



President-elect Donald J. Trump declares victory early in the morning on November 6, 2024.  
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# 1

## INTRODUCTION TO THE ENDURING DEMOCRACY

### LEARNING OBJECTIVES

- 1.1 Examine the 2024 presidential campaign in historical context.
- 1.2 Explain the philosophical underpinnings of the American political system through the exploration of important theories such as the “social contract” theory.
- 1.3 Assess the importance of the value of popular sovereignty and how that value is realized through “representative democracy” in the United States.
- 1.4 Define *political culture* and describe the unique combination of political beliefs and values that form the American political culture.
- 1.5 Assess the health of American democracy and evaluate whether the American system is in decline by applying a historical perspective on contemporary politics.

### PRESIDENTIAL ELECTION RESULTS, HISTORY, DIVERSITY, AND AMERICAN POLITICS

Presidential elections are the hallmark of American politics. Every four years the nation’s attention focuses on the nomination of the Democratic and Republican parties’ candidates and then the general election contest waged between them. During an election year, the news cycle, political leaders, journalists, voters and people around the world focus on the contest for leader of the free world. Certainly, 2024 was no exception.

The 2024 presidential election was the most expensive and among the hardest fought and divisive in American history. Incumbent president Joe Biden sailed through his party’s primaries to easily win the Democratic nomination. Former president Donald Trump, who was defeated by Biden in the 2020 election, easily won the GOP nomination, setting up a rematch of the previous election that would be filled with controversy once again. Trump’s refusal to concede the 2020 outcome led to a speech on January 6, 2021 which resulted in a riot at the U.S. capitol in an attempt to prevent the certification of Biden’s victory.

Many factors including a problematic economy, a Supreme Court decision overturning the *Roe v. Wade* abortion ruling, and an immigration crisis at the southern border fueled a trying general election campaign. Eventually Trump and Biden agreed to an early presidential debate on June 27, 2024. The 80-year-old Biden’s confused performance in that contest confirmed for many that his mental condition had diminished, and that he would not be up to the rigors of a second term in office. Leaders within his own party called for him to step aside with the hope that a replacement could defeat Trump’s challenge. Within three weeks, Biden stepped aside, and with only 107 days until election day, endorsed his own sitting Vice President, Kamala Harris, whom the Democratic Party overwhelmingly endorsed as the first Black woman to capture a major party’s nomination.

The campaign between Trump and Harris was fought largely over the issues of inflation, abortion, immigration, trans-gender rights and wars in the Middle East and Ukraine. The contestants attacked each other’s character and vocally questioned their opponents’ fitness for office. Two assassination attempts on Trump’s life, including a gunshot wound to his ear during a rally in Pennsylvania, filled the news of the campaign. Once more, not only was the presidency itself to be decided by the election, but so too was party control of both houses of Congress. Throughout the 107-day campaign, the many polls conducted showed a very close race both nationally and in all the so-called “battleground” states where the outcome would likely be decided.

Early in the morning the day after the November 5 election, Donald Trump claimed victory as all of the TV networks projected that he would win a sufficient number of electoral votes to win the



After President Biden referred to Trump voters as his “garbage supporters,” Trump took advantage of Biden’s slip by wearing a garbage collection vest and making comments to the media from a garbage truck.

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election. Later that day, Kamala Harris conceded that Trump had won, but vowed to keep up the fight that her campaign had generated. In the end Trump won the electoral college vote to take the presidency and had also won the more symbolic popular vote by a narrow margin. The Republican victory also extended to majority control in the Senate and the House of Representatives, once again giving Donald Trump and the Republican Party control of the national government in January 2025, just as they had secured it eight years earlier in January of 2017.

### History Repeats Itself

The 2024 election results repeated the outcome of the 2016 election in giving Donald Trump and the Republican Party control of the executive and legislative branches, and the promise of possible future appointments to the judicial branch. History often does repeat itself, and the patterns of history can provide a powerful tool for better understanding American government today.

Only twice in American history has an incumbent president lost a re-election bid, only to come back to win the office back four years later. Trump’s comeback win in 2024 made him both the 45<sup>th</sup> and 47<sup>th</sup> president of the United States. More than 100 years earlier, Grover Cleveland became the 24<sup>th</sup> president exactly four years after losing his first re-election campaign as the incumbent 22<sup>nd</sup> president.

In 1892, Democrat Grover Cleveland became the 24th president of the United States by defeating Republican Benjamin Harrison in a hotly contested race. Cleveland’s 1892 win marked the first time a president would serve two non-consecutive terms, as his 1884 victory made Cleveland the 22nd president as well. Cleveland narrowly won in 1884 (just as Trump did in 2016), before losing the 1888 race to Benjamin Harrison (just as Trump did in 2020) in an election where Cleveland won the popular vote but lost the electoral vote. In the 1892 rematch, Cleveland soundly defeated his political nemesis (just as Trump did in 2024).

## Debates Over Diversity in American Politics

As part of this book's exploration of our country's history, we also highlight the country's ongoing victories and struggles with the diversity in the American population. It is critical to highlight and understand the unique role of diversity in our evolving democracy. We take a broad view of diversity to examine how differences in various identity characteristics (such as gender, race, ethnicity, and sexuality) can impact not only our place in society but also our opportunities to have a voice in American government. We hope to challenge you to think broadly on how your particular identity impacts your understanding of and participation in American politics.

Some people worry that the growing diversity in America introduces an essential dilemma into American politics, as it requires society and government to evolve and change. During the last three presidential campaigns, Donald Trump stirred up racial and religious tensions by speaking negatively about our nation's diversity, emphasizing the supposed dangers of the Latino and Muslim populations in the country. Throughout this book we highlight not only how our diversity has always been viewed as a potential challenge, but also how it has been seen by many as a source of our country's strength. In what may have been the first diversity dilemma the country faced, the U.S. government was forced to define who classified as a citizen for purposes of the U.S. Census population count. Even though our definition of a citizen was rather limited at the time of our country's founding, our understanding of the American people has slowly evolved. As an example of this evolution, consider changes that have been made to the U.S. Census. Since 1790, the U.S. government has implemented a nationwide census to count the population in the country every 10 years. This population information is used for a variety of reasons, including distribution of federal spending and planning for the growing population. The U.S. Census questionnaire has evolved considerably since 1790, often as a result of our changing understanding of diversity. The first census collected very rudimentary information on the racial makeup of the country—it was restricted to asking if the individual responding was white or owned slaves. The census racial categories have evolved; however, they are still limited to five basic categories: white, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander.

It was not until 1970 that the U.S. Census began to ask respondents about their ethnicity: Initially, this was restricted to asking a subsample of respondents whether they had a Hispanic family origin. After 2000, the Census allowed respondents to choose more than one racial category. The most recent debate over census questions revolved around whether to include a question about citizenship. We are now challenged with understanding the true diversity of the U.S. population, which may require further Census revisions.

In this book, we examine the major topics and concepts in American government and politics. We attempt to answer sweeping questions about how the American government works: How does policy get made? Who are the major players and institutions that make the laws? How do these players achieve their position? How do disputes get resolved? What is the role and power of the people? Throughout these discussions, we pay special attention to millennials and Generation Z, the contributions and challenges of diversity, and how we might better understand American government today by observing the patterns of history.

## FORMS AND FUNCTIONS OF GOVERNMENT

**Government** is the collection of public institutions in a nation that establish and enforce the rules by which the members of that nation must live. Even the most primitive of societies have found government to be necessary. Without government, society would be in a state of **anarchy**, a situation characterized by lawlessness and discord in the political system. Thomas Hobbes, a seventeenth-century British political philosopher, wrote that without government, life would be “solitary, poor, nasty, brutish and short.”<sup>1</sup> Government is necessary to make the rules by which citizens must abide, promoting order, stability, and protection for the society. It exists in part to resolve conflicts that naturally arise when people live in communities. Elaborating on the role of government, Jean-Jacques Rousseau, an eighteenth-century

French philosopher, posited that in fact a “social contract” exists.<sup>2</sup> A **social contract** is an agreement people make with one another to form a government and abide by its rules and laws. In return, the government promises to protect the people’s rights and welfare and to promote their best interests.

A government’s **authority** over its citizens refers to the ability of public institutions and the officials within them to make laws, independent of the power to execute them. People obey authority out of respect, whereas they obey power out of fear. Numerous different forms of government with governing authority can be found around the nations of the world. One such form—the form that will receive extended attention throughout this book—is **democracy**, defined as a government in which the people, either directly or through elected representatives, hold power and authority. The word *democracy* is derived from the Greek *demos kratos*, meaning “rule by the people.”

By contrast, an **oligarchy** is a form of government in which a small exclusive class, which may or may not attempt to rule on behalf of the people as a whole, holds supreme power. In a **theocracy**, a particular religion or faith plays a dominant role in the government; Iran is just one example of a theocratic nation in the world today. A **monarchy** is a form of government in which one person, usually a member of a royal family or a royal designate, exercises supreme authority. The monarch may be a king or queen, such as King Charles III of Great Britain. In the past, monarchies were quite common; today they are rarely practiced in the absolute sense. Although the United Kingdom continues to pay homage to its royalty, true political power rests in the Parliament, the members of which are elected by the people.

Many of the nations in the world today have an **authoritarian** form of government in which one political party, group, or person maintains such complete control over the nation that it may refuse to recognize, and may even choose to suppress, all other political parties and interests. North Korea under Kim Jong-un is an authoritarian government in existence today, as is Russia under the dictatorial control of Vladimir Putin.

An important characteristic of any government, whether democratic or not, is its power to exercise authority over people. **Power** is the capacity to get individuals to do something that they may not otherwise do, such as pay taxes, stop for red lights, or submit to a search before boarding an airplane. Without power, a government would find it very difficult to enforce rules. The sustained power of any government largely rests on its legitimacy. **Legitimacy** is the extent to which the people (or the “governed”) afford the government the authority and right to exercise power. The more that people subscribe to the goals of a government, and the greater the degree to which that government guarantees the people’s welfare (e.g., by supporting a strong economy or providing protection from foreign enemies), the higher will be the government’s level of legitimacy. When the governed grant a high level of legitimacy to their government, the government wields its power to make and enforce rules more successfully.

## AMERICAN GOVERNMENT AND POLITICS

**Politics** is defined as the way in which the institutions of government are organized to make laws, rules, and policies, and how those institutions are influenced. Nearly 90 years ago, political scientist Harold Lasswell proposed a brief but very useful definition of politics as “who gets what, when and how.”<sup>3</sup> In American politics, the “who” includes actors within and outside the formal government, such as citizens, elected officials, interest groups, and state and local governments. The “what” are the decisions the government makes and takes the form of what government funds, the way it raises revenue, and the policies it produces and enforces. The “when” relates to setting priorities about what the government does. The concerns and issues that the government addresses differ in importance, and issues of greater importance tend to be addressed more quickly. Finally, the “how” refers to the way in which the government goes about its work, based on the political institutions that exist and the formal and informal procedures and rules that define the governing process. In describing American politics, this book provides answers to Lasswell’s “Who gets what, when and how?”

Government in the United States is especially complex. It is organized into multiple layers (national, state, and local) and contains many governing units, as shown in Table 1.1. It encompasses a number of political institutions that share power—the executive (the president), the legislature (Congress), and

**TABLE 1.1** ■ Governments in the United States

The government of the United States might be more correctly described as a system of governments. In addition to the federal government, there are 50 state governments and thousands of local governments. The 2022 U.S. Census Bureau's *Census of Governments* listed these totals for the number of governments operating throughout the nation.

| Government       | Number |
|------------------|--------|
| Federal          | 1      |
| State            | 50     |
| County           | 3031   |
| Municipal        | 19,491 |
| School district  | 12,546 |
| Township/town    | 16,214 |
| Special district | 39,555 |
| Total            | 90,888 |

Source: U.S. Census Bureau, 2022 Census of Governments.

the judiciary (the courts)—and it provides countless methods for individuals and groups to influence the decisions made by those institutions. In this book, we examine this complex organization of the American government, describe the political institutions that exercise power, and explore the varied ways that people and groups exert influence. As we sort through this complexity of the American government, we explain how and why the American political system has been able to endure the conflicts, both internal and external, that it has faced and currently faces. We attempt to show how the American government is uniquely designed to stand up to its many challenges.

The strength and stability of the U.S. government are grounded in the high level of legitimacy it maintains with the American public. Americans may disagree vehemently with public officials, but rarely do they question their claim to authority. The framers of the U.S. Constitution were keenly aware of the importance of the legitimacy of the system.

They knew that if the government was to withstand the test of time, it must serve the people well. These ideas about legitimacy drew largely on the theories of seventeenth-century British political philosopher John Locke (1632–1704).<sup>4</sup> Locke proposed that people are born with certain *natural rights*, which derive from **natural law**, the rules of conduct inherent in the relationship among human beings and thus more fundamental than any law that a governing authority might make. Government cannot violate these natural rights, which include life, liberty, and property. Therefore, government, or human law, must be based on the “consent of the governed.” That is, citizens are responsible for choosing their government and its leaders. This theory loomed large in the mind of Thomas Jefferson as he drafted the Declaration of Independence to justify the American colonies’ split with the British government: “All men ... are endowed by their creator with certain unalienable rights ... [and] whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.” A government maintains legitimacy as long as the governed are served well and as long as the government respects the natural rights of individuals.

Drawing on this philosophy, the framers drafted a Constitution that created a political system able to manage the inevitable conflicts that occur in any society. Mindful of Thomas Hobbes’s notion that the essence of government is to manage naturally occurring conflicts, the framers designed a government that allows for conflict and competition rather than attempting to repress it. As we shall see in the chapters that follow, the U.S. Constitution includes a number of mechanisms that allow naturally occurring conflict to play out in as productive a manner as possible. Mechanisms are also in place to resolve conflicts and arrive at consensus on issues. Those who disagree and come up on the short side of political battles are guaranteed rights and liberties nonetheless. Further, the rules by which conflicts are settled are predicated on fairness and proper procedures.

The significance of what the framers of the Constitution accomplished cannot be overstated. They not only addressed the short-term problems challenging the new nation; they also drafted a blueprint for how the government should go about dealing with problems and conflicts into the future. The U.S. Constitution has served as the cornerstone of an American political system that routinely attempts to tackle some of the thorniest problems imaginable. In Chapter 2 of this book, we examine the enduring principles and processes outlined in the Constitution.

The Constitution provides a way for the American government to navigate through the many problems and conflicts that have faced the nation, including severe economic depressions, two world wars, nuclear confrontations with the former Soviet Union, and persisting questions of equality. Through all these difficulties, the American government has endured. The foresight of the framers to create a Constitution that possesses the flexibility to adapt to changing times has served as a basis for the enduring democracy of the United States.

