**8.1 The Meaning of Civil Liberties and Civil Rights**

The concept of civil liberties is sometimes confused with that of civil rights. The term civil liberties refers to the personal freedoms and the rights of those accused of crimes that are enjoyed by citizens and non-citizens alike, while the term civil rights focuses on the rights of citizens to be protected from discrimination in both the public and the private sectors. Civil liberties are often referred to as negative rights, as they focus on what government cannot do, while civil rights are often referred to as positive rights because they focus on what government must do.

Civil liberties include those rights listed in the Bill of Rights that include freedom of speech, freedom of religious exercise, and the freedom to peaceably assemble. They also generally include the unstated right to privacy. These rights cannot be abridged by the federal government. Civil liberties also include the rights of the accused, such as due process, protection from cruel and unusual punishment, protection from unreasonable searches and seizures, and the protection from being forced to testify against oneself.

By contrast, civil rights pertain to the right to be free from discrimination due to membership in a group, such as discrimination based on gender, race, religion, ethnicity, or something else. Voting rights and equal access to public education are civil rights that have been fought for by different groups over the years. The 14th Amendment Equal Protection Clause and Due Process Clause and the Fifth Amendment Due Process Clause provide the constitutional basis for civil rights. These will be discussed in this chapter.

The U.S. Constitution’s Bill of Rights guarantees some basic civil liberties, such as freedom of speech, freedom of religious exercise, protection against unlawful searches and seizures, and jury trials. In providing for the election of representatives to Congress, the Constitution even hints at the right to vote. But in the nation’s early years, state governments were much more of a daily presence in Americans’ lives than the federal government was. The Bill of Rights, as you may recall from Chapter 2, was intended to protect liberties that the Anti-Federalists were concerned states would lose if the U.S. Constitution were ratified without it. The Bill of Rights was designed to protect state sovereignty against encroaching national authority. It was not until 1868, following the Civil War, that the 14th Amendment was ratified as a vehicle for applying the protections in the Bill of Rights to the states.

To summarize, then, civil liberties involve protections against government actions that would interfere with individual freedoms, while civil rights are legal actions that government takes in order to provide equal conditions for individuals and groups. Further, civil liberties differ from civil rights in that civil liberties protect individuals while civil rights protect groups. When we speak of civil liberties, we are often talking about individuals’ rights to freely practice religion or to have fair trials with legal representation. When we talk about civil rights, we are often talking about the rights of a group, such as the right of African Americans to vote or not to be discriminated against in workplaces, education, and accommodations. Arguably, the civil rights of a group begin with the civil liberties of an individual, in that if a group is being discriminated against, members of that group may be denied civil liberties.

**Obligations of Government to Protect Citizens**

Civil liberties need to be protected because they are essential to the workings of democratic governance. For example, if an individual’s right to free speech, which includes the right to criticize government, is not protected, then government is not held accountable by the people. Democracy requires government accountability to the people.

Civil rights are often defined as government protections of the rights of citizenship. Issues of discrimination, however, are complicated. While government may not show preference for one group over another, private individuals and groups are not restricted in the same way unless they are receiving public monies or running establishments that serve the public, such as hotels or restaurants. A private college that does not want to allow female students to enroll in its football military leadership programs can control its own enrollment policy and refuse female students this right. However, the government then has the right to deny the school access to federal monies, including for research, student financial aid, and loan guarantees.

Unlike private institutions, public institutions must provide equal protections to citizens. A governmental obligation to protect a citizen’s right to vote, for example, means that a citizen cannot be prevented from voting by either private individuals or public officials, and that each person’s vote must be counted equally. The United States follows the principle of “one person, one vote.” If the right to vote is defined as a basic civil right, and then one state attempts to erect barriers to voting, as many Southern states did against African Americans prior to the 1965 Voting Rights Act, government then has an obligation to remove those barriers. Moreover, if the government fails to do so, it is not treating its citizens equally. Voting rights is a difficult example because some politicians and private citizens argue that voting barriers protect elections from fraud, such as ineligible people voting, while others consider these barriers to be a type of civil rights violation. Contemporary debates over photo identification or state and local government requiring multiple forms of identification as a condition of voting are considered within their civil rights context.

**The 14th Amendment’s Definition of Citizenship and Equal Protection**

Understanding the 14th Amendment

How do you protect individuals and minorities against the danger of state-based legislation that will violate their rights? The Equal Protection and Due Process clauses of the 14th Amendment allow the Supreme Court to maintain freedom of expression and freedom of the press over any state law that might violate it.

The roots of civil liberties in the U.S. Constitution lie in the language of the Bill of Rights, but, as previously mentioned, they applied only to the national government. After all, the first word of the First Amendment is “Congress,” the federal legislature, suggesting that the Bill of Rights protects the people from the federal government. The vehicle for applying the rights included in the Bill of Rights to the states lies in the 14th Amendment. The Supreme Court has used that amendment to incorporate the Bill of Rights and extend to the states what were originally limitations on the federal government.

The 14th Amendment was ratified as part of Reconstruction after the Civil War; at its core lies the definition of citizenship. Section 1 states, “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The definition of citizenship was a direct response to the Dred Scott ruling, where the U.S. Supreme Court stated that slaves and their descendants could not be considered citizens. With the definition of citizenship in the 14th Amendment, a person born in the state of Alabama was to be considered a citizen of the United States, as was one born in the state of Massachusetts. The 14th Amendment made citizenship a national right as well as a state right. The amendment goes on to say,

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

There are two components to this statement. The first is referred to as the Due Process Clause, and the second is the Equal Protection Clause. The Due Process Clause requires that citizens be treated fairly in judicial processes, while the Equal Protection Clause means that states may not enact statutes that deny rights guaranteed to U.S. citizens.

The Due Process and Equal Protection clauses were used to decide a landmark same-sex marriage case in 2015. The U.S. Supreme Court decided, in Obergefell v. Hodges (2015), that the 14th Amendment’s Equal Protection and Due Process clauses mean that states may not refuse to recognize same-sex marriages performed legally in other states. The Court decided that marriage cannot be denied to adults by any state simply because the two persons getting married are of the same sex.

The Equal Protection Clause actually reinforces the Due Process Clause. It requires that individuals be treated equally. The language typically used in how the U.S. Constitution approaches the law is that government may not create discriminatory and unfair groups of people. If, for example, Congress creates a public assistance program for poor people whose qualifications for assistance are based on need, Congress cannot deny assistance to Hispanic women who are otherwise eligible. That would, in effect, put Hispanic women into a category of being “other” or different from all the other women qualifying for assistance, which would be discriminatory and unfair. Once government does this, it is not treating people equally.

The U.S. Supreme Court’s recognition of same-sex marriage as a civil right makes it fall under the protection of the Equal Protection Clause of the 14th Amendment; if marriage is guaranteed to all individuals, then it cannot be denied to one group of people.

The status of gay rights under these two clauses is one line of reasoning that was used to argue for the civil right of same-sex marriage. By reading the Equal Protection Clause alongside the Due Process Clause, the Supreme Court recognized same-sex marriage as a right, which means that the state of South Carolina cannot refuse to recognize the legitimacy of a marriage conducted in New York because doing so denies the couple who moves from New York to South Carolina equal protection under the law. As marriage is considered to be a basic right, regardless of one’s sexual orientation, denying homosexuals the right to marry one another was deemed discriminatory and unfair.

Combining the Due Process Clause with the citizenship clause of the 14th Amendment makes a very powerful statement about individual liberties and, by extension, civil rights. These two clauses together mean that one born anywhere in the United States is considered a citizen and cannot lose that citizenship when traveling to a part of the country that chooses not to recognize it. This is critically important because the 14th Amendment follows the 13th Amendment, which abolished slavery. Together, these two amendments guaranteed that a former slave who was given freedom through the 13th Amendment would be a citizen of the United States.

The 14th Amendment also precedes the 15th Amendment, which states, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” This means that a citizen of the United States cannot be denied the right to vote by any state on the basis of race, because doing so denies that person the equal protection of the law.

**8.2 Freedom of Expression as a Basic Civil Liberty**

Some Americans may take for granted the right to free speech, the right to exercise freedom of religion, and basic rights to due process. These are the core of Americans’ basic civil liberties. In addition, Americans often assume they have a basic right to privacy even though privacy rights are not specified in the Bill of Rights. All of Americans’ core civil liberties are stated or implicit in the Bill of Rights, and all are essential if the concept of human agency is to have any real meaning. But as was the case with the Supreme Court having to carve out a role for itself (as we discussed in Chapter 7), so too has the Court needed to define the nature of citizens’ civil liberties.

**The First Amendment**

The First Amendment reads,

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

**What Qualifies as Free Speech?**

Protections for free speech increased throughout the 20th century. In reviewing cases that arose from the Espionage Act in World War I, the Supreme Court established a "clear and present danger" standard. Even during the McCarthy era, the idea of criminal prohibitions against anti-government speech was not a factor. Flag-burning incidents so repugnant to most people in this country are examples of the right of U.S. citizens to say unpopular things.

**What is an example of something you could say that would NOT be covered by freedom of speech?**

Many would agree that the right to freedom of speech is a fundamental civil liberty. The First Amendment makes it clear that Congress shall make no law abridging the right to freedom of speech. The First Amendment, as written, applies to only the federal government. The language of the 10th Amendment, which includes the powers reserved to the states, gives states the power to limit speech. But the 14th Amendment provides the vehicle to apply that limitation to the states on the basis of the Equal Protection Clause.

As important a right as freedom of speech is, it is by no means absolute. There are circumstances when limitations can be placed on speech, especially when it may cause harm to others. In his famous 1859 essay On Liberty, John Stuart Mill argued that the state could interfere with individual liberty if a person’s action in any way harmed him- or herself or others. Mill spent much of this work talking about the appropriateness of restricting speech. However, Mill also took the position that speech that hurts people’s feelings or that some find offensive is not really harmful and should therefore be allowed. In fact, he argued that offensive speech is part of the free marketplace of ideas that sustains democratic government. If people are allowed to say things that are offensive, the truth will emerge.

Free speech is also critical to the concept of individuality. It supports the core American values of life, liberty, and the pursuit of happiness because the life that a person chooses to live is a form of free speech. If one is free to think about things as an expression of his or her individuality, it is only logical that he or she would be entitled to free speech as an extension of human agency.

However, freedom of speech must be tempered for the sake of the public interest. The notion that free speech can cause harm by causing dangerous actions only complicates the issue of free speech. By Mill’s standard, for instance, members of the Ku Klux Klan marching in a heavily African American neighborhood and promoting hate speech might be considered simply offensive. But if the march leads to physical violence, then the speech extends beyond offensive to harmful.

**Freedom of Religion**

The First Amendment declares the free exercise of religion as a basic right. The Framers believed that religion was a matter of individual conscience and therefore an extension of human agency, which should be respected by government. In 1802, Thomas Jefferson described this concept as a separation of church and state. The First Amendment was meant as much to protect states that had established churches as to protect those that did not.

The Establishment Clause of the First Amendment declares that Congress shall not establish an official religion. The Free Exercise Clause of the First Amendment guarantees that individuals are free to practice their religion without government interference. Of the several rights and protections found in the First Amendment, the two concerning religion appear first, which suggests that religious freedom was important to supporters of the Bill of Rights. But what if one wants to have prayer in school? Does that violate the Establishment Clause because the school, if it is public, is an extension of the state? If the school does not allow prayer, is the school violating the right to free exercise? Partly because of these knotty questions, the issue of school prayer has proven to be very contentious. Civil libertarians often invoke the separation of church and state as the basis for opposing prayer in school, while proponents of school prayer often accuse civil libertarians of being against religion.

