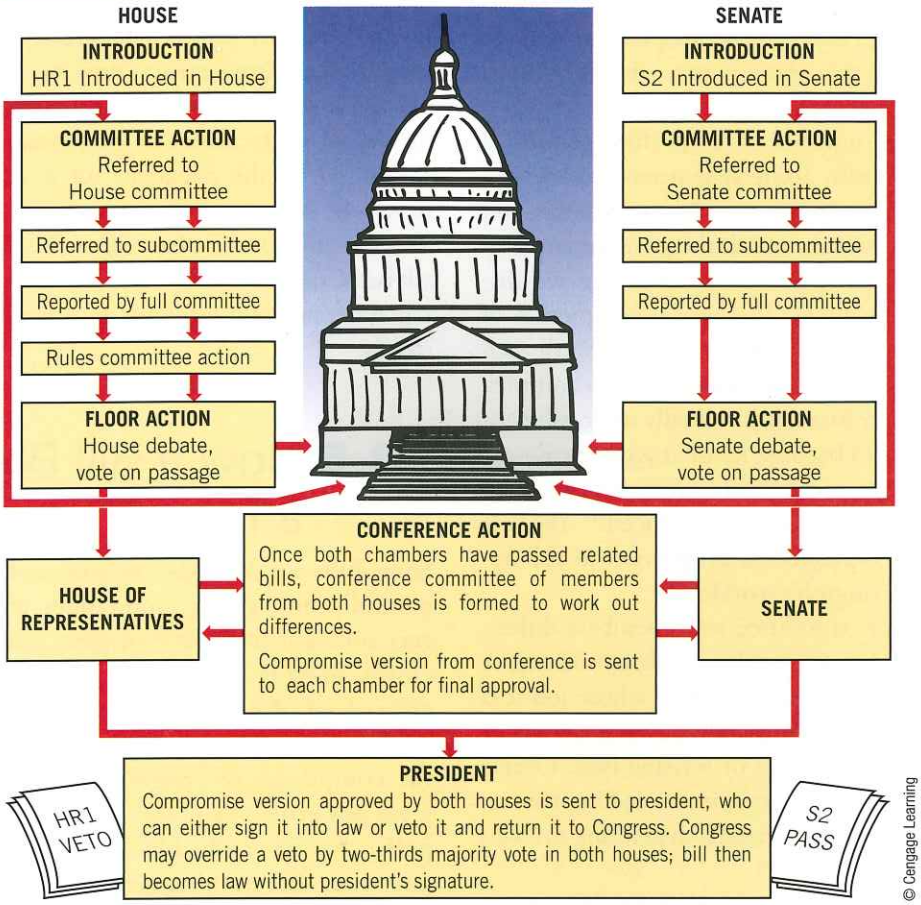
Some bills zip through Congress; others make their way painfully and slowly, sometimes emerging in a form very different from their original one. Congress is like a crowd, moving either sluggishly or, when excited, with great speed. While reading the following account of how a bill becomes law (see Figure 13.4), keep in mind that the complexity of congressional procedures ordinarily gives powerful advantages to the opponents of any new policy. Action can be blocked at many points. This does not mean that nothing gets done, but that to get something done, a member of Congress must *either* slowly and painstakingly assemble a majority coalition or take advantage of enthusiasm for some new cause that sweeps away the normal obstacles to change.

Introducing a Bill

Any member of Congress may introduce a bill—in the House by handing it to a clerk or dropping it in a box; in the Senate by being recognized by the presiding officer and announcing the bill's introduction. Bills are then numbered and printed. If a bill is not passed within one session of Congress, it is dead and must be reintroduced during the next Congress.

We often hear that legislation is initiated by the president and enacted by Congress. The reality is more complicated. Congress often initiates legislation (e.g., most consumer and environmental laws passed since 1966 originated in Congress), and even laws recommended by the president often have been incubated in Congress. Even as the principal author of a bill, a prudent president will submit only after careful consultation with key congressional leaders. In any case, the president cannot introduce legislation; only a member of Congress may do so.

FIGURE 13.4 How a Bill Becomes a Law



simple resolution *An expression of opinion either in the House or Senate to settle procedural matters in either body.*

concurrent resolution *An expression of opinion without the force of law that requires the approval of both the House and the Senate, but not the president.*

joint resolution *A formal expression of congressional opinion that must be approved by both houses of Congress and by the president; constitutional amendments need not be signed by the president.*

In addition to bills, Congress can also pass resolutions. Either house can use a **simple resolution** for such matters as establishing operating rules. A **concurrent resolution** is used to settle housekeeping and procedural matters that affect both houses. Simple and concurrent resolutions are not signed by the president and do not have the force of law. A **joint resolution** requires approval by both houses and a presidential signature; it is essentially the same as a law. A joint resolution is also used to propose a constitutional amendment, in which case it must be approved by a two-thirds vote in each house, but does not require the signature of the president.

Study by Committees

A bill is referred to a committee for consideration by either the Speaker of the House or the Senate's presiding officer. If a chairperson or committee is known to be hostile to a bill, assignment can be a crucial matter. Rules govern which committee will get which bill, but sometimes a choice is possible. In the House, the Speaker's right to make such a choice (subject to appeal to the full House) is an important source of his or her power.

The Constitution requires that "all bills for raising revenue shall originate in the House of Representatives." The Senate can and does amend such bills, but only after the House has acted first. Bills that are not for raising revenue—that is, that do not alter tax laws—can originate in either chamber. In practice, the House also originates *appropriations bills* (bills that direct the spending of money). Because of the House's special position on revenue legislation, the committee that handles tax bills—the Ways and Means Committee—is particularly powerful.

Most bills die in committee. They are often introduced only to get publicity for various members of Congress or to enable them to say to a constituent or pressure

group that they "did something" on some matter. Bills of general interest—many of them drafted in the executive branch though introduced by members of Congress—are assigned to a subcommittee for a hearing where witnesses appear, evidence is taken, and questions are asked. These hearings are used to inform members of Congress, to permit interest groups to speak out (whether or not they have anything helpful to say), and to build public support for a measure favored by the majority on the committee.

Though committee hearings are necessary and valuable, they also fragment the process of considering bills dealing with complex matters. Both power and information are dispersed in Congress, and thus it is difficult to take a comprehensive view of matters cutting across committee boundaries. This has made it harder to pass complex legislation. For example, President George W. Bush's proposals to expand government support for religious groups that supply social services were dissected into small sections for the consideration of the various committees that had jurisdiction; after three years, no laws emerged. But strong White House leadership and supportive public opinion can push through controversial measures without great delay, as in the cases of Bush's tax cuts in 2001 and homeland security plans in 2002.

After the hearings, the committee or subcommittee makes revisions and additions (sometimes extensive) to the bill, but these changes do not become part of the bill unless they are approved by the entire house. If a majority of the committee votes to report a bill favorably to the House or Senate, it goes forward, accompanied by an explanation of why the committee favors it and why it wishes to see its amendments, if any, added; committee members who oppose the bill may include their dissenting opinions.

If the committee does not report the bill out to the House favorably, that ordinarily kills it, though there are complex procedures whereby the full House can get a bill that is stalled in committee out and onto the floor. The process involves getting a majority of all House members to sign a **discharge petition**. If 218 members sign, then the petition can be voted on; if it passes, then the stalled bill goes directly to the floor for a vote. These procedures are rarely attempted and even more rarely succeed—one study suggests that only about 2 percent of bills where a discharge petition is filed eventually become law.[48] That said, discharge petitions have been used on several important pieces of legislation that became law, such as the Bipartisan Campaign Reform Act of 2002, and the 2015 Reauthorization of the Export-Import Bank of the United States. Further, even a threat of a discharge petition can bring legislation to the floor, as in the case of the 1964 Civil Rights Act.

For a bill to come before either house, it must first be placed on a calendar. There are five of these in the House and two in the Senate. Though the bill goes onto a calendar, it is not necessarily considered in chronological order or even considered at all. In the House, the powerful Rules Committee—an arm of the party leadership, especially of the speaker—reviews most bills and sets the rule, that is, the procedures, under which they will be considered by the House. A **restrictive** or **closed rule** sets strict limits on debate and confines amendments to those proposed by the committee; an **open rule** permits amendments from the floor. The Rules Committee is no longer as mighty as it once was, but it can still block any House consideration of a measure and can bargain with the legislative committee by offering a helpful rule in exchange for alterations in the substance of a bill. In the 1980s, closed rules became more common.

discharge petition *A device by which any member of the House, after a committee has had the bill for 30 days, may petition to have it brought to the floor.*

restrictive rule *An order from the House Rules Committee that permits certain kinds of amendments but not others to be made to a bill on the floor.*

closed rule *An order from the House Rules Committee that sets a time limit on debate; forbids a bill from being amended on the floor.*

open rule *An order from the House Rules Committee that permits a bill to be amended on the floor.*

The House needs the Rules Committee to serve as a traffic cop; without some limitations on debate and amendment, nothing would ever get done. The House can bypass the Rules Committee in a number of ways, but it rarely does so unless the committee departs too far from the sentiments of the House.

No such barriers to floor consideration exist in the Senate, where bills may be considered in any order at any time whenever a majority of the Senate chooses. In practice, bills are scheduled by the majority leader in consultation with the minority leader.

Floor Debate

Once on the floor, the bills are debated. In the House all revenue and most other bills are discussed by the *Committee of the Whole*—that is, whoever happens to be on the floor at the time, so long as at least 100 members are present. The Committee of the Whole can debate, amend, and generally decide the final shape of a bill but technically cannot pass it—that must be done by

quorum *The minimum number of members who must be present for business to be conducted in Congress.*

riders *Amendments on matters unrelated to a bill that are added to an important bill so that they will "ride" to passage through the Congress. When a bill has many riders, it is called a Christmas-tree bill.*

cloture rule *A rule used by the Senate to end or limit debate.*

double tracking *A procedure to keep the Senate going during a filibuster in which the disputed bill is shelved temporarily so that the Senate can get on with other business.*

voice vote *A congressional voting procedure in which members shout "yea" in approval or "nay" in disapproval, permitting members to vote quickly or anonymously on bills.*

division vote *A congressional voting procedure in which members stand and are counted.*

roll-call vote *A congressional voting procedure that consists of members answering "yea" or "nay" to their names.*

the House itself, for which the **quorum** is half the membership (218 representatives). The sponsoring committee guides the discussion, and normally its version of the bill is the version that the full House passes.

Procedures are a good deal more casual in the Senate. Measures that have already passed the House can be placed on the Senate calendar without a committee hearing. There is no Committee of the Whole and no rule (as in the House) limiting debate, so filibusters (lengthy speeches given to prevent votes from being taken) and irrelevant amendments, called **riders**, are possible. Filibusters can be broken if three-fifths of all senators resolve to invoke the **cloture rule**.

The sharp increase in Senate filibusters has been made easier by a new process called **double tracking**. When a senator filibusters against a bill, it is temporarily put aside so the Senate can move on to other business. Because of double tracking, senators no longer have to speak around the clock to block a bill. Once they talk long enough, the bill is shelved. Indeed, some have argued that this practice is a key reason that filibusters have increased dramatically since the middle of the 20th century: if senators have to speak around the clock, filibustering is extremely costly and will be rare. If it requires much less effort, it will become more common.[49]

We can see the rise in filibustering by looking at the number of cloture votes cast in Congress: in the middle of the 20th century, only a handful occurred in each Congress, typically no more than three or four. Starting in the 1970s, it begins to increase rapidly, and in recent Congresses there have often been over a hundred; the record was 218 such votes in the 113th Congress (2013–2015).[50] Indeed, because of the threat of a filibuster, for all practical purposes, nearly all legislation in the Senate now requires 60 votes to pass.

The Senate has made an effort to end filibusters aimed at blocking the nomination of federal judges. In 2005, seven Democrats and seven Republicans agreed not to filibuster a nomination except in "exceptional circumstances." A few nominees whose appointments had been blocked managed to get confirmed by this arrangement. While this truce held for several years, it did not last forever. In 2013, Democrats under Majority Leader Harry Reid used a parliamentary tactic to block filibusters of nominations, except for the Supreme Court and certain other offices. Even this compromise failed in 2017, when Republicans eliminated the filibuster for Supreme Court nominees to allow for a confirmation vote on Neil Gorsuch. While the filibuster is gone for nominations, it still exists on legislation, at least for now.[51]

One rule was once common to both houses: courtesy, often of the most exquisite nature, was required. Members always referred to each other as "distinguished" even if they were mortal political enemies. Personal or ad hominem criticism was frowned upon, but of late it has become more common. In recent years, members of Congress—especially of the House—have become more personal in their criticisms of one another, and human relationships have deteriorated.

Methods of Voting

There are several methods of voting in Congress, which can be applied to amendments to a bill as well as to the question of final passage. Some observers of Congress make the mistake of deciding who was for and who against a bill based on the final vote. This can be misleading. Often, a member of Congress will vote for final passage of a bill after having supported amendments that, if they had passed, would have made the bill totally different. To keep track of someone's voting record, therefore, it is often more important to know how that person voted on key amendments than how he or she voted on the bill itself.

Finding that out is not always easy, though it has become simpler in recent years. The House has three procedures for voting. A **voice vote** consists of the members shouting "yea" or "nay"; a **division vote** (or standing vote) involves the members standing and being counted. In neither case are the names recorded of who voted which way. This is done only with a **roll-call vote**. Since 1973, an electronic voting system has been in use that greatly speeds up roll-call votes, and the number of recorded votes has thus increased sharply. To ensure a roll-call vote, one-fifth

of House members present must request it. Voting in the Senate is simpler; it votes by voice or by roll call; they do not use a **teller vote** or electronic counters.

If a bill passes the House and Senate in different forms, the differences must be reconciled if the bill is to become law. If they are minor, the last house to act may simply refer the bill back to the other house, which then accepts the alterations. Major differences must be ironed out in a conference committee, though only a minority of bills requires a conference. Each house must vote to form such a committee. The members are picked by the chairs of the standing committees that have been handling the legislation; the minority as well as the majority party is represented. No decision can be made unless approved by a majority of *each* delegation. Bargaining is long and hard; in the past it was also secret, but some sessions are now public. Often—as with Carter's energy bill—the legislation is substantially rewritten in conference. Theoretically nothing already agreed upon by both the House and Senate is to be changed, but in the inevitable give-and-take, even those matters already approved may be modified.

Conference reports on spending bills usually split the difference between the House and Senate versions. Overall, the Senate tends to do slightly better than the House.[52] But whoever wins, conferees report their agreement back to their respective houses, which usually consider the report immediately. The report can be accepted or rejected; it cannot be amended. In the great majority of cases, it is accepted—the alternative is to have no bill at all, at least for that Congress.

The bill, now in final form, goes to the president for signature or **veto**. A vetoed bill returns to the house of origin, where an effort can be made to override the veto. Two-thirds of those present (provided there is a quorum) must vote, by roll call, to override. If both houses override, the bill becomes law without the president's approval.

MediaPunch Inc/Alamy Stock Photo

IMAGE 13-10 President Trump signs a measure into law in March 2017. The law overturned regulations passed by the Obama administration.

Legislative Productivity

In recent years, political scientists have studied how productive Congress has been and whether the post-9/11 Congress has performed especially well or especially poorly. The first issue concerns how best to measure the body's major and minor "legislative productivity." It is clear that Congress passed and funded an enormous number of bills in response to the Great Depression in the 1930s and in the mid-1960s, mainly in conjunction with that era's "war on poverty." And most scholars agree that in recent decades the body's legislative output has often slowed or declined.[53] Indeed, the 112th (2011–2013) and 113th (2013–2015) passed the fewest bills of any Congress in the post–World War II era, making them the least productive Congresses of that period.[54] While productivity increased slightly in the 114th Congress, it still remained below historical levels.

teller vote *A congressional voting procedure in which members pass between two tellers, the "yeas" first and the "nays" second.*

veto *Literally, "I forbid"; it refers to the power of a president to disapprove a bill, and may be overridden by a two-thirds vote of each house of Congress.*

divided government *One party controls the White House and another party controls one or both houses of Congress.*

unified government *The same party controls the White House and both houses of Congress.*

Some argue that **divided government** (one party in control of the presidency and the other in charge of one or both chambers of Congress) decreases legislative productivity. Although there are some exceptions, most studies of the subject suggest that divided party government reduces the passage of only the most far-reaching and costly legislation.[55] As we discuss in Chapter 14, divided party government does not lead inevitably to "policy gridlock" any more than having **unified government** (a single party in power in the White House and in both chambers of Congress) makes enacting ever more sweeping laws easy or inevitable.

Second, there is the issue of whether Congress, by cutting its staff, has hampered its ability to legislate and to oversee various agencies (indeed, this may be one of many factors related to the decline in legislative productivity in recent years).[56] As we noted earlier in the chapter, Congress has dramatically cut back on its staff in recent years, yet the federal government has grown ever-more complex, with a nearly $4 trillion budget and hundreds of agencies. As a result, some say that Congress has become too reliant on special interests and bureaucrats, and needs

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

National Service: A Bridge to Entrepreneurial Politics?

As you are learning in this chapter, the process by which a bill becomes law can be quite complicated. Most bills, in fact, never do become law. And even bills that are broadly popular often go nowhere unless there is at least one wise, well-positioned, and energetic policy entrepreneur, whether inside or outside the government, to get the idea on the policy agenda, sustain interest in it, and navigate the legislative process.

John M. Bridgeland, known widely in Washington, DC, as "Bridge," has been the policy entrepreneur behind successive recent federal national service initiatives. Before serving in the early 2000s as a senior White House assistant, Bridgeland, a Harvard-educated, moderate Republican from Ohio with a law degree, had spent a half-decade as a top legislative aide on Capitol Hill.

Working both within the West Wing and inside the halls of Congress, in 2002, Bridge got President George W. Bush, congressional leaders in both parties, diverse business and nonprofit leaders, and others to support an effort to expand existing national service programs including AmeriCorps, Senior Corps, and Peace Corps; encourage each American to commit at least two years (4,000 hours) to volunteer service over his or her lifetime; and boost federal support for myriad other volunteer and community service projects. He created what became officially known as USA Freedom Corps and served as its founding director. Although he functioned as a classic policy entrepreneur, his case for the plan was steadfastly majoritarian in character: everybody contributes, everybody benefits.

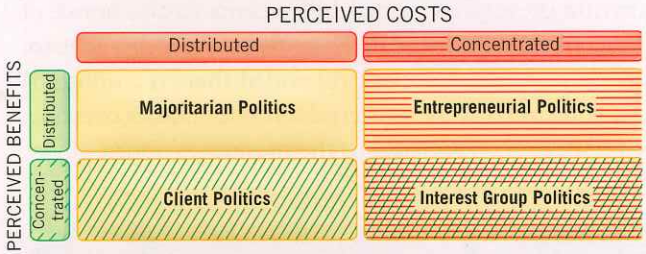
After leaving the White House, Bridgeland founded a policy research and development organization and continued to develop national service proposals. For instance, in 2008, he co-led the "Service Nation" summit that brought together then–presidential candidates Barack Obama and John McCain. In 2009, with the summit's network behind it, a broadly bipartisan coalition of more than 100 organizations supported the Edward M. Kennedy Serve America Act. The bill passed with 79 votes in the Senate, and was signed into law by President Obama in April 2009.

The 2009 law authorized, and in some cases revitalized, many of the USA Freedom Corps initiatives that Bridgeland had crafted in 2002; and, in 2013, he was still at it. Through

AP Photo/J. Scott Applewhite

IMAGE 13-11 John Bridgeland

the Aspen Institute's "Franklin Project," he led in developing a proposal for a million, full-time, year-round national service slots for the nation's 18- to 28-year-olds, including recently returned military veterans.



▶ **PRACTICE POLITICAL SCIENCE** Explain why multiple political ideologies have supported the case for the national service initiatives advocated by John M. Bridgeland.

Source: John M. Bridgeland, *Heart of the Nation: Volunteering and America's Civic Spirit*. Lanham, MD: Rowman and Littlefield, 2013.

to strengthen itself to re-assert its power.[57] While scholars and activists have floated various reform proposals along these lines, they have not been enacted into law.

Finally, there is how the post-9/11 Congress has legislated on matters directly relevant to homeland security, especially its own. The Framers crafted Congress as an institution that favors deliberation over dispatch; to act boldly only when backed by a persistent popular majority or a broad consensus among its leaders, or both; and to be slow to change its time-honored procedures and structures.

But intelligence officials believe that a fourth plane involved in the 9/11 terrorist attacks was headed for the

Capitol. In its June 2003 report, the bipartisan Continuity of Government Commission concluded that "the greatest hole in our constitutional system is the possibility of a terrorist attack that would kill or injure many members of Congress."[58]

This "hole" is relatively small with respect to the Senate. The Seventeenth Amendment allows the emergency replacement of senators by the governors of their states provided the state legislature allows it; otherwise, the governors must call for new elections. But the problem is greater for the House, where vacancies can be filled only by special elections, a process that can take many months.

Congress has enacted some, but by no means all, of the 9/11 Commission's recommendations.[59] But, as of 2017, more than a decade and a half after the 9/11 attacks on the United States, it had failed to enact comprehensive legislation or proposals for constitutional amendments to ensure that "the first branch" can continue to function should a terrorist attack kill or incapacitate many or most of its members.

13-6 Reforming Congress

While most citizens are only vaguely familiar with the rules and procedures under which Congress operates, they do care whether Congress as an institution serves the public interest and fulfills its mission as a democratic body. Over the past several decades, many proposals have been made to reform and improve Congress—term limitations, new ethics and campaign finance laws, and organizational changes intended to reduce the power and perks of members while making it easier for Congress to pass needed legislation in a timely fashion (the proposal to rehire more Congressional staff discussed above would be another such proposal). Some of these proposals—for example, campaign finance reforms (see Chapter 10)—have recently become law, though most remain just proposals.

Many would-be reformers share the view that Congress is self-indulgent. It is, they complain, quick to impose new laws on states, cities, businesses, and average citizens but slow to apply those same laws to itself and its members. It is quick to pass **pork-barrel legislation**—bills that give tangible benefits (highways, dams, post offices) to constituents in the hope of winning their votes in return—but slow to tackle complex and controversial questions of national policy. The reformers' image of Congress is unflattering, but is it wholly unwarranted?

No perk is more treasured by members of Congress than the frank. Members of Congress are allowed by law to send material through the mail free of charge by substituting their facsimile signature (*frank*) for postage. But rather than using this **franking privilege** to keep their constituents informed about the government, most members use franked newsletters and questionnaires as campaign literature. That is why use of the frank soars in the months before an election. Thus, the frank amounts to a taxpayer subsidy of members' campaigns, a perk that bolsters the electoral fortunes of incumbents. While Congress has not removed the frank altogether, it has put limits on franking in recent years that have dramatically reduced the cost and extent of such mailings over time.[60]

pork-barrel legislation *Legislation that gives tangible benefits to constituents in several districts or states in the hope of winning their votes in return.*

franking privilege *The ability of members to mail letters to their constituents free of charge by substituting their facsimile signature for postage.*

For years, Congress routinely exempted itself from many of the laws it passed. In defense of this practice, members said that if members of Congress were subject to, for example, the minimum-wage laws, the executive branch, charged with enforcing these laws, would acquire excessive power over Congress. This would violate the separation of powers. But as public criticism of Congress grew and confidence in government declined, more and more people demanded that Congress subject itself to the laws that applied to everybody else. In 1995, the 104th Congress did this by passing a bill that obliges Congress to obey 11 important laws governing things such as civil rights, occupational safety, fair labor standards, and family leave.

The bipartisan Congressional Accountability Act of 1995 had to solve a key problem: under the constitutional doctrine of separated powers, it would have been unwise and perhaps unconstitutional for the executive branch to enforce congressional compliance with executive-branch regulations. So Congress created the independent Office of Compliance and an employee grievance procedure to deal with implementation. Now Congress, too, must obey laws such as the Civil Rights Act, the Equal Pay Act, the Age Discrimination Act, and the Family and Medical Care Leave Act. Further, in response to concerns about ethical lapses around campaign finance, Congress has also subjected itself to various ethics laws (see the discussion in Chapter 10).

As already mentioned, bills containing money for local dams, bridges, roads, and monuments are referred to disparagingly as pork-barrel legislation. Reformers complain that when members act to "bring home the bacon," Congress misallocates tax dollars by supporting projects

with trivial social benefits in order to bolster their reelection prospects.

No one can doubt the value of trimming unnecessary spending, but pork is not necessarily the villain it is made out to be. For example, the main cause of the budget deficit was the increase in spending on entitlement programs (such as health care programs like Medicaid or Medicare) without a corresponding increase in taxes. Spending on pork is a small fraction of total annual federal spending (about 2.5 percent, on average, from 1993 to 2005).[61] By 2015, what most observers would count as pork spending was below 1 percent of total federal spending. Of course, one person's pork is another person's necessity. No doubt some congressional districts get an unnecessary bridge or highway, but others get bridges and highways that are long overdue. The notion that every bridge or road a member of Congress gets for his or her district is wasteful pork is tantamount to saying that no member attaches any importance to merit.

Even if all pork were bad, it would still be necessary. Congress is an independent branch of government, and each member is, by constitutional design, the advocate of his or her district or state. No member's vote can be won by coercion, and few can be had by mere appeals to party loyalty or presidential needs. Pork is a way of obtaining consent. The only alternative is bribery, but bribery, besides being wrong, would benefit only the member, whereas pork usually benefits voters in the member's district. If you want to eliminate pork, you must eliminate Congress, by converting it into a parliament under the control of a powerful party leader or prime minister. In a tightly controlled parliament, no votes need be bought; they can be commanded. But members of such a parliament can do little to help their constituents cope with government or to defend them against bureaucratic abuses, nor can they investigate the conduct of the executive branch. The price of a citizen-oriented Congress is a pork-oriented Congress.

HOW THINGS WORK

How Congress Raises Its Pay

For more than 200 years, Congress has tried to find a politically painless way to raise its own pay. It has managed to vote itself a pay increase 23 times in those two centuries, but usually at the price of a hostile public reaction. Twice during the 19th century, a pay raise led to a massacre of incumbents in the next election.

Knowing this, Congress has invented various ways to get a raise without actually appearing to vote for it. For example, members have voted for a tax deduction for expenses incurred as a result of living in Washington, or linking increases in pay to decreases in speaking fees and other honoraria. Another proposal would have created a citizens' commission that could recommend a pay increase that would take effect automatically, provided Congress did not vote against it.

In 1989, a commission recommended a congressional pay raise of over 50 percent (from $89,500 to $135,000) and a ban on honoraria. The House planned to let it take effect automatically. But the public wouldn't have it, demanding that Congress vote on the raise—and vote it down. It did.

Embarrassed by its maneuvering, Congress retreated. At the end of 1989, it voted itself (as well as most top executive and judicial branch members) a small pay increase (7.9 percent for representatives, 9.9 percent for senators) that also provided for automatic cost-of-living adjustments (up to 5 percent a year) in the future. Congress, however, has often rejected those automatic increases, typically because of fear of citizen reprisal. Congress last raised its pay in 2009, when it went from $169,300 to $174,000, where it stands today. The Twenty-Seventh Amendment—first proposed by James Madison in 1789 but not finally ratified by the necessary three-fourths of states until 1992—ensures that any pay change for members of Congress not take effect until the start of the following congressional term. The amendment had languished in obscurity for nearly two centuries, and might have remained there indefinitely, had it not been rediscovered by undergraduate Gregory Watson in 1982 while researching a class term paper. Watson began a campaign to ratify the amendment, and a decade later, it became the most recent amendment to the constitution.[62]

WHAT WOULD YOU DO?

Will You Support an Increase in Size of the House of Representatives?

To: *U.S. Representative Hope Shelly*
From: *Jacki Julie, legislative aide*
Subject: *The size of the House of Representatives*

The House can decide how big it wishes to be. When it was created, there was one representative for every 30,000 people; now each House member typically represents almost 700,000 people. In most other democracies, each member of parliament represents far fewer people. Doubling the size of the House may be a way of avoiding term limits.

To Consider:

A powerful citizens' organization has demanded that the House of Representatives be made larger so that voters can feel closer to their members. Each representative now speaks for more than 700,000 Americans—far too many, the group argues, to make it possible for all points of view to be heard.

Arguments for:

1. Doubling the size of the House would reduce the huge demand for constituent services each member now faces.
2. A bigger House would represent more shades of opinion more fairly.
3. Each member could raise less campaign money because his or her campaign would be smaller.

Arguments against:

1. A bigger House would be twice as hard to manage, and it would take even longer to pass legislation.
2. Campaigns in districts of 350,000 people would cost as much as ones in districts with 700,000 people.
3. Interest groups do a better job of representing public opinion than would a House with more members.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ Increase size of House ☐ Do not increase size of House

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

LEARNING OBJECTIVES

13-1 Contrast congressional and parliamentary systems.

A congress differs from a parliament in two basic ways: how one becomes a member and what one does as a member. To run for a seat in a parliament like the United Kingdom's, you first need a political party to put your name on a ballot, but to become a candidate for representative or senator in Congress, you first need to enter a primary election (political parties exercise relatively little control over who runs). In a parliament, the head of the executive branch (the prime minister) is selected by the majority party from among its members, and once in office a member of parliament has only one important decision to make—whether or not to support the government. By contrast, the voters, not the Congress, pick the president, and once elected, a member of Congress has powers that he or she can exercise without regard to presidential preferences.

13-2 Trace the evolution of Congress in American politics.

The Framers of the Constitution created a bicameral legislature—the House and Senate—to ensure that power would be shared in the national government. Because of its larger size, the House has always been more centralized than the Senate, but since the 1950s, more power has devolved to individual members. The most significant change in the evolution of the Senate has been the change, with the Seventeenth Amendment in 1913, in election from state legislatures to voters. The rise of the filibuster, the tradition of unlimited debate in the Senate, also is an important development in the institution.

13-3 Discuss who serves in Congress and what influences their votes.

Demographically, members of Congress share few similarities with the American public. Most Americans, unlike most members of Congress, are not middle-aged white men with law degrees or past political careers. Some groups (e.g., women, African Americans, and Latinos) are much less prevalent in Congress than they are in the nation as a whole, whereas other groups (e.g., Catholics) constitute about the same fraction of Congress as they do of the American people. Ideologically, Republican members of Congress are more conservative than average Americans, and Democratic members of Congress are more liberal than average Americans. But many factors influence how legislators vote, including their constituents' interests, political party priorities, and their own political beliefs.

13-4 Summarize the organization of Congress.

Congress comprises numerous committees in each chamber, including standing committees, select committees, joint committees, and conference committees. Members of Congress also have their own staffs, as do congressional committees. Congress also has specialized agencies, such as the Congressional Budget Office and the Government Accountability Office, to assist in its operations.

13-5 Explain how a bill becomes a law.

A bill must undergo a lengthy policymaking process and overcome many hurdles to become a law. Briefly, a bill must be introduced in the House or Senate (all revenue-raising bills must originate in the House), be approved by each chamber—usually after undergoing extensive committee and subcommittee review—be reviewed by a conference committee and then approved again by both chambers, and then signed by the president. If a bill is not passed in a congressional session (which lasts for two years), then it must be reintroduced in the next Congress and go through the entire process again.

13-6 Discuss possibilities for congressional reform.

The Framers of the Constitution knew that Congress would normally proceed slowly and err in favor of deliberative, not decisive, action. Congress was intended to check and balance strong leaders in the executive branch, not automatically cede its authority to them, not even during a war or other national crisis. Today, the increased ideological and partisan polarization among members has arguably made Congress even less capable than it traditionally has been of planning ahead or swiftly

CHAPTER 14

The Presidency

KEY OBJECTIVES OF THIS CHAPTER

- *Presidential powers and functions promote a policy agenda.*
- *Presidents have interpreted and justified their use of formal and informal powers differently over time.*
- *The Electoral College can both facilitate and impede democracy.*

KEY TAKEAWAYS FROM THIS CHAPTER

- Justifications for a single executive are set forth in *Federalist No. 70*.
- Constitutional-power and term-of-office restrictions, including the passage of the Twenty-Second Amendment, demonstrate changing presidential roles.
- Presidents use powers and functions of the office to accomplish a policy agenda.

THEN When the Framers wrote the Constitution in the summer of 1787, they did not have a ready consensus on how to select the chief executive or define the powers of the office. James Wilson of Pennsylvania wanted the president to be elected by the people, Roger Sherman of Connecticut wanted him elected by Congress. Wilson's view got almost no support because the size of the United States (in 1787 it was as large as England, Ireland, France, Germany, and Italy combined) made it unlikely that anybody save George Washington could obtain a popular majority. Sherman's view got a lot of support, but many delegates worried that the president would become nothing more than a tool of Congress.

The Committee on Postponed Matters, a small subset of the group, suggested creating an electoral college to choose the president. The Framers approved the plan, but as they thought candidates would have difficulty winning a majority in the electoral college, they expected that the U.S. House of Representatives ultimately would decide most elections.

NOW More than 200 years later, the electoral college endures, and the House has not chosen a president since 1824. The stability of this institution is surprising, given that the Framers settled on it as a last-minute compromise, and because twice in the 21st century, 2000 and 2016, the presidential candidate who won the election lost the popular vote (until 2000, this had not happened since 1888). Nevertheless, the electoral college is the only part of the presidential campaign process that the Framers would recognize in the 21st century.

The lengthy road to the nomination, the extensive fundraising required (the two major-party candidates, their political parties, and super PACs raised approximately $2.5 billion for the 2016 presidential race),[1] and 24-hour media coverage are all standard features of modern presidential selection. Furthermore, the weighty demands of winning the White House affect how the victorious candidate governs as president.

As you read this chapter, think about which features of the American presidency make sense today and which might merit change, keeping in mind that the Framers were not necessarily wedded to all aspects of the institution they created, nor could they have anticipated how technology and other factors would change it.

Professor Jones speaks to his political science class:

> The president of the United States occupies one of the most powerful offices in the world. Presidents Kennedy and Johnson sent American troops to Vietnam, President George H. W. Bush sent them to Saudi Arabia, and President Clinton sent them to Kosovo, all without war being declared by Congress. In fact, Clinton continued the air attacks in Kosovo even after the House of Representatives rejected, in a mostly party-line vote, a resolution to authorize the bombing.
>
> President Nixon imposed wage and price controls on the country. Presidents Clinton, George W. Bush, and Obama selected most of the federal judges now on the bench, thus shaping the courts with their political philosophies. President Bush created military tribunals to try captured terrorists and persuaded Congress to toughen counterterrorism laws. President Obama, within just months of taking office, got Congress to go along with his plans for giving the executive branch new and sweeping powers to regulate financial markets. In his first months in office, President Trump issued numerous executive orders, including a highly controversial ban on immigration from some countries. No wonder people talk about our having an "imperial presidency."

A few doors down the hall, Professor Smith speaks to her class:

> The president, compared with the prime ministers of other democratic nations, is one of the weakest chief executives anywhere. President Carter signed an arms-limitation treaty with the Soviets, but the Senate wouldn't ratify it. President Reagan was not allowed even to test antisatellite weapons, and in 1986 Congress rejected his budget before the ink was dry. President Clinton's health care plan was ignored, and the House voted to impeach him. The federal courts struck down several parts of President George W. Bush's counterterrorism policies.
>
> Even with his party in control of both chambers of Congress, President Obama's first budget proposals were nixed on Capitol Hill, and his first health care reform plan was quickly recast by congressional committee chairpersons. President Trump has made several decisions via executive order, but has had more difficulty enacting legislation with Congress. Subordinates who are supposed to be loyal to the president regularly leak White House views to the press and undercut programs before Congress. No wonder people call the U.S. president a "pitiful, helpless giant."

Can Professors Jones and Smith be talking about the same office? Who is correct? In fact, they both are. The American presidency is a unique office, with elements of great strength and profound weakness built into it by its constitutional origins.

14-1 Presidents and Prime Ministers

The popularly elected president is an American invention. Of the roughly five dozen countries in which there is some degree of party competition and thus, presumably, some measure of free choice for the voters, only 16 have a directly elected president, and 13 of these are nations of North and South America. The democratic alternative is for the chief executive to be a prime minister, chosen by and responsible to the parliament. This system prevails in most Western European countries as well as in Israel and Japan. No nation in Europe has a purely presidential political system; France, for example, combines a directly elected president with a prime minister and parliament.[2]

In a parliamentary system, the prime minister is the chief executive. The prime minister is chosen not by the voters but by the legislature, and the prime minister in turn selects ministers for national departments from members of parliament. If the parliament has only two major parties, the ministers usually will be chosen from the majority party; if there are many parties (as in Israel), several parties may participate in a coalition cabinet.

Prime ministers remain in power as long as their party has a majority of seats in the legislature or as long as the coalition they have assembled holds together. The voters choose who is to be a member of parliament—usually by voting for one or another party—but cannot choose who is to be the chief executive officer. Whether a nation has a presidential or a parliamentary system makes a big difference in the identity and powers of the chief executive.

U.S. Presidents Are Often Outsiders

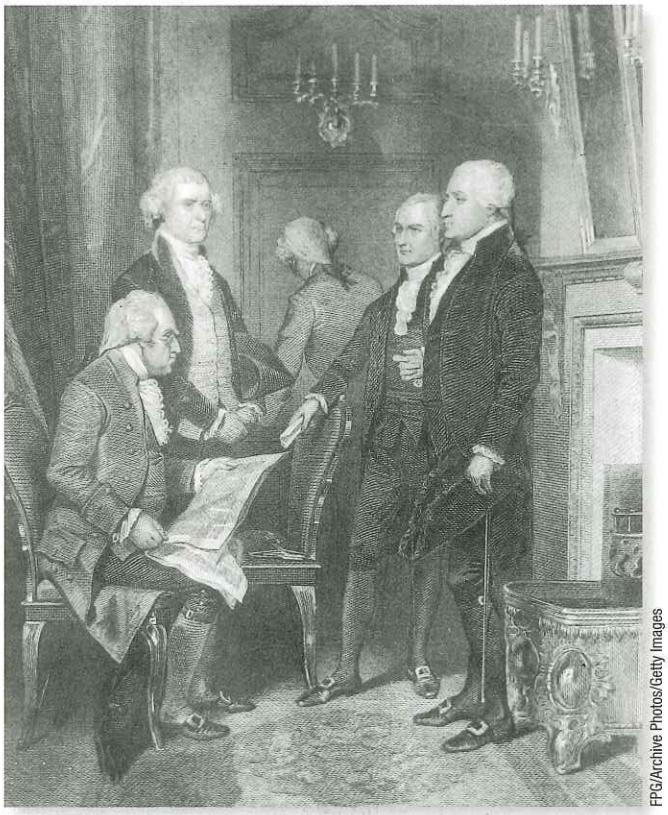
People become president by winning elections, and sometimes winning is easier if you can show the voters that you are not part of "the mess in Washington." Prime ministers are selected from among people already in parliament, and so they are always insiders.

Jimmy Carter, Ronald Reagan, Bill Clinton, George W. Bush, and Donald Trump did not hold national office before becoming president. Franklin D. Roosevelt had been assistant secretary of the navy, but his real political experience was as governor of New York. Dwight Eisenhower was a general, not a politician. John F. Kennedy, Lyndon Johnson, Richard Nixon, Gerald Ford, George H. W. Bush, and Barack Obama had served in Congress, and four of them served as vice president as well (Johnson, Nixon, Ford, and Bush).

In addition to his elected offices, George H. W. Bush had a great deal of executive experience in Washington—including U.S. representative to China, U.S. Permanent Representative to the United Nations, and director of the Central Intelligence Agency—whereas Bill Clinton and George W. Bush both served as governors. Barack Obama was the third president to be elected directly from the U.S. Senate to the White House; the other two were Warren G. Harding and John F. Kennedy. Donald Trump was elected to political office for the first time when he won the 2016 presidential race.

Presidents Choose Cabinet Members from Outside Congress

Under the Constitution, no sitting member of Congress can hold office in the executive branch. The persons chosen by a prime minister to be in the cabinet are almost always members of parliament.



FPG/Archive Photos/Getty Images

IMAGE 14-1 The first cabinet: left to right, Secretary of War Henry Knox, Secretary of State Thomas Jefferson, Attorney General Edmund Randolph, Secretary of the Treasury Alexander Hamilton, and President George Washington.

Of the 15 heads of cabinet-level departments in the first George W. Bush administration, only 4 had been members of Congress. The rest, as is customary with most presidents, were close personal friends or campaign aides, representatives of important constituencies (e.g., farmers, African Americans, or women), experts on various policy issues, or some combination of all three. The prime minister of the United Kingdom, by contrast, picks all cabinet ministers from members of Parliament. This is one way in which the prime minister exercises control over the legislature. If you are an ambitious member of Parliament, eager to become prime minister yourself someday, and if you know your main chance of realizing that ambition is to be appointed to a series of ever more important cabinet posts, then you likely will not antagonize the person doing the appointing.

Presidents Have No Guaranteed Majority in the Legislature

A prime minister's party (or coalition) always has a majority in parliament; if it did not, somebody else would be prime minister. A president's party often does not have a congressional majority; instead, Congress can be controlled by the opposite party, creating a divided government. Divided government means that cooperation between the two branches, hard to achieve under the best of circumstances, is often further reduced by partisan bickering. Even when one party controls both the White House and Congress, the two branches often work at cross-purposes. The U.S. Constitution created a system of separate branches sharing powers. The authors of the document expected there would be conflict between the branches, and they have not been disappointed.

When Kennedy was president, his party, the Democrats, held a large majority in the House and the Senate. Yet Kennedy was frustrated by his inability to get Congress to approve proposals to enlarge civil rights, supply federal aid for school construction, create a department of urban affairs and housing, or establish a program of subsidized medical care for older adults. Carter did not fare much better; even though the Democrats controlled Congress, many of his most important proposals were defeated or greatly modified. Only Franklin Roosevelt (1933–1945) and Lyndon Johnson (1963–1969) had even brief success in leading Congress, and for Roosevelt, most of that success was confined to his first term or to wartime.

These differences in political position are illustrated by how George W. Bush and Tony Blair managed the war in Iraq. Once Bush decided to fight, he had to cajole Congress, even though it was controlled by his own party, to support him. Once Blair decided to fight, there could not be any meaningful political resistance in Parliament. When public opinion turned against Bush, he continued the fight because he could not be removed from office. When public opinion turned against Blair, he announced he would resign from office and turn over the job of prime minister to another member of his party.

divided government *One political party controls the White House and another political party controls one or both chambers of Congress.*

unified government *The same political party controls the White House and both chambers of Congress.*

The guaranteed majority that prime ministers have in their legislature may exist for American presidents, but it has become much less common since the mid-20th century. From 1952 through 2016 there were 34 congressional elections and 17 presidential elections. Twenty of the 34 produced **divided government**—a government in which one party controls the White House and a different party controls one or both chambers of Congress. When Donald Trump became president in 2017, he was only the fifth president in almost 50 years to have party control of both chambers of Congress, creating a **unified government**.

Before the Trump presidency, the 2001 inauguration of President George W. Bush marked the first time since 1953 that the Republicans were fully in charge of both branches of government (they controlled the White House and the Senate from 1981 to 1987). But not long after the Senate convened, one Republican, James Jeffords of Vermont, announced that he was an independent and voted with the Democrats. Divided government returned until an additional Republican was elected to the Senate in 2002. But the Democrats retook control in 2007 and increased their majorities in both chambers two years later, even gaining the 60 votes necessary to halt filibusters in the Senate following a contested Minnesota race that ended with Democrat Al Franken being declared the winner and seated.

The Democrats lost their filibuster-proof majority in 2010, when Republican Scott Brown won a surprise victory to fill the seat of recently deceased Senator Ted Kennedy of Massachusetts. And President Obama faced a partially divided government after two years in office, with a Republican-led House and a narrowly Democratic Senate, a division of power that continued even after Obama won reelection in 2012. In 2014, Republicans increased their majority in the House and won control of the Senate as well, resulting in a fully divided government for the last two years of the Obama presidency.

gridlock *The inability of the government to act because rival parties control different parts of the government.*

Americans say they don't like divided government. They, or at least the pundits who claim to speak for them, think divided government produces partisan bickering, political paralysis, and policy gridlock. During the 1990 budget battle between President Bush and a Democratic Congress, one magazine compared it to a movie featuring the Keystone Kops, characters from silent movies who wildly chased each other around while accomplishing nothing.[3] In the 1992 campaign, Bush, Clinton, and Ross Perot bemoaned the "stalemate" that had developed in Washington. When Clinton was sworn in as president, many commentators spoke approvingly of the "end of gridlock."

There are two things wrong with these complaints. First, it is not clear that divided government produces a gridlock that is any worse than that which exists with unified government. Second, it is not clear that, even if **gridlock** does exist, it is always, or even usually, a bad thing for the country.

Does Gridlock Matter?

Despite the well-publicized stories about presidential budget proposals being ignored by Congress (Democrats used to describe Reagan's and Bush's budgets as being "dead on arrival"), it is not easy to tell whether divided governments produce fewer or worse policies than unified ones. The scholars who have looked closely at the matter have, in general, concluded that divided governments do about as well as unified ones in passing important laws, conducting important investigations, and ratifying significant treaties.[4] Political scientist David Mayhew studied 267 important laws that were enacted between 1946 and 1990. These laws were as likely to be passed when different parties controlled the White House and Congress as when the same party controlled both branches.[5] For example, divided governments produced the 1948 Marshall Plan to rebuild war-torn Europe and the 1986 Tax Reform Act. Table 14.1 lists six examples of divided government in action.

Why do divided governments produce about as much important legislation as unified ones? The main reason is that "unified government" is something of a myth. Just because the Republicans control both the presidency and Congress does not mean that the Republican president and the Republican senators and representatives will see things the same way. For one thing, Republicans themselves are divided between conservatives (mainly from the South) and more moderate members (largely from the Midwest and West). They disagree about policy almost as much as Republicans and Democrats disagree. For another thing, the Constitution ensures that the president and Congress will be rivals for power and thus rivals in policymaking. That's what the separation of powers and checks and balances are all about.

As a result, periods of unified government often turn out not to be so unified. Democratic president Lyndon Johnson could not get many Democratic members of Congress to support his war policy in Vietnam. Democratic president Jimmy Carter could not get the Democratic-controlled Senate to ratify his strategic arms-limitation treaty. Democratic president Bill Clinton could not get the Democratic Congress to go along with his policy on gays in the military or his health proposals; and when the heavily revised Clinton budget did pass in 1993, it was by just one vote.

The only time there really is a unified government is when not just the same party but the same *ideological wing* of that party is in effective control of both branches of government. This was true in 1933 when Franklin Roosevelt was president and change-oriented Democrats controlled Congress, and it was true again in 1965 when Lyndon Johnson and liberal Democrats dominated Congress. Both were periods when many major policy initiatives became law: Social Security, business regulations, Medicare, and civil rights legislation. But these periods of ideologically unified government are very rare.

TABLE 14.1 | Divided Government at Work: Six Examples

President George W. Bush and the partly Democrat-controlled Congress (Senate) passed legislation to institute assessment requirements in primary and secondary education.
President Bill Clinton and the Republican-controlled Congress overhauled the nation's welfare system and balanced the federal budget.
President George H. W. Bush and the Democrat-controlled Congress enacted historic legislation to aid disabled persons.
President Ronald Reagan and the partly Democrat-controlled Congress (House) reformed the federal tax system.
President Richard Nixon and the Democrat-controlled Congress created many new federal environmental policies and programs.
President Dwight D. Eisenhower and the Democrat-controlled Congress established the interstate highway system.

Source: Eisenhower to Clinton examples adapted from Associated Press, "Major Laws Passed in Divided Government," 9 November, 2006.

Is Policy Gridlock Bad?

An American president has less ability to decide what laws get passed than does a British prime minister. If you think the job of a president is to "lead the country," that weakness may worry you. The only cure for that weakness is either to change the Constitution so that our government resembles the parliamentary system in effect in the United Kingdom, or always to vote into office members of Congress who not only are of the same party as the president but also agree with him on policy issues.

We suspect that even Americans who dislike gridlock and want more leadership are not ready to make sweeping constitutional changes or to stop voting for presidents and members of Congress from different parties. This unwillingness suggests they like the idea of national political institutions being able to block a policy if it lacks strong public support. Since all of us don't like something, we all have an interest in some degree of gridlock.