The preamble to the U.S. Constitution perhaps best summarizes the broad goals of American government:

*We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, 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.*

It is no accident that the first three words of the Constitution are “We the People.” With this phrase, the framers acknowledged that the ultimate source of power rests with the people, a concept known as **popular sovereignty**. The U.S. Constitution provided for a form of **representative democracy**, under which regular elections are held to allow voters to choose those who govern on their behalf. In this sense, individual citizens do not directly make policies, rules, and other governing decisions (that system of government is known as a **direct democracy**). Rather, representative democracy, also referred to as *indirect democracy* or a *republican* form of government, rests on the notion that consent of the governed is achieved through free, open, and regular elections of those who are given the responsibility of governing.

An important source of the legitimacy of the U.S. government is the nation’s commitment to representative democracy, which features the notion of majority rule. Majorities (more than 50 percent of the voters) and pluralities (the leading vote getters, whether or not they constitute absolute majorities) choose the winners of election contests, and so officeholders take their positions on the basis of whom most voters prefer. If officeholders fall from public favor, they may be removed in subsequent elections.

## THEN & NOW

### WHEN THE POPULAR VOTE AND THE ELECTORAL VOTE DIVERGE

In 2024, Donald Trump won the electoral vote by a much wider margin than the popular vote. The Electoral College offers a unique, if sometimes controversial, system for selecting America’s chief executive every four years. The Electoral College and the popular vote have produced different results in five presidential elections in American history, the most recent example occurring in 2016.

#### Then

**In 1888**, the presidential race featured a contentious face-off between the Republican challenger, Benjamin Harrison, and the Democratic incumbent, President Grover Cleveland. On November 6 of that year, voters cast their ballots and the national vote tally provided nearly 100,000 more votes to Cleveland. However, the result in the Electoral College, which decides presidential elections, gave Harrison nearly 60 more electoral votes and thus a resounding victory. This electoral vote/popular vote divergence came only 12 years after the same event occurred in the course of Rutherford B. Hayes’s victory over Samuel Tilden in 1876. That time, too, the Republican rode to victory, courtesy of the Electoral College.

### Now

**As the** presidential contests of 2000 and 2016 reached their respective conclusions, voters cast their ballots for the candidates of their choosing. In both instances, the winner of the popular vote lost the Electoral College and with it, the presidency. In 2000, the Democrat Al Gore won the popular vote by more than 540,000 votes, but he was narrowly defeated in the Electoral College by a count of 271–267. Sixteen years later, the Republican candidate Donald J. Trump lost the popular vote to Democrat Hillary Clinton by about 2,800,000. Still, he managed to muster 67 more electoral votes than Clinton to put him over the top in the Electoral College count.

### For Critical Thinking and Discussion

1. Do you think that the U.S. Constitution should be amended to eliminate the Electoral College and replace it with the national popular vote as the method of selecting a president? What are the advantages and disadvantages of such an amendment?
2. In two of the past five elections, the popular vote winner was not the electoral vote winner. Why do you think the electoral vote has benefited the GOP's candidates in recent years?

Legitimacy is also enhanced by broad public support for the specific purposes of government stated in the preamble to the Constitution: to “insure domestic tranquility” (produce laws that maintain a peaceful and organized approach to living in the nation), to “provide for the common defense” (establish and maintain a military force to protect the nation from outside threats), to “promote the general welfare” (develop domestic policy programs to promote the welfare of the people), and to “secure the blessings of liberty” (guarantee basic freedoms, such as the rights of free expression and the ownership of property, even to those in the minority). Though people may have different opinions on how to achieve these broad goals, few in the United States would disagree with the ideals as stated in the abstract, or with the broad outlines of our republican form of government. Problems arise when public officials stray so far from these goals that their actions are deemed illegitimate by a near, if not absolute, majority. Yet the political system as a whole has been able to maintain its legitimacy, even under such trying circumstances, because it has been flexible enough to eventually rid itself of those ineffective actors, whether through elections, impeachment, or some other means. The relatively high degree of legitimacy that is maintained in the United States has helped the American government persist under the U.S. Constitution through good times and bad since 1789.

## AMERICAN POLITICAL CULTURE

**Political culture** refers to the core values about the role of government and its operations and institutions that are widely held among citizens in a society. Political culture defines the essence of how a society thinks politically. It is transmitted from one generation to the next and thus has an enduring influence on the politics of a nation. Every nation has a political culture, and the United States is no exception.

Whereas common ancestry characterizes an important aspect of the political culture of many other nations, the United States has no common ancestry. Most other nations around the world, such as France, Britain, China, and Japan, are bound by a common birth lineage that serves to define the cultural uniqueness of the nation. For example, Britain, despite being a democracy, retains a monarchy as a symbolic gesture toward its historical antecedents. In many nations rich with such common ethnic traditions, these routines often serve to underscore the political culture of the nation.

The United States has no such common ancestry to help define its political culture. As seen in Table 1.2, Elazar presented a popular description of American political culture. Its land was first occupied by many different Native American tribes and then settled by people from many different parts of the world. Most of the immigrants who settled the colonies were seeking a better life from the political



**TABLE 1.2 ■ Daniel Elazar's Typology of American Political Culture**

Many observers of American politics have used different approaches and typologies to describe American political culture. The late political scientist Daniel Elazar described three competing political subcultures, which he believed differentiated American political culture from that found in any other country in the world. According to Elazar, different subcultures can be found in different geographic areas and sometimes within a single area. For example, he described the political subculture in Texas as part traditionalistic (as manifested in the long history of one-party dominance in state politics) and part individualistic (as seen in the state government's commitment to support for private business and its opposition to big government).

| Subculture       | Description  |
|------------------|--|
| Individualistic  | Is skeptical of authority, keeps government's role limited, and celebrates the United States' general reliance on the marketplace  |
| Moralistic       | Has faith in the American government's capacity to advance the public interest and encourages citizens to participate in the noble cause of politics   |
| Traditionalistic | Maintains a more ambivalent attitude toward both government and the marketplace, believing that politicians must come from society's elite, whereas ordinary citizens are free to stand on the sidelines |

Source: Adapted from Daniel J. Elazar, *American Federalism: A View from the States* (New York: Thomas Y. Crowell, 1966).

or religious persecution they experienced in their native countries, or they were seeking improved economic opportunities for themselves and their families. As America continued to grow through the centuries, it attracted immigrants from around the world, eager to find a better life. These circumstances had a profound influence on the core values that have become ingrained in American political culture. The ideas generated by democratic political philosophers such as Thomas Hobbes and John Locke also significantly contributed to American political culture. These ideas were used by the founders to justify the Declaration of Independence and the U.S. Constitution, and they continue to underlie American political culture today.

The circumstances surrounding America's first and current immigrants, as well as the great ideas generated by Enlightenment philosophers, form the core set of values that define the American political culture. One of these core values is **majority rule**. From its earliest times, the American nation has been committed to the notion that the "will of the people" ought to guide public policy, thus underscoring the importance of popular sovereignty in the thinking of the founders. Majority rule is the way in which popular sovereignty is actually exercised. Rarely will all of the people agree all of the time, and so it is what the majority of people prefer that generally guides decision-making. Early local governments, such as town governments in some of the New England colonies, relied on town meetings, where all citizens were invited to attend, discuss, and vote, to make governmental decisions. Elections for most local and state offices, and elections for the U.S. Congress, are all based on the idea that those who make and enforce laws are duly elected by majorities. A more recent aspect of U.S. commitment to majority rule is its heavy reliance on public opinion polling as a gauge for assessing the performance of elected leaders and to ensure that leaders respect public preferences for certain policy positions.

Although the preferences of the majority rule the day, another core value in the American political culture is minority rights. Those in the minority enjoy certain rights and liberties that cannot be taken away by the government. The idea of the natural law (e.g., that people are "endowed by their creator with certain unalienable rights" that the government cannot deny) is an important corollary to majority rule. The rights to speak freely, to choose a religion, or to decide not to practice religion at all are among the many liberties that are protected by the U.S. Bill of Rights and are widely endorsed by the American public.

These rights are intended to inspire debate on issues, guarantee religious freedoms, and afford due process rights to those accused of crimes. The American political culture places a high value on individual liberty. The fact that many immigrants came to this country for the promise of greater freedom adds further credence to this proposition. Certainly, there are some terrible black marks in American history that belie this claim. Among them are the perpetuation of slavery in the country up until the Civil War, the internment of Japanese Americans during World War II, and the treatment of

early 1960s civil rights protesters in the South. Still, many Americans today view their nation as the world’s “garden” of freedom and liberty, even if it has come to this status only slowly and sometimes with reluctance during its more than two centuries of existence.

Another core value in American political culture is the idea of **limited government**. Americans have generally supported the idea expressed by Thomas Jefferson that “the government that governs least governs best.” From the days of the American Revolution, the colonists believed that the corruptive power of King George III and the British Parliament led to unfair treatment of the colonies.



Latina journalist and PBS senior correspondent Maria Hinojosa.

Mike Coppola/Getty Images for HBO

Suspicion of the government and those with power is firmly rooted in the psyche of American political culture. The “watchdog” function of the press, the separation of powers and the system of checks and balances among political institutions, and the rather negative connotation of the word *politics* all reflect an appreciation for limits and checks on those with authority. Corresponding to the value of limited government is the notion that communities and the private sector should take a role in helping fellow citizens. Problems that may be solved without government should be solved that way. The French journalist Alexis de Tocqueville observed this tradition when he visited the United States in the early 1800s and credited the success of the American political system in part to citizens’ strong interest in community and helping one another apart from government.<sup>5</sup> Because the United States has no common ancestral or cultural bloodline, American political culture recognizes the value and strength derived from the diversity of its population—another important core value. At the base of the Statue of Liberty in New York Harbor is inscribed a poem by Emma Lazarus that includes the phrase “Give me your tired, your poor, your huddled masses yearning to breathe free.” Until the U.S. government adopted a restrictive immigration policy in the early 1920s, those huddled masses arrived in waves from different parts of the world, as the United States became the chosen destination for those seeking a better life. Joining freed Black men and women who were originally brought here against their will were legions of Italians, Irish, Germans, and other immigrants from Europe and elsewhere. This surge in immigration occurred from 1880 through 1920, as immigrants left the economic and political strife of Europe seeking jobs and opportunities in America.

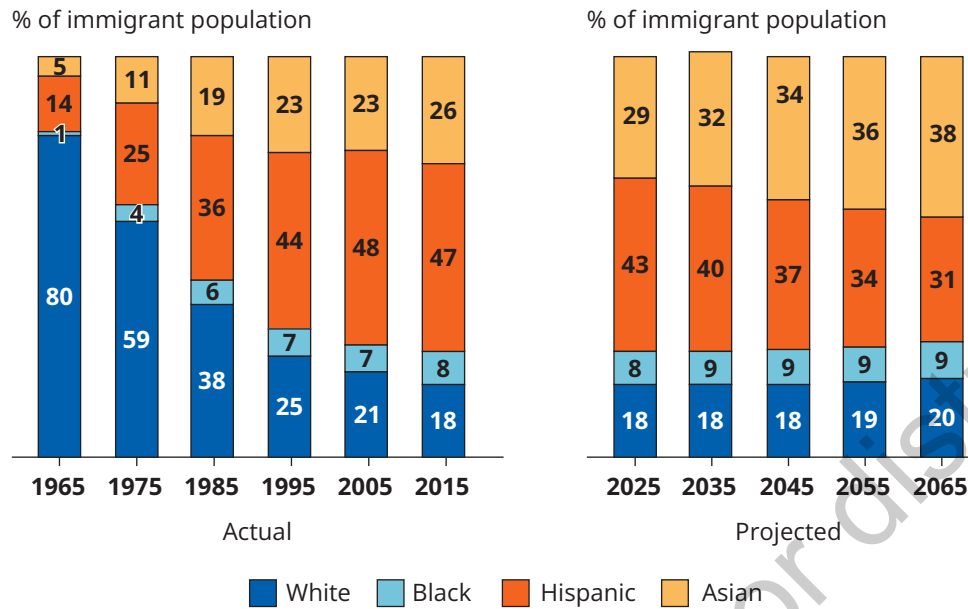
One of the most profound population developments in the recent history of the United States has been the skyrocketing growth of the nation’s Hispanic population. The Latino populations have expanded from what was once a small, regionally concentrated subgroup of fewer than 6 million in 1960 to a now widely dispersed population of more than 63 million (or 19 percent of the nation’s population) today. The recent explosion of immigrants from Latin America is largely a product of the difficult economic and social conditions they face in their home countries, as well as the opportunity for a better life they believe is possible in the United States.

As shown in Figure 1.1, the Pew Research Center projects that this modern immigration wave will drive U.S. population growth and change at least through 2065. The projections also include a growing Asian American foreign-born population that will even surpass Hispanics as the country’s largest immigrant group by 2055. Such a massive swelling in the ranks of Hispanics and Asian Americans has the potential to create major political change in America.

This population growth has transformed the United States to one of the most racially and ethnically diverse nations in the world. Integrating these many people into a united nation has not been easy; in fact, resistance to the notion of a “melting pot” has been common. The nation has been wracked at times with racial and ethnic strife to a degree that more homogeneous countries can more easily avoid. Government officials occasionally exacerbate these tensions by promoting policies that discriminate against various groups, including Native Americans, Black Americans, Asian Americans, and Latinos. No stranger to ethnic and racial tensions himself, German dictator Adolf Hitler calculated that the diversity of the United States would eventually hamper its resistance against Germany’s totalitarian

**FIGURE 1.1** ■ Asians Projected to Become the Largest Immigrant Group in the United States by 2055

### Projections of Asian Population in America



Note: Pew Research Center estimates for 1965–2015 based on adjusted census data; Pew Research Center projections for 2025–2065.

Note: Whites, Blacks, and Asians include only single-race non-Hispanics. Asians include Pacific Islanders. Hispanics are of any race. Other races shown but not labeled.

Source: “Asians Projected to Become Largest Immigrant Group, Surpassing Hispanics,” *Pew Research Center*, Washington, DC, September 23, 2015, [https://www.pewhispanic.org/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/ph\\_2015-09-28\\_immigration-through-2065-05/](https://www.pewhispanic.org/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/ph_2015-09-28_immigration-through-2065-05/).