**Engel v. Vitale (1962)**

Students participate in See You at the Pole, a global day of student prayer. Since the 1962 case of Engel v. Vitale, mandatory recitation of prayer in school has been considered a violation of the First Amendment’s Establishment Clause.

In Engel v. Vitale, the U.S. Supreme Court established that school prayer violates the First Amendment. The case involved a non-denominational prayer written by the New York Board of Regents to be recited in the public schools. Parents brought suit against the board of education. The New York courts upheld the “Regents’ Prayer” so long as students were not forced to participate over their parents’ or their own objections.

The Supreme Court disagreed. Writing for the Court, Justice Hugo Black made it clear that the fact that the prayer was nondenominational was really beside the point:

Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause. . . . When the power, prestige, and financial support of government are placed behind particular religious beliefs, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.

Even a nondenominational prayer becomes corrupted when joined to the state. That students were free to exempt themselves from participation does not mean that they would not be vulnerable to social ostracism, which in itself is discriminatory.

**Lemon v. Kurtzman (1971)**

Lemon v. Kurtzman considered whether the state could support religion by providing subsidies to church-related schools. Various states passed legislation providing financial assistance to church-related K–12 schools that went beyond providing transportation or textbooks. Statutes enacted in Pennsylvania and Rhode Island allowed parochial schools to be reimbursed for providing secular teaching services for courses found in a public school curriculum. Like the Rhode Island statute, the 1968 Pennsylvania Nonpublic Elementary and Secondary Education Act allowed reimbursement for math, modern foreign languages, physical science, and physical education courses while prohibiting reimbursement for “any subject matter expressing religious teaching, or morals or forms of worship of any sect.” Alton Lemon, a public school parent, brought suit against Pennsylvania Superintendent of Public Instruction David Kurtzman for violating the Establishment and Free Exercise clauses. A three-judge federal court held that the law violated neither clause.

Again, the Supreme Court disagreed, developing what has been referred to as the Lemon test. Chief Justice Warren Burger stated that, under this test, a statute would have to meet three criteria to demonstrate that it does not violate either First Amendment religion clause. The statute must have a secular legislative purpose, neither advance nor inhibit religion, not foster “an excessive government entanglement with religion.”

Subsidies of this nature, the Court concluded, violated the Establishment Clause if they had the effect of lowering the cost of sending children to parochial schools.

**Zelman v. Simmons-Harris (2002)**

Many thought that the Lemon test was too stringent and discriminated against those who wanted to send their children to religious schools. But what about a public voucher program that allows parents to choose their children’s school? In recent years, reform efforts have allowed parents to receive vouchers from the local public school district if they want to send their children to a private school to offset the cost of tuition. Do vouchers amount to a subsidy for private education? Parents who send their children to private school often complain about paying property taxes for public schools their children do not use. Some argue that vouchers make the education market competitive by forcing public schools to offer a higher-quality education, while others claim that vouchers subsidize religious education because many of the private schools that parents opt for are parochial.

Ohio created a voucher program in the late 1990s that offered a $2,250 tuition grant for each student from a low-income family enrolled in a private school, whether religious or non-religious. Doris Simmons-Harris and others sued Ohio Superintendent of Public Instruction Susan Tave Zelman on the grounds that the voucher program violated the Establishment Clause.

The Supreme Court took the view that the voucher program offered real choice and as such was constitutional. Unlike the Lemon case, this voucher program did not create an excessive entanglement between government and religion because its only intent was to offer parents the choice of a private school alternative to public education.

**8.3 The Right to Privacy as a Basic Civil Liberty**

The right to privacy is not specifically spelled out in the Constitution. Rather, it is inferred on the basis of both the Fourth and Ninth amendments. The Fourth Amendment safeguards against unreasonable searches and seizures. Individuals may not have their private houses, personal effects, papers, or other property searched or seized without probable cause, as expressed in a warrant. To the extent that there is a guarantee against such intrusion, there is an assumption of privacy. The Ninth Amendment reserves to the people those rights that had not been enumerated, or listed, in the Constitution. The issue of privacy has been a contentious one, especially with regard to abortion.

The Supreme Court’s 1973 decision in Roe v. Wade remains one of the most controversial—and adversarial—decisions made by the Court.

In Roe v. Wade (1973), the Supreme Court found that a woman’s right to terminate a pregnancy was constitutional under her right to privacy. The Court’s ruling invalidated a Texas statute criminalizing abortion for both the woman seeking an abortion and the doctor performing the procedure.

The Supreme Court could not point to a specific provision in the Constitution that actually granted a right to privacy that extended to abortion rights, so the Court staked its claims on Griswold v. Connecticut (1965), where it held that married couples had a right to privacy to practice birth control. The Court also asserted that the Constitution contained a penumbra—a spirit—of privacy.

In Roe v. Wade, the Court held that women could terminate pregnancies under certain conditions. It left open the possibility for the state to regulate abortions if there were a compelling interest to do so. During the first trimester, a woman was presumed to have unlimited rights to terminate. But as the fetus attained viability, that is, the likelihood of survival outside the womb, there might be a compelling state interest to regulate and limit her choice to terminate. A state might place limitations on abortions during the second trimester and even ban them during the third unless the mother’s life was at stake. One problem with this standard was that technological advances would allow fetal viability to be achieved earlier, thereby making stricter regulations more likely.

Roe v. Wade touched on religious freedom issues even though religious practice was not central to the abortion issue. Critics claimed the decision was contrary to religious beliefs holding that abortion is the murder of the unborn. The decision also touched on the issue of federalism. Prior to Roe v. Wade, abortion was an issue for states to decide. In making its ruling, the Court nationalized the issue and created a uniform standard by limiting whether, when, and how states regulated abortion. Roe v. Wade touched off a divisive culture war in the United States. Not only does the case ask when life begins, but for socially liberal individuals, the case raises issues about human agency, particularly within the context of the Declaration’s promise of “life, liberty, and the pursuit of happiness.”

**8.4 The Rights of the Accused**

Americans expect that if and when they are accused of crimes, certain due process rights will be protected. First, they will know what they are charged with and they will be informed of their rights. Second, their homes will not be illegally searched. And third, they will receive state-provided legal representation if they cannot afford it themselves. All three of these are essential ingredients for a fair trial. The premise is simple: If proper procedure is followed, then the outcome will be correct and just. If the state could search one’s home without a warrant, what safeguard would there be to ensure that evidence was not planted by police? If, in prosecuting a case, the state can have people arguing in court who are knowledgeable about the law, then as a matter of fairness the accused should also have somebody knowledgeable about the law representing him or her. If one could be questioned without an attorney present, it would be hard to verify that a confession was not coerced.

**Unlawful Searches and Seizures**

The Fourth Amendment states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” It then says that warrants to search a home or one’s papers or even to arrest somebody will not be issued unless there is probable cause, but the warrant must clearly state where the search will take place, and who or what specifically may be seized. This means that if someone is hiding a gun that is believed to have been used in a murder in his or her home, it cannot be seized unless there is a warrant to search that person’s house. The suspicion that this person might have committed the crime would serve as probable cause to obtain the warrant. As part of due process, the police must explain to a judge why they need a warrant. This requirement creates a safeguard against the arbitrary exercise of authority. If it were not required, what would prevent the police from knocking on doors conducting fishing expeditions for anything illegal?

Does this Fourth Amendment protection also prevent evidence that was illegally obtained from being used against a defendant? This was the question addressed by the Supreme Court in Mapp v. Ohio, decided in 1961. Dollree Mapp was convicted of possessing obscene materials, but the police obtained the evidence illegally. Cleveland police forced their way into Mapp’s home searching for a bombing suspect without a search warrant. During their search, the police found obscene materials. The Ohio Supreme Court upheld Mapp’s conviction even though it acknowledged that the evidence was illegally obtained because the obscene materials were found while the police were looking for a bombing suspect and the materials were not in plain view. The Supreme Court overturned that decision.

This case incorporated the exclusionary rule, which stipulates that evidence obtained illegally cannot be used against the accused even if it would prove them guilty. Earlier precedents had already made illegally obtained evidence in federal trials exclusionary. The Mapp ruling made it clear that Fourth Amendment rights extend to the states through the 14th Amendment when it stated, “The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest” (Mapp v. Ohio, 1961).

**The Right to Counsel**

The Sixth Amendment establishes that one has the right to legal counsel in federal criminal trials. Yet the right to counsel may be understood as the right to be represented by an attorney in court only but does not extend to the government providing an attorney. As late as the 1940s, the Supreme Court held that the right to the government providing legal representation did not apply to the states.

In 1942, the Supreme Court held as constitutional, in Betts v. Brady, that the government did not have to provide indigent persons accused of state crimes with an attorney unless the accused person met special circumstances. A Maryland court denied Smith Betts’s request for counsel upon being indicted for robbery. Forced to represent himself, he was convicted. He filed petitions for habeas corpus, claiming that he was denied his right to counsel, and the local and state courts rejected his case, after which the U.S. Supreme Court agreed to hear it.

The Court upheld Betts’s conviction and denied that the right to counsel obligated states to provide poor people with attorneys. Four years earlier, in Johnson v. Zerbst, the Court held that poor defendants were guaranteed counsel in federal trials, and in Powell v. Alabama in 1932, the Court held that states had to provide attorneys to poor defendants in capital cases, where the death penalty was a possible conviction. Powell v. Alabama involved the “Scottsboro Boys” case, where Ozzie Powell and several Black youths were charged with raping two White girls in Alabama. They were found guilty and sentenced to death. The issues before the Supreme Court included the absence of a fair, impartial, and deliberate trial; the denial of counsel at trial; and the exclusion of Blacks from the jury. The Court majority asserted that even an intelligent person would be at a disadvantage without counsel:

**Portrait of Clarence Earl Gideon.**

Associated Press

Clarence Earl Gideon’s 1961 appeal to the U.S. Supreme Court led the Court to rule that persons charged in criminal cases must be represented by counsel in all states.

Left without the aid of counsel he may be put on trial without proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. (Powell v. Alabama, 1932)

In Betts, however, the Supreme Court said that the right to counsel did not extend to all cases, because it did not follow that just because one was poor he or she was more likely to be convicted. The issue was not poverty; it was ignorance of the law that put one at a disadvantage at trial. In his dissent, Justice Hugo Black made it clear that the denial of counsel to poor people did indeed increase the likelihood of conviction, which in his view represented a violation of the Equal Protection Clause.

The Betts case was overturned in Gideon v. Wainwright (1963). Clarence Earl Gideon was convicted in Florida for petty theft and sentenced to 5 years in a Florida prison. He was forced to defend himself because the Florida court maintained that it could appoint counsel only in capital cases. Gideon read some law books in the prison library and handwrote a petition to the U.S. Supreme Court seeking to overturn his conviction. In its ruling, the Supreme Court maintained, in a 9–0 decision, that a person accused of a felony could not be guaranteed a fair trial without the assistance of legal counsel. The effect of being forced to defend himself was to not only violate equal protection but to strip the poor person of his basic rights to due process, as he would not know how or have the resources to adequately respond to his accuser.

**The Accused Must Know Their Rights**

We are all familiar with the famous line on any number of police shows, such as Law & Order, that, when arrested, individuals have the right to remain silent and the right to an attorney and that, if they cannot afford one, an attorney will be appointed for them. These are the Miranda Rights, and they come from the 1966 Miranda v. Arizona decision. Ernesto Miranda confessed to a crime during police interrogation without requesting the assistance of counsel. Speaking for the Court, Chief Justice Earl Warren wrote,

It is obvious that . . . an interrogation environment is created for no purpose other than to subjugate the individual to the will of the examiner. . . . The current practice of incommunicado interrogation is at odds with one of our Nation’s most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed . . . no statement obtained from the defendant can truly be the product of free choice.