And we seem to protect that interest. In a typical presidential election, about one-fourth of all voters will vote for one party's candidate for president and the other party's candidate for Congress. As a result, about one-fourth of all congressional districts will be represented in the House by a person who does not belong to the party of the president who carried that district. Some scholars believe that voters split tickets deliberately in order to create divided government and thus magnify the effects of the checks and balances built into our system, but the evidence supporting this belief is not conclusive.

Gridlock, to the extent that it exists, is a necessary consequence of a system of representative democracy. Such a system causes delays, intensifies deliberations, forces compromises, and requires the creation of broad-based coalitions to support most policies. This system is the opposite of direct democracy. If you believe in direct democracy, you believe that what the people want on some issue should become law with as little fuss and bother as possible.

Political gridlocks are like traffic gridlocks—people get overheated, things boil over, nothing moves, and nobody wins except journalists who write about the mess and lobbyists who charge big fees to steer their clients around the tie-up. In a direct democracy, the president would be a traffic cop with broad powers to decide in what direction the traffic should move and to make sure that it moves that way.

But if unified governments are not really unified—if in fact they are split by ideological differences within each party and by the institutional rivalries between the president and Congress—then this change is less important than it may seem. What *is* important is the relative power of the president and Congress. That has changed greatly.

14-2 The Powers of the President

Though presidents, unlike prime ministers, cannot command an automatic majority in the legislature, they do have some formidable, albeit vaguely defined, powers. The Framers of the Constitution designed the executive office with limited powers, but over time, the presidency has evolved to assume increasing political responsibilities and to face heightened public expectations, even as the institution's constitutional powers have remained largely the same.

Constitutional Powers

The president's official powers are mostly set forth in Article II of the Constitution and are of two sorts: those the president can exercise without formal legislative approval, and those that require the consent of the Senate or of Congress as a whole.

Powers of the President Alone

- Serve as commander-in-chief of the armed forces
- Commission officers of the armed forces
- Grant reprieves and pardons for federal offenses (except impeachment)
- Convene Congress in special sessions
- Receive ambassadors
- Take care that the laws be faithfully executed
- Wield the "executive power"
- Appoint officials to lesser offices

Powers the President Shares with the Senate

- Make treaties
- Appoint ambassadors, judges, and high officials

Powers the President Shares with Congress as a Whole

- Approve legislation

Taken alone and interpreted narrowly, this list of powers is not very impressive. Obviously, the president's authority as commander-in-chief is important, but literally construed, most of the other constitutional grants seem to provide for little more than a president who is chief clerk of the country. A hundred years after the Founding, that is about how matters appeared to even the most astute observers. In 1884, Woodrow Wilson wrote a book about American politics titled *Congressional Government*, in

which he described the business of the president as "usually not much above routine," mostly "*mere* administration." The president might as well be an officer of the civil service. Success required simply obeying Congress and staying alive.[6]

But even as Wilson wrote, he was overlooking some examples of enormously powerful presidents, such as Abraham Lincoln, and he was not sufficiently attentive to the potential for presidential power to be found in the more ambiguous clauses of the Constitution as well as in the political realities of American life. The president's authority as commander-in-chief has grown—especially, but not only, in wartime—to encompass not simply the direction of the military forces, but also the management of the economy and the direction of foreign affairs as well. A quietly dramatic reminder of the awesome implications of the president's military powers occurs at the precise instant that a new president assumes office. A military officer carrying a locked briefcase moves from the side of the outgoing president to the side of the new one. In the briefcase are the secret codes and orders that permit the president to authorize the launch of American nuclear weapons.

The president's duty to "take care that the laws be faithfully executed" has become one of the most elastic phrases in the Constitution. By interpreting this broadly, Grover Cleveland was able to use federal troops to break a labor strike in the 1890s, and Dwight Eisenhower was able to send troops to help integrate a public school in Little Rock, Arkansas, in 1957.

The greatest source of presidential power, however, is not found in the Constitution at all but in politics and public opinion. Increasingly since the 1930s, Congress has passed laws that confer on the executive branch broad grants of authority to achieve some general goals, leaving it up to the president and his deputies to define the regulations and programs that will actually be put into effect. In Chapter 15, we see how this delegation of legislative power to the president has contributed to the growth of the bureaucracy. Moreover, the American people—always in times of crisis, but increasingly as an everyday matter—look to presidents for leadership and hold them responsible for a large and growing portion of our national affairs. The public thinks, wrongly, of the presidency as the "first branch" of government.

The Evolution of the Presidency

Not surprisingly, given the preeminence of the presidency in American politics today, few issues inspired as much debate or concern among the Framers in 1787 as the problem of defining the chief executive. The delegates feared anarchy and monarchy in about equal measure. When the Constitutional Convention met, the existing state constitutions gave most, if not all, power to the legislatures. In 8 states, the governor actually was chosen by the legislature, and in 10 states, the governor could not serve more than one year. Only in New York, Massachusetts, and Connecticut did governors have much power or serve for any length of time.

BRENDAN SMIALOWSKI/AFP/Getty Images

IMAGE 14-2 A military aide to the president carries a leather briefcase containing the classified nuclear war plan, popularly known as the "football," to Marine One.

Some of the Framers proposed a plural national executive (i.e., several people would each hold the executive power in different areas, or they would exercise the power as a committee). Others wanted the executive power checked, as it was in Massachusetts, by a council that would have to approve many of the chief executive's actions. Alexander Hamilton strongly urged the exact opposite: in a five-hour speech, he called for something very much like an elective monarchy, patterned in some respects after the British kind. No one paid much attention to this plan or even, at first, to the more modest (and ultimately successful) suggestion of James Wilson for a single, elected president.

In time, those who won out believed that the governing of a large nation, especially one threatened by foreign enemies, required a single president with significant powers. Their cause was aided, no doubt, by the fact that everybody assumed George Washington would be the first president, and confidence in him—and in his sense of self-restraint—was widely shared. Even so, several delegates feared the presidency would become, in the words of Edmund Randolph of Virginia, "the foetus of monarchy."

Concerns of the Founders

The delegates in Philadelphia, and later the critics of the new Constitution during the debate over its ratification, worried about aspects of the presidency that were quite different from those that concern us today. In 1787–1789, some Americans suspected that the president, by being able to command the state militia, would use the militia to overpower state governments. Others were worried that if presidents were allowed to share treaty-making power with the Senate, they would be "directed by minions and favorites" and become a "tool of the Senate."

But the most frequent concern was over the possibility of presidential reelection: Americans in the late 18th century were sufficiently suspicious of human nature and sufficiently experienced in the arts of mischievous government to believe that a president, once elected, would arrange to stay in office in perpetuity by resorting to bribery, intrigue, and force. This might happen, for example, every time the presidential election was thrown into the House of Representatives because no candidate had received a majority of the votes in the electoral college, a situation that most people expected to happen frequently.

In retrospect, these concerns seem misplaced, even foolish. The power over the militia has had little significance, the election has gone to the House only twice (1800 and 1824), and though the Senate dominated the presidency off and on during the second half of the 19th century, it has not done so recently. The real sources of the expansion of presidential power—the president's role in foreign affairs, ability to shape public opinion, position as head of the executive branch, and claims to have certain "inherent" powers by virtue of the office—were hardly predictable in 1787.

There was nowhere in the world at that time, nor had there been at any time in history, an example of an American-style presidency. It was a unique and unprecedented institution, and the Framers and their critics can easily be forgiven for not predicting accurately how it would evolve. At a more general level, however, they understood the issue quite clearly. Gouverneur Morris of Pennsylvania put the problem of the presidency this way: "Make him too weak: the Legislature will usurp his powers. Make him too strong: he will usurp on the Legislature."[7]

The President: Qualifications and Benefits

Qualifications

- A natural-born citizen (can be born abroad to parents who are American citizens)
- 35 years of age
- A resident of the United States for at least 14 years (but not necessarily the 14 years just preceding the election)

Benefits

- A nice house
- A salary of $400,000 per year (taxable)
- An expense account of $50,000 per year (tax-free)
- Travel expenses of $100,000 per year (tax-free)
- A pension, upon retirement, equal to the pay of a cabinet member (taxable)
- Staff support and lifetime Secret Service protection after leaving the presidency
- A White House staff of approximately 400–500
- A country residence at Camp David
- A personal airplane, *Air Force One*
- A fine chef

electoral college *The people chosen to cast each state's votes in a presidential election. Each state can cast one electoral vote for each senator and representative it has. The District of Columbia has three electoral votes, even though it cannot elect a representative or senator.*

The Framers knew very well that the relations between the president and Congress and the manner in which the president is elected were of profound importance, and they debated both at great length. The first plan was for Congress to elect the president—in short, for the system to be quasi-parliamentary. But if that were done, some delegates pointed out, Congress could dominate an honest or lazy president, whereas a corrupt or scheming president might dominate Congress.

After much discussion, it was decided that the president should be chosen directly by voters. But which voters? The emerging nation was large and diverse. It seemed unlikely that every citizen would be familiar enough with the candidates to cast an informed vote for a president directly. Worse, a direct popular election would give inordinate weight to the large, populous states, and no plan with that outcome had any chance of adoption by the smaller states.

The Electoral College

Thus the **electoral college** was invented, whereby each of the states would select electors in whatever manner it wished. The electors would then meet in each state capital and vote for president and vice president. Many Framers expected that this procedure would lead to each state's electors voting for a favorite son, and thus no candidate would win a majority of the popular vote. In this event, it was decided, the House of Representatives should make the choice, with each state delegation casting one vote.

The plan seemed to meet every test: large states would have their say, but small states would be protected by having a minimum of three electoral votes no matter how tiny their population. The small states together could wield considerable influence in the House, where it was widely expected most presidential elections would ultimately be decided. Of course, it did not work out quite this way: The Framers did not foresee the role that political parties would play in producing nationwide support for a slate of national candidates.

Once the manner of electing the president was settled, the question of powers was much easier to decide. After all, if you believe the procedures are fair and balanced, then you are more confident in assigning larger powers to the president within this system. Accordingly, the right to make treaties and the right to appoint lesser officials, originally reserved for the Senate, were given to the president "with the advice and consent of the Senate."

The President's Term of Office

Another issue was put to rest soon thereafter. George Washington, the unanimous choice of the electoral college to be the first president, firmly limited himself to two terms in office (1789–1797), and no president until Franklin D. Roosevelt (1933–1945) dared to run for more (though Ulysses S. Grant tried). In 1951, the Twenty-second Amendment to the Constitution was ratified, formally limiting all subsequent presidents to two terms.

The remaining issues concerning the nature of the presidency, and especially the relations between the president and Congress, have been the subject of continuing dispute. The pattern of relationships we see today is the result of an evolutionary process that has extended over more than two centuries. The first problem was to establish the legitimacy of the presidency itself, that is, to ensure, if possible, public acceptance of the office, its incumbent, and its powers, and to establish an orderly transfer of power from one incumbent to the next.

CONSTITUTIONAL CONNECTIONS | Executive Checks and Balances

In *Federalist* No. 70, Alexander Hamilton famously wrote of the need for "energy in the Executive," which he defined as "unity" (a single president), "duration" (a term of office long enough for the executive to be effective), "adequate provision for its support" (a reasonable salary), and "competent powers" (the ability to fulfill the responsibilities of the office). Addressing fears that Article II of the Constitution made the executive too powerful, Hamilton said the president would be checked by "a due dependence on the people" (elections) and "a due responsibility" (commitment to the public good). Do these checks suffice to keep the Framers' system of separation of powers/checks and balances intact, and the president accountable, in the 21st century?

Source: Alexander Hamilton, The *Federalist* No. 70: The Executive Department Further Considered, March 15, 1788. Available online through the Avalon Project: Documents in Law, History and Diplomacy, Yale Law School.

Today, we take this for granted. After Donald Trump was inaugurated on January 20, 2017, becoming the 45th U.S. president, Barack Obama, the 44th, quietly left the capital. In the world today, such an uneventful succession is unusual. In many nations, a new chief executive comes to power with the aid of military force or as a result of political intrigue, and a predecessor often leaves office disgraced, exiled, or dead.

At the time the Constitution was written, the Founders could only hope that an orderly transfer of power from one president to the next would occur. France had just undergone a bloody revolution; England in the not-too-distant past had beheaded a king; and in Poland the ruler was elected by a process so manifestly corrupt and so open to intrigue that Thomas Jefferson, in what may be the first example of ethnic humor in American politics, referred to the proposed American presidency as a "bad edition of a Polish king."

Yet by the time Abraham Lincoln found himself at the helm of a nation plunged into a bitter, bloody civil war, 15 presidents had been elected, served their time, and left office without a hint of force being used to facilitate the process and with the people accepting the process—if not admiring all the presidents. This orderly transfer of authority occurred despite passionate opposition and deeply divisive elections (such as that which brought Jefferson to power). And it did not happen by accident.

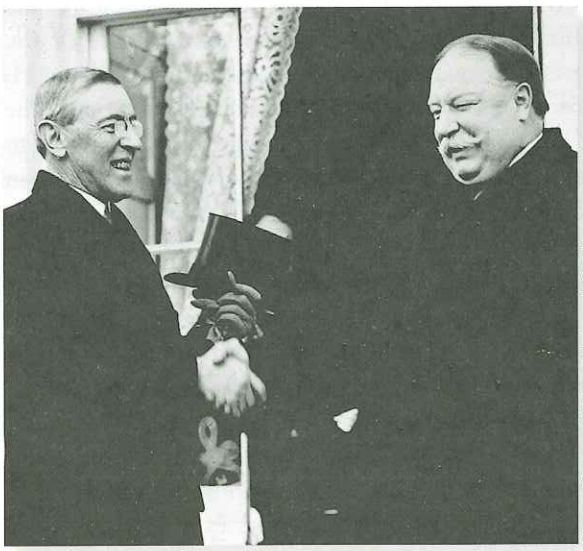
The First Presidents

Those who first served as president were among the most prominent men in the new nation, all active either in the movement for independence or in the Founding, or in both. Of the first five presidents, four (all but John Adams) served two full terms. Washington and Monroe were not even opposed. The first administration had at the highest levels the leading spokesmen for all of the major viewpoints: Alexander Hamilton was Washington's secretary of the treasury (and was sympathetic to urban commercial interests), and Thomas Jefferson was secretary of state (and more inclined toward rural, small-town, and farming views).

Washington spoke out strongly against political parties, and though parties soon emerged, there was a stigma attached to them: Many people believed that it was wrong to take advantage of divisions in the country, to organize deliberately to acquire political office, or to make legislation depend on party advantage. As it turned out, this hostility to party (or "faction," as it was more commonly called) was unrealistic; parties are as natural to democracy as churches are to religion.

Establishing the legitimacy of the presidency in the early years was made easier by the fact that the national government had relatively little to do. It had, of course, to establish a sound currency and to settle the debt accrued during the Revolutionary War. The Treasury Department inevitably became the principal federal office, especially under the strong leadership of Hamilton. Relations with England and France were important—and difficult—but otherwise government took little time and few resources.

In appointing people to federal office, a general rule of "fitness" emerged: Those appointed should have some standing in their communities and be well thought of by their neighbors. Appointments based on partisanship soon arose, but community stature could not be neglected. The presidency was kept modest. Washington clearly had not sought the office and did not relish the exercise of its then modest powers. He traveled widely so that as many



Library of Congress Prints and Photographs Division

Universal History Archive/Getty Images

IMAGES 14-3 and 14-4 America witnessed peaceful transfers of power not only between leaders of different parties (such as Woodrow Wilson and William Howard Taft in 1913), but also after a popular leader was assassinated (Lyndon Johnson is sworn in after John F. Kennedy's death).

people as possible could see their new president. His efforts to establish a semi-regal court etiquette were quickly rebuffed; the presidency was to be kept simple. Congress decided that not until after a president was dead might his likeness appear on a coin or on currency; no president until Eisenhower was given a pension upon his retirement.

The president's relations with Congress were correct but not close. Washington appeared before the Senate to ask its advice on a proposed treaty with some Indian tribes. He got none and instead was politely told that the Senate would like to consider the matter in private. He declared that he would be "damned if he ever went there again," and he never did. Thus ended the responsibility of the Senate to "advise" the president. Vetoes were sometimes cast by the president, but sparingly, and only when the president believed the law was not simply unwise but unconstitutional. Washington cast only two vetoes; Jefferson and Adams cast none.

The Jacksonians

At a time roughly corresponding to the presidency of Andrew Jackson (1829–1837), broad changes began to occur in American politics. These changes, together with the personality of Jackson himself, altered the relations between the president and Congress and the nature of presidential leadership. As so often happens, few people at the time Jackson took office had much sense of what his presidency would be like. Though he had been a member of the House of Representatives and of the Senate, he was elected as a military hero—and an apparently doddering one at that. Sixty-one years old and seemingly frail, he nonetheless used the powers of his office as no one before him had.

Jackson vetoed 12 acts of Congress, more than all his predecessors combined and more than any subsequent president until Andrew Johnson 30 years later. His vetoes were not simply on constitutional grounds but on policy ones: As the only official elected by the entire voting citizenry, he saw himself as the "Tribune of the People." None of his vetoes were overridden. He did not initiate many new policies, but he struck out against the ones he did not like. He did so at a time when the size of the electorate was increasing rapidly, and new states, especially in the West, had entered the Union. (There were then 24 states in the Union, nearly twice the original number.)

Jackson demonstrated what could be done by a popular president. He did not shrink from conflict with Congress, and the tension between the two branches of government that was intended by the Framers became intensified by the personalities of those in government: Jackson in the White House, and Henry Clay, Daniel Webster, and John Calhoun in Congress. These powerful figures walked the political stage at a time when bitter sectional conflicts—over slavery and commercial policies—were beginning to split the country. Jackson, though he was opposed to a large and powerful federal government and wished to return somehow to the agrarian simplicities of Jefferson's time, was nonetheless a believer in a strong and independent presidency. This view, though obscured by nearly a century of subsequent congressional dominance of national politics, was ultimately to triumph—for better or for worse.

The Granger Collection, NYC

IMAGE 14-5 President Andrew Jackson thought of himself as the "Tribune of the People," and he symbolized this by throwing a White House party that anyone could attend. Hundreds of people showed up and ate or carried away most of a 1,400-pound block of cheese.

The Reemergence of Congress

With the end of Jackson's second term, Congress quickly reestablished its power, and except for the wartime presidency of Lincoln and brief flashes of presidential power under James Polk (1845–1849) and Grover Cleveland (1885–1889, 1893–1897), the presidency for a hundred years was the subordinate branch of the national government. Of the eight presidents who succeeded Jackson, two (William H. Harrison and Zachary Taylor) died in office, and none of the others served more than one term. Schoolchildren, trying to memorize the list of American presidents, always stumble in this era of the "no-name" presidents. This is hardly a coincidence: Congress was the leading institution, struggling unsuccessfully with slavery and sectionalism.

It was also an intensely partisan era, a legacy of Jackson that lasted well into the 20th century. Public opinion was closely divided. In 9 of the 17 presidential elections between the end of Jackson's term in 1837 and Theodore Roosevelt's election in 1904, the winning candidate received less than half the popular vote. Only two candidates (Lincoln in 1864 and Ulysses S. Grant in 1872) received more than 55 percent of the popular vote.

During this long period of congressional—and usually senatorial—dominance of national government, only Lincoln broke new ground for presidential power.

Lincoln's expansive use of that power, like Jackson's, was totally unexpected. He was first elected in 1860 as a minority president, receiving less than 40 percent of the popular vote among a field of four candidates. Though a member of the new Republican Party, he had been a member of the Whig Party, a group that had stood for limiting presidential power. He had opposed America's entry into the Mexican War and had been critical of Jackson's use of executive authority.

But as president during the Civil War, Lincoln made unprecedented use of the vague powers in Article II of the Constitution, especially those that he felt were "implied" or "inherent" in the phrase "take care that the laws be faithfully executed" and in the express authorization for him to act as commander-in-chief. Lincoln raised an army, spent money, blockaded Southern ports, temporarily suspended the writ of habeas corpus, and issued the Emancipation Proclamation to free the slaves—all

HOW THINGS WORK | The Electoral College

Until November 2000, it was almost impossible to get a student interested in the electoral college. But in the 2000 presidential election, Florida's electoral vote hung in the balance for weeks, with Bush finally winning it and (though he had fewer popular votes than Al Gore) the presidency. As this electoral college–popular vote discrepancy had not happened since 1888, many people said 2000 was a historical anomaly—until it happened again in 2016, when Donald Trump won the presidential election with 304 electoral college votes, but Hillary Clinton won nearly 3 million more popular votes.

Here are the essential facts: each state gets electoral votes equal to the number of its senators and representatives (the District of Columbia also gets three, even though it has no representatives in Congress). There are 538 electoral votes. To win, a candidate must receive at least half, or 270.

In all but two states, the candidate who wins the most popular votes wins all of the state's electoral votes. Maine and Nebraska have a different system. They allow electoral votes to be split by awarding some votes on the basis of a candidate's statewide total and some on the basis of how the candidate did in each congressional district. In 2016, three of Maine's electoral votes went to Clinton; one went to Trump, who also won all five available in Nebraska.

Electoral Votes per State

The distribution of electoral college votes per state is for the 2016 presidential election, based on the 2010 census. The colors indicate which states voted Democratic and Republican in 2016.

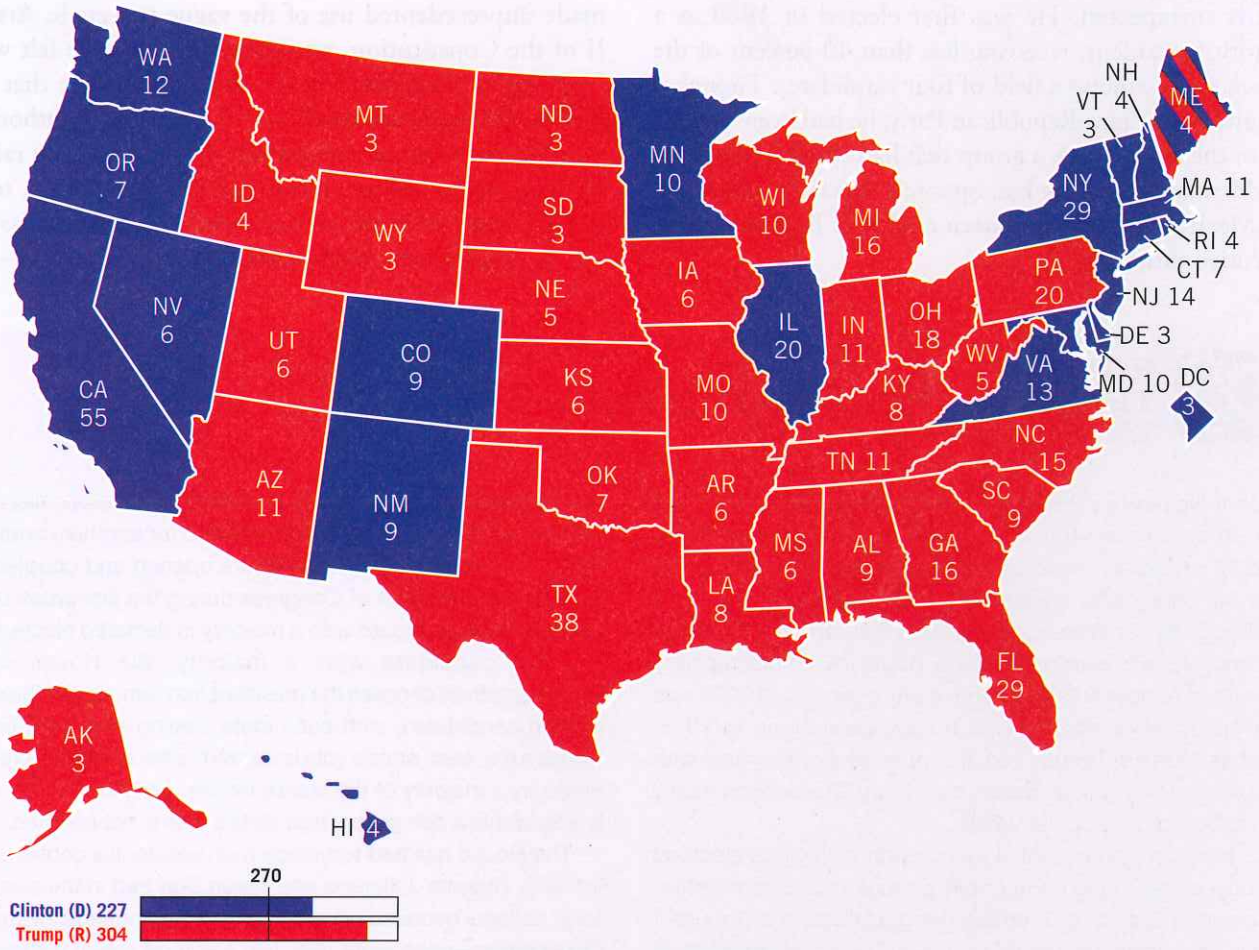
The winning slates of electors assemble in their state capitals about six weeks after the election to cast their ballots. Ordinarily this is a pure formality. Occasionally, however, an elector will vote for a presidential candidate other than the one who carried the state. Such "faithless electors" have appeared in several elections since 1796. The 2016 presidential election had seven faithless electors—two pledged for Donald Trump and five pledged for Hillary Clinton—more than any other presidential election in nearly 200 years (apart from ones in which a presidential or vice-presidential candidate died before electoral college votes were cast, and electors then voted for another candidate). The state electoral ballots are opened and counted before a joint session of Congress during the first week of January. The candidate with a majority is declared elected.

If no candidate wins a majority, the House of Representatives chooses the president from among the three leading candidates, with each state casting one vote. By House rules, each state's vote is allotted to the candidate preferred by a majority of the state's House delegation. If there is a tie within a delegation, that state's vote is not counted.

The House has had to decide two presidential contests. In 1800, Thomas Jefferson and Aaron Burr tied in the electoral college because of a defect in the language of the Constitution—each state cast two electoral votes, without indicating which was for president and which for vice president. (Burr was supposed to be vice president and, after much maneuvering, he was.) This problem was corrected by the Twelfth Amendment, ratified in 1804. The only House decision under the modern system was in 1824, when it chose John Quincy Adams over Andrew Jackson and William H. Crawford, even though Jackson had more electoral votes (and probably more popular votes) than his rivals.

Today the winner-takes-all system in effect in 48 states makes it possible for a candidate to win at least 270 electoral votes without winning a majority of the popular votes. This happened in 2016, 2000, 1888, and 1876, and almost happened in 1960 and 1884. Today, a candidate who carries the 10 largest states wins 256 electoral votes, only 14 short of a presidential victory.

This means candidates have a strong incentive to campaign extensively in big states they have a chance of winning. In 2016, Hillary Clinton and Donald Trump worked hard in key swing states such as Florida, Pennsylvania, North Carolina, and Virginia, but they spent less time in states where their respective political party has a strong majority (such as California for the Democrats and Texas for the Republicans). But the electoral college also gives power to small states. South Dakota, for example, has three electoral votes (about 0.5 percent of the total), even though it



(The other seven electors – 2 slated for Trump and 5 slated for Clinton – cast ballots for other candidates.)

casts only about 0.3 percent of the popular vote. South Dakota and other small states are thus overrepresented in the electoral college. In 2016, Clinton and Trump made multiple trips to highly competitive states such as New Hampshire and Nevada, which have four and six electoral college votes, respectively, because the race was so close.

Sometimes states can have surprising results: In 2016, Hillary Clinton was expected to win Michigan and Wisconsin (her campaign's confidence in the latter was so high that she did not campaign there between the primary and general election). But Trump won both states and their combined 26 electoral college votes, which, along with Pennsylvania's 20 electoral college votes, were key to his victory. (See the How Things Work box titled "2016 Election" in Chapter 10 for a discussion of the 2016 presidential election results.)

Most Americans would like to abolish the electoral college. But doing away with it entirely would have some unforeseen effects. If we relied just on the popular vote, there might have to be a runoff election among the two leading candidates if neither gets a majority because third-party candidates won a lot of votes. This would encourage the formation of third parties (we might have a Jesse Jackson Party, a Pat Buchanan Party, a Pat Robertson Party, and a Ralph Nader Party). Each third party would then be in a position to negotiate with one of the two major parties between the first election and the runoff about favors it wanted in return for its support. American presidential politics might come to look like the multiparty systems in France and Italy.

Other changes could be made. One is for each state to allocate its electoral votes proportional to the popular vote the candidates receive in that state. Voters in Colorado acted on that measure in November 2004, but that proposal failed. If every state did that, several past elections would have been decided in the House of Representatives because no candidate got a majority of the popular vote.

The electoral college also serves another purpose: it makes candidates think about carrying states as well as popular votes, and so heightens the influence of states in national politics.

without prior congressional approval. He justified this, as most Americans probably would have, by the emergency conditions created by civil war. In this he acted little differently from Thomas Jefferson, who while president waged undeclared war against various North African pirates.

After Lincoln, Congress reasserted its power and became, during Reconstruction and for many decades thereafter, the principal federal institution. But it had become abundantly clear that a national emergency could equip the president with great powers and that a popular and strong-willed president could expand his powers even without an emergency.

Rise of the Modern Presidency

Except for the administrations of Theodore Roosevelt (1901–1909) and Woodrow Wilson (1913–1921), the president was, until the New Deal, at best a negative force—a source of opposition to Congress, not a source of initiative and leadership for it. Grover Cleveland was a strong personality, but for all his efforts he was able to do little more than veto bills that he did not like. He cast 414 vetoes—more than any other president until Franklin Roosevelt. Frequent targets of his vetoes were bills to confer special pensions on Civil War veterans.

Today we are accustomed to thinking that the president formulates a legislative program to which Congress then responds, but until the 1930s the opposite was more the case. Congress ignored the initiatives of such presidents as Grover Cleveland, Rutherford Hayes, Chester Arthur, and Calvin Coolidge. Woodrow Wilson in 1913 was the first president since John Adams to deliver personally the State of the Union address, and he was one of the first to develop and argue for a presidential legislative program.

Our popular conception of the president as the central figure of national government, devising a legislative program and commanding a large staff of advisers, is very much a product of the modern era and of the enlarged role of government. In the past, the presidency became powerful only during a national crisis (the Civil War, World War I) or because of an extraordinary personality (Andrew Jackson, Theodore Roosevelt, Woodrow Wilson). Since the 1930s, however, the presidency has been powerful no matter who occupied the office and whether or not there was a crisis.

Until the 1930s, Congress largely directed policymaking, particularly for domestic issues, though some presidents were active in promoting or rejecting legislation. But beginning with the presidency of Franklin D. Roosevelt, the executive office acquired more political power, resulting in what presidency scholar Fred I. Greenstein has called the "modern presidency."[8]

Four features distinguish the modern presidency from previous chief executives: greater formal and informal power; primary responsibility for agenda-setting; increased staff and advisory resources; and heightened visibility. Increased power creates heightened expectations for leadership, which presidents cannot always meet. Even so, presidents today exercise far more initiative in setting the policy agenda and promoting legislation than the Framers envisioned.

Because government now plays such an active role in our national life, the president is the natural focus of attention and the titular head of a huge federal administrative system (whether the president is the real boss is another matter). But the popular conception of the president as the central figure of national government belies the realities of present-day legislative–executive relations. Even in the modern presidency, Congress still takes the lead in some areas to set the legislative agenda.[9] For example, the 1990 Clean Air Act, like the 1970 Clean Air Act before it, was born and bred mainly by congressional, not presidential, action. Administration officials played almost no role in the legislative process that culminated in these laws.[10]

When President George H. W. Bush signed the 1990 Clean Air Act or President Clinton signed the 1996 Welfare Reform Act, each took credit for it, but in fact both bills were designed by members of Congress, not by the president.[11] Likewise, although presidents dominated budget policymaking from the 1920s into the early 1970s, they no longer do. Instead, the "imperatives of the budgetary process have pushed congressional leaders to center stage."[12] Thus, as often as not, Congress proposes, the president disposes, and legislative–executive relations involve hard bargaining and struggle between these two branches of government.

14-3 How Modern Presidents Influence Policymaking

The sketchy constitutional powers given to presidents, combined with the lack of an assured legislative majority, mean that they must rely heavily on persuasion to accomplish much. Here, the Constitution gives some advantages; the president and the vice president are the only officials elected by the whole nation, and the president is the ceremonial head of state as well as the chief executive of the government.

Presidents can use their national constituency and ceremonial duties to enlarge their political power, but they must do so quickly: The second half of their first term in office will be devoted to running for reelection, especially

bully pulpit *The president's use of prestige and visibility to guide or mobilize the American public.*

if they face opposition for their own party's nomination (as was the case with Carter and Ford).

The Three Audiences

The president's persuasive powers are aimed at three audiences. The first, and often the most important, is the Washington, DC, audience of fellow politicians and leaders. As Richard Neustadt points out in his book *Presidential Power and the Modern Presidents*, a president's reputation among Washington colleagues is of great importance in affecting how much deference the chief executive's views receive and thus how much power the White House may wield.[13] If a president is thought to be "smart," "sure," "cool," "on top of things," or "shrewd," and thus "effective," then the president likely *will* be effective. Franklin Roosevelt had that reputation, and so did Lyndon Johnson, at least for his first few years in office. Truman, Ford, and Carter often did not have that reputation, and they lost ground accordingly. Power, like beauty, exists largely in the eye of the beholder.

A second audience comprises party activists and officeholders outside Washington—the partisan grassroots. These persons want the president to exemplify their principles, trumpet their slogans, appeal to their fears and hopes, and help them get reelected. As we explained in Chapter 9, partisan activists increasingly have an ideological orientation toward national politics. Therefore, they will expect "their" president to make fire-and-brimstone speeches that confirm in them a shared sense of purpose and, incidentally, help them raise money from contributors to state and local campaigns.

The third audience is "the public." But of course that audience is really many publics, each with a different view or set of interests. A president on the campaign trail speaks boldly of what will be accomplished; a president in office speaks quietly of problems that must be overcome. Citizens often are irritated at the apparent tendency of officeholders, including the president, to sound mealy-mouthed and equivocal. But it is easy to criticize the cooking when you haven't been the cook. A president learns quickly that every utterance will be scrutinized closely by the media and by organized groups here and abroad, and errors of fact, judgment, timing, or even inflection will be immediately and forcefully pointed out. Given the risks of saying too much, it is a wonder that presidents say anything at all.

Presidents have made fewer and fewer impromptu remarks in the years since Franklin Roosevelt held office; they instead rely more and more on prepared speeches from which political errors can be removed in advance. Hoover and Roosevelt held, on average, one or more press conferences per week, but no president since then has come close to that frequency (though the White House press secretary does meet daily with the media in formal briefings and informally as well).[14] Instead, modern presidents make formal speeches, or they communicate directly with the public through events or, more recently, social media. A president's use of public speeches is called the **bully pulpit**, a phrase that means taking advantage of the prestige and visibility of the presidency to try to guide or mobilize the American people.

Presidential public communication has become more important since the early 20th century. Woodrow Wilson resumed the custom started by the first two presidents of delivering state of the union messages in person to Congress. Presidential scholar Richard E. Neustadt wrote in 1960 of the need for presidents to appeal to multiple constituencies, and he emphasized the importance of "public prestige," for which a president must be "effective as a teacher to the public."[15]

Political scientists and communication scholars have identified the use of public rhetoric as a political strategy by presidents in modern American politics. Samuel Kernell shows how modern presidents routinely use a practice of "going public" to build popular support for their policies, and Jeffrey K. Tulis examines the development of the "rhetorical presidency," in which presidents use public speeches to exercise popular leadership. Mary E. Stuckey finds that advances in media technology shape what presidents say and how they say it, whereas Karlyn Kohrs Campbell and Kathleen Hall Jamieson evaluate how presidents use rhetorical opportunities to exercise political influence with the other institutions of government.[16]

Despite all the time and energy that presidents invest in their public communication, their efforts may not yield the results they seek. Based on extensive analysis of public opinion polls, George C. Edwards III argues that presidential speeches serve to bolster existing public views rather than to change them—the "bully pulpit," he says, falls "on deaf ears." Jeffrey E. Cohen examines media coverage of the presidency and finds that presidents can influence segments of the public through local news coverage, but that national strategies of "going public" are less successful.[17]

Popularity and Influence

Despite the limits of the bully pulpit, presidents communicate with the public to attempt to convert personal popularity into congressional support for the president's legislative programs (and to improve chances for reelection). It is not obvious, of course, why Congress should

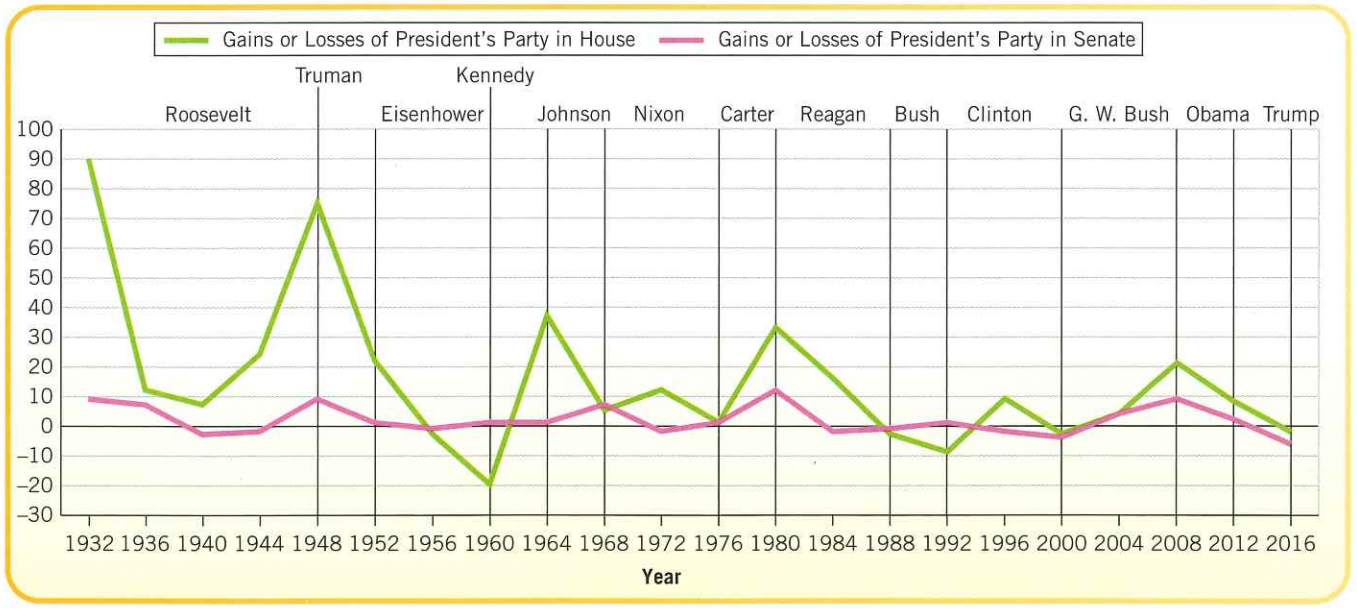
care about a president's popularity. After all, as we saw in Chapter 13, most members of Congress are secure in their seats, and few need fear any "party bosses" who might deny them renomination. Moreover, the president cannot ordinarily provide credible electoral rewards or penalties to members of Congress. By working for their defeat in the 1938 congressional election, President Franklin Roosevelt attempted to "purge" members of Congress who opposed his program, but he failed. Nor does presidential support help a particular member of Congress: Most representatives win reelection anyway, and the few who are in trouble are rarely saved by presidential intervention. When President Reagan campaigned hard for Republican senatorial candidates in 1986, he, too, failed to have much effect.

That said, as we discussed in Chapter 10, congressional candidates do benefit from the president's coattails; when a popular president is at the top of the ticket, more of that party's candidates win their races for Congress. It is true, as can be seen from Figure 14.1, that a winning president will often find that party strength in Congress increases. Of course, as we also discussed in Chapter 10, other factors affect legislative elections as well, so presidential coattails are just one of several factors that matter there. While coattails exist, they are more modest than earlier studies suggested.

In midterm election years, when the president is not running for office, the president's party typically fares less well than in presidential election years. The decay in the reputation of the president and party midterm is evident in Figure 14.2. Since 1934, in every off-year election but three, the president's party has lost seats in one or both chambers of Congress (see also the discussion in Chapter 10 of the surge-and-decline phenomenon). In 1934, during the Great Depression and Franklin D. Roosevelt's first term as president, the Democrats gained nine seats in the House and nine seats in the Senate. In 1998, during President Bill Clinton's second term in office and in the midst of a contentious and volatile inquiry into the president's affair with a White House intern (see page 358), the Democrats won five seats in the House and lost none in the Senate. In 2002, during the first term of President George W. Bush and just over a year after the devastating 9/11 terror attacks, the Republicans gained eight House seats and two in the Senate. Outside of crises, the ability of the president to persuade is important but limited.

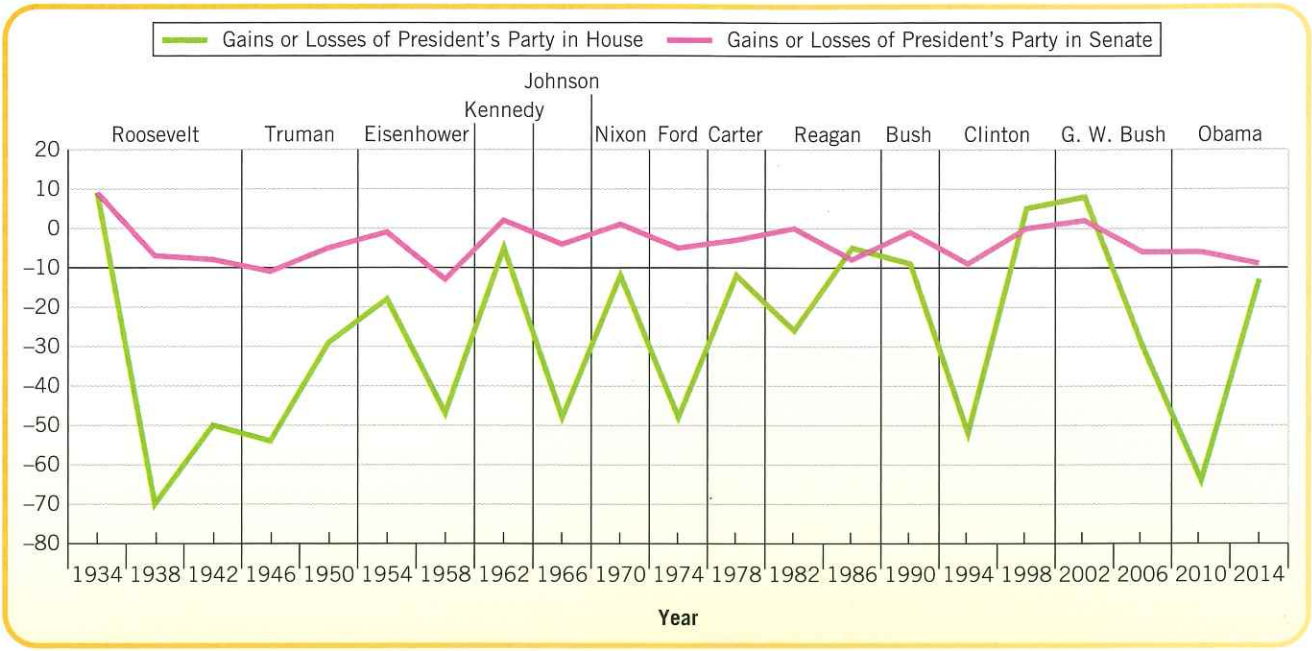
Nonetheless, a president's personal popularity may have a significant effect on how many White House initiatives are enacted into law, even if those initiatives do not affect reelection chances for members of Congress. Though they do not fear a president who threatens to campaign against them (or cherish one who promises to support them), members of Congress do have a sense that it is risky to oppose too adamantly the policies of a popular president. Politicians share a sense of a common fate: they tend to rise or fall together. Statistically, a president's popularity, as measured by a Gallup poll (see Figure 14.3),

FIGURE 14.1 **Partisan Gains or Losses in Congress in Presidential Election Years**



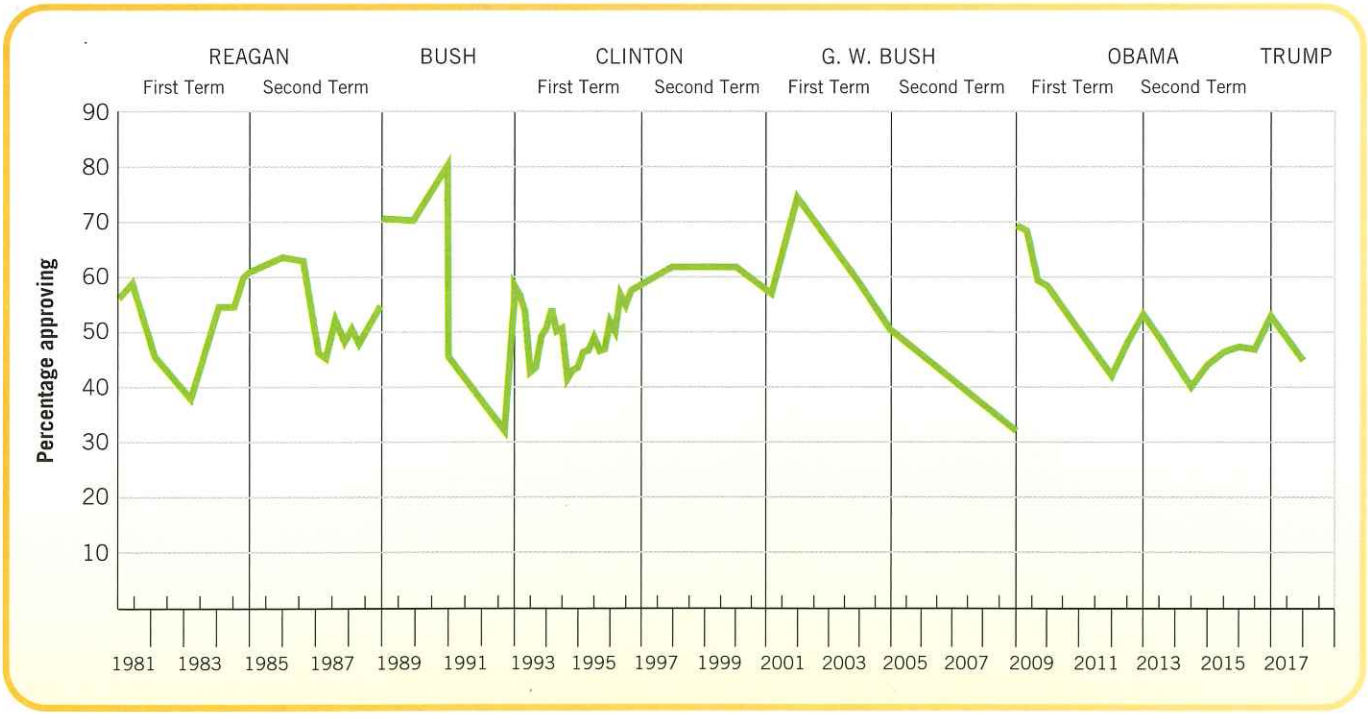
Source: Gerhard Peters, "Seats in Congress Gained or Lost by the President's Party in Presidential Election Years," *The American Presidency Project*, edited by John T. Woolley and Gerhard Peters, Santa Barbara, CA: University of California, 1999–2017. www.presidency.ucsb.edu/data/presidential_elections_seats.php/.

FIGURE 14.2 **Partisan Gains or Losses in Congress in Off-Year Elections**



Source: Gerhard Peters, "Seats in Congress Gained/Lost by the President's Party in Mid-Term Elections," *The American Presidency Project*, edited by John T. Woolley and Gerhard Peters, Santa Barbara, CA: University of California, 1999–2015. www.presidency.ucsb.edu/data/mid-term_elections.php.

