EMBASSY OF THE UNITED STATES IN JAPAN

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Outline of U.S. Government: Chapter 1

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An Enduring document

"This provision is made in a Constitution intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs."
— John Marshall, Chief Justice of the U.S. Supreme Court, McCulloch v. Maryland, 1819

The Constitution of the United States is the central instrument of American government and the supreme law of the land. For 200 years it has guided the evolution of governmental institutions and has provided the basis for political stability, individual freedom, economic growth, and social progress.

The American Constitution is the world's oldest written constitution in force, one that has served as the model for a number of other constitutions around the world. The Constitution owes its staying power to its simplicity and flexibility. Originally designed in the late 18th century to provide a framework for governing 4 million people in 13 very different states along America's Atlantic coast, its basic provisions were so soundly conceived that, with only 27 amendments, it now serves the needs of more than 260 million Americans in 50 even more diverse states that stretch from the Atlantic Ocean to the Pacific.

The path to the Constitution was neither straight nor easy. A draft document emerged in 1787, but only after intense debate and six years of experience with an earlier federal union. The 13 British colonies in America declared their independence from their motherland in 1776. A year before, war had broken out between the colonies and Britain, a war for independence that lasted for six bitter years. While still at war, the colonies — now calling themselves the United States of America — drafted a compact that bound them together as a nation. The compact, designated the "Articles of Confederation and Perpetual Union," was adopted by a congress of the states in 1777 and formally signed in July 1778. The Articles became binding when they were ratified by the 13th state, Maryland, in March 1781.

The Articles of Confederation devised a loose association among the states and set up a federal government with very limited powers. In such critical matters as defense, public finance, and trade, the federal government was at the mercy of the state legislatures. It was not an arrangement conducive to stability or strength. Within a short time the weakness of the confederation was apparent to all. Politically and economically, the new nation was close to chaos. In the words of George Washington, who would become the first president of the United States in 1789, the 13 states were united only "by a rope of sand."

It was under these inauspicious circumstances that the Constitution of the United States was drawn up. In February 1787 the Continental Congress, the legislative body of the republic, issued a call for the states to send delegates to Philadelphia, in the state of Pennsylvania, to revise the Articles. The Constitutional Convention convened on May 25, 1787, in Independence Hall, where the Declaration of Independence had been adopted 11 years earlier, on July 4, 1776. Although the delegates had been authorized only to amend the Articles of Confederation, they pushed aside the Articles and proceeded to construct a charter for a wholly new, more centralized form of government. The new document, the Constitution, was completed September 17, 1787, and was officially adopted March 4, 1789.

The 55 delegates who drafted the Constitution included most of the outstanding leaders, or Founding Fathers, of the new nation. They represented a wide range of interests, backgrounds, and stations in life. All agreed, however, on the central objectives expressed in the preamble to the Constitution: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Uniting a Diverse People

The primary aim of the Constitution was to create a strong elected government, directly responsive to the will of the people. The concept of self-government did not originate with the Americans; indeed, a measure of self-government existed in England at the time. But the degree to which the Constitution committed the United States to rule by the people was unique, even revolutionary, in comparison with other governments around the world. By the time the Constitution was adopted, Americans had considerable expertise in the art of self-government. Long before independence was declared, the colonies were functioning governmental units, controlled by the people. And after the Revolution had begun — between January 1, 1776, and April 20, 1777 — 10 of the 13 states had adopted their own constitutions. Most states had a governor elected by the state legislature. The legislature itself was elected by popular vote.

The Articles of Confederation had tried to unite these self-governing states. The Constitution, by contrast, established a strong central, or federal, government with broad powers to regulate relations between the states and with sole responsibility in such areas as foreign affairs and defense.

Centralization proved difficult for many people to accept. America had been settled in large part by Europeans who had left their homelands to escape religious or political oppression, as well as the rigid economic patterns of the Old World that locked individuals into a particular station in life regardless of their skill or energy. These settlers highly prized personal freedom, and they were wary of any power — especially that of government — that might curtail individual liberties.

The diversity of the new nation was also a formidable obstacle to unity. The people who were empowered by the Constitution in the 18th century to elect and control their central government represented different origins, beliefs, and interests. Most had come from England, but Sweden, Norway, France, Holland, Prussia, Poland, and many other countries also sent immigrants to the New World. Their religious beliefs were varied and, in most cases, strongly held. There were Anglicans, Roman Catholics, Calvinists, Huguenots, Lutherans, Quakers, Jews. Economically and socially, Americans ranged from the landed aristocracy to slaves from Africa and indentured servants working off debts. But the backbone of the country was the middle class —

farmers, tradespeople, mechanics, sailors, shipwrights, weavers, carpenters, and a host of others.

Americans then, as now, had widely differing opinions on virtually all issues, including the wisdom of breaking free of the British Crown. During the American Revolution a large number of British loyalists — known as Tories — had fled the country, settling mostly in eastern Canada. Those who stayed behind formed a substantial opposition bloc, although they differed among themselves on the reasons for opposing the Revolution and on what accommodation should be made with the new American republic.

In the past two centuries, the diversity of the American people has increased, and yet the essential unity of the nation has grown stronger. Throughout the 19th century and on into the 20th, an endless stream of immigrants contributed their skills and their cultural heritages to the growing nation. Pioneers crossed the Appalachian Mountains in the east, settled the Mississippi Valley and the Great Plains in the center of the continent, then crossed the Rocky Mountains and reached the shores of the Pacific Ocean — 4,500 kilometers west of the Atlantic coastal areas settled by the first colonists. And as the nation expanded, its vast storehouse of natural resources became apparent to all: great stands of virgin timber; huge deposits of coal, copper, iron, and oil; abundant water power; and fertile soil.

The wealth of the new nation generated its own kind of diversity. Special regional and commercial interest groups sprang up. East Coast shipowners advocated free trade. Midwest manufacturers argued for import duties to protect their positions in the growing U.S. market. Farmers wanted low freight rates and high commodity prices; millers and bakers sought low grain prices; railroad operators wanted the highest freight rates they could get. New York bankers, southern cotton growers, Texas cattle ranchers, and Oregon lumbermen all had different views on the economy and the government's role in regulating it.

It was the continuing job of the Constitution and the government it had created to draw these disparate interests together, to create a common ground and, at the same time, to protect the fundamental rights of all the people.

Compared with the complexities of contemporary government, the problems of governing 4 million people in much less developed economic conditions seem small indeed. But the authors of the Constitution were building for the future as well as the present. They were keenly aware of the need for a structure of government that would work not only in their lifetime but for generations to come. Hence, they included in the Constitution a provision for amending the document when social, economic, or political conditions demanded it. Twenty-seven amendments have been passed since ratification, and the flexibility of the Constitution has proven to be one of its greatest strengths. Without such flexibility, it is inconceivable that a document drafted more than 200 years ago could effectively serve the needs of 260 million people and thousands of governmental units at all levels in the United States today. Nor could it have applied with equal force and precision to the problems of small towns and big cities.

The Constitution and the federal government stand at the peak of a governmental pyramid that includes local and state jurisdictions. In the U.S. system each level of government has a large degree of autonomy with certain powers reserved particularly to itself. Disputes between different jurisdictions are resolved by the courts. However, there are questions involving the national interest that require the cooperation of all levels of government simultaneously, and the Constitution makes provision for this as well. American public schools, for example, are largely administered by local jurisdictions, adhering to statewide standards. But the federal government also aids the schools, since literacy and educational attainment are matters of vital national interest, and it enforces uniform standards designed to further equal educational opportunity. In other areas, such as housing, health, and welfare, there is a similar partnership between the various levels of government.

No product of human society is perfect. Despite its amendments, the Constitution of the United States probably still contains flaws that will become evident in future periods of stress. But two centuries of growth

and unrivaled prosperity have proven the foresight of the 55 men who worked through the summer of 1787 to lay the foundation of American government. In the words of Archibald Cox, former solicitor general of the United States, "The original Constitution still serves us well despite the tremendous changes in every aspect of American life because the framers had the genius to say enough but not too much.... As the plan outlined in the Constitutional Convention succeeded, as the country grew and prospered both materially and in the realization of its ideals, the Constitution gained majesty and authority far greater than that of any individual or body of men."

Drafting the Constitution

The period between the adoption of the Articles of Confederation in 1781 and the drafting of the Constitution in 1787 was one of weakness, dissension, and turmoil. Under the Articles of Confederation, no provisions were made for an executive branch to enforce the laws or for a national court system to interpret them. A legislative congress was the sole organ of the national government, but it had no power to force the states to do anything against their will. It could — theoretically — declare war and raise an army, but it could not force any state to meet its assigned quota for troops or for the arms and equipment needed to support them. It looked to the states for the income needed to finance its activities, but it could not punish a state for not contributing its share of the federal budget. Control of taxation and tariffs was left to the states, and each state could issue its own currency. In disputes between states — and there were many unsettled quarrels over state boundaries — Congress played the role of mediator and judge but could not require states to accept its decisions.

The result was virtual chaos. Without the power to collect taxes, the federal government plunged into debt. Seven of the 13 states printed large quantities of paper money — high in face value but low in real purchasing power — in order to pay Revolutionary War veterans and a variety of creditors and to settle debts between small farmers and large plantation owners.

By contrast, the Massachusetts legislature imposed a tightly limited currency and high taxes, triggering formation of a small army of farmers led by Daniel Shays, a former Revolutionary War army captain. In a bid to take over the Massachusetts statehouse, Shays and others demanded that foreclosures and unfair mortgages be dropped. Troops were called out to suppress the rebellion, but the federal government took notice.

Absence of a uniform, stable currency also disrupted trade among the states and with other countries. Not only did the value of paper currency vary from state to state, but some states (like New York and Virginia) levied duties on products entering their ports from other states, thereby provoking retaliatory actions. The states could say, as had the federal superintendent of finance, that "our public credit is gone." To compound their problems, these newly independent states, having separated violently from England, no longer received favored treatment at British ports. When U.S. Ambassador John Adams tried to negotiate a commercial treaty in 1785, the British refused on the grounds that the individual states would not be bound by it.

A weak central government, without the power to back its policies with military strength, was inevitably handicapped in foreign affairs as well. The British refused to withdraw their troops from the forts and trading posts in the new nation's Northwest Territory, as they had agreed to do in the peace treaty of 1783 that marked the end of the Revolutionary War. To make matters worse, British officers on the northern boundaries and Spanish officers to the south supplied arms to various Indian tribes and encouraged them to attack American settlers. The Spanish, who controlled Florida and Louisiana as well as all territory west of the Mississippi River, also refused to allow western farmers to use the port of New Orleans to ship their produce.

Although there were signs of returning prosperity in some areas of the fledgling nation, domestic and foreign problems continued to grow. It became increasingly clear that the confederation's central government was not strong enough to establish a sound financial system, to regulate trade, to enforce treaties, or to exert military

force against foreign antagonists when needed. Internal divisions between farmers and merchants, debtors and creditors, and among the states themselves were growing more severe. With Shays' Rebellion of desperate farmers in 1786 vividly in mind, George Washington warned: "There are combustibles in every state which a spark might set fire to."

This sense of potential disaster and the need for drastic change pervaded the Constitutional Convention that began its deliberations on May 25, 1787. All of the delegates were convinced that an effective central government with a wide range of enforceable powers must replace the impotent congress established by the Articles of Confederation. Early in the proceedings the delegates agreed that the new government would be composed of three separate branches — legislative, judicial, and executive — each with distinct powers to balance those of the other two branches. It was also agreed that the legislative branch — like the British Parliament — should consist of two houses.

Beyond this point, however, there were sharp differences of opinion that threatened at times to disrupt the convention and cut short its proceedings before a constitution was drafted. The larger states argued in favor of proportional representation in the legislature — each state should have voting power according to its population. The smaller states, fearing domination by the larger ones, insisted on equal representation for all states. The issue was settled by the "Great Compromise," a measure giving every state equal representation in one house of Congress and proportional representation in the other. In the Senate, every state would have two seats. In the House of Representatives, the number of seats would depend on population. Because it was considered more responsive to majority sentiment, the House of Representatives was given the power to originate all legislation dealing with the federal budget and revenues.

The Great Compromise ended the rift between the large and small states, but throughout the long summer the delegates worked out numerous other compromises. Some delegates, fearful of giving too much power to the people, argued for indirect election of all federal officials; others wanted as broad an electoral base as possible. Some wanted to exclude the western territories from eventual statehood; others saw the future strength of the nation in the virgin lands beyond the Appalachians. There were sectional interests to be balanced; differing views to be reconciled on the term, powers, and method of selection of the president; and conflicting ideas on the role of the federal judiciary.

The high quality of the delegates to the convention eased the way to compromise. Only a few of the great leaders of the American Revolution were absent: Thomas Jefferson and John Adams — both future presidents — were serving as America's envoys to France and England; John Jay was busy as secretary of foreign affairs of the confederation. A handful of others, including Samuel Adams and Patrick Henry, chose not to participate, believing that the existing governmental structure was sound. Of those in attendance, the best known by far was George Washington, commander of American troops and hero of the Revolution, who presided over the convention. Benjamin Franklin, the wise old scientist, scholar, and diplomat, was also there. So, too, were such outstanding men as James Madison of Virginia, Gouverneur Morris of Pennsylvania, and Alexander Hamilton, the brilliant young lawyer from New York.

Even the youngest delegates, still in their twenties and thirties, had already displayed political and intellectual gifts. As Thomas Jefferson in Paris wrote to John Adams in London, "It really is an assembly of demigods."

Some of the ideas embodied in the Constitution were new, but many were drawn from British governmental tradition and from the practical experience in self-government of the 13 states. The Declaration of Independence was an important guide, keeping the minds of the delegates fixed on the ideas of self-government and preservation of fundamental human rights. The writings of such European political philosophers as Montesquieu and John Locke were also influential.

In late July the convention appointed a committee to draft a document based on the agreements that had been reached. After another month of discussion and refinement, a second committee, headed by Gouverneur

Morris, produced the final version, which was submitted for signing on September 17. Not all the delegates were pleased with the results; some left before the ceremony, and three of those remaining refused to sign: Edmund Randolph and George Mason of Virginia, and Elbridge Gerry of Massachusetts. Of the 39 who did sign, probably no one was completely satisfied, and their views were ably summed up by Benjamin Franklin, who said, "There are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them." He would accept the Constitution, however, "because I expect no better and because I am not sure that it is not the best."

Ratification: A New Beginning

The way was now set for the arduous process of ratification, that is, acceptance of the Constitution by at least nine states. Delaware was the first to act, followed swiftly by New Jersey and Georgia. Approval was given by comfortable majorities in Pennsylvania and Connecticut. A bitter debate occurred in Massachusetts. That state finally conditioned its ratification on the addition of 10 amendments guaranteeing certain fundamental rights, including freedom of religion, speech, press, and assembly; the right to trial by jury; and the prohibition of unreasonable searches or arrests. A number of other states added similar provisos, and the 10 amendments — now known as the Bill of Rights — were incorporated into the Constitution in 1791.

