

Comparing the States and Communities

A STEM Approach to Politics, Government and
Policy in the United States

10th Edition, Fall 2019

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PREFACE TO THE 10th EDITION

For many years, my students and my colleagues' students at Texas A&M University have helped us with their questions and helpful advice on how best to communicate our ideas. This edition is better because of their feedback, both positive and negative. We value and appreciate our students very much more than they know.

I am grateful to Norman R. Luttbeg, the author of editions 1-6, and my coauthor on editions 7-9, and to my colleagues P. See Lim and Dwight Roblyer for writing study questions and providing advice on this edition. I am grateful to Sandra Tucker for editing and to Carole Rodriguez for compiling and organizing this edition.

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Chapter 1

FIFTY STATES AND 90,000 LOCAL GOVERNMENTS

This is an unusual state and local government textbook in many ways. Authors normally tell you about the typical state and the typical local government. We think it is vitally important to emphasize also how these governments differ. Recognition and consideration of differences is fundamental to understanding American state and local governments. At almost every opportunity, American governments exercise the option to be different. The American “experiment” is about enormous freedom of choice limited by relatively few constraints.

If this were a more conventional textbook, we would prescribe changes to improve state and local governments in America. We would give plausible arguments for why these actions should be taken. To a greater or lesser extent, readers would have to trust that our statements are supported by appropriate interpretation of factual information. However, this textbook takes a different approach. We will be presenting numerous empirical analyses about patterns of behavior across states and communities.

The target audience for this 10th Edition is undergraduate students at Texas A&M University enrolled in a course required for a baccalaureate degree. It is subtitled “A STEM Approach to Politics, Government and Policy in The United States” for two reasons. First, the large majority of current students are in STEM disciplines. They are already familiar with the practice of using empirical information logically and consistently to answer questions and solve problems. STEM students are also knowledgeable about and skillful in using a variety of graphics and other data visualizations. This text targets and seeks to build on those skills.

Second, Political Science is a STEM discipline, one of the social sciences. Most professional Political Science research assesses ideas about the real

world using methods widely employed in Engineering, the Life Sciences, the traditional sciences Physics, Chemistry and Biology and Geosciences. As a student recently put it, “you are using *OUR* methods to study human social behavior.”

Not only STEM discipline students, essentially all in the contemporary cohort of traditional college and university students differ from those of past in that you are comfortable with a variety of graphics and visual presentations of information. As you will see, there are many maps, scatterplots, and other visual representations of data throughout this textbook. Rather than assert what is true, the approach will be to demonstrate empirical relationships.

Evaluating ideas with empirical research has little or nothing to do with most discussions of politics and government. In Chapter 2, social science will be distinguished from pseudo-science in detail. The point here is that most analyses of politics and government in the news media and among normal Americans is essentially stating beliefs and repeating simple slogans. They reject as ridiculous the central question that identifies scientific thought: “What conceivable evidence would make you reject your statement as an accurate characterization of the empirical world?” In Texas and the nation as a whole, a large proportion of the population rejects science, either selectively or entirely.

All Texas Aggies are familiar with, and might even believe, certain popular statements about American government that are out of date, incorrect or simply preposterous. One example is *the private sector is always more efficient and effective than government*. The fact that more than half of American private sector companies are out of business within five years of creation seems to call into question the inherent inferiority of government.

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Furthermore, state and local governments almost always contract with private companies to undertake public construction projects. The government role is limited to finance and oversight. Is this public-private model efficient or inefficient?

Another example is *government cannot create jobs; only the private sector can create jobs*. Those who espouse this view must think that county restaurant inspectors, municipal first responders, and public school teachers do not have jobs. Perhaps they do not always keep in mind that these neighbors and friends are employees of local governments.

Most Americans have the federal government in mind when they speak of “the government.” They rarely distinguish differences between federal and state and local. Yet, it is clearly a contradiction to maintain simultaneously 1) the federal government cannot create jobs and is always ineffective and 2) our military forces are the best in the world.

A goal of this text is to help readers understand the differences between facts and opinions. Much of what passes for conventional wisdom about government may be statements of belief or slogans rather than conclusions from rigorous analyses.

States are the fundamental units of government in American federalism. States created the federal government and states created, and continue to create and oversee, local governments. We will follow up on the familiar notion that states provide a “laboratory” by identifying patterns of differences between them. We will also inquire into the extent to which patterns of differences are related to each other. Identifying systematic patterns of interrelations can potentially help us not only understand how states are different but also gain insight into why they are different. However, as you will see, sometimes the patterns we expect do not exist. Other times, patterns exist but are difficult to interpret. Sometimes we will identify puzzles rather than explanations.

We live in an age of unprecedented access to information. Through professional associations, traditional and electronic news media, the Internet, and other sources, government officials can know which of their peers have dealt with challenges similar to the ones they are facing. They can also know about the variety of attempts to deal with these challenges and their relative successes and failures.

The same information is usually available to you. Furthermore, as a student, you have access to sophisticated computing hardware and software that enable you to collect and analyze data on your own. You can replicate what is presented in this book in two senses. You can collect identical data and subject them to the same analyses to see whether our results are correct. You can also collect and analyze data in the future to see whether what is true now is also true then.

You have been exposed to a lot of information about American politics provided by traditional and electronic news media and the Internet. You already recognize that these information sources have their own biases and pursue their own goals. Few, if any, seek to tell the truth, the whole truth and nothing but the truth, and we should not expect them to. One goal of this text is to guide readers to high quality information about state and local governments and demonstrate how the information might be used to create knowledge to help us meet important goals.

Perhaps the most striking result of considering information about state and local governments is an appreciation for how different the states are. These differences are usually substantial. For instance, your chances of being murdered in Louisiana are 9 times as great as they would be if you lived in Hawaii! The number of marriages performed per 1,000 residents in Nevada is 13 times the rate in Pennsylvania. Per capita state and local debt in Alaska is 4.5 times that of Idaho. The percent of people without health insurance is 3 times as great in Texas as in Minnesota. The percent of population 25 years old and over with a bachelor’s degree or higher is 2.5 times as great in Massachusetts as in West Virginia. The percent of births to unmarried women in New Mexico is more than twice the rate in Illinois. New Jersey spends more than twice as much per student attending public schools as Utah does. Per capita income is nearly twice as high in Connecticut as in Mississippi.

We think all Americans prefer lower rates of murder, government debt, and people without health insurance, both for the states where they live and for all the other states. We think they prefer higher rates of formal education and higher income. We think they care deeply about marriage, birth rates, and spending on public schools. Americans want government to play a positive role in

making life-enhancing improvements in these areas. It is state governments and local governments that create policies and activities that have the greatest impact on these and other aspects of our daily lives.

Clearly, some states are more successful than others in achieving quality of life goals. Frequently, the efforts of state governments are credited as making improvements, either directly or indirectly. Although government officials would rather not admit it, frequently their work does not lead to improvements. Sometimes efforts at first deemed successful are later judged unsuccessful and abandoned.

Having 50 states and approximately 90,000 counties, municipalities, school districts and special districts allows a comparison of them and their characteristics to see what works. In this text we choose most often to compare the combined activities of state and local governments within each state. This is because, while states undertake many activities in common, they are quite disparate in how they assign responsibilities to state level and the variety of local level governments. For example, in some states, spending on public elementary and secondary education is financed mainly by state funds. Other states fund education mainly by local funds. Only by considering combined state and local spending can we make appropriate comparisons.

Before pursuing state differences further, let's consider the larger context in which they operate.

State and Local Governments in American Federalism

American government is one of the most complex systems to be found in any nation. In a country such as Sweden, the central government, such as ours in Washington, D.C., decides policies. Regional governments, similar to our states and local governments, administer these policies. Most Americans think our system works essentially the same top-down way. This is incorrect.

Americans know more about the federal government than they know about state and local governments. High school civics and history classes focus most strongly on the development, powers and activities of the federal government. Every day, the media you and others use for information and entertainment highlight the federal government. The media that target nation-wide audiences do so to meet the presumed interests of the largest numbers

of readers, viewers and listeners. The media that target smaller audiences provide some information about state and local government activities. But they devote even more coverage to national and international events that emphasize the federal government and exclude state and local governments.

The cumulative effect inevitably gives the impression that America has a national government. The imbalance in coverage leads to the conclusion that the federal government is the most active and the most important. It is reasonable to deduce the federal government is nearly omnipotent in its ability to command state and local governments. Our system is not so simple.

The states created the federal government when they ratified the Constitution of 1787. That Constitution gave certain powers to the federal government in Washington, D.C., and reserved the others for the states. If the Congress passes a law, it is the "supreme" law of the land, overriding any state laws. However, states gave themselves what they expected would be sufficient power to control Congress. States appointed members of the Senate and set the rules for electing members of the House of Representatives. Through the Electoral College, states also made themselves the central actors in choosing the President and Vice President. The states intended to create an entity they could control, not vice versa.

The founders who wrote the Constitution of 1787 and the Bill of Rights Amendments ratified in 1791 did not foretell that the number of states would grow from 13 to 50. They did not predict that the United States would grow in size, population and wealth. They did not foresee industrialization, urbanization or agricultural transformation. They did not prophesy future urbanization, immigration, modern corporations or an international economy. They did not expect that women and slaves and descendants of slaves would ever have the rights granted by the Constitution to a subset of the population.

State leaders in 1787 knew nothing of the events that would later make both the states and the people want power of the federal government to grow. It is doubtful they contemplated the extent to which the U.S. Supreme Court would assume responsibility for deciding when the legislative and executive branches have overstepped the authority granted by

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the Constitution.

The federal government has become larger, more active, more important and more powerful than originally expected. Yet, states continue to hold fundamental powers. They continue to reassign unpopular political tasks from themselves to the federal government. Few recognize that states are the key governments in America.

American federalism is complex and evolving. From our perspective, it is not a top-down or bottom-up system. It is a state centric system. We invite you to suspend your belief that the federal and state governments are adversaries. Instead, we encourage you to view the federal government as an ever-changing majority—these days a supermajority—of states working together. The conflict is between the supermajorities and minorities of states. It is difficult to see this clearly because the states comprise different majority and minority groups across policy areas.

The states are not puppets controlled by the federal government. A more appropriate puppet analogy posits the federal government as a marionette with states pulling its strings in different directions. Yet, depending on the policy issue, sometimes the federal government takes the lead and sometimes states take the lead. In American federalism, no government is always the master.

Consideration of some high profile contemporary issues in American politics will serve to illustrate some of the complexities and dynamics of federalism.

Firearms

Ownership and possession of firearms is currently a hot issue at both the federal and state levels. The Second Amendment to the United States Constitution states “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” The Supreme Court ruled in 1833 that the Second Amendment limited only the federal government. The Second Amendment became binding on the states when the Fourteenth Amendment was passed in 1868.

State constitutions also establish limits on their governments’ ability to limit possession and use of firearms. For example, Article I Section 23 of the Texas State Constitution states “Every citizen shall have the right to keep and bear arms in the lawful

defense of himself or the State; but the Legislature shall have power by law to regulate the wearing of arms with a view to prevent crime.”

On June 26, 2008, in *District of Columbia v. Heller*, the United States Supreme Court issued an important opinion on the right to keep and bear arms. The Court ruled that the Second Amendment to the U.S. Constitution confers an individual right to possess firearms for traditionally lawful purposes such as self-defense.¹ In essence, the Court made the right to keep and bear arms independent of the need for a well-regulated militia.

The Court also specified that the right to keep and bear arms is subject to regulation, such as concealed weapons prohibitions, limits on the rights of felons and the mentally ill, laws forbidding the carrying of weapons in certain locations, laws imposing conditions on commercial sales, and prohibitions on the carrying of dangerous and unusual weapons. It stated that this was not an exhaustive list of the regulatory measures that would be presumptively permissible under the Second Amendment.

The Court seems to find a crucial distinction between infringing and regulating. Federal and state government are not allowed to infringe on the right of individuals to keep and bear arms. At the same time, these governments can regulate these rights. So-called “pro-gun” and “anti-gun” organizations chose to focus on different elements of the decision. Both declared victory.

There are ongoing disputes over four major legal issues: what firearms are permissible, where firearms are permissible, who is excluded from owning and bearing firearms and how change in ownership of permissible firearms can occur. Currently, policies are made primarily at the state level. Predictably, the states disagree and have different policies.

On July 20, 2012, 12 people were shot and killed at a movie theater in Aurora, Colorado by a single gunman carrying an assault rifle, a shotgun and a handgun. The shooter had legally purchased the weapons and ammunition used.

On December 14, 2012, 20 children and 6 adults were shot and killed at the Sandy Hook Elementary School in Newtown, Connecticut by a single gunman carrying an assault rifle and two handguns. The shooter’s mother legally owned the weapons and ammunition used. The shooter had shot and murdered her immediately before he went to the elementary school.

Spurred by these shooting massacres and by other highly publicized deadly shootings, Presi-

dent Barack Obama and others pressed the United States Congress to enact legislation intended to curb gun violence. One proposal was supported consistently by nearly 90 percent of respondents to multiple opinion surveys. It was to extend required background checks before firearms can be sold and to allow only licensed dealers to sell firearms. There were also proposals to ban future sales of rapid firing assault weapons and to limit the size of ammunition clips. All were rejected in the Senate, even though a majority of Senators were Democrats.

Both Chambers of Congress have been controlled by Republicans since 2010 and Republicans gained control of the presidency in January 2017. In President Trump's first year in office 5 people in Orange County, Florida, 3 in San Francisco, 59 in Las Vegas, 26 in Sutherland Springs, Texas, and 4 in Rancho Tehama Reserve, California dies in mass shootings. In the first six months of 2018 there were 23 school shootings—nearly one per week—where someone was hurt or killed, including 17 in Parkland, Florida and 10 in Santa Fe, Texas. Unmistakably, President Trump and the Republican-controlled Congress are not interested in taking any action. Under current law, federal funds cannot be used to study the impact of current firearms policies on public health. Even should Democrats gain control of one or both chambers in 2019, federal inaction on firearms policy will continue.

Given federal inaction, the states have become the leaders in setting firearms policies to enhance public safety. Some states that have been the sites of gun massacres, including Colorado, Connecticut and Florida, have enacted stronger regulations concerning background checks for firearms sales, limitations large capacity ammunition magazines, banning certain firearms, and so-called “red flag laws” intended to temporarily restrict individuals' access to firearms when they are a danger to themselves or to others. Other states have taken action to loosen their regulations on firearms by expanding access to own and carry firearms and expanding public venues where weapons may be carried to include more elementary and secondary schools, college campuses and churches. Clearly, attitudes and laws about firearms are extremely different across the states.

Texas has been a leader in expanding the right to own and carry firearms. In 2015, Texas joined 45 other states that allow “open carry” of handguns; some with and some without permit requirements. The Texas Legislature also passed

legislation in 2015 expanding the areas on public university campuses where those with licenses may carry concealed handguns. Private institutions of higher education were permitted to choose whether or not to allow concealed handguns on their campuses. With the exception of Amberton University, a small, nonprofit school based in Garland, all private colleges and universities chose to forbid firearms. Concealed handguns are allowed in many locations on the campuses of public universities. The Texas Attorney General has announced that public universities may forbid concealed handguns in some venues, such as stadiums. They may regulate concealed handguns in dormitories. They may not forbid concealed handguns in public university classrooms.

In reaction to the May 18, 2018 high school shooting that resulted in 10 dead and 10 more injured in Santa Fe, Texas state officials are considering taking actions. Governor Greg Abbott held three days of roundtable discussions in and issued a School and Firearm Safety Action Plan on May 30, 2018. The plan contains more than 36 proposals, some of which are scheduled to be studied by Texas Senate and House committees as they prepare for the 2019 regular legislative session. Most proposals require expenditures without identifying sources of immediately available funding. Governor Abbot's plan and plans advocated by many other statewide elected officials involve increasing the number of armed employees, including teachers, and armed volunteers in public schools.

States are the firearms policy leaders, but it is questionable whether it is possible for all to achieve their different goals. The prospects for enforcing strict regulations on who can own, what can be owned and how sales are handled are dim because states with stricter policies states are affected by the weaker policies of neighboring states.

Marriage equality

In June 2013, the United States Supreme Court overturned the section of the federal Defense of Marriage Act of 1966, which forbade the federal government from recognizing legal marriages of same sex couples. The Court ruled that the federal government must treat legal marriages between opposite sex and same sex couples equally. The federal government responded to the decision very quickly. In August 2013, the Department of the Treasury and the Internal Revenue System announced all marriages of legally married same

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sex couples would be recognized for federal tax purposes regardless of where they live. Similar decisions were quickly announced and implemented by other federal agencies, including the Office of Personnel Management, Department of Defense, Department of Health and Human Services and Department of Homeland Security.

In its decision of June 2013, the Supreme Court did not consider the section of DOMA that specified states could decide whether same sex couples could be legally married and could disregard the marriages of same sex couples conducted in states that permit them. The Supreme Court addressed those issues in June 2015, and held that the fourteenth amendment requires states both to license marriages between same sex couples and to recognize same sex marriages lawfully licensed and performed elsewhere. This issue is discussed in greater detail in Chapter 11.

Marijuana

Marijuana policies are similarly different across the states and the issue is further muddled by federal government actions. Eight states and the District of Columbia have adopted the laws legalizing marijuana for recreational use. Thirty states have laws legalizing marijuana in some form.²

According to the federal Office of National Drug Control Policy, “Marijuana is a Schedule I controlled substance under the Controlled Substances Act. As such: A. The drug has a high potential for abuse, B. The drug has no currently accepted medical use in treatment in the United States and C. There is a lack of accepted safety for use of the drug under medical supervision.”⁵ The policy statement goes on to say “Regardless of state laws to the contrary, there is no such thing as “medical” marijuana under Federal law.

The federal Food and Drug Administration has a different view. It has approved medical use of isolated components of marijuana. The Department of Justice has issued guidelines to its prosecutors indicating “it is not an efficient use of federal resources to focus enforcement efforts on individuals with serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law”⁶ These guidelines, nevertheless do not legalize marijuana and the enforcement of major illegal drug trafficking remains a core Department of Justice priority.

State policies and intentions concerning marijuana are as different as they can be. Most criminalize the drug, some permit medical use and two permit its sale with both state excise and sales taxes applied. Federal law criminalizes it, yet Department of Justice policy does not endorse prosecution of medical use of the drug—which it does not recognize. The Obama administration was not pursuing the policy originally intended by Congress and applied by previous administrations. There are indications that the Trump administration is considering overriding state decisions and taking control of marijuana policies by the federal government. There is an evolving conflict between the states, between federal and state governments and between branches of the federal government. To repeat, American federalism is not simple.

The Importance of State and Local Government Spending

Federal spending and state and local spending are inextricably linked. Earlier, we noted that state governments have successfully reassigned some of their most onerous tasks to the federal government. The most important reassignment concerns collecting revenue.

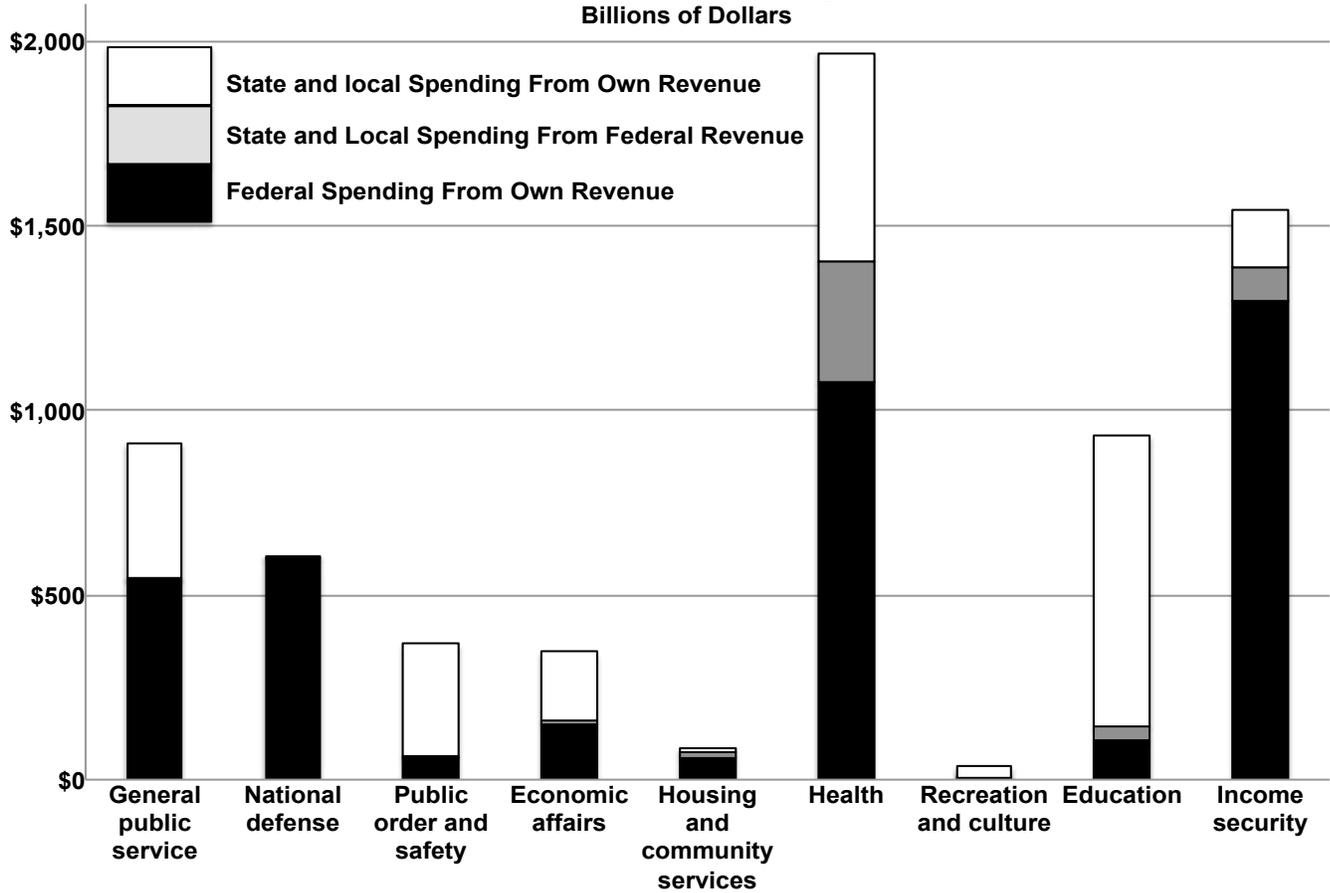
In 2014, the federal government spent an estimated \$4.4 trillion.⁷ In the same year, American state and local governments spent \$2.9 trillion. Through simple arithmetic, we could calculate total government spending as 7.3 trillion dollars, 60 percent federal and 40 percent state and local. The total would be correct, but the percentages are quite misleading.

The sixty-four split in spending is based on final spending by each. However, \$552 billion in federal funds were transferred to state and local governments as grants and subsidies. These transfers comprise 7 percent of total spending, and are counted twice.

If the split is calculated in terms of where funds were raised, the division is 65 percent federal and 35 percent state and local. If the split is calculated in terms of where funds were spent without double counting federal grants and subsidies, the division is 57 percent federal and 43 percent state and local.

We can now appreciate the important fiscal element of American federalism. Very few are aware of the implications of the flow of funds from federal to state and local governments. The upshot

Figure 1.1
Government Spending 2014



is that the states can portray themselves as “collecting” 35 percent but spending 43 percent. The federal government is portrayed as “collecting” 65 percent and spending only 57 percent. No wonder that most Americans view the federal government as extraordinarily wasteful and inefficient and view state and local governments as more prudent and efficient! This fiscal slight-of-hand is a prime example how the states make themselves look better by making the federal government look worse. The history of this budgetary misdirection is even more telling. From 1950 to 2002, federal grant funds given to state and local governments total \$2.1 trillion.⁸ Total federal deficit spending in the same years totals \$3.1 trillion.⁹ In an important sense, 47 percent of federal grants to state and local governments comprise 47 percent of the federal deficit in these years.

Figure 1.1 shows spending by categories for all governments in 2014. Each category is divided into three kinds of spending: federal spending from federal funds, state and local spending from federal

funds and state and local spending from state funds.

Health care is the most expensive governmental service in the United States, more than 29 percent of all spending. It is the fastest growing expenditure for three reasons. First is the rising cost of health care in general. Second is the increasing share of the population age 65 and older eligible for Medicare insurance. The third is the increasing number of indigent elderly and children and their caretakers who qualify for Medicaid health coverage resulting from the economic depression that began in 2007.

The next largest spending category is income security, 23 percent of the total. It includes Social Security, welfare, social services and unemployment. Social Security is another program affected by the aging of the American population.

The top two categories, health and income security, account for more than half of government spending. Both are entitlement programs, meaning that individuals who qualify are entitled to receive benefits if they claim them. Payroll taxes fund Social Security and partially fund Medicare. For

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those programs, recipients feel they are entitled to benefits because they have already paid for them. This meaning of entitlement also applies to Medicaid recipients who paid federal and state taxes in the past, but it does not apply to the largest Medicaid group, children.

The third most expensive governmental service, public primary, secondary and higher education, takes 14 percent of total government spending. State and local governments pay the most for education. They pay 88 percent; 84 percent from their own sources and 4 percent from federal grants. Education is an entitlement program in the sense that services must be provided to eligible children who enroll in public schools. It is not an entitlement program in the sense that children have paid in advance.

The fourth most expensive program, 13 percent of total spending, has the misleading label general public service. A small part of the category is spending on what the label suggests: costs of executive and legislative branches, tax collection and financial management. However, the largest expenditures are for interest payments on debt.

Including both direct payments and grants to state and local governments, the federal government pays 60 percent of general public service expenses. Almost all state governments have constitutional limitations requiring annual operating budgets to be balanced by annual revenues and accumulated surpluses. Local government borrowing is constrained by state laws. In contrast, the federal constitution does not limit borrowing. Over the last several decades, current revenues from taxes and fees have financed a decreasing share of federal spending. Federal borrowing has financed an increasing share.

National defense, funded entirely by the federal government, is 9 percent of total spending. One hundredth of one percent of defense spending is federal grants to state and local governments. These payments typically provide partial payment for local government expenses incurred by military reservation personnel stationed in the area. The federal lands are not subject to local government property taxes, and the grants are limited compensation for the tax revenue that otherwise would have been collected.

The five most expensive categories account for 88 percent of total governmental spending. The economic affairs category includes transportation,

general economic and labor affairs and natural resources. Costs are shared almost equally by federal and state and local governments. Public order and safety—police, fire, courts and prisons—are paid mainly through state and local funds. The federal government pays 90 percent of funding for housing and community services. State and local governments pay 83 percent of recreation and culture costs from their own funds.

What would happen if American state and local governments vanished overnight? Unless and until the federal government took over paying for all existing government programs, we would have Medicare, Social Security, and payments on debt and national defense. We would have funding for most of Medicaid but no one to administer the program. We would have greatly reduced welfare and economic affairs programs. We would essentially have no education, no police, no fire protection, no sewage, and no highway maintenance or construction.

The point is many of the government services affecting us are *not* the result of efforts by our elected officials in Washington, D.C. Rather, state and local officials chiefly decide the laws, set the taxes to cover these services, and decide how extensive these services will be.

State Differences

Now, we return to considering how the states are different and to what extent. Throughout the text, we present empirical information on states. For most government programs, we use data on the combined policy efforts of state and local governments in each state because the division of labor is so different across the states. Our facts come from sources we regard as high quality: state and local governments themselves, the federal government, independent nonprofit organizations and academic studies.

The numbers we use are reliable; different individuals or organizations that collect the same information independent of each other do or would report the same values. However, you should be aware that measurement error is an issue in even the highest quality information on the states. Our data are good, but they are not perfect.

Imperfections result from simple human error in counting, transcribing, sending and receiving.

Modern information technologies have made certain random errors less likely. For example, copying and pasting does not add random inaccuracies. On the other hand, incorrect copying and pasting does introduce misinformation. Fortunately, those slipups are systematic and are much easier to identify and correct than are random mistakes.

There are inevitable failures in the challenging task of reorganizing disparate information from tens of thousands of governments into meaningful new categories. The decennial census is very accurate, but it is not perfect. Measurement error in random sample surveys is a function of sample size. However, a large sample national survey does not necessarily have large numbers from each state. For example, the United States Census Bureau's 2014 American Community Survey had information from 165,116 individuals. Hawaii had the fewest, 832; California had the most, 15,589¹⁰

Some things one would think are easy to count accurately sometimes are not. The number of Republicans and Democrats in a state legislative chamber is an example. We could use the list of winners from the most recent elections, but that might not catch changes due to successfully contested election outcomes or election winners changing party affiliations. We could use the list of members at the beginning of the legislative session. Because there are more than 7,000 state legislators, it is a certainty that some members will resign, become too ill to serve or die every year.

You might think the dollar measures of budgets contain precise descriptions of how money will be spent, but they do not. Your college or university has a budget for this year, but it is more a general plan than a document of binding decisions. For example, an instructor scheduled to teach summer school may receive a research grant or cancel because of a family illness.

The summer courses may be withdrawn or be taught by other faculty who are paid more or less than the original instructor. All government budgets are modified between appropriation and execution.

Even determining dollars of past expenditures is problematic. The fiscal year for the state of Texas begins September 1 and ends August 31 in the following calendar year. Fiscal years are named for the calendar years in which they end. There are estimates of spending during the year and shortly

after August 31, but final audits of all state accounts will not be published until more than a year later. As a result, spending data are always estimates subject to revision. But even auditors face insurmountable problems in the quest for perfectly accurate accounts. One is the reality that the accounting systems of different government agencies disagree on fundamentals such as when funds are recorded as received and disbursed.

Some data simply do not exist or have not yet been collected or are too expensive to gather. Sometimes high quality data is available, but only once every five years or ten years or only once so far. Suffice it to say even the best information on state and local governments should be critically evaluated before use. The data presented in this text have what we regard as acceptable measurement error.

We can use empirical records to measure differences across the states in simple numbers. We can show how much the states differ on a variety of measures. But you must decide for yourself whether the differences are large or small, important or unimportant. Recognize that there can be legitimate disparities in interpretations of important and unimportant between you and your classmates, you and students at rival schools, you and your parents, and so forth. We invite you to consider also your own assessments of what differences are important that might well change over time.

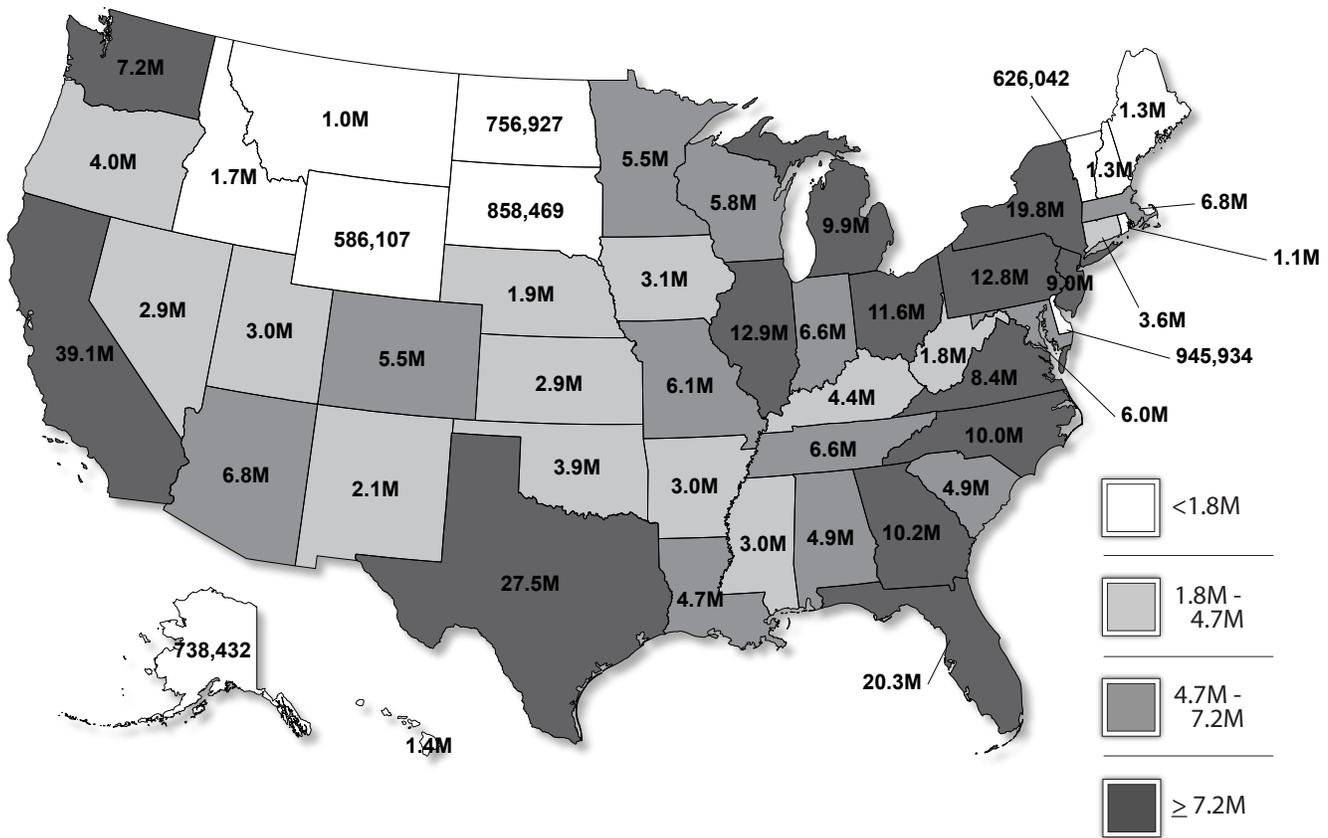
Identifying the best state

Consider the premise that we can use information about the states to determine which are more and less desirable places to live. If you were tasked to identify the best state to live in, what information would be germane to your assessment?

For some, there is no need to use comprehensive information systematically to compare the states. Some already know which is the best state. More than 90 percent of our students at Texas A&M University are convinced that Texas is by far the best state, both at the beginning and at the end of their academic courses on state and local government. Texas is so superior that they cannot imagine a future decision to move elsewhere voluntarily.

Identifying the best state can be viewed as a strictly emotional decision, or a decision where

Figure 1.2
Population of the United States 2015



emotion takes precedence over logic. The statement “my state is the best state” may be a way of saying “I like where I live.” Most college students do not require a complex spreadsheet analysis to decide with whom they want to eat lunch or sit with at a sporting event. Some readers may not need to assess information further to know which is the best state.

Those who already know which is the best state might be willing to compare comprehensive information on the most superior and the inferior states. We might convince them to “reverse engineer” their conclusion so we can understand how and why they identified the best state. Comparing states might be a means for them to convince the rest of us that they have correctly recognized the best state.

Empirical Measures of Differences

Throughout this text we will be presenting many

comparisons and analyses of state differences. In this section, we will compare the states on only a few measures. Our goals here are limited to considering whether state differences are large or small and important or unimportant.

Size and Population. The 50 states differ greatly both in size and population. Information on both dimensions is provided in Figure 1.2.¹¹ Alaska, the largest state, encompasses 425 times the area of Rhode Island, the smallest state. Providing services in some states can be very expensive. For example, states such as Wyoming and Alaska have small populations dispersed across a large geographic area. Many miles of expensive highways will be needed, but small publics will pay for them.

Services such as unemployment compensation will require many expensive offices in geographically large states and each will serve few clients. Large but populous states, such as California, New York, or Texas, will need more highways and offices, but each has the population base to distrib-

ute the cost broadly. State populations range from a low of 586,000 in Wyoming to more than 39 million in California. The difference between the two is more than the combined populations of the 21 states with the smallest populations.

Paying for a \$100 million highway program has little individual impact on 39 million Californians, but it would impose financial burdens on 626,000 Vermonters. We expect unanimous agreement that the population differences in the states are large and important.

Six states have fewer than 1 million people: Wyoming, Vermont, Alaska, North Dakota, South Dakota, and Delaware. Upper New England, the Great Plains, and the Western mountain states, as is evident on the map in Figure 1.2, have fewer people. We might expect a lifestyle difference between such states and California, Texas, or New York, as people can have more personal space and experience less impact on their environment. A New Yorker and a Montanan may react differently to living near many people. Having many people around may be desirable for the New Yorker but not for the Montanan. On this measure, they may

differ on what is “best.”

More populous and more diverse states assure the full range of occupations that result from more complex or well-developed economies. The less populous states lack such economies, as they are not industrialized. An agricultural or ranching state needs few high-paying professional jobs. People who always have lived in large cities are likely to feel less comfortable apart from the masses of people to which they have grown accustomed. Perhaps a measure of these ideas is the percentage of a state’s population that lives in metropolitan areas.

Percentage Metropolitan. Each metropolitan area contains either a city with a minimum population of 50,000 or as defined by the Office of Management and Budget urbanized area and a total metropolitan population of at least 100,000 (75,000 in New England). By this definition, the population of the United States in 2015 was 85 percent metropolitan.

According to the Census Bureau, two states had 100 percent metropolitan populations: New Jersey and Rhode Island (Figure 1.3). Wyoming was the least metropolitan, with only 31 percent

Figure 1.3
Metropolitan Population 2014

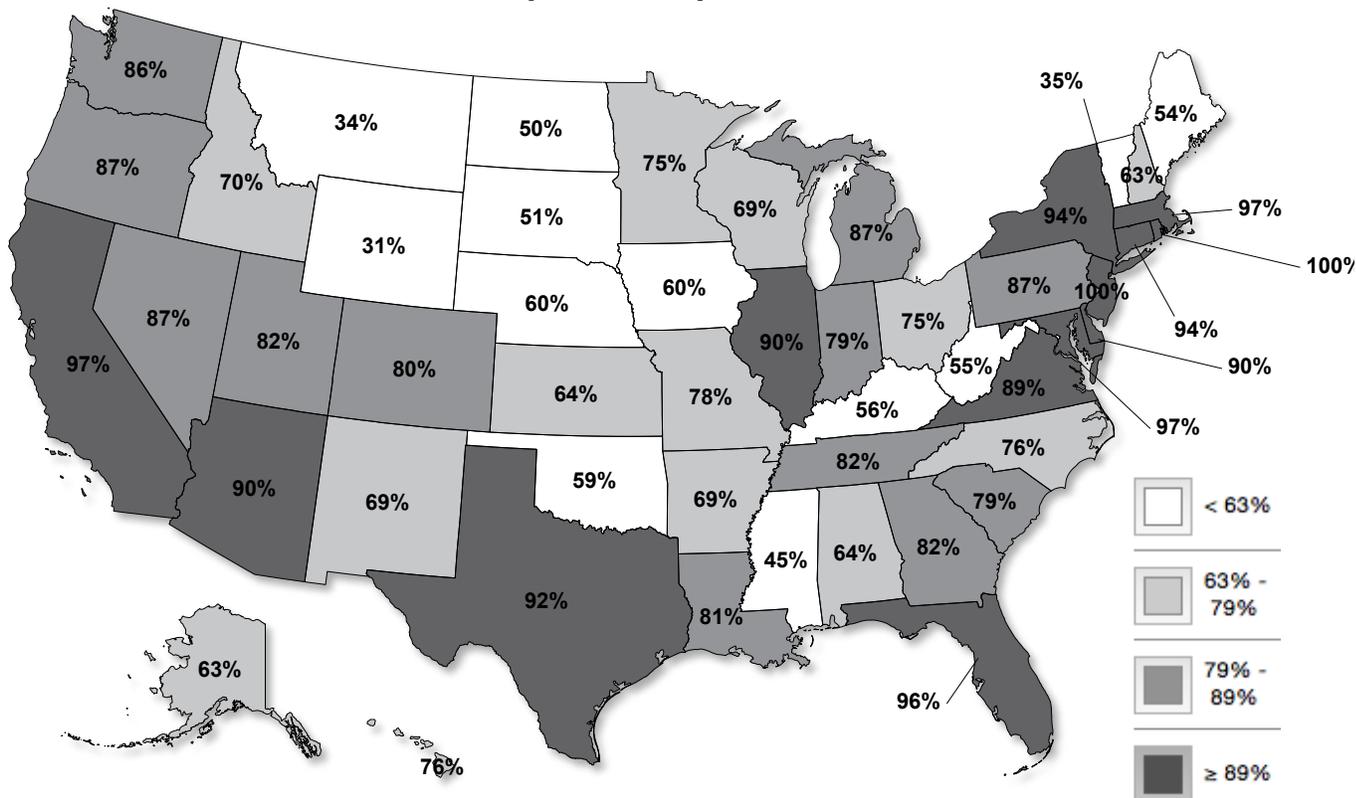
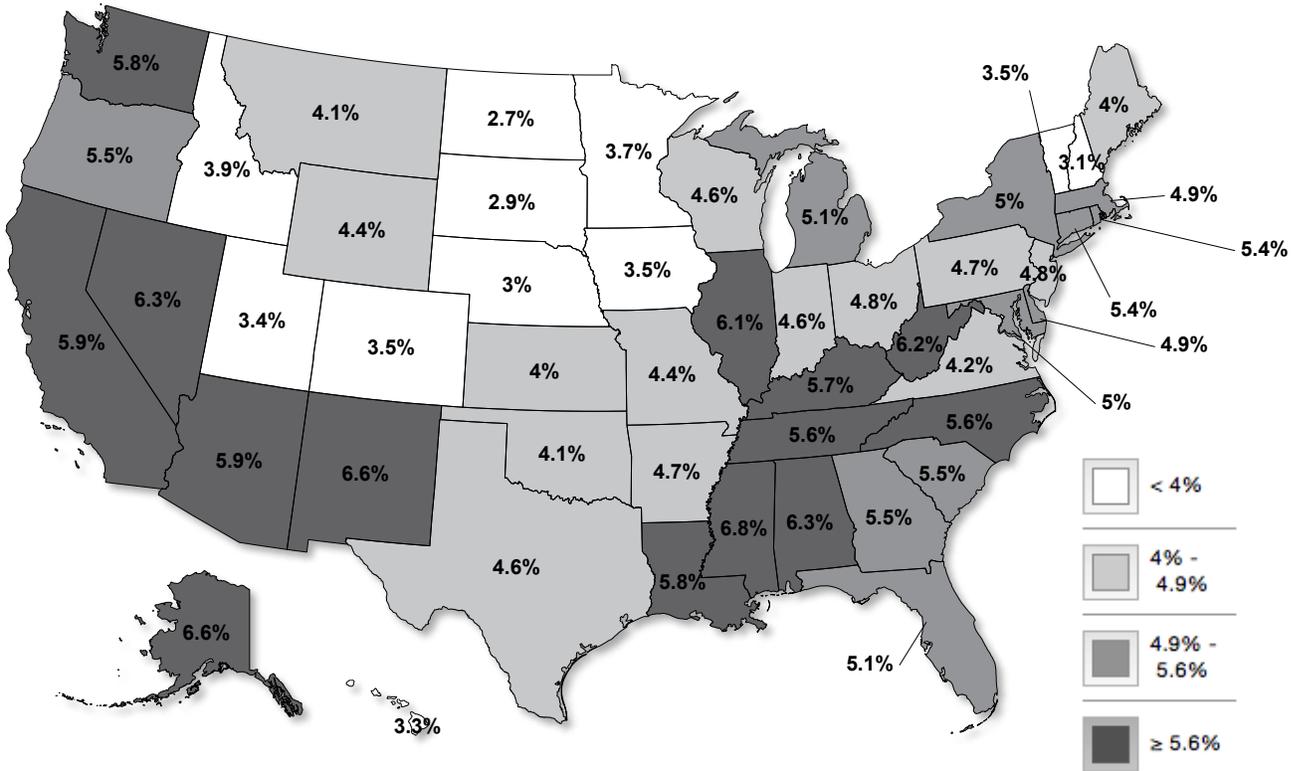


Figure 1.5
Unemployment Rate December 2014



means also that a 1 percent income tax in Connecticut would yield nearly twice as much as from each individual in Mississippi.

Figure 1.4 shows a pattern of wealth. There is a broad band of poor states across the South and Southwest and up through the Great Plains and Mountain West. The Northeastern states and Wyoming have the wealthiest citizens. No doubt many people hold excellent paying jobs even in the poorer states, but you can expect, given these data, that most such jobs will be in the darker shaded states. In the next chapter, we will begin to explore why wealth is not equally distributed across the states and what impact this wealth has on services provided by state government.

Unemployment. For many or even most people, job opportunities alone define their “best” state. “Best” in this context might, therefore, be defined as the state with the lowest unemployment. We may find unfilled jobs even in states with low unemployment, but that does not mean those states are “best” in terms of employment. Figure 1.5 identifies unemployment rates for each state in December 2014.

North Dakota had the lowest unemployment rate, 2.7 percent. South Dakota’s rate was 2.9 percent and 9 other states had rates below 4 percent. Mississippi had the highest unemployment rate, 6.8 percent, followed by New Mexico and Alaska, both at 6.6 percent. Do you think the difference between 2.7 percent and 6.8 percent unemployed is large? Do you think it is important? Would it matter if you were seeking employment?

The map in Figure 1.5 shows the four groupings of states on unemployment. Clearly, there is a very low unemployment cluster in the Great Plains states. Note also that, with some exceptions, more populous and metropolitan states have higher unemployment. Should state elected officials be held accountable for high unemployment in more metropolitan states? Since all metropolitan states suffer with unemployment, is it even possible for officials there do anything?

Murder. The “best” state is that with the lowest murder rate. In 2014, New Hampshire, with only 0.9 murders per 100,000, was most murder free. Louisiana, with 10.3 murders per 100,000, clearly was the worst. You would have 10 times the

chances of being murdered in Louisiana as in New Hampshire. Is the difference of 10 more murders per 100,000 people large? Is it important? Now that you know about the higher murder rate, are you less likely to vacation in Louisiana? Would you prefer to reside in New Hampshire or Louisiana?

Figure 1.6 shows that the nine adjacent states, Missouri and 8 of 11 former Confederate states, have very high murder rates. Murder rates might be entirely different than rates for other crimes. But you still might choose to live where murders are uncommon.

Comprehensive Evaluations. Many have created indexes combining what they think is appropriate information to rank the states from best to worst. There are many rankings of states as being friendly to business or to new businesses. Chiefexecutive.net listed Texas as the 2015 Best state for business. USA today rated Texas as 6th best for business in 2015. CNBC listed Texas as the second best state for business in 2015 and Forbes listed Texas sixth best for 2014¹²

Texas has actively sought recognition as a state that offers a favorable environment for businesses, both existing and new companies. Texas actively entices businesses in other states to expand or relocate to Texas. A variety of incentives, including startup cash, land, temporary or permanent tax exemptions have been offered by the State of Texas and its local governments. More than half its state budget is labeled as supporting economic development, including incentive programs, education at all levels, transportation and other capital infrastructure. The philosophy of current Texas leaders is that a good business environment will ultimately result in better opportunities for state residents.

Other indexes have focused on assessing quality of life for people in each state. Gallup calculates an annual Index of Population Well-Being. Gallup combines survey and other information on Life Evaluation, Physical Health, Emotional Health, Healthy Behavior, Work Environment and Basic Access to health care. The 2014 values are mapped in Figure 1.7.¹³

Hawaii and Alaska have the highest state pop-

Figure 1.6
Murders Per 100,000 Population 2014

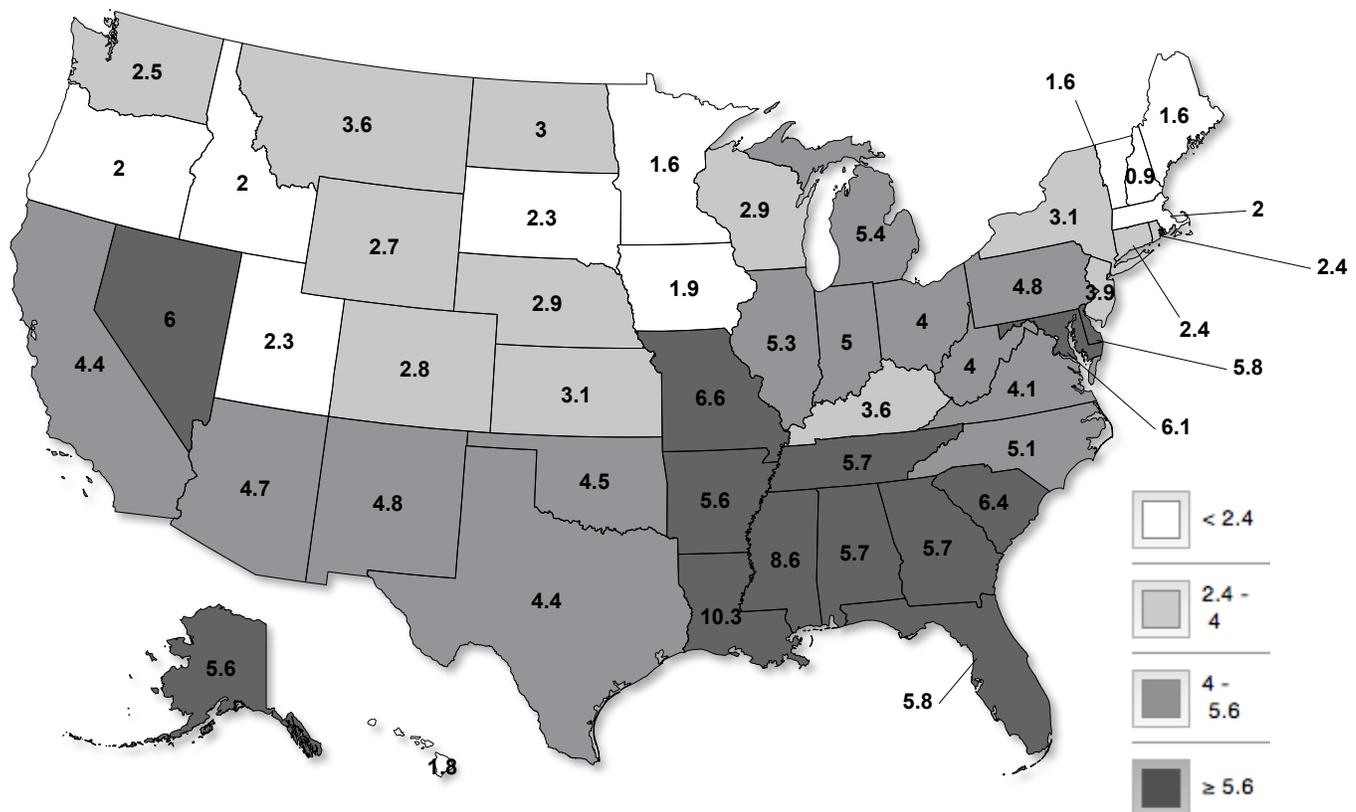
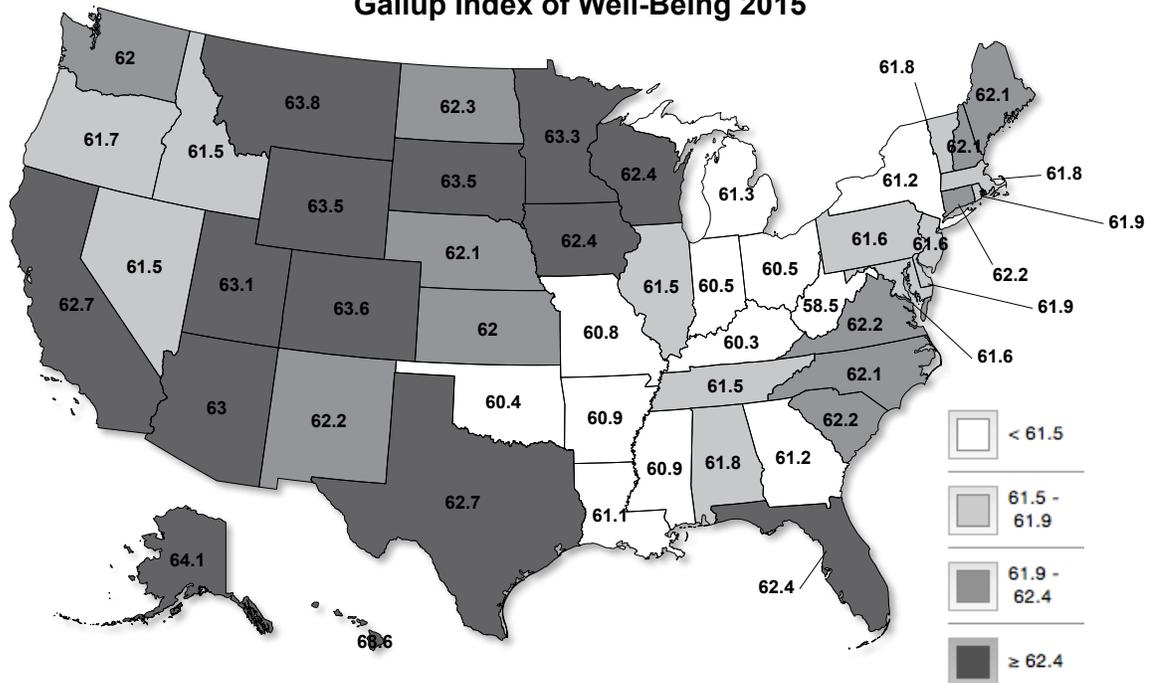


Figure 1.7
Gallup Index of Well-Being 2015



ulation Well-Being. West Virginia and Kentucky have the lowest Well-Being. A combination of former Confederate states and rustbelt states stand out as having lower Well-Being. Texas is ranked 10th in Well-Being.

CNN has combined information to identify the best and worst states to live in. For 2015, Hawaii, Vermont and Minnesota were the three best. Tennessee, Oklahoma and Michigan were the three worst.¹⁴ It would seem best for business and best for living are distinct evaluations.

Do you find these rankings convincing? What are the rankings for your state? If you do not already live in one of them, are you motivated to move to one of the top states as soon as you can? If you live in one of the five bottom states, do you now intend to relocate? If you do consider relocating, do you want best for business, best for living, or a combination? Would you make the same choice when you are starting your career, at midcareer and near or after retirement?

Asking which state is “best” prompts us to consider what we value. Do any of the combined evaluations of the states completely measure what you think is important? We hope you recognize that the summary information presented above does not give sufficient detail for you to know the extent to which the data measure any or all of the

things essential to you.

The states differ greatly on combined quality indexes. Even were Americans to agree totally on what measures should be used in identifying this “best” state—best for people, or for families, or for new businesses, established businesses, small businesses, large corporations--we would argue that *no single state would be ranked best by all measures or combined indexes*. But agreement on appropriate measurement seems improbable— even between you and your classmates. The popularity of ratings produced by the media suggests people want to read such rankings, if not to act on them.

Comparing States and Communities

We hope you have an understanding and appreciation for state differences. These differences are not, however, merely random. If we can establish which states are more successful than others, we then explore why they are more successful. We can look for patterns of relationships between success and other state measures. Knowledge of such patterns might help us identify actions that states and their residents could take to be more successful in achieving their goals. Politicians and commentators profess to know already the best way to achieve goals. But they do not have to link their

16 • Chapter 1

views to factual information. They are not obligated to offer evidence based on systematic analysis of appropriate comprehensive information. That is a job for academics, not for those active in political discourse. If practitioners' ideas about factors related to success and failure are even partially correct, we should find certain empirical relationships.

The states offer a unique opportunity to compare different attempts to achieve the same goals. The laboratory analogy is useful but limited. Unlike biology and chemistry laboratories, the states do not afford the opportunity to tests with experimental control over treatment and control groups. We cannot make the states similar in every way except, for example, the resources they devote to primary, secondary and higher education.

We can only compare the states as they are. While the differences we observe may seem important to us, they may not be large enough to have an impact. For example, what if elementary school classes with 10 or fewer students per teacher resulted in maximum academic achievement? If class sizes across the states range from 20 to 35 students per teacher, we would find little or no relationship between student-teacher ratios and academic success. We might conclude incorrectly that smaller classes cannot improve achievement because we have no examples of classes below the crucial threshold.

States share some general goals, but details may pose challenges for identifying successful policies. As a thought experiment, assume there is a strong relationship between state residents' academic attainment levels and state poverty rates. All states have low poverty as a goal but they might differ about what level of poverty qualifies as acceptably low. We could easily miss the policies that would result in minimum poverty if some states make no attempt to achieve the minimum.

As a final example, assume that greater resources devoted to primary, secondary and higher education per student results in a larger proportion of those students completing baccalaureate degrees. Imagine all states compete for college-educated residents but pursue different strategies. Some states devote great resources to educating their own children. Other states make meager investments in their own children but pursue expensive programs to import college graduates from other states and countries. If the importers

of college graduates can also succeed in exporting their own uneducated residents to other states, there may be little apparent relationship between resources devoted to education and residents with high educational attainment.

Unless we recognize that students educated in some states become residents of other states, we will misinterpret empirical analysis. To conclude the thought experiment, we ask you to ponder whether all states can have highly educated residents if none educate their own and all seek to import them from elsewhere.

Comparing the states with comprehensive data has the potential to identify more and less successful policies, but there are challenges and impediments to success. Those already convinced that a policy is successful and those who favor a policy whether or not it is successful have an easier mission. They can use whatever "evidence" that seems to support their preferences. They can juxtapose isolated information out of context in an attempt to convince others the action they advocate will produce certain results.

Social science analysis competes with junk science. Junk science often succeeds because it seeks to document answers while social science seeks to pursue questions. A goal of this text is to make you more knowledgeable and more skeptical consumers of empirical data analyses, including those we present.

The Plan of This Textbook

In Chapters 2 and 3, we will consider multiple differences among the states and the patterns of these differences. We will consider differences in wealth, politics, and political institution, as well as the fact that many differences among the states are interrelated. This will both inform and complicate our efforts to assess whether policies work.

This discussion will be followed by a consideration of the historical development of government in our society in Chapter 4. The focus will be on changing views on the purpose of government and how it should be run. Chapter 5 will consider one of the foremost concerns of government—the costs of providing services and the sources of revenues required to provide them. There are different ways in which taxes for governmental services can be gathered.

Chapters 6 and 7 will address a fundamental concern of political science, the state of democracy in the 50 states, including the role of the governed and those who govern. Topics include voting, political parties, interest groups, and what is proper government.

Chapters 8 through 11 will consider the basic formats of our subnational governments, from municipal or city governments, school governments, special district governments, and county governments to the governments of the 50 states. Fundamental to our concern will be the process by which policies are enacted into law and variations in the form of government that are thought to affect those policy decisions.

Finally, Chapters 12, and 13 will consider in more detail what seems to matter in terms of producing better state policies. It is hoped that we will learn what we need to develop better empirical analyses and better policies.

Summary

1. American federalism is dynamic and the relationships between states and the federal government have changed over time. Most observers think the federal government controls the states. A more sophisticated, state-centric view is superior.
2. The federal government and the states may not infringe, but they can regulate the right to keep and bear arms. States have confirmed they vary in their reactions to recent deadly shootings. Some have increased regulations but most have decreased regulations.
3. Marriage rights and marijuana restrictions are examples of changing policies. It seems that the federal government and some states are pursuing different goals.
4. State and local governments spend close to half of all government revenues in the United States and pass most of the laws that affect our day to day lives.
3. Federal grants to states create the impression that states are better stewards of government revenue than the federal government.
4. Funds for national defense, social security and Medicare are entirely federal. Funding of education, public order and safety and recreation and culture are almost entirely by states. Spending for health care in general, economic affairs and general public services are divided between the two levels.
5. Acquiring high quality data on state and local governments is frequently more challenging than one might expect.
6. States vary in many ways, including 1) physical and demographic differences; 2) wealth differences and 3) differences in social problems faced.
7. While on any measure some states are “better,” probably no state or states are consistently “best.”
8. Identifying patterns of state differences may help us create knowledge to identify policies to achieve goals more effectively.
9. We cannot assign states to treatment and control groups and conduct true experiments. Systematic analysis of comprehensive state and local information is challenging. Success in identifying ways to achieve goals is not guaranteed.

Information Sources

Figure 1.1	U.S. Department of Commerce Bureau of Economic Analysis, 2015 National Income and Produce Accounts Tables, Table 3.16 Government Current Expenditures by Function and Table 3.17 Selected Government Current and Capital Expenditures by Function, http://www.bea.gov
Figure 1.2	http://www.infoplease.com/us/states/population-by-rank.html
Figure 1.3	Population Distribution by Metropolitan Status, Kaiser Family Foundation State Health Facts, http://kff.org/other/state-indicator/metropolitan-distribution/#
Figure 1.4	BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70
Figure 1.5	Bureau of Labor Statistics, Unemployment Rates for States, www.bls.gov/web/laus/laumstrk.htm
Figure 1.6	Federal Bureau of Investigation, Uniform Crime report for 2014, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-4
Figure 1.7	Gallup State of the States, Overall Well-Being 2015, http://www.gallup.com/poll/125066/State-States.aspx?ref=interactive

Study Guide, Chapter 1

Essay Questions

1. Explain the broad concept of federalism and how it differs from other ways of organizing government. What are the primary roles in making policy for American federal, state and local governments?
2. Describe how federalism affects the relationship between state governments and local governments. Does this differ from the relationship between the federal government and state governments? Why or why not?
3. How is the American form of federalism more complicated in practice than in theory? Describe two examples of complexity and the roles played by each level of government.
4. In general terms, how do states act as “laboratories” for “experimenting” with different policies? Give examples. To what extent can the laboratory analogy be applied to the study of state politics?
5. What would be the impact on
 - A. state and local governments if the federal government stopped transferring federal funds to them? Provide two examples and explain.
 - B. citizens if state and local governments vanished? Why? Provide two examples and explain.
6. You and your friend are having a friendly discussion about which state is the “best.” What concepts (such as wealth, health, opportunity) are most important to you and how would you measure each? Discuss two measures from Chapter 1 and how well they depict your concepts?
7. How would you support the argument that state and local governments’ laws and policies affect American citizens day-to-day more than federal laws and policies?