FIGURE 14.3 **Presidential Popularity**



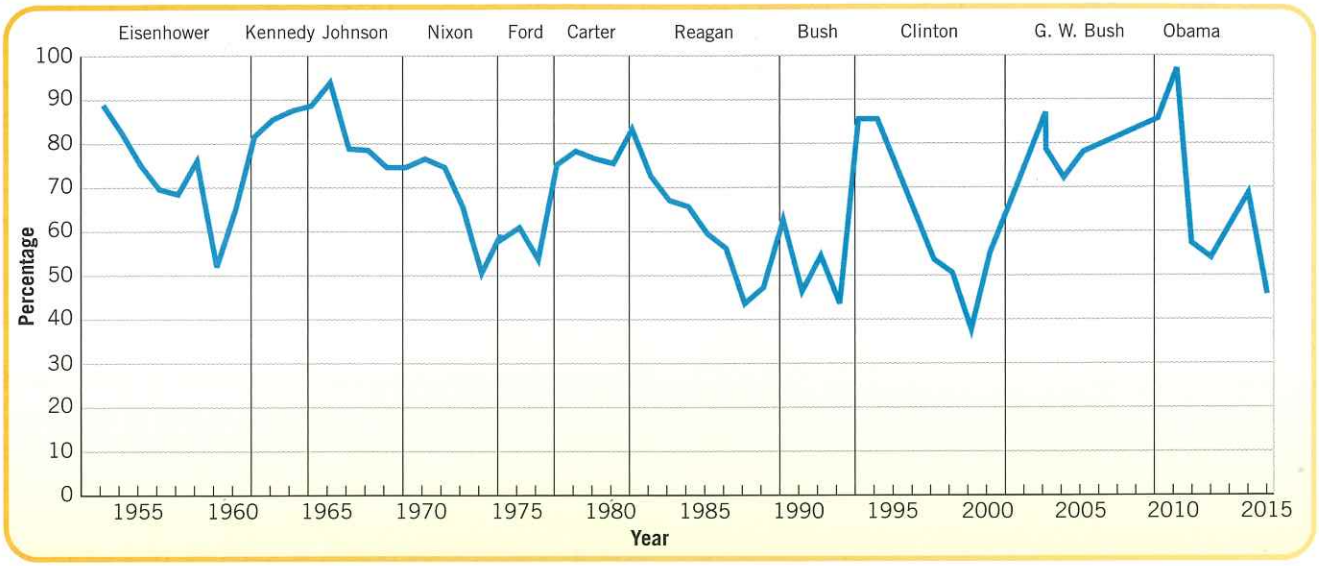
Note: Popularity is measured by asking "Do you approve of the way _____ is handling his job as president?" on a regular basis.

Source: Gallup, Presidential Job Approval Center.

is associated with the proportion of presidential legislative proposals approved by Congress (see Figure 14.4). Other things equal, the more popular the president, the higher the proportion of presidential bills that Congress will pass.

But use these figures with caution. How successful a president is with Congress depends not just on the numbers reported here, but on many other factors as well. First, the president can be "successful" on a big bill or on a trivial

FIGURE 14.4 **Presidential Victories on Votes in Congress, 1953–2015**



Note: Percentages indicate the number of congressional votes supporting the president divided by the total number of votes on which the president has taken a position.

Source: "Presidential Victories on Votes in Congress, 1953–2015," in *Vital Statistics on Congress*, The Brookings Institution.

one. If the president is successful on a lot of small matters and never on a big one, the measure of presidential victories does not tell us much. Second, a president can keep the victory score high by not taking a position on any controversial measure. (President Carter made his views known on only 22 percent of House votes, whereas President Eisenhower made his views known on 56 percent of those votes.) Third, a president can seem to be successful if a few executive initiatives are passed, but most of the legislative program is bottled up in Congress and never comes to a vote. Given these problems, "presidential victories" are hard to measure accurately.

A fourth general caution: presidential popularity is hard to predict and can be greatly influenced by factors over which nobody, including the president, has much control. For example, when he took office in 2001, President George W. Bush's approval rating was 57 percent, nearly identical to what President Bill Clinton received in his initial rating (58 percent) in 1993. But Bush also had an initial *dis*approval rating of 25 percent, which undoubtedly was due partly to the Florida vote-count controversy (see Chapter 10). (Bush's initial disapproval rating had been the highest of any president since polling began, but President Donald Trump's initial disapproval rating of 45 percent in January 2017 was considerably higher.)

Bush's approval ratings through his first six months were fairly typical for presidents since 1960. But from the terrorist attack on the United States on September 11, 2001, through mid-2002, his approval ratings never dipped below 70 percent, and the approval ratings he received shortly after the attack (hovering around 90 percent) were the highest ever recorded.

President Barack Obama's approval rating averaged 63 percent in his first six months in office, but as unemployment neared 10 percent, his popularity decreased, falling below 45 percent by the 2010 midterm elections. In 2011 and 2012, Obama's approval ratings typically averaged between 45 and 50 percent, and they were above 50 percent when he won reelection. In his second term, Obama's approval ratings dropped to the low 40s, but they moved just above 50 percent before he left office. President Trump took office in 2017 with an historically low initial public approval rating of 45 percent (the same percentage as his initial disapproval rating). By June 2017, his disapproval rating had reached 60 percent, a higher number than nine of his 13 predecessors ever received throughout their presidencies.

The Decline in Popularity

Though presidential popularity is an asset, its value tends inexorably to decline. As can be seen from Figure 14.3, every president except Eisenhower, Reagan, and Clinton lost popular support between inauguration and the time that he left office, except when his reelection gave him a brief burst of renewed popularity. Truman was hurt by improprieties among his subordinates and by the protracted Korean War; Johnson was crippled by the increasing unpopularity of the Vietnam War; Nixon was severely damaged by the Watergate scandal; Ford was hurt by pardoning Nixon for his part in Watergate; Carter was weakened by continuing inflation, staff irregularities, and the Iranian kidnapping of American

veto message *A message from the president to Congress stating that that a bill passed in both chambers will not be signed. Must be produced within 10 days of the bill's passage.*

pocket veto *A bill fails to become law because the president did not sign it within 10 days before Congress adjourns.*

line-item veto *An executive's ability to block a particular provision in a bill passed by the legislature.*

hostages; George H. W. Bush was harmed by an economic recession, as was Barack Obama. George W. Bush suffered from public criticism of the war in Iraq.

Because a president's popularity tends to be highest right after an election, political commentators like to speak of a "honeymoon," during which, presumably, the president's love affair with the people and with Congress can be consummated. Certainly, Roosevelt enjoyed such a honeymoon. In the legendary "first hundred days" of his presidency, from March to June 1933, FDR obtained from a willing Congress a vast array of new laws creating new agencies and authorizing new powers. But those were extraordinary times; the most serious economic depression of that century had put millions out of work, closed banks, impoverished farmers, and ruined the stock market. It would have been politically irresponsible for Congress to have blocked, or even delayed, action on measures that seemed to be designed to help the nation out of the crisis.

Other presidents, serving in more normal times, have not enjoyed such a honeymoon. Truman had little success with what he proposed; Eisenhower proposed little. Kennedy, Nixon, Ford, and Carter had some victories in their first year in office, but nothing that could be called a honeymoon. Only Lyndon Johnson enjoyed a highly productive relationship with Congress; until the Vietnam War sapped his strength, he rarely lost. Reagan began his administration with important victories in his effort to cut expenditures and taxes, but he then faced more challenges in his second year (though he recovered to win reelection resoundingly in 1984). Nevertheless, presidents do have other ways besides persuasion to influence policymaking.

Other Ways for Presidents to Influence Policymaking

The Constitution gives the president the power to veto legislation. In addition, most presidents have asserted the right of "executive privilege," or the right to withhold information that Congress may want to obtain from the president or subordinates, and some presidents have tried to impound funds appropriated by Congress. Presidents also may use their "executive power," as enumerated in Article II of the Constitution, to make policy pronouncements through executive orders and signing statements. These efforts by the president to say no are not only a way of blocking action but also a way of forcing Congress to bargain with the White House over the substance of policies.

Veto Power

If a president disapproves of a bill passed by both houses of Congress, then a veto is possible in one of two ways. One is by a **veto message**. This is a statement that the president sends to Congress accompanying the bill, within 10 days (not counting Sundays) after the bill has been passed. In it the president sets forth reasons for not signing the bill. The other is the **pocket veto**. If the president does not sign the bill within 10 days *and* Congress has adjourned within that time, then the bill will not become law.

Obviously, a pocket veto can be used only during a certain time of the year—just before Congress adjourns at the end of its second session. At times, however, presidents have pocket-vetoed a bill just before Congress recessed for a summer vacation or to permit its members to campaign during an off-year election. In 1972, Senator Edward M. Kennedy of Massachusetts protested that this was unconstitutional, since a recess is not the same thing as an adjournment. In a case brought to federal court, Kennedy was upheld, and it is now understood that the pocket veto can be used only just before the life of a given Congress expires.

A bill not signed or vetoed within 10 days while Congress is still in session becomes law automatically, without the president's approval. A bill returned to Congress with a veto message can be passed over the president's objections if at least two-thirds of each house votes to override the veto. A bill that has received a pocket veto cannot be brought back to life by Congress (since Congress has adjourned), nor does such a bill carry over to the next session of Congress. If Congress wants to press the matter, it will have to start all over again by passing the bill anew in its next session, and then hope the president will sign it or, if not, that they can override a veto.

The president must either accept or reject the entire bill. Presidents do not have the power, possessed by most governors, to exercise a **line-item veto**, with which the chief executive can approve some provisions of a bill and disapprove others. Congress could take advantage of this by putting items the president did not like into a bill

otherwise favored, forcing the president to approve those provisions along with the rest of the bill or reject the entire legislation.

In 1996, Congress passed a bill, which the president signed into law, giving the president the power of "enhanced rescission." This means the president could cancel parts of a spending bill passed by Congress without vetoing the entire bill. The president had five days after signing a bill to send a message to Congress rescinding some parts of what had been signed. These rescissions would take effect unless Congress, by a two-thirds vote, overturned them. Congress could choose which parts of the president's cancellations it wanted to overturn. But the Supreme Court has decided that this law is unconstitutional. The Constitution gives the president no such power to carve up a bill: the president must sign the whole bill, veto the whole bill, or allow it to become law without a presidential signature.[18]

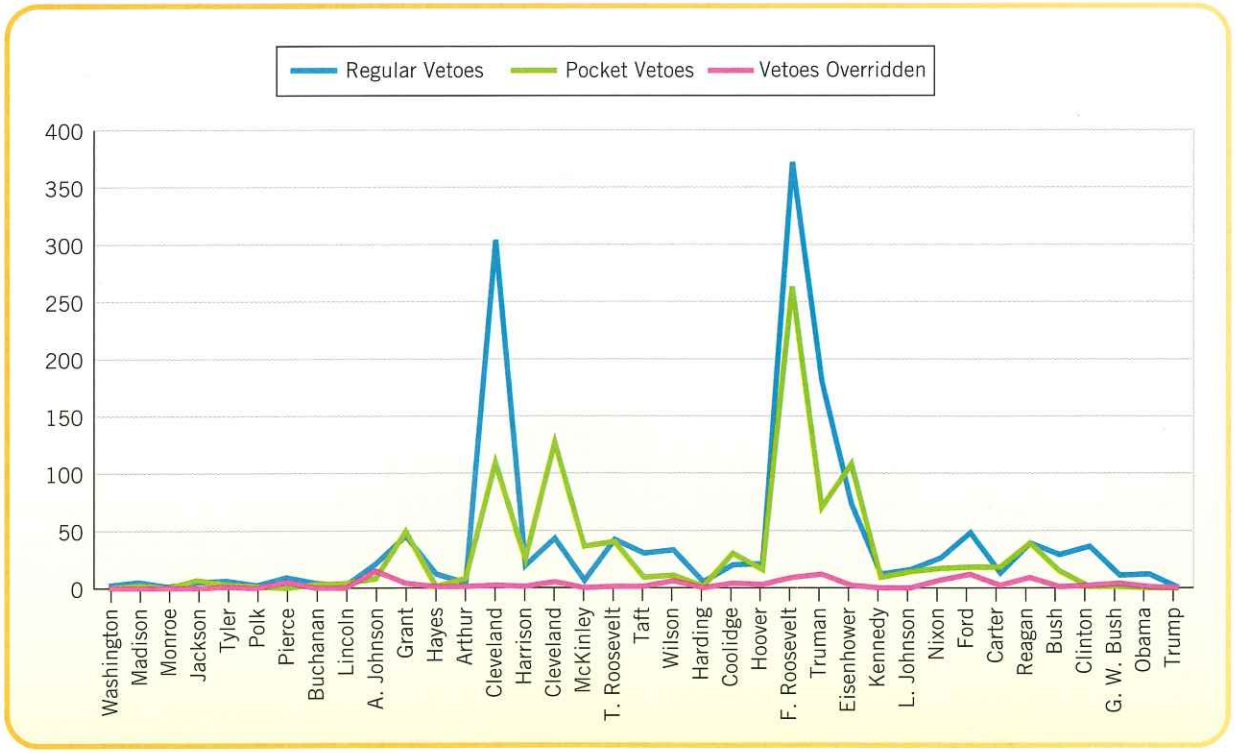
Nevertheless, the veto power is a substantial one, because Congress rarely has the votes to override it. From George Washington to Barack Obama, more than 2,500 presidential vetoes were cast; of these, about 4 percent were overridden (see Figure 14.5). Cleveland, Franklin Roosevelt, Truman, and Eisenhower made the most extensive use of vetoes, accounting for 65 percent of all vetoes ever cast.

George W. Bush did not veto a single bill in his first term, though he issued 12 vetoes in his second term, of which 4 were overridden. In his first term in office, Barack Obama vetoed just two bills. Often the vetoed legislation is revised by Congress and passed in a form suitable to the president. There is no tally of how often this happens, but it is frequent enough so that both branches of government recognize that the veto, or even the threat of it, is part of an elaborate process of political negotiation in which the president has substantial powers.

Executive Privilege

The Constitution says nothing about whether the president is obliged to divulge private communications with principal advisers, but presidents have acted as if they do have that privilege of confidentiality. The presidential claim is based on two grounds. First, the doctrine of the separation of powers means that one branch of government does not have the right to inquire into the internal workings of another branch headed by constitutionally named officers. Second, the principles of statecraft and

FIGURE 14.5 **Presidential Vetoes, 1789–2017**



Source: Gerhard Peters, "Presidential Vetoes," *The American Presidency Project*, edited by John T. Woolley and Gerhard Peters, Santa Barbara, CA: University of California, 1999–2017. http://www.presidency.ucsb.edu/data/vetoes.php.

executive order *A presidential directive that calls for action within the executive branch.*

of prudent administration require that the president have the right to obtain confidential and candid advice from subordinates; such advice could not be obtained if it quickly would be exposed to public scrutiny.

For almost 200 years, the claim of presidential confidentiality was not seriously challenged. The Supreme Court did not require the disclosure of confidential communications to or from the president.[19] Congress was never happy with this claim but until 1973 did not seriously dispute it. Indeed, in 1962, a Senate committee explicitly accepted a claim by President Kennedy that his secretary of defense, Robert S. McNamara, was not obliged to divulge the identity of Defense Department officials who had censored certain speeches by generals and admirals.

In 1974, the Supreme Court for the first time met the issue directly. A federal special prosecutor sought tape recordings of White House conversations between President Nixon and his advisers as part of his investigation of the Watergate scandal. In the case of *United States v. Nixon*, the Supreme Court, by a vote of eight to zero, held that while there may be a sound basis for the claim of executive privilege, especially where sensitive military or diplomatic matters are involved, there is no "absolute unqualified Presidential privilege of immunity from judicial process under all circumstances."[20] To admit otherwise would be to block the constitutionally defined function of the federal courts to decide criminal cases.

Thus, Nixon was ordered to hand over the disputed tapes and papers to a federal judge so that the judge could decide which were relevant to the case at hand and allow those to be introduced into evidence. In the future, another president may well persuade the Court that a different set of records or papers is so sensitive as to require protection, especially if there is no allegation of criminal misconduct requiring the production of evidence in court. As a practical matter, it seems likely that presidential advisers will be able, except in unusual cases such as Watergate, to continue to give private advice to the president.

In 1997 and 1998, President Clinton was sued while in office by a private person, Paula Jones, who claimed he had solicited sex from her in ways that hurt her reputation. In defending himself against that and other matters, his lawyers attempted to claim executive privilege for Secret Service officers and government-paid lawyers who worked with him, but federal courts held that not only could a president be sued, but these other officials could not claim executive privilege.[21] One unhappy consequence of this episode is that the courts have greatly weakened the number of officials with whom the president can speak in confidence. It is not easy to run an organization when the courts can later compel your associates to testify about everything you said.

Impoundment of Funds

From time to time, presidents have refused to spend money appropriated by Congress. Truman did not spend all that Congress wanted spent on the armed forces, and Johnson did not spend all that Congress made available for highway construction. Kennedy refused to spend money appropriated for new weapons systems that he did not like. Indeed, the precedent for impounding funds goes back at least to the administration of Thomas Jefferson.

But what has precedent is not thereby constitutional. The Constitution is silent on whether the president *must* spend the money that Congress appropriates; all it says is that the president cannot spend money that Congress has *not* appropriated. The major test of presidential power in this respect occurred during the Nixon administration. Nixon wished to reduce federal spending. He proposed in 1972 that Congress give him the power to reduce federal spending so that it would not exceed $250 billion for the coming year. Congress, under Democratic control, refused. Nixon responded by pocket-vetoing 12 spending bills and then impounding funds appropriated under other laws that he had not vetoed.

Congress in turn responded by passing the Budget Reform Act of 1974, which, among other things, requires the president to spend all appropriated funds unless Congress is told what funds should not be spent, and then Congress agrees, within 45 days, to delete the items. If the president wishes simply to delay spending the money, then Congress need only be informed, but Congress then can refuse the delay by passing a resolution requiring the immediate release of the money. Federal courts have upheld the rule that the president must spend, without delay for policy reasons, money that Congress has appropriated.

Executive Orders

Article II of the Constitution states that "The executive Power shall be vested in a President of the United States of America." Executive power to sign or veto laws passed by Congress is clearly explained in the Constitution; but presidents historically have interpreted executive power more broadly in order to make decisions and take action unilaterally—that is, without seeking congressional approval. In so doing, presidents sometimes have issued **executive orders**, which are presidential directives that call for action within the executive branch. As one scholar wrote, "presidents have used executive orders to make momentous policy choices, creating and abolishing

executive agencies, reorganizing administrative and regulatory processes, determining how legislation is implemented, and taking whatever action is permitted within the boundaries of their constitutional or statutory authority."[22]

Virtually every president has issued executive orders, though their number, type, and substance have varied considerably over time. George Washington's Neutrality Proclamation to keep the United States out of conflicts in Europe, Thomas Jefferson's Louisiana Purchase, Abraham Lincoln's Emancipation Proclamation, Franklin D. Roosevelt's relocation of Japanese Americans to internment camps during World War II, Harry S. Truman's desegregation of the armed forces and seizure of steel mills during the Korean War, and Dwight D. Eisenhower's decision to call the Arkansas National Guard into service to enforce a school desegregation in Little Rock all were actions taken by executive order.[23] Since the 1930s, most executive orders are numbered and published in the *Federal Register*.[24] Presidents also may issue proclamations, memoranda, and other executive actions that are comparable to executive orders but do not have the same requirements for numbering and publication.[25]

All of these executive statements have the force of law, but they remain in effect only as long as the president allows or the courts permit. For example, in 2012, Barack Obama unilaterally created the Deferred Action for Childhood Arrivals (DACA) program, which allowed people who entered the United States illegally as children to receive two-year work permits (which could be renewed), and have temporary relief from deportation procedures.[26] Obama did so because the White House and Congress could not come close to an agreement on comprehensive immigration reform. Two years later, Obama announced the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, which extended similar protections to illegal immigrants whose children are U.S. citizens. But when a federal court issued an injunction on the program in response to a lawsuit filed by several states, DAPA was halted, and the U.S. Citizenship and Immigration Services agency announced that it would not extend the DACA program either.[27]

In his first seven weeks in office, President Trump issued some two dozen executive orders or comparable unilateral actions. Some were information-oriented, such as the creation of task forces to combat crime or to review military readiness or the 2010 Dodd-Frank financial regulations. Some were organizational, such as restructuring the National Security Council or moving the Historically Black Colleges and Universities offices back from the Department of Education to the White House. And some were highly controversial policy changes, most significantly a revised executive order that temporarily suspended the U.S. refugee program and banned immigration from six countries with majority Muslim populations, citing national security concerns about potential terrorist attacks. But federal courts blocked both the original order, issued one week after Trump took office, and the revised one.[28] The Supreme Court agreed to review the travel ban in the fall of 2017, and permitted a limited version (which excluded close relatives of people legally residing in the United States, as well as individuals with valid visas, from the ban) to be implemented until then.

signing statement *A presidential document that reveals what the president thinks of a new law and how it ought to be enforced.*

Signing Statements

Since at least the presidency of James Monroe, the White House has issued statements at the time the president signs a bill that has been passed by Congress. These statements have had several purposes: to express presidential attitudes about the law, to tell the executive branch how to implement it, or to declare that the president thinks some part of the law is unconstitutional. President Andrew Jackson, for example, issued a statement in 1830 saying that a law designed to build a road from Chicago to Detroit should not cross the Michigan boundary (and so not get to Chicago). Congress complained, but Jackson's view prevailed and the road did not get to Chicago.

In the 20th century, these statements became common. President Reagan issued 71, President George H. W. Bush signed 141, and President Clinton inked 105. By the late 1980s, they were published in legal documents as part of the legislative history of a bill.[29] During his two terms, President George W. Bush signed more than 150, and in so doing he challenged more than 1,200 sections of legislation, about double the number challenged by all of his predecessors. President Obama, who campaigned against the use of signing statements, signed more than three dozen.[30]

Naturally, members of Congress are upset by this practice. To them, a **signing statement** often blocks the enforcement of a law Congress has passed and is therefore equivalent to an unconstitutional line-item veto. But presidential advisers have defended these documents, arguing (as did an assistant attorney general in the Clinton administration) that they not only clarify how the law should be implemented but also allow the president to declare what part of the law is in his view unconstitutional and thus ought not to be enforced at all.[31]

While the Supreme Court has allowed signing statements to clarify the unclear legislative intent of a law, it

LANDMARK CASES | Powers of the President

- ***United States v. Nixon* (1974):** A president is entitled to receive confidential advice but can be required to reveal material related to a criminal prosecution.
- ***Nixon v. Fitzgerald* (1982):** The president may not be sued while in office.
- ***Clinton v. Jones* (1997):** The president may be sued for actions taken before becoming president.

has never given a clear verdict about the constitutional significance of such documents.[32] In 2007, the Democratic Congress considered a challenge to the practice, and President Obama issued a memo less than three months after taking office, stating that he would use signing statements only to protest unconstitutional provisions on legislation, not for policy disagreements. But even with unified government, Obama issued signing statements during his first year in office, and members of Congress criticized him for doing so. The struggle over signing statements is another illustration of what one scholar has called the "invitation to struggle" that the Constitution has created between the president and Congress.[33]

14-4 Presidential Character, Organization, and Policymaking

Although all presidents share certain constitutional and political powers, every president brings to the White House a distinctive personality; the way the White House is organized and run will reflect that personality. Moreover, the public will judge the president not only in terms of accomplishments but also in terms of perception of character. Thus, personality plays a more important role in explaining the presidency than it does in explaining Congress, as the selected examples of modern presidential leadership below illustrate.

Presidential Personality and Leadership Style

Dwight Eisenhower brought an orderly, military style to the White House. He was accustomed to delegating authority and to having careful and complete staff work done for him by trained specialists. Though critics often accused him of having a bumbling, incoherent manner of speaking, in fact much of that was a public disguise—a strategy for avoiding being pinned down in public on matters where he wished to retain freedom of action. His private papers reveal a very different Eisenhower—sharp, precise, deliberate.[34]

John F. Kennedy brought a very different style to the presidency. He projected the image of a bold, articulate, and amusing leader who liked to surround himself with talented amateurs. Instead of clear, hierarchical lines of authority, there was a pattern of personal rule and an atmosphere of improvisation. Kennedy did not hesitate to call very junior subordinates directly and tell them what to do, bypassing the chain of command.[35]

Lyndon Johnson was a master legislative strategist who had risen to be majority leader of the Senate on the strength of his ability to persuade other politicians in face-to-face encounters. He was a consummate deal maker who, having been in Washington for 30 years before becoming president, knew everybody and everything. As a result, he tried to make every decision himself. But the style that served him well in political negotiations did not serve him well in speaking to the country at large, especially when trying to retain public support for the war in Vietnam.[36]

Richard Nixon was a highly intelligent man with a deep knowledge of and interest in foreign policy, coupled with a deep suspicion of the media, his political rivals, and the federal bureaucracy. In contrast to Johnson, he disliked personal confrontations and tended to shield himself behind an elaborate staff system. Distrustful of the cabinet agencies, he tried first to centralize power in the White House and then to put into key cabinet posts former White House aides loyal to him. Like Johnson, his personality made it difficult for him to mobilize popular support. Eventually, he was forced to resign under the threat of impeachment arising out of his role in the Watergate scandal.[37]

Gerald Ford, before being appointed vice president, had spent his political life in Congress and was at home with the give-and-take, discussion-oriented procedures of that body. He was also a genial man who liked talking to people and encouraged an open system of White House organization. But this meant that many decisions were made in a disorganized fashion in which key people—and sometimes key problems—were not reviewed systematically.[38]

Jimmy Carter was an outsider to Washington and boasted of it. A former Georgia governor, he was determined not to be "captured" by Washington insiders. He also was a voracious reader with a wide range of interests and an appetite for detail. These dispositions led him to try

to do many things and to do them personally. Like Ford, he began with an open system; unlike Ford, he based his decisions on reading countless memos and asking detailed questions. His advisers finally decided that he was trying to do too much in too great detail, and later in his presidency, he shifted toward a more structured advisory process.[39]

Ronald Reagan was also an outsider, a former governor of California. But unlike Carter, he wanted to set the broad directions of his administration and leave the details to others. He gave wide latitude to subordinates and to cabinet officers, within the framework of an emphasis on lower taxes, less domestic spending, a military buildup, and a tough line with the Soviet Union. He was a superb leader of public opinion, earning the nickname "The Great Communicator."[40]

George H. W. Bush lacked Reagan's speaking skills and was much more of a hands-on manager. Drawing on his extensive experience in the federal government (he had been vice president, director of the CIA, ambassador to the United Nations, representative to China, and a member of the House), Bush made decisions on the basis of personal contacts with key foreign leaders and Washington officials.[41]

Bill Clinton, like Carter, brought gubernatorial experience to the White House, paid a lot of attention to public policy, and preferred informal, ad hoc arrangements for running his office. Unlike Carter, he was an effective speaker who could make almost any idea sound plausible. Consistent with his governing philosophy in his home state of Arkansas, he was elected president as a centrist Democrat but immediately pursued liberal policies such as comprehensive health insurance. When those failed and the Republicans won control of Congress in 1994, Clinton became a centrist again. His sexual affairs became the object of major investigations, and he was impeached by the House but acquitted by the Senate.[42]

George W. Bush, the 43rd president, entered office as an outsider from Texas, but he was an outsider with a difference: his father had served as the 41st president of the United States, his late paternal grandfather had served as a U.S. senator from Connecticut, and he won the presidency only after the U.S. Supreme Court halted a recount of ballots in Florida, where his brother was governor. Bush, who had earned an advanced degree in business administration from Harvard, ran a very tight White House ship, insisting that meetings run on time and that press contacts be strictly controlled. He turned back public doubts about his intellect through self-deprecating humor. Following the terrorist attack on America on September 11, 2001, his agenda shifted almost entirely to foreign and military affairs, the war on terror, and homeland security.[43]

Barack Obama succeeded Bush in 2009. He was the first African American to win a major party's presidential nomination and only the third person elected to the presidency while a sitting U.S. Senator. In the 2008 presidential race, Obama campaigned as the candidate of change and hope ("Yes we can!" was his most popular mantra). He came to office in January 2009 amid a global economic crisis that included devastating losses in America's real-estate sector and financial markets. In his first term in office, he passed the largest budget in U.S. history and enacted legislation for comprehensive health insurance. Obama won reelection in 2012 but faced severe policymaking challenges in his second term, including a government shutdown in 2013 and a refusal by a Republican-led Senate to consider his Supreme Court nominee in 2016. While Obama's public popularity was above 50 percent when he left the White House, criticism of his leadership style included perceptions of aloofness and a dislike of the ongoing engagement and communication with political opponents required for policymaking.[44]

Donald Trump's unexpected victory in the 2016 presidential race was surprising for several reasons. A businessman who never mounted a full-fledged political campaign before the 2016 election, Trump did not follow the traditional path of fundraising, endorsements from party elites, and campaign staff with extensive expertise in presidential politics. He relied on social media, particularly Twitter, to convey ideas and attack political opponents, and he continued to rely on this tool as a means of governance from the White House. In his early months in office, President Trump took several measures via executive order to follow through on campaign promises, such as a temporary ban on immigration from certain countries (which was blocked in federal court) and a decision to withdraw from the Trans-Pacific Partnership trade agreement. How his leadership style will affect his ability to enact legislation with Congress remains to be seen.

The Office of the President

It was not until 1857 that the president was allowed to have a private secretary paid for with public funds, and it was not until after the assassination of President McKinley in 1901 that the president was given a Secret Service bodyguard. The president was not able to submit a single presidential budget until after 1921, when the Budget and Accounting Act was passed and the Bureau of the Budget (now called the Office of Management and Budget) was created. Grover Cleveland personally answered the White House telephone, and Abraham Lincoln often answered his own mail.

Today, of course, the president has hundreds of people who can assist, and the trappings of power—helicopters, guards, limousines—are plainly visible. The White

pyramid structure *A president's subordinates report to him through a clear chain of command headed by a chief of staff.*

circular structure *Several of the president's assistants report directly to him.*

ad hoc structure *Several subordinates, cabinet officers, and committees report directly to the president on different matters.*

House staff has grown enormously. (Just how big the staff is, no one knows. Presidents like to pretend that the White House is not the large bureaucracy that it in fact has become.) Add to this the opportunities for presidential appointments to the cabinet, the courts, and various agencies, and the resources at the disposal of the president would appear to be awesome. That conclusion is partly true and partly false, or at least misleading, and for a simple reason. If presidents were once helpless for lack of assistance, they now confront an army of assistants so large that it constitutes a bureaucracy that can be difficult to control.

The ability of a presidential assistant to affect the president is governed by the rule of propinquity: in general, power is wielded by people in the room when a decision is made. Presidential appointments can thus be classified in terms of their proximity, physical and political, to the president. There are three degrees of propinquity: the White House Office, the Executive Office, and the cabinet.

The White House Office

The president's closest assistants have offices in the White House, usually in the West Wing of the building. Their titles often do not reveal the functions that they actually perform: "counsel," "counselor," "assistant to the president," "special assistant," "special consultant," and so forth. The actual titles vary from one administration to another, but in general the men and women who hold them oversee the political and policy interests of the president. As part of the president's personal staff, these aides do not have to be confirmed by the Senate; the president can hire and fire them at will. The White House staff today typically includes about 400–500 people.[45]

Essentially, a president can organize personal staff in three ways—through the "pyramid," "circular," and "ad hoc" methods. In a **pyramid structure**, used by Eisenhower, Nixon, Reagan, both Presidents Bush, and (after a while) Clinton, most assistants report through a hierarchy to a chief of staff, who then deals directly with the president. In a **circular structure**, used by Carter, cabinet secretaries and assistants report directly to the president. In an **ad hoc structure**, used for a while by President Clinton, task forces, committees, and informal groups of friends and advisers deal directly with the president. For example, the Clinton administration's health-care policy planning was spearheaded not by the Health and Human Services secretary Donna E. Shalala, but by First Lady Hillary Rodham Clinton and a White House adviser, Ira Magaziner. Likewise, its initiative to reform the federal bureaucracy (the National Performance Review) was led not by the Office of Management and Budget director Leon E. Panetta, but by an adviser to Vice President Gore, Elaine Kamarck.[46]

It is common for presidents to mix methods. For example, Franklin Roosevelt alternated between the circular and ad hoc methods in the conduct of his domestic policy and sometimes used a pyramid structure when dealing with foreign affairs and military policy.

Taken individually, each method of organization has advantages and disadvantages. A pyramid structure provides for an orderly flow of information and decisions, but does so at the risk of isolating or misinforming the president. The circular method has the virtue of giving the president a great deal of information, but at the price of confusion and conflict among cabinet secretaries and assistants. An ad hoc structure allows great flexibility, minimizes bureaucratic inertia, and generates ideas and information from disparate channels, but it risks cutting the president off from the government officials who are ultimately responsible for translating presidential decisions into policy proposals and administrative action.

All presidents claim they are open to many sources of advice, and some presidents try to guarantee that openness by using the circular method of staff organization. President Carter liked to describe his office as a wheel, with himself as the hub and his several assistants as spokes. But most presidents discover, as did Carter, that the difficulty of managing the large White House bureaucracy and of conserving their own limited supply of time and energy makes it necessary for them to rely heavily on one or two key subordinates. Carter, in July 1979, dramatically altered the White House staff organization by elevating Hamilton Jordan to the post of chief of staff, with the job of coordinating the work of the other staff assistants.

At first, President Reagan adopted a compromise between the circle and the pyramid, putting the White House under the direction of three key aides. At the beginning of his second term in 1985, however, the president shifted to a pyramid, placing all his assistants under a single chief of staff. Clinton began with an ad hoc system and then changed to one more like a pyramid. Each assistant has, of course, others working for him or her, sometimes a large number. At a slightly lower level of status, "special assistants to the president" serve various purposes. (Being "special" means, paradoxically, being less important.)

Typically, senior White House staff members are drawn from the ranks of the president's campaign staff—longtime associates in whom he has confidence. A few members, however, will be experts brought in after the campaign; such was the case, for example, with Henry Kissinger, a former Harvard professor who became President Nixon's assistant for national security affairs. The offices these men and women occupy often are small and crowded (Kissinger's was not much bigger than the one he had while a professor at Harvard), but their occupants willingly put up with any discomfort in exchange for the privilege (and the power) of being *in* the White House. The arrangement of offices—their size, and especially their proximity to the president's Oval Office—is a good measure of the relative influence of the people in them.

To an outsider, the amount of jockeying among the top staff for access to the president may seem comical or even perverse. The staff attaches enormous significance to whose office is closest to the president's, who can see the president on a daily as opposed to a weekly basis, who can get an appointment with the president and who cannot, and who has a right to see documents and memoranda just before they go to the Oval Office. To be sure, there is ample grist here for Washington political novels. But there is also something important at stake: it is not simply a question of power plays and ego trips. Who can see the president and who sees and "signs off" on memoranda going to the president affect in important ways who influences policy and thus whose goals and beliefs become embedded in policy.

The Executive Office of the President

Agencies in the Executive Office of the President (EOP) report directly to the president and perform staff services, but are not located in the White House itself. Their members may or may not enjoy intimate contact with the president; some agencies are rather large bureaucracies. The top positions in these organizations are filled by presidential appointment, but unlike the White House staff positions, these appointments typically require Senate confirmation. Principal agencies in the EOP include the Council of Economic Advisers, Director of National Intelligence, National Security Council, Office of Management and Budget (OMB), Office of the U.S. Trade Representative, and Office of the Vice President.

The Myth and Reality of the White House Office

The Myth

The White House Office was created in the 1930s following recommendations made by the President's Commission on Administrative Management. The principles underlying those recommendations have been endorsed by almost every presidential chief of staff since then. The key ones are:

1. *Small is beautiful*. The presidential staff should be small. At first, there were only six assistants.
2. *A passion for anonymity*. The president's personal assistants should stay out of the limelight.
3. *Honest brokers*. The presidential staff should not make decisions for the president; it should only coordinate the flow of information to the president.

The Reality

Increasingly, the operations of the White House Office seem to reflect almost the exact opposite of these principles.

1. *Big is better*. The White House staff has grown enormously in size. Hundreds now work there.
2. *Get out front*. Key White House staffers have become household words—Henry Kissinger (under Nixon and Ford), H. R. Haldeman (under Nixon), Hamilton Jordan (under Carter), Howard Baker (under Reagan), George Stephanopoulos (under Clinton), Karl Rove (under G. W. Bush), and David Axelrod (under Obama).
3. *Be in charge*. Cabinet officers regularly complain that White House staffers are shutting them out and making all the important decisions. Congressional investigations have revealed the power of such White House aides as Haldeman, John Poindexter, and Lieutenant Colonel Oliver North.

Why the Gap Between Myth and Reality?

The answer is—the people and the government. The people expect much more from presidents today; no president can afford to say, "We're too busy here to worry about that." The government is much more complex, and so leadership requires more resources. Even conservatives such as Ronald Reagan have been activist presidents.

Source: Adapted from Samuel Kernell and Samuel L. Popkin, editors, *Chief of Staff*. Berkeley: University of California Press, 1986, pp. 193–232.

cabinet *The heads of the 15 executive branch departments of the federal government.*

Of all the EOP agencies, perhaps the most important in terms of the president's need for assistance in administering the federal government is the OMB. First called the Bureau of the Budget when it was created in 1921, it became OMB in 1970 to reflect its broader responsibilities. Today it does considerably more than assemble and analyze the figures that go each year into the national budget the president submits to Congress. It also studies the organization and operations of the executive branch, devises plans for reorganizing various departments and agencies, develops ways of getting better information about government programs, and reviews proposals that cabinet departments want included in the president's legislative program.

The OMB has a staff of more than 500 people, almost all career civil servants, many of high professional skill and substantial experience. Traditionally, OMB has been a nonpartisan agency—experts serving all presidents, without regard to party or ideology. Starting with the Reagan administration, however, OMB has played a major role in advocating policies rather than merely analyzing them. David Stockman, President Reagan's OMB director, was the primary architect of the 1981 and 1985 budget cuts proposed by the president and enacted by Congress. Stockman's proposals often were adopted over the objections of the affected department heads. In 2001, President George W. Bush's OMB director, Mitch Daniels, also participated fully in West Wing political strategy sessions; he later was elected governor of Indiana.

President Obama's first OMB director, Peter Orzag, was highly active in the administration's health care reform initiative. In President Obama's second term, he appointed Sylvia Mathews Burwell, a former executive in the Gates Foundation and former OMB staffer under President Clinton, to head OMB. Burwell also was active in promoting the president's policy agenda, and she became the administration's main official for implementing the Affordable Care Act upon her appointment as secretary of Health and Human Services in 2014. In 2017, South Carolina Congressman John Michael ("Mick") Mulvaney was appointed OMB Director in the Trump administration. A founding member of the Tea Party movement and the House Freedom Caucus (until he left Congress to take the OMB post), Mulvaney demonstrated clear determination to pursue major cuts in federal spending.

The Cabinet

The **cabinet** is a product of tradition and hope. At one time, the heads of the federal departments met regularly with the president to discuss matters, and some people, especially those critical of strong presidents, would like to see this kind of collegial decision making reestablished. But in fact this role of the cabinet is largely fiction. Indeed, the Constitution does not even mention the cabinet (though the Twenty-fifth Amendment implicitly defines it as consisting of "the principal offices of the executive departments").

When Washington tried to get his cabinet to work together, its two strongest members—Alexander Hamilton and Thomas Jefferson—spent most of their time feuding. The cabinet, as a presidential committee, did not work any better for John Adams or Abraham Lincoln, for Franklin Roosevelt or John Kennedy. Dwight Eisenhower is almost the only modern president who came close to making the cabinet a truly deliberative body; he gave it a large staff, held regular meetings, and listened to opinions expressed there. But even under Eisenhower, the cabinet did not have much influence over presidential decisions, nor did it help him gain more power over the government.

By custom, cabinet officers are the heads of the 15 major executive departments. These departments, together with the dates of their creation and the approximate number of their employees, are given in Table 14.2. The order of their creation is unimportant except in terms of protocol: where one sits at cabinet meetings is determined by the age of the department that one heads. Thus, the secretary of state sits next to the president on one side and the secretary of the treasury sits next to him on the other. Down at the foot of the table are the heads of the newer departments.

The president appoints or directly controls vastly more members of cabinet departments than does the British prime minister. The reason is simple: the president must struggle with Congress for control of these agencies, whereas the prime minister has no rival branch of government that seeks this power. Presidents get more appointments than prime ministers to make up for what the separation of powers denies them.

This abundance of political appointments, however, does not give the president ample power over the departments. The secretary of Health and Human Services (HHS) reports to the president and has a few hundred political appointees to assist him or her in responding to the president's wishes. But the secretary of HHS heads an agency with nearly 80,000 employees, 11 operating divisions, hundreds of grant-making programs, and a budget of more than $1 trillion (of which approximately 85 percent is for spending on Medicare and Medicaid).[47] Likewise, the secretary of Housing and Urban Development (HUD) spends the most time on departmental business and vastly less on talking to the president. It is hardly surprising that the secretary is largely a representative of HUD to

TABLE 14.2 | The Cabinet Departments

Department	Year Created	Approximate Employees (2015)
State	1789	10,000 (2014)
Treasury	1789	84,000
Defense*	1947	89,500
Justice	1789	111,000
Interior	1849	48,800
Agriculture†	1889	73,700
Commerce	1913	35,200
Labor	1913	15,100
Health and Human Services‡	1953	63,300
Housing and Urban Development	1965	8,100
Transportation	1966	53,800
Energy	1977	14,400
Education	1979	3,900
Veterans Affairs	1989	324,600
Homeland Security	2002	167,000

*Formerly the War Department, created in 1789. Figures are for civilians only.

†Agriculture Department was created in 1862; was made part of the cabinet in 1889.

‡Originally Health, Education and Welfare; reorganized in 1979.

Source: U.S. Office of Personnel Management, *Sizing Up the Executive Branch: Fiscal Year 2015*, Table 3: Federal Executive Branch Employment by Cabinet Level Agency.

the president, rather than the president's representative to HUD. And no one should be surprised that the secretary of HUD rarely finds much to talk about with the secretary of defense at cabinet meetings.

Having the power to make these appointments does give the president one great advantage, namely, a lot of opportunities to reward friends and political supporters. In the Education Department, for example, President Clinton found jobs for one-time mayors, senators, state legislators, and campaign aides.

Independent Agencies, Commissions, and Judgeships

The president also appoints people to four dozen or so agencies and commissions that are not considered part of the cabinet and that by law often have a quasi-independent status. The difference between an "executive" and an "independent" agency is not precise. In general, it means the heads of executive agencies serve at the pleasure of the president and can be removed at the president's discretion. On the other hand, the heads of many independent agencies serve for fixed terms of office and can be removed only "for cause."

The president can also appoint federal judges, subject to the consent of the Senate. Judges serve for life unless they are removed by impeachment and conviction. The reason for the special barriers to the removal of judges is that they represent an independent branch of government as defined by the Constitution, and limits on presidential removal powers are necessary to preserve that independence.

Who Gets Appointed

As we have seen, a president can make a lot of appointments but rarely knows more than a few of the appointees. Unlike cabinet members in a parliamentary system, the president's cabinet officers and their principal deputies usually have not served with the chief executive in the legislature. Instead, they come from private business, universities, think tanks, foundations, law firms, labor unions, and the ranks of former and present members of Congress as well as past state and local government officials. A president is fortunate to have agreement from most cabinet members on major policy questions. President Reagan made a special effort to ensure that his cabinet members were ideologically in tune with him, but even so, Secretary of State Alexander Haig soon got into a series of quarrels with senior members of the White House staff and had to resign.

The men and women appointed to the cabinet and to the subcabinet usually will have had some prior federal experience. One study of more than a thousand such appointments made by five presidents (Franklin Roosevelt through Lyndon Johnson) found that about 85 percent of the cabinet, subcabinet, and independent-agency appointees had some prior federal experience. In fact, most were in government service (at the federal, state, or local level) just before they received their cabinet or subcabinet appointment.[48] Clearly, the executive branch is not, in general, run by novices.

Many of these appointees are what Richard Neustadt has called "in-and-outers": people who alternate between jobs in the federal government and ones in the private sector, especially in law firms and in universities. Donald Rumsfeld, before becoming secretary of defense to President George W. Bush, had been secretary of defense and chief of staff under President Ford and before that a member of Congress. Between his Ford and Bush services, he was an executive in a large pharmaceutical company. This pattern is quite different from that of parliamentary

systems, where all the cabinet officers come from the legislature and typically are full-time career politicians.

At one time, the cabinet had in it many people with strong political followings of their own—former senators and governors and powerful local party leaders. Under Franklin Roosevelt, Truman, and Kennedy, the postmaster general was the president's campaign manager. George Washington, Abraham Lincoln, and other presidents had to contend with cabinet members who were powerful figures in their own right: Alexander Hamilton and Thomas Jefferson worked with Washington; Simon Cameron (a Pennsylvania political boss) and Salmon P. Chase (formerly governor of Ohio) worked for—and against—Lincoln. Before 1824, the post of secretary of state was regarded as a stepping-stone to the presidency; and after that at least 10 persons ran for president who had been either secretary of state or ambassador to a foreign country.[49]

Of late, however, a tendency has developed for presidents to place in their cabinets people known for their expertise or administrative experience rather than for their political following. This is in part because party leaders can no longer demand a place in the cabinet and in part because presidents want (or think they want) "experts." A remarkable illustration of this is the number of people with PhDs who have entered the cabinet. President Nixon, who supposedly did not like Harvard professors, appointed two—Henry Kissinger and Daniel Patrick Moynihan—to important posts. President Clinton appointed Georgetown professor Madeleine Albright to serve as the U.S. permanent representative to the United Nations and then secretary of state; President George W. Bush appointed Stanford professor Condoleezza Rice to serve as national security adviser and then secretary of state.

Additionally, presidents have become more attentive to recognizing politically important groups, regions, and organizations in their executive appointments. Robert Weaver became the first African American to serve in the cabinet when he served as secretary of HUD under President Johnson. The secretary of labor must be acceptable to the AFL-CIO, the secretary of agriculture to at least some organized farmers. Each of the last three presidents (Bill Clinton, George W. Bush, and Barack Obama) appointed several women and minorities to his cabinet.

Because political considerations must be addressed in making cabinet and agency appointments, and because any head of a large organization will tend to adopt the perspective of that organization, there is an inevitable tension—even a rivalry—between the White House staff and the department heads. Staff members see themselves as extensions of the president's personality and policies; department heads see themselves as repositories of expert knowledge (often knowledge of why something will not work as the president hopes).

White House staffers, many of them young men and women in their 20s or early 30s with little executive experience, will call department heads, often persons in their

Keystone-France/Gamma-Keystone/Getty Images

Chip Somodevilla/Getty Images

IMAGES 14-6 and 14-7 Secretary of Labor Frances Perkins (left), appointed by President Franklin Roosevelt, was the first woman cabinet member. When Condoleezza Rice was selected by President George W. Bush to be National Security Advisor, she became the first woman to hold that position (and later the first African American woman to be Secretary of State).

50s with substantial executive experience, and tell them "the president wants" this or that or "the president asked me to tell you" one thing or another. Department heads try to conceal their irritation and then maneuver for some delay so they may develop counterproposals. On the other hand, when department heads call a White House staff person and ask to see the president, unless they are one of the privileged few in whom the president has special confidence, they often are told that "the president can't be bothered with that" or "the president doesn't have time to see you."

The President's Program

Imagine you have just spent three or four years running for president, during which time you have given essentially the same speech over and over again. You have had no time to study the issues in any depth. To reach a large television audience, you have couched your ideas largely in rather simple—if not simple-minded—slogans. Your principal advisers are political aides, not legislative specialists.

You win. You are inaugurated. Now you must *be* a president instead of just talking about it. You must fill hundreds of appointive posts, but you know personally only a handful of the candidates. You are expected to deliver an address to a joint session to Congress only two or three weeks after you are sworn in. It is quite possible you have never read, much less written, such a message before. You must submit a new budget; the old one is hundreds of pages long, much of it comprehensible only to experts. Foreign governments, as well as the stock market, hang on your every word, interpreting many of your remarks in ways that totally surprise you. What will you do?

The Constitution is not much help. It directs you to report on the state of the union and to recommend "such measures" as you shall judge "necessary and expedient." Beyond that, you are charged to "take care that the laws be faithfully executed."