By late June 1788, Maryland, South Carolina, and New Hampshire had given their assent, satisfying the requirement for ratification by nine states. Legally, the Constitution was in force. But two powerful and pivotal states — New York and Virginia — remained undecided, as did the two smaller states of North Carolina and Rhode Island. It was clear that without the consent of New York and Virginia, the Constitution would stand on shaky ground.

Virginia was sharply divided, but the influence of George Washington, arguing for ratification, carried the state legislature by a narrow margin on June 26, 1788. In New York, Alexander Hamilton, James Madison, and John Jay combined to produce a remarkable series of written arguments for the Constitution — The Federalist Papers — and won a narrow vote for approval on July 26. In November, North Carolina added its approval. Rhode Island held out until 1790, when its position as a small and weak state hedged in by a large and powerful republic became untenable.

The process of organizing the government began soon after ratification by Virginia and New York. On September 13, 1788, Congress fixed the city of New York as the seat of the new government. (The capital was moved to Philadelphia in 1790 and to Washington, D.C., in 1800.) It set the first Wednesday in January 1789 as the day for choosing presidential electors, the first Wednesday of February for the meeting of the electors to select a president, and the first Wednesday of March for the opening session of the new Congress.

Under the Constitution, each state legislature had the power to decide how presidential electors, as well as representatives and senators, would be chosen. Some states opted for direct elections by the people, others for election by the legislature, and a few for a combination of the two. Rivalries were intense; delays in setting up the first elections under the new Constitution were inevitable. New Jersey, for example, chose direct elections but neglected to set a time for closing the polls, which stayed open for three weeks.

The full and final implementation of the Constitution was set for March 4, 1789. But by that time, only 13 of the 59 representatives and 8 of the 22 senators had arrived in New York City. (Seats allotted to North Carolina and Rhode Island were not filled until those states ratified the Constitution.) A quorum was finally attained in the House on April 1 and in the Senate on April 6. The two houses then met jointly to count the electoral vote.

To no one's surprise, George Washington was unanimously elected the first president, and John Adams of Massachusetts, the vice president. Adams arrived in New York on April 21, and Washington on April 23. They were sworn into office on April 30, 1789. The business of setting up the new government was

completed. The job of maintaining the world's first republic had just begun.

The Constitution as Supreme Law

The U.S. Constitution calls itself the "supreme law of the land." Courts have interpreted this clause to mean that when state constitutions or laws passed by state legislatures or by the national Congress are found to conflict with the federal Constitution, these laws have no force. Decisions handed down by the Supreme Court over the course of two centuries have confirmed and strengthened this doctrine of constitutional supremacy.

Final authority is vested in the American people, who can change the fundamental law, if they wish, by amending the Constitution or — in theory, at least — drafting a new one. The people do not exercise their authority directly, however. They delegate the day-to-day business of government to public officials, both elected and appointed.

The power of public officials is limited under the Constitution. Their public actions must conform to the Constitution and to the laws made in accordance with the Constitution. Elected officials must stand for re-election at periodic intervals, when their records are subject to intensive public scrutiny. Appointed officials serve at the pleasure of the person or authority who appointed them and may be removed at any time. The exception to this practice is the lifetime appointment by the president of justices of the Supreme Court and other federal judges, so that they may be free of political obligations or influence.

Most commonly, the American people express their will through the ballot box. The Constitution, however, does make provision for the removal of a public official from office, in cases of extreme misconduct or malfeasance, by the process of impeachment. Article II, Section 4 reads: "The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Impeachment is a charge of misconduct brought against a government official by a legislative body; it does not, as is commonly thought, refer to conviction on such charges. As set forth in the Constitution, the House of Representatives must bring charges of misconduct by voting a bill of impeachment. The accused official is then tried in the Senate, with the chief justice of the Supreme Court presiding at the trial.

Impeachment is considered a drastic measure, one that has been used on only rare occasions in the United States. Since 1797 the House of Representatives has voted articles of impeachment against 16 federal officials — two presidents, one cabinet member, one senator, one justice of the Supreme Court, and 11 federal judges. Of those impeached, the Senate has convicted seven, all of them judges.

In 1868 President Andrew Johnson was impeached over issues relating to the proper treatment of the defeated Confederate states following the American Civil War. The Senate, however, fell one vote short of the two-thirds majority necessary for conviction, and Johnson completed his full term in office. In 1974, as a result of the Watergate affair, President Richard Nixon resigned from office after the Judiciary Committee of the House recommended impeachment, but before the full House of Representatives could vote on a bill of impeachment.

As recently as 1998, President Bill Clinton was impeached by the House of Representatives on charges of perjury and obstruction of justice. After a trial, the Senate acquitted the president on both charges, voting not guilty on perjury by a margin of 55-45 and dividing evenly at 50-50 on obstruction of justice. To remove the president from office would have required a guilty verdict by a majority of 67 votes on either charge.

The Principles of Government

Although the Constitution has changed in many aspects since it was first adopted, its basic principles remain

the same now as in 1789:

— The three main branches of government — executive, legislative, judicial — are separate and distinct from one another. The powers given to each are delicately balanced by the powers of the other two. Each branch serves as a check on potential excesses of the others.

— The Constitution, together with laws passed according to its provisions and treaties entered into by the president and approved by the Senate, stands above all other laws, executive acts, and regulations.

— All persons are equal before the law and are equally entitled to its protection. All states are equal, and none can receive special treatment from the federal government. Within the limits of the Constitution, each state must recognize and respect the laws of the others. State governments, like the federal government, must be democratic in form, with final authority resting with the people.

— The people have the right to change their form of national government by legal means defined in the Constitution itself.

Provisions for Amendment

The authors of the Constitution were keenly aware that changes would be needed from time to time if the Constitution was to endure and keep pace with the growth of the nation. They were also conscious that the process of change should not be facile, permitting ill-conceived and hastily passed amendments. By the same token, they wanted to ensure that a minority could not block action desired by most of the people. Their solution was to devise a dual process by which the Constitution could be revised.

The Congress, by a two-thirds vote in each house, may initiate an amendment. Alternatively, the legislatures of two-thirds of the states may ask Congress to call a national convention to discuss and draft amendments. In either case, amendments must have the approval of three-fourths of the states before they enter into force.

Aside from the direct process of changing the Constitution, the effect of its provisions may be changed by judicial interpretation. Early in the history of the republic, in the 1803 case of Marbury v. Madison, the Supreme Court established the doctrine of judicial review, which is the power of the Court to interpret acts of Congress and decide their constitutionality. The doctrine also embraces the power of the Court to explain the meaning of various sections of the Constitution as they apply to changing legal, political, economic, and social conditions. Over the years, a series of Court decisions, on issues ranging from governmental regulation of radio and television to the rights of the accused in criminal cases, has had the effect of bringing up to date the thrust of constitutional law, with no substantive change in the Constitution itself.

Congressional legislation, passed to implement provisions of the basic law or to adapt it to changing conditions, also broadens and, in subtle ways, changes the meaning of the Constitution. Up to a point, the rules and regulations of the many agencies of the federal government may have a similar effect. The acid test in both cases is whether, in the opinion of the courts, such legislation and rules conform with the intent of the Constitution.

The Bill of Rights

The Constitution has been amended 27 times since 1789, and it is likely to be further revised in the future. The most sweeping changes occurred within two years of its adoption. In that period, the first 10 amendments, known collectively as the Bill of Rights, were added. Congress approved these amendments as a block in September 1789, and 11 states had ratified them by the end of 1791.

Much of the initial resistance to the Constitution came not from those opposed to strengthening the federal union but from statesmen who felt that the rights of individuals must be specifically spelled out. One of these

was George Mason, author of the Declaration of Rights of Virginia, which was a forerunner of the Bill of Rights. As a delegate to the Constitutional Convention, Mason refused to sign the document because he felt it did not protect individual rights sufficiently. Indeed, Mason's opposition nearly blocked ratification by Virginia. Because of similar feelings in Massachusetts, that state conditioned its ratification on the addition of specific guarantees of individual rights. By the time the First Congress convened, sentiment for adoption of such amendments was nearly unanimous, and the Congress lost little time in drafting them.

These amendments remain intact today, as they were written two centuries ago. The first guarantees freedom of worship, speech, and press; the right of peaceful assembly; and the right to petition the government to correct wrongs. The second guarantees the right of citizens to bear arms. The third provides that troops may not be quartered in private homes without the owner's consent. The fourth guards against unreasonable searches, arrests, and seizures of property.

The next four amendments deal with the system of justice. The fifth forbids trial for a major crime except after indictment by a grand jury. It prohibits repeated trials for the same offense, forbids punishment without due process of law, and provides that an accused person may not be compelled to testify against himself. The sixth guarantees a speedy public trial for criminal offenses. It requires trial by an unbiased jury, guarantees the right to legal counsel for the accused, and provides that witnesses shall be compelled to attend the trial and testify in the presence of the accused. The seventh assures trial by jury in civil cases involving anything valued at more than 20 U.S. dollars. The eighth forbids excessive bail or fines, and cruel or unusual punishment.

The last two of the 10 amendments contain very broad statements of constitutional authority. The ninth declares that the listing of individual rights is not meant to be comprehensive; that the people have other rights not specifically mentioned in the Constitution. The tenth provides that powers not delegated by the Constitution to the federal government nor prohibited by it to the states are reserved to the states or the people.

Vital Protection for Individual Liberties

The genius of the Constitution in organizing the federal government has given the United States extraordinary stability over the course of two centuries. And the Bill of Rights and subsequent amendments have placed fundamental human rights at the center of the U.S. legal system.

In moments of national crisis, it has been tempting for governments to attempt to suspend these rights in the interest of national security, but in the United States such steps have always been taken reluctantly and under the most scrupulous safeguards. During wartime, for example, military authorities censored mail between the United States and foreign countries, and especially from the battlefronts to families back home. But not even in wartime has the constitutional right to a fair trial been abrogated. Persons accused of crimes — and these include enemy nationals accused of spying, subversion, and other dangerous activities — are given the right to defend themselves and, under the American system, are presumed innocent until proven guilty.

Amendments to the Constitution subsequent to the Bill of Rights cover a wide range of subjects. One of the most far-reaching is the fourteenth, ratified in 1868, which establishes a clear and simple definition of citizenship and guarantees equal treatment under the law. In essence, the Fourteenth Amendment required the states to abide by the protections of the Bill of Rights. Other amendments have limited the judicial power of the national government; changed the method of electing the president; forbidden slavery; protected the right to vote against denial because of race, color, sex, or previous condition of servitude; extended the congressional power to levy taxes to individual incomes; and instituted the election of U.S. senators by popular vote.

The most recent amendments include the twenty-second, limiting the president to two terms in office; the

twenty-third, granting citizens of the District of Columbia the right to vote; the twenty-fourth, giving citizens the right to vote regardless of failure to pay a poll tax; the twenty-fifth, providing for filling the office of vice president when it becomes vacant in midterm; the twenty-sixth, lowering the voting age to 18; and the twenty-seventh, concerning the compensation of U.S. senators and representatives.

It is of significance that a majority of the 27 amendments stem from continued efforts to expand individual civil or political liberties, while only a few are concerned with amplifying the basic governmental structure drafted in Philadelphia in 1787.

The Federal System

The framers of the Constitution had several clear-cut objectives in mind. They set these down with remarkable clarity in a 52-word, six-point preamble to the principal document.

The problem of building a "more perfect Union" was the obvious issue facing the 13 states in 1787. It was quite clear that almost any union would be more nearly perfect than that which existed under the Articles of Confederation. But devising another structure to replace it involved critical choices.

"... To Form a More Perfect Union"

All the states were covetous of the sovereign power they had exercised since the break with England 11 years earlier. Balancing states' rights with the needs of a central government was no easy task. The makers of the Constitution accomplished this by letting the states keep all the powers necessary to regulate the daily lives of their citizens, provided that these powers did not conflict with the needs and welfare of the nation as a whole. This division of authority, which is termed federalism, is essentially the same today. The power of each state over local affairs — in matters such as education, public health, business organization, work conditions, marriage and divorce, local taxation, and ordinary police powers — is so fully recognized and accepted that two neighboring states frequently have widely differing laws on the same subject.

Ingenious though the constitutional arrangement was, the controversy over states' rights continued to fester until, three-quarters of a century later, in 1861, a four-year war broke out between the states of the North and those of the South. The war was known as the Civil War, or the War Between the States, and the underlying issue was the right of the federal government to regulate slavery in the newer states of the Union. Northerners insisted that the federal government had such a right, while southerners held that slavery was a matter for each state to decide on its own. When a group of southern states attempted to secede from the Union, war broke out and was fought on the principle of the preservation of the republic. With the defeat of the southern states and their reentry into the Union, federal supremacy was reaffirmed and slavery abolished.

"... To Establish Justice"

The essence of American democracy is contained in the Declaration of Independence, with its ringing phrase, "All men are created equal," and the follow-up statements "that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

The Constitution makes no distinction as to the wealth or status of persons; all are equal before the law, and all are equally subject to judgment and punishment when they violate the law. The same holds true for civil disputes involving property, legal agreements, and business arrangements. Open access to the courts is one of the vital guarantees written into the Bill of Rights.

"... To Insure Domestic Tranquility"

The stormy birth of the United States and the unsettled conditions along the American western frontier convinced Americans of the need for internal stability to permit the new nation to grow and prosper. The

federal government created by the Constitution had to be strong enough to protect the states against invasion from the outside and from strife and violence at home. No part of the continental United States has been invaded by a foreign nation since 1815. The state governments have generally been strong enough to maintain order within their own borders. But behind them stands the awesome power of the federal government, which is constitutionally empowered to take the necessary steps to preserve the peace.

"... To Provide for the Common Defense"

Even with its independence secured, the new nation faced very real dangers on many sides in the late 18th century. On the western frontier, settlers faced a constant threat from hostile Indian tribes. To the north, the British still owned Canada, whose eastern provinces were jammed with vengeful American Tories, who had remained loyal to the British Crown during the Revolutionary War. The French owned the vast Louisiana Territory in the continental midwest. To the south, the Spanish held Florida, Texas, and Mexico. All three European powers had colonies in the Caribbean Sea, within striking distance of the American coast. Moreover, the nations of Europe were embroiled in a series of wars that spilled over into the New World.

In the early years, the constitutional objective of providing a "common defense" focused on opening up the territory immediately beyond the Appalachian Mountains and negotiating a peace with the Native American tribes who inhabited the area. Within a short time, however, the outbreak of war with England in 1812, skirmishes with the Spanish in Florida, and war with Mexico in 1846 underscored the importance of military strength.

As America's economic and political power increased, its defensive strength grew. The Constitution divides the defense responsibility between the legislative and executive branches: Congress alone has the power to declare war and to appropriate funds for defense, while the president is commander-in-chief of the armed forces and bears primary responsibility for the defense of the country.