Multiple Choice Questions

1. Who creates local governments?
 - a. federal government
 - b. state government
 - c. voters in the states
 - d. voters in the communities
2. Which level of government has the most impact on public policies affecting elementary and secondary education, higher education, marriage, and speed limits?
 - a. federal government
 - b. state government
 - c. local government
3. Which level of government is responsible for national defense?
 - a. federal government
 - b. state government
 - c. shared between federal and state levels, but federal level has primary responsibility
 - d. shared between federal and state levels, but state level has primary responsibility
4. Which policy area is financed mainly by the federal government?
 - a. elementary and secondary education
 - b. police and corrections
 - c. fire protection
 - d. welfare and social services

Notes

- 1 <http://loc.gov/law/help/second-amendment.php> Law Library of Congress.
- 2 <http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html>
- 3 <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- 4 <http://www.whitehouse.gov/ondcp/federal-laws-pertaining-to-marijuana>
- 5 <http://www.whitehouse.gov/ondcp/federal-laws-pertaining-to-marijuana>
- 6 Bureau of Economic Analysis 2014 National Income and Product Accounts Tables 3.16 and 3.17, www.bea.gov.
- 7 Fiscal Year 2016 Historical Tables, Budget of the U. S. Government, <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist.pdf>, Bureau of Economic Analysis Historical Tables, Table 12.1 Summary Comparison of Total Outlays for Grants to State and Local Governments: 1940-2018, www.bea.gov.
- 8 Bureau of Economic Analysis Historical Tables, Table 1.1 Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2018, www.bea.gov. 1950 to 2002 can be viewed as more “normal” years for grants and deficits. Starting in 2002, the deficit increases to unprecedented levels because of military action in the Middle East, new drug benefits for Medicare recipients, tax cuts, and a worldwide economic depression.
- 9 <http://www.census.gov/acs/www/methodology/sample-size-and-data-quality-/sample-size>
- 10 Alaska and Hawaii are on a different scale than the other 48 states. Alaska is too small and Hawaii is too large.
- 11 <http://chiefexecutive.net/best-worst-states-business>; <http://www.usatoday.com/story/money/business/2015/03/01/247-wall-st-best-states-business-story/24107507/>; <http://www.cnbc.com/2014/06/24/americas-top-states-for-business.html>; <http://www.forbes.com/best-states-for-business/>
- 12 <http://www.gallup.com/poll/wellbeing.aspx>
- 13 <http://chiefexecutive.net/texas-is-the-best-state-for-business-2013> <http://www.cnbc.com/2015/06/24/americas-top-states-to-live-in-2015.html> ; <http://www.cnbc.com/2015/06/24/americas-10-worst-states-to-live-in-2015.html>;

Chapter 2

STATE DIFFERENCES AND RELATIONSHIPS

We presented evidence in Chapter 1 that the states are different and that differences are usually substantial. In this chapter, we will continue to assess differences among the states but also begin to explore how these differences are interrelated.

In Chapter 1, we noted the states created the federal government when they ratified the Constitution of 1787. The states themselves came into being on July 4, 1776, through the Declaration of Independence statement “these United Colonies are, and of right ought to be, free and independent states.” The Declaration also specified independence was necessary to establish a government based on the consent of the governed in order to secure rights such as life, liberty and the pursuit of happiness.

Our views of “consent of the governed” and “life liberty and the pursuit of happiness” have changed over time, but they remain the *Raison d’être*, the reason for being, of the states. The states hold these fundamental goals in common today. We use government as an important—but not the only—actor working to achieve these goals. Other important actors include individuals, families, voluntary organizations and businesses.

Progress toward some goals the American states pursue can be assessed quite accurately. We can use high school and college completion rates to assess the educational attainment of residents. The ultimate objective is not necessarily all residents holding baccalaureate degrees, but more is preferable to fewer. Similarly, we want higher incomes, lower poverty, healthier populations, better roads and bridges, greater public safety.

As we saw in Chapter 1, states can be identified as being more or less successful than others in meeting these goals. Using the laboratory analogy, states attempt to deal with common social problems

by pursuing different policies with different resources. We cannot conduct experiments and assign states to treatment and control groups, but we do have the opportunity to study states using the comparative method. Effective comparative analyses have the potential to create knowledge to identify necessary resources and effective policies to help states achieve the goals they share.

Studying Relationships

Attributes and characteristics that take on different values across the states, such as population, income and formal education are called variables. If there were any descriptors that had identical values for all states, they would be called constants. We are interested in patterns, or relationships, between state variables. There can be no meaningful relationship between one element that is identical and another that is variable for the states. Quite simply, something that is the same for all states cannot be the cause of something that is different for all states, and *vice versa*.

There are two important elements of patterns of differences—relationships—between variables that we want to identify: direction and strength. There are two possible directions: positive and negative. Consider a relationship between state features X and Y. A positive relationship exists when states with higher values on X have higher values on Y and states with lower values on X have lower values on Y. A negative relationship exists when the opposite occurs: states with higher values on X have lower values on Y and states with lower values on X have higher values on Y.

Direction is the first element of interest. Political scientists and other social scientists articulate

ideas about empirical relationships, how things associate in the real world, in terms of directional hypotheses. A hypothesized relationship is disconfirmed by finding an empirical relationship in the wrong direction. As an example, suppose we hypothesize a positive relationship between percent of state residents completing high school and percent completing baccalaureate degrees. If we analyze appropriate state data and find a negative relationship, we must reject our hypothesis as disconfirmed.

The heart of social science analysis is the willingness to disconfirm predictions. Social scientists must be willing to say, “I was wrong.” Pseudo science or junk science is the opposite of social science. For pseudo scientists, the objective is to identify empirical relationships that confirm predictions so they can claim, “I was right.” Pseudo scientists will disregard and not report their own research that finds relationships in the opposite direction of their predictions.

Social scientists use the best and most appropriate data and analyses to test hypotheses. Junk scientists are willing to use faulty data and analyses. Social scientists seek to interpret the empirical world accurately. Pseudo scientists seek to serve interests they do not identify explicitly and hidden agendas.

Scientists are willing to identify research findings that disconfirm their ideas; junk scientists are not. We all use examples to clarify our ideas to others; examples are not necessarily misrepresentations. However, identifying empirical examples that support preconceived ideas and ignoring examples that disconfirm them is pseudo science if the examples are falsely presented as scientific evidence.

Social scientists require more than relationships in predicted directions, relationships must be both predicted and strong. Strength is the second element of interest. It is virtually always possible to find an empirical relationship between variables. Consider testing a coin to determine whether it is “fair” in the sense that it will land heads half the time and tails half the time. If we test a fair coin with one thousand flips, the result will probably not be exactly 500 heads and 500 tails. Absent a strength measure, we would incorrectly interpret 501 heads and 499 tails as meeting the directional prediction “more heads.”

If we test with five flips, half-and-half is not a possible outcome. There will always be either more heads or more tails. A junk scientist would report a five-flip trial with 60 percent heads (3 heads and 2 tails) as evidence in support of a prediction of more heads, even though 60 percent heads or tails is the possible outcome closest to half-and-half. Unless the both sides of the coin are tails, the desired outcome can be attained with a few series of five flips, and the pseudo scientist will choose to report only the “successful” result.

If five-flip trials were the only tests possible, a social scientist would insist on making a large number of five-flip tests. If one thousand five-flip trials were completed and the results were 60 percent with three or more heads, the social scientist would conclude the coin was unfairly biased in favor of heads. If 501 of one thousand trials were 3 or more heads, the social scientist would conclude the coin was not biased (but a junk scientist would wrongly present such a finding as evidence).

Comparative study of the American states is limited to a maximum of 50 units of analysis, or observations, in any year or other time period. The scientific discipline Statistics recognizes a number of measures of association we could use to test for relationships. And, for each measure, Statistics identifies threshold values that are appropriate to distinguish strong relationships. Only when empirical findings are in the predicted direction and relationships are strong are hypotheses not rejected. Either wrong direction or predicted direction and weak relationship are grounds for rejecting hypotheses. We check direction first because wrong direction always disconfirms, and strength becomes irrelevant. Were we to focus first on strength, we might accept strong relationships in the wrong direction as meeting our predictions.

If you have been paying close attention, you might expect that we could identify strong relationships by conducting a large number of 50 state trials, analogous to the coin flip trials discussed earlier. This could be done by studying the same relationships for the states in different calendar years, fiscal years, census years and so on. We agree that a relationship that is consistently strong over many such trials is more impressive than a strong relationship for a single trial. But replicating state research at different points in time is different from coin flip trials. Simply put, the fairness of a

coin is not affected by number of flips and fairness does not change over time. States and their attributes do change over time.

There is a fundamental difference between the natural sciences, such as Physics, Chemistry and Biology and social sciences: the expectation that findings will be the same or similar at all places and times. Physicists expect the atomic number of carbon to be unchanging and the relationship $F=ma$ to endure at least as long as there are physicists. Social scientists expect all human social behavior is subject to change.

In your lifetimes, Republicans and Democrats have exchanged places on many fundamental issues. Partisan general elections have transformed from typically competitive and close to typically uncontested by one of the two major parties. Parties that create gerrymandered state legislative election districts are seemingly invulnerable to losing their majorities, even when they lose state-wide contests by a large margin. For example, in the elections of 2012, Republicans retained majori-

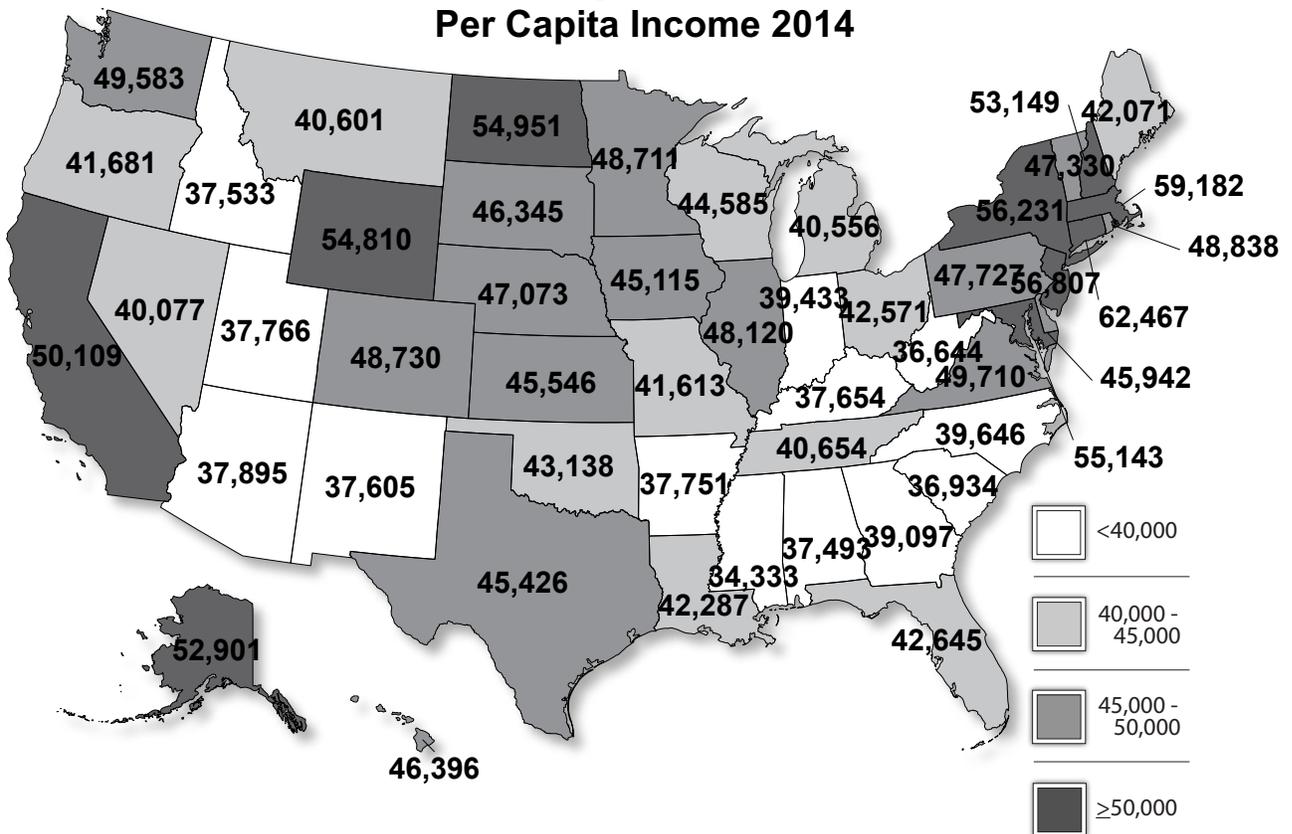
ty control of both legislative chambers in six states where President Obama won a majority of the popular vote for president.¹

The expectation of change creates challenges for social science that are rare for natural science. When comparing the states, it is entirely possible that relationships between attributes will exist at some points in time but not at others. In studying the states, evidence that relationships do not exist at some points in time does not disconfirm their existence at others.

Wealth and Education Data in Maps

Some states are wealthier and some are poorer. Actually, it is more correct to say that states have wealthier and poorer residents. Governments must have revenues to pay for governmental services such as public education. In the United States, taxes provide the largest share of government revenues. Any given state or local government's taxes are paid mainly by people and businesses within

Figure 2.1
Per Capita Income 2014



the state. A government with only poor residents cannot provide services similar to those offered by a government with mostly wealthy residents.

Past research has shown that there are many noteworthy empirical relationships involving differences in state wealth. Wealth is not only an important resource in itself; it is consistently positively related to other resources, to government policies and programs and to success in meeting goals. Relationships concerning wealth have been among the most important and enduring in the comparative state research literature.²

Education is often seen as a means for people to improve their future earnings. This is probably one of the reasons you are pursuing a college degree. State government officials see improving education as a way to make their states more competitive in attracting businesses with high-paying jobs. According to this argument, businesses with a choice among states will go to the state with the better educated residents because more will be available to fill positions requiring better educations. The lack of an educated public may keep a state poor as better paying jobs go elsewhere. An educated population is typically a component of “best for business” measures, such as those pre-

sented in Chapter 1.

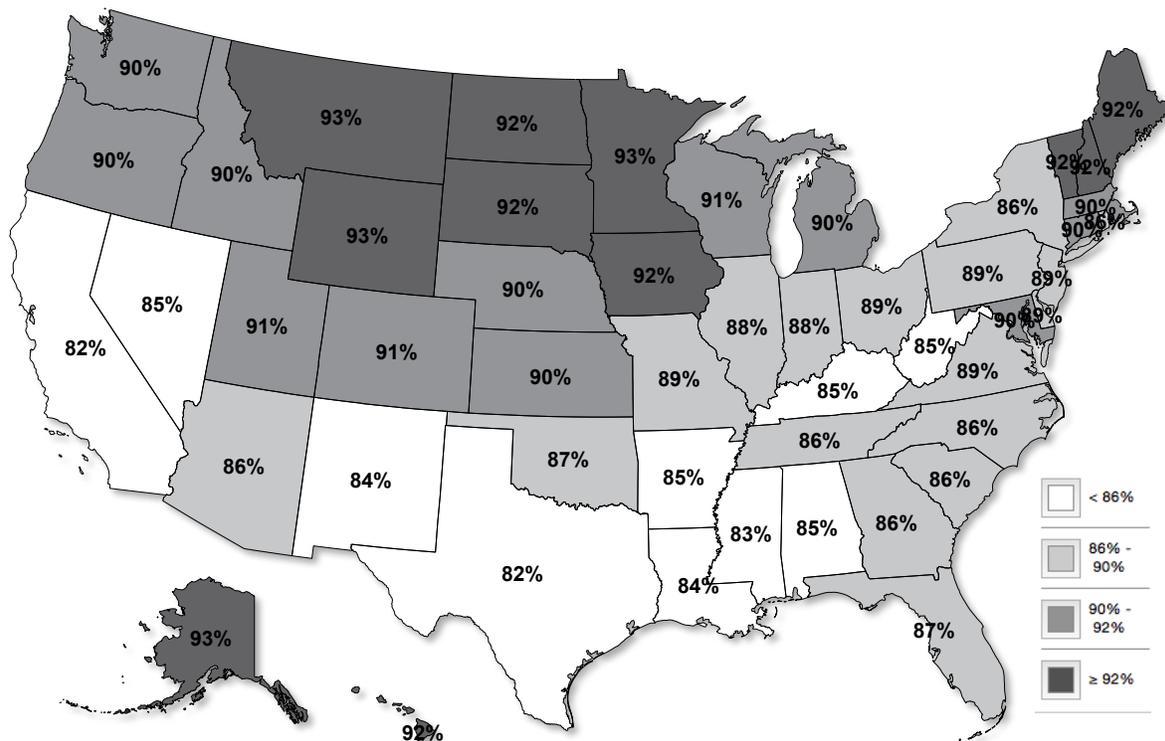
In the first half of the 20th century, the most common measure of state residents’ educational attainment was the percentage with at least a high school education. In 1960, about 41 percent of people over 25 years old had at least high school educations, but by 2014, this had soared to more than 88 percent.³ In 54 years, the percentage more than doubled.

At the same time, the percentage of those completing college has also increased dramatically. In 1960, fewer than 8 percent of Americans 25 years and older held bachelor’s degrees or greater, but by 2014, this quadrupled to 32 percent.⁴

There is broad agreement, both inside and outside the scholarly community, that educational attainment is linked to economic success, both for individuals and for communities.⁵ Educational attainment is also linked to better health and longer life expectancy.⁶ There seem to be no advocates of the position that lower educational attainment is better.

So, we expect there is a strong positive relationship between the education levels and wealth of states’ population. We expect that both percent of residents with high school completion and

Figure 2.2
Percentage of Population With High School Completion or Higher 2014



percent baccalaureate degree completion will be related to state population wealth, but which relationship will be stronger?

Figure 2.1 is the same map presentation of state per capita income in 2014 presented above as Figure 1.4. Per capita income is the best available measure of state wealth, even though income technically refers to funds acquired during a year and wealth refers to the difference between assets and liabilities. We would be interested in using a measure of wealth if there were trustworthy, valid and reliable estimates for each state. The only available wealth data that meet those criteria is value of real property, that is, land and permanent improvements to land. There are data for the value assigned to real property for the purpose of assessing and collecting state and local property taxes. We do not have data on personal property, that is, cash, government and corporate securities, motor vehicles, jewelry, art, and other personal possessions.

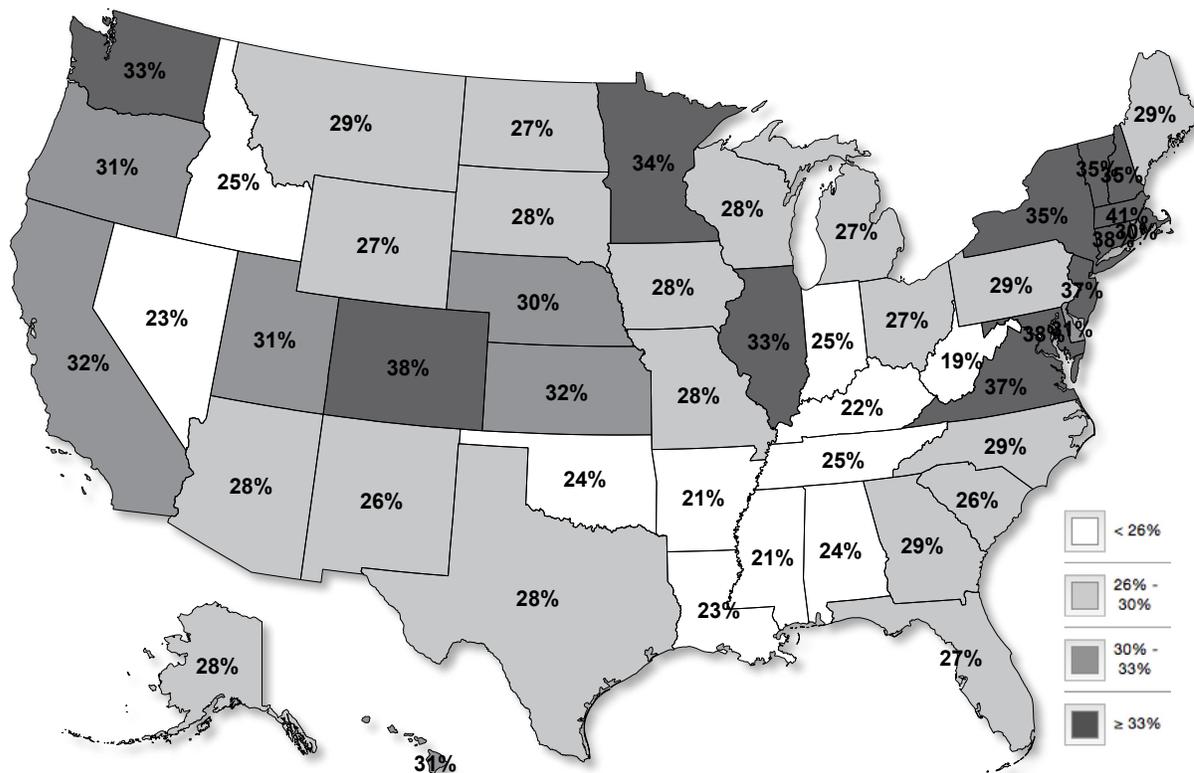
State per capita income is the total personal income of each state divided by its population. This measure does not take into account the extent to which it is more expensive to live in some states than in others.

For some analyses we would like to control for cost of living disparities across the states, but there are no regular “official” cost of living estimates for the states. It may surprise you to learn that the United States Federal Government collects data and calculates cost of living indexes only for selected metropolitan areas. An attempt to use available information to calculate state cost of living indexes found only seven states had costs that were more than 10 percent higher or lower than the national average in 2003.⁷

State maps are good data visualization tools to identify patterns related to geography, and there are some regional patterns of per capita income differences in Figure 2.1. With the exception of California and Texas, the southernmost states are in the lower two income categories. Six of the former Confederate states are in the lowest category and three are in the next category. Only Virginia and Texas are in the second highest category. All of the states in the highest income category are in the Northeast region except for California, North Dakota and Wyoming.

Figure 2.2 shows percent of state populations that completed high school in 2010. The South

Figure 2.3
Percentage of Population With Bachelor’s Degree or Higher 2014



stands out as poorly educated. All eleven former Confederate states are in the bottom two categories and nine are in the lowest category. This pattern largely reflects the pattern for per capita income. However, California and Texas are in the lowest category of high school completion while California was in the highest category and Texas in the second-highest category of per capita income.

In other regions the income and high school education maps are different. Many, but not all of the Northeastern states in the highest income category are in the highest high school completion category. The same is true for the six contiguous northernmost Midwestern and Mountain states. It is not easy to describe similarities and dissimilarities in the two maps.

Figure 2.3 shows population percentages with bachelor's degrees or greater for the states. This map looks somewhat more like the map of per capita income. This would suggest that higher education assures high incomes. However, it is not entirely clear the extent to which per capita income geographic patterns are closer to higher educational attainment than to high school educational

attainment—if, indeed, they are closer.

Thus far, we have merely been eyeballing or comparing two maps, seeking to see their overlap. We need something better. We need better tools that examine information on two variables for all states simultaneously. We need scatterplots and correlation coefficients.

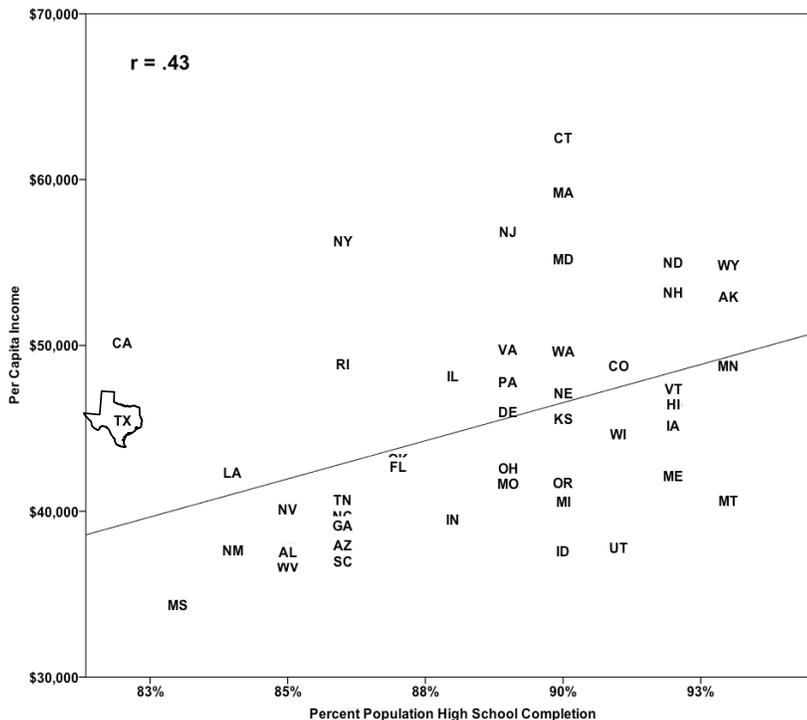
Scatterplots and Correlations

Figure 2.4 is a scatterplot of the state per capita income and percent population with high school completion in 2014. It uses the same information used to create the maps of Figure 2.1 and Figure 2.2. The scatterplot shows information for two variables for each state.

Percent high school completion is on the horizontal, or X-axis. Per capita income is on the vertical, or Y-axis. In Texas, 82 percent of population aged 25 and older have completed high school, and state per capita income is \$45,426. The corresponding values for Connecticut are 90 percent and \$68,714.

The scatterplot in Figure 2.4 also displays a

Figure 2.4
Per Capita Income and Percent High School Completion 2014



line that provides the best fit for the states' locations. It is the straight line that is as close as possible to all observations. The regression line is determined by a statistical formula, and is expressed as an algebraic equation. The equation for the regression line in Figure 2.4 is $Y = 920X - 36,250$. In this equation, "Y" stands for per capita personal income level and "X" for percentage of the population that has completed high school. The equation means the best estimate of a state's per capita personal income is \$920 times its percentage of population age 25 and older that has completed high school minus \$36,250. In other words, a one percent increase in state percent that completed high school is related to a \$920 increase in state per capita income.

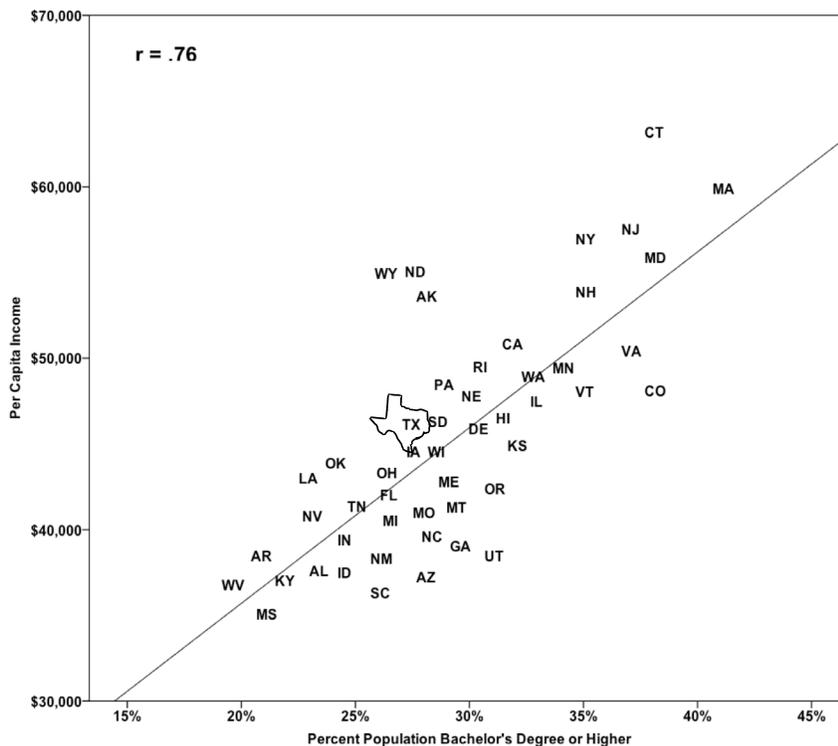
States above the regression line have a higher per capita income than expected given their percent high school completion. States below the line have lower per capita income than expected. In the lower left corner, Texas, California and Mississippi have similar percent with high school completion, but Mississippi has lower per capita income than expected while Texas and California have higher

per capita income than expected. For most scatterplots, about half the states will be above the regression line and half will be below. The scatterplot in Figure 2.4 has 20 states above the regression line and 30 below. This is because the states below are relatively close to the line, but a group of five states are very far above the line: Connecticut, New York, New Jersey, Massachusetts and Maryland. Distant outliers on one side must be balanced by a larger number of states on the other side.

Regression lines indicate the direction of the relationship. In Figure 2.4, the relationship is positive; states with lower percent high school completion have lower per capita incomes and states with higher percent high school completion have higher per capita incomes. Regression lines with lower left to upper right orientation denote positive relationships. Regression lines with upper left to lower right orientation represent negative relationships.

Figure 2.4 also includes the information $r = .43$. This means the value of the correlation coefficient for the scatterplot, r , is .43. A correlation coefficient gives us information about the direction and goodness of fit of the estimated regression line.

Figure 2.5
Per Capita Income and Percent Bachelor's Degree or Higher 2014



Correlation coefficients, or correlations, may have values from -1.0 to +1.0. The sign of the correlation coefficient indicates whether the regression line is positive or negative. The size of the correlation coefficient indicates how well the regression line fits the scatterplot elements and how strong the relationship is between the two variables being analyzed. Correlation coefficients close to zero indicate very weak relationships. Stronger positive relationships are identified by correlations closer to +1.0; stronger negative relationships are identified by correlations closer to -1.0. If there were a perfect positive relationship, the correlation coefficient would be 1.00 and all states would be on a positive regression line (lower left to upper right). If there were a perfect negative relationship, the correlation coefficient would be -1.00 and all states would be on a negative regression line (upper left to lower right). For perfect positive and negative relationships, the maps of each variable would be the same.

A correlation of .00 or -.00 means there is no relationship whatsoever between the two variables. The regression line would be horizontal, or vertical

and the states would be scattered above and below it with no particular pattern.⁸ The maps would not overlap at all.

A correlation coefficient is a precise measure of the direction and strength of a relationship. For all relationships, correlation coefficients closer to zero are weaker and coefficients closer to 1.00 or -1.00 are stronger. As mentioned earlier, Statistics identifies critical values for correlation coefficients and other measures of association that scholars use to distinguish relationships that could be produced by random phenomena such as random sampling and random error in data. These critical values are used to gauge “statistical significance” of measures of association.

Instead of using statistical significance to identify strong and weak relationships, we will use a simple rule of thumb. We will interpret correlation coefficients of .30 and -.30 as sufficiently strong to say a relationship exists. Correlations at or larger than .30 and -.30 are simple, round number values that are a bit higher than the threshold of statistical significance for 50 observations most often used in comparative state research by social scientists.

Table 2.1
Per Capita Income and Educational Attainment Correlations Over Time

Year	Per Capita Income and High School Completion	Per Capita Income and Baccalaureate Degree
1950	.70	.52
1960	.66	.48
1970	.61	.65
1980	.63	.64
1990	.44	.74
2000	.31	.74
2010	.37	.79
2014	.43	.76

We will interpret correlations smaller than that as below our strength criterion. Correlations between .00 and .29 and between .00 and -.29 are so weak that we will simply say there is no relationship.

We will be considering empirical relationships by scatterplots, regression lines, and correlation coefficients throughout this book. You should not be intimidated by the graphic representations and correlation values shown. Simply focus on whether each relationship is positive ($r = .30$ or larger), negative ($r = -.30$ or larger) or no relationship (r between $-.29$ and $.29$).

You can probably tell whether the direction of a relationship is positive or negative by scanning the pattern of observations and seeing if they form a positive or negative diagonal. With some practice, you will also develop a feel for the strength of relationships by scanning scatterplots. In Figure 2.4, even without the regression line, you can see there are few states in the upper left or lower right portions of the scatterplot. Rather, they concentrate on a diagonal running from the lower left to the upper right.

For our purposes, correlation coefficients alone are sufficient to assess direction and strength of relationships. However, examination of scatterplots linked to correlations frequently yields valuable insights. You already have a base of knowledge about the states. A goal of this text is to help you organize that information and integrate it with new information. We invite you to use both the scatterplot data visualizations and the correlation coefficient measures to interpret relationships between pairs of variables.

Wealth and Education Scatterplots and Correlations

We know from Figure 2.4 that states with higher high school educational attainment rates have higher per capita incomes. The correlation coefficient .43 meets our strength criterion. So, we conclude there is a positive empirical relationship between the two variables in 2014. Figure 2.5 shows the relationship between higher educational attainment and per capita income.

Figure 2.5 shows a very strong positive relationship between state higher educational attainment and per capita income. States are close to the regression line with very few exceptions. That is

why the correlation coefficient is .76. We can now answer the question raised earlier about whether high school educational attainment or higher educational attainment is more strongly related to state per capita income. The relationship with higher educational attainment is very much stronger. The regression equation can be interpreted to mean a one percent increase in state percent that completed baccalaureate degrees is related to a \$1025 increase in state per capita income.

Correlations between state per capita income and the two measures of state educational attainment over time are presented in Table 2.1. The relationships are consistently positive, but important changes in size of correlations have occurred.

For 1950 and 1960, per capita income is more strongly related to high school attainment. For 1970 and 1980, per capita income is equally related to both measures of educational attainment. Starting in 1990, per capita income is more strongly related to higher educational attainment. These changing relationships over time fit well with generalizations you are familiar with. For people in your great-grandparents' age cohort, high school completion was the key educational credential for quality career opportunities. For people in your parents' age cohort, a college degree was a superior educational credential. For your age cohort, college degree may approach being a necessary credential for career opportunities that have higher income.

What Empirical Relationships Mean and Do Not Mean

Throughout the book, scatterplots correlations merely show the presence or absence of empirical relationships. Strong empirical relationships between state educational attainment and per capita income have been reported consistently starting in 1950. However, empirical relationships documented by correlations alone are not sufficient to prove causal relationships.

You have been taught “correlation does not prove causation” in a variety of academic courses over the years. We all need to repeat this to ourselves because the temptation to interpret predicted empirical relationships as evidence supporting and confirming our ideas is very strong.

Remember, social scientists test hypotheses by

subjecting them to the possibility of disconfirmation. Correlations that show predicted empirical relations do not exist are sufficient evidence to reject hypotheses.

We should also repeat to ourselves “lack of correlation disproves causation” to remind us of the limitations of social science analyses.

Spurious Relationships

An empirical relationship can be result from something other than one variable causing the other. Empirical relationships also exist when variables we correlate are both strongly related to a third variable or multiple variables other than the two used to calculate a correlation coefficient. Perhaps a simple example can make the distinction between a causal relationship and a spurious relationship easier to understand. If we were to gather data on the number of fire engines at the scene of several hundred fires in a city as well as the dollars of damage in each of these fires, we would see a very strong positive relationship. When there are more fire engines at a fire, there is more damage. The correlation coefficient in this hypothetical example would be very strong, say $r = .80$.

If this empirical relationship were mistaken

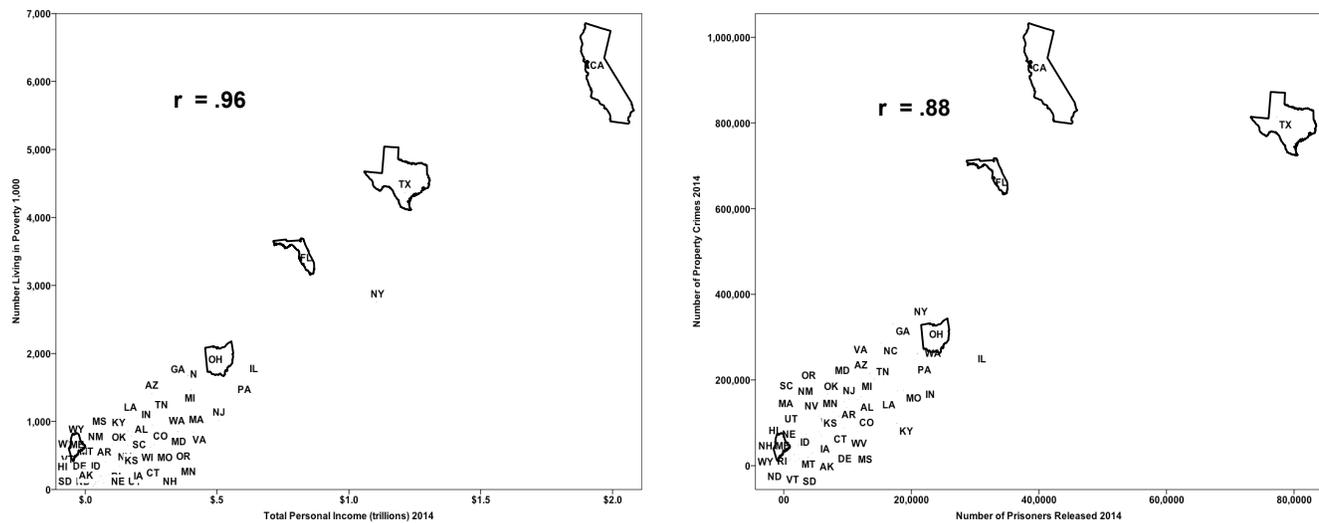
as a causal relationship, a misguided city council might decide that a plausible and cheap method to reduce fire damage would be to have a policy that no more than one fire engine could respond to any fire. Would this work? Of course not! The relationship between number of fire engines and damage is spurious. A third variable—the severity of the fire—causes both the number of fire engines responding and the extent of damage.

You probably foresaw that this was a spurious relationship, but most of the time spurious relationships are *not* obvious. Spurious empirical relationships are frequently used by pseudo social scientists as evidence in support of their ideas. We want to call attention to an important spurious relationship across the states frequently presented, incorrectly, to suggest causal relationships or to “prove” causal relationships. Consider the following two examples.

The correlation between total state personal income and number of state residents living in poverty in 2014 is .96. It seems strange that there is a positive relationship between income and poverty. Could it be causal? Could reducing residents’ income also reduce poverty?

The correlation between number of prisoners released and number of property crimes in 2014

Figure 2.6
Spurious Relations With State Population



is .88. Could this relationship be causal? We have no information about whether recently released prisoners are the ones committing property crimes. Can releasing fewer prisoners cause fewer property crimes?

The examples above are both empirical relations that are spuriously related to the absent variable state population size. Figure 2.6 displays scatterplots of the two relationships. With minor exceptions, the states line up on both diagonals in order of population size.

States with more living in poverty have more personal income. But they also have more property crimes and more released from prison. States with more property crimes have more released from prison. But they also have more living in poverty and higher total personal income. States with more people will have larger counts of things people typically do. State population size is related to annual purchase and consumption of kegs of beer and gallons of milk. States population size is also related to number of people who attend religious services weekly and number of firearms. There are strong correlations between these state measures of milk and firearms, but milk consumption does not cause firearms or the desire for firearms. There are strong correlations between beer and religious service attendance, but attending services does not cause beer consumption or the desire to consume beer.

The preceding empirical relationships are all spurious rather than causal because population size was ignored and all measures used are related to population size. It is almost never appropriate to compare the states and ignore population size differences. Sometimes other controls, such as number of children in public schools and number of welfare recipients, are superior. Beware whenever you are shown state relationships that do not control for number of people.

What Causes What

Another important limitation of the analyses presented in this text is correlations alone are not sufficient to tell us which variable causes which if there is a causal relationship. We initially began our empirical analyses of wealth and education in this chapter with the goal of identifying why states have higher and lower per capita incomes. We

have implicitly assumed that educational attainment causes income. It could also be the case that per capita income causes educational attainment. We need knowledge not conveyed by correlation coefficients to identify correctly possible causal directions when empirical relationships exist.

We know that firefighters work to prevent and stop fires. That knowledge causes us to reject the idea that more fire engines responding causes greater fire damage. If there is a causal relationship, it must be that fire damage causes number of responding engines. That recognition, and the recognition that the relationship is most likely spurious, is not inherent in a correlation coefficient or a scatterplot.

Sometimes awareness of event sequences eliminates some causal directions. In most states, general elections for state and federal offices are held in November and winners assume office in January. Fiscal years in 46 states begin July 1 and end June 30 in the following calendar year.⁹ New office holders have much greater opportunity to make decisions for the fiscal year that begins on the July 1 after they take office than the fiscal year that ends June 30 of the year they take office.

If we were to correlate information about the partisan, gender and ethnicity distribution of state legislators who appropriated funds for a given fiscal year and the appropriations they passed, we would know the causal direction if causality exists. It must be that the distribution of legislators' attributes caused the appropriations, not vice versa.

The spending decisions legislators make after an election occurs and a legislative session begins cannot possibly cause their partisan affiliations, gender or ethnicity. The distribution of members' attributes determined by elections that predate their legislative actions cannot cause those actions.

What if we reverse the time sequence in this example? What if we interrelate the appropriations decisions made by legislators for, say, 2015 with election results in 2016. Voters' reactions to actions taken by legislators could influence who wins and who loses subsequent elections. The attributes of legislators chosen in 2016 cannot cause appropriations decisions made earlier, but earlier decisions could possibly affect the attributes of legislators elected afterwards.

We posit that cause cannot come after effect. Sometimes we cannot be as precise as we might

like to be in determining when events occur. We have no way to restate precisely information provided for fiscal years in calendar years and *vice versa*. This is an example of the measurement error inherent in our empirical analyses.

Some argue that cause and effect can seem to be out of chronological order when people act in anticipation of future events. The Medicare Modernization Act of 2003 expanded entitlement prescription benefits available to Medicare patients. However, the legislation did not allow Medicare to negotiate prescription drug prices the way other federal programs and private insurers could. As a result, profits of pharmaceutical corporations increased as they sold more drugs at full price.

We might hypothesize that prices of stocks for these corporations would go up immediately after Congress passed the legislation. However, stock prices also rose before final passage of legislation because many investors bought on the expectation legislation would pass and larger profits would ensue. When we hypothesize that actions take place in anticipation of future events, we must make sure

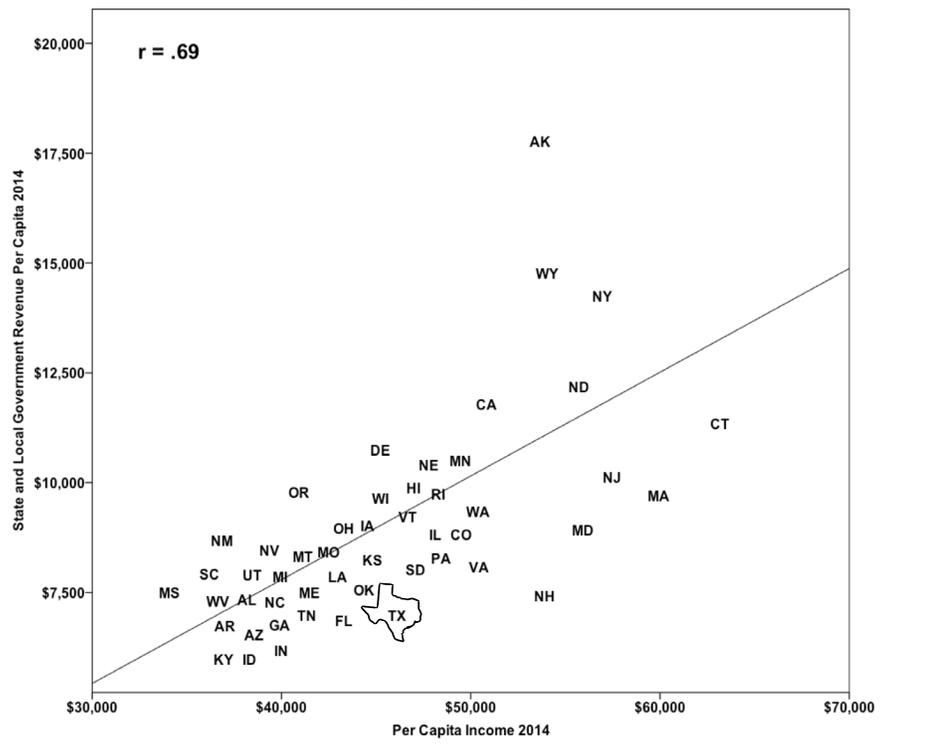
that we focus on when the anticipation occurs, not when what has been anticipated occurs. The temporal sequence of our measures should be anticipation before what anticipation is hypothesized to cause.

Correctly identifying cause and effect relationships are ongoing challenges, even for experienced researchers. A non-hypothetical example from our own research provides an example of incorrect thinking about cause and effect.¹⁰

State legislatures typically take final action on a large percentage of the bills they pass in the final days of legislative sessions. The so-called legislative logjam of business builds up during the session and is cleared at the very end. Many observers think this is an undesirable practice. They argue that important decisions are being made under severe time constraints and conditions that are chaotic. Critics advise state legislatures to implement certain practices, such as deadlines for introducing bills, to minimize end-of-session logjams.

We tested the effectiveness of practices recommended to minimize logjams by comparing

Figure 2.7
Per Capita Total State and Local Government Revenue and Per Capita Income 2014



37 state legislatures. We hypothesized a negative relationship between use of recommended practices and logjam size. We found the opposite. There was a positive relationship between the presence of reformed procedures and logjam size. Our hypotheses were rejected by empirical analysis because our ideas about cause and effect were wrong. They were backwards. We thought that procedural reforms would cause smaller logjams. In reality, only legislatures with logjam problems were motivated to implement such practices. In other words, large logjams caused procedural reforms.

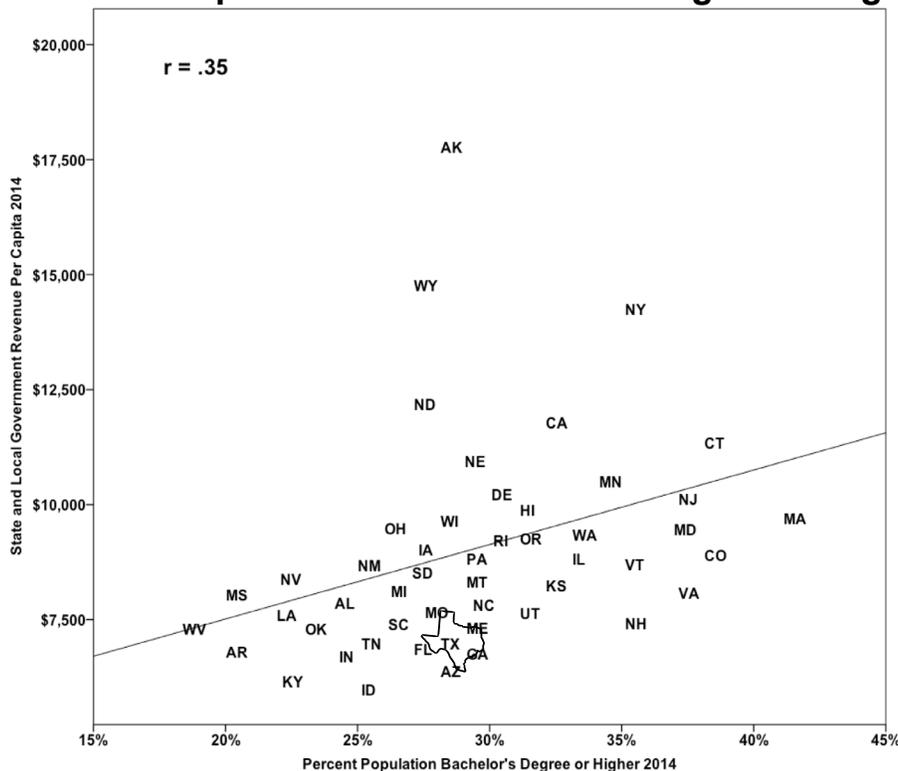
Conclusion on What Empirical Relationships Mean and Do Not Mean

We now recognize three possibilities as we consider state differences and relationships. First, we can find that there is **no empirical relationship**. Second, we can find there is an **empirical relationship that is spurious and not causal**. Third, we can find **empirical relationships that might be causal**.

A finding of no empirical relationship is easy to interpret: there is no simple, straightforward causal relationship. When we hypothesize a causal relationship and find no empirical relationship, we must reject our hypothesis. We might introduce intervening factors and test a more complex hypothesis, but we cannot continue to espouse an idea disconfirmed by empirical analysis.

Finding a predicted empirical relationship is usually more pleasing, but empirical relationships are starting places for further investigation. The existence of an empirical relationship between variables does not prove one variable is causing the other no matter how high the correlation. On the contrary, extremely high correlations should make us suspicious that we have found a spurious relationship. The longstanding and evolving correlations over time between state per capita income and educational attainment are not sufficient for us to conclude causal relationships, but they should cause us to inquire further into whether and how one variable might affect another.

Figure 2.8
Per Capita State and Local Government Revenue Per Capita and Percent of Population with Bachelor's Degree or Higher 2014



More Relationships

Financial Resources: Residents and Governments

We have explored how state per capita income and state educational attainment are correlated with each other. Per capita income is a measure of state residents' financial capacity. Educational attainment can be viewed as a measure of residents' human capital. Let's investigate how some other state differences are related to differences in these monetary and population resources.

You may think it is a no-brainer to predict that state and local government revenues per capita will be correlated with per capita income of state residents. As Figure 2.7 shows, there is a positive correlation, but perhaps not as strong as we might expect: .69.

It is readily apparent that some states are outliers, located far from the regression line in the scatterplot. The states most distant from the line, Alaska, Wyoming and New York, all have much larger total revenues per capita than we would expect from per capita income alone. Remember that not all government income is tied to the financial resources of residents. Both Alaska and Wyoming

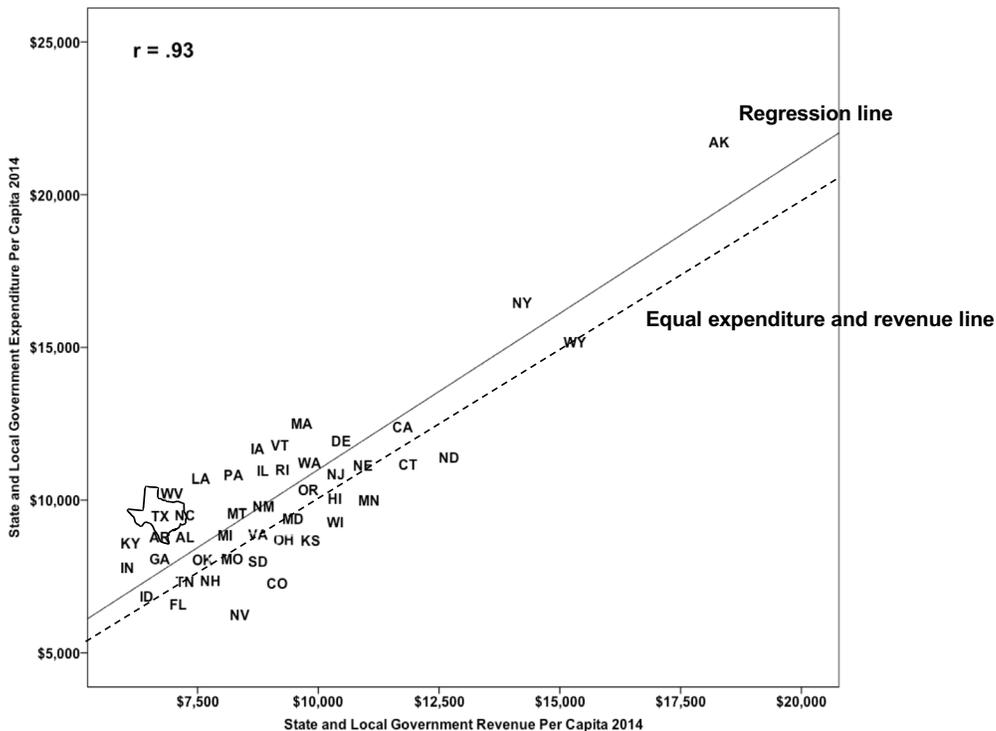
receive significant incomes from royalties and taxes on natural resources, both petroleum and ore extraction. Since both states have small populations, the revenue per capita is quite large. Total revenues include grants from the federal government. Alaska has long been a leader in grant funds per capita.

The other outlier, New York has an unusual revenue source. The City of New York assesses a payroll tax that applies whether or not employees reside in the State of New York or in neighboring states. Because they live elsewhere, New York City does not benefit from the sales, income and property taxes they pay to their residential state and local governments. The payroll tax offsets the cost of providing services to them when they are in the city.

Per capita personal income and per capita state and local government revenue are interrelated yet distinct. Monetary resources of residents do not translate simply and directly into resources for governments. Once again, the states have important differences in their policies for financing government activities. We will consider state and local government revenue further in Chapter 8.

Figure 2.8 interrelates state and local government revenue per capita and higher educational

Figure 2.9
State and Local Government Expenditure Per Capita and Revenue Per Capita 2014



attainment. The correlation of .35 is just above our minimum value of .30. So, we conclude there is a relationship. The correlation is so low we recognize that, if higher educational attainment does cause state and local government revenue per capita, other additional variables must also be causes.

Figure 2.9 relates state and local government revenues and expenditures per capita. The scatterplot and correlation of .93 indicates the two are nearly identical. In most fiscal years, government spending matches revenues quite closely. Fiscal year 2014 was unusual. Governments were still suffering from the loss of tax revenues that followed the financial crisis of 2007 and subsequent economic downturn. Approximately 29 states, those above the dotted line denoting equal revenue and expenditure, overspent annual revenue in 2014. Some shifted funds from 2015. Others took on short or long term debt. Approximately 14 states spend less than they received in 2014. In most cases, this was the result of austerity programs of spending cuts.

Figure 2.9 provides a vivid picture of the range of revenue and expenditure differences across the states. New York and Wyoming have revenues and expenditures approximately twice as large as

those in Oklahoma, Missouri and New Hampshire. Wealthy residents of low revenue and expenditure states can purchase services they wish at their own expense. Poor residents cannot do so. They might want to “vote with their feet” and move to wealthier states.

Crime and Punishment

Figure 2.10 assesses the relationship between crime and punishment across the states. The correlation between violent crime rate and incarceration rate is .45. States with higher violent crime rates have higher percent of residents incarcerated. It is noteworthy that Louisiana, Oklahoma, Alabama, Mississippi, Arizona, Arkansas and Texas have the highest incarceration rates in the nation. In addition, their rates are very far above the regression line, much larger than their crime rates would predict. Massachusetts is an outlier with much lower incarceration rates than predicted by crime rates.

It makes sense that there would be relationships between crime and punishment in the states. We can speculate that the high and low outlier states

Figure 2.10
Incarceration Rate and Violent Crime Rate 2014

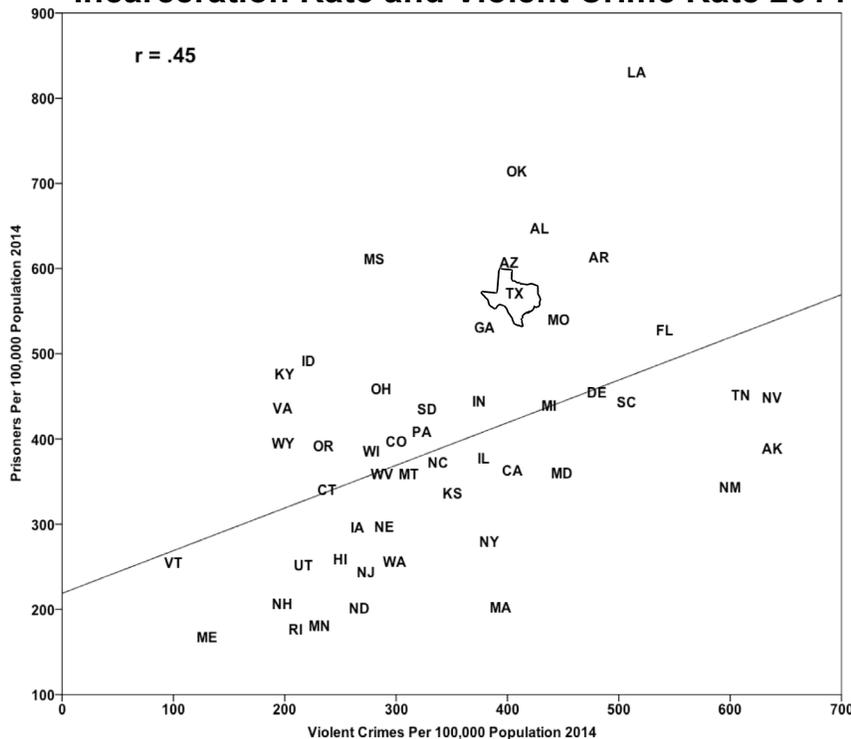
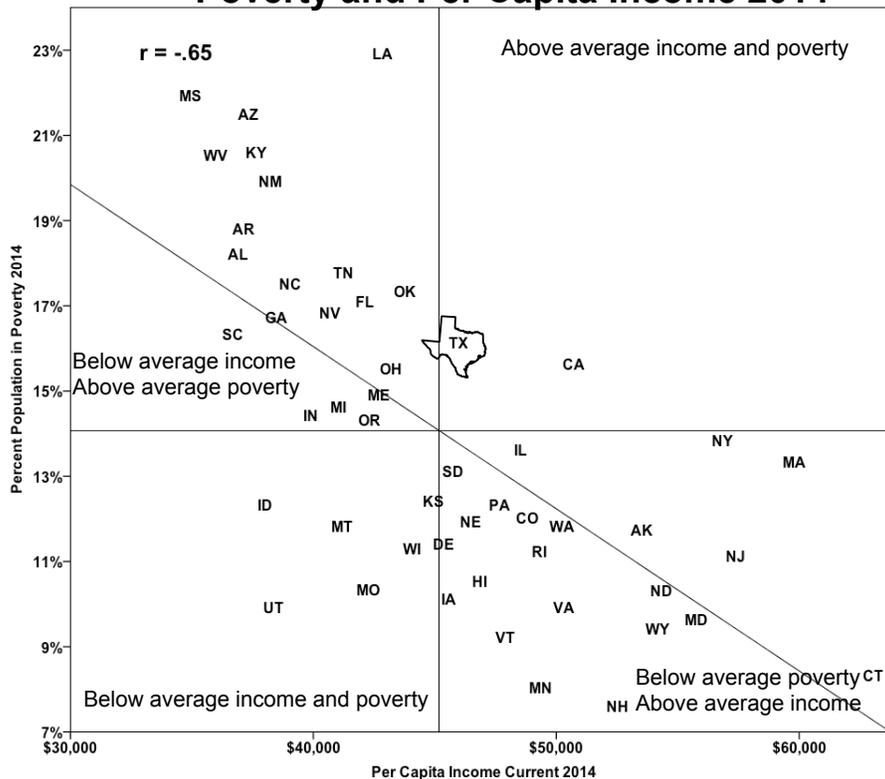


Figure 2.11
Poverty and Per Capita Income 2014



might have different values and practices concerning punishment. Before we interpret the analyses in Figure 2.10 as consistent with a causal relationship, we should recognize that the crime rate measure is for a single year. Incarceration rate is also for a single year, but total incarceration in any year reflects imprisonments and releases over many years. The correlation between same year violent crime rate and imprisonment rates is .24; the same year correlation between violent crime and release rates is .36. It seems the states have a range of practices concerning punishment that may be independent of crime and more influential than crime.

Income and Poverty

Figure 2.11 is a scatterplot of per capita income and state poverty rate. The correlation $-.65$ informs us that there is a strong negative relationship. States with higher income have lower poverty and vice versa. The distribution of states in the scatterplot lets us recognize some of the underlying complexity.

Approximately 22 states are in the most desirable quadrant, below average poverty and above

average income. Another 20 states are in the least desirable quadrant, below average income and above average poverty. Louisiana is close to average on per capita income but has the highest poverty rate state. Louisiana has considerable dispersion above and below the income mean. It has large numbers of residents who are wealthy and who are impoverished. At the other extreme, Iowa, Missouri and Vermont are also close to average on per capita income but are among the lowest poverty rates. Curiously, average income and high poverty exists in one state and average income and low poverty exists in other states. For most readers this complexity may be unexpected.

Infant Mortality and Life Expectancy

There may be nearly unanimous agreement that, if we could, we would minimize infant mortality and maximize lifespans. There may also be unanimous agreement that, if there is a causal relationship between lifespan and infant mortality, it must be that higher infant mortality causes lower lifespan. The two are strongly related; the correlation is $-.78$ (see Figure 2.12).

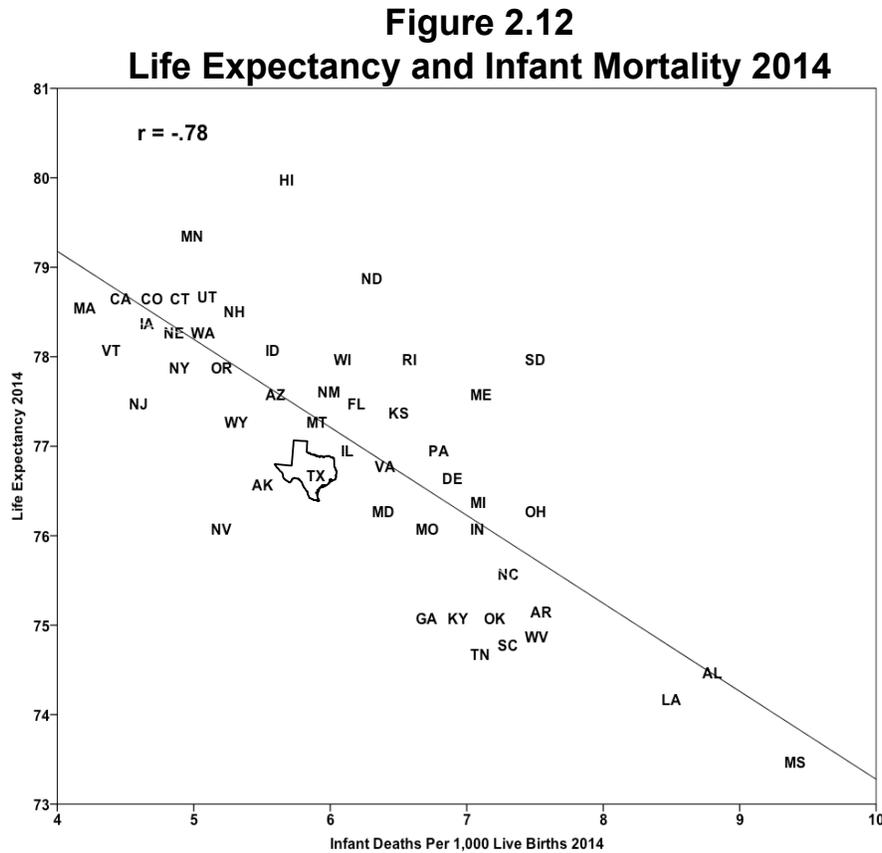


Figure 2.12 shows the relationship between life expectancy and infants' dying before they are one year old applies generally across the states. Hawaii, North Dakota and South Dakota are outliers with much longer lifespans than predicted by infant mortality. Nevada is an outlier with shorter than predicted average lifespan.

If states with the lowest life expectancy wanted to make rapid improvements, they would be wise to provide better health care to infants with the greatest risk of dying before reaching the age of one year. Their best strategy is to improve prenatal and postnatal care available to poor mothers.

Other strategies might be available for states to lower infant mortality rates. Lower infant mortality is related to higher per capita income ($r = -.57$), to lower poverty ($r = .58$); and to more population with baccalaureate degrees or higher ($r = -.65$).

Strategies other than lowering infant mortality may increase states residents' longevity. Longer life expectancy is also strongly correlated with higher per capita income ($r = .54$) and lower poverty ($r = -.70$).

Can you live longer by moving to a state with long life expectancy? If so, must you arrive be-

fore you reach a certain age? You probably did not know before looking at Figure 2.12 that residents of Hawaii and Minnesota have the highest lifespans and residents of Mississippi, Alabama, and Louisiana have the lowest lifespans. Residents of states with the highest lifespans live 2 to three years longer than the national average of 77.1 years.

Residents of shorter lifespan states live three or more years less than the national average. We can tell you the difference between lowest and highest lifespan states is more than six years. You must decide for yourself whether 6 years is an important difference. As you do, please keep in mind that no correlations and no scatterplots provide sufficient evidence in and of themselves for us to conclude that relationships are causal.

Conclusion

We want all of our students and all readers of this text to be informed and skeptical consumers of reports of studies pertaining to government and politics that claim to be scientific. Scientific analysis requires valid and reliable data. It is hard to

judge data quality without delving into the details of research that are frequently not provided in summary reports.