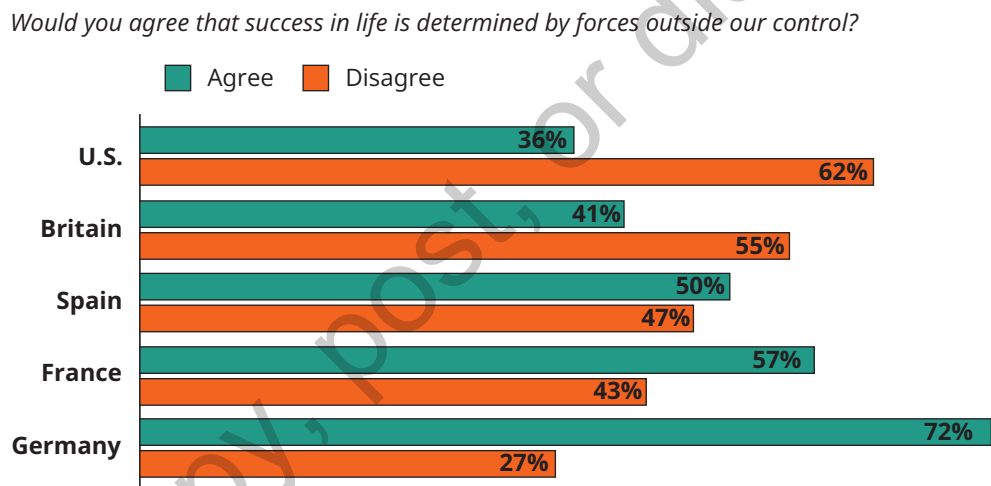
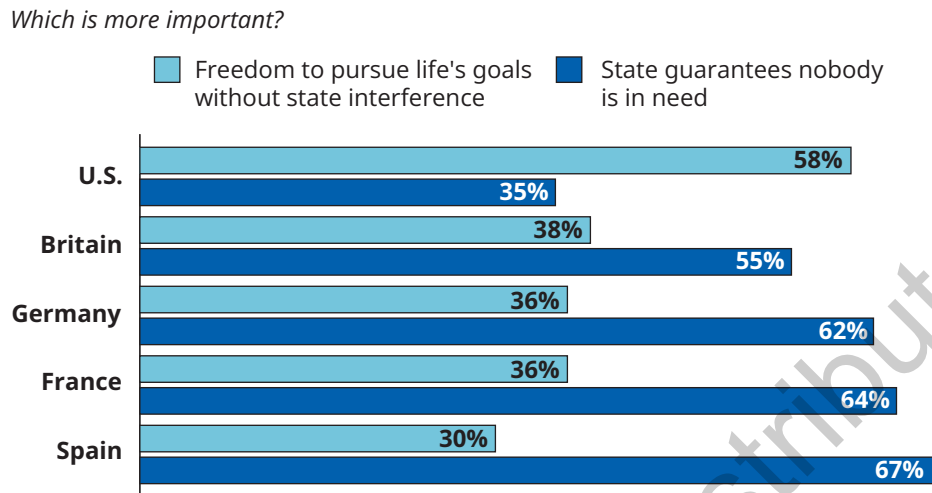
aggression; in fact, American soldiers of different backgrounds, ethnicities, and religions fought in World War II. Much to Hitler’s chagrin, U.S. diversity proved to be a source of strength rather than weakness. Indeed, many Americans today believe that the heterogeneity of our society enhances the quality of our culture and helps guarantee the fairness of the government.

Americans also generally subscribe to the notion that individuals are primarily responsible for their lot in life—a value referred to as **individualism**. The seeds of this value were sown hundreds of years ago with the Puritans and their commitment to a strong work ethic that stressed that “what one sows determines what one reaps.” In other words, hard work and intelligence should be rewarded. Although the U.S. government has assumed some responsibility to provide a safety net for citizens who suffer economically, the American political culture, through its primary reliance on a capitalist economic system, free markets, and individual effort, is one that promotes individual initiative and responsibility. Figure 1.2 depicts the heightened importance of the value of individualism in the American political culture, compared to other European democracies.

The value of individualism promotes another core value—equality of opportunity, or the idea that the role of government is to set the stage for individuals to achieve on their own and that everyone should be given the same opportunity to achieve success. Indeed, America has been an attractive place for highly motivated individuals from around the world to immigrate so that they might have a fair chance of achieving personal success. Many immigrants today, particularly from Asia and Latin America, are attracted to the United States for the opportunities to achieve individual success.

The United States has long set itself apart from those nations whose histories include traditions of a rigid class system of privileged aristocracies and oligarchies and peasants with few or no rights or freedoms. In the United States, there is no formal recognition of a class system; nor is there a tradition of royalty, nobility, or monarchy. Indeed, Article I of the Constitution specifically prohibits both the

**FIGURE 1.2 Individualism as a Value in the United States Compared to Other Democracies**



Source: "5 ways Americans and Europeans are different," *Pew Research Center*, Washington, DC, April 19, 2016, <https://www.pewresearch.org/fact-tank/2016/04/19/5-ways-americans-and-europeans-are-different/>.

Note: A Pew Global Survey shows that Americans are more likely than their European counterparts to believe that "it is more important to pursue life's goals without government interference" and to disagree with the statement "success in life is determined by forces outside our control."

federal government and the state governments from granting any title of nobility upon its citizens. Instead, American political culture values the so-called Horatio Alger myth. Alger was a popular writer in the late 1800s whose characters came from impoverished backgrounds but through pluck, determination, and hard work achieved huge success. Although this idealistic rags-to-riches notion often ignores the many harsh economic disparities that exist in the United States, it remains central to the American political culture. The stories of Benjamin Franklin and Abraham Lincoln exemplified this road to success, as do the more recent examples of Presidents Barack Obama and Joe Biden, both of whom came from less-than-privileged circumstances to win the nation's highest political office and become leaders of the free world. Perhaps it is because of these success stories that so many Americans believe that they have boundless opportunities to better their lot on the basis of diligence and hard work.

These core values provide a window into American political culture. To be sure, there is plenty of room for disagreement as to how these values might be applied to specific situations, which we address in Chapter 10. In addition, these values are often in conflict. At the heart of the debate over affirmative action, for example, lies the value conflict pitting individualism against equality of opportunity. Those

who oppose affirmative action in hiring claim that individuals should be evaluated exclusively based on who they are and what they can do rather than on their gender, race, or other demographic characteristic. Those supporting affirmative action claim that historical discrimination has led to a current job market that provides unequal opportunities for certain groups, such as racial minorities and women. Although these values do not always solve problems and policy debates, they do lay the groundwork for how American politics goes about settling problems and debating issues.

## IS AMERICAN DEMOCRACY IN DECLINE?

The old saying that “those who ignore the problems of the past are destined to repeat them” holds as true in American politics as it does in any other context. Certainly, new issues and problems may arise, requiring innovative new thinking to address them. But many other difficulties the United States faces can be effectively addressed by casting an eye on the distant or not-so-distant past. A historical view can help place modern dilemmas in proper perspective.

### The Case for Decline

Some recent observers of American politics have suggested that the American political system is in decline. Are we currently witnessing a deterioration of democracy in the United States? Is the American political system in jeopardy? Are the problems that the American system of government faces today beyond repair? To try to answer these questions, let's first look at the factors some cite as contemporary indicators of the decline of American democracy.

- 1. The decline of the United States as an economic superpower?** The growth of the national economy from the Industrial Revolution through the post-World War II era established the United States as the preeminent fiscal power in the world for much of the twentieth century. This fiscal strength enabled the United States to establish the dollar as the benchmark unit of currency for the world, defeat the Soviet Union in the Cold War, build a military capability vastly superior to that of other nations, and provide the leadership that brought democracy to many other nations. However, the significant growth of the Chinese economy over the past decade, coupled with the exploding U.S. national debt (and the willingness of China to underwrite much of that debt), has raised serious questions about the future of U.S. dominance over the world's economy. Concerns over the economic rise of China and the decline of the United States are summarized in a recent study by the Congressional Research Service: “The emergence of China as a major economic superpower has raised concern among many U.S. policymakers . . . that China will overtake the United States as the world's largest trade economy in a few years and the world's largest economy within the next two decades. In this context, China's rise is viewed as America's relative decline.”<sup>6</sup> This report offers evidence of a decline in economic power citing projections of U.S. and Chinese gross domestic product (GDP).
- 2. The death of capitalism?** The collapse of some of the largest financial institutions in the United States in 2008 and the subsequent “Great Recession” have raised questions about the viability of the free market system in contemporary society. In large part, the financial industry's drive in the 1990s and 2000s to capitalize on rising real estate markets drove financial institutions to rely on increasingly risky lending practices. Risky loans were bundled and sold off to investors in the form of real estate securities. (These practices were depicted in the award-winning movie *The Big Short*.) Multibillion-dollar financial institutions, such as Citibank, Morgan Stanley, Lehman Brothers, Countrywide Mortgage, and AIG, among many others, found themselves in the red at the exact same time that the real estate market collapsed, thus freezing credit in the United States. The stock market tumbled, and the U.S. government needed to bail out many of the largest financial institutions just to keep the nation's financial system from collapse. The frantic drive for profits among the largest of these companies was identified as the source of economic ills not only in the United States

but around the world. Greed, inspired by capitalism, seemed to be the culprit of the world's economic woes, thus leading to questions about the viability of the free market system in the modern age. The failure of markets during the Great Recession contributed to the popular presidential campaign of Democratic socialist Bernie Sanders in 2016 and 2020. More recently, corporations have been the subject of a great deal of criticism and blame for the spike in inflation. A number of U.S. senators agree with Senator Elizabeth Warren (D-MA): "Now, you might think inflation would also be bad for companies too. After all, an increase in the costs of doing business would likely eat into a company's bottom line. But that's not happening. In fact, the CEOs of some of the biggest companies have been bragging to their investors that inflation has created a terrific opportunity for them to boost profits."<sup>7</sup>

3. **Policy paralysis caused by partisan gridlock?** Relations between the two major parties tend to ebb and flow with changing political moods and circumstances. Still, cross-party relations between Republicans and Democrats seemed to have reached a low in the current era that policy-making all but ceases to function. In recent years, whichever party has carried the White House has been forced to brace for a Senate opposition that uses the filibuster freely and with few limitations to impose a supermajority requirement of 60 senators for all legislative enactments. Many other bills can never even get out of committee. Meanwhile, in the House of Representatives, the president's opposition has ruled with an iron hand, rendering matters that had in the past proven perfunctory (such as the routine raising of the nation's debt ceiling) into a knockdown, drag-out fight between the two parties in Congress. The prospect of a government shutdown often looms over every budget fight, and in December 2018–January 2019 partisan tensions did, in fact, lead to the longest shutdown of many federal government functions in the nation's history. Party-line votes in Congress on most major legislative initiatives indicate a lack of any common ground whatsoever. Tensions between the Democrat-controlled House and President Trump in 2020 and 2021 led to two impeachments of the then-chief executive. Tensions between a GOP-led House and Democratic President Joe Biden led to a House impeachment inquiry on Biden in 2024.
4. **Has money ruined American politics?** "Big money" now dominates American elections, in the form of contributions from those who seek to influence future officials, personal expenditures from candidates themselves, and general expenditures by political parties. The Supreme Court's landmark decision in *Citizens United v. Federal Election Commission* (2010) seemed to cement the role that big money plays in determining election outcomes, paving the way for independent-expenditure political action committees (often called super-PACs) to accept unlimited contributions from individuals, unions, and corporations for the



Senator Bernie Sanders, a self-proclaimed Democratic Socialist, campaigns for the Democratic Party's nomination in 2020. He has been a harsh critic of capitalism.

KAMIL KRZACZYNSKI/AFP/Getty Images

purpose of making so-called independent expenditures on behalf of candidates; it thus enabled wealthy individuals to dominate the process. In the year following *Citizens United*, just 22 donors provided the money for half of the \$67 million funded by super-PACs! In some instances, anonymous outside groups poured millions of dollars into the process. Others were willing to stand up and be counted: consider that billionaire Sheldon Adelson alone kept Newt Gingrich's struggling presidential campaign afloat in 2012 with his donation of \$10 million to a pro-Gingrich super PAC. Similarly, billionaires who support Democrats, such as George Soros and Tom Steyer, float much financial support to campaigns on the political left. With a handful of individuals responsible for a large percentage of the donations in these campaigns, the corruptive influence of money appears to have reached new, dangerous heights.

## But Do These Problems Really Signify a Decline?

If we reexamine some of the criticisms of contemporary American politics with the benefit of historical perspective, we may reach far different conclusions about whether American democracy is now in a state of decline.

- 1. The United States will remain an economic superpower.** Challenges to U.S. fiscal dominance, such as the current challenge of China, are nothing new. Forty years ago, for example, many policy-makers expressed similar concerns about the imminent decline of U.S. economic power. At that time, the concern was focused not on China but on Japan. The Japanese economy flourished in the decades after World War II. A latecomer to modernization, Japan was able to avoid the pitfalls of industrialization experienced by the United States and other advanced democracies prior to World War II. Once converted to a free market system after the war, Japan's economy took off quickly. By the 1970s, Japan had the world's second largest economy and appeared to be closing in on the United States. Gross domestic product (GDP) in Japan grew from \$8 billion in 1955, to \$32 billion in 1965, to \$148 billion in 1975, to \$323 billion in 1985. By 1990, Japan's per capita GDP exceeded per capita GDP in the United States. The sharp upward trajectory alarmed many U.S. policy-makers, who felt that Japan's rise would ultimately derail the U.S. dominance of world fiscal policy. Yet today Japan offers no significant threat to the economic power of the United States. The rapid rise of Japan's economy left it unable to effectively deal with a recessionary period of any length. Consequently, the dire predictions of the U.S. economic fall to Japan were never realized. Furthermore, by 2016 China's economy was already showing signs of slower growth, leading economists to recognize the likely continued dominance of the United States well into the twenty-first century.<sup>8</sup> To put the economic power of the United States in international perspective, consider the ranking of national GDP in 2022 presented in Table 1.3.

**TABLE 1.3** ■ GDP of the 10 Largest National Economies in 2023

|   |
|---|
| 1. United States (GDP: 26.95 trillion)  |
| 2. China (GDP: 17.7 trillion)           |
| 3. Germany: (GDP: 4.43 trillion)        |
| 4. Japan: (GDP: 4.23 trillion)          |
| 5. India: (GDP: 3.73 trillion)          |
| 6. United Kingdom: (GDP: 3.33 trillion) |
| 7. France: (GDP: 3.05 trillion)         |
| 8. Italy: (GDP: 2.19 trillion)          |
| 9. Brazil: (GDP: 2.13 trillion)         |
| 10. Canada: (GDP: 2.12 trillion)        |

Source: <https://worldpopulationreview.com/countries/countries-by-gdp>.