"... To Promote the General Welfare"

At the end of the Revolution, the United States was in a difficult economic position. Its resources were drained, its credit shaky, and its paper money was all but worthless. Commerce and industry had come to a virtual halt, and the states and the government of the confederation were deeply in debt. While the people were not in imminent danger of starving, the prospects for economic development were slim indeed.

One of the first tasks the new national government faced was to put the economy on a sound footing. The first article of the Constitution provided that: "The Congress shall have power to lay and collect taxes ... to pay the debts and provide for the ... general welfare of the United States."

The tax power enabled the government to finance its war debts and to put the currency on a firmer basis. A secretary of the treasury was appointed to look after the fiscal affairs of the nation, and a secretary of state to handle relations with other nations. Also appointed were a secretary of war to be responsible for the nation's military security, and an attorney general to act as the chief law officer of the federal government. Later, as the country expanded and the economy became more complex, the well-being of the people necessitated the creation of additional executive departments.

"... To Secure the Blessings of Liberty to Ourselves and Our Posterity"

The emphasis on personal liberty was one of the salient features of the new American republic. Coming, as many of them had, from a background of political or religious suppression, Americans were determined to preserve freedom in the New World. The framers of the Constitution, in giving authority to the federal government, were careful to protect the rights of all persons by limiting the powers of both the national and state governments. As a result, Americans are free to move from place to place; make their own decisions

about jobs, religion, and political beliefs; and go to the courts for justice and protection when they feel these rights are being infringed upon.

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Outline of U.S. Government: Chapter 2

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Explaining the Constitution: The Federalist papers

"But what is government itself but the greatest of all reflections on human nature?"

— James Madison, The Federalist Papers, 1787-88

For Thomas Jefferson, one of America's Founding Fathers and later the new nation's third president, The Federalist Papers were "the best commentary on the principles of government ... ever written." For the 19th-century British philosopher, John Stuart Mill, The Federalist — as the collection of 85 short essays was usually titled — was "the most instructive treatise we possess on federal government." The astute French political commentator, Alexis de Tocqueville, writing in 1835, thought it "an excellent book, which ought to be familiar to the statesmen of all countries."

Contemporary historians, jurists, and political scientists have generally agreed that The Federalist is the most important work of political philosophy and pragmatic government ever written in the United States. It has been compared to Plato's Republic, Aristotle's Politics, and Thomas Hobbes' Leviathan. And it has been consulted by the leaders of many new nations in Latin America, Asia, and Africa as they were preparing their own constitutions.

The delegates who signed the draft U.S. Constitution in Philadelphia on September 17, 1787, stipulated that it would take effect only after approval by ratifying conventions in 9 of the 13 states. Although not stipulated, a negative vote by either of two key states — New York or Virginia — could destroy the whole enterprise because of these states' size and power. Both New York and Virginia delegates were sharply divided in their opinions of the Constitution. And New York Governor George Clinton had already made clear his opposition.

One would imagine that a work so highly praised and so influential as The Federalist Papers was the ripe fruit of a long lifetime's experience in scholarship and government. In fact, it was largely the product of two young men: Alexander Hamilton of New York, age 32, and James Madison of Virginia, age 36, who wrote in great haste — sometimes as many as four essays in a single week. An older scholar, John Jay, later named as first chief justice of the Supreme Court, contributed five of the essays.

Hamilton, who had been an aide to Washington during the Revolution, asked Madison and Jay to join him in this crucial project. Their purpose was to persuade the New York convention to ratify the just-drafted Constitution. They would separately write a series of letters to New York newspapers, under the shared pseudonym "Publius," in which they would explain and defend the Constitution.

It was Hamilton who initiated the project, outlined the sequence of topics to be discussed, and vigorously addressed most of them in 51 of the letters. But Madison's 29 letters have proved to be the most memorable in their combination of frankness, balance, and reasoning power. It is not clear whether The Federalist Papers, written between October 1787 and May 1788, had a decisive effect on New York's grudging ratification of the Constitution. But there can be no doubt that the essays became, and remain, the most authoritative commentary on that document.

A New Kind of Federalism

The first and most obvious approach The Federalist Papers used was a new definition of federalism. Having just won a revolution against an oppressive monarchy, the former American colonists were in no mood to replace it with another centralized, unrestrained regime. On the other hand, their experience with instability and disorganization under the Articles of Confederation, due to jealousy and competition between the individual states, made them receptive to the creation of a stronger national government. A number of The Federalist Papers argued that a new kind of balance, never achieved elsewhere, was possible. Indeed, the Papers were themselves a balance between the nationalist propensities of Hamilton, who reflected the commercial interests of a port city, New York, and the wariness of Madison, who shared the suspicion of distant authority that was widely held by Virginia farmers.

Madison proposed that, instead of the absolute sovereignty of each state under the Articles of Confederation, the states would retain a "residual sovereignty" in all those areas that did not require national concern. The very process of ratification of the Constitution, he argued, symbolized the concept of federalism rather than nationalism. He said: "This assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and individual states to which they respectively belong.... The act, therefore, establishing the Constitution, will not be a national but a federal act."

Hamilton suggested what he called a "concurrency" of powers between the national and state governments. But his analogy of planets revolving around the sun yet retaining their separate status placed greater emphasis on a central authority. Hamilton and Jay (also from New York) cited examples of alliances in ancient Greece and contemporary Europe that invariably fell apart in times of crisis. To the authors of The Federalist Papers, whatever their differences, the lesson was clear: survival as a respected nation required the transfer of important, though limited, powers to the central government. They believed that this could be done without destroying the identity or autonomy of the separate states.

Checks and Balances

The Federalist Papers also provide the first specific mention found in political literature of the idea of checks and balances as a way of restricting governmental power and preventing its abuse. The words are used mainly in reference to the bicameral legislature, which both Hamilton and Madison regarded as the most powerful branch of government. As originally conceived, the presumably impetuous, popularly elected House of Representatives would be checked and balanced by a more conservative Senate chosen by state legislatures.

(The Seventeenth Amendment to the Constitution, added in 1913, changed this provision to mandate the popular election of senators.) On one occasion, however, Madison argued more generally that "office should check office," and Hamilton observed that "a democratic assembly is to be checked by a democratic senate and both these by a democratic chief magistrate."

In his most brilliant essay (Number 78), Hamilton defended the Supreme Court's right to rule upon the constitutionality of laws passed by national or state legislatures. This historically crucial power of "judicial review," he argued, was an appropriate check on the legislature, where it was most likely that "the pestilential breath of faction may poison the fountains of justice." Hamilton explicitly rejected the British system of allowing the Parliament to override by majority vote any court decision it finds displeasing. Rather, "the courts of justice are to be considered the bulwarks of a limited Constitution against legislative encroachments." Only the painstaking and difficult process of amending the Constitution, or the gradual transformation of the Supreme Court's members to another viewpoint, could reverse the Court's interpretation of that document.

Human Nature, Government and Individual Rights

Behind the notion of checks and balances lay a profoundly realistic view of human nature. While Madison and Hamilton believed that people at their best were capable of reason, self-discipline, and fairness, they also recognized their susceptibility to passion, intolerance, and greed. In a famous passage, after discussing what measures were needed to preserve liberty, Madison wrote: "It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself."

In the most striking and original of The Federalist Papers (Number 10), Madison addressed this double challenge. His central concern was the need "to break and control the violence of faction," by which he meant political parties, and which he regarded as the greatest danger to popular government: "I understand a number of citizens ... are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."

These passions or interests that endanger the rights of others may be religious or political or, most often, economic. Factions may divide along lines of haves and have-nots, creditors and debtors, or according to the kinds of property possessed. Madison wrote: "A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide themselves into different classes, actuated by different sentiments and view. The regulations of these various and interfering interests forms the principal task of modern legislation...."

How can fair, rational, and free people mediate so many competing claims or the factions that derive from them? Since it is impossible to outlaw passion or self-interest, a proper form of government must be able to prevent any faction, whether minority or majority, from imposing its will against the general good. One defense against an overbearing faction, Madison said, is the republican (or representative) form of government, which tends "to refine and enlarge the public views by passing them through the medium of a chosen body of citizens."

But even more important, according to Madison, was broadening the geographic and popular basis of the republic, as would happen under the national government proposed by the new Constitution. He wrote: "As each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried.... The influence of factious leaders may kindle a flame within their particular states but will

be unable to spread a general conflagration through the other states."

What is being urged here is the principle of pluralism, which welcomes diversity both for its own sake as a testimony to individual variety and freedom, but even more crucially for its positive effect in neutralizing conflicting passions and interests. Just as the great variety of religious faiths in the United States makes unlikely the imposition of a single established church, so the variety of states with many divergent regions and concerns makes unlikely the national victory of an inflamed and potentially oppressive faction or party. A confirmation of Madison's argument can be found in the evolution of the major American political parties, which have tended to be moderate and nonideological because they each encompass such a diversity of sectional and economic interests.

The Separation of Powers

The idea of separating powers among the various branches of government to avoid the tyranny of concentrated power falls under the larger category of checks and balances. But The Federalist Papers see another virtue in the separation of powers, namely, an increase in governmental efficiency and effectiveness. By being limited to specialized functions, the different branches of government develop both an expertise and a sense of pride in their roles, which would not be the case if they were joined together or overlapped to any considerable degree.

Qualities that might be crucial to one function could be ill-suited for another. Thus Hamilton termed "energy in the executive" as essential to defending the country against foreign attacks, administering the laws fairly, and protecting property and individual liberty, which he viewed as closely related rights. On the other hand, not energy but "deliberation and wisdom" are the best qualifications for a legislator, who must earn the confidence of the people and conciliate their divergent interests.

This difference of needs also explains why executive authority should be placed in the hands of one person, the president, since a plurality of executives could lead to paralysis and "frustrate the most important measures of government, in the most critical emergencies of the state." That is, once the legislature, reflecting the will of the people, has rendered its deliberate and fully debated judgment by passing a law, the executive must firmly carry out that law without favoritism, resisting any self-interested pleas for exception. And in the event of an attack by a foreign state, the executive must have the power and energy to respond immediately and forcefully. As for the judiciary, the qualities wanted there are special as well: not the executive's energy and dispatch, nor the legislator's responsiveness to popular sentiment or ability to compromise, but "integrity and moderation." And, by being appointed for life, judges would have freedom from popular, executive, or legislative pressures.

The Perennial Questions of Politics

The memorable observations in The Federalist Papers about government, society, liberty, tyranny, and the nature of political man are not always easy to locate. Much in these essays is dated or repetitious or archaic in style. The authors had neither the time nor the inclination to put their thoughts in an orderly and comprehensive form. Yet The Federalist Papers remain indispensable to anyone seriously interested in the perennial questions of political theory and practice raised by Hamilton and Madison. "No more eloquent, tough-minded, and instructive answers have ever been given by an American pen," wrote the distinguished political historian, Clinton Rossitor in the 20th century. "The message of The Federalist reads: no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality — and none of these great goods without stability and order."

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Outline of U.S. Government: Chapter 3
The Executive Branch: Powers of the Presidency

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"The chief magistrate derives all his authority from the people..."

— Abraham Lincoln, First Inaugural Address, 1861

At a time when all the major European states had hereditary monarchs, the idea of a president with a limited term of office was itself revolutionary. But the Constitution adopted in 1787 vested executive power in a president, and that remains the case today. The Constitution also provides for the election of a vice president, who succeeds to the presidency in case of the death, resignation, or incapacitation of the president. While the Constitution spells out in some detail the duties and powers of the president, it does not delegate any specific executive powers to the vice president, to the 14-member presidential cabinet (made up of the heads of the federal departments), or to other federal officials.

Creation of a powerful, unitary presidency was the source of some contention in the Constitutional Convention. Several states had experience with executive councils made up of several members, a system that had been followed with considerable success by the Swiss for some years. Delegate Benjamin Franklin urged that a similar system be adopted by the United States. Moreover, many delegates, still smarting under the excesses of executive power wielded by the British Crown, were wary of a powerful presidency. Nonetheless, advocates of a single president — who would operate under strict checks and balances — carried the day.

The Constitution requires the president to be a native-born American citizen at least 35 years of age. Candidates for the presidency are chosen by political parties several months before the presidential election, which is held every four years (in years divisible evenly by four) on the first Tuesday after the first Monday in November. The Twenty-second Amendment, ratified in 1951, limits the president to two terms of office.

The vice president serves concurrently with the president. In addition to holding the right of succession, the vice president is the presiding officer of the Senate. The Twenty-fifth Amendment, adopted in 1967, amplifies the process of presidential succession. It describes the specific conditions under which the vice president is empowered to take over the office of president if the president should become incapacitated. It also provides for resumption of the office by the president in the event of his recovery. In addition, the amendment enables the president to name a vice president, with congressional approval, when the second office is vacated.

The Constitution gives Congress the power to establish the order of succession after the vice president. At present, should both the president and vice president vacate their offices, the speaker of the House of Representatives would assume the presidency. Next comes the president pro tempore of the Senate (a senator elected by that body to preside in the absence of the vice president), and then cabinet officers in designated order.

The seat of government is Washington, D.C. (the District of Columbia), a federal enclave located between the states of Maryland and Virginia on the eastern seaboard. The White House, both residence and office of the president, is located there.

The method of electing the president is peculiar to the American system. Although the names of the candidates appear on the ballots, the people technically do not vote directly for the president (and vice president). Instead, the voters of each state select a slate of presidential "electors," equal to the number of senators and representatives that state has in Congress. The candidate with the highest number of votes in each state wins all the "electoral votes" of that state.

The electors of all 50 states and the District of Columbia — a total of 538 persons — make up what is known as the electoral college. Under the terms of the Constitution, the electoral college never meets as a body. Instead, the electors in each state gather in their state capital shortly after the election and cast their votes for the candidate with the largest number of popular votes in their state. To be successful, a candidate for the presidency must receive 270 electoral votes out of the possible 538. The Constitution stipulates that if no candidate has a majority, the decision shall be made by the House of Representatives, with all members from a state voting as a unit. In this event, each state and the District of Columbia would be allotted one vote only.

The presidential term of four years begins on January 20 (it was changed from March by the Twentieth Amendment, ratified in 1933) following a November election. The president starts his official duties with an inauguration ceremony, traditionally held on the steps of the U.S. Capitol, where Congress meets. The president publicly takes an oath of office, which is traditionally administered by the chief justice of the Supreme Court. The words are prescribed in Article II of the Constitution: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States." The oath-taking ceremony is followed by an inaugural address in which the new president outlines the policies and plans of his administration.

Presidential Powers

The office of president of the United States is one of the most powerful in the world. The president, the Constitution says, must "take care that the laws be faithfully executed." To carry out this responsibility, he presides over the executive branch of the federal government — a vast organization numbering about 4 million people, including 1 million active-duty military personnel. In addition, the president has important legislative and judicial powers.

Executive Powers

Within the executive branch itself, the president has broad powers to manage national affairs and the workings of the federal government. The president can issue rules, regulations, and instructions called

executive orders, which have the binding force of law upon federal agencies but do not require congressional approval. As commander-in-chief of the armed forces of the United States, the president may also call into federal service the state units of the National Guard. In times of war or national emergency, the Congress may grant the president even broader powers to manage the national economy and protect the security of the United States.