Put differently, without minimal safeguards, there is no way to know that the confession was not coerced. Unless proper procedures are followed, the outcome cannot be said to be fair and just. In sum, the Miranda and Mapp cases have long been viewed by law and order conservatives as examples of judicial activism whereby the rights of criminal defendants were protected at the expense of the public interest.

**Summary of Civil Liberties**

What the various civil liberties cases have in common is that individual liberties are to be respected, but they are by no means absolute. In matters of privacy, as well as matters of religion and speech, there is to be a presumption favoring individual rights unless there is a compelling societal interest to restrict those rights. To establish the interest as compelling, government would need to demonstrate that regulation is needed to prevent incitement and irreparable harm to society.

However, when it comes to the rights of the accused, the bar would appear to be even higher. Here the Court indicates that because the state can deprive persons of their life and liberty, it must be absolutely clear that proper procedures have been followed so that the outcome is just. Thus, one cannot be compelled to make confessions, nor can due process or legal counsel be denied even as the nation is fighting a war on terrorism. In short, basic civil liberties must be protected to ensure not only that Americans may enjoy freedom, but also that the government remains accountable to the public. See Timeline: Evolution of civil liberties for a brief summary of civil liberties in the United States.

**8.5 The Quest for Civil Rights**

Civil rights differ from civil liberties in that civil rights speak to the desire of groups to be treated the same as other groups, while civil liberties address individual legal and procedural protections. Core civil rights concerns address discrimination based on race, inequality of education, and obstacles to voting. Political and economic inequalities have resulted from these civil rights violations.

**The Right to Vote**

Women’s suffrage supporters rally in Chicago in 1916. The right to vote was not guaranteed to all adult persons until well into the 20th century. Women, for example, did not win universal voting rights until the 19th Amendment was ratified in 1920.

The U.S. Constitution does not guarantee voting rights. States could decide who was eligible to vote and whether other requirements needed to be met, such as property qualifications or registration.

Initially, states limited voting rights to individuals who were adult White males who owned property. In the 1820s, the states extended the right to vote to all adult White males, regardless of whether they owned property. Many Western states allowed women to vote in the 19th century, but women were not guaranteed that right nationally until the 19th Amendment was ratified in 1920. In 1971, the 26th Amendment extended the right to vote to 18-year-olds in the wake of anti-Vietnam protests.

Despite these constitutional protections, for many Americans the fight for voting rights continued. In particular, while the 15th Amendment, ratified in 1870, prohibited states from denying the right to vote on the basis of race, many Southern states still found ways to deny voting rights to African Americans. In the Jim Crow South, where barriers were constructed to prevent African Americans from voting, a “grandfather clause” meant that one had to pass a literacy test and a “good citizenship” test or fulfill an “understanding requirement” if one’s grandfather had not been able to vote, which, if he had been a slave, he would not have. Those who could not read were effectively disfranchised from the system. Recently freed slaves who had not received an education were thus barred. Other barriers to voting included poll taxes, which kept poor people, both Black and White, away from the polls. In other areas, Black voters would be discouraged by racial violence and intimidation, including lynching.

**The Civil Rights Movement**

There are distinct ideological differences between Republicans and Democrats. In recent years, the Republicans have become more coherent in their conservatism, whereas Democrats debate about whether or not the party should be more moderate. Democrats tend to favor an activist approach, solving problems people cannot deal with themselves. The Republican Party has gone from a business orientation in the days of Robert Taft to military conservatism during the Cold War to social conservatism with the rise of the religious right, all trends that tend to rise and fade.

8**.6 The Meaning of Equal Rights and Equal Treatment**

Most Americans take it as a given that equal treatment is a basic civil right. If, for example, John is given greater protections and liberties by the state than Susan is, Susan can rightfully claim that she is not receiving equal treatment. If Susan is not being treated equally because of her gender, she can claim discrimination. Such cases of discrimination may appear to be simple enough, but in practice they often become quite complicated. Suppose, for example, that both John and Susan apply for a job and only one can be hired. By definition, the one who is not hired has been discriminated against. The employer made a choice and stated a preference. Can we still say that both John and Susan received equal treatment?

The infamous segregated water fountains of the 1950s were indicative of the era’s “separate but equal” doctrine, established by the U.S. Supreme Court in the 1890s.

The concept of equal protection has meant different things at different times. From about 1890 until the 1950s, the reigning approach to race-based treatment was separate but equal. For example, a school system did not have to educate White and Black students in the same classrooms, as there could be separate schools for Black and White students as long as the schools claimed that they were “equal.” It was these types of segregated facilities, including separate water fountains and movie entrances for Blacks and Whites in the South, that would come to symbolize the Civil Rights Era of the 1950s and 1960s. Today, it is often taken for granted that to be afforded equal treatment means that facilities will be racially integrated.

**Plessy v. Ferguson (1896)**

For most of the period between the Civil War and the cultural revolution that began in the 1960s, Blacks and Whites were held to the separate but equal doctrine in the United States. The doctrine was upheld by the Supreme Court beginning in the 1896 case of Plessy v. Ferguson, which revolved around a Louisiana statute requiring separate railway cars for Whites and Blacks. Homer A. Plessy, who was one-eighth Black, was arrested for sitting in a railway car reserved for Whites. Plessy appeared White; however, he sat in the White-only car and informed the train conductor that he was Black in order to get arrested so that he could sue on the basis of the 14th Amendment. Convicted in a Louisiana court, he appealed the order of the judge, John Ferguson.

The Supreme Court did not consider the statute to violate the 13th Amendment, which abolished involuntary servitude, nor the 14th Amendment, which established citizenship and equal protection. At issue for the Court was whether the Louisiana statute was reasonable. As the Court stated:

In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable.

The Court also made it clear that social equality would have to occur naturally; the U.S. Constitution could not order it. In other words, individuals could not be forced to abandon their prejudices because of a clause in the 14th Amendment, nor could that clause force people to accept others as their social equals.

**Brown v. Board of Education (1954)**

Associated Press

George E. C. Hayes (left), future Supreme Court Justice Thurgood Marshall (center), and James M. Nabrit (right) join hands outside the Supreme Court after it ruled in Brown v. Board of Education (1954) that racial segregation in public schools was unconstitutional.

The Supreme Court reversed one aspect of Plessy v. Ferguson in Brown v. Board of Education, the 1954 school desegregation decision where the Court concluded that separate was not equal in public schools. Linda Brown was prohibited from attending a White public school in Topeka, Kansas, near her home. Seven students’ parents, including Linda Brown’s, sued on the grounds that separate schools violated their right to equal protection. Their case was helped by events in the larger world. Coming on the heels of World War II, where the consequences of hatred and bigotry in Nazi Germany were clear, coupled with the fact that Black soldiers had fought valiantly for the country, the Court was inclined to reconsider its earlier precedent.

Another factor influencing the Court’s willingness to reconsider precedent, which perhaps was a factor in the larger Civil Rights Movement, was the United States’ image during the Cold War. The Eisenhower Justice Department filed a brief in the Brown case in part because the inequality among the races was a detriment in the eyes of the Soviet Union and the Third World.

Writing for the unanimous Court, Chief Justice Earl Warren made it clear that education was the very foundation of citizenship:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Based on the testimony of psychologists and various social scientists, the Court concluded that segregation had a detrimental effect on students. Separate school facilities were not equal.

Brown v. Board of Education proved to be extremely controversial. Critics accused the Court of judicial activism. They argued that segregated school systems reflected the democratic will of the majority in the communities where they were located. Who was the Supreme Court to defy democracy? There were even calls to strip the Supreme Court of its authority. Even President Eisenhower, who had appointed Chief Justice Warren, wondered if he had made a mistake.

**Evolving Civil Rights**

Over the years, several cases arguing for equal rights and equal treatment would come before the Supreme Court, and civil rights in the United States evolved from an initial quest to remove barriers to access and participation to policies aimed at achieving equal opportunity. (See Timeline: Evolution of civil rights for a brief summary of civil rights in the United States.) The educational cases dealing with segregation in schools were about obtaining equality in educational opportunity because unequal education would result in group disadvantage, thereby exacerbating economic inequality, which in turn would affect various groups’ ability to participate in the political process on an equal basis. As these barriers were removed, national policy turned to the attainment of equality through programs including affirmative action, which were designed to advance groups that were historically discriminated against so that they could be on an even plane with others. As much as the Supreme Court was willing to allow these programs in principle on the grounds that they furthered a social interest, it was not willing to allow them to be designed in such a way that the effect would be to discriminate against Whites.

**9.1 What Is a Political Party and What Is Its Purpose?**

A campaign poster from 1888. American political parties have been in place since shortly after the nation was founded. Their main function has been to have their candidates elected to office.

Political parties are organizations that seek to influence government policy by taking positions on current and public issues, nominating candidates, and trying to get them elected to office. The Framers of the Constitution took a dim view of political parties. They considered them to be factions of self-interest that placed the welfare of one group above that of the general public. Worse, the founders feared that such groups might ride roughshod over individual rights and liberties. The Framers also understood that party formation would be an inevitable byproduct of liberty. Free association, after all, meant that like-minded individuals could interact with one another and that formal organizations would develop around those associations.

Initially, there were two relatively small political parties (the Federalists and the Democratic-Republicans, both of which no longer exist, at least in their original form), and they tended to operate primarily in Congress. But as more people were granted franchise—the right to vote—political parties emerged as vehicles to get them to the polls.

Political parties in modern democratic societies perform five essential functions: (1) they get people out to vote, (2) they seek to win elections, (3) they organize the government, (4) they generate symbols of identification and loyalty, and (5) they implement policy objectives. The primary purpose of the American party system is to win political office, which means that getting out the vote is secondary to that primary purpose. In the United States, winning political office would certainly be more difficult if there were not parties in place to mobilize voters behind specific candidates and their policy positions. But this also means that party platforms—the political positions of the party—are secondary to the primary purpose of winning political office.

Parties take on three roles in American politics: party-in-the-organization, party-in-the-government, and party-in-the-electorate. The party-in-the-organization consists of activists who seek to define the issues on which the party will campaign and who will, at times, run for office. These activists may also work the phones or go door to door just prior to elections to remind voters that an election is coming up and try to attract voters to their particular candidates. Party activists may serve as delegates to national nominating conventions.

The party-in-the-government consists of party members who hold public office and whose members get to organize government and work to pass the agenda on which they campaigned. The party-in-the-electorate consists of those voters who are registered with the political party, as well as persons who identify with that party.

**Get Out the Vote**

**Ideological Differences Between Republicans and Democrats**

There are distinct ideological differences between Republicans and Democrats. In recent years, the Republicans have become more coherent in their conservatism, whereas Democrats debate about whether or not the party should be more moderate. Democrats tend to favor an activist approach, solving problems people cannot deal with themselves. The Republican Party has gone from a business orientation in the days of Robert Taft to military conservatism during the Cold War to social conservatism with the rise of the religious right, all trends that tend to rise and fade.

Think of the political parties in recent presidential elections. Were the differing issues between each party clearly defined? Do you think that clearly defining issues makes it easier for American citizens to vote?

Overall voter turnout is relatively low in the United States, such that turnout in presidential elections has not exceeded 60% since 1992. Thus, getting people out to vote usually consists of party activists attempting to register voters. Those least likely to vote are poor people in poor communities (the reason for this is discussed in Chapter 10), so political party activists often hold voter registration drives in poor communities and knock on doors to get people to register. In a tight race, registering new voters can be the difference between victory and defeat for a party and its candidates. This then leads to the next critical function of parties, which is winning elections.