- 2. Capitalism is not dead.** The Great Recession of 2008 and the events that led up to it certainly did not mark the first time that speculation in free markets and government interference in those markets led to economic catastrophe. A panic in 1837 led to stymied economic growth for more than three years, a severe recession in 1873 retracted growth for six years, and an economic panic in 1893 set off a series of bank failures. A stock market crash in 1929 produced the decade-long "Great Depression." These and many other economic downturns in U.S. history, aggravated by speculation and overly exuberant investors, have led to extremely tough economic times. But the ills of the free market have never limited the ability of capitalism to provide the medicine for recovery, and then some. Panics, recessions, and depressions

have always been corrected by bull markets, opportunities, and resurgences. Capitalism has been declared dead many times in U.S. history. The approach of each economic downturn was accompanied by claims that the U.S. experiment with a free market system had finally failed. In fact, the free markets operate in natural cycles of growth and retraction. Just as the free market system was declared dead at earlier times in American history, so, too, were many claiming that the Great Recession of 2008 was the last nail in the coffin of American capitalism. However, just as the cyclical nature of free market growth calmed the fears of the skeptics before, so, too, has the recent growth of the U.S. stock market and decline in unemployment quieted the naysayers once again.

3. **The polarization of the two major political parties has not paralyzed the lawmaking process.** The political parties' recent polarization is hardly unprecedented: At various times in history (e.g., during the Civil War, the New Deal) the parties have stood in stark contrast on nearly all the major issues of the time. Some democratic theorists argue that a marked differentiation between the two parties may actually contribute to democracy under a "responsive theory of democracy": the two parties disagree on the issues and then allow the public to express its opinion through elections. Despite all the talk of polarization, the Congress passed (and Presidents Trump and Biden have signed) a number of new laws, including a vast tax cut bill in 2017, and three multitrillion-dollar spending bills in 2020 and 2021 to address the negative economic impact of the COVID-19 pandemic. In fact, the 116th Congress (which began January 3, 2019 and ended January 3, 2021) enacted 344 new laws.<sup>9</sup> And in early 2022, overwhelming majorities of Democrats and Republicans alike joined together to pass a large aid package to aid Ukraine in defense against Russia's invasion. Thus, while the two major parties continue to grow further apart on numerous issues, the government continues to find enough common ground to pass legislation.
4. **The influence of money does not spell the end of American politics.** American elections have always been dominated by individuals with immense power and influence. For much of this nation's history, political machines all but controlled the nomination process and wielded heavy influence on politicians who benefitted from their respective handouts and other forms of largesse. Whether it was Boss Tweed and Tammany Hall in New York City, the Thomas Pendergast political machine in Missouri, or the Daley machine in Chicago, power has always been wielded by a relatively few, elite individuals. The recent dominance of money in politics has shifted the source of power from those machines to the extremely wealthy, but that may actually represent a positive development of sorts, as both parties have enjoyed their share of big donors and fundraising prowess in recent years. Moreover, well-financed campaigns like Governor Jeb Bush's unsuccessful bid for the White House in 2016 prove that money can only go so far without the right messenger and the right message. Those who think money corrupts politics might want to consider these caveats, as well as the far less attractive alternative that used to mark the elections process.

## FROM YOUR PERSPECTIVE

### Courting the Youth Vote

Candidates and political parties often try to increase turnout as a means of enhancing their prospects in an election. However, numerous nonpartisan organizations also engage in special efforts to encourage the so-called youth vote in particular. These organizations may target young voters primarily for two reasons: (1) young voters represent the future of American democracy, and (2) youth turnout has tended to be lower than turnout among older Americans. In the 2016 presidential election, less than half of eligible voters ages 18 to 29 voted, leaving that group well behind turnout rates of the electorate as a whole (60 percent). Half of the youth turned out to vote in the 2020 presidential election, which was an 11 point increase from 2016, and 42% turned out in 2024.<sup>10,11</sup>





A student at the University of Tennessee votes in the 2020 presidential election.  
Troy Stolt/Chattanooga Times Free Press via AP

Among the many organizations that run programs to encourage young voters to exercise their voting rights are the following:

1. Rock the Vote, which claims to have registered more than 5 million new voters in recent presidential elections (see [rockthevote.org](http://rockthevote.org));
2. CIRACLE (Center for Information and Research on Civic Learning and Engagement), which studies the voting behavior of young people (see [www.civicyouth.org](http://www.civicyouth.org)); and
3. YouthVote.org, a website that provides a plethora of information to help young people learn how to register to vote and why it is important to do so.

### For Critical Thinking and Discussion

1. Why do you think college-age students turn out in relatively lower numbers compared to older voters?
2. How effectively have the candidates in 2024 addressed issues that are important to college students?

History does not literally repeat itself. The specific people, circumstances, and events certainly change. But history can help us identify patterns, recurring problems, and trends in how the American political system functions and resolves conflicts. The preceding discussion of some of the contemporary arguments for why American democracy may be in a state of decline helps us frame current conditions. In doing so, we may gain a greater understanding of the challenges facing the nation today. Certainly, many contemporary challenges are no less daunting than problems the nation has encountered over the past two centuries. Throughout this book, a historical perspective on contemporary problems offers a sense of how the past might help us understand politics today.

## SUMMARY

### 1.1 Elections, History, Diversity, and American Politics

- No event in American politics receives the level of attention that a presidential election elicits. The 2024 campaign was highly partisan, but many past campaigns were no stranger to divisive partisan battles.
- The patterns of history provide a powerful tool for understanding American politics today.

## 1.2 Forms and Functions of Government

- The development of the American political system is grounded in the philosophy of John Locke and Jean-Jacques Rousseau, who argued that government is necessary and that it exists for the purpose of protecting the people that it serves. The “social contract” theory states that natural law gives people certain unalienable rights that the government cannot take away and that the people give government authority to rule, but the people can withdraw that authority if the government does not serve the people’s interests.
- Democracy may be distinguished from other forms of government in that it is a form of government in which the people, either directly or through elected representatives, hold power and authority.

## 1.3 American Government and Politics

- Democracy includes at its core the idea of popular sovereignty. The United States practices a form of democracy known as “representative democracy,” where the people indirectly rule by electing leaders who are responsible for making and carrying out policies and laws.

## 1.4 American Political Culture

- The political culture in America is reflected in the Constitution and the way in which the political system deals with and decides political debates. Among the core values guiding the American political culture are majority rule, liberty, limited government, diversity, individualism, and equality of economic opportunity.

## 1.5 Is American Democracy in Decline?

- Although the current American government has been in place for more than 200 years, questions have been raised about whether this political system is in a state of decline. Lower voter turnout, confusing election outcomes, negativity, polarization in politics, and the influence of money in policy outcomes have been offered as evidence of a decline. However, a review of historical patterns in American politics suggests that these seemingly contemporary problems are chronic, and the American political system has effectively dealt with these and many other problems in the past.
- Viewing the American government from a historical perspective may enrich our understanding of how the political system works. History can help us identify patterns, recurring problems, and trends in how the American political system functions and resolves conflicts. Many contemporary challenges are no more significant than problems the nation has encountered over the past two centuries.

### KEY TERMS

anarchy  
 authoritarian  
 authority  
 democracy  
 direct democracy  
 government  
 individualism  
 legitimacy  
 limited government  
 majority rule

monarchy  
 natural law  
 oligarchy  
 political culture  
 politics  
 popular sovereignty  
 power  
 representative democracy  
 social contract  
 theocracy



jamesbenet/Getty Images



## THE FOUNDING AND THE CONSTITUTION

### LEARNING OBJECTIVES

- 2.1 Discuss the causes of the American Revolution and the structure of the first national government under the Articles of Confederation, including its strengths, weaknesses, and struggles.
- 2.2 Compare the various plans for the new constitution and the obstacles to agreement among the different colonies.
- 2.3 Explain the principles incorporated in the new constitution, including popular sovereignty, the separation of powers, federalism, and limited government.
- 2.4 Discuss the reasons why ratification succeeded and the role that the Bill of Rights played in the process.
- 2.5 Describe the process of amending the Constitution as well as alternative means of achieving constitutional change.

**THE ENDURING CAPACITY** of the U.S. Constitution to govern for better than two centuries represents something of a miracle: by one estimate, the average life-span of other countries' national constitutions over this same period was just 17 years. How has the American constitutional experiment succeeded where so many others have failed? The secret lies in its capacity to serve two functions at the same time: it provides stability (just 17 amendments have been ratified during the past 230 years) while at the same time offering the flexibility to adapt to changes in America's political culture. Woodrow Wilson addressed this when he wrote, "The Constitution of the United States is not a mere lawyers' document: it is a vehicle of life, and its spirit is always the spirit of the age."

### THEN & NOW

#### STRETCHING THE CONSTITUTION TO SERVE POLITICAL NEEDS

Amendments to the Constitution provide the most visible form of change to our founding document, but they are exceedingly rare. There have been just 27 amendments ratified since the Bill of Rights first appeared in 1791. How can a republic adapt to changing times and realities when its written constitution is so impervious to formal change? In practice, less formal types of constitutional change (such as the decision by one of the three branches to offer its own newly formed interpretation of the document) can serve the needs of the nation as well. On the other hand, these forms of constitutional change can prove more controversial, as they can occur quickly and without the formal approval of a majority of the governed.

#### Then

As the United States sunk further into the Great Depression during the early 1930s, certain principles of intergovernmental relations remained unchanged from the earliest days of the republic. That included the "nondelegation doctrine," which prohibited Congress from passing its constitutionally prescribed law-making powers on to other branches. Yet, beginning in 1933, a forceful new chief executive, Franklin Delano Roosevelt, was prepared to offer innovative new solutions to the nation's economic woes. Because the unwieldy size of Congress had left it largely powerless to hold previously unregulated businesses accountable, FDR's administration planned to stretch the Constitution's limits to allow for executive action in the matter. Thus, on June 16, 1933, FDR signed into law the National Industrial Recovery Act (NIRA), by which Congress authorized the chief executive to approve codes generated by trade associations regarding maximum hours of labor, minimum rates of pay, and working conditions in business. The administration approved more than 700 industry codes in all before the Supreme Court invalidated portions of the NIRA in 1935. Still, even that

legal setback could not stop the growth of the welfare state under Roosevelt and his successors. Between 1935 and 1980 the federal government grew exponentially on the backs of executive agencies issuing rules and regulations that clearly amounted to law-making. The Constitution's capacity to stretch eventually afforded the federal government more flexibility to offer innovative solutions for an increasingly complex society.



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### Now

Upon assuming office as president in January 2021, Joseph Biden was forced to address pressing crises at home, with the continuing pandemic and its impact on the economy front and center on his list of priorities. The worst public health crisis in a century had already taken 425,000 American lives, and the logistical challenges of manufacturing and distributing new vaccines remained immense. Millions of Americans had lost their jobs during the pandemic; unemployment protections provided by the government (including stimulus checks) offered only a temporary fix to their problems. And although they had been relegated to the minority, Republicans retained the power to filibuster all legislation in the Senate. Given these obstacles, President Biden turned to the one unilateral tool that remained available to him and all modern presidents: the executive order. On just his first day in office, Biden reengaged with the World Health Organization to help coordinate multinational approaches to the pandemic; ordered agencies to extend eviction and foreclosure moratoriums that would impact laid-off workers; and extended the pause on student-loan payback requirements. All this was accomplished without federal legislation. Later, as vaccines became more widely available, the Biden administration rolled out vaccination requirements for most federal employees and contractors. Of course the use of executive orders is not an unlimited source of authority. Though many of the new president's unilateral actions survived, in January 2022, the U.S. Supreme Court blocked the government's vaccine mandates for workers not employed at hospitals or health care facilities; five months earlier, in August of 2021, the Court had declared eviction moratoriums unconstitutional. Still, although the court found that President Biden had exceeded his authority in those two instances, it did not stand in the way of hundreds of other executive orders related to the pandemic and the economy. Once again, the Constitution was reshaped by new interpretations of the same text that had been in place for more than two centuries.



President Joseph Biden, the 46th President of the United States, speaking from the Roosevelt Room in the White House.

JIM WATSON/AFP via Getty Images

### For Critical Thinking and Discussion

1. Since 1803, the U.S. Supreme Court has assumed for itself the right to say what the Constitution means, including what it forbids. Does the president and/or the Congress have the power to interpret the Constitution as well? If a political branch disagrees strongly with a Supreme Court decision, can it offer a contrary position?
2. Do you believe the Constitution should adapt and change according to the times, even when no amendment that spells out that change has been formally ratified? Why or why not?

## THE BEGINNINGS OF A NEW NATION

Throughout the seventeenth and early eighteenth centuries, thousands of people migrated to North America. Many came in search of greater economic opportunities; others fled to escape religious persecution and sought freedom to worship as they pleased. Slowly, a culture dedicated to the protection of social and civil rights began to take shape in the colonies.

The political structures that governed the colonies up through the early 1760s roughly paralleled those of England during the same period: (1) Royal governors served as substitutes for the king in each individual colony; (2) a governor's council in each colony served as a mini House of Lords, with the most influential men in the colony serving effectively as a high court; and (3) the general assembly in each colony was elected directly by the qualified voters in each colony and served essentially as a House of Commons, passing ordinances and regulations that would govern the colony. Up until the middle of the eighteenth century, the colonies' diverse histories and economies had provided little incentive for them to join together to meet shared goals. In fact, those in Great Britain feared other European powers attempting to encroach on their American holdings far more than they feared any form of uprising on the part of the colonists.

The French and Indian War that was waged in the colonies from 1754 through 1763 was a significant turning point in British-colonial relations.<sup>1</sup> For nearly a decade, the French, from their base in Canada, fought the British in the colonies for control of the North American empire. Both nations were interested in rights to the territory that extended west of the colonial settlements along the Atlantic seaboard and over the Appalachian Mountains into the Ohio Valley. Britain defeated France, and under the terms of the Treaty of Paris (1763), which settled the war, all territory from the Arctic Ocean to the Gulf of Mexico between the Atlantic Ocean and the Mississippi River (except for New Orleans,

which was ceded to Spain, an ally of Britain during the war) was awarded to Britain. But along with the acquisition of all this new territory came a staggering debt of approximately 130 million pounds. Administering its huge new North American empire would be a costly undertaking for Britain.