The president nominates — and the Senate confirms — the heads of all executive departments and agencies, together with hundreds of other high-ranking federal officials. The large majority of federal workers, however, are selected through the Civil Service system, in which appointment and promotion are based on ability and experience.

Legislative Powers

Despite the constitutional provision that "all legislative powers" shall be vested in the Congress, the president, as the chief formulator of public policy, has a major legislative role. The president can veto any bill passed by Congress and, unless two-thirds of the members of each house vote to override the veto, the bill does not become law.

Much of the legislation dealt with by Congress is drafted at the initiative of the executive branch. In his annual and special messages to Congress, the president may propose legislation he believes is necessary. If Congress should adjourn without acting on those proposals, the president has the power to call it into special session. But beyond this official role, the president, as head of a political party and as principal executive officer of the U.S. government, is in a position to influence public opinion and thereby to influence the course of legislation in Congress.

To improve their working relationships with Congress, presidents in recent years have set up a Congressional Liaison Office in the White House. Presidential aides keep abreast of all important legislative activities and try to persuade senators and representatives of both parties to support administration policies.

Judicial Powers

Among the president's constitutional powers is that of appointing important public officials. Presidential nomination of federal judges, including members of the Supreme Court, is subject to confirmation by the Senate. Another significant power is that of granting a full or conditional pardon to anyone convicted of breaking a federal law — except in a case of impeachment. The pardoning power has come to embrace the power to shorten prison terms and reduce fines.

Powers in Foreign Affairs

Under the Constitution, the president is the federal official primarily responsible for the relations of the United States with foreign nations. The president appoints ambassadors, ministers, and consuls — subject to confirmation by the Senate — and receives foreign ambassadors and other public officials. With the secretary of state, the president manages all official contacts with foreign governments. On occasion, the president may personally participate in summit conferences where chiefs of state meet for direct consultation. Thus, President Woodrow Wilson headed the American delegation to the Paris conference at the end of World War I; President Franklin D. Roosevelt met with Allied leaders during World War II; and every president since then has sat down with world leaders to discuss economic and political issues and to reach bilateral and multilateral agreements.

Through the Department of State, the president is responsible for the protection of Americans abroad and of foreign nationals in the United States. The president decides whether to recognize new nations and new

governments, and negotiate treaties with other nations, which become binding on the United States when approved by two-thirds of the Senate. The president may also negotiate "executive agreements" with foreign powers that are not subject to Senate confirmation.

Constraints on Presidential Power

Because of the vast array of presidential roles and responsibilities, coupled with a conspicuous presence on the national and international scene, political analysts have tended to place great emphasis on the president's powers. Some have even spoken of the "the imperial presidency," referring to the expanded role of the office that Franklin D. Roosevelt maintained during his term.

One of the first sobering realities a new president discovers is an inherited bureaucratic structure that can be difficult to manage and slow to change direction. The president's power to appoint extends only to some 3,000 people out of a civilian government work force of about 3 million.

The president finds that the machinery of government often operates independently of presidential interventions, has done so through earlier administrations, and will continue to do so in the future. New presidents are immediately confronted with a backlog of decisions from the outgoing administration. They inherit a budget formulated and enacted into law long before they came to office, as well as major spending programs (such as veterans' benefits, Social Security payments, and Medicare health insurance for the elderly), which are mandated by law. In foreign affairs, presidents must conform with treaties and informal agreements negotiated by their predecessors in office.

As the happy euphoria of the post-election "honeymoon" dissipates, the new president discovers that Congress has become less cooperative and the media more critical. The president is forced to build at least temporary alliances among diverse, often antagonistic interests — economic, geographic, ethnic, and ideological. Compromises with Congress must be struck if any legislation is to be adopted. "It is very easy to defeat a bill in Congress," lamented President John F. Kennedy. "It is much more difficult to pass one."

Despite these constraints, every president achieves at least some of his legislative goals and prevents by veto the enactment of other laws he believes not to be in the nation's best interests. The president's authority in the conduct of war and peace, including the negotiation of treaties, is substantial. Moreover, the president can use his unique position to articulate ideas and advocate policies, which then have a better chance of entering the public consciousness than those held by his political rivals. President Theodore Roosevelt called this aspect of the presidency "the bully pulpit," for when a president raises an issue, it inevitably becomes subject to public debate. A president's power and influence may be limited, but they are also greater than those of any other American, in or out of office.

The Executive Departments

The day-to-day enforcement and administration of federal laws is in the hands of the various executive departments, created by Congress to deal with specific areas of national and international affairs. The heads of the 14 departments, chosen by the president and approved by the Senate, form a council of advisers generally known as the president's "cabinet." In addition to departments, there are a number of staff organizations grouped into the Executive Office of the President. These include the White House staff, the National Security Council, the Office of Management and Budget, the Council of Economic Advisers, the Office of the U.S. Trade Representative, and the Office of Science and Technology Policy.

The Constitution makes no provision for a presidential cabinet. It does provide that the president may ask opinions, in writing, from the principal officer in each of the executive departments on any subject in their area of responsibility, but it does not name the departments nor describe their duties. Similarly, there are no specific constitutional qualifications for service in the cabinet.

The cabinet developed outside the Constitution as a matter of practical necessity, for even in the days of George Washington, the country's first president, it was impossible for the president to discharge his duties without advice and assistance. Cabinets are what any particular president makes them. Some presidents have relied heavily on them for advice, others lightly, and some few have largely ignored them. Whether or not cabinet members act as advisers, they retain responsibility for directing the activities of the government in specific areas of concern.

Each department has thousands of employees, with offices throughout the country as well as in Washington. The departments are divided into divisions, bureaus, offices, and services, each with specific duties.

Department of Agriculture

The Department of Agriculture (USDA) supports agricultural production to ensure fair prices and stable markets for producers and consumers, works to improve and maintain farm income, and helps to develop and expand markets abroad for agricultural products. The department attempts to curb poverty, hunger, and malnutrition by issuing food stamps to the poor; by sponsoring educational programs on nutrition; and by administering other food assistance programs, primarily for children, expectant mothers, and the elderly. It maintains production capacity by helping landowners protect the soil, water, forests, and other natural resources.

USDA administers rural development, credit, and conservation programs that are designed to implement national growth policies, and it conducts scientific and technological research in all areas of agriculture. Through its inspection and grading services, USDA ensures standards of quality in food offered for sale. The department's Agricultural Research Service works to develop solutions to agricultural problems of high national priority, and it administers the National Agricultural Library to disseminate information to a wide cross-section of users, from research scientists to the general public.

The USDA Foreign Agricultural Service (FAS) serves as an export promotion and service agency for U.S. agriculture, employing specialists abroad who make surveys of foreign agriculture for U.S. farm and business interests. The U.S. Forest Service, also part of the department, administers an extensive network of national forests and wilderness areas.

Department of Commerce

The Department of Commerce serves to promote the nation's international trade, economic growth, and technological advancement. It offers assistance and information to increase U.S. competitiveness in the global marketplace; administers programs to create new jobs and to foster the growth of minority-owned businesses; and provides statistical, economic, and demographic information for business and government planners.

The department comprises a diverse array of agencies. The National Institute of Standards and Technology, for example, promotes economic growth by working with industry to develop and apply technology, measurements, and standards. The National Oceanic and Atmospheric Administration, which includes the National Weather Service, works to improve understanding of the earth's environment and to conserve the nation's coastal and marine resources. The Patent and Trademark Office promotes the progress of science and the useful arts by securing for authors and inventors the exclusive right to their creations and discoveries. The National Telecommunications and Information Administration advises the president on telecommunications policy and works to spur innovation, encourage competition, create jobs, and provide consumers with better quality telecommunications at lower prices.

Department of Defense

Headquartered in the Pentagon, one of the world's largest office buildings, the Department of Defense (DoD)

is responsible for all matters relating to the nation's military security. It provides the military forces of the United States, which consist of about 1 million men and women on active duty. They are backed, in case of emergency, by 1.5 million members of state reserve components, known as the National Guard. In addition, about 730,000 civilian employees serve in the Defense Department in such areas as research, intelligence communications, mapping, and international security affairs. The National Security Agency, which coordinates, directs, and performs highly specialized intelligence activities in support of U.S. government activities, also comes under the direction of the secretary of defense.

The department directs the separately organized military departments of the Army, Navy, Marine Corps, and Air Force, as well as the four military service academies and the National War College, the Joint Chiefs of Staff, and several specialized combat commands. DoD maintains forces overseas to meet treaty commitments, to protect the nation's outlying territories and commerce, and to provide air combat and support forces. Nonmilitary responsibilities include flood control, development of oceanographic resources, and management of oil reserves.

Department of Education

While schools are primarily a local responsibility in the U.S. system of education, the Department of Education provides national leadership to address critical issues in American education and serves as a clearinghouse of information to help state and local decisionmakers improve their schools. The department establishes policy for and administers federal aid-to-education programs, including student loan programs, programs for disadvantaged and disabled students, and vocational programs.

In the 1990s, the Department of Education focused on the following issues: raising standards for all students; improving teaching; involving parents and families in children's education; making schools safe, disciplined, and drug-free; strengthening connections between school and work; increasing access to financial aid for students to attend college and receive training; and helping all students become technologically literate.

Department of Energy

Growing concern with the nation's energy problems in the 1970s prompted Congress to create the Department of Energy (DOE). The department took over the functions of several government agencies already engaged in the energy field. Staff offices within DOE are responsible for the research, development, and demonstration of energy technology; energy conservation; civilian and military use of nuclear energy; regulation of energy production and use; pricing and allocation of oil; and a central energy data collection and analysis program.

The Department of Energy protects the nation's environment by setting standards to minimize the harmful effects of energy production. For example, DOE conducts environmental and health related research, such as studies of energy-related pollutants and their effects on biological systems.

Department of Health and Human Services

The Department of Health and Human Services (HHS), which oversees some 300 programs, probably directly touches the lives of more Americans than any other federal agency. Its largest component, the Health Care Financing Administration, administers the Medicare and Medicaid programs, which provide health care coverage to about one in every five Americans. Medicare provides health insurance for 30 million elderly and disabled Americans. Medicaid, a joint federal-state program, provides health coverage for 31 million low-income persons, including 15 million children.

HHS also administers the National Institutes of Health (NIH), the world's premier medical research organization, supporting some 30,000 research projects in diseases like cancer, Alzheimer's, diabetes, arthritis, heart ailments, and AIDS. Other HHS agencies ensure the safety and effectiveness of the nation's food supply

and drugs; work to prevent outbreaks of communicable diseases; provide health services to the nation's American Indian and Alaska Native populations; and help to improve the quality and availability of substance abuse prevention, addiction treatment, and mental health services.

Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) manages programs that assist community development and help provide affordable housing for the nation. Fair housing laws, administered by HUD, are designed to ensure that individuals and families can buy a home without being subjected to discrimination. HUD directs mortgage insurance programs that help families become homeowners, and a rent-subsidy program for low-income families that otherwise could not afford decent housing. In addition, it operates programs that aid neighborhood rehabilitation, preserve urban centers from blight, and encourage the development of new communities. HUD also protects the home buyer in the marketplace and fosters programs to stimulate the housing industry.

Department of the Interior

As the nation's principal conservation agency, the Department of the Interior is responsible for most of the federally owned public lands and natural resources in the United States. The U.S. Fish and Wildlife Service administers 500 wildlife refuges, 37 wetland management districts, 65 national fish hatcheries, and a network of wildlife law enforcement agents. The National Park Service administers more than 370 national parks and monuments, scenic parkways, riverways, seashores, recreation areas, and historic sites, through which it preserves America's natural and cultural heritage.

Through the Bureau of Land Management, the department oversees the land and resources — from rangeland vegetation and recreation areas to timber and oil production — of millions of hectares of public land located primarily in the West. The Bureau of Reclamation manages scarce water resources in the semiarid western United States. The department regulates mining in the United States, assesses mineral resources, and has major responsibility for protecting and conserving the trust resources of American Indian and Alaska Native tribes. Internationally, the department coordinates federal policy in the territories of the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, and oversees funding for development in the Marshall Islands, the Federated States of Micronesia, and Palau.

Department of Justice

The Department of Justice represents the U.S. government in legal matters and courts of law, and renders legal advice and opinions upon request to the president and to the heads of the executive departments. The Justice Department is headed by the attorney general of the United States, the chief law enforcement officer of the federal government. Its Federal Bureau of Investigation (FBI) is the principle law enforcement body for federal crimes, and its Immigration and Naturalization Service (INS) administers immigration laws. A major agency within the department is the Drug Enforcement Administration (DEA), which enforces narcotics and controlled substances laws, and tracks down major illicit drug trafficking organizations.

In addition to giving aid to local police forces, the department directs U.S. district attorneys and marshals throughout the country, supervises federal prisons and other penal institutions, and investigates and reports to the president on petitions for paroles and pardons. The Justice Department is also linked to INTERPOL, the International Criminal Police Organization, charged with promoting mutual assistance between law enforcement agencies in 176 member countries.

Department of Labor

The Department of Labor promotes the welfare of wage earners in the United States, helps improve working

conditions, and fosters good relations between labor and management. It administers federal labor laws through such agencies as the Occupational Safety and Health Administration, the Employment Standards Administration, and the Mine Safety and Health Administration. These laws guarantee workers' rights to safe and healthy working conditions, hourly wages and overtime pay, freedom from employment discrimination, unemployment insurance, and workers' compensation for on-the-job injury. The Department also protects workers' pension rights, sponsors job training programs, and helps workers find jobs. Its Bureau of Labor Statistics monitors and reports changes in employment, prices, and other national economic measurements. For job seekers, the department makes special efforts to help older workers, youths, minorities, women, and the disabled.

Department of State

The Department of State advises the president, who has overall responsibility for formulating and executing the foreign policy of the United States. The department assesses American overseas interests, makes recommendations on policy and future action, and takes necessary steps to carry out established policy. It maintains contacts and relations between the United States and foreign countries, advises the president on recognition of new foreign countries and governments, negotiates treaties and agreements with foreign nations, and speaks for the United States in the United Nations and in other major international organizations. The department maintains more than 250 diplomatic and consular posts around the world. In 1999, the Department of State integrated the U.S. Arms Control and Disarmament Agency and the U.S. Information Agency into its structure and mission.

Department of Transportation

The Department of Transportation (DOT) establishes the nation's overall transportation policy through 10 operating units that encompass highway planning, development, and construction; urban mass transit; railroads; civilian aviation; and the safety of waterways, ports, highways, and oil and gas pipelines.

For example, the Federal Aviation Administration (FAA) operates a network of airport towers, air traffic control centers, and flight service stations across the country; the Federal Highway Administration provides financial assistance to the states to improve the interstate highway system, urban and rural roads, and bridges; the National Highway Traffic Safety Administration establishes safety performance standards for motor vehicles and motor vehicle equipment; and the Maritime Administration operates the U.S. merchant marine fleet. The U.S. Coast Guard, the nation's primary maritime law enforcement and licensing agency, conducts search and rescue missions at sea, combats drug smuggling, and works to prevent oil spills and ocean pollution.

