

*CONSENT OF THE GOVERNED:
CONTINUOUS AND INTERACTIVE*

by

Howard W. Hallman

*President
Civic Action Institute
6508 Wilmett Road
Bethesda, Maryland 20817*

Mon-Thurs: (301) 694-2859

Fri-Sat: (301) 897-3668

April 1995

ABSTRACT

CONSENT OF THE GOVERNED: CONTINUOUS AND INTERACTIVE

Consent of the governed is a fundamental principle of American democracy. Yet the concept of consent and its richly varied applications are amazingly neglected by American political scientists. In the political science literature consent is perceived mainly as periodic election of public officials, supplemented by voting on ballot issues. In practice, though, consent has many more manifestations.

In American democracy consent of the governed is a continuous, interactive process. It occurs through a host of activities taking place over extended periods of time: potential candidates positioning themselves to run for public office; election

campaigns stretching out over months and years before culminating in voting; ballot issue campaigns taking weeks and months to complete; sustained efforts by interest groups and individual citizens to influence legislation; extensive deliberation, negotiation, and involvement of outside interests in the adoption of executive policies; and sometimes the influence of public opinion on judicial decisions.

American political science deals with all of these activities but categorizes them in other ways. If, however, we look freshly at these well-known phenomena through lens that focus on consent, we can obtain a much better understanding of how consent of the governed is achieved in American democracy. We will then be able to analyze more thoroughly the accomplishments

and shortcomings of the consent process. This article offers such a perspective.

AT THE BEGINNING

In 1776 when Thomas Jefferson and his colleagues at the Second Continental Congress enshrined "consent of the governed" in the Declaration of Independence, they were using a phrase from their common political vocabulary. It was so naturally accepted that two scholars of our own century who penned the most widely-read analyses of the Declaration, Carl Becker (1922) and Garry Wills (1978), felt it unnecessary to explain the meaning of consent.

Concept

The idea of consent entered Mediterranean and West

European thought during the course of 2,000 years of inquiry into the origin of government and speculation on why people are willing to accept the authority of the state (Sabine 1937). John Locke's repeated reference to consent in his influential *Second Treatise of Government* ([1690] 1965) was in this tradition.

Even before Locke's book appeared, American colonists were articulating the importance of consent as they strove for self-government (Rossiter 1953). Thus, Thomas Hooker, who helped develop the Fundamental Orders of Connecticut in 1639, placed heavy emphasis upon consent. So did Roger Williams, who in 1644 founded the colony of Rhode Island.

As expressions of consent developed in the colonies, political participation was limited primarily to freeholders, usually defined

as white male property owners or taxpayers. Two forms of democratic governing bodies emerged: representative assemblies, commencing in 1619 with the first one in Jamestown and eventually forming in all 13 colonies; and town meetings open to all freeholders, starting around 1630 in the Massachusetts Bay Colony and spreading throughout New England and to a few locales in New York and New Jersey (Barck and Lefler 1964, Kammen 1969, Zimmerman 1967).

When relationships with Great Britain began to sour in the 1760s, the elected colonial assemblies served as vehicles for providing representation (directly or extralegally) to intercolonial congresses. The first of these, the Stamp Act Congress of 1765, insisted that "no taxes should be imposed on them, but with their

own consent" (Rossiter 1953, 319). The First Continental Congress in 1774 noted that "the first grand right, is that of the people having a share in their own government by their representatives chosen by themselves" (Ford 1904, 107).

If an interviewer had asked delegates to the Second Continental Congress what they meant by consent, likely most of them would have talked about the election of public officials by the citizenry, with some mention of New England town meetings. This was certainly the foundation for consent in the newly formed United States of America, but soon it became much more in practice.

Consent to Constitutions

Initially the legislatures of most of the newly independent

states drew up and adopted their state constitutions. But in Pennsylvania when a balky assembly refused to act, citizens chose delegates to a separate constitutional convention. In 1778 freeholders in Massachusetts got a chance to vote in town meetings on a constitution drafted by their legislature, and they defeated it. For a second try freeholders elected members of a constitutional convention, which produced a constitution that gained approval at town meetings in 1780. New Hampshire revised its initial constitution in a similar manner in 1784 (Ketchum 1974; Nevins 1959; Wood 1969).

Over the next decades it became the norm for voters to elect state constitutional convention delegates and to approve the product. Today all states except Delaware require voter

approval of state constitutional amendments (*Council of State Governments 1992, 329*). A similar pattern prevails for city and county charters.

Although the new U.S. Constitution of 1787 did not go as far as requiring direct voter approval, it did call for ratification by state conventions. This made campaigns for election to serve in the ratifying conventions a kind of referendum on the Constitution.

In drawing up the U.S. Constitution, the delegates added another factor to the consent process: anticipation. They knew they had to write a constitution that would be transmitted through the existing Congress of the Confederation to the state conventions. They also realized that the new constitution would

have to gain approval in both large and small states from New England to the South. Accordingly they bargained among themselves and made compromises with an eye toward the ratification process (Collier and Collier 1986, Rossiter 1968, van Doren 1948). This added a future orientation to the consent process.

The campaign for and against the new Constitution revealed another aspect of consent: the impact of public opinion. 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 ([1787-88] 1937). Anti-Federalist writings were published there and elsewhere (Storing 1971).

The writers were trying to influence voters who would choose delegates to the state ratifying conventions and the delegates themselves. This brought a public opinion dynamic into the consent process.

Anti-Federalists were concerned that the new constitution contained no Bill of Rights. Many of them also wanted a stronger guarantee that the states retained all powers not delegated to the general government. As expressions of these and other concerns, seven of the 13 state ratifying conventions in their resolutions of approval proposed a total of 124 amendments to the Constitution (Tashill 1927, 1009-59). In response George Washington and leading Federalists offered assurance that the First Congress under the new Constitution

would address these concerns (Corwin, Small, and Jayson 1964, 840). This promise of future action extended the time dimension of consent-giving.

Forming New Governments

Thus, by the time the new state governments and the new general government became operational, consent of the governed had gained a new expression in voter approval of the basic structure and powers of government. What the voters approved in the state and U.S. constitutions was a form of government they called a republic. James Madison described a republic 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 good behavior" (*The Federalist No. 39*, 243-44). Today we call this representative government.

In the new Federal Union the states determined voter qualifications. They limited suffrage mostly to white males and maintained a property or tax-paying requirement for voting, though not as stringent as during the colonial period. 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 (Eidelberg 1968, 263).

Of the principal offices of these new governments, the U.S. House of Representatives, the state legislatures, and three governors were directly elected. The other ten governors and

the U.S. Senate were elected by the state legislatures. The president and vice president of the United States were chosen by a small group of electors selected in a manner determined by the legislatures. This meant that consent expressed through elections was only partially direct.

As the framers conceived the system, responsibility for government would be delegated to "a chosen body of citizens, whose wisdom may best discern the true interest of their country" (The Federalist No. 10, 59). It would be representative government in an elitist mode.

New Instruments of Consent

However, as these new governments became operational, two new instruments of consent emerged: political parties and

interest groups. They added new features to the consent process and provided greater continuity of participation.

George Washington, first president of the United States, did not want political parties to form in the new federal union.

Many other founders agreed, including Vice President John Adams. Nevertheless, before Washington's first term was over, they were functioning within Congress and in many states and localities. They were a strong factor in selection of Washington's successor in 1796. Ever since parties have been a prominent feature of American democracy (Reichley 1992).

Likewise many of the founders looked with disapproval upon interest groups. "Factions" they called them (*The Federalist No. 10*). Nevertheless, interest groups showed up in 1789 in New

York where the First Congress was meeting (Source 19xx) They have been hanging around the halls of government ever since. Not only do they seek to influence legislative and executive decisions, but also they try to affect public opinion on particular issues and sometimes mobilize specific blocs of voters in elections and ballot-issue campaigns.

By 1800 consent of the governed was considerably broadened from merely electing public officials and letting them run the government. The people were taking a hand in adopting constitutions. They had formed political parties to extend their participation in the electoral process. They were functioning as interest groups to gain influence in the ongoing policy-making processes of government. In many respects the

history of American democracy since then can be viewed as steady elaboration of sets of intertwined processes for achieving the consent of the governed.

TODAY'S FRAMEWORK FOR CONSENT

Consent of the governed in the United States occurs today in numerous ways. Consent starts in election campaigns and voting. It then continues during successive stages of governmental decision making. The consent process occurs all year round.

Two species of democracy. Consent takes place in a governmental system that is primarily a representative democracy but also contains elements of direct democracy.

Representative government in the United States now

functions in a participatory mode as interactive consent gains expression in the course of three decision-making processes: electing public officials, enacting legislation, and adopting executive policies. Participants include persons positioning themselves to seek public office, announced candidates, political party officials and campaign workers, legislative and executive officials, interest group representatives and individual citizens seeking to influence decision makers. Molders of public opinion also play influential roles.

Consent also occurs in two practices of direct democracy that provide further opportunities for citizen involvement: voting on ballot issues and, in some local jurisdictions, town meetings that serve as official governing bodies.

In its totality the consent process is an accumulation of innumerable bits and pieces of interaction between citizens and public officials, occurring through extended periods of time.

From the seemingly randomness of highly diversified activities, overall patterns emerge and define the outcome of consent of the governed in American democracy.

Individuals and organizations. American society is simultaneously individualistic and communal. Both characteristics are present throughout the consent process.

Individuals act on their own to become candidates for public office. They retain various degrees independence during the campaign and, if elected, during their tenure in office. At the same time they function as members of political parties,

legislative bodies, and the structured executive branch.

Individual citizens mark secret ballots. They communicate with elected officials whenever they choose. But they also affiliate with political parties and join with other citizens in interest groups.

Within government legislatures function as collective bodies and make decisions through majority rule. The executive branch tends to be more hierarchical, but seldom do chief executives and department heads make decisions without considerable consultation within the government and often with outsiders, too.

Outside of government political parties and interest groups play major roles in the consent process. Indeed, so important are these instruments of consent that we should understand how

they are organized and how they function before examining how consent unfolds in the course of decision making.

Political Parties

Political parties perform their first and foremost roles in the electoral process. They also contribute to governance by providing an identity for organizing majority and minority blocs in legislative bodies and for selecting policy makers in the executive branch. They provide linkages between consent expressed through elections and interactive consent occurring in ongoing governmental operations. (As a sample of the extensive literature on political parties, see Cotter and others 1984, Epstein 1986, Keefe 1991, Reichley 1992, Sabato 1988, Sundquist 1983.)

Candidates run as nominees of political parties in elections for president and vice president of the United States, the U.S. Congress, all 50 governors, all state legislatures but one (Nebraska), most other state elected officials, 80 percent of the governing bodies of the nation's 3,043 counties, but in only 25 percent of the municipalities (Council of State Governments 1994, xx; county source; Renner and DeSantis 1993, 67).

Almost all the winners in these partisan elections are members of the Democratic and Republican parties. Third party candidates and independents without party affiliation may run, but few win. Thus, in 1995 all members of the U.S. Congress but one and all but 18 of the 7,375 state legislators chosen in partisan elections were Democrats and Republicans

(National Conference of State Legislatures 1995).

In spite of their success at the polls, the two main parties do not reign over all aspects of elections. These days independent voters constitute from 20 to 30 percent of the electorate and function as the swing vote in numerous elections (source). Thus, candidates and parties have to appeal to them. But independent voters alone do not make up a large enough bloc to elect candidates unaffiliated with a major party unless they receive considerable support from individual Democrats and Republicans.

The two main parties, Democratic and Republican, are highly diversified institutions. They do not have formal membership requiring payment of dues or creedal adherence.

The closest voters come to gaining official party affiliation is by indicating a party preference at the time voter registration or at the primary polling place. This occurs in 35 states containing ___ percent of the U.S. population, but the other 15 states have no such requirement (Council of State Governments 1990, 236).

More than anything else, party affiliation is a matter of personal identity (Epstein 1986, 239-271). This can range from strong (usually voting a straight ticket) to weak (frequently voting for independents or candidates of other parties). This identity gains expression in a variety of party organizations: local, state, national.

Party units form in precincts, wards, municipalities, counties, states, and the nation as a whole. They nominate

candidates for public office and campaign for their election. In their organizational 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. Organization is more bottom-up than top-down, but operationally national committees sometimes assist state and congressional district party units.

Legislators form their own party units, one for the majority and another for the minority, with separate units in each house of bicameral bodies. Elected chief executives (mayor, county executive, governor, president) tend to assert party leadership somewhat apart from the official party structure and distinct from legislative party units.

Subunits take shape within the parties, such as racial, ethnic, and gender caucuses and informal clusters supporting particular candidates for public office.

Thus, the Democratic and Republican parties are multi-nuclear in their organization and operations. Neither party maintains ideological purity and consistency. Neither exercises strict party discipline over members and party units. For instance, the national committee cannot tell party members in the U.S. House of Representatives or Senate how to vote. Nor can the president order members of his own party in Congress to support his policies. The same pattern generally prevails with governors and state legislatures although sometimes a state party dominated by a close-knit oligarchy can exercise a measure of

party discipline.

The two major parties 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. But overall, elections and governance are dominated by Democrats and Republicans.

In summation, political parties serve the consent process by functioning in the electoral arena to facilitate nomination of candidates for public office and to organize, finance, and carry out campaigns in general elections. Party affiliation provides the basis for organizing legislative bodies and working out legislative

policies of majority and minority blocs. They help establish ties between elected chief executives and legislative delegations of their parties.

Political parties are a source for recruiting persons to fill top policy positions in the executive branch and for appointment as judges. In jurisdictions with political patronage systems, party appointees claim many other governmental jobs. Parties serve as a channel of influence on executive policies, regulatory matters, and awarding grants and contracts. Sometimes they provide 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. (To sample the literature on interest groups see Berry 1989, Cigler and Loomis 1991, Heinz and others 1993, Salisbury 1992, Schlozman and Tierney 1986, and Walker 1991).

Today virtually everyone in the land is part of one or more interest groups (often many). Citizens form interest groups out of recognition that they share particular concerns with other persons. They realize that they 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, disarmament, tax reduction, government reform, 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.

A distinction is sometimes made between private interest and public interest groups. "Public-interest organizations," according to David Cohen (1978, 56-57), "are often defined as groups that seek 'common, collective, or public goods' that do not exclusively, materially, or selectively benefit their members....The diffused benefits of public-interest activities need to be contrasted

to the benefits accruing to the special interests as a result of their activities."

Yet, even among public interests a degree of self-interest sometimes enters in. For example, child welfare advocates, mayors, and governors all seek federal funding of programs beneficial to children, but they compete among themselves in whether funds should go directly to community organizations, cities, or states. However, for none of them is personal economic gain a strong a factor as it is for manufacturers, farmers, bankers, home builders, and other economic interest groups.

Whether private or public in orientation, interest groups give considerable attention to public decision making. They lobby legislative bodies. They seek to influence executive decisions and

regulatory decisions. They also try to affect judicial decisions to the extent they can. They get involved in elections through campaign contributions and sometimes mobilization of voters in order to have public officials sympathetic to their viewpoints. They also try to influence who is appointed to executive and judicial positions.

In sum, interest groups are very active participants in the consent process. They help to bring about representative citizen participation that intertwines with representative government.