**Win Elections**

The positions taken by American political parties change over time as the preferences of the electorate change. As an example, the Democratic Party was considered to be the party of racial segregation until 1965, when a Democratic Congress passed the Voting Rights Act and a Democratic president signed it. The segregationists, largely concentrated in the South, abandoned the Democrats, and the party became one of racial inclusion. As it sought new voters, it appealed to more people on the left of the political spectrum. As this happened, many others grew uncomfortable in the Democratic Party and began to switch over to the Republicans. In an attempt to appeal to disaffected Democrats, the Republican Party became the states’ rights party. In many respects, American parties follow the competitive market model. In an effort to attract new customers, a business will introduce new products. So too will political parties.

Both political parties have large national party committees: the Democratic National Committee (DNC) and the Republican National Committee (RNC). These are essentially umbrella organizations that are responsible for governing political parties on a day-to-day basis. The most essential national party functions are fundraising and recruiting candidates to run in various congressional contests. The two national party committees also engage in public relations efforts on behalf of their parties’ political platforms and support the presidential and vice-presidential nominee once they are nominated.

As part of their efforts to win elections, the DNC and RNC raise large sums of money. In the 2014 campaign cycle, the DNC raised $168 million, while the RNC raised $195 million. These monies were then used to assist both Democrats and Republicans in House and Senate races.

**Organize Government**

Political parties, especially what we refer to as the party-in-the-government, organize the legislative branch. The party that wins the most seats in a house of Congress gets to control the leadership of that house. Because the Republican Party won the most seats in the U.S. House of Representatives in 2014, it continued to control that house of Congress, including having the power to select the speaker of the House. Senate Republicans gained control of the Senate from the Democrats, who had held the majority since 2007. The winning party also takes control of committee chair leadership so that all House committees continued under Republican control when the new Congress was sworn in in January of 2015 and the Republican Senate could select committee chairs. The benefit of holding all standing committee chairs is that the winning party then gets to set the legislative agenda, at least until the next election. At the same time, because the president works with party leaders in each house of Congress, such as the House speaker, party control in Congress affects each party’s relationship with the president.

John Boehner gives up his position as speaker of the House to Republican Paul Ryan in October 2015. Boehner announced his intention to resign as speaker of the House in September 2015.

Although all members of Congress represent their own respective districts or states, both parties have party caucuses within each chamber of Congress. The caucuses often shape policy agendas, political strategies, and leadership positions. The House Republican caucus, for example, determines the majority party leadership, the Republican policy agenda, and the political strategy for achieving it. Meanwhile, in the House Democratic caucus, decisions are made about who will serve as minority leaders and ranking members, who are chosen from among members of the minority party and serve as vice chairs of committees in Congress. The Democratic Party caucus also shapes its strategy for opposing the majority party strategy.

Party-in-the-government also plays a role in the executive and judicial branches. When presidents make appointments to the Cabinet and other departments and agencies, they usually choose members of their party. This reinforces continuity with previous administrations of that party. As an example, when President Obama was looking for experienced Washington Democrats to staff his administration following his 2008 election, he found that he was selecting from among those who had served in the previous Democratic administration of President Bill Clinton. Lawrence Summers, who was selected by President Obama to direct the National Economic Council, had been Clinton’s secretary of the treasury, while Eric Holder, who was selected to be Obama’s first attorney general, had been an assistant attorney general for civil rights in Bill Clinton’s administration.

Similarly, presidents look to appoint members of their party to positions in the judiciary. This helps to ensure that their appointments will share the same values, particularly because federal and Supreme Court judges serve life terms with “good behavior.”

**Generate Symbols of Identification and Loyalty**

Political parties are generally a source of both identification and registration. Voters are often identified by their party registration, while persons holding state and federal legislative and executive offices, and some local legislative and executive officials, run with party labels. Federal judges are usually identified by the party of the president who appointed them.

Until the 1960s, voters tended to vote on the basis of party loyalty. Most people joined the party of their parents and grandparents. From the 1930s, the Democratic Party was viewed as the party of the middle class, whose members were primarily blue-collar working-class, low-income groups. The party was also built as a broad coalition of ethnic groups and labor unions, at least in urban areas. The Republican Party tended to be more patrician and composed of more educated, affluent individuals. For many years, even Democrats who became educated and financially successful tended to continue identifying with the party of their parents because of party loyalty.

Because of this tradition, elections were relatively predictable: Democrats would vote for Democratic candidates, and Republicans would vote for Republican candidates. In recent years, however, fewer people identify with either party, and increasingly more voters consider themselves independents, or political moderates who swing back and forth between the parties. The number of independents has increased since the 1970s (see Figure 9.1). The trend actually began during the late 1960s because of a dealignment, where long-term Democrats chose not to be identified with the party for a variety of reasons.

From the 1930s until the late 1960s, the Democratic Party was the majority party in terms of voter affiliation. Following protests over the Vietnam War and the perception that the Democratic Party was moving to the left on critical issues including race relations, blue-collar Democrats, primarily in the South and in ethnic enclaves in the Northeast and industrial Midwest, began to vote for Republicans. While Southern Democratic voters dropped their Democratic Party affiliation, they did not identify as Republicans. Data from the National Election Studies (NES) show that between 1952 and 1992, identification with the Democratic Party decreased from 59% to 47.5%, while identification with the Republican Party increased from 31.6% to 39.4%. Meanwhile, the percentage of the population that identified themselves as independents tripled, from 6.5% to 19.6% (Levin-Waldman, 1997).

Today, both political parties have their own respective “bases.” The base of the modern Republican Party is considered to be very conservative, while the base of the Democratic Party is considered to be very liberal. Both adhere more strictly to ideology than more centrist members of their parties do. Modern conservative voters tend to favor smaller government, states’ rights, lower taxes, restrictions on privacy and abortion rights, school prayer, and traditional family values. Modern liberals tend to favor more government programs and regulation to achieve a more fair society, higher taxes on wealthier individuals and families, strict separation of church and state, rights to privacy and freedom of choice, and strong civil rights for groups such as gays and lesbians.

The Tea Party movement, which emerged after President Obama’s 2008 election, has a conservative Republican focus. It espouses less government spending and protests government-mandated health insurance.

Because political parties seek to mobilize voters to support a particular candidate and win an election, they often strive to be an open tent with a wide variety of views. But if moderates drop out to be independents, both parties may be left with ideological extremists.

It is not uncommon to identify the typical Democrat, both the voter and the politician, as being liberal. Similarly, the typical Republican is viewed as conservative. The Democratic Party still has a base of low-income and blue-collar groups with a high school education. But the Democratic Party also has many highly educated professionals, academics, and business people who are more liberal on social issues. A member of the Democratic base, for example, may believe that abortion should be legal in all circumstances, including during the third trimester, past the point of viability. The very liberal Democrat might contend that an individual’s right to privacy, and to control her body and reproduction, supersedes the government’s right to protect a fetus.

Modern Republicans tend to be White, evangelical Protestant, conservative, and in favor of states’ rights. The Republican Party today is still home to the very wealthy and the old patrician classes, but it is also home to more working-class people, including Catholics who are conservative on social issues, especially regarding the family. The position of a member of the Republican base on abortion would likely be the opposite of that of the liberal Democrat. The very conservative Republican might assert that abortion should be prohibited under all circumstances, even in cases where it is necessary to save the life of the mother, if, for example, his or her religious beliefs encourage this position.

The Republican Party, of late, has been influenced by the Tea Party movement, which emerged following Barack Obama’s 2008 election. Tea Party members represent a conservative faction of the party focusing on reducing government spending with the goal of reducing the national debt and the federal budget deficit. The Tea Party has taken an active role in shaping Republican Party politics, particularly in its efforts protesting health care reform and in its support of strongly conservative candidates.

**Implement Policy Objectives**

To the extent that parties represent specific policy agendas, they also identify the objectives for policy implementation. Policy is technically implemented by the bureaucracy, but policy objectives are established by political actors. These objectives often reflect the values of the parties with which they are identified. By extension, then, parties implement policy objectives. Consider for a moment that, if it is an official Democratic Party position to support abortion rights and the Democratic preference would be for the new health care law to pay for abortions, then the Democratic Party would seek to meet that objective by crafting or amending the new health care legislation so that it covers abortions. Meanwhile, as a traditional position of the Republican Party is to oppose abortion, Republican members of Congress will seek to block funding for abortions from the language of the new health care law so that when the law is fully implemented, individuals with publicly funded insurance will not have coverage for abortion services.

Implementation of policy objectives ultimately requires that parties mobilize support. In this vein, political parties organize dissent and opposition and institutionalize, channel, and socialize conflict. When they are able to mobilize bias in favor of something, thereby making it easier to implement, they effectively legitimize the decisions of government.

**9.2 Evolution of the American Political Parties**

Today’s Democrats and Republicans were not the first parties in the United States. In fact, political parties have evolved throughout the nation’s history. Historians have found it helpful to divide the history of American parties into “party systems.” The “first” party system lasted from the beginning of the republic until about 1824. The “second” party system, sometimes called the Jacksonian party system, lasted from 1824 until the eve of the Civil War. The period of Reconstruction following the Civil War ushered in Democratic Party rule in the South and Republican Party dominance at the national level. Beginning in the early 20th century, the party system changed again due to an era of political reform. Then, from the mid-1960s into the early 1970s, both political parties introduced reforms in their attempts to attract more voters, but these also weakened party loyalty and increased the number of political independents.

**The First Party System (1770s–1824)**

At the time of the nation’s founding, those supporting strong centralized authority were known as the Federalists. Notably, Alexander Hamilton supported developing a strong commercial and industrial economy. Thomas Jefferson, by contrast, favored small agricultural economies.

The first party system emerged out of this dispute. Jefferson’s followers formed the nation’s first political party, the Democratic-Republicans (the precursor to the modern Democratic Party), in an effort to recapture the republican spirit (discussed in Chapter 1) that had animated the American Revolution. Meanwhile, Hamilton’s supporters maintained the Federalist label. The intent of the new Democratic-Republicans was to paint Hamilton and his supporters as secret monarchists—people who wanted to reestablish the king in America—and the intent of the Federalists was to paint Jefferson and his supporters as Anti-Federalists and enemies of the Constitution. By the 1820s, the Democratic-Republicans had become so successful that the Federalists had ceased to exist.

Political cartoon titled “Pilgrims’ Progress” that shows Andrew Jackson leading the Democratic Party donkey carrying James K. Polk and George Dallas to the 1844 presidential election. In the Jacksonian party system, congressional caucuses were replaced by party conventions, where some ordinary citizens were involved in nominating presidential candidates.

**The Second Party System (1824–1860)**

The second party system began in 1824 with Andrew Jackson’s first run for the presidency. In part, it was a response to political participation being opened to the masses, as property requirements for voting were abolished and more White men were enfranchised.

“Jacksonian” democracy was a grassroots movement intended to mobilize the newly eligible electorate, or those who are eligible to vote. In the first party system, presidential candidates were nominated by caucuses made up of members of Congress, in order for Congress to have some control over who might be president. These caucuses were not popular among the presidential candidates. In the Jacksonian system, caucuses were replaced by conventions, where party delegates, who could be ordinary citizens, gathered to nominate a candidate.

In 1831, the newly formed anti-Jackson National Republican Party nominated Henry Clay in the first major party convention. The National Republican Party would eventually die out and be replaced by the Whig Party, which was then replaced by the Republican Party that remains in place today. The Democratic Party (which had dropped Republican from its name) held a convention in 1832 that nominated Jackson for reelection and Martin Van Buren for vice president. Van Buren would later be nominated for president by a Democratic convention in 1836. Jackson supporters voted Democratic, while the National Republicans then formed the Whig Party.

