

In our times there is great international interest in representative democracy and the idea of consent, though sometimes expressed in different terms.

Thus, in the Universal Declaration of Human Rights, adopted by United Nations General Assembly in 1948, Article 21 states:

The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.<sup>1</sup>

This Article also indicates:

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.<sup>2</sup>

In 1985 the Organization of American States (OAS) in 1985 amended its Charter to indicate that its member states are

Convinced that representative democracy is an indispensable condition for the stability, peace and development of the region.<sup>3</sup>

Therefore one of the essential purposes of OAS would be

To promote and consolidate representative democracy, with due respect for the principle of nonintervention.<sup>4</sup>

In response to emergence of democracy in Eastern Europe, the Commission on Security and Cooperation in Europe (CSCE) at a meeting in Copenhagen in 1990 declared that

pluralistic democracy and the rule of law are essential for ensuring respect for all human

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<sup>1</sup> "Universal Declaration of Human Rights " in *Human Rights*. New York: United Nations, 1988. Article 21, §3. p.7.

<sup>2</sup> *Op. cit.*, Article 21, §1. p.7.

<sup>3</sup> *Charter of the Organization of American States*. Washington: General Secretariat, Organization of American States, 1992. Preamble, p.1.

<sup>4</sup> *Op. cit.*, Article 2, §(a). p. 2.

*rights and fundamental freedoms.<sup>5</sup>*

*The Copenhagen document further stated that*

*the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all governments.<sup>6</sup>*

*Thus, in many parts of the globe today there is a strong consensus that*

*(a) The authority of government should be based upon "the will of the people" and the powers of government should be derived from the "consent of the governed."*

*(b) The will of the people should be expressed periodically in free elections, conducted by secret ballot, with universal suffrage.*

*(c) Representative government should function under the rule of law in order to assure human rights and fundamental freedom.*

*Less well expressed is the thought that consent enters into governmental processes going beyond elections, such as has developed in the United States during the last 200 years.*

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<sup>5</sup> *Citation to be added.*

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## PART ONE. STATEMENT OF THESIS

### Chapter 1. Continuous, Interactive Consent

#### Thesis

*Consent of the governed in the United States in the 1990s is a continuous, interactive process.*

*Consent occurs in a governmental system that is primarily a representative democracy. American democracy is representative because citizens directly and indirectly choose legislators, executive officials, and judges to serve in their behalf. There are, though, traces of direct democracy through voting on ballot issues and, in some locales, town meetings in which all may participate.*

*All citizens of the United States age 18 and older, except for some convicted felons, may vote for candidates for elected offices. They may also vote on numerous ballot issues. After the ballots are counted the citizenry has multiple opportunities to interact with the nearly half million officials they elect and also with appointed officials. These public officials, therefore, carry out their responsibilities with the consent of the governed.*

*Consent occurs through election campaigns, voting on candidates for public office, public involvement in enacting legislation and making executive policy decisions, and voting on ballot issues. To facilitate their participation in these activities, Americans use two primary sets of instruments: political parties and interest groups.*

*Consent is continuous because it occurs in activities that extend over time: election campaigns stretching out over months and years before culminating in voting; lengthy consideration and debate preceding enactment of legislation; extensive deliberation and negotiation in the adoption of executive policy.*

*The time factor brings in past, present, and future. The past consists of tradition, established values, psychic memory, habitual attitudes, previously adopted laws, and past relationships among various participants. The present is "now", moving steadily ahead. The future consists of anticipated events and vision of hoped-for outcome.*

*Consent is interactive because consent-giving activities involve millions of participants engaged in complex relationships. Among the myriad participants are citizens with diverse opinions and interests, persons positioning themselves to run for office, candidates, political party officials and campaign workers, legislators, elected and appointed executive officials, interest group leaders,*

lobbyists, grassroots organizers.

Although consent activities are continuous, a majority of the citizenry is active only intermittently. However, a sizable core of political party leaders, interest group representatives, and citizen activists is continuously involved. They are actively involved with public officials and candidates for office who themselves are engaged full time in the consent process.

In the United States a kind of representative participation occurs in conjunction with representative government because many of the most active participants are chosen through the democratic processes of political parties, citizen associations, and other interest groups. Moreover, self-selected activists tend to represent the views of others who remain on the sidelines. Nevertheless, some portions of the population are inadequately represented in the ongoing consent process.

In its totality consent of the governed in contemporary America is an accumulation of innumerable bits and pieces of interaction. From the seemingly randomness of highly diversified activities, overall patterns emerge and define the outcome of consent of the governed in elections, legislative enactment, and adoption of executive policies. Consent of the governed in the United States nowadays is substantial and meaningful.

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

### **Consent: An Idea Old and New**

Consent of the governed has a rich intellectual history. It gained its most renown articulation in 1776 in the American Declaration of Independence. The signers proclaimed that to secure the inalienable rights of life, liberty, and the pursuit of happiness

governments are instituted among men<sup>1</sup>,  
deriving their just powers  
from the consent of the governed.<sup>2</sup>

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<sup>2</sup> "The Declaration of Independence -- 1776" in *Documents Illustrative of the Formation of the Union of the American States*. Selected, arranged, and indexed by Charles C. Tansill. Washington: Government Printing Office, 1927. p. 22.

Though freshly expressed in the Declaration, consent was no new idea. It had entered 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.<sup>3</sup>

The mainstream answer was that men and women agreed to give up the individual freedom they found in the "state of nature" in order to achieve mutual protection of life and property and other benefits of a social community. In doing so they entered into a "social contract", more implicit than a formal document, to which they gave their consent. A tyrannical regime that imposed itself over a people violated their natural right of consent.

In this tradition 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."<sup>4</sup>

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<sup>3</sup> For a fuller discussion, see Appendix A.

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In the same spirit Roger Williams in 1644 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."<sup>5</sup> This attached the idea of majority rule to the concept of consent.

In 1765 when representatives of nine British colonies in North America met together to protest the Stamp Act, a revenue measure adopted 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.<sup>6</sup>

Pamphleteers shortened it to "no taxation without representation."

In 1774 the First Continental Congress in a "Letter to the Inhabitants of the Province of Quebec" 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.<sup>7</sup>

In this manner the American colonists linked the concept of representative government with the idea of consent.

On June 12, 1776 the Virginia House of Burgess adopted a Declaration of Rights, 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.<sup>8</sup>

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A dozen years later during the ratification debate for the proposed new Constitution of the United States, James Madison described the governmental system so created as a "republic", which he defined 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.<sup>9</sup>*

Today we refer to this form of government as representative democracy.

### **Early American Practices**

An interest in representative government was strong from the beginning of the American colonies. Thus, in 1619, a dozen years after the establishment of the first permanent English settlement in North America in Jamestown, Virginia, the settlers set up an elected assembly. Other colonies followed suit. By the time of the American Revolution all thirteen colonies had vibrant elected assemblies, chosen by an electorate composed mainly of white, male property owners and taxpayers.

However, only in the two corporate colonies of Rhode Island and Connecticut were the governors elected. In eight royal colonies the British crown appointed the governor, and in three proprietary colonies the proprietor himself served as governor or appointed a deputy.

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Eleven colonies had councils advisory to the governor and serving as a precursor "upper house" of bicameral legislatures. The crown appointed seven of the councils upon advice of the governor. The Massachusetts legislature appointed its council, subject to veto of the governor. Voters in Rhode Island and Connecticut elected council members.<sup>10</sup>

The elected colonial assemblies served as the principal vehicle for calling the Stamp Act Congress of 1765, the First Continental Congress of 1774, and the Second Continental Congress, which functioned from 1775 to 1781. The assemblies either formally named delegates to represent their colony at these congresses or unofficially helped make arrangements for delegate selection.<sup>11</sup>

As British colonial rule came to an end in the mid-1770s, the elected assemblies initially took the lead in writing and adopting new state constitutions. But soon the practice developed of having constitutional conventions with elected delegates and then ratification by popular vote.<sup>12</sup> This was a new expression of the consent process.

The first union government was set up under the Articles of Confederation, written by the Continental Congress and ratified by the 13 state legislatures. When it faltered, a special convention of delegates appointed by the states produced a brand new U.S. Constitution in 1787. The framers wrote the preamble in the name of "We the People" to deflect state domination of the federal union. They then let the people decide by providing for ratification by conventions of specially elected delegates in each state.

This practice yielded to a couple of new features in the consent process. One was the working of anticipatory consent as the conventions sought to produce constitutions that would gain voter approval. The second was bargaining as part of the ratification process. In the case of the U.S. Constitution this produced an understanding that the First Congress would adopt a Bill of Rights in the form of a series constitutional amendments for later ratification. In these ways, continuity entered the consent process by tying present consent to future action.

### **Broadening American Democracy**

The U.S. Constitution and the first state constitutions established representative democracy in the United States, but with limitations.

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<sup>10</sup> For more on colonial government, see Appendix A.

<sup>11</sup> See Appendix A for details.

<sup>12</sup> See Appendix B for details.

Under the new federal system, 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 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.<sup>13</sup>

Of the principal offices of these new governments, only the U.S. House of Representatives, the state legislatures, and three governors were directly elected. The other governors and the U.S. Senate were elected by the state legislatures, and the president of the United States was chosen by a small group of electors selected in a manner determined by the legislatures.

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

to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.<sup>14</sup>

The philosophy was: "Trust us. Elect us and we'll govern." Consent would be intermittent, achieving representative democracy in an elitist mode.

The American people, however, didn't settle for such limitations. In the first presidential election, half of the states allowed voters to select presidential electors rather than retaining this task for the state legislature. By 1828 popular selection of presidential electors had become "the general and permanent rule."<sup>15</sup> Popular election of governors was universal by \_\_\_\_.<sup>16</sup> During the first half of the 19th century the states eliminated most property requirements for voting.<sup>17</sup> In 1870

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the 15th Amendment prohibited the states from denying the right to vote "on account of race, color, or previous condition of servitude."

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

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

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

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

The structure of American democracy has withstood internal turmoil, including grievous division during the Civil War (1861-65). The high ideals of the Declaration of Independence and the Preamble to the Constitution have prevailed: that to secure basic rights we the people institute government and require it to function through our consent. As President Abraham Lincoln explained in dedicating a cemetery on the Gettysburg battlefield, American democracy consists of "government of the people, by the people, and for the people."<sup>18</sup>

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

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December 8, 1993

## PART ONE. INTRODUCTION

### *Chapter 1. Thesis: Continuous, Interactive Consent*

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*All citizens of the United States age 18 and older, except for some convicted felons, may vote for candidates for elected offices. They may also vote on diverse ballot issues. After the ballots are counted the citizenry has multiple opportunities to interact with the nearly half million officials*

they elect and also with numerous appointed officials who are delegated decision-making authority. These public officials, therefore, carry out their responsibilities with the consent of the governed.

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*January 17, 1994*

## Chapter 2. A Bit of History

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January 17, 1994

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## PART TWO. CONSENT PATHWAYS AND PARTICIPANTS

### Chapter 3. Pathways of Consent

*In the United States consent of the governed is broad and deep and extends through time. The consent process occurs along sets of pathways traversed on the way to electing public officials, enacting legislation, and making executive policies.*

*Candidates move along election pathways. Legislative and executive officials follow regular decision pathways. In their journey along these pathways, candidates and public officials are joined by citizens, political party officials, and interest group representatives. Sometimes the path is crowded with persons who want to influence election outcome or policy decisions. But sometimes only a few are involved, especially in the early stages.*

*At the end of the journey a majority, or sometimes only a plurality, of voters elect public officials. A majority of the legislature enacts laws.*

*Duly elected executives make policy decisions. But what has occurred along the pathways is as important as the final outcome in achieving the consent of the governed.*

## **ELECTIONS**

*Election of public officials is the bedrock of the consent process in American democracy. While the electoral process has its own a distinct set of activities spread out over time, it is also interrelated to governing processes, especially where incumbents seek reelection.*

### **Election Pathways**

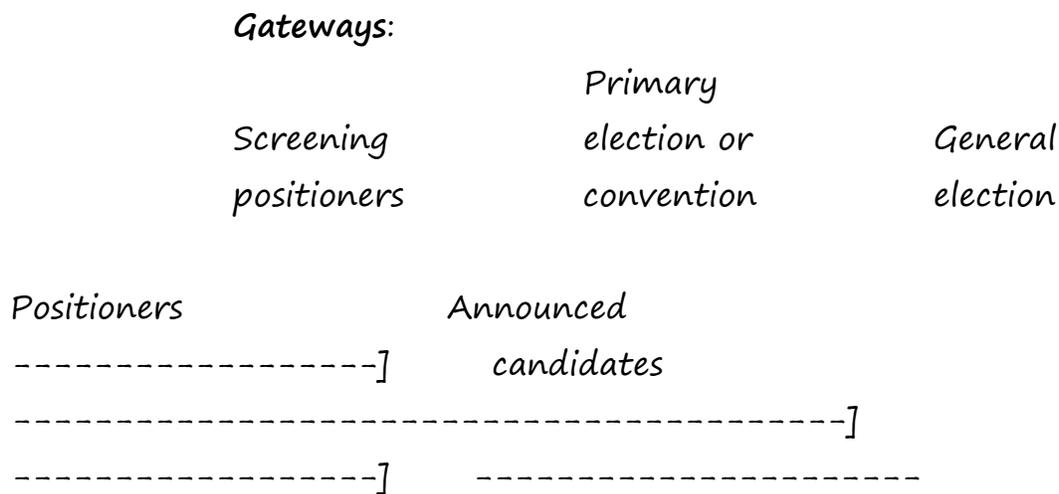
*The electoral process consists of a series of paths converging on election day. Persons aspiring for elective office look ahead to the roadway they must travel over the course of weeks, months, and sometimes years.*

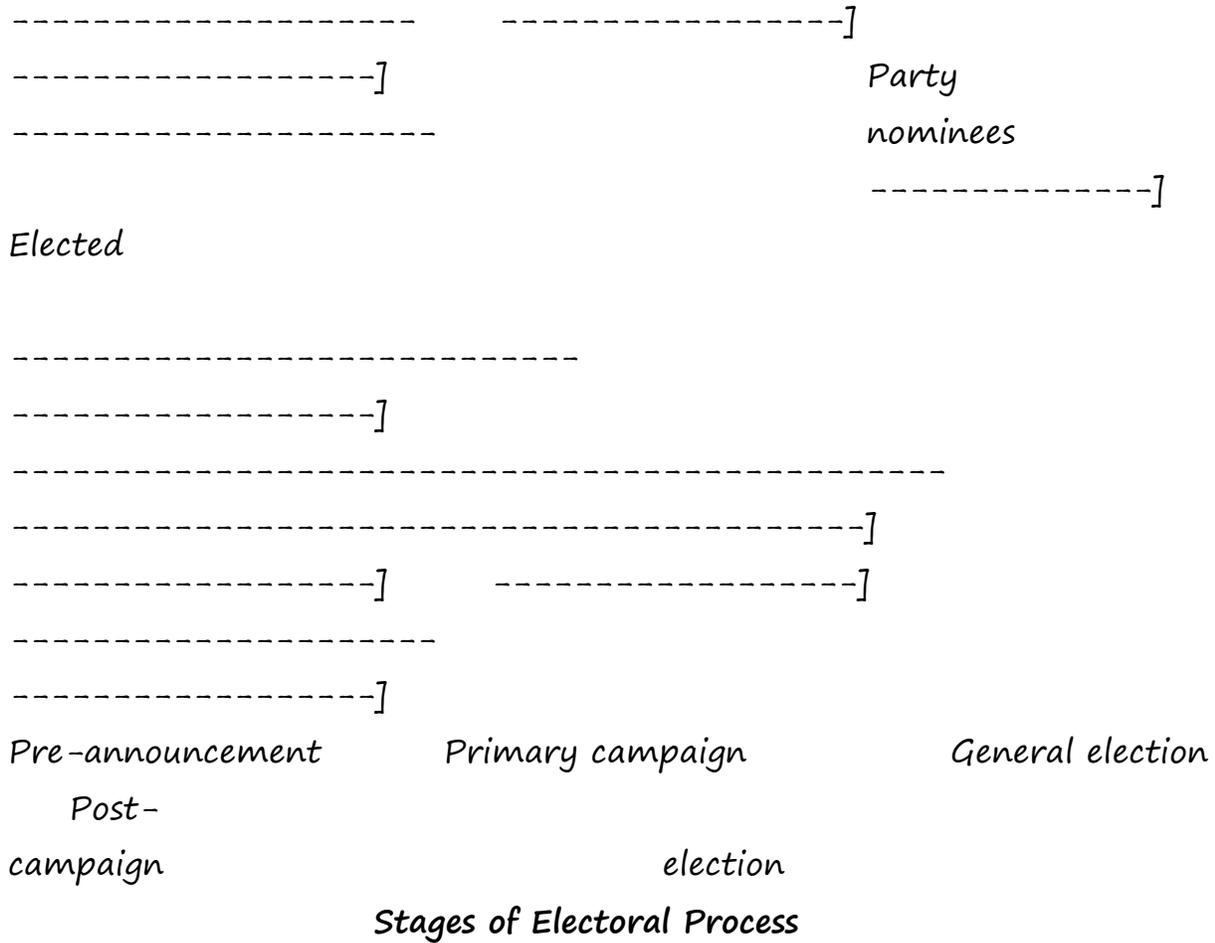
*Citizens and interest groups wanting to effect the outcome look for ways they can influence candidates journeying along the election pathway.*

*The road network begins with numerous separate paths traversed by*

persons positioning themselves to run for public office. The pathways of incumbents seeking reelection are different from those of their challengers or persons preparing to run for an open office where no incumbent is running. These various positioning paths lead into the roadway of party nomination, actually a separate road for each political party. The nominating roadways then merge into a single thoroughfare for the general election. The route ends on election day. Winners then move on to become officeholders. This is illustrated in Figure 2-1.

