

**CONSENT OF THE GOVERNED:
The American Experience**

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CONSENT.01

CONSENT OF THE GOVERNED
What It Means, How to Apply It

by Howard W. Hallman

For the powers of government to be just, they must derive from the consent of the governed. This is the message of the American Declaration of Independence, adopted in Philadelphia and proclaimed on July 4, 1776.

The consent of the governed. What does it mean? How can it be applied? Especially in a new democracy.

Three Approaches

Consent of the governed can have three manifestations, three approaches, which are not mutually exclusive.

First, citizens approve the basic framework of government by voting on the state constitution or the city charter sets forth the powers of government and indicates who shall exercise these powers.

Second, citizens vote on who will hold office for specific terms. This occurs periodically. Thereafter, elected officials govern by enacting laws, adopting budgets, levying taxes, and administering governmental services within the constitutional framework.

Third, citizens and public officials continuously interact so that citizens participate in discussions and negotiations which precede policy decisions and public officials keep in touch with citizens and take their views into consideration.

The first two approaches happen through events occurring at specific times. Citizens vote on a state constitution or city charter which will be in effect for an indefinite period, but from time to time they may vote on amendments or on a substantial revision of the constitution or charter. To elect public officials, citizens vote at regular intervals, such as one, two, three, four, five, six years apart.

In the third approach the consent process occurs continuously through ongoing interaction between citizens and public officials.

A new democracy is likely to start with the first two approaches. Consent first takes the form of defining the powers and structure of government in the constitution or charter. Then

consent is expressed in the choice of persons who will exercise these powers. With this accomplished, a democratic system can design and implement measures that make consent a more continuous, interactive process. As this occurs, election campaigns themselves contribute to the continuity of consent.

American Experience

This reflects the American experience, spread over 200 years. First came the U.S. constitution and the constitutions of the states, originally 13, now grown to 50. Then came the election of public officials. As they took office and undertook their responsibilities, citizens found numerous ways to interact with them. Now American democracy features a complex pattern of continuous, interactive consent.

- Election campaigns are stretched out over weeks and months. Persons seeking office lay out policy positions and establish relationships with the electorate in a kind of anticipatory consent. Incumbents seeking reelection keep in touch with voters in ways that affect policy decisions they make between elections.
- Enactment of laws and adoption of budgets occur through processes involving considerable public participation over a period of time. Legislators hold public hearings, attend community meetings, read their mail and newspaper comments, appear on radio and television call-in shows.
- Elected officials and top appointed administrators use a variety of techniques to determine citizen views, such as opinion polls, focus groups, advisory committees, attendance at community meetings, and formalized processes of citizen participation in budget making and project planning that extend over many months.
- Citizens do not sit back, waiting to be asked their views. They organize advocacy groups. They lobby directly and through grassroots mobilization. They get their opinions into the media. Sometimes they organize demonstrations and undertake other forms of protest to gain attention to their views and feelings.

Decision-making Processes

Consent can occur as a continuous, interactive process because most public policy decision-making, except for dire emergencies, takes weeks, months, sometimes years to accomplish. Some decision-making processes follow a stated calendar schedule, such as elections, budget making and appropriations, and the work of legislative bodies with time-limited sessions. Other forms of decision-making have a regular sequence of events, such as enacting laws, adopting regulations, project planning and implementation, awarding contracts, making grants, and appointing persons to

serve on boards and in executive positions.

The steps and timing of specific decision-making processes determine how continuity of consent can be achieved. This can be illustrated in three governmental processes.

Planning. Take the matter of planning. Although there may be a distaste for governmental planning in nations where a command system has prevailed for many decades, democratic governments will have major responsibilities which necessitate careful planning. For instance, for transportation, construction of schools and other community facilities, housing construction, neighborhood rehabilitation, environmental improvements, and other kinds of projects. But it can be participatory planning.

For a neighborhood plan that is to be adopted by the city planning commission and city council, the process might be as follows:

DEVELOPING PLAN

Define problem ----> Set goals & objectives ----> Delineate land use & specify projects ----> Approval by planning director

GAINING APPROVAL

Planning board hearing -----> Planning board approval -----> Council hearing -----> Council approval

The final plan is greatly influenced by how the problem is defined and what objectives are established. Citizens who wait until the public hearing to offer their views may discover that options they preferred have already been precluded.

In contrast, where there are official arrangements for citizen participation, citizens can get involved in all the stages of community planning and work cooperatively with public officials. Where a unit of government is weak in citizen participation, citizens to be influential must assert themselves and offer their views at the early stages, long before the formal public hearing.

Legislation. In enacting legislation a unicameral legislative body is likely to take the following major steps :

Drafting -> Introduction -> Public Hearing -> Committee action -> Floor chief executive -> Approval by bill

In bicameral legislature a bill passed by one house goes to the other house for committee consideration and floor action. Then differences are resolved by a conference committee. The bill then goes back to the two houses for final action before going to the chief executive.

If citizens are to be influential, they must be involved in all stages. They can offer a draft bill or look over what legislators and administrative officials have drafted. They can help line up sponsors within the legislative body. They can testify at public hearings and confer with committee members. They can mobilize grassroots support or opposition. They can push for floor amendments. They can urge the chief executive to approve or veto the legislation.

Citizens concerned about a particular bill who do not become involved until legislation is ready for a floor vote are likely to discover that the fundamental shape of the legislation is already set and is very difficult to alter at this late stage.

Elections. In the electoral process election day is the culmination of months of positioning and campaigning that goes through several major stages. In the United States the process occurs in the following manner:

PRELIMINARIES

Positioning -----> Lining up support -----> Announcement of candidacy

SEEKING NOMINATION (several patterns)

For local & state offices and Congress in some states:

Primary campaigning -----> Primary election

For local & state offices and Congress in other states:

Party convention + option of -----> Challenge primary election

For U.S. president:

State primaries, caucuses, conventions -----> National convention

GENERAL ELECTION

Campaigning -----> Voting

Well before the deadline for filing nominating petitions, potential candidates obtain commitments for support, political leaders form alliances, and some potential candidates fall by the wayside. Interaction between candidates and the electorate begins during the positioning period. Promises made by potential candidates then and during the formal campaign will affect policy decisions made months later if they are elected to office. So even in elections a kind of continuity of consent occurs.

1. The Setting

*We hold these truths to be self-evident,
that all men are created equal,
that they are endowed by their Creator
with certain unalienable rights
that among these rights are
life, liberty, and
the pursuit of happiness.
That to secure these rights,
governments are institute among men,
deriving their just powers
from the consent of the governed.*

These immortal words from the American Declaration of Independence remind us that American democracy is a system of government based upon the consent of the people.

As it has unfolded, the consent process has grown into a complex pattern of relationships between those chosen to govern and the people who elect them, oftentimes reelect them, and sometimes remove them from office. Consent in the last decade of the 20th century in the United States has become a continuous, interactive process. Not perfect, not complete, but richly developed during the last 200 years.

A Federal System

To comprehend the consent process in American democracy it is necessary to understand the federal system of government that prevails in the United States of America.

After declaring independence from Great Britain in 1776, the founders of the American republic faced the challenge of how to combine 13 colonies, now become independent states, into a unified whole. The first attempt in the Articles of Confederation yielded too weak an instrument of national government to be effective. In a second attempt delegates from 12 of the 13 states assembled in Philadelphia in 1787 and produced the Constitution of the United States.

The new constitution divided the powers of government two ways. First, between two levels, or arenas: national (which they called "federal") and the states. Second, within the national government between three, coequal branches: legislative, executive, and judicial. Congress, constituting the legislative branch, is divided into two chambers, House of Representatives and Senate.

Under this system each state has its own constitution, drawn up and approved by its citizens without review by the national government. On their own volition all of the states, now grown to 50, have divided governmental authority into legislative, executive, and judicial branches. All state legislatures except one are bicameral.

In the public debate carried out during the ratification process for the U.S. Constitution, James Madison, one of the prominent drafters and later the fourth president of the United States, explained the essence of the federal system.

The federal and state governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes.¹

The people are one but they choose to have different kinds of government for different purposes. An individual is simultaneously a citizen of the United States and a citizen of one of the states.

When the Frenchman Alexis de Tocqueville visited the United States in the 1830s, he noted that

there are two distinct social structures connected and, as it were, encased within the other; one finds two completely separate and almost independent governments.²

Today a foreign observer would find a much more complicated pattern. First, the national and 50 state governments are far from separate. Rather they are entwined in a complex array of intergovernmental relationships.

Second, local government has become a third major arena of the federal system. Although legally cities, counties, and other local units derive their powers from the states, politically they function with considerable autonomy. Voters elect local, state, and national officials separately and relate to them directly without going through a chain of command. Multiple citizenship has three facets: local, state, and national.

¹ *The Federalist No. 46*. New York, The Modern Library, 1937. pp. 304-5
First published in *New York Packet*, January 29, 1788.

² Alexis de Tocqueville, *Democracy in America*. Translated by George Lawrence. New York: Harper & Row, 1969. First published in 1835.

Many Governments

Three-tiered federalism in the United States has 83,235 units of government, most of them local. This pattern has come about through two centuries of territorial expansion, settlement, population growth, and governmental evolution.

When European settlers began to arrive in North America in the 16th century, the land was already populated by the First Settlers, who had migrated from Asia through Alaska many centuries earlier. Gradually the Second Settlers spread across the continent, claimed new territory, and displaced the First Settlers. As they did, they established new governmental units.

States and territories. Some of the original 13 states claimed land as far west as the Mississippi River. Congress took control of the land west of the Appalachian Mountains and divided it into territories. When a particular territory gained a sizable population of Second Settlers, it became a state with its own constitution and government. In this manner all of the territory between the Atlantic and Pacific Oceans and between Canada on the north and Mexico on the south was divided into 48 states, the last being admitted to the Union in 1912. In 1959 two non-contiguous territories, Alaska and Hawaii, became states, bringing the total to 50.

[Map of the 50 states.]

There are also island territories associated with the United States: Guam and Puerto Rico, won from Spain in a war of 1898, American Samoa, obtained from Germany and Great Britain in 1900, and the Virgin Islands, purchased from Denmark in 1917. Puerto Rico is a self-governing commonwealth with a governor and a bicameral legislature elected by the people. The president of the United States appoints the territorial governors of Guam and the Virgin Islands, and the secretary of interior appoints the governor of Samoa. In each of these three territories the people elect a unicameral legislature.

The District of Columbia, the site of the nation's capitol, has unique status. It occupies land ceded by the State of Maryland, is partly under the jurisdiction of Congress, but has a home rule charter and its own elected government. The District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands each sends a delegate with limited voting rights to the U.S. House of Representatives.

Local governments. The pattern of local government in the original 13 colonies exerted a strong influence on the new states as they joined the Union. New England in the northeast was divided into units called towns, which tended to have a village near the center surrounded by farms

and forests. The other colonies divided their territory into larger counties. Mid-Atlantic state were further divided into townships but with lesser powers than the New England towns. Cities formed with charters from the King of England, and then after independence by authority of the state legislatures.

As new states came into the Union, they divided all of the land into counties. North Central states followed the Mid-Atlantic pattern a divided each county into townships, but new states in the South and West, with a couple exceptions, didn't create townships. State legislatures adopted laws allowing municipalities to incorporate. Counties built their courthouse in a central located municipality, which became the "county seat".

During the 19th century public schools began operating throughout the United States. Most of them now operate as independent districts under popularly elected school boards. Some are, however, units of city or county government, but even in these situations board members are frequently elected.

Other special districts developed for a wide variety of purposes, such as cemeteries, fire fighting, water supply, sewerage, bridges, airports, and numerous other functions. Of the _____ special districts in existence in 1987, _____ had elected boards while the other were under boards appointed by mayors, county commissioners, and governors.

Table 1-1 lists the major types of governments in the United States. Altogether the 83,235 units of government have 497,155 popularly elected officials. The consent of the governed in the United States starts with their election and continues as citizens interact with them.

Table 1-1. Governmental Units in United States, 1987.

National	1
State	50 plus District of Columbia and 4 territories
Local	<u>83,184</u> [subtract DC and territories?] 3,042 counties 15,691 townships (mostly rural but some suburban) 19,200 municipalities plus 14,721 independent school districts 29,531 special districts

Total =====

83,235

Elections

The 50 states have primary legal authority and responsibility for the conduct of elections. This includes registration procedures, type of ballot used (such as paper, voting machine), how ballots are counted and safeguarded, and related matters. Most states delegate these operations to county or municipal governments but retain overall jurisdiction.

State laws determine what offices are filled through election, though some home-rule cities have this authority, too. The states establish how candidates are nominated, such as through primary election, party caucus, or convention. Most states set parameters for political parties.

Even though the states administer elections, the national government has significant involvement in the electoral process. The U.S. Constitution prohibits states from denying citizens the right to vote on account of race, color, sex, age (18 and older), or failure to pay any poll tax. The federal courts consider cases dealing with denial of these rights, and the U.S. Congress has enacted statutes specifying how the states must apply these basic standards. In 1993 Congress passed a law requiring states to register voters in connection with issuance of drivers licenses and at welfare offices.

Political Parties

In American democracy political parties are important instruments in achieving the consent of the governed. They make their greatest contribution in the electoral process, but they also provide a framework for formulating governmental policies and carrying out governmental operations. Among their roles are these:

Electoral

- Facilitate nomination of candidates for public office.
- Organize, finance, and carry out campaigns in general election.

Legislative

- Provide basis for organizing legislative bodies and working out legislative policies of majority and minority blocs.
- Establish ties between elected chief executive (president, governor, mayor) and legislative delegations of their parties.

Governmental operations

- Source for recruiting persons to fill top policy positions and in some jurisdictions many other governmental jobs ("patronage").
- Channel of influence on executive policies, regulatory matters, and awarding grants and contracts.
- Assistance to citizens in solving service-delivery problems.

Political parties formed in the 1790s during the initial term of George Washington, the first president under the new Constitution. Since then two major parties have dominated most of the time. The present Democratic Party traces its origin to that period, and the Republican Party was first established in 1854. Smaller parties have formed, contested elections, lingered for many years, or passed out of existence, but two-party dominance has prevailed.

The Democratic Party and the Republican Party are highly pluralistic endeavors. They are amalgamations that enable persons sharing common political values to work together in election campaigns and governance. Neither is a cohesive monolith with a unified, top-down hierarchy. Rather each of them is composed of mostly autonomous local and state units which come together in a loose-knit, national federation. In this manner they reflect the diversity of the American federal system.

Precincts. The operational base for American political parties is the approximately 175,000 local voting districts, often called "precincts", sometimes "divisions" or some other name. Each has a precinct leader (or a similar title). Depending upon the state, they are chosen by party members voting in the primary or general election, by party caucus, or through appointment by a city or county party official.

Precinct leaders recruit and direct the activities of block workers and other volunteers. They reach out to voters in their precinct, distribute campaign literature, collect funds, and get out the vote. In some cities precinct leaders come together in ward committees. In many states they play a role in selecting members of city, county, and state party committees and in choosing convention delegations.

Local committees. Local party committees are built upon the precinct foundation. The Democratic and Republican parties have committees in virtually all of the 3,042 counties in the United States and in a large number of cities, New England towns, and township with strong governmental powers. They usually operate under rules specified by the state central committee or state law, but in their operations they are basically autonomous.

Typically county and city committees are composed of all precinct leaders. They elect the chairperson, who directs local party activities and may represent the county on the state committee. Thus, a county chairperson is an important figure in party politics.

In some states local political committees hold caucuses to select their party's nominees for various local offices and the state legislature, but more frequently primary elections are held with open competition among candidates. After the primary the local committee usually supports the winners from its party in the general election.

Where a state legislative district or a congressional district encompasses more than one local governmental jurisdiction, local party committees come together in the nominating process. In some states they hold nominating conventions to select the party's candidate. In other states the candidate is chosen in a primary election, and the aggregate of local committees supports her or him in the general election.

State committees. Because each state may establish its own political party structure, state party committees vary greatly around the United States. They range in size from fairly small to quite large. Most commonly state committee members are elected in the primary election or by local party conventions, but in some states county chairpersons form the state committee. The committee formally elects the state chairperson, but in many instances the governor or the last gubernatorial candidate determines who it will be.

Many state committees play a prominent role in selection of party nominees for state office: governor, lieutenant governor, attorney general, and other elected executive officers. In yesteryears party leaders in a number of states decided their party's nominee and got it ratified by the state convention or in the party primary election. This happens less frequently now because candidates usually come forth as self-starters, but sometimes party leaders have a hand in recruiting who they think will be a strong candidate and then issue an endorsement. In several states the state committee is responsible for organizing and conducting a nominating convention for state offices.

Like local committees, state party committees are autonomous and are not directed what to do by the national committee. However, during the past 20 years many state committees have received technical assistance and financial contributions from their national committee. They in turn have offered assistance to local party committees, such as computerized lists of registered voters, training for candidates, and sometimes financial donations.

National committee. The national committees of the Democratic and Republican parties are composed of representatives of the state committees, usually one man and one woman plus other members reflective of the party's policy orientation and electoral base. Usually the party's presidential nominee selects the national chairperson.

The central task of the national committee is to organize and run the quadrennial national convention to nominate the party's candidate for president. As an extension of this responsibility,

the national committee establishes rules for selection of delegates from the states, such as when state primaries may be held and the gender composition of delegates. Court rulings have affirmed the right of the national committee to adopt binding requirements that state party organizations must observe even if it means changing state laws.

The national convention selects the party's nominee for president and vice president and adopts a party platform. The platform, though, is not legally binding on the party's presidential and vice-presidential candidates, on the party's representatives in Congress, or on state and local party committees. Nor can the national committee tell party members in Congress what legislation to enact.

Although national party committees cannot command state and local committees, they get involved in state and local party affairs by making financial contributions to candidates, offering technical assistance and training to party officials and candidates, and in some instances helping to obtain a strong candidate to run for an open seat in Congress or against an incumbent of the other party.

***Legislative party units.** Within the U.S. Congress, state legislatures, and city councils, members from each political party form a caucus. The majority bloc selects legislative leaders and committee chairs and controls the flow of legislation. The minority blocs serves as a vocal opposition. These legislative party blocs are a power unto themselves, except in some rare instances where they are part of a cohesive party machine under the direction of a political boss or a small oligarchy. However, the bloc that is from the same party as the president, governor, or mayor usually works closely with the chief executive on legislative issues.*

Party units in Congress and many state legislatures also form campaign committees to raise funds to support colleagues facing close contests for reelection and to help candidates from their party seeking to win open seats or defeat incumbents of the other party.

Thus, the two major American political parties are multi-nuclear in their organization and operations. They are more pragmatic than ideological. However, they generally display sufficient difference between them to offer a choice to American voters. From time to time smaller parties function with purer ideology or focus upon particular issues. And from time to time, independent candidates run for office.

Interest Groups

A second significant instrument which American democracy uses in the consent process is the interest group. Their formation is natural and inevitable in a democracy. Individuals get together to form interest groups out of recognition that they share particular concerns. They realize that

they can assert greater influence on public policy by joining with others of similar persuasion.

Interests groups, like political parties, have existed since the beginning of the American republic. When the First Congress met in 1789 under the new U.S. Constitution, lobbyists appeared to press for action favorable to their interests.

The pervasive role of interest groups in public policy-making in American democracy stems from the widespread existences of private associations throughout the United States. De Tocqueville was struck by this phenomenon in the 1830s. He noted:

Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types -- religious, moral, serious, futile, very general and very limited, immensely large and very minute.³

A century and a half later the same situation prevails. Business corporations dominate the economy. Nonprofit corporations run universities and hospitals and provide divers services. Thousands of national associations promote the concerns of numerous trades, professions, and other interests. And every locality in America has a wide variety of citizen associations engaging in a multitude of activities. If a new challenge arises that an existing organization cannot handle, Americans are as likely as not to form a new association.

Numerous citizen associations exist primarily for sociability and mutual benefit of their members. Others are oriented largely toward community service. Still others concentrate on public policy advocacy. Even those that are mostly internally oriented may get into public issues from time to time.

Many interest groups consist of persons sharing common economic self-interest: farmers, commercial growers, industrial workers, manufacturers, retailers, consumers, importers, utilities, various professions, and many more. Other interest groups are organized around particular issues: civil rights, public education, health care, environment, campaign finance, disarmament, and many other causes. Some focus on ideology, such as socialism, capitalism, populism, liberalism, conservatism, and libertarianism, occasionally taking the form of a political party but usually more interested in promoting their ideas than expecting to gain political office.

Organizations established for other purposes, such as churches, synagogues, social clubs, colleges and universities, hospitals and social service agencies, on occasion seek to influence governmental

³ De Tocqueville, *ibid.*, p. 513

policy, thereby acting as interest groups in the political arena.

Within American federalism associations of local governmental officials function as interest groups in dealing with state government. They are joined by associations of state officials in addressing the national government on a wide variety of policy issues. Even governmental employees organize as interest groups to influence policies of the governmental unit for which they work; for instance, employee unions, associations of teachers, and racial, ethnic, and women's caucuses.

Federalism shows up among interest groups as much as the governmental units they seek to influence. National associations have state and local chapters. Conversely local advocacy organizations ally themselves with state and national coalitions.

Democracy expects interest groups to form, to articulate their views, and to press for advantage. In subsequent chapters we will notice how interest groups have numerous roles in the continuous, interactive consent process.

Multiple Dimensions

Consent of the governed in American democracy has both horizontal and vertical dimensions. Within any one governmental jurisdiction continuous interaction occurs between persons holding positions in government, political parties, and interest groups. Individual citizens, acting as voters and advocates, are also involved.

Simultaneously interaction occurs between different arenas of federalism -- national, state, and local. For instance, local political parties nominate U.S. representatives and choose members of the state party committee. States, with partial delegation to local governments, conduct elections for national office.

Time provides another dimension. Campaigns preceding elections go on for many months. Adoption of legislation has a set sequence. Budget-making and community planning occur through a series of stages. In all of these processes governmental officials, interest groups, political parties, and individual citizens are thoroughly engaged through extended periods of time.

Rather than being we-elect-them-and-that's-it, consent of the governed in American democracy is a very dynamic, continuous process. It takes place in a federal system that combines centralization and decentralization in an ever-changing balance.

May 18, 1993

for international version on "Consent"

After the Second Continental Congress adopted the Declaration of Independence in 1776, it appointed a committee to design a national seal to serve as a symbol of national unity. And what a committee! Its members were Benjamin Franklin, the most renowned American of his day, and two future presidents, John Adams and Thomas Jefferson. As a national motto for the Great Seal, they chose a Latin phrase, "E Pluribus Unum". "Out of many, one."

This motto remains as an important explanation of the United States of America. The 13 former British colonies formed 13 state governments but were united in the federal union. Subsequently they grew to 50 states. Within them are xx,xxx general-purpose local governments, run by popularly elected officials.

American political parties parallel the governmental structure. Both the Democratic and the Republican Party have thousands of autonomous local committees, 50 state committees, and a national committee. Smaller parties tend to have similar structure.

The 50 states different in character but some share a regional identity: New England, Mid-Atlantic, South, Great Lakes, Great Plains, Rocky Mountains, Desert Southwest, Pacific. These differences show up in different styles of local and state politics. There are also differences between city, suburban, and rural political organizations.

Accordingly, reflections on the American experience with consent of the governed must take into account the enormous variety that occurs within a political system that also has many common factors.

February 13, 1993

Origin of American Political Parties

Not surprisingly British influence is noticeable in the origin of American political parties.

In Great Britain political division between Tories and Whigs appeared one hundred years before the American Revolution. In the 1680s they disputed over who should govern as the successor to the Catholic monarch, Charles II. The Tories favored a Catholic successor (even though many of them were staunch Anglicans) while the Whigs wanted a Protestant. When Charles died in 1685, his brother, James, a Catholic became king. After three years an aristocratic coalition ousted him because of his authoritarian manner and replaced with him with William of Orange, a Dutch Protestant, and his wife, Mary (who was James' daughter).

In the 1700s social orientation and policy differences separated Tories and Whigs in British political life. "In general," A. James Reichley has written, "Tories stood for the older view of a hierarchically organized feudal society and an established church, while Whigs gave more rein to the social and political individualism that was associated with growing economic enterprise and the philosophy of John Locke. Both parties, however, remained distinctly aristocratic in their outlook."¹

They lacked formal party organizations and in the House of Commons functioned mainly through loose coalitions.

Britain's North American colonies mirrored this division in the 1760s when the struggle for greater colonial freedom came to the fore. Supporters of the British crown were known as Tories and opponents as Whigs. After American independence discredited the Tories, other divisions arose, particularly on issues of property rights and debt collection. Blocs formed in the new state legislatures, and in a few states and localities embryonic political parties took shape.

The ratification debate over the new U.S. Constitution in 1787 and '88 pitted Federalists, who favored a strengthened national government and full protection of property rights, against Anti-Federalists, who opposed centralization of authority and wanted strong protection for human rights. In the national debate Federalists were better organized and more articulate (especially with the famous essays), and they gained the majority of delegates in the state ratifying conventions. At that time, however, there wasn't a formal Federalist Party, and the Anti-Federalists were even less cohesive.

George Washington, the first president under the new Constitution, didn't want political parties to form, and most other prominent founders agreed, including Vice President John Adams.

¹ A. James Reichley, *The Life of the Parties: A History of American Political Parties*. New York: Free Press, 1992. p. 20. Other parts of this section draw upon Reichley's book.

Nevertheless, before Washington's first term was over, political parties were functioning. Within Washington's own cabinet Secretary of the Treasury Alexander Hamilton and Secretary of State Thomas Jefferson engaged in vigorous policy disputes. As a leading Federalist, Hamilton favored a strong national government supportive of manufacturing and commerce while Jefferson preferred greater dispersion of power in a predominantly agrarian economy. A clash of personalities was also a factor.

In the First Congress, 18 of the 24 senators and 37 of the 65 representatives identified with the Federalists, so Hamilton's program carried.² However, the opposition gained in the second congressional election, and in the House of Representatives James Madison led a strengthened minority bloc. Within the 13 states similar divisions became apparent and began to be represented in political organizations.

In the 1792 presidential election, the opposition coalition, in part derived from an Anti-Federalist base but beginning to be known as Republicans, supported George Clinton of New York to replace John Adams as vice president. Adams won 77 of the 132 electoral votes, but Clinton had 50. The contest revealed strong Republican units in several states. Four years later Federalists supported John Adams to succeed George Washington as president, and Republicans backed Thomas Jefferson. Neither campaigned personally, but their supporters did. When the electors voted, Adams won 71 to become president, and Jefferson with 68 became vice president. When the contest was repeated in 1800, Jefferson was victorious. By then the Republican Party was well organized in most of the states and within the Congress. The Federalist Party was in decline, but the pattern of two competing parties was well established in presidential elections, within Congress, and in the states.

First, persons and groups with similar interests

Second, local and state units who formed national coalitions, such as for presidential elections

Third, party groups within Congress

Fourth, general identity

Fifth, ideological similarity, such as Federalist & Anti-Federalist

Not necessarily in this order

March 3, 19931

² Reichley, p. 38

PART ONE. THE SETTING

Chapter 1. Emergence of American Democracy

*We hold these truths to be self-evident:
That all men¹ are created equal,
That they are endowed by their Creator
with certain inalienable rights,
That among these rights are life, liberty,
and the pursuit of happiness,
That to secure these rights,
governments are instituted among men,¹
deriving their just powers
from the consent of the governed.*

For more than 200 years these inspirational words from the American Declaration of Independence have been the most profound influence for democracy around the globe. Where government is oppressive, people welcome the message that all persons are equally entitled to basic human rights. Where government is controlled by a dictator or a ruling body accountable only to itself, people welcome the concept that powers of government are just only if the people give their consent.

The consent of the governed. This means that the people are sovereign. They have the supreme power. Not a king, not a landed aristocracy, not a powerful economic elite, not a military junta, not a dictator, not a political party monopolizing power. Democracy is a system of government grounded in the sovereignty of the people.

Although the United States of America was founded on this principle, initially consent-giving was a limited process. The original thirteen states restricted suffrage to white, male property owners. In only four of them did the electorate choose their governors directly. In the original U.S. Constitution, only members of the House of Representatives were directly elected.

In the United States we've come a long ways during the past 200 years. We have enlarged suffrage to encompass all citizens age 18 and older. We have nearly half a million popularly elected public officials. Political parties have developed as significant instruments in the electoral process.

¹ For the authors "men" was a generic term for "humankind". Today to assure an intent of gender inclusiveness we would say "men and women".

Citizens perpetually interact with public officials, both elected and appointed. Interest groups press hard to influence public policy. The way American democracy has developed, the consent of the governed has become a continuous, interactive process.

There are many lessons to be learned from the American experience: lessons for new democracies, for older democracies wanting to do better, and for people in the United States who want to make further improvements in the consent process and to achieve even fuller participation.

CONCEPT OF CONSENT IN 18TH CENTURY²

² This section is based in part upon ideas derived from *Seedtime of the Republic* by Clinton Rossiter (New York: Harcourt, Brace & World, 1953) and *A History of Political Theory* by George H. Sabine (New York: Henry Holt and Company, 1937).

When delegates from the 13 American colonies³ adopted the Declaration of Independence on July 4, 1776, "consent" was a natural part of their political vocabulary. Therefore, they felt no need to offer a precise definition of its meaning.

Eleven years earlier representatives from nine of the thirteen colonies met in New York to protest a revenue measure, the Stamp Act of 1765, imposed on them by the British Parliament. In their "Declaration of the Rights and Grievances of the Colonies in America", they stated:

That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.⁴

Pamphleteers shortened it to "no taxation without representation."

Elaboration of this position was offered in a resolve drawn up by Samuel Adams and adopted by the Massachusetts Assembly in November 1765:

That no man can justly take the property of another without his consent, and that upon this original principle, the right of representation in the same body which exercises the power of making laws for levying taxes, which is one of the main pillars of the British Constitution, is evidently founded.⁵

Consent was no new idea for the colonists. Thomas Hooker, who helped develop the Fundamental Orders of Connecticut in 1639, explained that when men covenant with one another and join together in civil society, "it is by their own free consent and mutual engagement on both sides."⁶ Five years later Roger Williams brought the colony of Rhode Island into formal existence under a grant of authority to the settlers to establish whatever "form of civil government, as by voluntary consent of all, or the great part of them, they shall find most suitable to their estate and condition."⁷ Thus, the idea of majority rule was attached to the concept of consent.

³ New Hampshire, Massachusetts, Rhode Island, and Connecticut in New England; New York, New Jersey, Pennsylvania, Delaware, and Maryland in the Mid-Atlantic region; and Virginia, North Carolina, South Carolina, and Georgia in the South. [Possibly have a map of the 13 colonies.]

⁴ Rossiter, *Seedtime*, p.319

⁵ Rossiter, *Seedtime*, p. 321

⁶ Quoted in Rossiter, *Seedtime*, p. 172-3. Changed to modern spelling.

⁷ Rossiter, *Seedtime*, p. 189. Changed to modern spelling.

These early colonists inherited 2,000 years of inquiry in Europe on the origin of government and speculation on why people are willing to accept the authority of the state. Much of this stream of thought was rooted in a belief in the law of nature -- a higher, universal law, applicable at all times in all places.

In Greece in the third century B.C. Epicureans, according to George H. Sabine, maintained that "the state and the law came into existence as a contract to facilitate intercourse between men."⁸ Subsequently other European political philosophers offered many variations of the contract theory.

Around 50 B.C. Marcus Tullius Cicero, the Roman orator and political philosopher, argued that the state is "the people's affair,... the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual activities."⁹ Even the authority of the most powerful ruler is derived from the people and must be exercised according to law. A tyrannical regime violates the principles of right and justice, which are based upon natural law.

In Northern Europe the Germanic people "conceived the law as belonging to the folk, or the people, or the tribe."¹⁰ Such laws were at first customs, handed along by word of mouth and later attained written expression. The power of rulers derived from the folk.

As kingdoms formed during medieval times, kings salted their edicts with such phrases as "consent and council" and "by the advise and assent". In practice this usually meant consultation with bishops, barons, and other elite, not the people directly.¹¹

This was the case with the Magna Carta of 1215 in which King John of England promised to hold "a common council of the kingdom" before assessing taxes. In practice this meant the nobility and churchmen, but in 1295 King Edward I called together a parliament that also included knights and townsmen ("commoners") in order to get broad support for new taxes. Two years later he signed the Confirmation of Charters, formally agreeing that no taxes would be levied "but by the common assent of the realm" (that is, by parliament).¹²

⁸ Sabine, p. 134.

⁹ *Republic*, I, 25; quoted in Sabine, p. 166.

¹⁰ Sabine, p. 200.

¹¹ Sabine, pp. 204-5.

¹² Richard L. Perry, ed., *Sources of Our Liberties. Documentary Origins of Individual*

Although this established a useful precedent, the contest over royal prerogatives continued in England and on the European continent as kings claimed divine right to rule and succession by inheritance rather than by selection. Among others resisting these claims, French Huguenots in the middle of the 16th century, insisted that "the power of the ruler is delegated by the people and continues only with their consent."¹³

Johannes Althusius, a Dutch Calvinist, in a book published in 1603 reinforced this idea by insisting that the sovereign power of the state resides in the people as a corporate body. They bestow power by consent or contract, expressed or tacit. When administrative officers of the state misuse their power, it reverts to the people.¹⁴

This was the heritage that the early American colonists drew upon. And it was in this tradition that the Englishman John Locke wrote his *Second Treatise of Government*. Published in 1690 to justify displacement of an English king, it had strong appeal 75 years later to Americans engaged in their own dispute with another English monarch.

Locke postulated that men (in the generic sense) lived originally in a state of nature, "all free, equal, and independent." With their own consent, they agreed with

other men to join and unite into a community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it....When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.¹⁵

It was a two-stage process. People form a civil society and then create a government, achieved through a pair of "social contracts", entered into by tacit or expressed consent. Summing up the ends of political society and government, Locke indicated that people "unite for the mutual

Liberties in the United States, Constitutions, and Bill of Rights. Chicago: American Bar Foundation, 1959. pp. 14, 31.