Between 1836 and 1852, both the Whig and Democratic parties attempted to avoid the issues of slavery and sectionalism, but by the middle of the 19th century, these matters became unavoidable. The slavery issue shattered the old parties and caused new ones to emerge. The modern Republicans, founded in 1854 by anti-slavery activists, became a major force that began to dominate national politics in the years leading up to the Civil War.

**The Third Party System (1860s–early 1900s)**

With the election of Abraham Lincoln in 1860, the Republican Party became established as a major party. Those who supported the Union side in the Civil War became loyal Republicans for generations, and, likewise, those who supported the Confederacy became loyal Democrats. With few exceptions, Northern states tended to be solidly Republican, while Southern states tended to be solidly Democratic.

The Republican Party was further strengthened in 1896. Running for the Democrats, William Jennings Bryan campaigned with strong populist rhetoric that alienated many voters in Northeastern states while attracting voters in the South and the Midwest. This only reinforced the split between North and South that had been created by the Civil War. One consequence of this split was that most states were, in effect, one-party states. The party that controlled each state controlled who was nominated, which limited voters’ choices. State-level electoral competition occurred within a single dominant party. Within each party, especially the Republicans, there emerged two factions. The first faction, which could be said to reflect the party-in-the-organization, consisted of party regulars, professional politicians, those who were preoccupied with building the party machinery, developing party loyalty, and obtaining patronage jobs for themselves and loyal followers. The second faction sought to do away with patronage and weaken the power of what are known as the “political machines.”

**Parties Under Reform (1900s–1960s)**

Beginning in the early 20th century, Progressive reformers sought to weaken the influence of political parties and in some cases to abolish them altogether. The first major issue was to confront party control of the nomination process by machine bosses. Political machines were disciplined organizations in which a single boss or small group could command the support of individual voters and businesses (who were often campaign workers), who in turn could expect to be rewarded for their efforts. The power of the machine lay in the ability of the workers to get out the vote on Election Day. Machine bosses, especially in large cities, owned construction companies and would ge tcontracts to build public works. Following the model of the old spoils system, these bosses selected nominees who would serve the interests of the machine. Naturally, this lent itself to corruption.

Tammany Hall clubhouse in New York City.

Irving Underhill, 1914

In New York City, machine bosses used to meet and divide up public contracts in the Tammany Hall clubhouse, which over time came to symbolize the corruption of machine party politics.

The machines provided pathways of upward socioeconomic mobility for ethnic minorities, such as Irish and Italian immigrants. They also offered a social welfare framework when economic transformations were causing dislocations and massive poverty while the government did not provide welfare services. For example, machine bosses commonly appeared at wakes to offer assistance to widows and children of the deceased. At a minimum, this assistance might pay for funeral expenses, but it could also cover the rent and pay for food for a short time. Progressive reformers who were part of the educated social elite were effectively excluded from the machine party system.

For the educated elite to regain leadership, the rules of the game had to change. Progressives supported primary elections to weaken the stranglehold of the machine bosses, as voters could choose their own party nominees rather than having party bosses choose for them. Reformers also sought local-level nonpartisan elections and strict voter registration requirements to reduce voter fraud. Finally, they sought to establish civil service systems to eliminate the patronage system altogether.

These reforms, however, were slow in coming. Some states, such as California and Wisconsin, were more successful than others. Over the years, more states adopted primary elections. As late as 1960, only eight states held presidential primaries. This meant that presidential candidates, even as late as 1968, could bypass primary election states altogether and secure the party nomination by negotiating with state party chairs.

**The Decline of Parties (1970s–present)**

The decline of the political parties really has more to do with the party-in-the-electorate than within the party-in-the-organization and in government. Ironically, party decline has its roots in the late-1960s and early-1970s reform efforts to increase party bases. Several events converged to foster the need for reform. First, growing opposition to the Vietnam War led Senator Eugene McCarthy of Minnesota to challenge President Lyndon Johnson for the Democratic Party nomination in 1968. Shortly after McCarthy entered the race, Senator Robert Kennedy of New York, the brother of slain President John F. Kennedy, did too. Both McCarthy and Kennedy sought to win the Democratic nomination through the states that had instituted primaries. After Kennedy declared his candidacy, Johnson announced on March 31, 1968 that he would not seek reelection. Johnson’s withdrawal paved the way for Vice President Hubert Humphrey to enter the race, but Humphrey had no intention of entering any primary contests, in part because he had a late start. So while McCarthy and Kennedy battled it out in primaries, Humphrey negotiated with state party chairs and secured delegates.

Kennedy won the California primary in early June and looked likely to win the party nomination, but on the night of that primary victory he was assassinated. Humphrey, having never entered a primary, had the nomination wrapped up going into the Democratic convention in Chicago, but there was a pall cast over the gathering by protestors and violence in the streets outside. In the general election, Kennedy and McCarthy supporters refused to support Humphrey, in part because he would not disavow his earlier support for the Vietnam War and, more significantly, because they believed that he had stolen the nomination. The result was a split Democratic Party, which contributed to Republican Richard Nixon’s election in what was otherwise a close race.

Police clearing demonstrators out of Grant Park in Chicago. There is a tipped-over trash can and litter scattered on the ground. Some of the demonstrators appear to have fallen during the commotion.

**Associated Press**

Riots outside the 1968 Democratic Convention were indicative of the Democratic Party split over the Vietnam War. Vice President and presidential candidate Hubert Humphrey backed the war.

The 1968 election appeared to be a watershed event for several reasons. Some believed that it was the beginning of an emerging Republican Party majority. Democrats believed they had lost the election because the party had been split during the primary season. Close election results implied that had the party not been fractured, it might have won the election.

The 1968 election also saw the independent candidacy of George Wallace, the Democratic segregationist governor of Alabama, who was able to capitalize on White anger in the South over civil rights. The effect of Wallace’s candidacy was to peel Democratic voters away from Humphrey. Nixon also took away Democratic voters, but for different reasons. Nixon ran on a platform of law and order and ending the Vietnam War. For many blue-collar workers and social conservatives, the violence of the 1968 convention, which was broadcast on national television, fueled a perception that the Democrats no longer represented their interests. In this vein, the 1968 election marked a major turning point in the nation’s cultural wars.

Democratic Party activists convened multiple commissions in their attempt to unify the party on the assumption that the fracture was due largely to the nominating process. The first commission, the McGovern-Fraser Commission, chaired by Senator George McGovern of South Dakota and Representative Donald Fraser of Minnesota, recommended that all states adopt either primary elections or party caucuses. They argued that this approach would democratize the nominating process and remove it from the influence of state party chairs. They also recommended making the party more inclusive by selecting more women and minorities as convention delegates.

In many cases, state legislatures had to pass new laws to hold primaries. As states adopted these reforms, the result was that anybody could enter primaries without necessarily representing the parties’ traditional bases. Another result was that the nominating conventions were to become little more than pep rallies.

Between 1968 and 1992, with the exception of Jimmy Carter’s election in 1976, the country did not elect a Democratic president. Part of the reason may have been a perception that the party had moved too far to the left, which was one consequence of its losing control of the nominating process.

**9.3 Two-Party System Versus Multi-Party System**

The American political system is characterized by a two-party system, while the typical parliamentary system includes multiple parties represented in the legislature. There have been two main parties in the United States since they emerged in the late 18th century. Several attempts over time to form third parties have never really succeeded. Why has this been the case?

**Why the United States Has a Two-Party System**

The principal reason the United States has a two-party system is that it has single-member congressional districts—each voter gets one vote for a given office. Getting elected requires a plurality of votes. In the 1950s, French sociologist Maurice Duverger (1964) noted, in what has come to be known as Duverger’s law, that a plurality election system tends to favor two-party systems. In other words, the candidate who wins the office is the one who receives the most votes. In practical terms, this means that if in District 2 Joan, George, and Danielle run for office and Danielle gets 49% of the vote, George gets 35%, and Joan gets 16%, Danielle is the winner.

This is very different from a parliamentary system, where there is proportional representation, which means that voters can vote for several candidates to represent the province in which they live. As an example, if Province A will be represented by 10 people out of 20 people running, each party understands that the number of seats it takes in Parliament for this province will be in proportion to the percentage of votes that it receives. If the Liberal Party receives 30% of the vote, the Conservative Party receives 20% of the vote, the Labor Party receives 40% of the vote, the Consumer Party receives 7% of the vote, and the Green Party receives 3% of the vote, the results will look as shown in Table 9.1.

**Table 9.1: Example of proportional representation**

| **Party** | **Percentage of the vote** | **Number of seats in Parliament** |
| --- | --- | --- |
| Liberal | 30 | 3 |
| Conservative | 20 | 2 |
| Labor | 40 | 4 |
| Consumer | 7 | 1 |
| Green | 3 | 0 |
| **Total** | **100** | **10** |

Because more than one person can represent the district, there is room for more than the two strongest parties. The weakest parties can survive by achieving a minimum threshold, such as receiving at least 10% of the vote, to secure at least one seat. A party receiving 10% in a single-member district system like the United States would not secure representation in office, and in the long term that party could not survive.

**Broker Party Model**

Two-party systems tend to be examples of broker party models because their primary purpose is to win elections. The issues on which the party campaigns are based on what will attract the most votes. As the preferences of the voters change, so too do “planks” in the party platform. The party platform outlines the official positions of the political party, and the term planks refers to the components of that platform. Because Americans tend to vote for personality more than platform, the candidate who runs for office shapes the position of the party platform. Whoever appeals most to the voters in a primary election gets to represent the party in the general election. In the broker party model, the party acts as a medium for voters to express their preferences for particular candidates. While the party is non-ideological in the broker party model, this is not to say that ideology does not play a role in the selection of candidates, especially during primary campaigns. Rather, ideology is a tool that can be used to rally support among voters to help secure a nomination.

**Responsible Party Model**

The responsible party model functions in both parliamentary systems, such as Great Britain, and in single-member winner-take-all systems, such as the United States, although it is more common in parliamentary systems, where issues and candidates are secondary to parties. Platform planks tend not to change according to changing voter preferences; rather, voter preference affects whether the party gains or loses votes. This means that parties are more ideological in the responsible party model compared with the broker party model.

In the responsible party model, when people contribute money, they contribute to parties. The candidates who run on behalf of the party are chosen by party leaders, not primary elections. A candidate is merely a spokesperson for the party. Usually the person who would, for example, be prime minister, is the leader of the party, and the only way that person became party leader was by working the way up the ranks and demonstrating loyalty to the party and its policy positions. Officeholders who challenge the party leadership or buck party ideology are generally displaced from the ballot in the next election. In the responsible party model, then, party discipline tends to be tight. Political parties can be more ideological because there are more of them. Parties would rather lose an election than compromise on principles. But even a strongly ideological party is still likely to have seats, even if there are fewer of them.

**9.4 Interest Groups**

Interest groups such as the National Rifle Association (NRA) have proliferated as political parties have weakened. The same individualism that brought about the demise of political parties appears to strengthen interest groups.

As with political parties, the Framers assumed that interest groups, or organizations focused on a single issue, would naturally form because people had the liberty to freely associate; however, as with political parties, the Framers did not have a positive view of interest groups because they were primarily factions of self-interest. In Federalist No. 10, James Madison defined factions as

a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. (1787, para. 3)

Insofar as interest groups would be factions, they would seek to pursue the interests of the group first, even if they were contrary to the larger public interest.