Figure 2-1. Pathways to Election





### Gatekeepers

Each section of the route to election has gatekeepers determining who passes to the next section. The gatekeepers for party nomination are sometimes party officials who slate candidates but are more likely to be party members who attend party nominating conventions or those who vote in primary elections. The gatekeepers in the general election are

voters who go to the poll on election day. Persons running for office must figure out who these gatekeepers are and determine how to gain support of enough of them to pass through to the next stage.

Interaction between candidates and gatekeepers is a vital part of the consent process. It not only determines who is elected, but also it can be a significant influence on current public policy decisions made by incumbents seeking reelection and on future decisions to be made by them and their challengers if elected.

Along each section of the roadway a candidate has to obtain support of only a portion of the electorate to pass through the gate to the next stage. This number increases as the journey moves along towards election day.

In situations where party leaders slate candidates, the first gatekeeper may be only one person -- a political boss -- or a small oligarchy of party leaders. Where caucuses within the party endorse candidates, a caucus

majority makes the determination. In party conventions a majority of delegates decide. In primary elections it is a plurality of those voting, or a majority if runoff elections are required. In general elections the outcome is decided by a plurality of persons who come to the polls (but a majority in runoff elections).

Thus, in elections consent is not the unanimous voice of the entire citizenry but rather the consent of persons who slate, nominate, and vote for winning candidates. In this manner majority rule enters the consent process.

In Part Three we'll trace the election pathway in greater detail and will examine how this process contributes to the consent of the governed.

### **PUBLIC POLICY DECISIONS**

In a strictly legal sense, decisions on public policies are made by legislative bodies and executive officials: Congress, state legislatures, county, city and township councils enacting statutes and ordinances, adopting

*budgets, making appropriations, levying taxes; the president, governors, county executives, mayors, township commissioners making decisions on a host of executive matters.*

*In practice, however, almost always these formal decisions are the end product of processes involving a variety of persons inside and outside government and extending through many weeks and months. Rarely does an elected chief executive act without consulting others, though he or she may sometimes make decisions contrary to advice received or in face of certain opposition. Legislative decisions are always a group process even though some legislators have more power and influence than others and occasionally a single legislator is dominant on a particular issue.*

### ***Legislative Pathways***

*Legislative bodies in the United States -- the U.S Congress, state legislatures, city and county councils, township boards -- have regular procedures for enacting laws. This establishes the legislative pathway.*



*Once drawn up, a bill might have multiple sponsors within the legislature.*

*Bills are routinely referred to committees for consideration. A committee or one of its subcommittees holds hearings on bills considered important. Then members of the committee (sometimes preceded by the subcommittee) will discuss the bills, perhaps consolidate several into one, consider and vote on amendments, and decide to approve the bill as amended, or disapprove.*

*The bill then goes to the full body. In the U.S. House of Representatives most bills go through the Rules Committee, which schedules them for debate. In other legislative units the majority leadership usually has some mechanism for scheduling floor action. Once on the floor members may offer amendments, which are debated and voted on. Then members vote for final passage or rejection of the bill as amended.*

*In bicameral legislatures this process is repeated in the second chamber, either with a bill freshly introduced or with a bill passed and*

referred by the first chamber. Unless the second chamber passes the bill in the exact form as referred, the two versions of the legislation are sent to a conference committee composed of members from the two chambers. The conference committee produces a compromise version, which each chamber considers separately and approves. If one chamber disapproves, the bill goes back to the conference committee for further consideration.

After final passage by both chambers (or by the single chamber of a unicameral legislative body), the bill goes to the chief executive -- president, governor, mayor, county executive -- for approval or veto. If vetoed, the legislative body may override. In many jurisdictions a favorable vote of three-fifths, two-thirds, or even three-fourths of the members is required to override a veto.

In American democracy the legislative pathway runs mostly through an open field. There is a written trail of bills as introduced and amended, committee reports, and published journals of legislative debate and action.

Although on occasion the pathway may go out of sight in some legislative bodies, such as when committees are "marking up" bills, final consideration occurs in full public view.

Legislators don't walk this pathway alone. Citizens, interest group representatives, and officials from the executive branch accompany them, often openly but sometimes in the shadows. There is no phase of the legislative process where outside influence is absent.

As this happens, every citizen doesn't get involved in every piece of legislation. Rather particular individuals and interest groups deal with matters that concern them. Ultimately elected legislators vote on the final version of legislation, followed by the chief executive's approval. But this final product is shaped through continuous interaction with the public. We'll study this process more completely in chapters 16 and 17.

### **Pathways of Executive Decisions**

In the American governmental system executive officials, elected and

*appointed, have important policy-making roles. Numerous programs enacted by the legislative body provide considerable discretion to executive departments in implementation. So also with laws that must be enforced and regulatory actions that must be carried out. Moreover, by common practice the executive branch is the initiator of many new programs and laws that go before the legislative body for consideration.*

*In formulating policies and designing programs, executive officials often move through a sequence of analysis, consideration of alternatives, drafting details, and then either adopting policies or submitting proposals to the legislative body for consideration. They proceed along a pathway for executive decision-making, as shown in Figure 2-3.*

**Figure 2-3. Pathway of Executive Decision-Making**

*Analysis of  
problems  
and needs*

*Evaluation of  
past and current  
responses*

*Development of  
policy alternatives,  
proposed projects*

*Choosing among  
alternatives*

*Policy adoption,  
project approval*

*Sometimes executive officials clearly demarcate their pathways to decisions. Along the way they provide information to the public and invite participation through advisory committees, community meetings, hearings, and other means. But for many executive decisions the pathways are not well defined for outsiders to follow and not particularly open to participation. For instance, this is often the case with foreign and military policy. Nevertheless, the pathways are there for individuals and interest groups to seek out and try to influence executive decisions as the move along the way.*

One of the more open processes is the development of neighborhood plans by local planning agencies and adopted by the planning board and city council. Forty years ago neighborhood residents often entered this process only after the professional planners had produced a plan, but nowadays in most cities and urban counties, residents participate from the earliest stage. Figure 2-4 shows the steps.

**Figure 2-4. Pathway of Neighborhood Planning**

**DEVELOPING PLAN**

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

**GAINING APPROVAL**

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

Where local government functions in a participatory mode in neighborhood planning, citizens are involved from the very beginning.

*They offer their own perspective in defining problems to be solve. They help set goals and objectives, offer suggestions for specific projects, and comment on proposals of the city planners. They testify at public hearings and take part in plan implementation.*

*But where a unit of government is weak in citizen participation, citizens to be influential must assert themselves and offer their views at the early stages, long before the plan is published and a formal public hearing is conducted. Because the final plan is greatly influenced by how the problem is defined and what objectives are established, citizens who wait until the public hearing to offer their views may discover that options they preferred have already been precluded.*

*But whether the planning process is open or closed, there is a definitive pathway followed in neighborhood planning. This is also the case in other kinds of project planning carried out by executive departments: for highways, school construction, parks, sewerage systems, flood control,*

airports, and numerous other public endeavors. Sometimes the public is invited to participate during the early stages, sometimes not. Eventually the project surfaces, and citizens have their say at public hearings and other forums. They express their views to the elected chief executive, department heads, and the legislative body and may muster support for or opposition to the project.

Consent of the governed enters into executive policy-making in bits and pieces. Government is involved in a wide range of activities and pursues many different paths in formulating and adopting policies for these activities. Individual citizens and interests tend to seek involvement mainly on matters affecting them. Thus, participation is segmented. For any particular program or project it involves only a small slice of the citizenry. However, in aggregate a considerable portion of the population gets involved in ongoing executive decision-making in the course of each year. We'll consider more about how this happens in chapters 18 and 19.

## *Relationships*

*As bills move along the legislative pathway and as project plans and program policies move through executive decision-making pathways, many persons are involved: governmental officials, individual citizens, interest group representatives, and political party officials. Constitutions, statutes, and operating procedures provide the framework for these decisions. The organizational structure of government identifies officials in policy-making positions and charts their formal ranking. But the crucial variable is ever-changing relationships among persons within and outside government.*

*In American democracy three sets of relationships are particularly important.*

*The first set occurs among persons holding governmental positions: executive, legislative, and judicial. in formulating policy within the executive branch elected officials interact with those who they appoint. Legislators interact with one another as bills move through the legislative*

process. The judicial appeal process brings layers of courts into relationship, and judges in multi-member appellate courts deal with one another in make their decisions. Executive officials and legislators continuously interact. And judges deal with governmental executives and legislators in certain legal cases.

A second set consists of relationships between public officials and citizens, acting individually and organized into interest groups and political parties. This is the heart of the consent process with respect to public policy-making.

Varied manifestations occur: public officials providing information; citizens offering views and comments on proposed policies and initiating their own proposals; direct and grassroots lobbying; public hearings; advisory committees; other participation processes; media campaigns; and protest demonstrations. Political party leaders have a special relationship with legislators and executive officials from their party.

*A third set involves relationships among individual citizens and within and between interest groups and political parties. Citizens get together to formulate their views and work out strategies for dealing with government.*

*Groups come together in coalitions. Interest groups with opposing views compete in their efforts to influence governmental policies.*

*These three sets of relationships occur simultaneously and intermingle. In enacting a law legislators deal not only with one another but also with the chief executive and the bureaucracy and with individual citizens and interest groups. Citizens get together to plan and implement strategies for influencing key legislators. Interest groups seek ways to influence executive decisions. Sometimes they enlist the help of legislators. On occasion a public agency may seek allies among interest groups to press the legislature to adopt specific bills.*

*These relationships around governmental decision-making are very dynamic. They take expression over periods of time. They join with the*

*dynamics of elections to give consent of govern in American democracy its continuity.*

*To better understand how this occurs we need to know more about the participants in the consent process. This is the subject of the next five chapters.*

*January 17, 1994*

## *Chapter 5. Elected Officials in a Federal System*

*In American democracy the voters determine who governs by electing 497,155 officials of local, state, and national government.<sup>1</sup> The people then relate to these elected officials and their appointees through continuous interaction.*

*As they govern, elected officials take the lead in legislative and executive decision-making. As they seek reelection, they are prominent participants in the electoral process. Accordingly, it is important to be aware of the variety of offices filled through election.*

*These offices are found in three sets of government: local, state, and national. The powers of the national government and the states are derived directly and separately from the people. Local governments are established under state law, but many municipalities and urban counties*

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<sup>1</sup> U.S. Bureau of the Census, "Popularly Elected Officials" *1987 Census of Governments, Government Organization*, vol. 1, no. 2. p. 1. Washington: U.S. Department of Commerce, Bureau of the Census, January 1990. [To be updated when data from the 1992 Census of Governments

*have home rule charters adopted by their citizens. The officers of local, state, and national government are directly elected by the people and are accountable to them without going through a hierarchy of governments.*

*Although established separately and having their own directly elected officials, national, state, and local governments collectively form a federal system. Federalism introduces complexity into governmental operations and ways consent of the governed is achieved. Therefore, a clear perception of American federalism is essential for our understanding of the consent process in the United States.*

### **VARIETY OF ELECTED OFFICIALS**

*[To be completed after a report on popularly elected officials in the United States, derived from the 1992 Census of Governments, becomes available.]*

#### **Local Government**

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*becomes available.]*

*Municipalities, counties, townships, other local units, Indian reservations (special kinds of sub-state entities).*

*States and Territories*

*National Government*

## **FEDERAL SYSTEM**

*And so we see that the United States has nearly half a million popularly elected officials serving in national, state, and local governments. Voting for them, their positioning themselves to run, and their campaigning for office and reelection comprise a major part of the consent process in American democracy.*

*As they govern, these elected officials and their appointees serve in 83,\_\_\_ governmental units.<sup>2</sup> In their totality these units compose a federal*

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<sup>2</sup> U.S. Department of Commerce, Bureau of the Census, *1987 Census of Governments*. Gov-

system of government that combines considerable independence for its component parts with numerous interrelationships. This system was established in 1787-89 with the consent of the governed and has constantly evolved in the ensuing 200 years.

It was the second attempt by the founders of the American republic to work out a proper relationship between a national government and the several states. In the first attempt after American Independence the 13 original states agreed to "articles of Confederation and perpetual Union". They called this confederacy "The United States of America". Each state retained its sovereignty but entered into "a firm league of friendship with each other, for their common defense, the security of their Liberties, and their mutual and general welfare." They established a weak national government dependent upon the states for revenue and without a chief

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*ernment Organization. Vol 1, No. 1. [To be updated when data from the 1992 Census of Governments becomes available.]*

*executive.*<sup>3</sup>

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<sup>3</sup> See Appendix B for fuller discussion of development of the Articles of Confederation.

Inadequacies of this arrangement led the 1787 Convention in Philadelphia to write a new "Constitution for the United States of America." It established a national government with substantial enumerated powers, including authority for direct taxation without going through the states. The Constitution, along with laws and treaties made under its authority, would be the supreme law of the land. At the same time the states remained in place with their own independent authority.<sup>4</sup>

In this manner the federal system replaced the confederation. Ever since citizens, public officials, scholars, and foreign visitors have tried to understand and explain American federalism.

### **Founders' Perspectives**

In the seminal work of American political science, *The Federalist*, James Madison offered two contrasting views. In the 46th *Federalist* essay he observed:

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<sup>4</sup> See Appendix B for fuller discussion of development of the U. S. Constitution.

*The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other.<sup>5</sup>*

*This is consistent with the affirmation of the Declaration of Independence that the just powers of government derive from consent of the governed.*

*The people are sovereign. They choose to assign some powers to the federal government and other powers to the states. They select officials for each to serve as their agents and trustees.*

*However, in the 51st Federalist essay Madison's own sight of the people dimmed as he wrote:*

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

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<sup>5</sup> James Madison, *The Federalist No. 46*. New York: The Modern Library, 1937. pp. 304-5.

same time that each will be controlled by itself.<sup>6</sup>

In this explanation the people, rather than being the common superior, surrender power to the national government and the states, which become competing sovereigns. The people are protected, not by direct control through consent processes, but rather through rivalry between the states and the national government and rivalry among legislative, executive, and judicial officials within each of them.

Over the years writings on American federalism have given varying emphasis to these two perspectives.

### **Viewpoints of 19th Century**

During the fifth and tenth decades of the federal union two prominent foreign visitors were quite impressed how the people of the United States exercised their control over two, mostly separate sets of government, state and national.

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<sup>6</sup> James Madison, *Federalist No. 51*. p. 339.

In the 1830s the Frenchman Alexis de Tocqueville in *Democracy in*

*America* started by insisting that:

Any discussion of the political laws of the United States must always begin with the dogma of the sovereignty of the people....

The people take part in the making of laws by choosing the lawgivers, and they share in their application by electing the agents of executive power....<sup>7</sup>

He continued by noting that the "form of government established in

America on the principle of sovereignty of the people" yields a "complex

Constitution". He pointed out that:

there are two distinct social structures connected and, as it were, encased within the other; one finds two completely separate and almost independent governments; the one is the ordinary and undefined government which provides for the daily needs of society, while the other is exceptional and circumscribed and only concerned with certain general interests. In a word, there are twenty-four little sovereign nations who together form the United States.<sup>8</sup>

Slightly over fifty years later British Lord James Bryce took another

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<sup>7</sup> Alexis de Tocqueville, *Democracy in America*. Translated by George Lawrence. New York: Harper & Row, 1969. (First published in 1835.) pp.58-60.

look. In *The American Commonwealth* he observed that:

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

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

On the other hand, the State in no wise depends on the National government for its organization or its effective working. It is the creation of its own inhabitants. They have given it its constitution.