¹³ Sabine, p. 381.

¹⁴ Summation of Johannes Althusius' book, *Politica methodice digesta* by Sabine, pp. 416-420.

¹⁵ John Locke, *Two Treatises of Government*. New York: The New American Library, 1965. (Originally published in 1690). Book II, §95. Changed to modern spelling.

preservation of their lives, liberties and estates, which I call by the general name, property."¹⁶

The Declaration of Independence took this a step further, insisting that "the Laws of Nature and Nature's God" establish a set of basic human rights. Among these, the Declaration stated, are "life, liberty, and the pursuit of happiness", changing Locke's list to add a social dimension. Men and women institute government to secure these rights. But the powers of government are just only if they are derived from the consent of the governed.

ACHIEVING CONSENT IN THE AMERICAN COLONIES

These are fine words, but what are the deeds to achieve them? Locke wasn't very specific, nor were most of the other political philosophers. But in the English colonies in North America the settlers pragmatically worked out ways to provide a measure of consent. In doing so, there were similarities among the colonies but also difference, derived from varying forms of colonial government and historical factors settlement (an early example of American pluralism).

At the time of the American Revolution eight of the colonies (New Hampshire, Massachusetts, New York, New Jersey, Virginia, North Carolina, South Carolina, and Georgia) were under royal control and had crown-appointed governors. Of these only Massachusetts had a written charter specifying rights and governmental framework. Three colonies were proprietary: Pennsylvania and Delaware under the Penn family and Maryland, the domain of the Calverts. The proprietor either served as governor directly or appointed a deputy. The other two colonies, Connecticut and Rhode Island, operated under corporate charters which allowed them to elect their own governors.¹⁷

Permanent English settlement began in Jamestown, Virginia in 1609, and the first representative assembly for the colony of Virginia met there in 1619. By 1683 ten other colonies had their own elected assemblies, and the other two established such bodies in subsequent years.¹⁸ Among other responsibilities these assemblies approved the levying of taxes to support the colonial government, and this gave them leverage in dealing with the governors.

Members of the assemblies were elected by freeholders (property owners) or towns. Twelve of

¹⁶ *Ibid.*, Book II, §123.

¹⁷ Allan Nevins, *American States: During and After the Revolution*. New York: Macmillan Co., 1927. p. 2.

¹⁸ Michael Kammen, *Deputies & Libertyes. The Origins of Representative Government in Colonial America*. New York: Alfred A. Knopf, 1969. pp.11-12, 52-68.

the colonies also had councils, set up initially to advise governor but later becoming the second chamber of bicameral legislatures. In nine colonies council members were appointed by the crown upon recommendation of the governor. In Massachusetts the general court chose the council, subject to veto by the governor. In Connecticut and Rhode Island they were elected by voters. [doublecheck Rhode Island] Pennsylvania, except for one brief period, had no council and therefore had the only unicameral legislature.¹⁹

For local government the New England colonies (New Hampshire, Massachusetts, Rhode Island, and Connecticut) divided their territories into towns, usually with a village or small city at the center, surrounded by rural area. Each town was governed by a town meeting in which all male property owners could participate. This was the fullest development of direct democracy within colonial America.²⁰

The middle colonies, led by New York and Pennsylvania, divided their territory into counties, governed by elected boards. Cities and boroughs were chartered and were permitted to elect their own council and mayor. A few locales in New York had town meetings, but they were the exception.

New England also had counties, but their officers were appointed by the colonial governor. In the South counties and parishes were administered by appointees of the governor. Thus, there were sectional differences in the extent of self-government.

In determining who could vote, all of the colonies adopted property requirements. Seven of them required possession of land, while the other six considered possession of personal property or payment of taxes to be sufficient. Moreover, "almost everywhere," according to Clinton Rossiter, "additional restrictions kept women, youth, Catholics, Jews, infidels, Negroes, Indians, mulattoes, indentured servants, and other 'inferior' persons from the polls."²¹ This left white male property owners as the electorate.

On top of this some of the colonies added more stringent property requirements on who could hold public office.

Thus, consent in the American colonies consisted mainly of a restricted electorate participating in periodic elections (usually annual) to choose representatives to one chamber of colonial legislatures

¹⁹ Rossiter, *Seedtime*, p. 15.

²⁰ Information on local government comes from Rossiter, *Seedtime*, pp. 24-27.

²¹ Rossiter, *Seedtime*, p. 19.

(but also to the second chamber in Connecticut and Rhode Island) and to city and borough councils. In New England towns (and a few in New York) freeholders participated in town meetings. The electorate in chartered cities and boroughs chose their own mayor. In the middle colonies they elected the county boards, which combined legislative and executive responsibilities. Except in Connecticut and Rhode Island, the colonists had no voice in selection of governors and many other administrative officers.

Limited as it was, the American colonies kept pace with England in the development of democracy and were far ahead of most other nations. Their colonial assemblies were particularly important, for they formed the basis for organizing a set of gatherings in behalf of all of the colonies to challenge the mother country, eventually to declare and win independence, and then to form a new government for the United States of America.

FRAMEWORK FOR CONSENT IN THE NEW NATION

Armed conflict between the British army and American colonists erupted in Massachusetts on April 19, 1775. On May 10 the Second Continental Congress convened in Philadelphia. The delegates took on the task of organizing a continental army and on June 15 appointed George Washington as commander-in-chief.

As war spread, the colonial governments collapsed. This meant that the American colonists would have to decide what kind of government they wanted and then bring it into existence. Transformation occurred first in the colonies as they became independent states. Then these new states worked together to fashion a national government.

Adopting State Constitutions

On May 15, 1776 the Second Continental Congress passed a resolution recommending to the colonial assemblies that they "adopt such governments as shall, in the opinion of the representatives of the people, best conduce to the happiness of their constituents in particular and of America in general."

By then the task was underway, for New Hampshire and South Carolina had already adopted new constitutions. Others followed, and by April 1777 eight other states had new constitutions. Massachusetts temporarily functioned within the framework of its royal charter but adopted a new constitution in 1780. Connecticut and Rhode Island, which already had representative government with elected governors, merely dropped certain royal reference in their charters and kept them in operation. Five states took a second look at their new constitutions in the early years of independence and rewrote them, but five of the new constitutions served their states for 45 to 75

years.²²

In writing these new constitutions, the assemblies took charge. "In no State was the new fundamental law the work of specially elected Constitutional Convention," Allan Nevins noted. "Nor did a single member of the Union submit its Constitution to popular vote." However, during 1975-77 special elections were held for the assembly in seven States in contemplation of writing a constitution.²³

Accepting the doctrine of separation of powers as taught by the Frenchman Montesquieu in *The Spirit of Laws* (1748), all thirteen states established three branches of government: legislative, executive, and judicial. Of these, the legislature was overwhelmingly dominant. With one exception, the legislatures were bicameral with both chambers elected by voters. Pennsylvania continued its a unicameral legislature until 1790 when a revised constitution established a second branch.

Most of the new state constitutions contained a bill of rights. They maintained a property or tax-paying requirement for voting but not as restrictive as before.

In nine of the 13 states the legislature chose the governor under these initial state constitutions. Pennsylvania's first constitution had a 12-member executive council instead of a governor but changed to a elected chief executive in the 1790 revision. None of the states gave their governor a final veto over legislation, although in three states the governor had partial veto power. As Nevins observed:

²² Nevins, pp. ??

²³ Nevins, pp. 128-9.

he Americans of 1776 thought that it was easy to keep the legislature a truly popular agency, but they knew no way of holding a powerful governor responsive to their will. They were unable to distinguish properly between a Crown governor and a popularly elected governor, and they had not learned the value of concentration of responsibility.²⁴

The challenge of how to organize the executive branch and select a chief executive also confronted the states when they joined together to establish a national government. The efforts of the states in writing and rewriting state constitutions provided valuable experience for this task.

Forming a National Government.

The first efforts of the 13 colonies to work together officially came in the form of congresses composed of delegates chosen by their assemblies: Stamp Act Congress (1765), First Continental Congress (1774), Second Continental Congress (1775-81), Congress of the Confederation (1781-89). In these congresses each state, regardless of population, had one vote, determined by a majority of its delegates.

This model was successful initially in providing a united voice for dealings with the British Government, but it proved an awkward instrument for conducting the Revolutionary War. It took five years after declaring independence to draw up and adopt Articles of Confederation and to get a national government organized. But the Articles proved unequal to the needs of the new nation, for Congress had quite limited powers and there wasn't any effective executive branch.

In an attempt to improve the situation, 12 states sent delegates to a Convention in Philadelphia in May 1787 (with Rhode Island declining to participate). They had instructions from Congress to develop revisions to the Articles of Confederation and to report back to Congress and the several state legislatures. Instead the Convention between May 14 and September 17, 1787 wrote a brand new Constitution for the United States of American.²⁵

The majority of delegates were predisposed to strengthen the national government and to make it a republic, later defined by James Madison, a key leader at the Convention, as

²⁴ Nevins, p. 166.

²⁵ In writing this section a valuable resource has been *1787: The Grand Convention* by Clinton Rossiter (New York: New American Library, 1968).

a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.²⁶

In the new Constitution the framers showed a preference for the indirect through a "scheme of representation." This, explained Madison, will

refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country....²⁷

With this in mind the new Constitution provided that membership in the House of Representatives in the new bicameral Congress would be apportioned according to population and members would be elected directly by the people. In each state qualifications for voting would be the same as for the most numerous branch of the state legislature. In contrast, the Senate would be composed of two senators from each state, chosen by the legislature.

This arrangement was a major feature in a compromise between the small states, which liked the one state, one vote arrangement of the previous congresses, and the large states, which wanted greater representation for their more numerous populations.

Chastened by headless meandering under the Articles of Confederation and overcoming their distasteful memory of colonial governors and the distant king, the framers decided to vest executive authority in a single official, the president. Selection of this person would be entrusted to electors, equal to the total number of senators and representatives and appointed by each state in a manner determined by the state legislature. Alexander Hamilton provided the rationale:

that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.²⁸

²⁶ James Madison, *The Federalist No. 39*. New York: Modern Library, 1937. pp. 243-4.

²⁷ James Madison, *The Federalist No. 10*. p. 29.

²⁸ Alexander Hamilton, *The Federalist No. 68*. pp. 441-2.

In short, the framers of the Constitution didn't think the general mass of citizens had sufficient discernment to make a wise choice.

The Constitution gave the president authority to appoint ambassadors, judges of the Supreme Court, and top administrative officers but required "the advice and consent of the Senate".

Members of the House of Representatives were assigned a term of two years, the president four, and senators six. The Constitution placed no restrictions on total number of terms a person could serve. The Convention rejected proposals to require these officers to be property owners.

In the total scheme of the new Constitution, indirect selection was dominant: senators by state legislatures; the president by electors chosen in a manner state legislators determined (initially by themselves); cabinet officers, judges, and ambassadors by the president with the advice and consent of the Senate. Only members of the House of Representatives were chosen directly by the electorate, whose qualifications were determined by each state, which in this period limited voting to white male property owners.

Consent of the governed came into play in one other aspect of the new Constitution: the ratification process. The delegates to the Convention knew that they were exceeding their authority from the Congress of the Confederation, so they had to figure out how to get their work accepted. Therefore, they decided that ratification should occur in conventions in each state, called for this purpose, and that ratification by nine states would be sufficient for establishing the Constitution for the ratifying states.

This decision required the Convention itself to engage in a process of anticipatory consent. The delegates met in secrecy, strictly observed, in order to be able to have frank discussion of difficult issues and to allow delegates to try out ideas, change their positions, and come up with compromises free from outside pressure. But never far from mind was the need to gain approval of the new Constitution from both large and small states, from New England, the Mid-Atlantic States, and the South, from people who favored a stronger national government with a sufficient majority over those opposed.

In order even to have ratifying conventions organized within each state, the framers had to transmit the proposed Constitution first to the Congress of the Confederation and through it to the respective state legislatures. The latter in turn would call the ratification conventions and arrange for election of delegates to them. So at least unconsciously, often implied, and perhaps sometimes directly, the framers asked themselves whether they were producing a document that could survive the transmittal process. Were they proposing a Constitution which future delegates to state ratifying conventions would approve? This kind of anticipatory consent was a pattern that has since had abundant repetition in a variety of ways in American democracy.

Whereas the Articles of Confederation was put forth in the name of "we the undersigned delegates of the states", the framers of the new Constitution put aside a draft for the Preamble that listed the states and boldly stated:

We the people of the United States, in order to
form a more perfect union,
establish justice,
insure domestic tranquility,
provide for the common defense,
promote the general welfare, and
secure the blessings of Liberty to ourselves and our posterity,
do ordain and establish this Constitution
for the United States of America.

This was fitting, for the new Constitution created a set of direct relationships between the national government and the citizenry without going through the states. The Preamble also expanded the purposes of government beyond those specified by John Locke and even the Declaration of Independence.

The framers' plan for ratification was imminently successful. On September 28, 1787, eleven days after the Constitutional Convention completed its work, the Congress of the Confederation, condemned to oblivion, voted that the Constitution "be transmitted to the several state legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof."²⁹ On December 7, 1787 Delaware's ratifying convention was first to approve the new Constitution. On June 21, 1788 the convention in New Hampshire was the ninth to approve, technically sufficient, but ratification by Virginia on June 26 and New York on July 26 were necessary to make the new Constitution politically viable.

The campaign for and against the new Constitution revealed another aspect of the consent process: the role of news media. Throughout the 13 states newspapers offered their editorial views and provided space for proponents and opponents. The pro-ratification essays known as *The Federalist* first appeared in New York newspapers, and anti-federalist writings were published there and elsewhere.³⁰ They were trying to influence voters who would choose delegates to the state ratifying conventions and then the delegates themselves. But they were also appealing to a broader

²⁹ *Formation of the Union of the American States*. Washington: Government Printing Office, 1927. p. 1007.

³⁰ [An anti-federalist collection to be cited.]

public opinion on issues raised by the proposed Constitution but likely to continue as important matters to be taken up by the new government.

Ratification of the Constitution cleared the way for voters to elect the first members House of Representatives, the state legislatures to choose the first U.S. senators, and electors chosen by the state legislatures to unanimously select George Washington as first president and John Adams as vice president. The First Congress under the U.S. Constitution met on March 4, 1789 mustered a quorum on April 6. George Washington's inaugural as president occurred on April 20.

Building on the Foundation.

In this manner the initial framework of the U.S. Constitution was established and went into effect. But it didn't end there. By 1800 popular selection of presidential electors was occurring. In the next 50 years the states eliminated most property requirements for voting. In 1870 the 15th Amendment prohibited the states from denying the right to vote "on account of race, color, or previous condition of servitude."

In the latter half of the 19th century some states granted women the right to vote and allowed voters to determine who the legislature would appoint to the U.S. Senate. In 1913 the 17th Amendment provided for the direct election of senators, and in 1920 the 19th Amendment assure women the right to vote.

In 1964 the 24th Amendment outlawed the poll tax (which had been used in the South to prevent Negro suffrage). The next year the U.S. Congress enacted the Voting Rights Act of 1965 with enforcement power to assure complete access to the polls by all citizens. In 1971 the 26th Amendment gave the right to vote to any person 18 years of age or older.

Beyond these legal changes the consent process expanded in numerous ways, as this book will enumerate in rich detail. Of particular significance was the emergence of two major instruments of consent: political parties and interest groups. Before George Washington had completed his first term as president, they appeared in the workings of the new national government as well as in the states and localities. Today political parties and interest groups are pervasive in many aspects of what has become continuous, interactive consent-giving.

All this has occurred within the framework of a Constitution that has shown remarkable adaptability over a span of 200 years. The framers advanced representative democracy to a new level. They established a strong foundation for the structure of democracy that future generations would build upon. Many of them as officeholder in the new republic helped erect the ground floor. Since then others have added more rooms, furnishings, and new ways of doing things.

The structure of American democracy has withstood internal turmoil, including grievous

division during the Civil War (1861-65). Commemorating a battlefield of that war, President Abraham Lincoln offered a new definition of American democracy: "government of the people, by the people, and for the people."³¹ This was a concise summation of the high ideals of the Declaration of Independence and the Preamble to the Constitution: that to secure basic rights we the people institute government and require it to function through our consent.

July 22, 1993

³¹ Abraham Lincoln, *Gettysburg Address*, November 19, 1863.

PART ONE. THE SETTING

Chapter 1. Emergence of Representative Democracy in Colonial America

We hold these truths to be self-evident:

That all men¹ are created equal,

*That they are endowed by their Creator
with certain inalienable rights,*

*That among these rights are life, liberty,
and the pursuit of happiness,*

That to secure these rights,

governments are instituted among men,¹

deriving their just powers

from the consent of the governed.

For more than 200 years these inspirational words from the American Declaration of Independence have been the most profound influence for democracy around the globe. Where government is oppressive, people welcome the message that all persons are equally entitled to basic human rights. Where government is controlled by a dictator or a ruling body

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accountable only to itself, people welcome the concept that powers of government are just only if the people give their consent.

The consent of the governed. This means that the people are sovereign. They have the supreme power. Not a king, not a landed aristocracy, not an economic elite, not a military junta, not a dictator, not a political party monopolizing power. Democracy is a system of government grounded in the sovereignty of the people.

Although the United States of America was founded on this principle, initially consent-giving was a limited process. The original thirteen states restricted suffrage mostly to white male property owners and taxpayers. In only three of them did the electorate choose their governors directly. In the original U.S. Constitution, only members of the House of Representatives were directly elected.

In the United States we've come a long ways during the past 200 years. We have enlarged suffrage to encompass all citizens age 18 and

older. We have nearly half a million popularly elected public officials.

Political parties have developed as significant instruments in the electoral process. Citizens perpetually interact with public officials, both elected and appointed. Interest groups press hard to influence public policy. The way American democracy has developed, the consent of the governed has become a continuous, interactive process. There are many lessons to be learned from the American experience: lessons for new democracies, for older democracies wanting to do better, and for people in the United States who want to make further improvements in the consent process and to achieve even fuller participation.

CONCEPT OF CONSENT IN 18TH CENTURY²

When delegates from the 13 American colonies³ adopted the

² Among other sources this section draws especially upon ideas presented in *Seedtime of the Republic* by Clinton Rossiter (New York: Harcourt, Brace & World, 1953) and *A History of Political Theory* by George H. Sabine (New York: Henry Holt and Company, 1937).

³ New Hampshire, Massachusetts, Rhode Island, and Connecticut in New England; New York, New Jersey, Pennsylvania, Delaware, and Maryland in the Mid-Atlantic region; and Virginia, North Carolina, South Carolina, and Georgia in the South. See map on p. 1-8.

Declaration of Independence on July 4, 1776, "consent" was a natural part of their political vocabulary. Therefore, they felt no need to offer a precise definition of its meaning.⁴

Eleven years earlier representatives from nine of the thirteen colonies met in New York to protest a revenue measure, the Stamp Act of 1765, imposed on them by the British Parliament. In their "Declaration of the Rights and Grievances of the Colonies in America", they stated:

That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.⁵

Pamphleteers shortened it to "no taxation without representation."

The First Continental Congress in a "Letter to the Inhabitants of the Province of Quebec", drafted by John Dickinson and adopted on October

⁴ Interestingly authors of two widely-read analyses of the Declaration of Independence in this century felt it unnecessary to explain the meaning of consent: Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas*. (New York: Alfred A. Knopf, 1922) and Garry Wills, *Inventing America: Jefferson's Declaration of Independence*. (Garden City, New York: Doubleday & Company, 1978).

⁵ Rossiter, *Seedtime*, p.319

26, 1774, maintained that:

*the first grand right, is that of the people having a share in their own government by their representatives chosen by themselves, and, in consequence, of being ruled by laws, which they themselves approve, not by edicts of men over whom they have no control.*⁶

On June 12, 1776 the Virginia House of Burgess adopted a Declaration of

Rights, written by George Mason, which included this statement:

*That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants and at all times amenable to them.*⁷

For the American colonists consent was no new idea. Thomas Hooker, who helped develop the Fundamental Orders of Connecticut in 1639, explained that when men covenant with one another and join together in civil society, "it is by their own free consent and mutual engagement on

⁶ *Journals of the Continental Congress, 1774-1789*. Vol. 1, Worthington Chauncey Ford, editor. Washington: Government Printing Office, 1904. p. 107.

⁷ "The Virginia Declaration of Rights" in *The Spirit of 'Seventy-Six: The Story of the American Revolution as Told by Participants* edited by Henry Steel Commager and Richard B. Morris. Indianapolis: Bobbs-Merrill Company, 1958. p. 389.

both sides."⁸ Five years later Roger Williams brought the colony of Rhode Island into formal existence under a grant of authority to the settlers to establish whatever "form of civil government, as by voluntary consent of all, or the great part of them, they shall find most suitable to their estate and condition."⁹ Thus, the idea of majority rule was attached to the concept of consent.

These early colonists inherited 2,000 years of inquiry in Europe on the origin of government and speculation on why people are willing to accept the authority of the state. Much of this stream of thought was rooted in a belief in the law of nature -- a higher, universal law, applicable at all times in all places.

In Greece in the third century B.C. Epicureans, according to George H. Sabine, maintained that "the state and the law came into existence as a

⁸ Quoted in Rossiter, *Seedtime*, p. 172-3. Changed to modern spelling.

⁹ Rossiter, *Seedtime*, p. 189. Changed to modern spelling.

contract to facilitate intercourse between men."¹⁰ Subsequently other European political philosophers offered many variations of the contract theory.

Around 50 B.C. Marcus Tullius Cicero, famous orator and political philosopher of the Roman republic, argued that the state is "the people's affair,... the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual activities."¹¹ Even the authority of the most powerful ruler is derived from the people and must be exercised according to law. A tyrannical regime violates the principles of right and justice. which are based upon natural law.

In Northern Europe the Germanic people "conceived the law as belonging to the folk, or the people, or the tribe."¹² Such laws were at first customs, handed along by word of mouth and later attained written

¹⁰ Sabine, p. 134.

expression. The power of rulers derived from the folk.

As kingdoms formed during medieval times, kings salted their edicts with such phrases as "consent and council" and "by the advise and assent". In practice this usually meant consultation with bishops, barons, and other elite, not the people directly.¹³

This was the case with the Magna Carta of 1215 in which King John of England promised to hold "a common council of the kingdom" before assessing taxes. Initially this involved representatives of the nobility and top church leaders meeting with the king in "parliament", as these gatherings became known. Over the years other segments gained representation: knights (first in 1254), representatives of cities and boroughs (1265), commoners and inferior clergy (1295). In 1297 a parliament used its leverage with King Edward I, who was seeking support for new taxes, to force him to sign the Confirmation of Charters, which

¹¹ *Republic*, I, 25; quoted in Sabine, p. 166.

¹² Sabine, p. 200.

incorporated major provisions of the Magna Carta and stated specifically that no taxes would be levied "but by the common assent of the realm" (that is, by parliament).¹⁴

Although this established a useful precedent, the contest over royal prerogatives continued in England and on the European continent as kings claimed divine right to rule and succession by inheritance rather by selection. Among others resisting these claims, French Huguenots in the middle of the 16th century, insisted that "the power of the ruler is delegated by the people and continues only with their consent."¹⁵

Johannes Althusius, a Dutch Calvinist, in a book published in 1603 reinforced this idea by insisting that the sovereign power of the state resides in the people as a corporate body. They bestow power by consent or contract, expressed or tacit. When administrative officers of the state

¹³ Sabine, pp. 204-5.

¹⁴ Richard L. Perry, ed., *Sources of Our Liberties. Documentary Origins of Individual Liberties in the United States, Constitutions, and Bill of Rights.* Chicago: American Bar Foundation, 1959. pp. 14, 24-25, 31.

misuse their power, it reverts to the people.¹⁶

This was the heritage that the early American colonists drew upon.

And it was in this tradition that the Englishman John Locke wrote his

Second Treatise of Government. Published in 1690 to justify displacement

of an English king, it had strong appeal 75 years later to Americans

engaged in their own dispute with another English monarch.

Locke postulated that men (in the generic sense) lived originally in a

state of nature, "all free, equal, and independent." With their own

consent, they agreed with

other men to join and unite into a community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it....When any number of men have so consented make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.¹⁷

¹⁵ Sabine, p. 381.

¹⁶ Summation of Johannes Althusius' book, *Politica methodice digesta*, by Sabine, pp. 416-420. Sabine's book refers to many other writers and social movements which dealt with the ideas of contract and consent.

¹⁷ John Locke, *Two Treatises of Government*. New York: The New American Library, 1965.

It was a two-stage process. People form a civil society and then create a government, achieved through a pair of "social contracts", entered into by tacit or expressed consent. Summing up the ends of political society and government, Locke indicated that people "unite for the mutual preservation of their lives, liberties and estates, which I call by the general name, property."¹⁸

The Declaration of Independence took this a step further, insisting that "the Laws of Nature and Nature's God" establish a set of basic human rights.

Among these, the Declaration stated, are "life, liberty, and the pursuit of happiness", changing Locke's list to add a social dimension. Men and women institute government to secure these rights. But the powers of government are just only if they are derived from the consent of the governed.

(Originally published in 1690). Book II, §95. Changed to modern spelling.

¹⁸ Ibid., Book II, §123.

ACHIEVING CONSENT IN THE AMERICAN COLONIES

These are fine words, but what are the deeds to achieve them? Locke wasn't very specific, nor were most of the other political philosophers. But the people in the North American colonies pragmatically worked out ways to provide a measure of consent.

European Settlement

When European settlers began to arrive in North America in the 17th century, the land was already populated by the First Settlers, who had migrated from Asia through Alaska many centuries earlier. In 1600 a million or more First Settlers lived in what later became the 48 contiguous states. They constituted 250 or so tribal groups, each with a distinct language and its own government. The Europeans called them Indians, but each tribe had its own name, rendered into English as Powhattan, Cherokee, Susquehanna, Delaware, Mohican, Narraganset, Massachusetts, and many more. Considering themselves separate nations, they sometimes

entered into treaties with one another. Five nations, called Iroquois by French explorers, had a functioning confederation in what is now upper New York State.

The initial colonists usually arrived with their own framework of government, developed by the trading company or proprietor who sponsored the settlement. However, in November 1620 the ship *Mayflower* arrived unexpectedly off the coast of Cape Cod where no colonial government existed. So before going ashore, the 41 male adults on the *Mayflower* signed a compact to "covenant & combine ourselves together into a civil body politic", just as contract theory taught them they should.

The Second Settlers did not include the First Settlers within their scope of government. Instead the Europeans entered into treaties with various tribes with a primary intent, to put it bluntly, to displace them peacefully. This process continued for 250 years until most of the surviving First Settlers were relocated to reservations -- land set aside for tribes

when they relinquished other land through treaties with the U.S.

government.

Although Dutch and Swedish trading companies founded settlements on the east coast of North America, the thirteen colonies that became the United States of America were all under British control at the time of Independence. They are shown on Map 1-1, with dates of first permanent European settlement indicated.

**Map 1-1. British Colonies Which Became the United States of America,
Showing Date of First Permanent European Settlement**

[Map of 13 colonies with date of first permanent European settlement]

There was considerable diversity among these colonies, derived from character and orientation of initial European settlers, type of colonial regime, time of settlement, terrain, and climate. This yielded varying

forms of colonial government. Such variety remains a characteristic of state and local government in the United States.

Colonial Government

At the time of the American Revolution eight of the 13 colonies were under direct control of the British crown: New Hampshire, Massachusetts, New York, New Jersey, Virginia, North Carolina, South Carolina, and Georgia. Of these only Massachusetts had a written charter specifying rights and governmental framework. Three colonies were proprietary with power delegated by the crown to the proprietor: Pennsylvania and Delaware under the Penn family and Maryland, the domain of the Calverts. The other two colonies, Connecticut and Rhode Island, operated under corporate charters which granted them substantial authority for self-government.¹⁹

Governors. In the eight royal colonies the British monarch appointed

¹⁹ Allan Nevins, *American States: During and After the Revolution*. New York: Macmillan Co., 1927. p. 2; Rossiter, *Seedtime*, pp, 12-13.

the governor. In the three proprietary colonials the proprietor himself served as governor or appointed a deputy. Citizens in the two corporate colonies chose their own governor.

In eleven colonies governors had councils of leading citizens to advise them. In seven colonies the crown appointed council members upon recommendation of the governor. In Massachusetts the General Court (the legislature) chose the council, subject to veto by the governor. In Connecticut and Rhode Island eligible voters elected council members. The Penn proprietary colonies, Pennsylvania and Delaware, had no councils except for one brief period in Pennsylvania.

Legislatures. All thirteen colonies had elected assemblies. The first one met in Jamestown, Virginia in 1619, a dozen years after the founding of this first permanent English settlement in North America. By 1683 ten other colonies had their own elected assemblies, and the other two

established such bodies in subsequent years.²⁰ Members of these assemblies were elected by freeholders (property owners and sometimes other taxpayers). Among their responsibilities the assemblies approved the levying of taxes to support the colonial government, and this gave them leverage in dealing with the governors.

The elected assemblies joined with the mostly appointed councils to form bicameral legislatures in eleven colonies. This followed the pattern of the British Parliament with its House of Commons and House of Lords. Lacking councils, Pennsylvania and Delaware had unicameral legislatures.²¹

Local government. There was considerable variation in local government.²² The New England colonies (New Hampshire, Massachusetts, Rhode Island, and Connecticut) divided their territories into towns, usually

²⁰ Michael Kammen, *Deputies & Libertyes. The Origins of Representative Government in Colonial America*. New York: Alfred A. Knopf, 1969. pp.11-12, 52-68.

²¹ Rossiter, *Seedtime*, p. 15. C.A. Weslager, *The Stamp Act Congress*. Newark, Delaware: University of Delaware Press, 1976. p. 93.

²² Information on local government comes from Rossiter, *Seedtime*, pp. 24-27 and Oscar Theodore Barck, Jr. and Hugh Talmadge Lefler, *Colonial America*. 2nd edition. New York: Macmillan Co., 1964. pp. 247-9.

with a village or small city at the center, surrounded by rural area. Each town was governed by a town meeting in which male property owners could participate. This was the fullest development of direct democracy within colonial America.

New England also had larger units called counties but with officers appointed by the governor. In the South counties and parishes were also administered by gubernatorial appointees, which in effect made them officers of the crown.

In contrast New York and Pennsylvania counties were governed by elected boards. These colonies also had townships, run by elected and appointed officials rather than town meetings, except for a few in New York. Other Mid-Atlantic colonies had counties, and some had townships.

During the colonial period cities in New England were governed by town meetings. Cities elsewhere had charters of incorporation and usually elected their own mayors, councilors, and aldermen, though in a few cities

these officials were authorized to appoint their own successors.

Thus, there were sectional differences in the extent of local self-government in colonial America.

Suffrage

In determining who could vote, the colonies looked to persons with a stake in the community. Seven of them required possession of land, while the other six considered possession of personal property or payment of taxes to be sufficient. Eligible voters were overwhelmingly white male although here and there some women and Negro freemen who met property or taxpaying requirements could vote. But according to Clinton Rossiter, "almost everywhere additional restrictions kept women, youth, Catholics, Jews, infidels, Negroes, Indians, mulattoes, indentured servants, and other 'inferior' persons from the polls."²³

²³ Rossiter, *Seedtime*, p. 19. {Need to find another source to develop this section a little

On top of this some of the colonies added more stringent property requirements on who could hold public office.

Congresses

In the 1760s when American relationships with the British government began to sour, the elected colonial assemblies served as the principal vehicle for calling intercolonial congresses and providing representation to them.

more.]

To respond to the British Stamp Act, Massachusetts' elected assembly, the General Court, in June 1765 invited the other assemblies to send representatives to New York in October. Of the nine delegations which attended, six were officially chosen by their colonial assemblies. For the other three, members of the assemblies, blocked by their governors from holding a special session for this purpose, found other ways to pick their delegates.²⁴

Nine years later, as the British Parliament tightened its grip on the colonies, the Massachusetts General Court, with strong encouragement from members of the Virginia House of Burgess, in June 1774 took the lead in inviting the other assemblies to send delegations to meet together to coordinate colonial strategy for dealing with the British. All the colonies except Georgia were represented when the First Continental Congress convened in Philadelphia in September 1774.

²⁴ Weslager, pp. 58-106.

The credentials of delegates, formally presented to the Continental Congress and recorded in its *Journal*, verified that they were selected in a manner to assure that they truly represented their colonies.²⁵

The assemblies in Rhode Island and Pennsylvania elected their delegates in regular sessions. The Connecticut assembly delegated the chose to its committees of correspondence, which it had previously authorized as vehicles for inter-colony communication.

Elsewhere the assemblies weren't in session and the royal governors wouldn't call special sessions. The Massachusetts General Court, defying the governor, met in secret session to choose its delegates, excluding Tories, who were British loyalists. Elsewhere as Lynn Montross has summarized:

Provisional assemblies under various designations were called for that purpose in Maryland, Delaware, New Jersey, New Hampshire and North Carolina. Appointments in South Carolina were made at a "general meeting of the inhabitants" at Charleston, and in Virginia a "convention" was summoned by the radical group of the

²⁵ *Journals of the Continental Congress, 1774-1789*. Vol. 1, Edited by Worthington Chauncey Ford. pp. 15-24. 30.

House of Burgess.

....New York, ridden by the largest and most aggressive Tory faction in America, did not achieve enough unity for a central assembly. Delegates were chosen by the city and five counties in any manner which suited their convenience.²⁶

Before adjourning in October the delegates made plans to hold in a Second Congress in May 1775. For the most part the delegations stayed intact -- with some additions and some subtractions. Three more assemblies gave their official blessing to their colony's delegation, for a total of five. Before 1775 ended a Georgia delegation appeared. Thus, all 13 colonies were represented as the Continental Congress moved toward its fateful decision for independence in July 1776.