At one time, of course, the demands placed on a newly elected president were not very great because the president was not expected to do very much. The president, upon assuming office, might speak of the tariff, or relations with England, or the value of veterans' pensions, or the need for civil service reform. The president was not expected to have something to say (and offer) to everybody, but is expected to do so today.

Putting Together a Program

A president can develop a program in essentially two ways. One, exemplified by Presidents Carter and Clinton, is to have a policy on almost everything. To do this, they worked endless hours and studied countless documents, trying to learn something about and then state their positions on a large number of issues. The other method, illustrated by President Reagan, is to concentrate on three or four major initiatives or themes and leave everything else to subordinates.

But even when a president has a governing philosophy, as did Reagan, plunging ahead independently is risky. The president must judge public and congressional reaction to the proposed program before committing fully to it. Therefore, the president often will allow parts of the program to be "leaked" to the press, or "floated" as a trial balloon. Reagan's commitment to a 30 percent tax cut and larger military expenditures was so well known that it required no leaking, but he did have to float his ideas on Social Security and certain budget cuts to test popular reaction. His opponents in the bureaucracy did exactly the same thing, hoping for the opposite effect. They leaked controversial parts of the program in an effort to discredit the whole policy. This process of testing the winds by a president and his critics helps explain why so many news stories coming from Washington mention no person by name but only an anonymous "highly placed source."

In addition to the risks of adverse reaction, the president faces three other constraints on planning a program. One is the sheer limits of time and attention span. Every president works harder than ever before. A 90-hour week is typical. Even so, the president has great difficulty keeping up with everything to know and make decisions about. For example, Congress during an average year passes several hundred bills, each of which the president must sign, veto, or allow to take effect without a presidential signature. Scores of people wish to see the president. Hundreds of phone calls must be made to members of Congress and others in order to ask for help, to smooth ruffled feathers, or to get information. The president must receive all newly appointed ambassadors and visiting heads of state and in addition have pictures taken with countless people, from a Nobel Prize winner to a child whose likeness will appear on the Easter Seal.

The second constraint is the unexpected crisis. Franklin Roosevelt obviously had to respond to a depression and to the mounting risks of world war.[50] But most presidents get their crises when they least expect them. Kennedy faced the failure of the Bay of Pigs invasion in Cuba just three months after taking office, and then successfully resolved the Cuban missile crisis 18 months later.[51] Johnson wanted to focus on domestic policy, but his incremental escalation of U.S. involvement in the Vietnam War ultimately dominated his presidency.[52] Nixon had to contend with the Vietnam War, increasing oil prices, and the Watergate burglary and cover-up, which

forced his resignation.[53] George H. W. Bush managed the U.S. response to the ending of the Cold War and the dissolving of the Soviet Union into independent republics, and then developed a multilateral coalition to repel Iraq's invasion of Kuwait.[54] George W. Bush led the nation after the devastating 9/11 terrorist attacks, waging war in both Afghanistan and Iraq.[55]

The third constraint is that the federal government and most federal programs, as well as the federal budget, can be changed only marginally, except in special circumstances. The vast bulk of federal expenditures are beyond control in any given year; the money must be spent whether the president likes it or not. Many federal programs have such strong congressional or public support that they must be left intact or modified only slightly. And this means that most federal employees can count on being secure in their jobs, whatever a president's views on reducing the bureaucracy.

The result of these constraints is that the president, at least in ordinary times, has to be selective about priorities. The president can be thought of as having a stock of influence and prestige comparable to a supply of money. To get the most "return" on resources, the president must "invest" that influence and prestige carefully in enterprises that promise substantial gains—in public benefits and political support—at reasonable costs.

Each president tends to speak in terms of changing everything at once, using overarching concepts such as a "New Deal," a "New Frontier," a "Great Society," the "New Federalism," or "Make America Great Again." But beneath the rhetoric, the president must identify a few specific proposals to pursue while remaining mindful of the need to leave a substantial stock of resources in reserve to handle the inevitable crises and emergencies. What a president manages to do beyond this will depend on personal views and a sense of what the nation, as well as reelection, requires.

And it will depend on one other thing: opinion polls. The last president who never used polls was Herbert Hoover. Franklin Roosevelt began making heavy use of them, and every president since has relied on them. Bill Clinton had voters polled about almost everything—where he should go on vacation (the West) and how to deal with Bosnia (no ground troops). Once, when polls did not exist, politicians often believed they should do what they thought the public interest required. Now that polls are commonplace, some politicians act on the basis of what their constituents want. Scholars call the first view the trustee approach: do what the public good requires, even if the voters are skeptical. The second view is the delegate model: do what your constituents want you to do.

But there is another way of looking at polls. They may be a device not for picking a policy, but for deciding what language to use in explaining that policy. Choose a policy that helps you get reelected or that satisfies an interest group, but then explain it with poll-tested words. President Clinton wanted to keep affirmative action (described in Chapter 6), but knew that most voters disliked it. So he used a poll-tested phrase—"mend it but don't end it"—and then did nothing to mend it.

New York Times Co/Archive Photos/Getty Images

IMAGE 14-8 During the Great Depression, the federal government created the Civilian Conservation Corps to provide employment through public works projects.

Finally, a president's program can be radically altered by a dramatic event or prolonged crisis. George W. Bush ran as a candidate interested in domestic issues and with little background in foreign affairs, but the terrorist attack of September 11, 2001, on the World Trade Center and the Pentagon dramatically changed his presidency into one preoccupied with foreign and military policy. Barack Obama campaigned against the war in Iraq but spent the first months of his presidency focused mainly on the country's sagging economy.

Attempts to Reorganize

One item on the presidential agenda has been the same for almost every president since Herbert Hoover: reorganizing the executive branch of government. In the wake of the terrorist attack on the United States on September 11, 2001, the president, by executive order, created a new White House Office of Homeland Security, headed by his friend and former Pennsylvania governor, Tom Ridge. In the months that followed, it became clear to all, including the president, that he had given Ridge an impossible job. For one thing, despite its obvious importance, Ridge's office, like most units with the Executive Office of the President, had only a dozen or so full-time staff, little budgetary authority, and virtually no ability to make and enforce decisions regarding how cabinet agencies operated. Nobody could meaningfully coordinate the literally dozens of administrative units that the administration's new homeland security blueprint required Ridge's office to somehow manage.

To address this problem, President Bush called for a reorganization that would create the third-largest cabinet department: encompassing 22 federal agencies, nearly 180,000 employees, and an annual budget of close to $40 billion. Among the federal agencies placed under the new Department of Homeland Security are the Coast Guard, the Customs Service, the Federal Emergency Management Agency, and the Immigration and Naturalization Service. A law authorizing the new Department of Homeland Security was enacted in November 2002, but it has taken years and much effort for the new agency to become fully operational.

Important as it is, the ongoing attempt to reorganize the federal government around homeland security goals is neither the first, nor even the largest, reorganization effort made by a sitting president. With few exceptions, every president since 1928 has tried to change the structure of the staff, departments, and agencies that are theoretically subordinate to the White House. Every president has been appalled by the number of federal agencies and by the apparently helter-skelter manner in which they have grown. But this is only one—and often not the most important—reason for wanting to reorganize. If a president wants to get something done, put new people in charge of a program, or recapture political support for a policy, it often is easier to do so by creating a new agency or reorganizing an old one than by abolishing a program, firing a subordinate, or passing a new law. Reorganization serves many objectives and thus is a recurring theme.

Legally, the president can reorganize the personal White House staff anytime. To reorganize in any important way the larger Executive Office of the President or any of the executive departments or agencies, however, Congress must first be consulted. For more than 40 years, this consultation usually took the form of submitting to Congress a reorganization plan that would take effect provided that neither the House nor the Senate passed, within 60 days, a concurrent resolution disapproving the plan (such a resolution was called a legislative veto [discussed in Chapter 15]). This procedure, first authorized by the Reorganization Act of 1939, could be used to change, but not create or abolish, an executive agency. In 1981, authority under that act expired, and Congress did not renew it. Two years later, the Supreme Court declared all legislative vetoes unconstitutional (see Chapter 15), and so today any presidential reorganization plan would have to take the form of a regular law, passed by Congress and signed by the president.

What has been said so far may well give you the impression that the president is virtually helpless. That is not the case. The *actual* power of the president can only be measured in terms of what he can accomplish. What this chapter has described so far is the office as the president finds it—the burdens, restraints, demands, complexities, and resources that he encounters upon entering the Oval Office for the first time. Every president since Truman has remarked on how limited the powers of the president seem from the inside compared to what they appear to be from the outside. Franklin Roosevelt compared his struggles with the bureaucracy to punching a feather bed; Truman wrote that the power of the president was chiefly the power to persuade people to do what they ought to do anyway. After in office a year or so, Kennedy spoke to interviewers about how much more complex the world appeared than he had first supposed. Johnson and Nixon were broken by the office and the events that happened there.

Yet Franklin Roosevelt helped create the modern presidency, with its vast organizational reach, and directed a massive war effort. Truman ordered two atomic bombs dropped on Japanese cities. Eisenhower sent American troops to Lebanon; Kennedy supported an effort to invade Cuba. Johnson sent troops to the Dominican Republic and to Vietnam; Nixon ordered an invasion of Cambodia;

Reagan launched an invasion of Grenada and sponsored an antigovernment insurgent group in Nicaragua; Bush invaded Panama and sent troops to the Persian Gulf to fight Iraq; Clinton sent troops to Haiti and Bosnia; George W. Bush ordered U.S. military operations in Afghanistan and Iraq; Obama approved air strikes in Libya. Obviously Europeans, Russians, Vietnamese, Panamanians, Iraqis, and others do not think the American president is "helpless."

14-5 Presidential Transition

No president but Franklin Roosevelt has ever served more than two terms, and since the ratification of the Twenty-second Amendment in 1951, no president will ever again have the chance. But more than tradition or the Constitution escorts presidents from office. Only about one-third of the presidents since George Washington have been elected to a second term. Of the 27 not reelected, four died in office during their first term. But the remainder either did not seek or (more usually) could not obtain reelection.

Of the eight presidents who died in office, four were assassinated: Lincoln, Garfield, McKinley, and Kennedy. At least six other presidents were the objects of unsuccessful assassination attempts: Jackson, Theodore Roosevelt, Franklin Roosevelt, Truman, Ford, and Reagan. (There may have been attempts on other presidents that never came to public notice; the attempts mentioned here involved public efforts to fire weapons at presidents.)

The presidents who served two or more terms fall into certain periods, such as the Founding (Washington, Jefferson, Madison, Monroe), wartime or economic crisis (Lincoln, Wilson, Franklin D. Roosevelt, George W. Bush, Obama), relatively tranquil times (Monroe, McKinley, Eisenhower, Clinton), or some combination of the above. When the country was deeply divided, as during the years just before the Civil War and during the period of Reconstruction afterward, it was the rare president who was reelected.

Michael Evans/The White House/National Archives and Records/Administration

IMAGE 14-9 President Reagan waved to onlookers moments before he was shot on March 30, 1981, by a would-be assassin. The Twenty-fifth Amendment addresses the issue of presidential disability by providing for an orderly transfer of power to the vice president.

The Vice President

Eight times a vice president has become president because of the death of his predecessor. It first happened to John Tyler, who became president in 1841 when William Henry Harrison died peacefully after only one month in office. The question for Tyler and for the country was substantial: Was Tyler simply to be the acting president and a kind of caretaker until a new president was elected, or was he to be *president* in every sense of the word? Despite criticism and despite what might have been the contrary intention of the Framers of the Constitution, Tyler decided on the latter course and was confirmed in that opinion by a decision of Congress. Ever since, the vice president has automatically become president, in title and in powers, when the occupant of the White House has died or resigned.

But if vice presidents frequently acquire office because of death, they rarely acquire it by election. Since the earliest period of the Founding, when John Adams and Thomas Jefferson were each elected president after having first served as vice president under their predecessors, there have been only three occasions when a vice president was later able to win the presidency without the president having died in office. One was in 1836, when Martin Van Buren was elected president after having served as Andrew Jackson's vice president. The second was in 1968, when Richard Nixon became president after having served as Dwight Eisenhower's vice president from 1953 to 1961. The third was in 1988, when George Bush succeeded Ronald Reagan. Many vice presidents who entered the Oval Office because their predecessors died were subsequently elected to terms in their own right—Theodore Roosevelt, Calvin Coolidge, Harry Truman, and Lyndon Johnson. But no one who wishes to become president should assume that to become vice president first is the best way to get there.

The vice-presidency is just what so many vice presidents have complained about its being: a rather empty job. John Adams described it as "the most insignificant office that ever the invention of man contrived or his imagination conceived," and most of his successors would have agreed. Thomas Jefferson, almost alone, had a good

word to say for it: "The second office of the government is honorable and easy, the first is but a splendid misery."[56] Daniel Webster rejected a vice-presidential nomination in 1848 with the phrase, "I do not choose to be buried until I am really dead."[57] (Had he taken the job, he would have become president after Zachary Taylor died in office, thereby achieving a remarkable secular resurrection.) For all the good and bad jokes about the vice-presidency, however, candidates still struggle mightily for it. John Nance Garner gave up the speakership of the House to become Franklin Roosevelt's vice president (a job he later cuttingly valued as "not worth a pitcher of warm spit"*), and Lyndon Johnson gave up the majority leadership of the Senate to become Kennedy's. Truman, Nixon, Humphrey, Mondale, and Gore all left reasonably secure Senate seats for the vice-presidency.

The only official task of the vice president is to preside over the Senate and to vote in case of a tie. (Vice President Mike Pence did this in early 2017 for Secretary of Education Betsy DeVos's confirmation vote.) Even this is scarcely time-consuming, as the Senate chooses from among its members a president pro tempore, as required by the Constitution, who (along with others) presides in the absence of the vice president. The vice president's leadership powers in the Senate are weak, especially when the vice president is of a different party from the majority of the senators. But on occasion the vice president can become very important. Right after the terrorists attacked the United States in 2001, President Bush was in his airplane while his advisers worried that he might be attacked next. Vice President Cheney was quickly hidden away in a secret, secure location so he could run the government if anything happened to President Bush. And for many months thereafter, Cheney stayed in this location in case he suddenly became president. But absent a crisis, the vice president is, at best, only an adviser to the president.

Problems of Succession

If the president should die in office, the right of the vice president to assume that office has been clear since the time of John Tyler. But two questions remain: What if the president falls seriously ill, but does not die? And if the vice president steps up, who then becomes the new vice president?

The first problem has arisen on a number of occasions. After President James A. Garfield was shot in 1881, he lingered through the summer before he died. President Woodrow Wilson collapsed from a stroke in 1919, became a virtual recluse for several months, and then sharply curtailed activity for the rest of his term. Eisenhower had three serious illnesses while in office; Reagan was shot during his first term and hospitalized during his second.

The second problem has arisen on eight occasions when the vice president became president owing to the death of the incumbent. In these cases, no elected person was available to succeed the new president, should he die in office. For many decades, the problem was handled by law. The Succession Act of 1886, for example, designated the secretary of state as next in line for the presidency should the vice president die, followed by the other cabinet officers in order of seniority. But this meant that a vice president who became president could pick his own successor by choosing his own secretary of state. In 1947, the law was changed to make the Speaker of the House and then the president pro tempore of the Senate next in line for the presidency. But that created still other problems: a Speaker or a president pro tempore is likely to be chosen because of seniority, not executive skill, and in any event might well be of the party opposite to that occupying the White House.

Both problems were addressed in 1967 by the Twenty-fifth Amendment to the Constitution. It deals with the disability problem by allowing the vice president to serve as "acting president" whenever the president declares an inability to discharge the powers and duties of the office, or whenever the vice president and a majority of the cabinet declare that the president is incapacitated. If the president disagrees with the opinion of the vice president and a majority of the cabinet, then Congress decides the issue. A two-thirds majority is necessary to confirm that the president is unable to serve.

The amendment deals with the succession problem by requiring a vice president who assumes the presidency (after a vacancy is created by death or resignation) to nominate a new vice president. This person takes office if the nomination is confirmed by a majority vote of both houses of Congress. When there is no vice president, then the 1947 law governs: next in line are the Speaker, the Senate president, and the 15 cabinet officers, beginning with the secretary of state.

The disability problem has not arisen since the adoption of the amendment, but the succession problem has. In 1973, Vice President Spiro Agnew resigned, having pleaded no contest to criminal charges. President Nixon nominated Gerald Ford as vice president, and after extensive hearings he was confirmed by both chambers of Congress and sworn in. Then on August 9, 1974, Nixon resigned the presidency—the only president to do so—and Ford became president. He nominated as his vice president Nelson Rockefeller, who was confirmed by both houses of

*The word he actually used was a good deal stronger than *spit*, but historians are decorous.

impeachment *Charges against a president approved by a majority of the House of Representatives.*

Congress—again, after extensive hearings—and was sworn in on December 19, 1974. For the first time in history, the two principal executive officers of the nation had not been elected to either the presidency or the vice-presidency. It is a measure of the legitimacy of the Constitution that this arrangement caused no crisis in public opinion.

Impeachment

A president can leave office early one other way—besides death, disability, or resignation—and that is by impeachment. Not only the president and vice president but also all "civil officers of the United States" can be removed by being impeached and convicted. As a practical matter civil officers—cabinet secretaries, bureau chiefs, and the like—are not subject to impeachment because the president can remove them at any time and usually will if their behavior makes them a serious political liability. Federal judges, who serve during "good behavior"† and who are constitutionally independent of the president and Congress, have been the most frequent objects of impeachment.

An **impeachment** is like an indictment in a criminal trial: a set of charges against somebody, voted by (in this case) the House of Representatives. To be removed from office, the impeached officer must be convicted by a two-thirds vote of the Senate, which sits as a court, is presided over by the Chief Justice, hears the evidence, and makes its decision under whatever rules it wishes to adopt. Nineteen persons have been impeached by the House, and eight have been convicted by the Senate. The last conviction was in 2010, when a federal judge was removed from office.

Only two presidents have ever been impeached—Andrew Johnson in 1868 and Bill Clinton in 1998. (Richard Nixon would surely have been impeached in 1974, had he not resigned after the House Judiciary Committee voted to recommend impeachment.) The Senate did not convict either Johnson or Clinton by the necessary two-thirds vote. The case against Johnson was entirely political—radical Republicans, who wished to punish the South after the Civil War, were angry at Johnson, a Southerner, who had a soft policy toward the South. The argument against him was flimsy.

The case against Clinton was more serious. The House Judiciary Committee, relying on the report of independent counsel Kenneth Starr, charged Clinton with perjury (lying under oath about his sexual affair with White House intern Monica Lewinsky), obstruction of justice (trying to block the Starr investigation), and abuse of power (making false written statements to the Judiciary Committee). The vote to impeach was passed by the House along party lines. The Senate vote fell far short of the two-thirds required for conviction.

Why did Clinton survive? There were many factors. The public disliked his private behavior, but did not think it amounted to an impeachable offense. (In fact, right after the affair became public, Clinton's standing in opinion polls went up.) The economy was strong and the nation was at peace. Clinton was a centrist Democrat whose private behavior may have offended voters, but whose public policies still had broad support.

The one casualty of the entire episode was the death of the law creating the office of the Independent Counsel. Passed in 1978 by a Congress that was upset by the Watergate crisis, the law directed the attorney general to ask a three-judge panel to appoint an independent counsel whenever a high official is charged with serious misconduct. (In 1993, when the 1978 law expired, President Clinton asked that it be passed again. It was.) Eighteen people were investigated by various independent counsels from 1978 to 1999. In about half the cases, no charges were brought to court.

For a long time, Republicans disliked the law because the counsels were investigating them. After Clinton came to office, the counsels started investigating him and his associates, and so the Democrats began to oppose it. In 1999, when the law expired, it was not renewed. The U.S. attorney general may still appoint an independent counsel to lead a criminal investigation if having the Justice Department investigate presents a conflict of interest. A problem remains, however. How will any high official, including the president, be investigated when the attorney general, who does most investigations, is part of the president's team? One answer is to let Congress do it, but Congress may be controlled by the president's party. No one has yet solved this puzzle.

For example, the news that several advisers to the Trump campaign had met with the Russian ambassador to the United States during the 2016 presidential campaign and transition period sparked controversy because of U.S. intelligence reports that Russia had tried to influence the presidential election. Attorney General Jeff Sessions announced in March 2017 that he would recuse himself from any investigation because he had met with the Russian ambassador during the campaign, when Sessions was a member of the Senate Armed Services Committee and a supporter of Trump's candidacy. A few weeks

†"Good behavior" means a judge can stay in office until he retires or dies, unless he or she is impeached and convicted.

later, President Trump dismissed his Federal Bureau of Investigation (FBI) Director James B. Comey, prompting allegations that the president was trying to halt any investigation of possible connections between the Trump campaign and Russian officials. The Justice Department then appointed former FBI Director Robert S. Mueller to serve as special counsel to investigate possible campaign ties, but prospects for resolving or moving past the controversy were uncertain at best.

Some Founders may have thought that impeachment would be used frequently against presidents, but as a practical matter it is so complex and serious an undertaking that we can probably expect it to be reserved in the future only for the gravest forms of presidential misconduct. No one quite knows what a high crime or misdemeanor is, but most scholars agree that the charge must involve something illegal or unconstitutional, not just unpopular. Unless a president or vice president is first impeached and convicted, many experts believe those individuals are not liable to prosecution while in office. (No one is certain, because the question has never arisen.) President Ford's pardon of Richard Nixon meant that he could not be prosecuted under federal law after leaving the White House for alleged actions while in office.

Students may find the occasions of misconduct or disability remote and the details of succession or impeachment tedious. But the problem is not remote—succession has occurred nine times and disability at least twice—and what may seem tedious goes, in fact, to the heart of the presidency. The first and fundamental problem is to make the office legitimate. That was the great task George Washington set himself, and that was the substantial accomplishment of his successors.

Despite bitter and sometimes violent partisan and sectional strife, beginning almost immediately after Washington stepped down, U.S. presidential succession has always occurred peacefully, without a military coup or a political plot. For centuries, in the bygone times of kings as well as in the present times of dictators and juntas, peaceful succession has been a rare event among the nations of the world. Many of the critics of the Constitution believed in 1787 that peaceful succession would not happen in the United States either: somehow the president would connive to hold office for life or to handpick a successor. Their predictions were wrong, though their fears are understandable.

How Powerful Is the President Today?

Just as members of Congress bemoan their loss of power, so presidents bemoan theirs. Can both be right?

In fact, they can. If Congress is less able to control events than it once was, that does not mean the president is thereby more able to exercise control. The federal government *as a whole* has become more constrained, so it is less able to act decisively. The chief source of this constraint is the greater complexity of the issues that Washington must address.

It was one thing to pass the Social Security Act in 1935; it is quite another thing to keep the Social Security system adequately funded. It was one thing for the nation to defend itself when attacked in 1941; it is quite another to maintain a constant military preparedness while simultaneously exploring possibilities for arms control. It was not hard to give pensions to veterans; it seems almost impossible today to determine how to address such highly controversial issues as illegal immigration and reducing annual budget deficits and the ballooning national debt.

In the face of modern problems, all branches of government, including the presidency, seem both big and ineffectual. Furthermore, increased participation in politics by organized interests, as discussed in Chapter 11, raises additional issues for elected officials to contend with in policymaking. Add to this continuous, and often highly critical, media coverage (see Chapter 12), and it is small wonder that both presidents and members of Congress view their offices today as less powerful than in the past.

To address this problem for the presidency, some scholars recommend changing the institution in fundamental ways. One proposal is to give the president "fast-track" authority to propose legislation to Congress, which would have to approve or reject initiatives without amendments and within a fixed timetable.[58] Another proposal is to create a constitutional provision for special elections, for the president and Congress, if the public demonstrates a lack of confidence in both institutions. (This would be comparable to a no-confidence vote in parliamentary systems for the prime minister, though finding an acceptable measure for public confidence in the United States would be difficult.) Special elections could further test prospects for presidential influence, but they also could give the president a mandate to govern in a time of crisis.[59] Apart from the substantive debates, though, prospects for either proposal to be enacted are slim, as they likely would require a constitutional amendment.

Nevertheless, despite institutional constraints, presidents do have significant constitutional and political powers that enable them to set the direction of the country in domestic, economic, and foreign policy. (See Chapters 17, 18, 19 for a discussion of each policy area.) The rise of the modern presidency, as discussed

on pages 337, means that presidents are expected to lead the country and direct the national policy agenda, even if their ability to do so is constrained by other institutions and political actors. Consequently, presidents have come to acquire certain rules of thumb for addressing political expectations and challenges. Among them are these:

- *Move it or lose it.* A president who wants to get something done should do it early in his term, before political influence erodes.
- *Avoid details.* President Carter's lieutenants regret having tried to do too much. Better to have three or four top priorities and forget the rest.
- *Cabinets don't get much accomplished; people do.* Find capable White House subordinates and give them well-defined responsibility; then watch them closely.[60]

These informal guides to action illustrate well how presidents must operate quickly once in office to achieve as many of their goals as possible within a fixed time period of four or eight years.[61]

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

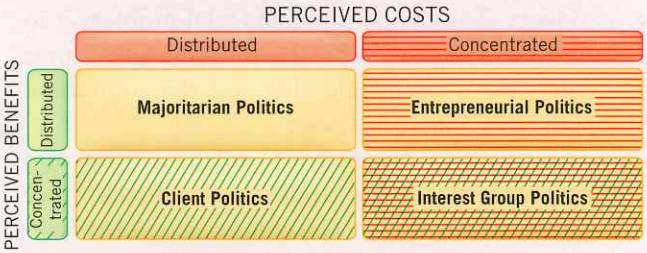
The Sequester: Entrepreneurial or Majoritarian Politics?

In the spring of 2013, federal spending cuts took effect because the White House and Congress did not reach a budget agreement. The cuts, known as the "sequester," were part of the 2011 agreement to increase the debt ceiling, which stated that if the federal government did not enact a plan to cut $1.5 trillion in spending over 10 years, then automatic spending reductions, divided evenly between domestic and defense spending, would be enacted.

Republican leaders in Congress presented the sequester as entrepreneurial politics. Those directly affected by the spending cuts—furloughed government employees, participants in public tours of the White House (which were halted after the sequester began)—would pay, but the public as a whole would benefit from trimming the budget deficit and achieving more moderate and sustainable federal spending of public dollars over the next decade.

The Obama White House criticized the spending cuts as draconian efforts to limit short-term government spending at the expense of our long-term economic health. The president's economic advisers defined budgetary battles as majoritarian politics: everyone would pay for deficit spending now, which would lead to greater and more sustained economic productivity, lower unemployment, and reduced budget deficits in the future. The sequester did not cut wasteful government spending, according to the White House, but cut preschool and after-school educational opportunities in the Head Start program, halted meals for senior citizens, and reduced funds for first responders nationwide. Those who most needed assistance from the federal government were harmed most by the sequester, with significant consequences for curtailing their educational and economic opportunities in the future.

How do you think the White House and Congress should decide on immediate and long-term spending priorities? What does the United States need to do in the coming years to reduce budget deficits and the national debt? And how should proposals be presented to maximize public support?



▶ **PRACTICE POLITICAL SCIENCE** Articulate a defensible claim about the federal government's "sequester" budget cuts. Use refutation to present an alternate perspective to your claim.

Sources: Dylan Matthews, "The Sequester: Absolutely Everything You Could Possibly Need to Know," *Washington Post*, 1 March, 2013; White House, "What You Need to Know About the Sequester," https://obamawhitehouse.archives.gov/issues/sequester.

WHAT WOULD YOU DO?

Will You Support the Budget Plan Proposed by Congress?

To: *President Lucy Barr*
From: *Talya Potter, Director, Office of Legislative Affairs*
Subject: *Passing budget bills under divided government*

With the opposition party in control of Congress, media pundits and other commentators are calling for the president to accept the other party's agenda for the next round of budget bills.

To Consider:

In the latest budget battle between the White House and Congress, the pressure on the president to accept a compromise with his political opponents is great, given the looming threat of not only a government shutdown but also a debt default by the United States for the first time in the history of the American republic.

Arguments for:

1. With a reelection battle around the corner, the president cannot afford to get caught up in a budget battle with Congress.
2. The president's ability to gain public support for her agenda is limited, and even increased public support will not improve leverage with Congress.
3. The president should defer to Congress as the primary representative of the people in American politics.

Arguments against:

1. American politics is guided too often by campaigns, and the president will build support for reelection by acting presidential—that is, by setting the agenda for the budget and not backing down.
2. The president can build public support through speeches and other forms of communication, and this support can be used as political capital to negotiate with Congress.
3. The president is the only nationally elected official in American politics (other than the vice president), and therefore is responsible for identifying and promoting public priorities, even if this means legislative battles with Congress.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ **Favor plan** ☐ **Oppose plan**

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

LEARNING OBJECTIVES

14-1 Explain how presidents differ from prime ministers and discuss the evolution of divided government in the United States.

Unlike prime ministers, American presidents are elected independently of Congress, which gives them both more independence in governing and more challenges in building political coalitions. Divided government has become much more common in the United States since the mid-20th century, with mixed consequences for policymaking.

14-2 Summarize how the constitutional and political powers of the presidency have evolved from the founding of the United States to the present.

The Framers developed the Constitution with the expectation that Congress would be the most important institution in the national government. And it was, with a few exceptions, until the 20th century. Today, presidential power has grown significantly from its constitutional origins. Since the 1930s, the president has become the central figure in American politics, even though the president's ability to achieve political success remains highly dependent on other individuals and institutions.

14-3 Discuss how modern presidents influence policymaking.

To make policy, a president must work closely with advisers and Congress while being attentive to political party and public expectations. A president needs to show why policy proposals are in their interest in order to win the support of advisers, political party members, Congress, and the public. Presidents additionally may influence policymaking in other ways, including through vetoes, executive privilege, impoundment of funds, executive orders, and signing statements.

14-4 Explain why presidential character and organization matter for policymaking.

A president's personality influences how White House advisors convey and evaluate information as well as how executive offices are organized. Many offices, within the White House as well as cabinet departments and executive agencies, influence the president's policy program.

14-5 Describe presidential transitions and their consequences for executive power.

The Constitution provides limited guidance on presidential transitions, creating four-year terms as well as the office of vice president and establishing the procedure of impeachment. Subsequently, Congress has passed legislation on executive succession, and constitutional amendments have limited a president to two terms of office and addressed the possibility of presidential disability. All of these provisions affect a president's ability to develop and enact a policy agenda.

14-6 Evaluate how powerful U.S. presidents are today.

The increasing complexity of policy challenges today make U.S. national political institutions seem ill-equipped to address public needs. Proposals to change the U.S. presidency, such as fast-track authority for legislation, or a provision for special elections (that would apply to Congress as well) are unlikely to be enacted because they would require a constitutional amendment. Still, the rise of the modern presidency does give the chief executive clear opportunities to govern, provided that the president is willing to take quick, decisive action in a limited time period.

TO LEARN MORE

Official White House blog: **www.whitehouse.gov**

Studies of presidents:

Miller Center of Public Affairs, University of Virginia: **https://millercenter.org/president**

The American Presidency Project, University of California at Santa Barbara: **www.presidency.ucsb.edu**

Cohen, Jeffrey E. *Going Local: Presidential Leadership in the Post-Broadcast Age*. New York: Cambridge

CHAPTER 15

The Bureaucracy

KEY OBJECTIVE OF THIS CHAPTER

- *The president ensures that executive branch agencies and departments carry out their responsibilities in concert with the goals of the administration.*

KEY TAKEAWAY FROM THIS CHAPTER

- Tasks performed by the bureaucracy (departments, agencies, commissions, and government corporations) are represented by writing and enforcing regulations, issuing fines, testifying before Congress, and issuing networks and "iron triangles."

There is probably not a man or woman in the United States who has not, at some time or other, complained about "the bureaucracy." Your letter was slow in getting to Aunt Minnie? The Internal Revenue Service took months to send you your tax refund? The Defense Department paid $400 for a hammer? The Occupational Safety and Health Administration told you that you installed the wrong kind of portable toilet for your farm workers? The "bureaucracy" is to blame.

For most people and politicians, *bureaucracy* is a pejorative word implying waste, confusion, red tape, and rigidity. But for scholars—and for bureaucrats themselves—*bureaucracy* is a word with a neutral, technical meaning. A **bureaucracy** is a large, complex organization composed of appointed officials. By *complex*, we mean that authority is divided among several managers; no one person is able to make all the decisions. A large corporation is a bureaucracy; so also are a big university and a government agency. With its sizable staff, even Congress has become, to some degree, a bureaucracy.

What is it about complex organizations in general, and government agencies in particular, that leads so many people to complain about them? In part, the answer is to be found in their very size and complexity. But in large measure the answer is to be found in the political context within which such agencies must operate. If we examine that context carefully, we will discover that many of the problems that we blame on "the bureaucracy" are in fact the result of what Congress, the courts, and the president do. And, if we dig just a bit deeper, we will also discover that behind just about every government bureaucracy is some set of new or old public demands. Consider, for example, Washington bureaucracies' roles with respect to keeping us safe from street criminals, cleaning up toxic waste sites, and making sure that all children have nutritious school lunches.

bureaucracy *A large, complex organization composed of appointed officials.*

THEN The U.S. Department of Justice (USDOJ—this is bureaucracy, so enjoy all the alphabet soup) was established in 1789, but until a series of federal "crime bills" was enacted beginning in the 1960s, it had only an incidental role in crime control. For the most part, it neither funded nor worked at all closely with state and local criminal justice agencies. A USDOJ subunit, the Federal Bureau of Prisons (FBOP), was a tiny agency that held fewer inmates than many small state prison systems did.

NOW With public support for successive federal "wars on crime" and "wars on drugs," the USDOJ and other federal agencies now spend billions of dollars each year to fund federal, state, and local agencies engaged in combating street crime, and the FBOP now runs one of the largest prison systems in the world.

THEN Before the Environmental Protection Agency (EPA) was launched in 1970, the federal government's environmental protection activities were virtually nonexistent.

NOW The media stories and public outcries that accompanied the discovery of lethal toxic waste sites in and around New York's Love Canal area led in 1978 to the creation of the so-called Superfund program. To administer Superfund, in 1980 the EPA expanded, and there has been an expansion in federal environmental protection efforts, and in federally directed state and local efforts as well, in most years ever since. In 2017, though, the Trump administration proposed significant budget cuts in EPA funding, particularly for programs seeking to reduce effects of climate change, making the agency's future uncertain.

THEN The first federal law providing for subsidized school lunches was passed in 1946, but it was not until the 1960s that Washington began expanding its programs in this area to include ever-greater numbers of children eligible for both free (or reduced-price) breakfasts and lunches.

NOW It was only in 2010 that the U.S. Department of Agriculture (USDA)—created in 1862, made into a cabinet department in 1889, and long concerned mainly with the nation's farms and agri-businesses—was mandated by law to work with local school districts and other organizations to make nutritious meals (breakfasts, lunches, and snacks) available to children in low-income households year-round, including in the summer months when school is out. The Trump administration's proposed budget early 2017 kept the school lunch program intact, but it proposed cuts in federal funding for after-school programs, many of which include snacks and meals.

Whatever else it may be, bureaucracy is an outgrowth of representative democracy. If people demanded that government do less or do nothing, in due course public laws would change and the agencies that exist to translate those laws into administrative action would dissolve. But that has rarely happened in the United States. Instead, 6 of the federal government's 15 cabinet agencies were created after 1964. This includes the second and third largest agencies: the Department of Veterans Affairs, created in 1989, and the Department of Homeland Security, created in 2002. (The largest federal agency, the Department of Defense, dates back to 1947 and was predated by the Department of War, which was one of the original cabinet departments created in 1789.)

15-1 Distinctiveness of the American Bureaucracy

As you might expect, much the same can be said for the growth of bureaucracy in other democratic nations. Indeed, bureaucratic government has become an obvious feature of all modern societies, democratic and nondemocratic alike.

American Constitutionalism and the Federal Bureaucracy

In the United States, however, three aspects of our constitutional system and political traditions give to the bureaucracy a distinctive character. First, political authority over the bureaucracy is not in one set of hands but is shared among several institutions. In a parliamentary regime, such as in the United Kingdom, the appointed officials of the national government work for the cabinet ministers, who are in turn dominated by the prime minister. In theory, and to a considerable extent in practice, British bureaucrats report to and take orders from the ministers in charge of their departments, do not deal directly with Parliament, and rarely give interviews to the press. In the United States, the Constitution permits both the president and Congress to exercise authority over the bureaucracy. Every senior appointed official has at least two masters: one in the executive branch and the other in the legislative branch. Often there are many more than two: Congress, after all, is not a single organization but a collection of committees, subcommittees, and individuals. This divided authority encourages bureaucrats to play one branch of government against the other and to make heavy use of the media.

Second, most of the agencies of the federal government share their functions with related agencies in state and local governments. Though some federal agencies deal directly with American citizens—the Internal Revenue Service collects taxes from them, the Federal Bureau of Investigation looks into crimes for them, the Postal Service delivers mail to them—many agencies work with other organizations at other levels of government. For example, the Department of Education gives money to local school systems; the Centers for Medicare and Medicaid Services in the Department of Health and Human Services reimburse states for money spent on health care for the poor through Medicaid and other programs; the Department of Housing and Urban Development gives grants to cities for community development; and the Employment and Training Administration in the Department of Labor supplies funds to local governments so that they can run job-training programs. In France, by contrast, government programs dealing with education, health, housing, and employment are centrally run, with little or no control exercised by local governments.

Third, the institutions and traditions of American life have contributed to the growth of what some writers have described as an "adversary culture," in which the definition and expansion of personal rights, and the defense of rights and claims through lawsuits as well as political action, are given central importance. A government agency in this country operates under closer public scrutiny and with a greater prospect of court challenges to its authority than in almost any other nation. Virtually every important decision of the Occupational Safety and Health Administration or of the Environmental Protection Agency is likely to be challenged in the courts or attacked by an affected party; in Sweden the decisions of similar agencies go largely uncontested.

The scope as well as the style of bureaucratic government differ. In many Western European nations, national governments owned and operated large parts of the economy, including banks, cigarettes, railways, and telecommunications, for much of the twentieth century. In the 1970s, for example, publicly operated enterprises accounted for about 12 percent of all employment in France but less than 3 percent in the United States.[1] In the twenty-first century, advanced industrialized countries have shifted away from state ownership of companies, though governments still play a large part in many industries. In the United States, the federal government regulates privately owned enterprises to a degree not found in many other countries. Why we should prefer regulation to ownership or management as the proper government role is an interesting question to which we return.

Proxy Government

Much of our federal bureaucracy operates on the principle of **government by proxy**.[2] In every representative government, the voters elect legislators who make the laws, but in this country the bureaucrats often pay other people to do the work. These "other people" include state and local governments, business firms, and nonprofit organizations.

Among the programs run this way are Social Security, Medicare, much environmental protection, and the collection of income taxes by withholding money from your paycheck. Even many military duties are contracted out.[3] In the first Gulf War in 1991, American soldiers outnumbered private contractors in the region by 60 to 1. But in 2006, there were nearly as many private workers as soldiers in Iraq. One company was paid $7.2 billion to get food and supplies to U.S. troops there.[4]

When Hurricanes Katrina and Rita hit our Gulf Coast, the nation's response was managed by a small and weak group, the Federal Emergency Management Agency (FEMA). When the levees broke, it had only 2,600 employees; most of the help it was to provide came through "partners," such as state and local agencies, and some of these were not very competent (see our discussion of this disaster in Chapter 3).

Critics of our government-by-proxy system argue that it does not keep track of how the money we send to public and private agencies is used. Congress, of course, could change matters around, but it has an interest in setting policies and defining goals, not in managing the bureaucracy or levying taxes. Moreover, the president and Congress like to keep the size of the federal bureaucracy small by giving jobs to people not on the federal payroll.[5]

Defenders of government by proxy claim that the system produces more flexibility, takes advantage of private and nonprofit skills, and defends the principle of federalism embodied in our Constitution. The defenders make fair points, but the system does produce certain everyday oddities, such as the fact that many average citizens receive costly federal government services over long periods of time without ever directly interacting with civil servants. Donald F. Kettl, a political scientist and professor at the University of Maryland, dubbed this the "Mildred Paradox": In her last several years of life, his aged and ill mother-in-law, Mildred, applied successfully for multiple federal health insurance programs and received several years' worth of different types of expensive institutional care and top-quality medical treatment—all at government expense—but without ever actually encountering a single government worker.[6]

government by proxy
Washington pays state and local governments and private groups to staff and administer federal programs.

Or look a bit closer at what we noted above regarding the U.S. Department of Agriculture (USDA). As a result of federal law (the Healthy, Hunger-Free Kids Act of 2010), the USDA is required to expand and improve its "food security" programs by, among other measures, seeing to it that all eligible low-income children have daily access to free meals (breakfast or lunch plus a snack) during the summer months when school is out. The law, however, did not even begin to specify just how the USDA and its scores and scores of state and local government proxy agencies (not to mention their tens of thousands of administrative partners) are to accomplish that objective. For example, after the law passed in 2010, Philadelphia developed one of the largest USDA-funded summer food programs in the country (almost 4 million meals served each summer through more than 1,000 local "sites" including churches, recreation centers, and private homes on streets closed off for the purpose by local police). But the city's summer participation rate among eligible children was about 50 percent. Given this complex web of administration, perhaps it is a surprise that the program works as well as it does.

Mario Tama/Getty Images

IMAGE 15-1 Many people were taken by boat away from their New Orleans homes that were struck by Hurricane Katrina in 2005.

15-2 Evolution of the Federal Bureaucracy

The Constitution made scarcely any provision for an administrative system other than to allow the president to appoint, with the advice and consent of the Senate, "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."[7] Departments and bureaus were not mentioned.

In the first Congress in 1789, James Madison introduced a bill to create a Department of State to assist the new secretary of state, Thomas Jefferson, in carrying out his duties. People appointed to this department were to be nominated by the president and approved by the Senate, but they were "to be removable by the president" alone. These six words, which would confer the right to fire government officials, occasioned six days of debate in the House. At stake was the locus of power over what was to become the bureaucracy. Madison's opponents argued that the Senate should consent to the removal of officials as well as their appointment. Madison responded that, without the unfettered right of removal, the president would not be able to control his subordinates, and without this control he would not be able to discharge his constitutional obligation to "take care that the laws be faithfully executed."[8] Madison won, 29 votes to 22. When the issue went to the Senate, another debate resulted in a tie vote, broken in favor of the president by Vice President John Adams. The Department of State, and all cabinet departments subsequently created, would be run by people removable only by the president.

That decision did not resolve the question of who would really control the bureaucracy, however. Congress retained the right to appropriate money, to investigate the administration, and to shape the laws that would be executed by that administration—more than ample power to challenge any president who claimed to have sole authority over his subordinates. And many members of Congress expected the cabinet departments, even though headed by people removable by the president, to report to Congress.

The government in Washington was at first minuscule. The State Department started with only nine employees; the War Department did not have 80 civilian employees until 1801. Only the Treasury Department, concerned with collecting taxes and finding ways to pay the public debt, had much power, and only the Post Office Department provided any significant service.

Appointment of Officials

Small as the bureaucracy was, people struggled, often bitterly, over who would be appointed to it. From George Washington's day to modern times, presidents have found appointment to be one of their most important and difficult tasks. The officials they select affect how the laws are interpreted (thus the political ideology of the job holders is important), what tone the administration will display (thus personal character is important), how effectively the public business is discharged (thus competence is important), and how strong the political party or faction in power will be (thus party affiliation is important). Presidents trying to balance the competing needs of ideology, character, fitness, and partisanship have rarely pleased most people. As John Adams remarked, every appointment creates one ingrate and 10 enemies.

Because Congress, during most of the 19th and 20th centuries, was the dominant branch of government, congressional preferences often controlled the appointment of officials. And because Congress was, in turn, a collection of people who represented local interests, appointments were made with an eye toward rewarding the local supporters of members of Congress or building up local party organizations. These appointments made on the basis of political considerations—patronage—would later become a major issue. They galvanized various reform efforts that sought to purify politics and to raise the level of competence of the public service. Many of the abuses the reformers complained about were real enough, but patronage served some useful purposes as well. It gave the president a way to ensure that his subordinates were reasonably supportive of his policies, it provided a reward the president could use to induce recalcitrant members of Congress to vote for his programs, and it enabled party organizations to be built up to perform the necessary functions of nominating candidates and getting out the vote.

Though at first there were not many jobs to fight over, by the middle of the 19th century, there were a lot. From 1816 to 1861, the number of federal employees increased eightfold. This expansion was not, however, the result of the government taking on new functions, but simply a result of the increased demands on its traditional functions. The Post Office alone accounted for 86 percent of this growth.[9]

The Civil War was a great watershed in bureaucratic development. Fighting the war led, naturally, to hiring many new officials and creating many new offices. Just as important, the Civil War revealed the administrative weakness of the federal government and led to demands by the civil service reform movement for an improvement in the quality and organization of federal employees. And finally, the war was followed by a period of rapid industrialization and the emergence of a national economy. The effects of these developments could no longer be managed by state governments acting alone. With the creation of a nationwide network of railroads, commerce among the states became increasingly important. The constitutional powers of the federal government to regulate interstate commerce, long dormant for want of much commerce to regulate, now became an important source of controversy.

A Service Role

From 1861 to 1901, new agencies were created, many to deal with particular sectors of society and the economy. More than 200,000 new federal employees were added,

with only about half of this increase in the Post Office. The rapidly growing Pension Office began paying benefits to Civil War veterans; the Department of Agriculture was created in 1862 to help farmers; the Department of Labor was founded in 1882 to serve workers; and the Department of Commerce was organized in 1903 to assist businesspeople. Many more specialized agencies, such as the National Bureau of Standards, also came into being.

These agencies had one thing in common: Their role was primarily to serve, not to regulate. Most did research, gathered statistics, dispensed federal lands, or passed out benefits. Not until the Interstate Commerce Commission (ICC) was created in 1887 did the federal government begin to regulate the economy (other than by managing the currency) in any meaningful way. Even the ICC had, at first, relatively few powers.

Federal officials primarily performed a service role for several reasons. The values that had shaped the Constitution were still strong; these included a belief in limited government, the importance of states' rights, and the fear of concentrated discretionary power. The proper role of government in the economy was to promote, not to regulate, and a commitment to **laissez-faire**—a freely competitive economy—was strong. But just as important, the Constitution said nothing about giving any regulatory powers to bureaucrats. It gave to *Congress* the power to regulate commerce among the states. Now, obviously, Congress could not make the necessary day-to-day decisions to regulate, for example, the rates that interstate railroads charged to farmers and other shippers. Some agency or commission comprising appointed officials and experts would have to be created to do that. For a long time, however, the prevailing interpretation of the Constitution was that no such agency could exercise such regulatory powers unless Congress first set down clear standards that would govern the agency's decisions. As late as 1935, the Supreme Court held that a regulatory agency could not make rules on its own; it could only apply the standards enacted by Congress.[10] The Court's view was that the legislature may not delegate its powers to the president or to an administrative agency.[11]

These restrictions on what administrators could do were set aside in wartime. During World War I, for example, President Woodrow Wilson was authorized by Congress to fix prices, operate the railroads, manage the communications system, and even control the distribution of food.[12] This kind of extraordinary grant of power usually ended with the war.

Some changes in the bureaucracy did not end with the war. During the Civil War, World War I, World War II, the Korean War, and the war in Vietnam, the number of civilian (as well as military) employees of the government rose sharply. These increases were not simply in the number of civilians needed to help serve the war effort; many of the additional people were hired by agencies, such as the Treasury Department, not obviously connected with the war. Furthermore, the number of federal officials did not return to prewar levels after each war. Though there was some reduction, each war left the number of federal employees larger than before.[13]

laissez-faire *An economic theory that government should not regulate or interfere with commerce.*

It is not hard to understand how this happens. During wartime, almost every government agency argues that its activities have *some* relation to the war effort, and few legislators want to be caught voting against something that may help that effort. Hence in 1944, the Reindeer Service in Alaska, an agency of the Interior Department, asked for more employees because reindeer are "a valued asset in military planning."