### British Actions

Following the war, Britain imposed upon its colonies a series of regulatory measures intended to make the colonists help pay the war debts and share the costs of governing the empire. To prevent colonists from ruining the prosperous British fur trade, the Proclamation of 1763 restricted them to the eastern side of the Appalachian chain, angering those interested in settling, cultivating, and trading in this new region. The Sugar Act of 1764 was the first law passed by Parliament for the specific purpose of raising money in the colonies for the Crown. (Other regulatory acts passed earlier had been enacted for the purpose of controlling trade.) The Sugar Act (1) increased the duties on sugar; (2) placed new import duties on textiles, coffee, indigo, wines, and other goods; and (3) doubled the duties on foreign goods shipped from England to the colonies. The Stamp Act (1765) required the payment of a tax on the purchase of all newspapers, pamphlets, almanacs, and commercial and legal documents in the colonies. Both acts drew outrage from colonists, who argued that Parliament could not tax those who were not formally represented in its chambers. Throughout late 1765 and early 1766, angry colonists protested the Stamp Act by attacking stamp agents who attempted to collect the tax, destroying the stamps, and boycotting British goods. When English merchants complained bitterly about the loss of revenue they were suffering as a result of these colonial protests, Parliament repealed the Stamp Act in March 1766.<sup>2</sup>

### Colonial Responses

As a result of the Stamp Act fiasco, positions on the state of British rule were articulated both in the colonies and in Parliament. Following the lead of the Virginia assembly, which sponsored the Virginia Resolves that had declared the principle of “no taxation without representation,” an intercolonial Stamp Act Congress met in New York City in 1765. This first congressional body in America issued a Declaration of Rights and Grievances that acknowledged allegiance to the Crown but reiterated the right to not be taxed without consent. Meanwhile, the British Parliament—on the same day that it repealed the Stamp Act—passed into law the Declaratory Act, asserting that the king and Parliament had “full power and authority” to enact laws binding on the colonies “in all cases whatsoever.”

Despite the colonists’ protests, Parliament continued to pass legislation designed to raise revenue from the colonies. The Townshend Acts, passed in 1767, imposed duties on various items, including tea, imported into the colonies, and created a Board of Customs Commissioners to enforce the acts and collect the duties. When the colonists protested by boycotting British goods, in 1770 Parliament repealed all the duties except that on tea. The Tea Act, enacted in 1773, was passed to help the financially troubled British East India Company by relaxing export duties and allowing the company to sell its tea directly in the colonies. These advantages allowed the company to undersell colonial merchants. Angry colonists saw the act as a trick to lure them into buying the cheaper tea and thus ruining colonists’ tea sellers. On December 16, 1773, colonists disguised as Mohawk Indians boarded ships in Boston Harbor and threw overboard their cargoes of tea. Outraged by this defiant Boston Tea Party, Parliament in 1774 passed the Intolerable Acts (known in the colonies as the Coercive Acts), designed to punish the rebellious colonists. The acts closed the port of Boston, revised the Massachusetts colonial government, and required the colonists to provide food and housing for British troops stationed in the colonies.

The colonists had had enough. In September 1774, 56 leaders from 12 colonies (there were no delegates from Georgia) met in Philadelphia to plan a united response to Parliament’s actions. This First Continental Congress denounced British policy and organized a boycott of British goods. Although the Congress did not advocate outright independence from England, it did encourage the colonial militias to arm themselves and began to collect and store weapons in an arsenal in Concord, Massachusetts. The British governor general of Massachusetts ordered British troops to seize and destroy the weapons. On their way to Concord, the troops met a small force of colonial militia members at Lexington. Shots

were exchanged, but the militia were soon routed and the British troops marched on to Concord. There they encountered a much larger group of colonial militia. Shots again were fired, and this time the British retreated. The American Revolution had begun.

### The Decision for Independence

Despite the events of the early 1770s, many leading colonists continued to hold out hope that some settlement could be reached between the colonies and Britain. The tide turned irrevocably in early 1776, when one of the most influential publications of this period, *Common Sense*, first appeared. In it, Thomas Paine attacked King George III as responsible for the provocations against the colonies and converted many wavering Americans to the cause of independence.<sup>3</sup>

On June 7, 1776, Richard Henry Lee, a delegate to the Second Continental Congress from Virginia, proposed a resolution stating that “these United Colonies are, and of right ought to be, free and independent States.” Of course, the Congress needed a formal document both to state the colonies’ list of grievances and to articulate their new intention to seek independence. The Congress thus appointed a committee to draft a document that would meet those objectives.

The committee, consisting of Thomas Jefferson, John Adams, Roger Sherman, Robert Livingston, and Benjamin Franklin, appointed Jefferson, a popular delegate from a more populous state, to compose the document. The committee eventually submitted its draft to Congress on July 2, 1776; after making some changes, Congress formally adopted the document on July 4. The **Declaration of Independence** restated John Locke’s theory of natural rights and the social contract between government and the governed.<sup>4</sup> Locke had argued that although citizens sacrifice certain rights when they consent to be governed as part of a social contract, they retain other inalienable rights. In the Declaration, Jefferson reiterated this argument with the riveting sentence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.” Jefferson went on to state that whenever government fails in its duty to secure such rights, the people have the right to “alter” or “abolish” it and institute a new one. Through the centuries, America’s political leaders have consistently invoked the Declaration of Independence as perhaps the truest written embodiment of the American Revolution. Before independence could become a reality, however, the colonists had to fight and win a war with Great Britain.



Patrick Henry, a leading revolutionary who coined the phrase “Give me liberty or give me death,” speaking before the Virginia House of Burgesses in 1775.

MPI/Stringer/Getty Images

### The First National Government: The Articles of Confederation

The colonies also needed some sort of plan of government to direct the war effort. The Second Continental Congress drew up the **Articles of Confederation**, a written statement of rules and



principles to guide the first continent-wide government in the colonies during the war and beyond. Although the document was initially adopted by Congress in 1777, it was not formally ratified by all 13 states until 1781. The Articles of Confederation created a “league of friendship” among the states, but the states remained sovereign and independent, with the power and authority to rule the colonists’ daily lives. The sole body of the new national government was the Congress, in which each state had one vote. As shown in Table 2.1, the Congress enjoyed only limited authority to govern the colonies: It could wage war and make peace, coin money, make treaties and alliances with other nations, operate a postal service, and manage relations with the Native Americans.<sup>5</sup> But Congress had no power to raise troops, regulate commerce, or levy taxes, which left it dependent on state legislatures to raise and support armies or provide other services. Congress’s inability to raise funds significantly hampered the efforts of George Washington and the Continental Army during the war against Britain. Although Congress employed a “requisition system” in the 1780s, which essentially asked that states voluntarily meet contribution quotas to the federal government, the system proved ineffective. New Jersey, for example, consistently refused to pay such requisitions. Reflecting the colonists’ distrust of a strong centralized government, the Articles made no provision for a chief executive who could enforce Congress’s laws.

**TABLE 2.1 ■ The Articles of Confederation and the U.S. Constitution: Key Features**

| Articles of Confederation Provisions  | Problems Generated   | 1787 Federal Constitution   |
|---|--|---|
| Unicameral (one-house) Congress with each state having one vote, regardless of population | Gave smaller, less populated states disproportionate power in law-making   | Bicameral (two-house) legislature with one house apportioned by population (House of Representatives) and second house (Senate) apportioned equally among states (two senators from each state) |
| Approval by 9 of 13 states required for most legislative matters                          | Restricted law-making by simple majorities, halting the legislative process in most cases  | Approval of simple majority (one-half plus one) of both houses required for most legislation  |
| No separate executive or judiciary  | Legislative abuses went unchecked  | Three separate branches of government: legislative, executive, and judicial   |
| Congress did not have the power to regulate foreign or interstate commerce                | States negotiated separately among themselves and with foreign powers on commercial matters, to the detriment of the overall economy               | Congress given power to regulate interstate and foreign commerce  |
| Congress did not have the power to levy or collect taxes                                  | Suffering from the economic depression and saddled with their own war debts, states furnished only a small portion of the money sought by Congress | Congress given power to levy and collect taxes  |
| Congress did not have the power to raise an army  | Once the war with Britain had ended, states were reluctant to provide any support for an army  | Congress given power to raise and support armies  |
| Amendments to Articles required unanimous approval of state legislatures                  | Articles were practically immune from modification and thus inflexible to meet changing demands of a new nation                                    | Amendments to Constitution require two-thirds vote of both houses of Congress, ratification by three-fourths of states  |

The limited powers of the central government posed many problems, but changing the Articles of Confederation to meet the needs of the new nation was no easy task. The Articles could be amended only by the assent of all 13 state legislatures, a provision that made change of any kind nearly impossible. Wealthy property owners and colonial merchants were frustrated with the Articles for various reasons. Because Congress lacked the power to regulate interstate and foreign commerce, it was exceedingly difficult to obtain commercial concessions from other nations. Quarrels among states disrupted interstate commerce and travel. Finally, a few state governments (most notably, that of Pennsylvania) had come to be dominated by radical movements that further threatened the property rights of many wealthy, land-owning colonists.

These difficulties did not disappear when the war ended with the Americans' victory in 1783. Instead, an economic depression, partially caused by the loss of trade with Great Britain and the West Indies, aggravated the problems facing the new nation. In January 1785, an alarmed Congress appointed a committee to consider amendments to the Articles. Although the committee called for expanded congressional powers to enter commercial treaties with other nations, no action was taken. Further proposals to revise the Articles by creating federal courts and strengthening the system of soliciting contributions from states were never even submitted to the states for approval; congressional leaders apparently despaired of ever winning the unanimous approval of the state legislatures needed to create such changes.

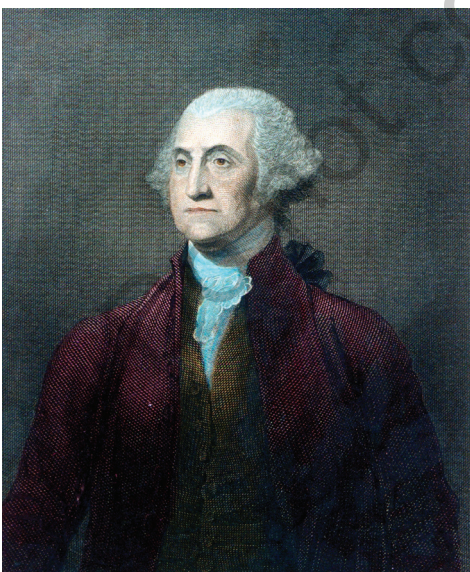
Then in September 1786, nine states accepted invitations to attend a convention in Annapolis, Maryland, to discuss interstate commerce. Yet, when the Annapolis Convention opened on September 11, delegates from only five states (New York, New Jersey, Delaware, Pennsylvania, and Virginia) attended. A committee led by Alexander Hamilton, a leading force at the Annapolis meeting, issued a report calling upon all 13 states to attend a convention in Philadelphia the following May to discuss all matters necessary "to render the constitution of the federal government adequate to the exigencies of the Union." At the time, few knew whether this proposal would attract more interest than had previous calls for a new government.

Events in Massachusetts in 1786–1787 proved a turning point in the creation of momentum for a new form of government. A Revolutionary War veteran, Daniel Shays was also one of many debt-ridden farmers in Massachusetts, where creditors controlled the state government. Shays and his men rebelled against the state courts' foreclosing on the farmers' mortgages for failure to pay debts and state taxes.<sup>6</sup> When the state legislature failed to resolve the farmers' grievances, Shays's rebels stormed two courthouses and a federal arsenal.<sup>7</sup> Eventually the state militia put down the insurrection, known as **Shays's Rebellion**, but the message was clear: A weak and unresponsive government carried with it the danger of disorder and violence. In February 1787, Congress endorsed the call for a convention to serve the purpose of drafting amendments to the Articles of Confederation, and by May 11, states had acted to name delegates to the convention to be held in Philadelphia.

## THE CONSTITUTIONAL CONVENTION

The **Constitutional Convention** convened on May 25, 1787, with 29 delegates from nine states in attendance. Over the next four months, 55 delegates from 12 states would participate. Fiercely resistant to any centralized power, Rhode Island sent no delegates. Some heroes of the American Revolution, such as Patrick Henry, refused appointments because of their opposition to the feelings of nationalism that had spurred the convention to be held in the first place. Meanwhile, lending authority to the proceedings were such well-known American figures as George Washington, Alexander Hamilton, and Benjamin Franklin. (The 36-year-old James Madison of Virginia was only beginning to establish a reputation for himself when he arrived in Philadelphia; meanwhile, John Adams and Thomas Jefferson were both on diplomatic assignment in Europe.)

The delegates, who unanimously selected Washington to preside over the convention, were united by at least four common concerns: (1) The United States was being treated with contempt by other nations, and foreign trade had suffered as a consequence; (2) the economic radicalism of Shays's Rebellion might spread in the absence of a stronger central government; (3) Native Americans had responded to encroachment on their lands by threatening early settlers including land speculators, and the national government was ill-equipped to provide citizens with protection; and (4) the postwar economic depression had worsened, and the national government was powerless to take any action to address it.<sup>8</sup> Of course, on many other matters the delegates differed. Those from bigger, more heavily populated states such as Virginia and Pennsylvania wanted



Portrait of George Washington. Washington was elected president of the Constitutional Convention in Philadelphia.

iStockphoto/pictore

a central government that reflected their larger population bases, whereas those from smaller states like Georgia and Delaware hoped to maintain the one-state, one-vote principle of the Articles.

### Plans and Compromises

It quickly became evident that a convention originally called to discuss amendments to the Articles of Confederation would be undertaking a more drastic overhaul of the American system of government. Members of the Virginia delegation got the ball rolling when they introduced the **Virginia Plan**, also known as the “large states plan,” which proposed a national government consisting of three branches—a legislature, an executive, and a judiciary. The legislature would consist of two houses, with membership in each house proportional to each state’s population. The people would elect members of one house, and the members of that house would then choose members of the second house. The legislature would have the power to choose a chief executive and members of the judiciary, as well as the authority to legislate in “all cases to which the states are incompetent” or when the “harmony of the United States” demands it. Finally, the legislature would have power to veto any state law. Under the plan, the only real check on the legislature would be a Council of Revision, consisting of the executive and several members of the judiciary, which could veto the legislature’s acts.

To counter the Virginia Plan, delegates from less populous states proposed the **New Jersey Plan**, which called for a one-house legislature in which each state, regardless of size, would have equal representation. The New Jersey Plan also provided for a national judiciary and an executive committee chosen by the legislature, expanded the powers of Congress to include the power to levy taxes and regulate foreign and interstate commerce, and asserted that the new constitution and national laws would become the “supreme law of the United States.” Both the Virginia and the New Jersey plans rejected a model of government in which the executive would be given extensive authority.

By July 2, 1787, disagreements over the design of the legislature and the issue of representation had brought the convention to a near dead end. The delegates then agreed to submit the matter to a smaller committee in the hope that it might craft some form of compromise.