Today, there are two dominant views of interest groups. One holds that interest groups reflect a dynamic democratic process built on pluralism. Of the multitude of interests within society, some work together while others work against one another. Classical pluralism argues that interest groups use their resources to exert influence in government, while an alternative view suggests that interest groups distort the democratic process because they succeed in having their interests trump those of the public.

**The Role of Interest Groups**

Many interest groups focus on single issues. People who join interest groups such as the National Rifle Association (NRA) or the Sierra Club do so because of their concern over a specific policy area. The NRA is concerned with the rights of people to bear arms, while the Sierra Club focuses on matters that affect the environment.

Interest groups pursue their goals by making policy-related appeals to government. They seek to influence elections through political action committees (PACs), interest groups’ financial arms. PACs raise money and contribute to campaigns. Donations are most often directed at incumbents, regardless of party, because incumbents have a high reelection rate. Interest groups act strategically when they give money to incumbents who will likely be reelected. The NRA, for instance, will contribute to whoever has a record of voting against gun control.

Lobbyists from different interest groups wait to see members of Congress on Capitol Hill. The job of a lobbyist is to present information and arguments to legislators for the purposes of securing their support on specific issues.

Interest groups also seek to influence public policy through lobbying. Lobbyists, who represent interest groups in their efforts to shape public policy, meet with elected representatives and attempt to influence their votes on particular issues. Lobbyists explain why supporting their position is important to the interest group’s members whom the elected officials represent. One tactic that lobbyists use is to impress upon legislators that they represent large numbers of people who vote.

**Difference Between Interest Groups and Political Parties**

The principal difference between interest groups and political parties is that interest groups tend to be single issue while political parties address a wide array of issues. Additionally, a political party tends to be a more heterogeneous group, with activists who often take the same position on core party issues but may have different opinions on others. A political party seeks to win elections for its candidates. An interest group seeks to gain support for its cause. Anyone can be a party member by registering with that party for the purposes of voting. But interest group members pay membership dues in order to join the group. Political parties often act like big tents that seek to attract many people with different points of view, while interest groups seek to attract only those who agree with their cause.

**Madison’s Dilemma**

James Madison argued against factions because they sought to place their own interests over the public interest. But factions were also the inevitable byproduct of liberty. The ultimate cure for factions would, of course, be to eliminate them by legal means, but the cure would be worse than the disease. The only solution to this dilemma, then, would be to allow for so many factions that the relative power of each would be diluted. The more interest groups there are, the less influence each one has.

Interest groups represent the diversity of American society and speak to the issue of pluralism whereby different people get involved with different issues at different times. The U.S. Constitution and the Bill of Rights were designed to protect individualism. Pluralism is individualism in its collective form. Because the United States is a large and diverse nation, interest groups have become an essential tool for individuals to express themselves and have their voices heard by governmental officials.

Interest groups can be viewed as reflecting healthy democratic expression. They represent the diversity of views in American society.

Madison’s dilemma also suggested that one interest group might have too much power. Economist John Kenneth Galbraith (1993) argued that interest groups would ultimately be checked by what he termed countervailing forces. In the face of one powerful interest group, several smaller ones would come together in a coalition, and they would balance out the power of the larger group. Consistent with Madison’s notion that the effects of factions can be controlled by having more factions, the more interest groups there are operating in the system, the more countervailing forces will exist. This is an instance of the marketplace working to curb the excesses of interest groups.

**Rationality and Logic of Collective Action**

An interest group is a voluntary organization, and many people who sympathize with it may derive benefits without having to bear the costs of membership. For example, an environmental interest group may petition the federal government to pass regulations that will reduce automobile emissions. The environmental group’s PAC may donate money to the congressional campaigns of incumbents who have voted for pro-environmental regulations in the past, while the environmental group’s lobbyists may lobby both Democratic and Republican members of Congress to support legislation to reduce automobile emissions. If Congress passes the legislation and the president signs it, one result will be cleaner air that all people will benefit from, including persons who never joined the interest group along with those who may have opposed the regulation out of concern that it would cause an increase in the cost of automobiles. When individuals do not bear the costs of interest group membership, yet derive the benefits of that group’s work, it is called the free rider problem. Logic would suggest that individuals have little incentive to join interest groups because they can be free riders. However, if everybody were to assume that they could be free riders, then interest groups would be challenged in recruiting members. As a consequence, individuals acting rationally by being free riders can cause collective irrationality because the consequence of their inaction is the absence of a strong and large interest group to advocate for their interests.

The purpose of joining an interest group is to demonstrate that there is a constituency supporting a particular issue and acting collectively to achieve greater results than acting alone would.

If its benefits are so readily available to free riders, why would anybody join the environmental interest group? One key reason that individuals would continue to join is because of asymmetric information, in that individuals will not know what everyone else is doing. Those supporting auto emission reductions do not know for certain that they will fare just as well if they opt to be free riders. And collective action achieves greater results than acting alone does. This, after all, is the purpose of joining an interest group: to demonstrate that there is a constituency supporting a particular issue.

Interest groups have also found practical ways around the free rider barrier by offering benefits to members. As an example, AARP offers its members discounts on a variety of items, including insurance policies and travel packages. The NRA offers gun safety courses, as well as discounts on hotels and insurance policies. As a result, individuals may see some practical benefit to joining. People may also join interest groups for the opportunity to socialize with others on matters of common interest.

**Impact of Interest Groups on Democracy**

Political scientist Theodore Lowi (2009) argued that, as government took on more responsibilities, Congress would delegate authority for policy implementation to the executive branch. The inevitable result would be a significant increase in interest groups. Indeed, not only have interest groups emerged to lobby Congress for specific programs as the nature and number of government responsibilities have increased, but they have also lobbied the executive for contracts to deliver services.

Lowi also concluded that a government founded on liberal principles, such as the United States, cannot prioritize values. Lowi’s conclusion is based on the notion that, on a philosophical level, each person’s conception of the good is just as valid as any other. To treat everyone equally means that someone arguing for food for the hungry will not get preference over someone arguing for corporate subsidies. The old constitutional system, as Lowi referred to it, would not extend beyond its limited function. Once government found itself responding to new crises, delegating authority, and dealing with multitudes of interest groups, it would give priority to the cause with the largest and most powerful interest group behind it. If corporate subsidies are backed by a powerful interest group, they have a higher order of importance than feeding the hungry does, even if it turns out that most citizens disagree with these priorities. The end result is that interest groups distort democracy because they do not represent the people equally. Rather, government is more responsive to larger and more active interest groups. Not everyone agrees with this position. Political scientist Robert Dahl (1961) has suggested that even if interest groups represent different groups on different issues, the effect is pluralism in action.

**9.5 The Challenge of Interest Groups to Constitutional Representation**

Madison’s dilemma and the corresponding concept of countervailing forces assume that competition among interests produces balance and compromise. Yet it is not clear that interest groups represent the broader public. As an example, the NRA might claim to speak for millions of Americans when it opposes gun control. But we do not really know that these millions of Americans, who might believe they have the right to own guns for hunting, target practice, and personal protection, would oppose laws making it more difficult for criminals or the mentally ill to acquire one.

Legislators might believe that an interest group speaks for more than its actual membership suggests because of its perceived power. Further, interest groups may not be representative because their membership may have a decidedly upper-class bias. For instance, many environmental interest group members come from more educated and affluent backgrounds and claim that they speak for millions more across education and income groups who are not dues-paying members.

**Money in Politics**

Many argue that the greatest challenge that interest groups pose to democracy is that they often enable those with the most money to enjoy the loudest voice. The PACs that collect money for interest groups channel those donations into specific campaigns. Table 9.2 outlines the maximum amounts that individuals and groups can contribute to PACs. There are different limits based on the type of donor and recipient. Because members of Congress have to raise huge sums of money to be elected and reelected, they tend to be beholden to those who contribute money to their campaigns compared with those who do not contribute. This circumstance has led to the charge that, through their contributions, PACs effectively direct policymaking.

Congressional incumbents and candidates understand that an interest group with a well-funded PAC may direct resources into efforts to defeat someone who opposes their interests. In response, interest groups may decide to run advocacy ads in an attempt to cause their opponents to be defeated by candidates who are more sympathetic to their cause. An advocacy ad might run independently of a candidate’s official campaign. Interest groups may spend as much as they want on independent expenditures, which are monies spent without coordinating with any candidate.

Typical citizens who are not interest group members who otherwise support a cause may believe that members of Congress are not really representing their interests because of the role of money in politics. Some argue money in politics poses a challenge to constitutional representation because those contributing more money to congressional campaigns may buy more influence. (Table 9.3 highlights the top 20 financial contributors in the 2013–2014 election cycle.) In a constitutional democracy, members of Congress should represent all the people and not just those with money.

**Table 9.2: Contribution limits 2015–2016**

| **RECIPIENTS** | | | | |
| --- | --- | --- | --- | --- |
| **DONORS** | **Candidate committee** | **PAC**1 | **State/district/ local party committee** | **National  party  committee** |
| **Individual** | **$2,700\*  per  election** | **$5,000 per  year** | **$10,000 per year (combined)** | **$33,400\* per year** |
| **Candidate  committee** | $2,000  per election | $5,000  per year | Unlimited transfers | Unlimited transfers |
| **PAC:  Multicandidate** | $5,000 per election | $5,000  per year | $5,000 per year  (combined) | $15,000 per year |
| **PAC:  Nonmulticandidate** | $2,700 per election | $5,000  per year | $10,000 per year  (combined) | $33,400\* per year |
| **State/district/local party committee** | $5,000 per election | $5,000  per year | Unlimited transfers | |
| **National party  committee** | $5,000 per election | $5,000  per year |

**Interest Groups and Free Speech**

The first law limiting the role of corporations in political campaigns was enacted in 1907. The Tillman Act prohibited national corporations from contributing to national political campaigns. It was not until the 1970s that Congress enacted additional campaign finance regulations. The Federal Election Campaign Act (FECA) was enacted in 1971 and amended in 1974. Among other regulations, FECA limited the amount of money that candidates could contribute to their own campaigns on the grounds that contributions from individuals should be limited even if those individuals contributing were the candidates themselves. Yet, the U.S. Supreme Court ruled in the 1976 case of Buckley v. Valeo that limiting the amount of money that candidates could contribute to their own campaigns violated First Amendment free speech protections.

Congress attempted again to regulate campaign money with the 2002 Bipartisan Campaign Reform Act (or “McCain-Feingold,” the names of the two Senate co-sponsors), which restricted the amount of money that organizations such as corporations, labor unions, and other interest groups could contribute to federal campaigns. But in 2010, the Supreme Court ruled in Citizens United v. Federal Election Commission that these restrictions violated free speech guarantees because organizations have the right, under the First Amendment, to express themselves in the political arena. On one level, if interest groups can spend unlimited sums of money on behalf of particular candidates, then bigger and richer interest groups would appear to have more power and influence. But on another level, in terms of countervailing forces, the Supreme Court implied in the Citizens United decision that individuals are free to join interest groups, which can in turn attempt to raise as much money as they choose and contribute as much as they want to the candidate who supports their cause. This would appear to be democracy in action.

One key consequence of the Citizens United decision is the emergence of “super PACs.” Super PACs are registered federal political committees that may not contribute to candidates or parties but may make unlimited independent expenditures. Super PACs are exempt from the restrictions imposed on other organizations such as corporations and labor unions. The role of super PACs in presidential elections has been significant. For example, in 2012, more than 1,300 groups organized as super PACs, which together reported total receipts of almost $830 million. The best-funded super PAC in 2012 was “Restore Our Future,” which supported Republican nominee Mitt Romney. Restore Our Future raised $154 million in the 2011–2012 presidential election cycle, of which $142 million was spent on independent expenditures.