A Change in Role

Today's bureaucracy is largely a product of two events: the Great Depression of the 1930s (and the concomitant New Deal program of President Franklin Roosevelt) and World War II. Though many agencies have been added since then, the basic features of the bureaucracy were set mainly as a result of changes in public attitudes and in constitutional interpretation that occurred during these periods. The government was now expected to play an active role in dealing with economic and social problems. In the late 1930s, the Supreme Court reversed its earlier decisions (see Chapter 16) on the question of delegating legislative powers to administrative agencies and upheld laws by which Congress merely instructs agencies to make decisions that serve "the public interest" in some area.[14] As a result, it was possible for President Nixon to set up in 1971 a system of price and wage controls based on a statute that simply authorized the president "to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries."[15] The Cost of Living Council and other agencies that Nixon established to carry out this order were run by appointed officials who had the legal authority to make sweeping decisions based on general statutory language.

World War II was the first occasion during which the government made heavy use of federal income taxes—on individuals and corporations—to finance its activities. Between 1940 and 1945, total federal tax collections increased from about $5 billion to nearly $44 billion. The end of the war brought no substantial tax reduction: The country believed

that a high level of military preparedness continued to be necessary and that various social programs begun before the war should enjoy the heavy funding made possible by wartime taxes. Tax receipts continued, by and large, to grow. Before 1913, when the Sixteenth Amendment to the Constitution was passed, the federal government could not collect income taxes at all (it financed itself largely from customs duties and excise taxes). From 1913 to 1940, income taxes were small (in 1940, the average American paid only $7 in federal income taxes). World War II created the first great financial boom for the government, permitting the sustained expansion of a wide variety of programs and thus entrenching a large number of administrators in Washington.[16]

A third event—the September 11, 2001, terrorist attacks on the United States—may have affected bureaucracy as profoundly as the depression of the 1930s and World War II. A law creating a massive new cabinet agency, the Department of Homeland Security (DHS), was passed in late 2002. Within two years of its creation, the DHS had consolidated under its authority 22 smaller federal agencies with nearly 180,000 federal employees (third behind the Departments of Defense and Veterans Affairs) and over $40 billion in budgets (fourth behind the Departments of Defense, Health and Human Services, and Education). In addition, dozens of intergovernmental grant-making programs came under the authority of the DHS.

In late 2004, Congress passed another law that promised, over time, to centralize under a single director of national intelligence the work of the more than 70 federal agencies authorized to spend money on counterterrorist activities. But even after related reforms in 2006, dozens of different agencies were still authorized to spend money on counterterrorism activities. In 2013, the DHS faced sharp questioning from the House Subcommittee on Oversight and Management Efficiency, and the Government Accountability Office once again ranked the DHS, which by then employed more than 220,000 employees, among those agencies with serious management problems.[17]

CONSTITUTIONAL CONNECTIONS

Beyond Checks and Balances?

The Framers of the Constitution did not envision anything akin to today's federal bureaucracy, with its several million full-time employees and its millions more part-time employees. But far more surprising to the Framers than the sheer size of today's federal bureaucracy (after all, the country and its population have grown, too) would be its scope: cabinet departments, bureaus, independent agencies, government corporations, and regulatory commissions touching virtually every facet of the nation's economic, social, and civic life—trade, banking, labor, environmental protection, broadcasting, transportation, human services, health, housing, education, energy, space exploration, national parks, homeland security, and more. Beyond the contemporary federal bureaucracy's size and scope, the Framers might be mystified by the "proxy government" system described earlier in the chapter, and by how so many "federal" programs are actually jointly funded and administered by federal, state, and local governments in conjunction with for-profit firms and nonprofit organizations.

But would the Framers, in turn, view today's federal bureaucracy not only as a "fourth branch" of American national government but one that operates outside their system of separated powers and checks and balances, and that has transformed federalism (see Chapter 3) into Washington-controlled "intergovernmental administration"?

Some think so. They argue that federal agencies, including the Internal Revenue Service, the Environmental Protection Agency, and many others, routinely exercise not only executive powers but also lawmaking and judicial powers as well, and that state governments are required to fund or co-fund and administer many federal programs including large ones such as Medicaid. Moreover, they claim, Congress now commonly passes long and complicated laws and leaves it almost entirely to the discretion of federal bureaucrats to decide what the laws mean, how to apply them, and even in some cases how much to spend on them.

Others, however, think not. They argue that through federal laws that set boundaries on administrators' authority (like the Administrative Procedures Act of 1946), routine oversight of federal agencies by congressional committees and subcommittees, and federal court decisions limiting how far Washington can go in requiring state governments to fund or administer its programs, the federal bureaucracy's powers and the discretion exercised by Washington's appointed officials normally remain duly limited. We share this view: the "fourth branch" is far bigger and broader than the Framers could ever have envisioned, but most federal government agencies most of the time are checked and balanced by Congress and by other means.

15-3 The Federal Bureaucracy Today

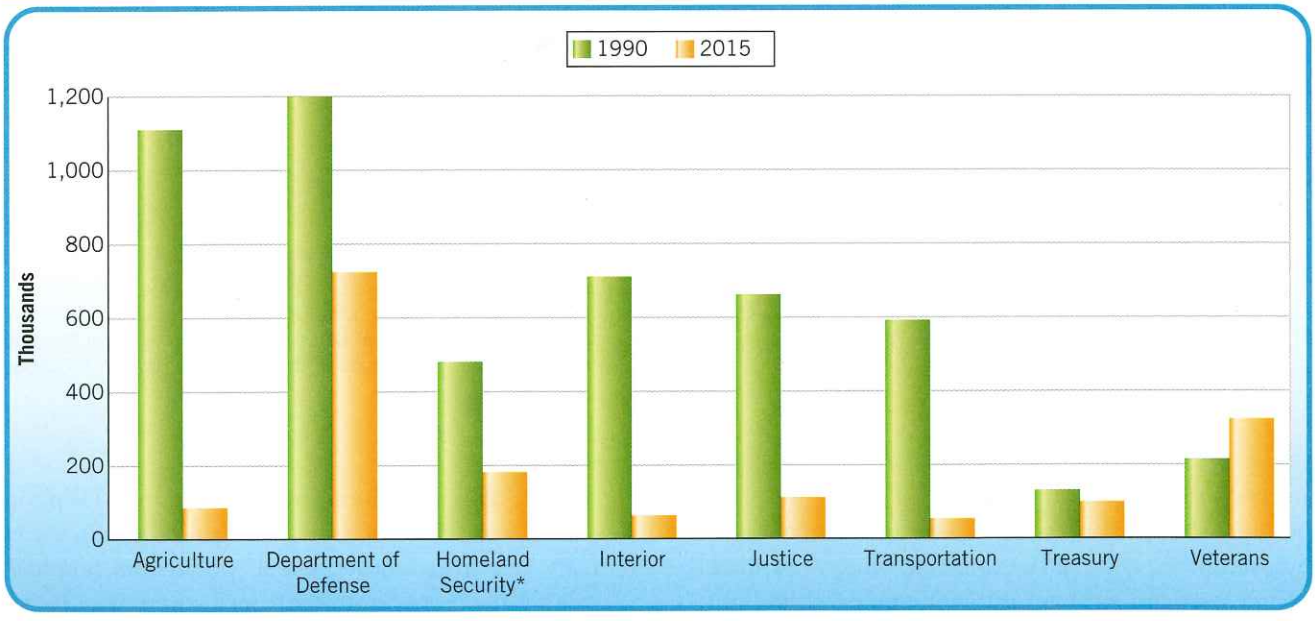
Presidents do not want to admit that they have increased the size of the bureaucracy. They can avoid saying this by pointing out that the number of civilians working for the federal government, excluding postal workers, has not increased significantly in recent years and is about the same today (2 million persons) as it was in 1960, and less than it was during World War II. This explanation is true but misleading, for it neglects the roughly 13 million people who work *indirectly* for Washington as employees of private firms and state or local agencies that are largely, if not entirely, supported by federal funds. Nearly three persons earn their living indirectly from the federal government for every one who earns it directly. While federal employment has remained quite stable, employment among federal contractors and consultants and in state and local governments has mushroomed. Indeed, most federal bureaucrats, like most other people who work for the federal government, live outside Washington, DC.

As Figure 15.1 shows, from 1990 to 2015, several federal executive departments reduced their workforce. The Department of Defense cut its civilian employees by almost one-third. Other departments, including Agriculture and Treasury, also have fewer employees. The Department of Veterans Affairs expanded after 2007 as veterans from the wars in Iraq and Afghanistan began to return home. High growth also was evident in the U.S. Department of Justice (DOJ). This growth is explained mainly by the growth in just one DOJ unit—and one of the few federal agencies anywhere in the bureaucracy that was slow to join the trend toward what we described earlier in this chapter as government by proxy—the Federal Bureau of Prisons (BOP). The BOP administers nearly 200 facilities, from maximum-security prisons to community corrections centers, all across the country. Between 1990 and 2013, its staff doubled to nearly 39,000, while the prisoner populations these federal workers supervised more than doubled to about 276,000.[18]

discretionary authority
The extent to which appointed bureaucrats can choose courses of action and make policies not spelled out in advance by laws.

The power of the federal bureaucracy cannot be measured by the number of employees, however. A bureaucracy of 5 million persons would have little power if each employee did nothing but type letters or file documents, whereas a bureaucracy of only 100 persons would have awesome power if each member were able to make arbitrary life-and-death decisions affecting the rest of us. The power of the bureaucracy depends on the extent to which appointed officials have **discretionary authority**—that is, the ability to choose courses of action and to make policies not spelled out in advance by laws. As Figure 15.2 shows, the volume of regulations issued has increased much faster than the rate of government spending (relative to gross

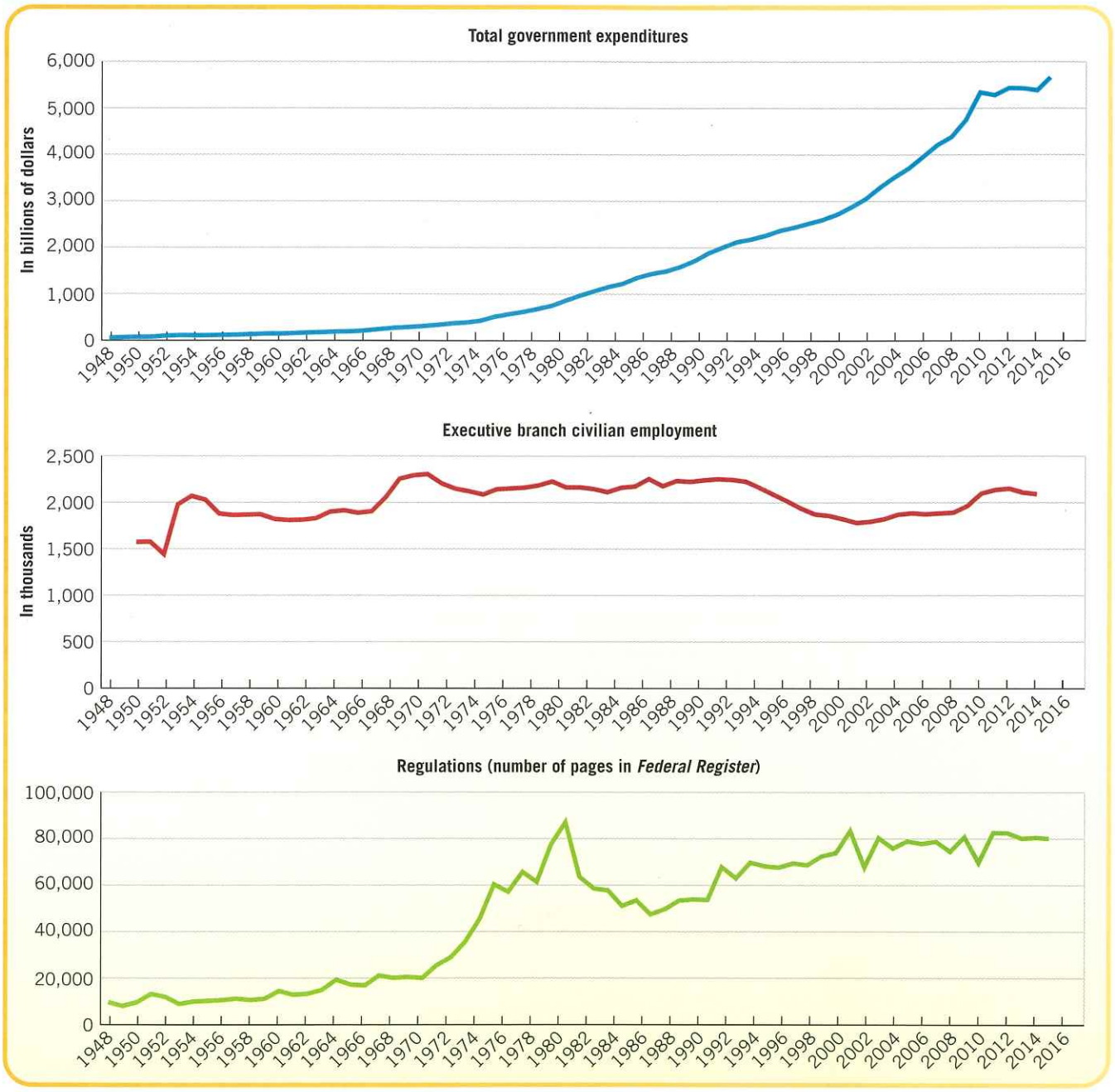
FIGURE 15.1 Federal Civilian Employment, 1990–2015



*Homeland Security previously referred to 22 different federal agencies, which became part of a single cabinet department in 2002.

Source: Office of Management and Budget, *Fiscal Year 2017 Historical Tables: Budget of the U.S. Government*, Table 16.1, "Total Executive Branch Civilian Full-Time Equivalent Employees, 1990 and 2015."

FIGURE 15.2 **The Growth of the Federal Government in Money, People, and Rules, 1940–2015**



Sources: Office of Management and Budget, *Fiscal Year 2017: Historical Tables: Budget of the U.S. Government*, Table 14.4, "Total Government Expenditures by Major Category of Expenditure, 1948–2015"; Office of Personnel Management, *Data, Analysis, & Documentation: Federal Employment Reports, Historical Federal Workforce Tables*, "Executive Branch Civilian Employment Since 1940"; Congressional Research Service, "Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the *Federal Register*," 4 October, 2016, p. 17.

domestic product) and the number of federal employees who write the regulations and spend the money (federal employees who, as we have explained, often work mainly through state and local government employees and other administrative proxies).

By this test, the power of the federal bureaucracy has grown enormously. Congress has delegated substantial authority to administrative agencies in three areas: (1) paying subsidies to particular groups and organizations in society (farmers, veterans, scientists, schools, universities, hospitals); (2) transferring money from the federal government to state and local governments (the grant-in-aid programs described in Chapter 3); and (3) devising and enforcing regulations for various sectors of society and the economy. Some of

these administrative functions, such as grants-in-aid to states, are closely monitored by Congress; others, such as the regulatory programs, usually operate with a greater degree of independence. These delegations of power, especially in the areas of paying subsidies and regulating the economy, did not become commonplace until the 1930s, and then only after the Supreme Court decided that such delegations were constitutional. Today, by contrast, appointed officials can decide, within rather broad limits, who shall own a television station, what safety features automobiles shall have, what kinds of scientific research shall be specially encouraged, what drugs shall appear on the market, which dissident groups shall be investigated, what fumes an industrial smokestack may emit, which corporate mergers shall be allowed, what use shall be made of national forests, and what prices crop and dairy farmers shall receive for their products.

If appointed officials have this kind of power, then how they use it is of paramount importance in understanding modern government. Broadly, four factors may explain the behavior of these officials:

1. The manner in which they are recruited and rewarded
2. Their personal attributes, such as their socioeconomic backgrounds and their political attitudes
3. The nature of their jobs
4. The constraints that outside forces—political superiors, legislators, interest groups, journalists—impose on their agencies

Recruitment and Retention

The federal civil service system was designed to recruit qualified people on the basis of merit, not political patronage, and to retain and promote employees on the basis of performance, not political favoritism. Many appointed federal officials belong to the **competitive service**. This means they are appointed only after they have passed a written examination administered by the Office of Personnel Management (OPM) or met certain selection criteria (such as training, educational attainment, or prior experience) devised by the hiring agency and approved by the OPM. Where competition for a job exists and candidates can be ranked by their scores or records, the agency must usually appoint one of the three top-ranking candidates.

In recent years, the competitive service system has become decentralized, so that each agency now hires its own people without an OPM referral, and examinations have become less common. In 1952, more than 86 percent of all federal employees were civil servants hired by the competitive service; by 1996, that figure had fallen to less than 54 percent. This decentralization and the greater use of ways other than exams to hire employees were caused by three things. First, the old OPM system was cumbersome and often not relevant to the complex needs of departments. Second, these agencies had a need for more professionally trained employees—lawyers, biologists, engineers, and computer specialists—who could not be ranked on the basis of some standard exam. And third, civil rights groups pressed Washington to make the racial composition of the federal bureaucracy look more like the racial composition of the nation.

competitive service *The government offices to which people are appointed on the basis of merit, as ascertained by a written exam or by applying certain selection criteria.*

Moreover, the kinds of workers being recruited into the federal civil service have changed. For example, blue-collar employment has fallen while the federal government's white-collar workforce has become more diverse occupationally. As one expert on civil service reform has noted, the "need to recruit and retain physicists, biologists, oceanographers, nurses, statisticians, botanists, and epidemiologists, as well as large numbers of engineers, lawyers, and accountants, now preoccupies federal personnel managers."[19]

Employees hired outside the competitive service are part of the excepted service. They now make up almost half of all workers. Though not hired by the OPM, they still are typically hired in a nonpartisan fashion. Some are hired by agencies—such as the CIA, the FBI, and the Postal Service—that have their own selection procedures.

About 3 percent of the excepted employees are appointed on grounds other than or in addition to merit. These legal exceptions exist to permit presidents to select, for policymaking and politically sensitive posts, people who are in agreement with their policy views. Such appointments are generally of three kinds:

1. Presidential appointments authorized by statute (cabinet and subcabinet officers, judges, U.S. marshals and U.S. attorneys, ambassadors, and members of various boards and commissions).
2. "Schedule C" appointments to jobs described as having a "confidential or policy-determining character" below the level of cabinet or subcabinet posts (including executive assistants, special aides, and confidential secretaries).
3. Noncareer executive assignments given to high-ranking members of the regular competitive civil service or to persons brought into the civil service at these high levels. These people are deeply involved in the advocacy of presidential programs or participate in policymaking.

name-request job *A job filled by a person whom an agency has already identified.*

These three groups of excepted appointments constitute the patronage available to a president and his administration. When President Kennedy took office in 1961, he had 451 political jobs to fill. When President Trump took office in 2017, he had more than four times that number, including nearly double the number of top cabinet posts (and had filled fewer spots one month into his term than his recent predecessors).[20] Scholars disagree over whether this proliferation of political appointees has improved or worsened Washington's performance, but one thing is clear: widespread presidential patronage is hardly unprecedented. In the 19th century, practically every federal job was a patronage job. For example, when Grover Cleveland, a Democrat, became president in 1885, he replaced some 40,000 Republican postal employees with Democrats.

Ironically, two years earlier, in 1883, the passage of the Pendleton Act had begun a slow but steady transfer of federal jobs from the patronage to the merit system. It may seem strange that a political party in power (the Republicans) would be willing to relinquish its patronage in favor of a merit-based appointment system. Two factors made it possible for the Republicans to pass the Pendleton Act: (1) public outrage over the abuses of the spoils system, highlighted by the assassination of President James Garfield by a man always described in the history books as a "disappointed office seeker" (*lunatic* would be a more accurate term); and (2) the fear that if the Democrats came to power on a wave of antispoils sentiment, existing Republican officeholders would be fired. (The Democrats won anyway.)

U.S. COAST GUARD/UPI/Newscom

IMAGE 15-2 In 2010, fire erupted from an offshore oil rig operated by BP in the Gulf of Mexico near American land, creating an environmental disaster and requiring a federal investigation and response.

The merit system spread to encompass most of the federal bureaucracy, generally with presidential support. Though presidents may have liked in theory the idea of hiring and firing subordinates at will, most felt that the demands for patronage were impossible either to satisfy or to ignore. Furthermore, by increasing the coverage of the merit system, a president could "blanket in" patronage appointees already holding office, thus making it difficult or impossible for the next administration to fire them.

The Buddy System

The actual recruitment of civil servants, especially in mid- and upper-level jobs, is somewhat more complicated, and slightly more political, than the laws and rules might suggest. Though many people enter the federal bureaucracy by learning of a job, filling out an application, perhaps taking a test, and being hired, many also enter on a "name-request" basis. A **name-request job** is one that is filled by a person whom an agency has already identified. In this respect, the federal government is not so different from private business. A person learns of a job from somebody who already has one, or the head of a bureau decides in advance whom he or she wishes to hire. The agency must still send a form describing the job to the OPM, but it also names the person whom the agency wants to appoint. Sometimes the job is even described in such a way that the person named is the only one who can qualify for it. Occasionally, this tailor-made name-request job is offered to a person at the insistence of a member of Congress who wants a political supporter taken care of; more often it is made available because the bureaucracy itself knows whom it wishes to hire and wants to circumvent an elaborate search. This is the "buddy system."

The buddy system does not necessarily produce poor employees. Indeed, it is frequently a way of hiring people known to the agency as capable of handling the position. It also opens up the possibility of hiring people whose policy views are congenial to those already in office. Such networking is based on shared policy views, not (as once was the case) on narrow partisan affiliations. For example, bureaucrats in consumer protection agencies recruit new staff from private groups with an interest in consumer protection, such as the various organizations associated with Ralph Nader, or from academics who have a pro-consumer inclination.

There has always been an informal "old boys' network" among those who move in and out of high-level government posts; with the increasing appointment of women to these jobs, there has begun to emerge an old girls' network as well.[21] In a later section, we consider whether, or in what ways, these recruitment patterns make a difference.

Firing a Bureaucrat

The great majority of bureaucrats who are part of the civil service and who do not hold presidential appointments have jobs that are, for all practical purposes, beyond reach. An executive must go through elaborate steps to fire, demote, or suspend a civil servant. (See Table 15.1.) Realistically, this means no one is fired or demoted unless his or her superior is prepared to invest a great deal of time and effort in the attempt. In 1987, about 2,600 employees who had completed their probationary period were fired for misconduct or poor performance. That is about one-tenth of 1 percent of all federal employees. It is hard to believe that a large private company would fire only one-tenth of 1 percent of its workers in a given year. It's also impossible to believe that, as is often the case in Washington, it would take a year to fire anyone. To cope with this problem, federal executives have devised a number of strategies for bypassing or forcing out civil servants with whom they cannot work—denying them promotions, transferring them to undesirable locations, or assigning them to meaningless work.

With the passage of the Civil Service Reform Act of 1978, Congress recognized that many high-level positions in the civil service have important policymaking responsibilities and that the president and his cabinet officers ought to have more flexibility in recruiting, assigning, and paying such people. Accordingly, the act created the Senior Executive Service (SES), about 8,000 top federal managers who can (in theory) be hired, fired, and transferred more easily than ordinary civil servants. Moreover, the act stipulated that members of the SES would be eligible for substantial cash bonuses if they performed their duties well. (To protect the rights of SES members, anyone who is removed from the SES is guaranteed a job elsewhere in government.)

Things did not work out quite as the sponsors of the SES had hoped. Though most eligible civil servants joined it, the proportion of higher-ranking positions increased only modestly in agencies that were filled by transfer from another agency; the cash bonuses did not prove to be an important incentive (perhaps because the base salaries of top bureaucrats did not keep up with inflation); and hardly any member of the SES was actually fired. Two years after the SES was created, less than one-half of 1 percent of its members had received an unsatisfactory rating, and none had been fired. Nor does the SES give the president a large opportunity to make political appointments: only 10 percent of the SES can be selected from outside the existing civil service. And no SES member can be transferred involuntarily.

The Agency's Point of View

When one realizes that most agencies are staffed by people recruited by those agencies, sometimes on a name-request basis, and are virtually immune from dismissal, it becomes clear that the recruitment and retention policies of the civil service work to ensure that most bureaucrats will have an "agency" point of view. Even with the encouragement for transfers created by the SES, most government agencies are dominated by people who have not served in any other agency and who have been in government service most of their lives. This fact has some advantages: It means that most top-tier bureaucrats are experts in the procedures and policies of their agencies and that there will be a substantial degree of continuity in agency behavior no matter which political party happens to be in power.

But the agency point of view has its costs as well. A political executive entering an agency with responsibility for shaping its direction will discover that he or she must carefully win the support of career subordinates. A subordinate has an infinite capacity for discreet sabotage and can make life miserable for a political superior by delaying action, withholding information, following the rule book with literal exactness, or making an "end run" around a superior to mobilize members of Congress sympathetic to the bureaucrat's point of view. For instance, when one political executive wanted to downgrade a bureau in his department, he found, naturally, that the bureau chief was opposed. The bureau chief spoke to some friendly lobbyists

TABLE 15.1 | Firing a Bureaucrat

To fire or demote a member of the competitive civil service, these procedures must be followed:

1. The employee must be given written notice at least 30 days in advance that he or she is to be fired or demoted for incompetence or misconduct.
2. The written notice must contain a statement of reasons, including specific examples of unacceptable performance.
3. The employee has the right to an attorney and to reply, orally or in writing, to the charges.
4. The employee has the right to appeal any adverse action to the Merit Systems Protection Board (MSPB), a three-person, bipartisan body appointed by the president with the consent of the Senate.
5. The MSPB must grant the employee a hearing, at which the employee has the right to have an attorney present.
6. The employee has the right to appeal the MSPB decision to a U.S. court of appeals, which can hold new hearings.

and a key member of Congress. When the political executive asked the congressman whether he had any problem with the contemplated reorganization, the congressman replied, "No, you have the problem, because if you touch that bureau, I'll cut your job out of the budget."[22]

Personal Attributes

Another factor that may shape the way a bureaucrat uses power is personal attributes. These include social class, education, and personal political beliefs. The federal civil service as a whole looks very much like a cross section of American society in the education, sex, race, and social origins of its members (see Figure 15.3). But as with many other employers, African Americans and other minorities are most likely heavily represented in the lowest grade levels and tend to be underrepresented at the executive level. At the higher-ranking levels, where the most power is found—say, in the supergrade ranks of GS 16 through GS 18—the typical civil servant is a middle-aged white man with a college degree whose father was somewhat more advantaged than the average citizen. In the great majority of cases, this individual is in fact very different from the typical American in both background and personal beliefs.

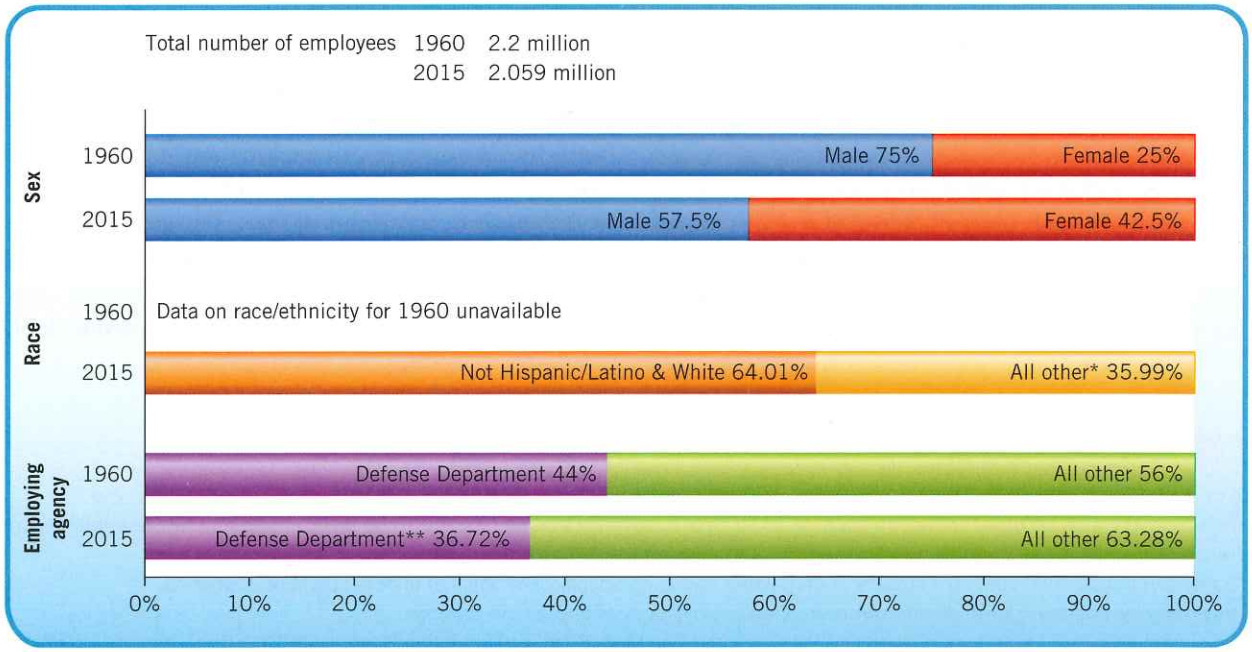
Because political appointees and career bureaucrats are not representative of the average American, and because of their supposed occupational self-interest, some critics have speculated that the people holding these jobs think about politics and government in ways very different from the public at large. Some surveys do find that career bureaucrats are more likely than other people to hold liberal views, to trust government, and to vote for Democrats.[23]

It is important, however, not to overgeneralize from such differences. For example, whereas Obama appointees (virtually all of them strong Democrats) were more liberal than average citizens, George W. Bush appointees (virtually all of them loyal Republicans) were undoubtedly more

Nick Suydam/Alamy Stock Photo

IMAGE 15-3 Amtrak passenger trains bring long-distance travel to many small towns in the United States. Amtrak service costs the federal government much more than the trains earn in fares.

FIGURE 15.3 Characteristics of Federal Civilian Employees, 1960 and 2015



*Black/African Americans, Native Americans, Hispanics, Asians, and Pacific Islanders

**Includes Departments of the Air Force, Navy, and Army.

Sources: *Statistical Abstract of the United States*, 1961, pp. 392–394; Office of Personnel Management, *Common Characteristics of the Government Fiscal Year 2015*.

Kumar Sriskandan/Alamy Stock Photo

IMAGE 15-4 In addition to mail delivery, the U.S. Postal Service performs other functions, such as assistance with passport applications.

conservative than average citizens; likely the same is true of those appointed by President Trump. Likewise, career civil servants are more pro-government than the public at large, but on most specific policy questions, federal bureaucrats do not have extreme positions. Still, those employed in "activist" agencies such as the Federal Trade Commission, Environmental Protection Agency, and Food and Drug Administration tend to have more liberal views than those who work for the more "traditional" agencies such as the Departments of Agriculture, Commerce, and the Treasury. Even when the bureaucrats come from roughly the same social backgrounds, their policy views seem to reflect the type of government work that they do. For example, studies dating back decades have found that Democrats and people with liberal views tend to be overrepresented in social service agencies, whereas Republicans and people with conservative views tend to be overrepresented in defense agencies.[24] But it is not clear whether such differences in attitudes are produced by the jobs that people hold or whether certain jobs attract people with certain beliefs. Probably both forces are at work.

Do Bureaucrats Sabotage Their Political Bosses?

Because it is so hard to fire career bureaucrats, it is often said that these people will sabotage any actions by their political superiors with whom they disagree. And since civil servants tend to have liberal views, it has been conservative presidents and cabinet secretaries who have usually expressed this worry.

Some bureaucrats will no doubt drag their heels if they don't like their bosses, and a few will block actions they oppose. However, most bureaucrats try to carry out the policies of their superiors even when they personally disagree with them. When David Stockman was director of the OMB, he set out to make sharp cuts in government spending programs in accordance with the wishes of his boss, President Ronald Reagan. He later published a book complaining about all the people in the White House and Congress who worked against him.[25] But nowhere in the book is there any major criticism of the civil servants at the OMB. It seems that whatever these people thought about Stockman and Reagan, they loyally tried to carry out Stockman's policies.

Bureaucrats tend to be loyal to political superiors who deal with them cooperatively and constructively. An agency head who tries to ignore or discredit them can be in for a tough time, however. The powers of obstruction available to aggrieved bureaucrats are formidable. Such people can leak embarrassing stories to Congress or to the media, help interest groups mobilize against the agency head, and discover a thousand procedural reasons why a new course of action won't work.

The exercise of some of those bureaucratic powers is protected by the Whistle Blower Protection Act. Passed in 1989, the law created the Office of Special Counsel, charged with investigating complaints from bureaucrats that they were punished after reporting to Congress about waste, fraud, or abuse in their agencies.

It may seem odd that bureaucrats, who have great job security, would not always act in accordance with their personal beliefs instead of in accordance with the wishes of their bosses. Bureaucratic sabotage, in this view, ought to be very common. But bureaucratic cooperation with superiors is not odd, once you take into account the nature of a bureaucrat's job.

If you are a voter at the polls, your beliefs will clearly affect how you vote (see Chapters 7 and 10). But if you are the second baseman for the Boston Red Sox, your political beliefs, social background, and education will have nothing to do with how you field ground balls. Sociologists like to call the different things that people do in their lives "roles" and to distinguish between roles that are loosely structured (such as the role of voter) and those that are highly structured (such as that of second baseman). Personal attitudes greatly affect loosely structured roles and only slightly affect highly structured ones. Applied to the federal bureaucracy, this suggests that civil servants performing tasks that are routinized (such as filling out forms), tasks that are closely defined by laws and rules (such as issuing welfare checks), or tasks that are closely monitored by others (supervisors, special-interest groups, the media) will probably perform them in ways that can be explained only partially, if at all, by their personal attitudes. Civil servants performing complex, loosely defined tasks that are not closely monitored may carry out their work in ways powerfully influenced by their attitudes.

Among the loosely defined tasks are those performed by professionals, and so the values of these people may

influence how they behave. An increasing number of lawyers, economists, engineers, and physicians are hired to work in federal agencies. These men and women have received extensive training that produces not only a set of skills, but also a set of attitudes as to what is important and valuable. For example, the Federal Trade Commission (FTC), charged with preventing unfair methods of competition among businesses, employs two kinds of professionals: lawyers, organized into a Bureau of Competition, and economists, organized into a Bureau of Economics. Lawyers are trained to draw up briefs and argue cases in court and are taught the legal standards by which they will know whether they have a chance of winning a case. Economists are trained to analyze how a competitive economy works and what costs consumers must bear if the goods and services are produced by a monopoly (one firm controlling the market) or an oligopoly (a small number of firms dominating the market).

Because of their training and attitudes, lawyers in the FTC prefer to bring cases against a business firm that has done something clearly illegal, such as attending secret meetings with competitors to rig the prices that will be charged to a purchaser. These cases appeal to lawyers because there is usually a victim (the purchaser or a rival company) who complains to the government, the illegal behavior can be proved in a court of law, and the case can be completed rather quickly.

Economists, on the other hand, are trained to measure the value of a case not by how quickly it can be proved in court, but by whether the illegal practice imposes large or small costs on the consumer. FTC economists often dislike the cases that appeal to lawyers. The economists feel that the amount of money that such cases save the consumer is often small and that the cases are a distraction from the major issues—such as whether IBM or Apple unfairly dominates the computer business, or whether General Motors is too large to be efficient. Lawyers, in turn, are leery of big cases, because the facts are hard to prove and they may take forever to decide (one blockbuster case can drag through the courts for 10 years). In many federal agencies, divergent professional values such as these help explain how power is used.

Culture and Careers

Unlike the lawyers and economists working in the FTC, the government bureaucrats in a typical agency don't have a lot of freedom to choose a course of action. Their jobs are spelled out not only by the laws, rules, and routines of their agency, but also by the informal understandings among fellow employees as to how they are supposed to act. These understandings are the *culture* of the agency.[26]

If you belong to the air force, you can do a lot of things, but only one thing really counts: flying airplanes, especially advanced jet fighters and bombers. The culture of the air force is a pilots' culture. If you belong to the navy, you have more choices: fly jet aircraft or operate nuclear submarines. Both jobs provide status and a chance for promotion to the highest ranks. By contrast, sailing minesweepers or transport ships (or worse, having a desk job and not sailing anything at all) may not be a very rewarding job. The culture of the CIA emphasizes working overseas as a clandestine agent; staying in Washington as a report writer is not as good for your career. The culture of the State Department rewards skill in political negotiations; being an expert on international economics or embassy security is much less rewarding.

You can usually tell what kind of culture an agency has by asking an employee, "If you want to get ahead here, what sort of jobs should you take?" The jobs that are career enhancing are part of the culture; the jobs that are not career enhancing ("NCE," in bureaucratic lingo) are not part of it.

Being part of a strong culture is good—to a point. It motivates employees to work hard in order to win the respect of their coworkers and the approval of their bosses. But a strong culture also makes it hard to change an agency. FBI agents for many years resisted getting involved in civil rights or organized crime cases, and diplomats in the State Department didn't pay much attention to embassy security. These important jobs were not a career-enhancing part of the culture.

Constraints

The biggest difference between a government agency and a private organization is the vastly greater number of constraints on the agency. Unlike a business firm, the typical government bureau cannot hire, fire, build, or sell without going through procedures set down in laws. How much money it pays its members is determined by statute, not by the market. Not only the goals of an agency, but often its exact procedures, are spelled out by Congress.

At one time, the Soil Conservation Service was required by law to employ at least 14,177 full-time workers. The State Department has been forbidden by law from opening a diplomatic post in Antigua and Barbuda but forbidden from closing a post anywhere else. The Agency for International Development (which administers our foreign-aid program) has been given by Congress 33 objectives and 75 priorities and must send to Congress 288 reports each year. When it buys military supplies, the Department of Defense must give a "fair proportion" of its contracts to small businesses, especially those operated by "socially and economically disadvantaged individuals," and must buy from American firms even if, in some cases, buying abroad would be cheaper. Some of the more general constraints include the following:

- *Administrative Procedure Act (1946).* Before adopting a new rule or policy, an agency must give notice, solicit comments, and (often) hold hearings.

- *Freedom of Information Act (1966)*. Citizens have the right to inspect all government records except those containing military, intelligence, or trade secrets or those revealing private personnel actions.
- *National Environmental Policy Act (1969)*. Before undertaking any major action affecting the environment, an agency must issue an environmental impact statement.
- *Privacy Act (1974)*. Government files about individuals, such as Social Security and tax records, must be kept confidential.
- *Open Meeting Law (1976)*. Every part of every agency meeting must be open to the public unless certain matters (e.g., military or trade secrets) are being discussed.

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

Postal Service Reform: Client Politics?

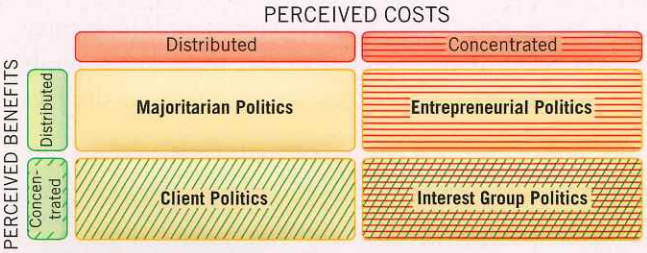
Article I, section 8 of the Constitution authorized the Congress to "establish Post Offices." Today's United States Postal Service (USPS) is the second largest employer in the nation (behind Walmart). It is not taxpayer-funded and generates more than $60 billion a year in revenue from its services. It has more than 500,000 career employees. It has mail routes that cover every square mile of the nation. It delivers mail to more than 100 million addresses each week. It handles about 160 billion pieces of mail each year. It has more office buildings than the number of McDonald's, Starbucks, and Walmart stores combined. Millions of people (especially older people) and many businesses (not only "junk mail" purveyors) continue to rely heavily on "snail mail." And certain legal documents still normally get sent in paper envelopes via "regular mail."

But the USPS is in trouble. Since 2001, the volume of mail delivered by the USPS has declined by about a quarter, and its workforce has fallen by more than 300,000. In the 2012 fiscal year, the USPS ran a deficit that totaled about $16 billion. Facebook, email, texting, and other means of electronic communications have increasingly displaced both routine and episodic communications that once started with dropping paper into the old metal mailbox on the street corner. Meanwhile, for-profit shipping businesses like United Parcel Service (UPS) and Federal Express have expanded. They carry substantial portions of all "door-to-door" mail, including express or "overnight" envelopes, packages, and boxes.

In recent years, Congress has considered numerous proposals to "save" or "streamline" the USPS. For instance, in 2012, Postmaster General Patrick Donahoe proposed reducing mail delivery to five days a week (eliminating most Saturday deliveries), restructuring payments for postal worker retiree health benefits, consolidating mail processing centers, and reducing "window hours" in about half of the roughly 26,000 post offices around the country. The USPS receives no taxpayer funding. In 2012, the Senate passed a bill that would have pumped billions of tax dollars into the USPS, but the House rejected the measure. In 2013, the USPS announced that it would end most Saturday deliveries effective August of that year, but Congress refused to let it do so.

Some have characterized the battles over USPS reform bills as, in effect, instances of client politics. Supposedly, the issue pits the labor union representing most postal workers (the American Postal Workers Union of the AFL-CIO) against a broad, bipartisan coalition, backed by majority public opinion, that favors closing more postal offices and accelerating workforce reductions. But that view is at odds with at least two facts: First, some key GOP leaders in Congress have opposed sweeping reforms to the USPS and, second, as revealed in a major survey commissioned by the USPS Office of the Inspector General in early 2013, most Americans, including young Americans, oppose such reforms, too:

- Although three-quarters of people erroneously assume that the USPS is taxpayer-funded, four-fifths still say they want the USPS to serve all citizens in all locations even if it means that the USPS loses money.
- Three-quarters are opposed to reducing postal service hours, and three-quarters also oppose plans for three-day delivery schedules.
- Even 95 percent of young adults, a population that relies largely on online communications, say they would be adversely affected if the USPS went out of business anytime soon.



▶ **PRACTICE POLITICAL SCIENCE** Compare trends in data about the financial health of the U.S. Postal Service and the public's expectations of service from the USPS. Draw conclusions about why reforming the USPS is so difficult.

Source: "Going Postal," *The Economist: World in 2012*, 46; Julia Ziegler, "Postmaster General Urges Quick Action in Lame Duck Session," Federal News Radio, 1 November, 2012; Hope Yen, "Post Office Reports Record Loss of $15.9 Billion for Year," Federal News Radio, Associated Press, 15 November, 2012; American Postal Workers Union, "Survey Says: Most Americans Oppose Plant Closures," 4 June, 2013. www.apwu.org.

One of the biggest constraints on bureaucratic action is that Congress rarely gives any job to a single agency. Stopping drug trafficking is the task of the Customs Service, the FBI, the Drug Enforcement Administration, the Border Patrol, and the Defense Department (among others). Disposing of the assets of failed savings-and-loan associations was the job of the Resolution Funding Corporation, Resolution Trust Corporation, Federal Housing Finance Board, Office of Thrift Supervision in the Treasury Department, Federal Deposit Insurance Corporation, Federal Reserve Board, and Justice Department (among others). Similarly, in the aftermath of the 2007 financial crisis, many different agencies were involved in the Troubled Asset Relief Program, the bailouts, and the programs to help homeowners who could no longer afford their homes.

The effects of these constraints on agency behavior are not surprising.

- The government will often act slowly. (The more constraints that must be satisfied, the longer it will take to get anything done.)
- The government will sometimes act inconsistently. (What is done to meet one constraint—for example, freedom of information—may endanger another constraint—for example, privacy.)
- It will be easier to block action than to take action. (The constraints ensure that lots of voices will be heard; the more voices heard, the more they may cancel each other out.)
- Lower-ranking employees will be reluctant to make decisions on their own. (Having many constraints means having many ways to get into trouble; to avoid trouble, let your boss make the decision.)
- Citizens will complain of red tape. (The more constraints to serve, the more forms to fill out.)

These constraints do not mean government bureaucracy is powerless, only that, however great its power, it tends to be clumsy. That clumsiness arises not from the fact that the people who work for agencies are dull or incompetent, but from the complicated political environment in which that work must be done.

The moral of the story: the next time you get mad at a bureaucrat, ask yourself, why would a rational, intelligent person behave that way? Chances are you will discover good reasons for that action. You would probably behave the same way if you were working for the same organization.

PJF Military Collection/Alamy Stock Photo

IMAGE 15-5 A U.S. Air Force squadron views an F-15E Strike Eagle dual-role fighter aircraft.

15-4 Checks, Problems, and Possibilities for Reform

Government agencies behave as they do in large part because of the many different goals they must pursue and the complex rules they must follow. Where does all this red tape come from?

From us. From us, the people.

Checks

Every goal, every constraint, every bit of red tape, was put in place by Congress, the courts, the White House, or the agency itself responding to the demands of some influential faction. Civil rights groups want every agency to hire and buy from women and minorities. Environmental groups want every agency to file environmental impact statements. Industries being regulated want every new agency policy to be formulated only after a lengthy public hearing with lots of lawyers present. Labor unions also want those hearings so that they can argue against industry lawyers. Everybody who sells something to the government wants a "fair chance" to make the sale, and so everybody insists that government contracts be awarded only after complex procedures are followed. A lot of people don't trust the government, and so they insist that everything it does be done in the sunshine—no secrets, no closed meetings, no hidden files.

If we wanted agencies to pursue their main goal with more vigor and less encumbering red tape, we would have to ask Congress, the courts, or the White House to repeal some of these constraints. In other words, we would have to be willing to give up something we want in order to get something else we want even more. But politics does not encourage people to make these trade-offs; instead, it encourages us to expect to get everything—efficiency, fairness, help for minorities—all at once.

Agency Allies

Despite these constraints, government bureaucracies are not powerless. In fact, some of them actively seek certain constraints. They do so because it is a way of cementing

a useful relationship with a congressional committee or an interest group.

At one time scholars described the relationship between an agency, a committee, and an interest group as an **iron triangle** (see Figure 15.4). For example, the Department of Veterans Affairs, the House and Senate committees on veterans' affairs, and veterans' organizations (such as the American Legion) would form a tight, mutually advantageous alliance. The department would do what the committees wanted and in return get political support and budget appropriations; the committee members would do what the veterans' groups wanted and in return get votes and campaign contributions. Iron triangles are examples of what are called *client politics* (see our discussion of client politics in Chapter 1 for more details).

Many agencies still have important allies in Congress and the private sector, especially those bureaus that serve the needs of specific sectors of the economy or regions of the country. The Department of Agriculture works closely with farm organizations, the Department of the Interior with groups interested in obtaining low-cost irrigation or grazing rights, and the Department of Housing and Urban Development with mayors and real-estate developers.

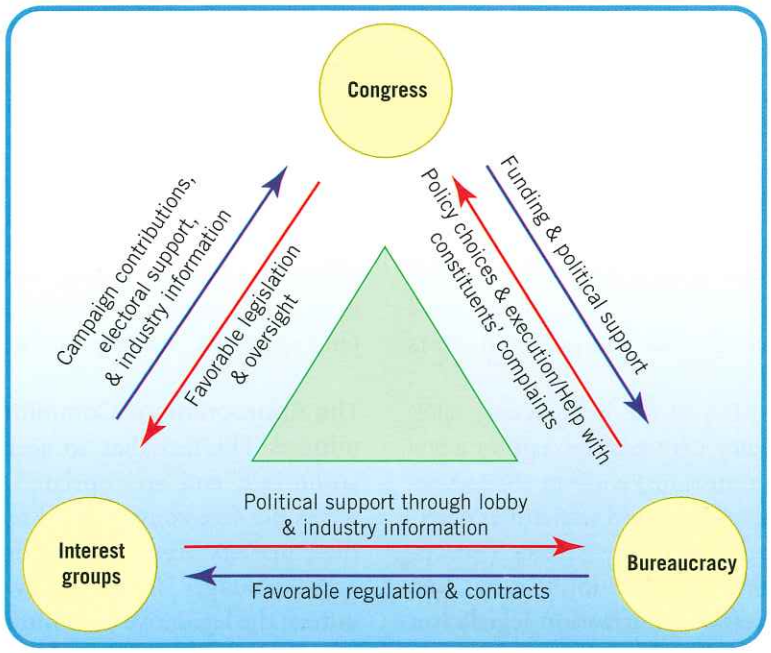
Sometimes these allies are so strong that they can defeat a popular president. For years, President Reagan tried to abolish the Small Business Administration (SBA), arguing that its program of loans to small firms was wasteful and ridden with favoritism. But Congress, reacting to pressures from small-business groups, rallied to the SBA's defense. As a result, Reagan had to oversee an agency that he didn't want.

iron triangle *A close relationship between an agency, a congressional committee, and an interest group.*

But iron triangles are much less common today than once was the case. Politics of late has become far more complicated. For one thing, the number and variety of interest groups have increased so much in recent years that scarcely any agency is not subject to pressures from several competing interests instead of from only one powerful interest. For another, the growth of subcommittees in Congress has meant most agencies are subject to control by many different legislative groups, often with very different concerns. Finally, the courts have made it much easier for all kinds of individuals and interests to intervene in agency affairs.