DECISION-MAKING PROCESSES OF REPRESENTATIVE DEMOCRACY

Political parties and interest groups provide an organizational structure for citizens as they participate in the

decision-making processes of representative democracy.

Citizens also participate individually as they interact with candidates for public office and with elected officials. This occurs in three modes of decision making: elections, legislative enactment, and adoption of executive policies.

Election of Public Officials

The election of public officials holds a central place in the consent process of American democracy. Altogether voters choose 511,039 officials of local, state, and national government (U.S. Bureau of the Census 1994). This occurs through direct election except for the president and vice president of the United States, still officially chosen by voter-selected electors, who, however, are committed to specific candidates.

Voting on election day is the decisive act of the electoral process, but interaction between candidates and potential voters in the preceding months is a very important aspect of consent-giving. This occurs along an electoral roadway featuring a series of gates, regulated by sets of gatekeepers. There are three main stages: positioning, campaigning, and voting. Of these, positioning is the least analyzed in political science literature.

Positioning. These days in American politics most aspirants for public office are self-selected (Ehrenhalt 1991). In preparation they often make a careful effort to position themselves long before the formal nominating process begins. They do this by joining organizations, engaging in community

service, making friends, currying favor with political leaders and party blocs, forming alliances, seeking publicity, and gaining public recognition. It is a beginning of a relationship with voters and the constituents they will serve if elected. (As an example of this process in one congressional district, see Fowler and McClure 1989).

Positioners look ahead to identify the gatekeepers at various stages along the electoral roadway. They see a broadening number of persons who will determine their fate.

The first gatekeepers regulate entry into the political party convention or primary election. The gatekeepers might consist of party officials, an unofficial selection committee, a caucus composed of particular elements within the party, fundraisers,

influential interest groups, and to some extent journalists and other molders of public opinion. Rarely can any of these gatekeepers prevent a potential candidate from entering the fray, but they can influence the degree of ease or difficulty.

The second set of gatekeepers are delegates to party conventions or voters in the primary election (sometimes both in sequence). They decide whether the aspirant will become the party nominee in the general election.

The third and final set of gatekeepers are voters in the general election. They determine who will win elective office.

The challenge for aspirants is to gain acceptance by the first group of gatekeepers and then be in position to move successfully through the next two gateways. In doing so they make

commitments that will influence conduct in office if elected. At the same time political party members, interest group representatives, and voters begin their interaction with candidates, some of whom will become elected officials.

Incumbents seeking reelection (a majority of current officeholders at any one time) start positioning themselves to run again as soon as the last election is over. By and large they do this in the course of carrying out their official duties: legislators representing their district on policy issues and helping their constituents in numerous ways; elected executives taking policy initiatives and running governmental operations in a manner that gains public support.

Incumbents continually communicate with their constituents

and receive feedback from them. They issue news releases, send out newsletters, grant interviews to journalists, appear on radio and television shows, speak at community meetings, appear at public events. For them it is a matter of simultaneously serving as receptive public servants and getting in position to run for reelection.

As Richard Fenno has pointed out (1978, 29), "Each member of Congress perceives four concentric constituencies: geographic, reelection, primary, and personal." The same applies to other officeholders. They want to retain strong support within their party to prevent challengers from arising and to defeat them in the primary if necessary. They also want to maintain support of a majority of those who will vote in the

next general election. But they also realize that they have responsibility to the entire district, city, county, or state they represent. Public service in the present and positioning for the next election constantly intermingle. The interaction with the citizenry that occurs is a significant part of the continuous consent process.

Campaigning. Candidates for public office move from positioning to active campaigning by formally announcing their candidacy and filing necessary papers with election officials. By then they have usually put together a campaign organization, developed a strategy, and begun fundraising. Their objective is clearcut: win more votes than any opponent to gain party nomination and then win more votes than any other candidate

to prevail in the general election.

Voters bring a different perspective to the campaign. They want to find and vote for candidates who can best represent them in the halls of government. Their desire intersects with candidates' desire to win and produces the dynamics of consent-giving through the electoral process.

The roadway candidates travel to become their party nominee varies from state to state. Most states conduct primary elections to select party nominees for Congress, state offices, and local offices filled through partisan balloting. However, a dozen states provide for some permutation of a party convention, usually in combination with a primary (Council of State Governments 1992, xx). Party nominees for president of

the United States are chosen through a succession of caucuses, primaries, and conventions in the various states, culminating in the national party convention.

Candidates calculate who will participate in these party conventions and primaries, and they map out campaign tactics to garner the support they need to achieve victory. They may sponsor polls to find out the opinions of various segments of the population on key issues. They talk with personal and party advisers and sometimes hire campaign consultants. (For elaboration of how political campaigns are crafted, see Allen 1992, Beaudy 1986, Huseby 1983, Lansing 1991, and Schwartzman 1989.)

Candidates usually try to offer voters a clear picture of who

they are, what they stand for, and why people should vote for them. They may test their message in small meetings, news interviews, and conversations with groups of voters. They are likely to vary their message with different audiences but try to retain overall consistency. They analyze feedback and study polling data. They begin to make campaign promises of what they will do if elected. The larger the election district the more candidates rely on mass media to get their message out.

Simultaneously voters and convention delegates are trying to figure out which candidate they want to represent their party in the general election. Persons representing party blocs and interest groups meet with candidates and seek commitments on various policy positions. Highly interested persons attend

candidates forums and pose questions. Politically active individuals serve as volunteers in the campaigns of their favorite candidates.

This process is repeated on a larger scale during the general election campaign. Candidates who gained party nomination through cohesive support of a highly motivated segment of party members now have to find ways to appeal to a much broader electorate. In the general election campaign many more interest groups press candidates to take positions on matters that did not come up during the primary election. In the process candidates may have to soften their position on certain issues but not become so mushy that they lose their core support.

Some voters habitually vote for the nominee of their party

and stray away only in rare circumstance. Many other voters, although voting mostly for candidates of the party they identify with, are willing to split their ticket. Some voters are deliberately independent. Candidates, therefore, have to figure how to retain the support of party members while appealing to independents in the middle and to ticket-splitters and straying members of the other party.

In these various ways interactive consent enters wholeheartedly into election campaigns. Political parties adopt party platforms. Candidates make campaign promises and put out position papers on a host of issues. Voters build up expectations of what the victors will do when they take office. They develop notions of what they are consenting to. Although

not all campaign promises are kept by the winners, they make commitments that will influence their conduct in office.

Voting. Campaigns culminate on election day when voters record their choice. This is the moment they formalize their consent to have particular persons represent them for a term in office.

Over the years restrictions on suffrage in the United States have fallen by the wayside: race, sex, age, property ownership, tax paying. Today virtually every U.S. citizen 18 years and older may vote.

Many, however, do not exercise this opportunity. [data]

When the votes are counted and the winners declared, what kind of consent has been given and by whom?

The winners receive the most votes but not necessarily support from a majority of people residing in their election districts. Given the level of voter turnout, it is quite likely that those voting for the victors constitute a minority of the adult population. Frequently they are a minority of registered voters. Where the ballot contains three or more candidates, they are sometimes a minority of those voting unless there is a runoff election.

Therefore, in a narrow sense only persons voting for the winners have formally consented that these individuals shall govern. Persons who voted for losing candidates can claim that they did not give their consent to the winner. Hence the bumper sticker: "Don't blame me. I voted for [name of loser]." Those who did not vote at all can also assert that they did not consent.

But in a broader sense the entire citizenry consents to the electoral system that allows candidates receiving the most votes to take office and govern. We accept the winners and allow them to exercise the powers of government. We consent to the legitimacy of the electoral process even though we vote for losing candidates or do not vote at all.

The winners have their own views on the meaning of consent. After they are installed in office, they might claim that their election gave them a mandate to enact particular legislation or adopt specific executive policies. They explain that they stated their views during the campaign and that by electing them the voters consented to the policies they now seek to adopt. For example, in the opening session of the 104th Congress House Republican leaders made this claim for the "Contract with America", which they had published during the 1994 congressional campaign.

However, rarely does the vast majority of voters perceive the election of public officials to be a referendum on detailed public policies. Most voters do not read party platforms or candidates'

position papers and do not listen to campaign speeches. During the 1994 congressional election campaign, for instance, only about five percent of the voters were aware of the House Republicans' "Contract with America" (source). And even voters who study the issues carefully may disagree with some of the policy positions of the candidates they vote for.

A bundle of factors enter into voter choice, such as party identity, political philosophy, economic interest, agreement on some issues but not all, perhaps dislike for incumbents or candidates on the ballot, and sometimes race and gender (source). Moreover, voters may cast ballots for candidates for different offices, such as U.S. representative, senator, and president, who themselves disagree on particular issues.

So it is not clear who has the mandate. The election determines who shall govern, not a whole range of policies they will adopt and carry out. These come later.

Accordingly, citizens do not look upon elections as the only means of providing their consent. Rather they see the necessity of keeping in touch with their elected officials and seeking to influence their decisions during their term in office . Therefore, the consent process does not terminate on the election day but rather moves into the domain of legislative and executive decision making.

Removal. American democracy also has provisions for withdrawal of consent from officeholders. Fifteen states permit citizens to petition for a vote to recall elected state officials

(Council on State Governments 1994, xx). Thirty-one states authorize procedures for recalling local elected officials. The U.S. Constitution and xx state constitutions allow the legislative body to remove the chief executive and other elected officials through impeachment proceedings. And Congress, state legislatures, and local councils may expel members under certain circumstances.

(For further analysis of recall, see Cronin 1989, 125-156;

Zimmerman 1986, xx-xx).

Legislative Decision Making

After the votes are counted and the winners declared, consent of the governed moves on to other expressions as citizens continuously interact with their elected representatives. This is most apparent in legislative decision making.

Legislative bodies -- the U.S. Congress, state legislatures, city and county councils, township boards -- have regular procedures for enacting laws. Legislation moves through a regular sequence of steps, such as: drafting a bill, introduction, referral to committee, public hearing by committee or subcommittee, committee consideration (called "mark up" in Congress), report to the whole body, floor action. In bicameral bodies these steps are repeated in the second chamber, and differences are reconciled by a conference committee. The chief executive then has an opportunity to sign or veto the bill. If the latter happens, the legislature has an opportunity to override. (Sources)

The legislators themselves are the most important actors in this process, but they almost never act alone. They are assisted

by staff, approached by officials from the executive branch, sometimes influenced by political party leaders, and constantly lobbied by individual citizens and interest groups. Legislators in turn reach out to learn the views of their constituents and to explain their positions. It is a reciprocal process. (Sources)

A wide variety of interest groups are major players in this phase of continuous, interactive consent. Many of them make their first connection with legislators during the election campaign, sometimes as early as the positioning period. Immediately after the election they get in touch with the winners, both newcomers and reelected incumbents, to offer proposals for the upcoming legislative session. On matters affecting their interests they try to have a hand in drafting

legislation. They may help to line up cosponsors. They ask to testify or suggest witnesses for public hearings. They follow committee consideration very carefully, seek to review proposed amendments, offer some of their own, and lobby committee members directly and through their grassroots connections.

Interest groups work especially hard to influence votes when legislation affecting them comes to the floor of the legislative body. They patrol the lobby and mobilize their grassroots. They form coalitions with allied interests. They try to shape public opinion through the mass media. They may urge the chief executive to threaten a veto if changes are not made and to actually veto the bill as passed if its not to their liking.

To exercise their influence, interest groups sustain

long-lasting relationships with legislators. The most effectively organized and best financed interest groups maintain staff in Washington and in state capitals. They know the legislative process inside and out. They keep in touch with legislators through frequent contacts and seek to develop a sense of friendly rapport. Sometimes they make financial contributions to election campaigns, thereby strengthening their ties with legislators and helping to gain easier access.

Nevertheless, the seemingly most powerful interests do not always get their way with legislators, for they are engaged in a highly competitive endeavor. Sets of interest groups contend against one another: labor versus management; commercial interests versus consumer advocates; creditors versus debtors;

groups on opposite sides of social issues. Molders and mobilizers of public opinion, such as talk show hosts, are a factor.

During the last 25 years numerous public interest organizations have countered private economic interests and achieved notable victories. Although poor people are least represented and are rarely heard directly, religious organizations and other socially-conscious groups serve as advocates in their behalf.

In this manner, two expressions of representation come together in the legislative process: interest groups, self-organized to represent overlapping segments of the population, and legislators, officially elected to represent of citizens in their districts. While a legislator votes on every bill, particular

interest groups concentrate only on matters that concern them most. But cumulatively an array of interest groups and individual citizens are involved with all major bills considered by legislative bodies. The consent process in legislative enactment is manifested through the totality of this interaction.

Ultimately it is up to legislators to decide. Constantly they are under pressure to side with one interest and reject the views of another, or to seek a compromise. As the people's elected representatives, they are expected to make decisions. They cannot delegate this obligation to lobbyists or to their own staff. They are responsible and accountable.

But the continuous interaction legislators have with their constituents, with a wide range of interest groups, and with

executive officials ordinarily influences their decisions. They may not always cast legislative votes as a majority in their district might prefer, but they tend to be cautious about straying too far from district opinion on most issues. In this manner interactive consent flows continuously around and within virtually every legislative body in American government.

Executive Decision Making

Elected executives and their appointees are the second set of decision makers in American government. They propose legislation and prepare budgets. When new laws go into effect, executive departments draft and adopt implementing regulations. They work out administrative procedures and issue program guidelines. They are in charge of planning a host of

public projects.

Compared to the regularity of legislative procedures, executive decision-making processes display many different configurations and are sometimes quite obscure. For some kinds of executive policies and under some styles of executive management, the decision roadway may not be publicly revealed or readily accessible to public participation for most of the journey. In many other instances, though, the process is more open, especially in its later stages, and opportunities for citizen involvement are more readily available.

Citizens and interest groups recognize that elected executives and their appointees make important decisions and therefore try to influence them whether invited in or not. In doing so many

interest groups use practices similar to their approach to legislators: getting involved in political campaigns, making contact between election and installation in office, seeking to influence the budget as it is being prepared, offering input during the drafting of program policies and regulations, attempting to influence program and project planning from the earliest stages onward.

As a means of overcoming executive secretiveness, laws mandate public disclosure of proposed projects and proposed regulations. In addition, public hearings are required for certain kinds of projects, usually occurring fairly far along the decision making roadway after the public agency has produced a fully-developed project proposal or drafted a complete set of

regulations. Citizens take advantage of these opportunities.

Moreover, many governmental jurisdictions have procedures for citizen participation. They provide timely information, set up advisory committees, send staff to community meetings, sponsor informal and formal hearings on project proposals. Many of these practices have deep roots, but they blossomed particularly in the 1960s and 1970s as part of a broad movement to achieve more participatory democracy. (Sources)

Of all the tasks of executive policy formulation, the annual budget looms high in importance, for the budget determines who benefits from public expenditures and who pays the bill.

Ordinarily budget making is an internal process of the executive branch. Although a few astute interest groups push to gain

funding for their programs and projects, most citizens lack access to the executive budget makers. Not until the budget is completed does it surface for public scrutiny. Then it is published and presented to the legislative body, which conducts public hearings. (sources)

There are, though, some city governments which have processes for citizen involvement in budget making from the earliest stage. In these situations neighborhood organizations and other citizen groups formulate their proposals before operating departments present their own requests and feed them into the budgetary process. Citywide advisory committees review both citizen and departmental proposals and offer recommendations to the budget office and chief executive

(Hallman 1988).