They administer its government. It goes on its own, touching the national government at but few points....

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<sup>8</sup> *Ibid.*, p. 61.

*Neither does the National government allow its structures to be dependent on action of the States....<sup>9</sup>*

*But even as Bryce wrote the strict separation of national and state governments was changing. A growing number of federal financial grant-in-aid to the states were operating in response to nationwide needs. The national government was starting to regulate national business corporations. This trend accelerated in the 1930s as federal initiatives multiplied in response to the Great Depression. As a result, the workings of state and national governments became more and more interrelated, though each continued to draw its authority directly from the people.*

*At the same time local government was growing in number and variety of activities. Although local governmental units are legally creatures of the states, in practice they operate as separate entities, run by officials directly elected by the citizenry. Accordingly, cities, counties, and*

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<sup>9</sup> James Bryce, *The American Commonwealth*. 2nd edition revised. London: Macmillan and Co., 1891. pp. 312-14 with

*other local units have become important participants in the federal system.*

### **Recent Observations**

*By the middle of the 20th century it was commonplace to speak of three-level federalism in the United States. By then the operations of national, state, and local government were so intertwined that the older notion of separate sovereignties was no longer valid.<sup>10</sup> This resulted in a search for alternative descriptions of American federalism and yielded a greater variety of metaphors than any other aspect of American government.*

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*rearrangement of sequence.*

<sup>10</sup> Edwin S. Corwin, "The Passing of Dual Federalism," *Virginia Law Review* 36, no. 1 (February 1950)

Some spoke of a three-tiered layer cake, but in the early 1950s Joseph E. McLean called it a marble cake to depict the way in which national, state, and local ingredients blend with one another.<sup>11</sup>

Morton Grodzins picked up the metaphor of "a marble cake, or what the British call a rainbow cake" and explained:

No important activity of government in the United States is the exclusive province of one of the levels, not even what may be regarded as the most national of national functions, such as foreign relations; not even the most local of local functions, such as police protection and park maintenance.<sup>12</sup>

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

Reflecting the change occurring in this century, Grodzins elaborated:

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

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<sup>11</sup> Quoted by David Walker in *Toward a Functioning Federalism* (Cambridge, Mass.: Winthrop Publishers, 1981) p. 67.

<sup>12</sup> Morton Grodzins, *The American System*. Chicago: Rand McNalley, 1966. p. 8.

money (here the central view is most influential) or through professional associations.<sup>13</sup>

Other observers noted that mutual activities within American federalism tend to be segmented along functional lines. For instance, local street departments relate to the state highway department which in turn relates to the federal highway agency. And many other examples. Terry Sanford, based upon his experience as governor of North Carolina in the 1960s, called this "picket-fence" federalism.<sup>14</sup> Each picket is a function erected vertically, connected with cross slates (that is, local, state, and national government) which hold the pickets in line but don't bring them together.

These metaphors focused upon American federalism as if it consisted of relationships among governments, a kind of vastly more complicated compound republic of rival sovereignties. Several scholars, though, offered

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<sup>13</sup> *Op. cit.*

<sup>14</sup> Terry Sanford, *Storm over the States*. New York: McGraw-Hill

*descriptions more in keeping with the idea of national, state, and local governments as different agents and trustees of the people.*

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*Book Co., 1967. p. 80.*

Thus, Luther Gulick, instead of speaking of levels, identified three major "extensions" of government. The American scheme of government, he noted, "is made up of partially autonomous governmental structures differing primarily with respect to the extent of the constituencies and boundaries on which they rest." The three extensions are "comprehensive" (national), "intermediate" (the states), and "limited, local extension."<sup>15</sup>

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

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<sup>15</sup> Luther Gulick, *The Metropolitan Problem and American ideas*. New York: Alfred A. Knopf, 1962. pp. 30-31.

spirit of the constitution."<sup>16</sup>

Elazar articulated what he deemed to be the true spirit of American federalism. However, the reality of the federal system in the past 30 years has been shaped by the immense growth of federal grants to state and local government with accompanying regulations and also by an increase in federal mandates laid upon the states and local governments. President Lyndon Johnson's Great Society programs started this trend. The Nixon and Carter Administrations modified but didn't fundamentally alter this course.

Observing this concoction in the early 1980s, Aaron Wildavsky returned to the bakery and called it "fruitcake" federalism, a congealed mass with lots of "plums to be had for the picking."<sup>17</sup> In another

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<sup>16</sup> Daniel J. Elazar, "Urbanism and Federalism: Twin Revolutions of the Modern Era" in *Publius* (Winter 1975), Vol. 5, No. 2. pp. 23-25.

<sup>17</sup> Aaron Wildavsky, "Birthday Cake Federalism: in Robert B. Hawkins and Lamar Alexander, editors, *American Federalism: A New Partnership for the Republic*. San Francisco: Institute for Contemporary

*description David Walker changed the picket fence to "bamboo-fence" federalism in order to emphasize softer material, an elaborate horizontal wiring system, and greater capacity to bend to prevailing winds.<sup>18</sup>*

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

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*Studies, 1982. p. 182.*

<sup>18</sup> *Walker, p. 128.*

In defining this relationship, scholars have given special attention to the increased power of the national government over state and local governments through the use of federal grants, regulations, mandates, and preemption. They have described the system as cooperative federalism,<sup>19</sup> permissive federalism,<sup>20</sup> pragmatic federalism,<sup>21</sup> regulatory federalism,<sup>22</sup> cooptive federalism,<sup>23</sup> competitive federalism,<sup>24</sup> and coercive federalism<sup>25</sup>.

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<sup>19</sup> Grodzins, *The American System* (1966); Elazar, *American Federalism: A View from the States*. Second edition. New York: Thomas Y. Crowell Company, 1972.

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

<sup>21</sup> Parris N. Glendening, *Pragmatic Federalism: An Intergovernmental View of American Government*. Pacific Palisades, Calif.: Palisades Publishers, 1984.

<sup>22</sup> Advisory Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact and Reform*. Washington: ACIR, 1984.

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

<sup>24</sup> Thomas R. Dye, *American Federalism: Competition among Governments*. Lexington, Mass.: Lexington Books, 1990.

<sup>25</sup> John Kincaid, "From Cooperative to Coercive Federalism," *The Annals of the American Academy of Political and Social Science* 509 (May 1990): 148-152.

Much of this terminology fits into what Walker claims to be a "nation-centered system".<sup>26</sup>

Nevertheless, other scholars have pointed out that there is abundant vitality in state and local governments. They refer to numerous initiatives taken by the states, cities, and counties during the 1980s when the Reagan Administration was turning its back on many grave social problems of the United States. They insist that there's plenty of life left in all arenas of American federalism.<sup>27</sup>

These recent studies of American federalism have mostly emphasized relationships between arenas of government -- national, state, and local -- and have tended to treat them as competing sovereigns involved in win-lose

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<sup>26</sup> David B. Walker "American Federalism from Johnson to Bush," *Publius* 21 (Winter 1991), pp. 105-119.

<sup>27</sup> For example, Richard P. Nathan, Fred C. Doolittle, and Associates, *Reagan and the States*. Princeton: Princeton University Press, 1987; Marshall Kaplan and Sue O'Brien, *The Governors and the New Federalism*. Boulder, Colo.: Westview Press, 1991. [A reference to local initiatives to be added.]

contests. That is, they have applied Madison's second definition. In doing so they have ignored Madison's other outlook that these sets of governments are all agents and trustees of the people, who hold sovereignty over all of them and vote directly for officeholders in each arena. Public officials in national, state, and local governments may compete, but they are all ultimately beholden to the same people.

The people, though, are not necessarily of one mind. They press their elected representatives in Congress to address a wide variety of problems and fund numerous programs. At the same time they support their elected officials at city hall, county courthouse, and statehouse in resisting federal interference in local and state affairs. The assignment of different powers for different purposes to these different agents and trustees of the people occurs more through temporal responses to felt needs rather than through a carefully developed and thoroughly debated long-term plan for federalism. Balance within federalism is determined through an

*accumulation of thousands, no, millions of legislative, administrative, and electoral decisions that almost never directly consider the most appropriate division of responsibility.*

*In this manner American federalism is a kaleidoscope of every changing patterns.*

### ***Relation to Consent Process***

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

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

*States administer election laws, but a series of constitutional*

amendments and acts of Congress mandate broad eligibility to vote. At the same time states delegate aspects of voter registration and conduct of elections to local government, including administering the election of state and national officials. But on occasion federal agents monitor local polling places.

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

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

Some interest groups have centralized national organization with state

and local chapters. Others take the form of national federations composed of mostly autonomous local and state organizations.

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

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

In sum, we cannot fully comprehend the consent process of American democracy unless we realize that it functions within a federal system of government.<sup>28</sup>

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<sup>28</sup> For a global perspective on federalism, see Daniel J. Elazar,

January 17, 1994

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*Exploring Federalism.* Tuscaloosa: University of Alabama Press, 1987.

## *Chapter 6. Political Parties As Instruments of Consent*

*Political parties in the United States serve as important instruments for obtaining the consent of the governed. They provide the framework for nominating candidates for public office and campaigning for their election. Political party affiliation is a major factor in organizing legislative bodies and in making executive appointments. It can be an influence in selecting judges. Party policies can be a factor in making executive policy decisions. In some jurisdictions party affiliation is take into consideration in hiring governmental personnel, awarding contracts, and making grants.*

*Of the 497,155 elected officials in the United States, xxx,xxx are chosen in what are deemed partisan elections because candidates' political party affiliation is noted on the ballot. The remainder are chosen in supposedly nonpartisan elections because candidates' party identity is not disclosed on the ballot. However, in many of these elections local and state political parties endorse or quietly support slates of candidates.*

Every U.S. president since George Washington was a member of one of the two major parties of his time. Forty-eight of the 50 governors are currently either a Democrat or a Republican, and most of the time all of them are. Almost all mayors and county executives chosen in partisan elections are Democrats or Republicans.

Congress, state legislatures, and city councils chosen in partisan elections divide into majority and minority blocs on the basis of party affiliation. Ordinarily the majority determines the content of bills reported out of committee and controls the consideration of legislation on the floor. The minority serves as a vocal, in-house opposition.

Elected chief executives look mostly to their own party in making appointments of cabinet officers, members of regulatory boards, and judges.

Where persons from the same party control both the executive and legislative branches, they have a bond to facilitate cooperative relationships.

Where they are from different parties, policy competition is likely to be

greater, and sometimes gridlock ensues.

The influence of party affiliation in governance stems from the significant roles that political parties play in the electoral process. In partisan elections, candidates run as nominees of particular parties. This means that initial competition occurs during party primaries, caucuses, and conventions. Then parties help to organize, finance, and carry out campaigns in the general election. Even when the campaign is dominated by candidates, as many are these days, party loyalists ordinarily form a solid core of political workers.

Ordinarily persons with political ambition must attach themselves to one of the two major parties if they want to get elected to public office. To a considerable extent the same is true for persons seeking appointment to high-level, policy-making positions. Although independent candidates and nominees of small parties serve a useful function as an outlet for voters' frustrations with the major parties and as a means of focusing attention on

particular concerns, they rarely win.<sup>1</sup>

For citizens not seeking public office but wanting to influence who is elected and the policies they adopt, involvement with a political party can be an useful endeavor. Persons so inclined will discover that political parties are for the most part remarkably open to citizens who want to partake in their activities. You don't have to have an invitation to participate, but you do need to know how political parties are organized, how they function, when and how best to get involved.

## ORIGIN<sup>2</sup>

Political parties appeared in Great Britain in the first half of the 18th century as Tories and Whigs formed loose associations in the House of

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<sup>1</sup> Theodore Roosevelt, running for president in 1912 as a renegade Republican on the "Bull Moose" ticket, received 27.4 percent of the popular vote and came in second. Next in rank are independent candidate Ross Perot in 1992 with 18.9 percent of the popular vote; Robert M. LaFollette, 1924 Progressive Party candidate, with 16.6 percent; George C. Wallace on the American Independent Party ticket in 1968 with 13.5 percent; James B. Weaver from the People's Party (populist) in 1896 with 8.5 percent; and John Anderson, who received 6.6 percent of the vote as an independent in 1980.

<sup>2</sup> This section draws upon A. James Reichley, *The Life of the Parties: A History of American Political Parties*. New York: Free Press, 1992.

Commons. The same designations appeared in colonial America before the Revolution, but more to define political orientation than as party organizations. Generally American Tories were conservatives and loyalists to the British crown. Whigs were oriented toward liberty and representative government and therefore were prone to resist British domination. They were divided, however, on whether to break completely with the mother country until British rule became so harsh in 1775.

American independence discredited the loyalist Tories, but other divisions arose, particularly on issues of property rights and debt collection. Blocs formed in the new state legislatures, and in a few states and localities embryonic political parties took shape.

The ratification debate over the new U.S. Constitution in 1787 and '88 pitted Federalists, who favored a strengthened national government and full protection of property rights, against Anti-Federalists, who opposed centralization of authority and wanted stronger protection for

human rights. In the national debate Federalists were better organized and more articulate (especially with the famous essays), and they gained the majority of delegates in the state ratifying conventions. At that time, however, there wasn't a formal Federalist Party, and the Anti-Federalists were even less cohesive.

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

In the First Congress, 18 of the 24 senators and 37 of the 65 representatives identified with the Federalists, so Hamilton's program carried.<sup>3</sup> However, the opposition gained in the second congressional election, and in the House of Representatives James Madison led a strengthened minority bloc. Within the 13 states similar divisions became apparent and began to be represented in political organizations.

In the 1792 presidential election, the opposition coalition, in part derived from an Anti-Federalist base but beginning to be known as Republicans, supported George Clinton of New York to replace John Adams as vice president. Adams won 77 of the 132 electoral votes, but Clinton had 50. The contest revealed strong Republican units in several states.

Four years later Federalists supported John Adams to succeed George Washington as president, and Democratic-Republicans, as they had become known, backed Thomas Jefferson. Neither campaigned personally, but

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<sup>3</sup> Reichley, p. 38

their supporters did. When the electors voted, Adams won 71 to become president, and Jefferson with 68 became vice president. When the contest was repeated in 1800, Jefferson was victorious.

By then the Democratic-Republican Party was well organized in most of the states and within the Congress. The Federalist Party was in decline, but the pattern of two competing parties was well established in presidential elections, within Congress, and in the states.

Subsequently Jefferson's party dropped "Republican" from its name, and as the Democratic Party has continued to this day as one of two major parties. The Federalist Party disappeared. A Whig Party emerged as the major second party, but split apart on the slavery issue. A new Republican Party organized in 1854 and since then has served as the other major party.

Smaller parties have formed, contested elections, lingered for many years, or passed out of existence. Some of them have elected governors

and won seats in Congress and state legislatures, but none has won the presidency or gained a majority in either house of Congress. Two-party dominance has prevailed.

#### POLITICAL PARTIES TODAY<sup>4</sup>

Periodically pollsters ask Americans which political party they belong to. Although proportions vary from year to year, usually \_\_ to \_\_ percent say they are either a Democrat or a Republican. The others say they are independents or belong to one of the smaller parties. When the pollsters probe, they find that many of the independents are oriented toward one or other of the two major parties. Such a poll taken in 199?, as shown in Table 6-1, revealed that \_\_ percent of eligible voters in the United States

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<sup>4</sup> I write from the perspective of one who has observed American political parties for many years and participated in a number of election campaigns. I have sampled the enormous literature on political parties to gain a broader perspective, such as V.O. Key, Jr., *Politics, Parties, and Pressure Groups*. 5th edition. New York: Thomas Y. Crowell Company, 1964; James L. Sundquist, *Dynamics of the Party System*. Revised edition. Washington: Brookings Institution, 1983; Cornelius P. Cotter, James L. Gibson, John F. Bibby, and Robert J. Huckshorn, *Party Organization in American Politics*. New York: Praeger Publishers, 1984; Leon D. Epstein, *Political Parties in the American Mold*. Madison: University of Wisconsin Press, 1986; Larry J. Sabato, *The Party's Just Begun*. Glencoe, Ill: Scott, Foresman & Co., 1988; William J. Keefe, *Parties, Politics, and Public Policy in America*. 6th edition. Washington: CQ Press, 1991; and Reichley's book, mentioned previously.