For scientific research, quality data must be analyzed correctly and results must be presented in their entirety. Direction and strength must both be important evaluation criteria but direction results contrary to predictions disconfirm hypotheses. Strong relationships in the wrong direction do not support hypotheses; they lead us to develop new hypotheses.

Scientists try to disconfirm their predictions. Pseudo-scientists try to confirm their predictions. They do not attempt analysis of comprehensive data. Replication is not valued; it is viewed as a threat. They are willing to juxtapose information out of context to guide unsuspecting readers and listeners to reach the conclusion preferred by the pseudo-scientists and those whose interests they promote. Scientists always inquire whether empirical relations could be spurious. Those who misuse science for their own ends employ spurious relations as a tool of their trade.

Political actors, media personalities, anyone can cite “findings” from bad science. The citers may not be aware conclusions are fake. Producers of sham science and fictitious facts and conclusions persist even when they are unmasked. Examples abound in “pants on fire” and maximum Pinocchio awards to those who repeat falsehoods and thoroughly refuted arguments.

The research methods used in this text to study relationships in the states are useful but limited. We can use them to create knowledge that only begins the challenging work of exploring causality. As we do so, we must be mindful of random error in our data and the ongoing reality that the people and behaviors we study are subject to change.

States with greater financial and human resources have options not available to their less wealthy counterparts. States need financial resources to educate their children, or to lure those educated elsewhere to relocate, or both. It would seem to be conventional wisdom that educated residents are a key to business and economic success. Educational attainment may be effective means to achieve longer and healthier lives as well.

Social problems are not equally distributed across the country. As we have seen, crime and health vary from state to state and even show re-

gional patterns. Leaders in unhealthy states may be partially responsible for failing to deal with dangerous environments or failing to provide indigent health care. States with high death rates caused by many elderly retiring there cannot be held responsible for aging, however.

Clearly, government services can help the poor and cost the wealthy. If we put aside the rhetoric, such as what is “fair,” “good for the economy,” or “liberal,” this question of who pays for what services is the basis of most politics. Americans have the freedom to relocate. You have the option of moving to another state. If you are wealthy, you might want to move to a state with low taxes, thereby avoiding having your wealth used to provide government services to those less able to provide for them.

In the next chapter, we shall turn to state political and institutional differences. These differences may impact states’ inclination to address social problems and their effectiveness in dealing with them.

Summary

1. There is bountiful information available about state and local governments and their attempts to use resources to achieve common goals. We must make thoughtful choices if our use of such information is to be worthwhile. Failing to control for state population size when studying behaviors related to population size almost always results in spurious findings.
2. The comparative method allows us to explore patterns of state differences. Data visualizations such as maps and scatterplots are useful exploratory tools. Correlation coefficients can be used to evaluate direction and strength of relationships.
3. Correlations and scatterplots alone cannot provide proof that a causal relationship exists. Neither can they specify which variable influences which. Other information must be brought to bear. Frequently that information is anecdotal or from nonscientific studies.
4. Some states are wealthy in that people working within their borders earn substantial incomes. Such wealthy residents can, in turn, be taxed to pay

for the governmental services provided for others. Other states are quite poor because they lack many wealthy individuals. A central question is how can poorer states become wealthier?

5. States with many college graduates have higher personal incomes. Although states cannot pass laws demanding that people have higher incomes, they can enact policies to encourage residents to pursue higher education. They can also encourage college graduates residing elsewhere to relocate to their states.

6. College education may provide the key to improving state economies and state tax bases, but there is not a simple direct relationship between proportion of college graduates and state and local government total revenue per capita.

7. Violent crime rates are related to incarceration rates, which are cumulative from past imprisonments and releases. States practices concerning short-term punishment may be indirectly related or unrelated to short-term crime.

8. Per capita income is related to poverty. However, poverty can exist in the presence of high income or in the absence of high income.

9. Educational attainment and financial wealth are also related to lower poverty, lower infant mortality and longer lifespans. Poverty, infant mortality and lifespan are also interrelated.

Study Guide, Chapter 2

Essay Questions

1. List three differences between “junk science” and social science. For each, explain the different methodologies used by the two approaches and how the procedure each uses is consistent with their goals.
2. What are the advantages and disadvantages of data presentations using 1) one variable and one map, 2) two variables and two maps and 3) a scatterplot of two variables? Give examples of when each of the three might be the preferred presentation method.
3. Sometimes, things of interest to social scientists are very difficult to measure well. Give three examples of concepts that are challenging to measure empirically. For each, explain the measurement challenge and how you would deal with it.
4. A correlation coefficient is a number that describes two aspects of a relationship between two variables: direction and strength. What is the direction of a relationship? What part of the correlation coefficient describes direction? Explain. What is the strength of a relationship? What part of the correlation coefficient describes strength? Explain.
5. What is the regression line on a scatterplot? What does it tell us about the relationship between two variables? What does it mean when a data point is above, is on or is below the regression line? Explain with examples.
6. After analyzing the empirical relationship between two variables with a scatterplot and a correlation coefficient, what are the three possible relationships that could be determined? Explain. Explain why “causal relationship” is not one of the three.
7. Imagine you are an advisor to a powerful state legislator. The legislator asks you to examine Table 2.1 and tell her or him whether it suggests adopting policies to reduce per capita income would result in higher high school graduation rates. In a short paragraph, give your answer.

Multiple Choice Questions

1. What is the correlation between total per capita state revenues and total per capita state expenditures?
 - a. positive
 - b. negative
 - c. no correlation
2. Which of the following statements is FALSE?
 - a. Southern states tax little and spend little.
 - b. States with higher revenues have higher expenditures.
 - c. States with low revenues provide more services.
 - d. States with high per capita income generate high tax revenues.
3. When are data visualizations using maps superior to scatterplot data visualizations?
 - a. never
 - b. always
 - c. when there are strong regional patterns
 - d. when correlations are either small or spurious
4. What is the correlation between state incarceration rates and violent crime rates?
 - a. positive
 - b. negative
 - c. no correlation
 - d. higher than necessary to prove a causal relationship

Information Sources

Figure 2.1	BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70
Figure 2.2	U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html
Figure 2.3	U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html
Figure 2.4	X: U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html Y: BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70
Figure 2.5	X: U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html Y: BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70
Figure 2.6	X: BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70 Y: http://www.census.gov/hhes/www/poverty/data/historical/people.html Historical Poverty Tables Table 3. Poverty Status of People, by Age, Race, and Hispanic Origin: 1959 to 2014 X: https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-5 Crime in the United States by State 2014 Y: https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-5 Crime in the United States by State 2014
Figure 2.7	X: BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70

Figure 2.8	<p>X: U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html</p> <p>Y: http://www.usgovernmentrevenue.com/compare_state_revenue_2014bZ0a FY 2014 State Revenue and Debt</p>
Figure 2.9	<p>X: http://www.usgovernmentrevenue.com/compare_state_revenue_2014bZ0a</p> <p>Y: http://www.usgovernmentspending.com/state_spend_gdp_population</p>
Figure 2.10	<p>X: https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-5 Crime in the United States by State 2014</p> <p>Y: Bureau of Justice Statistics Table 6. Imprisonment rates for sentenced prisoners under jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, by sex, December 31, 2013 and 2014. Data source(s): National Prisoner Statistics Program</p>
Figure 2.11	<p>X: BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70</p> <p>Y: http://www.census.gov/hhes/www/poverty/data/historical/people.html Historical Poverty Tables Table 3. Poverty Status of People, by Age, Race, and Hispanic Origin: 1959 to 2014</p>
Figure 2.12	<p>X: http://www.americashealthrankings.org/FL/IMR</p> <p>Y: The Measure of America 2013-2014 http://www.measureofamerica.org/docs/MOA-III-June-18-FINAL.pdf</p>
Table 2.1	<p>U.S. Bureau of Economic Analysis, Regional Economic Accounts, SA1-3 Personal Income Summary, http://www.bea.gov/regional/spi/</p> <p>U.S. Census Bureau, American Community Survey, 2010 1-Year Estimates, Table S. 1501</p> <p>U.S. Statistical Abstract, various years Digest of Education Statistics, various years</p> <p>U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html</p> <p>BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrnd=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70</p>

Notes

- 1 <http://www.governing.com/blogs/politics/gov-year-single-party-control-supermajorities.html>

- 2 Thomas Dye, *Politics, Economics and the Public* (Chicago: Rand McNally, 1966); Ira Sharkansky, "Government Expenditures and Public Services in the American States," *American Political Science Review* (1967, 1066-77); Harvey J. Tucker, "It's About Time: The Use of Time in Cross Sectional State Policy Research," *American Journal of Political Science* (1982, 176-196); James Garand, "Explaining Government Growth in the US States," *American Political Science Review* (1988, 837-849); Richard Hofferbert, "The Relationship between Public Policy and Some Structural and Environmental Variables in the United States," *American Political Science Review* (1966, 73-78).

- 3 U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; <http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html>

- 4 U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; <http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html>

- 5 S. Ma Baum and K. Payea, "Education Pays, 2010: the Benefits of Higher Education for Individuals and Society," Trends in Higher Education Series, College Board Advocacy & Policy Center, 2010; J. C. Day and E. C. Newburger, "Big payoff: Educational Attainment and Synthetic Estimates of Work-life Earnings," U.S. Department of Commerce, Economics and Statistics Administration, 2002; and J. C. Day and E. C. Newburger, "Big payoff: Educational Attainment and Synthetic Estimates of Work-life Earnings," Special Studies, Current Population Reports, (U.S. Census Bureau, 2007).

- 6 Paula Braveman, Catherine Cubbins, Susan Egertner, David R. Williams and Elsie Pamuk, "Socioeconomic Disparities in health in the United States: What the Patterns Tell Us" *American Journal of Public Health*, 100 SI, 2010.

- 7 William D. Berry, Richard C. Fording, and Russell L. Hanson, *Annual Cost of Living Index for the American States, 1960-2003*, ICPSR 1275.

- 8 If all observations were on a horizontal line, the Y- axis measure would have to be the same for all states, a constant. If all observations were on a vertical line, the X-axis measure would have to be the same for all states, a constant. We would not bother to create a scatterplot and calculate a correlation coefficient if either variable were a constant.

- 9 National Conference of State Legislatures, <http://www.ncsl.org/issues-research/budget/fiscal-year-2013-budget-status.aspx>. Fiscal years are named for the calendar years in which they end.

- 10 Harvey J. Tucker, "Legislative Logjams: A Comparative State Analysis." *Western Political Quarterly* (1985, 432- 446).

Chapter 3

POLITICS AMONG THE STATES

Before elections in the United States, television commercials, newspaper advertisements, yard signs, and bumper stickers advise that we should vote for candidate Smith for the state legislature, for candidate Doe for governor, and candidate Washington for president. The appeal is that if they are elected, something concerning government will change. Government will be more efficient, taxes will be lower, and a specific policy to deal with a problem will be implemented. One or more of the following will improve decisions: experience holding elective office or no experience in politics; satisfaction with the way things are or a desire for change; knowledge of issues or strong opinions; business values, family values, religious values, common sense, wisdom, or integrity.

Political scientists think that there are linkages between who makes decisions, what procedures are followed, what alternatives are considered, what choices are made and what results ensue. For example, we expect that, if elections are competitive, with two or more candidates articulating different positions on issues, and vying with nearly equal chances of winning, the election outcome will matter. Such an election outcome might well result in change in public policies. This assumes, of course, that candidates speak sincerely rather than strategically and seek office to pursue policy goals rather than merely to gain and hold power.

If the current office holder is the only candidate running, the election outcome is certain. If incumbents are rarely challenged in general elections, public policies are unlikely to change. If only members of their own parties challenge incumbents, policy changes are likely to be slight—if and when they occur.

Americans believe political institutions are

important. This has been a common view since we became a nation based on the novel idea that, in the words of the Declaration of Independence, “governments are instituted among men, deriving their just powers from the consent of the governed.” Governments derive power from the governed. All states have the familiar three branches with checks and balances among them. However, within this common framework, there are differences in the institutions of the states that many think are important.

The states are sufficiently different in their political values and institutions that comparative analyses are possible. Some states have distinctive political styles that seem to persist over time. Election turnout may be high or low; general election votes may be close or uncompetitive. Governing may be free of corruption, or successive governors or congressmen or state legislators or county officials may be sentenced to federal or state prisons.

The questions are: Do procedures in choosing leaders and making decisions affect what states do? Do the views and preferences of residents affect what states do? Are some residents, or nonresidents, more influential than others? The central foci of this chapter are political and institutional differences among the states. We want to weigh political differences, determine whether they are large or important and begin to assess whether they might be empirically related success and failure in meeting the goals states share.

Proactive and Reactive Government Policy

States attempt to deal with a wide range of problems. They pursue public policies to achieve certain outcomes. The goal of government action is to reduce problems and enhance the lives of citizens. So,

many of us assume and expect the following causal direction: effective government actions cause better social conditions. When social conditions are measured in terms of problem size, there should be negative correlations with government action. When social conditions are measured in terms of desired outcomes—successes and benefits—there should be positive correlations with government action. Government is assumed to be proactive in dealing with problems and working to achieve goals.

Viewing government as the actor is appealing and perhaps comforting. On reflection, the opposite view is equally plausible: government is reactive, not proactive. State legislatures' efforts to deal with end-of-session logjams are an example of government responding to a problem. Fire departments react to fires. The number of engines sent to a given fire is a response. The stimulus is perceived damage potential of the fire.

If we always view state governments as powerful, effective, **proactive** agents, we always expect that state program efforts will be positively correlated with good results. If we always view state governments as **reactive** agents, we always expect that state efforts will be negatively correlated with good results. A more sophisticated approach would be to recognize that, sometimes, state governments are powerful actors and sometimes they are reactors whose ability to make bad situations become good is limited.

With this in mind, you should recognize that scatterplots and correlations sometimes have the potential to help us distinguish when governments are actors and when they are reactors. When we do not already know what is the cause and what is the effect, the direction of relationships measured as strong can, at times, aid our understanding.

In Chapter 2, Figure 2.10 showed a strong positive correlation between violent crime rates and incarceration rates. Should states that desire lower crime rates reduce their incarceration rates? Is it reasonable to think that no incarceration will cause zero or minimal crime rates? Of course not! If there is a causal relationship, it must be that crime rates cause incarceration rates. State and local governments react to crime rates.

How often are state and local governments proactive, and how often are they reactive? An early comparative state study offers some information.

Ira Sharkansky tested the idea that state and local governments that spend more have better outcomes than state and local governments that spend less.¹ He correlated three measures of state and local expenditures on certain policies with 68 public service measures in the areas of education, highways, public welfare, health and hospitals, natural resources, and public safety.

Sharkansky's results measures were all constructed so that a higher value would always be success. For example, instead of using rate of infant mortality he used rate of infant survival. As a consequence, positive correlations would meet his prediction that more spending is related to more success. He calculated more than 200 correlation coefficients to assess whether states that spend more better achieve their goals.²

Sharkansky reported that only 38 percent of the correlations met his threshold criterion for strong relationships. None of these strong correlations was large enough to conclude that spending alone exerts a pervasive influence on the nature of public services. The division between correlation directions was 20 percent positive and 18 percent negative. In other words, reactive spending relationships were approximately as frequent as proactive spending programs.

Some consistent patterns of directional relationships were reported. Correlations between education expenditures and educational attainment measures generally suggested that state and local government programs were proactive. Correlations between public safety expenditures and rates for rape, robbery, burglary, larceny, and auto theft all suggested that state and local governments react to crime rates.

Those who promote anti-government doctrines frequently tempt others to misinterpret the lack of a strong positive correlation between government activity and success as evidence of government failure. They exploit the unarticulated, and incorrect, assumption that government can always be proactive. To distinguish good science from bad science, we must be aware of stated and unstated tenets and also attentive to the details of empirical research. As we move forward to consider the scope and consequence of government efforts, we should be mindful that government programs as likely to be reactive as they are to be proactive.

Political Culture Differences Among the States

One of the key elements of American politics is that states have diverse styles or approaches to social problems. Historically, New York has dealt with problems differently than Texas. These two states sometimes disagree on what qualifies as a problem that state government ought to deal with. Oregon and Washington, adjacent states, seldom enact similar legislation. Newcomers to a state are frequently told, “Things are just done differently here.” This is the basic idea of political culture or cultures. Questions about political culture include the following: How many cultures are there? Do we have 50 distinct state political cultures? If we have fewer, why are some states alike?

Daniel Elazar has articulated a popular description of American state political culture.³ He posited three political cultures but also described some states as having a combination of two of the three. Figure 3.1 maps Elazar’s political cultures.

The *traditionalistic* political culture reflects

an orientation that predates the industrialization and urbanization of the United States and rests on the “normal” ordering of society going back to England. Those of wealth and position were expected to rule and to have their property protected by the government from theft by others.⁴ Turnout in elections and other political participation should be low. Decisions were to be made by those most capable, not by typical citizens.

The government is expected to play little other role, since to do so is not traditional. No one expects an active government seeking to end corruption, to lessen the impact of economically tight times, or to deal with immorality. Government is to do only what it has always done—maintain records of who owns what and stop some from stealing from others.

With the exception of Texas, the white settlement of the Southern states was primarily from England. Immigrants brought the values of the traditional political culture with them. Until well after World War II, these states experienced little

Figure 3.1
Political Culture in the United States



demand for government action and probably would have been unresponsive to such demands anyway. Good examples of this political culture include South Carolina, Alabama, and Mississippi.

It should be noted that Arizona and New Mexico are non-southern traditional political culture states and that all the traditionalistic states in Figure 3.1 have substantial minority populations.⁵ This suggests that poor states with substantial minority populations behave in the manner described as traditional.

The *moralistic* political culture ranges along the northern border in a belt from Maine to Oregon. Good government, promoting the public goods of honesty and selflessness, and governments serving God's purpose define the moralistic political culture.⁶ Like the traditionalistic political culture, this culture derives from the ideas that whites brought with them, this time from Northern Europe, where Protestant religions predominate. In this political culture, government is to serve God. Government must do what is morally correct. This attitude might be expected to regard corruption in public office as unacceptable and to demand that merit, not whom one knows or one's political party, be the basis for selecting who will get public jobs.⁷

Participation in elections and other political activities is a civic duty in the moralistic culture, even though because of relatively homogeneous lifestyles, there is little disagreement on what is morally correct. Nevertheless, turnout in elections and other political participation should be high. The states that best exemplify this culture are Wisconsin, Minnesota, and the Dakotas.

Finally, the *individualistic* political culture emphasizes the conception of the Democratic order as a marketplace. From this perspective, "a government is instituted for strictly utilitarian reasons, to handle those functions demanded by the people it is created to serve."⁸ Again, there is a belt of states included in this culture that runs from Massachusetts through the U.S. industrial heartland. In these states, immigrants from all over Europe found employment in the industrial revolution and settled in rather squalid conditions in cities where that revolution was centered. Conditions made them receptive to the idea of having government provide them necessary services. They were willing to pay taxes—or have the wealthy pay taxes—to under-

write these services.

In the individualistic culture, government is to be earned through political competition. Citizens should participate in elections and other political activities to gain power and influence. Government is to serve those who win it. "To the victors go the spoils" is the common phrase. It was not limited to what was traditional or to what was moral. Even the ideas of honesty or using government for the public good are less relevant than using government to serve one's purposes. Massachusetts, Ohio and Illinois probably best represent this political culture. Urban lifestyles prompted this political culture, so its best expression or most typical states will be those with large cities and a high percentage of the population living in metropolitan areas. Certainly, Boston in Massachusetts, and Chicago in Illinois meet these expectations.

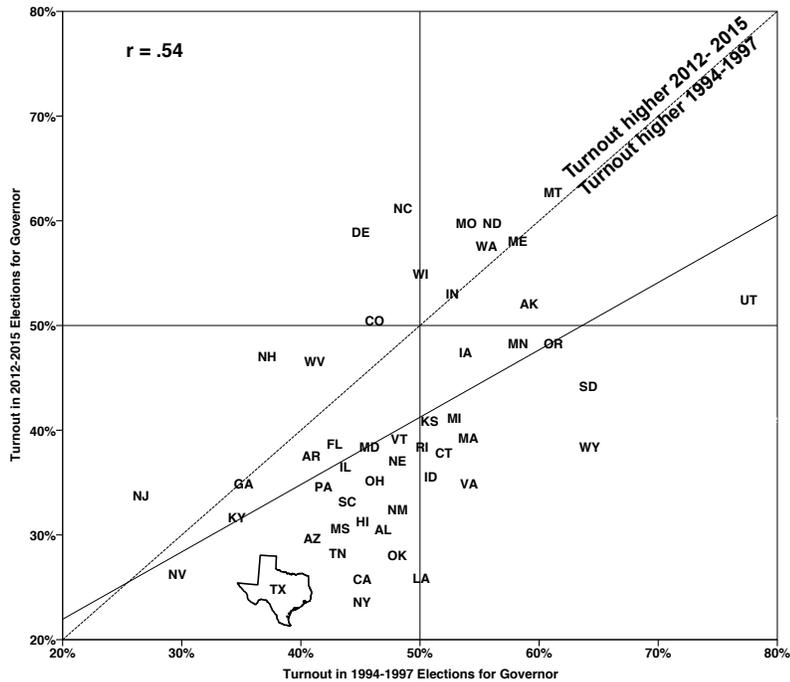
Elazar's political cultures can be categorized by two key concepts: scope of government and turnout. The traditionalistic political culture calls for minimal government and participation by a very small elite group. The moralistic political culture is the opposite: significant government and large-scale participation. The individualistic political culture falls in between: more government and participation than the traditional culture but not as much as the moralistic culture.

While political culture gives many intuitively satisfying insights, applying Elazar's ideas to contemporary America is challenging. Elazar wrote that he used a lot of empirical data to categorize states. But, he did not specify exactly what data and exactly how those data were used to create his measures. As a result, we do not know how to update his measures by replicating his procedures.⁹

While we cannot update Elazar's political culture designations, we can assess whether they are still accurate today. Figure 3.2 is a scatterplot of the two key concepts in political culture: scope of government and participation. Scope of government is measured as the percent of Gallup Poll respondents who identified themselves as Conservative in 2014. Participation is measured as turnout of voting age population in 2014.

If the state behavior patterns of specified in Elazar's political cultures holds true today, the states with darkest shadings in Figure 3.1 should be in the lower right, traditionalistic quadrant. States with lightest shadings should be moralistic and

Figure 3.3
Turnout of Voting Age Population Elections for Governor 1994-1997 and 2012-2015



similar range of turnout in 1994-1997: two states had turnout lower than 30% and four states had turnout higher than 60%.

Turnout was unmistakably lower for elections in 2012-2015 than in 1994-1997. Average turnout in the earlier period was 49% and in the later period 40%. Turnout increased in 12 states and declined in 38 states.

Figure 3.3 shows that across a 20-year period, low-turnout states remain low-turnout states. The correlation between the two series of election turnout for governor is .54.

It is possible to see a certain degree of regionalism in Figure 3.3, as most of the high-turnout states are in the largely rural Great Plains and Mountain West states. Similarly, the Southern states tend to be in the lower left. Turnout declined by more than 20% in California, New York, South Dakota, Louisiana, Utah and Wyoming. Turnout increased by more than 10% only in Delaware and North Carolina.

Liberals and Conservatives

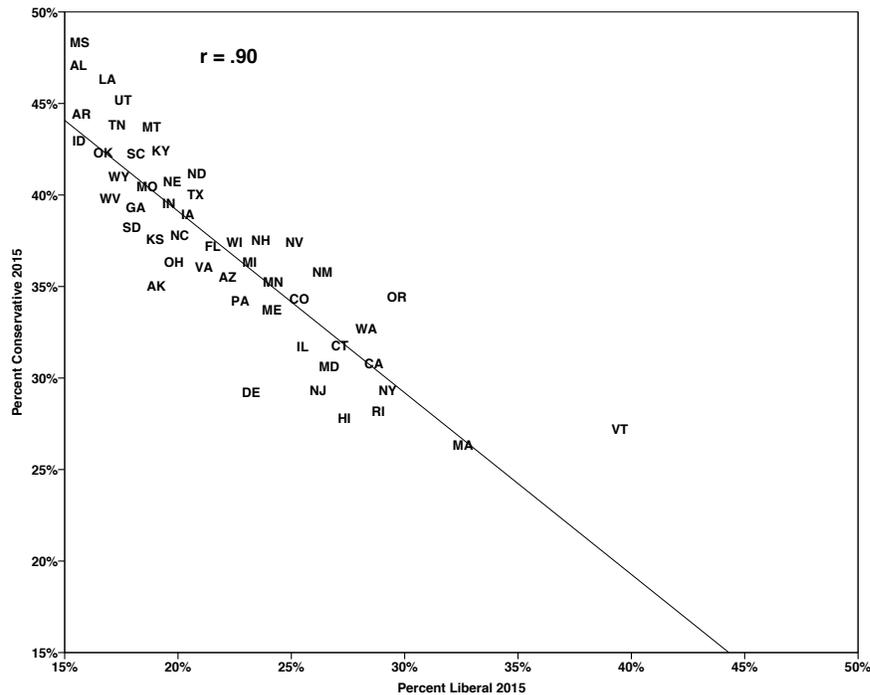
These terms are frequently used to characterize the preferences of political leaders and of voters. The

media and politicians frequently characterize the outcome of elections as being “conservative” or “liberal.” Candidates use these words to describe their opponents in negative advertising. The goal is to communicate that opponents are extremists, out of touch with the public, a danger, and unworthy of public office.

We cannot provide consistent definitions for these popular political descriptions. Some think of liberal and conservative in terms of the preferred role of government. For others, size of government and fiscal and monetary policies are the defining factors. Others have social policies in mind. Yet others think of foreign policy. Finally, some define liberal and conservative in terms of positions on a single issue. And there is wide disagreement on what single issue defines the terms. Figure 3.4 is a scatterplot of self-identified liberals and conservatives in 2014 Gallup Polls.

The correlation of $-.90$ between state percent liberal and percent conservative is evidence of the contemporary polarization of American politics. Conservatives are the most unique and strongest in their views. It is easy to overlook in Figure 3.4 the numerical advantage conservatives have over liberals. The state average is 37% for conservatives,

Figure 3.4
Percent Liberal and Conservative 2015



21% for liberals. However, the average for moderates is 36%.

Figure 3.5 interrelates percent conservatives in 2014 and 1988-1999.¹¹ The correlation is .77, indicating they are strongly related. The United States is much more conservative in 2014 than at the end of the 20th century. The average increase is 6 percent, from 31 percent to 37 percent. Only 3 states are not more conservative in 2014: South Dakota, Delaware and Vermont.

Americans characterize themselves as more conservative in 2014. But this change in self-identification may or may not be the same as a change in policy and party preferences. Are Americans more fiscally conservative or socially conservative or both? Do they favor retaining the current role of government or scaling it back? Do they prefer continuing current federal and state roles or devolving authority from federal to state governments?

Republicans and conservatives increased their numbers in the midterm elections for federal offices in 2014. Republicans became the majority party in the United States Senate, increasing from 45 to 54 seats. In the House of Representatives, Republicans increased their majority from 233 to 247 seats. Republican majorities in the Senate and

House did not result in the expected increases in Republican power and policies.

It is not unusual for Congressional parties with large majorities to split into factions. An invitation-only group of approximately 40 right-wing conservatives called the House Freedom Caucus acted as a faction that refused to work with the Republican Party leadership. In 2015 and 2016, Freedom Caucus members staged a rebellion against their own party leaders, disrupting them to the point of forcing Speaker John Boehner to resign.¹² To pursue its goal of electing a Republican President in 2016, the Freedom Caucus focused on articulating policies rather than acting on legislation that would be approved by their Republican colleagues in the House or Senate. House Republicans were not a majority without the support of Freedom Caucus members. The primary source of legislative dysfunction and gridlock changed from being disagreement between two major parties to disagreement within the majority party in the House. Of course, there was also substantial disagreement between the Republican Congress and Democratic President Obama. Although stymied at the federal level, the Republican Party and its Tea Party activists were extraordinarily success-

Figure 3.5
Percent Conservative 1988-1999 and 2015

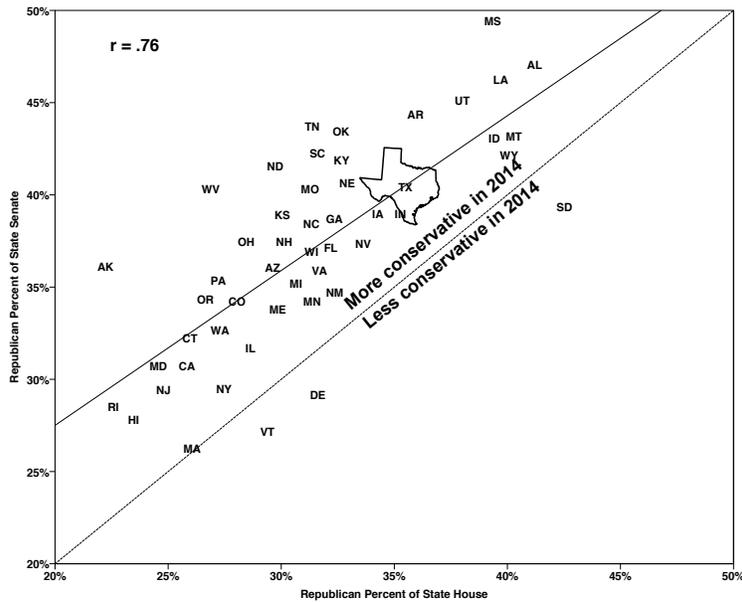
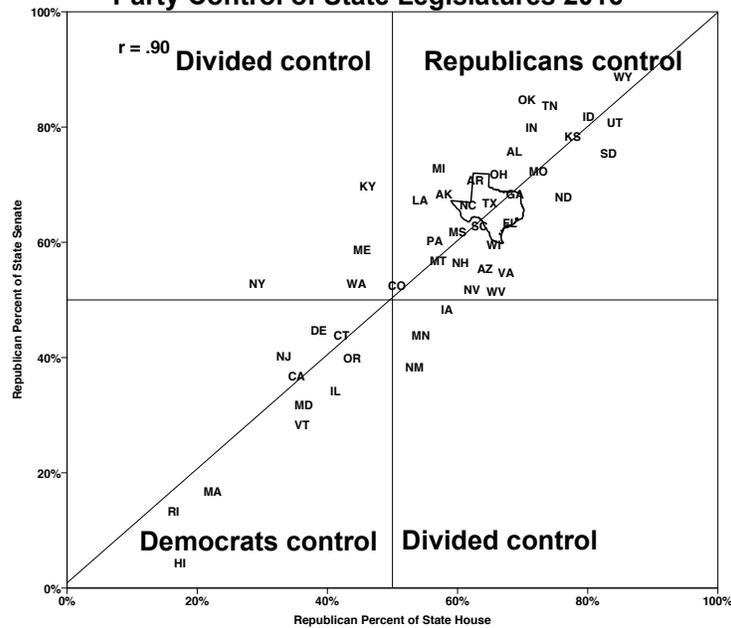


Figure 3.6
Party Control of State Legislatures 2016



ful in governing and enacting policies at the state level.

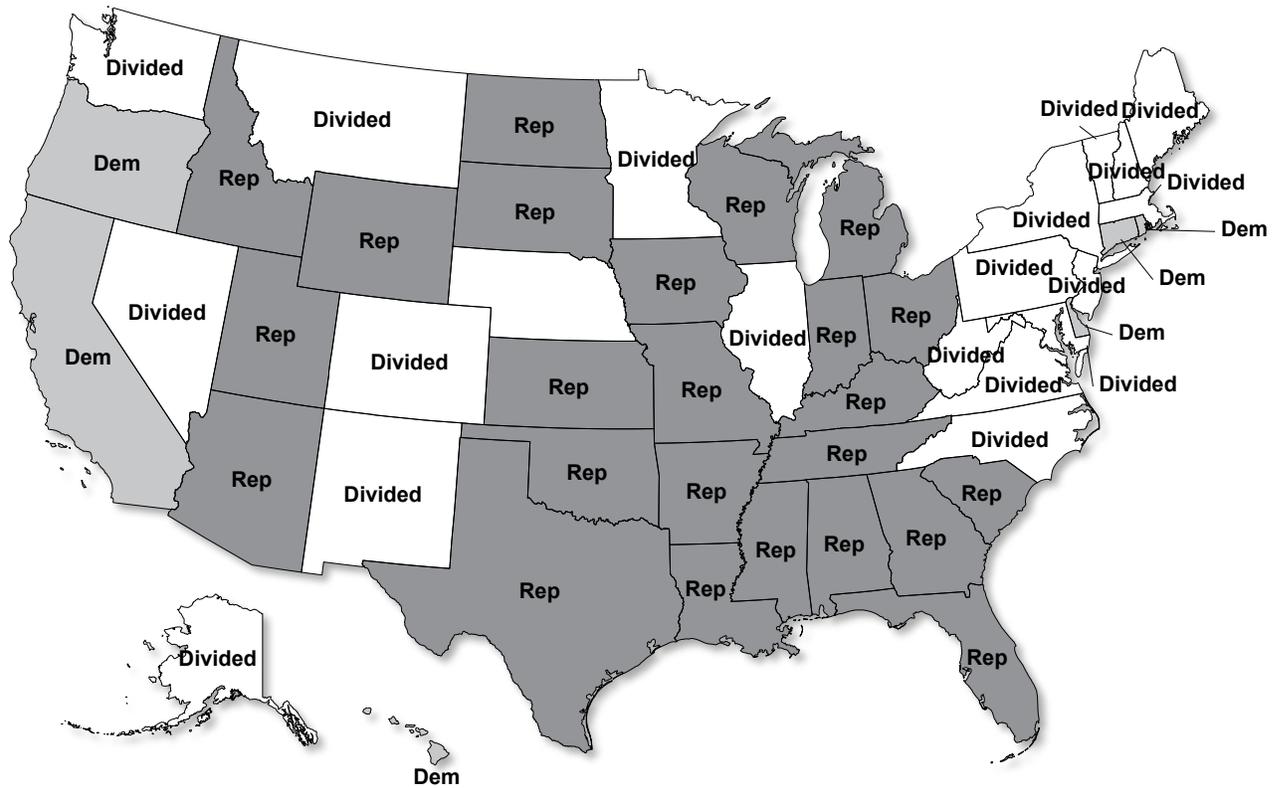
State Partisanship

We might well expect states where the Democrats control to differ in policies from those controlled by the Republicans.¹³ The mass media certainly

speak of the Democrats as willing to expand government and provide new services. They characterize Republicans as ever seeking to cut taxes and services. These images are not necessarily based on events in the recent or distant past at both the federal and state levels of government.

Figure 3.6 is a scatterplot of Republican members of the two legislative chambers in forty-nine

Figure 3.7
Party Control of Legislature After 2016 Elections



state legislatures in 2016. Most won elections in 2012 or 2014.¹⁴ The percentages of Republicans in the states' upper and lower houses are strongly related. The correlation is .90.

Figure 3.7 is a map of party control in state legislatures after the 2016 elections. Republicans control 24 states and Democrats control 6 states. Control is divided in 19 state legislature and Nebraska has a unicameral, nonpartisan legislature.

The parties control states in distinct regions. Republicans control legislatures of the former confederate states, many midwestern states and mountain west states. Democrats control legislatures in almost all the other coastal states and Illinois.

Figure 3.8 is a scatterplot of self-identified Republicans in Gallup public opinion surveys and in state Houses in 2015-2016. The correlation is strong, .88. Why is the correlation not 1.00? Several reasons come to mind. First, those who vote in legislative elections may not reflect the preferences of the entire population. Second, majority parties create legislative districts to maximize their

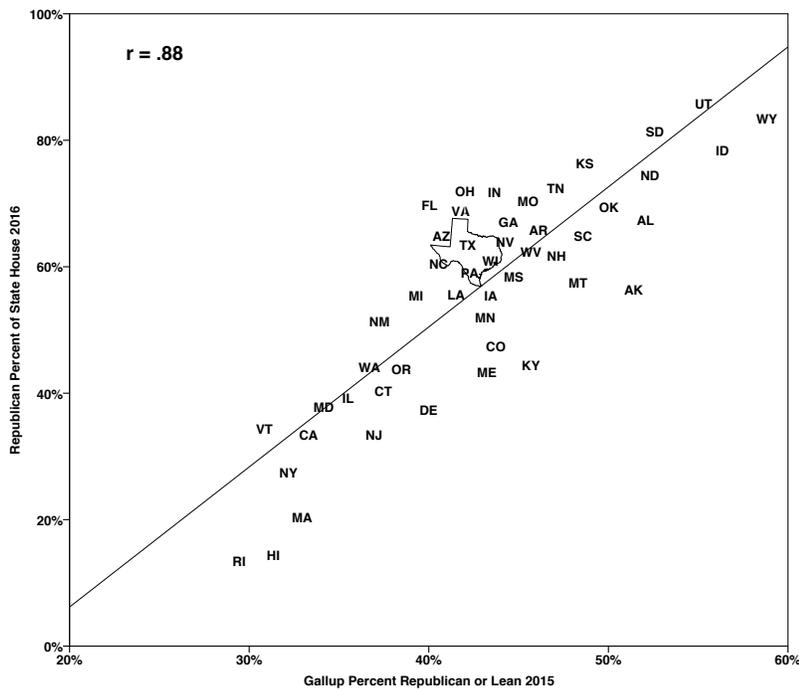
partisan majority. Third, incumbent members have electoral advantages over challengers.

The partisan divide in the states is strongly related to the rift between conservative and liberal preferences articulated in survey polls. The correlation between conservatives in the population and Republicans in state lower legislative chambers is .79. The cumulative evidence of different preferences across the states in political orientations and parties is undeniable.

Figure 3.9 maps the combined partisan control of both chambers of state legislatures and state governorships after the 2016 elections. In 30 states, one party has total control; Republicans control 24 and Democrats control 6. Of the remaining 20 states, 19 have divided control and Nebraska has a Republican governor and a nonpartisan unicameral state legislature.

There is a strong contrast between Republicans' ability to govern and make policy at the federal and state levels. While stymied at the federal level, Republicans controlling 23 states are enacting the

Figure 3.8
Republicans in the Population and State Houses 2015-16



conservative policies they favor. In Texas, Republicans have controlled all statewide elected executive branch positions and both chambers of the state legislature since 2003. According to Texas Republicans, only the interference of the federal government prevents them from creating what they view as the ideal state.

Conclusions about Political Differences

The maps and scatterplots in this chapter and the preceding ones are numerous. Much of what has been introduced will be dealt with more extensively later. First, we have considered differences across the states ranging from economics, political culture, politics and government, and social problems faced that probably greatly influence what a state does. Clearly, there are meaningful differences between states on most, if not all, such measures.

Second, resources available to states play a very important role in accounting for differences in circumstances or experiences of the states, as well as the policies that they enact to cope with problems. A poor state has few resources with which to solve its problems, regardless of its politics. How-

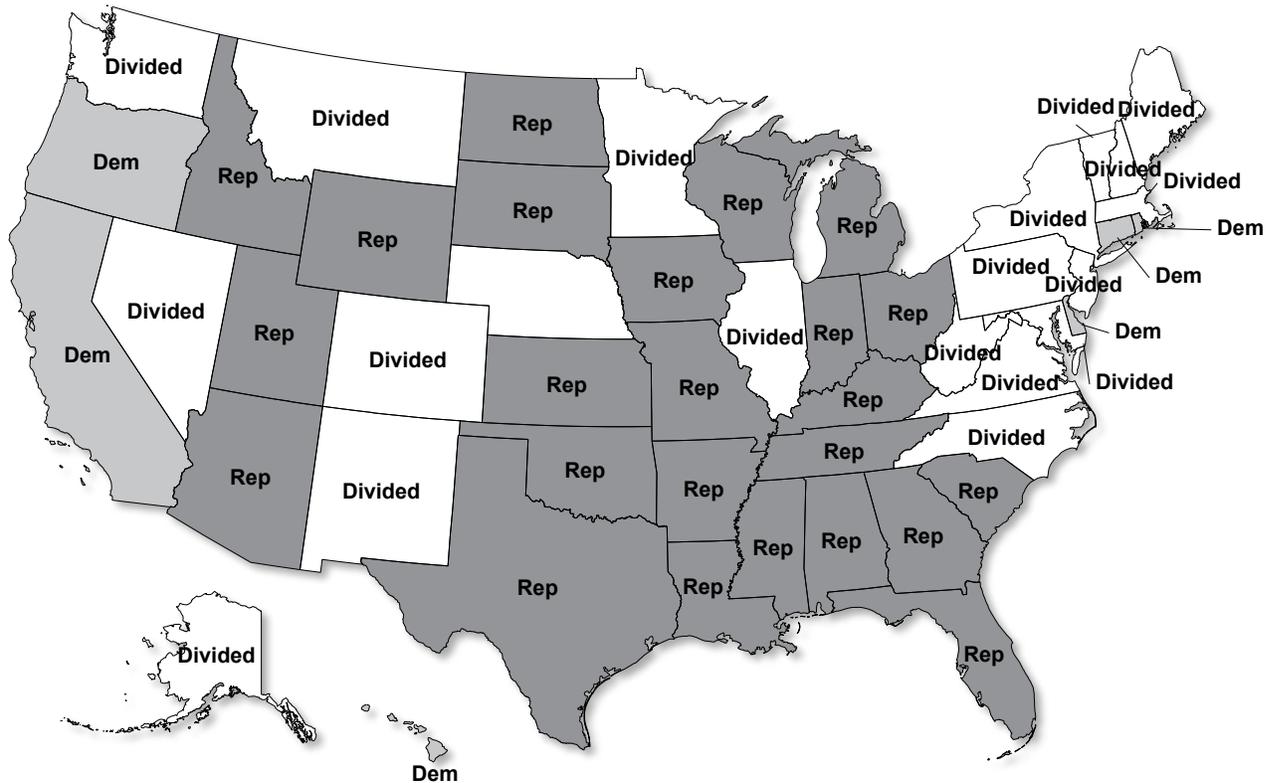
ever, we should not conclude that economics is the only consideration.²¹

Finally, all of these differences persist although each state is a partner in our federal system of government and subject to the limitations that the federal government (Congress, the presidency, and the federal courts) can impose.

The federal government frequently acts as a supermajority of states trying to influence the behavior of a small minority of states. In such cases, the goal is to provide incentives for the minority to behave more like the majority. Yet, we still see remarkable differences between the states.

Where you live affects many things in your life that are of concern to government. Policymakers in government can manipulate only some of these differences. These differences, as we will see, permit a comparative analysis of the states, as discussed in this chapter. It is apparent from our consideration of political culture and of liberal/conservative differences that states differ on the fundamental purposes of government and what goals should be pursued. The next chapter deals with many of the ideas that shape what we expect of government.

Figure 3.9
Party Control of Legislature and Governor After 2016 Elections



Summary

1. Governments exist to address problems and enhance the lives of citizens. However, government is not always the main proactive force and is not necessarily proactive at all. Government is sometimes a reactor.
2. Public and decision-maker attitudes concerning what government should do, called political culture, may influence how government seeks to cope with social problems. Political culture categories created to describe views on the proper government scope and participation in politics in the 1960s are fairly accurate today.
3. Americans are not avid participants in elections or politics, and rates of participation and voting

turnout vary greatly across the country.

4. There is an ideological rift in American politics that finds expression in both federal and state politics.
5. The ideological divide matches differences in the two major political parties. At the federal level, there have been partisan conflict levels sometimes characterized as gridlock. States are at or near historical high points for unified party control of government. As a result, state governments are pursuing quite different policies.

Information Sources

Figure 3.1	Daniel Elazar (ed.), <i>American Federalism: A View from the States</i> , 2nd ed. (New York: Harper & Row, 1972) p. 117.
Figure 3.2	X: U.S. State Political Data 2014, www.gallup.com Y: http://www.electproject.org/home/voter-turnout/voter-turnout-data
Figure 3.3	X: U.S. Statistical Abstract 2008, Persons Reported Registered and Voted, by State: 2006, http://www.census.gov/compendia/statab/cats/elections/votingage_population_and_voter_participation.html Y: http://www.electproject.org/home/voter-turnout/voter-turnout-data and various state Secretary of State Historical Records Internet pages
Figure 3.4	X: U.S. State Political Data 2015, www.gallup.com Y: U.S. State Political Data 2015, www.gallup.com
Figure 3.5	X: Data are an update by Luttbeg using CBS/New York Times cumulative surveys for the period 1988-1999 using data and procedures reported in Gerald C. Wright, Robert S. Erikson, and John P. McIver, "Measuring State Partisanship and Ideology with Survey Data," <i>Journal of Politics</i> (1985, 469-489) Y: U.S. State Political Data 2015, www.gallup.com
Figure 3.6	X: http://www.ncsl.org/legislatures-elections/elections/statevote-charts.aspx Y: http://www.ncsl.org/legislatures-elections/elections/statevote-charts.aspx
Figure 3.7	http://www.ncsl.org/research/elections-and-campaigns/statevote-2014-post-election-analysis635508614.aspx ; http://www.ncsl.org/Portals/1/Statevote/StateVote_Combined%20Presentation.pdf
Figure 3.8	X: U.S. State Political Data 2015, www.gallup.com Y: http://www.ncsl.org/legislatures-elections/elections/statevote-charts.aspx
Figure 3.9	http://www.ncsl.org/Portals/1/Statevote/StateVote_Combined%20Presentation.pdf and http://www.nga.org/cms/governors/bios , Current Governors by State, Party Affiliation, and Terms in Office

Study Guide, Chapter 3

Essay Questions

1. What are the three types of state political culture as posited by Daniel Elazar? Explain the differences. Which state political culture would you expect to be most supportive of the interests of large corporations and businesses in general? Why?
2. What is the most common form of political participation? What are the causes of variation in this means of participation over time and across the states? How does Texas compare with other states? Is this form of participation increasing or decreasing in Texas? Explain how this information is consistent or inconsistent with Elazar's political culture designation for Texas.
3. Chapter 3 identifies five different ways Americans may define themselves as Liberal or Conservative. For each of the five, identify an example of a Liberal preference and a Conservative preference. In your view, is it possible for an individual to be Liberal in some ways and Conservative in others? If so, give an example. If not, explain why not.
4. Government programs can be proactive in dealing with problems or can react to problems. Some agencies attempt to do both. How can a fire department be proactive in limiting damage caused by fires? How can a fire department be reactive in limiting damage caused by fires? Do you think fire departments spend more resources and time on proactive or reactive efforts? Explain why.
5. Figure 3.2 uses a 2014 Gallup Poll to measure the percent of state residents who identify as conservative and uses elections in 2014 to measure turnout. The previous edition of this text used a 2010 Gallup poll and elections in 2012. The results in the previous edition are not identical to the results in this edition. Give three reasons why results might be different and explain each.
6. In the midterm elections of 2014, the Republican Party increased its majority in the U.S. House of Representatives and became the majority party in the U.S. Senate. But Republicans could not implement all the policies they preferred, even with majority control of Congress. Identify and discuss at least three reasons for Republicans failing to achieve all their goals in 2015 and 2016.
7. In recent years, at which level of government have Republican politicians been most successful in winning and retaining sufficient political power to pass the conservative policies they prefer? What are some reasons that they have been successful at this level but not at the other level of government where elections for top executives and the legislative branch are contested on a partisan basis?

Multiple Choice Questions

1. Which of the following statements is true?
 - a. there is a strong correlation between state residents who say they are liberal and residents who say they are conservative
 - b. more Americans said they were conservative in 2012 than in 1988-99
 - c. there is a positive correlation between percent conservative in 1988-99 and percent conservative in 2012
 - d. all of the above
2. According to Daniel Elazar, "...Texas has a _____ political culture."
 - a. moralistic
 - b. traditionalistic
 - c. individualistic
 - d. individualistic and moralistic
3. Ira Sharkansky's study of state expenditures and public services suggests state governments are _____ on education and _____ on crime.
 - a. reactive/reactive
 - b. proactive/proactive
 - c. reactive/proactive

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d. proactive/reactive

4. Correlations above the 0.30 threshold are evidence of
 - a. one variable tracked exactly the other variable
 - b. a causal relationship between the two variables
 - c. an empirical relationship between the two variables but not necessarily a causal relationship
 - d. a relationship so weak that we regard it as no relationship

Notes

- 1 Ira Sharkansky, "Government Expenditures and Public Services in the American States," *American Political Science Review* (1967, 1066-1077).
- 2 Not all of his measures attempted to control of state population differences.
- 3 Daniel J. Elazar, *Cities of the Prairie: The Metropolitan Frontier and American Politics* (New York: Basic Books, 1970). He later implied the culture of the state from that which predominated among its cities; see Daniel J. Elazar, *American Federalism: A View from the States* (New York: Harper & Row, 1972). Most recently, a collection of essays on his ideas has been published: John Kincaid (Ed.), *Political Culture, Public Policy and the American States* (Philadelphia: Institute for the Study of Human Issues, 1982).
- 4 Elazar, *American Federalism*, pp. 92-93.
- 5 Norman R. Luttbeg, "Classifying the American States: An Empirical Attempt to Identify Internal Variation," *Midwest Journal of Political Science* (1971, 703-721).
- 6 Elazar, *American Federalism*, pp. 89-92.
- 7 Jody L. Fitzpatrick and Rodney E. Hero, "Political Culture and Political Characteristics of the American States: A Consideration of Some Old and New Questions," *Western Political Quarterly* (1987, 145-153).
- 8 Elazar, *American Federalism*, p. 86.
- 9 Some have tried to measure political culture in ways that potentially could be replicated. Charles A. Johnson, "Political Culture in American States: Elazar's Formulation Examined," *American Journal of Political Science* (1976, 491-509); and Joel Lieske, "Regional Subcultures of the United States," *The Journal of Politics* (1993, 888-913) are examples.
- 10 Each year, some states have elections for governor. Some states elect governors every two years. Some states hold special elections when an elected governor resigns or dies.
- 11 These latter data are an updating by Luttbeg. See: Gerald C. Wright, Robert S. Erikson, and John P. McIver, "Measuring State Partisanship and Ideology with Survey Data," *Journal of Politics* (1985, 469-489). Their procedures were used.
- 12 <http://www.pewresearch.org/fact-tank/2015/10/20/house-freedom-caucus-what-is-it-and-whos-in-it/>
<http://www.politico.com/magazine/story/2015/10/the-freedom-caucus-historic-rebellion-213256>
http://www.realclearpolitics.com/articles/2016/01/19/one_year_later_freedom_caucus_upbeat_on_2016_goals_129356.html
- 13 Austin Ranney, "Parties in State Politics," in *Politics in the American States: A Comparative Analysis*, Herbert Jacob and Kenneth N. Vines (Eds.), (Boston: Little, Brown, 1965), pp. 61-99.
- 14 Kentucky, Louisiana, Mississippi, New Jersey and Virginia hold elections for state offices in odd-numbered years.

Chapter 4

THE EVOLUTION OF AMERICAN FEDERALISM

When you know government is about to make decisions that greatly affect your life, you are likely to care about those decisions. You might even want to know how they will be made. You are unlikely to be concerned enough to run for public office. You probably will not contact a government official. If you are like most Americans in most elections, you will not even vote.

We rarely think about how often government affects our daily lives. If you are attending a public institution of higher education, you probably know the tuition and fees students pay depend on financial assistance provided by state and/or local government. You are aware that states and cities establish driving regulations and enforce them with state and local police. You might recognize that local, state, or even federal government provides the roads you travel on. You probably give little thought to the role governments play in ensuring the safety of the water you drink and the food you purchase.

The overwhelming majority of Americans live in metropolitan areas. We are close to many neighbors and might come in contact with dozens or even hundreds of people on any given day. In addition, modern communications and transportation technologies link us to Americans outside our neighborhoods. In the global village of the 21st century, we are potentially affected by the behavior of people elsewhere in the nation or even elsewhere on the planet.

The United States of America was created long before the Internet, television, radio, and telephone. There were no airplanes or automobiles. Distances we travel today in hours took days. Information did not move faster than people did. In earlier times,

typical Americans were not continually and instantaneously affected by the behavior of neighbors.

The majority sustained families more with what they produced on their farms than through commerce. Such people asked and received little from government. Taxes were low. There was little concern about governments, government decisions, or who governed. Much has changed since then.

Periods of Government in America

We shall consider several historical periods of the United States. Our purpose is to consider the thinking of people at the time. There have always been three levels of government. The key questions for us here are: 1) what should government do; and 2) which level of government should be doing it? You might be surprised at how often multiple levels of government cooperate with each other. As discussed in Chapter 1, this cooperation is not always recognized. Most often, state and local governments take credit and downplay or ignore the role of the federal government.

Different ideas arose during different periods concerning what government should do and how it should operate. Many of these same ideas continue to exist today. Some made sense at the time they were conceived but do not apply very well to the way we live today. For example, from the first period, we have the idea that the best government is the least government. Many still declare this, despite driving on public roads, using public education, enjoying government testing and regulation to ensure safe drugs, looking forward to social security, expecting protection from criminals, and demanding security from international terrorism. Why do

we say, “the least government is best,” other than to discourage new programs and higher taxes? Is not the proper response, “That is the silliest thing I have ever heard!”? Putting ideas in the context of their times allows us to see why they are part of the rhetoric of contemporary American politics. More importantly, we shall see how events drive our political system and all political systems to change in efforts to deal with society’s troubles.

No Government Period: 1776 to 1850

There are many who would probably take exception both to the characterization of this period as the “no government period” and to the dates for the beginning and end of this period and others. There is no question that each period blends gradually into the next and that some states—notably Massachusetts, New York, New Jersey, and probably Illinois—left this particular period for the next at an earlier date. Similarly, some states moved into the later period much after 1850. These labels reflect events that shaped the dominant tone of thought that in turn affected our governing institutions and still shape our thinking and conversation.

At the end of the successful fight for independence, a nation of many states evolved into a new federal system of government. There were many details that needed to be resolved. There were external threats from European countries on the other side of the Atlantic and from American Indians to the west. Individual states could not deal with these threats on their own. A central government had to take the lead. There were questions of interplay between the states and of smoothing commerce by dealing with interstate trade and creating a stable economy.

Early in the period, the states ratified the Constitution of the new federal government. Not long after, state and county governments undertook substantial capital infrastructure projects such as the canals in New York and Pennsylvania. Nevertheless, the average American living on a subsistence farm could fully expect to live a life with nearly no contact with government. For this reason, we call this the No Government Period.

This would have been ideal for contemporary Americans who wish for a simpler life free of government interference. If you needed a service, you had to provide it yourself. If you wanted to

burn your leaves in the fall, you did so. You rarely had to complete any government forms or file tax returns. You might deal with the county clerk’s paperwork involved in reporting a birth or in buying or selling a farm. Every 10 years, you might interact with the Census counter. On occasion, you might cooperate with the county sheriff as he dealt with theft of property or loss of life. So, we might call this the period of county government.

There were few towns of any size. In the first census of 1790, no U.S. city had a population of more than 50,000. Only five cities were larger than 8,000 people. Not until 1820 were there any larger than 100,000, and there was no American city with a million people until 1880.¹ In 1820, only 5 percent of Americans lived in areas designated in the first census as “urban”—2,500 populations or more. Of necessity, Americans were a more resourceful and less dependent people. In times of need, they relied on those they knew best: family, friends, neighbors, and community. They did not contemplate help from large-scale governments headquartered in distant capitals.

Ideas such as *self-dependence* sprang from this period. If something unfortunate happened, you were on your own. ***The best government was the least government***, largely because little or no government was the only thing available. When you did have contact with government, such as with the sheriff, troops, or a tax collector, it was usually a negative experience.

Ideas about accountability of government to citizens had little meaning in an agricultural society. Who cared whether the mayor of New York was corrupt, since few people lived there and people outside New York were not affected? Even the ideas of corruption or inefficiency meant little, since governments provided little service. Government officials could do little harm or good. Even issues of states’ rights versus those of the central government in Washington, D.C., had little relevance to the average American. This changed in 1860 when Lincoln called for preserving the Union after the south attempted to secede.

To use the language of political culture from Chapter 3, government in this earliest period was traditional. *Traditional government* defined ownership of property, kept records, and protected property as it had for hundreds of years. These services were provided, but no others were needed

until people began to concentrate in urban areas.

Central Ideas from the No Government Period

- *Families are self-dependent, but you can count on your neighbors. There is a “sense of community.”*
- *Government is not an institution that you turn to when there is trouble. When you have contact with any government, it usually affects you adversely. The best government is the least government.*
- *Government should do what it traditionally has done—very little.*

Municipal Government Period: 1850-1895

During and after the Civil War, urbanization increased in the United States. This change in where and how people lived was driven largely by the industrialization of our economy and the arrival of European immigrants. Manufacturing in the 1800s required concentrating plants and industries at points where access to the sea or to other water transportation allowed raw materials to be shipped in and finished products to be shipped out. In 1870, seven of the 15 largest cities were seaports, and six more were lake or river ports.² Since the only realistic means to get from home to work was to walk, urbanism—with its concentration of workers in tenement housing near where they worked—was a second requirement. A substantial influx of European immigrants provided the unskilled work force necessary for industrialization.

Families living in congested urban areas did not have options available to farm families. They could not grow and raise their own food. They could not craft clothing and build shelter from nearby raw materials. Water was not readily available and often became tainted because there was little understanding of how waste materials could contaminate drinking water. The rural practice of discarding refuse onto the land or into the water did not work in growing cities. Strangers who lived nearby could not be counted on to aid your family if something went wrong. The sense of community did not apply to an entire city.

With urban concentration, crime increased and

more police were needed. Families could not cope with greater threats to health and security. Large-scale problems needed large responses from government. Cities were pressured to pass health codes and provide more law enforcement. Building codes were demanded to deal with dangerous tenement housing built at the lowest possible prices. Mass education became urgent. The public needed to be literate to read instruction manuals or even to find its way in the streets. In urban areas, old and new services had to be provided to an increasingly dependent population.

When large numbers of people concentrated in an area, they could request permission from the state government to establish a city or municipal government. Such local governments could pass laws to provide needed services and to collect taxes to provide services. Although states had laws making robbery and murder crimes, they had neither resources nor inclination to enforce them. Even asking them to provide urban services seemed unnecessarily complicated and indirect. In a word, it was senseless. *If government is to help cope with local problems, it should be local government, because **local government is closest to the people and knows what they need.***

The first government that greatly affected people in their daily lives was municipal government. Much of our contemporary notions about government were shaped by the experience of this period. The first of these new ideas was *government could and should provide services beyond those dealing with property*. Second, *candidates for public office could promise to provide services desired by citizens in exchange for their votes*. Third, *corrupt administration of government is inefficient and expensive*. Corruption is abhorrent to contemporary American values. It is hard for us to understand the high tolerance urban residents had for the corrupt practices of machine political organizations that dominated early urban governments. The idea that efficient government is preferable to corrupt government originated in the small middle and upper class population of that time. They had the greatest wealth and paid the most in taxes.

It was probably inevitable that large city politicians, elected from ethnically distinct districts or “wards,” would recognize the benefits of developing “solid neighborhood loyalty.” By being a friend

of that neighborhood through providing of city services, the politician assured his party's reelection success.³ Local politicians were called "ward heelers." There is little question that the service of the representative seeking to give service to constituents, and those constituents in turn supporting him for reelection during this period, is fundamental to our concept of democracy.

It was public knowledge that ward heelers took bribes, kept tax funds for themselves, granted special favors to friends, and made life difficult for enemies. Their lower- and working-class supporters voted for their machine friends in spite of corruption. Recent arriviers came from countries with equal or greater dishonesty in government. They had no recourse; political power followed from wealth and titles obtained through heredity. Immigrants found the corruption of political machines a small price to pay for social and economic opportunities available in America. In addition, machine representatives were friendly to them and helped them find housing and employment. Critics accused the machines of pandering to immigrants and reflecting a "foreign" way of doing things.⁴

The United States did not invent municipal government. Many of the names and ideas for the shape of this government, including corruption, came from England. Words such as sheriff, alderman, borough, township, and bailiff can be traced back to 9th-century English names. During that century, kings structured territorial local governments and urban concentrations that are the precursors of both our county and municipal governments.⁵ These governments also distinguished between legislative, or at least somewhat representative, bodies and executives, accountable to the Church of England or the crown. Both forms of local government evolved but were initially imposed on local areas by the central government, the king of England.

The documents of the founders stated ideals such as all men are created equal and government derives power from the consent of the governed. In practice, only the wealthy elite articulated their consent. Voting rights were limited to men of property, older age, and long residence. In federal politics, only members of the House of Representatives were chosen directly by these voters. The Electoral College and selection of U.S. senators by state legislatures concentrated the power of choice in even

smaller privileged bodies. Perhaps the most important new idea from what we call the municipal government period is that *outcomes of mass-participation elections could change policies*. Until this idea took root, the election of one privileged politician over another had virtually no meaning to normal citizens. Immigrants were probably amazed to find that merely voting into public office those who promised to improve local life could change their day-to-day experience.

The novel idea that the votes of normal citizens matter inspired the highest rates of voting in our history.⁶ Those competing in high turnout elections recognized *organization was important to winning public office*. Only by getting immigrants to vote together was victory assured. Government services became important tools in winning elections. Political machines had to follow through on their promises. The idea developed that the mission of government was to work in the best interests of all. Finally, we had the idea that the *public trust meant that public decision makers had to behave more responsibly than private sector decision makers*.

While the urban machines did provide new governmental services, especially to those most in need, the extensive corruption eventually became more visible and more costly. Even so, machines could not be defeated in local elections. In the next government period, middle and upper class opponents moved the contest for power over cities to a venue where they could win: state government. Reformers persuaded state legislatures that machine corruption and inefficiencies could not be tolerated. State legislatures passed a series of changes that ended the reign of urban political machines.

Central Ideas from the Municipal Government Period

- *Government can help solve problems, especially local government because it is closest to the people.*
- *Candidates are more likely to gain voter support if they promise certain actions if elected.*
- *Those who win public office can make decisions affecting everyone—elections matter.*
- *By being organized, you can win elections.*

- *Inefficiency and corruption in government can cost individuals higher taxes, especially those with money.*
- *Those in public office can violate public trust and can be criticized for doing so.*

State Intercity Government Period: 1895-1932

The privileged elite who held power before the rise of urban machines resented their change of fortune. They were accustomed to holding municipal offices and making municipal policy before industrialization. They resented everything about the ward heelers: their style, their supporters, and their policies. Along with those living in rural areas, they saw the new urban centers as hostile, foreign, and contrary to their self-interest.⁷ One scholar of this period saw a community whose ideas of decency were offended by the society they saw, not only by the excesses of the “robber barons” of private industry, but even more so by the alien elements controlling and abusing city government.⁸ Things would be right only if “*responsible* men” were put back in charge of government.

Those pressuring states to assume a more active role in urban areas focused their talking points on political corruption in the cities. There was also some new thinking about how to cope with a much more complex society, including the problems posed by the excesses of robber barons in the oil, railroad, and steel industries. Prejudices formed against the new immigrants and against their potential support for the socialist ideas then being popularized among industrial workers in Europe.