Department of the Treasury

The Department of the Treasury is responsible for serving the fiscal and monetary needs of the nation. The department performs four basic functions: formulating financial, tax, and fiscal policies; serving as financial agent for the U.S. government; providing specialized law enforcement services; and manufacturing coins and currency. The Treasury Department reports to Congress and the president on the financial condition of the government and the national economy. It regulates the sale of alcohol, tobacco, and firearms in interstate and foreign commerce; supervises the printing of stamps for the U.S. Postal Service; operates the Secret Service, which protects the president, the vice president, their families, and visiting dignitaries and heads of state; suppresses counterfeiting of U.S. currency and securities; and administers the Customs Service, which regulates and taxes the flow of goods into the country.

The department includes the Office of the Comptroller of the Currency, the Treasury official who executes the laws governing the operation of approximately 2,900 national banks. The Internal Revenue Service (IRS) is responsible for the determination, assessment, and collection of taxes — the source of most of the federal

government's revenue.

Department of Veterans Affairs

The Department of Veterans Affairs (VA), established as an independent agency in 1930 and elevated to cabinet level in 1989, dispenses benefits and services to eligible veterans of U.S. military service and their dependents. The Veterans Health Administration provides hospital and nursing-home care, and outpatient medical and dental services through 173 medical centers, 40 retirement homes, 600 clinics, 133 nursing homes, and 206 Vietnam Veteran Outreach Centers in the United States, Puerto Rico, and the Philippines. It also conducts medical research in such areas as aging, women's health issues, AIDS, and post-traumatic stress disorder.

The Veterans Benefits Administration (VBA) oversees claims for disability payments, pensions, specially adapted housing, and other services. The VBA also administers education programs for veterans and provides home loan assistance to eligible veterans and active-duty service personnel. The VA's National Cemetery System provides burial services, headstones, and markers for veterans and eligible family members within 116 cemeteries throughout the United States.

The Independent Agencies

The executive departments are the major operating units of the federal government, but many other agencies have important responsibilities for keeping the government and the economy working smoothly. These are often called independent agencies, since they are not part of the executive departments.

The nature and purpose of these agencies vary widely. Some are regulatory groups with powers to supervise certain sectors of the economy. Others provide special services either to the government or to the people. In most cases, the agencies have been created by Congress to deal with matters that have become too complex for the scope of ordinary legislation. In 1970, for example, Congress established the Environmental Protection Agency to coordinate governmental action to protect the environment. Among the most important independent agencies are the following:

The Central Intelligence Agency (CIA) coordinates the intelligence activities of certain government departments and agencies; collects, correlates, and evaluates intelligence information relating to national security; and makes recommendations to the National Security Council within the Office of the President.

The Environmental Protection Agency (EPA) works with state and local governments throughout the United States to control and abate pollution in the air and water and to deal with problems related to solid waste, pesticides, radiation, and toxic substances. EPA sets and enforces standards for air and water quality, evaluates the impact of pesticides and chemical substances, and manages the "Superfund" program for cleaning toxic waste sites.

The Federal Communications Commission (FCC) is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. It licenses radio and television broadcast stations, assigns radio frequencies, and enforces regulations designed to ensure that cable rates are reasonable. The FCC regulates common carriers, such as telephone and telegraph companies, as well as wireless telecommunications service providers.

The Federal Emergency Management Agency (FEMA) coordinates the work of federal, state, and local agencies in responding to floods, hurricanes, earthquakes, and other natural disasters. FEMA provides financial assistance to individuals and governments to rebuild homes, businesses, and public facilities; trains firefighters and emergency medical professionals; and funds emergency planning throughout the United States and its territories.

The Federal Reserve Board is the governing body of the Federal Reserve System, the central bank of the United States. It conducts the nation's monetary policy by influencing the volume of credit and money in circulation. The Federal Reserve regulates private banking institutions, works to contain systemic risk in financial markets, and provides certain financial services to the U.S. government, the public, and financial institutions.

The Federal Trade Commission(FTC) enforces federal antitrust and consumer protection laws by investigating complaints against individual companies initiated by consumers, businesses, congressional inquiries, or reports in the media. The commission seeks to ensure that the nation's markets function competitively by eliminating unfair or deceptive practices.

The General Services Administration (GSA) is responsible for the purchase, supply, operation, and maintenance of federal property, buildings, and equipment, and for the sale of surplus items. GSA also manages the federal motor vehicle fleet and oversees telecommuting centers and child care centers.

The National Aeronautics and Space Administration (NASA) was established in 1958 to run the U.S. space program. It placed the first American satellites and astronauts in orbit, and it launched the Apollo spacecraft that landed men on the moon in 1969. Today, NASA conducts research aboard earth-orbiting satellites and interplanetary probes, explores new concepts in advanced aerospace technology, and operates the U.S. fleet of manned space shuttle orbiters.

The National Archives and Records Administration (NARA) preserves the nation's history by overseeing the management of all federal records. The holdings of the National Archives include original textual materials, motion picture films, sound and video recordings, maps, still pictures, and computer data. The Declaration of Independence, the U.S. Constitution, and the Bill of Rights are preserved and displayed at the National Archives building in Washington, D.C.

The National Labor Relations Board (NLRB) administers the principal U.S. labor law, the National Labor Relations Act. The board is vested with the power to prevent or remedy unfair labor practices and to safeguard employees' rights to organize and determine through elections whether to have a union as their bargaining representative.

The National Science Foundation (NSF) supports basic research and education in science and engineering in the United States through grants, contracts, and other agreements awarded to universities, colleges, and nonprofit and small business institutions. The NSF encourages cooperation among universities, industry, and government, and it promotes international cooperation through science and engineering.

The Office of Personnel Management (OPM) is the federal government's human resources agency. It ensures that the nation's civil service remains free of political influence and that federal employees are selected and treated fairly and on the basis of merit. OPM supports agencies with personnel services and policy leadership, and it manages the federal retirement system and health insurance program.

The Peace Corps, founded in 1961, trains and places volunteers to serve in foreign countries for two years. Peace Corps volunteers, now working in some 80 nations, assist in agricultural-rural development, small business, health, natural resources conservation, and education.

The Securities and Exchange Commission (SEC) was established to protect investors who buy stocks and bonds. Federal laws require companies that plan to raise money by selling their own securities to file reports about their operations with the SEC, so that investors have access to all material information. The commission has powers to prevent or punish fraud in the sale of securities and is authorized to regulate stock exchanges.

The Small Business Administration (SBA) was created in 1953 to advise, assist, and protect the interests of

small business concerns. The SBA guarantees loans to small businesses, aids victims of floods and other natural disasters, promotes the growth of minority-owned firms, and helps secure contracts for small businesses to supply goods and services to the federal government.

The Social Security Administration (SSA) manages the nation's social insurance program, consisting of retirement, disability, and survivors benefits. To qualify for these benefits, most American workers pay Social Security taxes on their earnings; future benefits are based on the employees' contributions.

The United States Agency for International Development (USAID) administers U.S. foreign economic and humanitarian assistance programs in the developing world, as well as in Central and Eastern Europe and the New Independent States of the former Soviet Union. The agency supports programs in four areas — population and health, broad-based economic growth, environment, and democracy.

The United States Postal Service is operated by an autonomous public corporation that replaced the Post Office Department in 1971. The Postal Service is responsible for the collection, transportation, and delivery of the mails, and for the operation of thousands of local post offices across the country. It also provides international mail service through the Universal Postal Union and other agreements with foreign countries. An independent Postal Rate Commission, also created in 1971, sets the rates for different classes of mail.

The Presidency

Term of Office: Elected by the people, through the electoral college, to a four-year term; limited to two terms.

Salary: $400,000 per year as of January 20, 2001.

Inauguration: January 20, following the November general election.

Qualifications: Native-born American citizen, at least 35 years old, and at least 14 years a resident of the United States.

Chief Duty: To protect the Constitution and enforce the laws made by the Congress.

Other Powers: To recommend legislation to the Congress; to call special sessions of the Congress; to deliver messages to the Congress; to sign or veto legislation; to appoint federal judges; to appoint heads of federal departments and agencies and other principal federal officials; to appoint representatives to foreign countries; to carry on official business with foreign nations; to exercise the function of commander-in-chief of the armed forces; to grant pardons for offenses against the United States.

THE CABINET

All departments are headed by a secretary, except the Department of Justice, which is headed by the attorney general.

Department of Agriculture: Created in 1862.

Department of Commerce: Created in 1903. The Department of Commerce and Labor split into two separate departments in 1913.

Department of Defense: Amalgamated in 1947. The Department of Defense was established by combining the Department of War (established in 1789), the Department of the Navy (established in 1798), and the Department of the Air Force (established in 1947). Although the secretary of defense is a member of the cabinet, the secretaries of the Army, Navy, and Air Force are not.

Department of Education: Created in 1979. Formerly part of the Department of Health, Education, and Welfare.

Department of Energy: Created in 1977.

Department of Health and Human Services: Created in 1979, when the Department of Health, Education, and Welfare (created in 1953) was split into separate entities.

Department of Housing and Urban Development: Created in 1965.

Department of the Interior: Created in 1849.

Department of Justice: Created in 1870. Between 1789 and 1870, the attorney general was a member of the cabinet, but not the head of a department.

Department of Labor: Created in 1913.

Department of State: Created in 1789.

Department of Transportation: Created in 1966.

Department of the Treasury: Created in 1789.

Department of Veterans Affairs: Created in 1989, when the Veterans Administration was elevated to cabinet level.

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Outline of U.S. Government: Chapter 4

日本語

The Legislative Branch: The Reach of Congress

"Government implies the power of making laws."

— Alexander Hamilton, The Federalist Papers, 1787-1788

Article I of the Constitution grants all legislative powers of the federal government to a Congress divided into two chambers, a Senate and a House of Representatives. The Senate is composed of two members from each state as provided by the Constitution. Its current membership is 100. Membership in the House is based on each state's population, and its size is therefore not specified in the Constitution. Its current membership is 435.

For more than 100 years after the adoption of the Constitution, senators were not elected by direct vote of the people but chosen by state legislatures and looked on as representatives of their home states. Their duty was to ensure that their states were treated equally in all legislation. The Seventeenth Amendment, adopted in 1913, provided for direct election of the Senate.

The delegates to the Constitutional Convention reasoned that if two separate groups — one representing state governments and one representing the people — must both approve every proposed law, there would be little danger of Congress passing laws hurriedly or carelessly. One house could always check the other in the manner of the British Parliament. Passage of the Seventeenth Amendment did not substantially alter this balance of power between the two houses.

While there was intense debate in the convention over the makeup and powers of Congress, many delegates believed that the legislative branch would be relatively unimportant. A few believed that the Congress would

concern itself largely with external affairs, leaving domestic matters to state and local governments. These views were clearly mistaken. The Congress has proved to be exceedingly active, with broad powers and authority in all matters of national concern. While its strength vis-à-vis the executive branch has waxed and waned at different periods of American history, the Congress has never been a rubber stamp for presidential decisions.

Qualifications of Members of Congress

The Constitution requires that U.S. senators must be at least 30 years of age, citizens of the United States for at least nine years, and residents of the states from which they are elected. Members of the House of Representatives must be at least 25, citizens for seven years, and residents of the states from which they are elected. The states may set additional requirements for election to Congress, but the Constitution gives each house the power to determine the qualifications of its members. Each state is entitled to two senators. Thus, Rhode Island, the smallest state, with an area of about 3,156 square kilometers, has the same senatorial representation as Alaska, the biggest state, with an area of some 1,524,640 square kilometers. Wyoming, with an estimated 480,000 persons, has representation equal to that of California, with its population of 32,270,000.

The total number of members of the House of Representatives has been determined by Congress. That number is divided among the states according to their populations. Regardless of its population, every state is constitutionally guaranteed at least one member of the House. At present, seven states — Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming — have only one representative. On the other hand, six states have more than 20 representatives — California alone has 52.

The Constitution provides for a national census each 10 years and a redistribution of House seats according to population shifts. Under the original constitutional provision, the number of representatives was to be no more than one for each 30,000 citizens. There were 65 members in the first House, and the number was increased to 106 after the first census. Had the 1-to-30,000 formula been adhered to permanently, population growth in the United States would have brought the total number of representatives to about 7,000. Instead, the formula has been adjusted over the years, and today the ratio of representatives to people is about 1-to-600,000.

State legislatures divide the states into congressional districts, which must be substantially equal in population. Every two years, the voters of each district choose a representative for Congress.

Senators are chosen in statewide elections held in even-numbered years. The senatorial term is six years, and every two years one-third of the Senate stands for election. Hence, two-thirds of the senators are always persons with some legislative experience at the national level.

It is theoretically possible for the House to be composed entirely of legislative novices. In practice, however, most members are reelected several times, and the House, like the Senate, can always count on a core group of experienced legislators.

Since members of the House serve two-year terms, the life of a Congress is considered to be two years. The Twentieth Amendment to the U.S. Constitution provides that the Congress will convene in regular session each January 3, unless Congress fixes a different date. The Congress remains in session until its members vote to adjourn — usually late in the year. The president may call a special session when he thinks it necessary. Sessions are held in the Capitol building in Washington, D.C.

Powers of the House and Senate

Each house of Congress has the power to introduce legislation on any subject except raising revenue, which must originate in the House of Representatives. The large states may thus appear to have more influence over

the public purse than the small states. In practice, however, each house can vote against legislation passed by the other house. The Senate may disapprove a House revenue bill — or any bill, for that matter — or add amendments that change its nature. In that event, a conference committee made up of members from both houses must work out a compromise acceptable to both sides before the bill becomes law.

The Senate also has certain powers especially reserved to that body, including the authority to confirm presidential appointments of high officials and ambassadors of the federal government, as well as authority to ratify all treaties by a two-thirds vote. In either instance, a negative vote in the Senate nullifies executive action.

In the case of impeachment of federal officials, the House has the sole right to bring charges of misconduct that can lead to an impeachment trial. The Senate has the sole power to try impeachment cases and to find officials guilty or not guilty. A finding of guilt results in the removal of the federal official from public office.

The broad powers of the whole Congress are spelled out in Article I of the Constitution:

— To levy and collect taxes;
— To borrow money for the public treasury;
— To make rules and regulations governing commerce among the states and with foreign countries;
— To make uniform rules for the naturalization of foreign citizens;
— To coin money, state its value, and provide for the punishment of counterfeiters;
— To set the standards for weights and measures;
— To establish bankruptcy laws for the country as a whole;
— To establish post offices and post roads;
— To issue patents and copyrights;
— To set up a system of federal courts;
— To punish piracy;
— To declare war;
— To raise and support armies;
— To provide for a navy;
— To call out the militia to enforce federal laws, suppress lawlessness, or repel invasions;
— To make all laws for the seat of government (Washington, D.C.);
— To make all laws necessary to enforce the Constitution.