Another important policy-making task of executive departments is the preparation of regulations to implement new laws. As this occurs, interest groups which have followed the legislation keep track of regulation writing, try to see drafts, and otherwise seek to influence the final wording. The extent of outside involvement generally depends upon the assertiveness of interest groups rather than outreach by executive officials.

Executive departments make other important decisions as they plan various public projects, such as new parks, highways, water and sewerage systems, other public facilities, whole neighborhoods and business districts. Nowadays it is quite common to achieve widespread citizen involvement in

neighborhood planning. Often citizen representatives also participate in the planning of highways, water resource projects, and other kinds of public improvement. (Rohe, etc.)

Citizen involvement in these planning processes and other types of executive decision making is a further manifestation of representative participation. Advisory committees are composed of a cross-section of concerned citizens. Hearings and other open forums attract citizens who present a variety of viewpoints. In other phases of policy formulation a range of assertive interest groups get involved.

As this occurs, participation tends to be weighted toward individuals and groups most affected by pending policy decisions. Poorer and less well educated segments of the population tend to

be underrepresented. But even with less than perfect representation, active citizen involvement in executive decision making is a further expression of continuous, interactive consent.

DIRECT DEMOCRACY

Consent of the governed manifested in elections, lobbying to influence legislation, and citizen involvement in executive policy making occurs within the framework of representative government. This is the main thrust of American democracy.

In addition, consent also occurs in two modes of direct democracy: *citizen assemblies* functioning as governing bodies and *plebiscites* that enable citizens to participate in decision making by voting on ballot issues. These approaches supplement and complement representative government.

Citizen Assemblies

The first assembly held by European settlers in North America for governmental purposes occurred in November 1620 aboard the Mayflower, anchored off Cape Cod. Before going ashore the 41 male adults of this Pilgrim contingent adopted a compact "to covenant and combine ourselves together into a civil body politic for our better ordering and preservation". However, the Plymouth Colony they formed was governed by a chosen council rather than an assembly (Zimmerman 1967).

Town meetings. A few years later as Puritans began settling the nearby Massachusetts Bay Colony, they clustered their houses in town centers around a common and a meeting house. By 1630 they were holding regular town meetings open

to all freeholders to make decisions on the welfare of their town.

They elected officers to handle day-to-day affairs of town management (Zimmerman 1967).

Other New England colonies -- Maine, New Hampshire, Connecticut, and Rhode Island -- followed this model of local government. A few locales in New York and New Jersey also formed town meetings.

According to Joseph F. Zimmerman, "the open town meeting functioned adequately albeit tumultuously on occasion for at least its first century and a half in all towns" (1986, 28). But as towns grew in population, large assemblies in which all freeholders could participate became unwieldy, indeed virtually impossible in the most populous towns. A number of them,

therefore, adopted city charters and elected city councils, thereby switching to representative government.

Beginning in Brookline, Massachusetts in 1915, the representative town meeting (RTM) emerged as a variation. Under this arrangement, town voters elect members to a fairly large assembly, which serves as the town's governing body. In the mid-1980s Massachusetts' 45 RTMs ranged in size from 50 to 370 with an average of 225 members (Zimmerman 1986, 28-29).

In 1992 there were xxx towns in the six New England states governed by town meetings open to all citizens , xx in New York, and xx in New Jersey. There were xx representative town meetings (xx in Massachusetts and x Connecticut). This amounts

to x.xx percent of the 35,935 local general-purpose governments in the United States. Altogether ____ people lived in localities with town meetings and RTMs, x.xx percent of the U.S. population.

Though numerically small, town meetings have preserved an element of direct democracy in municipal governance.

[Evaluation to be added. Zimmerman 1986, 29; Mansbridge.]

Other varieties. The vision of the New England town

meeting has retained a favorable place in American imagination. Elected political officials, candidates for office, and citizen organizations organize events they bill as town meetings. They are usually held on an ad hoc basis, open to anyone who shows up that day. When candidates and public officials are on stage, the meeting serves primarily as a vehicle for two-way communication. When sponsored by a citizen organization for its members without outsiders present, the meeting may provide opportunities for deliberation and coming to conclusions on issues at hand. These of town meetings are not, though, decision-making bodies for units of government, as the authentic versions in New England towns are.

Advocates of popular democracy, such as Milton Kotler

(1969) and Benjamin R. Barber (1984, 267-273), have advocated use of neighborhood assemblies as units of governance. This was attempted in the late 1960s in a Columbus, Ohio neighborhood, with financial support from the U.S. Office of Economic Opportunity. However, the assembly-governed organization did not build a sustaining base of local support or gain recognition from city government. After a while it passed out of existence (Hallman 1970, 65-73 and 1974, 151-3).

An alternative common approach for neighborhood participation is to establish networks of neighborhood councils and to provide them official advisory roles on city policies affecting their neighborhoods. Cities throughout the United States have done this during the past 25 years. In some places

neighborhood councils are organized afresh under the authority of a city ordinance or charter amendment. In other locales existing neighborhood associations are given official recognition. The governing body almost always takes a representative form with a governing board elected by residents rather than being a citizens assembly in which all participate (Berry, Portney, and Thomson 1993; Hallman 1977, 1984).

However, some of these neighborhood associations and others elsewhere hold monthly or annual meeting open to all residents or all members. These sessions function as citizen assemblies to debate issues, determine priorities, and set organizational policies. Between meetings an elected board of directors or executive council runs the organization, thereby

blending direct and representative democracy (Cunningham and Kotler 1983. 27-70).

Another blend occurs in a coalition of organizations that holds an annual assembly of organizational representatives, somewhat analogous to a representative town meeting. This assembly (sometimes called a congress) determines overall policies and elects a governing board (Cunningham and Kotler 1983, 71-81).

Plebiscites

The second mode of direct democracy in the United States is the plebiscite, allowing the eligible electorate to vote on issues of public policy. There are two types: referendums and initiatives.

As the terms indicate, referendums are referrals from legislatures, constitutional conventions, and local charter commissions to the voters. Initiatives originate by citizen petition. These measures have several major purposes.

Approve state constitutions. We have previously noted how popular voting on state constitutions began in Massachusetts and New Hampshire soon after Independence. The practice spread during the 19th century and by midcentury was a standard requirement for states seeking admission to the Union (Cronin

1989, 41).

Today voter approval of state constitutional amendments and wholesale revision is almost universally required. Even to convene a state constitutional requires voter consent in 39 states, including 14 states where a periodic vote is required on whether to have a new convention. Elsewhere the legislature alone has the authority to call a constitutional convention. After these conventions have completed their work, citizens have an opportunity to vote on the product. In every state except Delaware amendments proposed by the legislature must also be approved by the electorate (May 1994).

In 18 states citizens themselves may initiate constitutional amendments by petition. In 16 of these states the proposals go

directly on the ballot if sufficient eligible signatures are obtained, but in the other two the legislatures have an opportunity to review the proposal first.

Of the 239 state constitutional amendments proposed during the 1992-93 biennium, 201 originated in the legislatures, 34 came from citizen initiatives, one was put forth by a constitutional convention, and 3 were offered by special study commissions. The voters approved two-thirds of them (May 1994).

Approve municipal incorporation, boundary changes, charters. State law commonly requires resident approval of municipal incorporation, a practice first occurring in Massachusetts in 1821. Proposals to establish special districts

and to change municipal boundaries through annexation and consolidation are often placed before the voters. [source]

It is a common practice among cities and counties to seek voter approval of home rule charters and charter amendments.

In some states, municipalities may choose a form of government from several options provided in state law (such as mayor-council, council-manager). Voter consent is sometimes required. [Find sources, elaborate.]

***Review and adopt legislation.** Citizens also have opportunities to vote directly on other issues and proposed statutes of state and local government. This began occurring around the middle of the 19th century on such matters as location of state institutions. The practice was soon extended to*

referendums on state and local debt authorization, bond issues, and tax rates (Cronin 1989, 42).

In the 1880s and 1890s a movement arose to have popular participation in state legislation through referendums on measures adopted by legislatures and citizen initiatives to place proposals directly on the ballot. Between 1898 and 1918 twenty-three states adopted provisions for one or both of these approaches. Since then three other states and the District of Columbia have done likewise (Cronin 1989, 51; also see Mageley 1984, Zimmerman 1986, Zisk 1987, and Schmidt 1989).

In 25 of these 26 states, the legislature may voluntarily submit laws to voters for their approval. In 18 states voters may petition for a referendum on bills adopted by the

legislatures. Twenty-one states allow voters to initiate legislation by petition. In 18 states such initiatives can go directly onto the ballot if enough eligible signatures are collected, but in five of these states the legislature has the option of considering and adopting the proposed measure before it reaches the ballot. In three states legislative review is mandatory prior to initiatives going to the voters (Kehler and Stern 1994).

Issues considered.

Referendums and initiatives also occur frequently in local government. A 1991 survey of 3,728 cities of all sizes from all regions of the country revealed that 90 percent have referendum procedures, 49 percent allow citizens to initiative local legislation by petition, and 32 percent permit citizens to petition for ballot

consideration of measures adopted by the local council (Renner and DeSantis 1993).

Make decisions on governmental finance. Starting in the middle of the 19th century, referendum on authorization of debt and tax rates has become a common practice. [Expand.]

Although today city and county governing bodies generally have authority to set tax rates and approve bond issues, these matters are sometimes referred to the voters. For example, a study of a cross-section cities found that 29 percent had held one or more bond election between 1977 and 1987 (Crane and Green, 1989).

Who participates, issues, evaluation.

Proposals extension of plebescite democracy.

ROLE OF PUBLIC OPINION

CONCLUSION

Thoughtful scholars of democracy have constructed other terminology to describe democracy in the United States, such as unitary versus adversary democracy (Mansbridge 1980) and strong versus thin democracy (Barber 1984). Rather than introducing these specialized terms, I believe that it is preferable to stick with the long-used terms of "representative" and "direct". We can then analyze the extent of participation, first, in the representative system, and, second, through supplemental elements of direct democracy. For example, see the five-city study of Berry, Portney, and Thomson (1993).

*CONSENT OF THE GOVERNED:
ORIGINS OF CONCEPT AND EARLY AMERICAN PRACTICES*

by

Howard W. Hallman

*President
Civic Action Institute
6508 Wilmett Road
Bethesda, Maryland 20817*

Mon-Thurs: (301) 694-2859

Fri-Sat: (301) 897-3668

June 1995

ABSTRACT

Consent of the governed was an accepted principle of the founders of the American Republic. The concept had evolved in 2,000 years of Mediterranean and West European political thought. American colonists built on these ideas and began to achieve practical application, mainly through election of public officials.

All 13 colonies established elected assemblies, and two elected their governors and councils ("upper house"). A cadre of local elected officials emerged. New England had town meetings as a form of direct democracy. Suffrage, though, was limited mostly to white, property-owning males.

After Independence consent gained new expressions through voter approval of state constitutions (in two states initially) and ratification of the U.S. Constitution by specially-elected state conventions. Between 1789 and 1800 two significant instruments of consent became prominent: political parties and interests groups. In this manner consent became more interactive with greater continuity of participation beyond periodic elections.

CONSENT OF THE GOVERNED
ORIGINS OF CONCEPT AND EARLY AMERICAN PRACTICES

Consent of the governed is a fundamental principle of American democracy. Yet the concept of consent and its richly varied applications are amazingly neglected by American political scientists. This is the case with both historical analysis and empirical examination of contemporary practices.

In the first place, there is scant scholarly inquiry into what consent meant to the founders of the American republic. For instance, neither Carl Becker (1922) nor Garry Wills (1978), authors of the most widely-read analyses of the Declaration in this century, delved into the meaning of consent. In this article I explore this matter, drawing particularly upon a history of

political philosophy (Sabine 1937) and writings of American historians.

In the second place, textbooks and other political science literature on the contemporary American political system view consent of the governed primarily as periodic elections of public officials, supplemented by voting on ballot issues. In practice, though, consent of the governed is a continuous, interactive process with numerous manifestations, as I will discuss in a second article.

Views of the Founders

In 1776 when Thomas Jefferson and his colleagues at the Second Continental Congress enshrined "consent of the governed" in the Declaration of Independence, they were using a phrase

from their common political vocabulary. Nearly 50 years later

Jefferson recalled:

Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it [the Declaration] was intended to be an expression of the American mind (Rossiter 1953, 356).

In the years preceding the Declaration, America colonists dissatisfied with British rule made repeated references to consent as a basic political principle. Thus, in 1765 when representatives from nine of the thirteen colonies met in New York to protest the Stamp Act, a revenue measure imposed on them by the British Parliament, 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 (Commager 1973, 58).

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 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 (Continental Congress 1:107).

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 (Commager 1973, 103).

But even then, consent was not a new idea for the American 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"

(Rossiter 1953, 172-3). 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" (Rossiter 1953, 189). Thus, early in colonial history the idea of majority rule was attached to the concept of consent.

Historical Roots

These early colonists inherited 2,000 years of inquiry by Mediterranean and West European thinkers on the origin of government and their 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.E. Epicureans, according to George H. Sabine (1937, 134), maintained that "the state and the law came into existence as a contract to facilitate intercourse between men." Subsequently other political philosophers offered many variations of the contract theory.

Around 50 B.C.E. Marcus Tullius Cicero, famous orator 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" (*Republic*, I, 25; quoted in Sabine 1937, 166). 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" (Sabine 1937, 200). 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 (Sabine 1937, 204-5).

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 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 (Perry 1959, 14, 24-25, 31).

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" (Sabine 1937, 381).

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 (Sabine 1937, 416-20).

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 ([1690] 1965, Book II, §95).

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" (Book II, §123).

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 (Continental Congress 5:510).

ACHIEVING CONSENT IN THE AMERICAN COLONIES

These are fine words, but what are the deeds to achieve them? Locke was not very specific, nor were most of the other political philosophers. The people in the North American colonies, though, were pragmatists and worked out ways to achieve a measure of consent within the structure of colonial government.

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 north of the present US-Mexican boundary. They constituted 250 or so tribal groups, each with a distinct language and its own government (Waldman 1985a). The Europeans called them Indians, but each tribe had its own name for itself, rendered into English as Powhattan, Cherokee, Susquehanna, Delaware, Mohican, Narraganset, Massachusetts, and many more (Waldman 1985b). Considering themselves separate nations, they sometimes entered into treaties with one another. Some

tribes formed confederations, such as the five-nation Haudenosaunee, who French explorers called the Iroquois (Barreiro 1992).

The Second Settlers did not include the First Settlers within the scope of the governments they established. Usually the colonists built on unoccupied land but within territory claimed by various tribes. Sometimes the Europeans negotiated treaties to take over the land, with or without compensation. Sometimes they used the force of arms. In either case the effect was displacement of the First Settlers, rather than commingling.

The initial colonists usually arrived with their framework of government already determined 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. Before going ashore, the 41 male adults on the *Mayflower* signed a compact to "covenant & combine ourselves together into a civil body politick", just as contract theory taught them they should (Commager 1973, 16).

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. Accordingly, laws and governmental structure evolved mostly from the British tradition, though William Penn, Benjamin Franklin, and others picked up useful ideas from the Iroquois confederation (Barreiro

1992).

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 with different degrees of self-government.