By any objective standard, corruption was rampant. In 1870, of the nation’s 10 largest cities, New York, Philadelphia, Cincinnati, Chicago, and San Francisco were judged corrupt by the press and public opinion. Moreover, Boston, Brooklyn, and New Orleans either had corrupt mayors or city councils. Only Baltimore and St. Louis were essentially honest. Generally, the mayor played a lesser role than the ward heelers on the city council. City councils made most political appointments and were divided into subject-matter committees that made day-to-day administrative decisions.⁹ There were instances of citywide political machines in which a mayor played the central role, including

the Tammany machine in New York City in 1868. They were short-lived and perhaps exaggerated in importance.¹⁰

The economic crash of 1873 caused many cities to default on their debt and even to surrender their charters or to relinquish their status as cities.¹¹ Cities were competing with each other and over-extending themselves to attract railroads. Machine opponents had been advocating “state legislative supervision,” supposedly motivated by concern for the “moral order of the cities” since the 1850s. These arguments gained favor with state legislators as cities became economically and politically weaker. In the 1870s, the municipal reform movement became national in scope.

Reforms imposed by state governments on urban municipalities changed the rules of political engagement. Election reforms made it impossible for machines to use the strategies that had kept them in power. Elections became nonpartisan and held at different times of the year than partisan state and federal contests. Responsibility for preparing ballots was shifted from political parties to municipal government. Ballots prepared by parties listed only their own candidates. Voters merely cast the ballots handed out by ward heelers. Ballots with all candidates required voters to make choices. Without the cue of party affiliation, most found it challenging to identify machine candidates.

Other reforms changed the status of mayors and city employees. Mayoral powers were strengthened. They were tasked with reorganizing municipal agencies to achieve greater efficiency. Another major change was implementation of a **civil service system**. Municipal employees were chosen by merit, rather than political loyalty. They retained their positions for good job performance, not for delivering services and votes to machine leaders. Also, public schools were made independent of cities. This removed schoolteachers, and a large number of jobs filled by patronage, from control of the urban machines. Taken as a package, reforms were intended to remove corruption from municipal elections and municipal administration. It was not a coincidence that reforms also reduced the participation and political influence of the immigrant and working classes.¹²

This is an excellent example of *changing the arena of conflict* to improve chances of winning political conflict. The groups who had lost out

in the politics of industrialized municipalities remained in control of state and national governments. If they could pass laws at these levels of government and force them on the municipalities, they could win at the state levels what they had lost at the municipal levels. To do so, they had to establish the right of states to tell municipalities that they had to enact civil service procedures for employment, have voter registration, and keep functional budgets subject to inspection, among other things.

An argument by an academic and the willingness of the state courts to demand certain actions by cities facilitated this changing of arenas. In 1878, a lawyer, Thomas Cooley, used common law to argue that local government should deal with a limited range of services, those they can offer easily, cheaply, and intelligently. State government should have more general powers.

He argued that any violations of this rule were unconstitutional.¹³ Scholar John Dillon extended these ideas and thus shaped how the courts reacted to efforts within the cities and within the legislatures to reform municipal government.¹⁴ He argued:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessary or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.... All acts beyond the scope of the powers granted are void.¹⁵

As applied by state courts, this became known as **Dillon's rule**. It severely constrained opportunities for municipalities to deal with their problems creatively and independently. On the other hand, it also limited opportunities for municipalities to ignore problems.

State legislatures became active producers of statutes designed to remove corruption and introduce efficiency in municipal services. But this was not the limit of their activity. Some cities were granted powers to make franchise agreements with private businesses. The goal was to impose order to a chaotic situation. Competing utility companies kept the streets dug up endlessly and made the air above a hopeless tangle of wires. The presumed benefit of lower prices from private sector compe-

tion was abandoned in favor of the control and order that could follow from awarding a franchise agreement to a single company. Franchising may have helped to provide order, but it also gave the companies a reason to become involved in municipal politics.¹⁶

Some cities took effective steps to protect residents from unsanitary sewage disposal, contagious diseases, and hazardous buildings. Other cities chose to pay no attention to such threats to public health and safety. People who were displeased with their city's willful disregard in these areas sought out sympathetic state legislators who would enact state statutes. These statutes forced all cities to comply by way of the Dillon rule. One could get building and health codes forced on cities by winning a state statute requiring such codes. *States became active in passing statutes affecting life in the cities.*

Increasingly, the **common law** that we had adopted from Great Britain proved inadequate to cope with the new problems of an industrialized and urbanized state. Common law is a series of case-by-case judicial court principles for resolving disputes, such as what happens when a cow dies shortly after being bought or when people are denied access across property after having long been allowed that access. In the first case, the common law is to "let the buyer beware," meaning that he or she has no recourse to government. Similarly, if the public has not been allowed access for "a year and a day," under common law the property owner can have violators arrested for trespassing. Undertaking a job under common law means that one accepts the possibility of being maimed while doing it. All of these common laws and many others no longer seemed fair in the urban industrialized economies. State legislatures needed to be active. They stepped in and passed statutes that overruled or took precedence over the common laws. *States became active in passing statutes to undo a system of common law that predated modern urban life.*

Intrastate commerce, most often involving goods moving between the farm and the city, was a concern shared by state government as well as multiple local governments. Railroads, waterways, and land routes had to be regulated or provided. State government had the geographic scope to be the appropriate level for such governmental activity. Because it controlled the land between cities,

state government became active in passing statutes to regulate intrastate commerce. Many ideas important today came from this time. One is *local government is a creation of the state government*. This afforded the possibility for various interests who lost in a policy-making decision at the local level to “change the arena” to the state level and win there. State government in this period joined municipal government in being active in coping with problems. State government was especially active when those problems crossed the boundaries of several local governments or when there was corruption in a major city in the state. State statutes became the means for overriding common law, which might otherwise have been revered since it represented wisdom derived over hundreds of years.

Perhaps the most important concept from this period was reform—the idea that government institutions can be manipulated to achieve intended results. *Changing institutions could alter human behavior. Society would be improved.* This idea is optimistic. Historical hindsight lets us identify cases in which such optimism is naive. An experiment with prohibiting alcohol proved unsuccessful and was ultimately abandoned. The 55 mph speed limit is another example of an effort that was soon forsaken. It is easy to predict that there will be similar changes in your lifetimes. No doubt you will tell future youngsters that legal behavior used to be criminal, and vice versa.

The reform movement promised to weed out corruption and fraud and thereby achieve greater efficiency. To cope with municipal inefficiency and fraud, states merely needed to pass election laws, require auditing to ensure proper use of public funds, and select quality public employees based on merit rather than political spoils. To ensure quality local government, states needed to require checks and balances between the legislative (city council) and the executive (the strong mayor) branches or to combine the two branches into a manager-council form of government. Although many would accuse the reformers of reflecting their class interests in their reforms, it should be noted that they believed reforms would work. Perhaps the primary ideas that persist from this period are (1) there are clear standards by which government can be judged, and (2) reform can improve government performance.

Central Ideas from the State Intercity Government Period

- *State government could also become active. Many problems were forcing such governments to become active.*
- *Under the name “the reform movement,” many sought to undo urban machines, using state government to pass laws shaping municipal elections and procedures that were forced on the cities under the Dillon rule.*
- *The decline of urban machines as a result of the “reforms” enacted led to the belief that laws can shape behavior and outcomes.*
- *The success achieved by opponents of machine government created recognition that, in the American federal system, you could lose at one level, shift the contest to another level, and win there.*
- *States could regulate intercity or intrastate commerce, require municipalities to institute health and building codes, and supersede common laws.*

Federal Government Era: 1932-1981

Two events drove the United States into the next era of government. The first was the Great Depression of the late 1920s and early 1930s. We use the year in which Franklin Roosevelt was elected president, 1932, to identify the beginning of this era. The second event was the declaration of war by the United States against Japan and Germany immediately after the bombing of Pearl Harbor on December 7, 1941. Both of these events raised enormous challenges. The United States met these challenges by greatly increasing the scope of federal government responsibilities. The federal government became responsible for managing the economy and actively providing national defense.

The Constitution of 1789 gave the federal government responsibility for national defense. Until 1941, with few exceptions, only a small part of the federal budget was devoted to national defense. In

1940, for example, national defense received only 18 percent of the \$9.5 billion federal government budget. After declaration of war, the proportion increased to 43 percent in 1941 and 69 percent in 1942. Defense expenditures remained 20 percent or higher until 1993 and then declined each year to 16.1 percent in 1999. Defense expenditures began to increase again even before the events of September 11, 2001. They have been at 20 percent or more since 2004.

Figures 4.1, 4.2 and 4.3 show expenditures by federal and state and local governments from 1929 to 2015. They distinguish 1) federal spending from federal revenues, 2) federal grants—state and local spending from federal revenues—and 3) state and local spending from own funds. Figure 4.1 is typically used to document the contention that government spending is out of control. The 667-fold increase from \$9 billion in 1929 to \$6 trillion in

2015 is breathtaking. It is also partial information taken out of context.

The massive increase seen in Figure 4.1 does not control for inflation, the changing value of money over time. Controlling for inflation, one dollar in 1929 is worth \$13.86 in 2015.¹⁷ Figure 4.2 shows that in constant 2015 dollars total government spending increased from \$125 billion to \$6 trillion, a 48-fold increase. Figure 4.2 is also misleading partial information, because it does not take into account the growing population of the United States.

Figure 4.3 is the most accurate and complete picture of increased government spending. Spending increased from \$1,024 to \$18,524 constant 2015 dollars per capita, an 18-fold increase. Figure 4.3 shows the effort made by the federal government, with both direct spending and grants to the states, to bring the United States out of the great

Figure 4.1
Total Government Spending 1929-2015
 Increase from \$9 billion to \$6 trillion Contemporary Dollars

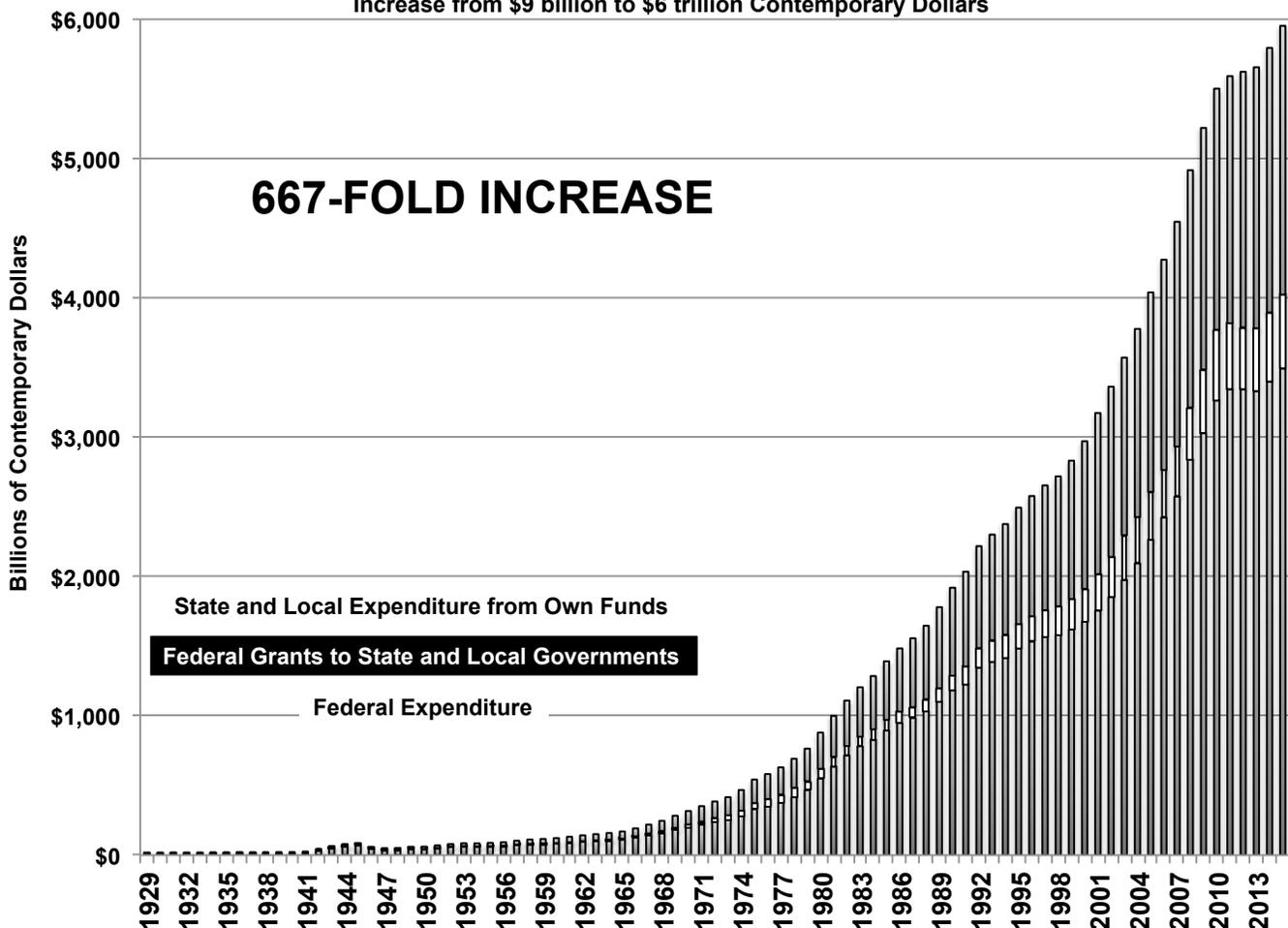
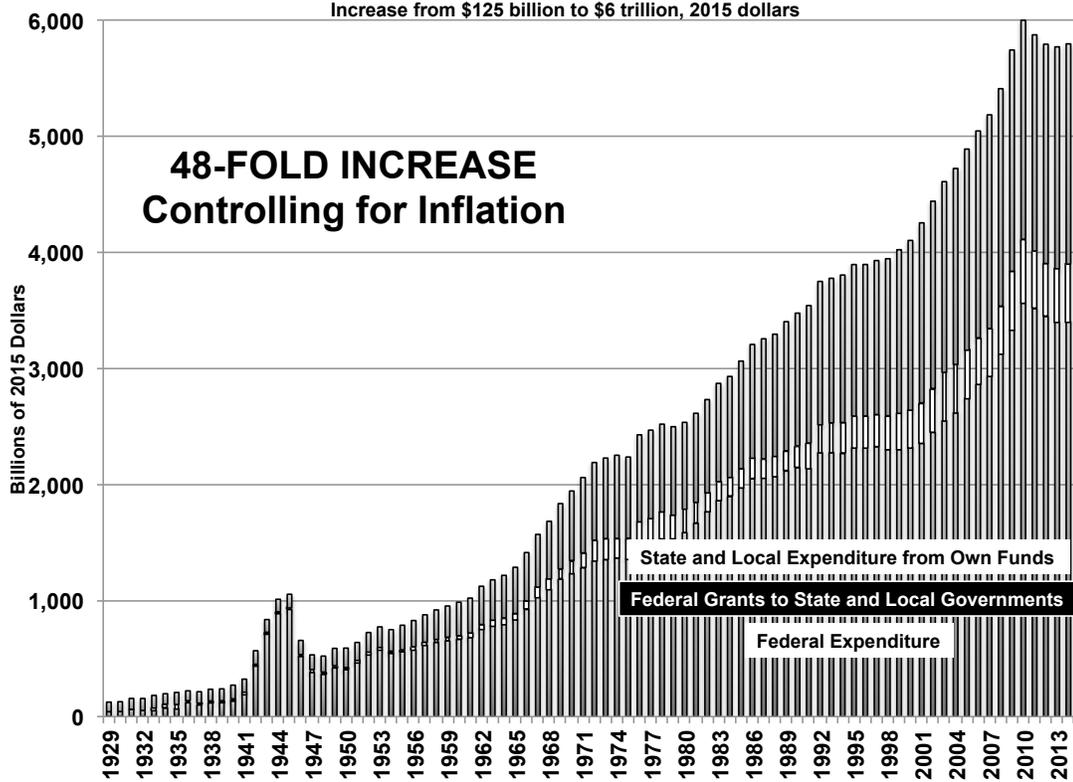


Figure 4.2
Total Government Spending 1929-2015
 Increase from \$125 billion to \$6 trillion, 2015 dollars



depression. It also shows the massive increase in federal spending during the World War II era.

Several elements important to contemporary American politics come from this era. Probably foremost is that of the **federal government's income tax**. Readopted in 1913, it generated bountiful revenue for the federal government, especially in the 1930s and even more so after 1960. The graduated income tax, in combination with the authority to borrow money, gave the federal government an unprecedented resource base. For the first time, the federal government became the wealthiest government.

Federal resources and power became more important in the workings of state and local governments and the lives of citizens. *The federal government took on the role of guardian and protector.* It became responsible for softening the impact of economically bad times. As the United States took on a leadership role among nations after World War II, defense and international security became permanent prime missions for the federal government. The federal government was also assigned responsibility in domestic affairs for guaranteeing income

for elderly and disabled Americans, for protecting the environment, for safety in the workplace, for assuring quality education, for eliminating discrimination, for reducing crime and pornography, and for protecting the integrity of our "national pastime," baseball. The public now expects government to be active in all these arenas. Even if the federal government were to step back, state and local governments would have to step forward.

An important concept associated with intergovernmental transfer of funds is attaching "strings," or conditions, to the funds. If local governments want state funds or if local and state governments want federal funds, they have to adhere to the limitations and conditions imposed. For example, they may be required to desegregate their schools, to not discriminate on the basis of race or gender, and to impose a 21-year-old drinking age.

Conditions on how individual grants could be spent gave grantors important influence over recipients. General requirements applied to all grants were even more important. Providers of these funds wanted proof money had been spent appropriately. As a result, state and local govern-

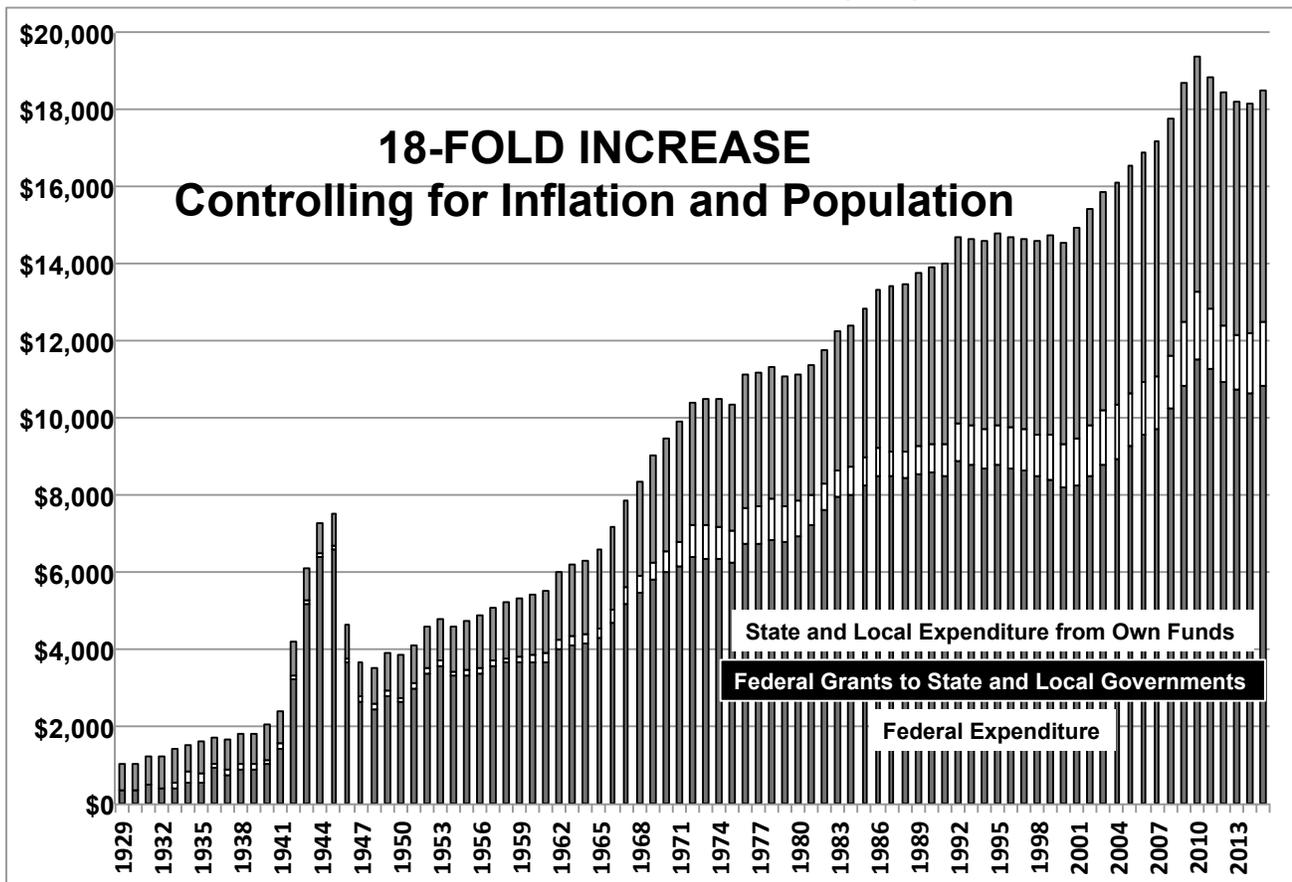
ments had to maintain accurate financial records. Eventually, these records had to be available for review by those outside of the spending government. To document that they were eligible for grant programs, more local governments had to provide information to more central governments. Keeping secrets became too expensive. The end result is what is now called transparency in government. Intergovernmental grants were used as tools to encourage more honest and ethical behavior. Information requirements and open records reduced opportunities for corruption in government. For many grants, state and local governments had to prove they were in compliance with certain federal statutory laws. For many reasons, local standards gave way to national standards.

The federal government's ability to produce revenue from taxes and to *deficit spend* put it in a superior position. The federal government used these resources to help the nation get out of the

Depression and to win the Second World War. A popular conclusion was the *federal government is of the right scale to deal with problems that extend beyond not only the borders of local or state government, but also beyond national boundaries*. Recent concerns about global climate change and the international economy call into question whether the federal government is of the right scale to deal with some 21st century problems.

There was another example in this era of losers becoming winners by change of arenas. State legislatures continued to be dominated by rural interests in spite of the shift of population to urban areas. Federal and state constitutions required reapportionment of legislatures every 10 years. Yet states continued to base legislative representation on land areas such as counties. Those in the cities now could tell their rural opponents in state governments that legislative representation was not a matter for states to decide on their own. Federal law

Figure 4.3
Total Government Spending 1929-2015
 Increase from \$1,024 to \$18,524 2015 dollars per capita



required representation based on population. States had to obey federal law because it was the supreme law of the land. In the 1960s, the Supreme Court told the state legislatures that they had to reapportion legislative districts to be equal in population. Urban defeated rural by shifting the decision to the federal level. We will discuss reapportionment in greater detail in Chapter 9.

Congress and the Supreme Court have been active since World War II in imposing national standards on issues such as safety, discrimination, criminal rights, civil rights, retirement benefits, capital punishment, and others on both states and communities. Earlier, the states and communities, being responsive to local constituencies, could enact local standards. Beginning in this era, national standards took precedence over local standards.

Central Ideas from the Federal Government Era

Government should take responsibility to soften economic hardships, help us in our old age, and assure health coverage.

National defense and international involvement are also continuing responsibilities of the national government.

National standards for discrimination, food and drug standards, pornography, car safety, and even the quality of education can override local standards.

National funds can be given to state and local governments with conditions attached.

The federal government can spend more than its revenue by borrowing money.

For world, national, and even local problems, we turn to the federal government.

The New Federalism Era 1980-The Present

There is substantial popular consensus that a new era in American Federalism began with the election of President Reagan in 1980 and his taking office in 1981. Even President Barack Obama, a Democrat, said Mr. Reagan's was a transformative presidency. Republicans interpreted their victories in the

1980 presidential election and 1994 congressional elections as widespread support among voters for what President Reagan called the New Federalism.

New Federalism posited three tenets: individuals make better decisions than institutions; businesses make better decisions than governments; and governments closer to the people make better decisions than more distant governments. Proponents pledged to use three principles in governing: (1) the private sector is superior to the public sector; (2) less government is preferable to more government; and (3) state and local governments make better decisions than the federal government. There was widespread expectation that the federal government would transfer many of its powers and resources to the states.

Nathan argued that there is a cycle in the interplay between state governments and the federal government, with each temporarily leading the way in innovative policy. Beginning in 1980, "the states again are on the move."¹⁷ He saw five factors contributing to this new trend. First was the New Federalism of the Reagan administration that sought to cut federal underwriting to domestic programs. States had the choice of either paying for or abandoning programs.

Nathan's second factor was modernization of state governments: improved managerial and technical capacity. His third factor was the reapportionment of state legislatures, giving more power to those in cities and especially suburbs. Fourth, he argued the South had caught up with the rest of the states in government resource capacity. Finally, Nathan believed that the states overreacted to the sharp recession of the U.S. economy in 1980-1981 by passing new taxes and sharply curtailing expenses. When the economy recovered, the states had ample reserves to innovate with new programs.¹⁸

Figure 4.4 shows that the federal share of total expenditures peaked during and after World War II. The federal share declined from 1953 to 1973 except for the Vietnam War period in the 1960s. There was an increase in the federal share during the presidencies of Nixon/Ford and Carter. New Federalism under Presidents Reagan and George H.W. Bush administrations gave more responsibility to state and local governments and decreased the federal share of total government spending. Figure 4.5 makes it clear that the apparent decrease in fed-

eral share of government spending was largely the result of increased federal grants to state and local governments. Part of the New Federalism was that the federal government took the “blame” for taking revenues while state and local governments took the “credit” for the benefits of their spending. This reinforced the belief that state and local governments make better decisions than the federal government.

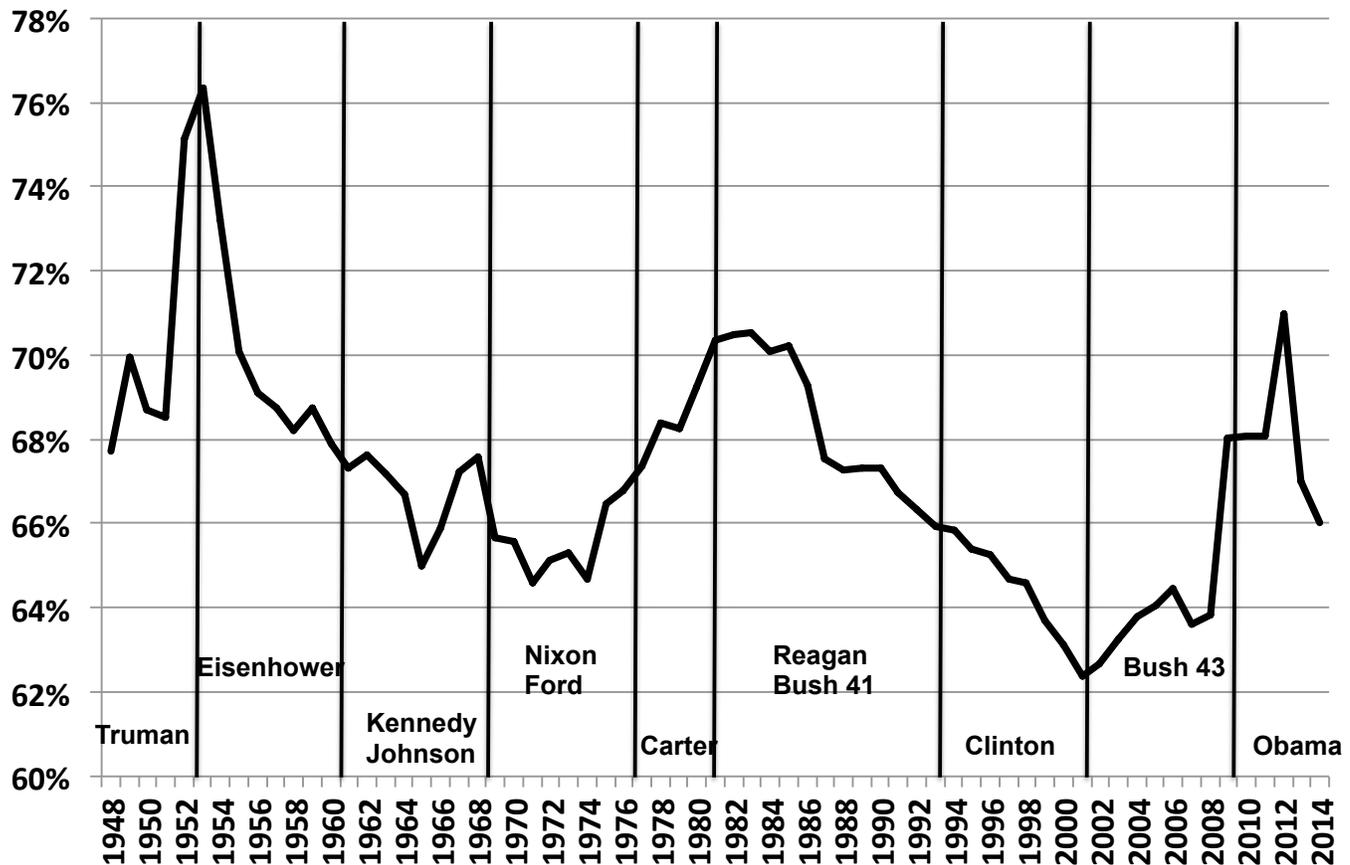
In principle, the New Federalism was to include devolution of power from federal to state and local government, massive deregulation to transfer power from government to the private sector and tax cuts to transfer power from government to citizens. Other important goals included decreasing federal spending and changing the annual federal deficit to an annual surplus.

To a significant extent, the goals articulated by President Reagan were achieved between 1981 and 2002, although some occurred during the presi-

dencies and because of the efforts of George H. W. Bush and William J. Clinton. Figure 4.5 shows that per capita federal spending (the sum of federal expenditures and federal grants) increased significantly during the first 5 years of the Reagan presidency, then remained quite stable from 1986 until 1991, the second year of the Bush Presidency.

There is widespread knowledge that federal income taxes were decreased during the Reagan presidency. Many conclude that a decrease in federal spending caused growth in the private sector. It is not widely known that the decrease in income taxes was accompanied by an increase in payroll taxes. As Figure 4.6 shows, this accelerated a process of reducing the share of taxes paid by corporations and increasing the share paid by wage earners that began in 1950. This shifting of the burden of federal income taxes met the goal of promoting the strength of the private sector. As we will see in Chapter 5, there was also shifting of income tax

Figure 4.4
Federal Share of Total Government Expenditures 1948-2014
 Federal Grants Included With State and Local Spending



burdens from higher to lower income families. Tax changes, spending changes and improvement in the national economy all contributed to stable federal spending per capita for six years.

Federal spending jumped in the last two years of the Bush presidency because of the Gulf War and a weaker economy. In spite of his campaign promise of “no new taxes,” President Bush did sign a tax increase bill, which, in combination with consistent and declining federal spending during the Clinton presidency, and another tax increase enacted during the first year of the Clinton Presidency, resulted in a federal budget surplus from 1998 to 2001.

President Clinton explicitly supported the key goals of the New Federalism. In his 1996 state of the union address he declared, “the era of big government is over.” During his presidency, total government spending per capita remained essentially constant and, partly because of increased federal grants, state and local governments increased their share of total spending each year.

There is evidence to support the conclusion that the major goals of the New Federalism articulated

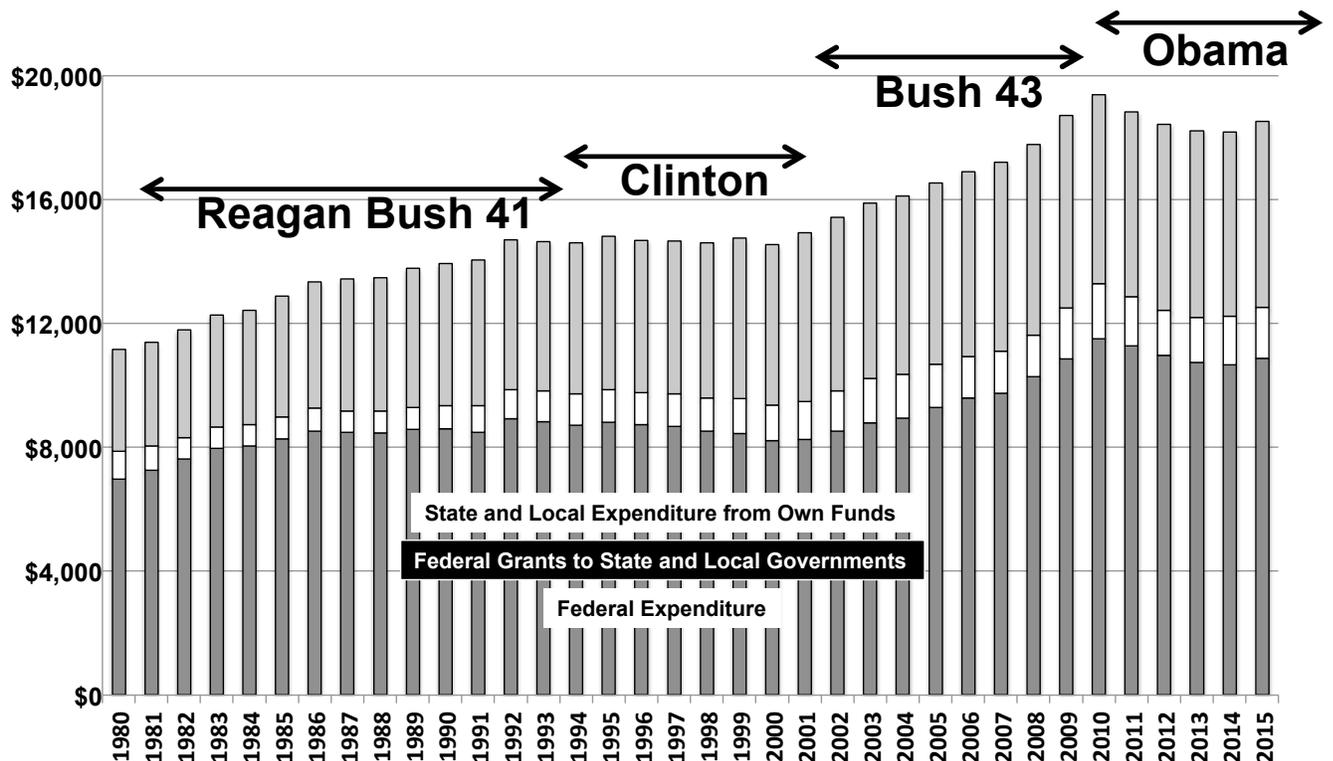
by a Republican president were finally achieved under a Democratic President and a divided Congress followed by a majority Republican Congress.

The Republican Party controlled both the presidency and both chambers of Congress from 2001-2007. Its leaders continued to voice support of the goals of the New Federalism. However, only some of President Reagan’s tenets were followed under President George W. Bush.

The Bush administration and Republican Congress did implement significant tax cuts and deregulation of the private sector. Commitment to a balanced federal budget, restrained federal spending and increased state and local spending power disappeared.

The federal share of government expenditures increased during the George W. Bush administration, primarily because of new Medicare drug benefits and secondarily because of wars in Iraq and Afghanistan. This increased spending and the Bush tax cuts were financed through increased borrowing and federal debt. Massive increases in federal spending began at the end of the Bush presidency in reaction to the worldwide economic

Figure 4.5
Total Government Spending 2015 Dollars Per Capita



depression initiated by the collapse of the finance sector in the United States.

Federal bailout programs begun by the Bush administration continued for the first several years of President Obama’s terms of office. The worldwide recession triggered a number of interrelated increases in federal expenditures, including federal support of some large financial institutions and auto manufacturing companies, a federal program to reduce state and local government employment reductions and stimulate the economy, federal welfare and unemployment benefits to an increasing share of the population and a significant decline in the tax revenues of state and local governments.

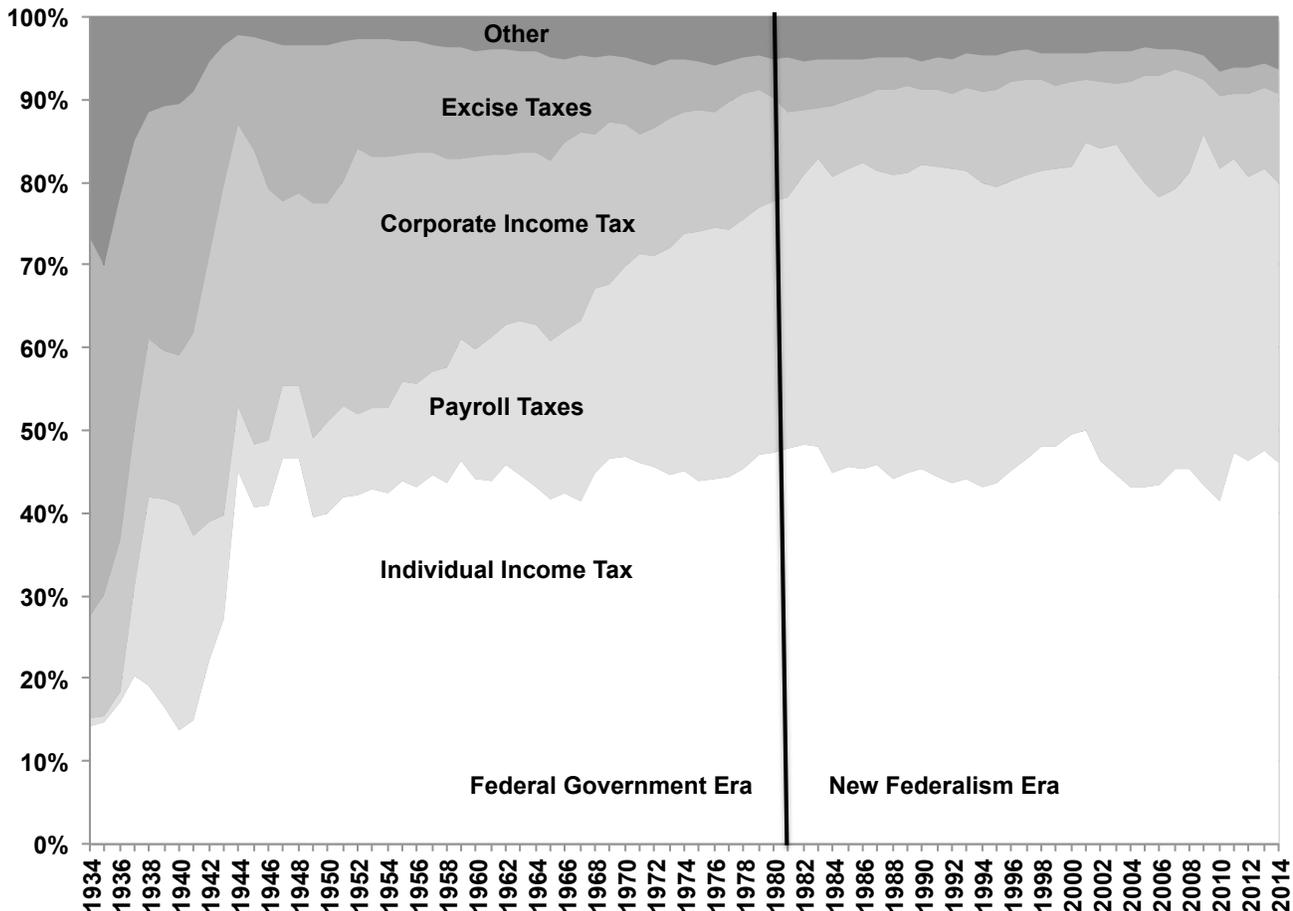
Total per capita government expenditure peaked in 2010 as Republicans gained control of the Senate and the House of Representatives in 2011. Federal and total expenditures per capita started declining in 2011, largely because of a limitation

on federal spending known as sequestration. The Republican Congress refused to continue virtually all stimulus programs and sought to limit spending on entitlements that increased with economic collapse.

It could be legitimately argued that the New Federalism Era ended in 2001 or 2011 or some time between the two years. The next era could be called the Gridlock Era as federal Republicans and Democrats seemingly could agree on nothing. After President Obama’s election in 2008, Senate minority leader, Mitch McConnell said the number one goal of the Republican Party was making sure Obama was a one-term president. When he became majority leader in 2011, he had sufficient power to pursue that goal by delaying or blocking executive branch initiatives.

Partisan animosity grew to the extent that the Republican Party majority in Congress refused to

Figure 4.6
Composition of Federal Tax Revenue 1934-2014



authorize federal borrowing and spending, resulting in government shutdowns in 2013 and 2015. Hours after Supreme Court Justice Anton Scalia's death in February 2016, Senate Republican Majority Leader Mitch McConnell announced that there would be no action whatsoever on any Supreme Court nomination made by President Obama until the American people got to vote on a new president. This refusal was unprecedented and ultimately successful. After Donald Trump won the presidential election of 2016, he nominated Neil Gorsuch. Senate rules were changed to require only majority approval instead of approval from 60 senators. The Republican House and Senate found other ways to take actions without any support from or even participation by minority party Democrats.

One might argue that these events initiated a new era in American federalism that might be called the Tea Party Era, the Anti-Federal Era or the Era of Minimum Bipartisan Participation. For the time being, the Tea Party is a minority within the Republican Party at the national level. At the federal level, both major parties pay homage to the principles of the New Federalism and accuse each other of violating them. It would seem that President Obama's expansion of the federal role in health care under the Affordable Care Act violates some New Federalism principles. It is also the case that President Bush's expansion of the federal role in health care by expanding Medicare drug benefits violates the same New Federalism principles. Tea Party members and others argue that private sector bailout programs initiated by both Presidents Bush and Obama violate New Federalism principles.

The large majority of Republicans and Democrats in federal politics identify themselves as seeking to follow the values of New Federalism. Figures 4.4 and 4.5 show direct federal spending declining starting in 2009 and total government spending per capita declining starting in 2011. Those patterns seem sufficient to say that, for the time being, the New Federalism era continues. There will be further consideration of the importance of the federal government financing state and local government expenditures in Chapter 6.

It is important to stress that many state governments chose to exercise their opportunities to differ by resisting and acting against federal ini-

tiatives. Texas chose to reject a small amount of federal stimulus funding altogether and spent most of the funding it accepted to replace state funds. Rather than sustain local government programs and employment, Texas chose to keep taxes low and maintain a large "rainy day" fund.

Many states chose not to participate totally in the expansion of medical insurance to low-income families through expanded Medicaid coverage. They rejected federal funding even though the federal government paid all expenses for the first two years of expanded coverage and pledged to pay 90% or more of costs of expanded coverage thereafter. Texas chose to reject all optional elements of the Affordable Care Act.

Party affiliation at the state level accounts for state participation or resistance to federal initiatives to stimulate the economy and expand access to health care. States controlled by Democrats participated and states controlled by Republicans resisted. Acrimonious partisanship spread from federal politics to state politics.

Central Ideas from the New Federalism Era

The federal government can better achieve some goals by collecting taxes and assigning more responsibilities to state and local governments.

Lower government taxing and spending can be beneficial by permitting individuals to make decisions for themselves.

Government should take responsibility to soften economic hardships, help us in our old age, and assure health coverage.

The federal government should take responsibility when private sector failures cause economic catastrophes.

National defense and international involvement are also continuing responsibilities of the national government.

States can choose to resist and work against federal programs they do not agree with.

Division of Authority in American Governments

The historical pattern we have seen is that first, local governments dealt with problems, and then states became involved. The federal government greatly expanded its role through programs to deal with depression and world war. Later, it initiated a variety of domestic programs. Those programs have continued to grow even though state and local governments have assumed a larger share of paying for them. When it acts directly instead of through the states, the federal government represents the ultimate centralization of problem solving in our system of government. Just as ideas about how government can best serve the people have changed over time, the way the states interact with each other and with the federal government has changed over time.

Confederacy

The 13 original colonies could have become 13 independent nations. It is hard to imagine that all or any could have been victorious over British army and naval forces. There was a need for the colonies to give up some of their authority or sovereignty to fight the revolution. What evolved was a confederacy. Ultimately, after many years of fighting the war, the Articles of Confederation, 1781-1789, formalized this organization.

Confederacy represents the absolute minimum concession of authority from organizing polities to the new central administration. A **government of governments** undertakes programs and services desired by all constituent governments. In the case of our confederacy, the central government was set up to fight the war but was not authorized to collect taxes to pay for it or to draft troops to fight it. Typically, each government in a confederacy retains the right to veto and stop actions by the central government with a single negative vote. Additionally, the members can withdraw or secede without permission from or approval of other members. If the United States had still been a confederacy when the depression of the 1930s hit, the New Deal of Roosevelt could have been undertaken only if all 48 states had agreed to it—a very unlikely prospect.

The Constitution of 1789

After only a few years, the confederate form of government proved unsatisfactory to many. As you know, the states' representatives who met in Philadelphia to amend the Articles of Confederation exceeded their authority and drafted a new Constitution. It established a federal form of government, the first ever.¹⁹ This form of government is very complex since it establishes at least two governments for each individual. You can turn to either of these governments to solve problems, and you must obey the laws of both governments. The purpose of this complexity is to allow the central government to cope with national problems without the unanimous consent of the states.

Obviously, there is the potential for the laws of federal, state, and local governments to contradict each other. One option is to set up a system to resolve conflicts. Another alternative is to make the laws of the central or federal government the “supreme law” of the land. When there is conflict, the regional or state government's laws must give way. If this were the case with our complex system of modern economies and societies, one should be concerned that the central government would demote state governments to being its administrative governments. There is legitimate worry that a federal system with a supreme central government would soon become a unitary government.

The United States Constitution does have the **supremacy clause**: “Laws of the United States... shall be the supreme Law of the Land: and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.”²⁰ If this statement were all that the Constitution said on the subject, it seems likely that we would now be a unitary government. State governments, like local governments presently, would be allowed to make laws only until the higher level of government acted.

Limiting the Federal Government

There are several other elements in the U.S. Constitution that shape federal and state government interactions. The Constitution enumerates 16 powers that Congress has, plus a 17th that entitles it “To make all Laws which shall be necessary and

proper for carrying into Execution the foregoing Powers....”²¹ To some scholars, known as “strict constructionists,” the federal government has no powers other than the 16 *enumerated powers*. Those controlling the states advocate this view. Others, known as “loose constructionists,” see the *necessary and proper clause* as implying many more potential powers for the federal government, so long as they are “necessary and proper.” One of the enumerated powers, the *commerce clause*, gives Congress the right “To regulate Commerce... among the several States....” This clause was the primary motivation for the new Constitution and has been the basis of much of the federal government’s involvement in the national economy.

The 10th Amendment of the Bill of Rights, the *reserve powers amendment* states, “The powers not delegated to the United States (government) by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This clause seems to grant a large range of powers, some to the states and others to the people. There is a single legal definition for “the states.” “The people” in the 10th Amendment are not clearly defined. There is also the troublesome potential overlap and conflicts between powers that are reserved and powers that are necessary and proper.

The 14th Amendment also has been essential to greater federal government activity in contemporary times. It states, “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This is the *due process and equal protection clause* so often used to force the states to stop discrimination by majorities against unpopular minorities.

State Responsibilities to Other States

The Constitution also includes several statements that shape somewhat how the states deal with each other. States must recognize the official acts of other states, such as legislative acts, public records and judicial decisions, because “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” This is known as the *full faith and credit clause*.²²

Additionally, “The Citizens of each State shall be entitled to all Privileges and Immunities of Cit-

izens in the several States.”²³ This *privileges and immunities clause* means that states have to grant to nonresidents the same privileges and immunities that they accord to their residents. New residents have argued that universities continuing to charge them out-of-state tuition after they have established residency is a violation of the privileges and immunities clause. In Florida, Georgia, and Alabama federal courts, they have been successful.

Finally, “A person charged in any State with... Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.”²⁴ Under this *rendition or extradition clause*, if a state requests extradition or that a person charged with a crime be made available to be brought back to the state where the alleged crime took place, the requested governor is supposed to make that person available. “Waiving extradition” by the charged person merely means no paperwork needs to be filed and that he or she will go voluntarily.

Judicial Interpretation by the U.S. Supreme Court

In the terse language of the U.S. Constitution, many of these clauses seem individually absolute yet mutually contradictory. The Constitution makes no provision for limiting the absolute or contradictory nature of these clauses. But very early into our history under the Constitution, one agency of the federal government asserted its right to judge contradictions—the Supreme Court of the United States. *Marbury v. Madison* (1803) was the first case to assert the right of the U.S. Supreme Court to judge the compatibility of actions by government with statements in the U.S. Constitution, or the constitutionality of such acts. Shortly afterwards, the Court first identified federal actions that restricted the powers of the states. In *McCulloch v. Maryland* (1819), the Court broadly interpreted the necessary and proper clause and ruled that a state cannot tax the federal government because that was unconstitutional.

Inasmuch as the U.S. Supreme Court lacks enforcement capability, it could be ignored. Such has seldom been the case. Many of the Court’s decisions have shaped policies of state governments, sometimes limiting actions and sometimes

demanding actions. None of the other federal systems of government in the world allows one branch of the central or federal government to resolve conflicts between the regional or state governments and the central government.²⁵

Historically, the U.S. Supreme Court has limited the powers of state and local governments and upheld the powers of the federal government. In a case decided by a narrow vote, *Garcia v. San Antonio Metropolitan Transit Authority* (1985), the Supreme Court refused to identify “traditional” areas of state governing that are beyond the powers of Congress.²⁶ Instead, it said that the *process of federalism* should preserve the states. Since the states have representatives both in the House of Representatives and the Senate, they can influence Congress to respect powers of the states. Until Congress enacts a law, they said, the states could take action.

The decision went on to say that, when Congress acts, the states must comply. The Supreme Court’s minority opinion charged that, after many years of trying to resolve conflicts between the various clauses of the U.S. Constitution, the Supreme Court majority had given absolute power to the federal government.

In a recent case, *National Federation of Independent Business v. Sebelius* (2012), the Supreme Court ruled the principle “when Congress acts, the states must comply” is *not* absolute. The case concerned The Affordable Care Act of 2010 (frequently referred to as Obamacare). Most public attention has focused on the Court’s ruling that the federal government can use its taxing power to require individuals to purchase health insurance. The more important part of the decision has not been well recognized. The majority opinion written by Chief Justice Roberts decreed that the federal government could not penalize states that did not participate in the mandated expansion of Medicaid by reducing funding levels set by existing statutory law.²⁷ This decision may pave the way for the Supreme Court to set additional limits on the federal government’s power over state and local governments.

State Constitutions

The Constitution of the United States wrote the operating understanding among the states that had

allowed them to win the Revolutionary War in the Articles of Confederation. This document joined state constitutions as the only written constitutions in the world. The state constitutions were basically colonial charters quickly rewritten to weaken the office of the governor, who up to that time had been the king’s governor. Had the charters not existed, our state and federal constitutions might not have been written. The written constitution is another idea that developed from circumstances in our past.

Today, we revere our national Constitution as reflecting the good judgment of the founding fathers. These founders also wrote state constitutions and city charters. These documents all reflect thinking at the time they were written. The federal constitution includes amendment procedures. Yet, all attempts to change the constitution generate criticism that we should never question the wisdom of those who drafted it, even if that wisdom was informed only by knowledge available in the 18th century.

An important factor in understanding contemporary concern with state constitutions is the brevity of the second and current Constitution of the United States adopted in 1789. The original 8700-word document lacked detail. Over more than 200 years, detail has been added, subtracted, and changed. The changes have come partly from 27 amendments but primarily from hundreds of landmark decisions of the U.S. Supreme Court. The current Constitution contains 12,000 words. Seven state constitutions plus their amendments are of similar length. Of the 43 states with longer constitutions, 28 are more than twice as long as the Federal Constitution. Critics argue all state constitutions should be as short as the Federal Constitution. For them, the insights of the founders included optimal document length. The rest of us can recognize that current American constitutional law also includes voluminous text of court decisions.

Periods of State Constitution Writing

The earliest state constitutions typically were about 10,000 words long, leaving little room for detailed procedures and prohibitions and allowing a great range of possible legislation. Length began to increase in the middle 1800s and accelerated in the late 1800s and early 1900s, only to decline sharply

when many states began to draft new constitutions after World War II. Length and other attributes define several periods of constitution writing.

Until 1780

With the exception of New York, states operated with legislatively dominant governments, largely as a reaction against the excesses of the king's governor before independence. These constitutions were short (about 10,000 words). The basic idea was that newly won powers for the legislative branch were the basis of responsive government, in contrast to the unresponsive king's governor. Governors were viewed as dangerous even to the point of being abolished. At least initially, Americans trusted only legislatures.

1780 Through 1870

The state constitution of Massachusetts in 1780 and the federal Constitution of 1789 began the new idea of "balanced" government. A strengthened executive meant the governor was given powers, such as the veto and authority to appoint certain officials, to offset those of the legislative branch. The U.S. Constitution adopted this idea with the two branches checking and balancing each other. Neither the executive nor the legislature could be trusted; each had to check the other. This idea has attained revered status. It is credited to the framers of the U.S. Constitution even though it was taken wholesale from the Massachusetts constitution written 9 years earlier.

1870 Through 1920

The Civil War and its aftermath saw the need for much constitutional activity in the South. With the exception of Tennessee, all other Confederate states repeatedly held constitutional conventions. The first was in 1861, in Texas and probably elsewhere, to substitute "Confederate" for "United" States of America in their constitutions. They met again in 1864 or 1865 to reverse this action.²⁸ Then in 1867 or 1868, they met to enact the new constitution required by Congress under Reconstruction.²⁹ Finally, during the period 1874-1902, they met to enact post-Reconstruction constitutions that returned power to the wealthy whites that had con-

trolled state governments before the Civil War.³⁰ It was these post-Reconstruction southern constitutions that contained the anti-black Jim Crow laws that disenfranchised most blacks and encouraged racial separation.

After Reconstruction, no constitution of fewer than 20,000 words was written, and some of the very long constitutions exceeded 50,000 words in length. What was included in such lengthy documents? It was obvious to southern whites that there was no protection in a "checks and balances" government. The Reconstruction constitutions balanced the governor against the legislature, but that did not keep the government from, as they saw it, excessive actions against whites. When white southerners regained control, they sought better protection against government than they had under checks and balances. They gave power to the people, or at least to those allowed to cast meaningful votes.

The basic idea was to limit the power of state government with constitutional restrictions. Only when the voting public approved a constitutional amendment to allow an act could the legislature enact it. These constitutions are lengthy in order to incorporate the many restrictions on government. They are also the most heavily amended, which was perfectly acceptable to those who drafted them. As we will see, the legislatures and executives of these states are the weakest among the U.S. states, as was intended.

Even states unaffected by the Civil War and Reconstruction passed long constitutions during this period. Apparently, activist thinking was responsive to the arguments for restricting government and giving the public a substantial role in state government. These post-Reconstruction, detailed, and restrictive constitutions reflected greater confidence in the public than had earlier constitutions. The people could hold government in check. This was a new idea in American thought that spread to constitutions even outside the South.

Every detail written into a constitution bestows advantages on some and levies disadvantages on others. Content locked into constitutions can be changed only by constitutional amendments. The process favors those advantaged by the content of constitutions. It is almost always easier to defeat proposed amendments than to pass them. Some scholars believe various interests and the groups

that fight to retain these long, detailed constitutions do so because of advantages they receive.³¹ Others see no such relationship but do note that the lack of competition between political parties may encourage interests to attempt to safeguard their interests in constitutional provisions that are more difficult to change.³² At this point we will note only that both interest groups with a reputation for being strong as well as uncompetitive political parties are most evident in the South, as are long state constitutions. It may be only coincidental that strong interests and weak political parties are found in long-constitution states.

1945 Until the Present

No state constitutions were written between 1920 and 1945. Those written since 1945 are shorter in length. Many have fewer than 20,000 words. Additionally, many states, such as Georgia and Louisiana, have revised their constitutions rather than entirely redrafting them. They have been redrafted to exclude archaic laws. Additionally, constitutional provisions that seem more appropriate as laws, as well as city charters, have been removed.

These new constitutions allow states to deal more efficiently with state problems by strengthening both the governor and the legislature, or at least that is what the authors of them claim.³³ Certainly, however, many metropolitan and industrialized states with active state governments, such as California, Texas, and New York, have long constitutions. Apparently, it is possible to function in the 21st century even with a long, detailed, and restrictive state constitution.

Present State Constitutions

The National Municipal League contends that contemporary state constitutions are too long and have too much detail.³⁴ They have drafted a model state constitution of approximately 10,000 words. They argue that shorter constitutions with less detail permit greater agility in responding to contemporary issues. It is probably not a coincidence that their model constitution deletes elements that limit options available to municipal governments. The states would seem to disagree. At any rate, contemporary state constitutions heed neither the size nor content proposals of the National Municipal

League.

Amending State Constitutions

Every state constitution has been amended. More than 100 amendments have been approved in 30 states. Only Delaware allows its state legislature to amend its constitution with no vote of the people. The process of amending constitutions used most frequently in other states consists of two stages: proposal and ratification. Typically, a majority or two-thirds vote of state legislative chambers makes proposals. In 18 states citizens can initiate amendments. Proposed amendments must be approved either by a majority voting on the amendment or a majority voting in the larger general or special election. Minnesota requires a 60 percent majority. South Carolina requires legislative approval after voter approval.³⁵

Amendments are placed at the end of the election ballot. Many voters participate only in contests at the top of election ballots. It is slightly more difficult for amendments to pass in states that require approval of a majority voting in any contest. Overall, voters ratify 66 percent of all amendments.³⁶

Conclusion

We are both the beneficiaries and the victims of our ideas. As we have seen in this chapter, ideas on governance have arisen to deal with immediate concerns faced by society. Some groups support new ideas that are more in line with their interests and preference, whereas others oppose them. Each level of government provides a mechanism for resolving disagreements about preferred policies. If a sufficiently large majority of elected officials prefer a policy, it is enacted. Seldom, if ever, however, is the minority converted to the majority's view. Rather, battles are frequently refought.

A different battleground (a different level of government or arena) can be sought that might result in today's losers becoming tomorrow's winners. Politics is conflict; it is about winning and losing. State legislatures, governors' offices, Congress, and state and federal courts are among the arenas in which political battles are contested. Contemporary political leaders are not avid followers of academic research. They are unlikely to reconsider political beliefs based on historical

circumstances that no longer exist. Government decision makers in the past were no better in this regard.

The American experience also demonstrates that failed attempts to deal with problems are ultimately abandoned. Other actions are taken until a satisfactory solution is found. Pragmatic considerations override others. Higher levels of government historically take these actions, what we have called greater centralization. However, each state still has latitude to deal uniquely with its problems. Municipalities, school districts and other local governments still have a broad range of decisions that can be made without conflict with higher levels of government.

Summary

1. Changes in society have resulted in different expectations of how government is to help us and to shape what we do. Many of our ideas about government date from periods when government acted differently than it does today. At least some elements of political conventional wisdom are obsolete.
2. Major changes in the way Americans live have resulted in government at all levels becoming more active and more centralized.
3. Government programs attempt to solve problems and meet needs. Popular programs are not always effective and vice versa.
4. There is ongoing conflict over political power and government benefits. There is no guarantee that government will always seek the greatest good for the greatest number.
5. Constitutions have changed as ideas about government have changed.

Information Sources

Figure 4.1	Bureau of Economic Analysis, US Department of Commerce, National Income and Product Accounts, Table 3.2. Federal Government Current Receipts and Expenditures and Table 3.3. State and Local Government Current Receipts and Expenditures NIPA Tables http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1 Historical Statistics of the United States: Colonial Times to 1970 (Washington, DC: U.S. Government Printing Office) The Budget for Fiscal Year 2017, http://www.whitehouse.gov/omb/budget/ ; Historical Tables http://www.whitehouse.gov/omb/budget/Historicals and Bureau of Labor, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm
Figure 4.2	Same as Figure 4.1
Figure 4.3	Same as Figure 4.1
Figure 4.4	Same as Figure 4.1
Figure 4.5	Same as Figure 4.1
Figure 4.6	Tax Policy Center Historical Amount of Revenue by Source 1934-2020, http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=203

Study Guide, Chapter 4

Essay Questions

1. Compare and contrast the way Americans lived during the No Government Period as described in the text and the way Americans live today. What are the similarities and differences between expectations of government then and now?
2. Using your answer for Question 1 above, list several reasons that the idea “the best government is the least government” is still well suited for contemporary America. List several reasons why the idea is not as well suited for contemporary America as it was during the No Government Period
3. How and why did state governments take actions to end the domination of corrupt machine-controlled municipal governments? Discuss five or more changes made by state governments and the impact of each.
4. Why does the federal constitution take precedence over state constitutions? How would American Federalism be different if each state could choose which parts of the constitution and federal statutory law to follow and which parts to ignore? Would America have a federal system of government if state constitutions and laws took precedence over the federal constitution and federal laws?
5. Explain how the decisions of the U.S. Supreme Court have shaped American federalism. Give examples of decisions that increase federal power over the states. Give examples of decisions that limit federal power over the states.
6. How did the federal income tax and “deficit spending” increase the power of the federal government? Explain how this increase was at the expense of the states, to the benefit of the states and a mixture of the two.
7. Compare and contrast the federal constitution with state constitutions on purpose, length and complexity. Explain why there are differences.

Multiple Choice Questions

1. Which idea was a key element of what President Reagan called The New Federalism?
 - a. individuals make better decisions than institutions
 - b. businesses make better decisions governments
 - c. governments closer to the people make better decisions than more distant governments
 - d. all of the above
2. Which of the following is NOT related to the No Government Period: 1776 to 1850?
 - a. subsistence farming life free of government interference
 - b. rural communities with a few small cities
 - c. self-dependence
 - d. most citizens wanted the federal government to do more
3. Which of the following ideas sprang from the Municipal Government Period: 1850 to 1895?
 - a. local government can help to solve problems because it is closest to the people
 - b. elections do not matter, so why vote?
 - c. federal government can help to solve problems because it is closest to the people
 - d. immigrants should not be of concern to municipal governments
4. The two events that led to the Federal Government Era 1932 to 1981 were
 - a. the Great Depression and World War I
 - b. the Civil War and the Great Depression
 - c. the Great Depression and World War II
 - d. the Civil War and World War II

Notes

- 1 Noel P. Gist and L. A. Halbert, *Urban Society*, 4th ed. (New York: Crowell, 1956), p. 41.
- 2 Ernest S. Griffith, *A History of American City Government: The Conspicuous Failure, 1870-1900* (New York: Praeger, 1972), p. 6.
- 3 Kenneth Fox, *Better City Government: Innovation in American Urban Politics, 1850-1937* (Philadelphia: Temple University Press, 1977), p. 6.
- 4 For a succinct history of urban America during this period, see Kenneth Fox, *Better City Government*. Other frequently cited works include Robert H. Wiebe, *The Search for Order 1877-1929* (New York: Hill and Wang, 1967) and Sean D. Cashman, *America in the Gilded Age: From the Death of Lincoln to the Rise of Theodore Roosevelt* (New York: New York University Press, 1984).
- 5 P. W. Jackson, *Local Government* (London: Butterworth, 1970), pp. 3-7.
- 6 This phenomenon may, however, have been merely the result of some people fraudulently voting multiple times. See Jerrold D. Rusk, "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876-1908," *American Political Science Review* (1970, 1220-1238).
- 7 Wiebe described this conflict between the values of an older rural society and those of the new urban, worker society in Chapter 3.
- 8 Wiebe, Chapter 3.
- 9 Griffith, p. 11.
- 10 Fox, p. 16.
- 11 Griffith, p. 17.
- 12 Griffith, p. 91.
- 13 Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* (Boston: Little, Brown, 1878), p. 27.
- 14 John F. Dillon, *Treatise on the Law of Municipal Corporations* (Chicago: J. Cockcroft, 1872).
- 15 John F. Dillon, *Commentaries on the Law of Municipal Corporations* (Boston: Little, Brown, 1881).
- 16 Fox, pp. 184-185.
- 17 http://www.bls.gov/data/inflation_calculator.htm
- 18 Richard P. Nathan, "The Role of the States in American Federalism," in *The State of the States*, Carl E. Van Horn (Ed.), (Washington, DC: CQ Press, 1989), p. 18.
- 19 Also see Carl E. Van Horn, "The Quiet Revolution," in *The State of the States*, Carl E. Van Horn (Ed.), (Washington, DC: CQ Press, 1989).