A few of these powers are now outdated, but they remain in effect. The Tenth Amendment sets definite limits on congressional authority, by providing that powers not delegated to the national government are reserved to the states or to the people. In addition, the Constitution specifically forbids certain acts by Congress. It may not:

— Suspend the writ of habeas corpus — a requirement that those accused of crimes be brought before a judge or court before being imprisoned — unless necessary in time of rebellion or invasion;
— Pass laws that condemn persons for crimes or unlawful acts without a trial;
— Pass any law that retroactively makes a specific act a crime;
— Levy direct taxes on citizens, except on the basis of a census already taken;
— Tax exports from any one state;
— Give specially favorable treatment in commerce or taxation to the seaports of any state or to the vessels using them;
— Authorize any titles of nobility.

Officers of the Congress

The Constitution provides that the vice president shall be president of the Senate. The vice president has no

vote, except in the case of a tie. The Senate chooses a president pro tempore to preside when the vice president is absent. The House of Representatives chooses its own presiding officer — the Speaker of the House. The speaker and the president pro tempore are always members of the political party with the largest representation in each house.

At the beginning of each new Congress, members of the political parties select floor leaders and other officials to manage the flow of proposed legislation. These officials, along with the presiding officers and committee chairpersons, exercise strong influence over the making of laws.

The Committee Process

One of the major characteristics of the Congress is the dominant role committees play in its proceedings. Committees have assumed their present-day importance by evolution, not by constitutional design, since the Constitution makes no provision for their establishment.

At present the Senate has 17 standing (or permanent) committees; the House of Representatives has 19 committees. Each specializes in specific areas of legislation: foreign affairs, defense, banking, agriculture, commerce, appropriations, and other fields. Almost every bill introduced in either house is referred to a committee for study and recommendation. The committee may approve, revise, kill, or ignore any measure referred to it. It is nearly impossible for a bill to reach the House or Senate floor without first winning committee approval. In the House, a petition to release a bill from a committee to the floor requires the signatures of 218 members; in the Senate, a majority of all members is required. In practice, such discharge motions only rarely receive the required support.

The majority party in each house controls the committee process. Committee chairpersons are selected by a caucus of party members or specially designated groups of members. Minority parties are proportionally represented on the committees according to their strength in each house.

Bills are introduced by a variety of methods. Some are drawn up by standing committees; some by special committees created to deal with specific legislative issues; and some may be suggested by the president or other executive officers. Citizens and organizations outside the Congress may suggest legislation to members, and individual members themselves may initiate bills. After introduction, bills are sent to designated committees that, in most cases, schedule a series of public hearings to permit presentation of views by persons who support or oppose the legislation. The hearing process, which can last several weeks or months, opens the legislative process to public participation.

One virtue of the committee system is that it permits members of Congress and their staffs to amass a considerable degree of expertise in various legislative fields. In the early days of the republic, when the population was small and the duties of the federal government were narrowly defined, such expertise was not as important. Each representative was a generalist and dealt knowledgeably with all fields of interest. The complexity of national life today calls for special knowledge, which means that elected representatives often acquire expertise in one or two areas of public policy.

When a committee has acted favorably on a bill, the proposed legislation is then sent to the floor for open debate. In the Senate, the rules permit virtually unlimited debate. In the House, because of the large number of members, the Rules Committee usually sets limits. When debate is ended, members vote either to approve the bill, defeat it, table it — which means setting it aside and is tantamount to defeat — or return it to committee. A bill passed by one house is sent to the other for action. If the bill is amended by the second house, a conference committee composed of members of both houses attempts to reconcile the differences.

Once passed by both houses, the bill is sent to the president, for constitutionally the president must act on a bill for it to become law. The president has the option of signing the bill — by which it becomes law — or

vetoing it. A bill vetoed by the president must be reapproved by a two-thirds vote of both houses to become law.

The president may also refuse either to sign or veto a bill. In that case, the bill becomes law without his signature 10 days after it reaches him (not counting Sundays). The single exception to this rule is when Congress adjourns after sending a bill to the president and before the 10-day period has expired; his refusal to take any action then negates the bill — a process known as the "pocket veto."

Congressional Powers of Investigation

One of the most important nonlegislative functions of the Congress is the power to investigate. This power is usually delegated to committees — either to the standing committees, to special committees set up for a specific purpose, or to joint committees composed of members of both houses. Investigations are conducted to gather information on the need for future legislation, to test the effectiveness of laws already passed, to inquire into the qualifications and performance of members and officials of the other branches, and, on rare occasions, to lay the groundwork for impeachment proceedings. Frequently, committees call on outside experts to assist in conducting investigative hearings and to make detailed studies of issues.

There are important corollaries to the investigative power. One is the power to publicize investigations and their results. Most committee hearings are open to the public and are widely reported in the mass media. Congressional investigations thus represent one important tool available to lawmakers to inform the citizenry and arouse public interest in national issues. Congressional committees also have the power to compel testimony from unwilling witnesses and to cite for contempt of Congress witnesses who refuse to testify and for perjury those who give false testimony.

Informal Practices of Congress

In contrast to European parliamentary systems, the selection and behavior of U.S. legislators has little to do with central party discipline. Each of the major American political parties is a coalition of local and state organizations that join together as a national party — Republican or Democratic — during the presidential elections at four-year intervals. Thus the members of Congress owe their positions to their local or state electorate, not to the national party leadership nor to their congressional colleagues. As a result, the legislative behavior of representatives and senators tends to be individualistic and idiosyncratic, reflecting the great variety of electorates represented and the freedom that comes from having built a loyal personal constituency.

Congress is thus a collegial and not a hierarchical body. Power does not flow from the top down, as in a corporation, but in practically every direction. There is only minimal centralized authority, since the power to punish or reward is slight. Congressional policies are made by shifting coalitions that may vary from issue to issue. Sometimes, where there are conflicting pressures — from the White House and from important economic or ethnic groups — legislators will use the rules of procedure to delay a decision so as to avoid alienating an influential sector. A matter may be postponed on the grounds that the relevant committee held insufficient public hearings. Or Congress may direct an agency to prepare a detailed report before an issue is considered. Or a measure may be put aside ("tabled") by either house, thus effectively defeating it without rendering a judgment on its substance.

There are informal or unwritten norms of behavior that often determine the assignments and influence of a particular member. "Insiders," representatives and senators who concentrate on their legislative duties, may be more powerful within the halls of Congress than "outsiders," who gain recognition by speaking out on national issues. Members are expected to show courtesy toward their colleagues and to avoid personal attacks, no matter how unpalatable their opponents' policies may be. Members are also expected to specialize in a few policy areas rather than claim expertise in the whole range of legislative concerns. Those who conform to these informal rules are more likely to be appointed to prestigious committees or at least to

committees that affect the interests of a significant portion of their constituents.

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The Judicial Branch: Interpreting the Constitution

"... the judiciary is the safeguard of our liberty and of our property under the Constitution."

— Charles Evans Hughes, Chief Justice of the U.S. Supreme Court, Speech at Elmira, New York, 1907

The third branch of the federal government, the judiciary, consists of a system of courts spread throughout the country, headed by the Supreme Court of the United States.

A system of state courts existed before the Constitution was drafted. There was considerable controversy among the delegates to the Constitutional Convention as to whether a federal court system was needed, and whether it should supplant the state courts. As in other matters under debate, the delegates reached a compromise in which the state courts continued their jurisdiction while the Constitution mandated a federal judiciary with limited power. Article III of the Constitution states the basis for the federal court system: "The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish."

The Federal Court System

With this guide, the first Congress divided the nation into districts and created federal courts for each district. From that beginning has evolved the present structure: the Supreme Court, 13 courts of appeals, 94 district courts, and two courts of special jurisdiction. Congress today retains the power to create and abolish federal courts, as well as to determine the number of judges in the federal judiciary system. It cannot, however, abolish the Supreme Court.

The judicial power extends to cases arising under the Constitution, an act of Congress, or a treaty of the United States; cases affecting ambassadors, ministers, and consuls of foreign countries in the United States; controversies in which the U.S. government is a party; controversies between states (or their citizens) and foreign nations (or their citizens or subjects); and bankruptcy cases. The Eleventh Amendment removed from federal jurisdiction cases in which citizens of one state were the plaintiffs and the government of another state was the defendant. It did not disturb federal jurisdiction in cases in which a state government is a plaintiff and a citizen of another state the defendant.

The power of the federal courts extends both to civil actions for damages and other redress, and to criminal cases arising under federal law. Article III has resulted in a complex set of relationships between state and federal courts. Ordinarily, federal courts do not hear cases arising under the laws of individual states. However, some cases over which federal courts have jurisdiction may also be heard and decided by state courts. Both court systems thus have exclusive jurisdiction in some areas and concurrent jurisdiction in others.

The Constitution safeguards judicial independence by providing that federal judges shall hold office "during good behavior" — in practice, until they die, retire, or resign, although a judge who commits an offense while in office may be impeached in the same way as the president or other officials of the federal government. U.S. judges are appointed by the president and confirmed by the Senate. Congress also determines the pay scale of judges.

The Supreme Court

The Supreme Court is the highest court of the United States, and the only one specifically created by the Constitution. A decision of the Supreme Court cannot be appealed to any other court. Congress has the power to fix the number of judges sitting on the Court and, within limits, decide what kind of cases it may hear, but it cannot change the powers given to the Supreme Court by the Constitution itself.

The Constitution is silent on the qualifications for judges. There is no requirement that judges be lawyers, although, in fact, all federal judges and Supreme Court justices have been members of the bar.

Since the creation of the Supreme Court almost 200 years ago, there have been slightly more than 100 justices. The original Court consisted of a chief justice and five associate justices. For the next 80 years, the number of justices varied until, in 1869, the complement was fixed at one chief justice and eight associates. The chief justice is the executive officer of the Court but, in deciding cases, has only one vote, as do the associate justices.

The Supreme Court has original jurisdiction in only two kinds of cases: those involving foreign dignitaries and those in which a state is a party. All other cases reach the Court on appeal from lower courts.

Of the several thousand cases filed annually, the Court usually hears only about 150. Most of the cases involve interpretation of the law or of the intent of Congress in passing a piece of legislation. A significant amount of the work of the Supreme Court, however, consists of determining whether legislation or executive acts conform to the Constitution. This power of judicial review is not specifically provided for by the Constitution. Rather, it is doctrine inferred by the Court from its reading of the Constitution, and forcefully stated in the landmark Marbury v. Madison case of 1803. In its decision in that case, the Court held that "a legislative act contrary to the Constitution is not law," and further observed that "it is emphatically the province and duty of the judicial department to say what the law is." The doctrine has also been extended to cover the activities of state and local governments.

Decisions of the Court need not be unanimous; a simple majority prevails, provided at least six justices — the legal quorum — participate in the decision. In split decisions, the Court usually issues a majority and a

minority — or dissenting — opinion, both of which may form the basis for future decisions by the Court. Often justices will write separate concurring opinions when they agree with a decision, but for reasons other than those cited by the majority.

Courts of Appeal and District Courts

The second highest level of the federal judiciary is made up of the courts of appeals, created in 1891 to facilitate the disposition of cases and ease the burden on the Supreme Court. Congress has established 12 regional circuit courts of appeal and the U.S. Court of Appeals for the Federal Circuit. The number of judges sitting on each of these courts varies considerably (from 6 to 28), but most circuits have between 10 and 15 judges.

The courts of appeals review decisions of the district courts (trial courts with federal jurisdiction) within their areas. They also are empowered to review orders of the independent regulatory agencies in cases where the internal review mechanisms of the agencies have been exhausted and there still exists substantial disagreement over legal points. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the courts of special jurisdiction, the Court of International Trade and the Court of Federal Claims.

Below the courts of appeals are the district courts. The 50 states and U.S. territories are divided into 94 districts so that litigants may have a trial within easy reach. Each district court has at least two judges, many have several judges, and the most populous districts have more than two dozen. Depending on case load, a judge from one district may temporarily sit in another district. Congress fixes the boundaries of the districts according to population, size, and volume of work. Some of the smaller states constitute a district by themselves, while the larger states, such as New York, California, and Texas, have four districts each.

Except in the District of Columbia, judges must be residents of the district in which they permanently serve. District courts hold their sessions at periodic intervals in different cities of the district.

Most cases and controversies heard by these courts involve federal offenses such as misuse of the mails, theft of federal property, and violations of pure-food, banking, and counterfeiting laws. These are the only federal courts where grand juries indict those accused of crimes, and juries decide the cases.

Each judicial district also includes a U.S. bankruptcy court, because Congress has determined that bankruptcy matters should be addressed in federal courts rather than state courts. Through the bankruptcy process, individuals or businesses that can no longer pay their creditors may either seek a court-supervised liquidation of their assets, or they may reorganize their financial affairs and work out a plan to pay off their debts.

Special Courts

In addition to the federal courts of general jurisdiction, it has been necessary from time to time to set up courts for special purposes. These are known as "legislative" courts because they were created by congressional action. Judges in these courts, like their peers in other federal courts, are appointed for life terms by the president, with Senate approval.

Today, there are two special trial courts that have nationwide jurisdiction over certain types of cases. The Court of International Trade addresses cases involving international trade and customs issues. The U.S. Court of Federal Claims has jurisdiction over most claims for money damages against the United States, disputes over federal contracts, unlawful "takings" of private property by the federal government, and a variety of other claims against the United States.

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Landmark Decisions of the Supreme Court

"The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."

— Louis D. Brandeis, Associate Justice of the U.S. Supreme Court, Burnet v. Coronado Oil and Gas Co., 1932

Since the U.S. Supreme Court first convened in 1790, it has rendered thousands of opinions on everything from the powers of government to civil rights and freedom of the press. Although many of these decisions are little known and of little interest to the general public, several stand out because of the impact they have had on American history. A few of the most significant cases are summarized here.

Marbury v. Madison (1803)

Often called the most important decision in the history of the Supreme Court, Marbury v. Madison established the principle of judicial review and the power of the Court to determine the constitutionality of legislative and executive acts.

The case arose from a political dispute in the aftermath of the presidential election of 1800 in which Thomas Jefferson, a Democratic-Republican, defeated the incumbent president, John Adams, a Federalist. In the closing days of Adams's administration, the Federalist-dominated Congress created a number of judicial positions, including 42 justices of the peace for the District of Columbia. The Senate confirmed the appointments, the president signed them, and it was the responsibility of the secretary of state to seal the commissions and deliver them. In the rush of last-minute activities, the outgoing secretary of state failed to

deliver commissions to four justices of the peace, including William Marbury.

The new secretary of state under President Jefferson, James Madison, refused to deliver the commissions because the new administration was angry that the Federalists had tried to entrench members of their party in the judiciary. Marbury brought suit in the Supreme Court to order Madison to deliver his commission.