As a result, nowadays government agencies face a bewildering variety of competing groups and legislative subcommittees that constitute not a loyal group of allies, but a fiercely contentious collection of critics. The Environmental Protection Agency is caught between the demands of environmentalists and those of industry organizations, the Occupational Safety and Health Administration between the pressures of labor and those of business, and the Federal Communications Commission between the desires of broadcasters and those of cable television companies. Even the Department of Agriculture faces not a unified group of farmers, but many different farmers split into rival groups, depending on the crops they raise, the regions in which they live, and the attitudes they have toward the relative merits of farm subsidies or free markets.

FIGURE 15.4 **Iron Triangle**



issue network *A network of people in Washington, DC–based interest groups, on congressional staffs, in universities and think tanks, and in the mass media, who regularly discuss and advocate public policies.*

authorization legislation *Legislative permission to begin or continue a government program or agency.*

appropriation *A legislative grant of money to finance a government program or agency.*

Political scientist Hugh Heclo has described the typical government agency today as being embedded not in an iron triangle, but in an **issue network**.[27] These issue networks consist of people in Washington-based interest groups, on congressional staffs, in universities and think tanks, and in the mass media who regularly debate government policy on a certain subject—say, health care or auto safety. The networks are contentious, split along political, ideological, and economic lines. When a president takes office, he often recruits key agency officials from those members of the issue network who are most sympathetic to his views.

When Jimmy Carter, a Democrat, became president, he appointed to key posts in consumer agencies people who were from that part of the consumer issue network associated with Ralph Nader. Ronald Reagan, a conservative Republican, filled these same jobs with people who were from that part of the issue network holding free-market or antiregulation views. When George Bush the elder, a more centrist Republican, took office, he filled these posts with more centrist members of the issue network. Bill Clinton brought back the consumer activists. George W. Bush reversed Clinton, and Barack Obama reversed Bush, and (not surprisingly) Trump reversed Obama.

Congressional Oversight

The main reason why some interest groups are important to agencies is that they are important to Congress. Not every interest group in the country has substantial access to Congress, but those that do and that are taken seriously by the relevant committees or subcommittees must also be taken seriously by the agency. Furthermore, even apart from interest groups, members of Congress have constitutional powers over agencies and policy interests in how agencies function.

Congressional supervision of the bureaucracy takes several forms. First, no agency may exist (except for a few presidential offices and commissions) without congressional approval. Congress influences—and sometimes determines precisely—agency behavior by the statutes it enacts.

Second, no money may be spent unless it has first been authorized by Congress. **Authorization legislation** originates in a legislative committee (such as Agriculture, Education and Labor, or Public Works) and states the maximum amount of money that an agency may spend on a given program. This authorization may be permanent, it may be for a fixed number of years, or it may be annual (i.e., it must be renewed each year, or the program or agency goes out of business).

Third, even funds that have been authorized by Congress cannot be spent unless (in most cases) they are also appropriated. Appropriations usually are made annually, and they originate not with the legislative committees but with the House Appropriations Committee and its various (and influential) subcommittees. An **appropriation** (money formally set aside for a specific use) may be, and often is, for less than the amount authorized. The Appropriations Committee's action thus tends to have a budget-cutting effect. Some funds can be spent without an appropriation, but in virtually every part of the bureaucracy, each agency is keenly sensitive to congressional concerns at the time that the annual appropriations process is going on.

But is fidelity to the constitutional principle of separation of powers (see Chapter 2) called into question when Congress engages in oversight of agencies that are in the executive branch? Members of Congress themselves once debated that issue, but the aforementioned Administrative Procedure Act of 1946 and a dozen subsequent laws that built on it (the latest being the Data Quality Act of 2000, and all upheld when challenged in the courts) are predicated on the idea that agencies are "adjuncts for legislative functions. . . . Congress lacks the capacity to legislate on all matters it touches and perforce must delegate a great deal of legislative authority to the agencies."[28]

This idea was challenged during the George W. Bush presidency by administration officials and others who argued, especially but not exclusively with respect to military, national, and homeland security issues, that agencies were bound to act in accordance with the president's directives whenever they conflicted with directives from Congress. While Bush's executive-centered approach sparked many controversies, most scholars seem to think that it effected no major or lasting changes, and some suggest that it stirred Congress to pursue even more comprehensive (and aggressive) oversight policies and practices.[29]

The Appropriations Committee and Legislative Committees

The fact that an agency budget must be both authorized and appropriated means that each agency serves not one congressional master but several, and that these masters may be in conflict. The real power over an agency's budget is exercised by the Appropriations Committee; the legislative committees are especially important

when a substantive law is first passed or an agency is first created, or when an agency is subject to annual authorization. In the past, the power of the Appropriations Committee was rarely challenged; from 1947 through 1962, fully 90 percent of the House Appropriations Committee's recommendations on expenditures were approved by the full House without change.[30] Furthermore, the Appropriations Committee tends to recommend less money than an agency requests (though some specially favored agencies, such as the FBI, the Soil Conservation Service, and the Forest Service, have tended to get almost everything that they have asked for). Finally, the process of "marking up" (revising, amending, and approving) an agency's budget request gives to the Appropriations Committee, or one of its subcommittees, substantial influence over the policies that the agency follows. Of late, the appropriations committees have lost some of their great power over government agencies. This has happened in three ways. First, Congress has created trust funds to pay for the benefits many people receive. The Social Security trust fund is the largest of these. In 2012, it took in $729 billion in Social Security taxes and paid out $635 billion in old-age benefits. Several other trust funds also exist. **Trust funds** operate outside the regular government budget, and the appropriations committees have no control over these expenditures. They are automatic.

Second, Congress has changed the authorization of many programs from permanent or multiyear to annual authorizations. This means that every year the legislative committees, as part of the reauthorization process, get to set limits on what these agencies can spend. This limits the ability of the appropriations committees to determine the spending limits. Before 1959, most authorizations were permanent or multiyear. Now a long list of agencies must be reauthorized every year—the State Department, NASA, military procurement programs of the Defense Department, the Justice Department, the Energy Department, and parts or all of many other agencies.

Third, the existence of huge budget deficits during the 1980s and the 2000s has meant that much of Congress's time has been taken up with trying (usually not very successfully) to keep spending down. As a result, there has rarely been much time to discuss the merits of various programs or how much ought to be spent on them; instead, attention has been focused on meeting a target spending limit. In 1981, the budget resolution passed by Congress mandated cuts in several programs before the appropriations committees had even completed their work.[31] In addition to the power of the purse, Congress can control the bureaucracy through informal ways. An individual member of Congress can call an agency head on behalf of a constituent. Most such calls merely seek information, but some result in, or attempt to obtain, special privileges for particular people. Congressional committees may also obtain the right to pass on certain agency decisions. This is called **committee clearance**, and though it usually is not legally binding on the agency, few agency heads will ignore the expressed wish of a committee chair that he or she be consulted before certain actions (such as transferring funds) are taken.

trust funds *Funds for government programs collected and spent outside the regular government budget.*

committee clearance *The ability of a congressional committee to review and approve certain agency decisions in advance and without passing a law.*

legislative veto *The authority of Congress to block a presidential action after it has taken place. The Supreme Court has held that Congress does not have this power.*

The Legislative Veto For many decades, Congress made frequent use of the legislative veto to control bureaucratic or presidential actions. A **legislative veto** is a requirement that an executive decision must lie before Congress for a specified period (usually 30 or 90 days) before it takes effect. Congress could then veto the decision if a resolution of disapproval was passed by either house (a "one-house veto") or both houses (a "two-house veto"). Unlike laws, such resolutions were not signed by the president. Between 1932 and 1980, about 200 laws were passed providing for a legislative veto, many of them involving presidential proposals to sell arms abroad.

But in June 1983, the Supreme Court declared the legislative veto to be unconstitutional. In the *Chadha* case, the Court held that the Article I of the Constitution clearly requires that "every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary" (with certain minor exceptions) "shall be presented to the President of the United States," who must either approve it or return it with his veto attached. In short, Congress cannot take any action that has the force of law unless the president concurs in that action.[32] With a stroke of the pen, parts of 200 laws suddenly became invalid. At least that happened in theory. In fact, since the *Chadha* decision, Congress has passed a number of laws that contain legislative vetoes, despite the Supreme Court having ruled against them! (Someone will have to go to court to test the constitutionality of these new provisions.)

Opponents of the legislative veto hope future Congresses will have to pass laws that state much more clearly than before what an agency may or may not do. But it is just as likely that Congress will continue to pass laws stated in general terms and require that agencies implementing those laws report their plans to Congress, so that it will

red tape *Complex bureaucratic rules and procedures that must be followed to get something done.*

have a chance to enact and send to the president a regular bill disapproving the proposed action. Or Congress may rely on informal (but scarcely weak) means of persuasion, including threats to reduce the appropriations of an agency that does not abide by congressional preferences.

Congressional Investigations Perhaps the most visible and dramatic form of congressional supervision of an agency is the investigation. Since 1792, when Congress investigated an army defeat by a Native American tribe, congressional investigations of the bureaucracy have been a regular feature—sometimes constructive, sometimes destructive—of legislative–executive relations. The investigative power is not mentioned in the Constitution, but it has been inferred from the power to legislate. The Supreme Court has consistently upheld this interpretation, though it has also said that such investigations should not be solely for the purpose of exposing the purely personal affairs of private individuals and must not operate to deprive citizens of their basic rights.[33] Congress may compel a person to attend an investigation by issuing a subpoena; anyone who ignores the subpoena may be punished for contempt. Congress can vote to send the person to jail or can refer the matter to a court for further action. As explained in Chapter 14, the president and his principal subordinates have refused to answer certain congressional inquiries on grounds of "executive privilege."

Although many areas of congressional oversight—budgetary review, personnel controls, investigations—are designed to control the exercise of bureaucratic discretion, other areas are intended to ensure the freedom of certain agencies from effective control, especially by the president. In dozens of cases, Congress has authorized department heads and bureau chiefs to operate independent of presidential preferences. Congress has resisted, for example, presidential efforts to ensure that policies to regulate pollution do not impose excessive costs on the economy, and interest groups have brought suit to prevent presidential coordination of various regulatory agencies. If the bureaucracy sometimes works at cross-purposes, it usually is because Congress—or competing committees in Congress—wants it that way.

Bureaucratic "Pathologies"

Everyone complains about bureaucracy in general (though rarely about bureaucratic agencies that everyone believes are desirable). This chapter should persuade you that it is difficult to say anything about bureaucracy "in general"; there are too many different kinds of agencies, kinds of bureaucrats, and kinds of programs to label the entire enterprise with a single adjective. Nevertheless, many people who recognize the enormous variety among government agencies still believe they all have some general features in common and suffer from certain shared problems or pathologies.

This is true enough, but the reasons for it—and the solutions, if any—are often not understood. Bureaucracies experience five major (or at least frequently mentioned) problems: red tape, conflict, duplication, imperialism, and waste. **Red tape** refers to the complex rules and procedures that must be followed to get something done. (As early as the 7th century, legal and government documents in England were bound together with a tape of pinkish-red color. Since then *red tape* has come to mean "bureaucratic delay or confusion," especially that accompanied by unnecessary paperwork.[34]) *Conflict* exists because some agencies seem to be working at cross-purposes with other agencies. (For example, the Agricultural Research Service tells farmers how to grow crops more efficiently, while the Agricultural Stabilization and Conservation Service pays farmers to grow fewer crops or to produce less.) *Duplication* (usually called "wasteful duplication") occurs when two government agencies seem to be doing the same thing, as when the Customs Service and the Drug Enforcement Administration both attempt to intercept illegal drugs being smuggled into the country. *Imperialism* refers to the tendency of agencies to grow without regard to the benefits that their programs confer or the costs that they entail. *Waste* means spending more than is necessary to buy some product or service.

These problems all exist, but they do not necessarily exist because bureaucrats are incompetent or power-hungry. Most exist because of the very nature of government itself. Take red tape: We encounter cumbersome rules and procedures in part because any large organization, governmental or not, must have some way of ensuring that one part of the organization does not operate out of step with another. Business corporations have red tape also; it is to a certain extent a consequence of bigness. But a great amount of governmental red tape is also the result of the need to satisfy legal and political requirements. Government agencies must hire on the basis of "merit," must observe strict accounting rules, must supply Congress with detailed information on their programs, and must allow for citizen access in countless ways. Meeting each need requires rules; enforcing the rules requires forms. As described by political scientist Herbert Kaufman, "One person's 'red tape' may be another's treasured safeguard."[35]

Or take conflict and duplication: They do not occur because bureaucrats enjoy conflict or duplication. (Quite the contrary!) They exist because Congress, in as a quote setting up agencies and programs, often wants to achieve a number of different, partially inconsistent goals or finds that it cannot decide which goal it values the most. Congress has 535 members and little strong leadership; it should not be surprising that 535 people will want different things and will sometimes succeed in getting them.

Imperialism results in large measure from government agencies seeking goals so vague and so difficult to measure that it is hard to tell when they have been attained. When Congress is unclear as to exactly what an agency is supposed to do, the agency will often convert that legislative vagueness into bureaucratic imperialism by taking the largest possible view of its powers. It may do this on its own; more often it does so because interest groups and judges rush in to fill the vacuum left by Congress. As we saw in Chapter 3, the 1973 Rehabilitation Act was passed with a provision barring discrimination against people with disabilities in any program receiving federal aid. Under pressure from people with disabilities, that lofty but vague goal was converted by the Department of Transportation into a requirement that virtually every big-city bus have a device installed to lift people in wheelchairs onboard.

Waste is probably the biggest criticism that people have of the bureaucracy. Everybody has heard stories of the Pentagon's paying $91 for screws that cost 3 cents in the hardware store. President Reagan's "Private Sector Survey on Cost Control," generally known as the Grace Commission (after its chairman, J. Peter Grace), publicized these and other tales in a 1984 report. No doubt there is waste in government. After all, unlike a business firm worried about maximizing profits, in a government agency there are only weak incentives to keep costs down. If a business employee cuts costs, he or she often receives a bonus or raise, and the firm gets to add the savings to its profits. If a government official cuts costs, he or she receives no reward, and the agency cannot keep the savings—they go back to the Treasury.

David McNew/Getty Images

IMAGE 15-6 At the world's busiest border crossing, cars line up to enter the United States in Tijuana, Mexico, where passengers must first meet strict immigration requirements overseen by the U.S. Border Patrol.

But many of the horror stories are either exaggerations or unusual occurrences.[36] Most of the screws, hammers, and light bulbs purchased by the government are obtained at low cost by means of competitive bidding among several suppliers. When the government does pay outlandish amounts, the reason typically is that it is purchasing a new or one-of-a-kind item not available at your neighborhood hardware store—for example, a new bomber or missile.

Even when the government is not overcharged, it still may spend more money than a private firm in buying what it needs. The reason is red tape—the rules and procedures designed to ensure that when the government buys something, it will do so in a way that serves the interests of many groups. For example, it often must buy from American rather than foreign suppliers, even if the latter charge a lower price; it must make use of contractors that employ minorities; it must hire only union laborers and pay them the "prevailing" (i.e., the highest) wage; it must allow public inspection of its records; it frequently is required to choose contractors favored by influential members of Congress; and so on. Private firms do not have to comply with all these rules and thus can buy for less.

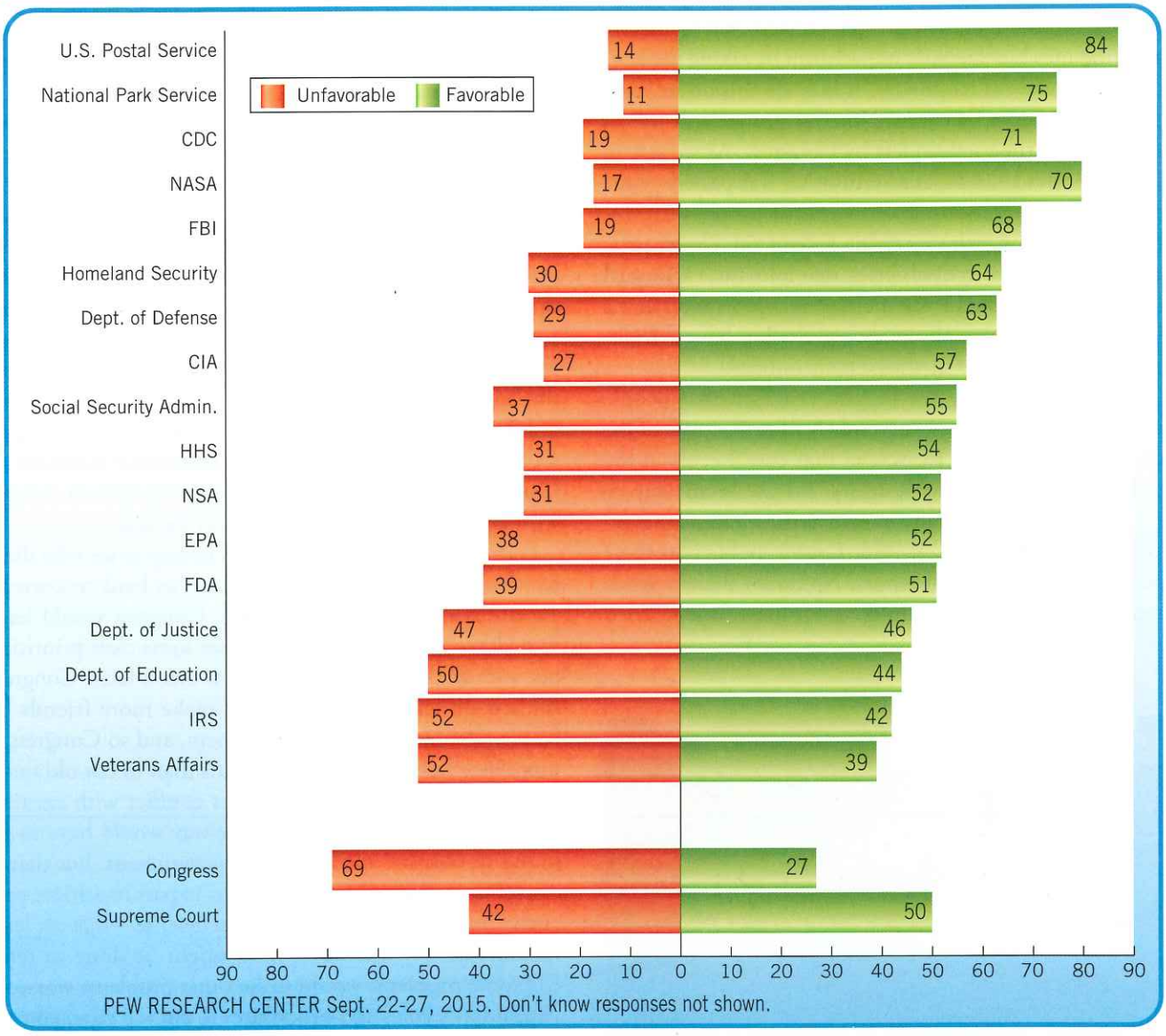
From this discussion, it should be easy to see why these five basic bureaucratic problems are so hard to correct. To end conflicts and duplication, Congress would have to make some policy choices and set some clear priorities, but with all the competing demands that it faces, Congress finds it difficult to do that. You make more friends by helping people than by hurting them, and so Congress is more inclined to add new programs than to cut old ones, whether or not the new programs conflict with existing ones. To check imperialism, some way would have to be found to measure the benefits of government, but that is often impossible; government exists in part to achieve precisely those goals—such as national defense—that are least measurable. Furthermore, what might be done to remedy some problems would make other problems worse. If you simplify rules and procedures to cut red tape, you are also likely to reduce the coordination among agencies and thus to increase the extent to which duplication or conflict occurs. If you want to reduce waste, you will have to have more rules and inspectors—in short, more red tape. The problem of bureaucracy is inseparable from the problem of government generally.

Just as people are likely to say they dislike Congress but like their own member of Congress, they are inclined to express hostility toward "the bureaucracy" but goodwill for that part of the bureaucracy with which they have dealt personally. While most Americans have unfavorable impressions of government agencies and officials in general, they have quite favorable impressions about government agencies and officials with whom they have had direct contact or about which they claim to know something specific.

For example, Figure 15.5 shows that wide majorities have very or somewhat favorable impressions of diverse federal government agencies. Surveys dating back decades suggest that, despite persistent public complaints about "the bureaucracy," most Americans have judged, and continue to judge, each federal agency to be fair and useful.[37]

This finding helps explain why government agencies are rarely reduced in size or budget: whatever the popular feelings about the bureaucracy, any given agency tends

FIGURE 15.5 **How the Public Views Particular Federal Agencies**



Source: "Beyond Distrust: How Americans View Their Government," Pew Research Center, U.S. Politics & Policy, 23 November, 2015. www.people-press.org.

to have many friends. Even the much-criticized FEMA, viewed unfavorably by half the public, was able to fend off budget cuts in the several years following its failed response to Hurricane Katrina.

Reforming the Bureaucracy

The history of American bureaucracy has been punctuated with countless efforts to make it work better and cost less. There were 11 major attempts in the 20th century alone. The latest was the National Performance Review (NPR)—popularly called the plan to "reinvent government"—led by Vice President Al Gore.

The NPR differed from many of the preceding reform efforts in one important way. Most of the earlier ones suggested ways of increasing central (i.e., presidential) control of government agencies: the Brownlow Commission (1936–1937) recommended giving the president more assistants, the First Hoover Commission (1947–1949) suggested ways of improving top-level management, and the Ash Council (1969–1971) called for consolidating existing agencies into a few big "super departments." The intent was to make it easier for the president and his cabinet secretaries to run the bureaucracy. The key ideas were efficiency, accountability, and consistent policies.

The NPR, by contrast, emphasized customer satisfaction (the "customers" in this case being the citizens who come into contact with federal agencies). To the authors of the NPR report, the main problem with the bureaucracy was that it had become too centralized, too rule-bound, too little concerned with making programs work, and too much concerned with avoiding scandal. The NPR report contained many horror stories about useless red tape, excessive regulations, and cumbersome procurement systems that make it next to impossible for agencies to do what they were created to do. (For example, when smoking was permitted in federal office buildings, the General Services Administration issued a nine-page document that described an ashtray and specified how many pieces it must break into, should it be hit with a hammer.)[38]

To solve these problems, the NPR called for less centralized management and more employee initiative, fewer detailed rules and more emphasis on customer satisfaction. It sought to create a new kind of organizational culture in government agencies, one more like that found in innovative, quality-conscious American corporations. The NPR was reinforced legislatively by the Government Performance and Results Act (GPRA) of 1993, which required agencies "to set goals, measure performance, and report on the results."

President George W. Bush built on the Clinton–Gore NPR efforts and the GPRA using the Performance Assessment Rating Tool (PART). The main goal of the PART was to link management reform to the budget process. During the 2008 presidential campaign, Barack Obama harkened back to the Clinton–Gore NPR but also pledged to keep but improve Bush's PART. By Obama's second term, however, administrative reform was not widely mentioned among main priorities or accomplishments in office.

Reforming the bureaucracy is easier said than done. Most of the rules and red tape that make it hard for agency heads to do a good job are the result either of the struggle between the White House and Congress for control over the agencies or of the agencies' desire to avoid irritating influential voters. Silly as the rules for ashtrays may sound, they were written so that the government could say it had an "objective" standard for buying ashtrays. If it simply had bought ashtrays at a department store the way ordinary people do, it would have risked being accused by Ashtray Company One of buying trays from its competitor, Ashtray Company Two, because of political favoritism.

The rivalry between the president and Congress for control of the bureaucracy makes bureaucrats nervous about irritating either branch, and so they issue rules designed to avoid trouble, even if these rules make it hard to do their job. Matters become even worse during periods of divided government, when different parties control the White House and Congress. As we saw in Chapter 14, divided government may not have much effect on *making* policy, but it can have a big effect on *implementing* it. Presidents of one party have tried to increase political control over the bureaucracy ("executive micromanagement"), and Congresses of another party have responded by increasing the number of investigations and detailed rule-making ("legislative micromanagement"). Divided government intensifies the cross fire between the executive and legislative branches, making bureaucrats dig into even deeper layers of red tape to avoid getting hurt.

This does not mean that reform is impossible, only that it is very difficult. For example, despite a lack of clear-cut successes in other areas, the NPR's procurement reforms stuck: government agencies can now buy things costing as much as $100,000 without following any complex regulations. Still, the main effect of the NPR,

WHAT WOULD YOU DO?

Will You Become the Assistant Secretary of Defense?

To: *Dr. Leah Raina Titanium, president of Cybersystems Engineering*
From: *Colin Rob Scott, secretary of defense*
Subject: *Becoming an assistant secretary of defense*

As both secretary and a dear old college buddy of yours, I write again to express my hope that you will accept the president's call to service. We all desperately want you aboard. Yes, conflict-of-interest laws will require you to sell your stock in your present company and drop out of its generous pension plan. No, the government won't even pay moving costs. And once you leave office, you will be barred for life from lobbying the executive branch on matters in which you were directly involved while in office, and you will be barred for two years from lobbying on matters that were under your general official authority. Your other concerns have teeth, too, but let me help you weigh your options.

To Consider:

Four months into the new administration, hundreds of assistant secretary and deputy assistant secretary positions remain unfilled. In 1960 the total number of presidential political appointees was just 450. Today the total is closer to 3,000, but sheer growth is not the whole story. Rather, say experts on federal bureaucracy, plum public service posts go unfilled because the jobs have become so unrewarding, even punishing.

Arguments for:

1. I hate to preach, but it is one's duty to serve one's country when called. Your sacrifice would honor your family and benefit your fellow Americans for years to come.
2. As an accomplished professional and the head of a company that has done business with the government, you could help the president succeed in reforming the department so that it works better and costs less.
3. Despite the restrictions, you could resume your career once your public service was complete.

Arguments against:

1. Since you will have to be confirmed by the Senate, your life will be put under a microscope, and everything (even some of our old college mischief together) will be fair game for congressional staffers and reporters.
2. You will face hundreds of rules telling you what you can't do and scores of members of Congress and their staffs telling you what you should do. Longtime friends will get mad at you for not doing them favors. The president will demand loyalty. The press will pounce on your every mistake, real or imagined.
3. Given the federal limits on whom in the government you can deal with after you leave office, your job at Cybersystems may well suffer.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ Accept position ☐ Reject position

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

the GPRA, and the PART was to get federal agencies to collect far more information than in the past concerning what they do, without, however, using the information to improve the way they do it.[39]

It might be easier to make desirable changes if the bureaucracy were accountable to only one master—say, the president—instead of to several. But that situation, which exists in many parliamentary democracies, creates its own problems. When the bureaucracy has but one master, it often ends up having none; it becomes so powerful that it controls the prime minister and no longer listens to citizen complaints. A weak, divided bureaucracy, such as exists in the United States, may strike us as inefficient, but that very inefficiency may help protect our liberties.

AP Photo/David Goldman

IMAGE 15-7 The Transportation Security Administration (TSA) screens passengers and their luggage at U.S. airports.

LEARNING OBJECTIVES

15-1 Discuss the unique features of the American federal bureaucracy.

A bureaucracy is a large, complex organization composed of appointed officials. American bureaucracy is distinctive in three ways: political authority over the bureaucracy is shared by several institutions; most national government agencies share their functions with state and local government agencies; and government agencies are closely scrutinized and frequently challenged by both individuals and nongovernmental groups.

15-2 Explain the evolution of the federal bureaucracy.

The Constitution made no provision for an administrative system other than to allow the president to appoint, with the advice and consent of the Senate, ambassadors, Supreme Court judges, and "all other officers . . . which shall be provided by law." By the early 20th century, however, Washington's role in making, administering, and funding public policies had already grown far beyond what the Framers had contemplated. Two world wars, the New Deal, and the Great Society each left the government with expanded powers and requiring new batteries of administrative agencies to exercise them.

Still, the president, cabinet secretaries, and thousands of political appointees are ultimately their bosses. Congress and the courts have ample, if imperfect, means of checking and balancing even the biggest bureaucracy, old or new.

15-3 Summarize how the federal bureaucracy functions today.

Today, the federal bureaucracy is as vast as most people's expectations about Washington's responsibility for every public concern one can name. It is the appointed officials—the bureaucrats—not the elected officials or policymakers, who command the troops, deliver the mail, audit the tax returns, run the federal prisons, decide who qualifies for public assistance, and do countless other tasks. Unavoidably, many bureaucrats exercise discretion in deciding what public laws and regulations mean and how to apply them.

Discretionary authority refers to the extent to which appointed bureaucrats can choose courses of action and make policies not spelled out in advance by laws. It is impossible for Congress to specify every detail about how a law will be implemented. Many laws are administered by persons with special information and expertise, and many private citizens administer public laws by working as government contractors or grantees.

15-4 Discuss checks on and problems with the federal bureaucracy, and possibilities for reform.

Congress exerts control over the bureaucracy in many different ways. It decides whether an agency may exist and how much money an agency spends. It can hold oversight hearings and launch investigations into just about any aspect of agency decision making or operations it chooses. And it traditionally has enjoyed

wide latitude from the president in exercising its oversight functions.

Numerous efforts have tried to make the bureaucracy work better and cost less, including 11 presidential or other major commissions in the 20th century. Among the latest was the National Performance Review (NPR), popularly called the plan to "reinvent government." Vice President Gore led the NPR during the two terms of the Clinton administration. The NPR was predicated on the view that bureaucracy had become too centralized, too rule-bound, too little concerned with program results, and too much concerned with avoiding scandal.

In the end, the NPR produced certain money-saving changes in the federal procurement process (how government purchases goods and services from private contractors), and it also streamlined parts of the federal personnel process (how Washington hires career employees). Most experts, however, gave the NPR mixed grades. The Bush administration abolished the NPR but began the Performance Assessment Rating Tool (PART). Most experts judged the PART to be only mildly successful.

All large organizations, including business firms, have some complex rules and procedures, or red tape. Some red tape in government agencies is silly and wasteful (or worse), but try imagining government without any red tape at all. Imagine no rules about hiring on the basis of merit, no strict financial accounting procedures, and no regulations concerning citizen access to information or public record-keeping. As Yale political scientist Herbert Kaufman once quipped, one citizen's "red tape" often is another's "treasured safeguard."

TO LEARN MORE

For addresses and reports of various cabinet departments: **www.whitehouse.gov**

Office of Personnel Management: **www.opm.gov**

National Partnership for Reinventing Government: **govinfo.library.unt.edu/npr/index.htm**

A few specific websites of federal agencies:

Department of Defense: **www.defense.gov**

Department of Education: **www.ed.gov**

Department of Health and Human Services: **www.hhs.gov**

Department of State: **www.state.gov**

Federal Bureau of Investigation: **www.fbi.gov**

Department of Labor: **www.dol.gov**

Burke, John P. *Bureaucratic Responsibility*. Baltimore: Johns Hopkins University Press, 1986. Examines the problem of individual responsibility—for example, when to be a whistle blower—in government agencies.

Downs, Anthony. *Inside Bureaucracy*. Boston: Little, Brown, 1967. An economist's explanation of why bureaucrats and bureaus behave as they do.

Durant, Robert F., ed. *The Oxford Handbook of American Bureaucracy*. New York: Oxford University Press, 2010. Thirty-three largely up-to-date academic essays covering just about every facet of the subject.

Halperin, Morton H. *Bureaucratic Politics and Foreign Policy*. Washington, DC: Brookings Institution, 1974. Insightful account of the strategies by which diplomatic and military bureaucracies defend their interests.

Heclo, Hugh. *A Government of Strangers*. Washington, DC: Brookings Institution, 1977. Analyzes how political appointees attempt to gain control of the Washington bureaucracy and how bureaucrats resist those efforts.

Kettl, Donald F. *Government by Proxy (Mis?Managing Federal Programs)*. Washington, DC: Congressional Quarterly Press, 1988. An account of how the federal government pays others to staff and run its programs.

Kettl, Donald F. *The Next Government of the United States: Why Our Institutions Fail Us and How to Fix Them*. New York: W. W. Norton, 2008. A masterful study of how proxy government functions and often fails today, and what might be done to remedy its worst failures.

Moore, Mark H. *Creating Public Value: Strategic Management in Government*. Cambridge, MA: Harvard University Press, 1995. A thoughtful account of how wise bureaucrats can make government work better.

Parkinson, C. Northcote. *Parkinson's Law*. Boston: Houghton Mifflin, 1957. Half-serious, half-joking explanation of why government agencies tend to grow.

Wilson, James Q. *Bureaucracy: What Government Agencies Do and Why They Do It*. New York: Basic Books, 1989. A comprehensive review of what we know about bureaucratic behavior in the United States.

CQ-Roll Call Group/Getty Images

CHAPTER 16

The Judiciary

KEY OBJECTIVES OF THIS CHAPTER

- *The principle of judicial review checks the power of other institutions and state governments.*
- *Other branches of government can limit federal courts' and the Supreme Court's power.*

KEY TAKEAWAY FROM THIS CHAPTER

- The foundation for powers of the judicial branch and how its independence checks the power of other institutions and state governments are set forth in Article III of the Constitution, *Federalist No. 78, and Marbury v. Madison* (1803).

THEN When the states were debating the ratification of the Constitution, Alexander Hamilton wrote in *Federalist* No. 78 that the new system of federal courts would be "the least dangerous" branch of government because, unlike the president, it would not command the sword and, unlike Congress, it would not control the purse strings. The courts, he argued, could take "no active resolution whatever." Nowhere in the Constitution was the Supreme Court given the right to declare laws of Congress or decisions of the president to be unconstitutional, though Hamilton argued that such a power was necessary. That document was our fundamental law and expressed the will of the people, and so it ought to be preferred to a law passed by Congress if there were an "irreconcilable variance between the two."

NOW Within a few years after the Constitution was ratified, the Supreme Court took Hamilton's position by asserting that the Court could decide whether a law was unconstitutional. A dozen years later, the same Court said that Congress could not only pass laws on the basis of powers explicitly given it by the Constitution, but also do things that were "necessary and proper" in order to implement those powers. By the middle of the 19th century, the Supreme Court had begun to declare many federal and scores of state laws to be unconstitutional.

As a result of its newfound powers, justices began serving on the Supreme Court for much longer periods. The 11 justices nominated by President George Washington served, on average, 7 years, while the 5 nominated 40 years later by President Andrew Jackson served on average 20 years. The Court had become not the least dangerous branch, but a powerful one.

In time, the identity of the justices became an important political issue. Until recently, most justices were confirmed by the Senate, and from 1947 to 1985, almost all persons nominated to be a federal appeals court judge were approved. But of late, these nominations have had a less certain reception in the Senate. When President Ronald Reagan nominated Antonin Scalia for the Supreme Court, he was confirmed by the Senate in 1986 by a vote of 98 to 0. But one year later, when President Reagan nominated Robert Bork, he was rejected by the Senate. Four years after that, Clarence Thomas barely survived a confirmation vote (52 to 48). In 2006, President George W. Bush's nominee Samuel Alito won confirmation by a vote of 58 to 42 after Senate Democrats tried to block the vote by means of a filibuster.

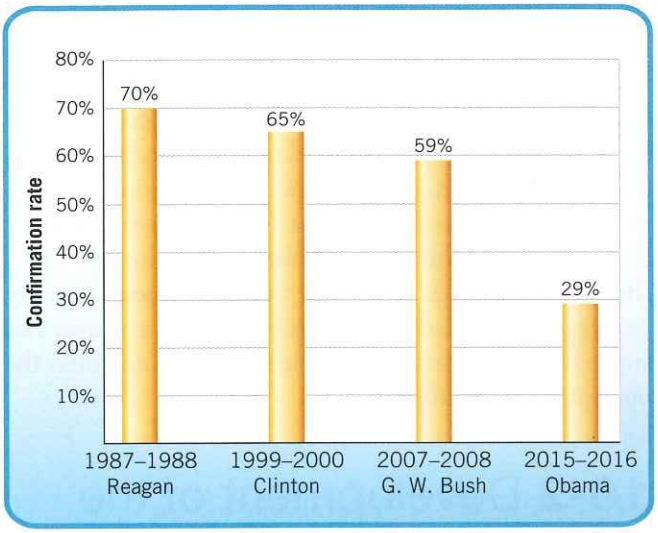
Both of President Barack Obama's nominees were confirmed—Sonia Sotomayor's nomination was approved in 2009 by a vote of 68 to 31, and Elena Kagan's nomination was approved in 2010 by a vote of 63 to 37—but in each case, many Republicans voted against the nominee. And after Justice Scalia's death in early 2016, Republican Majority Leader Mitch McConnell declared that the Senate would not hold hearings for the Obama administration's nominee, U.S. Appeals Court Judge Merrick Garland, but instead would wait for the next president to make a nomination. After taking office, President Donald Trump nominated U.S. Appeals Court Judge Neil Gorsuch for the Supreme Court, and the Senate confirmed Gorsuch by a 54-45 vote in April 2017.

Beyond the Supreme Court, there has been a sharp drop in the percentage of nominees to federal appeals and district courts who are confirmed. From 1945 until 1970, almost every appeals court nominee was confirmed, but by 1995 only about half got through the Senate, and by 2000 it was less than 40 percent. Figure 16.1 shows a decline in the confirmation rate for federal appeals and district courts nominations in the last two years of a presidency, from 70 percent in the Reagan administration to 29 percent in the Obama administration.

Nominees to the federal district court typically are much less controversial than nominees to the federal appeals courts because the president rarely nominates for a federal district court someone who is not known to and supported by the nominee's two home state senators. Still, in his last two years in office, President Obama had a confirmation rate of 27 percent for federal district court nominees, which was well below the confirmation rate of 63 percent for his predecessor in the same time period.[1] Also, as Figure 16.2 shows, over the past three presidencies, the average number of days between a nominee's Senate hearings and his or her confirmation has increased steeply for both federal appeals court nominees and for federal district court nominees.

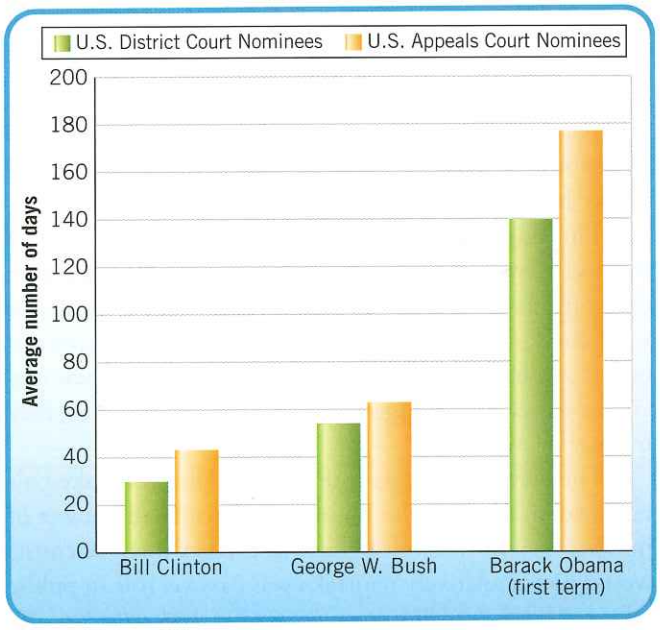
Why the changes? One reason is that the federal judiciary has played an increasingly important role in making public policy. It, and not Congress, decided that abortions should be legal, settled the closely contested 2000 presidential election, and allowed private homes to be seized in order to build a residential hotel and other private structures aimed at affluent clientele. In these and many other cases, the federal courts have become major political actors; as a result, Congress has become concerned about who will be federal judges. Especially during certain periods of divided government (see Chapter 14), the increased partisan polarization in Congress (see Chapter 13) has made its mark on the Senate's confirmation process. For example, during President Bill Clinton's first two years in office, a period of unified government, 86 percent of his

FIGURE 16.1 **Judicial District and Circuit Court Confirmation Rates, January of Seventh Year of Presidency to End of Eighth Year Summer Recess**



Source: Russell Wheeler, "Recess Is Over: Time to Confirm Judges," Brookings Institution, 6 September, 2016. www.brookings.edu/blog/fixgov/2016/09/06/recess-is-over-time-to-confirm-judges/.

FIGURE 16.2 **Federal Court Nominees, Time from Hearings to Confirmation**



Source: Adapted from Russell Wheeler, "Judicial Nominations and Confirmations in Obama's First Term," Brookings Institution, 13 December, 2012, 9. www.brookings.edu/research/judicial-nominations-and-confirmations-in-obamas-first-term/.

nominees for the U.S. Court of Appeals were confirmed; however, during his second two years in office, a period of divided government, the confirmation rate dropped to 55 percent.[2]

judicial review *The power of courts to declare laws unconstitutional.*

As federal judges make more policy decisions, and as partisan rancor over those decisions rises, the process by which the Senate considers nominees for the federal bench has become longer, more ideologically charged, and less certain to result in confirmations. By long-standing tradition, senators from the home state of an appeals court nominee are allowed to file a private objection—what is called registering a negative "blue slip" complaint. If filed by a Judiciary Committee member, this will prevent a hearing on the nominee from being held. Sometimes these blue slips indicate that a senator doesn't like the nominee's political views, but other times it can mean that the senator is blocking a judicial appointment as a way of inducing the president to do something he or she wants on a totally unrelated matter. But, over the past three presidencies, that tradition has been used ever more as just another tool of partisan politics.

16-1 Judicial Review

One aspect of the power of the federal courts is **judicial review**—the right of the federal courts to declare laws of Congress and acts of the executive branch void and unenforceable if they are judged to be in conflict with the Constitution. Since 1789, the Supreme Court has declared more than 160 federal laws to be unconstitutional. In Britain, by contrast, Parliament is supreme. The UK Supreme Court, established quite recently by the Constitutional Reform Act of 2005, started work in 2009 and is much more limited in its powers of judicial review. It cannot overturn primary legislation made by Parliament. As the second earl of Pembroke supposedly said, "A parliament can do anything but make a man a woman and a woman a man." All that prevents Parliament from acting contrary to the (unwritten) constitution of Britain are the consciences of its members and the opinions of the citizens.

About 60 nations do have something resembling judicial review, but in only a few cases does this power mean much in practice. Where it means something—in Australia, Canada, Germany, India, and some other nations—one finds a stable, federal system of government with a strong tradition of an independent judiciary.[3] Some other nations—France, for example—have special councils, rather than courts, that can under certain circumstances decide that a law is not authorized by the constitution.

Judicial review is the federal courts' chief weapon in the system of checks and balances on which the American government is based. Today, few people would deny to the

judicial restraint approach *The view that judges should decide cases strictly on the basis of the language of the laws and the Constitution.*

activist approach *The view that judges should discern the general principles underlying laws or the Constitution and apply them to modern circumstances.*

courts the right to decide that a legislative or executive act is unconstitutional, though once that right was controversial. What remains controversial is the method by which such review is conducted.

Two competing views exist, each ardently pressed during the fight to confirm Clarence Thomas. The first holds that judges should only judge—that is, they should confine themselves to applying those rules stated in or clearly implied by the language of the Constitution. This often is called the **judicial restraint approach**. The other argues that judges should discover the general principles underlying the Constitution and its often vague language, amplify those principles on the basis of some moral or economic philosophy, and apply them to cases. This is sometimes called the **activist approach**.

Note that the difference between activist and strict constructionist judges is not necessarily the same as the difference between liberals and conservatives. Judges can be political liberals and still believe they are bound by the language of the Constitution. A liberal justice, Hugo Black, once voted to uphold a state law banning birth control because nothing in the Constitution prohibited such a law. Or judges can be conservative and still think they have a duty to use their best judgment in deciding what is good public policy. Rufus Peckham, one such conservative, voted to overturn a state law setting maximum hours of work because he believed the Fourteenth Amendment guaranteed something called "freedom of contract," even though those words are not in the amendment. Seventy years ago, judicial activists tended to be conservatives and strict constructionist judges tended to be liberals; today the opposite is more often the case.

TABLE 16.1 | Chief Justices of the United States

Chief Justice	Appointed by	Years of Service
John Jay	Washington	1789–1795
Oliver Ellsworth	Washington	1796–1800
John Marshall	Adams	1801–1835
Roger B. Taney	Jackson	1836–1864
Salmon P. Chase	Lincoln	1864–1873
Morrison R. Waite	Grant	1874–1888
Melville W. Fuller	Cleveland	1888–1910
Edward D. White	Taft	1910–1921
William Howard Taft	Harding	1921–1930
Charles Evans Hughes	Hoover	1930–1941
Harlan Fiske Stone	F. Roosevelt	1941–1946
Fred M. Vinson	Truman	1946–1953
Earl Warren	Eisenhower	1953–1969
Warren E. Burger	Nixon	1969–1986
William H. Rehnquist	Reagan	1986–2005
John G. Roberts, Jr.	Bush	2005–present

Note: Omitted is John Rutledge, who served for only a few months in 1795 and who was not confirmed by the Senate.

16-2 Development of the Federal Courts

Most of the Founders probably expected the Supreme Court to have the power of judicial review (though they did not say that in so many words in the Constitution), but they did not expect federal courts to play so large a role in making public policy. The traditional view of civil courts was that they judged disputes between people who had direct dealings with each other—they had entered into a contract, for example, or one had dropped a load of bricks on the other's toe—and decided which of the two parties was right. The court then supplied relief to the wronged party, usually by requiring the other person to pay him or her money ("damages").

This traditional understanding was based on the belief that judges would find and apply existing law. The purpose of a court case was not to learn what the judge believes but what the law requires. The later rise of judicial activism occurred when judges questioned this traditional view and argued instead that judges do not merely find the law, they make the law.

The view that judges interpret the law, not make policy, made it easy for the Founders to justify the power of judicial review. It also led them to predict that the courts would play a relatively neutral, even passive, role in public affairs. Alexander Hamilton, writing in *Federalist* No. 78, described the judiciary as the branch "least dangerous" to political rights. The president is commander-in-chief and thus holds the "sword of the community"; Congress appropriates money and thus "commands the purse" as well as decides what laws shall govern. But the judiciary "has no influence over either the sword or the purse" and "can take no active resolution whatever." It has "neither

force nor will but merely judgment," and thus is "beyond comparison the weakest of the three departments of power." As a result, "liberty can have nothing to fear from the judiciary alone." Hamilton went on to state clearly that the Constitution intended to give to the courts the right to decide whether a law is contrary to the Constitution. But this authority, he explained, was designed not to enlarge the power of the courts but to confine that of the legislature.

Obviously, things have changed since Hamilton's time. The evolution of the federal courts, especially the Supreme Court, toward the present level of activism and influence has been shaped by the political, economic, and ideological forces of three historical eras. From 1787 to 1865, nation-building, the legitimacy of the federal government, and slavery were the great issues; from 1865 to 1937, the great issue was the relationship between the government and the economy; from 1938 to the present, the major issues confronting the Court have involved personal liberty and social equality, and the potential conflict between the two. In the first period, the Court asserted the supremacy of the federal government; in the second, it placed important restrictions on the powers of that government; and in the third, it enlarged the scope of personal freedom and narrowed that of economic freedom.