The product of that committee’s deliberations was a set of compromises, termed the **Great Compromise** by historians. (Formally proposed by delegate Roger Sherman of Connecticut, the agreement is also known as the “Connecticut Compromise.”) As shown in Table 2.2, its critical features included (1) a bicameral (two-house) legislature with an upper house or “Senate,” in which the states would have equal power with two representatives from each state, and a lower House of Representatives, in which membership would be apportioned on the basis of population; and (2) the guarantee that all revenue bills would originate in the lower house. The convention delegates settled as well on granting Congress the authority to regulate interstate and foreign commerce by a simple majority vote but required that treaties be approved by a two-thirds vote of the upper house. The Great Compromise was eventually approved by a narrow 5–4 margin of the state delegations.

**TABLE 2.2** ■ The Virginia Plan, the New Jersey Plan, and the Great Compromise

| The Virginia Plan   | The New Jersey Plan   | The Great Compromise   |
|---|---|--|
| Introduced on May 29, 1787, by Edmund Randolph of Virginia; favored initially by delegates from Virginia, Pennsylvania, and Massachusetts | Introduced on June 15, 1787, by William Paterson of New Jersey; favored initially by delegates from New Jersey, New York, Connecticut, Maryland, and Delaware | Introduced by Roger Sherman of Connecticut; approved at the convention by a narrow 5–4 vote on July 16, 1787   |
| Bicameral legislature with one house elected by the people and second house chosen by the first   | Unicameral legislature elected by the people  | Bicameral legislature with one house elected by the people and second house chosen by state legislatures   |
| All representatives and senators apportioned by population  | Equal representation among states   | Members of one house (representatives) apportioned by population (five enslaved people counted as three free men); members of second house (senators) apportioned equally among states |

(Continued)

**TABLE 2.2 ■ The Virginia Plan, the New Jersey Plan, and the Great Compromise (Continued)**

| The Virginia Plan  | The New Jersey Plan                                 | The Great Compromise   |
|--|---|--|
| Singular executive chosen by the legislature   | Plural executive chosen by the legislature          | Singular executive chosen by the “electoral college” (electors appointed by state legislatures choose president; if no one receives majority, House chooses president) |
| Congress can legislate wherever “states are incompetent” or to preserve the “harmony of the United States” | Congress has the power to tax and regulate commerce | Congress has power to tax only in proportion to representation in the lower House; all appropriation bills must originate in lower House                               |

Compromise also resolved disagreement over the nature of the executive. Although rejecting the New Jersey Plan’s call for a plural executive—in which officials would have exercised executive power through a multiperson council—the delegates split on whether the executive should be elected by members of Congress or directly by the people. The agreement reached called for the president (and vice president) to be elected by an electoral college. Because the number of electors equaled the number of representatives and senators from each state, this system gave disproportionately greater influence to smaller states. As chief executive, the president would have the power to veto acts of Congress, make treaties and appointments with the consent of the Senate, and serve as commander in chief of the nation’s armed forces.

### The Slavery Issue

The issue of representation collided with another thorny issue looming over the convention proceedings: the issue of slavery. Four Southern states (Maryland, Virginia, North Carolina, and South Carolina) had enslaved populations of more than a hundred thousand each, two New England states (Maine and Massachusetts) had already banned slavery, and another four Northern states (Vermont, New Hampshire, Rhode Island, and Connecticut) maintained extremely low concentrations of slavery within their borders. The steady march of abolition in the North was matched by a Southern enslaved population that had been doubling every two decades. (As shown in Figure 2.1, slavery would continue to predominate in the Deep South up through the eve of the Civil War.) The convention delegates who advocated a new form of government were wary of the role slavery would play in this new nation, but they were even more wary of offending Southern sentiments to the point that consensus at the convention would be endangered.

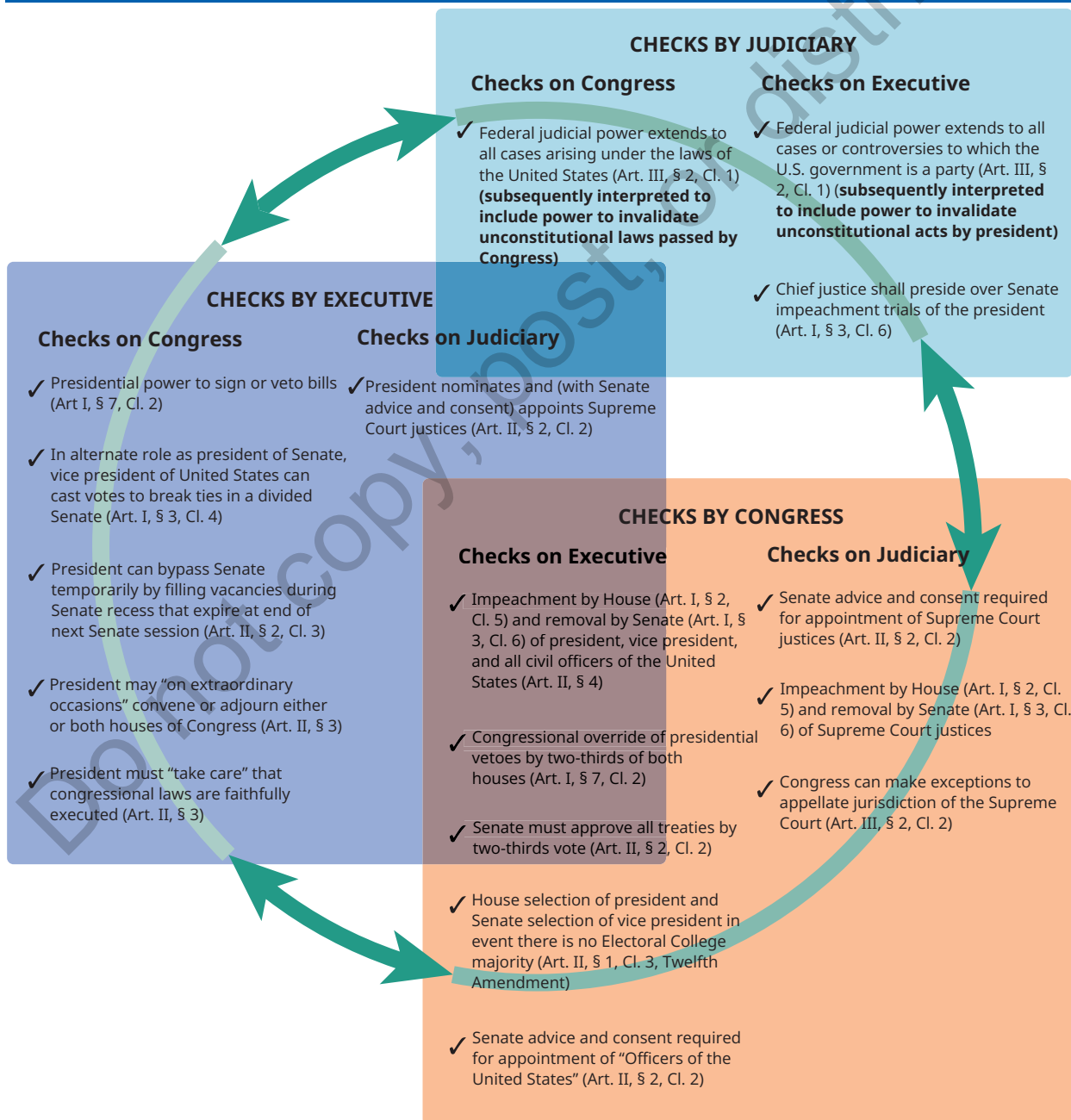
Some delegates from the Northern states who had already voted in favor of banning slavery sought a similar emancipation of enslaved people in all of the colonies by constitutional edict. Southerners hoping to protect their slave-labor economy, which depended on forced labor, wanted to prevent future Congresses from interfering with the institution of slavery and the importation of enslaved individuals. Southern delegates also wanted enslaved people to be counted equally with free people in determining the apportionment of representatives; Northerners opposed such a scheme for representation because it would give the Southern states more power, but the North did want enslaved people counted equally for purposes of apportioning taxes among the states.

In an effort to forestall the convention’s collapse, the delegates crafted a series of compromises that amounted to misdirection, and in some instances outright silence, on the issue of slavery.<sup>9</sup> By the agreement known as the **Three-Fifths Compromise**, five enslaved people would be counted as the equivalent of three “free persons” for purposes of taxes and representation. Delegates from Southern states also feared that a Congress dominated by representatives from more populous Northern states might take action against the slave trade. Most Northerners continued to favor gradual emancipation. Once again, neither side got exactly what it wanted. The new constitution said nothing about either preserving or outlawing slavery. Indeed, the only specific provision about slavery was a time limit on legislation banning the importation of enslaved people: Congress was forbidden from doing so for at least 20 years. In 1807, however, with the population of enslaved people steadily outgrowing demand, many Southerners



- The delegates recognized the need for a **separation of powers**. The founders drew upon the ideas of the French political philosopher Baron de Montesquieu, who had argued that when legislative, executive, and judicial power are not exercised by the same institution, power cannot be so easily abused. Mindful of the British model in which Parliament combined legislative and executive authority, the drafters of the new constitution assigned specific responsibilities and powers to each branch of the government—Congress (the legislative power), the president (the executive power), and the Supreme Court (the judicial power). In the new government, individuals were generally prohibited from serving in more than one branch of government at the same time. The vice president’s role as president of the Senate was a notable exception to this rule.
- While establishing separate institutions, the drafters of the new constitution also created a system of **checks and balances** to require that the branches of government would have to work together to formulate policies (see Figure 2.2). This system of “separate institutions sharing

**FIGURE 2.2** ■ Checks and Balances in the U.S. Constitution



power” helped ensure that no one interest or faction could easily dominate the government. Through the exercise of presidential vetoes, Senate advice and consent, and judicial interpretations and other tools, each institution would have an opportunity to contend for influence.

- Dividing sovereign powers between the states and the federal government—a system later termed *federalism* (discussed at greater length in Chapter 3)—is also a defining characteristic of the government framework established by the new constitution. Rather than entrusting all powers to a centralized government and essentially reducing the states to mere geographical subdivisions of the nation, the convention delegates divided powers between two levels of government: the states and the federal government. The distinction drawn between local concerns (controlled by state governments) and national concerns (controlled by the federal government) was nearly as confusing then as it is today. But the delegates determined that such a division was necessary to achieve a consensus.
- Although united by the belief that the national government needed to be strengthened, the framers of the new constitution were products of a revolutionary generation that had seen governmental power abused. Thus they were committed to a government of limited or **enumerated powers**. The new constitution spelled out the powers of the new federal government in detail, and it was assumed that the government’s authority did not extend beyond those powers. By rejecting a government of unlimited discretionary power, James Madison argued, individual rights, including those “inalienable rights” cited in the Declaration of Independence, would be protected from the arbitrary exercise of authority.
- Finally, some delegates believed that the new constitution should be a “living” document; that is, it should have some measure of flexibility in order to meet the changing demands placed on it over time. Perhaps the most frustrating aspect of the Articles of Confederation was the near impossibility of any sort of modification. Because any change to the Articles required the unanimous consent of the states, even the most popular reform proposals stood little chance of being implemented. Thus, the framers decided that the new constitution would go into effect when it had been ratified by 9 of the 13 states. Furthermore, once ratified, the constitution could be amended by a two-thirds vote of each house of Congress (subject to subsequent ratification by three-fourths of the state legislatures).

## THE RATIFICATION BATTLE

### Federalists Versus Anti-Federalists

Once Congress submitted the new constitution to the states for approval, battle lines were formed between the **Federalists**, who supported ratification of the new document, and the **Anti-Federalists**, who opposed it. From the outset, the Federalists enjoyed a number of structural and tactical advantages in this conflict.

- **Nonunanimous consent.** The rules of ratification for the new constitution, requiring approval of just 9 of the 13 states, were meant to ease the process of adopting the new document. The delegates understood that once the constitution had been approved, it would be difficult for even the most stubborn of state holdouts to exist as an independent nation surrounded by this formidable new national entity.
- **Special “ratifying conventions.”** The delegates realized that whatever form the new constitution might take, state legislatures would have the most to lose from an abandonment of the Articles. Thus they decided that the constitution would be sent for ratification not to state legislatures but instead to special state ratifying conventions that would be more likely to approve it.

- **The rule of secrecy.** The Constitutional Convention's agreed-upon rule of secrecy, which forbade publication or discussion of the day-to-day proceedings of the convention, followed the precedent established in colonial assemblies and the First Continental Congress, where it was thought that members might speak more freely and openly if their remarks were not subject to daily scrutiny by the public at large. In the fall of 1787, the rule of secrecy also gave the Federalists on the inside a distinct advantage over outside opponents, who had little knowledge of the new document's provisions until publicized. As it turned out, five state ratifying conventions approved the new constitution within four months of the convention's formal conclusion, just as Anti-Federalist forces were marshalling their strength for the battle ahead.
- **Conventions held in the winter limited rural participation.** Winter was approaching in late 1787 just as the fight over the new constitution was being launched. This timing gave the Federalists another advantage, especially in the critical ratification battlegrounds of Massachusetts, New Hampshire, and New York. It would be difficult for rural dwellers—mostly poor farmers resistant to a strong central government and thus opposed to the new constitution—to attend the ratification conventions if they were held in the dead of winter. Supporters of the new constitution successfully pressed for the ratifying conventions to be held as soon as possible. Of the six states that held such conventions over the winter, all voted to ratify by substantial margins.

### The Federalist Papers

Between the fall of 1787 and the summer of 1788, the Federalists launched an aggressive media campaign that was unusually well organized for its time. James Madison, Alexander Hamilton, and John Jay wrote 77 essays explaining and defending the new constitution and urging its ratification. Signed under the name “Publius,” the essays were printed in New York newspapers and magazines. These essays—along with eight others by the same men—were then collected, printed, and published in book form under the title *The Federalist*.<sup>10</sup> The essays allayed fears and extolled the benefits of the new constitution by emphasizing the inadequacy of the Articles of Confederation and the need for a strong government. Today these essays are considered classic works of political philosophy. The following are among the most frequently cited **Federalist Papers**:

- **Federalist No. 10.** In Madison's first offering in the Federalist Papers, he analyzes the nature, causes, and effects of *factions*, by which he meant groups of people motivated by a common economic and/or political interest. Noting that such factions are both the product and price of liberty, Madison argued that by extending the sphere in which they can act, “you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens.” Political theorists often cite Federalist No. 10 as justification for pluralist theory—the idea that competition among groups for power produces the best approximation of overall public good.
- **Federalist No. 15.** Hamilton launched his attack on the Articles of Confederation in this essay. Specifically, he pointed to the practical impossibility of engaging in concerted action when each of the 13 states retained virtual power to govern.
- **Federalist No. 46.** In this essay, Madison defended the system of federalism set up by the new constitution. He contended that the system allowed the states sufficient capacity to resist the “ambitious encroachments of the federal government.”
- **Federalist No. 51.** In perhaps the most influential of the essays, Madison described how the new constitution would prevent the government from abusing its citizens. His argument is that the “multiplicity of interests” that influences so many different parts of the government would guarantee the security of individual rights. Because the federal system of government divides the government into so many parts (federal vs. state, legislative vs. executive vs. judicial branch, etc.), “the rights of the individual, or of the minority, will be in little danger from interested combinations of the majority.”