*belonged to or were oriented toward the Democratic and Republican parties.*

**Table 6-1.** *[To be added.]*

*When it comes to officeholding, the Democratic and Republican parties are even more dominant. Thus, in 1993 all but one of the 535 members of Congress were affiliated with the Democratic or the Republican party.*

*All but 10 of the 7,412 state legislators chosen in partisan elections*

*belonged to the two major parties (this excludes the 49 members of*

*Nebraska's unicameral, nonpartisan legislature). [1992 data; update]*

*Forty-eight of the 50 governors were either a Democrat or a Republican.*

There were \_\_\_ city council members elected in partisan elections, and virtually all of them were Democrats or Republicans. More than 80 percent of the counties hold partisan elections for their governing body, and most winners come from the two major parties.

So even though the proportion of voters who claim to be independent has increased in recent years and Ross Perot as an independent presidential candidate attracted millions of votes in 1992, almost all policy-making positions in the United States selected on a partisan basis are in the hands of Democrats and Republicans. Accordingly, the two parties deserve particular attention in our quest to comprehend the consent process in American democracy.

### **Visualization**

To properly understand the Democratic and Republican parties, first put aside those neat organization charts that depict a hierarchy with the national committee on top, state committees in the middle, and local

committees at the bottom. Instead, the two parties are highly decentralized, pluralistic, and sometimes quite disorderly.

Secondly, discard the notion of ideological purity and consistency with strict party discipline over members and party units. European political parties and smaller American parties may have such features, but the two major parties in the United States are much more diverse and undisciplined.

These two diversified parties are composed of numerous clusters of Democrats and Republicans who share a common political identity. They join together in different arenas -- local, state, national -- in order to contest elections and to govern. Clusters form in precincts, wards, municipalities, and counties. They take shape in legislative bodies, ordinarily with separate clusters for each party in each house of bicameral legislatures. Clusters of Democrats and Republicans form around elected chief executives of their party (mayor, county executive, governor,

president) and around candidates for office. Racial, ethnic, and gender groups make up other clusters within each party.

As these clusters take expression in formal structure, the Democratic Party and the Republican Party are composed of mostly autonomous local and state units which come together in a loose-knit, national federation. In this manner they reflect the diversity and non-hierarchical nature of the American federal system in which they function.

### **Membership**

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

Democrats and Republicans range from persons who merely identify with the party label but do little to support the party to those who hold

party jobs and run for public office on the party ticket. At the core are party stalwarts, strong Democrats and strong Republicans, who usually vote the straight ticket. At the outer edge are weak Democrats and weak Republicans who are willing to split their ticket and vote for candidates from another party or independent candidates.

### **Precincts**

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

Precinct leaders recruit and direct the activities of block workers and other volunteers. They reach out to voters in their precinct, distribute

campaign literature, collect funds, and get out the vote. In some cities precinct leaders come together in ward committees. In many states they play a role in selecting members of city, county, and state party committees and in choosing convention delegations.

### **Local Committees**

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

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

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

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

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

supports her or him in the general election.

### **State Committees**

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

State committees play a role in selection of party nominees for state office: governor, lieutenant governor, attorney general, and other elected executive officers. In yesteryears party leaders in many states decided their party's nominee and got it ratified by the state convention or in the party primary election. This happens less frequently now because candidates usually come forth as self-starters, but sometimes party leaders

have a hand in recruiting who they think will be a strong candidate and then issue an endorsement. In several states the state committee is responsible for organizing and conducting a nominating convention for state offices and candidates for the U.S. Senate.

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

### **National Committees**

The Republican National Committee is composed of 165 members: the party chair plus a committeeman and a committeewoman from each of the 50 states, District of Columbia, American Samoa, Guam, Puerto Rico, and

the Virgin Islands. The Democratic National Committee consists of approximately 400 members, who include the chair of each state and territorial party, the highest ranking officer of the opposite sex, additional positions assigned each state on a population basis, representatives of Democratic elected officials, Young Democrats, and Democratic Women. Each national committee selects its own chair, but usually they accede to the choice of the incumbent president or the party's presidential nominee.<sup>5</sup>

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

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<sup>5</sup> Information obtained from Democratic National Committee and Republican National

means changing state laws.

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

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

### **Legislative Units**

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Committee.

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

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

By and large a legislative party cluster is independent of national,

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

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

### **Chief Executives**

It is customary for the president of the United States to be the dominant person in his (someday her) party. He chooses the national party chairperson, and the national committee works under guidance,

sometimes tight control, of the White House. But even if the president is nominal party leader, he still must deal collegially with members of his party in Congress. He is likely to have separate sets of relationships with leaders of his party in the Senate and the House of Representatives. Often these relationships are cooperative but at other times they can be prickly. When the president is of one party and Congress (or at least one its houses) is of the opposite party, party division is an important factor in executive-congressional relationships.

A similar pattern prevails in many states and in local governmental units with partisan elections. The governor, mayor, and county executive may dominate the party machinery, but party members in the state legislature, city and county council often act independently. In some states, however, party organization is cohesive enough (perhaps descendent of an old-time machine) that the governor can play a more dominant role over the legislature. And in some localities the mayor or county executive

can assert similar control. This happens most frequently where the chief executive has control of a sizable number of jobs and can use patronage as an instrument of dominance.

### **Summation**

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

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

## *Electoral*

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

## *Legislative*

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

## *Governmental operations*

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

*In later chapters we'll frequently encounter political parties as they play*

*different roles in the consent process.*  
*1994*

*January 17,*

## **7. Interest Groups: Another Set of Instruments**

*A second significant instrument which American democracy uses in the consent process is the interest group. Their formation is natural and inevitable in a democracy.*

*Individuals get together to form interest groups out of recognition that they share particular concerns. They realize that they can assert greater influence on public policy by joining with others of similar persuasion. Or, they are already part of an organization formed for another purpose (commercial, charitable, educational, religious, etc.), and from this base they enter the public policy arena.*

### **IN FOUNDING PERIOD**

*The principal framers of the U.S. Constitution had even more distaste for interest groups than they did for political parties. "Factions" they called them. As James Madison explained in *The Federalist No. 10*:*

*By a faction, I understand a number of citizens, whether amounting*

to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.<sup>1</sup>

This was the same disparaging tone as used today by journalists, social critics, and politicians in speaking of "special interests" (except their own!).

Madison boasted that a virtue of the new constitution was the several ways it preserved liberty and contained the nefarious affects of factions: representative government extended over a wide territory, thereby refining and enlarging the public view,<sup>2</sup> federal division between the states and nation,<sup>3</sup> three branches of government,<sup>4</sup> a bicameral Congress with representatives elected directly and senators indirectly.<sup>5</sup> "Ambition must be made to counteract ambition," he insisted.<sup>6</sup>

Contain, perhaps, but not eliminate, for Madison himself recognized

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<sup>1</sup>James Madison, *The Federalist No. 10*. p. 54.

<sup>2</sup>*The Federalist No. 10*. p. 59.

<sup>3</sup>*The Federalist No. 46*. pp. 304-5.

<sup>4</sup>*The Federalist No. 47*. pp. 312-3.

<sup>5</sup>*The Federalist No. 39*. pp. 243-4.

<sup>6</sup>*The Federalist No. 51*. p. 337.

that the causes of factions are sown in human nature: fallible reason producing different opinions, self-love, diversity of faculties, possession of different degrees and kinds of property. He put forth a list of factions that describe many of today's interest groups:

- *Creditors and debtors*
- *Landed interest, manufacturing interest, mercantile interest, moneyed interest*
- *Those with a zeal for different opinions concerning religion, concerning government, and many other points*
- *Persons attached to different leaders ambitiously contending for pre-eminence and power*
- *Persons who have divided mankind into parties*

Of all of these, Madison acknowledged that "the most common and durable source of factions has been the various and unequal division of property."<sup>7</sup>

Since they were inevitable, interest groups showed up as soon as the First Congress convened in 1789 under the new U.S. Constitution. [Case

*illustrations to be added.]*

*And as rich irony James Madison himself was a principal leader in organizing the Democratic-Republican Party within the First Congress, which joined interest groups as important instruments of consent beyond the formal constitutional process.*

#### **SITUATION TODAY<sup>8</sup>**

*[To be completed.]*

*January 17, 1994*

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<sup>7</sup>*The Federalist No. 10. pp. 55-56.*

<sup>8</sup>*Principal sources to be added.*

## Chapter 8. Governing Coalitions

[Note: The following pages are an initial statement of my outlook on who the primary decision-makers are in government. In fuller development I will take up the debate started in the 1950s by contrasting views of Robert Dahl in *Who Governs?* and Floyd Hunter in *Community Power Structure* and continued in subsequent books and articles.]

In governmental jurisdictions in the United States major policy decisions are frequently made through dynamic interaction within governing coalitions that have participation of elected and appointed officials, interest group representatives, and other influential citizens.<sup>1</sup>

"Governing" describes the function. "Coalition" describes an alliance between persons possessing power and influence, not all holding governmental positions. It indicates that power is pluralistic but acknowledges that the governing group is limited in numbers.

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<sup>1</sup> Portions of this chapter are based upon my previous writing on this subject in *The Organization and Operation of Neighborhood Councils* (New York: Praeger Publishers, 1977), pp.126-8. [Future drafts of this chapter will take into account the literature on governing coalitions and community power structure.]

## *In Local Government*

*The governing coalition in municipal government will almost always include the elected officials -- mayor and members of city council -- and also the appointed city manager, if there is one. In county government, likewise: elected county executive, county commissioners or members of county council, and appointed county administrator. Similarly for township governments.*

*In addition, a governing coalition of local government is likely to include some of the following, though not necessarily all at the same time: administrators heading public agencies; leaders of the victorious political party; representatives of business and labor; leaders of ethnic, racial, and religious groups active in public affairs; leaders of other organized interests, such as social welfare organizations, vociferous issue groups, and strong neighborhood associations. Except for the elected chief executive, each member of the governing coalition represents a minority. Even the chief*

*executive is limited in speaking for the people as whole, for his or her political base is likely to consist of a collection of minorities that together provided an electoral majority.*

*Within a governing coalition some will have more power than others, and the respective degree of influence will vary from one issue to the next. Moreover, the balance of power will be in a constant state of flux. If one person or group isn't exercising its full potential of influence, then another person or group is likely to claim more than its proper share. But if this second group goes too far, the first group, or a third or fourth group will begin to resist. Thus, a governing coalition is quite dynamic.*

*Around each cluster of decisions there is probably a subcoalition. One subcoalition might deal with housing, another with highways, a third with tax policies, and fourth with employment programs, and so on. Some subcoalitions are basically tripartite, consisting of administrators, legislators, and representatives of advocacy organizations. Memberships in*

*subcoalitions may overlap but are never identical.*

*Leaders who are in several subcoalitions have different weights in each depending upon the strength of influence and depth of feelings of the group they represent. The mayor or county executive usually has a role in most of the subcoalitions. This makes the overall structure what political scientist Robert Dahl has called an executive-centered coalition.<sup>2</sup>*

*A governing coalition is no monolith. Internal decision-making is characterized by continual bargaining. Participants are constantly negotiating, trading support, building and reinforcing alliances. For the most part this isn't a formal process conducted around a table as in bargaining during labor-management negotiations, although some of this occurs in meetings of legislative committees and advisory boards. Rather it is informal, subtle, and sometimes quite elusive.*

*Although ultimately formal decision are made by elected officials --*

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<sup>2</sup> Robert Dahl, *Who Governs?* New Haven: Yale University Press, 1961.

*the chief executive and the local council -- they will usually take into account the views and strengths of others in the coalition, and even those outside the coalition in the opposition. Even a mayor or county executive who is reputed to be the local political boss lacks total command authority, for he or she has to constantly touch base with leaders outside of government and sometimes has to bargain with his or her own appointees.*

*Ultimately decisions retain their democratic character because they require formal action by elected officials, who were democratically selected for this role and can be replaced at the next election. Moreover, sometimes interest groups not represented within the governing coalition can mobilize public support to overturn an informal decision of the governing coalition when it comes to vote at the city or county council. They might be assisted by council members who, though elected, are not included in the governing coalition. So broad-based democracy can prevail.*

*Even though an outsider may believe there is an unbreakable solidarity that excludes any new participant, an effective governing coalition will admit new individuals and representatives of groups which are showing increased strength and have enough in common with the coalition to be a useful working partner. Participants in governing coalitions who become out of phase with the objectives of the coalition or who lose their supporters will be eased out, or simply ignored.*

*Interest groups often decided that it's better to be represented inside a governing coalition or a subcoalition than remaining entirely on the outside.*

*Insiders talk with one another, bargain, and work out compromises that later emerge in policy proposals and legislation offered for formal adoption.*

*Having a voice in such proceedings can be valuable -- if it's real and not merely manipulated for appearance sake. If the latter is the case, an advocacy organization may be better off to remain outside and mobilize its supporters to pressure legislators and executive officials who have legal*

authority to make the final decision.

Some governing coalitions will try to preserve the status quo while others will initiate change. In either case the coalition, as a leadership group, will be committed to objectives that aren't necessarily shared by the entire citizenry. Nevertheless, the key leaders of the coalition will claim that their policies represent a broad community consensus. Often this is the case, but not always.

### ***In State and National Governments***

The same kind of governing coalitions function in state governments and in the national government, though they are more complex and subcoalitions are more diversified. The governor and leading state legislators, the president and leading members of Congress play central roles but seldom have unrestricted dominance. They have to bargain among themselves, with their own appointees, with career administrators, with political party leaders, with interest group representatives, and with other

persons who have influence because of campaign contributions, moral stature, or ability to mold public opinion through the media.<sup>3</sup>

Local elected officials, staff from their statewide organizations, and local party officials may be participants in the state's governing coalition.

Representatives of local government, governors, state legislators, and state political parties may participate in the national governing coalition and subcoalitions dealing with concerns of local and state governments.

Business and labor representatives and other kinds of advocacy organizations try to get into the inner workings of subcoalitions handling their interests.

Take virtually any subject that national and state governments deal with -- foreign policy, defense, international trade, transportation, housing, health, welfare, education, environment, natural resources, and

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<sup>3</sup> A superb exposition of how coalitions functioned in Washington during the Reagan years is offered by Hedrick Smith in *The Power Game: How Washington Works* (New York: Random House, 1988; paperback by Ballantine Books, 1989), especially chapter 13, "The Coalition Game: The Heart of Governing".

dozens more --and you will find a coalition working out policies during the various stages of decision-making. Persons with official positions -- president, governor, chairs of authorizing committees and appropriation subcommittees on that subject -- will have the most power and influence, but their authority is contained by the bargaining that is an inevitable part of the political process.

### **Relation to Representative Democracy**

Governing coalitions are widespread in American democracy. It fits within the framework of representative government because elected officials are principal participants and retain ultimate decision-making authority. Most persons from outside government who are involved in governing coalitions represent various interests. This achieves a kind of representative participation that is part of the consent-giving process.

Even so, we should ask of any governing coalition: Do all groups and viewpoints have equal access to gaining representation within the governing

coalition? Often the answer is: No, they don't.

If the answer is negative, remedies are threefold. First, elected officials, who are supposed to take a holistic view of the common good, have an obligation to achieve very broad participation in public decision making. This includes truly representative consultation during the policy formulation process.

Second, unrepresented interests can examine the decision-making process, learn its stages, determine who is influential at each stage, seek to make an impact, and maybe gain representation in the inner workings of governing coalitions. For them it is important to know both who makes decisions and how the decision-making process works.

Third, where segments of the population aren't well enough organized to participate effectively in the dynamics of governmental decision-making, strenuous efforts are needed to help them organize.

January 17, 1994

## PART TWO. CHOOSING PUBLIC OFFICIALS

### Chapter 9. Positioning to Run for Office and Reelection

In American politics the route to election starts with dozens of small paths traversed by persons positioning themselves to run for office. Activity along these entry paths occurs prior to the time candidates formally announce their intention to run for office or seek reelection. It happens before they file necessary petitions with election officials. What goes on during this pre-campaign period affects both who is elected and also their policy decisions once in office. It is a little-recognized feature of the consent-giving process.

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These days in American politics most aspirants for public office are self-selected. They make their own personal decision to run. Their motives are as complex and as varied as human nature, combining a quest for self-interest and a concern for others. They are self-seekers but also perceive themselves as public servants. In preparation for running, they often make a careful effort to position themselves well ahead of the formal nominating process.

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#### **Commonality**

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Potential candidates position themselves for election to class offices and student council in high school and college; as officers of service clubs, women's organizations, lodges, veterans organizations, and professional associations; in civic associations and cause-oriented organizations. The practice also occurs in religious denominations which elect bishops and other

top officers. There you can observe persons positioning themselves years in advance and then becoming engaged in informal and formal campaigning as election time approaches.