**10.1 Purpose of Elections**

The United States uses elections to choose its leaders. Voting is the most basic form of political participation and is assumed to be a basic right in a democracy. However, elections are important for other reasons as well. In the United States, elections serve three basic functions:

Through elections, American voters offer their tacit acceptance of the constitutional tradition. Elections also provide for the peaceful transfer of power and are the basis of democratic expression.

They provide an essential basis for democratic expression.

They provide for a peaceful transfer of power.

They allow citizens, as a political community, to offer their tacit acceptance of the American constitutional tradition. By voting, citizens reaffirm their commitment to the social contract that the Constitution represents.

**Democratic Expression**

People express themselves in a democracy by casting ballots either in person or by mail. Casting a vote allows them to express their preferences, which is an extension of human agency. When people vote for candidates who currently hold office, they affirm their support for the current government, and when they vote against those who currently hold office, they register their opposition to that same government.

Citizens achieve the greatest state of democratic expression when they can control the circumstances affecting their lives. In the political world, people control their circumstances by electing the government that will make decisions on their behalf. Elections are the vehicles by which the people achieve their political voice.

**Peaceful Transfer of Power**

Americans may take a peaceful transfer of power for granted, but this is actually one of the unique features of the American legacy. When the Framers of the Constitution constructed the American political system, they wanted to ensure peaceful transfers of power. A peaceful transfer of power—that is, using the ballot box rather than the barrel of a gun—represented a serious break from past experience. The election of 1800 illustrates this point. John Adams, George Washington’s vice president, who also was a Federalist, was elected president in 1796 after Washington opted not to seek a third term. Thomas Jefferson, the lead author of the U.S. Declaration of Independence who strongly opposed the centralized federal structure, lost to Adams in 1796. Jefferson became Adams’s vice president because the original Constitution (since changed with the 12th Amendment in 1804) extended the vice presidency to the person who received the second-highest number of electoral votes in the presidential election. Adams ran for reelection in 1800, and Jefferson ran for president a second time. This time, Jefferson won. The peaceful, though not apolitical, transfer of power that resulted from this election, from the nation’s first two presidents, both Federalists, to Jefferson, a Democratic-Republican, reflected the Framers’ aspirations.

Among the precedents that George Washington set as the first president was his personal choice not to seek more than two terms in office. Until the 22nd Amendment was ratified in 1951, the Constitution did not expressly prohibit presidents from serving two terms even though only one president (Franklin Delano Roosevelt) served more than two terms before the 22nd Amendment was ratified. Washington’s action paved the way for the election of his replacement and the tradition of peaceful transfer of power in the United States. Because Americans can trust that power will be peacefully transferred, they do not have to resort to violence to change the government.

**Tacit Acceptance of American Constitutional Tradition**

The U.S. Constitution is in many respects a social contract between the government and the people, but it was entered into by a generation of people from whom current Americans are far removed. Thomas Jefferson thought it would be a good idea if every generation held a constitutional convention so that each could choose the governing arrangements that would best meet its needs. But because Americans choose their government through periodic elections, they do not really need to convene new constitutional conventions. Elections enable them to offer their tacit consent, or implied agreement, to the basic social contract of the Constitution. By freely participating in the political process through elections, Americans agree to the political arrangements that govern them. Elections, then, in a very broad sense fulfill a public support function.

Of course, the public support function rests on the same assumptions of trust that the peaceful transfer of power does. Only because the people trust that the government in power will respect their wishes can elections represent this tacit acceptance. After all, if citizens participate in the political process by voting, rather than seeking to overthrow it through rioting and rebellion, it must follow that they are basically happy and accept the legitimacy of the system. But if it can no longer govern effectively, the government loses its legitimacy.

**10.2 Public Participation**

Although a majority of the country may be eligible to vote, not everyone does. On one level, because elections are critical to democracy, many regard voting as a civic obligation, similar to jury duty. But on another level, freedom to participate in the democratic process also means the freedom not to participate.

**Age and Voting Behavior**

The age of the voter is often an indication of voting behavior. One of the biggest changes in American politics in the last decades is the political activism of the elderly. Young voters are much less likely to vote than older people, which is certainly a change from the activism of baby boomers.

The United States does not mandate participation in elections. It also has one of the lowest rates of voter participation compared with other representative democracies. If a group of people chooses not to vote and the government then pursues policies that this group does not like, do these people have a reasonable basis to complain?

Are politicians obligated to represent all the people, or only those who vote? In theory, all citizens have a legitimate claim to be represented by elected officials. In reality, however, politicians tend to represent only those who vote. Of course, the larger question is what it means to talk about the importance of voting if people fail to exercise this basic right. Another issue is that—given the long-fought battle for civil rights, of which voting was most prominent—if large segments of the population opt not to vote, what was the point of fighting for the right in the first place?

**Who Votes?**

American citizens age 18 or older are eligible to vote, but the “typical voter” usually falls into a particular set of demographic categories. For example, various studies have shown that a person’s position in society based on economic class or education, or socioeconomic status, is a key determinant of who votes. Those with a higher socioeconomic status are more likely to vote than those with a lower socioeconomic status are.

Older people are more likely to vote than younger people are, women are slightly more likely to vote than men are, and Whites are more likely to vote than members of racial or ethnic minority groups are. Further, those with a strong political ideology, often assumed from their families, religious groups, or other social influences, are more likely to vote than those without a strong ideology, religious commitment, or social connection are.

**Reasons for Nonvoting**

The electorate consists of those who are eligible to vote, whether they vote or not. Voter turnout during presidential elections usually falls between 50% and 60% and is even lower during midterm congressional elections (see Figure 10.1). This means that at least 40% of the electorate chooses not to participate. Why is this the case?

**The Requirement to Register**

All but one state requires that eligible voters be registered in order to vote. Voter registration has proven to be a barrier to voting. Supporters of mandatory registration argue that registration is a safeguard against fraud. Yet registration can be burdensome because it requires that forms be completed and submitted to the local supervisor of elections in advance of an election. Of the 49 states requiring that voters register, half require registration between 15 and 30 days in advance, while the other half require registration between 0 (Election Day registration) and 14 days before Election Day. Federal law prohibits states from requiring registration beyond 30 days before Election Day. While voter registration may be inconvenient, it helps emphasize the importance of voting and assumes that responsible citizens will complete the process.

Many argue that one response to low voter turnout is to take additional steps to ease access to registration. After passage of the National Voter Registration Act (NVRA) in 1993, various states implemented a motor-voter process, which allows people to register to vote when they register their cars with the state Department of Motor Vehicles or apply for or renew a driver’s license. (Of course, for those who do not drive, this may not be helpful.) The NVRA also allowed people to register by mail or when applying for various social services.

One purpose of voter registration is to prevent fraud. However, registration is often considered a barrier to voting because it requires individuals to fill out and submit a form by a state-mandated deadline.

**The Disillusionment of Poor Voters**

Low-income people are less likely to vote for various reasons. These reasons may include the inconvenience and potentially lost wages to take time off to go to the polls, believing that voting will not affect the political process, or believing that elected officials do not understand their situation. Low-income people may believe that electing candidates who promise to enact economic and social programs that benefit lower-income groups will have little bearing on their lives. This belief may stem from the broker party nature of the system. Additionally, powerful interest groups enjoy advantages over individuals who are not organized.

When people opt out of the system because they believe it does not represent their interests well, their concerns become a self-fulfilling prophecy. Many politicians believe that there is no point in campaigning in areas or neighborhoods with high percentages of nonvoters. As noted in the last chapter, running for office is very expensive. Candidates must make strategic decisions about where to allocate their resources. They are more likely to spend their time and money in neighborhoods that are known to have relatively high turnout and are less likely to pay much attention to low-turnout populations.

**Constitutional Bases for Expanding Suffrage**

Voting eligibility is addressed in just a few places in the Constitution. The first is the 15th Amendment (see Figure 10.2), ratified in 1870, which states that a citizen cannot be denied the right to vote by the national government or any of the states on the basis of race, color, or previous condition of servitude. This amendment provided the constitutional basis for newly freed slaves to be eligible to vote after the Civil War. Next is the 19th Amendment, ratified in 1920, which says that citizens cannot be denied the right to vote on account of sex. This amendment granted women the right to vote.

The 23rd Amendment, ratified in 1961, extended the right to vote for president to residents of the District of Columbia (Washington, D.C.). Before the amendment was ratified, Electoral College votes were given only to states, and because Washington, D.C. is a district and not a state, D.C. residents could not vote for the president. The 23rd Amendment gave to Washington, D.C. the same number of Electoral College votes as the smallest state. As each state is guaranteed a minimum of three Electoral College votes, the District of Columbia was guaranteed three Electoral College votes as well.

Suffragettes stand in front of the Woman Suffrage headquarters in Cleveland, Ohio, in 1912. The 19th Amendment, which gave women the right to vote, was ratified in 1920.

The 24th Amendment, ratified in 1964, states that the right to vote in national elections cannot be denied for failing to pay a poll tax. The 24th Amendment was proposed and ratified in response to Southern states that were using such taxes to disqualify poor Blacks from voting. Finally, the 26th Amendment, ratified in 1971, lowered the legal voting age to 18. While some states allowed those over 18 to vote, other states required a minimum age of 21.

Voter eligibility is otherwise assumed to be a matter of states’ rights. States have enjoyed the power to determine who is eligible to vote while also handling their voter registration. States began eliminating property qualifications in the 1820s, and it was the Southern states that targeted voting barriers toward African Americans. The women’s suffrage movement originally began as a grassroots movement on a state-by-state basis, with Wyoming being the first state to allow women to vote in state and local elections, in 1893.

The constitutional amendments that expanded suffrage, federal legislation such as the 1965 Voting Rights Act, and key U.S. Supreme Court cases each removed voting barriers that were erected by the states. In fact, the Voting Rights Act prohibited states from imposing any “voting qualification or prerequisite to voting, or standard, practice, or procedure . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color.” It was Congress’s specific intention to outlaw the practice of requiring otherwise qualified voters to pass literacy tests to register to vote, which had been another method, in addition to poll taxes, by which Southern states denied African Americans the right to vote.

**Increasing the Voter Rolls**

Both parties seek to increase their election chances by increasing their registration numbers. In recent years, both parties have sought to find new voters among the Latino population. For example, when Republican President George W. Bush campaigned for office, he prided himself on being able to speak fluent Spanish in an attempt to increase Latino support for Republican candidates.

**10.3 Types of Elections**

Political scientist V. O. Key, Jr. (1955, 1959) famously observed that there are four types of elections: maintaining, deviating, reinstating, and realigning.

**Maintaining Elections**

A maintaining election is one in which the majority party, which holds power, such as the majority party in Congress, continues to hold power following an election. This type of election requires a continuation of party loyalty among the party-in-the-electorate, which assumes that voters will remain loyal to their party by voting for candidates sharing their party label.

This type of election is a maintaining election because the allegiance of the voters has not changed, probably because the nation is not facing a major crisis or, if facing a crisis, voters believe that the government in place and the party in power are handling it well. A maintaining election, then, is about preserving the status quo. A pattern of maintaining elections may result in representatives becoming complacent. If the majority party in government can rely on long-standing party loyalty among the electorate, it may not feel the need to be as close to the people as it would if the races were more competitive.

**Deviating Elections**

President Ronald Reagan standing at a podium giving a thumbs up with his wife, Nancy, by his side, who is waving. A man and a woman are standing behind the podium clapping.

**Associated Press**

Ronald Reagan’s 1980 presidential election victory is an example of a deviating election because large numbers of Democratic voters crossed party lines to vote for him.