And so we can see that the consent of the governed was involved in the workings of the Continental Congresses. They were called by elected colonial assemblies, which either appointed delegates directly or made

²⁶ Lynn Montross, *The Reluctant Rebels: The Story of the Continental Congress, 1774-1789*. New York: Barnes & Noble, 1950. pp. 26-27. Also see Samuel H. Beer, *To Make A Nation: The Rediscovery of American Federalism*. Cambridge, Mass.:

arrangements for extralegal selection. Where that wasn't possible, delegates were chosen through some kind of electoral process. It was consent through a pyramid of representation.

Summation

If someone had asked the signers of the Declaration of Independence to be more specific about what they meant by "consent of the governed", most of them probably would have emphasized consent through representation in legislative bodies. Some might have mentioned the desirability of directly electing governors, but their troublesome experience in dealing with royal and proprietary governors inclined them to favor legislative dominance.

The Declaration doesn't mention democracy. The signers were inclined to think of democracy as government by the masses, and therefore unstable and unpredictable. Rather they favored "republican" government, or what today we call representative democracy.

Belknap Press of Harvard University Press, 1993. pp. 196-8.

New England had a form of direct democracy in their town meetings in which all freeholders could participate. But this applied only to local government and was an exception to the general pattern of consent through representation.

This was their heritage as leaders in the newly freed colonies set out to write state constitutions and to work together to design some kind of union government. So fast was this challenge upon them that by the time the Declaration of Independence was signed on July 4, 1776, four states had already adopted new constitutions and a committee was at work to produce a plan for a 13 state confederation. Now they had an opportunity to turn rhetoric into action by determining for themselves how consent of the governed would be achieved.

August 30, 1993

PART ONE. THE SETTING

Chapter 1. Emergence of American Democracy

*We hold these truths to be self-evident:
That all men¹ are created equal,
That they are endowed by their Creator
with certain inalienable rights,
That among these rights are life, liberty,
and the pursuit of happiness,
That to secure these rights,
governments are instituted among men,¹
deriving their just powers
from the consent of the governed.*

For more than 200 years these inspirational words from the American Declaration of Independence have been the most profound influence for democracy around the globe. Where government is oppressive, people welcome the message that all persons are equally entitled to basic human rights. Where government is controlled by a dictator or a ruling body accountable only to itself, people welcome the concept that powers of government are just only if the people give their consent.

The consent of the governed. This means that the people are sovereign. They have the supreme power. Not a king, not a landed aristocracy, not a powerful economic elite, not a military junta, not a dictator, not a political party monopolizing power. Democracy is a system of government grounded in the sovereignty of the people.

Although the United States of America was founded on this principle, initially consent-giving was a limited process. The original thirteen states restricted suffrage to white, male property owners. In only four of them did the electorate choose their governors directly. In the original U.S. Constitution, only members of the House of Representatives were directly elected.

In the United States we've come along ways during the past 200 years. We have enlarged suffrage to encompass all citizens age 18 and older. We have nearly half a million popularly elected public officials. Political parties have developed as significant instruments in the electoral process.

¹ For the authors "men" was a generic term for "humankind". Today to assure an intent of gender inclusiveness we would say "men and women".

Citizens perpetually interact with public officials, both elected and appointed. Interest groups press hard to influence public policy. The way American democracy has developed, **the consent of the governed has become a continuous, interactive process.**

There are many lessons to be learned from the American experience: lessons for new democracies, for older democracies wanting to do better, and for people in the United States who want to make further improvements in the consent process and achieve even fuller participation.

ANTECEDENTS

In 1776 "consent" was such a natural part of the political vocabulary that the authors of the Declaration of Independence felt no need to offer a precise definition. It was an idea developed through a long quest in Western Europe to reconcile human freedom with the exercise of governmental power, a search that began in ancient Greece and Rome.²

An influential articulation came from Marcus Tullius Cicero (106-43 B.C.), the Roman politician, orator, and philosopher, in a pair of books, *de Republica* (Republic), and *de Legibus* (Laws), published at the height of the Roman Republic. Cicero argued that the state is "the people's affair",

*the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual activities.*³

According to Professor George H. Sabine, three consequences of Cicero's reasoning are:

First, since the state and its law is the common property of the people, its authority arises from the collective power of the people....

Second, political power when rightfully and lawfully exercised really is the corporate power of the people....

*Third, the state itself and its law is always subject to the law of God, or the moral or natural law -- that higher rule of right which transcends human choice and human institution.*⁴

² This section is based upon ideas presented by George H. Sabine in *A History of Political Theory* (New York: Henry Holt and Company, 1937).

³ *Republic*, I, 25; quoted in Sabine, p. 166.

⁴ *Ibid.*

Even the authority of the most powerful ruler is derived from the people and must be exercised according to law. A tyrannical regime violates the principles of right and justice.

Six hundred years, after Roman had declined in power and numerous emperors had exercised dictatorial powers, a Roman lawyer, Ulpian, in a *Digest* of Roman jurisprudence wrote:

The will of the Emperor has the force of law, because by the passage of the *lex regia* the people transfers to him and vests in him all its own power and authority.⁵

By then another thread of thought was developing among the Germanic people, who "conceived the law as belonging to the folk, or the people, or the tribe."⁶ Such laws were at first customs, handed along by word of mouth. Later they attained written expression. The power of rulers derived from the folk. As kings gained power, they salted their edicts with such phrases as "consent and council" and "by the advise and assent". In practice, this usually meant consultation with bishops, barons, and other elite, not the people directly.⁷

In contrasting the Roman and Germanic approaches, Sabine pointed out that

⁵ *Digest*, 1, 4, 1. Quoted in Sabine, p. 171.

⁶ Sabine, p. 200.

⁷ Sabine, pp. 204-5.

the constitutional theory of the Roman lawyers regarded the emperor's legal authority as derived from the Roman people....But the lawyer's theory regarded the cession of power as made once for all...The medieval theory, on the other hand, assumes a continuous co-operation between king and his subjects, both being, so to speak, organs of the realm to which the law belongs.⁸

Other ideas of Western political theory were offshoots of power struggle between the Roman Catholic pope and the secular leaders of Northern Europe. This was interwoven with the growing power of kings, their claim of divine right, and the trend toward succession by inheritance rather than selection.

An important document in this debate was *Vindiciae contra tyrannos*, published by French Huguenots in 1579. This book described a pair of covenants or contracts. "There is, first, a contract to which God is one party and the king and people jointly as the other party....Secondly, there is a contract in which the people appear as one party and the king as the other."⁹ In the latter, Sabine explained:

The people lay down the conditions which the king is bound to fulfill. ...The king...is bound unconditionally to perform the duties of his office; unless he does so, the compact is void. It follows that the power of the ruler is delegated by the people and continues only with their consent.¹⁰

In that period the idea of contract gained growing attention. For instance, Johannes Althusius, in a book published in 1603, postulated that the sovereign power of the state resides in the people as a corporate body. They bestow power by consent or contract, expressed or tacit. When administrative officers of the state misuse their power, it reverts to the people.¹¹

Contract theory in turn was interwoven with the concept that there is a universal law of nature, waiting to be discovered and applied. In their day Greek philosophers, Cicero, and other Romans were believers in natural law. In the 17th century, explained Sabine:

political theory based on natural law contained two elements: the contract by which a

⁸ Sabine, p. 209.

⁹ Sabine, pp. 378-9.

¹⁰ Sabine, p. 381.

¹¹ Sabine, p. 418.

society or government (or both) came into being and the state of nature which existed apart from the contract.¹²

In the middle of the 17th century a group of reformers in England known as the Levellers were concerned both with the power of the king and the growing power of Parliament, secured in its struggle with the throne. They gave the theory of natural law a new twist by advocating:

the innate right of every man to a minimum of political privilege, the doctrine of consent by participation in the choice of representatives, the justification of law and government as a protection of individual rights, and the limitation of every branch of government under the sovereign power of the people secured by a written list of inalienable rights.¹³

These ideas, precursor of the American Revolution a century and a quarter later, set the stage for John Locke, who was exceedingly influential in shaping thoughts of the American founders.

¹² Sabine, p. 430.

¹³ Sabine, p. 489.

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ANTECEDENTS

In 1776 "consent" was such a natural part of the political vocabulary that the authors of the Declaration of Independence felt no need to offer a precise definition. It was an idea derived from 2,500 years of inquiry in Europe on the origin of government and speculation on why people are willing to accept the authority of the state.²

In ancient Greece in the third century B.C. Epicureans maintained that "the state and the law came into existence as a contract to facilitate intercourse between men."³

In Rome around 50 B.C. Marcus Tullius Cicero argued that the state is "the people's affair,... the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual activities."⁴ Even the authority of the most powerful ruler is derived from the people and must be exercised according to law. A tyrannical regime violates the principles of right and justice.

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⁵ Sabine, p. 200.

consultation with bishops, barons, and other elite, not the people directly.⁶

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*the constitutional theory of the Roman lawyers regarded the emperor's legal authority as derived from the Roman people....But the lawyer's theory regarded the cession of power as made once for all....The medieval theory, on the other hand, assumes a continuous co-operation between king and his subjects, both being, so to speak, organs of the realm to which the law belongs.*⁷

As kings gained greater power in Northern Europe, they began to claim divine right to rule and succession by inheritance rather by selection. This caused clashes with the Roman Catholic pope and with powerful landowners. The latter were able to place some restraints on royal power and to achieve rudimentary parliaments. Other resisters, such as the French Huguenots in the middle of the 16th century, insisted that "the power of the ruler is delegated by the people and continues only with their consent."⁸

Johannes Althusius, in a book published in 1603, postulated that the sovereign power of the state resides in the people as a corporate body. They bestow power by consent or contract, expressed or tacit. When administrative officers of the state misuse their power, it reverts to the people.⁹

Contract theory in turn was interwoven with the concept that there is a universal law of nature, waiting to be discovered and applied. In their day Greek and Roman philosophers were believers in natural law, and it remained a persistent belief in Western thought. In the 17th century, according to Sabine, "political theory based on natural law contained two elements: the contract by which a society or government (or both) came into being and the state of nature which existed apart from the contract."¹⁰

These two elements were clearly present in the political philosophy of John Locke, whose

⁶ Sabine, pp. 204-5.

⁷ Sabine, p. 209.

⁸ Sabine, p. 381.

⁹ Sabine, p. 418.

¹⁰ Sabine, p. 430.

Second Treatise of Government was exceedingly influential in shaping thoughts of the American founders. In this "essay concerning the true original, extent, and end of civil government", Locke postulates that men (in the generic sense) originally lived in a state of nature, "all free, equal, and independent." With their own consent, they agree with

other men to join and unite into one community, for their community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it...When any number of men have so consented make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.¹¹

So it is a two-stage process. People form a civil society and then create a government, both through their own consent. Summing up the ends of political society and government, Locke indicated that people "unite for the mutual preservation of their lives, liberties and estates, which I call by the general name, property."¹²

Although the *Second Treatise of Government* contained numerous references to consent, Locke didn't specify the exact process how consent to form a civil society and then a government actually occurred, whether it was clearly expressed or merely tacit. Nor did he elaborate on mechanisms for obtaining consent in the continuing operations of government. But no matter, consent became a commonly accepted concept in the English-speaking world, including the British colonies in North America.

Thus, it was quite natural for Thomas Jefferson, who drafted the Declaration of Independence, to stipulate that among the self-evident truths was the proposition that the just powers of government derive from the consent of the governed. That's what they all believed, so no further explanation was necessary.

CONSTITUTIONAL FRAMEWORK ESTABLISHED

After proclaiming their independence, the Americans had two main tasks. First, overcoming British rule, defeating and expelling the British army. Second, forming workable self-government.

¹¹ John Locke, *Two Treatises of Government*. New York: The New American Library, 1965. (Originally published in 1689). Book II, §95.

¹² *Ibid.*, Book II, §122.

For the latter the great challenge was forming an effective union among the thirteen liberated colonies, placing sufficient power in a national government but retaining plenty of power in the individual states.

June 29, 1993

Chapter 2. Framework for Consent in the New Nation

Armed conflict between the British army and American colonists erupted in Massachusetts on April 19, 1775. On May 10 the Second Continental Congress convened in Philadelphia. The delegates took on the task of organizing a continental army and on June 15 appointed George Washington as commander-in-chief.

As opposition to British rule widened and war spread, the colonial regimes collapsed. The elected assemblies remained and served as their colony's principal governing body, though in some instances elected conventions took the place of assemblies whose conservative leaders were reluctant to break with Great Britain.

Several colonies turned to the Congress for guidance. In June 1775 the Congress advised Massachusetts to resume government based upon its 1691 charter, which the British had suspended. In November the Congress recommended to New Hampshire and South Carolina that they go

ahead and set up their own governments and then offered the same advice to Virginia in December.¹

On May 10, 1776 the Congress passed a broader resolution on this matter:

*That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such governments as shall, in the opinion of the representatives of the people, best conduce to the happiness of their constituents in particular, and America in general."*²

This sequence of events led President Abraham Lincoln to claim in a message to Congress on July 4, 1861, "The Union is older than any of the States, and, in fact, created them as States."³ This is true in the sense that the Continental Congress, as an instrument of Union, offered encouragement to the colonies to write their own constitutions, thereby giving tacit authorization to this process. But these new states for their

¹ Samuel H. Beer, *To Make A Nation*, p, 201; Lynn Montross, *The Reluctant Rebels*, pp. 99-100.

² *Journals of the Continental Congress, 1774-1789*. Vol. IV, p. 342.

part possessed the power to approve establishment of a new Union government under the Articles of Confederation. There was interdependency between the parts and the whole that showed the one couldn't exist without the other -- a preview of American federalism as it developed over the next two centuries.

ADOPTING STATE CONSTITUTIONS

Process

Having asked first, New Hampshire adopted its new constitution in January 1776. South Carolina followed in March. By the time the Declaration of Independence was signed on July 4, Virginia and New Jersey had done likewise. Other former colonies, now become independent states, took up this task, and by April 1777 six more had new constitutions. Connecticut and Rhode Island, which already had representative government with elected governor and elected bicameral legislature, merely

³ Quoted by Beer, p. 200.

dropped royal references in their charters and kept them in operation.

Massachusetts temporarily functioned within the framework of its royal charter.⁴

In nine states the assemblies took charge of writing these new constitutions rather than setting up separate constitutional conventions. Six of them, though, held special elections for the assembly in contemplation of writing a constitution.⁵ In Pennsylvania a balky assembly refused to act, so citizens by various means elected delegates to a separate constitutional convention, which then continued as the *de facto* legislature.⁶ None of these first ten constitutions went to the people for approval.

It took Massachusetts two tries to get a new constitution. In 1778 the General Court drafted one and submitted it to the electorate, who

⁴ Gordon S. Wood, *The Creation of the American Republic, 1776-1787*. Chapel Hill, N.C.: University of North Carolina Press, 1969. p. 133.

⁵ Allan Nevins, *American States: During and After the Revolution*. pp. 128-9; R.R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800*. Princeton, N.J.: Princeton University Press, 1959. p. 217.

⁶ Palmer, p. 217.

defeated it five to one, partly on the grounds that they didn't choose the drafters. Thereupon the legislature established an elected constitutional convention, which produced a constitution that gained voter approval in 1780. Similarly New Hampshire adopted a revised constitution in 1784 through a specially elected convention and popular vote for its product.⁷

Thus, Pennsylvania's innovation of a constitutional convention, specially elected for this task, was duplicated by Massachusetts and New Hampshire, which both added a popular vote on the state constitution before it could go into effect. Giving voters a direct voice in adopting the fundamental law of the state was an enlargement of consent of governed. These precedents were followed with modification in writing and ratifying the U.S.

Constitution in 1787-88.⁸

Four more states took a second look at their new constitutions in the

⁷ Ralph Ketchum, *From Colony to Country: The Revolution in American Thought, 1750-1820*. New York: Macmillan Publishing Co., 1974. p. 101.

⁸ For discussion of the idea of the constitutional convention, see Palmer, pp. 214-217.

early years of independence and rewrote them, but five of the new constitutions served their states for 45 to 75 years. Connecticut and Rhode Island, having initially extended their colonial charters, adopted their first state constitutions in 1818 and 1842. Massachusetts' 1780 constitution is still in effect, though with amendments adopted over the years.

Product

In their constitutions all 13 states accepting the doctrine of separation of powers, as taught by the Frenchman Montesquieu in *The Spirit of Laws* (1748) and established three branches of government: legislative, executive, and judicial. Of these, the legislature was overwhelmingly dominant.

Except for Pennsylvania and Georgia the legislatures were bicameral with both chambers elected by voters. When Georgia revised its constitution in 1788 it added a second house to the legislature, and Pennsylvania did likewise in 1790. In these bicameral legislatures the state senates,

successors to the appointed councils, had fewer members than the houses of representatives (or delegates). Senators had larger districts than representatives, and in _____ states senators initially were elected at large.

Most of the new state constitutions contained a bill of rights. They maintained a property or tax-paying requirement for voting but not as restrictive as before. Seven of the states had higher minimum property-owning requirements for members of the legislature than for voters, and six of them set a higher minimum for their governors than legislators.⁹

In nine states under these initial state constitutions the legislature chose the governor. Pennsylvania's first constitution had a 12-member executive council, chaired by a "president", instead of a governor but changed to a elected chief executive in the 1790 revision. None of the states gave their governor a final veto over legislation, although in three

⁹ Paul Eidelberg, *The Philosophy of the American Constitution*. New York: The Free Press,

states the governor had partial veto power. As Nevins observed:

The Americans of 1776 thought that it was easy to keep the legislature a truly popular agency, but they knew no way of holding a powerful governor responsive to their will. They were unable to distinguish properly between a Crown governor and a popularly elected governor, and they had not learned the value of concentration of responsibility.¹⁰

The challenge of how to organize the executive branch and select a chief executive also confronted the states when they joined together to establish a national government.

FORMING A NATIONAL GOVERNMENT

The first efforts of the 13 colonies to work together came in the Stamp Act Congress (1765), the First Continental Congress (1774), and the Second Continental Congress (1775-81). These congresses, as we have noted, were composed of delegates chosen in a variety of ways, most of them emanating from the elected assemblies. In Congress each colony,

1968. p. 263.

¹⁰ Nevins, p. 166.

regardless of population, had one vote, determined by a majority of its delegates.

These congresses convened essentially to provide a united voice for dealings with the British Government, more-or-less on an ad hoc basis. This was a useful approach for this purpose, but it proved an awkward instrument for conducting the Revolutionary War. Some better vehicle was needed.

Articles of Confederation

Adoption. As a start, the resolution to dissolve all political connection with Great Britain, introduced in the Second Continental Congress by Richard Henry Lee of Virginia on June 7, 1776, included a recommendation that "a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation."¹¹ A 13 member committee was appointed, and John

¹¹ *Journals of the Continental Congress, 1774-1789.* Vol. V, p. 425.

Dickinson of Pennsylvania took the lead in writing a draft of a plan of confederation. With revisions by the committee, this draft was offered to the Congress in July and considered intermittently for about a month. But the Congress was concentrating mostly on the war with the British and put off consideration for more than a year.¹²

Finally on November 15, 1777 Congress agreed upon "Articles of Confederation and perpetual Union" and sent the document to the state legislatures for ratification. All thirteen had to agree in order for the Confederation to go into effect. Until that was accomplished, the Continental Congress continued to serve as the interim government of the United States.

Twelve states ratified the Articles fairly promptly, but Maryland held out over objection to western land claims of several other states. When these states agreed to turn over such land to the Congress of the

¹² Jack N. Rakove, *The Beginnings of National Politics: An Interpretative History of the*

Confederation, Maryland ratified on March 1, 1781. The Articles then went into effect, almost five years after the Declaration of Independence.

Looking back on this process, we can discover that time was a important factor, for past, present, and future affected the consent-giving.

The past was established relationships among the colonies and the experience with the Continental Congress, which provided the model for selecting the Congress of the Confederation. The present (spread out over nearly five years) encompassed bargaining, first to develop an acceptable set of Articles and second to satisfy holdout Maryland. The future was the promise that Maryland's concerns would be handled by the new Congress.

Provisions. *As a governing mechanism, the Articles formalized the system developed by the Continental Congresses. The state legislatures appointed the delegates -- from two to seven per state -- and could recall them at any time. No person could served as a delegate for more than*

Continental Congress. New York: Alfred A. Knopf, 1979. p. 139.

three years out of six.

In Congress each state had one vote. The "united states in congress assembled" was authorized to appoint a "committee of the states", consisting of one delegate from each state, to exercise the powers of Congress when it was in recess, subject to the consent of nine states. There was no chief executive, neither elected nor appointed, but Congress set up a number of administrative bureaus and provided oversight.

As to the purpose of the Confederation, Article III specified:

The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IX gave Congress "the sole and exclusive right and power of determining on peace and war" but limited Congress's capacity to carry out a coordinated approach to foreign trade.

On domestic matters Congress was even weaker. It had no taxing

powers and instead had to request state contributions to the common treasury. Frequently states were tardy with their payments.

Appraisal. In spite of these limitations, the Confederation achieved some notable accomplishments. As summarized by Clinton Rossiter:

The first government of the United States fought a successful war, made a viable peace, laid the foundation for a new order of diplomacy, established enough credit at home and abroad to pay its most pressing expenses, conducted a kind of political and social academy for the continental elite, created a functioning bureaucracy, and above all maintained itself as a symbol of American unity even in the most parochial times after 1783.¹³

On balance, though, the Confederation, working mainly through a Congress not always able to maintain a quorum and overly dependent upon the states for revenues, was far too weak for the needs of the fledgling nation. Moreover, it was too far removed from the people to make consent truly meaningful.

Constitutional Convention

¹³ Rossiter, 1787: *The Grand Convention*. p.43.

In an attempt to improve the situation, 12 states sent delegates to a Convention in Philadelphia in May 1787 (with Rhode Island declining to participate). They had instructions from the Congress of the Confederation to develop revisions to the Articles of Confederation and to report back to Congress and the several state legislatures. Instead the Convention between May 14 and September 17, 1787 wrote a brand new Constitution for the United States of America.¹⁴

Orientation. The majority of delegates were predisposed to strengthen the national government and to make it a republic, later defined by James Madison, a key leader at the Convention, as

a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during

¹⁴ The basic scholarly resource on the Constitutional Convention is Max Farrand, *The Records of the Federal Convention*. 4 volumes, revised edition. (New Haven: Yale University Press, 1937). Periodically able writers draw on this source to produce analytical narratives of the Convention, such as, Carl van Doren, *The Great Rehearsal* (New York: Viking Press, 1948); Clinton Rossiter, *1787: The Grand Convention* (New York: New American Library, 1968); Christopher Collier and James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York: Random House and Reader's Digest Press, 1986).

*good behavior.*¹⁵

It would be a compound republic, combining two doctrines: federalism and separation of powers. The states would remain as components of a federal system. The powers of the new national government would be divided between legislative, executive, and judicial branches, as had already occurred in all of the state constitutions. As Madison explained:

*In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time each will be controlled by itself.*¹⁶

As a further division of power, the Congress of the United States would be bicameral, as 11 of the 13 state legislatures were at the time and soon all would be. The new Constitution provided that membership in the House of Representatives in the new bicameral Congress would be

¹⁵ James Madison, *The Federalist No. 39*. New York: Modern Library, 1937. pp. 243-4.

¹⁶ James Madison, *The Federalist No. 51*. p. 339.

apportioned according to population and members would be elected directly by the people. In each state qualifications for voting would be the same as for the most numerous branch of the state legislature. In contrast, the Senate would be composed of two senators from each state, chosen by the legislature.

This arrangement was a major feature in a compromise between the small states, which liked the one-state, one-vote arrangement of the previous congresses, and the large states, which wanted greater representation for their more numerous populations.

As a compromise between North and South, the Constitution contained a peculiar provision that allowed each Negro slave to be counted as three-fifths of a person in apportioning membership of the House of Representatives. This gave slave states greater representation even though slaves were denied the right to vote.

Chief executive. The framers, chastened by headless meandering

under the Articles of Confederation and overcoming their distasteful memory of colonial governors and the distant king, decided to vest executive authority in a single official, the president. Selection of this person would be entrusted to electors, equal to the total number of senators and representatives and appointed by each state in a manner determined by the state legislature. Alexander Hamilton provided the rationale:

that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.¹⁷

In short, the framers of the Constitution didn't think the general mass of citizens had sufficient discernment to make a wise choice.

The Constitution gave the president authority to appoint ambassadors, judges of the Supreme Court, and top administrative officers but required

"the advice and consent of the Senate".

Terms of office. Members of the House of Representatives were assigned a term of two years, the president four, and senators six. The Constitution placed no restrictions on total number of terms a person could serve. The Convention rejected proposals to require these officers to be property owners.

In the total scheme of the new Constitution, the framers showed a preference for indirect derivation of power from the people: senators elected by state legislatures; the president by electors chosen in a manner state legislators determined; cabinet officers, judges, and ambassadors appointed by the president with the advice and consent of the Senate. Only members of the House of Representatives were chosen directly by the electorate, whose qualifications were determined by each state, which in this period limited voting mostly to white male property owners and

¹⁷ Alexander Hamilton, *The Federalist No. 68*. pp. 441-2.

taxpayers. That's how the new Constitution provide consent through representation.

Preamble. Whereas the Articles of Confederation was put forth in the name of "we the undersigned delegates of the states", the framers of the new Constitution put aside a draft for the Preamble that listed the states and boldly stated:

We the people of the United States, in order to
form a more perfect union,
establish justice,
insure domestic tranquility,
provide for the common defense,
promote the general welfare, and
secure the blessings of Liberty to ourselves and our posterity,
do ordain and establish this Constitution
for the United States of America.

This was fitting, for the new Constitution created a set of direct relationships between the national government and the citizenry without going through the states. The Preamble also expanded the purposes of government beyond those specified by John Locke and even the Declaration

of Independence.

Gaining Approval

Consent of the governed came into play in one other aspect of the new Constitution: the ratification process. The delegates to the Convention knew that they were exceeding their authority from the Congress of the Confederation, so they had to figure out how to get their work accepted. Therefore, they decided that ratification should occur in conventions in each state, called for this purpose with specially elected delegates, and that ratification by nine states would be sufficient for establishing the Constitution for the ratifying states.

Anticipatory consent. The delegates met in secrecy, strictly observed, in order to be able to have frank discussion of difficult issues and to allow delegates to try out ideas, change their positions, and come up with compromises free from outside pressure. But never far from mind was the need to gain approval of the new Constitution from a broad and varied

constituency: from both large and small states, from New England, the Mid-Atlantic states, and the South, from people who favored a stronger national government with a sufficient majority over those opposed.

In order even to have ratifying conventions organized within each state, the framers had to transmit the proposed Constitution first to the Congress of the Confederation and through it to the respective state legislatures. The latter in turn would call the ratification conventions and arrange for election of delegates to them. So at least unconsciously, often implied, and perhaps sometimes directly, the framers asked themselves whether they were producing a document that could survive the transmittal process. Were they proposing a Constitution which future delegates to state ratifying conventions would approve? This kind of anticipatory consent was a pattern that has since had abundant repetition in a variety of ways in American democracy.

Ratification. The framers' plan for ratification was imminently

successful. On September 28, 1787, eleven days after the Constitutional Convention completed its work, the Congress of the Confederation, condemned to oblivion, voted that the Constitution "be transmitted to the several state legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof."¹⁸ On December 7, 1787 Delaware's ratifying convention was first to approve the new Constitution. On June 21, 1788 the convention in New Hampshire was the ninth to approve, technically sufficient, but ratification by Virginia on June 26 and New York on July 26 were necessary to make the new Constitution politically viable.

The campaign for and against the new Constitution revealed another aspect of the consent process: the role of news media. Throughout the 13 states newspapers offered their editorial views and provided space for proponents and opponents. The pro-ratification essays known as *The*

¹⁸ *Formation of the Union*. Washington: GPO. p. 1007.

Federalist first appeared in New York newspapers, and Anti-Federalist writings were published there and elsewhere.¹⁹ They were trying to influence voters who would choose delegates to the state ratifying conventions and then the delegates themselves. But they were also appealing to a broader public opinion on issues raised by the proposed Constitution but likely to continue as important matters to be taken up by the new government.

Affecting the future. In particular, Anti-Federalists were concerned that the new Constitution contained no Bill of Rights, a feature specifically rejected by the Constitutional Convention but contained in many of the new state constitutions and a heritage dating back to the English Bill of Rights of 1689. They also wanted assurance that the states retained all powers not expressly delegated to the federal government. As expression of these and

¹⁹ See Herbert J. Storing, editor and commentator, with assistance of Murray Dry, *The Complete Anti-Federalist*. 7 volumes. Chicago: University of Chicago Press, 1981. Storing's analysis of Anti-Federalist thought in volume 1 was published separately as *What the Anti-Federalists Were For* (University of Chicago Press, 1981).

other concerns, seven of the 13 state ratifying conventions in their resolutions of approval proposed a total of 124 amendments to the Constitution.²⁰ They were assured by a suggestion from George Washington and supported by leading Federalists that the First Congress under the new Constitution would address these concerns.²¹

Thus, as in ratifying the Articles of Confederation so also in ratifying the U.S. Constitution, bargaining and promise of future action entered into the consent process, another illustration of the time dimension of consent-giving. This time the bargainers went beyond a narrow group of state legislators to elected members of ratifying conventions and a significant segment of the public whose articulated demands had to be dealt with.

A New Government Forms

²⁰ *Formation of the Union.* pp. 1009-1059.

²¹ *The Constitution of the United States of America: Analysis and Interpretation.* Prepared by the Legislative Reference Service, Library of Congress. Washington: Government Printing Office, 1964. p. 840.

Ratification of the Constitution cleared the way for voters to elect the first 65 members House of Representatives. There were approximately _____ eligible voters in a population of nearly four million, and an estimated ____ participated in this first congressional election. The state legislatures chose the first 24 U.S. senators (Rhode Island was a late ratifier and therefore had no representation in Congress initially). For the first presidential election __ of the 13 state legislatures themselves designated presidential electors, but in __ states electors were chosen through popular election.²² These electors unanimously selected George Washington as first president and John Adams as vice president.

The First Congress under the U.S. Constitution met on March 4, 1789 and mustered a quorum on April 6. George Washington's inaugural as president occurred on April 20. Keeping the promise of the ratification debate, the First Congress on September 25 agreed upon twelve

²² [Note: R.R. Palmer says that "as early as 1788 almost half the states provided for popular

amendments to the Constitution and sent them to the states for ratification. Nine dealt with individual rights, one reserved to the states and the people powers not delegated to the national government, and two referred to congressional apportionment and pay, . Within the next 27 months eleven states ratified ten of the amendments to produce the three-fourths required by the Constitution (by then Vermont had joined the Union as the 14th state). Known as the Bill of Rights, they went into effect on December 15, 1791. The ones dealing with Congress didn't gain approval by three-fourths of the states.²³

Building on the Foundation.

In this manner the U.S. Constitution and the first state constitutions established limited democracy in the United States. Of the principal offices of government, as we have seen, only the U.S. House of Representatives, the

election of presidential electors" (p. 231). Verify this from another source and find out how many states.]

²³ However, the one requiring that congressional pay raises not take effect until after the next election was taken up by state legislatures during the 1980s and enough of them ratified it so that it went into effect on _____ as the ____ Amendment, ____ years after first proposed.

state legislatures, and three governors were directly elected, and suffrage was limited mostly to white male property owners and taxpayers. The other governors and the U.S. Senate were elected by the state legislatures, and the president of the United States was chosen by a small group of electors selected in a manner determined by the legislatures. A couple of members of the Constitutional Convention advocated direct election of senators and the president, but they were a tiny minority.

In *The Federalist No. 10* James Madison revealed that the intended effect of this arrangement was

to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.²⁴

The philosophy was: "Trust us. Elect us and we'll govern." It was representative democracy in an elitist mode.

²⁴ James Madison, *The Federalist No. 10*. p. 59.

The American people, however, didn't settle for such limitations. By 1828 popular selection of presidential electors had become "the general and permanent rule."²⁵ During the first half of the 19th century the states eliminated most property requirements for voting. In 1870 the 15th Amendment prohibited the states from denying the right to vote "on account of race, color, or previous condition of servitude."

In the latter half of the 19th century some states granted women the right to vote and allowed voters to determine who the legislature would appoint to the U.S. Senate. In 1913 the 17th Amendment provided for the direct election of U.S. senators, and in 1920 the 19th Amendment assured women the right to vote. In 1964 the 24th Amendment outlawed the poll tax (which had been used in the South to prevent Negro suffrage). The next year the U.S. Congress enacted the Voting Rights Act of 1965 with enforcement power to assure complete access to the polls by

²⁵ R.R. Palmer, p. 231.

all citizens. In 1971 the 26th Amendment gave the right to vote to any person 18 years of age or older.

Beyond these legal changes the consent process expanded in numerous ways, as this book will enumerate in rich detail. Of particular significance was the emergence of two major instruments of consent: political parties and interest groups. Before George Washington had completed his first term as president, they appeared in the workings of the new national government as well as in the states and localities. Today political parties and interest groups are pervasive in many aspects of what has become continuous, interactive consent-giving.

All this has occurred within the framework of a Constitution that has shown remarkable adaptability over a span of 200 years. The framers advanced representative democracy to a new level. They established a strong foundation for the structure of democracy that future generations would build upon. Many of them as officeholders in the new republic

helped erect the ground floor. Since then others have added more rooms, furnishings, and new ways of doing things.

The structure of American democracy has withstood internal turmoil, including grievous division during the Civil War (1861-65). The high ideals of the Declaration of Independence and the Preamble to the Constitution have prevailed: that to secure basic rights we the people institute government and require it to function through our consent. As President Abraham Lincoln explained in dedicating a cemetery on a the Gettysburg battlefield, American democracy consists of "government of the people, by the people, and for the people."²⁶

Since Lincoln's day American democracy has continued to developed. Today we have representative democracy in a participatory mode. Not perfect, not complete but going far beyond the beginning of the 1780s.

September 11, 1993

²⁶ Abraham Lincoln, *Gettysburg Address*, November 19, 1863.

Chapter 2. American Federalism

After the Second Continental Congress adopted the Declaration of Independence on July 4, 1776, it appointed a committee to design a national seal which would serve as a symbol of national unity. And what a committee! Its members were Benjamin Franklin, the most renowned American of his day, and two future presidents, John Adams and Thomas Jefferson. As a national motto for the Great Seal, they chose a Latin phrase, "E Pluribus Unum." "Out of many, one."