- **Federalist No. 69.** Hamilton in this essay defined the “real character of the executive,” which, unlike the king of Great Britain, is accountable to the other branches of government and to the people.
- **Federalist No. 70.** In this paper, Hamilton presented his views on executive power, which had tempered considerably since the convention, when he advocated an executive for life. Still, Hamilton argued for a unitary, one-person executive to play a critical role as a check on the legislative process (i.e., by exercising vetoes), as well as in the process of negotiating treaties and conducting war. According to Hamilton, “Energy in the executive is a leading character in the definition of good government”; by contrast, “the species of security” sought for by those who advocate a plural executive is “unattainable.”
- **Federalist No. 78.** In this essay—cited in several landmark Supreme Court opinions—Hamilton argues that the judiciary would be the weakest of the three branches because it has “neither FORCE nor WILL, but merely judgment.” Because the Court depends on the other branches to uphold that judgment, Hamilton called it “the least dangerous branch.”

In late 1787 and early 1788, Anti-Federalists countered the Federalist Papers with a media campaign of their own.<sup>11</sup> In letters written under the pseudonyms “Brutus” and “The Federal Farmer” and published by newspapers throughout the colonies, the Anti-Federalists claimed that they were invoking a cause more consistent with that of the revolution—the cause of freedom from government tyranny. For them, the new national government’s power to impose internal taxes on the states amounted to a revival of the British system of internal taxation. Perhaps the Anti-Federalists’ most effective criticism was that the new constitution lacked a bill of rights that explicitly protected citizens’ individual rights. They rejected Madison’s contention in Federalist No. 51 that limitations on the central government provided those protections.

Ratification ultimately succeeded but by a somewhat narrow margin (see Table 2.3). Of the first five states to ratify, four (Delaware, New Jersey, Georgia, and Connecticut) did so with little or no opposition, whereas Pennsylvania did so only after a bitter conflict at its ratifying convention.

**TABLE 2.3** ■ Ratifying the Constitution

| State           | Vote    | Date of Ratification |
|-----------------|---------|----------------------|
| Delaware        | 30–0    | December 7, 1787     |
| Pennsylvania    | 43–23   | December 12, 1787    |
| New Jersey      | 38–0    | December 18, 1787    |
| Georgia         | 25–0    | January 2, 1788      |
| Connecticut     | 128–40  | January 9, 1788      |
| Massachusetts   | 187–168 | February 16, 1788    |
| Maryland        | 63–11   | April 26, 1788       |
| South Carolina  | 149–73  | May 23, 1788         |
| New Hampshire   | 57–46   | June 21, 1788        |
| Virginia        | 89–79   | June 25, 1788        |
| New York        | 30–27   | June 26, 1788        |
| North Carolina* | 194–77  | November 21, 1789    |
| Rhode Island    | 34–32   | May 29, 1790         |

\*Despite strong Federalist sentiment at the convention, North Carolina withheld its vote in 1788 until a draft bill of rights was formally introduced. The submission by Congress of 12 proposed amendments to the states on September 25, 1789, led North Carolina to hold a second ratifying convention the following November.

Massachusetts became the sixth state to ratify when proponents of the new constitution swung the convention narrowly in their favor only by promising to push for a bill of rights after ratification. By June, three more states (Maryland, South Carolina, and New Hampshire) had voted to ratify, providing the critical threshold of nine states required under the new constitution. Still, the Federalists worried that without ratification by the major states of New York and Virginia, the new union would not succeed.

Opposition in Virginia was formidable, with Patrick Henry leading the Anti-Federalist forces against James Madison and the Federalists.<sup>12</sup> Eventually Madison gained the upper hand with an assist from George Washington, whose eminent stature helped capture numerous votes for the Federalists. Madison also promised to support adding a bill of rights to the new constitution. Then, Alexander Hamilton and John Jay capitalized on the positive news from Virginia to secure victory at the New York ratifying convention. With more than the required nine states—including the crucial states of New York and Virginia—the Congress did not wait for the votes from North Carolina or Rhode Island; on July 2, 1788, it appointed a committee to prepare for the new government.

### A Bill of Rights

Seven of the state constitutions created during the Revolutionary War featured a statement of individual rights in some form. The Virginia Declaration of Rights of 1776, for example, had borrowed (from John Locke) its grounding of individual rights in a conception of natural law and social contract: “All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity.” Later, during the battle over ratification, five state ratifying conventions had stressed the need for amendments to the proposed constitution in the form of a bill of rights, which would expressly protect fundamental rights against encroachment by the national government.<sup>13</sup>

Still, not all Federalists saw the need for a federal bill of rights. Madison, for one, believed a bill of rights was unnecessary because the central government held only those powers enumerated in the Constitution. He explained, “The rights in question are reserved by the manner in which the federal powers are granted . . . the limited powers of the federal government and the jealousy of the subordinate governments afford a security which has not existed in the case of the state governments, and exists in no other.” Madison was also concerned about the dangers of trying to enumerate all important rights: “There is great reason to fear that a positive declaration of some of the most essential rights could not be obtained,” leaving some essential rights omitted for the future. Hamilton underscored this sentiment in Federalist No. 84, arguing that such a list of rights might invite governmental attempts to exercise power over those rights not included in the list.

Among the most ardent supporters of adding a bill of rights to the Constitution was Thomas Jefferson, who warned about the dangers of abuses of power.<sup>14</sup> From his distant vantage point in France, where he continued to serve as an American minister, Jefferson was in the dark about the new constitution until November 1787. Then, in a December 20, 1787, letter to his friend and political protege from Virginia, James Madison, Jefferson wrote, “A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference.” Although recognizing Madison’s fears of omissions as legitimate, Jefferson continued to argue the point. In a subsequent letter dated March 15, 1789, Jefferson argued that “half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can.”

In the end, Jefferson’s arguments prevailed, and Madison (by this time a member of Congress from Virginia) became a principal sponsor of a bill of rights in the first Congress. Introducing the bill in the House of Representatives, he declared, “They will be an impenetrable bulwark against every assumption of power in the legislative or executive.” On September 9, 1789, the House of Representatives voted to submit a list of 12 **amendments** to the states; 10 of these were ratified by the required nine states by December 15, 1791, and compose today’s **Bill of Rights**.

Among the rights protected by the Bill of Rights are the rights of free religious exercise, free speech, free press, and assembly (First Amendment); rights against search and seizure without a warrant stating “probable cause” (Fourth Amendment); and rights of due process and no self-incrimination (Fifth Amendment). The two amendments not ratified in 1791 did not relate to individual rights at

all. They were (1) a prohibition on salary increases for legislators taking effect prior to the next congressional election (in 1992—more than two hundred years later—this became the Twenty-Seventh Amendment) and (2) a provision defining the rules for determining the number of members of the House of Representatives.

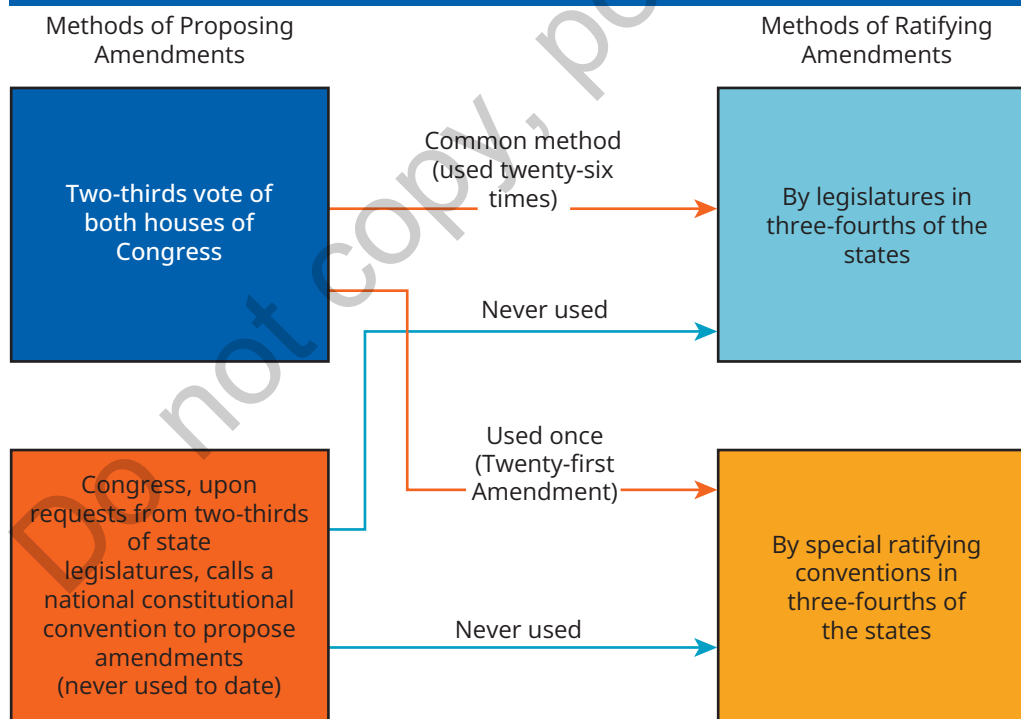
## CHANGING THE CONSTITUTION

### The Formal Amendment Process

Although political circumstances dictated that the Bill of Rights be passed quickly, future proposed amendments would not have it so easy. In crafting the rules for amending the new constitution, the framers sought to balance two competing interests: (1) the need to protect the Constitution from short-lived or temporary passions by making amendments exceedingly difficult to pass, and (2) sufficient flexibility to allow for amendments to be added when the needs of the nation demanded change. Their determination to strike such a balance was shaped by their experience in dealing with the Articles of Confederation, whose “unanimous consent of states” rule had left the document immune from even the most necessary of reforms.

As shown in Figure 2.3, Article V of the Constitution specifies two ways in which amendments can be proposed and two methods of ratification. Congress may propose an amendment by a two-thirds vote of both houses; alternatively, two-thirds of the state legislatures may apply to Congress to call a special national convention for proposing amendments. Amendments take effect when ratified either by a vote of three-fourths of the state legislatures or by special ratifying conventions held in three-fourths of the states. To date, all 27 amendments (including the Bill of Rights) have been proposed by Congress, and all but one (the Twenty-First Amendment) have been ratified by the state legislatures.

**FIGURE 2.3** ■ How an Amendment Gets Proposed and Ratified



No national convention has ever been called for the purpose of proposing amendments. Indeed, the closest the states have ever come to applying to Congress for such an event occurred in 1967, when 33 states (just one short of the required number) petitioned Congress to call a convention that would propose an amendment reversing the 1964 Supreme Court ruling requiring that both houses of each

state legislature be apportioned according to population. Given the ambiguity of Article V, numerous questions have been raised about the form such a convention would take.

How would delegates be chosen? When Congress proposed the Twenty-First Amendment, it left it to each state to determine the manner in which delegates to the ratifying conventions would be chosen. How would the convention be run? Could a convention go beyond the limitations placed on it by Congress? What would happen if a convention went far afield and proposed an entirely new constitution, just as the convention in 1787 did? Congress has to date refused to pass laws dictating the terms of future conventions, in part because it has not wanted to encourage such an event.<sup>15</sup>

Critics of the amendment process charge that it is undemocratic, as today just 13 of the 50 states can block amendments desired by a large majority. Additionally, amendments, especially those ratified by special conventions, may be adopted even if they lack widespread popular support.

Although 27 amendments have been ratified since 1789, only 17 of those were ratified after 1791 (see Table 2.4). More than 11,000 amendments have been introduced in Congress since that time, but only 33 have been formally proposed by Congress. Today, different amendments sponsored by Congress garner varying levels of support. Among the proposed amendments that failed in the ratification process are the following:

- An amendment that would withdraw citizenship from any person who has accepted a title of nobility or who has received (without the consent of Congress) an office or salary from a foreign power (proposed in 1810)
- An amendment proposed on the eve of the Civil War in 1861 that would have prohibited further interference by the federal government with slavery in any state
- An amendment that would have prohibited labor by young children (proposed in 1924)

**TABLE 2.4 ■ Amendments, Date of Ratification, and Length of Ratification Process**

| Amendment<br>Bill of Rights | Subject of Amendment   | Date Proposed      | Date Ratified      | Length     |
|-----------------------------|--|--------------------|--------------------|------------|
| First                       | Free speech, press, religion, assembly   | September 25, 1789 | December 15, 1791  | 2+ years   |
| Second                      | Right to bear arms   |                    |                    |            |
| Third                       | No quartering of troops in homes   |                    |                    |            |
| Fourth                      | No unreasonable searches/seizures  |                    |                    |            |
| Fifth                       | Right to due process, grand jury, no double jeopardy, self-incrimination               |                    |                    |            |
| Sixth                       | Right to speedy and public trial, counsel  |                    |                    |            |
| Seventh                     | Right to trial by jury in civil cases  |                    |                    |            |
| Eighth                      | No excessive bail, fines, cruel/unusual punishment                                     |                    |                    |            |
| Ninth                       | Rights not enumerated retained by people   |                    |                    |            |
| Tenth                       | Powers not delegated to Congress or prohibited to states belong to states or people    |                    |                    |            |
| Eleventh                    | No federal cases between state, citizen of other state                                 | March 5, 1794      | January 8, 1798    | 3+ years   |
| Twelfth                     | Modification of Electoral College rules  | December 12, 1803  | September 25, 1804 | 9+ months  |
| Thirteenth                  | Ban on slavery   | February 1, 1865   | December 18, 1865  | 10+ months |
| Fourteenth                  | States can't deprive right to due process, equal protection, privileges and immunities | June 16, 1866      | July 28, 1868      | 2+ years   |

| Amendment<br>Bill of Rights | Subject of Amendment   | Date Proposed      | Date Ratified     | Length     |
|-----------------------------|--|--------------------|-------------------|------------|
| Fifteenth                   | Right to vote can't be denied by race                        | February 27, 1869  | March 30, 1870    | 1+ years   |
| Sixteenth                   | Congress can levy individual income taxes                    | July 12, 1909      | February 25, 1913 | 3+ years   |
| Seventeenth                 | Direct election of senators                                  | May 16, 1912       | May 31, 1913      | 1+ years   |
| Eighteenth                  | Prohibition of liquors                                       | December 18, 1917  | January 29, 1919  | 1+ years   |
| Nineteenth                  | Women's right to vote  | June 4, 1919       | August 26, 1920   | 1+ years   |
| Twentieth                   | Dates for inauguration, Congress's session                   | March 2, 1932      | February 6, 1933  | 1+ months  |
| Twenty-First                | Repeal of prohibition  | February 20, 1933  | December 5, 1933  | 9+ months  |
| Twenty-Second               | Presidential term limits                                     | March 24, 1947     | February 26, 1951 | 3+ years   |
| Twenty-Third                | DC residents' vote for president                             | June 16, 1960      | March 29, 1961    | 9+ months  |
| Twenty-Fourth               | Ban on poll taxes  | August 27, 1962    | January 23, 1964  | 1+ years   |
| Twenty-Fifth                | Appointment of new vice president, presidential incompetence | July 6, 1965       | February 10, 1967 | 1+ years   |
| Twenty-Sixth                | Eighteen-year-olds' right to vote                            | March 23, 1971     | July 1, 1971      | 3+ months  |
| Twenty-Seventh              | Congressional pay raises effective only after election       | September 25, 1789 | May 7, 1992       | 202+ years |