A deviating election occurs when short-term forces overtake long-term party loyalties. Voters cast their ballots for the party out of power, the minority party, displacing the majority party from power. While voters may support the party to which they do not belong in this election and maybe the next, these voters remain loyal to their party. They maintain their allegiance to their party even though they feel compelled to vote for the other party due to short-term forces, such as candidates and issues, that change with each election (either because different candidates and issues get shifted or because the magnitude of certain issues changes). The result is seen as a temporary deviation from the norm because the expectation is that, once the crisis is over, the former majority party will be returned to power.

**Reinstating Elections**

The return to power of a former majority party following a deviating election is called a reinstating election. A reinstating election brings a return to the status quo. It also verifies that whatever forces resulted in the deviation were short lived. Because the political landscape remains unchanged, reinstating elections have much in common with maintaining and deviating elections. Each represents relative stability in the composition of both the party-in-the-electorate and the party-in-the-government, with the electorate generally voting on the basis of traditional party loyalties. Some may argue that the election of 2008, in which Democrat Barack Obama was elected, was a reinstating election after Republican President George W. Bush’s two terms. Bush’s election in 2000, in which he won the Electoral College vote but lost the popular vote to Democratic Vice President Al Gore, deviated from the two previous Democratic presidential victories in 1992 and 1996.

**Realigning Elections**

A realigning election produces a major change in the composition of the party-in-the-government following a massive shift in the party-in-the-electorate. Voters abandon longtime party loyalties and shift their allegiance from the majority party to the minority party, which results in the minority party becoming the new majority party. As V. O. Key, Jr. (1955, 1959) saw it, a realigning election is a critical election because it represents a massive and durable shift in party loyalty that results in a long-term change in characteristics of the electorate and the composition of government. For an election to be considered critical, the voter realignment must be both sharp and durable. To be sharp, voter participation is relatively high, making it clear that whatever divisions within the electorate existed prior to the election have been fundamentally altered. The realignment must also occur at all levels of government.

For a realignment to be durable, the new electoral composition must persist over time. To measure the sharpness of the shift, an issue or a set of issues that would cause voters to make a monumental change would be essential. It would be extremely difficult to examine a single election isolated from its larger political context to determine durability. A momentous event, such as a war or a deep recession, that reorders the political landscape in ways not seen before is required.

Key argued that for there to be such a massive shift in one election, there would have to be a significant cleavage, or division, among the electorate. The people might argue, for example, over whether the government should provide universal health care; cleavage may be said to exist between conservatives who espouse individual liberty and limited government and liberals who support greater equality and more active government. If times are good and most people are confident about their economic future, perhaps the majority party that supports health care reform will remain in power. But a deep recession resulting in high unemployment and increased anxiety can cause the existing division to become more pronounced.

Key also recognized that there have been few instances in American history when voters switched allegiance in a single election. Key expanded his concept of critical elections to include gradual shifts over a long period. A given election might represent a phase in a long-term process of declining group solidarity. The critical election, then, might represent the culmination of this process. In the critical election, voters abandon their party and switch allegiance to the other major party. Students of critical elections suggest that they occur every 30 years or so.

**Consequences of Realignment**

The most profound consequence of realignment is a change in the party-in-the-government, which in turn often means a significant change in policy direction. Had the electorate been pleased with the direction of the country and the policies that it was pursuing prior to the election, there would not have been a realignment.

**Examples of Realignment**

The election of 1932, which occurred after the Great Depression hit, was an example of a realigning election because the Republicans lost the majority control of both houses of Congress to the Democrats, which occurred for nearly all elections until 1994. Democrat Franklin Roosevelt unseated incumbent Republican President Herbert Hoover, while many state houses changed to Democratic rule. All of the presidents elected from 1860 until 1932, with two exceptions, were Republican. Because of the depths of the Great Depression, Franklin Roosevelt came to office backed by an electoral coalition that included ethnic and religious minorities, blue-collar workers, and union members, as well as the traditional Southern states. This new coalition would remain the base of the Democratic Party until the late 1960s.

Yet suggesting that a particular election was a critical election because realignment occurred is to be retrospective. It does not necessarily mean that one can predict future elections based on what happened in the past. As an example, consider that political commentator Kevin Phillips wrote The Emerging Republican Majority in 1969 in an attempt to analyze the 1968 election. According to Phillips (1969), Richard Nixon’s election was the beginning of an electoral realignment because more people were moving to the suburbs and these suburban communities were voting Republican. Beginning with Nixon, the Republicans held the presidency from 1980 to 1988 and 2000 to 2008. Not only did suburban communities shift Republican, so too did many Southern states, because they were upset that Democratic President Lyndon Johnson signed the Voting Rights Act of 1965, which took power away from the Democratic-dominated Southern states in managing elections. Because the base of the Democratic Party had been concentrated in the cities, Phillips reasoned, the party would not be able to hold its majority if the demographics changed to favor suburbia. If Phillips was correct in saying that 1968 was the beginning of a realignment, that would mean that the 1976 election of Democrat Jimmy Carter was a deviation while the 1980 election of Republican Ronald Reagan was the reinstatement. Carter may have won because of deep divisions over Watergate. Carter’s opponent, incumbent President Gerald Ford, had been Nixon’s vice president. After Ford ascended to the presidency following Nixon’s resignation, he had pardoned Nixon for Nixon’s involvement in the Watergate scandal.

If 1968 was not a realigning election, then it was a deviating election, with 1976 serving as a reinstating election, while the realignment would have happened in 1980. Nixon won in 1968 in a close election amid deep divisions over the Vietnam War and the sense that there was too much lawlessness in the Democratic Party, as evidenced by the violence at the 1968 Democratic Party convention in Chicago. Ultimately, the answer to whether an election was a critical election is a matter of interpretation.

**Primaries and Caucuses**

Presidential elections begin at the state level through a series of primaries and caucuses. Since the 1960s, states have increasingly adopted primary elections far more than caucuses as a means to select candidates. Most primaries are either open primaries or closed primaries. Most states hold closed primaries, where only registered party members may vote in that party’s primary. In open primaries, by contrast, registered voters, no matter their party registration, or no party registration, may vote in one, but not both, party primaries.

Another way of selecting candidates is through the caucus system. Caucuses tend to be found in smaller states (such as Iowa) and require a greater time investment from the voters than casting a ballot. In a caucus, voters report to their polling station, in which each candidate has an area. Voters then go to the area of their preferred candidate, but voters in other areas, that is, supporters of other candidates, can challenge the preferences of others. This often leads to a general discussion of why one candidate is preferable to another. At the end of the night, support in each area in each precinct is tallied up and delegates are apportioned on the basis of the percentage of support that each candidate received.

One key benefit to the caucus system is that participants must be familiar with candidates’ issue positions so that they can intelligently defend their choices. Yet state-level caucuses tend to demonstrate low turnout because they require more commitment from voters. As a consequence, the outcomes may not be entirely representative of the state electorate because only party activists tend to participate. Three fourths of the states use primaries for presidential nominations.

**10.4 The Role of Public Opinion in Elections**

The outcome of an election often reflects the tide of public opinion. As U.S. Senator Barack Obama defeated U.S. Senator John McCain in 2008, the electoral outcome can be said to reflect various factors linked to public opinion toward Obama, McCain, the incumbent president and his party, various issues, partisanship, a combination of these, or something else. Public opinion also plays a key role in elections because candidates utilize pollsters to gauge public opinion throughout the election season. Still, as much as we talk about the importance of public opinion in democracy, it is not always easy to gauge.

**Defining Public Opinion: Values, Ideology, and Attitudes**

Public opinion generally encompasses values, political ideology, and attitudes. Values represent deep-rooted goals, aspirations, and ideals that shape an individual’s perceptions of political issues. As an example, most Americans believe in freedom as a fundamental American value. Though we may all define it differently, most people aspire to live freely.

Differences over the meaning of freedom involve political ideology. As a matter of ideology, one might think that personal freedom is maximized when government is limited in its function. A limited government would mean little regulation, low taxes, and very few social programs. Such an ideology is often referred to as conservative. The political ideology that values government support for disadvantaged populations or during periods of hardship is considered liberal or progressive. An attitude is a specific view about a particular issue, personality, or event that is shaped by ideology.

Values, political ideology, and attitudes may be affected by various factors, including socioeconomic status, family background, and one’s political environment.

**Measuring Public Opinion Through Polling**

The easiest way to measure public opinion is through surveys. Analysts, candidates, and officeholders routinely conduct polls to get a sense of public attitudes toward particular issues.

Polls conducted using scientific techniques are more accurate than those that are not. Scientific polls take a random sample of the population such that each person in the sample has an equal chance of being selected. A poll of registered Democratic activists is not a valid sample of the public because the respondents may be more ideological than the public and, thus, not represent the public’s views on government and issues.

The most famous case of polling inaccuracy was the 1948 election, where pollsters prematurely predicted Thomas Dewey’s defeat of President Harry Truman. Truman is shown here holding up an erroneous headline from a newspaper that went to press early on election night.

Today, most people have phones, which was not true in the 1940s. Sampling from the telephone book would not produce a sample representing the public. In the early days of polling, there were some significant inaccuracies. The most famous case was the 1948 election, where pollsters predicted Thomas Dewey’s defeat of President Harry Truman. Dewey went to bed thinking that he had won, only to find out that he had lost.

**Forces That Shape Values and Ideology**

Individuals develop their values and ideology through agents of socialization, which are the institutions and influences that help shape one’s basic political worldview. Four important agencies of socialization are the family, social groups, education, and prevailing political conditions.

The most important agent of socialization is the family. For example, children take on the ideology and other public perspectives of their parents, while family socioeconomic status might also affect one’s political ideology and values.

The second most important agent of socialization is education. Educated persons might think critically and be more open to competing ideas, while someone whose education focuses on reinforcing core values without questioning them will likely take on those same ideological approaches.

People are also socialized by the types of social groups, such as interest groups or churches, to which they belong. A social group is an important reinforcement because people are interacting with others who share their values. Finally, political values and ideology are often affected by prevailing political and economic conditions.

**Cleavages in Public Opinion**

It is tempting to talk about American public opinion as though there is one unified public. But public opinion is characterized by deep divisions across worldviews and the political ideologies on which those worldviews are based. Factors affecting these cleavages include occupation, race, religion, and socioeconomic status.

Individuals in higher-paying occupations may view tax policy differently from how individuals in lower-paying occupations do. Similarly, as average incomes tend to be higher among Republicans, there is often more opposition to new or increased taxes among Republicans compared with Democrats. Democrats, whose average income is lower than that of Republicans, may be more likely to favor increased or new taxes as a means of promoting welfare and other forms of support for lower-income groups.

While occupation may account for varying policy attitudes, it may not be as important in explaining other political attitudes. Race is an important variable that affects policy views. Affirmative action, for instance, divides public opinion along racial lines. Blacks tend to support affirmative action programs, while Whites tend to oppose affirmative action due to concerns about reverse discrimination. Still, such cleavages are not absolute. More affluent Whites tend to support affirmative action, while many successful Blacks oppose it because they believe that it stigmatizes them. At the same time, partisanship affects support for affirmative action, as Democrats more strongly support affirmative action on the grounds that it promotes equal opportunity, while Republicans tend to oppose affirmative action because they believe that it limits individual opportunities for success.

Religion is also an important source of cleavage. Catholics and evangelical Christians tend to oppose abortion and same-sex marriage, which may affect vote choice. Evangelical Christians favor school prayer more than other religious groups do. Meanwhile, Jews tend to oppose school prayer and often see it as a threat to First Amendment religious protections.