- 20 There are some who claim that the Iroquois Indians had federalism before we did.
- 21 Article VI.
- 22 Article I, section 8.
- 23 Article IV, Section 1.
- 24 Article IV, Section 2.
- 25 Article IV, Section 3.
- 26 For a lucid discussion of these matters, see William T. Gormley, Jr., "Custody Battles in State Administration," in *The State of the States*, Carl E. Van Horn (Ed.), (Washington, DC: CQ Press, 1989), pp. 131-151.
- 27 The earlier case was *National League of Cities v. Usery* (1976).
- 28 <http://www.statejournal.com/story/20417490/hold>
- 29 J. William Davis and Ruth Cowart Wright, *Texas Political Practice and Public Policy*, 3rd ed. (Dubuque, IA: Kendall/Hunt, 1978), pp. 36-37.
- 30 This resulted from Congress' requirement that former Confederate electorates take the "ironclad oath" requirement that voters swear to not having voluntarily served or aided the confederate cause, which disqualified most white voters; see Davis and Wright, p. 37.
- 31 These dates but not the interpretation are from Albert L. Sturm, *Thirty Years of State Constitution-Making: 1938-1968*. (New York: National Municipal League, 1970), pp. 10-11. Florida, Georgia, Louisiana, North Carolina, and Virginia adopted newer constitutions after 1960.
- 32 Lewis A. Froman, Jr., "Some Effects of Interest Group Strength in State Politics," *American Political Science Review* (1966, 950-967).
- 33 David C. Nice, "Interest Groups and State Constitutions: Another Look," *State and Local Government Review* (1988, 21- 27).
- 34 For research on concerns in the writing of seven of these constitutions, see Elmer E. Cornwell, Jr., Jay S. Goodman, and Wayne R. Swanson, *State Constitutional Conventions: The Politics of the Revision Process in Seven States* (New York: Praeger, 1975).
- 35 National Municipal League, *Model State Constitution*, 6th ed. (New York: National Municipal League, 1968). It should be noted that only the Vermont constitution is shorter than this model constitution.
- 36 http://ballotpedia.org/wiki/index.php/Amending_state_constitutions
- 37 *The Book of the States*, 2015 (Lexington, KY: Council of State Governments, 2015), State Constitutions Table 1.1. There have been 11,370 amendments proposed, of which 7,481 were ratified.

Chapter 5

GOVERNMENT REVENUE AND BUDGETING

In The Tax Foundation's 2009 Survey of U.S. Attitudes on Tax and Wealth, respondents were questioned about their views on government taxing and spending.¹ They were asked, "Considering all government services on the one hand and taxes on the other, which of the following statements comes closest to your view?" They answered as follows.

Keep taxes and services about where they are	36%
Decrease services and lower taxes	34%
Increase services and raise taxes	10%
Not sure	19%

Nearly 50 percent want either to keep taxes and services where they are or raise taxes and increase services. Thirty-four percent want to decrease taxes and services. This would seem to indicate widespread disagreement about taxing and spending in the United States. Still, more are either content or want more than are displeased and want less.

Respondents were much less satisfied when asked only about taxes. Fifty-six percent said the federal income tax they paid was too much. Only thirty-five percent said federal income taxes were about right or too low. When asked what maximum percentage of a person's income should be paid in all federal, state, and local tax, the average answer was 15.6 percent. When asked about the value to them of all services they received from all governments, the average response was \$7,635.

In addition to being unhappy about the level of taxation, respondents were critical of the way the tax system works. When asked, eighty-five percent said federal taxes were somewhat or very complex. Eighty-two percent said the federal tax system needed major changes or a complete overhaul. However, fewer than half were willing to give

up some federal tax deductions in exchange for an across-the-board cut in federal income tax rates.

The survey asked separately about the fairness of specific federal taxes and state and local taxes. The evaluations were identical. On a scale where 1 means very fair, 3 means fair, and 5 means very unfair, the average for both federal taxes and state and local taxes was 3.4.

These views of government taxing and spending are inconsistent. Americans say they are unhappy because taxes are too high. Yet, they also say taxes are generally fair and should be kept where they are or increased. They would prefer simpler income taxes but will not give up the benefits they receive from the exemptions and deductions that make income taxes complex.

The Tax Foundation survey included the following. "In 2006, 45.6 million Americans-- that's one-third of all taxpayers -- paid no federal income tax after deductions and credits. Thinking about your own tax burden, do you think this is fair, or do you feel everyone should be required to pay some minimum amount of tax to help fund government?" Two-thirds responded everyone should pay at least something to help fund the basic costs of government.²

The Tax Foundation interpreted this to mean that a large majority thinks it is unfair that so many people pay no federal income taxes because everyone should contribute to the basic cost of government. However, other interpretations are possible. The Tax Foundation survey intermixed questions about federal taxes and services and all government taxes and services. It intermingled questions about income taxes, other taxes and all taxes. The question about fairness juxtaposed the value "everyone contributing to the cost of government" and the

value “everyone should pay federal income taxes.” As we will explore in this chapter, taxation is a complex topic because there are multiple taxes in the United States. The complexity is increased by our multiple levels of government and by the specific tax choices made by individual governments. We will discuss different taxes separately but you should not lose sight of the big picture. American taxpayers pay federal and state and local taxes.

Even taxpayers who do not owe federal income taxes pay state and local taxes and, most probably, federal taxes other than income taxes. Only about 8 percent of households pay no federal taxes at all, usually because they’re either unemployed or on disability or students or are very poor.³

When it comes to taxes, everyone pays something. Who pays more and who pays less are questions we can attempt to answer with empirical information. Who *should* pay more and less are questions about what should be, not what is. We will present some general principles and explore the extent to which tax systems meet specific normative goals. Obviously, the value of such analyses to you depends on the extent to which you agree with the specified goals.

Some Unfortunate Truths

Governments must pay their bills every year with current revenues, surpluses from the past, and borrowed funds. Eventually, debt must be repaid. Politicians have always promised to both lower taxes and keep services by making government more efficient, but none have ever fulfilled that promise. Sometimes the things we buy do become better and cost less over time. Personal computers and high definition television sets are examples. Unfortunately, the primary role of government is to provide services rather than products. It is unrealistic to expect that these services can greatly improve in quality and simultaneously cost less.

There are at least two ways your professors this semester could provide more cost-effective instruction services to students. First, they could teach larger classes. Second, they could cover more material in less time by speaking faster when they lecture. Productivity would double if there were twice as many students in each class. Productivity would also double if academic semesters and terms were half as long and professors (and students) did

the same amount of work in half as much time.

Either strategy would reduce the cost of faculty per student credit hour. But, the quality of your academic experience might also diminish if classes were larger or academic terms were shorter. We could increase the workload on all government employees—teachers, police, firefighters, health inspectors, judges, and state legislators. However, any increased quantity of work might be offset by a decrease in quality of work.

It is not possible for everyone to get more and pay less for government over time. On the other hand, it is possible for *some to get more without increasing what is provided if others get less*. It is also possible for *some to pay less without decreasing revenues to government if others pay more*. Politics is about winning and losing. Many define winning and losing largely in terms of what they pay and what they get. Yet, most of us are ignorant about what we pay to and what we get from government. Furthermore, in order to know whether we are winning or losing, we also need information about what others are paying and getting. We now turn our attention to the question of who pays government taxes and fees. You should not be surprised that states have made very different choices.

Normative Ideas

One principle that could be used to decide who should pay and who should benefit is “Others should pay and we should benefit.” This only works if we can distinguish between “we” and “others.” There might also be conflict about the composition of the two groups. It might surprise you to learn that state and local governments sometimes can and do assess taxes that are paid by nonresidents and benefit residents.

One example of outsourcing the job of paying taxes is severance taxes levied on natural resources such as minerals, coal, oil, and natural gas. Those who consume the resources will ultimately pay these taxes. Resources exported to other states result in exported taxes. Part of the price Ohioans pay for natural gas from Texas is Texas severance taxes. Similarly, Texans who consume Arizona copper pay taxes to Arizona.

A second method of exporting costs to others is taxing goods and services purchased primarily by non-locals, such as tourists and other visitors.

Examples include tariffs on hotel rooms, vehicle rentals, and tickets to commercial sporting events. It is probably fortunate that only a very small portion of taxes paid to American governments can be “exported.” In the big picture, residents of the state are the primary payers of state taxes. Therefore, a state’s wealth is best measured by the wealth and income of its residents and their ability-to-pay higher taxes.

Consider two hypothetical families living in the same public school district. In Family A, both husband and wife work. They have a combined yearly income of \$120,000, substantially above the national median family income. They have a single child, who attends public school. Family B has a single working parent and a yearly income of \$36,000. This four-member family has three school-age children in public schools. The cost of education in the school district is about \$6,000 a year for each student.

How should these families pay for the governmental services they receive? To simplify, we will limit our discussion to providing public school education for their children. In a capitalist society, we normally pay for any goods or services that we receive. This is called *user or client pay*. If you bought this book you paid for the good received. On this basis, Family B would have to devote one-half of its before-tax income to educating its children. This expense might be beyond what Family B could afford, meaning that some or none of the children would receive an education. Family A, however, could easily afford the \$6,000-per-year cost to educate one child.

Many would argue that government services such as education should be paid on this basis. In our example, the child of Family A would attend school. Family B cannot afford to send all three children to school. The family cannot afford to pay for education in addition to food, clothing, shelter, childcare, and taxes. Home schooling is not an option for a single parent working to earn a living. Although this example is hypothetical, the reader should note that the 2016-2017 federal poverty level guideline for a family of four living in the 48 contiguous states is \$24,300.⁴ Family B’s income is above the \$31,590 threshold to qualify for free school meals, but it is below the \$44,955 maximum for reduced price meals.⁵

Would there be a cost to society, or to Family

A, if the children in Family B did not receive formal educations? Most people would say yes. Family A may be concerned about whether it is wrong to live in a society where the poor get little or no education. Family A might be concerned about its property, since Family B’s children would be at home with nothing to do while the members of Family A were at work or school. Home security might cost Family A more than the cost of taxes to support public education. In the future, the uneducated children of Family B would almost certainly be poorly paid and unable to pay for their children to go to school. Implicit in a user-pay system for public education is the idea that education is a good consumed by those who receive education. However, others in the community gain if the children of Family B are educated.

Education can be viewed as an investment that benefits society in general. That is why primary and secondary education in the United States has traditionally been supported by taxes. Taxes are gathered based on the *ability-to-pay* principle, and the services are provided to all who are eligible, regardless of their wealth. There are two prominent bases for measuring ability-to-pay: income and wealth. Income is funds brought in over one year. Wealth is the value of what is owned now. Income and wealth typically go together, but not always. Some of your classmates will earn high incomes immediately after they graduate. If they have accumulated debts from borrowing to fund their higher education, they may have negative wealth for a while. Their liabilities may exceed their assets. You probably know older relatives or family friends who have retired. They have relatively low incomes but may have sizeable wealth accumulated over many years.

To keep our example simple, let’s assume income is used to measure ability-to-pay. Family A has more than three times the yearly income of Family B. So, Family A would be taxed three times what Family B is taxed for public education. Although this arrangement may not seem a bargain for Family A, making education unavailable to Family B also has costs. If Family B’s children receive no formal education, Family A’s child might someday be the only taxpayer among these four children. For many reasons, Family A may prefer to have funding for public education based on the ability-to-pay.

The use of taxes based on the ability-to-pay to fund government programs such as education redistributes some of the wealth of the rich to the poor. Some government revenue and expenditure programs involve redistribution policy. Through government, money is redistributed from the wealthy in taxes to the poor in services. The tax rate in the example is a fixed or “flat” rate. The same rate applies to all taxpayers. As we will see, there are alternatives to the flat tax rate. When taxes are based on the ability-to-pay, the wealthy would prefer rates that are the same for everyone. The poor would prefer variable rates with higher tax rates applied to those with greater ability-to-pay.

Self-interest is heavily involved here. Much of the controversy in politics centers on redistribution policy. No discussion of changes in taxes or services is free of the self-interest of the wealthy to reduce taxes and move to more user-pay services and the self-interest of the poor to have taxes pay more of services they receive rather than having to pay for these services themselves. This is not a trivial issue. The poor often forgo services, such as taking their ill children to doctors, because they cannot afford to pay. As a result, many other children are at greater risk of exposure to communicable diseases. In some cases, the wealthy are willing to pay for services for the poor. Threshold levels for clean water, public health, and control of garbage, sewerage, and vermin can make the children of the wealthy less vulnerable to contagious diseases that would otherwise afflict poor children.

Just as college students prefer receiving higher grades to receiving lower grades, citizens prefer receiving more and higher quality services from government. Citizens prefer paying less to paying more. We should expect that wealthier people would advocate user-pay instead of ability-to-pay systems. We should expect the poor to favor ability-to-pay rather than user-pay systems. The middle class will prefer private sector provided services, and the working class will prefer public sector or governmental services. Both preferences will be based on self-interest.

How Broad Is Social Concern?

In our experience, most college and university students support ability-to-pay as the basis for

covering the costs of public education. There seem to be two possible reasons. First, students may be representative of overall society. Ability-to-pay has always been the basis for paying the costs of public education because of social concern about the consequences of failing to educate the poor. Paying for education with ability-to-pay taxes is conventional and traditional. Second, college and university students know they benefit because others underwrite much of the costs of their education. Self-interest may motivate their preference.

Let us now consider not just two families, but also an entire school district. If a school district has one section that is wealthy and others that are poor, should the wealthy contribute disproportionately to the costs of education in the district? Should multiple families A pay substantially more than their share for the services received and families B pay less? Again, most people probably support ability-to-pay as the basis for paying district-wide educational expenses. Indeed, this is the norm across the country. Please note that most districts ask parents to supply some or many of the materials used by their children in school. This moves the cost of those materials from ability-to-pay to user pay—the preference of wealthier residents who probably control the school board.

How about statewide? No state has its wealthy citizens evenly distributed from border to border. All have poor school districts as well as wealthy school districts. Should the wealth of the rich districts be redistributed to those that are poor? This is not traditional. Moreover, the social benefits are less evident. Residents of San Francisco, Dallas, and Philadelphia may not recognize that they and their children are affected by the quality of public education available to children in Los Angeles, San Antonio, and Pittsburgh. Thus, there is less support for statewide redistribution. The same logic, however, applies.

The wealthy portions of the state should see the benefit to them and their children of having quality education for all children whether rich or poor. Moreover, states are in competition with one another. A state that fails to educate its students will be at a disadvantage in the competition to attract new industries and high-paying jobs. Several state supreme courts have ruled that inequitable resources for local school districts are unconstitutional. Some states have been compelled to underwrite

public education more fully. The Supreme Court of the state of New Jersey ruled any plan that does not give students in poor districts the same level of support as students in wealthy districts is unconstitutional. New Jersey was forced to adopt a state income tax to provide more state funding.

Few people support the idea of wealthy areas of a state paying for the public education of children in distant poorer areas. Support for the idea of ability-to-pay for covering public education breaks down outside the local area. This might have several explanations, none of which have been researched. Perhaps people feel responsible for their local schools but not state schools. Maybe there is an importance of spatial separation. This “out-of-sight, out-of-mind” view is that it does not matter whether local schools are better, worse, or the same as schools elsewhere in the state. This outlook ignores the 21st century reality that competition for jobs and many other things of value extends across communities, across states, across nations, and across continents.

Support wanes even more for redistributing wealth from wealthy states to poorer states. Uneducated Mississippi children are less troublesome to people in Connecticut or Alaska than are poorly educated children within their own states. The federal effort in public education to “leave no child behind” as they “race to the top” is strong on slogan and weak on substance. Funding for the states promised at the inception of each program has not been provided.

Finally, we could consider redistributing wealth from wealthy nations to poorer nations. The United States provides some aid to impoverished nations in the form of education resources. Foundations and other tax-exempt organizations also make contributions. The scope and intent of all these programs combined is so small that it is more accurate to say they are charitable good works and not a significant program of redistribution. The United Nations is an international organization. One of its mandates is to redistribute wealth across nations. It relies on voluntary contributions to fund its efforts. As we have seen, there are strict limits on what the wealthier voluntarily give to the poorer. Generosity seems linked to closeness. However, we can offer no empirical evidence that closeness alone is the major cause of generosity.

Private Goods and Public Goods

Economists argue that government should provide public goods and services and that private goods and services should be retained in the private sector. This distinction between private and public goods depends on two considerations.

The first consideration is whether goods and services are excludable, meaning that sellers can guarantee the benefits of goods and services to those who pay and exclude those who do not pay. Private sector vendors specialize in things that are excludable because purchasers will not pay if there is no guarantee that they will receive what they paid for. Purchasers also will not pay if they know they may receive without paying. Goods and services need not be perfectly excludable for the private sector to be effective. Even though neighbors and visitors can appreciate a beautifully landscaped home, the homeowners pay for their own landscaping.

The second consideration is whether or not a good or service used by one person reduces what is available for others. If it does, economists say it should be a private good. A pie is an example. If four people were to eat it all before you arrived, there would be none left for you. On the other hand, when everyone can use a good or service without denying it to others, it is *non-rivaling*.

Goods and services that are non-rivaling pose two challenges to private sector vendors. First, most people do not think of themselves as consumers. They know they benefit from viewing their neighbors' gardens. But, they don't think of themselves as users because nothing of limited supply has been used or used up. The second challenge is that most will refuse to provide compensation voluntarily to the providers of non-rivaling goods or services. Users refuse to act as customers, even when providers convince them they benefit. They argue that they should not pay because they have not reduced the supply the vendor can “sell” to others. Certain things that are abundantly available are frequently thought of as non-rivaling. In the past, clean air and water have been consensus examples—even though we know that when one person breathes air or drinks water, less is available for others. When crises of air pollution and drought make air and water scarce, we recognize that great abundance made them seem to be non-rivaling.

Markets fail when potential customers think they can benefit without paying or should not have to pay for benefits they are receiving. The crucial element of voluntary exchange has been eliminated. You know you can underpay your federal taxes by cheating and still drive on interstate highways, visit federal parks, benefit from national defense, and so on. You also know that if everyone cheats, the benefits will not exist. Only by making payments mandatory can goods and services be provided in the quantity and quality we all want.

Private and Public Sectors

What is the proper division between the private sector and the public sector—government? Economists and others argue that the private sector is superior to the public sector in providing goods and services at high quality and low cost. Given the choice between private and public sector, they argue, the private sector is always or almost always the better choice. This view is a contemporary expression of the idea articulated in the No Government Period of American history: *The best government is the least government.*

Even those who advocate minimum government recognize that some government is necessary because there are some goods and services the private sector cannot provide or does not provide with necessary scope and effectiveness. Saying that the public sector should specialize in market failure situations still leaves many questions unanswered.

There can be legitimate disagreement about when market failures exist. It is not always easy to know the extent to which things are rivaling or non-rivaling. Technological changes can make things excludable that previously were not excludable. Changes in the way people live or behave can make excludability more difficult. Market failure is a concept that helps us understand why government is sometimes necessary. It does not provide clear guidelines for identifying market failures before or as they occur.

So far, our discussion of market failure has been based on technical academic criteria. It is also possible to define market failure subjectively as situations when the private sector could provide desired goods or services but does not do so. Private companies seek returns on investments: profits. Frequently, the private sector does not en-

gage in potentially profitable enterprises. In some cases, the investment is too large. In others, acceptable return on investment may take longer than companies deem acceptable. In yet others, the risk involved may be unsatisfactory. The private sector readily provides utilities and some transportation services in locations where populations are dense. In sparsely populated rural areas, private sector companies are less enthusiastic because infrastructure and capital costs are high, total consumption is low, and time from startup to profitability after recapture of investment is long. Many enterprises involving large and long term capital investments are either entirely financed by government or involve significant government subsidies to private companies.

So, government activity could be appropriate whenever the private sector does not provide what is needed. How do we decide what is needed? Another concept provides some guidance: merit goods. Merit goods are those things we think should not be denied to those who are unable to pay for them. Consensus merit goods include food for the hungry, shelter for the homeless, and aid of all kinds to victims of natural disasters. Americans provide care to those who cannot care for themselves.

Clean air and water might qualify as merit goods. Some would incorporate protection from tainted food, unsafe drugs, and other products that pose dangers that cannot be easily recognized. Today, public education and a minimum level of health care qualify. Jewelry and travel can hardly be considered merit goods, but what about gas or electricity to heat your home in winter? What about roads and bridges and public transportation so your travel time from home to other destinations is shorter? We cannot easily divide goods and services between merit and non-merit goods.

Clearly Governmental Services

Only the government can gather taxes or money without simultaneously providing corresponding services. Consider how you would react to a bill from a local store asking you to pay for something you never received. No wonder no one likes taxes. Government can also provide user-paid services, such as charging on the basis of the amount of water, electricity, or highway mileage used. Thus,

even if there were agreement that government should handle some services, there is no necessary reason why those services could not be paid on a user-pay basis.

Indeed, many municipal services over the years have been pressed to “pay their own way” or to pay for services without subsidies from general tax revenues. Water, sewage, electricity, and sanitation are examples. In order for these services to pay their own way, user charges would have to equal the costs of the services. This would include charges to those who cannot pay. Thus, pay-their-own-way arguments are just the user pay arguments in new clothing. Those advocating having services pay their own way are probably seeking to reduce their own taxes.

Few private goods and services are provided based on ability-to-pay. An example of this approach is dealers selling new cars at prices based on shoppers’ incomes or wealth. The most affluent would be charged \$250,000, and the very poor would pay nothing. Can you imagine this happening? Sometimes it does. Health care provides a real life example. Those with health insurance are charged more for services than those who are unable to pay, especially for childbirth.

Regardless of how services are financed, they can be provided directly by government or outsourced to private sector companies. Very few, if any, governmental services could not be “privatized” or given to the private sector to provide. Arizona has many services normally provided directly by local government, such as fire protection, provided by private industry. Private police shelter wealthy residential enclaves in many communities. Depending on where you live, water, electricity, fire protection, garbage pickup, street lighting, security, bridges, and ferry crossings are provided by private sources on the user-pay basis. Local governments still provide all of these services where most of us live. History and tradition, rather than cost-benefit analyses, best account for whether government or the private sector offers a service. Even if government provides a service, ability-to-pay will not necessarily be the basis of paying for its costs. Government revenues come from a variety of sources.

Taxes

No one likes to pay taxes. Given the opportunity, we would all pay nothing for any goods or services we receive. Perhaps you have daydreamed about such a life. The reality is we have to pay for goods and services we receive whether provided by private enterprise or government. This does not mean that we cannot be resentful of paying too much in taxes, just as we are resentful of paying too much for a sandwich at a fast food restaurant. We have frequent opportunities to judge whether we pay too much for sandwiches. When dissatisfied, we can usually find other restaurants nearby. Opportunities for judging whether we pay too much in taxes are less frequent and more challenging. Changing governments is much more expensive than changing restaurants.

Are U.S. Taxes High?

Recently, many have charged that Americans pay too high of a percentage of our money in taxes. One member of Congress erroneously said that for the first 40 percent (actually about 30 percent) of the year, we work for government. Of course, since few of us save much, this logic means that we work the rest of the year for McDonalds, Wal-Mart, Exxon Mobil, and other companies from which we get services and goods. American taxes are not high in comparison with other countries. Taxes at all levels claimed 25 percent of Gross Domestic Product in 2014. This is 25 percent below the 36 percent average of 33 members of the Organization for Economic Cooperation and Development.⁶ Three OECD countries had lower rates: Korea, Chile and Mexico. Their respective rates are 24.6, 19.8 and 19.5 percent of Gross Domestic Product. In many European countries, taxes exceeded 40 percent of GDP, but those countries generally provide much more extensive government services to their citizens than the United States does.⁷ Examples include health care, day care, retirement income, college education, and job retraining.

Types of Taxes

In the United States, we have basically three types of taxes: property taxes, sales taxes, and income

taxes. As we shall see, state, local, and federal governments depend on different taxes. The reason for this variation goes back to when the different governments became active and the type of taxes available at the time. There is no reason we could not have a single tax gathered once a year and distributed to the various governments. That would make the cost of government crystal clear to taxpayers. Officials act to obscure total tax bills, not to illuminate them. To make them less visible, governments spread tax collection over time by using escrow accounts, adding small amounts to retail purchases, and withholding from salaries.

People of varying abilities to pay are not equally affected by different taxes. Some would like to see the income tax eliminated, and others dislike the property tax. Some taxes are judged to be fairer or more equitable than others, at least by some people. The answer to the question “Who pays?” determines winners and losers. Any proposed change in tax structure mobilizes enormous concern and hot political interest. Thus, the likelihood of changing to a simple, single tax is close to zero.

The complexity, diversity, and timing of taxes probably reflect both the history of their invention and an effort to make none seem burdensome. The type of tax used reflects which government has imposed it as well as the influences of the multiple centers of political power inherent in a federal system of government. If one interest controls the city council and another the state government, two different taxes are likely to be collected.

Property Tax

Taxes on real property, land and permanent improvements, have been imposed for hundreds of years. Real property is simple to recognize. Its value can be determined with little difficulty. Property owners are relatively easy to identify. When most people lived on subsistence farms, they had little money income that could be taxed. They were more likely to barter than purchase with money. Income and sales taxes were not viable. When few had money income, barter was the normal mode of exchange. How could government tax the “sale” of 20 chickens for a plow? As a result, the property tax is much older than sales or income taxes.

Government, especially local government, collects taxes on property in its jurisdiction. Owners

of more valuable property receive larger tax bills. Property tax is a flat rate tax. All property owners pay the same rate, regardless of the quantity and value of property they own. These rates are sometimes measured in thousandths of a dollar of property value, called millage or mill rates. They are also expressed as pennies of taxes per one hundred dollars of value. Imagine your home is valued at \$300,000 and the mill rate is 8, 80 cents per hundred dollars of value. Your property tax bill will be \$2,400. If your home is valued at \$600,000, your tax bill will be \$4,800.

The mechanics of collecting property tax are complex. In modern economies and jurisdictions with a large amount and/or variety of property, it often becomes a tax that is not applied the same way to all property owners. Property tax requires determining value of property and identifying owners. Property tax imposing governments must hire property appraisers and must retain records of who owns what property. At one time, the king’s agents could break in, note all property, appraise it, and collect the appropriate taxes on the spot. Americans insist on greater protection and privacy from government, tax agents make appointments to review taxpayers’ records, and personal property is not taxed.

Modern property tax assessors gather data to determine property values. They record information on lot size, structure size, age, and quality of construction. They consider the use of property: residential, agricultural, industrial, or commercial. They learn about major improvements from building permits and conduct rare on-site inspections, perhaps once or twice every 10 years. They have information about surrounding properties and comparable properties throughout their jurisdiction. This information then is used to set a value on the property, typically by comparing it with similar and recently sold property. Assessors use selling prices as indicators of market value.

Theoretically, property taxes define ability-to-pay in terms of wealth. However, real property is only one kind of wealth. Personal property such as your electronic gear, wardrobe, and jewelry is excluded because it is too difficult to assess. Ownership and value of savings accounts, stocks, bonds, and other securities is not so difficult to determine. Yet these kinds of property are not subject to property tax. The old kings of England would

not have missed these tax revenue opportunities.

Second, the value of real estate, which we do tax, changes over time. On-site appraisals, although expensive, can deal with this problem. Few governments, however, inspect properties more than once every 5 years, with 20 percent of all property being inspected each year. Some Northeastern governments have not conducted comprehensive property value reviews since the early 1800s, when an appraised value of \$300 was placed on a property that now sells for \$450,000. Throughout the nation, new homes and recently sold properties are fairly consistently assessed at a fixed percentage of the selling price. Older, unsold properties are not assessed with similar consistency because there is no convenient standard of measure. As a result, older properties, rarely sold properties, and unusual properties tend to be under-assessed.

The first problem, excluding some wealth, results in the tax being unfair for the poor because it is regressive. When it was imposed on all property, it had equity because those with greater property wealth paid proportionately more than the poor, who had little.⁸ The poor pay a greater proportion of their income and their wealth in property taxes than do the wealthy. For one matter, the poor who do not own property still pay property taxes as part of their rent. Owners of rental properties receive tax bills but use rental income to pay them. For another matter, the home-owning poor have larger

proportions of their wealth in their residences than the more affluent do.

As wealth goes up, the percentage of one's wealth on which the property tax is collected decreases. A family with a \$300,000 home with a 2 percent property tax pays \$6,000 a year. If their yearly income is \$240,000, this is 2.5 percent of their yearly income. A person with a home worth \$30,000 at the same 2 percent property tax rate pays \$600. If that person's income is only \$15,000, property taxes consume 4 percent of his income, twice that of the more wealthy family. Property tax is a regressive tax because the poor have more of their assets in property that is taxed. The wealthy own additional valuable property that is not taxed: savings, stocks, bonds, and other securities.

There have been efforts to make the property tax more equitable. One example is called the homestead exemption. The first \$5,000 or \$10,000 of appraised value in one's primary residence is not subject to tax. With a \$10,000 exemption, the poor individual above then would pay only \$100, or .7 percent of his income. Another method is to set a maximum percentage of a person's income that will be collected as property taxes, called the circuit breaker. However, the property tax still is challenged as unfair.

Despite its inequities, the property tax persists as the primary source of local government tax revenues. People are accustomed to paying it. Because the appraised value of all property in the

Figure 5.1
2018 Federal Income Tax Rates for Households

Taxable Income Single Taxpayer	Taxable Income Married Filing Jointly	Earned Income Rate	Long Term Capital Gains Rate
Up to \$9,525	Up to \$19,050	10%	0%
\$9,526-\$38,700	\$19,051-\$77,400	12%	0%
\$38,701-\$82,500	\$77,401-\$165,000	22%	15%
\$82,501-\$157,500	\$165,001-\$315,000	24%	15%
\$157,501-\$200,000	\$315,001-\$400,000	32%	15%
\$200,001-\$500,000	\$400,001-\$600,000	35%	15%
Over \$500,000	Over \$600,000	37%	20%

city is known, setting a tax rate yields very predictable amounts of revenue. Although dependence by city, schools, and county governments on property taxes has declined since World War II, there is little question that it will be with us in the future. The states initially depended on property taxes and have only recently gathered more of their revenues from sales and income taxes. The federal government has never used a property tax.

Income Tax

Both federal and state governments had imposed income taxes before 1900. The federal government had used it to finance the Civil War and dropped it after that cost was paid. The states had tried unsuccessfully to use it in the early 1900s. In 1911, Wisconsin introduced the first successful state income tax. By 1920, nine other states had followed.⁹ Forty-three states now have an individual income tax. Of the seven states without individual income taxes, four have corporate income or gross receipts taxes. Only South Dakota and Wyoming tax neither individual nor corporate income.¹⁰

Income taxes assessed by the federal and most state governments have **progressive rates**. This means that those with higher taxable incomes pay higher tax rates. Figure 5.1 gives the progressive rates for federal income taxes in 2018. Of the 41 states that tax wage and salary income, 33 have progressive rates and 8 have one fixed or flat rate for all taxable incomes. New Hampshire and Tennessee tax only dividend and interest income and 7 states levy no income tax at all.¹¹

People commonly speak of the taxable incomes corresponding to rates as tax brackets. You may have heard someone complain about being “in the 24 percent tax bracket.” You might have thought that meant the speaker’s tax bill divided by the taxable income of the speaker was 24 percent. A closer look at Figure 5.1 clarifies that is not the case. For someone in the 24 percent tax bracket, 24 percent is the highest tax rate paid and it is only paid on income greater than \$82,501 for those filing as single taxpayers and greater than \$165,001 for those married filing jointly. Other income is taxed at 12 percent and 22 percent.

An important complication of progressive income tax rates is that most taxpayers pay multiple tax rates. An even more important complication

is that some income is exempt from income taxes. Remember, the tax rates in Figure 5.1 apply to *taxable income*, not *total income*.

According to estimates in 2015, the federal internal revenue code is 2.4 million words long and federal tax regulations are more than 7.6 million words long.¹² Tax rates for 2018 are contained in Figure 5.1, which is less than one page long and fewer than 100 words. The federal tax code contains a separate table of rates for corporations. What content of the tax code takes up the other 99.999 percent of word count?

The other content of the federal tax code discusses what is and what is not income subject to income tax. It discusses taxable income, also known as the income tax base. The federal tax code is so long because it contains thousands of exemptions from taxable income. Some exemptions are for individual taxpayers, but most are for corporate taxpayers. Some exemptions are for entire industries, some for corporations in certain locations and some for individually identified corporations.

Exemptions from taxes are also known positively as tax breaks and negatively as tax loopholes. All “tax reform” legislation involves changing who receives new or larger tax exemptions—and pays less and who loses or receives smaller tax exemptions—and pays more. You can now understand that any tax base change can be characterized as a tax break or a tax loophole, depending on the preferences of the writer or speaker.

Figure 5.1 describes rates for two kinds of taxable income, earned income and long term capital gains income. Capital gains income occurs when an asset is held for more than one year and sold for more than its original cost. Capital losses result from holding assets for more than one year and selling them for less than original cost. Capital gains taxes are paid only on the differences between gains and losses. As you can see in Figure 5.1, more capital gains income than earned income is exempt from taxation. Also, capital gains income is taxed at lower rates. Are capital gains a tax break or a tax loophole? Yes, but you get to decide which.

Individual federal taxpayers can reduce their income that is subject to taxes by taking advantage of other breaks and/or loopholes: tax exemptions and tax deductions. With few exceptions, federal exemptions and deductions are also used by states

Figure 5.2
Income, Federal Tax Bills and Tax Burdens
For Two Families, Married Filing Jointly 2018

Lower Income Couple	Higher Income Couple
• Total Income \$60,000	• Total Income \$120,000
• Standard Deduction \$24,000	• Standard Deduction \$24,000
• Personal Exemption \$0	• Personal Exemption \$0
• Income subject to earned income tax \$36,000	• Income subject to earned income tax \$36,000
– \$19,050*10% = \$1,905	– \$19,050*10% = \$1,905
– \$16,950*15% = \$2,543	– \$16,950*15% = \$2,543
• Earned income tax bill = \$4,448	• Earned income tax bill = \$4,448
• Income subject to long term capital gains tax \$0	• Income subject to long term capital gains tax \$60,000
• Long term capital gains tax bill \$0	– \$41,400*0% = \$0
• Total tax bill \$4,448	– \$18,600*15% = \$2,790
• Tax burden = \$4,948/\$60,000 = 7.4%	• Long term capital gains bill \$2,790
	• Total tax bill \$7,238
	• Tax burden = \$7,238/\$120,000 = 6.0%

that have individual income taxes.

Tax exemptions are granted for taxpayers and their dependents. If your parents pay more than 50% of your expenses during a year, they can claim you as a dependent and reduce their income tax base. There are larger exemptions for those over age 65 and those legally blind.¹³ Interest income from “tax exempt” state and local government bonds are also not part of income subject to tax.

Tax deductions are granted for certain expenses, including property taxes, income or sales taxes paid to state and local governments, interest on home mortgages and sole proprietor business expenses. Some expenses, such as educational, moving and employee business expenses, are deductible if they exceed certain cost thresholds. This is only a partial list of tax breaks available to you.

Some states allow additional tax breaks for individuals. Some income is exempt from taxation. Pension and retirement income is at least partially exempt in more than 30 states. Fourteen states

also have tax credits— amounts that are subtracted from tax bills. Some states have credits rather than exemptions for each dependent. Some states that apply sales taxes to food and prescription drugs have income tax credits for sales taxes paid on those purchases.

For individuals, their federal tax bills are based not only on the size of their incomes, but also on how those incomes are divided between earned income and capital gains. Federal tax bills are also affected by exemptions, deductions and tax credits available to, and claimed by, taxpayers. Figure 5.2 compares the incomes of two hypothetical families to explain some of the complexities of federal income taxes.

The lower income family had income of \$60,000. They used the standard deductions for a family of four, \$24,000. Their taxable income was \$36,000, resulting in a bill of \$4,448, 7.4 percent of their total income. The other family’s income was twice as large, \$120,000. They also used the standard deductions for a family of four, \$24,000.

However, the second family had capital gains income of \$60,000. Of the \$60,000, \$41,400 was below the total taxable income threshold of \$77,400, so their capital gains rate was 0%. The so their capital gains rate on \$41,400 of income was 0%. The capital gains rate of 15% applied to only \$16,950. Their total tax bill of \$7,238 was 6.0% of their total income, \$120,000.

The lower income family's tax burden was 7.4 percent. The higher income family's tax burden was 6.0 percent. The second family's income is 200 percent of the first family's income, but their tax burden is only 81 percent of the first family's burden. What would happen if there were no tax breaks or loopholes? What if all income had been subject to the earned income tax rates in Figure 5.1? The lower income family would have paid \$6,819 on income of \$60,000, a burden of 11.4 percent. The higher income family would have

paid \$18,279, a burden of 15 percent.

The crucial importance of the difference between *total income* and *taxable income* is clear in this example. Because only some income is subject to income taxes, the higher tax burden falls on the lower income family. Most who give hypothetical examples about income taxes stress tax rates and ignore tax bases. As a result, they conclude that higher income families not only pay more taxes in dollars, they pay a larger share of their incomes. On the contrary, because tax advantages are more available to higher income than lower income individuals and families, the latter end up with lower burdens than examples than "predicted" by tax rates alone.

Income taxes are challenging to understand. One must consider simultaneously income tax rates, total income, income subject to taxation and income exempt from taxation. The arithmetic is

Figure 5.3
26 Corporations Paying No Total Income Tax in 2008-2012

Company	2008-2012 Profit \$millions	2008-2012 Tax \$millions	2008-2012 Tax Rate
Pepco Holdings	\$1,743	-\$575	-33.0%
PG&E Corp.	\$7,035	-\$1,178	-16.7%
NiSource	\$2,473	-\$336	-13.6%
Wisconsin Energy	\$3,228	-\$436	-13.5%
General Electric	\$27,518	-\$3,054	-11.1%
CenterPoint Energy	\$4,078	-\$347	-8.5%
Integrus Energy Group	\$1,623	-\$133	-8.2%
Atmos Energy	\$1,486	-\$114	-7.7%
Tenet Healthcare	\$854	-\$51	-6.0%
American Electric Power	\$10,016	-\$577	-5.8%
Ryder System	\$1,073	-\$51	-4.7%
Con-way	\$587	-\$21	-3.5%
Duke Energy	\$9,026	-\$299	-3.3%
Priceline.com	\$557	-\$17	-3.0%
FirstEnergy	\$7,236	-\$216	-3.0%
Apache	\$7,580	-\$184	-2.4%
Interpublic Group	\$1,305	-\$28	-2.1%
Verizon Communications	\$30,203	-\$535	-1.8%
NextEra Energy	\$11,433	-\$178	-1.6%
Consolidated Edison	\$7,581	-\$87	-1.1%
CMS Energy	\$2,471	-\$26	-1.1%
Boeing	\$20,473	-\$202	-1.0%
Northeast Utilities	\$2,820	-\$19	-0.7%
Corning	\$3,438	-\$10	-0.3%
Paccar	\$1,711	-\$1	-0.1%
MetroPCS Communications	\$1,956	-\$1	-0.1%
TOTAL	\$169,504	-\$8,676	-5.1%

easy once the numbers are known. Discussions and “analyses” that focus only on tax rates use simple and incorrect arithmetic. Those who receive the greatest tax advantages would rather not talk about them and give the impression that their tax burdens are greater than they really are.

The job of collecting and reporting tax information is assigned to the taxpayers. In 2012, the Internal Revenue Service estimated that the average taxpayer needed 22 hours to do his or her 2011 tax return—32 hours if a Schedule C for business or a Schedule E for rental properties was filed.¹⁵ In 2013, 26 percent of Americans surveyed reported they hated preparing their federal taxes and 30 percent said they disliked it. Another 29 percent stated they liked it and 5 percent held they loved it. It is not surprising that 56 percent said they do not prepare their own income tax returns.¹⁶

Even if all taxpayers prepared their own tax returns and loved doing it, most would still be ignorant of how those with lower incomes can have higher tax burdens. Preparing only their own returns will not let them compare their incomes and burdens with those of different income levels and combinations of individual and capital gains income.

The divide between tax rates and tax burdens is even larger for federal corporate income taxes. There were 8 federal corporate income tax brackets in 2012. The lowest bracket was 15 percent for the first \$50,000 of taxable income. The highest bracket was 39 percent for \$100,000 to \$300,000. The higher income brackets had lower rates, 34 to 38 percent. The highest bracket, taxable income over \$18,333,333, had a rate of 35 percent.¹⁷

Figure 5.3 lists 26 corporations that paid no total income tax in 2008-2012. Each of the 26 corporations would have 35 percent if taxes were assessed on total profits. However, each had exemptions, deductions and tax credits that exceeded their tax liability. Each corporation paid a negative tax rate. In other words, each received a refund. These 26 corporations paid no income taxes on total profits of \$170 billion. Instead, they received total refunds of \$8.7 billion.

A long list of politicians, think tank fellows, pundits, and others have complained that the United States has the highest top corporate tax rates in the world, 38 percent. They assert high rates are holding back the American economy, sending jobs

and companies to other countries, and threatening the existence of capitalism. This rhetoric about rates successfully distracts attention from the effective rates paid by American corporations. If we ignore the essential difference between *total income* and *taxable income*, we conclude that corporate tax burdens are much higher than they are. The taxes paid by the most successful corporations are much closer to zero than to tax bracket rates.

There is nearly unanimous agreement that federal tax forms are too complex. Many advocate simplification by making all income subject to tax—no deductions and no exemptions. Many support replacing the variable rate structure with a single tax rate for all. Presumably, either of these reforms could eliminate the tax advantage of long term capital gains income, although most who call for tax simplification are not explicit on this point. The survey data discussed at the beginning of the chapter indicate Americans are not enthusiastic about tax reform if it means giving up the tax breaks they enjoy now. Simplification of the federal income tax will not come easily or quickly, if it comes at all.

Income taxes assessed by the states require taxpayers to report information from their federal income tax returns. Taxpayers have already completed the difficult work of collecting and reporting financial information for federal income taxes. They have already done almost all the work of determining what income is and is not taxable income. State income tax forms require little or no adjustments to the federal calculations of taxable income. States have different rate structures with widely varying tax rates. But tax rates require only simple multiplication or looking up information in a table. Compared to federal income taxes, the work of state income tax reports is simple. As a result, people rarely complain about the complexity of state income taxes, even though the complexity of federal taxable income is inherent in state income taxes.

Sales Tax

The sales tax is the most recently introduced tax. Mississippi in 1932 first introduced a general sales tax on a broad range of items bought in retail establishments within the state. This tax followed more selective sales taxes, such as the tax imposed

on gasoline that Oregon introduced in 1919, which spread rapidly to all states by 1929. The general sales tax also spread rapidly, as 13 more states introduced it in 1933; now 45 states have it on most goods. Typically, you pay more than 5 percent but less than 10 percent of the value of what you buy in sales taxes, most of which goes to state government. Twenty-four states also collect and remit sales taxes for local governments.¹⁸ Merchants collect both state and local sales taxes and remit them to the state. The state sends local governments their shares based on where purchases were made.

In all cases, the sales tax is a flat rate tax, since everyone pays the same percentage regardless of what they buy. Moreover, since the wealthy purchase items that are not taxed, such as services, bonds, stocks and travel, this tax is regressive in application. Partially to offset the higher percentage of the poor's money that goes toward buying food, 31 states exempt at least non-luxury foods from sales taxes.¹⁹ Florida briefly enacted a sales tax on services as well as goods, which of course would have shifted more taxes to the wealthy. Its application to national advertisers drew much protest, threats to stop advertising in Florida, and some canceling of conventions. The Florida legislature hurriedly repealed the measure.²⁰

Texas, among other states, now collects sales taxes on some limited services. Massachusetts lends an element of progressiveness to its sales tax: individual pieces of clothing are not subject to a sales tax unless they cost more than \$175. If the clothing costs more than \$175, the sales tax applies to the entire value of the item. Sales taxes are only regressive because of how they are presently used. Sixteen states have specified "sales tax holiday" periods. Most occur near the start of the school year and exempt school supplies and certain clothing items.²¹

Retail merchants do most of the work of sales tax systems. They collect sales tax from customers at the time and point of sale. Later, these funds are transferred to state and local governments that have sales taxes. Internet and mail order vendors must charge sales tax if they have retail outlets in the states where goods are delivered. State tax collectors have the challenging task of making sure these out-of-state businesses pass on the tax funds they collect. When they have the option, Internet and mail order businesses do not charge sales tax.

This gives them a competitive price advantage over brick-and-mortar businesses.

Businesses that collect sales taxes at the point of sale want out-of-state competitors to charge the same taxes. State and local governments, still suffering revenue shortfalls because of a slow economic recovery, want the tax income from Internet and mail order sales. In May 2013, the U.S. Senate passed a bill to end tax-free shopping on the Internet by a vote of 69-27. This Marketplace Fairness Act died in the House. The bill was reintroduced in the Senate in the next session of Congress. As of December 31, 2016, introduction has been the only action.²² If this bill or a future version were to pass, imagine the challenge of collecting sales taxes from millions of people who sell through eBay, Craig's List and similar sites!

Sales tax exemptions. As was the case with property and income taxes, there are sales that are not part of the sales tax base. Stocks, bonds and mutual funds are certainly bought and sold, but these transactions are not subject to sales tax. With few exceptions, real estate sales are also not subject to sales tax. It is the case that relatively inexpensive everyday purchases are taxed. The most expensive things most people ever purchase are not subject to sales tax. Once again, the advantage goes to the affluent that have the means to make such purchases.

The federal government has never used a general sales tax, although its excise taxes on liquor, tires, and gasoline are limited sales taxes. In 2015, sales taxes provided about 29 percent of tax revenues for state and local governments.²³ The sales tax, or gross receipts tax, as it is sometimes called, remains the best source of funds for the states.

Tax Burden and Tax Incidence

Tax systems decide who pays more and who pays less, who wins and who loses. We have discussed how only some property value, income and sales are part of the property tax, income tax and sales tax bases. *Tax base* is simply that which is subject to tax—the property, income, and sales being taxed. Tax base is multiplied by tax rate to determine tax liability—individual tax bills. As we have seen, tax bases are where the tax advantages and loopholes are found. Tax burden is tax bill divided by total income. Those with smaller burdens are

winners; those with larger burdens are losers.

There is another important tax phenomenon that influences winning and losing, *tax shifting*. Tax shifting occurs when the individuals are able to pass the cost of their taxes to others. This most frequently occurs in business situations. Landlords receive and pay property tax bills, but they pass the costs on to renters. Rental property owners use rent income to pay taxes. Private companies make greater profits to the extent they can pass on their costs of doing business to customers. Buyers pay business taxes indirectly as part of purchase prices.

The concept *tax incidence*, also called *tax application*, compares tax burdens across income groups. Tax incidence describes which income groups are paying more and which income groups are paying less of their income in taxes. Neutral tax incidence occurs when the bills for all taxpayers are the same proportions of their abilities to pay. Progressive tax incidence occurs when those with greater ability-to-pay are taxed a larger proportion than those with lesser ability-to-pay. Regressive tax incidence is the opposite: those with the lowest ability-to-pay are taxed a larger proportion than

those with greater ability-to-pay. Stated simply, progressive incidence soaks the wealthy, regressive incidence soaks the poor, and neutral incidence soaks everyone equally.

Property and sales taxes have flat rates but are regressive in incidence. This is because those with lower incomes spend more of that income on mortgage or rent payments and sales subject to tax than the wealthy spend. The wealthy have enough income to spend a smaller proportion on shelter. They also have sufficient income to invest in securities—that is, they can purchase securities without having to pay sales tax. Later, when they sell the securities, the investment income is subject to lower tax rates than ordinary income.

Federal income taxes and almost all state income taxes have a progressive rate and a progressive incidence. Although large corporations and wealthy individuals have more of their income exempt from the income tax base, as a group, greater incomes pay a larger share of income in federal taxes.

Each state has its own mix of state and local taxes. Each state makes its own choices about tax

Figure 5.4
Regressiveness of State and Local Taxes 1995

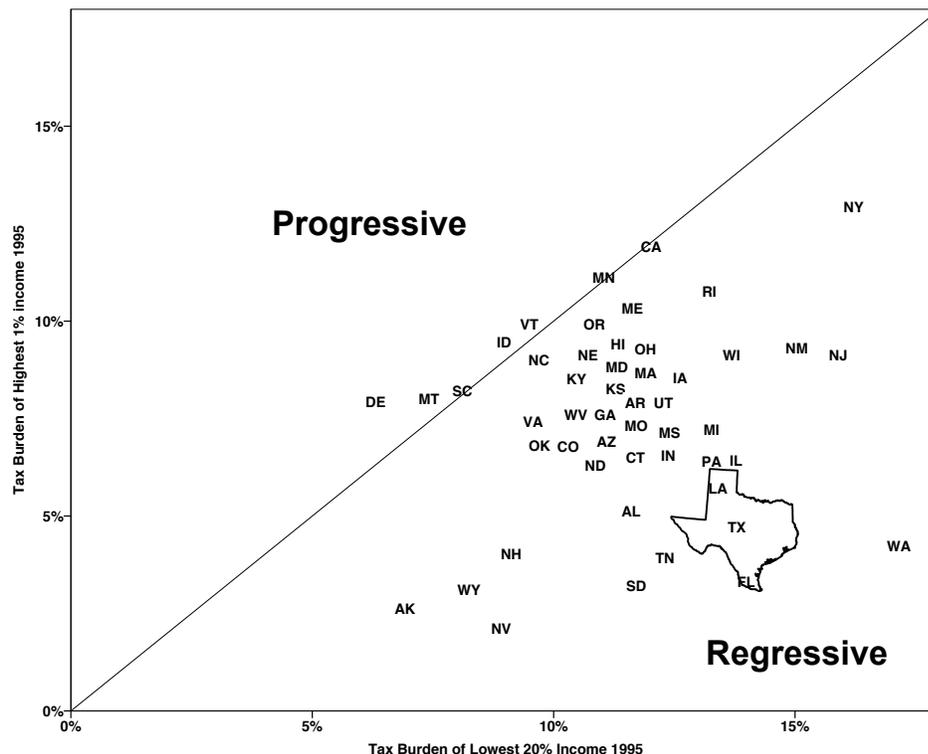
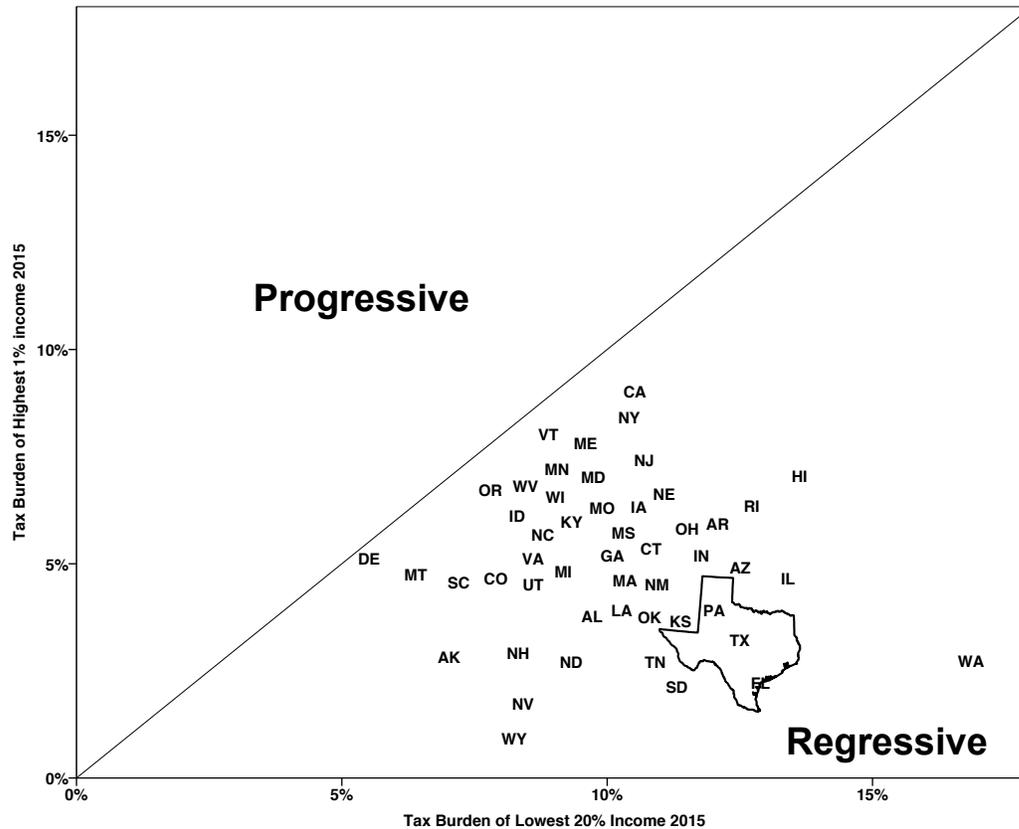


Figure 5.5
Regressiveness of State and Local Taxes 2015



rates and tax bases. We now turn to the question of assessing how progressive or regressive each state's overall tax system is. This entails comparing tax burdens paid by the poor with tax burdens paid by the wealthy. If more regressive taxes are used, the poor will end up paying a higher percentage of their income in state and local taxes than do the wealthy.

Figures 5.4 and 5.5 plot the percentage of income paid in state and local taxes by a state's lowest income 20 percent of residents and the percentage paid by the highest one percent in income in 1995 and 2015. The diagonal lines show where states would be if their state and local taxes had the same incidence for both the rich and poor. States above this diagonal are progressive in that they charge a higher percentage of income for the wealthy than for the poor.

In 1995, four states were above the line and

had progressive tax incidences: Delaware, Montana, Idaho and Vermont. Another three states had close to neutral tax incidences: California, Oregon and South Carolina. In 2015, all fifty states were below the line and had regressive tax incidences. Only Delaware had close to a neutral incidence. Washington has the most regressive state and local taxes. The 20% with lowest income there pay 7 times the tax burden paid by the 1% with highest income. Delaware is at the other extreme. As a proportion of income, the lowest there pay less than 10 percent more than the highest.

Figure 5.6 plots the difference between tax burdens for the wealthiest and poorest in 1995 and 2010 to present a picture of change in tax regressiveness. The large majority of states became more regressive. Kansas, Hawaii, Rhode Island, Ohio, and Arizona had the greatest increases in tax regressiveness. New Jersey, Michigan, and Wisconsin

Figure 5.7
Estimated Burden of All Taxes by Income Group 2015

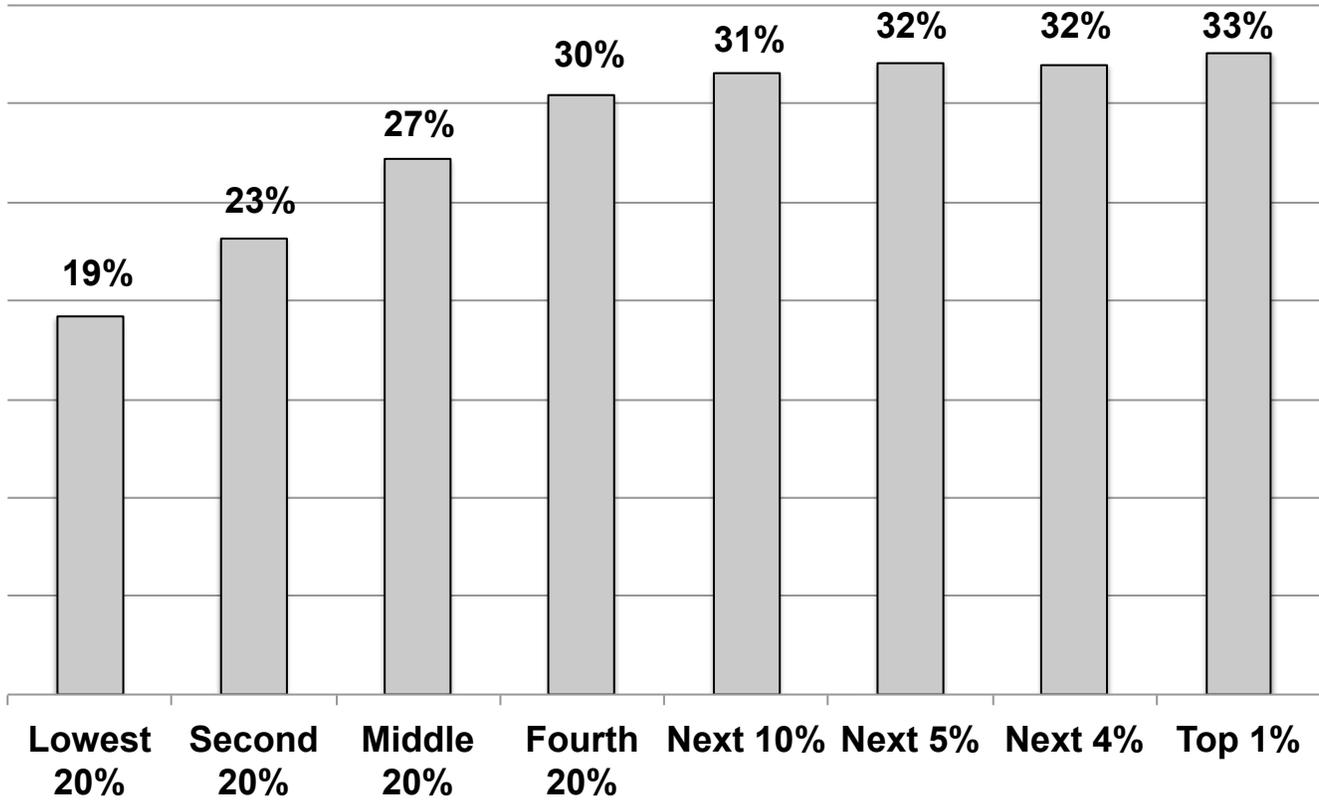


Figure 5.8
Taxes Overview

	Property Tax	Sales Tax	Income Tax
Base Being Taxed	Wealth	Consumption	Income
Primary User	Local Governments	State Governments	Federal Government
Compliance Workload	Government assesses property, determines tax bills, and collect taxes	Retailer vendors report sales, determine tax bills, and collect taxes	Taxpayers report income, determine tax bills, and submit taxes
Tax Rate	Flat	Flat	Progressive or Flat
Tax Incidence	Regressive	Regressive	Progressive, Neutral, or Regressive
Income Predictability	Highest	Lowest	Middle
Visibility	Visible to property owners	Least visible	Partly visible
Age Cohort Tax Burden	Older taxpayers	Younger more than older	Younger taxpayers
Politics	Preferred by nonpartisan local governments	Preferred by Republicans as a "use tax"	Preferred by Democrats as an "ability-to-pay tax"

Few of us keep these receipts, even when we take them. Can you estimate how much sales tax you have paid since January 1 to the nearest \$10 or \$50 or \$100?

Different taxes have distinctive impact on age cohorts. Property taxes affect older residents because they are more likely to have accumulated property wealth. Younger taxpayers are more affected by income taxes because retired older taxpayers have lower taxable incomes. Sales taxes also affect younger taxpayers more because older people purchase less in general and a larger share of their purchases (e.g. food, prescriptions, medical care) is exempt from sales taxes.

If you agree that paying more and less is germane to winning and losing, you should have noticed in the previous paragraph that your age group is likely to have a higher tax burden than your grandparents' age cohort. Can it be that older Americans have managed to create a tax system that is more generous to themselves than to younger Americans? If so, how did they do it? In

Chapter 6, we will argue older Americans are more successful in the political arena because they participate more strongly and more frequently.

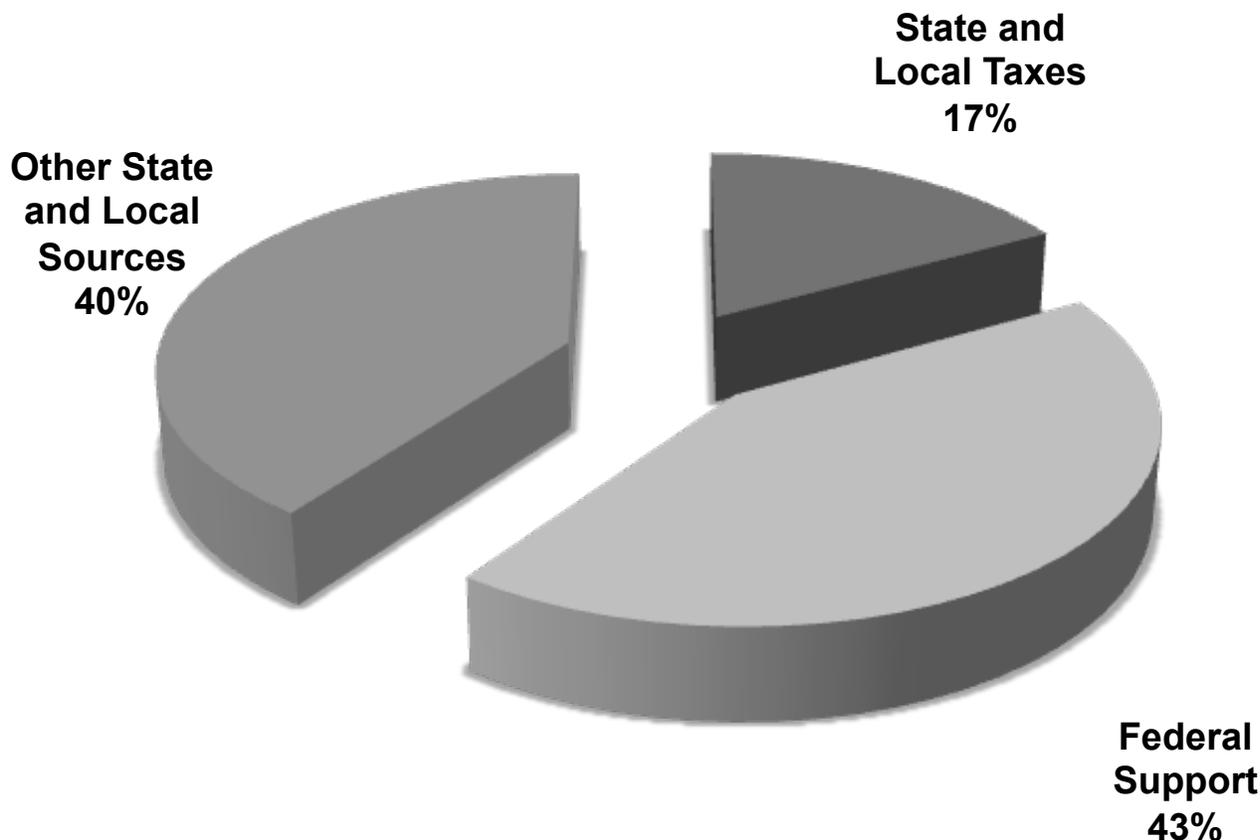
Variations in State Revenue Efforts

Our earlier discussion of tax incidence compared burdens of higher and lower income residents. What about the burden of state and local taxes combined with other state sources of revenue? What about the combined state and local revenue effort of each state?