This was easier said than done. It was one thing to unite against an oppressive British government but another to devise a scheme of government of their own to handle common concerns. The founders knew they needed some kind of unified "continental" (national) government, but they also wanted to retain the separate colonies, now become independent states. How could they have "one" and "many" at the same time?

The answer was American federalism. The founders didn't arrive at this solution on their first try, but they were successful in their second attempt. They produced a workable combination of states and a national government which later generations have shaped to meet their own needs. During the past 60 years in particular American federalism has taken on new dynamics. Consent of the governed today, as in the founding period, takes place within the context of the federal system.

FORMATION OF THE UNION

Confederation

As a start, the resolution to dissolve all political connection with Great Britain, introduced in the Second Continental Congress by Richard Henry Lee of Virginia on June 7, 1776, included a recommendation that "a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation."¹ John Dickinson of Pennsylvania produced a draft by mid-July, but Congress, concentrating on the war, put off consideration for a year.

Finally on November 15, 1777 Congress agreed upon Articles of Confederation and sent the document to the states for ratification. All thirteen had to agree in order for the Confederation to go into effect, and it took until March 1, 1781 to gain unanimous approval.

The states clearly had the upper hand in this "firm league of friendship with each other", for

¹ *Documents Illustrative of the Formation of the Union of the American States.* Washington: Government Printing Office, 1927. p. 21.

Article II specified:

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

In Congress each state had one vote. Congress had no taxing powers and instead had to request state contributions to the common treasury. Frequently states were tardy with their payments. Committees of Congress and scattered bureaus created by Congress handled administrative matters. The Articles made no provision for a chief executive.

In spite of these limitations, the Confederation achieved some notable accomplishments. As summarized by Clinton Rossiter:

The first government of the United States fought a successful war, made a viable peace, laid the foundation for a new order of diplomacy, established enough credit at home and abroad to pay its most pressing expenses, conducted a kind of political and social academy for the continental elite, created a functioning bureaucracy, and above all maintained itself as a symbol of American unity even in the most parochial times after 1783.²

It also settled an irksome dispute among the states by taking jurisdiction over territory claimed by several states between the Appalachian Mountains and the Mississippi River and by providing for formation of new states, which would be admitted into the union on equal footing as the original states.

On balance, though, the Confederation, working mainly through a Congress not always able to maintain a quorum and overly dependent upon the states for revenues, was far too weak for the needs of the fledgling nation. Instructed by this experience, delegates to the Constitutional Convention of 1787 worked out a new plan of government.

Federal Union

The new Constitution established a national government with substantial enumerated powers, including authority for direct taxation without going through the states. The Constitution, along with laws and treaties made under its authority, would be the supreme law of the land. At the same time the states remained in place with their own independent authority.

² Rossiter, 1787. p.43.

Although the original method for selecting U.S. senators and the president provided a role for state legislatures (see Chapter 1), the states and the federal government (as the framers called it) were mostly separate and co-equal. In this manner American federalism was born.

In explaining this system in the ratification debate James Madison indicated:

The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes.³

The people are one. They choose to have two different agents to serve their bidding: a national government and a collection of states. Each has its own assignment. Each derives its authority directly from the people, from the consent of the governed. If in the future the people want to shift assignments, Madison indicated, they have the right to do so.

Under this arrangement an individual is simultaneously a citizen of the United States and a citizen of one of the states. Citizens elect governing officials for each and abide by laws enacted by the U.S. Congress and the state legislatures.

Later Perspectives

This twofold division of responsibility pretty much characterized American federalism in its first one hundred years. This was noted in two celebrated studies by European visitors to the United States in the fifth and tenth decades of the Union.

In the 1830s the Frenchman Alexis de Tocqueville in *Democracy in America* noted that:

³ James Madison, *The Federalist No. 46*, pp. 304-5.

there are two distinct social structures connected and, as it were, encased within the other; one finds two completely separate and almost independent governments; the one is the ordinary and undefined government which provides for the daily needs of society, while the other is exceptional and circumscribed and only concerned with certain general interests. In a word, there are twenty-four little sovereign nations who together form the United States.⁴

Slightly over 50 years later British Lord James Bryce in *The American Commonwealth* made similar observations:

The authority of the National government over the citizens of every State is direct and immediate, not exerted through the State organization, and not requiring the co-operation of the State government....

On the other hand, the State in no wise depends on the National government for its organization or its effective working. It is the creation of its own inhabitants. They have given it its constitution. They administer its government. It goes on its own, touching the national government at but few points....

All authority flows from the people. The people have given part of their supreme authority to the Central, part to the State governments....⁵

Nowadays, another one hundred years later, a foreign observer would discover a much more complexity in American federalism.

First, the national and 50 state governments are far from separated. Rather they touch one another at many points. They are entwined in an intricate pattern of intergovernmental relationships involving federal grants and mandates.

Second, local government functions as a third arena of the federal system. Although legally cities, counties, and other local units derive their powers from the states, politically they operate with considerable autonomy. And they too are involved in numerous intergovernmental relationships: with one another in metropolitan areas, with their state, with the national government.

⁴ Alexis de Tocqueville, *Democracy in America*. Translated by George Lawrence. New York: Harper & Row, 1969. (First published in 1835.) p. 61.

⁵ James Bryce, *The American Commonwealth*. 2nd edition revised. London: Macmillan and Co., 1891. pp. 312, 313.

Third, all authority continues to flow from the people, who possess multiple citizenship in the local, state, and national arenas. Voters directly elect the public officials who govern in each arena: president, governors, mayors, county executives, members of Congress and state legislatures, city and county councilors, and many more. Thereafter citizens interact continuously with these elected officials and their appointees directly without going through a chain of command in a hierarchy of governments. Nevertheless, some aspects of the consent process involve local-state-national relationships, as we'll see in later chapters.

MANY GOVERNMENTS

To carry out three-arena federalism the American people have created numerous governmental units: 83,235 at the latest count, most of them local.⁶ This pattern has come about through two centuries of territorial expansion, settlement, population growth, and governmental evolution.

Setting Up New Governments

When European settlers began to arrive in North America in the 17th century, the land was already populated by the First Settlers, who had migrated from Asia through Alaska many centuries earlier. In 1600 a million or more First Settlers lived in what later became the 48 contiguous states. They constituted 250 or so tribal groups, each with a distinct language and its own government. Some of them joined together in confederation. The Europeans called them Indians, but each tribe had its own name: Powhattan, Cherokee, Susquehanna, Delaware, Mohican, Narraganset, Massachusetts, and many more.

Gradually the Second Settlers spread across the continent, claimed new territory, and displaced the First Settlers. This process started with the initial colonies on the Atlantic seaboard, was extending west of the Appalachian Mountains by the time of Union, and eventually proceeded all the way to the Pacific Coast.

The initial colonists usually arrived with a framework of government to install. However, in November 1620 the ship *Mayflower* arrived unexpectedly off the coast of Cape Cod where no colonial government existed. So before going ashore, the 41 male adults on the *Mayflower* signed a compact to "covenant & combine ourselves together into a civil body politic", just as contract theory taught

⁶ U.S. Department of Commerce, Bureau of the Census, *1987 Census of Governments. Government Organization*. Vol 1, No. 1. [To be updated when data from the 1992 Census of Governments becomes available.]

them they should. Later as Second Settlers proceeded westward beyond the bounds of the coastal states, they organized some kind of governmental unit on their own or relied upon a territorial government established by Congress.

States and Territories.

In 1789 the United States of America had 13 member states and claimed all the land from the Atlantic Ocean to the Mississippi River, south of Canada and north of Florida. The Congress of Confederation in 1787 had organized the Northwest Territory, northwest of the Ohio River, and provided a process for admitting three to five states from this territory. The new Constitution gave Congress authority to admit new states, and by 1820 Congress had admitted ten, completely encompassing all territory claimed in 1789.

Between 1803 and 1854 the United States gained control of the remaining land between present-day Canada and Mexico -- by purchase from European powers, by annexation at request of new settlers, and by conquest. Because First Settlers were already occupying much of this land, the U.S. government entered into treaties with them to assure their rights to certain land or to relocate them to reserved land. The United States, however, repeatedly broke these treaties and continued to remove First Settlers from where they once lived.

Following the pattern established by the Northwest Ordinance of 1787, Congress divided newly acquired lands into territories and provided for appointment of a territorial governor and election of a territorial legislature by the Second Settlers. When a territory gained a sizable population of Second Settlers, it could become a state with its own constitution and government. Altogether 48 states formed between the Atlantic and Pacific Oceans, and the last was admitted to the Union in 1912. In 1959 two non-contiguous territories became states: Alaska (purchased from Russia in 1867) and Hawaii (annexed in 1898 after American interests had overthrown a native government five years earlier), bringing the total to 50.

[Map of the 50 states.]

There are also island territories associated with the United States: Guam and Puerto Rico, won from Spain in a war of 1898, American Samoa, obtained from Germany and Great Britain in 1900, and the Virgin Islands, purchased from Denmark in 1917. Puerto Rico is a self-governing commonwealth with a governor and a bicameral legislature elected by the people. The president of the United States appoints the territorial governors of Guam and the Virgin Islands, and the secretary of interior appoints the governor of Samoa. In each of these three territories the people elect a unicameral legislature.

[Former trust territories in the Pacific?]

The District of Columbia, the site of the nation's capitol, has unique status. It occupies land ceded by the State of Maryland, is partly under the jurisdiction of Congress, but has a home rule charter and its own elected government. The District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands each sends a delegate with limited voting rights to the U.S. House of Representatives.

Local Governments

The pattern of local government in the original 13 colonies exerted a strong influence on the new states as they joined the Union. New England in the northeast was divided into units called towns, which tended to have a village near the center surrounded by farms and forests. They also had counties with limited assignments. The other colonies formed counties with greater responsibilities, and the Mid-Atlantic states also had townships but with lesser powers than the New England towns. Cities formed with charters from the King of England or the proprietors, and after independence they functioned by authority of the state legislatures.

As new states came into the Union, they divided all of their land into counties. North Central states tended to follow the Mid-Atlantic pattern and further divided each county into townships, but new states in the South and West didn't create townships. State legislatures adopted laws allowing municipalities to incorporate. Counties built their courthouse in a centrally located municipality, which became the "county seat".

During the 19th century public schools began operating throughout the United States. In 1987 there were 16,213 public school systems in the United States, and 14,721 of them (90.8 percent) were administratively and fiscally independent of any other government. ___ percent of these independent school districts had popularly elected school boards. Of the 1,492 school systems that were part of some other government, such as city, county, township, ___ had popularly elected boards.⁷

Other special districts have formed separate from state and local general government for a wide variety of purposes: fire protection, cemeteries, water supply, sewerage, drainage and flood control, soil conservation, housing and community development, parks and recreation, libraries, hospitals, highways, bridges, airports, and other functions.⁸ Most of the 29,532 special districts in existence in 1987 were under boards appointed by mayors, county commissioners, and governors, but ___ percent had elected boards.

⁷ 1987 Census of Governments. Vol. 1., No. 1. Government Organization. p. xiii.

⁸ Op. cit., p. x.

Table 1-1 lists the major types of governments in the United States. Altogether the 83,235 units of government have 497,155 popularly elected officials.⁹ The consent of the governed in the United States starts with their election and continues as citizens interact with them.

Table 1-1. Governmental Units in United States, 1987.

National	1
State	50
Local	<u>83,184</u>
	3,042 counties
	15,691 townships (mostly rural but some suburban)
	19,200 municipalities
14,721 independent school districts	
	29,531 special districts
	=====
Total	83,235

Indian Reservations¹⁰

In 1990 1,959,000 descendants of the First Settlers of North America, otherwise known as American Indians and Alaska Natives (Eskimos and Aleuts), lived in the United States. They formed 510 federally recognized tribes, including 200 village groups in Alaska. About one-half of this population lived on or adjacent to Indian reservations.

There are 278 federal Indian reservations, some of them are known locally as pueblos, rancherias, and communities. They consist of land set aside for tribes when they relinquished other land through treaties with the U.S. government. According to the treaties, the U.S. Secretary of the Interior is trustee of these Indian lands, a complicated relationship that combines guardianship, oversight, assistance, and encouragement of tribal responsibility. On each reservation the tribal

⁹ 1987 Census of Governments. Vol 1., No 1. Government Organization, p. vi; vol. 1, no. 2, Popularly-Elected Officials, p. ??.

¹⁰ Primary source of information for this section is U.S. Department of the Interior, Bureau of Indian Affairs, American Indians Today. Third edition, 1991.

government is the local governing authority. The federal Bureau of Indian Affairs deals directly with these tribal governments. States in which reservations are located have quite limited power over them.

All Indians born within the territorial limits of the United States are American citizens. They have the right to vote in tribal, local, state, and national elections and may hold elective office at all levels of government. Indeed, Charles Curtis, a part Kaw Indian, served as vice president of the United States when Herbert Hoover was president (1929-32).

The Indian reservations and tribal governments are another manifestation of the pluralism of American federalism.

STATUS OF FEDERALISM TODAY¹¹

When the framers of the U.S. Constitution assigned certain powers of the national government while leaving many tasks for the states to perform, James Madison asserted that it seems "beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States." Therefore, they will prefer that the states handle the greater share of governmental responsibility. But, he noted, if "the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration."¹²

Growth of National Government

As it turned out, the American people over the years turned to the national government to undertake more and more tasks. It was not particularly because of better administration but rather because territorial expansion across a whole continent and the growth of the American economy in the 19th century created problems and demands requiring national action. This was followed by the emergence of the United States as a world power in the 20th century with responsibilities which only the national government could fulfill.

As a means of responding to common needs, the national government commenced a system of financial grants-in-aid, first to the states and then directly to localities. To counter the vastly expanded economic power of large business corporations, Congress enacted anti-trust laws and other

¹¹ This section partly updates my early discussion of this topic in *Small and Large Together: Governing the Metropolis* (Beverly Hills, Calif.: Sage Publications, 1977) pp. 149-152.

¹² James Madison, *The Federalist No. 46*. pp. 305-6.

regulatory legislation. When the economy crashed in 1929 and the Great Depression stretched over months and years, the national government alone had the capacity to instigate measures to restore economic well-being to the nation. Accordingly, President Franklin Roosevelt's New Deal initiated an extensive array of federal programs, funded in Washington but most of them carried out by state and local governments.

Emergence of Local Government

Meanwhile, local governments had become major players in American federalism. In many respects the people felt a more natural attachment to them than to the states. Indeed, since 18?? local governments altogether have had more employees than the states and national government combined.

Even though cities, boroughs, towns, townships, and counties have no independent, constitutional authority, citizens vote directly for their own local elected officials and think of them as their own agents. In many states, municipalities have wrested home rule authority from their state legislatures and have written their own charters. So have many heavily populated counties, especially in metropolitan areas.

Local elected officials have formed associations to work in behalf of local interests in state politics and on the national scene. They deal directly with the president, Congress, and federal agencies without going through the states.

Thus, in American federalism local governments have become a third set of "agents and trustees of the people", constituted with powers designed to fulfill local purposes.

Images of Federalism

By the middle of the 20th century it had become commonplace to speak of three-level federalism in the United States. Some persons projected the image of a three-tiered layer cake. Others preferred different metaphors. For example, in 195? [name] described this system as a marble cake, depicting the way in which national, state, and local ingredients flow into one another.¹³

Luther Gulick described three major "extensions" of government. The American scheme of government, he noted, "is made up of partially autonomous governmental structures differing primarily with respect to the extent of the constituencies and boundaries on which they rest." The

¹³ Quoted by David Walker in

three extensions are "comprehensive" (national), "intermediate" (the states), and "limited, local extension."¹⁴

Daniel Elazar rejected the hierarchical notion of levels, maintaining that "there are no higher or lower power centers, only larger or small arenas of political decision-making and action." Each of these, he insisted, exists in its own right, and is not part of a hierarchy of national-state-local. He argued that American federalism is a noncentralized political system where "power is so diffused that it cannot be legitimately centralized or concentrated without breaking the structure and spirit of the constitution."¹⁵

Morton Grodzins agreed with the observation that operationally the American system of government isn't a layer cake but rather is "a marble cake, or what the British call a rainbow cake." He noted:

No important activity of government in the United States is the exclusive province of one of the levels, not even what may be regarded as the most national of national functions, such as foreign relations; not even the most local of local functions, such as police protection and park maintenance.¹⁶

This is a long way from de Tocqueville's "two distinct social structures" or Lord Bryce's view that state and national governments touch one another "at but few points". Reflecting the change occurring in this century, Elazar elaborated:

¹⁴ Luther Gulick, *The Metropolitan Problem and American ideas*. New York: Alfred A. Knopf, 1962. pp. 30-31.

¹⁵ Daniel J. Elazar, "Urbanism and Federalism: Twin Revolutions of the Modern Era" in *Publius* (Winter 1975), Vol. 5, No. 2. pp. 23-25.

¹⁶ Morton Grodzins, *The American System*. Chicago: Rand McNalley, 1966. p. 8.

If you ask the question, "Who does what?" the answer is in two parts. One is that officials of all "levels" do everything together. The second is that where one level is preponderant in a given activity, the other makes its influence felt *politically* (here the voice of the peripheral power units are heard most strongly) or through *money* (here the central view is most influential) or through *professional associations*.¹⁷

The political influence of the local on state and national and that of states on the national is an important factor in the contemporary consent process.

[name] noted that this mixture of "levels" tends to be segmented along functional lines. Local street departments relate to the state highway department which in turn relate to the federal highway agency. And many other examples. This, he indicated, is "picket-fence" federalism. Each picket is a function erected vertically, held together by horizontal rails, that is, local, state, and national government.¹⁸

Whether American federalism is a marble cake, a picket fence, or reflects some other image, in the 1990s national, state, and local governments definitely are partly separated, partly interrelated.

In defining this relationship, scholars have given special attention to the increased power of the national government through the use of federal grants, regulations, mandates, and preemption. They have described the system as cooperative federalism,¹⁹ permissive federalism,²⁰ regulatory federalism,²¹ cooptive federalism,²² coercive federalism²³. Such terminology fits on a spectrum of

¹⁷ *Op. cit.*

¹⁸ Citation to be added.

¹⁹ Edwin S. Corwin, "The Passing of Dual Federalism," *Virginia Law Review* 36, no. 1 (February 1950); [add other references].

²⁰ Michael D. Reagan and John G. Sanzone, *The New Federalism*. New York: Oxford University Press, 1981.

²¹ Advisory Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact and Reform*. Washington: ACIR, 1984.

²² David B. Walker, "Evaluating Reagan Federalism," *New England Journal of Public Policy* 3 (1987): 22-23.

²³ John Kincaid, "From Cooperative to Coercive Federalism," *The Annals of the American*

what David B. Walker has characterized as a "nation-centered system".²⁴

In contrast, others point out that there is plenty of vitality in state and local governments. They refer to numerous initiatives taken by the states, cities, and counties during the 1980s when the Reagan Administration was turning its back on many grave social problems of the United States. They insist that there's plenty of life left in all arenas of American federalism.²⁵

A Fourth Arena

There is one further perspective on American federalism, first offered by Thomas Jefferson in his retirement. He wrote:

We should thus marshal our government into, 1, the general federal republic, for all concerns foreign and federal; 2, that of the State, for what relates to our citizens exclusively; 3, the county republics for the duties and concerns of the county; and 4, the ward republics, for the small, and yet numerous interesting concerns of the neighborhood;

He advocated this course because he believed that

in government, as well as in every other business of life, it is by division and subdivision of duties alone, that all matters, great and small, can be managed to perfection. And the whole is cemented by giving to every citizen, personally, a part in the administration of the public affairs.²⁶

One hundred fifty years later Jefferson's plea for ward republics was taken up by advocates of neighborhood government.²⁷ This was one of the responses in the 1960s and '70s to the felt need

Academy of Political and Social Science 509 (May 1990): 148-152.

²⁴ David B. Walker "American Federalism from Johnson to Bush," *Publius* 21 (Winter 1991), pp. 105-119.

²⁵ For example, see Daniel J. Elazar, *Exploring Federalism*. Tuscaloosa: University of Alabama Press, 1987.

²⁶ Saul K. Padover, ed., *The Complete Jefferson*. New York: Duell, Sloan & Pearce, 1943. p. 290.

²⁷ Milton Kotler, *Neighborhood Government: The Local Foundations of Political Life*. Indianapolis: Bobbs-Merrill, 1969; Joseph F. Zimmerman, *The Federated City: Community Control*

for greater citizen involvement in public affairs and to a desire to give greater power to residents in inner city neighborhoods. No city created full-fledged neighborhood governments, but many of them set up elected neighborhood councils to provide residents with a greater voice in decisions affecting them.²⁸ Other methods of citizen participation came into widespread usage, as we'll examine in Chapter 10.

Meanwhile, in the suburbs neighborhood government exists in the form of small suburban municipalities with their own elected officials, taxing powers, and administrative operations. Thus, in 1970 12 percent of the metropolitan population of the United States lived in suburban units with fewer than 10,000 inhabitants, essentially neighborhood size. Another 11 percent resided in units in the 10- to 25,000 range, a kind of community district which might have several neighborhoods.²⁹ Thus for nearly one-fourth of the metropolitan population, neighborhood government was a reality. [Update data.]

Along with these small suburban municipalities, numerous metropolitan areas have established areawide agencies, especially in the form of special districts to carry out areawide functions, such as public transit, airports, water supply, regional parks, and other endeavors. This means that there is partly developed, three-arena "local federalism" in many metropolitan areas. Suburban municipalities and neighborhood councils in the central city are the "ward republics", the central city and suburban counties are the middle arena, and metropolitan agencies encompass the entire metropolis.³⁰

This adds to the complexity of American government but also contributes to its vitality. No matter what trends point toward a nation-centered system, states retain their constitutional independence and local governments are politically strong enough to maintain a considerable measure of autonomy. In the future functional assignments may shift, relationships will change, but three-arena federalism (with a partially developed fourth arena, neighborhoods) is likely to endure.

in Large Cities. New York: St.Martin's Press, 1972; Howard W. Hallman, *Neighborhood Government in a Metropolitan Setting*. Beverly Hills, Calif.: Sage Publications, 1974; David Morris and Karl Hess, *Neighborhood Power: The New Localism*. Boston: Beacon Press, 1975.

²⁸ Howard W. Hallman, *The Organization and Operation of Neighborhood Councils: A Practical Guide*. New York: Praeger Publishers, 1977.

²⁹ Howard W. Hallman, *Small and Large Together: Governing the Metropolis*. Beverly Hills, Calif.: Sage Publications, 1977. p. 35/

³⁰ I have developed this idea more completely in *Small and Large Together*, pp. 145-157.

AFFECT ON CONSENT PROCESS

Whatever the trends, the ways Americans give their consent and participate in governance occur within the context of a federal system. Federalism affects consent-giving at the same time that the consent process influences the course of federalism.

Although the state legislatures no longer elect U.S. senators, electors chose by people in each state still formally choose the president, even though they are bound by custom to vote for the winning candidate in their state. Obtaining a electoral college majority shapes presidential campaigns.

States administer election laws, but a series of constitutional amendments and acts of Congress mandate broad eligibility to vote. At the same time states delegate aspects of voter registration and conduct of elections to local government, including election of state and national officials.

Political parties have units in precincts and wards, cities and counties, states, and the nation as a whole, linked together (as we'll consider in greater detail in the next chapter). The majority of delegates to national party conventions are selected by geographic districts.

The career path for numerous politicians has a federal dimension as the move from local to state to national elective positions, and sometimes the other way, such as from Congress to becoming governor. Similarly state political party leaders usually get their start in local politics.

Some interest groups have a national organization with state and local chapters. Others take the form of national federations composed of mostly autonomous local and state organizations.

Associations of local officials act as interest groups in dealing with state and national governments. State officials likewise have associations that deal with federal agencies, Congress, and the president.

Federal laws facilitate organization and operation of advocacy organizations by granting income tax exemption (though with some restrictions on direct lobbying). Federal agencies sometimes directly or indirectly assist formation of advocacy organizations related to their domain.

In later chapters we'll take a close look of how these and other aspects of the consent process have a federal dimension.

August 10, 1993

Chapter 3. American Federalism

After the Second Continental Congress adopted the Declaration of Independence on July 4, 1776, it appointed a committee to design a national seal which would serve as a symbol of national unity. And what a committee! Its members were Benjamin Franklin, the most renowned American of his day, and two future presidents, John Adams and Thomas Jefferson. As a national motto for the Great Seal, they chose a Latin phrase, "E Pluribus Unum." "Out of many, one."

This was easier said than done. It was one thing to unite against an oppressive British government but another to devise a scheme of government of their own to handle common concerns. The founders knew they needed some kind of unified "continental" (that is, national) government, but they also wanted to retain the separate colonies, now become independent states. How could they have "one" and "many" at the same time?

The answer was American federalism. The founders didn't arrive at this solution on their first try, but they were successful in their second attempt. They produced a workable combination of states and a national government which later generations have shaped to meet their own needs. During the past 60 years in particular American federalism has taken on new dynamics. Consent of the governed today, as in the founding period, takes place within the context of the federal system.

FORMATION OF THE UNION

Confederation

After Independence, as we noted in the previous chapter, the Continental Congress developed "Articles of Confederation and perpetual Union" between the 13 states. They called this confederacy the "United States of America." But Article II revealed an intent of the states to keep tight control over the confederation, stipulating:

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction and right, which is not by this

confederation expressly delegated to the United States, in Congress assembled.

Article III spoke of "a firm league of friendship", a kind of treaty between sovereign states.

The state legislatures ratified the Articles, then appointed delegates to Congress, and could recall them. Lacking authority for direct taxation, Congress had to rely upon funds supplied by the states. Assent by delegates from at least nine states was required for important matters. The Articles could not be altered unless agreed to by Congress and "afterwards confirmed by the legislatures of every state." Such was the dominance of the states in the Confederation.

In spite of restrictions placed upon it, the Congress of the Confederation put in place some of the foundation stones for a national government. The Articles contained no provision for a chief executive officer, but Congress appointed a secretary of war, a secretary for foreign affairs, and a superintendent of finance, until replacing him with a

three-man board of treasury.¹ This was the beginning of national administrative departments.

Congress settled the irksome dispute among the states over western land by taking jurisdiction over territory claimed by several states between the Appalachian Mountains and the Mississippi River. Through several legislative acts, most notably the Northwest Ordinance of 1787, Congress provided a means for establishing "republican" government in frontier territory and admitting new states to the union on equal footing with the original states. In this manner Congress took control of national expansion.

Congress, however, lacked sufficient authority to deal effectively with commercial matters in which interstate cooperation was badly needed. In the search for remedies, the Virginia Assembly invited the other state legislatures to send representatives to a special meeting in Annapolis.

Commissioners from only five states showed up in September 1786: New

¹ Rossiter, 1787: *The Grand Convention*. p. 42.

York, New Jersey, Pennsylvania, Delaware, and Virginia. Four other states appointed representatives, but they never appeared. The Annapolis Convention didn't solve the trade problem, but it did call for another meeting of state delegates for an even broader agenda. They would meet in Philadelphia on "the second Monday in May next" for the purpose of devising provisions "necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."²

By early 1787 seven states had appointed delegates. On February 21 Congress gave its blessing to such a convention "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions."³

As it turned out, this was the death knell of the Confederation, for the Convention would write a brand new Constitution for the United States of

² "Proceedings of the State Commissioners at Annapolis, Maryland, September 11-14, 1786" in *The Origins of the American Constitution: A Documentary History*, edited by Michael Kammen. New York: Penguin Books, 1986. p. 22.

America. The league of sovereign states would be replaced by a federal system of government.

Federal Union

Delegations to the Constitutional Convention were appointed by the states. All but a couple of the 55 delegates had served as public officials of colony or state, and more than 40 were currently active in state affairs. Forty-two had served in Congress, and ten of them were currently members.⁴ They knew first hand the weaknesses of the Confederation and were quite willing to go beyond their limited instructions to develop amendments for the Articles.

The new Constitution established a national government with substantial enumerated powers, including authority for direct taxation without going through the states. The Constitution, along with laws and treaties made under its authority, would be the supreme law of the land.

³ *Journals of the Continental Congress.* Vol. ?, p. 74.

At the same time the states remained in place with their own independent authority.

Although the original method for selecting U.S. senators and the president provided a role for state legislatures (see Chapter 2), the states and the federal government (as the framers called it) were mostly separate and co-equal. In this manner American federalism was born.

This new approach was signaled by the Preamble and the method of ratification. Although Anti-Federalists, such as Patrick Henry of Virginia, thought the framers were presumptuous in beginning the Preamble with "We the people of the United States",⁵ it signified that the Constitution derived its authority directly from the citizenry without going through state legislatures. Ratification by special state conventions of delegates elected specifically for this purpose provided a kind of popular referendum on the new Constitution. Consent of the governed occurred in adoption of the

⁴ Rossiter, pp. 124-5, 236.

basic law of the land.

This process made it possible for James Madison during the ratification debate to offer a superb explanation of American federalism. In *The Federalist No. 46*, he wrote:

The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes.⁶

The people are one. They choose to have two different agents to serve their bidding: a national government and a collection of states. Each has its own assignment. Each derives its authority directly from the people, from the consent of the governed.

Under this arrangement an individual is simultaneously a citizen of the United States and a citizen of one of the states. Citizens elect governing officials for each and abide by laws enacted by the U.S. Congress and the state legislatures.

⁵ Herbert J. Storing, *What the Anti-Federalists Were For*, p. 12.

LATER PERSPECTIVES

This twofold division of responsibility basically characterized American federalism in its first one hundred years. This was noted in two celebrated studies by European visitors to the United States in the fifth and tenth decades of the Union.

In the 1830s the Frenchman Alexis de Tocqueville in *Democracy in America* noted that:

there are two distinct social structures connected and, as it were, encased within the other; one finds two completely separate and almost independent governments; the one is the ordinary and undefined government which provides for the daily needs of society, while the other is exceptional and circumscribed and only concerned with certain general interests. In a word, there are twenty-four little sovereign nations who together form the United States.⁷

Slightly over 50 years later British Lord James Bryce in *The American Commonwealth* made similar observations:

The authority of the National government over the citizens of every

⁶ James Madison, *The Federalist No. 46*, pp. 304-5.

⁷ Alexis de Tocqueville, *Democracy in America*. Translated by George Lawrence. New York: Harper & Row, 1969. (First published in 1835.) p. 61.

State is direct and immediate, not exerted through the State organization, and not requiring the co-operation of the State government....

On the other hand, the State in no wise depends on the National government for its organization or its effective working. It is the creation of its own inhabitants. They have given it its constitution. They administer its government. It goes on its own, touching the national government at but few points....

All authority flows from the people. The people have given part of their supreme authority to the Central, part to the State governments....⁸

AMERICAN FEDERALISM TODAY

Nowadays, another one hundred years later, a foreign observer would discover much more complexity in American federalism. This is due to several important factors.

Growth of the Nation

In 1789 the United States of America had 13 member states and

⁸ James Bryce, *The American Commonwealth*. 2nd edition revised. London: Macmillan

claimed all the land from the Atlantic Ocean to the Mississippi River, south of Canada and north of Florida. The Congress of the Confederation in 1787 had organized the Northwest Territory, northwest of the Ohio River, and provided a process for admitting three to five states from this territory. The new Constitution gave the successor Congress of the United States authority to admit new states. By 1820 Congress had admitted ten, completely encompassing all territory claimed in 1789.

Between 1803 and 1854 the United States gained control of the remaining territory between present-day Canada and Mexico -- by purchase from European powers, by annexation at request of new settlers, and by conquest. Because First Settlers were already occupying much of this territory, the U.S. government entered into treaties with them to assure their rights to certain land or to relocate them to reserved land.

The United States, however, repeatedly broke these treaties and continued

and Co., 1891. pp. 312, 313.

to remove First Settlers from where they once lived.

Creating new states. Following the pattern established by the Northwest Ordinance of 1787, Congress divided newly acquired lands into territories and provided for appointment of a territorial governor and election of a territorial legislature by the Second Settlers. When a territory gained a sizable population of Second Settlers, it could become a state with its own constitution and government. Altogether 48 states formed between the Atlantic and Pacific Oceans, and the last was admitted to the Union in 1912. In 1959 two non-contiguous territories became states: Alaska (purchased from Russia in 1867) and Hawaii (annexed in 1898 after American interests had overthrown a native government five years earlier), bringing the total to 50.

Map 3-1. The Fifty States of the United States of America

[Map of the 50 states.]

The District of Columbia, the site of the nation's capitol, has unique status. It occupies land ceded by the State of Maryland, is partly under the jurisdiction of Congress, but has a home rule charter and its own elected government. Citizens of the District vote in presidential elections and elect a delegate to the U.S. House of Representatives, where she or he has limited voting rights.

Outlying territories.⁹ There are also island territories having a political association with the United States: Puerto Rico and Guam, won from Spain in a war of 1898; American Samoa, obtained from Germany and Great Britain in 1899; the Virgin Islands, purchased from Denmark in 1917; and the Northern Mariana Islands, formerly a United Nations trusteeship administered by the United States and transformed to political union in 1976. Puerto Rico and the Northern Mariana Islands are self-governing commonwealths, and the other three function as

⁹ *Political Handbook of the World: 1992.* Arthur S. Banks, editor. Binghamton, New York:

unincorporated territories.

All have popularly elected governors and legislatures. The legislatures are bicameral in Puerto Rico, the Mariana Islands, and American Samoa (where clan chiefs and subchiefs choose members of the Senate) and are unicameral in Guam and the Virgin Islands. Except American Samoa the indigenous inhabitants of these commonwealths and territories are considered to be U.S. citizens but may not vote in presidential elections. American Samoa, Guam, Puerto Rico, and the Virgin Islands each sends a delegate with limited voting rights to the U.S. House of Representatives.

The United States also exercises control of other Pacific islands for military purposes and administers them through the Department of Defense. During the 1970s and '80s the United States mostly terminated its trusteeships of several other island groupings in the South Pacific but retained its defense interests.