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. In 1776 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. (North Carolina also had a period of proprietary rule from 1663 to 1729). The other two colonies, Connecticut and Rhode Island, operated under corporate charters which granted them substantial authority for self-government (Nevins 1927, 2).

In the century and two-thirds from initial settlement to independence, consent gained expression in the election of some, but not all, officers of the colonies and local government. It also occurred through direct participation in town meetings in New England and a few locales in New York and New Jersey.

Consent in this manner was significant from the beginning in

Connecticut and Rhode Island and in town meetings in the other New England colonies. Elsewhere practices of consent developed gradually over the course of decades.

Governors and Councils. Governors headed the colonial regimes. In the eight royal colonies the British monarch appointed the governor. In the three proprietary colonies the proprietor himself served as governor or designated a deputy. Citizens in the two corporate colonies chose their own governors (Rossiter 1953, 14).

In eleven colonies governors had councils of leading citizens to advise them. In Connecticut and Rhode Island freeholders (that is, property owners and taxpayers) elected council members. In Massachusetts the elected assembly, sitting annually with the old

council, chose the new council, subject to approval by the governor. In the other seven royal colonies the crown appointed council members upon recommendation of the governor. The governor appointed the council in Maryland, but the Penn proprietary colonies, Pennsylvania and Delaware, had no councils except for one brief period in Pennsylvania (Nevins 1927, 3-11).

Legislatures. All thirteen colonies developed elected assemblies prior to independence. The first one met in Jamestown, Virginia in 1619, a dozen years after the founding of this first permanent English settlement in North America. It subsequently evolved into the Virginia House of Burgess. By 1683 ten other colonies had their own elected assemblies (Kammen 1969, 11-16). The two least populated colonies,

North Carolina and Georgia, did not establish elected assemblies until 17xx and 1751.

Members of these assemblies were elected by freeholders, voting by ballot or at town meetings in New England. Among their responsibilities the assemblies approved the levying of taxes to support the colonial government in the tradition of the Magna Carta and the Confirmation of Charters. This gave them leverage in dealing with the governors (Nevins 1927, 3-11).

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 (Rossiter 1953, 15).

Local Government. There was considerable variation in local government (Barck and Lefler 1964, 247-9; Rossiter 1953, 24-27). 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 freeholders could participate. This was the fullest development of direct democracy in colonial America.

New England also had larger administrative and judicial units called counties with officers appointed by the governor. In the South counties and parishes were also administered by gubernatorial appointees, who in effect served as 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, except for a few town meetings in New York and New Jersey in which all freeholders could participate.. Other Mid-Atlantic colonies had counties, and some had townships with elected officers.

During the colonial period most 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 first appointed and then authorized to choose 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. These eligible freeholders were overwhelmingly white males although here and there some women and Negro freemen who met property or taxpaying requirements could vote. But according to Clinton Rossiter (1953, 19), "almost everywhere additional restrictions kept women, youth, Catholics, Jews, infidels, Negroes, Indians, mulattoes, indentured servants, and other 'inferior' persons from the polls."

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 inter-colonial congresses and providing representation to them.

To respond to the British Stamp Act, Massachusetts' 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 (Weslager 1976).

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, 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.

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 (Continental Congress 1:15-24, 30).

The assemblies in Rhode Island and Pennsylvania elected their delegates in regular sessions. The Connecticut assembly delegated the choice to committees of correspondence, previously established as vehicles for inter-colony communication.

Elsewhere the assemblies were not in session and the royal governors would not 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 (1950, 26-27) 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 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.

Before adjourning in October the delegates made plans to hold 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.

So it was that the consent of the governed played a role in instituting the Continental Congresses. They were called by elected colonial assemblies, which either appointed delegates directly or made arrangements for extralegal selection. Where that was not possible, delegates were chosen through some kind of electoral process. It was consent through a pyramid of representation.

As of 1776

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 does not 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 (Rossiter 1953, 446).

New England had a form of direct democracy in their town meetings in which all freeholders could participate. But this was

an exception to the general pattern of consent through representation.

Such 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.

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.

Replacement Governments

As opposition to British rule widened and war spread, the colonial regimes collapsed. The elected assemblies remained and in most colonies served as the principal governing body. In a few instances where assemblies were dominated by conservative leaders, reluctant to break with Great Britain, elected conventions took their place (Nevins 1927, 75-97).

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 (Beer 1993, 201; Montross 1950, 99-100).

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 (Continental Congress 4:342).

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" (quoted in Beer 1993, 200). 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 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 could not exist without the other -- a preview of American federalism as it developed over the next two centuries.

Adopting State Constitutions

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 an elected governor and an elected bicameral legislature, merely dropped royal references in their charters and

kept them in operation. Massachusetts temporarily functioned within the framework of its royal charter (Wood 1969, 133).

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 (Nevins 1927, 128-9). 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 (Palmer 1959, 217). 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 elected assembly drafted one and submitted it to the

electorate, who defeated it five to one, partly on the grounds that they did not choose the drafters. Thereupon in 1780 the legislature established an elected constitutional convention, which sent a new draft to town meetings for discussion, vote, and referral back to the convention for final action. In New Hampshire from 1778 to 1783 four successive conventions referred proposed constitutions to town meetings for consideration until they finally approved the fourth version (Ketchum 1974, 101; Nevins 1927, 175-183).

Thus, Pennsylvania's innovation of a constitutional convention, specially elected for this task, was duplicated by Massachusetts and New Hampshire, which both added review by town meetings and 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. It was a practice that spread widely during the 19th century.

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

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. Initially most of the states with new constitutions provided for at-large election of state senators (Wood 1969, 163, 214).

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 (Eidelberg 1968, 263).

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 states the governor had partial veto power (Nevins 1927, 166, 200).

Forming a Confederation

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" (Continental Congress 4:425). A 13 member

committee was appointed, and John 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 (Rakove 1979, 139).

Finally on November 15, 1777 Congress agreed upon "Articles of Confederation and perpetual Union" between the 13 states (Continental Congress 9:907-25). They called this confederacy the "United States of America." 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 Articles formalized the system of indirect representation 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 three years out of six. In Congress each state had one vote. There was no provision for a chief executive officer, elected or appointed.

Congress sent the Articles of Confederation 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 Confederation, Maryland ratified on March 1, 1781. In this manner bargaining entered into the process of gaining unanimous consent of the state legislatures. The Articles then went into effect, almost five years after the Declaration of Independence.

As an instrument for national government, the Confederation had successes and failures. Among its accomplishments, as summarized by Clinton Rossiter (1968, 43):

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.

Congress settled the irksome dispute among the states over western land and took control of national expansion. Through

the Northwest Ordinance of 1787 Congress established the principle that new states must have "republican" government prior to admission to the Union (Commager 1973, 132).

On the negative side Congress, as the principal vehicle for governance, was not always able to maintain a quorum and was overly dependent upon the states for revenues. Although Congress patched together several executive departments, the Confederation was far too weak for the needs of the fledgling nation. Particularly vexing was Congress's insufficient authority to deal effectively with commercial matters involving two or more states. Moreover, the Confederation government was too far removed from the people to make consent of the governed truly meaningful (Rossiter 1968, 35-49).

Writing A New Constitution.

In pursuit of remedies of trade problems representatives from five states met in Annapolis in 1786 (another four appointed delegates, who failed to appear). From this session came a call for a broader convention the following May for the purpose of devising provisions "necessary to render the constitution of the Federal Government adequate to the exigencies of the Union" (Tansill 1927, 43). In February 1787 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" (Continental Congress 32:74).

Twelve states sent delegates to a Convention in Philadelphia

in May 1787 with Rhode Island declining to participate.

Instead of abiding by instructions from the Congress to develop

revisions to the Articles of Confederation, the Convention

between May 14 and September 17, 1787 wrote a brand new

Constitution for the United States of America (Collier and Collier

1986; Rossiter 1968; van Doren 1948).

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. They agreed that ratification by nine states

would be sufficient for establishing the Constitution for the

ratifying states. This set up a kind of popular referendum on the new Constitution and brought consent of the governed into adoption of the basic law of the land.

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 a sufficient majority of people who favored a stronger national government.

In order even to have ratifying conventions organized within each state, the framers had to transmit the proposed Constitution through the Congress of the Confederation to the respective state legislatures. The latter in turn would call the ratification conventions and arrange for election of delegates to them. Thus, 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" (Continental Congress 33:349). 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.

Public Opinion. The campaign for and against the new

Constitution revealed another aspect of the consent process: the impact of public opinion. 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 (Madison, Hamilton, and Jay [1787-88] 1937). Anti-Federalist writings were published there and elsewhere (Storing 1981). 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. Many Anti-Federalists also wanted a stronger guarantee that the states retained all powers not delegated to the federal government. As expression of these and other concerns, seven of the 13 state ratifying conventions in their resolutions of approval proposed a total of 124 amendments to the Constitution (Tansill 1927, 1009-59). In response George Washington and leading Federalists offered assurance that the First Congress under the new Constitution would address these concerns (Small 1964, 840).

Therefore, 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. 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.

Forming New Governments

Thus, by the time the new state governments and the new general government became operational, consent of the governed had gained a new expression in voter approval of the basic structure and powers of government. What the voters approved in the state and U.S. constitutions was a form of government they

called a republic. James Madison described a republic 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 good behavior" (*The Federalist No. 39*, 243-44). Today we call this representative government.

In the new Federal Union the states determined voter qualifications. They continued limiting suffrage mostly to white males and maintained a property or tax-paying requirement for voting, though not as stringent as during the colonial period. They excluded Negro slaves and the First Settlers (Indians) still residing within the boundaries of the states. 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 (Eidelberg 1968, 263).

According to the new U.S. Constitution, the population of states by which seats in the U.S. House of Representatives would be apportioned would consist of "free persons, including those bound to service for a term of years [indentured servants], and excluding Indians not taxed, three fifths of all other persons [that is, Negro slaves] (Article 1, Section 2). This meant that although slaves could not vote, they boosted the number of representatives in Congress for slave states.

Of the principal offices of these new governments, the U.S. House of Representatives, the state legislatures, and four

governors were directly elected. The other nine governors and the U.S. Senate were elected by the state legislatures. The president and vice president of the United States were chosen by a small group of electors selected in a manner determined by the legislatures. This meant that consent expressed through elections was only partially direct.

As the framers conceived the system, responsibility for government would be delegated to "a chosen body of citizens, whose wisdom may best discern the true interest of their country" (*The Federalist No. 10*, 59). It would be representative government in an elitist mode.

New Instruments of Consent

Nevertheless, as these new governments became operational,

the consent process began to broaden. For instance, in the first presidential election, six of the participating states provided for popular vote in the selection of presidential electors. (New York could not get its act together, so had no electors. North Carolina and Rhode Island had not yet ratified the Constitution). In the first contested election in 1796, eight of the by then 16 states allowed voters to choose electors (Paullin 1932, 89).

Moreover, two very significant instruments of consent emerged in the 1790s: political parties and interest groups. They added new features to the consent process and provided greater continuity of participation.

George Washington, first president of the United States, did not want political parties to form in the new federal union.

Many other founders agreed, including Vice President John Adams. Nevertheless, before Washington's first term was over, they were functioning within Congress and in many states and localities. They were a strong factor in selection of Washington's successor in 1796 and were a dominant influence in the presidential election of 1800. Ever since parties have been a prominent feature of American democracy (Chambers 1963; Reichley 1992).

Likewise many of the founders looked with disapproval upon interest groups. "Factions" they called them (*The Federalist No. 10*). Nevertheless, interest groups showed up in 1789 in New York where the First Congress was meeting (deKieffer 1981). They have been hanging around the halls of government ever

since. Not only do they seek to influence legislative and executive decisions, but they also try to affect public opinion on particular issues and sometimes mobilize specific blocs of voters in elections and ballot-issue campaigns.

By 1800 consent of the governed was considerably broadened from merely electing public officials and letting them run the government. The people were taking a hand in adopting constitutions. They had formed political parties to extend their participation in the electoral process. They were functioning as interest groups to gain influence in the ongoing policy-making processes of government.

This was the beginning of continuous, interactive consent that characterizes American democracy today. Many aspects of the

history of political development in the United States since then can be viewed as steady elaboration of sets of intertwined methods for achieving the consent of the governed.

In a second article, I examine the myriad ways this complex consent process is manifested in the 1990s.

References

- Barck, Oscar Theodore, Jr. and Hugh Talmadge Lefler. 1964. *Colonial America*. 2nd edition. New York: Macmillan & Co.
- Barreiro, José, ed. 1992. *Indian Roots of American Democracy*. Ithaca, NY: AKWE:KON Press, Cornell University.
- Becker, Carl. 1922. *The Declaration of Independence: A Study in the History of Political Ideas*. New York: Alfred A. Knopf.
- Beer, Samuel H. 1993. *To Make a Nation: The Rediscovery of American Federalism*. Cambridge, Mass.: Belknap Press of Harvard University Press.
- Chambers, William Nisbet. 1963. *Political Parties in a New Nation: The American Experience, 1776-1809*. New York: Oxford University Press.

Collier, Christopher and James Lincoln Collier. 1986.

Decision in Philadelphia: The Constitutional Convention of 1787.

New York: Random House and Reader's Digest Press.

Commager, Henry Steele, ed. 1973. *Documents of American*

History. Vol. 1. 9th edition. Englewood Cliffs, NJ: Prentice Hall.

Continental Congress, Journals of the Continental Congress,

1774-1789. 34 volumes. Worthington Chauncey Ford and

Roscoe R. Hill, eds. Washington: Government Printing Office,

1904-1937.

Eidelberg, Paul. 1968. *The Philosophy of the American*

Constitution. New York: Free Press.

Kammen, Michael. 1969. *Deputies & Libertyes: The Origins*

of Representative Government in Colonial America. New York:

Alfred A. Knopf.

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

Locke, John. [1690] 1965. *Two Treatises of Government*. New York: The American Library.

Madison, James, Alexander Hamilton, and John Jay. [1787-88] 1937. *The Federalist*. New York: The Modern Library.

Montesquieu, Charles Le Secondat, Baron de. [1748] 1989. *The Spirit of the Laws*. Translated and edited by Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone. Cambridge, England: Cambridge University Press.

Montross, Lynn. 1950. *The Reluctant Rebels: The Story of*

the Continental Congress, 1774-1789. New York: Barnes and Noble.

Nevins, Alan. 1927. *American States: During and After the Revolution.* New York: Macmillan Co.

Palmer, R.R. 1959. *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800.* Princeton: Princeton University Press.

Paullin, Charles Oscar. 1932. *Atlas of the Historical Geography of the United States.* New York: Carnegie Institution of Washington and American Geographical Society of New York.

Perry, Richard L., ed. 1959. *Sources of Our Liberties. Documentary Origins of Individual Liberties in the United States, Constitutions, and Bill of Rights.* Chicago: American Bar

Association.

Rakove, Jack N. 1979. *The Beginnings of National Politics: An Interpretative History of the Continental Congress.* New York: Alfred A. Knopf.

Reichley, A. James. 1992. *The Life of the Parties: A History of American Political Parties.* New York: Free Press.

Rossiter, Clinton. 1953. *Seedtime of the Republic: The Origin of the American Tradition of Political Liberty.* New York: Harcourt, Brace and World.

Rossiter, Clinton. 1968. *1787. The Grand Convention.* New York: New American Library.

Sabine, George H. 1937. *A History of Political Theory.* New York: Henry Holt and Company.