Figure 5.9 shows all sources of revenue for state and local governments in 2013. State and local governments received 43 percent of total revenues from Federal support. The remaining 57 percent came from states' own sources of revenues. Of that 57 percent, 17 percent came from taxes and 40 percent came from other funds.

Those other funds included revenue from current charges, miscellaneous revenue, utility revenue, liquor store revenue, and insurance trust

Figure 5.9
State and Local Government Revenue Sources 2013



revenue, with current charges being the largest of these other revenues for state and local governments. Current charges include revenue from entities such as higher education institutions and hospitals. Insurance trust revenue includes public-employee retirement systems, unemployment compensation systems, state government workers compensation systems, and other state government social insurance trusts.²⁵

Budgeting by the States

Thirty-one states' legislatures meet each year and pass an annual budget. Fifteen states' legislatures meet every year and pass budgets for 2 years, called biennial budgets. Four states' legislatures meet every other year and pass biennial budgets. All but two of the states that pass biennial budgets pass separate budgets for each of two years. North Dakota and Wyoming pass two-year budgets. Biennial legislative sessions and biennial budgeting are more likely to be found in less populace states.²⁶ Kansas passes annual budgets for some agencies and biennial budgets for others. Missouri has an annual operating budget and a biennial capital budget.²⁷

Most often, a state's budget is a line-by-line plan of how the state's revenues should be spent by the many agencies providing services to the public. This money pays salaries, buys equipment, and generally allows the agency to function. An agency can spend less than is appropriated but cannot spend more. Agencies that spend substantially less than their allocations run the risk legislators will conclude they received too much and reduce their funding in the future.

A state's budget must be passed identically in both houses of the state legislature. This budget is called legislative appropriations and must be endorsed, not vetoed, by the governor to become official. All governors have power to veto statutory legislation, including appropriations. Forty-one governors have line-item budget veto power. Although states have various limitations, governors with this power can reduce appropriations amounts to zero. Twelve of the 41 have reduction vetoes. They can reduce appropriation amounts to lower amounts other than zero.

Most states require that the operating budget be balanced, meaning that expenditures must be

offset by revenues plus unspent funds from the past. Since there is never an abundance of state revenues, the appropriations process involves significant conflict. Agencies compete for funds, no matter how important or efficient their programs are.

Legislators, governors, and their support staffs are tasked to identify the best use of revenue. This is easier said than done. Legislators are advocates for their districts and will support programs that bring home benefits. Governors are chosen in statewide elections. Even so, they must be sensitive to the preferences of certain voting groups if they intend to be reelected. Budgeting is a zero-sum game. One program cannot simultaneously spend appropriations spent by another program.

Agencies seek friends in the legislature and powerful friends on the outside who can educate and influence legislators about the importance of maintaining and increasing funding levels. *Much of what we characterize as politics centers on drafting budget proposals and passing appropriations.* Decisions about how government will spend money have major impacts on who receives more and who receives less. Budgets and appropriations determine winners and losers. They are at the heart of politics in all organizations, both governmental and nongovernmental.

The public enjoys services provided in the budget but most often will object to any visible increase in taxes. As we have discussed, tax rates are highly visible; tax bases are not. In good economic times, tax bases expand as incomes, sales, and property values go up.

If tax bases increase, budgets can be maintained or enhanced without increasing tax rates. If bases increase enough, tax rates might even be lowered. In other times, certain expansion of income and sales tax bases may go unnoticed. Higher assessments on property may result in few complaints.

In bad economic times, tax bases become smaller and revenues decline. The mantra "greater efficiency" is repeated more frequently and urgently. When revenues fall far short of projections, crises ensue. There is rarely time for thoughtful and strategic decisions. The usual options are across-the-board reductions or emergency tax increases.

There have been major efforts to reform the budgetary process. The goal has been to increase

the capacity of legislators and central administrators to understand what agencies have done with money in the past and intend to do with money in the future. The assumption has been that greater transparency and understanding will result in greater efficiency.

Many new forms of budgeting were introduced in the 1960s and 1970s that were intended to improve efficiency. These reforms compared the program goals, program achievements, and program spending. *Planned program budgeting*, for example, required agencies to compute the costs of each of their services, thus making it quite evident which services were least and most costly. Costly programs could then either be made more efficient or stricken from the budget.

Zero-based budgeting requires each agency to defend not only the requested increase in their budgets from one budget to the next, but also all dollars in each budget. Without adequate defense of even the last year's budget, the agency might get a zero budget (no funds for the next year). Essential to such innovations in the allocation of state funds is the legislative and executive branches paying closer attention to an agency's total program rather than to the increases it seeks.

Performance budgeting explicitly links funding to substantive agency and program missions in budget and appropriations documents. During each budget cycle, past performances are reviewed and evaluated. Positive evaluations can result in additional funding. Negative evaluations can result in warnings, goal revisions, or reduced budgets.

While these innovations and others have been broadly adopted among the states, there is little evidence that they improve efficiency. Information has been provided in different formats. The quantity of information provided to legislators has doubled, redoubled, and doubled again. Yet, information alone is not sufficient for informed decision making. State and local legislators do not have sufficient time or expertise to make effective use of mountains of budget information. Nor do they have staff to do it for them. Budget procedures have changed, but budget outcomes have not. Rather than varying as a result of events, state budgets make predictable changes as they increase from year to year. This phenomenon is known as *incrementalism*.

Incrementalism

Incrementalism is both a strategy of decision-making and a description of budgeting decisions.²⁸ Contrary to the principles of zero-based budgeting, state legislators considering appropriations never start from zero. They start with information on a series of past decisions: amounts spent in previous years, amounts authorized for spending in the current fiscal year or biennium, requests from agencies, and a comprehensive revenue estimate and budget recommendation that is almost always prepared by the executive branch. They give major consideration to problem areas such as growing needs, crises such as natural disasters, and mandates from the federal government and state courts. Legislators also listen to those with political power. Then, they make a series of compromises between budget numbers submitted by agencies, the executive branch, and the appropriations committees of the upper and lower chambers, legislative leaders, and others.

Leaders of governments and other large organizations frequently draw an analogy with a large ship traveling on the ocean. The ship has considerable size and speed. It is going in a certain direction. Changes in direction are possible, but they occur slowly. So do changes in speed. Similarly, complex organizations make modest annual changes in spending. There is inertia in the behavior of organizations comparable to the inertia of a massive body in motion.

Small, predictable changes in state spending are the norm because legislators rarely have the capacity to contemplate and enact large, unexpected changes. Spending increases must be balanced by revenue increases. Thousands of interests compete for state funding. Those who benefit from programs in place lobby for spending increases. They do not welcome large increases in programs that benefit others because budgeting is a zero-sum game. Similarly, they do not welcome new large programs of expenditure. There is substantial political support for continuing the status quo.

While small changes are typical, from time to time major changes occur. Sometimes major changes are mandated or stimulated by changes in Federal Government programs. Major changes can also be mandated by state or federal court orders. For state governments, major changes occur at

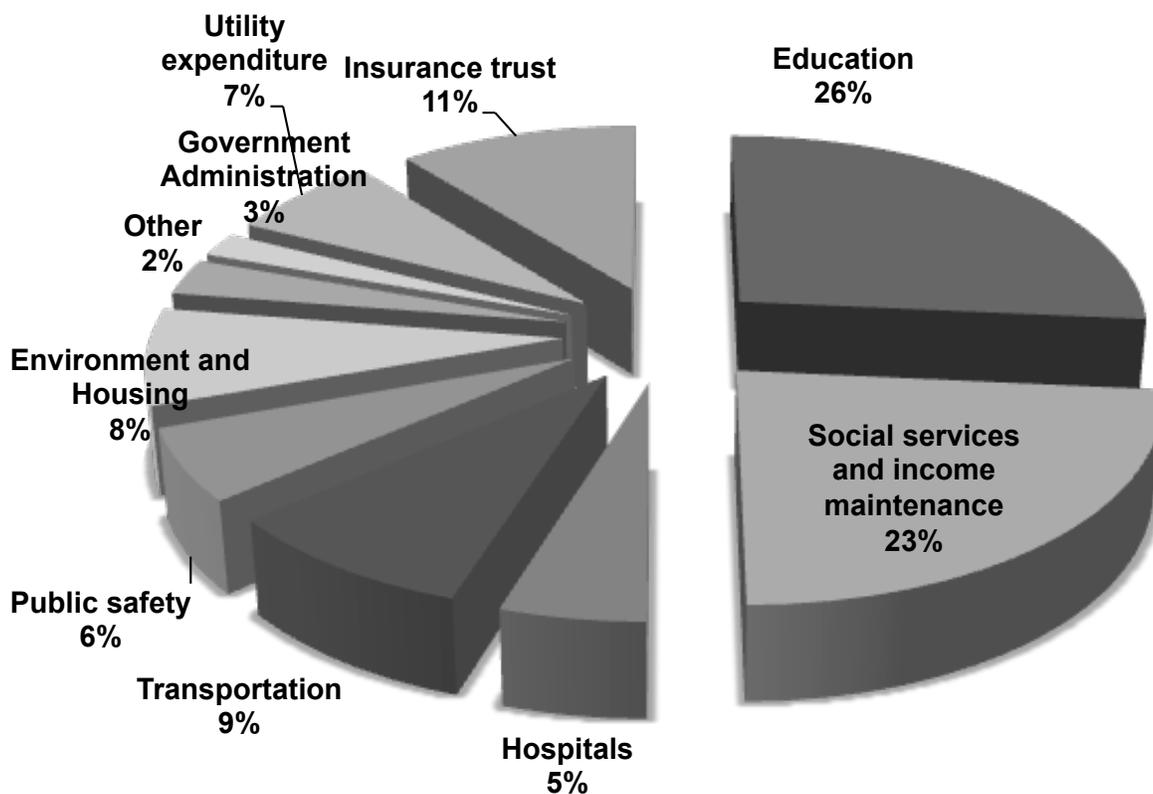
the program level. Thus, major change can occur in smaller parts of budgets while the budget as a whole changes modestly.

Appropriations are the one statutory action required of state legislatures. Innumerable actors in each state spend enormous time and energy over a long period of time for every state budget. Appropriations documents are hundreds of pages long and contain tens of thousands of separate decisions expressed in dollars. Yet, incremental character of state budgets suggests little latitude of action by budget makers. On the face of it, anyone with simple mathematical capabilities could seemingly replace the great efforts of all those involved in the budgeting process. We could save great time and money. At any rate, do not expect much change in your state's overall budgetary commitments in the near future.

Expenditures

After budgets have been established and funded through appropriations, money is spent throughout the fiscal year or biennium. Figure 5.10 shows the distribution of state and local government spending for 2013. The greatest share of state and local government expenditures, 26 percent, supports education. Public welfare, 21 percent, includes support of and assistance to needy persons and the administration of such assistance. Insurance trust spending, 11 percent, is the counterpart to Insurance trust income discussed earlier.²⁹ Transportation is 9 percent, Environment and housing is 8 percent, and other categories are 7 percent or smaller. In Chapter 12, we will consider educational, welfare, and crime expenditure differences among the states in greater detail.

Figure 5.10
State and Local Government Expenditures 2013



Summary

1. When asked, Americans give ambivalent and conflicting answers about taxes in general and income taxes in particular. We want changes to simplify and close loopholes, but we do not want to give up current tax breaks.
2. The principle of user pay works well in the private sector. Governments employ both user pay and ability-to-pay systems to generate revenue.
3. Tax burdens involve both tax rates and tax bases. Almost all advantages are in the details of what is and is not subject to taxation, tax bases.
4. State and local governments tax income, consumption and property wealth. State systems vary greatly in mix, rates and incidences.
5. Tax revenue structures have implications for whether the higher or lower income taxpayers have higher tax burdens. Progressive tax incidence results only, but not necessarily, from income taxes with progressive rates. Income taxes do not always result in larger tax burdens for higher income taxpayers.
6. State and local tax incidences have become more regressive since 1995. In 2015, state and local government tax incidences in all states are regressive.
7. The burden of all government taxes is progressive for those with the lowest 80% of incomes. There is little or no additional progressiveness in total tax incidence for the highest 20% of incomes.
8. Budgeting is incremental in two senses: decision makers contemplate a limited number of alternatives, and budgets usually change slowly over time.

Information Sources

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Figure 5.2	https://www.factcheck.org/2017/12/guide-tax-changes/
Figure 5.3	Robert S. McIntyre, Matthew Gardner and Richard Phillips, The Sorry State of Corporate Taxes, Citizens for Tax Justice and the Institute on Taxation & Economic Policy, February 2014, http://www.ctj.org/corporatetaxdodgers/sorrystateofcorptaxes.pdf
Figure 5.4	X: and Y: Michael Ettlinger, John O’Hara, Robert McIntyre, Julie King, Elizabeth Fray, and Neil Miranshy, <i>Who Pays? A Distributional Analysis of the Tax Systems in All 50 States</i> (Washington: Citizens for Tax Justice and Institute on Taxation and Justice, 1996)
Figure 5.5	X: and Y: Carl Davis, Kelly Davis, Matthew Gardner, Harley Heimovitz, Robert S. McIntyre, Richard Philips, Alla Sapozhnikova and Meg Wiehe, <i>Who Pays? A Distributional Analysis of the Tax Systems in All 50 States</i> , 4 nd edition (Washington: The Institute on Taxation and Economic Policy, 2013), http://itep.org/itep_re-ports/2013/01/who-pays-4th-edition.php#.Ubo0F_b734Q
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Study Guide, Chapter 5

Essay Questions

1. Some Americans pay federal income taxes, some pay federal payroll taxes and some pay both federal income and federal payroll taxes. Would you agree that only those who pay income taxes are contributing to federal revenue? Why or why not? What can we know about a family that, in a given year, pays federal payroll taxes but does not pay federal income tax?
2. Many political office holders, candidates and commentators argue that the top U.S. federal tax rate for corporations, 39%, is much higher than the highest rates in other developed nations. They then conclude that U.S. corporations are paying more in taxes as a share of corporate income than corporations in other developed nations are paying. What information is ignored in the conclusion drawn from accurate statements about corporate tax rates? In this case, is partial information sufficient to reach an accurate conclusion? Explain and give examples.
3. Taken as a whole, state and local taxes have regressive incidences in all states in 2015. Explain who wins and who loses when taxes are more and less regressive. In 1995, seven states had progressive or neutral state and local tax incidences. Does the change from 1995 to 2015 tell us anything about the states? How would liberals and how would conservatives answer that question?
4. A friend complains that “illegal aliens” living and working in the United States get benefits from federal, state and local governments but do not pay any taxes to any governments. This text says, “When it comes to taxes, everyone pays something.” Give examples of federal state and local taxes paid directly or indirectly by “illegal aliens.”
5. Explain market failure as it was used in the text. How can there be legitimate disagreement about when market failures exist? Include the concept merit goods as part of your explanation.
6. A friend complains that learning about tax rates, tax bases, tax loopholes, tax shifting, tax incidence, tax burdens, etc. is a waste of time. These stale academic ideas have no value in the real world because we can trust governments in the United States to impose fair and efficient tax systems. What would you say to your friend? Limit your answer to two paragraphs.
7. Your employer assigns you to find empirical information in Chapter 5 to support the contention that taxes and fees paid to federal, state and local governments in the United States are too high. What additional information beyond that in the chapter would you require to make a strong argument that was well documented? Would both rich and poor Americans accept your argument? Why or why not?

Multiple Choice Questions

1. According to the 2009 Tax Foundation’s Annual Survey of U.S. Attitudes on Tax and Wealth:
 - a. more people want to keep taxes and services where they are or increase them than want to decrease services and lower taxes
 - b. more people want to decrease services and lower taxes than keep taxes and services where they are
 - c. more people want to increase services and raise taxes than keep taxes and services where they are
 - d. the majority of the people do not know what they want
2. To understand income taxes, one must consider
 - a. income subject to taxation
 - b. income exempt from taxation
 - c. tax rates on different kinds and different levels of income
 - d. all of the above
3. Property tax
 - a. has a flat tax rate
 - b. is a progressive tax

- c. is a tax based on income
- d. is a tax based on user pay

4. Which of the following achieves the greatest efficiency and is now used exclusively in planning state budgets in all states?

- a. Planned program budgeting
- b. Zero-based budgeting
- c. Performance budgeting
- d. none of the above

Notes

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- 2 Scott A. Hodge, What do Americans Think About Non- payers? September 19, 2012, <http://taxfoundation.org/blog/what-do-americans-think-about-nonpayers>
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Chapter 6

THE INDIVIDUAL IN DEMOCRATIC GOVERNMENT

We commonly think and say that the United States of America is a democracy. A more accurate statement would be the United States practices representative democracy at all levels of government. Direct democracy has practical limitations. Imagine that a vote on an important decision is about to be made. Before ballots are cast, each eligible voter is allotted 5 minutes to address all others. Wyoming would need more than 26 days of nonstop discussion. California would need more than 235 days. If citizens insisted on responding to each other before the vote, the ensuing discussion would take months in Wyoming and years in California.

At one time, poor communication and transportation made any direct government all but impossible except on a small and local scale. In the days before amplification, no one could be heard in a gathering of many hundreds of people. Voting at such meetings would be difficult. Counting hundreds of raised hands or paper ballots would be easier said than done. Even assembling everyone in one location would be complicated. Before public transportation, the automobile, and modern highways, a trip of even 50 miles would have been a day's travel.

Modern communication and transportation may make such direct governing more practical, but the procedures of an earlier time remain. American government continues to be organized by geography. So does most participation. This could change as the digital and virtual worlds become more important. For all but the oldest in the population, communications in person are declining in frequency and importance. Email, cell phones, instant messaging, text messaging, twittering, and video conferencing have replaced them. Facebook and MySpace social networking websites may be-

come the prototype for representation in the future through virtual election districts. Self-identified communities of interest—friendships—might be the units choosing legislators. But no technology within our imagination would make it possible for direct democracy to replace representative democracy in American governments.

There are some opportunities for participation using the technology of the 18th century that come close to direct democracy. Some identify New England town meetings as examples. The underlying idea of the town meeting is that the legislative body consists of citizens, not their representatives. Those who come to a town meeting act as the legislature. If attendance is sufficiently high, decisions are guaranteed to reflect public opinion. In the real world, such turnout is extremely rare. Percentage attendance at town meetings is typically in the low double digits. The way they operate, town meetings are also examples of representative democracy. Those present make decisions for themselves and for those absent.

It is normal in governments across the country for the few to act for the many. This has been true throughout our history. Many think our political institutions fulfill the expectations of a democracy. They believe that the public policies enacted by Congress, the states and local governments are indistinguishable from those that would have been enacted had the entire public been involved. Others find strong evidence that the representatives making policy on behalf of the public inherently results in policies preferred by representatives but not necessarily by the public. Empirically, the disagreement is grounded in conflicting interpretations of the quantity and quality of public stimuli and governmental responses.

In this chapter, we consider the general public's role in governing. In later chapters, the focus shifts to the more active elite, such as political party leaders, pressure groups, legislators and city council members, governors, mayors, and judges.

Participation Opportunities

You have many opportunities to participate in making public policy and influencing the many governments that affect your life. We will start with those political acts that play a very direct role in governing and making policy and then move to those that only indirectly shape policy, such as voting.

Seeking Public Office

Our federal system has many elective officials at all levels of government. Overall in the United States, there are more than 270,000 elected offices to be filled and refilled after 2 years or so. Only one of these elected officials has a national constituency, the president of the United States, sharing the ticket with a vice president. Although there are other elected officials who serve in the national government, 100 senators and 435 representatives to Congress, they are all elected by either state or local districts. There are 7,382 state legislators, most elected for 2-year terms and all from local districts. Finally, there are more than 259,000 city council, school board, county commission, and town or township board members to be elected.¹ In short, hundreds of thousands could directly participate in government by holding one of these offices at least for some short time.

We have great opportunity to run for public office in the United States, and although many of these offices do not attract much media or public attention, many can hold public office at some time during their life. Assuming a 2-year term, two candidates for each position, and a 78-year life span with 57 of those years being eligible for holding public office, nearly 17 million Americans could have experience at least running for public office. This would be about 7.5 percent of adult Americans.

Only a small minority ever seeks to govern. Less than 1 percent of the Americans seek elective positions. This small proportion makes it appear “abnormal” to run for public office. Some have

suggested that only abnormal personalities must be so attracted.

Running for office is costly in many ways. Contenders must gather campaign contributions, lose privacy, and be objects of criticism. Election battles may involve disparagement from opponents. Some of it may be personal and humiliating. Candidates must see benefit beyond gratification for being civically active. This may just be vanity, but it may be more serious. Lasswell suggests a “psychopathology of politics” to capture this idea.² Children may say they want to grow up to be president, but few will seek the office, much less have a chance to win.

Local offices filled by nonpartisan elections, such as city council or school board membership, might attract more “average” persons and thus result in more normal personalities in those offices. Political science has yet to provide research assessing whether elected officials are abnormal and thus unrepresentative of the public.³ Although there is no demonstration that it is true, local elective officeholders probably differ least from their constituents.

In the broadest terms, we all want quality individuals to be our representatives and to be responsive to our demands and interests in how they govern. But what if the “best” people will not tolerate our uninformed demands for how they should act? Perhaps the best people will not seek public offices for exactly this reason, and those who do have other personal psychological needs that they meet when they are a mayor, senator, representative, or president.

Democratic elections may provide a *safety valve* to relieve the displeasure of people whose positions on issues are not supported or are ignored by government. If you feel strongly about an issue, you can seek to influence the decision directly by seeking and winning public office. You can also support others and defeat those whose actions you oppose. This option may dampen the threat that people will resort to violent means to get their preferences in public policy.⁴ Other direct forms of participation include protest, rebellion, assassination, and insurrection. None of these activities is at all common in the United States. Only the first is even condoned as freedom of speech.

We have to go back to the 1960s for the most recent example of massive, sustained protest

against government policy in the United States. Yet, even at the height of demonstrations against the Vietnam War, less than 1 percent was ever involved in protesting our military involvement there.⁵ We have no information on the minuscule percentages involved in other direct acts. Nevertheless, beginning with Shays' Rebellion in 1786 and with the excesses by the general public in the French Revolution, many have been alarmed by the potential of public excess in democracy. This subject, too, will be discussed later, but it may explain why few express concern with the lack of public involvement in governing.

Attending Public Meetings

As we move from more direct forms of participation to those that affect policy less directly, the number of people involved increases. We have many opportunities to attend various public meetings, although our expressed opinions may not influence the vote by the school board, city council, or county commission. Local governments and legislatures invite the public to attend their deliberations, although often those watching may have no opportunity to speak. Sometimes, however, officials can read the audience response as an indication of how the public feels, and it may influence their votes.

Public attendance in meetings concerning governments at all levels covers a very broad range. There are official public hearings by standing committees within state legislatures concerning possible new laws, such as permitting a state lottery, or reforming workers' compensation. The average citizen, however, is unlikely to be heard in such hearings. There are actual business meetings of the city councils and school boards in which the audience may be allowed to speak; there are less formal public meetings to interact with the candidates preceding elections, and many governments ask citizens' advice on what the future of the city or schools should look like. Elected officials often schedule such meetings to assure their reelection by impressing the public that they care about constituents.

The extent of public participation in such activities is not clearly known, but we can make estimates. Across five democracies, 28 percent of the public claims to have ever attempted to influence the outcome of a government decision

in their local community and about 16 percent at the national level.⁶ Nineteen percent claim to have attended at least one political meeting or rally in the last 3 years, and 30 percent claim to have worked with others in trying to solve some community problem.⁷ The National Election Studies of how people vote in presidential and congressional elections typically find about 8 percent claiming to have attended a political meeting. This figure has varied little over time.⁸ Only about one in ten attended a school board meeting within the past year.⁹ At most, about one American in four is present at a public hearing or meeting over a year's time. Moreover, many of them say nothing at these meetings. Also, some of these activity reports may be false. We have been taught that a "good" citizen is supposed to be involved. Some respondents answer incorrectly so questioners will think they are good citizens.

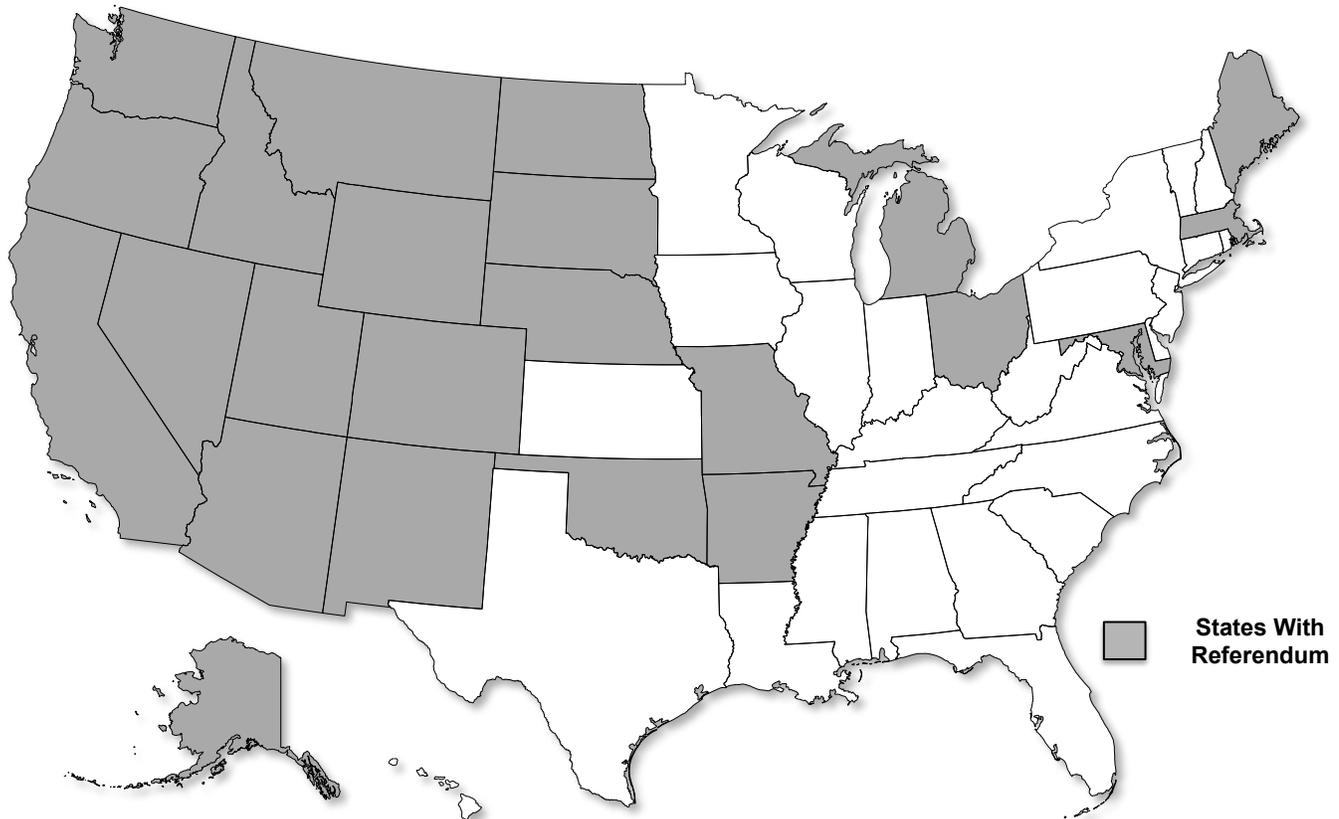
Communicating with Representatives

A less direct but more common act is to write to an elected official. About three in ten claim to have written to an elected official.¹⁰ Writing to congressional representatives is probably the most common, even if Congress has nothing to do with the problem. Congressional staff members devote considerable time to answering and tabulating these letters. Congressional lore holds that responding to constituents' communications is key to reelection. We know those who write to members of Congress are both well educated (probably because they feel comfortable in writing) and ideological (in that they appear to be sufficiently motivated to write).¹¹ These are all individual efforts to influence public policy. Now we turn to **voting**, an aggregate action that is supposed to influence public policy. It is aggregate in the sense that only your individual vote plus many more accumulating to either a plurality or a simple majority are needed to accomplish anything.

The Public Initiating and Repealing Laws— Direct Democracy

Some states and communities allow the public to make public policy decisions directly. Sometimes this voting is on constitutional or statutory law, such as the initiative and referendum in California.

Figure 6.1
States With Referendum



Sometimes it is on budgets, such as the practice in New York and several other states of having the public endorse (or reject) a school district's budget. Sometimes it is a request by a local government to borrow money for a project that will have a long lifespan.

Referendum (sometimes “popular referendum”) allows citizens to approve or disapprove proposals passed by state legislatures. In 23 states, identified in Figure 6.1, *mandatory legislative referendums* are required to enact or reject constitutional amendments and certain statutory laws proposed by state legislatures. The voters have the final say in those states. All states permit *optional legislative referendums* where legislative bodies reassign decisions they could have made themselves to voters. This occurs when those empowered by representative democracy prefer decisions made by direct democracy. Some *optional legislative referendums* ask for advice only and do not make binding decisions.¹²

The *initiative* process allows citizens to enact a proposal of a new law or constitutional amendment that is placed on the ballot by petition, that is, by collecting signatures of a certain number of citizens. The 24 states that permit citizen-initiated lawmaking are identified in Figure 6.2.¹³

The initiative processes starts with collecting the signatures of enough registered voters on petitions within a prescribed time. Enough is typically defined as 3 to 10 percent of the number voting for governor in the last election (California requires 5 percent). Qualified initiatives are automatically up for popular votes. Qualified indirect initiatives require legislative approval before being scheduled for popular votes. There are only two options on the ballot: for and against. A majority vote in the election passes or repeals law.¹⁴

Direct democracy through initiative and referendum was adopted primarily in the early 20th century. Of 24 states with initiative or referendum, 21 had implemented something by 1918. Since

then, three states have adopted them and three states have made modifications. There is not much reason to expect that additional states will approve initiative or referendum.¹⁵ Although the Progressives considered the referendum as important as the initiative, in practice, referendums are fairly rare, especially compared to initiatives.

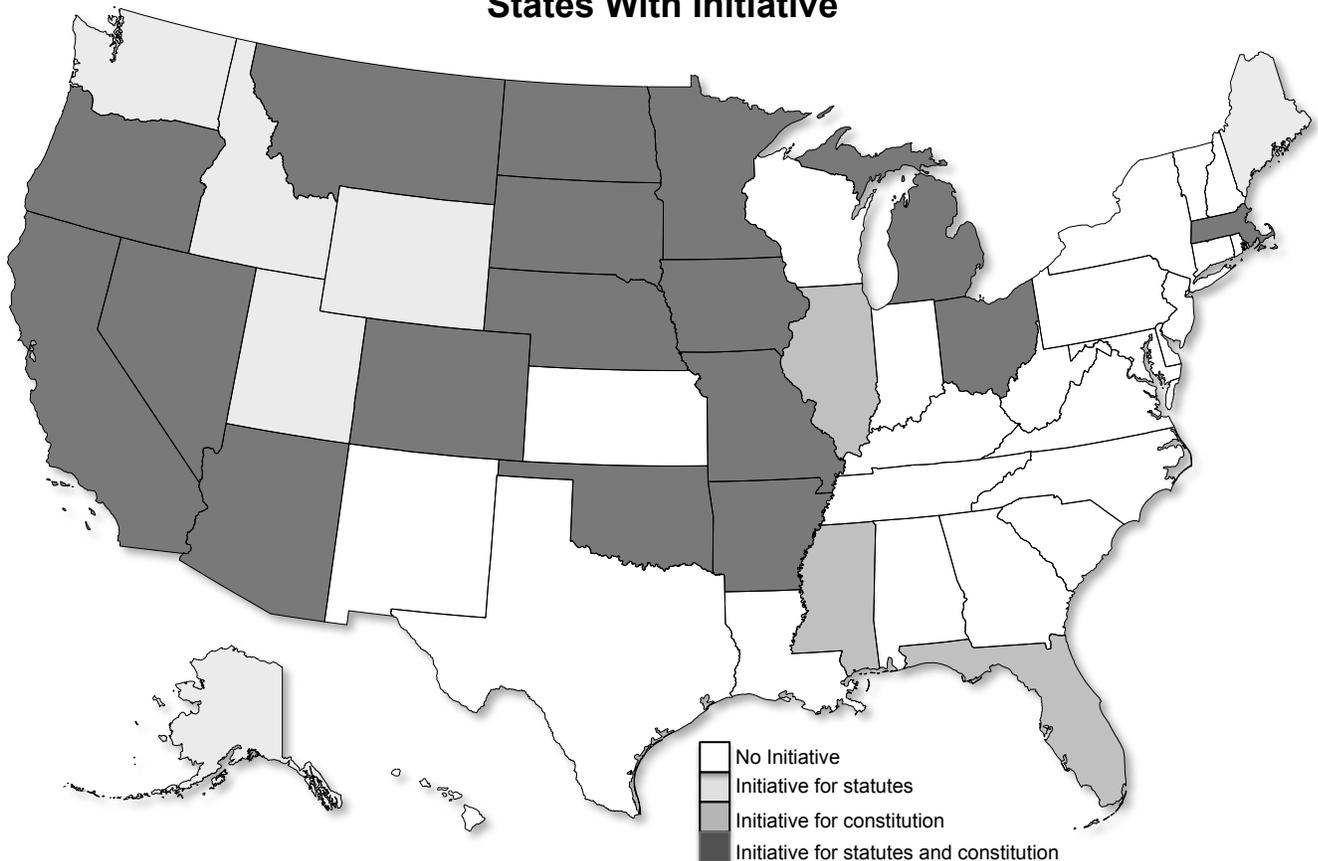
Every 4 years, the contest for the presidency tops the ballot. In most states, ballots also contain contests for other federal offices, then state and county contests. Occasionally, other local government elections come next. When initiatives and referendums are decided at the same time, they appear at the end of the ballot. Characteristically, many who vote for the top offices on the ballot fail to vote at the bottom of the ballot. This declining vote from the head of the ballot to the bottom is labeled *roll-off*. Only half of voters make choices for all offices and referendums on an election ballot. When turnout is low, those who vote are less like the general public; and when many voters

fail to vote at the lower end of the ballot, those that do are probably even less like the general public. These voters decide the fate of initiatives and referendums and most candidates for state and local offices.

As noted in Chapter 4, nearly all states have public referendums on state constitutional amendments. This voter approval or disapproval follows proposals from state legislatures. Most states also permit local governments to hold public referendums on local legislation.¹⁶ The city council, rather than the public, decides whether it wants to test public opinion in such cases. In addition, some states and local governments hold nonbinding advisory votes or “straw polls.” The federal government offers no such opportunities for the public to make policy decisions or even to express its views.

When asked, most state legislators say the most important thing they do is “kill bad bills.” The initiative process can propose bad laws that could seriously injure the state and its future or that just

Figure 6.2
States With Initiative



would be dumb policy. Some years ago, Californians were asked to vote on an initiative that would have limited the governor's salary to \$80,000 and set a maximum compensation of other state and local officials at 80 percent of this, or \$64,000, including fringe and retirement benefits. Had this measure passed (it did not), several thousand school superintendents, police chiefs, football coaches, and other officials would have had to take pay cuts or seek jobs in other states. California's future efforts in fighting both crime and other states' PAC-12 teams would have been hurt.

Although the debate over the advisability of direct initiative will no doubt continue, the evidence suggests that the resulting legislation is not easily classified, nationwide, as either conservative or liberal.¹⁷ Within individual states, decisions made by initiative reflect ideological preferences of the majority of voters.

There are individuals and groups that are making a career of promoting initiatives.¹⁸ California and Washington have seen the growth of an "initiative industry" that specializes in getting signatures on petitions and in spending great amounts of money to influence the outcome of referendums on initiatives. Many suggest that interest groups can more easily influence the public in the initiative process than they can influence state legislatures. We have no definitive data because interest groups prefer to keep their activities out of the public eye as much as possible. Ironically, the populist initiative process may actually have given power to interest groups instead of to the people. *The initiative has not proven to be a viable form of direct democracy usable in large democracies.*

Voting for Elected Offices—Indirect Democracy

Of all possible actions that citizens might take in governing, only one, voting for public officeholders, occasionally attracts a majority. These elections can be viewed as indirect democracy, or a "Republican Form of Government." Voters can affect policy indirectly by supporting candidates they agree with and defeating candidates they disagree with. Once in office, winners might be able to achieve what their followers hoped for.

Making a Choice at the Polls

The potential information and consideration that precede a choice among several candidates can be enormous. The simplest choice involves a single issue with two possible positions and two candidates who take opposing stances. The voter need only decide which option and candidate he or she prefers.

The complexity of this process grows enormously with additional candidates and issues, with lack of clarity of the candidates' positions, and with the voter's need to decide which issues are most important. The typical election is likely to be much more complex than the single issue with clear alternative candidate positions first suggested above.

On each of the issues, one has to become informed and to form one's personal opinion. Then one has to gather information from the candidates, and they may not want to take clear positions for fear of losing votes to an opponent. Finally, one must choose rationally between the two or three or more candidates. In addition, one must decide which issues are more important. ***Active involvement*** in gathering information and participating, ***being informed***, and ***rationally supporting*** the candidate who best reflects one's personal positions are the desirable, if difficult, goals to achieve. They are, however, the standards for voters in a democracy. This is called the ***Rational Activist Model*** of Democracy.

Unanticipated Issues

Finally, one additional requirement for voting makes the voter's task all but impossible. One has to select the candidate that takes one's position on unanticipated issues. If at the time of the election, no one anticipates a shortfall in the budget or the need to ratify a national constitutional amendment, the voter nevertheless must select the candidate that will vote consistently with the voter's personal positions. But, you ask, how can anyone do that?

If something about the candidate allows predictions as to how that candidate will vote on unanticipated issues and the voter knows it, the choice can be made. Past votes may predict representative's votes on future unanticipated issues, which may be a reason to support the known incumbent presently

holding the office. But how can one make predictions about challengers who have no experience in office available for review? Are labels such as “conservative” and “Democrat” sufficient to predict future behavior?

Winning candidates gain little information on public preferences from elections. They won, but they cannot be certain why. Winners may think or believe their victory gave them mandates. Some think a larger margin of victory means more of their campaign talking points have become directives to enact policies. These beliefs motivate behavior, but need not be supported by any specific empirical evidence.

Turnout in Various Elections

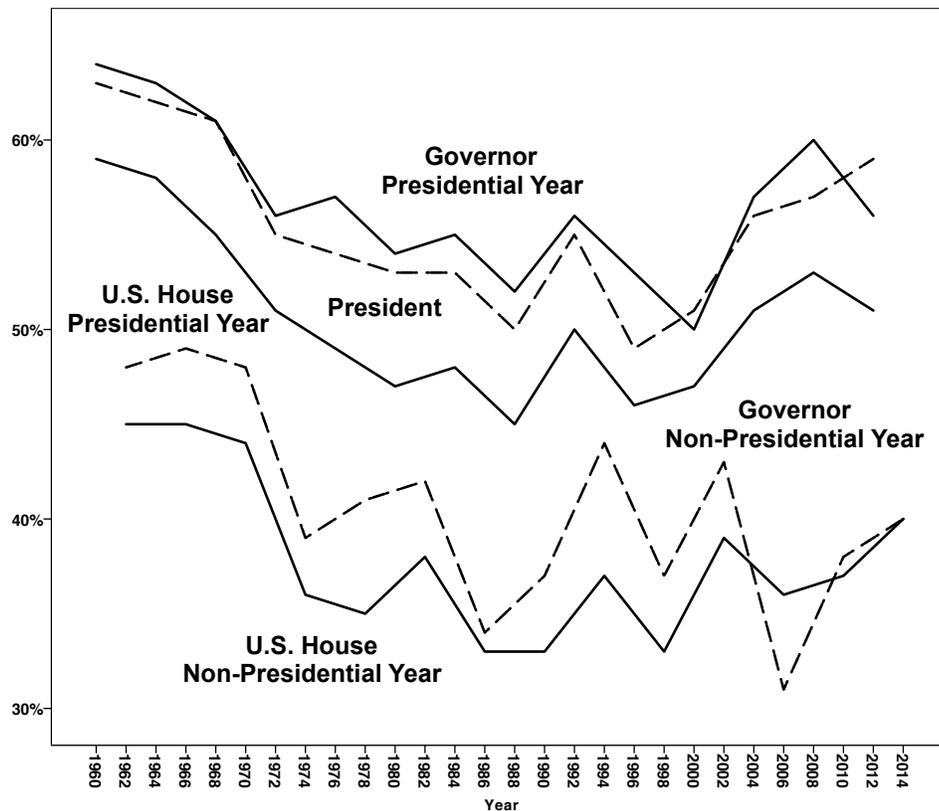
In the 2012 presidential election, President Barack Obama, the Democratic candidate, won 332 of 538 Electoral College votes, 62 percent. He had the support of about 51 percent of just over 122 million voters. American presidents usually receive more votes than any of their opponents and

also a majority of the popular vote. Yet, neither is necessary to win the election. Because of votes for minor party candidates, President Clinton in 1992 and 1996 as well as President George W. Bush in 2000 did not receive a majority of the popular vote. Moreover, in 2000, President George W. Bush received fewer popular votes—but more Electoral College votes—than Al Gore.

Figure 6.3 shows turnout in elections for President, Governor and Congress from 1960 to 2014. Voter turnout in the 2012 presidential election was about 58 percent of Americans old enough to vote. Turnout for typical elections to the House of Representatives was less than 30 percent. This is hardly a ringing endorsement. Few, if any, elected officials in the U.S. can say that more than half of the electorate voted for them. Perhaps a majority of voters supported them, but certainly not a majority of all who could have voted. This means none can say they have majority approval of the public.

Most state public offices are filled in elections in November of even-number years, when either the election for president or for governor heads the

Figure 6.3
Turnout in Various Elections 1960-2014



ballot. In a few states, both contests are held in the same year. As Figure 6.3 shows, in most presidential-election years the greatest voter participation is in the contest for governor. Turnout for gubernatorial elections is 2 percent higher than turnout for presidential elections in these election years. Turnout for Congressional elections typically trails the vote for governor by 5 to 7 percentage points.

When the president is not on the ballot (called off year elections), turnout is typically 15 to 20 percentage points lower than in presidential-election years. Governors in most states head the ballot in off years and usually do better than congressional candidates by about 2 to 3 percentage points.

The overall pattern is for presidential candidates to get a turnout of 55 percent. Governors in off years get turnouts of about 42 percent. Congress in presidential years gets about 51 percent of possible turnout and in off years about 39 percent. Figure 6.3 shows turnout for all of these contests trended downward until 1988. Since then, it has fluctuated.

Few study the turnout of voters for local elections. Since nearly 70 percent of local elections are held when no state or national office is on the ballot, such as in the spring of 2017, turnout is low. One nationwide survey reports that municipalities claim a 33 percent turnout.¹⁹ Research in the San Francisco Bay area shows a 31 percent turnout.²⁰ There is reason to question whether, when calculating local turnout, city clerks divide by the number of those eligible (which they seldom know), or by those registered (which they do know). Since few of those who move bother to register to vote for local elections, we cannot even be certain of the percentage of those eligible who are registered. Typically, only about 72 percent of those eligible are registered. Non-citizens, however, cannot register or vote.

One study divided the ballots cast by the eligible electorate that are citizens and found that just over 26 percent bothered to vote.²¹ Thus, true turnout in local elections probably barely exceeds 25 percent. No city council member or mayor can claim much of a mandate for a governmental action, inasmuch as probably no more than one in six to eight voting-eligible adults voted for him or her.

The lowest turnout happens at the level of government acclaimed as “closest to the people.” Perhaps individuals feel that a non-voter can influ-

ence local government as successfully as a voter. Perhaps citizens vote less often when elections are uncontested. Do Americans feel psychologically closest to elected officials who live nearby? Or, do they feel psychologically closest to the person whose election received more media coverage than all other elections combined: the President?

Trends in turnout

Figure 6.3 tracks turnout over time since 1960. With 1960 as a benchmark to judge trends, we can see all offices elected in presidential years decline smoothly between 1960 and 1990, with the exception of 1982.²² Turnout in presidential years has increased steadily starting in 2000. Much has been said about the 1960 through 1990 turnout decline, especially that for president.²³

Off year elections (the bottom two lines) always have lower turnout but fail to show any smooth trends. Many possible explanations, ranging from increased alienation from and less identification with political parties, poor presidential candidates selected by both political parties, a changing pattern of participation stressing more direct involvement, and increasingly negative coverage of politics by the news media, fail to account for the differences and trends.

Who Can Vote?

The 26th Amendment to the United States Constitution specifies that the states must allow U.S. citizens who are 18 years of age or older to vote. States can and do grant the right to vote to citizens younger than 18. Many states permit 17-year-olds to vote in primary elections and caucuses if they will be 18 years of age by the general election day. Today, all states also require that to vote, an individual must be both a *citizen* of the United States and a *resident* of the state.

There are two other constitutionally allowed restrictions on who is allowed to vote: felons and those not competent to conduct their own affairs. All states except Maine and Vermont do not allow felons in prison to vote. Most also do not allow felons on probation or parole to vote until they have completed all conditions. Most states once denied the vote to those convicted of a felony even after they have served their sentence, and this restric-

tion has not been found unconstitutional.²⁴ Today, only Kentucky and Virginia retain this lifetime penalty.²⁵ In 2014, more than 4 million felons were not eligible to vote.²⁶ Finally, most states disallow the vote of the mentally ill and those protected by guardians.

One study suggests that the declining turnout can be partly explained by the way we measure turnout rates. Turnout is normally measured in terms of number of voters divided by those old enough to vote, the population 18 years and older. This called *voting age population* turnout. Critics argue this measure is less accurate not as useful as it has been in the past for two reasons.

First, the number of non-citizens—both legal and illegal—has become large. They are part of the voting age population but they are not eligible to vote. Second, the number of felons ineligible to vote has become large. Including non-citizens and ineligible felons as part of the population eligible

to vote overstates potential voters and underestimates turnout rates.²⁷

Turnout of *voting eligible population* has been proposed as an alternative to *voting age population*. Estimating *voting eligible population* means subtracting from *voting age population* the non-citizens and felons who are old enough but not legally allowed to vote. Figure 6.4 provides such an estimate.

The same pattern of turnout fluctuation is apparent in Figure 6.4 whether *voting age population* or *voting eligible population* is used to measure turnout. We cannot account for the decline from 1960 to 1990, but the differences between offices seem enduring.

VAP and VEP Turnout in Texas

Figure 6.5 illustrates the difference between Voting age population (VAP) and Voting Eligible popula-

Figure 6.4
Voting Age Population and Voting Eligible Population Turnout 1960-2014

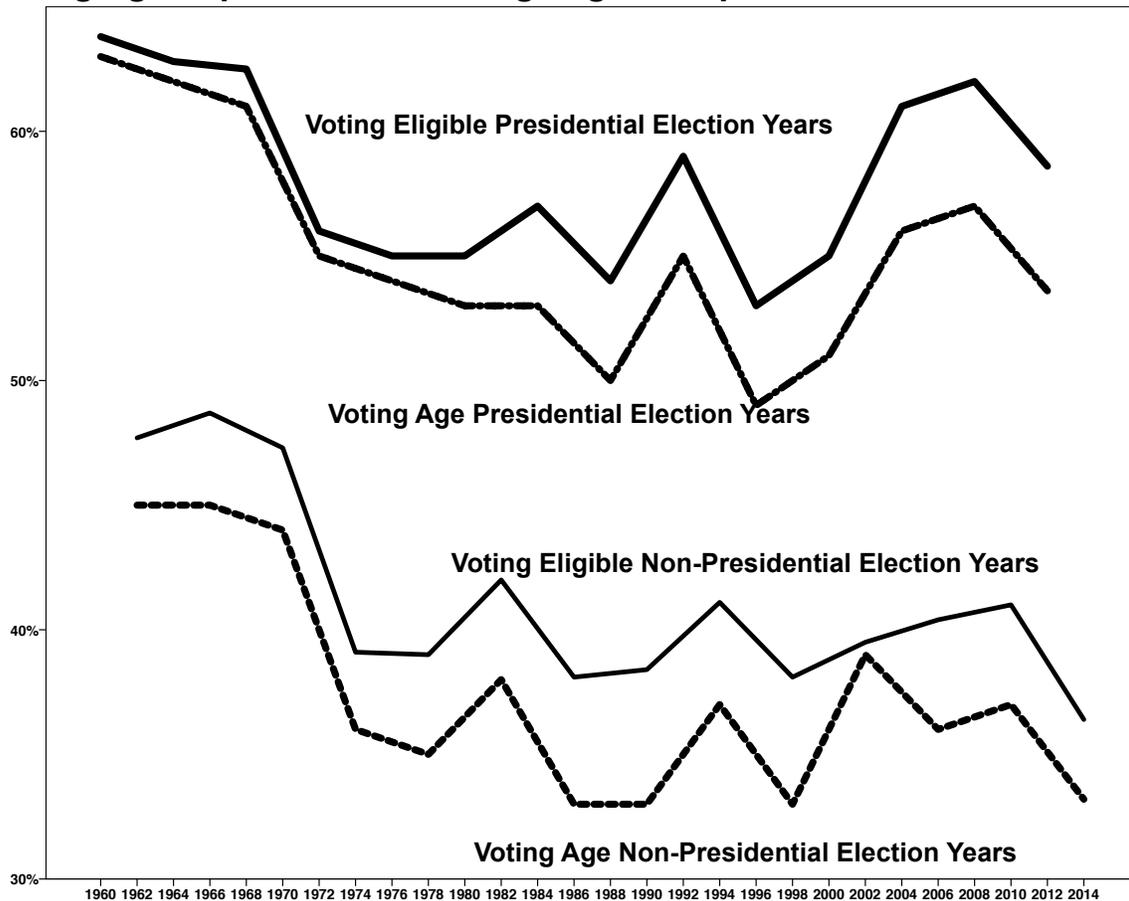
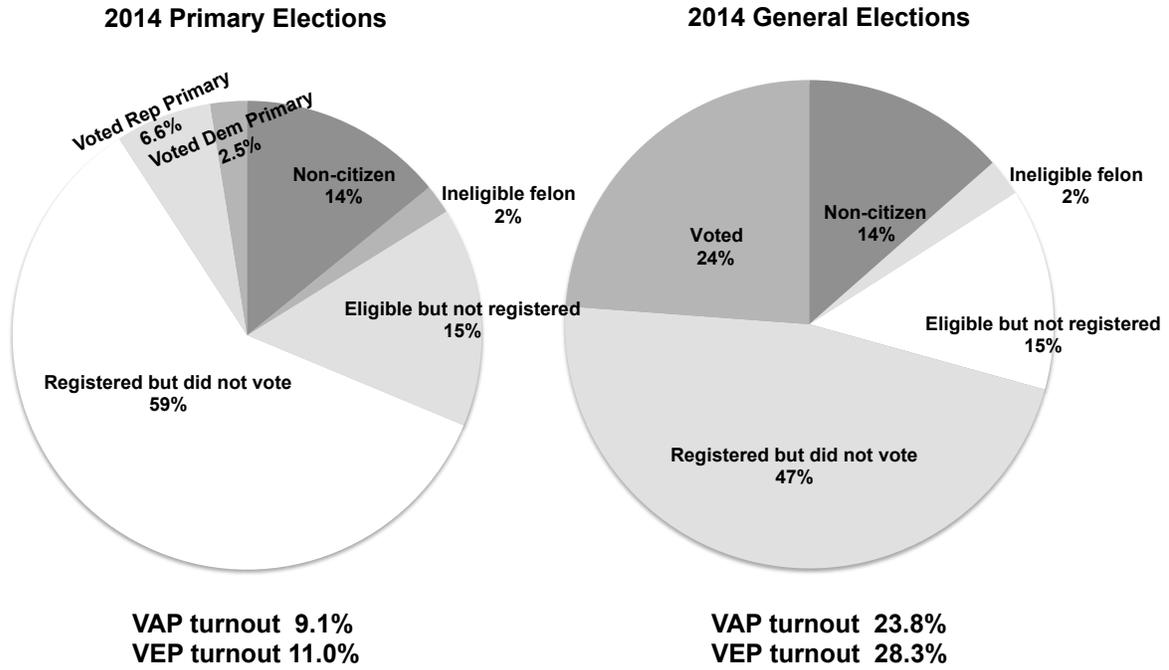


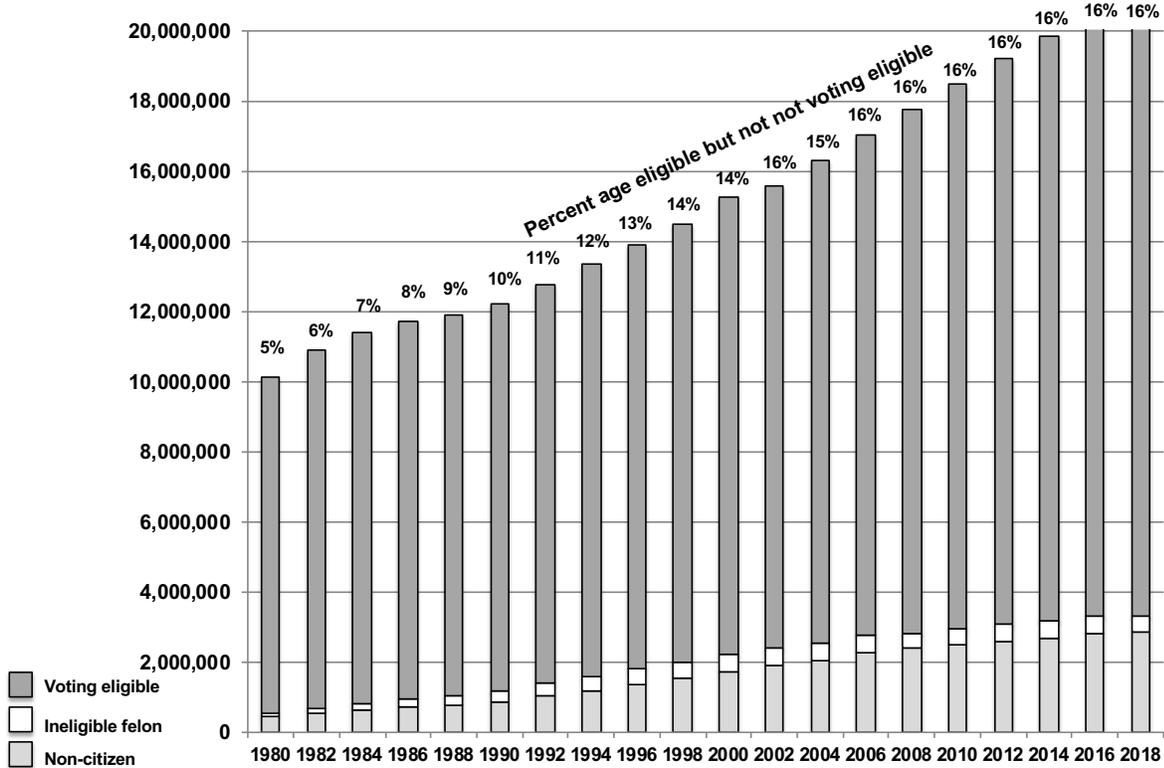
Figure 6.5
Texas Voting Age Turnout and Voting Eligible Turnout 2014



VAP turnout 9.1%
VEP turnout 11.0%

VAP turnout 23.8%
VEP turnout 28.3%

Figure 6.6
Texas Voting Age and Voting Eligible Population



tion (VEP) turnout for the 2014 primary and general elections in Texas. The pie charts of VAP are divided into categories of interest. Non-citizens, 14% and Ineligible felons 2% are in the VAP but excluded from the VEP. For both elections, 15% of eligible residents did not register.

In the primary elections, 59% of VAP were registered but did not vote and 9.1% voted. The turnout rate for VEP was 11.0%. In the general elections, 47% were registered but did not vote and 23.8% voted. The turnout rate for VEP was 28.3%. For both elections, the largest group of non-voters was registered to vote.

Texas is consistently a low turnout state. In 2014, its VAP turnout was the lowest in the nation. However, Indiana and New York had lower VEP turnout than Texas. Both had lower proportions of non-citizens and ineligible felons than Texas.

Figure 6.6 is a graphic that divides Texas VAP population into VEP, ineligible non-citizens and

ineligible felons from 1980 to 2016. The total of VAP not included in VEP increased from 5% in 1980 to 16% starting in 2006.

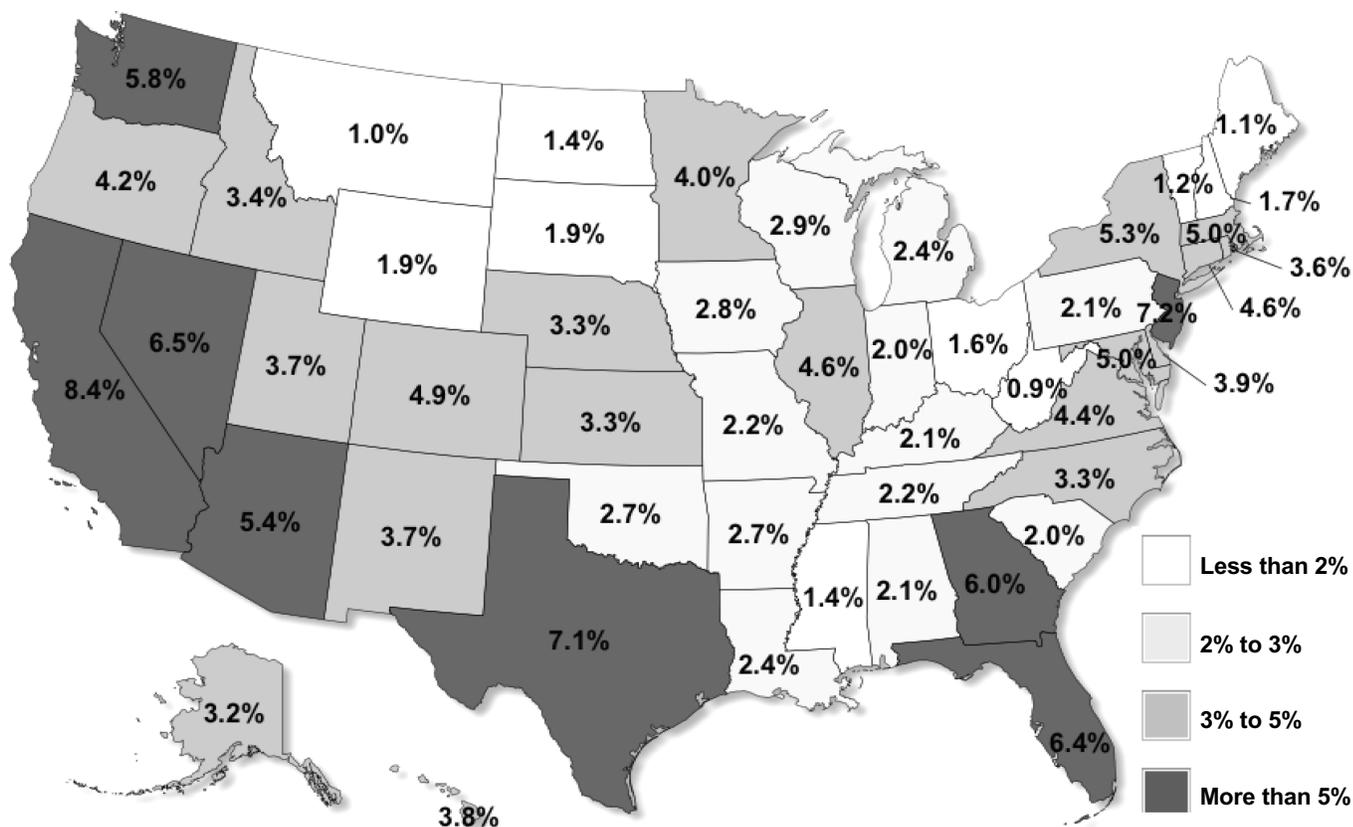
Figure 6.7 maps the percent of VAP excluded from VEP in 2018. Non-citizens comprise the largest excluded group in most states.

Why Do Americans Vote Less?

We do know that some Western democracies have seen an even greater decline, whereas others show some increase in turnout.²⁸ We cannot easily account for the different turnout levels between countries. We can see in Figure 6.8 that few other democracies have lower turnout in their national elections than does the United States. Of 72 nations that held presidential elections from 2010 to 2013, 55 had higher and only 13 had lower voter turnout.

Four factors largely account for our voting less: lack of *party-group linkage*, registration restric-

Figure 6.7
VAP Excluded From VEP 2018



tions, lack of penalties for failure to vote, and voter exhaustion.

Party-Group Linkages

First and most important, we lack party-group linkages found in other democracies. These are enduring and sharp correspondence between political parties and major segments of society.²⁹ America does not have the sharp class polarization found in other democracies.

If we wanted to strengthen group-party linkages, what action might be taken? The most effective change might be to abandon our winner-take-all system of district elections and change to a system of proportional representation that stimulates creation of multiple minority parties linked to a variety of social groups. No one has proposed, or is likely to propose, such major transformation of fundamental American political institutions.

Voter Registration

The second reason for low turnout in American elections is our system of *voter registration*. We have registration procedures least likely to encourage participation. In other democracies, government is active in making sure citizens will be eligible to vote. For example, in many other countries, students are registered to vote by their schools when they become old enough. Some countries employ registrars who go door to door just before an election to maximize the number of citizens eligible to vote. Elsewhere in the world, government is proactive in registering citizens to vote. In the United States, citizens themselves must be proactive to secure the right to vote.

Registration is required in all states except North Dakota.³⁰ The typical requirement is registration must be completed 30 days before an election. However, registration on Election Day

Figure 6.8
Percent Voting Age Population Turnout in Presidential Elections 2010-2013

Country	Turnout	Country	Turnout	Country	Turnout
Rwanda	98	Sri Lanka	75	Congo	59
Turkmenistan	97	Taiwan	74	Senegal	57
Singapore	95	Sao Tome and Principe	74	Bosnia and Herzegovina	56
Sierra Leone	91	East Timor	73	Ireland	56
Belarus	91	Dominican Republic	70	Chad	56
Kazakhstan	90	Ukraine	70	Poland	55
Chile	87	Iceland	69	Burkina Faso	55
Kenya	86	Costa Rica	69	Nigeria	54
Seychelles	85	Finland	69	Zambia	54
Benin	85	Cameroon	68	United States	54
Gambia	83	Paraguay	68	Austria	54
Peru	83	Kiribati	68	Comoros	53
Cyprus	82	Guinea	68	Palau	53
Côte d'Ivoire	81	Russian Federation	65	Egypt	52
Ecuador	81	Yemen	65	Croatia	50
France	80	Togo	65	Niger	49
Ghana	80	Montenegro	64	Bulgaria	48
Venezuela	80	Mexico	63	Portugal	47
Argentina	79	Kyrgyzstan	61	Serbia	46
Nicaragua	79	Central African Rep	61	Colombia	44
Brazil	78	Guatemala	61	Tanzania	43
Burundi	77	Cape Verde	60	Slovenia	42
Korea	76	Uganda	59	Liberia	39
Djibouti	75	Czech Republic	59	Haiti	22

is available in 13 states and is scheduled to begin in Vermont in 2017 and Hawaii in 2018.³¹ Such procedures increase turnout by between 5 and 13 percent with no additional fraud, such as persons voting who are not eligible.³²

Twenty-five states have used or approved registration through the Internet.³³ In 2015, Oregon implemented “automatic registration,” a system that automatically registers all eligible voters who are in the Department of Motor Vehicles database. Voters do not need to take any action to register, but they can “opt out” of being on the registered voter list.³⁴ One study suggests that with easier registration procedures, turnout could be increased by 14 percent.³⁵ Such an increase in the United States would leave us below more than half of the other countries in Figure 6.8.