If the Court sided with Marbury, Madison might still have refused to deliver the commission, and the Court had no way to enforce the order. If the Court ruled against Marbury, it risked surrendering judicial power to the Jeffersonians by allowing them to deny Marbury the office he was legally entitled to. Chief Justice John Marshall resolved this dilemma by ruling that the Supreme Court did not have authority to act in this case. Marshall stated that Section 13 of the Judiciary Act, which gave the Court that power, was unconstitutional because it enlarged the Court's original jurisdiction from the jurisdiction defined by the Constitution itself. By deciding not to decide in this case, the Supreme Court secured its position as the final arbiter of the law.

Gibbons v. Ogden (1824)

The first government of the United States under the Articles of Confederation was weak partly because it lacked the power to regulate the new nation's economy, including the flow of interstate commerce. The Constitution gave the U.S. Congress the power "to regulate commerce...among the several states....," but that authority was challenged frequently by states that wanted to retain control over economic matters.

In the early 1800s, the state of New York passed a law that required steamboat operators who traveled between New York and New Jersey to obtain a license from New York. Aaron Ogden possessed such a license; Thomas Gibbons did not. When Ogden learned that Gibbons was competing with him, and without permission from New York, Ogden sued to stop Gibbons.

Gibbons held a federal license to navigate coastal waters under the Coasting Act of 1793, but the New York State courts agreed with Ogden that Gibbons had violated the law because he did not have a New York State license. When Gibbons took his case to the Supreme Court, however, the justices struck down the New York law as unconstitutional because it infringed on the U.S. Congress's power to regulate commerce. "The word 'to regulate' implies, in its nature, full power over the thing to be regulated," the Court said. Therefore, "it excludes, necessarily, the action of all others that would perform the same operation on the same thing."

Dred Scott v. Sandford (1857)

Dred Scott was a slave whose owner, John Emerson, took him from Missouri, a state that allowed slavery, to Illinois, where slavery was prohibited. Several years later Scott returned to Missouri with Emerson. Scott believed that because he had lived in a free state, he should no longer be considered a slave.

Emerson died in 1843, and three years later Scott sued Emerson's widow for his freedom. Scott won his case in a Missouri court in 1850, but in 1852 the state supreme court reversed the lower court's decision. Meanwhile, Mrs. Emerson remarried, and Scott became the legal property of her brother, John Sanford (misspelled as Sandford in court records). Scott sued Sanford for his freedom in federal court, and the court ruled against Scott in 1854.

When the case went to the Supreme Court, the justices ruled that Scott did not become a free man by virtue of having lived in a free state and that, as a black man, Scott was not a citizen and therefore was not entitled to bring suit in a court of law. The decision was widely criticized, and it contributed to the election of Abraham Lincoln, who opposed slavery, as president in 1860 and hastened the start of the Civil War in 1861. Dred Scott v. Sandford was overturned by the Thirteenth Amendment to the Constitution, which abolished slavery in 1865, and the Fourteenth Amendment, which granted citizenship to former slaves in 1868.

National Labor Relations Board (NLRB) v. Jones & Laughlin Steel Corp. (1937)

While Gibbons v. Ogden established the supremacy of Congress in regulating interstate commerce, NLRB v. Jones & Laughlin extended congressional authority from regulation of commerce itself to regulation of the business practices of industries that engage in interstate commerce.

Jones & Laughlin, one of the nation's largest steel producers, violated the National Labor Relations Act of 1935 by firing 10 employees for engaging in union activities. The act prohibited a variety of unfair labor practices and protected the rights of workers to form unions and to bargain collectively. The company refused to comply with an NLRB order to reinstate the workers. A Circuit Court of Appeals declined to enforce the board's order, and the Supreme Court reviewed the case.

At issue in this case was whether or not Congress had the authority to regulate the "local" activities of companies engaged in interstate commerce — that is, activities that take place within one state. Jones & Laughlin maintained that conditions in its factory did not affect interstate commerce and therefore were not under Congress's power to regulate. The Supreme Court disagreed, stating that "the stoppage of those [manufacturing] operations by industrial strife would have a most serious effect upon interstate commerce.... Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace." By upholding the constitutionality of the National Labor Relations Act, the Supreme Court handed a victory to organized labor and set the stage for more far-reaching regulation of industry by the federal government.

Brown v. Board of Education (1954)

Prior to this historic case, many states and the District of Columbia operated racially segregated school systems under the authority of the Supreme Court's 1896 decision in Plessy v. Ferguson, which allowed segregation if facilities were equal. In 1951 Oliver Brown of Topeka, Kansas, challenged this "separate-but-equal" doctrine when he sued the city school board on behalf of his eight-year-old daughter. Brown wanted his daughter to attend the white school that was five blocks from their home, rather than the black school that was 21 blocks away. Finding the schools substantially equal, a federal court ruled against Brown.

Meanwhile, parents of other black children in South Carolina, Virginia, and Delaware filed similar lawsuits. Delaware's court found the black schools to be inferior to white schools and ordered black children to be transferred to white schools, but school officials appealed the decision to the Supreme Court.

The Court heard arguments from all these cases at the same time. The briefs filed by the black litigants included data and testimony from psychologists and social scientists who explained why they thought segregation was harmful to black children. In 1954 a unanimous Supreme Court found that "...in the field of education the doctrine of 'separate but equal' has no place," and ruled that segregation in public schools denies black children "the equal protection of the laws guaranteed in the Fourteenth Amendment."

Gideon v. Wainwright (1963) and Miranda v. Arizona (1966)

Two Supreme Court decisions in the 1960s supported the rights of persons accused of committing crimes.

Clarence Earl Gideon was arrested for breaking into a poolroom in Florida in 1961. When he requested a court-appointed lawyer to defend him, the judge denied his plea, saying that state law required appointment of a lawyer only in capital cases — cases involving a person's death or calling for the death penalty. Gideon defended himself and was found guilty. While in prison, he spent hours in the library studying law books and handwriting a petition to the Supreme Court to hear his case. The Court decided that Gideon was denied a fair trial and ruled that every state must provide counsel for people accused of crimes who cannot afford to hire their own. When Gideon was retried with the help of a defense attorney, he was acquitted.

Just three years later the Supreme Court decided that the accused should have the right to counsel long before they get to a courtroom. Ernesto Miranda was convicted in a state court in Arizona of kidnapping and rape. His conviction was based on a confession Miranda gave to police officers after two hours of questioning, without being advised that he had the right to have an attorney present. In its ruling the Supreme Court required that police officers, when making arrests, must give what are now known as Miranda warnings — that suspects have the right to remain silent, that anything they say may be used against them, that they can have a lawyer present during questioning, and that a lawyer will be provided if they cannot afford one.

Miranda v. Arizona is one of the Supreme Court's best known decisions, as Miranda warnings are dramatized routinely in American movies and television programs. However, in 1999 a federal court of appeals challenged the decision in the case of Dickerson v. United States, in which a convicted bank robber claimed he had not been properly read his rights. In June 2000, the Supreme Court overturned Dickerson in a 7-to-2 ruling that strongly reaffirmed the validity of Miranda.

New York Times Co. v. Sullivan (1964)

The First Amendment to the U.S. Constitution guarantees freedom of the press, but for years the Supreme Court refused to use the First Amendment to protect the media from libel lawsuits — lawsuits based on the publication of false information that damages a person's reputation. The Supreme Court's ruling in New York Times Co. v. Sullivan revolutionized libel law in the United States by deciding that public officials could not sue successfully for libel simply by proving that published information is false. The Court ruled that the complainant also must prove that reporters or editors acted with "actual malice" and published information "with reckless disregard of whether it was false or not."

The case arose from a full-page advertisement placed in the New York Times by the Southern Christian Leadership Conference to raise money for the legal defense of civil rights leader Martin Luther King, Jr., who had been arrested in Alabama in 1960. L.B. Sullivan, a city commissioner in Montgomery, Alabama, who was responsible for the police department, claimed that the ad libeled him by falsely describing the actions of the city police force. Sullivan sued the four clergymen who placed the ad and the New York Times, which had not checked the accuracy of the ad.

The advertisement did contain several inaccuracies, and a jury awarded Sullivan $500,000. The Times and the civil rights leaders appealed that decision to the Supreme Court, and the Court ruled unanimously in their favor. The Court decided that libel laws cannot be used "to impose sanctions upon expression critical of the official conduct of public officials," and that requiring critics to guarantee the accuracy of their remarks would lead to self-censorship. The Court found no evidence that the Times or the clergymen had malicious intent in publishing the ad.

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A Country of Many Governments

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

— The United States Constitution, Amendment X, 1789

The federal entity created by the Constitution is the dominant feature of the American governmental system. But the system itself is in reality a mosaic, composed of thousands of smaller units — building blocks that together make up the whole. There are 50 state governments plus the government of the District of Columbia, and further down the ladder are still smaller units that govern counties, cities, towns, and villages.

This multiplicity of governmental units is best understood in terms of the evolution of the United States. The federal system, it has been seen, was the last step in an evolutionary process. Prior to the Constitution, there were the governments of the separate colonies (later states) and, prior to those, the governments of counties and smaller units. One of the first tasks accomplished by the early English settlers was the creation of governmental units for the tiny settlements they established along the Atlantic coast. Even before the Pilgrims disembarked from their ship in 1620, they formulated the Mayflower Compact, the first written American constitution. And as the new nation pushed westward, each frontier outpost created its own government to manage its affairs.

The drafters of the U.S. Constitution left this multilayered governmental system untouched. While they made the national structure supreme, they wisely recognized the need for a series of governments more directly in contact with the people and more keenly attuned to their needs. Thus, certain functions — such as defense,

currency regulation, and foreign relations — could only be managed by a strong centralized government. But others — such as sanitation, education, and local transportation — could be better served by local jurisdictions.

State Government

Before their independence, colonies were governed separately by the British Crown. In the early years of the republic, prior to the adoption of the Constitution, each state was virtually an autonomous unit. The delegates to the Constitutional Convention sought a stronger, more viable federal union, but they were also intent on safeguarding the rights of the states.

In general, matters that lie entirely within state borders are the exclusive concern of state governments. These include internal communications; regulations relating to property, industry, business, and public utilities; the state criminal code; and working conditions within the state. Within this context, the federal government requires that state governments must be democratic in form and that they adopt no laws that contradict or violate the federal Constitution or the laws and treaties of the United States.

There are, of course, many areas of overlap between state and federal jurisdictions. Particularly in recent years, the federal government has assumed ever broadening responsibility in such matters as health, education, welfare, transportation, and housing and urban development. But where the federal government exercises such responsibility in the states, programs are usually adopted on the basis of cooperation between the two levels of government, rather than as an imposition from above.

Like the national government, state governments have three branches: executive, legislative, and judicial; these are roughly equivalent in function and scope to their national counterparts. The chief executive of a state is the governor, elected by popular vote, typically for a four-year term (although in a few states the term is two years). Except for Nebraska, which has a single legislative body, all states have a bicameral legislature, with the upper house usually called the Senate and the lower house called the House of Representatives, the House of Delegates, or the General Assembly. In most states, senators serve four-year terms, and members of the lower house serve two-year terms.

The constitutions of the various states differ in some details but generally follow a pattern similar to that of the federal Constitution, including a statement of the rights of the people and a plan for organizing the government. On such matters as the operation of businesses, banks, public utilities, and charitable institutions, state constitutions are often more detailed and explicit than the federal one. Each state constitution, however, provides that the final authority belongs to the people, and sets certain standards and principles as the foundation of government.

City Government

Once predominantly rural, the United States is today a highly urbanized country, and about 80 percent of its citizens now live in towns, large cities, or suburbs of cities. This statistic makes city governments critically important in the overall pattern of American government. To a greater extent than on the federal or state level, the city directly serves the needs of the people, providing everything from police and fire protection to sanitary codes, health regulations, education, public transportation, and housing.

The business of running America's major cities is enormously complex. In terms of population alone, New York City is larger than 41 of the 50 states. It is often said that, next to the presidency, the most difficult executive position in the country is that of mayor of New York.

City governments are chartered by states, and their charters detail the objectives and powers of the municipal government. But in many respects the cities function independently of the states. For most big cities,

however, cooperation with both state and federal organizations is essential to meeting the needs of their residents.

Types of city governments vary widely across the nation. However, almost all have some kind of central council, elected by the voters, and an executive officer, assisted by various department heads, to manage the city's affairs.

There are three general types of city government: the mayor-council, the commission, and the city manager. These are the pure forms; many cities have developed a combination of two or three of them.

Mayor-Council. This is the oldest form of city government in the United States and, until the beginning of the 20th century, was used by nearly all American cities. Its structure is similar to that of the state and national governments, with an elected mayor as chief of the executive branch and an elected council that represents the various neighborhoods forming the legislative branch. The mayor appoints heads of city departments and other officials, sometimes with the approval of the council. He or she has the power of veto over ordinances — the laws of the city — and frequently is responsible for preparing the city's budget. The council passes city ordinances, sets the tax rate on property, and apportions money among the various city departments.

The Commission. This combines both the legislative and executive functions in one group of officials, usually three or more in number, elected city-wide. Each commissioner supervises the work of one or more city departments. One is named chairperson of the body and is often called the mayor, although his or her power is equivalent to that of the other commissioners.

The City Manager. The city manager is a response to the increasing complexity of urban problems, which require management expertise not often possessed by elected public officials. The answer has been to entrust most of the executive powers, including law enforcement and provision of services, to a highly trained and experienced professional city manager.

The city manager plan has been adopted by a growing number of cities. Under this plan, a small, elected council makes the city ordinances and sets policy, but hires a paid administrator, also called a city manager, to carry out its decisions. The manager draws up the city budget and supervises most of the departments. Usually, there is no set term; the manager serves as long as the council is satisfied with his or her work.

County Government

The county is a subdivision of the state, usually — but not always — containing two or more townships and several villages. New York City is so large that it is divided into five separate boroughs, each a county in its own right: the Bronx, Manhattan, Brooklyn, Queens, and Staten Island. On the other hand, Arlington County, Virginia, just across the Potomac River from Washington, D.C., is both an urbanized and suburban area, governed by a unitary county administration.

In most U.S. counties, one town or city is designated as the county seat, and this is where the government offices are located and where the board of commissioners or supervisors meets. In small counties, boards are chosen by the county as a whole; in the larger ones, supervisors represent separate districts or townships. The board levies taxes; borrows and appropriates money; fixes the salaries of county employees; supervises elections; builds and maintains highways and bridges; and administers national, state, and county welfare programs.

Town and Village Government

Thousands of municipal jurisdictions are too small to qualify as city governments. These are chartered as towns and villages and deal with such strictly local needs as paving and lighting the streets; ensuring a water supply; providing police and fire protection; establishing local health regulations; arranging for garbage,

sewage, and other waste disposal; collecting local taxes to support governmental operations; and, in cooperation with the state and county, directly administering the local school system.

The government is usually entrusted to an elected board or council, which may be known by a variety of names: town or village council, board of selectmen, board of supervisors, board of commissioners. The board may have a chairperson or president who functions as chief executive officer, or there may be an elected mayor. Governmental employees may include a clerk, treasurer, police and fire officers, and health and welfare officers.