National Supremacy and Slavery

"From 1789 until the Civil War, the dominant interest of the Supreme Court was in that greatest of all the questions left unresolved by the Founders—the nation–state relationship."[4] The answer the Court gave, under the leadership of Chief Justice John Marshall, was that national law was in all instances the dominant law, with state law having to give way, and that the Supreme Court had the power to decide what the Constitution meant. In two cases of enormous importance—*Marbury v. Madison* in 1803 and *McCulloch v. Maryland* in 1819—the Court, in decisions written by Marshall, held that the Supreme Court could declare an act of Congress unconstitutional; that the power granted by the Constitution to the federal government flows from the people and thus should be generously construed (and thus any federal laws that are "necessary and proper" to the attainment of constitutional ends are permissible); and that federal law is supreme over state law, even to the point that a state may not tax an enterprise (such as a bank) created by the federal government.[5]

The supremacy of the federal government was reaffirmed by other decisions as well. In 1816, the Supreme Court rejected the claim of the Virginia courts that the Supreme Court could not review the decisions of state courts. The Virginia courts were ready to acknowledge the supremacy of the U.S. Constitution but believed they had as much right as the U.S. Supreme Court to decide what the Constitution meant. The Supreme Court felt otherwise, and in this case and another like it, the Court asserted its own broad powers to review any state court decision if that decision seemed to violate federal law or the federal Constitution.[6]

The power of the federal government to regulate commerce among the states was also established. When New York gave to Robert Fulton, the inventor of the steamboat, the monopoly right to operate his steamboats on the rivers of that state, the Marshall Court overturned the license because the rivers connected New York and New Jersey and thus trade on those rivers would involve *inter*-state commerce, and federal law in that area was supreme. Because there was a conflicting federal law on the books, the state law was void.[7]

All of this may sound rather obvious to us today, when the supremacy of the federal government is largely unquestioned. In the early 19th century, however, these were almost revolutionary decisions. The Jeffersonian Republicans were in power and had become increasingly devoted to states' rights; they were aghast at the Marshall decisions. President Andrew Jackson attacked the Court bitterly for defending the right of the federal government to create a national bank and for siding with the Cherokee Indians in a dispute with Georgia. In speaking of the latter case, Jackson is supposed to have remarked, "John Marshall has made his decision; now let him enforce it!"[8]

Though Marshall seemed to have secured the supremacy of the federal government over the state governments, another even more divisive issue had arisen; that, of course, was slavery. Roger B. Taney succeeded Marshall as chief justice in 1836. He was deliberately chosen by President Jackson because he was an advocate of states' rights, and he began to chip away at federal supremacy, upholding state claims that Marshall would have set aside. But the decision for which he is famous—or infamous—came in 1857 when, in the *Dred Scott* case, he wrote perhaps the most disastrous judicial opinion ever issued. A slave, Dred Scott, had been taken by his owner to a territory (near what is now St. Paul, Minnesota) where slavery was illegal under federal law. Scott claimed that since he had resided in a free territory, he was now a free man. Taney held that Negroes were not citizens of the United States and could not become so, and that the federal law—the Missouri Compromise—prohibiting slavery in Northern territories was unconstitutional.[9] The public outcry against this view was enormous, and the Court and Taney were discredited,

at least in the North. The Civil War was ultimately fought over what the Court mistakenly had assumed was a purely legal question.

Government and the Economy

The supremacy of the federal government may have been established by John Marshall and the Civil War, but the scope of the powers of that government or even of the state governments was still to be defined. During the period from the end of the Civil War to the early years of the New Deal, the dominant issue the Supreme Court faced was deciding when the economy would be regulated by the states and when by the nation.

The Court revealed a strong though not inflexible attachment to private property. In fact, that attachment had always been there: the Founders thought political and property rights were inextricably linked, and Marshall certainly supported the sanctity of contracts. But now, with the muting of the federal supremacy issue and the rise of a national economy with important unanticipated effects, the property question became the dominant one. In general, the Court developed the view that the Fourteenth Amendment, adopted in 1868 primarily to protect African American claims to citizenship from hostile state action, also protected private property and corporations from unreasonable state action. The crucial phrase was this: no state shall "deprive any person of life, liberty, or property, without due process of law." Once it became clear that a "person" could be a firm or a corporation as well as an individual, business and industry began to flood the courts with cases challenging various government regulations.

The Court quickly found itself in a thicket: it began ruling on the constitutionality of virtually every effort by any government to regulate any aspect of business or labor, and its workload increased sharply. Judicial activism was born in the 1880s and 1890s as the Court set itself up as the arbiter of what kind of regulation was permissible. In the first 75 years of this country's history, only two federal laws were held to be unconstitutional; in the next 75 years, 71 were.[10] Of the roughly 1,300 state laws held to be in conflict with the federal Constitution since 1789, about 1,200 were overturned after 1870. In one decade alone—the 1880s—5 federal and 48 state laws were declared unconstitutional.

Many of these decisions provided clear evidence of the Court's desire to protect private property: it upheld the use of injunctions to prevent labor strikes,[11] struck down the federal income tax,[12] sharply limited the reach of the antitrust law,[13] restricted the powers of the Interstate Commerce Commission to set railroad rates,[14] prohibited the federal government from eliminating child labor,[15] and prevented the states from setting maximum hours of work.[16] In 184 cases between 1899 and 1937, the Supreme Court struck down state laws for violating the Fourteenth Amendment, usually by economic regulation.[17]

But the Court also rendered decisions that authorized various kinds of regulation. It allowed states to regulate businesses "affected with a public interest,"[18] changed its mind about the Interstate Commerce Commission and allowed it to regulate railroad rates,[19] upheld rules requiring railroads to improve their safety,[20] approved state anti-liquor laws,[21] approved state mine safety laws,[22] supported state workers' compensation laws,[23] allowed states to regulate fire-insurance rates,[24] and in time upheld a number of state laws regulating wages and hours. Indeed, between 1887 and 1910, in 558 cases involving the Fourteenth Amendment, the Supreme Court upheld state regulations over 80 percent of the time.[25]

To characterize the Court as pro-business or anti-regulation is both simplistic and inexact. More accurate, perhaps, is to characterize it as supportive of the rights of private property but unsure how to draw the lines that distinguish "reasonable" from "unreasonable" regulation. Nothing in the Constitution clearly differentiates reasonable from unreasonable regulation, and the Court has been able to invent no consistent principle of its own to make this determination. For example, what kinds of businesses are "affected with a public interest"? Grain elevators and railroads are, but are bakeries? Sugar refineries? Saloons? And how much of commerce is "interstate"—anything that moves? Or only something that actually crosses a state line (recall our discussion of this point in Chapter 3)? The Court found itself trying to make detailed judgments that it was not always competent to make and to invent legal rules where no clear legal rules were possible.

In one area, however, the Supreme Court's judgments were clear: the Fourteenth and Fifteenth Amendments were construed so narrowly as to give African Americans only the most limited benefits of their provisions. In a long series of decisions, the Court upheld segregation in schools and on railroad cars and permitted black people to be excluded from voting in many states.

Government and Political Liberty

After 1936, the Supreme Court stopped imposing any serious restrictions on state or federal power to regulate the economy, leaving such matters in the hands of the legislatures. From 1937 to 1974, the Supreme Court did not overturn a single federal law designed to regulate business but did overturn 36 congressional enactments that violated personal political liberties. It voided as unconstitutional

LANDMARK CASES | Marbury v. Madison

The story of *Marbury v. Madison* is often told, but it deserves another telling because it illustrates so many features of the role of the Supreme Court—how apparently small cases can have large results, how the power of the Court depends not simply on its constitutional authority but also on its acting in ways that avoid a clear confrontation with other branches of government, and how the climate of opinion affects how the Court goes about its task.

When President John Adams lost his bid for reelection to Thomas Jefferson in 1800, he—and all members of his party, the Federalists—feared that Jefferson and the Republicans would weaken the federal government and turn its powers to what the Federalists believed were wrong ends (states' rights, an alliance with the French, hostility toward business). As his hours in office came to an end, Adams worked feverishly to pack the judiciary with 59 loyal Federalists by giving them so-called midnight appointments before Jefferson took office.

John Marshall, as Adams's secretary of state, had the task of certifying and delivering these new judicial commissions. In the press of business, he delivered all but 17; these he left on his desk for the incoming secretary of state, James Madison, to send out. Jefferson and Madison, however, were furious at Adams's behavior and refused to deliver the 17. William Marbury and three other Federalists who had been promised these commissions hired a lawyer and brought suit against Madison to force him to produce the documents. The suit requested the Supreme Court to issue a writ of mandamus (from the Latin, "we command") ordering Madison to do his duty. The right to issue such writs had been given to the Court by the Judiciary Act of 1789.

Marshall, the man who had failed to deliver the commissions to Marbury and his friends in the first place, had become the chief justice and was now in a position to decide the case. These days, a justice who had been involved in an issue before it came to the Court would probably disqualify him- or herself, but Marshall had no intention of letting others decide this question. He faced, however, not simply a partisan dispute over jobs but what was nearly a constitutional crisis. If he ordered the commission delivered, Madison might still refuse, and the Court had no way—if Madison was determined to resist—to compel him. The Court had no police force, whereas Madison had the support of the president of the United States. And if the order were given, whether or not Madison complied, the Jeffersonian Republicans in Congress would probably try to impeach Marshall. On the other hand, if Marshall allowed Madison to do as he wished, the power of the Supreme Court would be seriously reduced.

Marshall's solution was ingenious. Speaking for a unanimous Court, he announced that Madison was wrong to withhold the commissions, that courts could issue writs to compel public officials to do their prescribed duty—*but* that the Supreme Court had no power to issue such writs in this case because the law (the Judiciary Act of 1789) giving it that power was unconstitutional. The law said the Supreme Court could issue such writs as part of its "original jurisdiction"—that is, persons seeking such writs could go *directly* to the Supreme Court with their request (rather than go first to a lower federal court and then, if dissatisfied, appeal to the Supreme Court). Article III of the Constitution, Marshall pointed out, spelled out precisely the Supreme Court's original jurisdiction; it did not mention issuing writs of this sort and plainly indicated that on all matters not mentioned in the Constitution, the Court would have only appellate jurisdiction. Congress may not change what the Constitution says; hence, the part of the Judiciary Act attempting to do this was null and void.

The result was that a showdown with the Jeffersonians was avoided—Madison was not ordered to deliver the commissions—but the power of the Supreme Court was unmistakably clarified and enlarged. As Marshall wrote, "It is emphatically the province and duty of the judicial department to say what the law is." Furthermore, "a law repugnant to the Constitution is void."

laws that restricted freedom of speech,[26] denied passports to communists,[27] permitted the government to revoke a person's citizenship,[28] withheld a person's mail,[29] or restricted the availability of government benefits.[30]

This new direction began when one justice changed his mind, and it continued as the composition of the Court changed. At the outset of the New Deal, the Court was by a narrow margin dominated by justices who opposed the welfare state and federal regulation based on broad grants of discretionary authority to administrative agencies. President Franklin Roosevelt, who was determined to get just such legislation implemented, found himself powerless to alter the composition of the Court during his first term (1933–1937); because no justice died or retired, he had no vacancies to fill. After his overwhelming reelection in 1936, he moved to remedy this problem by "packing" the Court.

CONSTITUTIONAL CONNECTIONS | The "Exceptions" Clause

Article III, Section II of the Constitution provides that "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." In the 1868 case of *Ex Parte McCardle*, the Court unanimously agreed that the "Exceptions" clause gives Congress the power to restrict the Court's appellate jurisdiction. Since then, many noted jurists and scholars have taken serious issue with that interpretation, but the prevailing view is that, at least on an issue-by-issue basis, the exceptions clause gives Congress broad, if not unlimited, power to prohibit the federal courts, including the Supreme Court, from exercising judicial review.

Over the past several decades, each session of Congress has witnessed proposals to deny the federal courts appellate jurisdiction. There have been such proposals on abortion rights, busing to achieve racial balance in schools, school prayer, prisoners' rights, same-sex marriage, and many other issues. Some exception clause proposals have become bills and made it into federal law; for example, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibited the federal courts from hearing appeals regarding certain decisions by the U.S. Immigration and Naturalization Service.

Typically, however, even exception clause–related bills that come to a vote never make it into law. For example, in each of several sessions after 2000, the House approved a bill prohibiting federal courts from exercising appellate jurisdiction in cases involving the invocation of "under God" in the Pledge of Allegiance. But none of these bills made it through the Senate. Likewise, in 2011, Rep. Ron Paul (R-TX) sponsored the Sanctity of Life Act, which would have stripped the federal courts of the authority to hear abortion cases; but that was just the latest in a series of such exception clause bills on abortion that were much debated but never enacted.

Roosevelt proposed a bill that would have allowed him to appoint one new justice for each one over the age of 70 who refused to retire, up to a total membership of 15. Since six men in this category were then on the Supreme Court, he would have been able to appoint six new justices, enough to ensure a comfortable majority supportive of his economic policies. A bitter controversy ensued, but before the bill could be voted on, the Supreme Court, perhaps reacting to Roosevelt's big win in the 1936 election, changed its mind. Whereas it had been striking down several New Deal measures by votes of five to four, now it started approving them by the same vote. One justice, Owen Roberts, had switched his position. This was called the "switch in time that saved nine," but in fact Roberts had changed his mind *before* FDR's plan was announced.

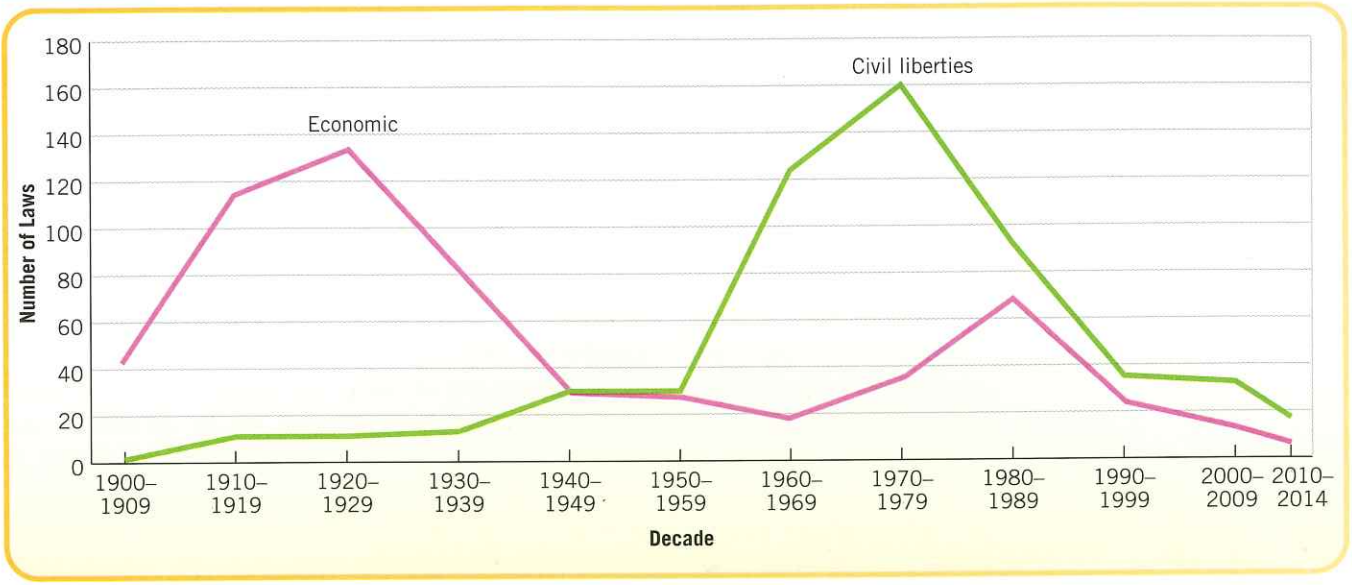
The "Court-packing" bill was not passed, but it was no longer necessary. Justice Roberts had yielded to public opinion in a way that Chief Justice Taney a century earlier had not, thus forestalling an assault on the Court by the other branches of government. Shortly thereafter, several justices stepped down, and Roosevelt was able to make his own appointments (he filled seven seats during his four terms in office). From then on, the Court turned its attention to new issues—political liberties and, in time, civil rights.

With the arrival in office of Chief Justice Earl Warren in 1953, the Court began its most active period yet. Activism now arose to redefine the relationship of citizens to the government and especially to protect the rights and liberties of citizens from governmental trespass. Although the Court has always seen itself as protecting citizens from arbitrary government, before 1937 that protection was of a sort that conservatives preferred; after 1937, it was of a kind that liberals preferred.

LANDMARK CASES | Power of the Supreme Court

- ***Marbury v. Madison* (1803):** Upheld judicial review of congressional acts.
- ***Martin v. Hunter's Lessee* (1816):** The Supreme Court can review the decisions of the highest state courts if they involve a federal law or the federal Constitution.
- ***McCulloch v. Maryland* (1819):** Ruled that creating a federal bank, though not mentioned in the Constitution, was a "necessary and proper" exercise of the government's right to borrow money.
- ***Ex parte McCardle* (1869):** Allowed Congress to change the appellate jurisdiction of the Supreme Court.

FIGURE 16.3 **Economics and Civil Liberties Laws Overturned by the U.S. Supreme Court, by Decade, 1900–2014**



Note: The Civil liberties category does not include laws supportive of civil liberties. Laws include federal, state, and local.

Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2015–2016* (Washington, D.C.: Congressional Quarterly Press, 2015), Figure 7.4.

The Revival of State Sovereignty

For many decades, the Supreme Court allowed Congress to pass almost any law authorized by the Constitution, no matter how it affected the states. As we saw in Chapter 3, the Court had long held that Congress could regulate almost any activity if it affected interstate commerce, and in the Court's opinion virtually every activity did affect it. The states were left with few rights to challenge federal power. But since around 1992, the Court has backed away from this view. By narrow majorities, it has begun to restore the view that states have the right to resist some forms of federal action.

When Congress passed a bill that forbade anyone from carrying a gun near a school, the Court held that carrying guns did not affect interstate commerce, and so the law was invalid.[31] One year later, it struck down a law that allowed Indian tribes to sue the states in federal courts, arguing that Congress lacks the power to ignore the "sovereign immunity" of states—that is, the right, protected by the Eleventh Amendment, not to be sued in federal court. (It has since upheld that view in two more cases.) And the next year, it held that the Brady gun control law could not be used to require local law enforcement officers to do background checks on people trying to buy weapons.[32] These cases are all hints that the supremacy of the federal government has some real limits created by the existence and powers of the several states.

After the enactment of President Obama's health care plan in 2010, several states argued that its requirement that everyone purchase health insurance was unconstitutional. Some district courts agreed with the claims and others disagreed. The issue was whether Congress's authority to levy taxes or to regulate interstate commerce gave it the right to require citizens to purchase a product. In addition, some state officials questioned the constitutionality of provisions requiring state governments to expand health care coverage for low-income citizens via the federal–state Medicaid program or risk losing all existing federal funding for that program.

In *National Federation of Independent Business v. Sebelius* (2012), the Supreme Court decided these issues. It upheld the law's "individual mandate" to purchase "minimum essential" health insurance, ruling that the monetary "penalty" to be levied by the Internal Revenue Service on anyone that does not purchase insurance as required by the law is tantamount to a constitutionally permissible federal "tax."

But, in the same decision, the Court struck down the law's mandate that state governments expand Medicaid coverage by 2014, ruling that the provision "violates the Constitution" by impermissibly "threatening States with the loss of their existing" federal funding for the program. This part of the decision had important consequences for the law's implementation, and it could in time have far-reaching implications for how the federal courts handle cases concerning intergovernmental programs (see Chapter 3):

> Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with accompanying conditions, but the States must have a genuine choice whether to comply.

constitutional court *A federal court, authorized by Article III of the Constitution, that keeps judges in office during good behavior and prevents their salaries from being reduced. They are the Supreme Court (created by the Constitution) and appellate and district courts created by Congress.*

district courts *The lowest federal courts; federal trials can be held only here.*

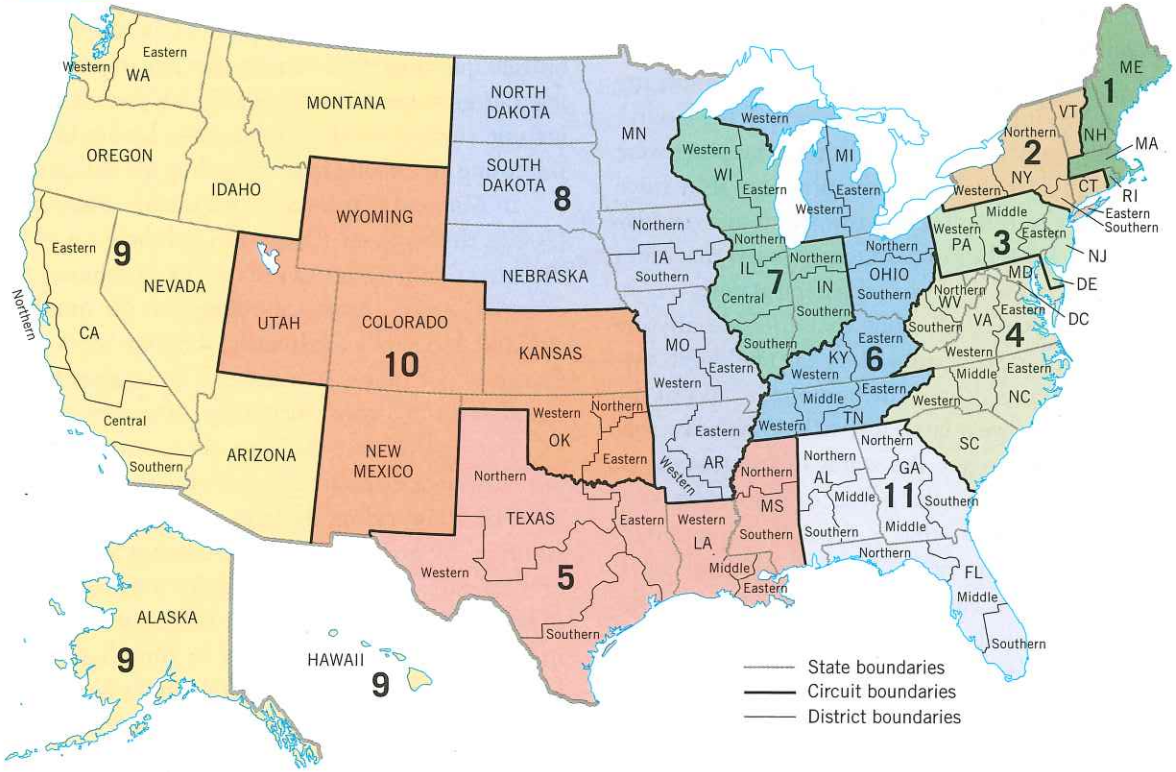
Debate over the federal government's appropriate role in health care continues. In 2015, the Supreme Court ruled six to three in *King v. Burwell* that the Affordable Care Act permits the federal government to provide subsidies for people to buy health insurance through the federal exchange if their state does not have its own exchange for comparing and purchasing health-care plans. Opponents had insisted the law allowed subsidies only for plans purchased through state exchanges; if that view had prevailed, then more than 6 million Americans in 34 states likely would no longer be able to afford health insurance. By upholding subsidies for the federal exchange, the Court ensured the viability of the health-care law for the foreseeable future, barring legislative or executive action to modify it.[33]

16-3 The Structure, Jurisdiction, and Operation of the Federal Courts

The only federal court the Constitution requires is the Supreme Court, as specified in Article III. All other federal courts and their jurisdictions are creations of Congress. Nor does the Constitution indicate how many justices shall be on the Supreme Court (there were originally six, now there are nine) or what its appellate jurisdiction shall be.

Congress has created two kinds of lower federal courts to handle cases that need not be decided by the Supreme Court: constitutional and legislative courts. A **constitutional court** is one exercising the judicial powers found in Article III of the Constitution, and therefore its judges are given constitutional protection: They may not be fired (they serve during "good behavior"), nor may their salaries be reduced while they are in office. The most important of the constitutional courts are the **district courts** (a total of 94, with at least one in each state, the District of Columbia, and the commonwealth

MAP 16.1 U.S. District and Appellate Courts



Note: Washington, DC, is in a separate court. Puerto Rico is in the first circuit; the Virgin Islands are in the third; Guam and the Northern Mariana Islands are in the ninth. The Court of Appeals for the Federal Circuit, located in Washington, DC, is a Title 3 court that hears appeals regarding patents, trademarks, international trade, government contracts, and from civil servants who claim they were unjustly discharged.

Source: Administrative Office of the United States Courts.

of Puerto Rico) and the **courts of appeals** (one in each of 11 regions, plus one in the District of Columbia and one federal circuit). Various specialized constitutional courts also exist, such as the Court of International Trade.

Legislative courts are those set up by Congress for some specialized purpose and staffed with people who have fixed terms of office and can be removed or have their salaries reduced. Legislative courts include the Court of Military Appeals and the territorial courts.

courts of appeals *Federal courts that hear appeals from district courts; no trials.*

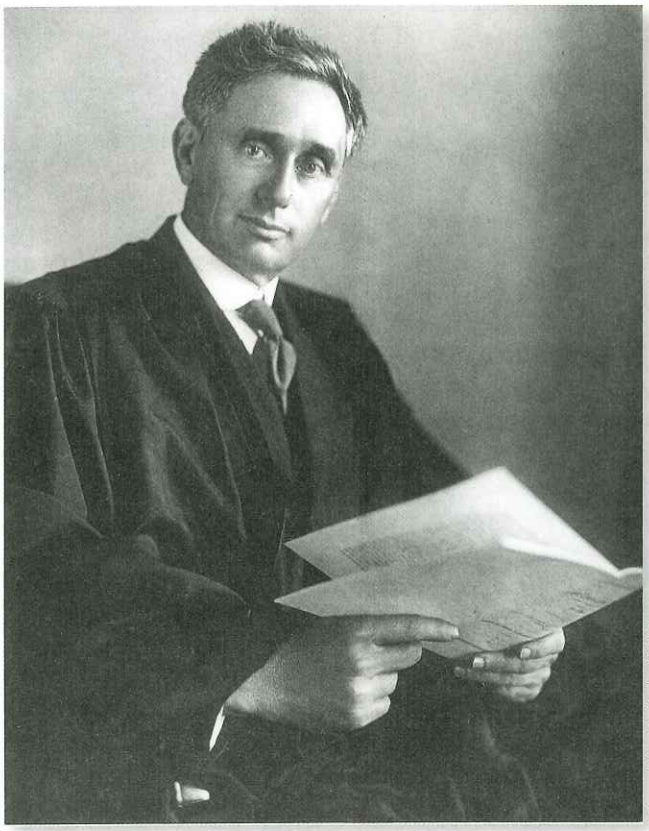
legislative courts *Courts created by Congress for specialized purposes, whose judges do not enjoy the protections of Article III of the Constitution.*

Selecting Judges

Party background makes a difference in how judges behave. Researchers have analyzed more than 80 studies of the link between party and either liberalism or conservatism among state and federal judges in cases involving civil liberties, criminal justice, and economic regulation. It shows that judges who are Democrats are more likely to make liberal decisions and Republican judges are more likely to make conservative ones.* The party effect is not small.[34] We should not be surprised by this, since we have already seen that among political elites (and judges are certainly elites), party identification influences personal ideology.

But ideology does not entirely determine behavior. So many other things shape court decisions—the facts of the case, prior rulings by other courts, the arguments presented by lawyers—that there is no reliable way of predicting how judges will behave in all matters. Presidents sometimes make the mistake of thinking they know how their appointees will behave, only to be surprised by the facts. Theodore Roosevelt appointed Oliver Wendell Holmes to the Supreme Court, only to remark later, after Holmes had voted in a way that Roosevelt did not like, that "I could carve out of a banana a judge with more backbone than that!" Holmes, who had plenty of backbone, said he did not "give a damn" what Roosevelt thought. Richard Nixon, an ardent foe of court-ordered school busing, appointed Warren Burger chief justice. Burger promptly sat down and wrote the opinion upholding busing. Another Nixon appointee, Harry Blackmun, wrote the opinion declaring the right to an abortion to be constitutionally protected.

Federal judges tend to be white, male, and Protestant, and increasingly have been judges on some other court. There has been a decline in the proportion of Supreme Court justices who come directly from private law practice; almost all have been promoted from a lower-ranking judgeship. For example, of the 9 justices chosen by President Franklin D. Roosevelt, only 2 had been judges, whereas of the 12 nominated by Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, George W. Bush, and Barack Obama, 10 had been judges. Sex, race, and ethnicity also have become important factors in selecting judges. As is evident in Figure 16.4, Democratic presidents since President Lyndon Johnson have appointed higher percentages of women, blacks, and Hispanics than Republican presidents have, including a record-shattering fraction of female appointees during the Obama presidency.



Fotosearch/Archive Photos/Getty Images

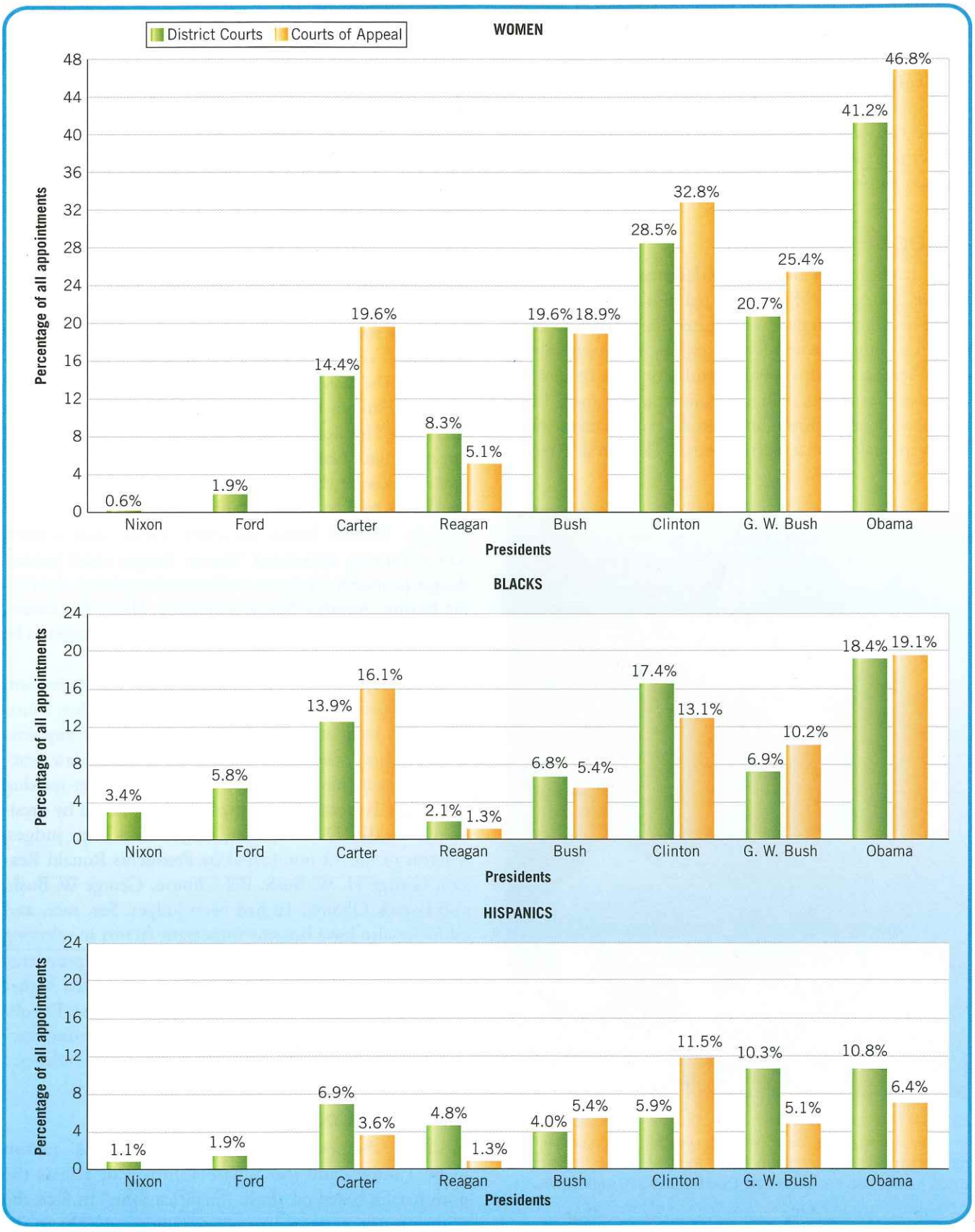
IMAGE 16-1 Louis Brandeis, creator of the "Brandeis Brief" that developed court cases based on economic and social more than legal arguments, became the first Jewish Supreme Court justice. He served on the Court from 1916 until 1939.

*A "liberal" decision is one that favors a civil right, a criminal defendant, or an economic regulation; a "conservative" one opposes the right or the regulation, or supports the criminal prosecutor.

Senatorial Courtesy

In theory, the president nominates a "qualified" person to be a judge, and the Senate approves or rejects the nomination based on those "qualifications." In fact, the tradition of *senatorial courtesy* gives heavy weight to the preferences of the senators from the state where a federal district judge is to serve. Ordinarily, the Senate will not

FIGURE 16.4 **Female and Minority Federal Judicial Appointments, 1963–2016**



Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2015–2016* (Washington, D.C.: Congressional Quarterly Press, 2015), Table 7.5.

confirm a district court judge if the senior senator from the state where the district is located objects (if he is of the president's party). The senator can exercise this veto power by means of the "blue slip"—a blue piece of paper on which the senator is asked to record his or her views on the nominee. A negative opinion, or even failure to return the blue slip, usually kills the nomination. This means that as a practical matter the president nominates only persons recommended by that key senator. With respect to district judges, the constitutional process appears to be reversed. To reflect reality, Article II, section 2, might be more accurate if written as follows: "The senators shall nominate, and by and with the consent of the President, shall appoint" federal judges.

The "Litmus Test"

Of late, presidents have tried to exercise more influence on the selection of federal district and appellate court judges by getting the Justice Department to find candidates who not only are supported by their party's senators, but also reflect the political and judicial philosophy of the president. Presidents Carter, Clinton, and Obama sought out liberal, activist judges; Presidents Reagan, George H. W. Bush, and George W. Bush sought out conservative, strict-constructionist ones. The party membership of federal judges makes a difference in how they vote.[35]

Because different courts of appeals have different combinations of judges, some will be more liberal than others. For example, more liberal judges are in the court of appeals for the ninth circuit (which includes most of the far western states) and more conservative ones are in the fifth circuit (Texas, Louisiana, and Mississippi). The ninth circuit takes liberal positions, the fifth more conservative ones. Because the Supreme Court does not have time to settle every disagreement among appeals courts, different interpretations of the law may exist in different circuits. In the fifth, for instance, it was for a while unconstitutional for state universities to have affirmative action programs, but in the ninth circuit that was permitted.

These differences make some people worry about the use of a political **litmus test**—a test of ideological purity—in selecting judges. When conservatives are out of power, they complain about how liberal presidents use such a test; when liberals are out of power, they complain about how conservative presidents use it. Many people would like to see judges picked on the basis of professional qualifications, without reference to ideology, but the courts are now so deeply involved in political issues that it is hard to imagine what an ideologically neutral set of professional qualifications might be.

litmus test *An examination of the political ideology of a nominated judge.*

A judicial nominee's view on abortion is the chief motive for using the litmus test. Because it is easy to mount a filibuster and it takes 60 votes to end one, the nominee usually must be assured of 60 Senate votes to be confirmed. In theory, the Senate could adopt a rule preventing filibusters of nominations, and it has recently moved in that direction. In 2005, a group of 14 senators, half from each party, agreed they would vote to block a filibuster on court nominees unless there were "extraordinary circumstances." This group—called the Gang of Fourteen—made it possible for several nominees (including Samuel Alito) to be confirmed even though they had fewer than 60 votes (but still, of course, more than 50). But this truce did not endure.

In 2013, Senate Democrats, led by Majority Leader Harry Reid, changed chamber rules to permit majority votes for some judicial nominations, though not for the Supreme Court (see Chapter 13, "Floor Debate," page 315). Republicans unanimously opposed the change, as did a few Senate Democrats.[36] Then, in 2016, after the unexpected death of Justice Antonin Scalia, the Republican-controlled Senate refused to consider President Obama's Supreme Court nominee (as discussed at the beginning of this chapter). In 2017, President Donald Trump nominated federal appellate judge Neil Gorsuch to the Supreme Court, but with a Republican Senate majority of 52 votes, a Democratic filibuster could have derailed the nomination. Instead, the Senate voted on party lines to change its rules to permit filibusters of Supreme Court nominees to end with a majority vote instead of 60 votes. The Senate subsequently confirmed Gorsuch with 51 of 52 Republican votes (one senator was absent due to a medical matter) and 3 of 48 Democratic votes (including two Independents who caucus with the Democrats).

The litmus test issue is of greatest importance in selecting Supreme Court justices. Here, no tradition of senatorial courtesy exists. The president takes a keen personal interest in the choices and, of late, has sought to find nominees who share his philosophy. In the Reagan administration, there were bruising fights in the Senate over the nomination of William Rehnquist to be chief justice (he won) and Robert Bork to be an associate justice (he lost), with liberals pitted against conservatives. When President George H. W. Bush nominated David Souter, there were lengthy hearings as liberal senators tried to pin down Souter's views on issues such as abortion. Souter refused to discuss matters on which he might later have to judge, however. Clarence Thomas, another Bush nominee, also tried to avoid the litmus test by saying he had not formed an opinion on prominent abortion cases. In his case,

Karen Bleier/AFP/Getty Images

IMAGE 16-2 In 2009, Sonia Sotomayor answered questions in Senate confirmation hearings to become a Supreme Court justice.

federal-question cases *Cases concerning the Constitution, federal laws, or treaties.*

diversity cases *Cases involving citizens of different states who can bring suit in federal courts.*

however, the litmus test issue was overshadowed by sensational allegations from a former employee, Anita Hill, that Thomas had sexually harassed her.

Of the 160 Supreme Court nominees presented to it, the Senate failed to confirm 36 of them. From the presidency of Harry Truman through the first term of President Barack Obama, 29 of 34 nominees have been confirmed. Of the five who were not confirmed, three (two nominated by President Richard Nixon and one nominated by President Ronald Reagan) were voted on and rejected by a Senate majority, and two (one nominated by President Lyndon Johnson and one nominated by President George W. Bush) withdrew before any Senate vote on the nomination. The reasons for rejecting a Supreme Court nominee are complex—each senator may have a different reason—but have involved such matters as the nominee's alleged hostility to civil rights, questionable personal financial dealings, a poor record as a lower-court judge, and Senate opposition to the nominee's political or legal philosophy. As we indicated earlier, nominations of district court judges are rarely defeated because typically no nomination is made unless the key senators approve in advance.

Jurisdiction of the Federal Courts

We have a dual court system—one state, one federal—and this complicates enormously the task of describing what kinds of cases federal courts may hear and how cases beginning in the state courts may end up before the Supreme Court. The Constitution lists the kinds of cases over which federal courts have jurisdiction (in Article III and the Eleventh Amendment) by implication; all other matters are left to state courts. Federal courts (see Figure 16.5) can hear all cases "arising under the Constitution, the laws of the United States, and treaties" (these are **federal-question cases**), and cases involving citizens of different states (called **diversity cases**).

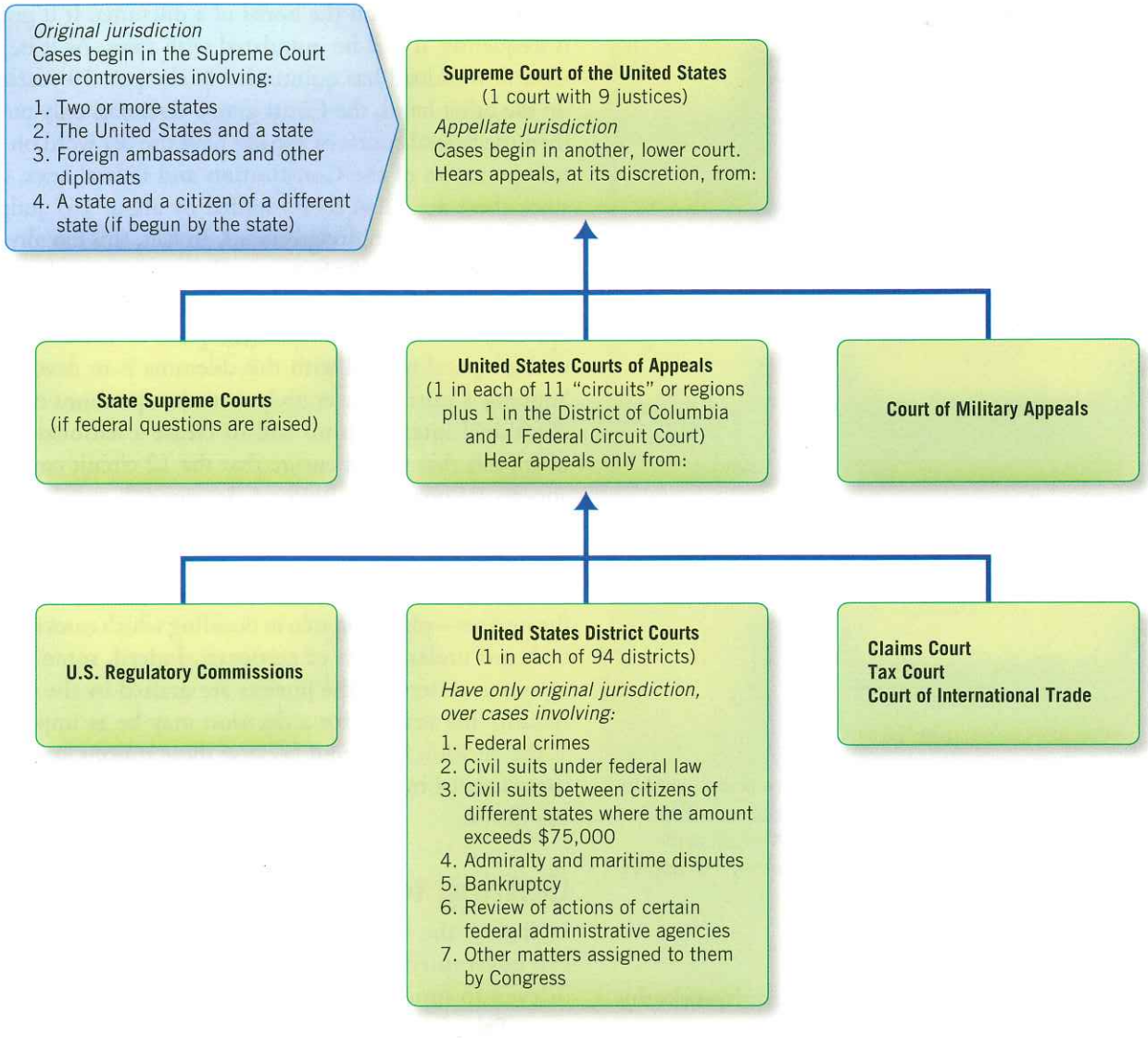
Some kinds of cases can be heard in either federal or state courts. For example, if citizens of different states wish to sue one another and the matter involves more than $75,000, they can do so in either a federal or a state court. Similarly, if someone robs a federally insured bank, he or she has broken both state and federal law and thus can be prosecuted in state or federal courts, or both. Lawyers have become quite sophisticated in deciding whether, in a given civil case, their clients will get better treatment in a state or federal court. Prosecutors often send a person who has broken both federal and state law to whichever court system is likelier to give the toughest penalty.

Sometimes defendants may be tried in both state and federal courts for the same offense. In 1992, four Los Angeles police officers accused of beating Rodney King were tried in a California state court and acquitted of assault charges. They were then prosecuted in federal court for violating King's civil rights. This time, two of the four were convicted. Under the dual sovereignty doctrine, state and federal authorities can prosecute the same person for the same conduct. The Supreme Court has upheld this doctrine on two grounds. First, each level of government has the right to enact laws serving its own purposes.[37] As a result, federal civil rights charges could have been brought against the officers even if they had already been convicted of assault in state court (though as a practical matter this would have been unlikely). Second, neither level of government wants the other to be able to block prosecution of an accused person who has the sympathy of the authorities at one level. For example, when certain Southern state courts were in sympathy with whites who had lynched blacks, the absence of the dual sovereignty doctrine would have meant that a trumped-up acquittal in state court would have barred federal prosecution.

Furthermore, a matter that is exclusively within the province of a state court—for example, a criminal case in which the defendant is charged with violating only a state law—can be appealed to the U.S. Supreme Court under certain circumstances (described below). Thus federal judges can overturn state court rulings even when they had no jurisdiction over the original matter. Under what circumstances this should occur has been the subject of long-standing controversy between the state and federal courts.

Some matters, however, are exclusively under the jurisdiction of federal courts. When a federal criminal law is

FIGURE 16.5 The Jurisdiction of the Federal Courts

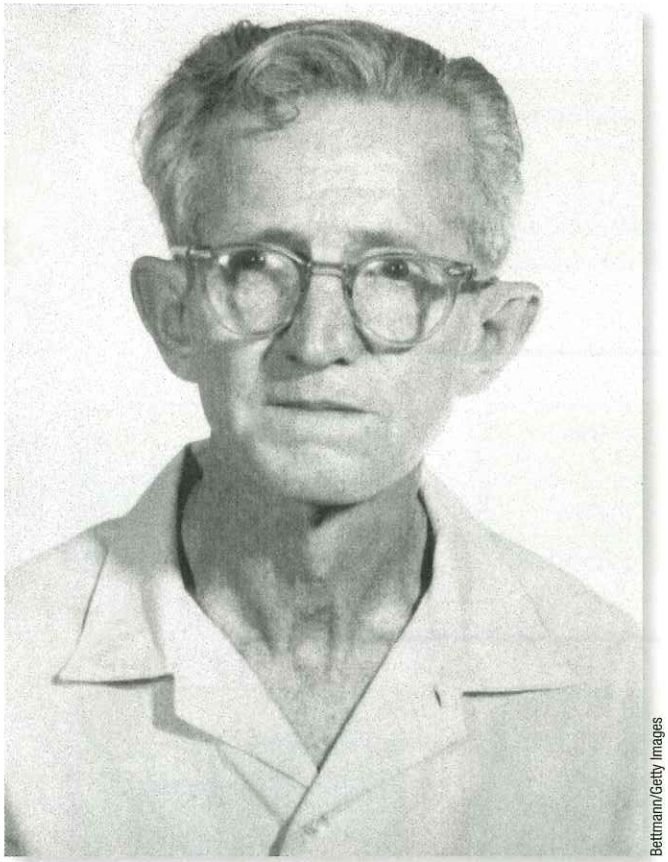


broken—but not a state one—the case is heard in federal district court. If you wish to appeal the decision of a federal regulatory agency, such as the Federal Communications Commission, you can do so only before a federal court of appeals. And if you wish to declare bankruptcy, you do so in federal court. If there is a controversy between two state governments—say, California and Arizona sue each other over which state is to use how much water from the Colorado River—the case can be heard only by the Supreme Court.

The vast majority of all cases heard by federal courts begin in the district courts. The volume of business there is huge. In 2009, the 667 district court judges received 276,397 cases (more than 400 per judge). Most of the cases heard in federal courts involve rather straightforward applications of law; few lead to the making of new public policy. Cases that do affect how the law or the Constitution is interpreted can begin with seemingly minor events. For example, a major broadening of the Bill of Rights—requiring for the first time that all accused persons in *state* as well as federal criminal trials be supplied with a lawyer, free if necessary—began when impoverished Clarence Earl Gideon, imprisoned in Florida, wrote an appeal in pencil on prison stationery and sent it to the Supreme Court.[38]

writ of certiorari *An order by a higher court directing a lower court to send up a case for review.*

The Supreme Court does not have to hear any appeal it does not want to hear. At one time, it was required to listen to certain appeals, but Congress has changed the law so that now the Court can pick the cases it wants to consider. It does this by issuing a **writ of certiorari**. *Certiorari* is a Latin word meaning, roughly, "made more certain";



Bettmann/Getty Images

IMAGE 16-3 Clarence Earl Gideon studied law books while in prison so that he could write an appeal to the Supreme Court. His handwritten letter asked that his conviction be set aside because he had not been provided with an attorney. His appeal was granted.

lawyers and judges have abbreviated it to *cert*. It works this way: The Court considers all the petitions it receives to review lower-court decisions; if four justices agree to hear a case, cert is issued and the case is scheduled for a hearing.