Congress passed the National Voter Registration Act of 1993, called “motor voter law,” as an attempt to increase registration. The law required states to make voter registration materials available at state offices with high citizen traffic. However, materials did have to be displayed prominently and no one was required to let visitors know about them.

The 1993 law became important in July 2013 when the Supreme Court decided that Arizona could not require applicants to use a state registration form that required proof of citizenship. This was because the 1993 law required states to “accept and use” a federal form that asks, “Are you a citizen of the United States?” Prospective voters must check a box for yes or no, and they must sign the form, swearing under the penalty of perjury that they are citizens. The court ruled that Arizona could not supersede the requirements of the federal form for registering residents to vote in elections for federal offices.³⁶

No Penalty for Not Voting

Many countries apply fines and **penalties for failure to vote**. You would, for example, receive a citation for failure to vote. This happens in Australia. Citation receivers must either explain their failure to vote or pay a fine of \$20. Again, were the states to impose such a penalty, our turnout apparently would increase. Presumably, a severe fine would have a larger effect. Few would fail to vote were the fine \$1,000. Some would question the value of

a vote from someone who did so only to avoid a fine. Nevertheless, many democracies do penalize those who fail to vote, with no apparent loss of quality in voters’ decisions. One can only imagine the outcry if someone were to propose that Americans who fail to vote should be fined.

Exhausted Voters

One final aspect of how Americans vote should be considered. Americans may participate at lower levels because they are fatigued by the number of times they must go to the polls.³⁷ We call this the **exhausted voter explanation** for why Americans vote less. As noted earlier, we elect more than 270,000 officials, with most elected to 2 or 4-year terms. Most of us live under many governmental jurisdictions—a city council, a school board, a county, a state, and a nation. We can expect every 4 years to be asked to vote for as many as a hundred officials in probably four general elections and four more primaries.

Citizens of many other democracies may have as few as three officials representing them—a member of parliament, a city council member, and a mayor. Is exhaustion, impatience, or possibly uncertainty about who is in charge at the root of lower U.S. participation?

Americans have four strikes against their participating in elections. In part this is a result of our history (the Reform Movement), our governmental format (Federalism and many offices to fill), and our election institutions (the Winner Takes All format). Partisan gerrymandering of election districts to virtually guarantee victory to one of the major parties means winners will be chosen by the very small percent of those who vote in partisan primary elections. Even though statewide turnout might be more than 50 percent in a general election, most winners for state legislative and Congressional positions will have already been determined in primary elections.

Convenience Voting to Encourage Turnout

The states have not been proactive in registering citizens and have not penalized those who do not vote. Some have attempted to increase turnout by implementing **convenience-voting procedures** to make voting easier. Mail voting, no excuse absen-

tee voting, early voting, and election-day registration are examples. Since World War II, most states have allowed some voters to cast their ballots by mail (or absentee vote, as it is called). Those who are hospitalized or expect to be out of the state on Election Day can apply for such a ballot, which is completed and returned by mail and the signature is checked against that on the voter registration. Since the 1970s, these procedures have been allowed for all voters in many states. Consistently, turnouts of more than 50 percent have been recorded when all vote by mail.³⁸ Such elections have proved to be about one-third less expensive and show little fraud.³⁹ Starting with the presidential election of 2000, Oregon has used mail-in ballots for all voting.

Although there are many advantages to mail voting and other convenience voting procedures, increased voter turnout is not one of them. The Center for the Study of the American Electorate has reported that, with the exception of the 1998 elections, states that adopt these reforms have a worse performance in the aggregate than those that do not.⁴⁰

Cumulative Voting to Encourage Turnout

In voting for the city council in Peoria, Illinois, voters can, if they chose, cumulate their votes for seats on the council and give them to a single candidate. In a normal at-large election, voters can cast as many votes as there are positions to be filled but can give each candidate only one vote. In cumulative elections, voters can give more than one of their votes to a single candidate. If they choose, they can cast all their votes for one candidate.

Imagine a city council with five members elected at-large. A minority with 30 percent of the vote can seldom, if ever, outvote the majority in normal elections. Cumulative voting allows members of such a minority to cast all votes for one candidate. This is supposed to improve the chances of minorities gaining at least one seat. Although it took two such cumulative elections before the minority realized that a single minority candidate was necessary to gain the advantage offered by cumulative voting, in the spring of 1995, Peoria did see an African-American endorsed candidate win a city council seat.

Single vote, winner-take-all election contests

make it difficult for any small group to outvote the majority. Those whose candidates have no chance of winning have little incentive to vote. One study has estimated turnout is 5 percent higher under proportional election systems than in normal plurality elections.⁴¹ In addition to Peoria, cumulative voting is used for city council elections in numerous cities in Alabama and Texas.

It is also used to elect school boards in more than 50 independent school districts.⁴² It has been used as a remedy in voting rights cases where minorities have been excluded from holding office. Yet, cumulative voting is not a well known voting system option in the United States. Apparently, increased voter turnout and increased minority office holders are not particularly high on the agenda of American local governments.

Recent Efforts to Discourage Voting

Some states are taking action to make voting less convenient. Since 2010, 17 states have enacted new requirements that voters must show photo identification. In 9 of those states, acceptable photo identification is “strict,” that is, limited to only a few government issued credentials. In those states and in two states that require non-photo ID, voters without acceptable identification must vote on a provisional ballot and also take additional steps after Election Day for it to be counted.⁴³

The legal challenge is that these new laws do not provide equal treatment. Individuals who do not already have approved photo identification may be required to obtain them at great time and request. In Texas, prospective voters would need to travel to a state Department of Public Safety office to get an election ID card. Although the card would be free, those seeking it would have to verify their identity to obtain one. In some cases, a certified copy of a birth certificate costing \$22 would be necessary. Federal judges found that the fees and the cost of traveling for those voters lacking one of the specified forms of ID disproportionately affected the poor and minorities, noting many would have to travel 200 to 250 miles to and from a D.P.S. office.⁴⁴

Two days earlier, another federal court held that the Texas Legislature discriminated intentionally against minority voters in drawing electoral district maps. Texas’ election districts and attempts

Figure 6.9
VAP Turnout Correlations Presidential Election Years

	2012	2008	2004	2000	1996	1992	1988	1984	1980
2012		.96	.87	.82	.72	.71	.63	.62	.60
2008			.93	.89	.81	.78	.68	.70	.66
2004				.96	.90	.89	.81	.82	.78
2000					.93	.92	.84	.85	.85
1996						.94	.89	.89	.85
1992							.94	.92	.91
1988								.97	.96
1984									.97
1980									

to enforce “inconvenience voting” laws would impact most those voters who support the current majority party in Texas the least.⁴⁵

In Ohio, Florida, Georgia, Tennessee and West Virginia, Republican-led legislatures dramatically reduced early voting in 2012 as part of what the Huffington Post characterized as “a concerted effort to suppress the votes of Democratic-leaning voters.”⁴⁶ Some states are taking action that would reduce voting convenience and create new barriers to voting. One possible explanation is Republicans think that higher turnout puts them in greater jeopardy of losing elections. However, it is also the case that the states making voting more challenging are states with political cultures that do not value high voter turnout. In the past, majorities of Democrats in those states took action to suppress turnout of minority and lower income voters.

Apparent efforts to suppress voting have continued through the primary elections of 2016. A Google search of “voting problems 2016” in April 2016 resulted in links to “Wisconsin’s Voter ID Laws Caused Major Problems at the Polls”; “Florida Voting Problems”; “Arizona’s shameful voting delays”; “Voters in Alabama, Colorado, Georgia and Texas flooded voter hotlines to complain” and more.

High voter turnout is a value shared by a majority of states, but not all states. The long-term historical trend has been for greater access to voting, primarily through federal action. It remains to be seen whether the supermajority of states that favor easier access and higher voter participation can convince or defeat the minority of states that disagree.

Nonpartisan Elections

More than 90 percent of local elections and many elections of state judges are *nonpartisan* elections, in which ballots do not list candidates’ political parties. Many times the law prohibits the candidates from advertising their party affiliations. It is usually argued that without partisan labels on the ballot, voters will be less inclined to vote for all Democrats or all Republicans. This practice was another part of the reform effort to overcome machine politics in U.S. cities in the late 1800s. The hope was that issues would replace such blind partisanship. Many other democracies use no party labels on their ballots, without any apparent loss of partisan voting. But, as mentioned earlier, voters in such countries cast votes for few offices, making their task easier.

Figure 6.11
Correlations With Turnout And Possible Causes 2014

	Voting Age	Voting Eligible
Conservative Ideology	-.09	-.16
Moderate and Liberal Ideology	.15	.12
Percent Senate Republican 2013	-.07	-.12
Percent House Republican 2013	-.03	-.09
Median Age of Population	.30	.26
High School Completion	.63	.60
College Degree	.18	.25
Per Capita Income	.17	.23
Poverty Rate	-.34	-.34
Percent Registered 2014	.60	.52
Percent Anglo Population	.48	.38
Percent African American Population	-.32	-.31
Percent Hispanic or Latino Population	-.41	-.30

Turnout: Why Are The States Different?

Citizen participation, even if limited to voting, is seen as essential to a true democracy. Turnout is expected to be encouraged by many factors, and high participation is expected to have many beneficial results. Apart from the overall decline in gubernatorial turnout, there are also substantial variations among the states. The 7 that hold gubernatorial elections in presidential years have considerably higher turnouts than do those in off years. However, as always, the states differ in turnout levels no matter when they hold elections. What might account for these differences?

We learned in Chapter 3, Figure 3.2, there was no relationship between state residents' political ideological preferences measured through survey research and turnout of voting age population in 2014. However, there was a positive correlation between turnout for elections for Governor in 1994-1997 and 2012-2015 (Figure 3.3). So, turn-

out is related to earlier turnout but not to political ideology. Figures 6.9 and 6.10 present additional evidence that state turnout rates tend to be quite consistent over time. Figure 6.9 shows Voting Age Population turnout in presidential election years. State turnout for each election year from 1980 to 2012 is highly correlated with turnout in all other election years. Figure 6.10 presents correlations across non-presidential election years. Again, state turnout for each non-presidential election year is correlated with turnout in other non-presidential election years.

To sum, we have essentially no firm knowledge based on systematic analysis of comprehensive data that permits us to identify what state and local governments might do to increase voter participation. Even if we did, the states that do not place great value on voter turnout would likely not use the knowledge.

Figure 6.12
Correlations With Turnout 2014 and Possible Results

	Voting Age	Voting Eligible
Accurate Republican Representation in House 2015	-.22	-.28
Even Division of House Seats 2015	-.28	-.29
Percent Senate Republican 2015	-.08	-.15
Percent House Republican 2015	-.07	-.08
Per Capita State and Local Revenue	.18	.21
Per Capita State and Local Expenditure	.18	.21
State and Local Tax Burden	-.05	-.01
Regressivity of State and Local Taxes	-.21	-.19
TANF Monthly Payment	-.04	-.01

Does Turnout Matter?

There seems to be great agreement on the proposition that more participation by the public in a democracy is better than less participation. Several normative benefits are expected to come with more participation. First is *improved legitimacy* for governmental decisions. Legitimacy is the psychological attitude that one must voluntarily obey decisions made by proper officials. Officials are proper if they are elected in fair contests open to all qualified citizens. Legitimacy is important but hard to measure empirically. Some research suggests that turmoil and violence are reduced as nations experience increased levels of citizen participation.⁴⁸ On the other hand, no research suggests that those states with low participation have more turmoil and violence.

This research does not focus on legitimacy directly, and we can cite no empirical studies of legitimacy in the American states. So, there is no evidence that there is a relationship between turnout and the legitimacy accorded governors, legislators, and other state officials. A second expected benefit of greater turnout is *better correspondence between public opinion and public policy*. This

linkage between what the public wants and what policy it gets is expected in a democracy. How is it to be achieved if a minority selects those who are elected? Do the opinions of those bothering to vote reflect those who do not? There is research to suggest little difference between voters and nonvoters, but there are other data showing an impact.⁴⁹

Figure 6.11 assesses the relationship between voter turnout measures and state differences we might expect to be related to turnout. The first two measures attempt to assess the linkage between public preferences expressed in 2014 surveys and the results of the election of 2014. There are no empirical relationships. Voter turnout is not related to more accurate matching of ideological or any preferences in surveys and seats in the lower chambers. Turnout is positively related to older population and more high school completion. Turnout is negatively related to poverty. There are positive relationships between percent registered and percent Anglo population and turnout. Percent African American and Hispanic or Latino population is negatively correlated with turnout.

Figure 6.12 assesses relationships between turnout and possible results of higher and lower turnout. There are no relationships between turn-

out and accurate representation of partisan preferences in the public or division of legislative seats between Republicans and Democrats. There are no relationships between turnout and taxing and spending policies or generosity of welfare payments.

There used to be very strong relationships between competition and turnout that existed throughout the 1960s and 1970s.⁵⁰ However, interparty competition and the majority party in each state both change over time.⁵¹ In retrospect, we can see that the earlier empirical relationship between competition and turnout was probably spurious and related to regional differences between Southern and Non-Southern states.

These correlations do not support the idea that greater turnout would result in better expression of public preferences. They support the conclusion that, at current levels, state turnout is not related to how accurately elections meet citizen preferences. The normative expectation *might* be met if and when all states have turnout levels of at least 66 percent. We have no reason to think that condition will be met in the near future, if it is ever met.

There are few empirical relationships with higher and lower turnout when we compare the states. It is also possible to examine higher and lower turnout within a state or local government. There is evidence that lower turnout than normal in some municipalities is related to greater success for proposals to borrow and spend money.⁵² Some researchers have found support for the hypothesis is that low voter turnout is associated with policies that favor privileged voters over under-privileged non-voters.⁵³

Many political practitioners act as though they believe there is a relationship between turnout and decisions made in ballot issue elections. Scholars tend to focus on the activities of contending interests in an election as the prime factor affecting level of turnout. There is another, less commonly recognized, cause of turnout that is usually within the control of the government affected by a policy election: when elections are held.

Texas provides a clear example of the choices available and their impact on turnout. Amendments to the Texas state constitution must be proposed by the state legislature and approved or disapproved by voters in an election. The Texas

Legislature has broad discretion in choosing election dates. If they put constitutional amendment proposals on a presidential election ballot, turnout might be as high as 50 percent. If they choose the date on which governor and other statewide offices are contested, turnout might be as high as 30 percent. Many Texas government texts observe that the average turnout in constitutional amendment elections has been approximately 15 percent. Halter explains why: since 1960 more than 70 percent of constitutional elections have been held in odd-numbered years with no overlap with state or federal elections. Low turnout in these elections results in amendments being approved, including those that provide benefits to business owners and impose costs on consumers.⁵⁴

Some political practitioners seem to recognize and act on an empirical relationship between turnout and decisions made in policy elections in their municipality, school district or state. We do not know how practitioners learned about the link between turnout and results. We suspect their knowledge comes more from local folklore or their own experiences than from social science research.⁵⁵

Summary

1. Americans have numerous opportunities to participate in their governments, but few do anything more than vote. Very few are politically involved.
2. Only in some presidential elections and in some gubernatorial elections in presidential election years do more than half of Americans even bother to vote.
3. Approximately half of the states allow citizens to make policy decisions through initiative and referendum processes. Large proportions of election participants vote in the contests for office at the top of ballots and skip the policy elections at the bottom.
4. Comparing turnout for our national elections with turnouts in other countries finds us to be poor participants. Several differences account for this low turnout. These are lack of political party/social class cleavages, voter registration procedures, and non-compulsory voting and voter exhaustion.

5. As a broad generalization, turnout is lowest in local elections, highest in presidential election year contests, and in the middle for state off year elections.

6. Turnout in state elections is no longer related to competitive elections or close division of office holders between parties. Turnout is most strongly related to some demographic characteristics of residents, to high school completion and to voter registration.

7. There is some evidence linking higher and lower turnout levels across the states in a given election with results of state policy elections. At the state and local levels, turnout that is lower than the historical norm from many elections is related to higher passage rates for proposals to borrow and spend.

Information Sources

Figure 6.1	http://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx
Figure 6.2	http://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx
Figure 6.3	U.S. Statistical Abstract, various years through 2013; America Votes 24 (Washington, DC: CQ Press, 2001) and previous years, Election Administration Survey Report 2010, 2013, http://www.eac.gov/research/election_administration_and_voting_survey.aspx , 2012 Presidential Election Results, Washington Post, http://www.washingtonpost.com/wp-srv/special/politics/election-map-2012/president/ http://www.electproject.org/home ; http://www.electproject.org/home
Figure 6.4	http://www.electproject.org/home
Figure 6.5	http://www.electproject.org/2014g ; http://www.sos.state.tx.us/elections/
Figure 6.6	http://www.electproject.org/home
Figure 6.7	http://www.electproject.org/home
Figure 6.8	Voter Turnout, International Institute for Democracy and Electoral Assistance, http://www.idea.int/vt/
Figure 6.9	http://www.electproject.org/home
Figure 6.10	http://www.electproject.org/home
Figure 6.11 and Figure 6.12	United States Elections Project, http://elections.gmu.edu , Book of the States 2013, U.S. Bureau of Economic Analysis, Regional Economic Accounts, SA1-3 Personal Income Summary, Statistical Abstract of the US: 2013: Table 425: Vote Cast For And Governor Elected By State: 2008 To 2011 [By Political Party Affiliation], http://www.bea.gov/regional/spi/ , U.S. Census Bureau, American Community Survey, 2010 1-Year Estimates, Table S. 1501, U.S. Census Bureau State and Local Government Finance, http://www.census.gov/govs/local , U.S. State Political Data, www.gallup.com , U.S. Statistical Abstract 2008, Persons Reported Registered and Voted, by State: 2006, http://www.census.gov/compendia/statab/cats/elections/votingage_population_and_voter_participation.html , Statistical Abstract of the US: 2013: Table 425: Vote Cast For And Governor Elected By State: 2008 To 2011 [By Political Party Affiliation] and http://www.politico.com/2012-election/map/#/Governor/2012/ , http://www.ncsl.org/legislatures-elections/elections/statevote-charts.aspx , Carl Davis, Kelly Davis, Matthew Gardner, Harley Heimovitz, Robert S. McIntyre, Richard Philips, Alla Sapozhnikova and Meg Wiehe, <i>Who Pays? A Distributional Analysis of the Tax Systems in All 50 States, 4th edition</i> (Washington: The Institute on Taxation and Economic Policy, 2013), http://itep.org/itep_reports/2013/01/who-pays-4th-edition.php#.Ubo0F_b734Q , Tax Foundation Releases 2010 Facts & Figures Handbook, http://taxfoundation.org/blog/tax-foundation-releases-2010-facts-figures-handbook , Tax Foundation, State and Local Tax Burden Report, http://taxfoundation.org/tax-topics/state-tax-and-spending-policy , http://taxfoundation.org/article/state-and-local-tax-burdens-all-years-one-state-1977-2010 ; http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx ; http://kff.org/other/state-indicator/distribution-by-raceethnicity/#table ; http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2014/tables.html

Study Guide, Chapter 6

Essay Questions

1. What are the advantages and disadvantages of 1) direct democracy and 2) representative democracy for contemporary American state and local governments? Is increasing opportunities for direct democracy a realistic goal? Is increasing representation a likely outcome of current state politics? Why or why not?
2. Turnout in elections for President of the United States is lower than turnout in the majority of other countries that hold comparable elections. Discuss at least 3 reasons for low turnout in the United States. Why are some states making registration and voting more difficult? Why might they prefer low, or even lower turnout?
3. What is political participation? Identify four of the common forms of political participation. What forms of participation are easier for students at Texas A&M to engage in? Why? What forms of participation are more difficult for students at Texas A&M University to engage in? Why?
4. Explain the difference between initiative and referendum. Discuss advantages and disadvantages of supplementing representative democracy policy-making with the opportunity for policy-making by a process closer to direct democracy. Explain the connection between Elazar's political culture types and the presence or absence of these direct democracy tools.
5. Voter participation rates across the states are positively correlated with the percent of population Anglo and percent of population African American and Hispanic or Latino. Give at least 3 reasons why this might be the case. What would have to be done to eliminate correlations between race/ethnicity and voter turnout? Identify two reasons this has not happened.
6. Identify and discuss at least three convenience-voting procedures. How is each intended to increase voter turnout? Is there evidence that any have succeeded in increasing voter turnover over a long period of time? Do you have a fresh idea for making voting more user-friendly?
7. In the 1960s and 1970s, there was a very strong positive relationship between voter turnout and competition (i.e., more equal number of winners) between the two major parties. Now, there no a relationship between turnout and competition. What are some possible explanations for this change? What do you think the change means?

Multiple Choice Questions

1. Turnout is highest in elections for
 - a. City council
 - b. Governor, off year
 - c. Congress, off year
 - d. President
2. Which of the following is part of the voting age population but not part of the voting eligible population for an election?
 - a. non-U.S. citizens
 - b. citizens who are not residents of the state or locality where the election takes place

- c. those not legally competent to conduct their own affairs
 - d. all of the above
3. Approximately what percent of the public runs for elective office?
- a. less than one percent
 - b. twelve percent
 - c. twenty-three percent
 - d. no data exist to estimate a percent
4. Which of the following empirical relationships exist in 2014 and show that voter turnout affects what governments do?
- a. higher turnout is positively correlated with closer division of state house seats between parties
 - b. higher turnout is positively correlated with better match of partisanship preferences between residents and state legislators
 - c. higher turnout is negatively correlated with how regressive state and local taxes are
 - d. none of the above

Notes

- 1 There are 3,031 counties, 19,522 municipalities, 16,364 towns and townships, and 12,884 independent school districts in the United States. Each varies in size, but most have at least five elected representatives, thus our estimate of 259,005 local elected legislative officials. Additionally, there are 37,203 special districts, usually with no independently elected officials. But some may be elected. Furthermore, there are elected school superintendents, mayors, local judges, and many others that could well swell my number greatly. See U.S. Census Bureau, 2012 Census of Governments, <http://www.census.gov/govs/cog2012/>
- 2 Harold D. Lasswell, *Psychopathology and Politics* (New York: Viking, 1960).
- 3 John B. McConaughy, "Certain Personality Factors of State Legislators in South Carolina," *American Political Science Review* (1950, 894-903).
- 4 Robert A. Dahl, *Who Governs?* (New Haven: Yale University Press, 1961). Dahl speaks of the "penetrability of the elite," meaning that we all can become members of the elite. As a proponent of American democracy, he sees this as important to society's responsiveness (p. 92).
- 5 Sidney Verba and Richard Brody, "Participation, Policy Preferences, and the War in Vietnam," *Public Opinion Quarterly* (1970, 330).
- 6 Reported in Sidney Verba and Norman H. Nie, *Participation in America: Political Democracy and Social Equality* (New York: Harper & Row, 1972), p. 27.
- 7 Verba and Nie, p. 31.
- 8 Norman R. Luttbeg and Michael M. Gant, *American Electoral Behavior: 1952-1992* (Itasca, IL: Peacock, 1994), p. 119.
- 9 Norman R. Luttbeg, *Florida Educational Needs: Public Satisfactions and Dissatisfaction with Their Schools* (Tallahassee, FL: Survey Data Center, Florida State University, 1970), p. 7.
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- 17 Ranney, pp. 82-85.
- 18 Jordan Schrader, Latest Tim Eyman initiative looks headed for Legislature, then ballot, *The Olympian*, January 03, 2013, <http://www.theolympian.com/2013/01/03/2372544/latest-tim-eyman-initiative-looks.html>
- 19 Albert K. Karnig and B. Oliver Walter, "Municipal Elections: Registration, Incumbent Success and Voter Participation," in *The Municipal Yearbook 1977* (Washington, DC: International City Management Association, 1977), pp. 65-72.
- 20 Heinz Eulau and Kenneth Prewitt, *Labyrinths of Democracy* (Indianapolis, IN: Bobbs-Merrill, 1973).
- 21 Norman R. Luttbeg studied 120 randomly chosen American cities and their elections between 1983 and 1993. He found that dividing the ballots cast by the citizen voting age population proved that 26.3 percent voted. Norman R. Luttbeg, *The Grassroots of Democracy: A Comparative Study of Competition and Its Impact in American Cities in the 1990s* (Lanham, MD: Lexington Books, 1999).
- 22 Norman R. Luttbeg, "Differential Voting Turnout in the American States, 1960-82," *Social Science Quarterly* (1984, 60-73). Data since 1980 added by Luttbeg. Through 1996, the regression coefficients were .43 percent per year for governor in presidential years; .59 percent for governor off year; .47 percent for president per year; and .54 percent for off year congressional. Through 2000 or 2002, they have declined to .31, .30, .23, and .34, respectively.
- 23 The primary focus on participation decline is over the period 1960 through 1980 for some reason. Much has been suggested to account for this period's decline, but none of it seems justified. See Norman R. Luttbeg and Michael M. Gant, *American Electoral Behavior: 1952-1992* (Itasca, IL: Peacock, 1994), chapter 3; Norman R. Luttbeg, "Attitudinal Components of Turnout Decline: Where Have Some States' Voters Gone?" *Social Science Quarterly* (1985, 435-43); and Carol A. Cassel and Robert C. Luskin, "Simple Explanations of Turnout Decline," *American Political Science Review* (1988, 1321-1330).
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- 25 American Civil Liberties Union, Felon Enfranchisement and the Right to Vote, <http://www.aclu.org/votingrights/exoffenders/index.html>
- 26 United States Elections Project, 2014 General Election Turnout Rates, http://elections.gmu.edu/Turnout_2014G.html
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Chapter 7

POLITICAL PARTIES, ELECTIONS, INTEREST GROUPS AND THE IDEA OF COMPETITION

Political parties and interest or pressure groups are a natural outgrowth in a democracy. They are active in all states and in all of the developed democracies worldwide. Although the founding fathers that wrote the Constitution of the United States may have wanted to resist “factions” or political parties and interest groups, their efforts proved unsuccessful. They themselves formed the first interest group and later political party to seek the ratification of their newly drafted constitution. Those interested in passing a certain policy strive at all levels of government to organize and thereby to optimize chances of getting their way. It is hard to imagine how a modern democracy could function without parties or pressure groups.

Fundamentally, political parties and interest groups differ little from each other. When individuals realize that they share a desire for the same public policy, they can increase the chances of getting their way by organizing. The drafters of the new federal Constitution in 1787 shared an interest in getting it ratified. They organized to do so and succeeded, probably because those opposed to its ratification failed to organize. Even the most basic and agrarian society, such as the American states in the late 1700s, has different interests. Many states had the beginnings of industrial development and sought to keep inexpensive foreign goods out of the country to make their companies more profitable. Farmers everywhere wanted the less expensive foreign goods. Thus, we had the beginnings of regional division between the agricultural South and the North with fledgling manufacturing capabilities.

A modern complex society almost demands many organized interests, perhaps many thousands at the state level and even hundreds in local politics. Pressure groups, or to use a more neutral term,

interest groups, organize such interests to exert their influence to get their interests best reflected in public policy. As noted in Chapter 1, multiple shooting massacres in 2012 resulted in some restrictions on purchasing firearms and ammunition—but only in Colorado and Connecticut, sites of the most horrendous deaths.

The National Rifle Association easily defeated minor reforms at the federal level supported by more than 90 percent of Americans. Moreover, sales of firearms and ammunition spiked and several states made access to firearms and ammunition easier. Evidently, the NRA has been better organized than their opponents, as judged by public policy.

The anti-abortion or pro-life segment of opinion has been well organized for several years. Recently, they have influenced many state legislatures to place restrictions to reduce the number of providers and impediments in the way of seekers of abortions. Pro-choice supporters have been much less organized. The success of their opponents in curtailing the availability of abortions may stimulate them to become better organized and more effective in the political arena.

Politics is winning and losing. The examples above demonstrate organization is important. Greater public support and greater funding are neither necessary nor sufficient for public policy victories. Organized interests typically defeat disorganized interests. Those who are unconcerned cannot be organized.

As discussed in the last chapter, the vast majority of the public lacks great concern about politics. The result is organized interests are a small minority. On the other hand, some interests are so broadly shared that organization is unnecessary. College

sports are so popular that there is no need to organize to deal with hypothetical opponents working to eliminate athletic competition between institutions of higher education. Organization is most likely when the opposing views are both minority views.

Small segments of society with no resources other than their votes achieve little or nothing by organizing. Wealthy small groups, however, have had great success, largely because they are able to target campaign funds to “deserving” candidates. As campaigning for public office has become very expensive because of “new style,” television-based politics, candidates have increasingly turned to wealthy interests for campaign contributions. Costly campaigns have greatly increased the influence of interest groups. With effective organization, interest groups can use dollars to offset their lack of voting support. A small interest with many dollars can have far greater impact than the few votes its members represent.

Size fundamentally distinguishes interest groups from political parties. Political parties must organize first to select and elect candidates to public office and then to pass and implement policies. Large numbers are necessary for success. Pluralities and majorities are necessary for candidates to win office. Majorities and supermajorities are necessary to pass legislation. To achieve their goals, major political parties must appeal to as many voters as possible and offend as few as possible. Parties must “patch over” many differences among prospective supporters.

Some interest groups have more reason to be uncompromising. They seek to appeal to their members, and their members are not pluralities or majorities of the population. Even if small in members, their generous contributions to campaigns can give them great say. They can make their dollars speak more loudly than their votes. If they were to compromise, those providing the money might decline future contributions.

Political Parties

The first political party in the United States, called the *Federalists*, organized to ratify the Constitution. To win a vote in a legislature, at least a majority of legislators have to approve; thus, organization within the legislative body is necessary to

win. One reason for political parties is to organize within the legislative body to pass laws. This can be called *legislative organization*. It is always easier for legislators to defeat bills than to pass them. Those who want to pass bills must organize to have success. When one side organizes, the other side must organize or risk losing. After elections, the first function of political parties is to manage the efforts of their members in the legislature.

A political party must win elections before it can coordinate the efforts of officeholders. Party activities concerned with appealing to voters and contesting and winning contests for office can be called *electoral organization*. With enough victories, a political party can secure the power to enact the policies it seeks. When party members think similarly about a broad range of issues, the organization becomes more enduring. They seek to retain their numbers within the legislature or to increase them to be successful on more issues. The purpose of the Jeffersonian Republicans was to resist the centralization of government advocated by the Federalists. As the poorly organized anti-Federalists, they sought unsuccessfully to stop the ratification of the Constitution.¹ Having lost, however, they organized to seek like-minded voters who would put their candidates into public office.

The *Jeffersonian Republicans* were the second U.S. political party but the first to organize both to win elections and within the halls of government. They proved to be the prototype of modern political parties. The dual-purpose organization by the Jeffersonian Republicans in combination with the unwillingness of the aristocratic Federalists to stoop to appeal for voter support resulted in the Federalists becoming irrelevant to national politics. The modern Democratic Party can trace its roots to the Jeffersonian Republicans.

A Brief History of American Political Parties

Today’s political parties derive from events in our history. Parties become successful by articulating basic ideas that lead to electoral success. Party leaders find it difficult to venture very far from the views they believe first made them victorious. As a result, parties are slow to change and the choices given to Americans by our political parties seldom venture from what has always been offered by these political parties. What led to the positions of

the two present political parties?

The Politics of Ratifying the Constitution

As already mentioned, the new Constitution of the United States led to the organization of the Federalists, who sought its ratification. That constitution provided a strong central government that many thought would be less sensitive to the general public's demands. Areas of commerce, primarily in seaports such as Boston, New York, Philadelphia, and Baltimore, sought to ratify the Constitution. A stronger central government would be able to smooth commerce between the states, and many living in these areas earned their livings in commerce. A stronger federal government could enact tariffs to give American goods a competitive advantage over English goods.

The inland areas, where most farmed to provide food and shelter for their families, saw a stronger central government as a renewed threat, not unlike the one only recently overthrown in the Revolutionary War. Those of this belief, as noted, were disorganized and were generally labeled "anti-Federalists."

From 1787 to 1789, only a fool would have run as an anti-Federalist for a state legislative seat, a U.S. House of Representatives Boston district seat, or any local elective seat, given the popular support in that area for the new Constitution. The district would have been uncompetitive, with only Federalists likely to win. Rural districts would also have been uncompetitive, but in these districts only anti-Federalists could win.

Elections in statewide races for governor or U.S. senator could be competitive. If a state had a close mix of voting population in mercantile and rural areas, such as Massachusetts, it might have a balance of Federalists and anti-Federalists, with both capable of winning. The anti-Federalists in the rural areas of the state would offset the Federalists of the more urban areas. Not all states had the requisite balance. Georgia and other predominantly rural states lacked competition both in local districts and in statewide elections.

The Civil War

For a time, the Civil War and its aftermath ended state and local party competition altogether. The

deaths and emotion associated with the Civil War and the Reconstruction that followed divided the country into a Republican North and a Democratic South. In the North, the Democratic Party was associated with the Confederacy and the deaths of many thousands of Northern troops. Democrats could win no elections and most often did not even contest elections. Similarly, no Republican could win in the South because of what Sherman had done to the South and the later experience in Republican-controlled Reconstruction. So, neither statewide nor local contests had partisan competition. Everyone lived in a one-party state and a one-party district. Since the North had the larger population, Republicans also dominated the presidency.

With no Republicans in the South and no Democrats in the North, both political parties made only regional appeals, such as "the South will arise again" or "the South must pay." Appeals based on the ideas of states' rights were seldom heard in campaigns. Northerners had little choice but to accept the programs of the Republicans. Southerners had no alternatives to the programs offered by the Democrats.

Machine Politics

Before and after the Civil War, Northern cities continued to grow. The heavy immigration after 1850 and the pressing need in urban areas for municipal services returned party competition to many Northern states. Because the Civil War held little meaning for immigrants, they were receptive to ward heelers who promised municipal services. Soon only "urban machine" candidates could win in such cities. At the city or local level, politics had changed from Republicans winning uncompetitive elections to machine parties winning uncompetitive elections. Machines typically called themselves the Democratic Party, but they had no ties to the Democratic Party of the South.

Machine supporters focused on local issues and seldom considered competing for state and national offices. However, if a state had a large city to offset Republicanism in rural areas, state politics and statewide elections often proved competitive. Each political party has a good chance to win an office, such as governor or U.S. senator. Of course, with little industrialization or urbanization, the South

remained uncompetitive at both the state and local levels.

When industrialization and urbanization finally came to the South after the Second World War, it led to a change in the politics of the South. Ironically, it led to Republican success in cities and continuing Democratic strength in rural areas.

The New Deal

Franklin D. Roosevelt put together a coalition of Northern city residents and Southerners, most of whom already identified themselves as Democrats. The purpose of the coalition was to relieve the unemployment in the Depression of the 1930s. However, it did little to change the competitiveness of any office other than the presidency. National public policy became the pervasive concern. Being a Democrat took on a new meaning—a supporter of the New Deal rather than a Southerner.

The New Deal coalition put together by the Democratic Party evolved after World War II to include labor unions. Bipartisan cooperation characterized the era with “liberal” Democrats and “moderate” Republicans seeking to expand the driving forces behind the great economic expansion: investment in higher education for World War II veterans and others, support for balancing the power of business and labor interests so many in the working class could join the burgeoning middle class, and support for government funded investment in infrastructure and research and development. These expansions of federal programs were financed partly by borrowing money. As a result, spending exceeded income and the size of the cumulative federal debt increased.

The New Deal Coalition was successful for Democrats at the federal level. From 1933 to 1969 all presidents were Democrats except for Republican Dwight Eisenhower, 1953-1961. For years, the Republicans wandered about in terms of their issue positions. Initially, they were opposed to the New Deal and opposed to civil rights. Southern states were also against much of the New Deal and opposed to civil rights. Yet, they continued following their post Civil War pattern of electing only Democrats.

Democrats succeeded in expanding new deal style programs aimed at bringing more from the poor and working class into the middle class. They

also passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

At the same time Democrats were achieving key domestic policy goals they were waging an unsuccessful and increasingly unpopular war in Vietnam. Discontent with the war and with the pace of increasing civil rights weakened the Democrats’ coalition and ability to win presidential elections. Republicans took advantage of the opportunity to bring southern Democrats who shared their views into the Republican Party.

Role Reversal and Hyper-partisanship

Richard Nixon’s “southern strategy” to win the presidency in 1968 successfully changed the dynamics of federal elections. From 1969 to 2017, Republicans occupied the White House for 28 years; Democrats held the presidency for 20 years. The Party of Lincoln now opposed expanding civil rights and sought to roll back social welfare programs. To a significant extent, the parties exchanged positions on these major issues. A combination of economic disruptions and costly military actions in this era largely accounts for both parties winning the presidency.

Although the Vietnam War ended during Richard Nixon’s presidency, the Republican Party became the supporter of increased military funding and military action. The party took credit for the collapse of the Soviet Union and the tilting toward capitalism of other Communist countries when Ronald Reagan was president, 1981-1989.

President Reagan advocated shrinking the size and the role of the federal government. He called for reducing federal regulation of the private sector and devolving federal authority to state and local government. He railed against increasing the national debt and called for reducing tax rates. He encouraged greater military spending to achieve peace through strength.

The term “Reaganism” was coined to refer to his articulated goals. Few recognize that the goal most achieved while he was president was increased military spending. Federal income tax rates were reduced for businesses and individuals in the highest income brackets. At the same time, payroll taxes were greatly increased. As discussed in Chapter 4 and 5, the result was a shifting of tax burden from business income to payroll income.

Candidate Reagan derided his opponents as “tax and spend Democrats.” Contrary to his campaign rhetoric, federal deficits and debt greatly expanded during his years in office. Republicans replaced “tax and spend” with “borrow and spend.”

When Democrat Bill Clinton campaigned for president in 1992, he adopted or coopted a key element of Reaganism by declaring the era of big government was over. The number of federal employees declined. Partly because of tax increases while Republican George H. W. Bush was president, the federal budget began to have surpluses while President Clinton was in office.

Three forces combined starting in the 1990s to produce the current period of hyper-partisanship: 1) Maximization of party control of election districts through gerrymandering; 2) expansion of partisan electronic and broadcast media; 3) Reduction of bipartisan cooperation and centralization of power in Congress.

Gerrymandering. The United States Supreme Court in the mid-1960s mandated creation of legislative districts with equal population for both Congress and state legislatures. For the most part, state legislatures sought to protect incumbents as new districts were drawn. The widespread availability of inexpensive computers made it possible to draw districts that would give substantial advantage to the majority party. In the 1970s and 1980s, most legislatures sought to protect most incumbents while leaving others vulnerable to defeat. This was done on a bipartisan basis. But new districts created by population growth or shifting or new opportunities created by incumbent retirement were drawn to the advantage of the majority party.

Starting in the 1990s, the combination of computer power and accurate databases of human behavior became available. First by zip code, then by census block, then by households, available information could increasingly accurately predict how people would vote. It was possible to know participation in elections, and, in some states, in which party primary voters participated. This information was ultimately linked to other information about donations to candidates, causes and charities; subscriptions to publications; even household purchases.

State legislators now had requisite tools to draw districts that would nearly guarantee which party would win the large majority of general

elections. Many states did so, and the number of contests for Congress and state legislatures with candidates from only one of the majority parties soared.

New Media. You probably do not remember when there were only three major television networks, few independent stations broadcasting locally, and only local radio. This was also before the Internet existed, so there were no online communications at all. The broadcast and print media focused on the same national news stories and presented information neutrally.

Today, the majority of news sources have a pronounced bias, and it is often partisan bias and most is aimed at conservative audiences. First talk radio and then 24/7 news and other cable TV channels had stations that reinforced existing political points of view, downplaying or ignoring any challenging information.

It is true that most Americans do not rely exclusively on biased sources for news. However, the small numbers who vote in primary elections are enthusiastic consumers of news from sources that reinforce their preexisting political views. The hyper-partisanship of so-called “core voters” is reinforced, if not driven by hyper-partisan media.

Congress. The Republican Party regained control of the House and Senate in 1995 after the first midterm election of the Clinton presidency. Republican Speaker Newt Gingrich and other leaders sought to eliminate bipartisan cooperation by limiting social interactions between Republicans and the now-enemy Democrats. Gingrich urged members to keep their families at home and to spend as little time in Washington, DC as possible. To that end, he limited House sessions to Tuesday afternoons through Thursday mornings. The typical member could be in DC only two or three nights each week.

At the same time, Gingrich required total loyalty from members. Over time, committees became less important as party leadership took control of the fate of bills. The number of bills passed declined. Major legislation was passed in large omnibus bills. Few participated in determining the final content of these bills. Only rarely did Democrats participate in writing bills. Increasingly, bills were considered in floor sessions with little or no opportunity for Democrats to offer amendments.

The hyper-partisan style of legislative leader-

ship has become common in the chambers of state legislators. In about half the states, the majority party needs no help or cooperation from the minority in passing bills. There is so much work to do in state legislatures that hyper-partisanship applies to a relatively small number of highly publicized issues. Some bills are substantive; others are merely symbolic. Whether or not such bills are enacted, they serve as vehicles for focusing media attention and publicizing to extreme members of party bases that issues important to them are being addressed.

As will be discussed below, there is another important force producing the current hyper-partisan behavior: primary elections. Contemporary primary elections held by the two major parties both make possible and reinforce hyper-partisan behavior in state legislatures and in the United States House of Representatives.

Lack of Local Competition

With few exceptions, partisan competition between two major parties used to be the norm in federal and state politics. Local areas, however, have seldom been competitive. Your college years may well be the only time in your life when you interact regularly with neighbors and classmates who have political views fundamentally different from yours. Later, wherever you live, there is little likelihood that your neighbors will be of a different political party. It is equally unlikely that your locally elected representative for Congress, state legislature, or local government will face competition from the other political party.

It is possible to create election districts that would enhance competition between Democrats and Republicans. But competitive districts will not be created so long as partisan elected officials choose boundaries. *Political parties have no interest in being competitive, only in winning.*

Historically, local districts, such as those in rural areas or deep within large cities, support only the locally dominant political party. Events have changed what that locally dominant party is over time but never resulted in much local competition. Some states with a close balance between urban and suburban or rural areas have experienced competitive statewide politics. Since 1952, most presidential contests have been competitive in the

sense that the national vote total for the major party candidates is close. But even in such competitive presidential elections, typically only 15 states have close contests. Most elections in the United States are local elections, and in these, few challengers are able to unseat the incumbent of the dominant local political party.

Why We Always Have Two Major Political Parties

In the United States, two political parties primarily vie for high profile federal offices, although on occasion a third organization centering on an individual, such as Ross Perot in 1992 and 1996, or Ralph Nader from 1996 to 2008, places a presidential candidate on many state ballots. The Jeffersonian Republicans evolved into the Democratic political party and faced only a single opposition party. The Federalists, Whigs, and later the Republicans provided their opposition.

Although political scientists may complain about the dominance of one political party, especially in the South, competition between more than two political parties is also viewed as undesirable. Countries with more than two political parties, such as Italy and France, endure many struggles to put together a coalition to govern. Members of several political parties are needed in these countries to achieve the majority in their parliaments necessary to establish a government. These precarious governing majorities and the uncertainty and instability of government no doubt cause this concern that multiple political parties may threaten democracy. If we understood the reasons why we only have two political parties, perhaps we could assure that this continues.

Good Fortune

Several factors may explain our being blessed with only two major political parties. First is that we had the *good fortune* to face only one divisive issue at a time. The agricultural versus mercantile divisions surrounding the Constitution gave way to the North versus South division and the Civil War. Similarly, the civil rights movement of the 1960s replaced the controversy between the wealthy and poor reactions to Roosevelt's New Deal programs. In each of these disputes, the Democratic Party took one stance and its opposition took the other.

V. O. Key calls this dualism.²

Institutional Factors

Institutional factors, such as the “winner-take-all, single-member districts” are also seen as central to our two-party system. If each district has but one victor, a new third party is unlikely to see its candidate win in any district. A third party must jump from getting none of the vote to getting a plurality of the vote in at least some districts to win any representation in making government decisions. Third parties getting 30 or even 40 percent of the vote, even if in many districts, will still lose. If there were multiple representatives to be selected from districts, however, a third party capable of getting a third of the popular vote might win as many as a third of the seats. All U.S. House and nearly all state legislative districts are single-member districts, meaning that third parties have little chance.

Primary Elections

Primary elections are another institutional factor accounting for only two parties. Winners of the Democratic and Republican primary for an office win a place on the general election ballot as that party’s candidate.³ Those voting their party identification can then give them their votes. Third parties typically have no primaries! Their candidates can get on the ballot by other means. Typically, they need a petition signed by many registered voters (several percent of the vote last cast for this office). Although primaries weaken the major political parties by taking candidate selection out of their hands, there is little question that they are fatal to third parties.

Party Identification

Party identification also contributes to our two-party system. Figure 7.1 documents that, since 1952, 15 percent or fewer of Americans refuse to identify themselves with either the Democrats or the Republicans in presidential election years. You might be surprised at how consistent the levels of support are for each party over 60 years. Please keep in mind that party identification and voting are different things. Further, because of the Electoral College, distribution of electoral support is

all-important in presidential elections. Because of partisan gerrymandering, distribution of electoral support is all-important in elections for the U.S. House of Representatives and elections for state legislatures.

Since parents transmit their party identification with great success to their children, a third political party would have to convert people as adults. Research has shown that only events such as the Civil War or the Great Depression of the 1930s have such a potential for converting people. Since the Vietnam War and World War II proved to be incapable of converting people’s partisanship, however, third parties seem to have little or no chance unless we have another experience of very great magnitude. Even then, however, it was the other major political party that benefited in the past.

Settlement from England

Finally, nearly all two-party democracies are Anglo, or English by heritage. The United States, Canada, Australia, New Zealand, and the United Kingdom are all Anglo, two-party democracies. What is it about English heritage that results in two-party government? The reduced influence of the Roman Catholic Church in these countries may underlie their having only two parties. Other countries may have a pro-Catholic working-class party as well as an anticlerical (against the Catholic Church) working-class party. In non-Anglo democracies, even if the middle class is not divided into pro and anti-Catholic political parties, there are usually at least three political parties. For a while, the Communist Party provided an additional somewhat successful party. More recently, environmental parties, such as the German Green party, have also attracted many votes.

Two of the explanations of our having a two-party system, the historical reasons, are accidental and could not be copied by other political systems. The explanations of structural barriers to third political parties would suggest that we could encourage third political parties if we wanted to do so. The party identification explanation, while not accidental, would be difficult to change to encourage third political parties. Third political parties at the presidential level stimulate the major parties to shift emphases in how they communicate their messages. Third parties have no major impact on

Figure 7.1
Gallup Poll Party Identification in Presidential Election Years

Year	Democrat or Lean Democrat	Republican or Lean Republican
1952	57	34
1956	51	37
1960	54	34
1964	60	30
1968	55	33
1972	51	34
1976	52	33
1980	50	36
1984	50	42
1988	47	41
1992	50	37
1996	53	39
2000	49	38
2004	50	40
2008	45	44
2012	47	42
2016	48	41

the fundamental content of the major parties' messages.

Regulating Political Parties

Even though political parties are not branches of any government, all states regulate political parties. This feature is apparently unusual among democracies and probably can be traced to the reform efforts to undo urban machine politics in the late 1800s, as discussed in Chapter 4. State laws regulating political parties are of five types: 1) defining membership, typically as being registered as a Democrat or as a Republican; 2) defining a formal party organization and its selection, including a state party chairman and central committee with some limited responsibilities; 3) allowing access to the state election ballot or denying it if the party lacks popular support; 4) providing procedures for nominating candidates and holding primaries; and 5) restricting campaign financing or providing public funds.⁴

Despite the overall decline in party control

since increased state regulation, some state political parties persist in influencing politics. In some states, they more actively recruit candidates, contribute more campaign funds, and train candidates in necessary modern campaign skills, such as soliciting campaign funds and using election polls. Party organizations attempting all of these are labeled "well organized."⁵

All of these efforts, no doubt, endear their political party to successful candidates; but as compared to earlier eras when a tightly organized political party could bring large numbers of loyal supporters to the polls and assure its candidates' success in winning elections, modern political parties are weak imitations. By contrast, wealthy interests have gained the attention of candidates because they contribute the campaign funds needed in modern, television-centered campaigns.

Primary Elections

States have weakened political parties by requiring *primary elections*.⁶ Before primary elections

Figure 7.2
2016 Primary Election Systems for Congress

State	Closed	Open	Semi-Closed	Other	State	Closed	Open	Semi-Closed	Other
Alabama	D	R			Montana		D, R		
Alaska			R	D Two-Round	Nebraska			D, R	
Arizona			D, R		Nevada	D, R			
Arkansas		D, R			New Hampshire			D, R	
California				Top Two	New Jersey	D, R			
Colorado		D, R			New Mexico	D, R			
Connecticut	D, R				New York	D, R		D, R	
Delaware	D, R				North Carolina				
Florida	D, R				North Dakota		D, R		
Georgia		D, R			Ohio		D, R		
Hawaii		D, R			Oklahoma	R		D	
Idaho		D, R			Oregon	D, R			
Illinois		D, R			Pennsylvania	D, R			
Indiana		D, R			Rhode Island	D, R			
Iowa		D, R			South Carolina		D, R		
Kansas			D, R		South Dakota	R		D	
Kentucky	D, R				Tennessee		D, R		
Louisiana				Two-Round	Texas		D, R		
Maine	D, R				Utah			D, R	
Maryland					Vermont		D, R		
Massachusetts			D, R		Virginia		D, R		
Michigan		D, R			Washington				Top Two
Minnesota		D, R			West Virginia			D, R	
Mississippi		D, R			Wisconsin		D, R		
Missouri		D, R			Wyoming		D, R		

were required, parties could select their candidates however they wished and then announce their selections. Frequently, elected state legislators of the party would meet and select candidates for all legislative seats including those then held by the opposition party. No one from those districts could be sure they would have any say on nominees

Criticism of such *legislative caucuses* centered on constituents in such districts having little say. *Party conventions* replaced these caucuses to give average party members more say in candidate selection. Conventions also have been criticized as being closed to the general public, with decisions made in smoke-filled rooms.

The ultimate reform was the primary election. *Primary elections* allow the public a say, but at the expense of not allowing the most active and engaged party members to pick its candidates. Best candidates would be those likely to win the general election while sharing the policy goals of the party.

Low turnout in primaries often results in a very few picking their preferred candidates, who may not hold values supported by the party's supporters in the general election.

The variety of primary elections used by states is impressive. States constantly consider changing primary election systems. In almost every election cycle, some states do make changes. Furthermore, some states permit the parties to have different primary election rules and to change them almost at will. As a result, any snapshot of state primary election systems is likely to be out of date soon. Figure 7.2 lists primary election systems used by states in elections for Congress in 2016. Figure 7.3 presents the same information in map form.

There are two key dimensions that define primary election systems. *Ballot form* is the first. In 3 states, California, Washington and Louisiana, primary election ballots contain the names of all candidates identified by party: Republican, Dem-

In contests without majority winners, the *top-two* finishers run against each other in a second round election.

Candidates in the first election can choose to be identified on the ballot as a candidate from any “registered” party. It is possible for second elections to have two candidates from the same party. Only Louisiana uses this system in regular elections. Texas and some other states use this system in special elections called when vacancies occur between regular elections. In Alaska, Democrats may choose to vote from all candidates of all parties and the individual who receives the greatest number of votes becomes the party’s nominee for the general election.

Washington and California have a primary election process called the top-two system.⁷ Its purpose is to choose two candidates who will face each other in the general election—but not nec-

essarily candidates from each of the two major parties.

Primary election ballots list all candidates from all parties and voters may cast one vote for each office. The *top-two* finishers in the primary for each office—regardless of party—face each other in the general election. As in Louisiana, both contestants in the next election can identify with the same party. Unlike Louisiana, those who win a majority in the primary election do not win office. They have to compete again in the general election.

Ballots Listing Candidates of One Party

The 47 other states have separate primary elections for each party. These are sometimes called *direct primary* systems. In Alaska, Democrats and Republicans applied different rules. For the 46 states that apply the same rules to all, rules have two

Figure 7.4
VEP Primary Election Turnout in Presidential Election Years 2000-2016
In States Where Both Parties Have Primary Elections

	2000	2004	2008	2012	2016		2000	2004	2008	2012	2016
Alabama	15%		32%	25%	35%	Montana			39%	31%	36%
Alaska						Nebraska			21%	19%	21%
Arizona	13%	7%	24%	12%	24%	Nevada					
Arkansas	15%		27%	16%	30%	New Hampshire	44%	30%	54%	31%	52%
California	40%	31%	40%	23%	34%	New Jersey	4%		29%	9%	20%
Colorado						New Mexico			19%	17%	23%
Connecticut	16%	6%		2%	21%	New York	25%		20%		21%
Delaware	8%	6%	24%	4%	24%	North Carolina			33%	32%	32%
Florida	13%		34%	13%	28%	North Dakota					32%
Georgia	18%	14%	32%	16%	30%	Ohio	31%	28%	42%	14%	38%
Hawaii						Oklahoma	11%	15%	29%	15%	29%
Idaho						Oregon			43%	22%	36%
Illinois	19%		34%	18%	39%	Pennsylvania			34%	15%	34%
Indiana			37%	20%	36%	Rhode Island			28%	3%	24%
Iowa						South Carolina	20%	9%	30%	18%	31%
Kansas						South Dakota			28%	15%	20%
Kentucky			29%	13%	18%	Tennessee	11%	11%	26%	13%	25%
Louisiana	8%		18%	10%	18%	Texas	15%	11%	28%	13%	25%
Maine						Utah			25%	14%	
Maryland	25%	17%	32%	15%	33%	Vermont			41%	21%	40%
Massachusetts	16%	15%	38%	11%	37%	Virginia		8%	27%	5%	30%
Michigan	20%		20%	17%	34%	Washington			31%		
Minnesota						West Virginia			33%	20%	31%
Mississippi			28%	18%	30%	Wisconsin	23%	25%	37%	19%	49%
Missouri	19%	13%	33%	7%	35%	Wyoming					

important elements: whether the choice of party ballot is made before or at the primary election and whether the choice is public or private.

In the *open primary* system the choice of party ballot is private and the choice is made at the primary election. In the 22 states with open primary systems and the Republican Party in Alabama, voters typically receive ballots from both parties and decide in the secrecy of the voting booth in which party's primary to vote.⁸ Except in North Dakota, primary election voters must register in advance, but they do not register by party.

The *closed primary* system exists in 11 states for both parties, for Republicans in Oklahoma and South Dakota and for Democrats in Alabama. Registration is by party in advance of the primary election, and this information is public. The commitment made at registration is binding. Only those registered in a party may vote in its primary—those who register but choose neither major party are not eligible to vote in either's primary. A voter registered for one major party who wants to change

and vote in the other party's primary must change his or her registration. Deadlines for registering and changing are typically 20 to 30 days before the primary election.⁹

The *semi-closed primary system* applies to Republicans and Democrats in 10 states, for Republicans in Alaska and for Democrats in Oklahoma and South Dakota. Voters registered as Republicans or Democrats must vote in those party's primaries. Unaffiliated voters may choose which party's primary to vote in.

Majority rule is not always the rule in state primary elections. In 11 states, typically former Confederate states, primary election candidates must win a majority. In North Carolina, a plurality of at least 40 percent is required.¹⁰ *Top-two* runoff elections are held when no candidate receives the required plurality or majority. States that hold runoff elections to choose party candidates keep records of which party's primaries voters participated in. Those who vote in one party's primary are not allowed to vote in other parties' runoff elections. If

Figure 7.5
Texas Voting Age and Voting Eligible Turnout for Primary Elections

	Presidential Election Years			
	Republican VAP Turnout	Republican VEP Turnout	Democratic VAP Turnout	Democratic VEP Turnout
2000	5.3%	6.3%	7.6%	9.1%
2004	4.2%	4.9%	5.2%	6.0%
2008	7.8%	9.1%	16.4%	19.2%
2012	7.6%	9.1%	3.1%	3.7%
2016	13.8%	16.4%	7.0%	8.3%
	Non-Presidential Election Years			
	Republican VAP Turnout	Republican VEP Turnout	Democratic VAP Turnout	Democratic VEP Turnout
2002	3.9%	4.7%	6.4%	7.6%
2006	3.9%	4.6%	3.0%	3.6%
2010	8.0%	9.6%	3.7%	4.4%
2014	6.6%	7.9%	2.6%	3.1%

they could, they might vote for weaker candidates. They could “raid” the runoff elections of the party they dislike, enhancing the general election fortunes of the party they like.

Many critics think the *open* and *top-two* primaries also encourage partisans of one party to vote in the opposition party’s primary. They might do so to select weak candidates that can be more easily defeated by their party’s candidates in the later general election. There is, however, little evidence that this kind of voting takes place to any significant degree.

Political parties have sought to counter the effects of primaries by selecting and endorsing desirable candidates before the primary. Although this approach has been partially successful, the primaries have nevertheless greatly weakened the importance of political parties for prospective candidates.¹¹ With sufficient money, particularly when the incumbent does not seek reelection, anyone can run and win the primary of the dominant party in the area. Success in the general election should then follow. This result can be achieved without the political party involved having any say. In this situation, a Democratic or Republican candidate need not necessarily have the policy positions expected by the political party.

Primary Election Turnout

Turnout in primary elections differs from turnout in general elections in two critical ways. First, turnout is much lower in than turnout in general elections. Second, the smaller numbers of primary election voters are more extreme in their views than the other members of their parties.

General election turnout rates from 1960 to 2014 were presented in Chapter 6, Figure 6.3. Figure 7.4 summarizes turnout rates for presidential primary elections from 2000 to 2016.

Presidential primary elections choose some or all delegates to national party nominating conventions. Not all states chose delegates through primary elections in any or all of the five election years summarized in Figure 7.4. You can tell at a glance that primary election turnout rates are much lower than the general election rates ranging from 50 to 59 percent. Small as the turnout rates are, they give an incorrect impression because they include, in almost all cases, voters in two or more partisan

primary elections. The information in Figure 7.5 is more informative.

Figure 7.5 presents turnout rates of voting eligible electorates separately for Republican and Democratic primary elections held in Texas from 2000 to 2016. To facilitate comparing similar elections, turnout for presidential and non-presidential years are presented separately. The turnout rates are very low for each party. More importantly, to win party nomination, a candidate needs only more than half of primary elections votes cast.

Texas Republican presidential primary turnout ranged from 4.3 to 13.8 percent. Majorities for these rates range from 2.6 to 7 percent. Majorities for turnout in Democratic presidential primary elections ranged from 1.9 to 9.6 percent.

The majority percentages are much lower for nonpresidential election years when Texas holds all of its statewide executive branch elections. Only more than 2.0 to 4.1 percent of the eligible electorate was sufficient to win Republican Party nominations. Winning Democratic Party nominations required more than 2.4 to 3.8 percent of the eligible electorate. Republican candidates won all general election contests from 2000 to 2012. They were nominated by as few as 2 percent of the most extremely traditional or conservative Republicans in Texas.

Texas Republicans seeking statewide office know that their first, and probably largest challenge is to secure their party’s nomination. To do so, they must appeal to a very small number of voters who are not representative of Texans or Texas Republicans. Candidates for United States Senate needed the support of 4.6 percent or fewer of the voting eligible population. Candidates for state executive positions elected statewide needed only more than 2.1 percent in 1998 and 2.0 percent since 2002.

Curiously, high-powered ultra-conservative interests use low primary election turnout to threaten incumbent Texas Republicans. These groups monitor the behavior of elected officials, even to the point of reviewing votes by individual state legislators. Republican incumbents risk running against well-financed challengers in the next primary election if they do not actively work for the conservative agenda as defined by the most conservative in Texas.

In Texas and elsewhere, higher turnout general

elections no longer play a moderating role in state and local politics. Incumbents are more likely to be defeated from a challenger from their own party in a primary election than a challenger from the opposite party in a general election. Partisan gerrymandering of legislative districts and one party predominance in statewide elections have made low turnout primary elections all-important.

Roles Played by Contemporary Parties

Although we share the system of two dominant political parties with Great Britain, ours are often seen as not offering the clear choice that the Labor and Conservative parties offer there. When political parties take clear stands on issues, select candidates who support those party positions, educate the public on those positions, remove officeholders who do not uphold those positions, and organize themselves within the halls of government to enact those positions into law, it is called a *responsible party system*.¹² Many believe that Britain has such a party system and that we would be better off if we were to have more responsible political parties. This is the same idea that we discussed in the preceding chapter as one source of why Americans vote less. Because our political parties are not “responsible parties,” a vote does not have clear policy consequences. Not voting in such a circumstance may have no costs.

The United States seems unlikely to develop such a system; moreover, many factors now all but preclude our doing so. As we have seen, most Americans loyally support their parents’ political party when voting. Many candidates can ignore political parties, relying on campaign contributions they gather themselves. And primary elections for selection of candidates weaken the political parties’ ability to exclude candidates not sharing their positions. Candidates in England have no such opportunity to ignore the party.

Are Parties Becoming Less Important?

There has been much concern that American political parties are in decline. Certainly, Americans in survey after survey seem more than willing to see parties vanish. They feel “the man rather than the party” should be the basis of the voting choice. Parties are seen as confusing the issues, creating

conflict where none really exists, and not keeping their promises.¹³ Nevertheless, most people call themselves Democrats or Republicans. Such antipathy toward political parties is often cited as a reason parties today are not as vital as they were before World War II, but there are other reasons.

We need to be cautious in assessing the strength of U.S. political parties. Compared with political parties in most democracies, ours can little influence the reelection success of those legislators who vote as the party would prefer in passing laws and making policies. *There seems little question that our parties were stronger in the past and that today even the best organized party would be judged quite weak when compared with those in the past or present day parties in other democracies.*

Political parties’ inability to influence elections does not necessarily mean that liberal Democrats and conservative Republicans are equally likely to be elected from all districts across the United States. As we have discussed, some areas are overwhelmingly likely to elect Republicans and others Democrats. And most conservatives will run as Republicans and liberals as Democrats. Weak political parties also do not mean that Democrats and Republicans will be nearly equal in number in state legislatures. Most states have one dominant political party.

New-Style Politics

New-style politics of campaigning does not rely on political party workers to establish ongoing person-to-person contact with voters. Candidates may go door to door speaking with individual residents for symbolic purposes. The major broad campaign communications use television and electronic media. Narrower, more focused communications are targeted to core voters and undecided voters. Rather than rely on party personnel, candidates hire expert campaign managers and pollsters. New style politics has created employment for and enriched consultants, public relations firms and television stations.