To be sure in all of these arenas, persons are sometimes sought out to become candidates for positions they haven't pursued or are nominated without their consent. These are exceptions, often quite valuable ones, but the general practice of positioning prevails.

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Positioning is quite common among persons seeking public office for the first time. Aspirants position themselves by joining organizations, doing things in the community, making friends, forming alliances, seeking publicity, and gaining recognition.

**Variations.** The way positioning unfolds varies according to the operational mold of different political systems, especially whether they are controlled by a few persons or are more open to wider participation. Thus, where one party is overwhelming dominant and is tightly controlled by a party boss or a small group of leaders, a potential candidate either has to gain their approval or mount a vigorous opposition campaign within the party. But where the party has several competing factions or caucuses, potential candidates seek favor with one of them, or if possible, two or more factions. Where two vigorous parties compete for the independent vote, candidates might benefit from developing a wide base of support beyond party regulars in order to show potentially broad appeal in the general election.

Geographic spread is another factor. It ranges from the intimate setting of ward and local council district to the entire state for

*gubernatorial and U.S. senatorial candidates and the whole nation for the presidency. The closer to home the more personalized positioning is while in the wider arena the positioner gives more attention to influential political leaders and organizations representing major blocs of voters.*

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winning. As they consider becoming a candidate for a particular office, they may ask themselves a series of questions.

- *What office do I want to seek? What are the district boundaries? (This may affect choice of residence.)*
- *Can I stand the heat of campaigning? The prospect of invasion of my privacy by the media? Attacks by opponents? Do I have the right temperament for competitive politics?*
- *Are there skeletons in my closet that the opposition will reveal?*
- *Do I want to commit the time required for campaigning and holding public office? (Even a part-time office demands a lot of time, and full-time positions may take 60 to 80 hours a week.)*
- *Can I afford to work for the salary? (Some salaries for elective officials may seem high, but there are a lot of hidden expenses.)*
- *How will it affect my family? Possible negative publicity? The long hours I will put in? The possible economic burden?*
- *Is there a succession of offices for reaching my goal? (Such as, school board then county council; member of city council then mayor; mayor or county executive then governor; state representative, next state senator, then governor; U.S. representative then senator and maybe president or vice president; or a succession of appointive positions before running for elective office.)*
- *When will there be an opening -- at the next election or a*

subsequent one? (Because of term limit, announced intent of incumbent not to seek reelection, prospect that he or she will be running for another office.)

- If the incumbent is likely to seek reelection, what are my prospects? If she or he is from the opposite party, can I win my party's nomination? If from my party, should I challenge the incumbent in the primary?
- Even if the incumbent seems assured of reelection, should I run to raise issues or to build initial support for a second try?
- Who can I get to support me? What individuals, caucuses, organizations?
- Who else is interested in running? What are their strengths and weaknesses, their support and public appeal? How do I compare?
- What opposition will I face from elements within my party or from advocacy organizations involved in electoral politics?
- Should I form a slate with candidates for parallel offices? (Such as persons running in other legislative districts.)
- What are my chances of winning -- excellent, fair, poor? How can I improve my chance?

Thus, the positioning period is a time for individual self-analysis. If persons contemplate seeking an elective office but discover enough negatives, they may decide not to run now, and perhaps never. Thus, they may

screen themselves out of the quest for office. But they may also conclude that they have the desire to run, announce their candidacy, and enter the competition. Through their positioning they have prepared to gain approval of the gatekeepers of the nominating process: political leaders, convention delegates, and primary voters who will decide their fate.

## **POSITIONING BY INCUMBENTS**

Nowadays in any particular election season, a majority of members of Congress, state legislatures, county and municipal councils, and township boards are likely to run for reelection. So too are mayors, county executives, and governors unless prevented by law from running again. Usually a first-term president of the United States also seeks reelection. As incumbents they take a different approach to positioning than newcomers.

### **Legislators**

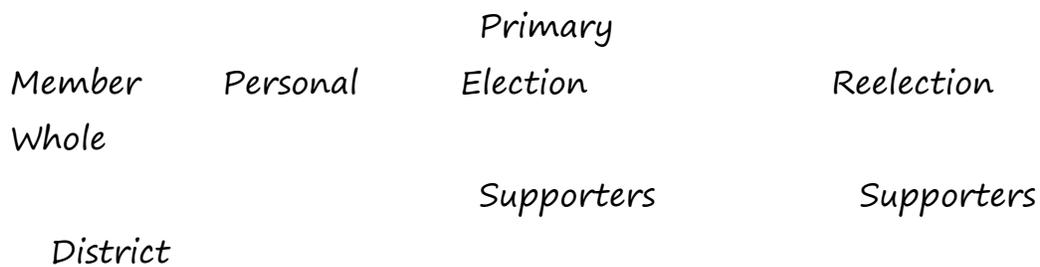
Legislators' quest for reelection is intermingled with their current responsibilities of representing their district on policy matters and serving their constituents in numerous other ways. They realized that voters elected them in the first place and will determine whether they will be reelected.

**View of constituency.** When political scientist Richard Fenno spent considerable time with a number of U.S. representatives in their home districts in the early 1970s, he discovered that "Each member of Congress perceives four concentric constituencies: geographic, reelection, primary,

and personal."<sup>1</sup> His findings remain valid 20 years later and apply to state legislators and members of municipal and county councils.

Figure 8-1 express this perception as a conical field of vision of a typical legislator looking outward. Close at hand she or he has a small, intimate circle of friends and close associates with whom she or he can relax, get advice, and receive emotional support. The next circle contains strong supporters who form the core constituency for the primary election, make financial contributions, and work in the campaign. Then comes a larger circle of persons needed to provide a winning vote in the general election. The outermost circle encompasses the entire congressional district, including opponents, swing voters, and apathetic citizens who seldom or never vote.

Figure 87-1. How Members of Congress View Their Constituents




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<sup>1</sup> Richard Fenno, *Home Style: House Members in Their Districts*. Boston: Little, Brown, 1978. p. 29

For an incumbent seeking reelection, the first task is to maintain the loyalty of strong supporters within her or his political party so as to scare off potential primary opponents, and if challenged, to have a solid base for winning. The second task is to develop and maintain trust and support from a wider range of voters, including independents and perhaps some from the other party, in order to win the next general election. A third task is to be the representative of everyone in the district whether or not they voted for her or him in the last election or will do so in the next.

Members of Congress, state legislators, city and county council members use a variety of methods to carry out the intertwined tasks of representing their district, serving individual and group constituents, and positioning themselves to run for reelection.

**Communicating.** Members of Congress, using printing allocations and free postage of their mailing frank, regularly send out newsletters to every household in their district or state. For many the first issue each year contains a questionnaire on important matters that will come up during the legislative session, and constituents are asked to reply. State legislators and local council members, lacking the frank, tend to send out fewer newsletters, but they find other ways to communicate with people in their district.

Legislators at all levels of government regularly send news releases to newspapers, radio and television stations serving their district. They hold news conferences within the district.

*The U.S. House of Representatives and the U.S. Senate maintain television and radio studios so that members can make live or taped broadcast to local stations. They send out radio "actualities" -- taped statements that are transmitted via telephone lines to local radio stations for insertion into news programs. They use satellite linkage to transmit videotaped statements or excerpts from floor speeches and committee testimony. Sometimes through these linkages they are interviewed by local TV reporters.*

*Although state legislatures and local councils rarely have their own radio and television production facilities, their members constantly seek opportunities to be heard and seen on broadcast media. They make themselves available to television reporters and are usually quite willing to appear on call-in shows. Because the listening and viewing audience of many radio and television stations encompass a number of state legislative and local council districts, legislators and council members compete among themselves for access. To get attention they sometimes create newsworthy events.*

*Legislators at all levels assign staff to handle constituency response and service. All mail is read by staff and usually tabulated by issue and opinion. Local council members and state legislators are likely to read all their mail. Some U.S. representatives do, too, but for many and for most U.S. senators the volume is too heavy for them to read every letter. Instead they receive a summary prepared by staff and read a sample, including correspondence from key supporters, state and local officials, and other influential citizens.*

*For the most part legislators answer their mail, except for postcards*

arriving in mass. Sometimes their reply is quite general: "Thank you for your letter. I always like to hear from my constituents." Etc. But often the response is tailored to the issue addressed. The advent of computers has made it possible to easily combine stock paragraphs into a seemingly personal letter. The response is likely to be more specific when the legislator shares the constituent's viewpoint and is fuzzier when the legislator is in disagreement or uncommitted on the issue. Computers also permit legislative offices to build mailing lists of constituents interested in particular issues so that later they can be sent statements and reports on legislative votes.

**Constituent service.** Most legislative offices are organized to perform "case work", that is, to help constituents deal with the bureaucracy and other kinds of problems. Much of this is unrelated to particular legislation, although certain patterns may reveal problems with legislative remedies. In this sense legislators serve as ombudsmen, that is, troubleshooters and overseers of bureaucratic performance.

In Washington, D.C. the majority of staff time of a typical congressional office is spent on dealings with constituents rather than legislation (but committee staff is available on legislative matters). Moreover, U.S. representatives and senators have district and state offices that provide further linkages with constituents. Staffs of state legislators and local council members devote a lot of time to constituent service.

**Legislative roles.** On legislative issues most members of Congress, state legislators, and local council members keep careful track of opinion in the district they represent. They have previously taken stands on particular issues during the election campaign, and they have the position of their political party to uphold. At the same time they are usually careful not to

stray too far from what seems to be majority opinion on particular issues. Or if they do on some issues, they try to counterbalance this by sticking with prevalent district opinion on many other issues. They do this both out of respect for their responsibility to represent their district and because they want to be reelected. Even legislators who garnered 70 percent or more of the vote in the previous election are cautious about casting wrong votes that could cause a drastic turnaround in the next election.

In short, most of the things that legislators do are things citizens want them to do as their representative in the legislative body. Whether a legislator's motivation is solely a desire to stay in office or is derived from a genuine commitment to be a true representative, the result is constant interaction between legislators and their constituents.

### **Executive Officials Seeking Reelection**

Like legislators, mayors, county executives, governors, the president of the United States, and other elected executive officials often want to be reelected if they are eligible for another term. So they position themselves for reelection as they go about their duties.

Usually an elected chief executive has a distinct advantage over legislators in gaining publicity. A city has only one mayor, a state only one governor, the nation only one president whereas city councils, state legislatures, and Congress have many members. The same pattern prevails in counties with an elected executive and county council, compared to the older pattern of a board of county commissioners. In these situations the chief executive is a central focus of media attention while legislative leadership is more spread out. Moreover, the executive process is more action-oriented than the deliberative processes of legislative bodies, and this generates greater publicity.

*Even so elected chief executives do many of the same things legislators do to communicate with their constituents and stay in touch with them: issue news releases, hold press conferences, grant interviews to print and broadcast journalists, appear on radio and television shows, speak at community meetings and conventions, appear at public events, attend funerals. In addition, the chief executive can call upon a host of appointed officials to perform similar outreach. In the process they are in touch with a variety of group constituencies, who are told how the chief executive shares their concerns.*

### ***Incumbents Seeking Other Offices***

*Persons already holding elective office who want to move to a broader arena -- local to state, state to national -- use a variety of techniques to position themselves to appeal to the broader constituency. They join statewide and national associations. They go outside their locality or state to participate in events where they meet persons from elsewhere and begin to achieve visibility. They serve on committees, speak at political conventions, and sometimes form or join caucuses of like-minded persons. They may support a candidate for a party post or an elective office with the hope that they will receive reciprocal support when they are ready to run for office in this broader domain.*

### **SELECTION COMMITTEES**

*In earlier periods in American politics, selection of nominees by a small group within the party was more common than it is today. This was done by the regular party leaders and sometimes by factions within the party opposing the dominant leaders.*

For instance, in 1946 a group of conservative Republicans in the 12th Congressional District of California was seeking a candidate to run against the liberal incumbent, Democrat Jerry Voorhis. They ran an ad in the newspaper but didn't favor any who applied. They asked Dr. Walker Drexler, former president of Whittier College to run. He declined but suggested a Whittier graduate, who was a superb debater: Richard Nixon, at the time living in Maryland and completing a term of service in the U.S. Navy. They contacted Nixon. He readily accepted and began his political career by defeating Voorhis.<sup>2</sup>

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<sup>2</sup> William L. Roper, *Winning Politics*. Radnor, Pa.: Chilton Book Co., 1978. p.10.

In 1948 in Michigan's 5th Congressional District a group calling themselves the Home Front Republicans wanted to challenge the Republican incumbent, an ally of the state Republican "boss" they were fighting. In a district where about half the voters were Dutch, they wanted someone who was or looked Dutch. With that in mind they recruited Gerald Ford, a young lawyer and Navy veteran, well known in those parts as a football star at the University of Michigan. He defeated the incumbent in the Republican primary and was in his 13th term in Congress when President Nixon appointed him vice-president to replace Spiro Agnew, who had resigned under pressure.<sup>3</sup>

[Add a Democratic example]

Outright recruitment still occurs these days in districts where no candidates are forthcoming to challenge a seemingly entrenched incumbent. And sometimes a state or national party unit will work with local and state party members to find a strong candidate to take on a presumed vulnerable incumbent of the other party. But more typically selection committees, where they function, perceive their task as screening persons who have indicated their interest in running and endorsing one of them.

Such a selection committee might be set up by political party officials or by a faction within the party opposed to party leadership. It might be a committee from a caucus that brings together African Americans, Hispanics, women, or other population groups. Sometimes it is a gathering of representatives of several such groups. It can also be a committee from an interest group (labor, business) or an ideological group (such as

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<sup>3</sup> *Op. cit.*, pp.11-12.

conservatives, Christian fundamentalists, moderates, liberals, libertarians) that functions outside the party organization.

Whatever its political orientation, the selection committee seeks a consensus on which candidate to back in the primary election or convention.

The intent is to avoid dividing the vote of party regulars or caucus members, thereby allowing a candidate with a different orientation to prevail.

Nowadays selection committees, where they function at all, usually don't have to beat the bushes to produce candidates. They are already out there in the open field, or at the edge deciding upon the best time to emerge. They are persons who have carefully positioned themselves to seek public office, or who have recently decided to run for election. Some of them have already announced their candidacy. Others are still in the positioning phase but pass the word through party or caucus connections that they are interested. The selection committee might interview them, talk to others about them, and decide which candidate to endorse in the primary election or at the convention. Now and then the selection committee will be dissatisfied with all announced candidates and will reach out to recruit someone else.

This process may not eliminate other candidates, for some persons are determined to run with or without party or caucus endorsement. But it is an effort to narrow the field and enhance the chances of the party's or caucus's favorite candidate.

Reform groups and newly formed caucuses which want to defeat an incumbent or to win an open seat find that their chance is increased by agreeing upon a candidate who seems to have the best chance of winning

and by discouraging other candidates of similar persuasion from dividing the vote.

This is not necessarily a contemporary version of the proverbial "smoked-filled room" (the back room out of public view where party bosses picked candidates). A selection committee can be democratically selected within the caucus or reform group. It can have open proceedings (and these sessions are likely to permit no smoking!). It can report back to a larger body for affirmation. Furthermore, this is only an early phase of the electoral process. Ultimately voters will decide in the primary and general elections.

## RELATIONSHIP TO CONSENT PROCESS

### *Influencing Positioners*

Because persons positioning themselves to seek elective officer are trying to establish a broad base of support, interest groups find this a good opportunity to promote their cause with the positioners.

Leaders of interest groups look around and see who is getting ready to run for office: for the school board, city council, county council, mayor, county executive, state legislature, governor, Congress, president of the United States. An interest group may find that some positioners already hold diametrically opposition policy positions and therefore don't bother talking with them. Others will be strongly supportive of the interest group's positions. Some will be unknown quantities or will be uncommitted and are the ones particularly worth approaching.

Interest groups try to educate positioners on their issues. They provide written information, may invite potential candidates to meetings,

and take them on site visits. The interest group doesn't necessarily make a commitment to support their candidacy, for it will want to see who else is running, who is most supportive of your cause, who is mostly likely to win. But it at least wants to establish contact.

At the same time positioners often want to avoid making firm promises to promote particular causes. They are testing the water and are becoming aware of various cross-currents. Ultimately strong positions on particular issues will gain some votes and lose others. Potential candidates may therefore prefer to wait taking positions on very controversial issues.