Emergence of Local Government

As the United States has expanded in territory and population, local government has emerged as a third major arena of the American federal system, along with the states and the national government. By the latest count there are 83,184 units of local government in the United States.

Almost half of them are general-purpose governments while the remainder carry out more specialized activities.¹⁰ General-purpose units consist of 3,042 counties, 15,691 townships (mostly rural but some suburban), and 19,200 municipalities.

Variety. The pattern of local general government in the original 13 colonies exerted a strong influence on the new states as they joined the Union. New England in the northeast was divided into units called towns, which tended to have a village near the center surrounded by farms and forests. They also had counties with limited assignments. The other

¹⁰ U.S. Department of Commerce, Bureau of the Census, *1987 Census of Governments*.

colonies formed counties with greater responsibilities, and the Mid-Atlantic states also had townships but with lesser powers than the New England towns. Cities formed with charters from the King of England or the proprietors, and after independence they functioned by authority of the state legislatures.

As new states came into the Union, they divided all of their land into counties. North Central states tended to follow the Mid-Atlantic pattern and further divided each county into townships, but new states in the South and West didn't create townships. State legislatures adopted laws allowing municipalities to incorporate. Counties built their courthouse in a centrally located municipality, which became the "county seat". Because each state wrote its own statutes, the details of local governmental organization and authority vary considerably around the nation.

In colonial times New Englanders established public schools. During the 19th century other states set up public schools until they spread throughout the country. In 1987 there were 16,213 public school systems in the United States, and 14,721 of them (90.8 percent) were administratively and fiscally independent of any other government. — percent of these independent school districts had popularly elected school boards. Of the 1,492 school systems that were part of some other government, such as city, county, township, — had popularly elected boards.¹¹

Other special districts have formed separate from state and local general government for a wide variety of purposes: fire protection, cemeteries, water supply, sewerage, drainage and flood control, soil conservation, housing and community development, parks and recreation,

¹¹ 1987 Census of Governments. Vol. 1., No. 1. Government Organization. p. xiii.

libraries, hospitals, highways, bridges, airports, and other functions.¹²

Most of the 29,532 special districts in existence in 1987 were under boards appointed by mayors, county commissioners, and governors, but ___ percent had elected boards.

In addition, there are 278 federal Indian reservations (some of them known locally as pueblos, rancherias, and communities). In 1990 about one-half the 1,959,000 population of American Indians and Alaska Natives (Eskimos and Aleuts) living in the United States resided on or adjacent to these reservations. They formed 510 federally recognized tribes, including 200 village groups in Alaska. On each reservation the tribal government is the local governing authority. The federal Bureau of Indian Affairs deals directly with these tribal governments. States in which reservations are located have quite limited power over them.¹³

The Commonwealth of Puerto Rico has 78 municipalities with

¹² *Op. cit.*, p. x.

popularly elected officials, the Commonwealth of the Northern Mariana Islands has four, and Guam has 19. American Samoa has four districts, administered by appointed officials, and the Virgin Islands has three, one for each island.¹⁴

Legal status. In the 50 states legally cities, boroughs, towns, townships, counties, school districts, and other special districts derive their powers from state government, but politically they operate with considerable autonomy. Citizens vote directly for their own local elected officials and think of them as their own agents. In many states, municipalities have wrested home rule authority from their state legislatures and have written their own charters. So have many heavily populated counties, especially in metropolitan areas.

Local governmental units are involved in numerous intergovernmental

¹³ Primary source of information for this section is U.S. Department of the Interior, Bureau of Indian Affairs, *American Indians Today*. Third edition, 1991.

¹⁴ Information provided by the U.S. Bureau of the Census and derived from *Political Handbook of the World: 1992*.

relationships: with one another in metropolitan areas, with their state, with the national government. Local elected officials have formed associations to work in behalf of local interests in state politics and on the national scene. They deal directly with the president, Congress, and federal agencies without going through the states.

Therefore, from a political viewpoint and in practical workings, local governments have become a third set of "agents and trustees of the people" in American federalism, constituted with powers designed to fulfill local purposes.

Growth of National Government

When the framers of the U.S. Constitution assigned certain powers of the national government while leaving many tasks for the states to perform, James Madison asserted that it seems "beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States." Therefore, they will prefer that the states handle

the greater share of governmental responsibility. But, he noted, if "the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration."¹⁵

As it turned out, the American people over the years have probably felt a more natural attachment to local government than to the states. But they have also turned to the national government to undertake more and more tasks. This has occurred not particularly because of better federal administration but rather because territorial expansion across a whole continent and the growth of the American economy in the 19th century created problems and demands requiring national action. This was followed by the emergence of the United States as a world power in the 20th century with responsibilities which only the national government could fulfill.

¹⁵ James Madison, *The Federalist No. 46*. pp. 305-6.

As a means of responding to common needs, the national government commenced a system of financial grants-in-aid, first to the states and then directly to localities. To counter the vastly expanded economic power of large business corporations, Congress enacted anti-trust laws and other regulatory legislation. When the economy crashed in 1929 and the Great Depression stretched over months and years, the national government alone had the capacity to instigate measures to restore economic well-being to the nation. Accordingly, President Franklin Roosevelt's New Deal initiated an extensive array of federal programs, funded in Washington but most of them carried out by state and local governments. Since then federal grants and mandates have grown enormously under a succession of presidents and congressional initiatives.

Situation Now

Because of these trends the national government and the 50 state governments are far from separated, as Lord Bryce found them a century

ago. Rather they touch one another at many points, and local government, too. These three arenas of government in the United States are entwined in intricate patterns of relationships.

All authority continues to flow from the people, who possess multiple citizenship in the local, state, and national arenas. Voters directly elect the public officials who govern in each arena: president, governors, mayors, county executives, members of Congress and state legislatures, city and county councilors, school board members, and many more. Thereafter citizens interact continuously with these elected officials and their appointees directly without going through a chain of command in a hierarchy of governments. Nevertheless, some aspects of the consent process involve local-state-national relationships, as we'll see in later chapters.

Images of Federalism

A greater variety of metaphors and conceptions are used to describe

federalism than any other aspect of American Government.

By the middle of the 20th century the era of dual federalism was over, for the states and national government were involved in a variety of cooperative relationships.¹⁶ Moreover, the importance of local government as a major participant in American federalism was widely recognized. So it had become commonplace to speak of three-level federalism in the United States, sometimes described as a three-tiered layer cake. But Joseph E. McLean called it a marble cake to depict the way in which national, state, and local ingredients blend with one another.¹⁷

Morton Grodzins agreed with the observation that operationally the federal system in the United States is "a marble cake, or what the British call a rainbow cake." He noted:

No important activity of government in the United States is the exclusive province of one of the levels, not even what may regarded

¹⁶ Edwin S. Corwin, "The Passing of Dual Federalism," *Virginia Law Review* 36, no. 1 (February 1950)

¹⁷ Quoted by David Walker in *Toward a Functioning Federalism* (Cambridge, Mass.: Winthrop Publishers, 1981) p. 67.

as the most national of national functions, such as foreign relations; not even the most local of local functions, such as police protection and park maintenance.¹⁸

This is a long ways from de Tocqueville's "two distinct social structures".

Reflecting the change occurring in this century, Grodzins elaborated:

If you ask the question, "Who does what?" the answer is in two parts. One is that officials of all "levels" do everything together. The second is that where one level is preponderant in a given activity, the other makes its influence felt *politically* (here the voice of the peripheral power units are heard most strongly) or through *money* (here the central view is most influential) or through *professional associations*.¹⁹

Instead of speaking of "levels" Luther Gulick identified three major "extensions" of government. The American scheme of government, he noted, "is made up of partially autonomous governmental structures differing primarily with respect to the *extent* of the constituencies and boundaries on which they rest." The three extensions are "comprehensive"

¹⁸ Morton Grodzins, *The American System*. Chicago: Rand McNalley, 1966. p. 8.

¹⁹ *Op. cit.*

(national), "intermediate" (the states), and "limited, local extension."²⁰

Daniel Elazar rejected altogether the hierarchical notion of levels, maintaining that "there are no higher or lower power centers, only larger or small arenas of political decision-making and action." Each of these, he insisted, exists in its own right. and is not part of a hierarchy of national-state-local. He argued that American federalism is a noncentralized political system where "power is so diffused that it cannot be legitimately centralized or concentrated without breaking the structure and spirit of the constitution."²¹

Some observers have noted that mutual activities within American federalism tend to be segmented along functional lines. For instance, local street departments relate to the state highway department which in turn relates to the federal highway agency. And many other examples. Terry

²⁰ Luther Gulick, *The Metropolitan Problem and American ideas*. New York: Alfred A. Knopf, 1962. pp. 30-31.

²¹ Daniel J. Elazar, "Urbanism and Federalism: Twin Revolutions of the Modern Era" in *Publius* (Winter 1975), Vol. 5, No. 2. pp. 23-25.

Sanford, based upon his experience as governor of North Carolina in the 1960s, called this "picket-fence" federalism.²² Each picket is a function erected vertically, connected with cross slates (that is, local, state, and national government) which hold the pickets in line but don't bring them together. Fifteen years later David Walker modified this metaphor to "bamboo-fence" federalism to emphasize softer material, an elaborate horizontal wiring system, and greater capacity to bend to prevailing winds.²³

Walker was writing after the explosion of President Lyndon Johnson's Great Society programs, especially featuring grants to state and local government with accompanying regulations. This thrust was modified but not fundamentally altered by the Nixon and Carter Administrations. Observing this concoction in the early 1980s, Aaron Wildavsky returned to the bakery and called it "fruitcake" federalism, a congealed mass with lots

²² Terry Sanford, *Storm over the States*. New York: McGraw-Hill Book Co., 1967. p. 80.

²³ Walker, p. 128.

of "plums to be had for the picking."²⁴

Whether American federalism is a marble cake, fruitcake, a bamboo fence, or reflects some other image, in the 1990s national, state, and local governments definitely are partly separated, partly interrelated.

In defining this relationship, scholars have given special attention to the increased power of the national government through the use of federal grants, regulations, mandates, and preemption. They have described the system as cooperative federalism,²⁵ permissive federalism,²⁶ pragmatic federalism,²⁷ regulatory federalism,²⁸ cooptive federalism,²⁹ competitive

²⁴ Aaron Wildavsky, "Birthday Cake Federalism: in Robert B. Hawkins and Lamar Alexander, editors, *American Federalism: A New Partnership for the Republic*. San Francisco: Institute for Contemporary Studies, 1982. p. 182.

²⁵ Grodzins, *The American System* (1966); Elazar, *American Federalism: A View from the States*. Second edition. New York: Thomas Y. Crowell Company, 1972.

²⁶ Michael D. Reagan and John G. Sanzone, *The New Federalism*. New York: Oxford University Press, 1981.

²⁷ Parris N. Glendening, *Pragmatic Federalism: An Intergovernmental View of American Government*. Pacific Palisades, Calif.: Palisades Publishers, 1984.

²⁸ Advisory Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact and Reform*. Washington: ACIR, 1984.

²⁹ David B. Walker, "Evaluating Reagan Federalism," *New England Journal of Public Policy* 3 (1987): 22-23.

federalism,³⁰ and coercive federalism³¹. Much of this terminology fits into what Walker claims to be a "nation-centered system".³²

In contrast, others point out that there is abundant vitality in state and local governments. They refer to numerous initiatives taken by the states, cities, and counties during the 1980s when the Reagan Administration was turning its back on many grave social problems of the United States. They insist that there's plenty of life left in all arenas of American federalism.³³

AFFECT ON CONSENT PROCESS

Whatever the trends, the ways Americans give their consent and participate in governance occur within the context of the federal system.

³⁰ Thomas R. Dye, *American Federalism: Competition among Governments*. Lexington, Mass.: Lexington Books, 1990.

³¹ John Kincaid, "From Cooperative to Coercive Federalism," *The Annals of the American Academy of Political and Social Science* 509 (May 1990): 148-152.

³² David B. Walker "American Federalism from Johnson to Bush," *Publius* 21 (Winter 1991), pp. 105-119.

³³ For example, Richard P. Nathan, Fred C. Doolittle, and Associates, *Reagan and the States*. Princeton: Princeton University Press, 1987; Marshall Kaplan and Sue O'Brien, *The Governors and the New Federalism*. Boulder, Colo.: Westview Press, 1991. [A reference to local initiatives to be added.]

Federalism affects consent-giving at the same time that the consent process influences the course of federalism.

Although the state legislatures no longer elect U.S. senators, electors chosen by people in each state still formally choose the president, even though they are bound by custom to vote for the winning candidate in their state. Obtaining a electoral college majority shapes presidential campaigns.

States administer election laws, but a series of constitutional amendments and acts of Congress mandate broad eligibility to vote. At the same time states delegate aspects of voter registration and conduct of elections to local government, including election of state and national officials.

Political parties have units in precincts and wards, cities and counties, states, and the nation as a whole, interrelated and federated but with considerable state and local autonomy (as we'll consider in greater detail in the next chapter). The majority of delegates to national party conventions

are selected by geographic districts.

The career path for numerous politicians has a federal dimension as they move from local to state to national elective positions, and sometimes the other way, such as from Congress to becoming governor. Similarly state political party leaders usually get their start in local politics.

Some interest groups have centralized national organization with state and local chapters. Others take the form of national federations composed of mostly autonomous local and state organizations.

Associations of local officials act as interest groups in dealing with state and national governments. State officials likewise have associations that deal with federal agencies, Congress, and the president.

Federal laws facilitate organization and operation of advocacy organizations by granting income tax exemption (though with some restrictions on direct lobbying). Federal agencies sometimes directly or indirectly assist formation of advocacy organizations related to their

domain.

In sum, we cannot fully comprehend the consent process of American democracy unless we grasp its relationship to the federal system of government.³⁴ This will become more apparent in later chapters.

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³⁴ For a global perspective on federalism, see Daniel J. Elazar, *Exploring Federalism*. Tuscaloosa: University of Alabama Press, 1987.

Chapter 3. Political Parties and Interest Groups

When Alexis de Tocqueville toured the country in the 1830s to study democracy in America, he came to realize the importance of associations in American life. He reported:

Better use has been made of associations and this powerful instrument of action has been applied to more varied aims in America than anywhere else in the world.¹

Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types -- religious, moral, serious, futile, very general and very limited, immensely large and very minute.²

For de Tocqueville the spectrum of associations ranged from business corporations to grassroots groups, that is, to virtually every nongovernmental organization.

ASSOCIATIONS IN AMERICA

By the time of de Tocqueville's visit it was an old story in America. The European colonizers came as private organizations with charters from their monarch rather than as government-run expeditions. Joint-stock trading companies, for example, were responsible for establishing Jamestown (1607), Plymouth (1620), New Amsterdam (1625) -- later renamed New York, Boston (1630), and New Sweden on the Delaware River (1638). As Second Settlers moved from original settlements and founded new towns, they sometimes functioned as an association before they could organize a government.

The colonists used associations to meet common needs. In the southern and middle colonies religious groups and other private organizations opened schools, though in New England early on this became a governmental responsibility. Private colleges formed, and by the time of independence nine were functioning. Benjamin Franklin organized the first voluntary fire brigade in Philadelphia in 1739, and people in other cities duplicated this approach. Charitable work was handled by private associations.

¹ Alexis de Tocqueville, *Democracy in America*. Translated by George Lawrence. New York: Harper & Row, Perennial Library, 1988. (First published in 1835). p. 61.

² *Ibid.*, p. 513.

As the break with Great Britain approached in the 1770s, the first Continental Congress set up the Continental Association to carry out a colony-wide boycott of British goods. Towns and colonial assemblies organized Committees of Correspondence as a means of communicating with one another. They were colonial examples of quasi-public, quasi-private operations that have been repeated in a variety of ways.

In the 19th century numerous associations formed for a multiplicity of purposes. One set helped immigrants integrate into American society. Thus, by the 1840s Jewish communities in East Coast cities were forming literary and educational associations and then broader-purpose community centers.³ Other ethnic groups did likewise. The first settlement house opened in New York in 1886 and the second one in Chicago in 1889.⁴ Numerous fraternal organizations formed, such as Masons, Odd Fellows, Elks, Shriners, Catholic Knights, Independent Order of Vikings, and many more. Although they focused mostly on ritual ceremony and personal fellowship, members gained practical experience in democratic processes through election of their officers and conduct of meetings.⁵

As we approach the end of the 20th century, associations remain a prominent feature of American life. Business corporations dominate the economy. Nonprofit corporations run universities and hospitals and provide diverse services. Thousands of national associations promote the concerns of numerous trades, professions, and other interests. And every locality in America has a wide variety of citizen associations engaging in a multitude of activities. If a new challenge arises that an existing organization cannot handle, Americans are as likely as not to form a new association.

Of all the associations in the United States, two varieties have particular significance for achieving the consent of the governed: political parties and interest groups. As a pair of powerful instruments of democracy, they deserve a closer look.

POLITICAL PARTIES⁶

³ H. Millman, "Jewish Community Centers," *American Jewish Yearbook*, Vol. 61. New York: American Jewish Committee, 1960. p. 92

⁴ Sidney Dillick, *Community Organization for Neighborhood Development: Past and Present*. New York: Woman's Press and William Morrow & Co., 1953. pp. 34-35.

⁵ ?? Schmidt, *Fraternal Organizations*. p. 16.

⁶ Sources used in writing this section include [to be completed]. However, my conclusions differ in some respects.

Origin

Not surprisingly British influence is noticeable in the origin of American political parties.

In Great Britain political division between Tories and Whigs appeared one hundred years before the American Revolution. In the 1700s both social orientation and policy differences separated Tories and Whigs in British political life. "In general," A. James Reichley has written, "Tories stood for the older view of a hierarchically organized feudal society and an established church, while Whigs gave more rein to the social and political individualism that was associated with growing economic enterprise and the philosophy of John Locke. Both parties, however, remained distinctly aristocratic in their outlook."⁷ They lacked formal party organizations and in the House of Commons functioned mainly through loose coalitions.

Britain's North American colonies mirrored this division in the 1760s when the struggle for greater colonial freedom came to the fore. Supporters of the British crown were known as Tories and opponents as Whigs. After American independence discredited the Tories, other divisions arose, particularly on issues of property rights and debt collection. Blocs formed in the new state legislatures, and in a few states and localities embryonic political parties took shape.

The ratification debate over the new U.S. Constitution in 1787 and '88 pitted Federalists, who favored a strengthened national government and full protection of property rights, against Anti-Federalists, who opposed centralization of authority and wanted strong protection for human rights. In the national debate Federalists were better organized and more articulate (especially with the famous essays), and they gained the majority of delegates in the state ratifying conventions. At that time, however, there wasn't a formal Federalist Party, and the Anti-Federalists were even less cohesive.

George Washington, the first president under the new Constitution, didn't want political parties to form, and most other prominent founders agreed, including Vice President John Adams. Nevertheless, before Washington's first term was over, political parties were functioning. Within Washington's own cabinet Secretary of the Treasury Alexander Hamilton and Secretary of State Thomas Jefferson engaged in vigorous policy disputes. As a leading Federalist, Hamilton favored a strong national government supportive of manufacturing and commerce while Jefferson preferred greater dispersion of power in a predominantly agrarian economy. A clash of personalities was also a factor.

⁷ A. James Reichley, *The Life of the Parties: A History of American Political Parties*. New York: Free Press, 1992. p. 20. Other parts of this section draw upon Reichley's book.

In the First Congress, 18 of the 24 senators and 37 of the 65 representatives identified with the Federalists, so Hamilton's program carried.⁸ However, the opposition gained in the second congressional election, and in the House of Representatives James Madison led a strengthened minority bloc. Within the 13 states similar divisions became apparent and began to be represented in political organizations.

In the 1792 presidential election, the opposition coalition, in part derived from an Anti-Federalist base but beginning to be known as Republicans, supported George Clinton of New York to replace John Adams as vice president. Adams won 77 of the 132 electoral votes, but Clinton had 50. The contest revealed strong Republican units in several states. Four years later Federalists supported John Adams to succeed George Washington as president, and Republicans backed Thomas Jefferson. Neither campaigned personally, but their supporters did. When the electors voted, Adams won 71 to become president, and Jefferson with 68 became vice president. When the contest was repeated in 1800, Jefferson was victorious. By then the Republican Party was well organized in most of the states and within the Congress. The Federalist Party was in decline, but the pattern of two competing parties was well established in presidential elections, within Congress, and in the states.

Political Parties Today

Much has happened in the with American political parties since 1800. Jefferson's party acquired the name Democratic-Republican, later dropped "Republican", and has continued as one of two major parties. The Federalist Party disappeared. A Whig Party emerged as the major second party, but split apart on the slavery issue. A new Republican Party organized in 1854 and since then has served as the other major party. Smaller parties have formed, contested elections, lingered for many years, or passed out of existence. Some of them have elected governors and won seats in Congress and state legislatures, but none has won the presidency or a majority in either house of Congress. Two-party dominance has prevailed.

In 1992 [update for 1993, later for 1994 if possible] all but one of the 535 members of Congress were affiliated with the Democratic or the Republican party. All but 10 of the 7,412 state legislators chosen in partisan elections belonged to the two major parties (this excludes the 49 members of Nebraska's unicameral, nonpartisan legislature). Forty-eight of the 50 governors were either a Democrat or a Republican. There were ___ city council members elected in partisan elections, and virtually all of them were Democrats or Republicans. More than 80 percent of the counties hold partisan elections for their governing body, and most winners came from the two major parties.

⁸ Reichley, p. 38

The Democratic Party and the Republican Party are highly pluralistic endeavors. They are composed of numerous clusters of person who share a common political identity. People in these clusters come together to contest elections and to govern. Neither party is a cohesive monolith with a unified, top-down hierarchy. Rather each of them is composed of mostly autonomous local and state units which join together in a loose-knit, national federation. In this manner they reflect the diversity and non-hierarchical nature of the American federal system in which they function.

Membership. Neither party has formal membership requiring strict creedal adherence or payment of dues. The closest you come to joining is by stating your party preference in voter registration or at the primary polling place, and at that in only three-fourths of the states. Mainly it is a matter of personal identity.

Democrats and Republicans range from persons who merely identify with the party label but do little to support the party to those who hold party jobs and run for public office on the party ticket. At the core are party stalwarts, strong Democrats and strong Republicans, who usually vote the straight ticket. At the outer edge are weak Democrats and weak Republicans who are willing to split their ticket and vote for candidates from another party or independent candidates.

Precincts. The operational base for American political parties is the approximately 175,000 local voting districts, often called "precincts", sometimes "divisions" or some other name. Each has a precinct leader (or a similar title). Depending upon the state, they are chosen by party members voting in the primary or general election, by party caucus, or through appointment by a city or county party official.

Precinct leaders recruit and direct the activities of block workers and other volunteers. They reach out to voters in their precinct, distribute campaign literature, collect funds, and get out the vote. In some cities precinct leaders come together in ward committees. In many states they play a role in selecting members of city, county, and state party committees and in choosing convention delegations.

Local committees. Local party committees are built upon the precinct foundation. The Democratic and Republican parties have committees in virtually all of the 3,042 counties in the United States and in a large number of cities, New England towns, and township with strong governmental powers. They usually operate under rules specified by the state central committee or state law, but in their operations they are basically autonomous.

Typically county and city committees are composed of all precinct leaders. They elect the chairperson, who directs local party activities and may represent the county on the state committee. Thus, a county chairperson is an important figure in party politics.

In some places for the primary election local party leaders offer a slate of candidates for local and state, sometimes even for Congress. A more common pattern nowadays is to let candidates compete and then support the winners in the general election.

Local committees are free to take positions on public issues on their own. They cannot be forced to follow a party line issued by the state committee or national committee, but more often than not they are loyal to these broader entities. If local party officials don't like the candidates offered by their party's state or national unit, they usually sit on their hands rather than oppose them outright.

Where a state legislative district or a congressional district encompasses more than one local governmental jurisdiction, local party committees come together in the nominating process. In some states they hold nominating conventions to select the party's candidate. In other states the candidate is chosen in a primary election, and the aggregate of local committees supports her or him in the general election.

State committees. Because each state may establish its own political party structure, state party committees vary greatly around the United States. They range in size from fairly small to quite large. Most commonly state committee members are elected in the primary election or by local party conventions, but in some states county chairpersons form the state committee. The committee formally elects the state chairperson, but in many instances the governor or the last gubernatorial candidate determines who it will be.

Many state committees play a prominent role in selection of party nominees for state office: governor, lieutenant governor, attorney general, and other elected executive officers. In yesteryears party leaders in a number of states decided their party's nominee and got it ratified by the state convention or in the party primary election. This happens less frequently now because candidates usually come forth as self-starters, but sometimes party leaders have a hand in recruiting who they think will be a strong candidate and then issue an endorsement. In several states the state committee is responsible for organizing and conducting a nominating convention for state offices.

Like local committees, state party committees are autonomous and are not directed what to do by the national committee. However, during the past 20 years many state committees have received technical assistance and financial contributions from their national committee. They in turn have offered assistance to local party committees, such as computerized lists of registered voters, training for candidates, and sometimes financial donations.

National committee. The national committees of the Democratic and Republican parties are composed of representatives of the state committees, usually one man and one woman plus other members reflective of the party's policy orientation and electoral base. Usually the party's

presidential nominee selects the national chairperson.

The central task of the national committee is to organize and run the quadrennial national convention to nominate the party's candidate for president. As an extension of this responsibility, the national committee establishes rules for selection of delegates from the states, such as when state primaries may be held and the gender composition of delegates. Court rulings have affirmed the right of the national committee to adopt binding requirements that state party organizations must observe even if it means changing state laws. (More on the nominating process in Chapter 6.)

The national convention selects the party's nominee for president and vice president and adopts a party platform. The platform, though, is not legally binding on the party's presidential and vice-presidential candidates, on the party's representatives in Congress, or on state and local party committees. Nor can the national committee tell party members in Congress what legislation to enact.

Although national party committees cannot command state and local committees, they get involved in state and local party affairs by making financial contributions to candidates, offering technical assistance and training to party officials and candidates, and in some instances helping to obtain a strong candidate to run for an open seat in Congress or against an incumbent of the other party.

Legislative units. Political parties form the basis for organizing the U.S. Congress, the state legislatures except Nebraska which has a nonpartisan unicameral body, and many city and county councils. This occurs as persons from the same political party join together to choose legislative officers and work out a party agenda, both for the majority and the minority. In bicameral bodies this is done separately in each house.

Ordinarily the majority party chooses the presiding officer, except where the vice president or lieutenant governor presides over the senate. The majority also controls the flow of legislation. Committee chairs may be chosen by the legislative committees themselves with the majority party prevailing, by the party caucus, or by the party's elected leader (speaker of the house, majority leader of the senate, chair of city or county council). The minority blocs serves as a vocal opposition.

By and large the legislative party is independent of the national, state, or local party committee and the elected chief executive, even if the latter is from the same party. Although they have the same party identity, these different units function as co-equals. Exceptions occur in localities and states with a tight party structure, sometimes referred to as a political machine. In such cases the political boss or a small oligarchy of leaders instructs legislators how to vote on particular bills.

Party units in Congress and many state legislatures form campaign committees to raise funds to support colleagues facing close contests for reelection and to help candidates from their party seeking to win open seats or defeat incumbents of the other party. Members of Congress have four such committees: Democratic and Republican for each house.

Chief executive. It is customary for the president of the United States to be the dominant person in his (someday her) party. He chooses the national party chairperson, and the national committee works under guidance, sometimes tight control, of the White House. But even if the president is nominal party leader, he still must deal collegially with members of his party in Congress. He is likely to have separate sets of relationships with leaders of his or her party in the Senate and the House of Representatives. Often this relationship is cooperative but at other times it can be prickly. When the president is of one party and Congress (or at least one its houses) is of the opposite party, party division is an important factor in executive-congressional relationships.

A similar pattern prevails in many states and in local governmental units with partisan elections. The governor, mayor, and county executive may dominate the party machinery, but party members in the state legislature, city and county council act independently. In some states, however, party organization is cohesive enough (perhaps descendent of an old-time machine) that the governor can play a more dominant role over the legislature. And in some localities the mayor or county executive can assert similar control. This happens most frequently where the chief executive has control of a sizable number of jobs and can use patronage as an instrument of dominance.

Summation. Thus, the two major American political parties are multi-nuclear in their organization and operations. They are more pragmatic than ideological. However, they generally display sufficient difference between them to offer a choice to American voters. From time to time smaller parties function with purer ideology or focus upon particular issues. And from time to time, independent candidates run for office.

In American democracy political parties are important instruments in achieving the consent of the governed. They make their greatest contribution in the electoral process, but they also provide a framework for formulating governmental policies and carrying out governmental operations. In summation they play the following roles:

Electoral

- Facilitate nomination of candidates for public office.
- Organize, finance, and carry out campaigns in general election.

Legislative

- Provide basis for organizing legislative bodies and working out legislative policies of majority and minority blocs.

- Establish ties between elected chief executive (president, governor, mayor) and legislative delegations of their parties.

Governmental operations

- Source for recruiting persons to fill top policy positions and in some jurisdictions many other governmental jobs ("patronage").
- Channel of influence on executive policies, regulatory matters, and awarding grants and contracts.
- Assistance to citizens in solving service-delivery problems.

Interest Groups

A second significant instrument which American democracy uses in the consent process is the interest group. Their formation is natural and inevitable in a democracy. Individuals get together to form interest groups out of recognition that they share particular concerns. They realize that they can assert greater influence on public policy by joining with others of similar persuasion.

Interests groups, like political parties, have existed since the beginning of the American republic. When the First Congress met in 1789 under the new U.S. Constitution, lobbyists appeared to press for action favorable to their interests.

Numerous citizen associations exist primarily for sociability and mutual benefit of their members. Others are oriented largely toward community service. Still others concentrate on public policy advocacy. Even those that are mostly internally oriented may get into public issues from time to time.

Many interest groups consist of persons sharing common economic self-interest: farmers, commercial growers, industrial workers, manufacturers, retailers, consumers, importers, utilities, various professions, and many more. Other interest groups are organized around particular issues: civil rights, public education, health care, environment, campaign finance, disarmament, and many other causes. Some focus on ideology, such as socialism, capitalism, populism, liberalism, conservatism, and libertarianism, occasionally taking the form of a political party but usually more interested in promoting their ideas than expecting to gain political office.

Organizations established for other purposes, such as churches, synagogues, social clubs, colleges and universities, hospitals and social service agencies, on occasion seek to influence governmental policy, thereby acting as interest groups in the political arena.

Within American federalism associations of local governmental officials function as interest groups in dealing with state government. They are joined by associations of state officials in addressing the national government on a wide variety of policy issues. Even governmental

employees organize as interest groups to influence policies of the governmental unit for which they work; for instance, employee unions, associations of teachers, and racial, ethnic, and women's caucuses.

Federalism shows up among interest groups as much as the governmental units they seek to influence. National associations have state and local chapters. Conversely local advocacy organizations ally themselves with state and national coalitions.

Democracy expects interest groups to form, to articulate their views, and to press for advantage. In subsequent chapters we will notice how interest groups have numerous roles in the continuous, interactive consent process.

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Interest Groups

Formation of interest groups is natural and inevitable in a democracy. Virtually everyone of us relates to one or more of them (often many). We form interest groups out of recognition that we share particular concerns with other persons. We realize that we can assert greater influence in the public policy arena by joining with others of similar persuasion.

Many interest groups consist of persons sharing common economic self-interest: farmers, commercial growers, industrial workers, manufacturers, retailers, consumers, importers, utilities, various professions, and many more. Other interest groups are organized around particular issues: civil rights, public education, health care, environment, campaign finance, disarmament, and many other causes. Some focus on ideology, such as socialism, capitalism, populism, liberalism, conservatism, and libertarianism, occasionally taking the form of a political party but usually more interested in promoting their ideas than expecting to gain political office.

Organizations established for other purposes, such as churches, synagogues, social clubs, colleges and universities, hospitals and social service agencies, on occasion seek to influence governmental policy, thereby acting as interest groups in the public arena. Associations of local governmental officials function as interest groups in dealing with state government. They are joined by associations of state officials in addressing the national government on a wide variety of policy issues.

Even governmental employees organize as interest groups to influence policies of the governmental unit for which they work; for instance, employee unions, associations of teachers, and racial, ethnic, and women's caucuses.

To be sure, the framers of the U.S. Constitution were nervous about interest groups, which they referred to as "factions". Indeed in the 10th *Federalist* essay, James Madison claimed that

the division of power among the federal executive, legislative, and judicial branches and the division of authority between the national and state governments had the advantage of protecting against the harmful effects of factions.

Over the years journalists and political reformers have advocated curtailing the supposedly harmful effects of interest groups. And nowadays some editorial writers and some politicians speak disparagingly of "special interests" (at least the ones they don't agree with).

The problem, though, is not interest groups *per se* but rather excesses and imbalance. Interest groups are important instruments of American democracy, functioning parallel with political parties to facilitate greater participation of the governed in continuous, interactive consent-giving processes.

Democracy expects interest groups to form, to articulate their views, and to press for advantage. The down side is that certain interests are disproportionately influential while some interests are scarcely heard in the tumult of policy debate and are rarely represented in the quiet, inner-workings of governing coalitions.

The remedy is not to prohibit interest groups from functioning, not to deny their access to public officials. Rather the challenge is to help the unrepresented to organize and get involved and to strengthen those organizations that counterbalance the most powerful interests.

An important function of democratic government is to achieve an effective balance among competing interests, to assure that no one group gains an unfair advantage, and especially to see that the interests of the weakest are not overlooked. Democracy also insists that all interest groups should constantly keep the common good in sight, not insist selfishly on always having one's way totally, and be willing to work out equitable compromises beneficial to the entire community, the entire nation.