The Equal Rights Amendment (ERA) proposed by Congress in 1972 also came up short during the ratification process, after years of effort to secure its passage. Although the courts have consistently held that ratification of an amendment must take place within a “reasonable time,” it has been left up to Congress to determine what constitutes a reasonable time. When drafting the proposed Eighteenth Amendment in 1917, Congress placed into the text of the amendment a seven-year limit on ratification and continued to do so with subsequent amendments it proposed up until 1960. That year, when Congress proposed the Twenty-Third Amendment giving residents of the District of Columbia the right to vote in presidential elections, it began the practice of setting time limits in the resolution accompanying submission of the amendment to Congress, rather than in the formal part of the amendment. As a consequence, when it appeared that the ERA would not be ratified, proponents of the amendment managed to get the ratification period extended to June 30, 1982 (an additional three years and three months beyond the original deadline), by a majority vote of both houses. Unfortunately for its proponents, the proposed amendment still failed to win the approval of more than 35 state legislatures by this new deadline. That said, the amendment process appears to be ongoing, as Nevada, Illinois and Virginia each passed ratification resolutions during the past decade. Given all this uncertainty, Congress may have to once again determine whether the ERA somehow lost its “vitality” before being formally ratified by enough states.

The “reasonable time” requirement for ratification of an amendment reached an extreme with the Twenty-Seventh Amendment (forbidding congressional pay raises from taking effect until an intervening election in the House of Representatives has occurred). Originally proposed in 1789 as part of the Bill of Rights, it was finally ratified in 1992, just over 202 years later. (See the “From Your Perspective” box in this chapter for more detailed discussion of what occurred.)

### Informal Processes of Change

After the Constitution and Bill of Rights were ratified, there remained the difficult task of interpreting those documents for use by the different branches of government. Among the framers, Alexander Hamilton was perhaps most attuned to the danger that Anti-Federalists and other opponents of the

Constitution might attempt to overturn the convention's carefully crafted compromises so many years later by judicial fiat. Certainly most of the Constitution's provisions were vague enough that they allowed discretion for maneuvering by the generation that interprets them, but how much discretion was justified in the process of constitutional interpretation?

The Supreme Court under Chief Justice John Marshall was the first to put its lasting imprint on the Constitution. Marshall, who hailed from Virginia, served as the chief justice of the United States from 1801 until his death in 1835.<sup>16</sup> Marshall believed in a **loose construction** (or interpretation) of the Constitution, meaning that under his leadership, many of the Constitution's provisions enjoyed broad and quite open-ended meanings. Thus, for example, Article I, Section 8, Clause 18 empowered Congress "to make all laws which shall be necessary and proper for carrying into execution" any of the powers specifically listed in the Constitution. Marshall's loose construction of that provision gave the federal government considerable implied powers (those not explicitly stated) to regulate the economy. Thus, in the 1819 case of *McCulloch v. Maryland*,<sup>17</sup> the Marshall court ruled that Congress had the power to create a national bank, even though the Constitution said nothing explicitly about such a power. The Court determined that a national bank was "necessary and proper" to assist in regulating commerce or raising armies. This philosophy of loose constitutional interpretation underlies the concept of a "living Constitution," one that is adaptable to changing times and conditions.

Thomas Jefferson, James Madison, and many others viewed the powers of the central government more narrowly. They favored a **strict construction**, arguing that the government possessed only those powers explicitly stated in the Constitution. Thus, although Article I, Section 8, Clause 3 gave Congress the power to regulate interstate commerce, it could not do so by creating a national bank or utilizing any other means not specifically mentioned in the Constitution. They supported a "fixed Constitution," one that could be changed only by the formal amendment process, not by congressional action or judicial ruling.

The tension between advocates of strict and loose constructions of the Constitution continues to this day. The late Supreme Court Justice Antonin Scalia rejected the notion of constitutional standards evolving over time; in 2008 he told one reporter that although change in a society can be reflected in legislation, "society doesn't change through a Constitution."<sup>18</sup> In accordance with this philosophy, the more conservative Supreme Court of the late 1990s (which included Scalia) struck down federal statutes regulating guns in the schools and domestic violence, on the theory that such regulations were not grounded in any specifically enumerated power of Congress, such as the power to regulate interstate commerce.

This strict-construction approach contrasts markedly with the approach advocated by professors Lawrence Tribe<sup>19</sup> and John Hart Ely,<sup>20</sup> as well as the late Supreme Court justice William Brennan, who argued for a loose or more flexible interpretation of the Constitution.

## FROM YOUR PERSPECTIVE

### One Student's Term Paper Proves That the Constitution Is Indeed a "Living Document"

College students may be forgiven for assuming that classroom assignments that invite them to propose constitutional amendments are strictly theoretical exercises. Yet, in the case of one University of Texas student, such an assignment on constitutional change became much more than theoretical. Gregory Watson chose as his research topic a long-forgotten amendment to forbid congressional pay raises from taking effect until an intervening election in the House of Representatives had occurred. Originally proposed in 1789 as part of the Bill of Rights, the amendment was finally ratified 202 years later, thanks largely to Watson. In 1982, the sophomore college student discovered the amendment while doing research for a paper on American government. Watson's final paper—in which he argued that the amendment was still viable for ratification—garnered a mere C from his professor. But Watson continued his quest to secure ratification of the amendment. Tapping into the resentment of citizens over various instances in which members of Congress had quietly passed pay raises for themselves without calling attention to their actions, Watson joined forces with several state lawmakers to get the required number of states to ratify the provision.

Their efforts succeeded, and the Twenty-Seventh Amendment was eventually ratified in May 1992. Although Watson's grade from a decade earlier remained unchanged, he at least had the satisfaction of knowing that he had made history—literally.

### For Critical Thinking and Discussion

1. What amendments to the Constitution would you like to see implemented?
2. Would you be willing to sacrifice your own time, energy, and resources to organize interest-group activities on an amendment's behalf?

Advocates of a loose construction (like Justice Brennan) view the document as evolving with the times. In the 1960s and 1970s, the Supreme Court utilized a loose-construction approach to interpret congressional power more broadly to include the power to create civil rights legislation and federal criminal laws. More recently, the Supreme Court utilized a loose construction approach in *NFIB v. Sebelius* (2012), when it upheld the so-called individual mandate of the Obama Administration's health care law (requiring that individuals purchase insurance) as a reasonable application of Congress's authority to "lay and collect taxes" (Art. 1, Sec. 8).

In recent decades, the Supreme Court justices have waged fierce battles on the bench over whether to apply a strict or loose construction of the constitution to cases considering an individual's right to personal privacy more generally and to sexual autonomy in particular. Debates over the scope of those rights have only intensified as society's notions of sexuality and sexual expression have quickly evolved. Certainly the U.S. Constitution as amended does not spell out any of these rights explicitly; it is left to the justices to decide whether the Court will seek to apply nonspecific Constitutional language to some of these uniquely modern issues.

In the landmark Supreme Court case of *Obergefell v. Hodges* (2015),<sup>21</sup> the high court extended the fundamental right to marry to same-sex couples, even though no constitutional amendment was ratified on the subject. In his majority opinion, Supreme Court Justice Anthony Kennedy utilized a looser construction of the Fourteenth Amendment's equal protection clause. Writing for the majority, he noted that the framers of the Constitution "did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning."

Of course, future challenges to the definition of these rights remain: Reformers continue to call for an amendment to the Constitution that would cement these gains into the law and force the actual language of the Constitution to reflect our nation's growing diversity on the nature of sexual autonomy, sexual expression, and sexuality more generally. At the same time, critics of the *Obergefell* decision hope that a more conservative Supreme Court might one day reverse, or at a minimum undermine, those same protections.

With so few amendments proposed and ratified during the nation's history, students of American politics may wonder how a constitution written in 1787 has developed to meet the needs of a changing nation. In truth, an informal constitutional convention occurs on a frequent basis in the American political system. Congress, the president, and the courts engage in constitutional interpretation every day through their respective activities, both official and unofficial. Thus, the Constitution has not been a straitjacket at all—rather, its elegant vagueness has opened it up to a variety of interpretations.

Much of the rise in presidential power during the twentieth century occurred in the absence of any formal amendments conferring new powers on the chief executive. The president of the United States reacted to circumstances facing the executive office by assuming greater authority over foreign and



Same-sex marriage supporters rejoice after the U.S. Supreme Court handed down its ruling protecting same-sex marriage on June 26, 2015.

Alex Wong/Getty Images

domestic policy-making, and the other branches of government deferred to the president in many such matters. With its ruling in *Marbury v. Madison* (1803),<sup>22</sup> the Supreme Court asserted its right of judicial review, that is, its authority to review acts of Congress for their constitutionality and void those that the Court determines are contrary to the Constitution. As part of its decision in *McCulloch v. Maryland*, the Court ruled that when state and federal powers collide, federal powers take precedence. With some notable exceptions, the other branches of the federal government and state courts have more or less acquiesced to such exercises of power.

When the states in 1791 ratified the Bill of Rights, citizens must have marveled at the flexibility of the new U.S. Constitution. After all, it had been amended 10 times in just two years! And yet the Constitution has proven remarkably resistant to change since then, incorporating only 17 additional amendments over the following two centuries. How has the federal Constitution survived so long and in nearly the same form as the original document? The demands of modern government, which manages an advanced welfare state that serves the needs of hundreds of millions of Americans, press the Constitution into service even when traditional rules of constitutional interpretation would seem to offer an insurmountable obstacle. Advocates of the New Deal were undaunted by the strictures of the “nondelegation doctrine,” and they stretched the Constitution’s language to advance the modern welfare state; more than 80 years later, President Trump pressed ahead with his controversial travel ban, confident that his efforts would eventually be validated and his campaign promise duly fulfilled. The so-called higher law found in the Constitution must ultimately defer to the same public that vests it with that supreme authority in the first place.

## SUMMARY

### 2.1 The Beginnings of a New Nation

- The American Revolution arose a decade after Britain’s victory in the French and Indian War; to pay off its significant war debts, Britain imposed numerous regulatory measures on the colonies, which generated outrage, protests, and eventually armed resistance from the colonists.
- The Articles of Confederation created a “league of friendship” among the 13 states by vesting them with equal authority in a weak government with only limited powers to raise revenue and regulate commerce. The weakness of the Articles hampered early American foreign policy and rendered Congress unable to stamp out political unrest throughout the states.

### 2.2 The Constitutional Convention

- In 1787 a Constitutional Convention of delegates from 12 states considered both the “Virginia Plan,” which favored larger, more populous states, and a “New Jersey Plan” that gave equal representation to the states.
- The Convention ultimately accepted the “Great Compromise” and its bicameral legislature featuring a House of Representatives apportioned by population and a Senate allotting equal power to each state.
- The delegates sidestepped the slavery issue by settling on the “Three-Fifths Compromise” (counting five enslaved people as three people for purposes of taxes and representation) and by deferring a ban on the importation of enslaved people for at least 20 years.

### 2.3 The New Constitution

- The new constitution combined features of popular sovereignty, separation of powers, and checks and balances with a commitment to a system of “federalism” that divides sovereignty between state and federal governments.

### 2.4 The Ratification Battle

- The battle over ratification was waged between the Federalists, who supported the new constitution, and the Anti-Federalists, who opposed it. In advocating the merits of the



document, Federalists benefited from the convention's rule of secrecy and the rule requiring the approval of just 9 of 13 state ratifying conventions for ratifications.

- Additionally, Federalists employed a well-crafted media campaign in support of ratification; this included the anonymous publication of the Federalist Papers in newspapers justifying various provisions of the new constitution. Several state ratifying conventions insisted that the new government add a bill of rights to the Constitution; James Madison, the “Father of the Constitution,” was initially reluctant to propose such a bill for fear that it might omit important rights, but eventually he sponsored a new Bill of Rights in the first Congress.

## 2.5 Changing the Constitution

- Article V of the Constitution makes it exceedingly difficult to amend the document. Since the Bill of Rights was ratified in 1791, all but one of the 17 amendments that followed resulted from a two-step process: (1) two-thirds support of both houses of Congress, followed by (2) ratification by three-fourths of the state legislatures. (The Twenty-First Amendment was ratified by three-fourths of special state ratifying conventions). To date, a national constitutional convention (also authorized by Article V) has never been held.
- Informal constitutional change often occurs through U.S. Supreme Court interpretation of the document's text, as well as through bold actions from the president and Congress. The Supreme Court under Chief Justice Marshall favored a loose construction of several provisions, giving the federal government considerable implied powers; Thomas Jefferson and Jeffersonian Republicans favored a stricter construction of the Constitution's provisions. Today, Supreme Court justices wage similar battles, disagreeing over whether to apply a loose or strict construction of the Constitution to Congressional assertions of its Article I authority, as well as to individual claims for sexual privacy or the right to same-sex marriage.

### KEY TERMS

|                             |                         |
|-----------------------------|-------------------------|
| amendments                  | Federalists             |
| Anti-Federalists            | Great Compromise        |
| Articles of Confederation   | loose construction      |
| Bill of Rights              | New Jersey Plan         |
| checks and balances         | separation of powers    |
| Constitutional Convention   | Shays's Rebellion       |
| Declaration of Independence | strict construction     |
| enumerated powers           | Three-Fifths Compromise |
| Federalist Papers           | Virginia Plan           |