Storing, Herbert I., ed. 1971. *The Complete Anti-Federalist*.

7 volumes. Chicago: University of Chicago Press.

Tansill, Charles C., ed. 1927. *Documents Illustrative of the*

Formation of the Union of the United States. Washington:

Government Printing Office.

van Doren, Carl. 1948. *The Great Rehearsal*. New York:

Viking Press.

Waldman, Carl. 1985a. *Atlas of the North American Indians*.

New York: Facts on File Publications.

Waldman, Carol 1985b. *Encyclopedia of Native American*

Tribes. New York: Facts on File Publications.

Weslager, A.C. 1976. *The Stamp Act Congress*. Newark,

Delaware: University of Delaware Press.

Wills, Garry. 1978. *Inventing America: Jefferson's Declaration of Independence*. Garden City, New York: Doubleday & Company.

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

*CONSENT OF THE GOVERNED:
CONTEMPORARY PRACTICES IN THE UNITED STATES*

by

Howard W. Hallman

*President
Civic Action Institute
6508 Wilmett Road
Bethesda, Maryland 20817*

Mon-Thurs: (301) 694-2859

Fri-Sat: (301) 897-3668

June 1995

ABSTRACT

CONSENT OF THE GOVERNED
CONTEMPORARY PRACTICES IN THE UNITED STATES

Consent of the governed in the United States in the 1990s is a continuous, interactive process. This is a much fuller description than offered in most American government textbooks and by other writings of American political scientists. Authors of these works perceive consent mainly as periodic election of public officials, supplemented by voting on ballot issues. In practice, though, consent has many more manifestations.

Interactive consent occurs through a host of activities taking place over extended periods of time: potential candidates positioning themselves to run for public office; election campaigns stretching out over months and years before culminating in voting; ballot issue campaigns taking weeks and months to com-

plete; sustained efforts by interest groups and individual citizens to influence legislation; extensive deliberation, negotiation, and involvement of outside interests in the adoption of executive policies; and sometimes the influence of public opinion on policy makes, and sometimes on judicial decisions.

American political science deals with all of these activities but categorizes them in other ways. If, however, we look freshly at these well-known phenomena through lens that focus on consent, we can obtain a much better understanding of how consent of the governed is achieved in American democracy. We will then be able to analyze more thoroughly the accomplishments and shortcomings of the consent process. This article offers such a perspective and builds upon a previous article that traced the historic origins of the consent concept and early American

practices.

TODAY'S FRAMEWORK FOR CONSENT

Consent of the governed in the United States takes place in a governmental system that is primarily a representative democracy but also contains elements of direct democracy.

Representative government in the United States today, in contrast with its elitist beginning, functions in a participatory mode. Interactive consent gains expression in the course of three decision-making processes that go on all year round: electing public officials, enacting legislation, and adopting executive policies. Participants include persons positioning themselves to seek public office, announced candidates, political party officials and campaign workers, voters, legislative and executive officials, interest group representatives and individual

citizens seeking to influence decision makers. Molders of public opinion also play influential roles.

Consent also occurs in two practices of direct democracy that provide further opportunities for citizen involvement: voting on ballot issues and, in some local jurisdictions, town meetings that serve as official governing bodies.

In its totality the consent process is an accumulation of innumerable bits and pieces of ongoing interaction between citizens and public officials. From the seemingly randomness of highly diversified activities, overall patterns emerge and define the outcome of consent of the governed in American democracy.

To facilitate participation citizens utilize two vital instruments of consent: political parties and interest groups. So important are political parties and interest groups that we need

to understand how they are organized and how they operate in order to fully comprehend the consent process in American democracy.

Political Parties

Since their origin in the 1790s, political parties in the United States have played significant roles in achieving the consent of the governed. The two dominant parties, Democratic and Republican, do so today: as focal points of identity for candidates, voters, and elected officials and as multi-nuclear organizations playing facilitative roles in elections and governance. And sometimes smaller parties play subsidiary roles.

To be sure, not everyone is pleased with the performance of political parties in contemporary America. Repeatedly

committees of scholars and citizen leaders have pleaded for "more responsible parties" with clear and disciplined policy commitments. Such advocates have included the Committee on Political Parties of the American Political Science Association (1950), the Committee on Party Renewal in the 1970s, and the Committee on the Constitutional System in the 1980s (Epstein 1986, 30-37; Sundquist 1987, 207-213.). Other observers have bemoaned the decline of American political parties (for example, Broder 1972; Crotty 1984; Wattenberg 1990).

Nevertheless, the Democratic and Republican parties continue doing what political parties have done in the United States for the past 200 years. In the electoral process they provide the framework for nominating candidates for public office and are heavily involved in election campaigns. Party

labels help to clarify voter choice by stamping at least a general identity on candidates. In governance legislators with the same party affiliation work together in majority and minority blocs. Chief executives, in making appointments to top policy making positions, select mostly persons associated with their own party. Shared political identity helps form linkages between chief executives and legislators from the same party. (Sources for this include Cotter and others 1984; Epstein 1986; Jewell and Olson 1988; Kayden 1985; Keefe 1994; Maisel 1990; Price 1984; Reichley 1992; Sabato 1988; Schlesinger 1985.)

For many decades almost all winners in partisan elections in the United States have been nominees of the two major parties, Democratic and Republican. This includes election for president and vice president of the United States, the U.S. Congress, all 50

governors, all state legislatures but one (Nebraska), most other state elective offices, 82 percent of the governing bodies of the nation's 3,043 counties, but elective offices in only 25 percent of the municipalities (Jones 1994, 105; DeSantis 1989, 64; Renner and DeSantis 1993, 67).

Persons desiring elective office, therefore, usually enter the contest for nomination as either a Democrat or a Republican. Third party candidates and independents without party affiliation may run, but few win. Thus, in 1995 all members of the U.S. Congress but one and all but 18 of the 7,375 state legislators chosen in partisan elections were Democrats and Republicans (Carle 1995; National Conference of State Legislatures 1995).

But in spite of their candidates' success, the two main

parties do not reign over all aspects of elections. Party loyalty at the polls is not as great as it once was, for many registered Democrats and Republicans stray from voting a straight party ticket. Moreover, independent voters constitute approximately 35 percent of the electorate and function as the swing vote in numerous elections (Flanigan and Zingale 1994). Thus, candidates and parties have to appeal to them in order to win.

Nevertheless, independent voters alone do not make up a large enough bloc to elect candidates unaffiliated with a major party unless they receive considerable support from individual Democrats and Republicans. Thus, there is a lot of cross-appealing in election campaigns.

The Democratic and Republican parties are highly diversified institutions. They do not have formal membership requiring

payment of dues or creedal adherence. The closest voters come to gaining official party affiliation is by indicating a party preference at the time voter registration or at the primary polling place. This occurs in 40 states containing — percent of the U.S. population, but the other ten states have no such requirement (Council of State Governments 1990, 236).

More than anything else, party affiliation is a matter of personal identity (Epstein 1986, 239-271). This can range from strong (usually voting a straight ticket) to weak (frequently voting for independents or candidates of other parties). This identity gains expression in a variety of party organizations: local, state, national.

Party units form in precincts, wards, municipalities, counties, states, and the nation as a whole. Some of these units

conduct caucuses and hold conventions to nominate candidates for elective office, but nowadays government-administered primary elections are held to select party nominees for most local and state offices and for delegates to national presidential nominating conventions. Although nominees often set up their own campaign organizations, regular party units also campaign for their election.

In overall organizational 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. Organization is more bottom-up than top-down. However, in the last 15 to 20 years national party committees have channeled funds to state party units and provided assistance in recruiting candidates, training on issues and campaign

techniques, and conducting public opinion polls. Likewise many state party committees assist local units.

Legislators form their own distinct party units to facilitate their legislative work, one for the majority and another for the minority, with separate units in each house of bicameral bodies. In Congress and many state legislatures, party blocs organize separate campaign committees to channel funds and offer advice to party nominees.

Elected chief executives (mayor, county executive, governor, president) independently assert party leadership, distinct from legislative party units. Ofttimes this occurs through the official party structure, but sometimes chief executives maintain a separate campaign organization, especially when they intend to run for re-election.

In addition, subunits take shape within the parties, such as racial, ethnic, and gender caucuses and clusters with a particular ideological persuasion.

Thus, the Democratic and Republican parties are multi-nuclear in their organization and operations. Neither party maintains ideological purity and consistency. Neither exercises strict party discipline over members and party units. For instance, the national committee cannot tell party members in the U.S. House of Representatives or Senate how to vote. Nor can the president order members of his own party in Congress to support his policies. The same pattern generally prevails with governors and state legislatures although sometimes a state party dominated by a close-knit oligarchy can exercise a measure of party discipline.

The two major parties 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 and sometimes win. But overall, elections and governance in the United States are dominated by Democrats and Republicans.

Interest Groups

A second significant instrument which American democracy uses in the consent process is the interest group. Sometimes interest group representatives also take part in governance.

Interest groups consist of individuals, economic enterprises, and other organizations which share particular concerns and

band together to influence public policy. They focus especially on legislation and executive decision making process. To strengthen their influence, many of them also get involved in election campaigns and pay heed to selection of executive policy-making officials. Some interest groups also try to influence public opinion as an indirect means of affecting governmental policies.

Interest groups existed before the adoption of the U.S. Constitution ("factions" James Madison called them in *The Federalist No. 10*) and have functioned every since. For all of this century American political science has recognized their influence on governmental processes (for instance, Bentley [1908] 1967; Herring 1929; Truman 1951; Latham 1952). Numerous studies of the last 20 years have analyzed their diversity and varied roles they play in American government (for

example, Berry 1989; Cigler and Loomis 1991; Heinz and others 1993; Petracca 1992; Salisbury 1992; Schlozman and Tierney 1986; and Walker 1991).

Although some editorial writers, columnists, scholars, and civic activists deplore their existence, interest groups are natural and inevitable in a flourishing democracy. Today virtually everyone in the land is part of one or more interest groups, including their critics.

Prominent among interest groups are those consisting of persons who share a 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, gun control (pro and con), disarmament, tax reduction, government reform, 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.

A distinction is sometimes made between private interest and public interest groups. "Public-interest organizations," according to David Cohen (1978, 56-57), "are often defined as groups that seek 'common, collective, or public goods' that do not exclusively, materially, or selectively benefit their members....The diffused benefits of public-interest activities need to be contrasted to the benefits accruing to the special interests as a result of their activities." Nevertheless, there is enough diversity among public interest groups that they oftentimes appear on different sides of policy disputes (such as for and against abortion, whether federal

grants should go to states, cities, or private nonprofit organizations).

The scope and variety of interest groups is highlighted in a directory of "Washington representatives", the term applied to "persons working to influence government policies and actions to advance their own or their client's interest. Totaling nearly 15,000, counting principal heads of organizations, not their much larger backup staff, they include officers trade and professional associations and labor unions, representatives of individual corporations, advocates of special causes, lawyers registered as lobbyists or foreign agents, public relations consultants, officers of political action committees (PACs), and persons from thinktanks engaged in public policy advocacy (Close, Steel, and Buckner 1994, 3-4).

At a smaller scale the same pattern occurs in state capitals. Similarly representatives of numerous interest groups actively deal with local government.

To affect public decision making, interest groups lobby legislators at the capitol, courthouse, and city hall and in their home districts, oftentimes through widespread grassroots mobilization. Interest groups seek out policy makers in the executive branch in order to influence their legislative proposals, executive policies, and regulatory. They initiate litigation and do what they can to affect judicial decisions. They get involved in elections through campaign contributions, publication of incumbents' voting records, and mobilization of voters. They also try to influence who is appointed to executive and judicial positions. Interest groups carry out education campaigns and

get their views disseminated through mass media in order to impact public opinion.

As an extension of their advocacy role, representatives of interest groups sometimes become active participants in governance. They supply useful information to decision makers, serve on study committees, participate in debate and deliberation on policy issues, and on occasion broker agreements among persons inside and outside government (Mansbridge 1992). In short, they become members of governing coalitions (more on this later).

Interest groups and political parties have overlapping roles in the consent process. The one is interested foremost in governmental policies while the other is concerned initially in who gains governmental office. However, interest groups have this

latter concern, too, and political parties have policy commitments.

As interest groups participate in governmental decision-making processes, they represent functional segments of the population cutting across geographic and political party lines. This contrasts with elected officials who are associated with political parties and represent voters from defined geographic districts. The result is a kind of multiple representation in the functioning of American government.

DECISION-MAKING PROCESSES OF REPRESENTATIVE DEMOCRACY

Political parties and interest groups provide an organizational framework for citizen involvement in the

decision-making processes of representative democracy.

Citizens also participate individually by interacting directly with candidates for public office and with elected officials. These actions occurs in three modes of decision making: elections, legislative enactment, and adoption of executive policies.

Election of Public Officials

The election of public officials holds a central place in the consent process of American democracy. Altogether voters choose 511,039 officials of local, state, and national government (U.S. Bureau of the Census 1994). This occurs through direct election except for the president and vice president of the United States, officially chosen by voter-selected electors, who, however, are committed to specific candidates.

Voting on election day is the decisive act of the electoral

process, but interaction between candidates and potential voters in the preceding months is a very important aspect of consent-giving. The process begins with numerous persons thinking about running for elective office and ends with voters choosing the winners.

As aspirants explore the possibility of running, they can look ahead and realize that to succeed they must gain the consent of an increasing number of persons who serve as gatekeepers at successive intervals along the electoral roadway. It is a journey with three main stages: positioning, campaigning (in two phases), and voting. Of these, positioning is the least analyzed in political science literature.

Positioning. The initial decision to seek public office is a personal one, sometimes made through consultation with family

and friends. Then the aspirant must choose which office to seek. Several possibilities might be kept open initially. Perhaps there is a succession of offices to a final goal. In partisan elections, the aspirant must choose a political party or decide to run as an independent. Often, though, the aspirant's party identity is already fixed.

Depending upon state law and party practice, the party nomination will be formally determined at a caucus, convention, or primary election. Each has a different set of gatekeepers: party members appearing at caucus meetings, convention delegates, or eligible voters participating in the primary. There may also be recruitment or endorsement committees of party leaders or blocs within the party. Sometimes particular interest groups are influential, such as chambers of commerce, labor

unions, other economic interests, civil rights organizations, ideological groups, and others. Newspaper endorsement might carry some weight. (For an illustration of this process in one congressional district, see Fowler and McClure 1989; also see Ehrenhalt 1991; [add other sources]).

Well before announcing their candidacy, newcomers to politics usually begin positioning themselves to run. They may do this by joining organizations, engaging in community service, making friends, currying favor with political leaders and party blocs, getting in touch with influential interest groups, forming alliances, sounding out potential financial supporters. seeking publicity, and gaining public recognition. This is the beginning of relationships with voters and with constituents to be served if elected. It is the first stage of interactive consent.

Incumbents seeking reelection (a majority of current officeholders at any one time) start positioning themselves to run again as soon as the last election is over. By and large they do this in the course of carrying out their official duties: legislators representing their district on policy issues and helping their constituents in numerous ways; elected executives taking policy initiatives and running governmental operations in a manner that gains public support.