Local associations are particularly important for American democracy. Some of them are territorial, such as neighborhood associations, block clubs, tenant associations, condominium associations, and councils of civic associations. Some have a service orientation, such as Kiwanis, Lions, Rotary, women's clubs, and sponsors of youth programs: boys' and girls' clubs, boy and girl scout troops, sports teams, and other recreational activities. Others support education, such as Head Start advisory committees, parent-teacher associations, tutoring programs, mentor groups. Some work for other causes, such as civil rights, affordable housing, crime prevention, environmental issues, and many other concerns. Others have an economic orientation, such as chambers of commerce, labor union councils, professional and trade associations, farm organizations. Fraternal organizations and ethnic clubs continue to function. And the list could be extended on and on.

Going beyond their primary purposes for organizing, these local associations function as a kind of school for democracy. In this respect, they recall de Tocqueville's observation in a discussion of New England towns.

Local institutions are to liberty what primary schools are to science; they put it within the people's reach; they teach people to appreciate its peaceful enjoyment and accustom them to make use of it. Without local institutions a nation may give itself a free government, but it has not got the spirit of liberty.⁹

And we can add, they provide practical training in ways relevant to achieving the consent of the governed.

⁹ *Op. cit.*, p, 63.

A Fourth Arena

There is one further perspective on American federalism, first offered by Thomas Jefferson in his retirement. He wrote:

We should thus marshal our government into, 1, the general federal republic, for all concerns foreign and federal; 2, that of the State, for what relates to our citizens exclusively; 3, the county republics for the duties and concerns of the county; and 4, the ward republics, for the small, and yet numerous interesting concerns of the neighborhood;

He advocated this course because he believed that

in government, as well as in every other business of life, it is by division and subdivision of duties alone, that all matters, great and small, can be managed to perfection. And the whole is cemented by giving to every citizen, personally, a part in the administration of the public affairs.¹

One hundred fifty years later Jefferson's plea for ward republics was taken up by advocates of neighborhood government.² This was one of the responses in the 1960s and '70s to the felt need for greater citizen involvement in public affairs and to a desire to give greater power to residents in inner city neighborhoods. No city created full-fledged neighborhood governments, but many of them set up elected neighborhood councils to provide residents with a greater voice in decisions affecting them.³ Other methods of citizen participation came into widespread usage, as we'll

¹ Saul K. Padover, ed., *The Complete Jefferson*. New York: Duell, Sloan & Pearce, 1943. p. 290.

² Milton Kotler, *Neighborhood Government: The Local Foundations of Political Life*. Indianapolis: Bobbs-Merrill, 1969; Joseph F. Zimmerman, *The Federated City: Community Control in Large Cities*. New York: St. Martin's Press, 1972; Howard W. Hallman, *Neighborhood Government in a Metropolitan Setting*. Beverly Hills, Calif.: Sage Publications, 1974; David Morris and Karl Hess, *Neighborhood Power: The New Localism*. Boston: Beacon Press, 1975.

³ Howard W. Hallman, *The Organization and Operation of Neighborhood Councils: A Practical Guide*. New York: Praeger Publishers, 1977.

examine in Chapter 10.

Meanwhile, in the suburbs neighborhood government exists in the form of small suburban municipalities with their own elected officials, taxing powers, and administrative operations. Thus, in 1970 12 percent of the metropolitan population of the United States lived in suburban units with fewer than 10,000 inhabitants, essentially neighborhood size. Another 11 percent resided in units in the 10- to 25,000 range, a kind of community district which might have several neighborhoods.⁴

Thus for nearly one-fourth of the metropolitan population, neighborhood government was a reality.

[Update data.]

Along with these small suburban municipalities, numerous metropolitan areas have established areawide agencies, especially in the form of special districts to carry out areawide functions, such as public transit, airports, water supply, regional parks, and other endeavors. This means that there is partly developed, three-arena "local federalism" in many metropolitan areas. Suburban municipalities and neighborhood councils in the central city are the "ward republics", the central city and suburban counties are the middle arena, and metropolitan agencies encompass the entire metropolis.⁵

This adds to the complexity of American government but also contributes to its vitality. No matter what trends point toward a nation-centered system, states retain their constitutional

⁴ Howard W. Hallman, *Small and Large Together: Governing the Metropolis*. Beverly Hills, Calif.: Sage Publications, 1977. p. 35.

⁵ I have developed this idea more completely in *Small and Large Together*, pp. 145-157.

independence and local governments are politically strong enough to maintain a considerable measure of autonomy. In the future functional assignments may shift, relationships will change, but three-arena federalism (with a partially developed fourth arena, neighborhoods) is likely to endure.

Chapter 3. Political Parties and Interest Groups

Partial Draft

As we have seen, the founders of the United States of America instituted a federal system of government, well grounded in the consent of the governed. They invented the constitutional convention wherein specially elected delegates developed the fundamental law of states and the nation and then submitted it to popular approval, either by referendum or in ratifying conventions. The states created bicameral legislatures with both houses directly elected and several popularly elected governors (though a minority initially). For the national government they didn't break complete away from state influence in the selection of senators and the president, but they did provide for direct election of the House of Representatives. Altogether the founders achieved the foremost representative democracy of their era.

In the new constitutional framework, consent of the governed was to occur primarily through voting for officers of government. Consent through representation, which had developed during the colonial period, was given wider application.

Quickly -- during the First Congress and during the first term of the first president -- two other instruments of consent emerged. They were political parties and interest groups. Since then they have developed and flourished as significant factors in American democracy. In chapters ahead as we examine various manifestation of the consent process, we will repeatedly encounter political parties and interest groups. To help make better sense of their roles and contributions, we here take an overview of what they are and what they do.

POLITICAL PARTIES

Origin¹

In the years leading up to the Revolution, American supporters of the British crown were known as Tories and opponents of royal domination of the colonies as Whigs. These were the names of political coalitions in the British House of Commons, but in America they didn't take the shape of political parties.

American independence discredited the Tories, but other divisions arose, particularly on issues of property rights and debt collection. Blocs formed in the new state legislatures. and in a few

¹ This section draws upon A. James Reichley, *The Life of the Parties: A History of American Political Parties*. New York: Free Press, 1992.

states and localities embryonic political parties took shape.

The ratification debate over the new U.S. Constitution in 1787 and '88 pitted Federalists, who favored a strengthened national government and full protection of property rights, against Anti-Federalists, who opposed centralization of authority and wanted stronger protection for human rights. In the national debate Federalists were better organized and more articulate (especially with the famous essays), and they gained the majority of delegates in the state ratifying conventions. At that time, however, there wasn't a formal Federalist Party, and the Anti-Federalists were even less cohesive.

George Washington, the first president under the new Constitution, didn't want political parties to form, and many other founders agreed, including Vice President John Adams. Nevertheless, before Washington's first term was over, political parties were functioning. Within Washington's own cabinet Secretary of the Treasury Alexander Hamilton and Secretary of State Thomas Jefferson engaged in vigorous policy disputes. As a leading Federalist, Hamilton favored a strong national government supportive of manufacturing and commerce while Jefferson preferred greater dispersion of power in a predominantly agrarian economy. A clash of personalities was also a factor.

In the First Congress, 18 of the 24 senators and 37 of the 65 representatives identified with the Federalists, so Hamilton's program carried.² However, the opposition gained in the second congressional election, and in the House of Representatives James Madison led a strengthened minority bloc. Within the 13 states similar divisions became apparent and began to be represented in political organizations.

In the 1792 presidential election, the opposition coalition, in part derived from an Anti-Federalist base but beginning to be known as Republicans, supported George Clinton of New York to replace John Adams as vice president. Adams won 77 of the 132 electoral votes, but Clinton had 50. The contest revealed strong Republican units in several states.

Four years later Federalists supported John Adams to succeed George Washington as president, and Democratic-Republicans, as they had become known, backed Thomas Jefferson. Neither campaigned personally, but their supporters did. When the electors voted, Adams won 71 to become president, and Jefferson with 68 became vice president. When the contest was repeated in 1800, Jefferson was victorious.

By then the Democratic-Republican Party was well organized in most of the states and within the Congress. The Federalist Party was in decline, but the pattern of two competing parties was

² Reichley, p. 38

well established in presidential elections, within Congress, and in the states.

Subsequently Jefferson's party dropped "Republican" from its name, and as the Democratic Party has continued to this day as one of two major parties. The Federalist Party disappeared. A Whig Party emerged as the major second party, but split apart on the slavery issue. A new Republican Party organized in 1854 and since then has served as the other major party.

Smaller parties have formed, contested elections, lingered for many years, or passed out of existence. Some of them have elected governors and won seats in Congress and state legislatures, but none has won the presidency or gained a majority in either house of Congress. Two-party dominance has prevailed.

Political Parties Today³

Periodically pollsters ask Americans which political party they belong to. Although proportions vary from year to year, usually __ to __ percent say they are either Democrats or Republicans. The others say they are independents or belong to one of the smaller parties. When the pollsters probe, they find that many of the independents are oriented toward one or other of the two major parties. The result of such a poll taken in 199?, as shown in Table 3-1, revealed that __ percent of eligible voters in the United States belong to or oriented toward the Democratic and Republican parties.

[Table to be added.]

When it comes to officeholding, the Democratic and Republican parties are even more dominant. Thus, in 1992 [update for 1993, later for 1994 if possible] all but one of the 535 members of Congress were affiliated with the Democratic or the Republican party. All but 10 of the 7,412 state legislators chosen in partisan elections belonged to the two major parties (this excludes the 49 members of Nebraska's unicameral, nonpartisan legislature). Forty-eight of the 50 governors were either a Democrat or a Republican. There were ___ city council members elected in partisan elections, and virtually all of them were Democrats or Republicans. More than 80 percent of the counties hold partisan elections for their governing body, and most winners come from the two major parties.

So even though the proportion of voters who claim to be independent has increased in recent years and Ross Perot as an independent presidential candidate attracted millions of votes, almost all policy-making positions in the United States selected on a partisan basis are in the hands of Democrats and Republicans. Accordingly, the two parties deserve particular attention in our quest

³ [Add list of major references.]

to comprehend the consent process in American democracy.

Depiction. To properly understand the Democratic and Republican parties, first put aside those neat organization charts that depict a hierarchy with the national committee on top, state committees in the middle, and local committees at the bottom. Indeed, the two parties are highly decentralized, pluralistic, and sometimes quite disorderly.

Secondly, discard the notion of ideological purity and consistency with strict party discipline over members and party units. European political parties and smaller American parties may have such features, but the two major parties are much more diverse and undisciplined.

The diversified parties are composed of numerous clusters of Democrats and Republicans who share a common political identity. They join together in different arenas -- local, state, national -- in order to contest elections and to govern. Clusters form in precincts, wards, municipalities, and counties. They take shape in legislative bodies, ordinarily with separate clusters for each party in each house of bicameral legislatures. Clusters of Democrats and Republicans form around elected chief executives (mayor, county executive, governor, president) and around candidates for office. Racial, ethnic, and gender groups make up other clusters within each party.

The party is like a gigantic tree, which has grown organically, buffeted by sun, rain, wind, and snow. The trunk is the party's historic tradition and value orientation. Large branches are state parties, emanating out to smaller branches, then to twigs holding leaf clusters. The crown of the tree, the national party, has the appearance of singularity but is actually composed of numerous leaves stemming from separate branches.

In formal structure the Democratic Party and the Republican Party are composed of mostly autonomous local and state units which come together in a loose-knit, national federation. In this manner they reflect the diversity and non-hierarchical nature of the American federal system in which they function.

Membership. Neither party has formal membership requiring strict creedal adherence or payment of dues. The closest one comes to joining is by stating party preference in voter registration or at the primary polling place, and at that in only three-fourths of the states. Mainly it is a matter of personal identity.

Democrats and Republicans range from persons who merely identify with the party label but do little to support the party to those who hold party jobs and run for public office on the party ticket. At the core are party stalwarts, strong Democrats and strong Republicans, who usually vote the straight ticket. At the outer edge are weak Democrats and weak Republicans who are willing to split their ticket and vote for candidates from another party or independent candidates.

Precincts. The operational base for American political parties is the approximately 175,000 local voting districts, often called "precincts", sometimes "divisions" or some other name. Each has a precinct leader (or a similar title), or can have (for in some precincts this office is unfilled by one party, sometimes both). Depending upon the state, they are chosen by party members voting in the primary or general election, by party caucus, or through appointment by a city or county party official.

Precinct leaders recruit and direct the activities of block workers and other volunteers. They reach out to voters in their precinct, distribute campaign literature, collect funds, and get out the vote. In some cities precinct leaders come together in ward committees. In many states they play a role in selecting members of city, county, and state party committees and in choosing convention delegations.

Local committees. Local party committees are built upon the precinct foundation. The Democratic and Republican parties have committees in virtually all of the 3,042 counties in the United States and in a large number of cities, New England towns, and township with strong governmental powers. They usually operate under rules specified by the state central committee or state law, but in their operations they are basically autonomous.

Typically county and city committees are composed of all precinct leaders. They elect the chairperson, who directs local party activities and may represent the county on the state committee. Thus, a county chairperson is an important figure in party politics.

In some places for the primary election local party leaders offer a slate of candidates for local and state offices, sometimes even for Congress. A more common pattern nowadays is to let candidates compete, and then the local party supports the winners in the general election.

Local committees are free to take positions on public issues on their own. They cannot be forced to follow a party line issued by the state committee or national committee, but more often than not they are loyal to these broader entities. If local party officials don't like the candidates offered by their party's state or national unit, they usually sit on their hands rather than oppose them outright.

Where a state legislative district or a congressional district encompasses more than one local governmental jurisdiction, local party committees come together in the nominating process. In some states they hold nominating conventions to select the party's candidate. In other states the candidate is chosen in a primary election, and the aggregate of local committees supports her or him in the general election.

State committees. Because each state may establish its own political party structure, state party committees vary greatly around the United States. They range in size from fairly small to quite large. Most commonly state committee members are elected in the primary election or by local party conventions, but in some states county chairpersons form the state committee. The committee formally elects the state chairperson, but in many instances the governor or the last gubernatorial candidate determines who it will be.

State committees play a role in selection of party nominees for state office: governor, lieutenant governor, attorney general, and other elected executive officers. In yesteryears party leaders in many states decided their party's nominee and got it ratified by the state convention or in the party primary election. This happens less frequently now because candidates usually come forth as self-starters, but sometimes party leaders have a hand in recruiting who they think will be a strong candidate and then issue an endorsement. In several states the state committee is responsible for organizing and conducting a nominating convention for state offices and candidates for the U.S. Senate.

Like local committees, state party committees are autonomous and are not directed what to do by the national committee. However, during the past 20 years many state committees have received technical assistance and financial contributions from their national committee. They in turn have offered assistance to local party committees, such as computerized lists of registered voters, training for candidates, and sometimes financial donations.

National committee. The Republican National Committee is composed of 165 members: the party chair plus a committeeman and a committeewoman from each of the 50 states, District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. The Democratic National Committee consists of approximately 400 members, who include the chair of each state and territorial party, the highest ranking officer of the opposite sex, additional positions assigned each state on a population basis, representatives of Democratic elected officials, Young Democrats, and Democratic Women. Each national committee selects its own chair, but usually they accede to the choice of the incumbent president or the party's presidential nominee.

The central task of the national committee is to organize and run the quadrennial national convention to nominate the party's candidate for president. As an extension of this responsibility, the national committee establishes rules for selection of delegates from the states, such as when state primaries may be held and the gender composition of delegates. Court rulings have affirmed the right of the national committee to adopt binding requirements that state party organizations must observe even if it means changing state laws. (More on the nominating process in Chapter 6.)

The national convention selects the party's nominee for president and vice president and adopts a party platform. The platform, though, is not legally binding on the party's presidential

and vice-presidential candidates, on the party's representatives in Congress, or on state and local party committees. Nor can the national committee tell party members in Congress what legislation to enact.

Although national party committees cannot command state and local committees, they get involved in state and local party affairs by making financial contributions to candidates, offering technical assistance and training to party officials and candidates, and in some instances helping to obtain a strong candidate to run for an open seat in Congress or against an incumbent of the other party.

Legislative units. Political party identity forms the basis for organizing the U.S. Congress, the state legislatures except Nebraska which has a nonpartisan unicameral body, and many city and county councils. This occurs as persons from the same political party join together to choose legislative officers and work out a party agenda, both for the majority and the minority. In bicameral bodies this is done separately in each house.

Ordinarily the majority party chooses the presiding officer, except where the vice president or lieutenant governor by constitutional designation presides over the senate. The majority also controls the flow of legislation. Committee chairs may be chosen by the legislative committees themselves with the majority party prevailing, by the party caucus, or by the party's elected leader (speaker of the house, majority leader of the senate, chair of city or county council). The minority bloc serves as a vocal opposition.

By and large a legislative party cluster is independent of national, state, and local party committees and the elected chief executive, even if the latter is from the same party. Although they have the same party identity, these different units function as co-equals. Exceptions occur in localities and states with a tight party structure, sometimes referred to as a political machine. In such cases the political boss or a small oligarchy of leaders instructs legislators how to vote on particular bills.

Party units in Congress and many state legislatures form campaign committees to raise funds to support colleagues facing close contests for reelection and to help candidates from their party seeking to win open seats or defeat incumbents of the other party. Members of Congress have four such committees: Democratic and Republican for each house.

Chief executive. It is customary for the president of the United States to be the dominant person in his (someday her) party. He chooses the national party chairperson, and the national committee works under guidance, sometimes tight control, of the White House. But even if the president is nominal party leader, he still must deal collegially with members of his party in Congress.

He is likely to have separate sets of relationships with leaders of his party in the Senate and the House of Representatives. Often these relationships are cooperative but at other times they can be

prickly. When the president is of one party and Congress (or at least one its houses) is of the opposite party, party division is an important factor in executive-congressional relationships.

A similar pattern prevails in many states and in local governmental units with partisan elections. The governor, mayor, and county executive may dominate the party machinery, but party members in the state legislature, city and county council often act independently. In some states, however, party organization is cohesive enough (perhaps descendent of an old-time machine) that the governor can play a more dominant role over the legislature. And in some localities the mayor or county executive can assert similar control. This happens most frequently where the chief executive has control of a sizable number of jobs and can use patronage as an instrument of dominance.

Summation. Thus, the two major American political parties are multi-nuclear in their organization and operations. They are more pragmatic than ideological. However, they generally display sufficient difference between them to offer a choice to American voters. From time to time smaller parties function with purer ideology or focus upon particular issues. And from time to time, independent candidates run for office.

In American democracy political parties are important instruments in achieving the consent of the governed. They make their greatest contribution in the electoral process, but they also provide a framework for formulating governmental policies and carrying out governmental operations. In summation they play the following roles:

Electoral

- Facilitate nomination of candidates for public office.
- Organize, finance, and carry out campaigns in general election.

Legislative

- Provide basis for organizing legislative bodies and working out legislative policies of majority and minority blocs.
- Establish ties between elected chief executive (president, governor, mayor) and legislative delegations of their parties.

Governmental operations

- Source for recruiting persons to fill top policy positions and in some jurisdictions many other governmental jobs ("patronage").
- Channel of influence on executive policies, regulatory matters, and awarding grants and contracts.
- Assistance to citizens in solving service-delivery problems.

In later chapters we'll frequently encounter political parties as they play different roles in the consent process.

INTEREST GROUPS

A second significant instrument which American democracy uses in the consent process is the interest group. Their formation is natural and inevitable in a democracy.

Individuals get together to form interest groups out of recognition that they share particular concerns. They realize that they can assert greater influence on public policy by joining with others of similar persuasion. Or, they are already part of an organization formed for another purpose (commercial, charitable, educational, religious, etc.), and from this base they enter the public policy arena.

In Founding Period

The principal framers of the U.S. Constitution had even more distaste for interest groups than they did for political parties. "Factions" they called them. As James Madison explained in *The Federalist No. 10*:

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.⁴

This was the same disparaging tone as used today by journalists, social critics, and politicians in speaking of "special interests" (except their own!).

Madison boasted that a virtue of the new constitution was the several ways it preserved liberty and contained the nefarious affects of factions: representative government extended over a wide territory, thereby refining and enlarging the public view,⁵ federal division between the states and nation,⁶ three branches of government,⁷ and a bicameral Congress with representatives elected directly and senators indirectly.⁸

⁴ James Madison, *The Federalist No. 10*. p. 54.

⁵ *Ibid.*, p. 59.

⁶ *The Federalist No. 46*. pp.304-5.

⁷ *The Federalist No. 47*. pp. 312-3.

⁸ *The Federalist No. 39*. pp.243-4.

Contain, perhaps, but not eliminate, for Madison himself recognized that the causes of factions are sown in the nature of man: fallible reason producing different opinions, self-love, diversity of faculties, possession of different degrees and kinds of property. He put forth a list of factions that describe many of today's interest groups:

- Creditors and debtors
- Landed interest, manufacturing interest, mercantile interest, moneyed interest
- Those with a zeal for different opinions concerning religion, concerning government, and many other points
- Persons attached to different leaders ambitiously contending for pre-eminence and power
- Persons who have divided mankind into parties

Of all of these, Madison acknowledged that "the most common and durable source of factions has been the various and unequal division of property."⁹

Since they were inevitable, interest groups showed up as soon as the First Congress convened in 1789 under the new U.S. Constitution. [Case illustrations to be added.]

⁹ *The Federalist No. 10.* pp. 55-56.

Chapter 4. Political Parties and Interest Groups

Partial Draft

The founders of the United States of America created the foremost representative democracy in the world for their era. They instituted a federal system of government, well grounded in the consent of the governed. They invented the constitutional convention wherein specially elected delegates developed the fundamental law of state or nation and then submitted it to popular approval, either by referendum or in ratifying conventions.

The states created bicameral legislatures with both houses directly elected and several popularly elected governors (though a minority initially). The national government didn't break away from state influence in the selection of senators and the president, but it did provide for direct election of the House of Representatives.

In the new constitutional framework, consent of the governed was to

occur primarily through voting for officers of government. Consent through representation, which had developed during the colonial period, was given wider application. And the state and federal constitutions provided for amending processes that allowed future generations to make changes as they would choose.

Quickly -- during the First Congress and during the first term of the first president -- two other instruments of consent emerged. They were political parties and interest groups. Since then they have developed and flourished as significant factors in American democracy.

We will repeatedly encounter political parties and interest groups in chapters ahead as we examine various manifestations of the consent process.

To help make better sense of their roles and contributions, we here take an overview of what they are and what they do.

POLITICAL PARTIES

Origin¹

Political parties appeared in Great Britain in the first half of the 18th century as Tories and Whigs formed loose associations in the House of Commons. The same designations appeared in colonial America before the Revolution, but more to define political orientation than as party organizations. Generally American Tories were conservatives and loyalists to the British crown. Whigs were oriented toward liberty and representative government and therefore were prone to resist British domination. They were divided, however, on whether to break completely with the mother country until British rule became so harsh in 1775.

American independence discredited the loyalist Tories, but other divisions arose, particularly on issues of property rights and debt collection. Blocs formed in the new state legislatures. and in a few states and localities embryonic political parties took shape.

¹ This section draws upon A. James Reichley, *The Life of the Parties: A History of American Political Parties*. New York: Free Press, 1992.

The ratification debate over the new U.S. Constitution in 1787 and '88 pitted Federalists, who favored a strengthened national government and full protection of property rights, against Anti-Federalists, who opposed centralization of authority and wanted stronger protection for human rights. In the national debate Federalists were better organized and more articulate (especially with the famous essays), and they gained the majority of delegates in the state ratifying conventions. At that time, however, there wasn't a formal Federalist Party, and the Anti-Federalists were even less cohesive.

George Washington, the first president under the new Constitution, didn't want political parties to form, and many other founders agreed, including Vice President John Adams. Nevertheless, before Washington's first term was over, political parties were functioning. Within Washington's own cabinet Secretary of the Treasury Alexander Hamilton and Secretary of State Thomas Jefferson engaged in vigorous policy

disputes. As a leading Federalist, Hamilton favored a strong national government supportive of manufacturing and commerce while Jefferson preferred greater dispersion of power in a predominantly agrarian economy. A clash of personalities was also a factor.

In the First Congress, 18 of the 24 senators and 37 of the 65 representatives identified with the Federalists, so Hamilton's program carried.² However, the opposition gained in the second congressional election, and in the House of Representatives James Madison led a strengthened minority bloc. Within the 13 states similar divisions became apparent and began to be represented in political organizations.

In the 1792 presidential election, the opposition coalition, in part derived from an Anti-Federalist base but beginning to be known as Republicans, supported George Clinton of New York to replace John Adams as vice president. Adams won 77 of the 132 electoral votes, but Clinton

² Reichley, p. 38

had 50. The contest revealed strong Republican units in several states.

Four years later Federalists supported John Adams to succeed George Washington as president, and Democratic-Republicans, as they had become known, backed Thomas Jefferson. Neither campaigned personally, but their supporters did. When the electors voted, Adams won 71 to become president, and Jefferson with 68 became vice president. When the contest was repeated in 1800, Jefferson was victorious.

By then the Democratic-Republican Party was well organized in most of the states and within the Congress. The Federalist Party was in decline, but the pattern of two competing parties was well established in presidential elections, within Congress, and in the states.

Subsequently Jefferson's party dropped "Republican" from its name, and as the Democratic Party has continued to this day as one of two major parties. The Federalist Party disappeared. A Whig Party emerged as the major second party, but split apart on the slavery issue. A new Republican

Party organized in 1854 and since then has served as the other major party.

Smaller parties have formed, contested elections, lingered for many years, or passed out of existence. Some of them have elected governors and won seats in Congress and state legislatures, but none has won the presidency or gained a majority in either house of Congress. Two-party dominance has prevailed.

Political Parties Today³

Periodically pollsters ask Americans which political party they belong to. Although proportions vary from year to year, usually __ to __ percent say they are either a Democrat or a Republican. The others say they are

³ I write from the perspective of one who has observed American political parties for many years and participated in a number of election campaigns. I have sampled the enormous literature on political parties to gain a broader perspective, such as V.O. Key, Jr., *Politics, Parties, and Pressure Groups*. 5th edition. New York: Thomas Y. Crowell Company, 1964; James L. Sundquist, *Dynamics of the Party System*. Revised edition. Washington: Brookings Institution, 1983; Cornelius P. Cotter, James L. Gibson, John F. Bibby, and Robert J. Huckshorn, *Party Organization in American Politics*. New York: Praeger Publishers, 1984; Leon D. Epstein, *Political Parties in the American Mold*. Madison: University of Wisconsin Press, 1986; Larry J. Sabato, *The Party's Just Begun*. Glencoe, Ill: Scott, Foresman & Co., 1988; William J. Keefe, *Parties, Politics, and Public Policy in America*. 6th

independents or belong to one of the smaller parties. When the pollsters probe, they find that many of the independents are oriented toward one or other of the two major parties. Such a poll taken in 1992, as shown in Table 3-1, revealed that __ percent of eligible voters in the United States belonged to or were oriented toward the Democratic and Republican parties.

Table 3-1. [To be added.]

When it comes to officeholding, the Democratic and Republican parties are even more dominant. Thus, in 1992 [update for 1993, later for 1994 if possible] all but one of the 535 members of Congress were affiliated with the Democratic or the Republican party. All but 10 of the 7,412 state legislators chosen in partisan elections belonged to the two major parties (this excludes the 49 members of Nebraska's unicameral, nonpartisan legislature). Forty-eight of the 50 governors were either a

edition. Washington: CQ Press, 1991; and Reichley's book, mentioned previously.

Democrat or a Republican. There were ___ city council members elected in partisan elections, and virtually all of them were Democrats or Republicans.

More than 80 percent of the counties hold partisan elections for their governing body, and most winners come from the two major parties.

So even though the proportion of voters who claim to be independent has increased in recent years and Ross Perot as an independent presidential candidate attracted millions of votes in 1992, almost all policy-making positions in the United States selected on a partisan basis are in the hands of Democrats and Republicans. Accordingly, the two parties deserve particular attention in our quest to comprehend the consent process in American democracy.

Depiction. To properly understand the Democratic and Republican parties, first put aside those neat organization charts that depict a hierarchy with the national committee on top, state committees in the middle, and local committees at the bottom. Instead, the two parties are

highly decentralized, pluralistic, and sometimes quite disorderly.

Secondly, discard the notion of ideological purity and consistency with strict party discipline over members and party units. European political parties and smaller American parties may have such features, but the two major parties in the United States are much more diverse and undisciplined.

These two diversified parties are composed of numerous clusters of Democrats and Republicans who share a common political identity. They join together in different arenas -- local, state, national -- in order to contest elections and to govern. Clusters form in precincts, wards, municipalities, and counties. They take shape in legislative bodies, ordinarily with separate clusters for each party in each house of bicameral legislatures. Clusters of Democrats and Republicans form around elected chief executives of their party (mayor, county executive, governor, president) and around candidates for office. Racial, ethnic, and gender

groups make up other clusters within each party.

As these clusters take expression in formal structure, the Democratic Party and the Republican Party are composed of mostly autonomous local and state units which come together in a loose-knit, national federation.

In this manner they reflect the diversity and non-hierarchical nature of the American federal system in which they function.

Membership. Neither party has formal membership requiring strict creedal adherence or payment of dues. The closest one comes to joining is by stating party preference in voter registration or at the primary polling place, and at that in only three-fourths of the states. Mainly it is a matter of personal identity.

Democrats and Republicans range from persons who merely identify with the party label but do little to support the party to those who hold party jobs and run for public office on the party ticket. At the core are party stalwarts, strong Democrats and strong Republicans, who usually vote

the straight ticket. At the outer edge are weak Democrats and weak Republicans who are willing to split their ticket and vote for candidates from another party or independent candidates.

Precincts. The operational base for American political parties is the approximately 175,000 local voting districts, often called "precincts", sometimes "divisions" or some other name. Each has a precinct leader (or a similar title), or can have (for in some precincts this office is unfilled by one party, sometimes both). Depending upon the state, they are chosen by party members voting in the primary or general election, by party caucus, or through appointment by a city or county party official.

Precinct leaders recruit and direct the activities of block workers and other volunteers. They reach out to voters in their precinct, distribute campaign literature, collect funds, and get out the vote. In some cities precinct leaders come together in ward committees. In many states they play a role in selecting members of city, county, and state party

committees and in choosing convention delegations.

Local committees. Local party committees are built upon the precinct foundation. The Democratic and Republican parties have committees in virtually all of the 3,042 counties in the United States and in a large number of cities, New England towns, and township with strong governmental powers. They usually operate under rules specified by the state central committee or state law, but in their operations they are basically autonomous.

Typically county and city committees are composed of all precinct leaders. They elect the chairperson, who directs local party activities and may represent the county on the state committee. Thus, a county chairperson is an important figure in party politics.

In some places for the primary election local party leaders offer a slate of candidates for local and state offices, sometimes even for Congress. A more common pattern nowadays is to let candidates compete, and then

the local party supports the winners in the general election.

Local committees are free to take positions on public issues on their own. They cannot be forced to follow a party line issued by the state committee or national committee, but more often than not they are loyal to these broader entities. If local party officials don't like the candidates offered by their party's state or national unit, they usually sit on their hands rather than oppose them outright.

Where a state legislative district or a congressional district encompasses more than one local governmental jurisdiction, local party committees come together in the nominating process. In some states they hold nominating conventions to select the party's candidate. In other states the candidate is chosen in a primary election, and the aggregate of local committees supports her or him in the general election.

State committees. *Because each state may establish its own political party structure, state party committees vary greatly around the United*

States. They range in size from fairly small to quite large. Most commonly state committee members are elected in the primary election or by local party conventions, but in some states county chairpersons form the state committee. The committee formally elects the state chairperson, but in many instances the governor or the last gubernatorial candidate determines who it will be.

State committees play a role in selection of party nominees for state office: governor, lieutenant governor, attorney general, and other elected executive officers. In yesteryears party leaders in many states decided their party's nominee and got it ratified by the state convention or in the party primary election. This happens less frequently now because candidates usually come forth as self-starters, but sometimes party leaders have a hand in recruiting who they think will be a strong candidate and then issue an endorsement. In several states the state committee is responsible for organizing and conducting a nominating convention for state

offices and candidates for the U.S. Senate.

Like local committees, state party committees are autonomous and are not directed what to do by the national committee. However, during the past 20 years many state committees have received technical assistance and financial contributions from their national committee. They in turn have offered assistance to local party committees, such as computerized lists of registered voters, training for candidates, and sometimes financial donations.

National committee. The Republican National Committee is composed of 165 members: the party chair plus a committeeman and a committeewoman from each of the 50 states, District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. The Democratic National Committee consists of approximately 400 members, who include the chair of each state and territorial party, the highest ranking officer of the opposite sex, additional positions assigned each state

on a population basis, representatives of Democratic elected officials, Young Democrats, and Democratic Women. Each national committee selects its own chair, but usually they accede to the choice of the incumbent president or the party's presidential nominee.⁴

The central task of the national committee is to organize and run the quadrennial national convention to nominate the party's candidate for president. As an extension of this responsibility, the national committee establishes rules for selection of delegates from the states, such as when state primaries may be held and the gender composition of delegates.

Court rulings have affirmed the right of the national committee to adopt binding requirements that state party organizations must observe even if it means changing state laws. (More on the nominating process in Chapter —.)

The national convention selects the party's nominee for president and

⁴ Information obtained from Democratic National Committee and Republican National

vice president and adopts a party platform. The platform, though, is not legally binding on the party's presidential and vice-presidential candidates, on the party's representatives in Congress, or on state and local party committees. Nor can the national committee tell party members in Congress what legislation to enact.

Although national party committees cannot command state and local committees, they get involved in state and local party affairs by making financial contributions to candidates, offering technical assistance and training to party officials and candidates, and in some instances helping to obtain a strong candidate to run for an open seat in Congress or against an incumbent of the other party.

Legislative units. Political party identity forms the basis for organizing the U.S. Congress, the state legislatures except Nebraska which has a nonpartisan unicameral body, and many city and county councils.

Committee.

This occurs as persons from the same political party join together to choose legislative officers and work out a party agenda, both for the majority and the minority. In bicameral bodies this is done separately in each house.