Not knowing which positioners will ultimately be elected, interest groups maintain contact with a number of them. It can be the beginning of a relationship that will blossom later, or it can be a deadend.

### **Public Benefits**

Individuals positioning themselves to run for political office are motivated by personal ambition and a desire for public service. Political party units, caucuses, and interest groups screen candidates and endorse one in hopes of winning. It's a competitive process that has public benefits.

As potential candidates position themselves, party leaders and other political activists observe them, note what they do and what they say, judge their accomplishments and their character, and consider whether they are appropriate candidates for public office. Unsuitable candidates to whom voters aren't likely to consent are screened out or encouraged to modify their positions and their mode of operation. Those who don't suffer defeat at the polls. Many strive but few are chosen.

Positioning functions as an early part of the consent of the governed. Prospective candidates, seeking recognition and staking out positions on public issues, interact with the public. Learning what the public thinks on particular issues, they may tailor their positions to reflect majority opinion. They may also educate the public on new ideas and learn how to advance unpopular views in a manner that will gain support. This exchange can have an effect on future policy decisions.

The positioning period is an opportunity for interest groups to gain support for their positions from potential candidates before they have taken a public stand on particular issues. This kind of early involvement enables citizen activists to make advantageous connections that they can intensify when formal campaign begins. It lays the groundwork for future lobbying of those who are elected.

Incumbents positioning themselves for reelection keep in touch with constituents and track public opinion. This influences current votes of legislators and the policy decisions of elected executives. Lobbyists offer election support to incumbents they favor. All of this is a manifestation of the interactive nature of the consent process, occurring continuously.

Accordingly, what happens along the positioning pathway is as much a part of the consent of the governed as election day. Numerous public policy decisions are affected by the positioning process.

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- Do I want to commit the time required for campaigning and holding public office? (Even a part-time office demands a lot of time, and full-time positions may take 60 to 80 hours a week.)

- *Can I afford to work for the salary? (Some salaries for elective officials may seem high, but there are a lot of hidden expenses.)*
- *How will it affect my family? Possible negative publicity? The long hours I will put in? The possible economic burden?*
- *Is there a succession of offices for reaching my goal? (Such as, school board then county council; member of city council then mayor; mayor or county executive then governor; state representative, next state senator, then governor; U.S. representative then senator and maybe president or vice president; or a succession of appointive positions before running for elective office.)*
- *When will there be an opening -- at the next election or a subsequent one? (Because of term limit, announced intent of incumbent not to seek reelection, prospect that he or she will be running for another office.)*
- *If the incumbent is likely to seek reelection, what are my prospects? If she or he is from the opposite party, can I win my party's nomination? If from my party, should I challenge the incumbent in the primary?*
- *Even if the incumbent seems assured of reelection, should I run to raise issues or to build initial support for a second try?*
- *Who can I get to support me? What individuals, caucuses, organizations?*
- *Who else is interested in running? What are their strengths and*

*weaknesses, their support and public appeal? How do I compare?*

- *What opposition will I face from elements within my party or from advocacy organizations involved in electoral politics?*
- *Should I form a slate with candidates for parallel offices? (Such as persons running in other legislative districts.)*
- *What are my chances of winning -- excellent, fair, poor? How can I improve my chance?*

*Thus, the positioning period is a time for individual self-analysis. If persons contemplate seeking an elective office but discover enough negatives, they may decide not to run now, and perhaps never. Thus, they may screen themselves out of the quest for office. But they may also conclude that they have the desire to run, announce their candidacy, and enter the competition. Through their positioning they have prepared to gain approval of the gatekeepers of the nominating process: political leaders, convention delegates, and primary voters who will decide their fate.*

### **POSITIONING BY INCUMBENTS**

*Nowadays in any particular election season, a majority of members of*

*Congress, state legislatures, county and municipal councils, and township boards are likely to run for reelection. So too are mayors, county executives, and governors unless prevented by law from running again. Usually a first-term president of the United States also seeks reelection. As incumbents they take a different approach to positioning than newcomers.*

### ***Legislators***

*Legislators' quest for reelection is intermingled with their current responsibilities of representing their district on policy matters and serving their constituents in numerous other ways. They realized that voters elected them in the first place and will determine whether they will be reelected.*

*View of constituency.* When political scientist Richard Fenno spent considerable time with a number of U.S. representatives in their home

districts in the early 1970s, he discovered that "Each member of Congress perceives four concentric constituencies: geographic, reelection, primary, and personal."<sup>1</sup> His findings remain valid 20 years later and apply to state legislators and members of municipal and county councils.

Figure 8-1 express this perception as a conical field of vision of a typical legislator looking outward. Close at hand she or he has a small, intimate circle of friends and close associates with whom she or he can relax, get advice, and

Figure 8-1. How Members of Congress View Their Constituents

Member	Personal	Primary Election	Reelection
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<sup>1</sup> Richard Fenno, *Home Style: House Members in Their Districts*. Boston: Little, Brown, 1978. p. 29

Whole

District

Supporters

Supporters

receive emotional support. The next circle contains strong supporters who form the core constituency for the primary election, make financial contributions, and work in the campaign. Then comes a larger circle of persons needed to provide a winning vote in the general election. The outermost circle encompasses the entire congressional district, including opponents, swing voters, and apathetic citizens who seldom or never vote.

For an incumbent seeking reelection, the first task is to maintain the loyalty of strong supporters within her or his political party so as to scare off potential primary opponents, and if challenged, to have a solid base for winning. The second task is to develop and maintain trust and support from a wider range of voters, including independents and perhaps some from the other party, in order to win the next general election. A third task is to be the representative of everyone in the district whether or not they voted for her or him in the last election or will do so in the next.

Members of Congress, state legislators, city and county council members use a variety of methods to carry out the intertwined tasks of representing their district, serving individual and group constituents, and

positioning themselves to run for reelection.

*Communicating.* Members of Congress, using printing allocations and free postage of their mailing frank, regularly send out newsletters to every household in their district or state. For many the first issue each year contains a questionnaire on important matters that will come up during the legislative session, and constituents are asked to reply. State legislators and local council members, lacking the frank, tend to send out fewer newsletters, but they find other ways to communicate with people in their district.

Legislators at all levels of government regularly send news releases to newspapers, radio and television stations serving their district. They hold news conferences within the district.

The U.S. House of Representatives and the U.S. Senate maintain television and radio studios so that members can make live or taped broadcast to local stations. They send out radio "actualities" -- taped

statements that are transmitted via telephone lines to local radio stations for insertion into news programs. They use satellite linkage to transmit videotaped statements or excerpts from floor speeches and committee testimony. Sometimes through these linkages they are interviewed by local TV reporters.

Although state legislatures and local councils rarely have their own radio and television production facilities, their members constantly seek opportunities to be heard and seen on broadcast media. They make themselves available to television reporters and are usually quite willing to appear on call-in shows. Because the listening and viewing audience of many radio and television stations encompass a number of state legislative and local council districts, legislators and council members compete among themselves for access. To get attention they sometimes create newsworthy events.

Legislators at all levels assign staff to handle constituency response and

service. All mail is read by staff and usually tabulated by issue and opinion.

Local council members and state legislators are likely to read all their mail.

Some U.S. representatives do, too, but for many and for most U.S.

senators the volume is too heavy for them to read every letter. Instead they receive a summary prepared by staff and read a sample, including correspondence from key supporters, state and local officials, and other influential citizens.

For the most part legislators answer their mail, except for postcards arriving in mass. Sometimes their reply is quite general: "Thank you for your letter. I always like to hear from my constituents." Etc. But often the response is tailored to the issue addressed. The advent of computers has made it possible to easily combine stock paragraphs into a seemingly personal letter. The response is likely to be more specific when the legislator shares the constituent's viewpoint and is fuzzier when the legislator is in disagreement or uncommitted on the issue. Computers also

permit legislative offices to build mailing lists of constituents interested in particular issues so that later they can be sent statements and reports on legislative votes.

**Constituent service.** Most legislative offices are organized to perform "case work", that is, to help constituents deal with the bureaucracy and other kinds of problems. Much of this is unrelated to particular legislation, although certain patterns may reveal problems with legislative remedies. In this sense legislators serve as ombudsmen, that is, troubleshooters and overseers of bureaucratic performance.

In Washington, D.C. the majority of staff time of a typical congressional office is spent on dealings with constituents rather than legislation (but committee staff is available on legislative matters). Moreover, U.S. representatives and senators have district and state offices that provide further linkages with constituents. Staffs of state legislators and local council members devote a lot of time to constituent service.

*Legislative roles.* On legislative issues most members of Congress, state legislators, and local council members keep careful track of opinion in the district they represent. They have previously taken stands on particular issues during the election campaign, and they have the position of their political party to uphold. At the same time they are usually careful not to stray too far from what seems to be majority opinion on particular issues. Or if they do on some issues, they try to counterbalance this by sticking with prevalent district opinion on many other issues. They do this both out of respect for their responsibility to represent their district and because they want to be reelected. Even legislators who garnered 70 percent or more of the vote in the previous election are cautious about casting wrong votes that could cause a drastic turnaround in the next election.

In short, most of the things that legislators do are things citizens want them to do as their representative in the legislative body. Whether a legislator's motivation is solely a desire to stay in office or is derived from a

*genuine commitment to be a true representative, the result is constant interaction between legislators and their constituents.*

### ***Executive Officials Seeking Reelection***

*Like legislators, mayors, county executives, governors, the president of the United States, and other elected executive officials often want to be reelected if they are eligible for another term. So they position themselves for reelection as they go about their duties.*

*Usually an elected chief executive has a distinct advantage over legislators in gaining publicity. A city has only one mayor, a state only one governor, the nation only one president whereas city councils, state legislatures, and Congress have many members. The same pattern prevails in counties with an elected executive and county council, compared to the older pattern of a board of county commissioners. In these situations the chief executive is a central focus of media attention while legislative leadership is more spread out. Moreover, the executive process is more*

*action-oriented than the deliberative processes of legislative bodies, and this generates greater publicity.*

*Even so elected chief executives do many of the same things legislators do to communicate with their constituents and stay in touch with them: issue news releases, hold press conferences, grant interviews to print and broadcast journalists, appear on radio and television shows, speak at community meetings and conventions, appear at public events, attend funerals. In addition, the chief executive can call upon a host of appointed officials to perform similar outreach. In the process they are in touch with a variety of group constituencies, who are told how the chief executive shares their concerns.*

### ***Incumbents Seeking Other Offices***

*Persons already holding elective office who want to move to a broader arena -- local to state, state to national -- use a variety of techniques to position themselves to appeal to the broader constituency. They join*

statewide and national associations. They go outside their locality or state to participate in events where they meet persons from elsewhere and begin to achieve visibility. They serve on committees, speak at political conventions, and sometimes form or join caucuses of like-minded persons. They may support a candidate for a party post or an elective office with the hope that they will receive reciprocal support when they are ready to run for office in this broader domain.

### **SELECTION COMMITTEES**

In earlier periods in American politics, selection of nominees by a small group within the party was more common than it is today. This was done by the regular party leaders and sometimes by factions within the party opposing the dominant leaders.

For instance, in 1946 a group of conservative Republicans in the 12th Congressional District of California was seeking a candidate to run against the liberal incumbent, Democrat Jerry Voorhis. They ran an ad in the

newspaper but didn't favor any who applied. They asked Dr. Walker Drexler, former president of Whittier College to run. He declined but suggested a Whittier graduate, who was a superb debater: Richard Nixon, at the time living in Maryland and completing a term of service in the U.S. Navy. They contacted Nixon. He readily accepted and began his political career by defeating Voorhis.<sup>2</sup>

In 1948 in Michigan's 5th Congressional District a group calling themselves the Home Front Republicans wanted to challenge the Republican incumbent, an ally of the state Republican "boss" they were fighting. In a district where about half the voters were Dutch, they wanted someone who was or looked Dutch. With that in mind they recruited Gerald Ford, a young lawyer and Navy veteran, well known in those parts as a football star at the University of Michigan. He defeated the incumbent in the Republican primary and was in his 13th term in Congress when President

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<sup>2</sup> William L. Roper, *Winning Politics*. Radnor, Pa.: Chilton Book Co., 1978. p.10.

Nixon appointed him vice-president to replace Spiro Agnew, who had resigned under pressure.<sup>3</sup>

[Add a Democratic example]

Outright recruitment still occurs these days in districts where no candidates are forthcoming to challenge a seemingly entrenched incumbent.

And sometimes a state or national party unit will work with local and state party members to find a strong candidate to take on a presumed vulnerable incumbent of the other party. But more typically selection committees, where they function, perceive their task as screening persons who have indicated their interest in running and endorsing one of them.

Such a selection committee might be set up by political party officials or by a faction within the party opposed to party leadership. It might be a committee from a caucus that brings together African Americans, Hispanics, women, or other population groups. Sometimes it is a gathering

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<sup>3</sup> *Op. cit.*, pp.11-12.

of representatives of several such groups. It can also be a committee from an interest group (labor, business) or an ideological group (such as conservatives, Christian fundamentalists, moderates, liberals, libertarians) that functions outside the party organization.

Whatever its political orientation, the selection committee seeks a consensus on which candidate to back in the primary election or convention.

The intent is to avoid dividing the vote of party regulars or caucus members, thereby allowing a candidate with a different orientation to prevail.

Nowadays selection committees, where they function at all, usually don't have to beat the bushes to produce candidates. They are already out there in the open field, or at the edge deciding upon the best time to emerge. They are persons who have carefully positioned themselves to seek public office, or who have recently decided to run for election. Some of them have already announced their candidacy. Others are still in the

positioning phase but pass the word through party or caucus connections that they are interested. The selection committee might interview them, talk to others about them, and decide which candidate to endorse in the primary election or at the convention. Now and then the selection committee will be dissatisfied with all announced candidates and will reach out to recruit someone else.

This process may not eliminate other candidates, for some persons are determined to run with or without party or caucus endorsement. But it is an effort to narrow the field and enhance the chances of the party's or caucus's favorite candidate.

Reform groups and newly formed caucuses which want to defeat an incumbent or to win an open seat find that their chance is increased by agreeing upon a candidate who seems to have the best chance of winning and by discouraging other candidates of similar persuasion from dividing the vote.

*This is not necessarily a contemporary version of the proverbial "smoked-filled room" (the back room out of public view where party bosses picked candidates). A selection committee can be democratically selected within the caucus or reform group. It can have open proceedings (and these sessions are likely to permit no smoking!). It can report back to a larger body for affirmation. Furthermore, this is only an early phase of the electoral process. Ultimately voters will decide in the primary and general elections.*

## **RELATIONSHIP TO CONSENT PROCESS**

### ***Influencing Positioners***

*Because persons positioning themselves to seek elective officer are trying to establish a broad base of support, interest groups find this a good opportunity to promote their cause with the positioners.*

*Leaders of interest groups look around and see who is getting ready to run for office: for the school board, city council, county council, mayor,*

county executive, state legislature, governor, Congress, president of the United States. An interest group may find that some positioners already hold diametrically opposition policy positions and therefore don't bother talking with them. Others will be strongly supportive of the interest group's positions. Some will be unknown quantities or will be uncommitted and are the ones particularly worth approaching.

Interest groups try to educate positioners on their issues. They provide written information, may invite potential candidates to meetings, and take them on site visits. The interest group doesn't necessarily make a commitment to support their candidacy, for it will want to see who else is running, who is most supportive of your cause, who is mostly likely to win. But it at least wants to establish contact.

At the same time positioners often want to avoid making firm promises to promote particular causes. They are testing the water and are becoming aware of various cross-currents. Ultimately strong positions on

particular issues will gain some votes and lose others. Potential candidates may therefore prefer to wait taking positions on very controversial issues.

Not knowing which positioners will ultimately be elected, interest groups maintain contact with a number of them. It can be the beginning of a relationship that will blossom later, or it can be a deadend.

### **Public Benefits**

Individuals positioning themselves to run for political office are motivated by personal ambition and a desire for public service. Political party units, caucuses, and interest groups screen candidates and endorse one in hopes of winning. It's a competitive process that has public benefits.