Incumbents continually communicate with their constituents and receive feedback from them. They issue news releases, send out newsletters, grant interviews to journalists, appear on radio and television shows, speak at community meetings, appear at public events. For them it is a matter of simultaneously serving as receptive public servants and getting in position to run for

reelection. This intermingling of representation and electioneering contributes to continuity in the consent process. (For how members of Congress relate to their home districts, see Fenno 1978; for state legislators, see Jewell 1982 and Rosenthal 1981.)

Persons holding one elective office and aspiring for another position themselves by building support for the next office. We see this most publicly in the parade of governors and members of Congress speaking at quadrennial Democratic and Republican conventions, looking ahead to the presidential nominating contest four or eight years later. Then they go to "cattle shows" around the country, speaking at state and local party gatherings and before influential interest groups. They appear on television interview programs and radio talk shows. They write books and

magazine articles. In similar ways city council members wanting to become mayor, state legislators desiring to run for governor position themselves a year or two in advance. Often this affects their performance in their current office as they sponsor legislation or take executive initiatives that attract attention of potential supporters for the next office they are seeking.

Campaigning. Candidates for public office move from positioning to active campaigning by formally announcing their candidacy and filing necessary papers with election officials. By then they have usually put together a campaign organization, developed a strategy, and begun fundraising. Their objective is clearcut: win more votes than any opponent to gain party nomination and then win more votes than any other candidate

to prevail in the general election.

Voters bring a different perspective to the campaign. They want to find and vote for candidates who can best represent them in the halls of government. Party officials want candidates who can win the general election. Interest groups look for candidates supportive of their viewpoints. These desires intersect with candidates' desire to win and produce the dynamics of consent-giving through the electoral process.

The roadway candidates travel to become their party nominee varies from state to state. Most states conduct primary elections to select party nominees for Congress, state offices, and local offices filled through partisan balloting. This means that party members, identified by voter registration or declaration at the polls on primary election day, make the

decision, not a narrow band of party officials. It is even broader in the states with open primaries where voters mark ballots containing names of candidates of all parties (Council of State Governments 1994, 217-8).

Fourteen states, however, provide for some permutation of a party convention, usually in combination with a primary .

Party nominees for president of the United States are chosen through a succession of caucuses, primaries, and conventions in the various states, culminating in the national party convention (sources: two parties).

Candidates calculate who will participate in these party conventions and primaries, and they map out campaign tactics to garner the support they need to win their party's nomination. They may sponsor polls to find out the opinions of various

segments of the population on key issues. They talk with personal and party advisers and sometimes hire campaign consultants. (For elaboration of how political campaigns are crafted, see Allen 1990, Beaudry and Schaeffer 1986, Grey 1994, Lansing 1991, and Schwartzman 1989.)

Candidates usually try to offer voters a clear picture of who they are, what they stand for, and why people should vote for them. They may test their message in small meetings, news interviews, and conversations with groups of voters. They are likely to vary their message with different audiences but try to retain overall consistency. They analyze feedback and study polling data. They begin to make campaign promises of what they will do if elected. The larger the election district the more candidates rely on mass media to get their message out.

Simultaneously voters and convention delegates are trying to figure out which candidate they want to represent their party in the general election. Persons representing party blocs and interest groups meet with candidates and seek commitments on various policy positions. Interest groups begin channeling financial contributions to the most promising candidates from their perspective. Highly motivated persons attend candidates forums and pose questions. Politically active individuals serve as volunteers in the campaigns of their favorite candidates.

This process is repeated on a larger scale during the general election campaign. Ordinarily candidates have their own campaign apparatus, but the regular party organization also gets involved. Interest groups make additional campaign contributions and sometimes mobilize their members in behalf of

avored candidates.

Candidates who gained party nomination through cohesive support of a highly motivated bloc of party members now have to find ways to appeal to a much broader electorate. In the general election campaign many more interest groups press candidates to take positions on matters that did not come up during the primary election. In the process candidates may have to soften their position on certain issues but not become so mushy that they lose their core support.

Some voters habitually vote for the nominee of their party and stray away only in rare circumstance. Many other voters, although voting mostly for candidates of the party they identify with, are willing to split their ticket. Some voters are deliberately independent. Candidates, therefore, have to figure

how to retain the support of party members while appealing to independents in the middle and to ticket-splitters and straying members of the other party.

In these various ways interactive consent enters wholeheartedly into election campaigns. Political parties adopt party platforms. Candidates make campaign promises and put out position papers on a host of issues. Interest groups get involved. Voters build up expectations of what the victors will do when they take office. They develop notions of what they are consenting to. Although not all campaign promises are kept by the winners, they make commitments that will influence their conduct in office.

Voting. Campaigns culminate on election day when voters record their choices. They are the gatekeepers who give their

consent to have particular persons represent them for a term in office.

Over the years restrictions on suffrage in the United States have fallen by the wayside: property ownership, paying, race, sex, age. Today virtually every U.S. citizen 18 years and older may vote.

Many, however, do not exercise this opportunity. [data]

A bundle of factors enter into voter choice, such as party

identity, political philosophy, economic interest, agreement on some issues but not all, perhaps dislike for incumbents or candidates on the ballot, and sometimes race and gender (source).

When the votes are counted and the winners declared, what kind of consent has been given and by whom?

The winners receive the most votes but not necessarily support from a majority of people residing in their election districts. Given the level of voter turnout, it is quite likely that those voting for the victors constitute a minority of the adult population. Frequently they are a minority of registered voters. Where the ballot contains three or more candidates, they are sometimes a minority of those voting unless there is a runoff election.

Therefore, in a narrow sense only persons voting for the winners have formally consented that these individuals shall govern. Persons who voted for losing candidates can claim that they did not give their consent to the winner. Hence the bumper sticker: "Don't blame me. I voted for [name of loser]." Those who did not vote at all can also assert that they did not consent.

But in a broader sense the entire citizenry consents to the electoral system that allows candidates receiving the most votes to take office and govern. We accept the winners and allow them to exercise the powers of government. We consent to the legitimacy of the electoral process even though we vote for losing candidates or do not vote at all.

The winners have their own views on the meaning of

consent. After they are installed in office, they might claim that their election gave them a mandate to enact particular legislation or adopt specific executive policies. They explain that they stated their views during the campaign and that by electing them the voters consented to the policies they now seek to adopt.

However, rarely does the vast majority of voters perceive the election of public officials to be a referendum on detailed public policies. Most voters do not read party platforms or candidates' position papers and do not listen to campaign speeches. And even voters who study the issues carefully may disagree with some of the policy positions of the candidates they vote for. Moreover, voters may cast ballots for candidates for different offices, such as U.S. representative, U.S. senator, and president, who themselves disagree on particular issues.

So it is not clear who has the mandate. The election determines who shall govern, not a whole range of policies they will adopt and carry out. These come later.

Accordingly, citizens do not look upon elections as the only means of providing their consent. Rather they see the necessity of keeping in touch with their elected officials and seeking to influence their decisions during their term in office. Therefore, the consent process does not terminate on the election day but rather moves into the domain of legislative and executive decision making, which we will examine in a moment.

Removal. *American democracy also has provisions for withdrawal of consent from officeholders. Sixteen states permit citizens to petition for a vote to recall elected state officials (Council on State Governments 1994, 305-6). Thirty-one*

states authorize procedures for recalling local elected officials.

The U.S. Constitution (Art.1, Sec. 2 & 3) and all of the state constitutions but one (name of state) allow the legislative body to remove the chief executive and other elected officials through impeachment proceedings (Council of State Governments 1994, 63-64). Congress, state legislatures, and local councils may expel their members under certain circumstances. (For further analysis of recall, see Cronin 1989, 125-156; Zimmerman 1986, 105-114).

Enactment of Legislation

After the votes are counted and the winners declared, consent of the governed moves on to other expressions as citizens continuously interact with their elected representatives. This is most apparent in legislative decision making.

Legislative bodies -- the U.S. Congress, state legislatures, city and county councils, township boards -- have established procedures for enacting laws. Legislation moves through a regular sequence of steps, such as: drafting a bill, introduction, referral to committee, public hearing by committee or subcommittee, committee consideration (called "mark up" in Congress), report to the whole body, floor action. In bicameral bodies these steps are repeated in the second chamber, and differences are reconciled by a conference committee. The chief executive then has an opportunity to sign or veto the bill. If the latter happens, the legislature has an opportunity to override.

(See Keefe 1991; National Conference of State Legislatures 1991; Olesek 1989; Scheier and Gross 1993.)

[other sources?]

The legislators themselves are the most important actors in this process, but they almost never act alone. They are assisted by staff, approached by officials from the executive branch, sometimes influenced by political party leaders, and constantly lobbied by individual citizens and interest group representatives. Legislators in turn reach out to learn the views of their constituents and to explain their positions. It is a reciprocal process. (Sources. Fenno?)

A wide variety of interest groups are major players in this phase of continuous, interactive consent. They often work simultaneously "inside" at the capitol, county court house, and city hall and "outside" through grassroots organizations.

Many interest groups make their first connection with legislators during the election campaign, sometimes as early as

the positioning period. They make campaign contributions and provide campaign works. Immediately after the election they get in touch with the winners, both newcomers and reelected incumbents, to offer proposals for the upcoming legislative session.

On matters affecting their interests interest groups try to have a hand in drafting legislation. This may include contacts with executive officials who are preparing legislative proposals. They help line up cosponsors for bills. They ask to testify or suggest witnesses for public hearings. They follow committee consideration very carefully, seek to review proposed amendments, offer some of their own, and lobby committee members directly and through their grassroots units.

Interest groups work especially hard to influence votes when legislation affecting them comes to the floor of the legislative

body. They patrol the lobby and mobilize their grassroots. They form coalitions with allied interests and try to counter the work of opposing coalitions. They try to shape public opinion through the mass media. They may urge the chief executive to threaten a veto if changes are not made and to actually veto the bill as passed if it is not to their liking. (For more on lobbying techniques, see Alderson and Sentman 1979; deKieffer 1981; Mack 1989; Schneier and Gross 1993; Wittenberg and Wittenberg 1989; Zorack.)

To exercise their influence, interest groups sustain long-lasting relationships with legislators and also with executive officials involved in legislative matters. The most effectively organized and best financed interest groups maintain staff in Washington and in state capitals. They know the legislative

process inside and out. They keep in touch with legislators through frequent contacts and seek to develop a sense of friendly rapport. The financial contributions they make to election campaigns strengthens their ties with legislators and helps gain easier access. Grassroots units maintain contact with legislators in their home districts.

This is a highly competitive process. Sets of interest groups contend against one another: labor versus management; commercial interests versus consumer advocates; creditors versus debtors; groups on opposite sides of social issues. Molders and mobilizers of public opinion, such as talk show hosts, are a factor.

There are winners and losers in the contest to determine legislative outcome. Some interest groups are stronger and more influential than others. Nevertheless, the competitive

nature of lobbying prevents the seemingly most powerful interests from always getting their way with legislators (Heinz and others 1993; McFarland 1992; Salisbury 1992, 339-364). For instance, during the last 25 years numerous public interest organizations have countered private economic interests and achieved notable victories (Pertschuk 1986). Moreover, although poor people are least represented and are rarely heard directly, religious organizations and other socially-conscious groups serve as advocates in their behalf.

In this manner, two expressions of representation come together in the legislative process: interest groups, self-organized to represent overlapping segments of the population, and legislators, officially elected to represent citizens in their districts. While a legislator votes on every bill, particular interest groups

concentrate only on matters that concern them most. But cumulatively an array of interest groups and individual citizens are involved with all major bills considered by legislative bodies. The consent process in legislative enactment is manifested through the totality of this interaction.

Ultimately it is up to legislators to decide. Constantly they are under pressure to side with one interest and reject the views of another, or to seek a compromise. As the people's elected representatives, they are expected to make decisions. They cannot delegate this obligation to lobbyists or to their own staff. They are responsible and accountable.

But the continuous interaction legislators have with their constituents, with a wide range of interest groups, and with executive officials ordinarily influences their decisions. They may

not always cast legislative votes as a majority in their district might prefer, but they tend to be cautious about straying too far from district opinion on most issues. In this manner interactive consent flows continuously around and within virtually every legislative body in American government.

Adoption of Executive Policies

Elected executives and their appointees are the second set of decision makers in American government. They propose legislation and prepare budgets. When new laws go into effect, executive departments draft and adopt implementing regulations. They work out administrative procedures and issue program guidelines. They are in charge of planning a host of public projects.

Compared to the regularity of legislative procedures,

executive decision-making processes display many different configurations and are sometimes quite obscure (sources?). For some kinds of executive policies and under some styles of executive management, the decision roadway may not be publicly revealed or readily accessible to public participation for most of the journey. In many other instances, though, the process is more open, especially in its later stages, and opportunities for citizen involvement are more readily available.

Citizens and interest groups recognize that elected executives and their appointees make important decisions and therefore try to influence them whether invited in or not. In doing so many interest groups use practices similar to their approach to legislators: getting involved in political campaigns, making contact between election and installation in office, proposing

persons to fill appointed executive positions, seeking to influence the budget as it is being prepared, offering input during the drafting of program policies and regulations, attempting to influence program and project planning from the earliest stages onward.

As a means of overcoming executive secretiveness, laws mandate public disclosure of proposed projects and proposed regulations (source?). In addition, public hearings are required for certain kinds of projects, usually occurring fairly far along the decision making roadway after the public agency has produced a fully-developed project proposal or drafted a complete set of regulations. Citizens take advantage of these opportunities.

Moreover, many governmental jurisdictions have procedures for citizen participation. They provide timely information, set

up advisory committees, send staff to community meetings, sponsor informal and formal hearings on project proposals.

Many of these practices have deep roots, but they blossomed particularly in the 1960s and 1970s as part of a broad movement to achieve more participatory democracy. (Sources)

Of all the tasks of executive policy formulation, the annual budget looms high in importance, for the budget determines who benefits from public expenditures and who pays the bill.

Ordinarily budget making is an internal process of the executive branch. Although a few astute interest groups push to gain funding for their programs and projects, most citizens lack access to the executive budget makers. Not until the budget is completed does it surface for public scrutiny. Then it is published and presented to the legislative body, which conducts

public hearings. (sources: Wildavsky 196?; Schuman 1984(?))

There are, though, some city governments which have processes for citizen involvement in budget making from the earliest stage. In these situations neighborhood organizations and other citizen groups formulate their proposals before operating departments present their own requests and feed them into the budgetary process. Citywide advisory committees review both citizen and departmental proposals and offer recommendations to the budget office and chief executive (Hallman 1988).

Another important policy-making task of executive departments is the preparation of regulations to implement new laws. As this occurs, interest groups which have followed the legislation keep track of regulation writing, try to see drafts, and

otherwise seek to influence the final wording. The extent of outside involvement generally depends upon the assertiveness of interest groups rather than outreach by executive officials, except perhaps to a few favored interests.

Executive departments make other important decisions as they plan various public projects, such as new parks, highways, water and sewerage systems, other public facilities, whole neighborhoods and business districts. Nowadays it is quite common to achieve widespread citizen involvement in neighborhood planning (Rohe and Gates 1985). Often citizen representatives also participate in the planning of highways, water resource projects, and other kinds of public improvement.

(sources)

Citizen involvement in these planning processes and other

types of executive decision making is a further manifestation of representative participation. Advisory committees are composed of a cross-section of concerned citizens. Hearings and other open forums attract citizens who present a variety of viewpoints. In other phases of policy formulation a range of assertive interest groups get involved.