Ordinarily the majority party chooses the presiding officer, except where the vice president or lieutenant governor by constitutional designation presides over the senate. The majority also controls the flow of legislation. Committee chairs may be chosen by the legislative committees themselves with the majority party prevailing, by the party caucus, or by the party's elected leader (speaker of the house, majority leader of the senate, chair of city or county council). The minority bloc serves as a vocal opposition.

By and large a legislative party cluster is independent of national, state, and local party committees and the elected chief executive, even if the latter is from the same party. Although they have the same party identity, these different units function as co-equals. Exceptions occur in

localities and states with a tight party structure, sometimes referred to as a political machine. In such cases the political boss or a small oligarchy of leaders instructs legislators how to vote on particular bills.

Party units in Congress and many state legislatures form campaign committees to raise funds to support colleagues facing close contests for reelection and to help candidates from their party seeking to win open seats or defeat incumbents of the other party. Members of Congress have four such committees: Democratic and Republican for each house.

Chief executive. It is customary for the president of the United States to be the dominant person in his (someday her) party. He chooses the national party chairperson, and the national committee works under guidance, sometimes tight control, of the White House. But even if the president is nominal party leader, he still must deal collegially with members of his party in Congress. He is likely to have separate sets of relationships with leaders of his party in the Senate and the House of

Representatives. Often these relationships are cooperative but at other times they can be prickly. When the president is of one party and Congress (or at least one its houses) is of the opposite party, party division is an important factor in executive-congressional relationships.

A similar pattern prevails in many states and in local governmental units with partisan elections. The governor, mayor, and county executive may dominate the party machinery, but party members in the state legislature, city and county council often act independently. In some states, however, party organization is cohesive enough (perhaps descendent of an old-time machine) that the governor can play a more dominant role over the legislature. And in some localities the mayor or county executive can assert similar control. This happens most frequently where the chief executive has control of a sizable number of jobs and can use patronage as an instrument of dominance.

Summation. *Thus, the two major American political parties are*

multi-nuclear in their organization and operations. They are more pragmatic than ideological. However, they generally display sufficient difference between them to offer a choice to American voters. From time to time smaller parties function with purer ideology or focus upon particular issues. And from time to time, independent candidates run for office.

In American democracy political parties are important instruments in achieving the consent of the governed. They make their greatest contribution in the electoral process, but they also provide a framework for formulating governmental policies and carrying out governmental operations. In summation they play the following roles:

Electoral

- *Facilitate nomination of candidates for public office.*
- *Organize, finance, and carry out campaigns in general election.*

Legislative

- *Provide basis for organizing legislative bodies and working out*

legislative policies of majority and minority blocs.

- *Establish ties between elected chief executive (president, governor, mayor) and legislative delegations of their parties.*

Governmental operations

- *Source for recruiting persons to fill top policy positions and in some jurisdictions many other governmental jobs ("patronage").*
- *Channel of influence on executive policies, regulatory matters, and awarding grants and contracts.*
- *Assistance to citizens in solving service-delivery problems.*

In later chapters we'll frequently encounter political parties as they play different roles in the consent process.

INTEREST GROUPS

A second significant instrument which American democracy uses in the consent process is the interest group. Their formation is natural and inevitable in a democracy.

Individuals get together to form interest groups out of recognition that they share particular concerns. They realize that they can assert greater influence on public policy by joining with others of similar persuasion. Or,

they are already part of an organization formed for another purpose (commercial, charitable, educational, religious, etc.), and from this base they enter the public policy arena.

In Founding Period

The principal framers of the U.S. Constitution had even more distaste for interest groups than they did for political parties. "Factions" they called them. As James Madison explained in *The Federalist No. 10*:

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.⁵

This was the same disparaging tone as used today by journalists, social critics, and politicians in speaking of "special interests" (except their own!).

⁵ James Madison, *The Federalist No. 10*. p. 54.

Madison boasted that a virtue of the new constitution was the several ways it preserved liberty and contained the nefarious affects of factions: representative government extended over a wide territory, thereby refining and enlarging the public view,⁶ federal division between the states and nation,⁷ three branches of government,⁸ a bicameral Congress with representatives elected directly and senators indirectly.⁹ "Ambition must be made to counteract ambition," he insisted.¹⁰

Contain, perhaps, but not eliminate, for Madison himself recognized that the causes of factions are sown in human nature: fallible reason producing different opinions, self-love, diversity of faculties, possession of different degrees and kinds of property. He put forth a list of factions that describe many of today's interest groups:

■ Creditors and debtors

⁶ *The Federalist No. 10.* p. 59.

⁷ *The Federalist No. 46.* pp. 304-5.

⁸ *The Federalist No. 47.* pp. 312-3.

⁹ *The Federalist No. 39.* pp. 243-4.

¹⁰ *The Federalist No. 51.* p. 337.

- *Landed interest, manufacturing interest, mercantile interest, moneyed interest*
- *Those with a zeal for different opinions concerning religion, concerning government, and many other points*
- *Persons attached to different leaders ambitiously contending for pre-eminence and power*
- *Persons who have divided mankind into parties*

Of all of these, Madison acknowledged that "the most common and durable source of factions has been the various and unequal division of property."¹¹

Since they were inevitable, interest groups showed up as soon as the First Congress convened in 1789 under the new U.S. Constitution. [Case illustrations to be added.]

And as rich irony James Madison himself was a principal leader in organizing the Democratic-Republican Party within the First Congress, which joined interest groups as important instruments of consent beyond

¹¹ *The Federalist No. 10. pp. 55-56.*

the formal constitutional process.

Situation Today¹²

[To be completed.]

August 31, 1993

¹² *Principal sources to be added.*

Chapter 3. Political Parties and Interest Groups

When Alexis de Tocqueville toured the country in the 1830s to study democracy in America, he came to realize the importance of associations in American life. He reported:

Better use has been made of associations and this powerful instrument of action has been applied to more varied aims in America than anywhere else in the world.¹

Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types -- religious, moral, serious, futile, very general and very limited, immensely large and very minute.²

For de Tocqueville the spectrum of associations ranged from business corporations to grassroots groups, that is, to virtually every nongovernmental organization.

ASSOCIATIONS IN AMERICA

By the time of de Tocqueville's visit it was an old story in America. The European colonizers came as private organizations with charters from their monarch rather than as government-run expeditions. Joint-stock trading companies, for example, were responsible for establishing Jamestown (1607), Plymouth (1620), New Amsterdam (1625) -- later renamed New York, Boston (1630), and New Sweden on the Delaware River (1638). As Second Settlers moved from original settlements and founded new towns, they sometimes functioned as an association before they could organize a government.

The colonists used associations to meet common needs. In the southern and middle colonies religious groups and other private organizations opened schools, though in New England early on this became a governmental responsibility. Private colleges formed, and by the time of independence nine were functioning. Benjamin Franklin organized the first voluntary fire brigade in Philadelphia in 1739, and people in other cities duplicated this approach. Charitable work was handled by private associations.

¹ Alexis de Tocqueville, *Democracy in America*. Translated by George Lawrence. New York: Harper & Row, Perennial Library, 1988. (First published in 1835). p. 61.

² *Ibid.*, p. 513.

As the break with Great Britain approached in the 1770s, the first Continental Congress set up the Continental Association to carry out a colony-wide boycott of British goods. Towns and colonial assemblies organized Committees of Correspondence as a means of communicating with one another. They were colonial examples of quasi-public, quasi-private operations that have been repeated in a variety of ways.

In the 19th century numerous associations formed for a multiplicity of purposes. One set helped immigrants integrate into American society. Thus, by the 1840s Jewish communities in East Coast cities were forming literary and educational associations and then broader-purpose community centers.³ Other ethnic groups did likewise. The first settlement house opened in New York in 1886 and the second one in Chicago in 1889.⁴ Numerous fraternal organizations formed, such as Masons, Odd Fellows, Elks, Shriners, Catholic Knights, Independent Order of Vikings, and many more. Although they focused mostly on ritual ceremony and personal fellowship, members gained practical experience in democratic processes through election of their officers and conduct of meetings.⁵

As we approach the end of the 20th century, associations remain a prominent feature of American life. Business corporations dominate the economy. Nonprofit corporations run universities and hospitals and provide diverse services. Thousands of national associations promote the concerns of numerous trades, professions, and other interests. And every locality in America has a wide variety of citizen associations engaging in a multitude of activities. If a new challenge arises that an existing organization cannot handle, Americans are as likely as not to form a new association.

Of all the associations in the United States, two varieties have particular significance for achieving the consent of the governed: political parties and interest groups. As a pair of powerful instruments of democracy, they deserve a closer look.

POLITICAL PARTIES⁶

³ H. Millman, "Jewish Community Centers," *American Jewish Yearbook*, Vol. 61. New York: American Jewish Committee, 1960. p. 92

⁴ Sidney Dillick, *Community Organization for Neighborhood Development: Past and Present*. New York: Woman's Press and William Morrow & Co., 1953. pp. 34-35.

⁵ ?? Schmidt, *Fraternal Organizations*. p. 16.

⁶ Sources used in writing this section include [to be completed]. However, my conclusions differ in some respects.

Origin

Not surprisingly British influence is noticeable in the origin of American political parties.

In Great Britain political division between Tories and Whigs appeared one hundred years before the American Revolution. In the 1700s both social orientation and policy differences separated Tories and Whigs in British political life. "In general," A. James Reichley has written, "Tories stood for the older view of a hierarchically organized feudal society and an established church, while Whigs gave more rein to the social and political individualism that was associated with growing economic enterprise and the philosophy of John Locke. Both parties, however, remained distinctly aristocratic in their outlook."⁷ They lacked formal party organizations and in the House of Commons functioned mainly through loose coalitions.

Britain's North American colonies mirrored this division in the 1760s when the struggle for greater colonial freedom came to the fore. Supporters of the British crown were known as Tories and opponents as Whigs. After American independence discredited the Tories, other divisions arose, particularly on issues of property rights and debt collection. Blocs formed in the new state legislatures, and in a few states and localities embryonic political parties took shape.

The ratification debate over the new U.S. Constitution in 1787 and '88 pitted Federalists, who favored a strengthened national government and full protection of property rights, against Anti-Federalists, who opposed centralization of authority and wanted strong protection for human rights. In the national debate Federalists were better organized and more articulate (especially with the famous essays), and they gained the majority of delegates in the state ratifying conventions. At that time, however, there wasn't a formal Federalist Party, and the Anti-Federalists were even less cohesive.

George Washington, the first president under the new Constitution, didn't want political parties to form, and most other prominent founders agreed, including Vice President John Adams. Nevertheless, before Washington's first term was over, political parties were functioning. Within Washington's own cabinet Secretary of the Treasury Alexander Hamilton and Secretary of State Thomas Jefferson engaged in vigorous policy disputes. As a leading Federalist, Hamilton favored a strong national government supportive of manufacturing and commerce while Jefferson preferred greater dispersion of power in a predominantly agrarian economy. A clash of personalities was also a factor.

⁷ A. James Reichley, *The Life of the Parties: A History of American Political Parties*. New York: Free Press, 1992. p. 20. Other parts of this section draw upon Reichley's book.

In the First Congress, 18 of the 24 senators and 37 of the 65 representatives identified with the Federalists, so Hamilton's program carried.⁸ However, the opposition gained in the second congressional election, and in the House of Representatives James Madison led a strengthened minority bloc. Within the 13 states similar divisions became apparent and began to be represented in political organizations.

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Political Parties Today

Much has happened in the with American political parties since 1800. Jefferson's party acquired the name Democratic-Republican, later dropped "Republican", and has continued as one of two major parties. The Federalist Party disappeared. A Whig Party emerged as the major second party, but split apart on the slavery issue. A new Republican Party organized in 1854 and since then has served as the other major party. Smaller parties have formed, contested elections, lingered for many years, or passed out of existence. Some of them have elected governors and won seats in Congress and state legislatures, but none has won the presidency or a majority in either house of Congress. Two-party dominance has prevailed.

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⁸ Reichley, p. 38

The Democratic Party and the Republican Party are highly pluralistic endeavors. They are composed of numerous clusters of person who share a common political identity. People in these clusters come together to contest elections and to govern. Neither party is a cohesive monolith with a unified, top-down hierarchy. Rather each of them is composed of mostly autonomous local and state units which join together in a loose-knit, national federation. In this manner they reflect the diversity and non-hierarchical nature of the American federal system in which they function.

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National committee. The national committees of the Democratic and Republican parties are composed of representatives of the state committees, usually one man and one woman plus other members reflective of the party's policy orientation and electoral base. Usually the party's

presidential nominee selects the national chairperson.

The central task of the national committee is to organize and run the quadrennial national convention to nominate the party's candidate for president. As an extension of this responsibility, the national committee establishes rules for selection of delegates from the states, such as when state primaries may be held and the gender composition of delegates. Court rulings have affirmed the right of the national committee to adopt binding requirements that state party organizations must observe even if it means changing state laws. (More on the nominating process in Chapter 6.)

The national convention selects the party's nominee for president and vice president and adopts a party platform. The platform, though, is not legally binding on the party's presidential and vice-presidential candidates, on the party's representatives in Congress, or on state and local party committees. Nor can the national committee tell party members in Congress what legislation to enact.

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Legislative units. Political parties form the basis for organizing the U.S. Congress, the state legislatures except Nebraska which has a nonpartisan unicameral body, and many city and county councils. This occurs as persons from the same political party join together to choose legislative officers and work out a party agenda, both for the majority and the minority. In bicameral bodies this is done separately in each house.

Ordinarily the majority party chooses the presiding officer, except where the vice president or lieutenant governor presides over the senate. The majority also controls the flow of legislation. Committee chairs may be chosen by the legislative committees themselves with the majority party prevailing, by the party caucus, or by the party's elected leader (speaker of the house, majority leader of the senate, chair of city or county council). The minority blocs serves as a vocal opposition.

By and large the legislative party is independent of the national, state, or local party committee and the elected chief executive, even if the latter is from the same party. Although they have the same party identity, these different units function as co-equals. Exceptions occur in localities and states with a tight party structure, sometimes referred to as a political machine. In such cases the political boss or a small oligarchy of leaders instructs legislators how to vote on particular bills.

Party units in Congress and many state legislatures form campaign committees to raise funds to support colleagues facing close contests for reelection and to help candidates from their party seeking to win open seats or defeat incumbents of the other party. Members of Congress have four such committees: Democratic and Republican for each house.

Chief executive. It is customary for the president of the United States to be the dominant person in his (someday her) party. He chooses the national party chairperson, and the national committee works under guidance, sometimes tight control, of the White House. But even if the president is nominal party leader, he still must deal collegially with members of his party in Congress. He is likely to have separate sets of relationships with leaders of his or her party in the Senate and the House of Representatives. Often this relationship is cooperative but at other times it can be prickly. When the president is of one party and Congress (or at least one its houses) is of the opposite party, party division is an important factor in executive-congressional relationships.

A similar pattern prevails in many states and in local governmental units with partisan elections. The governor, mayor, and county executive may dominate the party machinery, but party members in the state legislature, city and county council act independently. In some states, however, party organization is cohesive enough (perhaps descendent of an old-time machine) that the governor can play a more dominant role over the legislature. And in some localities the mayor or county executive can assert similar control. This happens most frequently where the chief executive has control of a sizable number of jobs and can use patronage as an instrument of dominance.

Summation. Thus, the two major American political parties are multi-nuclear in their organization and operations. They are more pragmatic than ideological. However, they generally display sufficient difference between them to offer a choice to American voters. From time to time smaller parties function with purer ideology or focus upon particular issues. And from time to time, independent candidates run for office.

In American democracy political parties are important instruments in achieving the consent of the governed. They make their greatest contribution in the electoral process, but they also provide a framework for formulating governmental policies and carrying out governmental operations. In summation they play the following roles:

Electoral

- Facilitate nomination of candidates for public office.
- Organize, finance, and carry out campaigns in general election.

Legislative

- Provide basis for organizing legislative bodies and working out legislative policies of majority and minority blocs.

- Establish ties between elected chief executive (president, governor, mayor) and legislative delegations of their parties.

Governmental operations

- Source for recruiting persons to fill top policy positions and in some jurisdictions many other governmental jobs ("patronage").
- Channel of influence on executive policies, regulatory matters, and awarding grants and contracts.
- Assistance to citizens in solving service-delivery problems.

Interest Groups

A second significant instrument which American democracy uses in the consent process is the interest group. Their formation is natural and inevitable in a democracy. Individuals get together to form interest groups out of recognition that they share particular concerns. They realize that they can assert greater influence on public policy by joining with others of similar persuasion.

Interests groups, like political parties, have existed since the beginning of the American republic. When the First Congress met in 1789 under the new U.S. Constitution, lobbyists appeared to press for action favorable to their interests.

Numerous citizen associations exist primarily for sociability and mutual benefit of their members. Others are oriented largely toward community service. Still others concentrate on public policy advocacy. Even those that are mostly internally oriented may get into public issues from time to time.

Many interest groups consist of persons sharing common economic self-interest: farmers, commercial growers, industrial workers, manufacturers, retailers, consumers, importers, utilities, various professions, and many more. Other interest groups are organized around particular issues: civil rights, public education, health care, environment, campaign finance, disarmament, and many other causes. Some focus on ideology, such as socialism, capitalism, populism, liberalism, conservatism, and libertarianism, occasionally taking the form of a political party but usually more interested in promoting their ideas than expecting to gain political office.

Organizations established for other purposes, such as churches, synagogues, social clubs, colleges and universities, hospitals and social service agencies, on occasion seek to influence governmental policy, thereby acting as interest groups in the political arena.

Within American federalism associations of local governmental officials function as interest groups in dealing with state government. They are joined by associations of state officials in addressing the national government on a wide variety of policy issues. Even governmental

employees organize as interest groups to influence policies of the governmental unit for which they work; for instance, employee unions, associations of teachers, and racial, ethnic, and women's caucuses.

Federalism shows up among interest groups as much as the governmental units they seek to influence. National associations have state and local chapters. Conversely local advocacy organizations ally themselves with state and national coalitions.

Democracy expects interest groups to form, to articulate their views, and to press for advantage. In subsequent chapters we will notice how interest groups have numerous roles in the continuous, interactive consent process.

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Interest Groups

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To be sure, the framers of the U.S. Constitution were nervous about interest groups, which they referred to as "factions". Indeed in the 10th *Federalist* essay, James Madison claimed that

the division of power among the federal executive, legislative, and judicial branches and the division of authority between the national and state governments had the advantage of protecting against the harmful effects of factions.

Over the years journalists and political reformers have advocated curtailing the supposedly harmful effects of interest groups. And nowadays some editorial writers and some politicians speak disparagingly of "special interests" (at least the ones they don't agree with).

The problem, though, is not interest groups *per se* but rather excesses and imbalance. Interest groups are important instruments of American democracy, functioning parallel with political parties to facilitate greater participation of the governed in continuous, interactive consent-giving processes.

Democracy expects interest groups to form, to articulate their views, and to press for advantage. The down side is that certain interests are disproportionately influential while some interests are scarcely heard in the tumult of policy debate and are rarely represented in the quiet, inner-workings of governing coalitions.

The remedy is not to prohibit interest groups from functioning, not to deny their access to public officials. Rather the challenge is to help the unrepresented to organize and get involved and to strengthen those organizations that counterbalance the most powerful interests.

An important function of democratic government is to achieve an effective balance among competing interests, to assure that no one group gains an unfair advantage, and especially to see that the interests of the weakest are not overlooked. Democracy also insists that all interest groups should constantly keep the common good in sight, not insist selfishly on always having one's way totally, and be willing to work out equitable compromises beneficial to the entire community, the entire nation.

Local associations are particularly important for American democracy. Some of them are territorial, such as neighborhood associations, block clubs, tenant associations, condominium associations, and councils of civic associations. Some have a service orientation, such as Kiwanis, Lions, Rotary, women's clubs, and sponsors of youth programs: boys' and girls' clubs, boy and girl scout troops, sports teams, and other recreational activities. Others support education, such as Head Start advisory committees, parent-teacher associations, tutoring programs, mentor groups. Some work for other causes, such as civil rights, affordable housing, crime prevention, environmental issues, and many other concerns. Others have an economic orientation, such as chambers of commerce, labor union councils, professional and trade associations, farm organizations. Fraternal organizations and ethnic clubs continue to function. And the list could be extended on and on.

Going beyond their primary purposes for organizing, these local associations function as a kind of school for democracy. In this respect, they recall de Tocqueville's observation in a discussion of New England towns.

Local institutions are to liberty what primary schools are to science; they put it within the people's reach; they teach people to appreciate its peaceful enjoyment and accustom them to make use of it. Without local institutions a nation may give itself a free government, but it has not got the spirit of liberty.⁹

And we can add, they provide practical training in ways relevant to achieving the consent of the governed.

⁹ *Op. cit.*, p, 63.

INTEREST GROUPS

*Situation Today*¹

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¹Principal sources to be added.

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August 10, 1993

PART TWO. SELECTING PUBLIC OFFICIALS

Chapter 5. Electoral Dimensions: Breadth, Depth, and Time

We turn now to the multiplicity of ways in which consent of the governed occurs in contemporary American democracy. It begins with selection of public officials, directly through elections and indirectly through appointment processes. It keeps going in governmental decision-making with continuous interaction between individual citizens, interest groups, and governmental officials. Underlying are methods for formulating and expressing public opinion in ways that affect the consent process. In this part of the book we take consider selection of public officials.

Elections are the primary tool of American democracy for selection of public officials. As such the electoral process has multiple dimensions: breadth, depth, and time. It achieves breadth through universal suffrage and the wide variety of officials elected in local, state, and national governments. It has depth in the extent of involvement by various participants: candidates and potential candidates, incumbents running for reelection, political party officials, campaign supporters, interest groups, and others. The electoral process occurs over a span of months and years and is unending as participants look ahead from one election to the next.

In short, the electoral process in American democracy is very dynamic. It goes far beyond the act of voting on election day.

BREADTH OF ELECTORAL SYSTEM

The American electoral system is very broad, both in who may vote and in the number of public officials chosen through elections.

Who May Vote

[To be written. Brief review of history of expanding suffrage. Eligibility determined by state law but with intrusions of federal constitutional amendments, statutes, and voting rights enforcement mechanisms. Now suffrage is virtually universal for persons 18 and older but different levels of participation among various segments of the population, to be addressed in chapter 10.]

Numerous Elected Officials

[To be written. Brief review of history of expansion in number and variety of elected officials. Analysis of today's nearly 500,000 popular elected officials. Mention of partisan or nonpartisan elections, length of terms, number of terms permissible, any special eligibility requirements.]

DEPTH OF INVOLVEMENT

[To be written. Opportunities exist for considerable depth of participation in electoral process but through self-selection different degrees of involvement. Lay out various roles offer some estimate of numbers, such as persons eligible to vote but not registered, voters in primary and general elections, campaign volunteers, party officials, candidates in primary and general elections, incumbents running for reelection, interest group representatives. A graph or table summarizing estimates.]

MOVING THROUGH TIME

Manifestation of breadth and depth in the American electoral system occurs within the constant flow of time. In this stream the breadth of suffrage and variety of elected officials, determined as they are by constitutions and statutes, remains fairly constant though over decades it has widened, and upon occasion has narrowed. In contrast the depth of involvement varies considerably over the course of a single year, becoming deeper as elections approach and achieving the greatest depth on election day.

The time factor in the electoral process has a past, present, and future. The past consists of established laws and regulations, traditions, citizens' party identity, developed party structures, alliances of individuals and groups, public impressions of parties and well-known candidates. These are the givens at the start of an election campaign. Some of them are fairly fixed while others can be modified during the campaign.

The present stretches over the course of the election campaign. It starts with potential candidates positioning themselves to run and concludes with counting the ballots and certifying the winners.

The future is denoted by what candidates promise to do if elected, their vision of the country, state, or locality, their policy position on particular issues, anticipation of the kind of persons they will appoint to executive and judicial positions.

The linkage between the present electoral campaign and future governance ties together two major aspects of the consent process: choosing public officials and influencing public policy decisions.

To better understanding the time dimension, we can look at the electoral process from two perspectives: candidates seeking office and citizens participating in varying degrees during different phases.

For Candidates, A Roadway

Candidates aspiring for elective office look ahead to the roadway they must travel over the course of weeks, months, and sometimes years. The road network begins with numerous separate paths as various individuals position themselves to run. Candidates pathways converge into party nomination processes and then merge into a single roadway for the general election. The route ends on election day. Up to the nominating process the paths are different for incumbents seeking reelection than for challengers or persons running for open seats, but they all eventually come together. This is illustrated in Figure 5-1.

Figure 5-1. Roadways to Election

Each pathway on the road to election has gatekeepers who determine whether a candidate may pass to the next segment. The gatekeepers for party nomination may be party officials who slate candidates or are more likely to be party members who vote in primary elections or attend party conventions. The gatekeepers in the general election are voters who go to the poll on election day. Persons running for office must figure out who those gatekeepers are and determine how to gain their support.

This interaction is a vital part of the consent process and can be a significant influence on future public policy decisions. However, it tends to be segmented interaction, for at each stage a candidate must obtain support of only a portion of the population. This is an increasing number as the process advances. It may start with only one person, a political boss, or a small oligarchy where party leaders slate candidates. In party conventions it is a majority of delegates. In primary elections it is a plurality of active party members, or a majority where runoff elections are required. In general elections it is a plurality of persons who come to the polls (but sometimes a majority in a runoff election).

In future chapters we'll examine these different segments in greater detail and how they contribute to the consent of the governed.

For Citizens, A Revolving Stage

While candidates may perceive of the electoral process as a roadway that must be traversed over a period of time, citizens might think of elections as coming in cycles, repeated year after year. For them the electoral process unfolds on slowly revolving stages for various political jurisdictions with elective officials. The stages revolve at different speeds. Some complete the cycle in a year. Some take two, four, and six years to revolve.

Citizens are in the audience, observing the actors on the revolving stage (or ignoring them for prolonged periods). As the stage revolves, citizens have opportunities to step on it to participate by

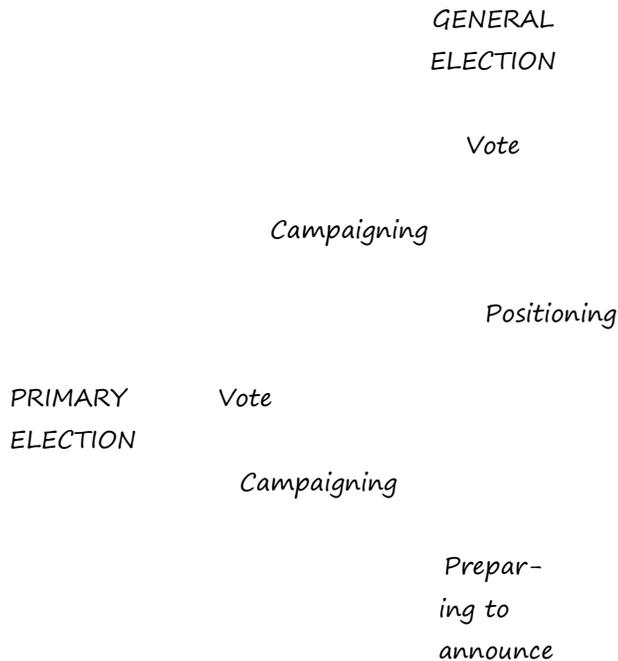
voting in the primary, helping a campaign, and playing other roles. A cycle is completed the day that voters come on stage to cast their vote in the general election. The next day the election cycle starts another round as the stage continues to revolve.

For several weeks or a few months before the vote occurs, the stage is occupied by candidates and campaign workers, busily scurrying about, calling out to the audience of potential voters. Before that a smaller group of actors are involved in pre-campaign activities as candidates, aided by a few advisors, prepare to announce their intent to run. Before that potential candidates are busy positioning themselves to seek public office. The stage is uncrowded then, but it is never completely empty at any time in the annual, biennial, or quadrennial cycle.

The stage continues revolving after the general election is over. Newly elected persons and reelected incumbents starting positioning themselves to run again. Potential challengers move on stage to establish their position. Some ambitious persons stay on stage for several election cycles in a long-term quest for office.

Pictorially the stage shown in Figure 5-2. Election laws demarcate different sections of the revolving stage. They specify filing deadlines and election days. They indicate the time for official caucuses, primary elections, and conventions. Each of these events bring people on stage: caucus and convention delegates, voters in primary and general elections.

Figure 5-2. Electoral Process on a Revolving Stage



As the stage revolves, positioners and candidates write scripts designed to appeal to the portion of audience whose support they need to move to the next section of the stage. If they find that some lines are not well received, they change them. Some in the audience (especially interest groups) send scripts to the positioners and candidates on stage and ask them to speak these lines. Exchanges between persons on stage and their audience increases as the stage moves toward election day, and more and more from the audience are drawn on stage.

In this manner American elections are for more than a spectator sport for numerous citizens. At the end of the contest those who vote become the judges and determine the winners.

Elections

The 50 states have primary legal authority and responsibility for the conduct of elections. This includes registration procedures, type of ballot used (such as paper, voting machine), how ballots are counted and safeguarded, and related matters. Most states delegate these operations to county or municipal governments but retain overall jurisdiction.

State laws determine what offices are filled through election, though some home-rule cities have this authority, too. The states establish how candidates are nominated, such as through primary election, party caucus, or convention. Most states set parameters for political parties.

Even though the states administer elections, the national government has significant involvement in the electoral process. The U.S. Constitution prohibits states from denying citizens the right to vote on account of race, color, sex, age (18 and older), or failure to pay any poll tax. The federal courts consider cases dealing with denial of these rights, and the U.S. Congress has enacted statutes specifying how the states must apply these basic standards. In 1993 Congress passed a law requiring states to register voters in connection with issuance of drivers licenses and at welfare offices.

May 18, 1993

Chapter 7. Preparing to Run for Office and Reelection

In American electoral process much activity occurs prior to the time candidates for office announce their intention to run or seek reelection and file necessary petitions with election officials. What goes on during this pre-campaign period affects who is elected and their policy decisions once in office. It is a little-recognized feature of the consent-giving process.

These days in American politics most aspirants for public office are *self-selected*. They make their own personal decision to run. Their motives are as complex and as varied as human nature, combining a quest for self-interest and a concern for others. They are self-seekers but also perceive themselves as public servants. In preparation for running, they often make a careful effort to *position* themselves well ahead of the formal nominating process.

There are, however, instances in which a *selection committee* from a political party, a caucus within a party, or an outside advocacy organization will screen candidates for elective office. They look at persons who are already positioning themselves to run, but on occasion they will reach out to recruit and groom certain individuals for the next election, or the one thereafter.

In rare instances a committee of citizens might call upon an established community leader and convince her or him to step out of private life into the political arena. But a true *draft* of a previously uninterested person is quite unusual, although the appearance of drafting is sometimes staged.

Sometimes a party, a caucus, or an advocacy organization puts forward a *slate* of candidates seeking nomination in the primary election for a set of related offices, such as all city council seats or all of the state legislative districts within the county. Occasionally individual candidates for parallel offices (such as adjacent council or legislative seats) join together to compose a slate, especially in the primary election.

POSITIONING BY NEWCOMBERS

Some persons suddenly get an urge to run for elective office and plunge right in. Most candidates, however, go through a positioning process in preparation for running. For many this is quite purposeful. Others come to realize that their involvement in various community activities for its own sake has prepared them for the quest for elective office. The plungers, too, usually have a background in civic or business activities that provide pertinent experience for their candidacy.

Commonality

Positioning occurs not only in the quest for public office but also in other arenas where elections

take place.

Potential candidates position themselves for election to class offices and student council in high school and college; as officers of service clubs, women's organizations, lodges, veterans organizations, and professional associations; in civic associations and cause-oriented organizations. The practice also occurs in religious denominations which elect bishops and other top officers. There you can observe persons positioning themselves years in advance and then becoming engaged in informal and formal campaigning as election time approaches.

To be sure in all of these arenas, persons are sometimes sought out to become candidates for positions they haven't pursued or are nominated without their consent. These are exceptions, often quite valuable ones, but the general practice of positioning prevails.

Entering the Political Arena

Position is commonplace among persons seeking public office for the first time. The experience of successful politicians indicates that positioning occurs by joining organizations, doing things in the community, making friends, forming alliances, seeking publicity, and gaining recognition.

Variations. The way positioning works varies according to the decision-making process of different political systems, especially whether they are controlled by a few persons or are more open to wider participation. Thus, where one party is overwhelming dominant and is tightly-controlled by a party boss or a small group of leaders, a potential candidate either has to gain their approval or mount a vigorous opposition campaign within the party. But where the party has several competing factions or caucuses, potential candidates seek favor with one of them, or if possible, gain the backing of two or more factions. Where two vigorous parties compete for the independent vote, candidates sometimes benefit from developing a wide base of support beyond party regulars in order to show potentially broad appeal in the general election.

Geographic spread is another factor. It ranges from the intimate setting of ward and local council district to the entire state for gubernatorial and U.S. senatorial candidates and the whole nation for the presidency. The closer to home the more personalized positioning is while in the wider arena the positioner gives more attention to influential political leaders and organizations representing major blocs of voters.

Name recognition. Some persons start with the benefit of name recognition, derived from athletics, television, business achievement, or prominent family. For example, U.S. Senator Bill Bradley from New Jersey was a basketball star at Princeton and with the New York Knicks. Representative Fred Grandy of Iowa was known through the television series, "Love Boat". Former Governor George Romney of Michigan was president of American Motors Company. In Massachusetts

members of the Kennedy family have had an advantage because of their name. The same phenomenon occurs in local elections.

Although name recognition opens doors, it doesn't automatically get you through the passageway to nomination. You still have to build support and work hard to win. Thus, Senator Bradley was active in the New Jersey Democratic Party while he was playing for the Knicks. After Fred Grandy graduated from college, he was an aide to an Iowa congressman before embarking on a theatrical career. He reentered the political scene in Iowa by learning farm issues and intensive campaigning. Governor Romney participated in the Michigan Republican Party prior to running for elective office. A succession of Kennedys -- Jack, Ted, Joe (as their constituents called them) -- went door-to-door and spoke at countless gatherings. They paid their dues.