In deciding whether to grant certiorari, the Court tries to reserve its time for cases decided by lower federal courts or by the highest state courts in which a significant federal or constitutional question has been raised. For example, the Court often will grant certiorari when one or both of the following is true:

- Two or more federal circuit courts of appeals have decided the same issue in different ways.
- The highest court in a state has held a federal or state law to be in violation of the Constitution or has upheld a state law against the claim that it is in violation of the Constitution.

In a typical year, the Court may consider more than 7,000 petitions asking it to review decisions of lower or state courts. It rarely accepts more than about 100 of them for full review.

In exercising its discretion in granting certiorari, the Supreme Court is on the horns of a dilemma. If it grants it frequently, it will be inundated with cases. As it is, the Court's workload has quintupled in the past 50 years. If, on the other hand, the Court grants certiorari only rarely, then the federal courts of appeals have the last word on the interpretation of the Constitution and federal laws, and since there are 12 of these, staffed by about 167 judges, they may well be in disagreement. In fact, this has already happened: Because the Supreme Court reviews only about 1 or 2 percent of appeals court cases, applicable federal law may be different in different parts of the country.[39] One proposal to deal with this dilemma is to devote the Supreme Court's time entirely to major questions of constitutional interpretation and to create a national court of appeals that would ensure that the 12 circuit courts of appeals are producing uniform decisions.[40]

Because the Supreme Court has a heavy workload, the influence wielded by law clerks has grown. These clerks—recent graduates of law schools who are hired by the justices—play a big role in deciding which cases should be heard under a writ of certiorari. Indeed, some of the opinions written by the justices are drafted by the clerks. Because the reasons for a decision may be as important as the decision itself, and because these reasons are sometimes created by the clerks, the power of the clerks can be significant.

Getting to Court

In theory, the courts are the great equalizer in the federal government. To use the courts to settle a question, or even to fundamentally alter the accepted interpretation of the Constitution, one need not be elected to any office, have access to the mass media, be a member of an interest group, or be otherwise powerful or rich. Once the contending parties are before the courts, they are legally equal.

It is too easy to believe this theory uncritically or to dismiss it cynically. In fact, it is hard to get before the Supreme Court: It rejects over 96 percent of the applications for certiorari that it receives. And the costs involved in getting to the Court can be high. To apply for certiorari costs only $300 (plus 40 copies of the petition), but if certiorari is granted and the case is heard, the costs—for lawyers and for copies of the lower-court records in the case—can be very high. And by then one has already paid for the cost of the first hearing in the district court and probably one appeal to the circuit court of appeals. Furthermore, the time it takes to settle a matter in federal court can be quite long.

But there are ways to make these costs lower. If you are indigent—without funds—you can file and be heard as a

pauper for nothing; about half the petitions arriving before the Supreme Court are **in forma pauperis** (such as the one from Gideon, described earlier). If your case began as a criminal trial in the district courts and you are poor, the government will supply you with a lawyer at no charge. If the matter is not a criminal case and you cannot afford to hire a lawyer, interest groups representing a wide spectrum of opinions sometimes are willing to take up the cause if the issue in the case seems sufficiently important. The American Civil Liberties Union (ACLU), a liberal group, represents some people who believe their freedom of speech has been abridged or their constitutional rights in criminal proceedings have been violated. The Center for Individual Rights, a conservative group, represents some people who feel that they have been victimized by racial quotas.

But interest groups do much more than just help people pay their bills. Many of the most important cases decided by the Court got there because an interest group organized the case, found the plaintiffs, chose the legal strategy, and mobilized legal allies. The NAACP has brought many key civil rights cases on behalf of individuals. Although in the past most such cases were brought by liberal interest groups, in the past few decades, conservative interest groups have entered the courtroom on behalf of individuals. One helped sue CBS for televising a program that allegedly libeled General William Westmoreland, once the American commander in Vietnam. (Westmoreland lost the case.) Other conservative groups have supported challenging affirmative action programs in colleges and universities (some of which have survived, some of which have not; see Chapter 6). And many important issues are raised by attorneys representing state and local governments. Several price-fixing cases have been won by state attorneys general on behalf of consumers in their states.

Fee Shifting

Unlike what happens in most of Europe, each party to a lawsuit in this country must pay its own way. (In England, by contrast, if you sue someone and lose, you pay the winner's costs as well as your own.) But various laws have made it easier to get someone else to pay. **Fee shifting** enables the **plaintiff** (the party that initiates the suit) to collect its costs from the defendant if the defendant loses, at least in certain kinds of cases. For example, if a corporation is found to have violated the antitrust laws, it must pay the legal fees of the winner. If an environmentalist group sues the Environmental Protection Agency and wins, it can get the EPA to pay the group's legal costs. Even more important to individuals, Section 1983 of Chapter 42 of the *United States Code* allows a citizen to sue a state or local government official—say, a police officer or a school superintendent—who has deprived the citizen of some constitutional right or withheld some benefit to which the citizen is entitled. If the citizen wins, he or she can collect money damages and lawyers' fees from the government. Citizens, more aware of their legal rights, have become more litigious, and a flood of such "Section 1983" suits has burdened the courts. The Supreme Court has restricted fee shifting to cases authorized by statute,[41] but it is clear that the drift of policy has made it cheaper to go to court—at least for some cases.

in forma pauperis *A method whereby a poor person can have his or her case heard in federal court without charge.*

Fee shifting *A rule that allows a plaintiff to recover costs from the defendant if the plaintiff wins.*

plaintiff *The party that initiates a lawsuit.*

standing *A legal rule stating who is authorized to start a lawsuit.*

Standing

There is, in addition, a nonfinancial restriction on getting into federal court. To sue, one must have **standing**, a legal concept that refers to who is entitled to bring a case. It is especially important in determining who can challenge the laws or actions of the government itself. A complex and changing set of rules governs standings; some of the more important ones are these:

- An actual controversy must exist between real adversaries. (You cannot bring a "friendly" suit against someone, hoping to lose in order to prove your friend right. You cannot ask a federal court for an opinion on a hypothetical or imaginary case or ask it to render an advisory opinion.)
- You must show that you have been harmed by the law or practice about which you are complaining. (It is not enough to dislike what the government or a corporation or a labor union does; you must show that you were actually harmed by that action.)
- Merely being a taxpayer does not ordinarily entitle you to challenge the constitutionality of a federal governmental action. (You may not want your tax money to be spent in certain ways, but your remedy is to vote against the politicians doing the spending; the federal courts will generally require that you show some other personal harm before you can sue.)

Congress and the courts have recently made it easier to acquire standing. It has always been the rule that a citizen could ask the courts to order federal officials to carry out some act that they were under a legal obligation to perform or to refrain from some action that was contrary

sovereign immunity *The rule that a citizen cannot sue the government without the government's consent.*

class-action suit *A case brought by someone to help both him- or herself and all others who are similarly situated.*

to law. A citizen can also sue a government official personally to collect damages if the official acted contrary to law. For example, it was long the case that if an FBI agent broke into your office without a search warrant, you could sue the agent and, if you won, collect money. However, you cannot sue the government itself without its consent. This is the doctrine of **sovereign immunity**. For instance, if the army accidentally kills your cow while testing a new cannon, you cannot sue the government to recover the cost of the cow unless the government agrees to be sued. (Since testing cannons is legal, you cannot sue the army officer who fired the cannon.) By statute, Congress has given its consent for the government to be sued in many cases involving a dispute over a contract or damage done as a result of negligence (e.g., the dead cow). Over the years, these statutes have made it easier to take the government into court as a defendant.

Even some of the oldest rules defining standing have been liberalized. The rule that merely being a taxpayer does not entitle you to challenge in court a government decision has been relaxed where the citizen claims that a right guaranteed under the First Amendment is being violated. The Supreme Court allowed a taxpayer to challenge a federal law that would have given financial aid to parochial (or church-related) schools on the grounds that this aid violated the constitutional requirement of separation between church and state. On the other hand, another taxpayer suit to force the CIA to make public its budget failed because the Court decided that the taxpayer did not have standing in matters of this sort.[42]

Class-Action Suits

Under certain circumstances, a citizen can benefit directly from a court decision, even though the citizen himself or herself has not gone into court. This can happen by means of a **class-action suit**, a case brought into court by a person on behalf not only of him- or herself, but of all other persons in similar circumstances. Among the most famous of these was the 1954 case in which the Supreme Court found that Linda Brown, a black girl attending the fifth grade in a Topeka, Kansas, public school, was denied the equal protection of the laws (guaranteed under the Fourteenth Amendment) because the schools in Topeka were segregated. The Court did not limit its decision to Linda Brown's right to attend an unsegregated school but extended it—as Brown's lawyers from the NAACP had asked—to cover all "others similarly situated."[43] It was not easy to design a court order that would eliminate segregation in the schools, but the principle was clearly established in this class action.

Since the *Brown* case, many other groups have been quick to take advantage of the opportunity created by class-action suits. By this means, the courts could be used to give relief not simply to a particular person but to all those represented in the suit. A landmark class-action case challenged the malapportionment of state legislative districts (see Chapter 13).[44] There are thousands of class-action suits in the federal courts involving civil rights, the rights of prisoners, antitrust suits against corporations, and other matters. These suits became more common partly because people were beginning to have new concerns that were not being met by Congress and partly because some class-action suits became quite profitable. The NAACP got no money from Linda Brown or from the Topeka Board of Education in compensation for its long and expensive labors, but, beginning in the 1960s, court rules were changed to make it financially attractive for lawyers to bring certain kinds of class-action suits.

Suppose, for example, you think your telephone company overcharged you by $75. You could try to hire a lawyer to get a refund, but not many lawyers would take the case because there would be no money in it. Even if you were to win, the lawyer would stand to earn no more than perhaps one-third of the settlement, or $25. Now suppose

Carl Iwasaki/The LIFE Images Collection/Getty Images

IMAGE 16-4 Linda Brown was refused admission to a white elementary school in Topeka, Kansas. On her behalf, the NAACP brought a class-action suit that resulted in the 1954 landmark Supreme Court decision *Brown v. Board of Education.*

you bring a class action against the company on behalf of everybody who was overcharged. Millions of dollars might be at stake; lawyers would line up eagerly to take the case because their share of the settlement, if they won, would be huge. The opportunity to win profitable class-action suits, combined with the possibility of having the loser pay the attorneys' fees, led to a proliferation of such cases.

In response to the increase in its workload, the Supreme Court decided in 1974 to drastically tighten the rules governing these suits. It held that it would no longer hear (except in certain cases defined by Congress, such as civil rights matters) class-action suits seeking monetary damages unless each and every ascertainable member of the class was individually notified of the case. To do this often is prohibitively expensive (imagine trying to find and send a letter to every customer who may have been overcharged by the telephone company!), and so the number of such cases declined and the number of lawyers seeking them out dropped.[45]

But it remains easy to bring a class-action suit in most state courts. State Farm automobile insurance company was told by a state judge in a small Illinois town that it must pay over $1 billion in damages on behalf of a "national" class, even though no one in this class had been notified. Big class-action suits powerfully affect how courts make public policy. Such suits have forced into bankruptcy companies making asbestos and silicone breast implants and have threatened to put out of business tobacco companies and gun manufacturers. (Ironically, in some of these cases, such as the one involving breast implants, there was no scientific evidence showing that the product was harmful.) Some class-action suits, such as the one ending school segregation, are good, but others are frivolous efforts to get companies to pay large fees to the lawyers who file the suits.

In sum, getting into court depends on having standing and having resources. The rules governing standing are complex and changing, but generally they have been broadened to make it easier to enter the federal courts, especially for the purpose of challenging the actions of the government. Obtaining the resources is not easy, but it has become easier because in some cases laws now provide for fee shifting, private interest groups are willing to finance cases, and it is sometimes possible to bring a class-action suit that lawyers find lucrative.

16-4 The Supreme Court in Action

If your case should find its way to the Supreme Court—and of course the odds are that it will not—you will be able to participate in one of the more impressive, sometimes dramatic ceremonies of American public life. The Court is in session in its white marble building for 36 weeks of each year, from early October until the end of June. The nine justices read briefs in their individual offices, hear oral arguments in the stately courtroom, and discuss their decisions with one another in a conference room where no outsider is ever allowed.

brief *A written statement by an attorney that summarizes a case and the laws and rulings that support it.*

amicus curiae *A brief submitted by a "friend of the court."*

Most cases, as we have seen, come to the Court on a writ of certiorari. The lawyers for each side may then submit their briefs. A **brief** is a document that sets forth the facts of the case, summarizes the lower-court decision, gives the arguments for the side represented by the lawyer who wrote the brief, and discusses the other cases that the Court has decided bear on the issue. Then the lawyers are allowed to present their oral arguments in open court. They usually summarize their briefs or emphasize particular points in them, and they are strictly limited in time—usually to no more than a half hour. (The lawyer speaks from a lectern that has two lights on it. When the white light goes on, the attorney has five minutes remaining; when the red flashes, he or she must stop—instantly.) The oral arguments give the justices a chance to question the lawyers, sometimes searchingly.

Since the federal government is a party—as either plaintiff or defendant—to about half the cases that the Supreme Court hears, the government's top trial lawyer, the solicitor general of the United States, appears frequently before the Court. The solicitor general is the third-ranking officer of the Department of Justice, right after the attorney general and deputy attorney general. The solicitor general decides what cases the government will appeal from lower courts and personally approves every case the government presents to the Supreme Court. In recent years, the solicitor general often has been selected from the ranks of distinguished law school professors.

In addition to the arguments made by lawyers for the two sides in a case, written briefs and even oral arguments may also be offered by a "friend of the court," or **amicus curiae**. An amicus brief is from an interested party not directly involved in the suit. For example, when Allan Bakke complained that he had been the victim of "reverse discrimination" when he was denied admission to a University of California medical school, 58 amicus briefs were filed supporting or opposing his position. Before such briefs can be filed, both parties must agree or the Court must grant permission. Though these briefs sometimes offer new arguments, they are really a kind of polite lobbying

TABLE 16.2 | Supreme Court Justices in Order of Seniority

Name (Birth Date)	Home State	Prior Experience	Appointed by (Year)
John G. Roberts, Jr., Chief Justice (1955)	Maryland	Federal judge	G. W. Bush (2005)
Anthony Kennedy (1936)	California	Federal judge	Reagan (1988)
Clarence Thomas (1948)	Georgia	Federal judge	G. H. W. Bush (1991)
Ruth Bader Ginsburg (1933)	New York	Federal judge	Clinton (1993)
Stephen Breyer (1938)	Massachusetts	Federal judge	Clinton (1994)
Samuel Alito, Jr. (1950)	New Jersey	Federal judge	G. W. Bush (2006)
Sonia Sotomayor (1954)	New York	Federal judge	Obama (2009)
Elena Kagan (1960)	New York	Law school dean	Obama (2010)
Neil Gorsuch (1967)	Colorado	Federal judge	Trump (2017)

per curiam opinion *A brief, unsigned court opinion.*

opinion of the Court *A signed opinion of a majority of the Supreme Court.*

concurring opinion *A signed opinion in which one or more members agree with the majority view but for different reasons.*

dissenting opinion *A signed opinion in which one or more justices disagree with the majority view.*

of the Court that declare which interest groups are on which side. The ACLU, the NAACP, the AFL-CIO, and the U.S. government itself have been among the leading sources of such briefs.

These briefs are not the only source of influence on the justices' views. Legal periodicals such as the *Harvard Law Review* and the *Yale Law Journal* are frequently consulted, and citations to them often appear in the Court's decisions. Thus the outside world of lawyers and law professors can help shape, or at least supply arguments for, the conclusions of the justices.

The justices retire every Friday to their conference room, where in complete secrecy they debate the cases they have heard. The chief justice speaks first, followed by the other justices in order of seniority. After the arguments they vote, traditionally in reverse order of seniority: the newest justice votes first, the chief justice last. By this process an able chief justice can exercise considerable influence—in guiding or limiting debate, in setting forth the issues, and in handling sometimes temperamental personalities. In deciding a case, a majority of the justices must be in agreement: If there is a tie, the lower-court decision is left standing. (There can be a tie among nine justices if one is ill or disqualifies him- or herself because of prior involvement in the case.)

Though the vote is what counts, by tradition the Court usually issues a written opinion explaining its decision. Sometimes the opinion is brief and unsigned (called a **per curiam opinion**); sometimes it is quite long and signed by the justices agreeing with it. If the chief justice is in the majority, he will either write the opinion or assign the task to a justice who agrees with him. If he is in the minority, the senior justice on the winning side will decide who writes the Court's opinion. There are three kinds of opinions—an **opinion of the Court** (reflecting the majority's view), a **concurring opinion** (an opinion by one or more justices who agree with the majority's conclusion but for different reasons that they wish to express), and a **dissenting opinion** (the opinion of the justices on the losing side). Justices each have three or four law clerks to help them review the many petitions the Court receives, study cases, and write opinions.

Many Supreme Court decisions, perhaps two-fifths of them, are decided unanimously. In these cases, the law is clear and no difficult questions of interpretation exist. But for the remaining ones, there seem to be two main blocs and one swing vote on today's Court (Justice Gorsuch is not included because he joined the Court late in its 2016–2017 term; where he will be listed remains to be seen):

- A conservative bloc of Samuel Alito, John Roberts, and Clarence Thomas.
- A liberal bloc of Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan, and Sonia Sotomayor.
- A swing vote of Anthony Kennedy. He often votes with the conservatives on criminal law but on some other cases (abortion, gay rights, and foreign combatants detained at Guantanamo Bay) votes with the liberals.

The Power of the Federal Courts

The great majority of the cases heard in the federal courts have little or nothing to do with changes in public policy: people accused of bank robbery are tried, disputes over contracts are settled, personal-injury cases are heard, and patent law is applied. In most instances, the courts are simply applying a relatively settled body of law to a specific controversy.

AP Photo/J. Scott Applewhite

IMAGE 16-5 The nine members of the U.S. Supreme Court are: Front row—Justices Ruth Bader Ginsberg and Anthony Kennedy, Chief Justice John Roberts, Justices Clarence Thomas and Stephen Breyer; second row—Justices Elena Kagan, Samuel Alito Jr., Sonia Sotomayor, and Neil Gorsuch.

The Power to Make Policy

The courts make policy whenever they reinterpret the law or the Constitution in significant ways, extend the reach of existing laws to cover matters not previously thought to be covered by them, or design remedies for problems that involve the judges' acting in administrative or legislative ways. By any of these tests the courts have become exceptionally powerful.

One measure of that power is the fact that more than 160 federal laws have been declared unconstitutional. And as we shall see, on matters where Congress feels strongly, it can often get its way by passing slightly revised versions of a voided law.

Another measure, and perhaps a more revealing one, is the frequency with which the Supreme Court changes its mind. An informal rule of judicial decision making has been **stare decisis**, meaning "let the decision stand." It is the principle of precedent: A court case today should be settled in accordance with prior decisions on similar cases. (What constitutes a similar case is not always clear; lawyers are especially gifted at finding ways of showing that two cases are different in some relevant way.) Precedent is important for two reasons. The practical reason should be obvious: If the meaning of the law continually changes, if the decisions of judges become wholly unpredictable, then human affairs affected by those laws and decisions become chaotic. A contract signed today might be invalid tomorrow. The other reason is at least as important: If the principle of equal justice means anything, it means that similar cases should be decided in a similar manner. On the other hand, times change, and the Court can make mistakes. As Justice Felix Frankfurter once said, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late."[46]

However compelling the arguments for flexibility, the pace of change can become dizzying. By one count, the Court has overruled its own previous decisions in more than 260 cases since 1810.[47] In fact, it may have done it more often, because sometimes the Court does not say that it is abandoning a precedent, claiming instead that it is merely distinguishing the present case from a previous one.

stare decisis *"Let the decision stand"; allowing prior rulings to control a current case.*

political question *An issue the Supreme Court will allow the executive and legislative branches to decide.*

remedy *A judicial order enforcing a right or redressing a wrong.*

A third measure of judicial power is the degree to which courts are willing to handle matters once left to the legislature. For example, the Court refused for a long time to hear a case about the size of congressional districts, no matter how unequal their populations.[48] The determination of congressional district boundaries was regarded as a **political question**—that is, as a matter that the Constitution left entirely to another branch of government (in this case, Congress) to decide for itself. Then, in 1962, the Court decided that it was competent after all to handle this matter, and the notion of a "political question" became a much less important (but by no means absent) barrier to judicial power.[49]

PAUL J. RICHARDS/Getty Images

IMAGE 16-6 When the Supreme Court heard arguments about the constitutionality of same-sex marriage in 2015, demonstrators expressed their views outside the building.

By all odds the most powerful indicator of judicial power can be found in the kinds of remedies that the courts will impose. A **remedy** is a judicial order setting forth what must be done to correct a situation that a judge believes to be wrong. In ordinary cases, such as when one person sues another, the remedy is straightforward: The loser must pay the winner for some injury that he or she has caused, the loser must agree to abide by the terms of a contract he or she has broken, or the loser must promise not to do some unpleasant thing (such as dumping garbage on a neighbor's lawn).

Today, however, judges design remedies that go far beyond what is required to do justice to the individual parties who actually appear in court. The remedies now imposed often apply to large groups and affect the circumstances under which thousands or even millions of people work, study, or live. For example, when a federal district judge in Alabama heard a case brought by a prison inmate in that state, he issued an order not simply to improve the lot of that prisoner but to revamp the administration of the entire prison system. The result was an improvement in the living conditions of many prisoners, at a cost to the state of an estimated $40 million a year. Similarly, a person who feels entitled to welfare payments that have been denied him or her may sue in court to get the money, and the court order will in all likelihood affect all welfare recipients. In one case certain court orders made an additional 100,000 people eligible for welfare.[50]

The basis for sweeping court orders can sometimes be found in the Constitution; the Alabama prison decision, for example, was based on the judge's interpretation of the Eighth Amendment, which prohibits "cruel and unusual punishments."[51] Others are based on court interpretations of federal laws. The Civil Rights Act of 1964 forbids discrimination on grounds of "race, color, or national origin" in any program receiving federal financial assistance. The Supreme Court interpreted that as meaning the San Francisco school system was obliged to teach English to Chinese students unable to speak it.[52] Since a Supreme Court decision is the law of the land, the impact of that ruling was not limited to San Francisco. Local courts and legislatures elsewhere decided that that decision meant that classes must be taught in Spanish for Hispanic children. What Congress meant by the Civil Rights Act is not clear; it may or may not have believed that teaching Hispanic children in English rather than Spanish was a form of discrimination. What is important is that it was the Court, not Congress, that decided what Congress meant.

Views of Judicial Activism

Judicial activism has, of course, been controversial. Those who support it argue that the federal courts must correct injustices when the other branches of the federal government, or the states, refuse to do so. The courts are the institution of last resort for those without the votes or the influence to obtain new laws, and especially for the poor and powerless. After all, Congress and the state legislatures tolerated segregated public schools for decades. If the Supreme Court had not declared segregation unconstitutional in 1954, it might still be law today.

Those who criticize judicial activism rejoin that judges usually have no special expertise in matters of school administration, prison management, environmental protection, and so on; they are lawyers, expert in defining rights and duties but not in designing and managing complex institutions. Furthermore, however desirable court-declared rights and principles may be,

implementing those principles means balancing the conflicting needs of various interest groups, raising and spending tax monies, and assessing the costs and benefits of complicated alternatives. Finally, federal judges are not elected; they are appointed and are thus immune to popular control. As a result, if they depart from their traditional role of making careful and cautious interpretations of what a law or the Constitution means and instead begin formulating wholly new policies, they become unelected legislators.

Some people think we have activist courts because we have so many lawyers. The more we take matters to courts for resolution, the more likely it is that the courts will become powerful. It is true that we have more lawyers in proportion to our population than most other nations. There is one lawyer for every 325 Americans, but only one for every 970 Britons, every 1,220 Germans, and every 8,333 Japanese.[53] But that may well be a symptom, not a cause, of court activity. As we suggested in Chapter 4, we have an adversary culture based on an emphasis on individual rights and an implicit antagonism between the people and the government. In general, lawyers do not create cases; contending interests do, thereby generating a demand for lawyers.[54] Furthermore, we had more lawyers in relation to our population in 1900 than in 1970, yet the courts at the turn of the 20th century were far less active in public affairs. In fact, in 1932 there were more court cases per 100,000 people than there were in 1972.

A more plausible reason for activist courts is the developments discussed earlier in this chapter that have made it easier for people to get standing in the courts, to pay for the costs of litigation, and to bring class-action suits. The courts and Congress have gone a long way toward allowing private citizens to become "private attorneys general." Making it easier to get into court increases the number of cases being heard. For example, in 1961, civil rights cases, prisoners' rights cases, and cases under the Social Security laws were relatively uncommon in federal court. Between 1961 and 1990, the increase in the number of such matters was phenomenal: the number of civil rights cases rose more than 60-fold and prisoners' petitions increased more than 40-fold. Such matters are the fastest-growing portion of the courts' civil workload.

Legislation and the Courts

An increase in cases by itself will not lead to sweeping remedies. For that to occur, the law must be sufficiently vague to permit judges wide latitude in interpreting it, and the judges must want to exercise that opportunity fully. The Constitution is filled with words of seemingly ambiguous meaning—"due process of law," "equal protection of the laws," the "privileges or immunities of citizens." Such phrases may have been clear to the Framers, but to the Supreme Court they have become equivocal or elastic. How the Court has chosen to interpret such phrases has changed greatly over the past two centuries in ways that can be explained in part by the personal political beliefs of the justices.

Increasingly, Congress has passed laws that also contain vague language, thereby adding immeasurably to the courts' opportunities for designing remedies. Various civil rights acts outlaw discrimination but do not say how one is to know whether discrimination has occurred or what should be done to correct it if it does occur. That is left to the courts and the bureaucracy. Various regulatory laws empower administrative agencies to do what the "public interest" requires but say little about how the public interest is to be defined. Laws intended to alleviate poverty or rebuild neighborhoods speak of "citizen participation" or "maximum feasible participation" but do not explain who the citizens are that should participate, or how much power they should have.

In addition to laws that require interpretation, other laws induce litigation. Almost every agency that regulates business will make decisions that cause the agency to be challenged in court—by business firms if the regulations go too far, by consumer or labor organizations if they do not go far enough.

One study showed that the federal courts of appeals heard more than 3,000 cases in which they had to review the decision of a regulatory agency. In two-thirds of them, the agency's position was supported; in the other third, the agency was overruled.[55] Perhaps one-fifth of these cases arose out of agencies or programs that did not even exist in 1960. The federal government today is much more likely to be on the defensive in court than it was 20 or 30 years ago.

Finally, the attitudes of the judges powerfully affect what they will do, especially when the law gives them wide latitude. Their decisions and opinions have been extensively analyzed—well enough, at least, to know that different judges often decide the same case in different ways. Conservative Southern federal judges in the 1950s, for example, often resisted plans to desegregate public schools, while judges with a different background authorized bold plans.[56] Some of the greatest disparities in judicial behavior can be found in the area of sentencing criminals.[57]

Checks on Judicial Power

No institution of government, including the courts, operates without restraint. The fact that judges are not elected does not make them immune to public opinion or to the views of the other branches of government.

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

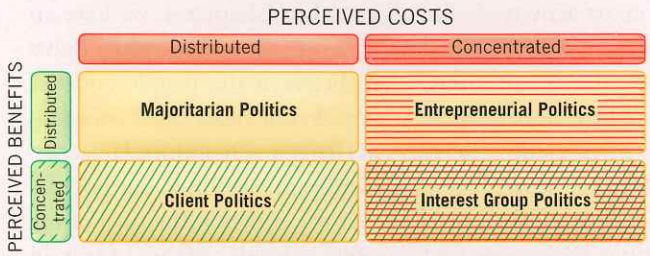
Telecommunications and "Decency": Interest-Group Politics

In the more than six decades that separated the Communications Act of 1934 from the Telecommunications Act of 1996, radio, television, and the Internet became everyday features of American life. The 1996 overhaul of the 1934 law was a clear-cut case of interest-group politics. The politically pitched battles over the bills that preceded the 1996 act were fought out mainly among and between economically self-interested groups. For instance, television broadcasters fought cable companies over who may send what kinds of signals to which homes. Telephone companies fought firms in other industries as well as each other.

As is often the case with interest-group politics, the telecommunications policy debates involved issues that most average citizens did not understand (in this case, "spectrum allotment," "intramodal competition," and others) but which interest-group members lived and breathed. When the interest-group politics dust settled, the complex law deregulated the industry and fostered competition, but it also made possible cross-media mega-corporations like those that now dominate cable broadcasting and telecommunications services in many regions.

In the mid-1990s, the general public and the media focused less on how an overhaul of the 1934 law might affect most people as consumers and more on Title V of the 1996 bill, which sought to restrict Internet and cable television pornography. The bill's "communications decency" provisions made it into law; but, a year later, in *Reno v. ACLU* (1997), the Supreme Court declared that the provisions were unconstitutional.

In 2008, the Federal Communications Commission launched investigations into the pricing policies of cable television companies. The effort resulted in few changes to industry practices. In 2012, an interfaith coalition of religious leaders publicly petitioned five leading national hotel chains to stop offering on-demand "adult" cable service. None complied. During the 2011–2012 national election cycle, telecommunications companies contributed millions of dollars to candidates of both parties; they also maintained a huge lobbying presence on Capitol Hill and skirmished with each other over proposed tweaks to this or that provision of the 1996 law.



▶ **PRACTICE POLITICAL SCIENCE** Explain how political institutions have interacted to affect policymaking in the regulation of telecommunications. Describe the most recent issues being debated in telecommunications policy and identify the interest groups aligned with the different sides of this debate.

How important these restraints are varies from case to case, but in the broad course of history they have been significant.

One restraint exists because of the very nature of courts. A judge has no police force or army; decisions that he or she makes can sometimes be resisted or ignored, *if* the person or organization resisting is not highly visible and is willing to run the risk of being caught and charged with contempt of court. For example, long after the Supreme Court's controversial decisions that school-organized prayer and Bible reading could not take place in public education,[58] schools all over the country still allowed prayers and Bible reading.[59] Years after the Court declared segregated schools to be unconstitutional, scores of school systems remained segregated. On the other hand, when a failure to comply is easily detected and punished, the courts' power is usually unchallenged. When the Supreme Court declared the income tax to be unconstitutional in 1895, income tax collections promptly ceased. When the Court in 1952 declared illegal President Harry Truman's effort to seize steel mills in order to stop a strike, the management of the mills was immediately returned to their owners.

Congress and the Courts

Congress has a number of ways of checking the judiciary. It can gradually alter the composition of the judiciary by the kinds of appointments the Senate is willing to confirm, or it can impeach judges it does not like. Fifteen federal judges have been the object of impeachment proceedings in our history, and nine others have resigned when such proceedings seemed likely. Of the 15 who were impeached, 8 were convicted by the Senate, 4 were acquitted, and 3 resigned before trial. In 2009, Samuel Kent resigned from the U.S. District Court for the Southern District of Texas, and in 2010, Thomas Porteous was convicted by the Senate and removed from office.[60] In practice, however, confirmation and impeachment proceedings do not make much of an impact on the federal courts because simple policy disagreements

are not generally regarded as adequate grounds for voting against a judicial nominee or for starting an impeachment effort.

Congress can alter the number of judges, though, and by increasing the number sharply, it can give a president a chance to appoint judges to his liking. As described above, a "Court-packing" plan was proposed (unsuccessfully) by Franklin Roosevelt in 1937 specifically to change the political persuasion of the Supreme Court. In 1978, Congress passed a bill creating 152 new federal district and appellate judges to help ease the workload of the federal judiciary. This bill gave President Carter a chance to appoint over 40 percent of the federal bench. In 1984, an additional 84 judgeships were created; by 1988, President Reagan had appointed about half of all federal judges. In 1990, an additional 72 judges were authorized. During and after the Civil War, Congress may have been trying to influence Supreme Court decisions when it changed the size of the Court three times in six years (raising it from 9 to 10 in 1863, lowering it again from 10 to 7 in 1866, and raising it again from 7 to 9 in 1869).

Congress and the states can also undo a Supreme Court decision interpreting the Constitution by amending that document. This happens, but rarely: The Eleventh Amendment was ratified to prevent a citizen from suing a state in federal court; the Thirteenth, Fourteenth, and Fifteenth were ratified to undo the *Dred Scott* decision regarding slavery; the Sixteenth was added to make it constitutional for Congress to pass an income tax; and the Twenty-sixth was added to give the vote to 18-year-olds in state elections.

On more than 30 occasions, Congress has merely repassed a law that the Court has declared unconstitutional. In one case, a bill to aid farmers, voided in 1936, was accepted by the Court in slightly revised form three years later.[61] (In the meantime, of course, the Court had changed its collective mind about the New Deal.)

One of the most powerful potential sources of control over the federal courts, however, is the authority of Congress, given by the Constitution, to decide what the entire jurisdiction of the lower courts and the appellate jurisdiction of the Supreme Court shall be. In theory, Congress could prevent matters on which it did not want federal courts to act from ever coming before the courts. This happened in 1868. A Mississippi newspaper editor named McCardle was jailed by federal military authorities who occupied the defeated South. McCardle asked the federal district court for a writ of habeas corpus to get him out of custody; when the district court rejected his plea, he appealed to the Supreme Court. Congress at that time was fearful that the Court might find the laws on which its Reconstruction policy was based (and under which McCardle was in jail) unconstitutional. To prevent that from happening, it passed a bill withdrawing from the Supreme Court appellate jurisdiction in cases of this sort. The Court conceded that Congress could do this and thus dismissed the case because it no longer had jurisdiction.[62]

Congress has threatened to withdraw jurisdiction on other occasions, and the mere existence of the threat may have influenced the nature of Court decisions. In the 1950s, for example, congressional opinion was hostile to Court decisions in the field of civil liberties and civil rights, and legislation was proposed that would have curtailed the Court's jurisdiction in these areas. It did not pass, but the Court may have allowed the threat to temper its decisions.[63] On the other hand, as congressional resistance to the Roosevelt Court-packing plan shows, the Supreme Court enjoys a good deal of prestige in the nation, even among people who disagree with some of its decisions, and so passing laws that would frontally attack it would not be easy except perhaps in times of national crisis.

Furthermore, laws narrowing jurisdiction or restricting the kinds of remedies that a court can impose often are blunt instruments that might not achieve the purposes of their proponents. Suppose that you, as a member of Congress, would like to prevent the federal courts from ordering schoolchildren to be bused for the purpose of achieving racial balance in the schools. If you denied the Supreme Court appellate jurisdiction in this matter, you would leave the lower federal courts and all state courts free to do as they wished, and many of them would go on ordering busing. If you wanted to attack that problem, you could propose a law that would deny to all federal courts the right to order busing as a remedy for racial imbalance. But the courts would still be free to order busing (and of course a lot of busing goes on even without court orders), provided that they did not say that it was for the purpose of achieving racial balance. (It could be for the purpose of "facilitating desegregation" or making possible "redistricting.") Naturally, you could always make it illegal for children to enter a school bus for any reason, but then many children would not be able to get to school at all. Finally, the Supreme Court might well decide that if busing were essential to achieve a constitutional right, then any congressional law prohibiting such busing would itself be unconstitutional. Trying to think through how *that* dilemma would be resolved is like trying to visualize two kangaroos simultaneously jumping into each other's pouches.

Public Opinion and the Courts

Though they are not elected, judges read the same newspapers as members of Congress, and thus they, too, are aware of public opinion, especially elite opinion.

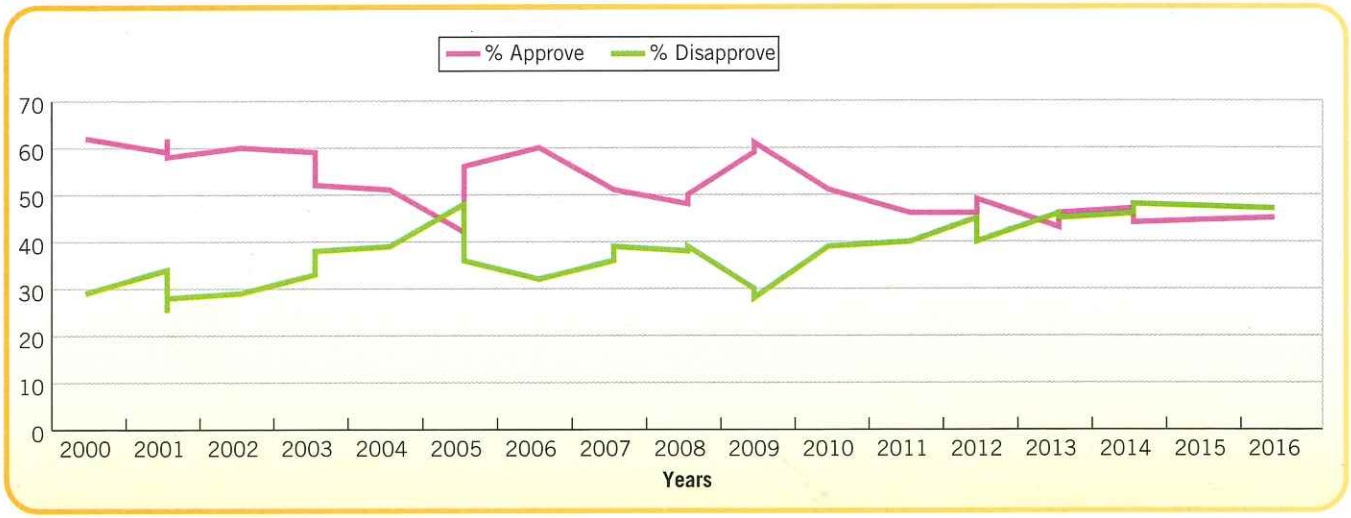
Though it may be going too far to say the Supreme Court follows the election returns, it is nonetheless true that the Court is sensitive to certain bodies of opinion, especially of those elites—liberal or conservative—to whom its members happen to be attuned. The justices will keep in mind historical cases in which their predecessors, by blatantly disregarding public opinion, very nearly destroyed the legitimacy of the Court itself. This was the case with the *Dred Scott* decision, which infuriated the North and was widely disobeyed. No such crisis exists today, but it is altogether possible that changing political moods affect the kinds of remedies that judges will think appropriate.

Opinion not only restrains the courts; it may also energize them. The most activist periods in Supreme Court history have coincided with times when the political system was undergoing profound and lasting changes. The assertion by the Supreme Court, under John Marshall's leadership, of the principles of national supremacy and judicial review occurred at the time when the Jeffersonian Republicans were coming to power and their opponents, the Federalists, were collapsing as an organized party. The pro-slavery decisions of the Taney Court came when the nation was so divided along sectional and ideological lines as to make almost any Court decision on this matter unpopular. Supreme Court review of economic regulation in the 1890s and 1900s came at a time when the political parties were realigning and the Republicans were acquiring dominance that would last for several decades. The Court decisions of the 1930s corresponded to another period of partisan realignment. (The meaning of a realignment period was discussed in Chapter 10.)

Pollsters have measured changes in public perceptions of how well the Supreme Court is handling its job. The results are shown in Figure 16.6. The percentage of people who say that they approve of how the Court is handling its job has fluctuated in recent years. In the 21st century, public approval of the Court's performance has been as low as 42 percent (in 2005) and as high as 61 percent (in 2009). These movements do not reflect any obvious swings in how the public perceives the Court's ideological tilt. Gallup polls and other opinion surveys indicate that, for most of the past decade, about half to four-fifths of the public thought the Court was neither too liberal nor too conservative, about a third thought the Court was too liberal, and about a fifth thought it was too conservative. Rather, the shifts in opinion seem to reflect the public's reaction not only to what the Court does but also to what the government as a whole is doing. An upturn in public approval of the Supreme Court in the early 1970s was probably caused by the Watergate scandal, an episode that simultaneously discredited the presidency and boosted the stock of those institutions (such as the courts) that seemed to be checking the abuses of the White House. And a gradual upturn in the 1980s may have reflected a general restoration of public confidence in government during that decade.[64]

Though popular support for the Court sometimes declines, these drops have so far not resulted in any legal checks placed on it. As explained in this chapter's Constitutional Connections feature (see page 398), each Congress witnesses many proposals that restrict the jurisdiction of federal courts and prohibit them from exercising judicial review in relation to given issues, but these proposals almost never become bills that make their way

FIGURE 16.6 **Public Approval of the Supreme Court's Performance, 2000–2017**



Source: Gallup, "Job Approval: Supreme Court," Gallup website, www.gallup.com/poll/4732/supreme-court.aspx.

WHAT WOULD YOU DO?

Will You Support the Data Surveillance Program?

To: *Senator Sally Caitlin*
From: *David M. Reid, chief of staff*
Subject: *Internet surveillance*

In 2007, the National Security Agency (NSA) and the Federal Bureau of Investigation (FBI) created a secret surveillance program, code-named PRISM, that—in conjunction with British intelligence agencies—gathered, tracked, and analyzed massive amounts of "private" data (audio and video chats, emails, and more) by directly searching the central servers of Microsoft, Yahoo, Google, Facebook, PalTalk, AOL, Skype, YouTube, and Apple. NSA contractor Edward Snowden leaked classified information about the program to journalists in 2013, and some people questioned whether it intruded upon American civil liberties.[65] Should the program be continued?

To Consider:

Congress is discussing whether to continue a secret surveillance program that gathers data from Internet companies as part of the federal government's counter-terrorism strategy.

Arguments for:

1. Broad data collection is necessary to fight terrorists, who rely almost exclusively on electronic communications.
2. Although the program was secret, some members of Congress were aware of, and approved, the surveillance for national security.
3. In the interest of national security, some civil liberties must be curtailed to keep the United States safe.

Arguments against:

1. Data collection will not substitute for human intelligence gathering, and this program diverts much-needed resources from the latter.
2. Congress has deferred too much to the executive branch in combating terrorism and needs to scrutinize surveillance programs much more carefully.
3. While civil liberties are not absolute, especially when national security is at stake, this program is unnecessarily broad in scope and allows the federal government to collect data without sufficient justification for intruding upon constitutionally guaranteed protections.

What Will You Decide? Enter **MindTap** to make your choice and support it in writing, and for sources to help inform your decision.

Your decision: ☐ Support the program ☐ Oppose the program

Source: Pew Research Center, "More Prioritize Border Security in Immigration Debate," 2014.

into law. The changes that have occurred in the Court have been caused by changes in its personnel. Presidents Nixon and Reagan attempted to produce a less activist Court by appointing justices who were more inclined to be strict constructionists and conservatives. To some extent, they succeeded: Justices Kennedy, O'Connor, Rehnquist, and Scalia were certainly less inclined than Justice Thurgood Marshall to find new rights in the Constitution or to overturn the decisions of state legislatures. But as of yet, there has been no wholesale retreat from the positions staked out by the Warren Court. As noted above, a Nixon appointee, Justice Blackmun, wrote the decision making antiabortion laws unconstitutional; and another Nixon appointee, Chief Justice Burger, wrote the opinion upholding court-ordered school busing to achieve racial integration. A Reagan appointee, Justice O'Connor, voted to uphold a right to an abortion. The Supreme Court has become somewhat less willing to impose restraints on police practices, and it has not blocked the use of the death penalty.

But in general, the major features of Court activism and liberalism during the Warren years—school integration, sharper limits on police practice, greater freedom of expression—have remained intact, as has the Court's deference to Congress and the presidency when they have established new agencies or expanded federal programs. The Warren E. Burger Court (1969–1986) was succeeded by courts with conservative Chief Justices, namely William H. Rehnquist (1986–2005) and John G. Roberts (2005–present). The aforementioned 2012 Court decision upholding the constitutionality of all (save the Medicaid expansion provision) of the 2010 health care reform law was written by Chief Justice Roberts.

The reasons for the growth in court activism are clear. One is the sheer increase in the size and scope of the government as a whole. The courts have come to play a larger role in our lives because Congress, the bureaucracy, and the president have come to play larger ones as well. In 1890, hardly anybody would have thought of asking Congress—much less the courts—to make rules governing the participation of women in college sports or the district boundaries of state legislatures. Today such rules are commonplace, and the courts are inevitably drawn into interpreting them. And when the Court decided how the vote in Florida would be counted during the 2000 presidential election, it created an opportunity in the future for scores of new lawsuits challenging election results.

The other reason for increased activism is the acceptance by a large number of judges, conservative as well as liberal, of the activist view of the function of the courts. If courts once existed solely to "settle disputes," today they also exist in the eyes of their members to "solve problems."

Though the Supreme Court is the pinnacle of the federal judiciary, most decisions, including many important ones, are made by the several courts of appeals and the 94 district courts. The Supreme Court can control its own workload by deciding when to grant certiorari. It has become easier for citizens and groups to gain access to the federal courts (through class-action suits, by amicus curiae briefs, by laws that require government agencies to pay legal fees). At the same time, the courts have widened the reach of their decisions by issuing orders that cover whole classes of citizens or affect the management of major public and private institutions. However, the courts can overstep the bounds of their authority and bring upon themselves a counterattack from both the public and Congress. Congress has the right to control much of the courts' jurisdiction, but it rarely does so. As a result, the ability of judges to make law is only infrequently challenged directly.

Hank Walker/The LIFE Picture Collection/Getty Images

IMAGE 16-7 Thurgood Marshall was the first black Supreme Court justice. As chief counsel for the NAACP, Marshall argued the 1954 *Brown v. Board of Education* case in front of the Supreme Court. He was appointed to the Court in 1967 and served until 1991.

LEARNING OBJECTIVES

16-1 Explain the concept of judicial review.

Nowhere in the Constitution does it say that the Supreme Court has the power of judicial review. The Constitution is silent on this matter, but the Court has asserted, and almost every scholar has agreed, that our system of separated powers means that the Court must be able to defend the Constitution. Otherwise, Congress and the president would be free to ignore it.

16-2 Summarize the development of the federal courts.

The federal courts have focused on different issues in American history depending on major political debates at the time. From the founding through the Civil War, the courts made significant decisions on nation-building, the legitimacy of the federal government, and slavery. From the end of the Civil War to the 1930s, the courts decided key cases on how government may be involved in the economy. Since the 1930s, the courts have concentrated on issues of personal liberty and social equality, and potential conflicts between the two concepts.

16-3 Discuss the structure, jurisdiction, and operation of the federal courts.

Article III of the Constitution guarantees federal judges that they can serve during good behavior. The Supreme Court, courts of appeal, and all district courts are all Article III courts. Original jurisdiction refers to a trial held before a court; appellate jurisdiction refers to an appeal a court hears from a trial in another court. Even the Supreme Court has original jurisdiction. For example, it will hear a trial involving ambassadors or a controversy between two or more states.

Strictly speaking, federal judges serve during "good behavior," but that means they would have to be impeached and convicted in order to be removed. The reason for this protection is clear: The judiciary cannot be independent of the other two branches of government if judges could be removed easily by the president or Congress, and this independence ensures that they are a separate branch of government.

16-4 Explain how the federal courts exercise power and the checks on judicial power.

Though the Constitution does not explicitly give federal courts the power of judicial review, they have acquired it on the reasonable assumption that the Constitution would become meaningless if the president and Congress could ignore its provisions. The Constitution, after all, states that it shall be the "supreme law of the land."

The federal courts rarely think their decisions create entirely new laws, but in fact their interpretations sometimes come close to just that. One reason is that many provisions of the Constitution are vague. What does the Constitution mean by "respecting an establishment of religion," the "equal protection of the law," or a "cruel and unusual punishment"? The courts must give concrete meaning to these phrases. But another reason is the personal ideology of judges. Some think a free press is more important than laws governing campaign finance, while others think a free press must give way to such laws. Some believe the courts ought to use federal law to strike down discrimination, but judges disagree about what types of affirmative action programs must be put in place. Congress can check the courts through nominations and the size of the judiciary, and public opinion also serves as a check on the courts over time. Still, the judicial power is highly significant for policymaking in American politics.

TO LEARN MORE

Federal Judicial Center: **www.fjc.gov**

Federal courts: **www.uscourts.gov**

Supreme Court decisions: **www.law.cornell.edu**

Finding laws and reports: **www.findlaw.com**

Abraham, Henry J. *The Judicial Process*. 7th ed. New York: Oxford University Press, 1998. An excellent, comprehensive survey of how the federal courts are organized and function.

Abraham, Henry J., and Barbara A. Perry. *Freedom and the Court*. 8th ed. Lawrence: University of Kansas