As this occurs, participation tends to be weighted toward individuals and groups most affected by pending policy decisions. Poorer and less well educated segments of the population tend to be underrepresented. But even with less than perfect representation, active citizen involvement in executive decision making is a vital part of continuous, interactive consent.

Governing Coalitions

Although we have separately considered three modes of

decision making in American government -- elections, legislative enactment, and adoption of executive policies, in practice they are intertwined. Interest groups and political parties are involved in all three modes, though in different ways. The next election affects legislative votes of incumbents intending to seek reelection. Executive officials develop legislative proposals, and legislators keep an eye on regulations promulgated by executive departments.

Similarly there is a blend of who the primary decision makers are. A long-standing debate rages among American political scientists on whether they are a narrow, elitist "power structure" (Hunter 195_, 1980) or a broader, more pluralistic "governing coalition" (Dahl 1961; also see Polsby 1980, others?). But either viewpoint indicates that the consent process has an

inner circle of decision makers consisting of executive officials, legislative leaders, well-connected outsiders representing various interests, and political party leaders. This occurs in local, state, and national government. Journalist Hedrick Smith has summarized this phenomenon as "The Coalition Game: The Heart of Governing" (Smith 1989, 445-500).

Actually there are many governing coalitions with different participants, operating in different functional areas: defense, transportation, education, housing, health, and many more. Particular interest groups, legislators, and executive officials are involved in particular coalitions but not in others. However, the elected chief executive -- president, governor, mayor, county executive -- is likely to be involved in most of them. So also are legislative majority leaders, and oftentimes minority leaders, too.

The principle of representative government remains intact in the operation of governing coalitions. Chief executives and legislators are elected by the people, and legislative leaders are elected by their peers. Influential interest group participants usually gain their position within their organizations through some kind of internal selection process. Thus, in the inner circle there is a blending of representative government and representative interest group involvement.

Interest groups not represented within governing coalitions sometimes focus their attention not only on elected officials but also on nongovernmental persons who have more influence inside the coalitions than they do. This is yet another manifestation of interactive consent.

Ultimately elected officials make legally binding decisions by

enacting legislation and adopting executive policies. This retains the democratic character of governmental decision making. But along the way numerous citizens are involved in formulating policies and working out their details. This is what makes consent a continuous, interactive process.

DIRECT DEMOCRACY

Consent of the governed manifested in elections, lobbying to influence legislation, and citizen involvement in executive policy making occurs within the framework of representative government. This is the main thrust of American democracy.

In addition, consent also occurs in two modes of direct democracy: citizen assemblies functioning as governing bodies and plebiscites that enable citizens to participate in decision making by voting on ballot issues. These approaches supplement and

complement representative government.

Citizen Assemblies

Town meetings. The most fully developed citizen assemblies with governmental decision-making authority are town meetings, found in the New England states and a few other locales. The first ones were organized around 1630 in the Massachusetts Bay Colony as freeholders gathered to make decisions on the welfare of their town and to select officers to handle day-to-day affairs of town management (Zimmerman 1967). Subsequently other New England colonies -- Maine, New Hampshire, Connecticut, and Rhode Island -- followed this model of local government. Similar town meetings formed here and there in New York and New Jersey.

According to Joseph F. Zimmerman, "the open town

meeting functioned adequately albeit tumultuously on occasion for at least its first century and a half in all towns" (1986, 28). But as towns grew in population, large assemblies in which all freeholders could participate became unwieldy, indeed virtually impossible in the most populous towns. A number of them, therefore, adopted city charters and elected city councils, thereby switching to representative government.

Beginning in Brookline, Massachusetts in 1915, the representative town meeting (RTM) emerged as a variation. Under this arrangement, town voters elect members to a fairly large assembly, which serves as the town's governing body. In the mid-1980s Massachusetts' 45 RTMs ranged in size from 50 to 370 with an average of 225 members (Zimmerman 1986, 28-29).

Features of representative government have come to other New England towns as boards of selectmen, finance committees, planning boards, and in some instances town councils have taken over various responsibilities once reserved for the town meeting as a whole. Usually, though, the town meetings retain final authority to adopt the annual budget (Zimmerman 1986, 24, 30).

In 1992 there were xxx towns in the six New England states governed by town meetings open to all citizens, xx in New York, and xx in New Jersey. There were xx representative town meetings (xx in Massachusetts and x Connecticut). This amounts to x.xx percent of the 35,935 local general-purpose governments in the United States. Altogether ____ people lived in localities with town meetings and RTMs, x.xx percent of the U.S.

population.

Though small in number, town meetings have preserved an element of direct democracy in municipal governance. These days town meeting attendance is less than it once was, and an activist minority tends to control. Debate is often tepid except when particular interests, such as parents, town employees, and anti-spending citizens, show up to to push their cause. While acknowledging these shortcomings, Zimmerman (1986, 32) maintains that "the open town meeting is not an anachronism and may be viewed as a safety valve allowing all voters to participate in town governance and offering apathetic and lethargic citizens when sufficiently aroused to control town decision making" (1986, 32). (Also see Mansbridge 1983).

Other Varieties. The vision of the New England town

meeting has retained a favorable place in American imagination. Elected political officials, candidates for office, and citizen organizations organize events they bill as town meetings. They are usually held on an ad hoc basis, open to anyone who shows up that day. When candidates and public officials are on stage, the meeting serves primarily as a vehicle for two-way communication. When sponsored by a citizen organization for its members without outsiders present, the meeting may provide opportunities for deliberation and coming to conclusions on issues at hand. These town meetings, though, are not decision-making bodies for units of government, as the authentic versions in New England towns are.

Advocates of popular democracy, such as Milton Kotler (1969), David Morris and Karl Hess (1975), and Benjamin R.

Barber (1984), have advocated use of neighborhood assemblies as units of governance within cities. Although no city has adopted this approach, from a metropolitan perspective small enclave cities, such as Hamtramck and Highland Park surrounded by Detroit, and small suburban municipalities function as de facto neighborhood governments (Hallman 1974, 41-51).

A more commonly used approach to neighborhood participation is the establishment of neighborhood councils with official advisory roles on city policies affecting their neighborhoods. Cities throughout the United States have done this during the past 25 years. In some places neighborhood councils are organized afresh under the authority of a city ordinance or charter amendment. In other locales existing neighborhood associations are given official recognition. The

governing body almost always takes a representative form as a board elected by residents rather than being a citizens assembly in which all participate (Berry, Portney, and Thomson 1993; Hallman 1977, 1984).

However, some of these officially recognized neighborhood units and other neighborhood associations elsewhere hold monthly meetings or an annual session open to participation by all residents or all members. These sessions function as citizen assemblies to debate issues, determine priorities, and set organizational policies. Between meetings an elected board of directors or executive council runs the organization, thereby blending direct and representative democracy (Cunningham and Kotler 1983, 27-70).

Another blend occurs in a coalition of community

organizations that holds an annual assembly of organizational representatives, somewhat analogous to a representative town meeting. This assembly (sometimes called a congress) determines overall policies and elects a governing board to run the affairs of the coalition (Cunningham and Kotler 1983, 71-81).

Plebiscites

The second mode of direct democracy in the United States is the plebiscite, used to allow the eligible electorate to vote on issues of public policy. There are two types: *referendums* and *initiatives*. As the terms indicate, referendums are referrals from legislatures, constitutional conventions, and local charter commissions to the voters. Initiatives originate by citizen petition. (Major sources on this topic include Cronin 1989;

Kehler and Stern 1994; Mageley 1984; Schmidt 1989; Zimmerman 1986; and Zisk 1987).

Referendums and initiatives are used nowadays for several different purposes. They give the entire citizenry a voice in ratifying or modifying the basic framework of government, approving municipal incorporation and boundary changes, concurring in or adopting statutes and financial measures, and sometimes sending messages and expressing opinions on public policy issues.

***Approve State Constitutions.** Popular voting on state constitutions began in Massachusetts and New Hampshire soon after independence. The practice spread during the 19th century and in 1857 became a requirement for states seeking admission to the Union (Schmidt 1989, 4-5).*

Today voter approval of state constitutional amendments and wholesale revision is almost universally required. Even to convene a state constitutional requires voter consent in 39 states, including 14 states where a periodic vote is required on whether to have a new convention. Elsewhere the legislature alone has the authority to call a constitutional convention. After these conventions have completed their work, citizens have an opportunity to vote on the product. In every state except Delaware amendments proposed by the legislature must also be approved by the electorate (May 1994).

In 18 states citizens themselves may initiate constitutional amendments by petition. In 16 of these states the proposals go directly on the ballot if sufficient eligible signatures are obtained, but in the other two the legislatures have an opportunity to

review the proposal first.

Of the 239 state constitutional amendments proposed during the 1992-93 biennium, 201 originated in the legislatures, 34 came from citizen initiatives, one was put forth by a constitutional convention, and 3 were offered by special study commissions. The voters approved two-thirds of them (May 1994).

***Approve Municipal Incorporation, Charters, Boundary Changes.** State law commonly requires resident approval of municipal incorporation, a practice first occurring in Massachusetts in 1821. Proposals to establish special districts and to change municipal boundaries through annexation and consolidation are often placed before the voters. [source]*

It is a common practice among cities and counties to seek

voter approval of home rule charters and charter amendments.

In some states, municipalities may choose a form of government from several options provided in state law (such as mayor-council, council-manager). Voter consent is sometimes required. [Find sources, elaborate.]

Review and Adopt Legislation. Citizens also have opportunities to vote directly on proposed statutes and policy issues of state and local government. This began occurring around the middle of the 19th century on such matters as location of state institutions. The practice was soon extended to referendums on state and local debt authorization, bond issues, and tax rates (Cronin 1989, 42).

In the 1880s and 1890s a movement arose to have popular participation in state legislation through referendums on

measures adopted by legislatures and citizen initiatives to place proposals directly on the ballot. Between 1898 and 1918 twenty-three states adopted provisions for one or both of these approaches. Since then three other states and the District of Columbia have done likewise (Cronin 1989, 51). — percent of the U.S. population lives in these 26 states and D.C.

In 25 of these states, the legislature may voluntarily submit laws to voters for their approval. In 18 states voters may petition for a referendum on bills adopted by the legislatures. Twenty-one states allow voters to initiate legislation by petition. In 18 states such initiatives can go directly onto the ballot if enough eligible signatures are collected, but in five states the legislature has the option of considering and adopting the proposed measure before it reaches the ballot. In three states

legislative review is mandatory prior to initiatives going to the voters (Kehler and Stern 1994).

Issues considered.

Referendums and initiatives also occur frequently in local government. A 1991 survey of 3,728 cities of all sizes from all regions of the country revealed that 90 percent have referendum procedures, 49 percent allow citizens to initiative local legislation by petition, and 32 percent permit citizens through petition to place on the ballot measures adopted by the local council (Renner and DeSantis 1993).

Make Decisions on Governmental Finance. Starting in the middle of the 19th century, referendums on authorization of debt and tax rates became a common practice. [Expand.]

Although today city and county governing bodies generally have authority to set tax rates and approve bond issues, these matters are sometimes referred to the voters. For example, a study of a cross-section cities found that 29 percent had held one or more bond election between 1977 and 1987 (Crane and Green, 1989).

Send Messages.

Analysis. [Who participates, percent of legislation, issues, evaluation, safety valve, etc.]

Proposals for Extension of Plebescite Democracy. ???

ROLE OF PUBLIC OPINION

CONCLUSION

REFERENCES

- Allen, Cathy. 1990. *Political Campaigning: A New Decade*.
Washington: National Women's Political Caucus.
- Committee on Political Parties of the American Political Science
Association. 1950. *Toward a More Responsible Two-Party System*. New York:
Rinehart.
- Barber, Benjamin R. 1984. *Strong Democracy: Participatory Politics for
a New Age*. Berkeley: University of California Press.
- Beaudry, Ann and Bob Schaeffer. 1986. *Winning Local and State
Elections: The Guide to Organizing Your Campaign*. New York: Free Press.
- Bentley, Arthur F. [1908] 1967. *The Process of Government*.
Cambridge: Belknap Press of Harvard University Press.
- Berry, Jeffrey M. 1989. *The Interest Group Society*. 2nd edition.
Glencoe, Ill.: Scott/Foresman.
- Berry, Jeffrey M., Kent E. Portnoy, and Ken Thompson. 1993. *The*

Rebirth of Urban Democracy. Washington: Brookings Institution.

Broder, David S. 1971. *The Party's Over: The Future of Politics in America.* New York: Harper & Row.

Carle, Robin H., compiler. 1995. *104th Congress: Representatives, Senators.* Washington: Clerk of the U.S. House of Representatives.

Cigler, Allan J. and Burdett A. Loomis. 1995. *Interest Group Politics.* 4th Edition. Washington: CQ Press.

Close, Arthur C., J. Valerie Steel, and Michael E. Buckner, eds. 1994. *Washington Representatives 1994.* 18th ed. Washington: Columbia Books.

Cohen, David. 1978. "The Public Interest Movement and Citizen Participation." In *Citizen Participation in America*, ed. Stuart Langton. Lexington, Mass: Lexington Books.

Cotter, Cornelius, James L. Gibson, John F. Bibby, and Robert J. Hartshorn, *Party Organization in American Politics.* 1984. New York: Praeger Publishers.

Council of State Governments. 1990. *The Book of the States 1990-91.*

Lexington, KY: Council of State Governments.

Council of State Governments. 1994. *The Book of the States 1994-95.*

Lexington, KY: Council of State Governments.

Crane, Randall and Roy E. Green. 1989. "Debt Financing at the Municipal Level: Decision Making in the 1980s." In *The Municipal Year Book 1989.* Washington: International City Management Association.

Cronin, Thomas E. 1989. *Direct Democracy: The Politics of Initiative, Referendum, and Recall.* Cambridge, Mass: Harvard University Press.

Crotty, William J. 1994. *American Parties in Decline.* 2nd ed. Boston: Little, Brown.

Cunningham, James and Milton Kotler. 1983. *Building Neighborhood Organizations.* Notre Dame: University of Notre Dame Press.

Dahl, Robert. 1961. *Who Governs?* New Haven: Yale University Press.

DeSantis, Victor. 1989. "County Government: A Century of Change." In

The Municipal Year Book 1989. Washington: International City Management Association.

DeSario, Jack and Stuart Langton, eds. 1987. *Citizen Participation in Public Decision Making.* New York: Greenwood Press.

Ehrenhalt, Alan. 1991. *The United States of Ambition: Politicians, Power, and the Pursuit of Public Office.* New York: Times Books.

Epstein, Leon P. 1986. *Political Parties in the American Mold.* Madison: University of Wisconsin Press.

Fenno, Richard. 1978. *Home Style: House Members in Their Districts.* Boston: Little, Brown.

Flannigan, William H. and Nancy H. Singale. 1994. *Political Behavior of the American Electorate.* 8th ed. Washington: CQ Press.

Fowler, Linda, and Robert D. McClure. 1989. *Political Ambition: Who Decides to Run for Congress.* New Haven: Yale University Press.

Gosling, James J. 1992. *Budgetary Politics in American Government*.
New York: Longman Publishing Group.

Grey, Judge Lawrence. 1994. *How to Win an Election*. New York: M.
Evans and Company.

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

Hallman, Howard W. 1984. *Neighborhoods: Their Place in Urban Life*.
Beverly Hills: Sage Publications.