Getting known. Persons lacking immediate name recognition find other ways to develop a favorable reputation in the district where they want to run. If they are trying to build support within a party, caucus, or advocacy organization, they may take on volunteer tasks, such as stuffing envelopes, handing out leaflets, making phone calls, attending rallies to add to crowd size. They join committees to work on issues and plan tactics. They might serve on the staff of an elected official. To become better known, they go out as a speaker, write letters to the editor, place phone calls to talk-in programs and appear on one themselves as they become better known.

Many positioners go beyond party and caucus by initiating civic endeavors, such as collecting food and clothing for the needy, organizing neighborhood cleanup, starting a mentor program for disadvantaged boys, forming a girls club. They become active and take leadership roles in nonpolitical organizations, such as church or synagogue, parent teacher association, service club, women's civic group, veterans organization. Sometimes persons who have engaged in such activities with no attention of running for office find themselves unexpectedly motivated to run, or push into running by friends. What they have done for other reasons turns out to have positioned them to enter the political arena.

These civic activities provide contacts for potential candidates, offers visibility, and gives them experience in group dynamics and coalition building. The nonpartisan nature of many civic endeavors can be an asset because it shows candidates to be public-spirited citizens, not narrowly constricted to one party or a highly-vocal, single-purpose advocacy group.

Deciding Whether to Run

For many persons the positioning process functions as a tryout to determine if they really want to run for office and to assess their chances of winning. As they consider becoming a candidate for a particular office, they may ask themselves a series of questions.

- *What office do I want to seek? What are the district boundaries? (This may affect choice of residence.)*
- *Can I stand the heat of campaigning? The prospect of invasion of my privacy by the media? Attacks by opponents? Do I have the right temperament for competitive politics?*
- *Are there skeletons in my closet that the opposition will reveal?*
- *Do I want to commit the time required for campaigning and holding public office? (Even a part-time office demands a lot of time, and full-time positions may take 60 to 80 hours a week.)*
- *Can I afford to work for the salary? (Some salaries for elective officials may seem high, but there are a lot of hidden expenses.)*
- *How will it affect my family? Possible negative publicity? The long hours I will put in? The possible economic burden?*
- *Is there a succession of offices for reaching my goal? (Such as, school board then county council; member of city council then mayor; mayor or county executive then governor; state representative, next state senator, then governor; U.S. representative then senator and maybe president or vice president; or a succession of appointive positions before running for elective office.)*
- *When will there be an opening -- at the next election or a subsequent one? (Because of term limit, announced intent of incumbent not to seek reelection, prospect that he or she will be running for another office.)*
- *If the incumbent is likely to seek reelection, what are my prospects? If she or he is from the opposite party, can I win my party's nomination? If from my party, should I challenge the incumbent in the primary?*
- *Even if the incumbent seems assured of reelection, should I run to raise issues or to build initial support for a second try?*
- *Who can I get to support me? What individuals, caucuses, organizations?*
- *Who else is interested in running? What are their strengths and weaknesses, their support and public appeal? How do I compare?*
- *What opposition will I face from elements within my party or from advocacy organizations*

involved in electoral politics?

- *Should I form a slate with candidates for parallel offices? (Such as with other legislative districts.)*

- *What are my chances of winning -- excellent, fair, poor? How can I improve my chance?*

Thus, the positioning period is a time for individual self-analysis. If persons contemplate running for elective office but discover enough negatives, they may decide not to stand for election now, and perhaps never. Thus, they may screen themselves out of the quest for office. But they may also conclude that they have the desire to run, announce their candidacy, and enter the competition.

LEGISLATORS SEEKING REELECTION

These days in any one election season a majority of members of Congress, state legislatures, county and municipal councils, and township boards are likely to run for reelection. As incumbents they take a different approach to positioning than newcomers. Their quest for reelection is intermingled with their desire to represent their district on policy matters and to serve their constituents in other ways during their present term in office.

Relationships with constituents is a central factor in the life of most legislators. Voters elected them in the first place and will determine whether they will be reelected. Therefore, most legislators pay a lot of attention to their constituents.

When political scientist Richard Fenno spent considerable time with a number of U.S. representatives in their home districts in the early 1970s, he discovered that "Each member of Congress perceives four concentric constituencies: geographic, reelection, primary, and personal."¹ His findings remain valid 20 years later and apply to state legislators and members of municipal and county councils.

Figure 7-1 express this perception as a conical field of vision of a typical legislator looking outward. Close at hand she or he has a small, intimate circle of friends and close associates with whom she or he can relax, get advice, and receive emotional support. The next circle contains strong supporters who form the core constituency for the primary election, make financial contributions, and work in the campaign. Then comes a larger circle of persons needed to provide a winning vote in the general election. The outermost circle encompasses the entire congressional district, including

¹ Richard Fenno, *Home Style: House Members in Their Districts*. Boston: Little, Brown, 1978. p. 29

opponents, swing voters, and apathetic citizens who seldom or never vote.

Figure 7-1. How Members of Congress View Their Constituents

Member	Personal	Primary Election Supporters	Reelection Supporters	Whole District
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For an incumbent seeking reelection, the first task is to maintain the loyalty of strong supporters within her or his political party so as to scare off potential primary opponents, and if challenged, to have a solid base for winning. The second task is to develop and maintain trust and support from a wider range of voters, including independents and perhaps some from the other party, in order to win the next general election. A third task is to be the representative of everyone in the district whether or not they voted for her or him in the last election or will do so in the next.

How Legislators Act

Members of Congress, state legislators, city and county council members use a variety of methods to carry out the intertwined tasks of representing their district, serving individual and group constituents, and positioning themselves to run for reelection.

Members of Congress, using printing allocations and free postage of their mailing frank, regularly send out newsletters to every household in their district or state. For many the first issue each year contains a questionnaire on important matters that will come up during the legislative session, and constituents are asked to reply. State legislators and local council members, lacking the frank, tend to send out fewer newsletters, but they find other ways to communicate with people in their district.

Legislators at all levels of government regularly send news releases to newspapers, radio and television stations serving their district. They hold news conferences within the district.

The U.S. House of Representatives and the U.S. Senate maintain television and radio studios so that members can make live or taped broadcast to local stations. They send out radio "actualities" -- taped statements that are transmitted via telephone lines to local radio stations for insertion into news programs. They use satellite linkage to transmit videotaped statements or excerpts from floor speeches and committee testimony. Sometimes through these linkages they grant live interviews to local TV reporters.

Although state legislatures and local councils rarely have their own radio and television production facilities, their members constantly seek opportunities to be heard and seen on broadcast media. They make themselves available to television reporters and are usually quite willing to appear on call-in talk shows. Because the listening and viewing audience of many radio and television stations encompass a number of state legislative and local council districts, legislators and council members compete among themselves for access. To get attention they sometimes create newsworthy events.

Legislators at all levels assign staff to handle constituency response and service. All mail is read by staff and usually tabulated by issue and opinion. Local council members and state legislators are likely to read all their mail. Some U.S. representatives do, too, but for many and for most U.S. senators the volume is too heavy for them to read every letter. Instead they receive a summary prepared by staff and read a sample, including correspondence from key supporters, state and local officials, and other influential citizens.

For the most part legislators answer their mail, except for postcards arriving in mass. Sometimes their reply is quite general: "Thank you for your letter. I always like to hear from my constituents." Etc. But often the response is tailored to the issue addressed, for the advent of computers has made it possible to easily combine stock paragraphs into a seemingly personal letter. The response is likely to be more specific when the legislator shares the constituent's viewpoint and is fuzzier when the legislator is in disagreement or uncommitted on the issue. Computers also permit legislative offices to build mailing lists of constituents interested in particular issues so that later they can be sent statements and reports on legislative votes.

Most legislative offices are organized to perform "case work", that is, to help constituents deal with the bureaucracy and other kinds of problems. Much of this is unrelated to particular legislation, although certain patterns may reveal problems with legislative remedies. In this sense legislators serve as ombudsmen, that is, troubleshooters and overseers of bureaucratic performance.

In Washington, D.C. the majority of staff time of a typical congressional office is spent on dealings with constituents rather than legislation (but committee staff is available on legislative matters). Moreover, U.S. representatives and senators have district and state offices that provide further linkages with constituents. Staffs of state legislators and local council members devote a lot of time to constituent service.

On legislative issues most members of Congress, state legislators, and local council members keep careful track of opinion in the district they represent. They have previously taken stands on particular issues during the election campaign, and they have the position of their political party to uphold. At the same time they are usually careful not to stray too far from what seems to be majority opinion on particular issues. Or if they do on some issues, they try to counterbalance this by sticking with prevalent district opinion on many other issues. They do this both out of respect for their

responsibility to represent their district and because they want to be reelected. Even legislators who garnered 70 percent or more of the vote in the previous election are cautious about casting wrong votes that could cause a drastic turnaround in the next election.

In short, most of the things that legislators do are things citizens want them to do as their representative in the legislative body. Whether a legislator's motivation is solely a desire to stay in office or is derived from a genuine commitment to be a true representative, the result is constant interaction between legislators and their constituents.

EXECUTIVE OFFICIALS SEEKING REELECTION

Like legislators, mayors, county executives, governors, the president of the United States, and other elected executive officials often want to be reelected if they are eligible for another term. So they position themselves for reelection as they go about their duties.

Usually an elected chief executive has a distinct advantage over legislators in gaining publicity. A city has only one mayor, a state only one governor, the nation only one president whereas city councils, state legislatures, and Congress have many members. The same pattern prevails in counties with an elected executive and county council, compared to the older pattern of a board of county commissioners. In these situations the chief executive is a central focus of media attention while legislative leadership is much more spread out. Moreover, the executive process is more action-oriented than the deliberative processes of legislative bodies, and this generates greater publicity.

Even so elected chief executives do many of the same things legislators do to communicate with their constituents and stay in touch with them: issue news releases, hold press conferences, grant interviews to print and broadcast journalists, appear on radio and television shows, speak at community meetings and conventions, appear at public events, attend funerals. In addition, the chief executive can call upon a host of appointed officials to perform similar outreach. In the process they are in touch with a variety of group constituencies, who are told how the chief executive shares their concerns.

INCUMBENTS SEEKING OTHER OFFICES

[To be written]

Persons already holding elective office who want to move to a broader arena -- local to state, state to national -- use various techniques to position themselves to appeal to the broader constituency. They join statewide and national associations. They go outside their locality or state to participate in events where they meet persons from elsewhere and begin to achieve visibility. They serve on committees, speak at political conventions, and sometimes form or join caucuses of like-minded

persons. They may support a candidate for a party post or an elective office with the hope that they will receive reciprocal support when they are ready to run for office in this broader domain.

SELECTION COMMITTEES

In earlier periods in American politics, selection of nominees by a small group within the party (regulars or opposition) was more common than it is today. For instance, in 1946 a group of conservative Republicans in the 12th Congressional District of California was seeking a candidate to run against the liberal incumbent, Democrat Jerry Voorhis. They ran an ad in the newspaper but didn't favor any who applied. They asked Dr. Walker Drexler, former president of Whittier College to run. He declined but suggested a Whittier graduate, who was a superb debater: Richard Nixon, at the time living in Maryland and completing a term of service in the U.S. Navy. They contacted Nixon. He readily accepted and began his political career by defeating Voorhis.²

In 1948 in Michigan's 5th Congressional District a group calling themselves the Home Front Republicans wanted to challenge the Republican incumbent, an ally of the state Republican "boss" they were fighting. In a district where about half the voters were Dutch, they wanted someone who was or looked Dutch. With that in mind they recruited Gerald Ford, a young lawyer and Navy veteran, well known in those parts as a football star at the University of Michigan. He defeated the incumbent in the Republican primary and was in his 13th term in Congress when President Nixon appointed him vice-president to replace Spiro Agnew, who had resigned under pressure.³

[Add a Democratic example]

Outright recruitment still occurs these days in districts where no candidates are forthcoming to challenge a seemingly entrenched incumbent. And sometimes a state or national party unit will work with local and state party members to find a strong candidate to take on a presumed vulnerable incumbent of the other party. But more typically selection committees, where they function, perceive their task as screening persons who have indicated their interest in running and endorsing one of them.

Such a selection committee might be set up by political party officials or by a faction within the party opposed to party leadership. It might be a committee from a caucus that brings together African Americans, Hispanics, women, or other population groups. Sometimes it is a gathering of representatives of several such groups. It can also be a committee from an interest group (labor,

² William L. Roper, *Winning Politics*. Radnor, Pa.: Chilton Book Co., 1978. p.10.

³ *Op. cit.*, pp.11-12.

business) or an ideological group (such as conservatives, Christian fundamentalists, moderates, liberals, libertarians) that functions outside the party organization.

Whatever its political orientation, the selection committee seeks a consensus on which candidate to back in the primary election or convention. The intent is to avoid dividing the vote of party regulars or caucus members, thereby allowing a candidate with a different orientation to prevail.

The selection committee is likely to discover that some persons have already announced their candidacy. Others are still in the positioning phase but pass the word through party or caucus connections that they are interested. The selection committee might interview them, talk to others about them, and decide which candidate to endorse in the primary election or at the convention. Now and then the selection committee will be dissatisfied with all announced candidates and will reach out to recruit someone else.

This process may not eliminate other candidates, for some persons are determined to run with or without party or caucus endorsement. But it is an effort to narrow the field and enhance the chances of the party's or caucus's favorite candidate.

Reform groups and newly formed caucuses which want to defeat an incumbent or to win an open seat will find that their chance is increased by agreeing upon a candidate who seems to have the best chance of winning and by discouraging other candidates of similar persuasion from dividing the vote.

This need not be a contemporary version of the discredited "smoked-filled room" (the back room out of public view where party bosses picked candidates). A selection committee can be democratically selected within the caucus or reform group. It can have open proceedings (and these sessions are likely to permit no smoking!). It can report back to a larger body for affirmation. Furthermore, this is only an early phase of the electoral process. Ultimately voters will decide in the primary and general elections.

Nowadays selection committees, where they function at all, usually don't have to beat the bushes to produce candidates. They are already out there in the open field, or at the edge deciding upon the best time to emerge. They are persons who have carefully positioned themselves to seek public office, or who have recently decided to run for election.

RELATIONSHIP TO CONSENT PROCESS

Influencing Positioners

Because persons positioning themselves to seek elective officer are trying to establish a broad base

of support, advocacy organizations many find this a good opportunity to promote their cause with the positioners.

If you a leader of an advocacy organization, look around and see who is getting ready to run for office: for the school board, city council, county council, mayor, county executive, state legislature, governor, Congress, president of the United States. Some of them will already hold policy position diametric to yours, so there's little point in talking with them. Others will be strongly supportive of your positions. Some will be unknown quantities or will be uncommitted. They are the ones particularly worth approaching.

You can educate them on your issues. Provide written information. If appropriate, take them on site visits. Invite them to your meetings. You don't necessarily have to make a commitment to support them if they announce their candidacy. Among other reasons, you will want to see who else is running, who is most supportive of your cause, who is mostly likely to win.

At the same time positioners may want to avoid making firm promises to promote your cause. They are testing the water and are becoming aware of various cross-currents. Ultimately strong positions on particular issues will gain some votes and lose others. They may prefer to wait taking positions on very controversial issues. But you can still talk with them.

Even with these ambiguities, contact by advocacy organizations with positioners is worthwhile. It can be the beginning of a relationship that will blossom later, or it can be a deadend. Not knowing which positioners will ultimately be elected, advocacy organizations can be in touch with a number of them.

Public Benefits

Individuals positioning themselves to run for political office are motivated by personal ambition and a desire for public service. Political party units, caucuses, and interest groups screen candidates and endorse one in hopes of winning. It's a competitive process that has public benefits.

As potential candidates position themselves, party leaders and other political activists observe them, note what they do and what they say, judge their accomplishments and their character, and consider whether they are appropriate candidates for public office. Unsuitable candidates to whom voters aren't likely to consent are screened out or encouraged to modify their positions and their mode of operation. Those who don't suffer defeat at the polls. Many strive but few are chosen.

Positioning functions as an early part of the consent of the governed. Prospective candidates, seeking recognition and staking out positions on public issues, interact with the public. Learning what the public thinks on particular issues, they may tailor their positions to reflect majority opinion. They

may also educate the public on new ideas and learn how to advance unpopular views in a manner that will gain support. This exchange can have an effect on future policy decisions.

The positioning period is an opportunity for advocacy organizations to gain support for their positions from potential candidates before they have taken a public stand on particular issues. This kind of early involvement enables citizen activists to make advantageous connections that they can intensify when formal campaign begins. It lays the groundwork for future lobbying of those who are elected.

Incumbents positioning themselves for reelection keep in touch with constituents and track public opinion (more on this in the next chapter). This influences the votes of legislators and the policy decisions of elected executives. Lobbyists offer election support to incumbents they favor. All of this is a manifestation of the interactive nature of the consent process, occurring continuously.

Accordingly, what happens on the revolving electoral stage during the period of positioning and other pre-campaign activities is as much a part of the consent of the governed as election day. Numerous public policy decisions are affected by the positioning process.

September 27, 1993

PART THREE. INFLUENCING PUBLIC POLICY

Chapter 13. Overview of Governmental Decision-Making

Partial draft, laying out basic ideas

Voters in the United States elect 497,155 public officials. In that manner the citizenry provides its basic consent for them to govern. But that doesn't end the consent process. Citizens continue to interact with elected officials throughout their terms in office as they make public policy, and also with persons who they appoint to policy-making positions.

In a strictly legal sense, decisions on public policies are made by legislative bodies and executive officials: Congress, state legislatures, county, city and township councils enacting statutes and ordinances, adopting budgets, making appropriations, levying taxes; the president, governors, county executives, mayors, township commissioners making decisions on a host of executive matters.

In practice, however, almost always these formal decisions are the end product of processes involving a variety of persons inside and outside government and extending through weeks, months, and sometimes years. Rarely does an elective chief executive act without consulting others, though he or she may sometimes make decisions contrary to advice received or in face of certain opposition. Legislative decisions are always a group process even though some legislators have more power and influence than others.

RELATIONSHIPS

Relationships among persons holding a variety of positions provide a key for understanding governmental decision-making. Constitutions, statutes, and operating procedures provide the framework. The organizational structure of government identifies officials in policy-making positions and charts their formal ranking. But the crucial variable is ever-changing relationships among influential persons within and outside government.

In American democracy three sets of relationships are particularly important.

The first set occurs among persons holding governmental positions: executive, legislative, and judicial. Within the executive branch elected officials interact with those who they appoint in formulating policy. Legislators interact with one another as bills move through the legislative process. The judicial appeal process brings layers of courts into relationship, and judges in multi-member appellate courts deal with one another in make their decisions. Executive officials and legislators

continuously interact. And judges deal with governmental executives and legislators in certain legal cases.

A second set consists of relationships between public officials and citizens, acting individually and organized into interest groups and political parties. Varied manifestations occur: public officials providing information; citizens offering views and comments on proposed policies and initiating their own proposals; direct and grassroots lobbying; public hearings; advisory committees; other participation processes; media campaigns; and protest demonstrations. Political party leaders have a special relationship with legislators and executive officials from their party.

A third set involves relationships among individual citizens and within and between interest groups and political parties. Citizens get together to formulate their views and work out strategies for dealing with government. Groups come together in coalitions. Interest groups with opposing views compete in their efforts to influence governmental policies.

These three sets of relationships occur simultaneously and intermingle. In enacting a law legislators deal not only with another but also the chief executive and the bureaucracy. Citizens get together to plan and implement strategies for influencing key legislators. Interest groups seek ways to influence executive decisions, and sometimes they enlist the help of legislators. Conversely a public agency may seek allies among interest groups to press the legislature to adopt specific bills.

These are very dynamic relationships. As they take expression in governmental decision-making processes, the time dimension is a significant factor. Some processes observe a regular calendar schedule. Others follow a predictable sequence even if they don't have precise deadlines.

In future chapters we will examine legislative and executive decision-making separately and consider where and how consent of the governed occurs. As an illustrative overview, here we look at the budgetary process. The budget is one of the most important policy documents that governments adopt, for it lays out governmental funds to be spent and indicates how governmental services will be paid for. In most units of general government in the United States the budget goes through a sequence of executive development, legislative review and adoption, and final approval by the chief executive.

BUDGET-MAKING: AN ILLUSTRATIVE PROCESS

We can think of the budget taking shape in a manufacturing complex, visualized as flowing through a large pipeline to which numerous auxiliary pipes are connected. A simplified configuration is shown in Figure 13-1.

Typical process. During the preparatory period governmental agencies begin considering what they want to request, and the budget office prepares instructions to guide agency submissions. Agency requests are based upon these guidelines, though sometimes they go beyond what the budget office suggests. Moreover, agency heads may appeal directly to the chief executive. The budget office reviews agency requests, makes adjustments (conferring with the chief executive on important issues), and puts together the total budget with expenditures related to anticipated revenues.

The chief executive gets more and more into the process as it goes along, makes major policy decisions on spending priorities and revenue measures, and then formally transmits the budget to the legislative body. At that time the complete budget is submitted to the legislative body and published for citizens.

Figure 13-1. Budget-making Process in Governmental Units in United States

Stages

- | | | | |
|---|---------------------------------|---|--------------------------|
| 1 | Advanced preparation | 6 | Public hearings |
| 2 | Departmental requests | 7 | Committee action |
| 3 | Budget office review | 8 | Floor action |
| 4 | Chief executive decisions | 9 | Chief executive approval |
| 5 | Transmittal to legislative body | | |

examination. The legislative process is simplest in local government and most complex in the national government.

Local government. The budget-approval process varies according to the form of local government. In mayor-council cities the council holds public hearings with agency representatives and citizens, modifies the budget as it chooses, and adopts it. In most cities the mayor has authority to veto the budget as adopted council, and in some places may veto specific items. Council can override, usually with a "super" majority of three-fifths or two-thirds required.

In council-manager cities the manager submits the budget, and usually the mayor lacks veto authority. Counties with an elected executive and council or a council and an appointed administrator have budgetary processes similar to city counterparts. Where a county commission combines legislative and executive functions, departments under the several commissioners develop budget proposals which the commission as a whole reviews, possibly modifies, and approves.

Federal. The federal budgetary process is much more complicated because Congress has four stages of consideration: first, an overall budget resolution to set the general framework of spending and taxation; second, authorization of expenditures; third, appropriation of funds; and fourth, tax legislation.

Adoption of the budget resolution occurs after consideration by House and Senate budget committees, approved by each house separately, then a House-Senate conference committee to reconcile differences, and final passage by the two houses. Authorization of expenditures goes through a set of authorizing committees, divided among major functions (such as Agriculture, Armed Services, Education and Labor, and others) with a conference committees on each function.

The House and Senate appropriations committees are organized into subcommittees dealing with

each function. They make the first determination, followed by review and possibly amendments by the full committees. The committees report separate appropriations bills for each function rather than a single, all-encompassing appropriations for the entire government. Next comes floor action where amendments are possible, then reconciliation of differences between the two houses by a conference committee, final passage by the entire Congress, and approval by the president. If the president vetoes an appropriations bill, Congress may override by a two-thirds majority in each house, but if unsuccessful, Congress must modify the bill to satisfy the president.

While this is going on the House Ways and Means Committee and the Senate Finance Committee are developing tax legislation, which goes to the floor of each house, then to a conference committee, back to each house for final action, and finally to the president.

The federal budgetary process takes about 15 months from the start of departmental preparation to appropriations of funds by Congress and approval by the president.

States. State budgetary processes fall between local government and the federal budget in their complexity. All state legislatures except Nebraska's are bicameral so that the budget has to go through both houses, a conference committee, and back to the two houses for final action. Some divide appropriations and tax legislation, but the process is as not complicated as that of the U.S. Congress. Even so a state budget is likely to take nine to twelve months from the beginning of departmental preparations to final approval by the governor.

Citizen involvement. In most governmental jurisdictions in the United States, budget-making is predominantly an internal operation within the executive branch until the complete budget is published upon submission to the legislative body. Even so, some interest groups seek to influence agency requests on particular items during the stage of departmental preparation and may also try to influence the chief executive on key budgetary issues. Budget consideration by the legislative body is more open, and citizens and interest groups have more opportunities to make their views known.

In local government time is short for council review while the legislative process usually takes longer in state and national governments. In none of these jurisdictions are citizens satisfied to say, "We elected you, so you decide the budget." Rather citizens insist on their input into budget-making. Moreover, a few cities carry out a budgetary process that provides much fuller citizen participation, beginning in the earliest stage, as we'll review in chapter 16.

Other processes. Like budget-making, many other governmental decisions are made through processes that have identifiable steps occurring in sequence over a period of time. Individual citizens and interest groups seek to influence governmental officials at each stage of the process. This achieves considerable citizen involvement in governmental decision-making as it moves through time. It is an expression of the consent of the governed.

It is, however, differentiated participation because particular interests focus mainly on decisions in which they have a stake. Frequently opposing interests will clash as they seek opposing objectives. Persons and groups not affected tend to stay on the sideline. Frequently there is no one championing the "general interest", which anyway is not always clearly defined. This is an issue we'll return to in later chapters.

GOVERNING COALITIONS¹

¹ Portions of this chapter are based upon my previous writing on this subject in *The Organization and Operation of Neighborhood Councils* (New York: Praeger Publishers, 1977), pp.126-8. [Future drafts of this chapter will take into account the literature on governing coalitions and community power structure.]

Some citizens and interest group representatives are so heavily involved in governmental decision-making that they join with elected and appointed public officials in constituting governing coalitions. "Governing" describes the function. "Coalition" describes an alliance between persons possessing power and influence, not all holding governmental positions. It indicates that power is pluralistic but acknowledges that the governing group is limited in numbers.

It is much more accurate to say that governments in American democracy are directed by governing coalitions than solely by elected and appointed public officials arrayed in a command hierarchy suggested by typical governmental organization charts.

In Local Government

The governing coalition in municipal government will almost always include the elected officials -- mayor and members of city council -- and also the appointed city manager, if there is one. In county government, likewise: elected county executive, county commissioners or members of county council, and appointed county administrator. Similarly for township governments.

In addition, a governing coalition of local government is likely to include some of the following, though not necessarily all at the same time: administrators heading public agencies; leaders of the victorious political party; representatives of business and labor; leaders of ethnic, racial, and religious groups active in public affairs; leaders of other organized interests, such as social welfare organizations, vociferous issue groups, and strong neighborhood associations. Except for the elected chief executive, each member of the governing coalition represents a minority. Even the chief executive is limited in speaking for the people as whole, for his or her political base is likely to consist of a collection of minorities that together provided an electoral majority.

Within a governing coalition some will have more power than others, and the respective degree of influence will vary from one issue to the next. Moreover, the balance of power will be in a constant state of flux. If one person or group isn't exercising its full potential of influence, then another person or group is likely to claim more than its proper share. But if this second group goes too far, the first group, or a third or fourth group will begin to resist. Thus, a governing coalition is quite dynamic.

Around each cluster of decisions there is probably a subcoalition. One subcoalition might deal with housing, another with highways, a third with tax policies, and fourth with employment programs, and so on. Some subcoalitions are basically tripartite, consisting of administrators, legislators, and representatives of advocacy organizations. Memberships in subcoalitions may overlap but are never identical.

Leaders who are in several subcoalitions have different weights in each depending upon the strength of influence and depth of feelings of the group they represent. The mayor or county executive

usually has a role in most of the subcoalitions. This makes the overall structure what political scientist Robert Dahl has called an executive-centered coalition.²

² Robert Dahl, *Who Governs?* New Haven: Yale University Press, 1961.

A governing coalition is no monolith. Internal decision-making is characterized by continual bargaining. Participants are constantly negotiating, trading support, building and reinforcing alliances. For the most part this isn't a formal process conducted around a table as in bargaining during labor-management negotiations, although some of this occurs in meetings of legislative committees and advisory boards. Rather it is informal, subtle, and sometimes quite elusive.

Although ultimately formal decisions are made by elected officials -- the chief executive and the local council -- they will usually take into account the views and strengths of others in the coalition, and even those outside the coalition in the opposition. Even a mayor or county executive who is reputed to be the local political boss lacks total command authority, for he or she has to constantly touch base with leaders outside of government and sometimes has to bargain with his or her own appointees.

Ultimately decisions retain their democratic character because they require formal action by elected officials, who were democratically selected for this role and can be replaced at the next election. Moreover, sometimes interest groups not represented within the governing coalition can mobilize public support to overturn an informal decision of the governing coalition when it comes to vote at the city or county council. They might be assisted by council members who, though elected, are not included in the governing coalition. So broad-based democracy can prevail.

Even though an outsider may believe there is an unbreakable solidarity that excludes any new participant, an effective governing coalition will admit new individuals and representatives of groups which are showing increased strength and have enough in common with the coalition to be a useful working partner. Participants in governing coalitions who become out of phase with the objectives of the coalition or who lose their supporters will be eased out, or simply ignored.

Interest groups often decide that it's better to be represented inside a governing coalition or a subcoalition than remaining entirely on the outside. Insiders talk with one another, bargain, and work out compromises that later emerge in policy proposals and legislation offered for formal adoption. Having a voice in such proceedings can be valuable -- if it's real and not merely manipulated for appearance sake. If the latter is the case, an advocacy organization may be better off to remain outside and mobilize its supporters to pressure legislators and executive officials who have legal authority to make the final decision.

Some governing coalitions will try to preserve the status quo while others will initiate change. In either case the coalition, as a leadership group, will be committed to objectives that aren't necessarily shared by the entire citizenry. Nevertheless, the key leaders of the coalition will claim that their policies represent a broad community consensus. Often this is the case, but not always.

In State and National Governments

The same kind of governing coalitions function in state governments and in the national government, though they are more complex and subcoalitions are more diversified. The governor and leading state legislators, the president and leading members of Congress play central roles but seldom have unrestricted dominance. They have to bargain among themselves, with their own appointees, with career administrators, with political party leaders, with interest group representatives, and with other persons who have influence because of campaign contributions, moral stature, or ability to mold public opinion through the media.³

³ A superb exposition of how coalitions functioned in Washington during the Reagan years is offered by Hedrick Smith in *The Power Game: How Washington Works* (New York: Random House, 1988; paperback by Ballantine Books, 1989), especially chapter 13, "The Coalition Game: The Heart of Governing".

Local elected officials, staff from their statewide organizations, and local party officials may be participants in the state's governing coalition. Representatives of local government, governors, state legislators, and state political parties may participate in the national governing coalition and subcoalitions dealing with concerns of local and state governments. Business and labor representatives and other kinds of advocacy organizations try to get into the inner workings of subcoalitions handling their interests.

Take virtually any subject that national and state governments deal with -- foreign policy, defense, international trade, transportation, housing, health, welfare, education, environment, natural resources, and dozens more --and you will find a coalition working out policies during the various stages of decision-making. Persons with official positions -- president, governor, chairs of authorizing committees and appropriation subcommittees on that subject -- will have the most power and influence, but their authority is contained by the bargaining that is an inevitable part of the political process.

Relation to Representative Democracy

Governing coalitions are widespread in American democracy. It fits within the framework of representative government because elected officials are principal participants and retain ultimate decision-making authority. Most persons from outside government who are involved in governing coalitions represent various interests. This achieves a kind of representative participation that is part of the consent-giving process.

Even so, we should ask of any governing coalition: Do all groups and viewpoints have equal access to gaining representation within the governing coalition? Often the answer is: No, they don't.

If the answer is negative, remedies are threefold. First, elected officials, who are supposed to take a holistic view of the common good, have an obligation to achieve very broad participation in public decision making. This includes truly representative consultation during the policy formulation process.

Second, unrepresented interests can examine the decision-making process, learn its stages, determine who is influential at each stage, seek to make an impact, and maybe gain representation in the inner workings of governing coalitions. For them it is important to know both who makes decisions and how the decision-making process works.

Third, where segments of the population aren't well enough organized to participate effectively in the dynamics of governmental decision-making, strenuous efforts are needed to help them organize.

October 3, 1993

Chapter 14.

From Democracy

What Citizens Expect

We citizens bring our own expectations to our relationships with members of Congress, state legislatures, city and county councils, and township boards.

We would prefer them to vote on legislative matters as we would vote if we were a member of the legislative body. We realize that this won't always happen, but at least we expect them to reflect majority opinion in the district they represent. We certainly don't want them to be beholden to a political boss (unless, perhaps, we are an intimate part of the political machine) or to any special interest (unless it is ours).

Even if we voted for another candidate or even if we differ from our representative's stated position on an issue, we want her or him to give consideration to our viewpoint, to read our letters, to meet with us upon request.

We want our representative to keep us informed about legislative issues, to attend meetings in the district, to participate in local events. We expect her or him to meet with reporters and appear on radio and television talk shows so that their views on policy issues are publicized.

We want our representative to work on matters that help our district. We want her or him to assist us in our dealings with government. Sometimes we do this after frustrating experience with the bureaucracy, knowing that our representative may have some clout. At other times we don't know where else to turn to solve some problem. Although we are aware of broader concerns that our representative must deal with, we feel that we need someone to look after our specific needs and interests in the course of legislation and program administration.

Chapter 16.

From Democracy

Citizens who want to influence chief executives can take advantage of these opportunities: invite them to meetings, catch them when they are making public appearances, call in when they are on radio and television shows. When cabinet members and department heads appear instead of the chief executive, citizens can send messages to the chief executive through them.

Lobbying executive officials is different than lobbying legislators, for executive policy-making processes are usually not as open and ordinarily don't follow a set procedure and timetable. There are no bills or proposed ordinance to study, support, oppose, or propose amendments, although chief executives often develop legislative proposals (commonly out of public view). Nevertheless, some key policy processes take place regularly, the most important being the annual operating budget. Vacancies in top appointive positions occur, and who gets the job affects future policy decisions in the particular department. So there are matters on which citizens can lobby chief executives. In several chapters of Part III, we'll examine in greater detail different methods citizens can use to influence executive officials.

Citizen advocacy can occur whether or not the chief executive is seeking reelection. But if the mayor, county executive, governor, or president is positioning himself or herself for reelection, citizens can recognize the positioning process and take advantage of it in their efforts to influence executive policy decisions. In this manner citizens can keep executive officials constantly alert and thereby more accountable to the public they were elected to serve.