As potential candidates position themselves, party leaders and other political activists observe them, note what they do and what they say, judge their accomplishments and their character, and consider whether they are appropriate candidates for public office. Unsuitable candidates to whom voters aren't likely to consent are screened out or encouraged to modify

*their positions and their mode of operation. Those who don't suffer defeat at the polls. Many strive but few are chosen.*

*Positioning functions as an early part of the consent of the governed.*

*Prospective candidates, seeking recognition and staking out positions on public issues, interact with the public. Learning what the public thinks on particular issues, they may tailor their positions to reflect majority opinion.*

*They may also educate the public on new ideas and learn how to advance unpopular views in a manner that will gain support. This exchange can have an effect on future policy decisions.*

*The positioning period is an opportunity for interest groups to gain support for their positions from potential candidates before they have taken a public stand on particular issues. This kind of early involvement enables citizen activists to make advantageous connections that they can intensify when formal campaign begins. It lays the groundwork for future lobbying of those who are elected.*

*Incumbents positioning themselves for reelection keep in touch with constituents and track public opinion. This influences current votes of legislators and the policy decisions of elected executives. Lobbyists offer election support to incumbents they favor. All of this is a manifestation of the interactive nature of the consent process, occurring continuously.*

*Accordingly, what happens along the positioning pathway is as much a part of the consent of the governed as election day. Numerous public policy decisions are affected by the positioning process.*

*January 17, 1994*

## APPENDIX. HISTORICAL FOUNDATION

### *Appendix A. Emergence of Representative Democracy in Colonial America*

*When delegates from 13 British colonies<sup>1</sup> in North America adopted the Declaration of Independence on July 4, 1776, they were providing justification for a resolution stating that "these United Colonies are, and of right ought to be, free and independent States."<sup>2</sup>*

*Richard Henry Lee of Virginia had introduced this resolution on June 7 in the Second Continental Congress, meeting in Philadelphia. Three days later the Congress voted to appoint a committee to draft a declaration supporting Lee's resolutions. The next day John Adams, Benjamin Franklin, Thomas Jefferson, Robert Livingston, and Roger Sherman were named to serve.*

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

<sup>2</sup> Citation to be added.

Jefferson took on the task of producing a draft. Other members reviewed it, Franklin and Adams in particular proposed a few changes, and the committee presented their final draft to the Congress. On July 2 the Congress approved Lee's resolution, and on July 4 approved "The unanimous Declaration of the thirteen united States of America."

Among other notable statements the Declaration insisted that "governments are instituted among men, deriving their just powers from the consent of the governed."<sup>3</sup>

### CONCEPT OF CONSENT IN 18TH CENTURY

Years later Jefferson recalled [to be completed with citation].

#### Views of American Colonists<sup>4</sup>

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<sup>3</sup> Citation to be added.

<sup>4</sup> Among other sources this section draws especially upon ideas presented in *Seedtime of the Republic* by Clinton Rossiter (New York: Harcourt, Brace & World, 1953).

For the leaders of the American Revolution "consent" was a natural part of their political vocabulary. They felt no need to offer a precise definition of its meaning.<sup>5</sup>

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

That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.<sup>6</sup>

Pamphleteers shortened it to "no taxation without representation."

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<sup>5</sup> Interestingly authors of two widely-read analyses of the Declaration of Independence in this century felt it unnecessary to explain the meaning of consent: Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas*. (New York: Alfred A. Knopf, 1922) and Garry Wills, *Inventing America: Jefferson's Declaration of Independence*. (Garden City, New York: Doubleday & Company, 1978).

<sup>6</sup> Rossiter, *Seedtime*, p.319

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.*<sup>7</sup>

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.*<sup>8</sup>

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<sup>7</sup> *Journals of the Continental Congress, 1774-1789.* Vol. 1, Worthington Chauncey Ford, editor. Washington: Government Printing Office, 1904. p. 107.

<sup>8</sup> "The Virginia Declaration of Rights" in *The Spirit of 'Seventy-Six: The Story of the American Revolution as Told by Participants* edited by Henry Steel Commager and Richard B. Morris.

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*Indianapolis: Bobbs-Merrill Company, 1958. p. 389.*

For the American colonists consent was no new idea. Thomas Hooker, who helped develop the Fundamental Orders of Connecticut in 1639, explained that when men covenant with one another and join together in civil society, "it is by their own free consent and mutual engagement on both sides."<sup>9</sup> 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."<sup>10</sup> Thus, the idea of majority rule was attached to the concept of consent.

### **Historical Roots<sup>11</sup>**

These early colonists inherited 2,000 years of inquiry in Europe on the origin of government and speculation on why people are willing to accept

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<sup>9</sup> Quoted in Rossiter, *Seedtime*, p. 172-3. Changed to modern spelling.

<sup>10</sup> Rossiter, *Seedtime*, p. 189. Changed to modern spelling.

<sup>11</sup> This section draws heavily on *A History of Political Theory* by George H. Sabine (New York: Henry Holt and Company, 1937).

the authority of the state. Much of this stream of thought was rooted in a belief in the law of nature -- a higher, universal law, applicable at all times in all places.

In Greece in the third century B.C. Epicureans, according to George H. Sabine, maintained that "the state and the law came into existence as a contract to facilitate intercourse between men."<sup>12</sup> Subsequently other European political philosophers offered many variations of the contract theory.

Around 50 B.C. Marcus Tullius Cicero, famous orator and political philosopher of the Roman republic, argued that the state is "the people's affair,... the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual activities."<sup>13</sup> Even the authority of the most powerful ruler is derived from the people and most be exercised according

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<sup>12</sup> Sabine, p. 134.

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."<sup>14</sup> 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.

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<sup>13</sup> *Republic*, I, 25; quoted in Sabine, p. 166.

<sup>14</sup> Sabine, p. 200.

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.<sup>15</sup>

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

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<sup>15</sup> Sabine, pp. 204-5.

that no taxes would be levied "but by the common assent of the realm" (that is, by parliament).<sup>16</sup>

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."<sup>17</sup>

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

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<sup>16</sup> Richard L. Perry, ed., *Sources of Our Liberties. Documentary Origins of Individual Liberties in the United States, Constitutions, and Bill of Rights.* Chicago: American Bar Foundation, 1959. pp. 14, 24-25, 31.

<sup>17</sup> Sabine, p. 381.

misuse their power, it reverts to the people.<sup>18</sup>

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

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<sup>18</sup> Summation of Johannes Althusius' book, *Politica methodice digesta*, by Sabine, pp. 416-420. Sabine's book refers to many other writers and social movements which dealt with the ideas of contract and consent.

*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.<sup>19</sup>*

*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."<sup>20</sup>*

*The Declaration of Independence took this a step further, insisting that*

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<sup>19</sup> John Locke, *Two Treatises of Government*. New York: The New American Library, 1965.

"the Laws of Nature and Nature's God" establish a set of basic human rights.

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

### **ACHIEVING CONSENT IN THE AMERICAN COLONIES**

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

#### **European Settlement**

When European settlers began to arrive in North America in the 17th century, the land was already populated by the First Settlers, who had

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

<sup>20</sup> Ibid., Book II, §123.

migrated from Asia through Alaska many centuries earlier. In 1600 a million or more First Settlers lived in what later became the 48 contiguous states. They constituted 250 or so tribal groups, each with a distinct language and its own government. The Europeans called them Indians, but each tribe had its own name, rendered into English as Powhattan, Cherokee, Susquehanna, Delaware, Mohican, Narraganset, Massachusetts, and many more. Considering themselves separate nations, they sometimes entered into treaties with one another. Five nations, called Iroquois by French explorers, had a functioning confederation in what is now upper New York State.

The initial colonists usually arrived with their own framework of government, developed by the trading company or proprietor who sponsored the settlement. However, in November 1620 the ship *Mayflower* arrived unexpectedly off the coast of Cape Cod where no colonial government existed. Before going ashore, the 41 male adults on the

*Mayflower signed a compact to "covenant & combine ourselves together into a civil body politic", just as contract theory taught them they should.<sup>21</sup>*

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

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

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<sup>21</sup> Citation to be added.

*European settlement indicated.*

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

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

*There was considerable diversity among these colonies, derived from*

character and orientation of initial European settlers, type of colonial regime, time of settlement, terrain, and climate. This yielded varying forms of colonial government. Such variety remains a characteristic of state and local government in the United States.

### **Colonial Government**

At the time of the American Revolution eight of the 13 colonies were under direct control of the British crown: New Hampshire, Massachusetts, New York, New Jersey, Virginia, North Carolina, South Carolina, and Georgia. Of these only Massachusetts had a written charter specifying rights and governmental framework. Three colonies were proprietary with power delegated by the crown to the proprietor: Pennsylvania and Delaware under the Penn family and Maryland, the domain of the Calverts.

The other two colonies, Connecticut and Rhode Island, operated under corporate charters which granted them substantial authority for

self-government.<sup>22</sup>

**Governors.** In the eight royal colonies the British monarch appointed the governor. In the three proprietary colonies the proprietor himself served as governor or appointed a deputy. Citizens in the two corporate colonies chose their own governor.

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

**Legislatures.** All thirteen colonies had elected assemblies. The first one met in Jamestown, Virginia in 1619, a dozen years after the founding

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<sup>22</sup> Allan Nevins, *American States: During and After the Revolution*. New York: Macmillan Co.,

of this first permanent English settlement in North America. By 1683 ten other colonies had their own elected assemblies, and the other two established such bodies in subsequent years.<sup>23</sup> Members of these assemblies were elected by freeholders (property owners and sometimes other taxpayers). Among their responsibilities the assemblies approved the levying of taxes to support the colonial government, and this gave them leverage in dealing with the governors.

The elected assemblies joined with the mostly appointed councils to form bicameral legislatures in eleven colonies. This followed the pattern of the British Parliament with its House of Commons and House of Lords. Lacking councils, Pennsylvania and Delaware had unicameral legislatures.<sup>24</sup>

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1927. p. 2; Rossiter, *Seedtime*, pp, 12-13.

<sup>23</sup> Michael Kammen, *Deputyes & Libertyes. The Origins of Representative Government in Colonial America*. New York: Alfred A. Knopf, 1969. pp.11-12, 52-68.

<sup>24</sup> Rossiter, *Seedtime*, p. 15. C.A. Weslager, *The Stamp Act Congress*. Newark, Delaware: University of Delaware Press, 1976. p. 93.

**Local government.** There was considerable variation in local government.<sup>25</sup> 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 male property owners could participate. This was the fullest development of direct democracy within colonial America.

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

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

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<sup>25</sup> Information on local government comes from Rossiter, *Seedtime*, pp. 24-27 and Oscar

York. Other Mid-Atlantic colonies had counties, and some had townships.

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

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

### **Suffrage**

In determining who could vote, the colonies looked to persons with a stake in the community. Seven of them required possession of land, while the other six considered possession of personal property or payment of taxes to be sufficient. Eligible voters were overwhelmingly white male although here and there some women and Negro freemen who met property or taxpaying requirements could vote. But according to Clinton Rossiter,

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Theodore Barck, Jr. and Hugh Talmadge Lefler, *Colonial America*. 2nd edition. New York:

"almost everywhere additional restrictions kept women, youth, Catholics, Jews, infidels, Negroes, Indians, mulattoes, indentured servants, and other 'inferior' persons from the polls."<sup>26</sup>

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

### **Congresses**

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

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Macmillan Co., 1964. pp. 247-9.

<sup>26</sup> Rossiter, *Seedtime*, p. 19. {Need to find another source to develop this section a little more.}

To respond to the British Stamp Act, Massachusetts' elected assembly, the General Court, in June 1765 invited the other assemblies to send representatives to New York in October. Of the nine delegations which attended, six were officially chosen by their colonial assemblies. For the other three, members of the assemblies, blocked by their governors from holding a special session for this purpose, found other ways to pick their delegates.<sup>27</sup>

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

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<sup>27</sup> Weslager, pp. 58-106.

The credentials of delegates, formally presented to the Continental Congress and recorded in its *Journal*, verified that they were selected in a manner to assure that they truly represented their colonies.<sup>28</sup>

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

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

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

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<sup>28</sup> *Journals of the Continental Congress, 1774-1789. Vol. 1, Edited by Worthington Chauncey Ford. pp. 15-24. 30.*

House of Burgess.

....New York, ridden by the largest and most aggressive Tory faction in America, did not achieve enough unity for a central assembly. Delegates were chosen by the city and five counties in any manner which suited their convenience.<sup>29</sup>

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

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

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<sup>29</sup> Lynn Montross, *The Reluctant Rebels: The Story of the Continental Congress, 1774-1789*. New York: Barnes & Noble, 1950. pp. 26-27. Also see Samuel H. Beer, *To Make A Nation: The Rediscovery of American Federalism*. Cambridge, Mass.:

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

### **Summation**

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

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

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

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

*January 17, 1994*

## *Appendix B. Consent in the New Nation*

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

*As opposition to British rule widened and war spread, the colonial regimes collapsed. The elected assemblies remained and served as the principal governing bodies of most colonies, but in some instances elected conventions took the place of assemblies whose conservative leaders were reluctant to break with Great Britain.*

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

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

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."*<sup>2</sup>

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

<sup>2</sup> *Journals of the Continental Congress, 1774-1789*. Vol. IV, p. 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."<sup>3</sup> 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 couldn't exist without the other -- a preview of American federalism as it developed over the next two centuries.

## ADOPTING STATE CONSTITUTIONS

### Process

Having asked first, New Hampshire adopted its new constitution in

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<sup>3</sup> Quoted by Beer, p. 200.

January 1776. South Carolina followed in March. By the time the Declaration of Independence was signed on July 4, Virginia and New Jersey had done likewise. Other former colonies, now become independent states, took up this task, and by April 1777 six more had new constitutions. Connecticut and Rhode Island, which already had representative government with elected governor and elected bicameral legislature, merely dropped royal references in their charters and kept them in operation. Massachusetts temporarily functioned within the framework of its royal charter.<sup>4</sup>

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.<sup>5</sup> In Pennsylvania a balky assembly refused to act,

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

<sup>5</sup> Allan Nevins, *American States: During and After the Revolution*. pp. 128-9; R.R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800*.

so citizens by various means elected delegates to a separate constitutional convention, which then continued as the *de facto* legislature.<sup>6</sup> None of these first ten constitutions went to the people for approval.

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Princeton, N.J.: Princeton University Press, 1959. p. 217.

<sup>6</sup> Palmer, p. 217.

It took Massachusetts two tries to get a new constitution. In 1778 the General Court drafted one and submitted it to the electorate, who defeated it five to one, partly on the grounds that they didn't choose the drafters. Thereupon the legislature established an elected constitutional convention, which produced a constitution that gained voter approval in 1780. Similarly New Hampshire adopted a revised constitution in 1784 through a specially elected convention and popular vote for its product.<sup>7</sup>

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

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

*Constitution in 1787-88.*<sup>8</sup>

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

### **Product**

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

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

both chambers elected by voters. When Georgia revised its constitution in 1788 it added a second house to the legislature, and Pennsylvania did likewise in 1790. In these bicameral legislatures the state senates, successors to the appointed councils, had fewer members than the houses of representatives (or delegates). Senators had larger districts than representatives, and in \_\_\_\_ states senators initially were elected at large.

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

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. As Nevins observed:

The Americans of 1776 thought that it was easy to keep the legislature a truly popular agency, but they knew no way of holding a powerful governor responsive to their will. They were unable to

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<sup>9</sup> Paul Eidelberg, *The Philosophy of the American Constitution*. New York: The Free Press, 1968. p. 263.

*distinguish properly between a Crown governor and a popularly elected governor, and they had not learned the value of concentration of responsibility.<sup>10</sup>*

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

### **FORMING A NATIONAL GOVERNMENT**

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

*These congresses convened essentially to provide a united voice for*

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<sup>10</sup> Nevins, p. 166.

dealings with the British Government, more-or-less on an ad hoc basis.

This was a useful approach for this purpose, but it proved an awkward instrument for conducting the Revolutionary War. Some better vehicle was needed.

### **Articles of Confederation**

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

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

But the Congress was concentrating mostly on the war with the British and put off consideration for more than a year.<sup>12</sup>

Finally on November 15, 1777 Congress agreed upon "Articles of Confederation and perpetual Union" between the 13 states. 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.

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

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<sup>12</sup> Jack N. Rakove, *The Beginnings of National Politics: An Interpretative History of the Continental Congress*. New York: Alfred A. Knopf, 1979. p. 139.

*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. The Articles then went into effect, almost five years after the Declaration of Independence.*

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

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

**Provisions.** *As a governing mechanism, the Articles formalized the*

system developed by the Continental Congresses. The state legislatures appointed the delegates -- from two to seven per state -- and could recall them at any time. No person could served as a delegate for more than three years out of six.

In Congress each state had one vote. The "united states in congress assembled" was authorized to appoint a "committee of the states", consisting of one delegate from each state, to exercise the powers of Congress when it was in recess, subject to the consent of nine states. When in session, assent by delegates from at least nine states was required for important matters. The Articles could not be altered unless agreed to by Congress and "afterwards confirmed by the legislatures of every state."