Hallman, Howard W. 1988. *Citizen Roles in City Budget Making:
Experience in Three Cities*. New York: New York City Charter Revision
Clearinghouse.

Heinz, John P., Edward O. Lanmore (?), Robert L. Nelson, and Robert H.
Salisbury. 1993. *The Hollow Core: Private Interests in National Policy Making*.
Cambridge: Harvard University Press.

Herring, E, Pendleton. 1929. *Group Representation Before Congress*.

Baltimore: Johns Hopkins Press.

Hunter, Floyd. 195?. *Community Power Structure: A Study of Decision Making*. Chapel Hill: University of North Carolina Press.

Hunter, Floyd. 1980. *Community Power Structure: Atlanta's Policy Makers Revisited*. Chapel Hill: University of North Carolina Press.

Jewell, Malcolm E. 1982. *Representation in State Legislatures*. Lexington: University of Kentucky Press.

Jewell, Malcolm E. and David M. Olson. 1988. *Political Parties and Elections in the American States*. 3rd edition. Chicago,: Dorsey Press.

Jones, Rich. 1994. "State Legislatures." In *The Book of the States 1994-95*. Lexington, KY: Council of State Governments.

Kayden, Xandra and Eddie Mahe, Jr. 1985. *The Party Goes On: The Persistence of the Two Party System in the United States*. New York: Basic Books.

Kehler, David and Robert M. Stern. 1994. "Initiatives in the 1980s and

1990s." *The Book of the States 1994-95*. Lexington, KY: Council of State Governments. pp. 279-293.

Keefe, William J. 1991. *The American Legislative Process: Congress and the States*. 8th edition. Washington: CQ Press.

Keefe, William J. 1994. *Parties, Politics, and Public Policy in America*. Washington: CQ Press.

Kotler, Milton 1969. *Neighborhood Government*.

Langton, Stuart. ed. 1978. *Citizen Participation in America*. Lexington, MA: Lexington Books.

Lansing, Jewel. 1991. *101 Campaign Tips for Women Candidates and Their Staffs*. Saratoga, CA: R & E Publishers.

Latham, Earl. 1952. *The Group Basis of Politics*.

Mack, Charles S. 1989. *Lobbying and Government Relations: A Guide for Executives*. New York: Quorum Books.

Madison, James. [1987] 1937. "The Federalist No. 10." In *The Federalist*.

New York: The Modern Library.

Mageley, David D. 1984. *Direct Legislation: Voting on Ballot Propositions in the United States*. Baltimore: Johns Hopkins University Press.

Maisel, L. Sandy, ed. 1990. *Changes in the American Party System*. Boulder: Westview Press.

Mansbridge, Jane J. 1983. *Beyond Adversary Democracy*. Chicago: University of Chicago Press.

Mansbridge, Jane J. 1992. "A Deliberative Theory of Interest Representation." In *The Politics of Interests*, ed. Mark P. Petracca. New York: Times Books.

May, Janice C. 1994. "State Constitutions and Constitutional Revision." In *The Book of the States 1994-95*. Lexington, KY: Council of State Governments.

McFarland, Andrew S. 1992. "Interest Groups and the Policymaking Process: Sources of Countervailing Power in America." In *The Politics of Interests*, ed. Mark P. Petracca. Boulder: Westview Press.

Morris, David and Karl Hess. 1975. *Neighborhood Power: The New Localism*. Boston: Beacon Press.

National Conference of State Legislatures. 1995. *Current Partisan Composition of State Legislatures*. Denver: National Conference of State Legislatures.

Olesek 1989. 3rd ed. [Congressional process]

Pertchuk, Michael. 1986. *Giant Killers*. New York: W.W. Norton & Co.

Petraca, Mark P., ed. 1992. *The Politics of Interests: Interest Groups Transformed*. Boulder: Westview Press.

Price, David Eugene. 1984. *Bringing Back the Parties*. Washington: CQ Press.

- Polsby, Nelson W., ed. 1980. *Community Power and Political Theory*. Rev. ed. New Haven: Yale University Press.
- Reichley, A. James. 1992. *The Life of the Parties: A History of American Political Parties*. New York: Free Press.
- Renner, Tari and Victor S. DeSantis. 1993. "Contemporary Patterns and Trends in Municipal Government Structure." In *The Municipal Year Book 1993*. Washington: International City Management Association.
- Rohe, William M. and Luren B. Gates. 1985. *Planning with Neighborhoods*. Chapel Hill: University of North Carolina Press.
- Rosenthal, Alan. 1981. *Legislative Life: People, Processes, and Performance in the States*. New York: Harper & Row.
- Sabato, Larry J. 1988. *The Party's Just Begun*. Glencoe, IL: Scott, Foresman & Co.
- Salisbury, Robert H. 1992. *Interests and Institutions*. Pittsburgh: University of Pittsburgh Press.

- Schmidt, David D. 1989. *Citizen Lawmakers: The Ballot Initiative Revolution*. Philadelphia: Temple University Press.
- Schwartzman, Edward. 1989. *Political Campaign Craftsmanship: A Professional's Guide to Campaigning for Public Office*. 3rd ed. New Brunswick: Transaction Publishers.
- Schlozman, Kay Lehman and John T. Tierney. 1986. *Organized Interests and American Democracy*. New York: Harper & Row.
- Schneier, Edward V. and Bertram Gross. 1993. *Congress Today*. New York: St. Martin's Press.
- Schlesinger, Joseph A. 1985. "The New American Political Party." *American Political Science Review*. vol. 74 (December): 1152-68.
- Smith, Hedrick. 1989. *The Power Game: How Washington Works*. New York: Ballantine Books.
- Sundquist, James L. 1983. *Dynamics of the Party System*. Rev. ed. Washington: Brookings Institution.

Sundquist, James L. 1987. "Strengthening the National Parties." In *Elections American Style*, ed. A. James Reichley. Washington: Brookings Institution.

Truman, David B. 1951. *The Governmental Process*. New York: Alfred A. Knopf.

U.S. Bureau of the Census. 1994. *Popularly Elected Officials in 1992*. Preliminary Report GC92-2(P). Washington: Government Printing Office.

Walker, Jack L., Jr. 1991. *Mobilizing Group Interests in America*. Ann Arbor: University of Michigan Press.

Wattenberg, Martin P. 1986. *The Decline of American Political Parties, 1952-1988*. Cambridge: Harvard University Press.

Wildavsky, Aaron B. 1992. *The New Politics of the Budgetary Process*. 2nd ed. New York: HarperCollins Publisher.

Wittenberg, Ernest and Elizabeth Wittenberg. 1989. *How to Win in Washington*. Cambridge, MA: Basil Blackwell.

Wolpe, Bruce C. 1990. *Lobbying in Congress: How the System Works.*

Washington: CQ Press.

Zimmerman, Joseph. 1967. *Massachusetts Town Meeting.* Albany:

Graduate School of Public Affairs, State University of New York.

Zimmerman, Joseph. 1986. *Participatory Democracy: Populism*

Revisited. Westport, CT: Prager Publishers.

Zisk, 1987. re referendum.

Zorack, John L. 1990. *The Lobbying Handbook.* Washington:

Professional Lobbying and Consulting Center.

Clinton Rossiter, *Seedtime of the Republic: The Origin of the American Liberty*. New York: Harcourt, Brace & World, Inc. 1953.

Tradition of Political

Contents -- copied

Part 1. The Circumstances

Chapter One. Colonial Government and the Rise of Liberty

Except for short terms, in isolated localities, and among small groups of pioneers, there was very little political democracy in the colonial period.... Yet for the most part government in the colonies was simply a less corrupt and oppressive, more popular and / easy-going version of government at home, and thus was characterized by limited suffrage, aristocratic leadership, and both deference and indifference among the mass of men. The governments of the continental colonies were a stage in the development of American democracy rather than democracy itself. pp.12-13

The Pattern of Government

Constitutions of the Colonies

Royal: Virginia, New York, New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, and Georgia

Proprietary: Pennsylvania, Delaware (same as Pa.), and Maryland

Corporate: Connecticut and Rhode Island

Governors, assemblies, councils -- copied

Courts, local government, instruments of imperial supervision , colonial agents

Popular Participation in Politics

Copied p.19, 21

The Factors of Freedom: I

Assembly and governor

By 1760 the assemblies were dominant in almost every colony in continental America. The royal power of disallowance was potent enough to prevent a complete overriding of the governor and other imperial officials, but shrewd observers were beginning to realize that only the full power of Parliament was now equal to the centrifugal practices of the assemblies. p. 23

Local government. copied 24-27

The Factors of Freedom: II

The rise of political liberty; freedom of the press.

Written constitutions and standing law.

Part 3. The Heritage

Introduction

The American colonies, 1765-1776

The ancient struggle between royal governor and popular assembly took on new vigor. p. 315

Etc.

The chain of political events, 1765-1776

Until the end of the decade the purpose of all but the most radical Americans was to restore the happy days of virtual home rule and untidy imperial supervision. p. 318

Events enumerated.

Two declarations copied: Stamp Act Congress & Massachusetts Assembly

Chapter 12. American Political Writing, 1765-1776

The American spokesmen and their agencies of communication

The men

The pamphlet. Perhaps most influential: James Otis, *Rights of the British Colonies*; John Adams, *Thoughts on Government*; Alexander Hamilton, *The Former Refuted*; Thomas Jefferson, *Summary View*; and Thomas Paine, *Common Sense*.

The newspaper article; the broadside; the almanac; the sermon; the oration; the letter; the official paper.

The problem of the American spokesman

Seven solutions proposed for problem of imperial organization:

1. Complete subjection and virtual representation
2. Representation in Parliament
3. Internal and external taxation
4. Taxation for revenue and taxation for regulation of trade
5. Denial of taxation; home rule
6. A dominion theory of the British Empire
7. Independence

The characteristics of political writing

Occasionalism; propaganda; legalism; facts; conservatism

The recourse to first principles; the American consensus (copied)

The sources of American political theory (copied)

Chapter Thirteen. American Political Thought, 1765-1776: The Rights of Man

The state of nature

The state of nature -- the state of "men living together according to reason without a common superior on earth, with authority to judge between them" -- was the point of reference around which Revolutionary thinkers grouped the principles of their political theory. p. 363.
Quote is from Locke, *Civil Government*, II. Chap. 3, Sec. 19.

The law of nature

Copied p. 366,
"Locke's great message: that government must respect the commands of natural law or release men from obedience." p. 369
"Finally and most important, natural law was the source of natural rights. p. 369

The nature of man

In short, the contract in Revolutionary thought was governmental, not social. p. 371
The natural character of man was an alloy of virtue and vice; his natural state was pure freedom and equality. "All men are, by nature, equal and free," wrote James Wilson; "no one has a right to any authority over another without his consent." p. 374. quote from *Works*, III, 205.

It is important to note these two aspects of the doctrine of natural equality to which most Revolutionists subscribed: that equality among men existed within a limited sphere, but that within this sphere all men were created absolutely equal. Each had an equal claim to be free of any earthly power, each could be governed only with his consent. p. 374

The natural rights of man

The doctrine of natural rights was therefore the hard core of Revolutionary political theory. Like almost all other exponents of higher law, Americans gave this law a content and meaning that suited their practical purpose. p. 375

What were these rights which man possessed as man and could never surrender?...But in works that were more political theory than propaganda we find these rights singled out as the legitimate possession of all men everywhere: life, liberty, property, conscience, and happiness. p.377

Although Locke had several times used the word "property" in the broad sense of everything a man is or has, colonists limited their definition to ownership of things tangible or at least convertible to money. p. 379

Only two other rights -- the right of conscience and the right of happiness -- were ever placed by more than one or two authors at the same level of sanctity and universality with life, liberty, and property. p.380

Jefferson was more than a felicitous penman when he proclaimed the "pursuit of happiness: to be a natural right of man, for by the time of the Declaration of Independence most thinkers agreed with him on this point. He was, however, something of a nonconformist in substituting

this right for that of property. He alone flirted seriously with the advanced view that property was a social rather than a natural right. p.380

The right of conscience, the right of each individual to reach out for God without interference or even assistance from other men, was naturally of prime interest to a people well on the way to full religious liberty. p. 380

The civil rights of the colonists

View of colonial theorists: "The constitution and laws of every free state must recognize and protect man's natural rights. Whatever restrictions government places upon the free exercise of these rights must result from freely given consent." p. 383 [five natural rights referenced above]

Colonial pamphleteers proclaimed at least seven other civil rights in addition to those believed to be natural and unalienable: the freedoms of speech, assembly, and petition; civil supremacy; representation and free elections; jury trial and its attendant safeguards. p.384

Representation: copied pp.388-91

The right of resistance

The American theorists, constitutionalists all, placed special emphasis on the broken contract as justification for community resistance. p.393

The General Court of Massachusetts tied together the contract and resistance in its proclamation of January 23, 1776:

As the happiness of the people is the sole end of government, so the consent of the people is the only foundation of it, in reason, morality, and the natural fitness of things. And therefore every act of government, every exercise of sovereignty, against, or without, the consent of the people, is injustice, usurpation, and tyranny... p.393

Conclusion: Congress and Virginia proclaim the rights of man

Copied pp. 398-401

Chapter Fourteen. American Political Thought, 1765-1776: The Pattern of Government

The origin of government

The consent of the contract or compact is nearly as old as political theory itself, and we have already noted the universality of its appeal to early Americans. p. 403

Paine's account [in *Common Sense*] is especially important for its careful distinction between society and government. p. 404

Copied pp.404-9

The purpose and nature of government

The form of government: I

Agreement on fundamentals:

[1] Whatever the form of government -- and there is no one plan good for all men at all times -- it should be designed to preserve the maximum of liberty and equality of the persons under it. p.416

[2] Government should always be a "plain, simple, intelligible thing... quite comprehensible by common sense." p.417 quote from John Adams, *Works*, III, 454

[3] Government should be kept as near to the people as possible, chiefly through frequent elections and rotation-in-office. p.418

Frequent elections meant, of course, annual elections, and all but one new state constitution made some provision for this method of preserving liberty and equality. Roughly half of them forbade indefinite re-eligibility to the most important executive offices. p.418

[4] The concept of rulers as servants of the people must be central to all planning for constitutional government.

[5] Government must be constitutional, an empire of laws and not of men: The discretion and whim of all men in power must be reduced to the lowest level consistent with effective operation of the political machinery. p.419

on writing constitutions: copied pp.420-1

The form of government: II

[1] No written constitution can be considered complete unless it embodies a specific declaration of rights. p. 422

Locke, II, 142 on legislative bodies: "They must not raise taxes on property without the consent of the people given by themselves or their deputies."

The framers of several of the first state constitutions inserted provisions in their bill of rights and legislative articles to remind the assembly of these limits so essential to the conduct of government by consent. p. 423

[2] A representative legislature is essential to free government, but so, too, are the twin doctrines of separation of powers and checks and balances. p. 423

[3] Re suffrage. Copied p.425-6

Supporters of unicameralism achieved their own constitutional success in Pennsylvania, Georgia, and Vermont, and many of them lived to regret it. p.428

The moral basis of government

"A stumbling-block to...tyranny and oppression"

Re political originality:

The Revolutionists would appear to have done their share by providing theoretical justification of written constitutions and bills of rights. Through these noble instruments they

converted the contract into a working principle of constructive statesmanship. p. 418

Notes taken July 14, 1993