One unique aspect of local government, found mostly in the New England region of the United States, is the "town meeting." Once a year — sometimes more often if needed — the registered voters of the town meet in open session to elect officers, debate local issues, and pass laws for operating the government. As a body, they decide on road construction and repair, construction of public buildings and facilities, tax rates, and the town budget. The town meeting, which has existed for more than two centuries, is often cited as the purest form of direct democracy, in which the governmental power is not delegated, but is exercised directly and regularly by all the people.

Other Local Governments

The federal, state, and local governments covered here by no means include the whole spectrum of American governmental units. The U.S. Bureau of the Census (part of the Commerce Department) has identified no less than 84,955 local governmental units in the United States, including counties, municipalities, townships, school districts, and special districts.

Americans have come to rely on their governments to perform a wide variety of tasks which, in the early days of the republic, people did for themselves. In colonial days, there were few police officers or firefighters, even in the large cities; governments provided neither street lights nor street cleaners. To a large extent, people protected their own property and saw to their families' needs.

Now, meeting these needs is seen as the responsibility of the whole community, acting through government. Even in small towns, the police, fire, welfare, and health department functions are exercised by governments. Hence, the bewildering array of jurisdictions.

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Outline of U.S. Government: Chapter 8

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Government of the People: The Role of the Citizen

"It is the function of the citizen to keep the government from falling into error."

— Robert H. Jackson, Associate Justice of the U.S. Supreme Court, American Communications Association v. Douds, 1950

With the drafting of the U.S. Constitution in 1787, the country's Founding Fathers created a new system of government. The idea behind it — quite revolutionary at the time — appears at first glance to be simple and straightforward. The power to govern comes directly from the people, not through primogeniture or the force of arms, but through free and open elections by the citizens of the United States. This may have been tidy and direct as a theory, but in practice it was far from inclusive. Complicating things from the very beginning was the question of eligibility: who would be allowed to cast votes and who would not.

The Founding Fathers were, of course, men of their time. To them, it was self-evident that only those with a stake in society should have a voice in determining who would govern that society. They believed that, since government was established to protect property and personal freedom, those involved in choosing that government should have some of each.

This meant, at the time, that only white Protestant males who owned property could vote. Not women, not poor people, not indentured servants, not Catholics and Jews, not slaves from Africa or Native Americans. "Women, like slaves and servants, were defined by their dependence," says historian Michael Schudson. "Citizenship belonged only to those who were masters of their own lives." Because of these restrictions, only about 6 percent of the population of the brand-new United States chose George Washington to be the

country's first president in 1789.

Even though these new Americans were proud of the fact that they had gotten rid of royalty and nobility, "common" people, at first, continued to defer to the "gentry." Therefore, members of rich and well-connected families generally won political office without much opposition. This state of affairs, however, did not last long. The concept of democracy turned out to be so powerful it could not be contained, and those who were not so rich and not so well-connected began to believe that they, too, should have the opportunity to help run things.

Extending the Franchise

Throughout the 19th century, politics in the United States became, slowly but inexorably, more inclusive. The old ways broke down, groups previously excluded became involved in the political process, and the right to vote was given, bit by bit, to more and more of the people. First came the elimination of religious and property-owning restrictions, so that by the middle of the century most white male adults were able to vote.

Then, after a Civil War was fought (1861-1865) over the question of slavery, three amendments to the U.S. Constitution significantly altered the scope and nature of American democracy. The Thirteenth Amendment, ratified in 1865, abolished slavery. The fourteenth, ratified in 1868, declared that all persons born or naturalized in the United States are citizens of the country and of the state in which they reside, and that their rights to life, liberty, property, and the equal protection of the laws are to be enforced by the federal government. The Fifteenth Amendment, ratified in 1870, prohibited the federal or state governments from discriminating against potential voters because of race, color, or previous condition of servitude.

The crucial word "sex" was left off this list, not through oversight; therefore, women continued to be barred from the polls. The extension of suffrage to include former slaves gave new life to the long-simmering campaign for women's right to vote. This battle was finally won in 1920, when the Nineteenth Amendment said that voting could not be denied "on account of sex."

Ironically, at this point the situation was reversed. Women could now vote, but many black Americans could not. Beginning in the 1890s, southern whites had systematically removed blacks from electoral politics through voting regulations such as the "grandfather clause" (which required literacy tests for all citizens whose ancestors had not been voters before 1868), the imposition of poll taxes, and, too often, physical intimidation. This disfranchisement continued well into the 20th century. The civil rights movement, which began in the 1950s, resulted in the Voting Rights Act of 1965, a federal law that outlawed unfair electoral procedures and required the Department of Justice supervise southern elections. The Twenty-fourth Amendment, ratified in 1964, abolished the imposition of a poll tax as a qualification for voting, eliminating one of the few remaining ways that states could try to reduce voting by African Americans and poor people.

One final change was made to the Constitution to broaden the franchise. U.S. involvement in the Vietnam War during the 1960s and early 1970s gave new impetus to the idea, first discussed during the Revolutionary War and revived during every war fought since, that people old enough to bear arms for their country were also old enough to vote. The Twenty-sixth Amendment, ratified in 1971, reduced the voting age from 21 to 18 years. Now, nearly all adult citizens of the United States, native-born or naturalized, over the age of 18 are eligible voters. Legal restrictions deny the vote only to some ex-felons and to those who have been declared mentally incompetent.

Direct Democracy

The most important question in U.S. electoral politics these days is not who is eligible to vote, but rather how many of those who are eligible will actually take the time and trouble to go to the polls. The answer now, for presidential elections, is around half. In the election of 1876, voter participation reached the historic high of

81.8 percent. Throughout the 1880s and 1890s, it averaged around 80 percent, but then began a gradual decline that reached a low of 48.9 percent in 1924. The Democratic Party's "New Deal Coalition" during the Great Depression of the 1930s caused a revival of interest on the part of voters, resulting in averages up around 60 percent. Turnouts started back down again in 1968, reaching a low of 49.1 percent in the presidential election of 1996.

The fact that more people do not vote is distressing to many. "There is currently a widespread sense, shown by public opinion surveys and complaints by informed observers, that the American electoral system is in trouble," says political scientist A. James Reichley in his book Elections American Style. "Some believe that this trouble is minor and can be dealt with through moderate reforms; others think it goes deep and requires extensive political surgery, perhaps accompanied by sweeping changes in the larger social order. Complaints include the huge cost and long duration of campaigns, the power of the media to shape public perceptions of candidates, and the undue influence exerted by 'special interests' over both nominations and general elections."

Many commentators believe that what the U.S. electoral system needs is more direct, less representative, democracy. Televised town hall meetings, for example, at which voters can talk directly to elected officials and political candidates, have been encouraged as a way to "empower" the people. And the use of ballot initiatives, referendums, and recall elections is growing rapidly. The precise mechanisms vary from state to state, but in general terms, initiatives allow voters to bypass their state legislatures by collecting enough signatures on petitions to place proposed statutes and, in some states, constitutional amendments directly on the ballot. Referendums require that certain categories of legislation, for example, those intended to raise money by issuing bonds, be put on the ballot for public approval; voters can also use referendums to rescind laws already passed by state legislatures. A recall election lets citizens vote on whether to remove officeholders before their regular terms expire.

Initiatives, now allowed by 24 states, have been especially popular in the West, having been used more than 300 times in Oregon, more than 250 times in California, and almost 200 times in Colorado. All sorts of issues have appeared on the ballot in the various states, including regulation of professions and businesses, anti-smoking legislation, vehicle insurance rates, abortion rights, legalized gambling and the medical use of marijuana, the use of nuclear power, and gun control.

Responsibilities of Citizenship

Citizens of the United States, it is clear, have a great many rights that give them freedoms all peoples hold dear: the freedom to think what they like; to voice those opinions, individually to their elected representatives or collectively in small or large assemblies; to worship as they choose or not to worship at all; to be safe from unreasonable searches of their persons, their homes, or their private papers. However, the theory of democratic government holds that along with these rights come responsibilities: to obey the laws; to pay legally imposed taxes; to serve on juries when called to do so; to be informed about issues and candidates; and to exercise the right to vote that has been won for so many through the toil and tears of their predecessors.

Another major responsibility is public service. Millions of American men and women have entered the armed forces to defend their country in times of national emergency. Millions more have served in peacetime to maintain the country's military strength. Americans, young and old alike, have joined the Peace Corps and other volunteer organizations for social service at home and abroad.

The responsibility that can make the most lasting difference, however, is getting involved in the political process. "Proponents of participatory democracy argue that increased citizen participation in community and workplace decision-making is important if people are to recognize their roles and responsibilities as citizens within the larger community," says Craig Rimmerman, professor of political science, in his book The New

Citizenship: Unconventional Politics, Activism, and Service. "Community meetings, for example, afford citizens knowledge regarding other citizens' needs. In a true participatory setting, citizens do not merely act as autonomous individuals pursuing their own interests, but instead, through a process of decision, debate, and compromise, they ultimately link their concerns with the needs of the community."

Tom Harkin, U.S. senator from Iowa, says that the kind of activists who fueled the earlier civil rights, anti-Vietnam War, and environmental movements are now focusing their energies "closer to home, organizing their neighbors to fight for such issues as better housing, fair taxation, lower utility rates, and the cleanup of toxic wastes.... Cutting across racial and class and geographical boundaries, these actions have shown millions of people that their common interests far outweigh their differences. [For all of them], the message of citizen action is the same: 'Don't get mad, don't get frustrated, don't give up. Organize and fight back.'"

Virtual Communities

Some concerned American voters have chosen to stay involved by being in touch with their elected officials, in particular the president and their senators and representatives. They have written letters, sent telegrams, made telephone calls, and gone in person to the official's office, whether in Washington or in the home state or district. During the past few years, however, a new medium of communication has burst upon the scene and given voters extraordinary power — the power to learn what is going on in their world, to comment on those events, and to work to change the things they don't like. This medium is the Internet, the World Wide Web, the Information Superhighway. Whatever it is called, it is changing politics in America, rapidly and irrevocably.

The Internet can be "a powerful instrument for collective action, if we choose to use it as such," says political activist Ed Schwartz in his book NetActivism: How Citizens Use the Internet. "It has the potential to become the most powerful tool for political organizing developed in the past 50 years, and one that any citizen can use.... [What] community activists often need most is hard information, both about government agencies and specific programs, as well as on how the political system works." They can find this information, easily and at practically no cost, on the Internet.

"Virtual communities" of men and women of similar interests, who may live thousands of miles apart and might never have known about each other any other way, are now coming together on the Internet. Quite often, these people never do meet in person, but they get to know each other well, through sustained, intelligent conversations over time about the issues that they care the most about.

Another profound change is the quick access the Internet gives people to information about government, politics, and issues that had previously been unavailable, or hard to find, for most of them.

EnviroLink, for example, is a Web site devoted to environmental issues. Community organizations can get specific facts from this site about such concerns as greenhouse gas emissions, hazardous waste, or toxic chemicals. In the past, these groups might have been limited to talking about these issues only in general terms. Now, EnviroLink makes detailed resource materials instantly available. The site provides access to educational resources, government agencies, and environmental organizations and publications, all listed by topic of interest. EnviroLink also offers information and advice on how to take direct action by providing names and e-mail addresses of persons to contact about specific environmental concerns, and it includes "chat rooms" where users can engage in discussions and share ideas.

Activists at the local level are finding the Internet to be particularly helpful. These are the people who get involved in politics as a way to improve conditions in their own neighborhoods and communities. They organize block cleanups, trash recycling efforts, crime watch groups, and adult literacy programs. "Their aim is not merely to perform community service," says Ed Schwartz, "although that's part of it. They simply believe that healthy communities are possible only when residents make a personal commitment to contribute

to their well-being."

One example of the way these people are using the Internet is Neighborhoods Online, a Web site set up by Schwartz to promote neighborhood activism throughout the United States. Hundreds of people visit the site every day, including organizers, staff members of nonprofit organizations, elected officials, journalists, college faculty and students, and ordinary citizens looking for new ways to solve neighborhood problems.

"From a modest beginning," says Schwartz, "we've reached the point where virtually every community development corporation, neighborhood advisory committee, adult literacy program, job training agency, and human service provider is either already online or trying to figure out how to get there."

Private Interest Groups

The groups discussed above and others like them are called public interest groups, in that they seek a collective good, the achievement of which will not necessarily benefit their own membership. This does not mean that such groups are correct in the positions they take, only that the element of profitable or selective self-interest is low.

Private interest groups, on the other hand, usually have an economic stake in the policies they advocate. Business organizations will favor low corporate taxes and restrictions of the right to strike, whereas labor unions will support minimum wage legislation and protection for collective bargaining. Other private interest groups — such as churches and ethnic groups — are more concerned about broader issues of policy that can affect their organizations or their beliefs.

One type of private interest group that has grown in number and influence in recent years is the political action committee, or PAC. These are independent groups, organized around a single issue or set of issues, that contribute money to political campaigns for Congress or the presidency. PACs are limited in the amounts they can contribute directly to candidates in federal elections. There are no restrictions, however, on the amounts PACs can spend independently to advocate a point of view or to urge the election of candidates to office. PACs today number in the thousands.

"The political parties are threatened as the number of interest groups has mushroomed, with more and more of them operating offices in Washington, D.C., and representing themselves directly to Congress and federal agencies," says Michael Schudson in his book The Good Citizen: A History of American Civic Life. "Many organizations that keep an eye on Washington seek financial and moral support from ordinary citizens. Since many of them focus on a narrow set of concerns or even on a single issue, and often a single issue of enormous emotional weight, they compete with the parties for citizens' dollars, time, and passion."

The amount of money spent by these "special interests" continues to grow, as campaigns become more and more expensive. Many Americans have the feeling that these wealthy interests — whether corporations or unions or PACs organized to promote a particular point of view — are so powerful that ordinary citizens can do little to counteract their influence.

But they can do something. They can inform themselves and then act on that information. Perhaps the quickest and most efficient way is by using the Internet to keep track of each of their elected officials. Within a matter of minutes, they can find out which "special interests" have given political contributions to an official and how that official has voted on recent pieces of legislation. These citizens can then use this information to make their opinions known.

A fact of political life is that thinking about issues, gathering information about them, and discussing them with friends and neighbors make no difference in how elected officials act — or, more important, vote. These officials care a great deal, though, about whether those who elected them are likely, or not likely, to elect

them again. When letters, phone calls, faxes, and e-mail messages from constituents start to arrive, attention is paid. It is still the people, each one with a vote whenever he or she chooses to cast it, who have the ultimate power.

The road from 1787 and the drafting of the U.S. Constitution to the present has not been a straight one. Voters have been moved by passions and events first in one direction, then in another. But, at some point, they have always found a way to come back to rest near the center. Somewhere between the pragmatic and the ideal, between the local and the national, between the public and the private, between selfishness and altruism, between states' rights and the good of the nation as a whole, exists a common ground on which the people of the United States have, through the years, built a strong, prosperous, free country — a country that is flawed, granted, but always spurred on by the promise of better days to come.

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