The Articles contained no provision for a chief executive officer, neither elected nor appointed. To handle administrative matters, Congress set up a number of bureaus, established oversight committees, and appointed a secretary of war, a secretary for foreign affairs, and a superintendent of

finance, until replacing him with a three-man board of treasury.<sup>13</sup> This was the beginning of national administrative departments.

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

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

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

On domestic matters Congress was even weaker. It had limited authority to deal with interstate commerce. It possessed no taxing powers and instead had to request state contributions to the common treasury. Frequently states were tardy with their payments.

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<sup>13</sup> Rossiter, 1787: *The Grand Convention*. p. 42.

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

*The first government of the United States fought a successful war, made a viable peace, laid the foundation for a new order of diplomacy, established enough credit at home and abroad to pay its most pressing expenses, conducted a kind of political and social academy for the continental elite, created a functioning bureaucracy, and above all maintained itself as a symbol of American unity even in the most parochial times after 1783.<sup>14</sup>*

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

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<sup>14</sup> Rossiter, 1787: *The Grand Convention*. p.43.

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

### **Transition**

*Particularly vexing was Congress's insufficient authority to deal effectively with commercial matters in which interstate cooperation was badly needed. In the search for remedies, the Virginia Assembly invited the other state legislatures to send representatives to a special meeting in Annapolis. Commissioners from only five states showed up in September 1786: New York, New Jersey, Pennsylvania, Delaware, and Virginia. Four other states appointed representatives, but they never appeared. The Annapolis Convention didn't solve the trade problem, but it did call for another meeting of state delegates for an even broader agenda. They*

would meet in Philadelphia on "the second Monday in May next" for the purpose of devising provisions "necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."<sup>15</sup>

By early 1787 seven states had appointed delegates. On February 21 Congress gave its blessing to such a convention "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions."<sup>16</sup>

As it turned out, this was the death knell of the Confederation, for the Convention would write a brand new Constitution for the United States of America. The league of sovereign states would be replaced by a federal system of government.

### **Constitutional Convention**

Twelve states sent delegates to a Convention in Philadelphia in May

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<sup>15</sup> "Proceedings of the State Commissioners at Annapolis, Maryland, September 11-14, 1786" in *The Origins of the American Constitution: A Documentary History*, edited by Michael Kammen. New York: Penguin Books, 1986. p. 22.

<sup>16</sup> *Journals of the Continental Congress*. Vol. ?, p. 74.

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.<sup>17</sup>

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<sup>17</sup> The basic scholarly resource on the Constitutional Convention is Max Farrand, *The Records of the Federal Convention*. 4 volumes, revised edition. (New Haven: Yale University Press, 1937). Periodically able writers draw on this source to produce analytical narratives of the Convention, such as, Carl van Doren, *The Great Rehearsal* (New York: Viking Press, 1948); Clinton Rossiter, *1787: The Grand Convention* (New York: New American Library, 1968); Christopher Collier and James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York: Random House and Reader's Digest Press, 1986).

*Orientation.* The majority of delegates were predisposed to strengthen the national government. All but two of the 55 delegates had served as public officials of colony or state, and more than 40 were currently active in state affairs. Forty-two had served in Congress, and ten of them were currently members.<sup>18</sup> They knew first hand the weaknesses of the Confederation and were quite willing to go beyond their limited instructions to develop amendments for the Articles.

In their political orientation they favor creation of a "republic", later defined by James Madison, a key leader at the Convention, as

*a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.*<sup>19</sup>

It would be what Madison called a compound republic, combining two doctrines: federalism and separation of powers. The states would remain

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<sup>18</sup> Rossiter, pp. 124-5, 236.

<sup>19</sup> James Madison, *The Federalist No. 39*. New York: Modern Library, 1937. pp. 243-4.

as components of a federal system. The powers of the new national government would be divided between legislative, executive, and judicial branches, as had already occurred in all of the state constitutions.

**Legislative representation.** As a further division of power, the Congress of the United States would be bicameral, as 11 of the 13 state legislatures were at the time and soon all would be. The new Constitution provided that membership in the House of Representatives in the new bicameral Congress would be apportioned according to population and members would be elected directly by the people. In each state qualifications for voting would be the same as for the most numerous branch of the state legislature. In contrast, the Senate would be composed of two senators from each state, chosen by the legislature.

This arrangement was a major feature in a compromise between the small states, which liked the one-state, one-vote arrangement of the previous congresses, and the large states, which wanted greater

representation for their more numerous populations.

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

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

that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper

to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.<sup>20</sup>

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

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

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

In the total scheme of the new Constitution, the framers showed a preference for indirect derivation of power from the people: senators

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<sup>20</sup> Alexander Hamilton, *The Federalist No. 68*. pp. 441-2.

*elected by state legislatures; the president by electors chosen in a manner state legislators determined; cabinet officers, judges, and ambassadors appointed by the president with the advice and consent of the Senate. Only members of the House of Representatives were chosen directly by the electorate, whose qualifications were determined by each state, which in this period limited voting mostly to white male property owners and taxpayers. That's how the new Constitution provide consent through representation.*

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

*We the people of the United States, in order to  
form a more perfect union,  
establish justice,  
insure domestic tranquility,  
provide for the common defense,  
promote the general welfare, and*

*secure the blessings of Liberty to ourselves and our posterity,  
do ordain and establish this Constitution  
for the United States of America.*

*Although Anti-Federalists, such as Patrick Henry of Virginia,  
thought the framers were presumptuous in beginning the Preamble with  
"We the people",<sup>21</sup> it signified that the Constitution derived its authority  
directly from the citizenry without going through state legislatures.  
Moreover, the new Constitution created a set of direct relationships  
between the national government and the citizenry to fulfill a set of  
purposes of government going beyond those specified by John Locke and  
even the Declaration of Independence.*

### ***Gaining Approval***

*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*

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<sup>21</sup> Herbert J. Storing, *What the Anti-Federalists Were For*. p. 12.

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 people who favored a stronger national government with a sufficient majority over those opposed.

In order even to have ratifying conventions organized within each state, the framers had to transmit the proposed Constitution first to the

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

**Ratification.** *The framers' plan for ratification was imminently successful. On September 28, 1787, eleven days after the Constitutional Convention completed its work, the Congress of the Confederation, condemned to oblivion, voted that the Constitution "be transmitted to the several state legislatures in order to be submitted to a convention of*

delegates chosen in each state by the people thereof."<sup>22</sup> 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.

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<sup>22</sup> *Formation of the Union*. Washington: GPO. p. 1007.

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, and Anti-Federalist writings were published there and elsewhere.<sup>23</sup> 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

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<sup>23</sup> See Herbert J. Storing, editor and commentator, with assistance of Murray Dry, *The Complete Anti-Federalist*. 7 volumes. Chicago: University of Chicago Press, 1981. Storing's analysis of Anti-Federalist thought in volume 1 was published separately as *What the Anti-Federalists Were For* (University of Chicago Press, 1981).

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.<sup>24</sup> In response George Washington and leading Federalists offered assurance that the First Congress under the new Constitution would address these concerns.<sup>25</sup>

Thus, as in ratifying the Articles of Confederation so also in ratifying the U.S. Constitution, bargaining and promise of future action entered into the consent process, another illustration of the time dimension in consent-giving. This time the bargainers went beyond a narrow group of

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<sup>24</sup> *Formation of the Union.* pp. 1009-1059.

<sup>25</sup> *The Constitution of the United States of America: Analysis and Interpretation.* Prepared by the Legislative Reference Service, Library of Congress. Washington: Government Printing Office, 1964. p. 840.

state legislators to elected members of ratifying conventions and a significant segment of the public whose articulated demands had to be dealt with.

### **A New Government Forms**

Ratification of the Constitution cleared the way for voters to elect the first 65 members House of Representatives. There were approximately \_\_\_\_\_ eligible voters in a population of nearly four million, and an estimated \_\_\_\_ participated in this first congressional election. The state legislatures chose the first 24 U.S. senators (Rhode Island was a late ratifier and therefore had no representation in Congress initially). For the first presidential election \_\_ of the 13 state legislatures themselves designated presidential electors, but in \_\_ states electors were chosen through popular election.<sup>26</sup> These electors unanimously selected George Washington as first president and John Adams as vice president.

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<sup>26</sup> [Note: R.R. Palmer says that "as early as 1788 almost half the states provided for popular

The First Congress under the U.S. Constitution met on March 4, 1789 and mustered a quorum on April 6. George Washington's inaugural as president occurred on April 20.

Keeping the promise of the ratification debate, the First Congress on September 25 agreed upon ten amendments to the Constitution to serve as a Bill of Rights. Within the next 27 months eleven states ratified these amendments to produce the three-fourths required by the Constitution (by then Vermont had joined the Union as the 14th state). The Bill of Rights went into effect on December 15, 1791.

The package of initial amendments also contained one dealing with population size of congressional districts and another requiring that no law changing congressional pay raises shall take effect until after the next election of representatives. Both failed to gain approval by three-fourths of the states at that time. However, in the 1980s state legislatures took

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election of presidential electors" (p. 231). Verify this from another source and find out precisely

up the one on congressional pay raises, legally still pending, and enough of them ratified it so that it went into effect on \_\_\_\_\_ as the \_\_\_\_\_ Amendment.

January 17, 1994

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how many states.]

*CONSENT OF THE GOVERNED*

*Reflections on the American Experience*

*A Book Proposed by*

*Howard W. Hallman*

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January 17, 1994

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**CONTENTS**

**Preface**

**Part One. Introduction**

1. *Thesis: Continuous, Interactive Consent*
2. *A Bit of History*

**Part Two. Consent Pathways and Participants**

3. *Pathways of Consent*
4. *Range of Participants*
5. *Elected Officials in a Federal System*
6. *Political Parties as Instruments of Consent*
7. *Interest Groups: Another Set of Instruments*
8. *Governing Coalitions*

**Part Three. Choosing Public Officials**

9. *Positioning to Run for Office and Reelection*
10. *Election Campaigns*
11. *Interest Groups and Campaign Finance*
12. *Election Mechanics: Help or Hindrance*
13. *Voting*
14. *Appointing Public Officials*
15. *Recall and Impeachment*
16. *Term Limits*

**Part Four. Influencing Public Policy**

17. *Legislative Decision-Making*
18. *Lobbying Legislators*
19. *Executive Decision-Making*
20. *Exemplary Approaches to Citizen Participation*
21. *Judicial and Regulatory Agencies*
22. *Town Meetings: Assembled and Electronic*
23. *Ballot Issues*

**Part Five. Public Opinion and Consent**

24. *Opinion Polling and Focus Groups*
25. *Communications Media*
26. *Social Movements and Protest*

*27. Campaigns to Influence Public Opinion*

***Part Six. Conclusions***

*28. Strengths and Weaknesses of the American System*

***Appendix. Historical Foundation***

*A. Representative Democracy in Colonial America*

*B. Consent in the New Nation*

*December 8, 1993*

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**SYNOPSIS**

**Preface**

*Global interest in "consent of the governed" from American Declaration of Independence....Concept a useful analytical tool for political science....Knowing how consent works in American democracy can be helpful for citizen activists....American experience can provide guidance for new democracies.*

**Part One. Introduction**

**1. Thesis: Continuous, Interactive Consent**

*Consent of the governed in contemporary United States is continuous and interactive....Manifested in election campaigns, voting, public involvement in enacting legislation and making executive policies.*

**2. A Bit of History**

*Consent: an idea old and new....Early American practices....Broadening American democracy.*

## **Part Two. Consent Pathways and Participants**

### **3. Pathways of Consent**

*Election pathways and gatekeepers: pre-announcement, primary campaign, general election campaign, post-election....Legislative pathways....Pathways of executive decisions: basic, illustration of neighborhood planning.... Relationships among participants.*

### **4. Range of Participants**

*All inhabitants....Adult citizens....Registered voters....Voters....Civic participants....Political party workers....Candidates for elective office....Elected officials.*

### **5. Elected Officials in a Federal System**

*Varieties of elected officials: local government, states and territories, national government....Federal system: Founders' perspective....Viewpoints of 19th century....Recent observations....Relation to consent process.*

### **6. Political Parties as Instruments of Consent**

*Origin of American political parties....Contemporary parties: pluralistic and decentralized....Their structure....Roles in consent process.*

### **7. Interest Groups: Another Set of Instruments**

*Interest groups in founding period....Variety of interest groups today.... How they contribute to the consent process.*

## **8. Governing Coalitions**

*Decision-makers go beyond formal structure....Concept of governing coalition....In local government, state, national....Influencing decisions from inside and from the outside.*

## **Part Three. Selecting Public Officials**

### **9. Positioning to Run for Office and Reelection**

*Positioning by newcomers....Incumbents seeking reelection: legislators, executive officials....Incumbents seeking another office....Selection committees....Relation to consent process.*

### **10. Election Campaigns**

*Course through election roadway....Getting by gatekeepers (party selection committees, convention delegates, primary election voters, general election voters)....How candidates campaign to gain majority support (or at least a plurality) of broadening numbers of gatekeepers.*

### **11. Interest Groups and Campaign Finance**

*Role of interest groups in electoral process....Campaign finance...  
Reforms: past, present, proposed*

### **12. Electoral Mechanics: Help or Hindrance**

*Registration....Types of elections (primary, general)....Voting methods...  
Counting and certifying....Challenges.*

### **13. Suffrage and Voting**

*Historic expansion of suffrage in United States....Who may vote today....Who votes, who doesn't....Why, why not....Ideas for achieving*

*broader participation.*

#### **14. Appointing Public Officials**

*Magnitude....Positioning and informal campaigning....Executive appointments....Advice and consent....Judicial appointments*

#### **15. Recall and Impeachment**

*Removal as "negative consent"....Directly through recall; experience with  
....Indirectly through impeachment; experience with.*

#### **16. Term Limits**

*Recent trends....Founders' views (1770s, Constitutional Convention)....  
Analysis of today's term limit movement....Judged to be  
anti-democratic because it restricts sovereignty of the people, the right  
to choose one's own representatives and reelect them.*

### **Part Four. Influencing Public Policy**

#### **17. Legislative Decision-Making**

*Variety of legislative bodies....Sequence of legislative  
enactment....Participants (legislators, staff, executive officials, interest  
groups, political parties, individual citizens): their roles and  
relationships.*

#### **18. Lobbying Legislators**

*At capitol, statehouse, courthouse, city hall: who and how....Grassroots  
lobbying: organizing and acting....Mobilization tactics.*

#### **19. Executive Decision-Making**

*Executive branch organization....Communication with citizens....Lobbying*

*executive officials....Structured citizen participation....Illustrated by budget-making....Planning processes....Program administration.*

## **20. Exemplary Approaches to Citizen Participation**

*Budget-making in three cities....Community involvement in local schools.... Natural resource planning....Other.*

## **21. Judicial and Regulatory Agencies**

*Public influence on judicial decisions....Public influence on regulatory decisions.*

## **22. Town Meetings: Assembled and Electronic**

*Experience with New England town meetings....Neighborhood assemblies.... Electronic town meetings.*

## **23. Ballot Issues**

*Adopting constitutions and charters....Bond issues....Other referenda ....Ballot initiatives.*

## **Part Five. Public Opinion and Consent**

### **24. Opinion Polling and Focus Groups**

*Origins....Use by candidates....Use by legislators, elected executive, governmental agencies....Evaluation.*

### **25. Communications Media**

*Print, radio, television....Affecting general opinion: editorials, news selection and slanting....Mobilizing opinion on specific issues (such as by talk-show hosts).*

## **26. Social Movements and Protest**

*How social movements affect public opinion and sometimes legislation and constitutional amendments....Illustrated by woman's suffrage movement.... Civil rights....Anti-Vietnam War....Abortion, pro and con.*

## **27. Campaigns to Influence Public Opinion**

*By executive branch (such as President Clinton's campaign for health care reform)....By interest groups (several cases).*

## **Part Six. Conclusions**

## **28. Strengths and Weaknesses of the American System**

*Summation of consent processes in American democracy....Strengths.... Weaknesses....Ideas for improvements.*

## *Appendix. Historical Foundation*

### *A. Representative Democracy in Colonial America*

*Concept of consent in 18th century (heritage from European political philosophers and initial American colonial thought)....Achieving consent in the American colonies: European settlement, colonial government, suffrage, congresses.*

### *B. Consent in the New Nation*

*Adopting state constitutions: process, product....Forming a national government: Articles of Confederation (adoption, provisions, appraisal)....U.S. Constitution: the Convention, anticipatory consent, ratification, first elections....Building on the foundation.*

*January 17, 1994*