Candidates make every effort to seem trustworthy and statesmanlike, without taking positions on the issues.¹⁴ They concentrate mainly on what they believe. Public policy goals are addressed infrequently and specific plans to achieve goals

are rarely articulated. Candidates for offices from mayor to President of the United States avow they know how to create jobs or strengthen the economy or achieve greater efficiency, etc. When pressed for details, they respond, “check my internet site.”

This new style of politics emulates advertising campaigns used to sell cola and cars. Attributes that are undefined or not measurable are touted. Buy our cola because it is the “real thing.” Buy our cars because we are the “number one dealer.” Counterpart political claims include a candidate “never forgets where she is from” or “believes in the American way of life.” The goal is to make potential voters feel good about the candidate.

Another element of the new-style politics of campaigning is “going negative.” Negative campaigning has always existed in American politics, but new resources make it easier and perhaps more effective. Contemporary information technology makes it almost effortless to identify statements that can be taken out of context or otherwise misrepresented against a political opponent. Video ads on television and the Internet employ misleading audio and video snippets of an opponent. Negative ads focus on political opponents to the near exclusion of any information about the candidates airing them.

One kind of negative campaigning involves turning a candidate’s strength into a weakness. The self-named Swift Boat Veterans were so successful in questioning and criticizing Senator John Kerry’s military service in the 2004 presidential election that the phrase “swift boating” has become part of our political lexicon.

Another variety of negative campaigning involves identifying opponents with famous national figures who are unpopular locally. Virtually all candidates running as Republicans for seats in the Texas legislature from 2010 to 2014 asserted their Democratic opponents agreed one hundred percent with “overreaching liberals in Washington, D.C.” Contrary to their opponents, they would “stand up to Barack Obama.” A large number of candidates in Republican primaries tried to associate their Republican opponents with President Obama by juxtaposing their opponents’ names and photographs with unflattering photographs of President Obama. By the same token, Democrats in stronghold states such as California and Hawaii did their best to associate their Republican opponents with

President George W. Bush.

All candidates criticize negative campaigning and promise not to do it. The fact that negative campaigning has become the dominant style in close elections indicates either it is effective or many believe it is effective. In an effort to control negative campaigning, Congress passed the Bipartisan Campaign Reform Act in 2002. Candidates were required to identify themselves and to say in audio ads and appear and say in video ads that they approved the communication. The net result is that feel-good ads have the candidate approval statement at the end, and negative ads have the statement at the beginning.

New style campaigning changed the roles played by the national parties. The “branding” of the national parties has become more important. Many presidential advertisements are distributed nationally through television and other media. To the extent possible, other candidates try to use the talking points developed by their parties’ presidential candidates. Second, large-scale transfers of funds from the national committee have played a critical role in implementing national campaign strategies through state and local parties.¹⁵ These efforts are targeted primarily toward the key battleground states in presidential elections. Parties in the 10 to 15 states with close presidential contests get attention and support from the national committees that have the secondary impact of helping their down ballot candidates.

In Figure 7.1, we found very little decline in political party identification. Still, one can see a *decline in partisanship in the electorate*, which some see as further evidence of the decline of U.S. political parties. Donald Trump became the Republican nominee for President of the United States in 2016 despite a history of joining and leaving the Republican Party. He registered for the first time as a Republican in 1987. He changed his registration to Independence Party in 1999, to the Democratic Party in 2001, and to the Republican Party in 2009. He indicated on his registration form in 2011 “I do not wish to enroll in a party.” He returned to the Republican Party in 2012 and declared his candidacy for the Republican nomination for President on June 16, 2015.¹⁶

A change in general voting procedures may have contributed to the declining importance of political parties. Straight ticket voting (also called

straight-party voting) allows voters to choose a party's entire slate of candidates with just a single ballot marking. Voters make one punch or mark on the ballot in order to vote for every candidate of that party for each office on the ballot. Once a widespread practice, the number of states making the option of voting for all candidates of a party with a single ballot marking has steadily declined. In July 2016, only 8 states, including Texas, had straight ticket voting as a ballot option.¹⁷ In 2017, the Texas Legislature passed a law ending straight ticket voting after September 2020.

For whatever reasons, Americans are less "strongly" committed to their political party than in the past. Furthermore, primaries have taken out of the political parties' hands the choice of which candidates will be called "Democrats" or "Republicans." Certainly, the advantage of the incumbent in seeking reelection has increased in Congress because of "candidate centered" campaign techniques focusing primarily on the use of television—new-style politics. The parties nevertheless persist, perhaps because they are organized.¹⁸

Interparty Competition

Competition between the political parties has long been thought to be important in our democracy.¹⁹ The basic idea is that to compete, political parties will select their candidates more carefully and better orchestrate the passage of needed legislation. They will be more responsive to public demands and more effective in passing policies preferred by the public when they are not assured of reelection. As a result, there has been a long tradition of measuring such competition.²⁰

The most common measures of competition include the percentage of Democrats in both the upper and lower houses, the percentage of the vote won by the Democratic gubernatorial candidates, the division of which party controls the legislative houses and the governorship, and the duration of one party's control. All of these measures have been weighed equally into a single measure.²¹ However, states that are competitive statewide may have few districts where incumbents are much challenged.²² Generally, the concept of competition is based on the incorrect assumption that a com-

Figure 7.6
VAP Turnout and Legislative Interparty Competition Correlations

1981	0.37	1998	-0.07
1982	0.37	1999	-0.10
1983	0.53	2000	-0.09
1984	0.52	2001	0.13
1985	0.42	2002	0.15
1986	0.41	2003	-0.14
1987	0.31	2004	-0.16
1988	0.30	2005	0.18
1989	0.38	2006	0.18
1990	0.37	2007	-0.07
1991	0.18	2008	-0.09
1992	0.16	2009	0.26
1993	0.43	2010	0.25
1994	0.43	2011	0.06
1995	0.04	2012	0.11
1996	-0.04	2014	0.27
1997	-0.06		

petitive state will be competitive regardless of how competition is measured.²³

The measure of party competition used here is based on the average difference in seats between the two parties in each legislative chamber. That average is then subtracted from 100 to create an index where a low value means little competition and a high value has more competition.

In 2015, the Democrats controlled 55 percent of the Maine House and Republicans controlled 57 percent of the Main Senate. The competition index value is 94. In Hawaii, Democrats held 96 percent of Senate seats and 84 percent of House seats. The competition index value is 20.

We expect that closer competitions between parties stimulate greater voter participation just as closer competitions between sports teams stimulates fan interest in those contests. There has been a longstanding hypothesis that political competition benefits the public parallel to the way that economic competition benefits the public. Many studies of the states have documented positive correlations

between measures of interparty competition and spending overall and spending on development of human capital.²⁵

As documented in Chapter 6, competition between Republicans and Democrats is at a low point and there was no correlation between turnout in 2014 and even division of House seats in 2015. Might results for 2014 be anomalous? Figure 7.6 shows there were consistent positive correlations between turnout and interparty competition through 1990, and no correlations beginning in 1995. How can we explain the change?

An obvious explanation is that the turnout-competition relationship was never causal. It was spurious, an artifact of regional differences that altered over time. Through the early 1990s, the Southern states were strongly controlled by Democrats and interparty competition was low. Then, interparty competition increased as Southern preferences switched to Republicans. What has remained consistent has been a pattern of lower turnout in Southern states, as documented in Figure 7.7. For

Figure 7.7
General Election Turnout: Northern and Former Confederate States Averages

	Northern VAP	Northern VEP	Former Confederate VAP	Former Confederate VEP
1980	57%	58%	47%	48%
1982	46%	47%	31%	32%
1984	57%	59%	49%	50%
1986	42%	43%	34%	35%
1988	55%	57%	46%	48%
1990	42%	44%	33%	34%
1992	60%	62%	51%	53%
1994	43%	45%	34%	36%
1996	52%	55%	46%	48%
1998	40%	43%	31%	33%
2000	54%	57%	48%	51%
2002	41%	44%	35%	38%
2004	60%	64%	53%	57%
2006	43%	46%	33%	36%
2008	60%	64%	56%	61%
2010	42%	45%	35%	38%
2012	56%	60%	54%	58%
2014	38%	40%	33%	36%

Figure 7.8
Correlations With Turnout 2014 Elections and Possible Results

	Voting Age	Voting Eligible
Accurate Republican Representation in House 2015	-.22	-.28
Even Division of House Seats 2015	-.28	-.29
Percent Senate Republican 2015	-.08	-.15
Percent House Republican 2015	-.07	-.08
Per Capita State and Local Revenue	.18	.21
Per Capita State and Local Expenditure	.18	.21
State and Local Tax Burden	-.17	-.16
Per Capita State and Local Long Term Debt	-.03	.05
Regressivity of State and Local Taxes	-.21	-.19
TANF Monthly Payment	-.04	-.01

every year, turnout in Southern states is significantly lower than turnout in Northern states.²⁶

Figure 7.8 shows that there are no relationships between turnout in the 2014 general elections and either partisan results of those elections or on policies in 2014. This is further evidence that general election turnout is not strongly related either to partisan election results or to state and local government policies.

The Impact of Competition

Are there patterns of differences we care about that are empirically linked to higher and lower interparty competition? In the years when turnout and interparty competition were correlated with each other, there were positive correlations between turnout and measures of taxing and spending. Do those patterns hold for 2014? Figure 7.9 correlates interparty competition and problem and policy measures from Chapter 6.

It would seem that past correlations between interparty competition and policy do not hold for 2014. Interparty competition is no longer positively related to taxing and spending measures as predicted. The two correlations in Figure 7.8 that meet our threshold of .30 are how accurately party divisions

in the State Houses reflect partisan preferences expressed in public opinion polls and the percent of voting age population registered to vote. It is no surprise that turnout is positively related to registration rate or that higher turnout results in more accurate reflection of the partisanship preferences of residents in the partisan affiliation of House members. *There is little to suggest that competition directly influences public policy.*²⁷ There may be an indirect relationship between turnout and policy if policy is related to the partisan composition of state legislatures.

It is logical to expect that party competition might force political parties and politicians to be more responsive to the wants of the electorate. The evidence does not support this model. Perhaps the declining importance of parties has undermined such responsiveness. Political parties have been greatly weakened both by the growth of primaries as well as the growing importance of direct mass media appeals to voters paid by individual campaign funds rather than the parties.

Although overall state party competition would seem most likely to shape public policy, competition between political parties at the district level might also be important. There is evidence that local competition is decreasing.²⁸ District-level

competition has declined as the majority parties have created safe elections for themselves and for their opponents. There is little reason to expect district-level interparty competition to increase and to be important in the future.

The Importance of Party Control

We turn now to a consideration of whether the policies of states with legislatures controlled by Democrats differ from those controlled by Republicans. We might expect that a legislature controlled by Democrats would enact more liberal programs, such as civil rights legislation or programs consistent with the New Deal. Some research has supported this theory,²⁹ but other research has not.³⁰

We would expect to find the liberalism of Democrats reflected in a larger tax burden and greater spending per capita. We would expect policies that place fewer restrictions on abortion and welfare benefits to be more generous. Figure 7.10 presents correlations between Republican Party control and a variety of state policies and status variables in 2014.

Republican control of state legislatures is

positively correlated with five of eleven current policies. All of the directions are in line with the expectation that Republicans enact more conservative policies. In 2014 greater control by Republicans was related to lower tax burdens, a lower per capita state and local debt, lower percent of Medicaid expenses paid by state and local government and higher incarceration rates overall and higher rates of new prisoners.

Party control has become more strongly related to state and local policies over time while turnout and interparty competition have become less strongly related to state and local policies. Long-term control of state government by one party provides opportunity for that party to implement its preferred policies. The last ten years have provided such opportunities in a large number of states. For example, the Republican Party won every statewide election in Texas from 1994 through 2016 and has controlled both chambers of the Texas Legislature since 2003. Republicans have had sufficient time to repeal previous policies they oppose and implement policies they prefer in almost all areas. Since they have faced no viable opposition from Texas Democrats, Texas Republi-

Figure 7.9
Correlations With Interparty Competition 2015

	Interparty Competition
Accurate Republican Representation in House 2015	.56
Percent of Voting Age Population Registered to Vote 2014	.41
Percent Senate Republican 2015	-.23
Percent House Republican 2015	-.23
Per Capita State and Local Revenue	-.04
Per Capita State and Local Expenditure	.03
State and Local Tax Burden	-.06
Per Capita State and Local Long Term Debt	.16
Regressivity of State and Local Taxes	-.23
TANF Monthly Payment	.25

Figure 7.10
Correlations With Republican Party Control of Legislature 2015

	Republican Control
Per Capita State and Local Revenue	-.25
Per Capita State and Local Expenditure	-.24
State and Local Tax Burden	-.31
Regressivity of State and Local Taxes	.22
Per Capita State and Local Long Term Debt	-.64
Percent of VAP Registered to Vote, 2014 General Election	.14
TANF Monthly Family Benefit	-.07
Educational Spending Per Child in ADA	-.47
Percent Medicaid Paid by State and Local Government	-.31
Poverty Rate	.20
Violent Crime Rate	.15
Property Crime Rate	.20
Prisoners Per 100,000 Population	.49
New Prisoners Per 100,000 Population	.30

cans have identified the U.S. federal government as their main political opponent and the key obstacle that prevents them from enacting ideal policies in every area.

If the pattern of one-party control of state governments continues, we might well see stronger relationships between state partisanship and policy. In the near future, there may be strong negative relationships between Republican control and per capita revenues and expenditures and regressivity of state and local taxes. For now, analyses suggest turnout and interparty competition are not strongly related to state and local policies but party control is.

Conclusion on the Impact of Party

Our empirical analyses found no evidence that supports the generalization that turnout in general elections is related to interparty completion or to

state efforts or outcomes. No evidence was found that interparty competition is related to state efforts or outcomes. We found many of the expected correlations between party control and policies and outcomes. If many states continue to be controlled by a single party, there may be more strong correlations with party control in the future.

Interest Groups

If political parties are weakening in the United States, interest groups seem willing and able to replace them. Our task in assessing interest or pressure groups will not be easy. While political parties must be visible and public if they are to win elections, interests need not be either visible or public to succeed. Interest groups are organizations of persons of similar interests and opinions seeking to influence public policy; but do they contribute to or detract from democracy? Despite Americans'

ambivalence toward political parties, few would argue that they are undemocratic or that their existence compromises democracy. Perhaps parties have resulted in biased public policy, inefficiency, and corruption, but since people voted freely for them—or arguably had the opportunity to do so—they are part of democracy.

Such is not the case for interest groups. Many, but certainly not all, people may be members of these groups, and no one votes for them. Furthermore, they organize to offset popular votes since they act between elections as well. They seek to substitute strong opinions, activism, and money for what they lack in votes.

Although it is useful to have large numbers in an interest group, this approach has its cost when members are not similarly affected by policies. Such internal conflicts might therefore obstruct group efforts. What is most useful for an interest group is enthusiasm or money. Enthusiasm facilitates getting group members to vote, to write, to organize, to care what happens, and to contribute money. Ample money allows interest groups to win appreciation from candidates for substantial campaign contributions to underwrite very expensive, new style television campaigns.

Ample money allows interest groups to have full-time lobbyists present in state capitals to attend and speak at public hearings. These lobbyists can advise legislators of the group's interests and gather information concerning how other sympathetic state legislatures had coped with a problem. They can establish personal relationships with legislators by offering them free meals and entertainment

These efforts may or may not establish sympathetic response to the group's interests. They will establish two things of paramount importance: recognition and access. Conference committees typically make final decisions on key items of legislation in the final days of sessions. At those times, the most a lobbyist can hope for is a minute or two of conversation with individual members. Access gives them the brief interaction. Recognition saves precious time; the lobbyist does not have to identify who she is and whom she represents.

Interest group money can play a major role in helping candidates win primary and general elections. Interest group spending in support of elections for office and for policy has become extremely important during contemporary college students'

lifespans. As discussed below, the Supreme Court decision in *Citizens United v. Federal Elections Commission 2010* has abolished most state and federal attempts to limit interest group spending to influence elections.

The *Citizens United* decision has had another important impact on interest group participation in elections: the introduction of Dark Money. Dark Money refers to political spending meant to influence the decision of a voter, where the donor is not disclosed and the source of the money is unknown. Dark Money groups account for staggering gaps in understanding exactly how each funding dollar is being spent during political elections. These gaps are becoming wider with every election cycle.³¹

The central feature to interest groups' democratic contribution is their capacity for allowing the emotions of those strongly opinionated on issues to be vented constructively. If they lose in an election, they can contribute money to interest groups sharing their values and seek to influence elected representatives between elections and win their point in the next election. Proponents of interest groups argue that millions are either members of groups or rely on them as reference groups or guides for how they should react to proposed legislation. Involvement in interest groups is seen as another form of participation in which some opinions are heard in the process of making public policy. Interest groups can be viewed as one of many channels through which the public can speak to their representatives.

Interest groups frequently contribute information to the political process. Such groups are likely to have more technical competence than do legislators. Although they may present only their perspective in offering this technical information to legislators at public hearings, at least that information is made available. Other groups may present other relevant and contradictory information. Across the 50 states, legislators accept the notion that such groups provide valuable technical information and thus contribute to better public policy.³² Case studies of many states suggest that the interaction between lobbyists and legislators is more constructive in some states than in others. Some research shows Oregon to lead this ranking.³³ There are few such studies because they are difficult to conduct.

The Strength of Interest Groups

Because interest groups do not stand for election, their number and relative strength in various states are uncertain. Most states register at least some groups, most often if they wish to appear in public hearings; and most states require budget information on at least the largest groups. This information, however, leaves uncertain the relative strengths of interest groups. Although groups may be asked to indicate the number of their members and even their budgets in such reports, neither of these pieces of information may determine which are most effective in getting their way. Not all states require such reports.

Despite arguments that interest groups contribute to better public policy and to affording the public alternative avenues to affect public policy, the suspicion remains that they pull public policy away from what we would expect were interest groups totally absent. A central problem is that not all segments of society are equally prevalent among interest groups. Interest groups over-represent the wealthy, better educated, white, males, and businesses.³⁴ Although the most effective groups in some states are public school teachers' organizations, such as those affiliated with the National Educational Association, business groups dominate the most effective ranks in most states.³⁵ General business organizations, such as chambers of commerce, bankers' associations, and manufacturers' groups, are second, third, and fourth, respectively, in most states. If interest groups are effective, there seems to be little question that they oppose rather than support the ideal of equal representation.

Efforts to Control Interest Groups

Not everyone would like to see pressure groups and their impact on government eliminated. Those whose preferences coincide with influential interest groups would oppose any reduction in government programs they benefit from. Some see these groups as one of the many channels through which people can influence government policy. Elected officials who get the bulk of their campaign funds from such groups—and future rivals who hope to—may be hesitant to limit their effectiveness, let alone to abolish them.

Controlling Interest Groups

Interest groups cannot legally **bribe** elected officials to vote the way the group wants. Money cannot be given in return for favorable votes. Groups can make contributions to campaigns with the expectation that the relationship will become mutually supportive. This is a very subtle difference, especially in states where an elected official can pocket any leftover campaign funds on retirement. Until the elections of 1994, even members of Congress could move money contributed to campaigns to their own pockets on retirement. This continues to be true in many states.

Many states also require **registration** by pressure groups, especially if they wish to speak before legislative committees. Registration consists of filing necessary forms with information such as the membership, budget, and officers of the association, and perhaps even those bills that the group would like to speak on in public hearings. The public can then learn about the activity of pressure groups from those registrations, if they bother to check.

If candidates were able to spend only half a year's salary in their campaigns rather than the hundreds of thousands of dollars now spent, the limited funds needed could come with fewer groups and fewer strings attached. Political party and individual contributions could even provide all allowed funds. Then interest groups could not "buy" votes.

In 1976, the U.S. Supreme Court ruled that restrictions on campaign expenditures by candidates are unconstitutional, a violation of the 1st Amendment's freedom-of-speech clause, despite the fact that all other developed democracies do restrict campaign expenditures.³⁵ In *Citizens United v. Federal Elections Commission* (2010), the Court said limitations on spending amounted to limitations on free speech. Federal law limiting contributions by corporations, unions, and misnamed "non-political" nonprofit organizations was overturned. As a result, existing half-hearted and largely ineffective attempts by the states to control interest group spending may soon disappear.

At this point, only an amendment to the federal constitution could authorize campaign expenditure restrictions, restrictions on contributions or public financing of elections. Such an amendment would

have to be proposed by those who benefit the most from uncontrolled campaign contributions: incumbent members of the U.S. Congress and state legislatures. As of July 2016, 16 state legislatures had passed resolutions calling on Congress to propose an amendment to overturn *Citizens United v. Federal Elections Commission* (2010). California will be the 17th state if a ballot measure in the 2016 general election is passed. These resolutions are symbolic rather than substantive.³⁵

PACs have increased enormously in numbers and influence and are rivals to political parties. They are little more than reorganized pressure groups. Often, they provide the majority of campaign funds to candidates, especially incumbents.³⁶ PAC spending in state elections rose from \$95 million in 1972 to \$400 million in 1984. PACs financed 60 percent of the campaign costs for the California Assembly in 1984 and 40 percent of the funds collected by Illinois legislators in 1984-1985.³⁷ Such increases are commonplace throughout the states.³⁸ According to the Federal Election Commission, PAC contributions to federal candidates for elections held in 1999 and 2000 cycle totaled \$259.8 million.³⁹ The Center for Responsive Politics reports that in the 2011-2012 elections, the top 20 PAC contributors alone gave more than \$915 million to candidates.⁴⁰

Several states have experimented in partial public financing. Until this financing is sufficient to require that taking public funds precludes using any additional funds, such as is true for presidential candidates in the past before the corrupting influence of “soft money,” which allows bypassing these limits, the effectiveness of such public financing remains unknown.

In *Arizona Free Enterprise Club’s Freedom PAC v Bennett* (2011), the Supreme Court struck down an Arizona public financing law that would have provided extra public money to candidates who were being outspent by privately funded candidates and independent expenditure groups. Arizona argued that public funds generated more speech, not less. The court determined well-funded candidates would be forced to spend more money to outspend opponents or spend less so opponents would not receive public funds.⁴¹

The Power and Impact of Pressure Groups

We have no objective measure of pressure group strength or influence.⁴² We do have a measure based on the assessments of public officials and political informants in states they know well. This is the outgrowth of the combined research of many political scientists in 50 states.⁴² This research suggests some changes over this nearly 20-year period. Eight states saw the strength of their interest groups decline, while six states saw an increase. Nevertheless, the Midwest and the Northeast reportedly still have the weakest interest groups.

Until the early 2000s, two interests were perceived as most influential: general business organizations (including state chambers of commerce) and schoolteachers. In 2007, they were still ranked first and second. However, utility interests have joined them. These three interests surpass all others.⁴³

We would expect interest groups to shape public policy in a direction preferred by business.⁴⁴ Other literature suggests that neither business groups nor any interest group has much success in shaping public policy as compared with others who influence public policy, such as political parties and institutional leaders.⁴⁵ There is substantial variation from state to state in which groups are most influential, although, as stated earlier, business groups predominate.⁴⁶

Conclusions on Interest Groups

As noted in the introduction to interest or pressure groups, we know little of the importance of interest groups to policy-making. There is also uncertainty about whether they are democratic. We have not been able to justify many conclusions on these groups. Certainly, they exist for a purpose. Hundreds of millions of dollars are spent each year by individuals and companies to support these groups. If an interest group organizes and pays for a lobbyist, a rival group might feel the need to countervail by organizing itself. This situation might occur even if the first group gets no clear public policy changes as a return for the money it spends seeking to affect policy. If this spending to offset others’ spending logic is correct, pressure groups may be having little effect on our public policies.

The greatest concern about interest groups is

that they “buy” representatives with their campaign contributions and thereby shape public policy to their satisfaction. With new-style politics, candidates need great amounts of money to compete, even if their districts are overwhelmingly uncompetitive. When pressure groups offer campaign contributions in return for the candidate’s support for the group’s point of view, few candidates can resist.

The Potential for Competitive Politics

Both political parties and pressure groups are organizations actively working for the public policies they desire. They almost certainly move public policy away from what it would be were such organizations absent. Institutionally limiting or encouraging either political parties or interest groups has proven to have little effect, with one exception. Primary elections seem to have hurt political parties. If we were to reverse this action, however, and allow parties to select their candidates by whatever means they please, would they strengthen politically? And if they did, would people whose views are under-represented by pressure groups, such as the poor, be championed by at least one of the strengthened parties? Although many believe or hope so, studying the variation in the strength of political parties in the states and the variation in regulations of those parties offers little confidence in this result.

We have found only modest support for many of the hypothesized relationships between political parties, pressure groups, and policy. The party of the poor, the Democratic Party, sometimes appears to be the advocate of that class. But often no relationship exists. Competition between the political parties also fails to have clear and consistent empirical relationships with state policy. Competition appears to have the most effect. Competitive political parties do not seem to be found in states with weaker pressure groups. Such may not have always been the case, however, since the parties may have once controlled pressure groups. More probably, however, time has just changed the role of political parties.

At one time, political parties may have been perfectly adequate for representing divisions between what people in urban, mercantile areas wanted versus what people in rural, agricultural

areas preferred. With economic complexity, however, subtle economic differences may be lost when there are only two or perhaps even three or four political parties. Automotive workers, the elderly, students, or residents in states with poor health facilities may be too small in number for a political party to be concerned with either their plight or their votes. Interest groups may allow such groups to express their views, supplementing the role of political parties.

Political parties in states with competitive parties and weak pressure groups may be able to reflect political divisions within the state that do not entail the more subtle reflection of interests available through pressure groups. Party and pressure group systems may just reflect the politics of the state. Pressure groups also may reflect, rather than shape, society.

Can we envision a political system with numerous pressure groups and no political parties vying in elections? It probably would look very much like a multiparty system. We might suspect that candidates would then seek the middle ground to appeal to more groups, win elections, seek out like-minded fellow representatives, and organize to pass policy. Those policies would be used to appeal for further voter support, by arguing that it is better to get something that they want rather than nothing. In effect, this scenario would suggest that political parties would reappear.

Summary

1. Those of like mind on the issues of the day can often overwhelm their opponents by organizing to get their supporters elected and to pass the desired policies into law. Political parties were the first such organizations, but interest groups also organize to enact desired policies.
2. At one time, political parties were stronger than they are today in the United States.
3. Political primaries and a new style of campaign using expensive television commercials paid for by interest groups have weakened political parties. It is also clear that many Americans are willing to cast their votes for candidates solely on the basis of which political party candidates are listed under.

4. States and districts with nearly equal numbers of Democrats and Republicans probably have more competitive political parties, and improved organization results from the parties seeking to optimize their chances. Few states or districts, however, have such balance.

5. Neither turnout in elections nor interparty competition consistently affects the policies on which we focused.

6. Party control has become more strongly related to state policies over time.

7. Interest groups are also organizations that seek to influence public policy to promote their interests. Business interest groups are most influential. There is evidence that would suggest interest groups are becoming stronger while political parties weaken.

8. Money is one of the major sources of influence for interest groups and is mainly applied by way of contributing to the campaign funds of incumbent legislators in the hopes of getting them to feel obligated to vote as the groups want.

9. Since the Supreme Court has judged campaign expenditure limitations and public funding of election campaigns as unconstitutional, there are few options for limiting the influence of interest groups.

10. Comprehensive subjective data available to assess the impact of interest groups suggest that they have little impact on state policies for taxing, spending, aid for the poor, or abortion. Stories and case studies of interest group successes suggest the opposite.

Information Sources

Figure 7.1	http://www.gallup.com/poll/15370/party-affiliation.aspx ; Gallup Polls, http://www.gallup.com/poll/159740/democrats-establish-lead-party-affiliation.aspx and earlier
Figure 7.2	http://www.fairvote.org/primaries#congressional_primary_type_by_state
Figure 7.3	http://www.fairvote.org/primaries#congressional_primary_type_by_state
Figure 7.4	http://www.electproject.org/
Figure 7.5	http://www.electproject.org/ and http://elections.sos.state.tx.us/
Figure 7.6	http://www.electproject.org/ and Carl Klarner, State Legislative Partisanship Files, http://www.ipsr.ku.edu/SPPQ/journal_datasets/klarner.shtml ; http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_2015_Feb4_11am.pdf ;
Figure 7.7	http://www.electproject.org/
Figure 7.8- Figure 7.10	http://www.electproject.org/ ; http://www.gallup.com/poll/15370/party-affiliation.aspx ; http://www.usgovernmentspending.com ; http://www.usgovernmentspending.com/compare_state_spending_2015dH0D ; http://www.itep.org/whopays/full_report.php ; http://taxfoundation.org/article/comments-who-pays-distributional-analysis-tax-systems-all-50-states ; http://www.cbpp.org/research/family-income-support/tanf-cash-benefits-have-fallen-by-more-than-20-percent-in-most-states http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2014/tables.html ; http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_2015_Feb4_11am.pdf ; National Association of State Budget Officers, Examining 2013-2015 State Spending, 2015; Council of State Governments, The Book of the States 2015

Study Guide, Chapter 7

Essay Questions

1. Politics is winning and losing. A small number of people with meager funding, but who are organized and working well together can defeat a larger number of people with more funding who are not organized and working together. Why is this the case? Discuss and give three examples.
2. A section in the “History of American Political Parties” is titled “Role Reversal and Hyper-partisanship.” What was the role reversal and what was hyper-partisanship? Discuss the impact each had on state and local politics and policy.
3. The text lists five factors that help explain why the United States has had two major political parties. Briefly discuss each. Identify the factor or factors you think have been most important in your lifetime and explain why. Which factors, if any, were showing signs of weakness in recent election seasons?
4. The states have a variety of primary election systems and procedures. What are the advantages and disadvantages for open, closed, and mixed primaries and for caucuses? Explain from both the voters’ and the parties’ perspectives.
5. Would you characterize turnout in Texas primary elections since 2000 as high or low? For each party, has turnout in Texas been stable over time or has it changed? Approximately what percent of maximum turnout is necessary for a Republican primary candidate to win a majority in non-presidential election years? What are the implications of your answer for representation and power sharing?
6. Identify and explain at least four elements of New-Style Politics in American elections. Have any of these elements contributed to making political parties weaker? Why or why not?
7. What empirical information in Chapter 7 supports the conclusion that states differences in election turnout and close competition between the two major parties is less important now than in the past. Is there any evidence that state differences concerning political parties might be important?

Multiple Choice Questions

1. The Federalists, the first political party in the U.S., organized to _____.
 - a. fight for independence
 - b. fight against taxation
 - c. ratify the Articles of Confederation
 - d. ratify the current U.S. Constitution
2. The impact of electronic and print news media causes Americans to focus most on _____ politics.
 - a. community
 - b. local
 - c. state
 - d. national
3. What is the correlation between Republican control of state legislatures and state tax burdens?
 - a. positive
 - b. negative
 - c. no correlation
 - d. since the relationship is spurious, it is not possible to calculate a correlation coefficient

4. The ruling in *Citizens United v. Federal Elections Commission* (2010)
 - a. makes it harder for states to regulate PACs and other interest groups
 - b. is limited to the federal government and has no impact on state politics
 - c. is more important for non-partisan elections than for partisan elections
 - d. will have no impact on the relative power of political parties and interest groups

Notes

- 1 For a more extended discussion, see V. O. Key, Jr., *Politics, Parties, and Pressure Groups*, 4th ed. (New York: Crowell, 1958), pp. 221-225.
- 2 Key, p. 228.
- 3 This may not apply in presidential primaries. The winner of a state presidential primary will not be the party's candidate in the general election if the national party nominates someone else. Louisiana is an exception for elected positions that are not federal. Washington and California are exceptions for all offices.
- 4 John F. Bibby, Cornelius P. Cotter, James L. Gibson, and Robert J. Huckshorn, "Parties in State Politics," in *Politics in the American States: A Comparative Analysis*, 4th ed., Virginia Gray, Herbert Jacob, and Kenneth N. Vines (Eds.), (Boston: Little, Brown, 1983), pp. 69-75.
- 5 James L. Gibson, Cornelius P. Cotter, John F. Bibby, and Robert J. Huckshorn, "Assessing Party Organizational Strength," *American Journal of Political Science* (1983, 193-222).
- 6 V. O. Key, Jr., *American State Politics: An Introduction* (New York: Knopf, 1956), pp. 85-194. For presidential primaries only, some states choose delegates by caucuses instead of or in addition to primary elections.
- 7 http://www.fairvote.org/primaries#congressional_primary_type_by_state.
- 8 Thomas M. Holbrook and Raymond J. La Raja, "Parties and Elections," in *Politics in the American States: A Comparative Analysis*, 10th Edition, Virginia Gray and Russell L. Hanson and Thad Kousser, (Eds.), (Los Angeles: CQ Press, 2013, p. 84
- 9 Thomas M. Holbrook and Raymond J. La Raja, "Parties and Elections," in *Politics in the American States: A Comparative Analysis*, 10th Edition, Virginia Gray and Russell L. Hanson and Thad Kousser, (Eds.), (Los Angeles: CQ Press, 2013, pp. 83-85.
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- 16 <http://www.washingtontimes.com/news/2015/jun/16/donald-trump-changed-political-parties-at-least-fi/>

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- 19 V. O. Key, Jr., *Southern Politics in State and Nation* (New York: Random House, 1949), p. 307.
- 20 For a summary, see Austin Ranney, "Parties in State Politics," in *Politics in the American States: A Comparative Analysis*, Herbert Jacob and Kenneth N. Vines (Eds.), (Boston: Little, Brown, 1965), footnote 10.
- 21 Ranney, pp. 63-65.
- 22 Harvey J. Tucker, "Interparty Competition in the American States," *American Politics Quarterly* (1982, 93-116).
- 23 Norman R. Luttbeg, "Multiple Indicators of the Electoral Contest of Democratic Responsiveness in Local Governments," a paper presented at the annual meeting of the Midwest Political Science Association, 1986.
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- 38 Larry Sabato, *PAC Power* (New York: Norton, 1985).
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- 40 Center for Responsive Politics <http://www.opensecrets.org/pacs/toppacs.php?cycle=2012&Type=E&filter=P>
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- 43 Thomas and Hrebenar, Clive S. Thomas, and Ronald J. Hrebenar, "Interest Groups in the States," in *Politics in the American States*, 8th ed., Virginia Gray and Russell L. Hanson (Eds.), (Washington, DC: CQ Press, 2004); and Anthony Knowles, Clive S. Thomas, and Ronald J. Hrebenar, "Interest Groups in the States," in *Politics in the American States*, 9th ed., Virginia Gray and Russell L. Hanson (Eds.), (Washington, DC: CQ Press, 2008).
- 44 Knowles, Thomas, and Hrebnar, 2008, p. 119.
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Chapter 8

THE FIRST ACTIVE GOVERNMENT: THAT AT THE LOCAL LEVEL

As noted at the beginning of this text, most people have federal government in mind when they think of “the government.” In Chapter 4, the role of the federal government working to make state and local governments look good was discussed. This element of American federalism continues to meet its goals. A 2013 Pew Research Center Poll reported 63 percent of Americans viewed local governments favorably. State and federal governments were viewed favorably by 57 percent and 28 percent respectively. In a 2014 Gallup Poll survey, 72 percent of Americans trust local government and 62 percent trust state government. A Gallup Poll survey in 2015 found 38 percent trust the federal government’s ability to handle domestic problems.¹

In the United States in general and Texas in particular, there is a strong contemporary anti-government attitude. To a great extent, negative views about the performance of the federal government are also applied to state governments. Local governments are viewed more positively, but Americans seem to forget that local governments are governments.

Today, you receive services such as education, highways, police, and welfare from national, state, and local governments. As we noted earlier in discussing the periods of government, city or municipal government first served a public increasingly dependent on government for a broad range of services. Even today, it provides most of our services, although those services may be paid with state and federal taxes. Some would suggest that cities and other local government are so subject to state rules and so dependent on money from the federal government that they act as administrators of state and federal programs. This conclusion, however, would ignore the fact that local governments finance the

large majority of their activities—68% in 2013—with their own revenues: taxes, usually property taxes, and fees paid to local governments.

Local Government Revenues and Spending

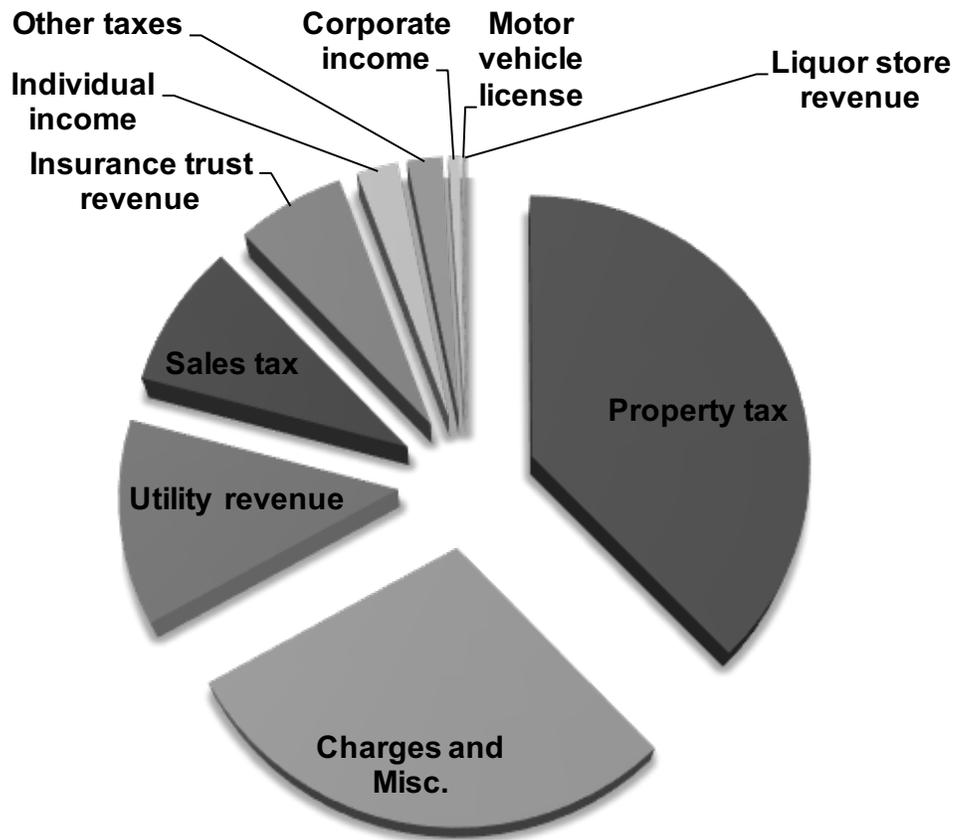
In 2013, local governments received 4 percent of their revenue directly from the federal government, 27 percent from state government and 68 percent from own sources of revenue. Figure 8.1 provides details on own sources revenues.

Local governments rely greatly on property and sales taxes. Tax on individual and business income is a minor source of funds. Local governments receive approximately 41 percent of revenue from local sources from things they charge for, including utilities.

Figure 8.2 details local government spending. Education is the most expensive program, approximately 34 percent of spending for primary and secondary education and 3 percent for higher and libraries. Public safety comprises 9 percent. Utility spending and Environment and Housing are also about 11 percent each. Transportation is 6 percent, hospitals are 5 percent and each of the other areas is less than 5 percent. Police, corrections, sewers, highways, and utilities constitute less than a quarter of local government expenditures for services.

When we think of local government services, we think first of those traditionally associated with municipal government: police, fire protection, street construction and maintenance, and sewage. For most Americans, cities also provide drinkable water, electricity, and garbage disposal through public utilities. Utilities could be provided by private sector business and are in some locations. A unique element of utilities is that delivery infrastructure

Figure 8.1
Local Government Own Source Revenue 2013



costs are so great that it is unrealistic to expect that multiple companies will build separate electrical, water and sewer systems and compete for customers. This market failure results in a single monopoly provider. Municipal and other local governments are most often the single providers for at least two reasons. First, the startup costs of utility infrastructure are so expensive that private companies are not willing to wait for decades before recognizing a profit. Second, Americans are more willing to have governments than private businesses have monopoly control over products and services regarded as necessities.

Local governments are in the construction business, managing and paying for the capital infrastructure necessary for local businesses to thrive. With few exceptions, local governments contract with private sector companies to build roads, bridges, buildings, sewage systems, etc. Local governments maintain such facilities after they are built, sometimes with their own employees and

sometimes by outsourcing to private sector companies. It is important to note that these activities are part of local governments' budgets, but the resulting private sector economic activity is not linked systematically to government in documents that report private sector growth or employment. As a result, analysts tend to assume the private sector activity financed by government results from other private sector activity. The crucial link between local government finance and oversight and private sector activity is almost entirely undocumented and poorly recognized.

Some cities provide many other services. The poor are aided with food and health care and are often provided with public housing at very low rent. Additionally, hospitals, parks and recreation, and airports are among some cities' services. Most cities also provide streetlights, sidewalks, and libraries.

Before the Second World War, it would have largely been cities or municipalities providing local

services, at least apart from public education. With the growth of special districts providing some limited local services, such as water or electricity, and some counties now acting as cities, it would be inaccurate to present only municipal services. Figure 8.2 includes all local governments, including cities, counties, school districts, and special districts.

Public education stands out, but apart from that, many services take a small share of local resources. *Local governments provide a broad range of services on which we depend.*

Several Local Governments

Local government is no doubt the most complex of our government levels. Even if you live in the most remote rural area, multiple local governments serve you. If you live in a large metropolitan area with one or more old core or central cities surrounded by multiple incorporated municipalities, you may

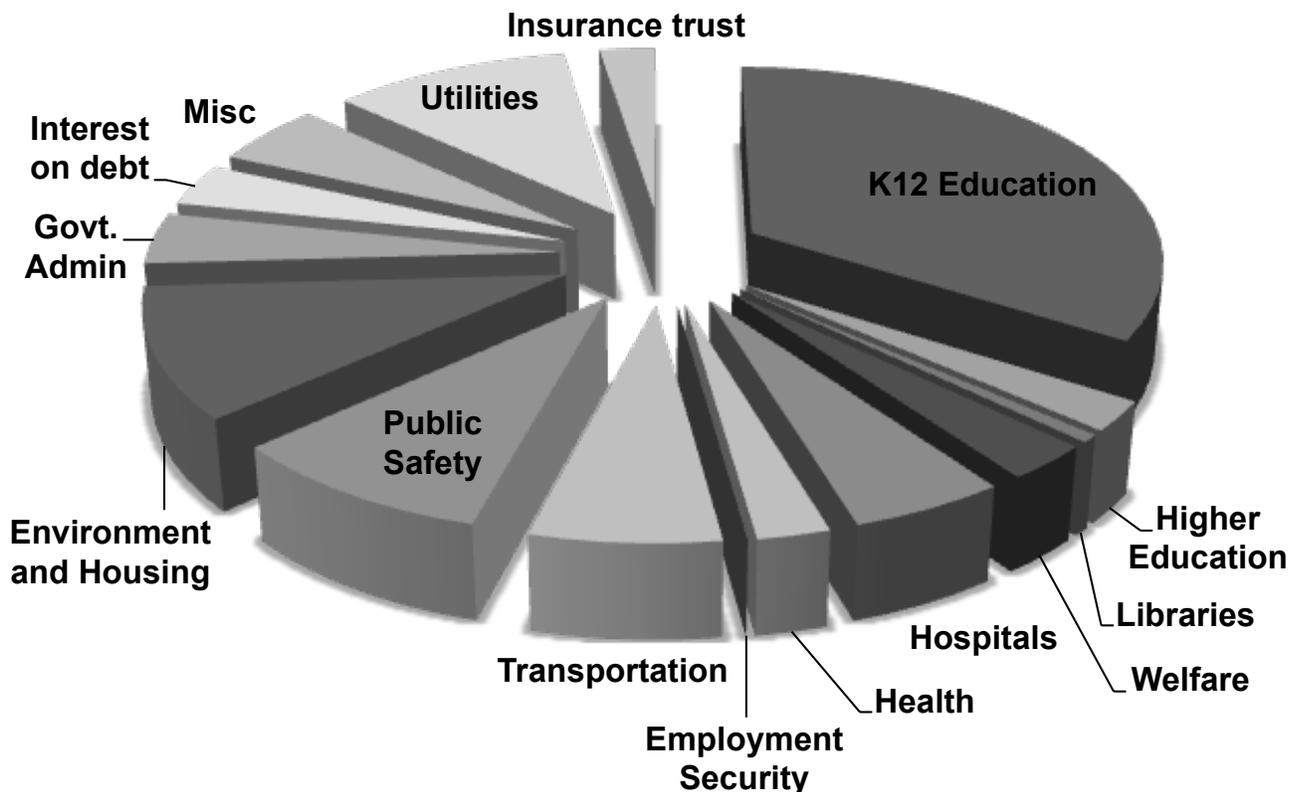
have as many as 10 or 12 local governments, each providing you with some services. Overall, there are 89,004 local governments.²

County Government

First we will discuss the oldest local government, *county government*. According to the 2012 U.S. Census Bureau Census of Governments, all states except Connecticut have county governments.³ They provide a limited number of governmental services, such as maintaining property records, providing public health care, and maintaining roads in rural areas. In Texas, counties inspect restaurants, provide jails and pay for county courts, which hear civil cases and misdemeanor criminal cases.

The county commission is but one of the names given to county governing bodies. In the Northeast, it is the board of supervisors; in Texas, it is the County Commissioners Court. Apart from a hand-

**Figure 8.2
Local Government Spending 2013**



ful of quite urban counties, county commissions combine the functions of both legislative and executive branches. Commissioners both pass county policies and see to their administration. County courts are part of state court systems and do not check or balance county legislative and executive branches.

Many county executives are elected, such as the sheriff, clerk, and tax assessor. But there is no independent chief executive to check and balance the commission acting as a legislative body. In some urban counties, such as Suffolk in New York, county government provides services that are more like those provided by municipalities. Many of these governments have elected or appointed chief executives or managers.

There were 3,031 counties in 2012; there has been little change in this number over time.⁴ The size of the county commission varies greatly between states, with many having 50 supervisors and others having five commissioners. Typically, this position is described as part-time with low pay. Since in most counties there is little for county government to do, this low pay does not discourage those interested in the satisfaction of being a commissioner. Frequently, owners of large farms or ranches seek these positions to protect themselves from the loss of services or higher taxes on their property.

The historical importance of county government is reflected in the way the federal government advises citizens about dangerous weather. The National Weather service broadcasts warnings about tornados, hurricanes, floods and other threats by identifying locations first and primarily in terms of counties. Visitors, short-term residents and even many long-term residents are generally ignorant of county names and locations. You probably know that College Station, Texas is in Brazos County. How many of the other 253 Texas counties can you identify by name and location?

Municipal Government Mayor/Council Form

We began this chapter discussing city government because it comes to mind first when we mention local government. Municipal government, or government in incorporated cities, is a relatively old form of government adopted from England, as is county government. The oldest form of municipal gov-

ernment, the *mayor/council* form of government, has the division between legislative and executive branches that Americans expect of government. This also dates well back into English history, perhaps suggesting that all checks-and-balances forms of government are copies of English municipal government.

The mayor heads the executive branch, and the city council is the legislative branch. Mayors with substantial formal powers, such as budget making and veto power are labeled “*strong*” mayors. “Weak” mayors lack these powers. They preside over council meetings and have the power to vote. Some weak mayors have only a tie-breaking vote in the council.

Frequently, weak mayors must vie with elected executives other than the city council. Additionally, they lack powers to influence strongly the city’s budget. These formal powers, or the lack of them, can be offset by other powers of the individuals involved. Mayor Daley’s strong influence on Chicago politics during the 1950s and 1960s was achieved despite his office being a “weak” mayor. Personality, political influence through organized political parties, and other informal powers can be more important than formal powers.

The strong mayor/council form of municipal government employs the *checks-and-balances* ideas of how to form public policy. In 1915, Cincinnati was the last American city to abandon the bicameral or two-house form of legislature that is normally associated with the idea of checks and balances. Now the check on the second legislative chamber on excesses of the first is not present in our cities, even those with mayor/council governments. The rivalry between the legislative and executive branches remains. Each checks and balances the other in making public policy. Only those policies that both think are desirable become law. The best policy is the one that meets the approval of both the executive and the legislative branches. This can be characterized as *policy-making by competition*.

Only in the last few years has the proportion of mayor council cities fallen below half. According to the National League of Cities 2011 survey, 33 percent of cities use the mayor council form. It is the most common form of government in cities with populations of at least 250,000.⁵

Municipal Government Council/Manager Form

The *council/manager* form of municipal government shares the same form of government used in U.S. independent school districts because the same reform movement--the Municipal Reform Movement, created both. This form of government is used by virtually all independent school districts and approximately 59 percent of cities. It is the majority in cities of populations less than 250,000.⁶ The key idea is that there should be no partisan way to provide services. There is no Democratic way to teach Johnny to read and no Republican way to decide when streets need to be repaved. Regardless of the service, administration should be professional rather than partisan. The best policy is a professional one that need be neither competitive nor cooperative but should be sound and well based. Under this form, the publicly elected city council appoints a professional city manager to administer municipal government during the term of his or her contract.

In independent school districts, an elected school board appoints a professional school superintendent. Both the city manager and the school superintendent are products of university professional schools. They typically have earned graduate degrees in government or education respectively. Both managers and superintendents have national professional associations and may have careers that see them moving long distances as they move up the career ladder. Since city managers and school superintendents follow careers that take them from city to city, many local residents and even the elected officials appointing them see them as outsiders.

No state has ever attempted to have a professional, appointed executive (akin to a city manager) and elected legislature, and most of the few large cities that tried it have returned to the mayor/council form. The professional manager is in a difficult circumstance politically because supportive council members may lose to those who are more critical of the manager's programs. The manager is often tempted, therefore, to become involved in seeking the reelection of supporters. Often, the manager's professional judgments on allocation and queuing—for example, which part of the city should receive new sewers first—result in loss of support in the areas that must wait. Representa-

tives from such areas may withdraw their support as a result. In short, especially in larger cities, two ill-defined and unlabeled political parties form—one supportive of the manager and one opposed.

City managers and school superintendents become vulnerable when they pursue policies the public opposes. They can make no claims that the public has endorsed their programs by electing them. They can invoke professional expertise if their elected boards support them. If boards are divided, managers and superintendents put themselves in jeopardy when they take sides. Professional administrators must play a balancing act between being professional and political.

Cities with managers also have mayors with few formal powers. Often, the mayor is chosen by citywide elections, whereas other members of the council are chosen in smaller districts. The mayor is a member of the city council with many symbolic functions, such as signing proclamations and greeting visitors. The local mass media often focus on the individual with the title of mayor. This gives mayors unusual access to the media and enhances their influence. Yet, they have one vote on the council, like other members.

Municipal Government Town Meeting Form

The *town meeting* and *representative town meeting* forms of municipal government are used in less than 4 percent of municipalities. Almost all are located in New England states. The town meeting form has strong elements of direct citizen participation. In the town meeting form, eligible citizens who attend meetings act as the legislative body. To a greater or lesser extent, eligible citizens who attend meetings act as the legislative body. There is an annual town meeting to approve tax and budget plans and to elect a board of officers called selectmen to carry out town policy. There may also be additional town meetings throughout the year to make a wider range of legislative decisions. In the representative town meeting form, an elected council makes decisions, but all citizens may attend and participate in council meetings. Mayors "moderate" town meetings and may have additional symbolic duties. Administrators may be hired to manage municipal employees.

The town meeting forms date back to colonial times. They combine elements of representative

government and direct or participatory democracy. The potential for citizen participation is very high in town meeting municipalities. Judging from ongoing admonitions from meeting attendees and local newspapers, actual participation is quite low. Only small municipalities or towns use this form. It is not an intended or practical form for governing large municipalities.

Municipal Government Commission Form

The **commission** form of municipal government originated in events after a major hurricane hit Galveston, Texas, in 1900 and killed 8,000 people. The mayor and city council were not willing or not competent to clean up the damage swiftly and to restore order. The new municipal government formed in Galveston combined both legislative and executive roles within one institution, the city commission.

The City of Portland has the last remaining Commission form of government among large cities in the United States. Voters elect a Mayor and Four Commissioners. The Mayor is the head of the executive branch and the Commissioners are the City Council. As a legislative body, the

Council adopts the City budget and passes its laws, policies and regulations. As administrators, Commissioners oversee city departments and carry out policies approved by the Council. The assignment of departments and bureaus is determined by the Mayor and may be changed at his or her discretion. Bureau assignments do not necessarily correspond to departmental titles.⁷

During the period 1900-1950, the commission form swept through many cities as a better or “reform” means of governing. It proved largely unworkable, however. No one had the long-term planning responsibilities traditionally undertaken by the mayor in the mayor/council form. The annual city budget placed commissioners in the contradictory position of being advocates for their own departments while simultaneously working for the good of the city as a whole. This conflict was typically resolved with commissioners supporting each other’s budget requests rather than questioning the need for items on the budgets.

Overall, the commission form of municipal government can claim few successes. It is now used by only 1 percent of American cities. Figure 8.3 summarizes the forms of municipal government and the differences we have been discussing.

**Figure 8.3
Municipal Government Forms**

Strong Mayor/Council	Council/Manager	Town Meeting	Commission
Checks and Balances between Legislative and Executive Branches	Appointed Executive and Elected Legislature	Eligible Citizens Who Attend Meeting Act as Legislature	Executive and Legislature Are the Same People
Mayor with Formal Powers	Symbolic Mayor Only	Symbolic Mayor Only	Symbolic Mayor Only
Also Used by State and Federal Governments	Originated in School Government	Used Only in New England States	Also Used by County Government
Competition to Make Public Policy	Professional Policy Implementation	Citizens Directly Enact Public Policy	Cooperation to Make Public Policy

Independent School Districts

Free primary and secondary education is provided almost everywhere in the United States by Independent School Districts. Municipal governments once provided public education. School districts are called independent to recognize they are no longer part of municipal governments. Only some of the very largest municipalities, such as New York City, still provide primary and secondary education. The movement to independent schools is all but complete.

After World War II, there were more than 100,000 school districts in the United States. With the steady increase in urbanization after the war, many rural districts consolidated with other rural districts. Thus, by 1962, we had only about 35,000 school districts. This decline continues. In 2012, there were 12,884 independent school districts.⁸

The State of Hawaii has a single statewide school district overseen directly by state government.⁹ All other states assign responsibility for providing public primary and secondary education to school districts. All state constitutions require equal access to a quality or effective or efficient education system. Except for Hawaii, the states share this responsibility with local school districts in a variety of ways.

States typically establish basic curriculum requirements and let school districts choose how to fulfill them and add additional elements as they see fit. School funding is shared by states and school districts in 49 states. The original philosophy of shared funding was to permit school districts to provide enrichment programs beyond state requirements and fund them with local taxes. However, states soon discovered that, instead of school districts with higher tax rates spending more per enrolled student, *school districts with higher tax rates spent less per enrolled student.*

Tax rates were negatively related to spending per student because school districts rely on property taxes. The amount of spending per student for a given tax rate is dependent on a district's property tax base divided by its number of students. The variation in taxable property value per student was such that property wealthy districts could spend more per student with low tax rates than property poor districts could spend per student with high tax rates. For example, in 2012, Pennsylvania had the

worst funding disparities between low-income and high-income schools. The state's poorest school districts receive 33 percent less state and local funding than the richest schools.¹⁰

The challenge to providing more equal funding per student in a state is political. There are several simple solutions to large variations in property value per student across school districts. For example, states could still fund public education with property taxes, but use statewide property value per student as the tax base. That would guarantee that districts that imposed larger property tax rates could spend more money per student than districts that chose smaller tax rates. Another simple solution would be to have a state property tax, and then distribute funds to school districts based on the number of students and other factors such as number of special needs students as defined by the state. The ongoing large disparities in spending per student exist because of decisions made by state officials.

Federal spending on public education is targeted to schools based largely on their numbers of students from low income families. As a result, federal funding plays a role in making spending per student more equal. In 2012, 24 states spent less per student in higher poverty districts with state and local funds. When federal funds were included, only 7 states spent less in higher poverty districts.¹¹ It is important to note that a significant portion of federal funding to schools pays for free breakfast and lunch programs for students in poverty. These programs are intended to enhance students' readiness to learn. They do not fund enhancement of educational services offered to students.

Special Districts

In contrast to the declining number of school districts, special districts continue to increase. The 12,340 special districts in 1952 grew to more than 37,203 in 2012.¹² These districts provide limited services most often in a single policy area, such as fire protection, mosquito abatement, soil conservation, public transit, water supply, and recreation. Special districts frequently cross the boundaries of preexisting municipalities, counties and even states. Sometimes special districts charge individuals for services; sometimes the constituent governments provide funds.

Existing governments agree to the creation of special districts that overlap their boundaries for political reasons. A problem exists that affects multiple governments and no single government can deal with the problem without the participation of other governments. Existing governments agree that a new unit of government can be more effective in resolving conflicts than trying on their own to reach agreements. A new, larger unit of government can make decisions in the best interests of all, where existing governments would vie for advantages over each other.

Governance of these special districts varies greatly across the states. In a few cases, the general public elects members of the governing board, but most often cooperating existing governments are treated as a *confederacy*, each joining to form a central government to provide the special service only. The public may have little or no direct control over special district governance. You are probably not aware of all the special districts that exist where you reside. As we shall see when we discuss metropolitan problems, special districts provide one solution to the fragmentation of most of our metropolitan area governments.

The Urban Machine and Reform

As we saw earlier, U.S. cities experienced tremendous growth in population and experienced many difficulties under the twin forces of industrialization and immigration. New industries needed a workforce. Given the lack of transportation available in the late 1800s and early 1900s, rivers and seaports were chosen as the sites for manufacturing plants. Urban areas alone could supply sufficient workers who could walk to work. Immigration brought a willing and substantial workforce to our cities, especially seaports.

This press of people into our cities resulted in a need for many new services that the existing governments were generally unwilling to provide. Some saw the potential for an appeal to the immigrants and seized the opportunity. In exchange for their votes to get elected, they provided the services needed by the new residents. Such individuals, often called ward heelers, soon controlled municipal government. When organized, they became what we call an urban machine. Such machines displaced the well-to-do classes that previously

governed in their own interests and who were unresponsive to raising their personal taxes to provide governmental services for the poor immigrants.

Those who lost power to the immigrant-based machines fought back by forcing cities to *reform*. This effort was called the *Reform Movement*. Various imposed reforms were intended mainly to disable the machines and to return power to “proper” persons. The political goal was to make a small group of wealthy and middle class residents the majority participants in municipal elections and other municipal government forums. The way this minority became the majority was to convince state legislatures to change municipal charters to reduce participation by the majority of residents who supported political machines. There are many elements to these reforms. We have already discussed some of these.

Probably foremost was the state-provided Australian ballot, or *secret ballot*, as the only lawful way to cast one’s vote. Until that time, any way of indicating one’s voting preferences was lawful, including machine-supplied ballots with voting choices already made. Poll watchers for the machines could see these ballots with the “correct” votes being cast. When a comprehensive ballot printed by government was wed to marking ballots secretly, no one could know how people voted. Machines could no longer be certain that supporters voted for machine candidates.

Nonpartisan elections, with candidates not identifiable by a party label, made it difficult for those with weaker literacy to know which candidates were machine candidates.¹³ The illiterate could no longer vote for the donkey or the elephant candidates. The added requirement of *literacy* disenfranchised these machine supporters and made the question of how to vote moot. Moving the dates of municipal elections far from those of partisan state and federal elections further reduced voter turnout.

Of cities responding to the National League of Cities 2011 Survey, 67 percent reported using nonpartisan elections and 33 percent reported using partisan elections. Half of those cities use the at-large and nonpartisan elections as originally advocated by the municipal reform movement, and only 5% use the pairing of district and partisan elections.¹⁴

The *merit system* of selecting public employees

was intended to disable the machine's awarding public jobs to supporters. In a merit system, public jobs have job descriptions and associated competency tests. Candidates judged competent receive jobs with no consideration of their party affiliation. Workers under the machine were expected to give up to 10 percent of their earnings back to the party organization that helped underwrite the expense of running that effort. Civil service employees owe nothing to the political parties for their jobs and, not unexpectedly, contribute little to the political parties. In fact, many states discourage political involvement by civil service employees.

The *strong-mayor* form of municipal government, with the mayor empowered to fill many positions by appointment and given a major role in taxing and spending decisions, was also a part of the reform movement. This practice clarified who was responsible for government actions. It also better protected important agency heads, such as the police chief, from politics by making them appointed. With fewer officials to elect, the ballot would be shorter, so this reform is often referred to as the *short-ballot* reform. Later, reformers advocated both the commission form of government, with less competition between the legislative and executive branches, and the professionalism of the city manager in the manager/council form of government.

In order to weaken the power of ward heelers, municipal reformers wanted city council members to be elected from citywide elections in which all could cast a vote. These *at-large elections* were originally used to defeat political machines. Later, political leaders in the South effectively used at-large elections to guarantee blacks could win no elections. Blacks were a concentrated residence minority. They would be influential and could possibly win elections contested in districts. They could little influence and never win citywide at-large contests.

At-large elections deny minorities the representation on city councils that would be expected given their percentage in the community. Federal courts have forced district elections both on city councils and, more recently, on school boards. These efforts improved minority representation in local government. Today, 66 percent of cities use at-large elections, 17 percent use district elections, and 17 percent use a combination of the two.¹⁵

Cities with populations of 250,000 or more tend to have at-large elections.

Just 54% of mayor-council governments use at-large elections, while 70% or more of the other government forms do. The highest use of at-large elections is found in the Pacific Coast (89%) and in New England (81%) cities.¹⁶

Election form in municipalities is no longer strongly related to minority representation. The percentage of minorities on city councils is now related to the percentage of minorities in city populations.

Finally, the requirements stating that one needed to **register** to vote and had to be a *citizen* to register greatly reduced the votes available to machine candidates. Eliminating urban machines was never the explicit goal of reformers. Instead, reform was advocated to reduce corruption and to improve efficiency in cities. It is not self-evident that a registration or citizenship requirement for voting does either. It is clear that both hurt urban machines.

The political machines died in U.S. cities. The machines may have not been viable in the long run. Immigrants swiftly acculturated into U.S. society and moved past the need for the organization provided by the machine. Wealthier citizens might have regained political power without reforms. Machine politics was not all bad.¹⁷ The Reformers' efforts may have taken municipal government away from the public and made it less democratic.¹⁸

Metropolitan Difficulties

Following World War II, there was an explosion of movement by American families. Some moved from the rural South to the urban North seeking jobs. Probably the most significant movement, however, was from the older and decaying neighborhoods of central cities to newly developed residential areas surrounding those cities—what became known as the *suburbs*. The availability of the *automobile* made it possible to travel relatively long distances to work, making it possible to live in the suburbs and work in the older core city. The *long-term graduated repayment mortgage* made it possible for more to own homes. The federal government's program to guarantee such home loans for veterans fueled the growth of suburban popula

tions. It was the middle class that could afford such a move, and move they did, in great numbers.

While the suburbanites fled the old core cities for the green grasses of the suburbs, they were accustomed to local government services, such as streets, sewers, schools, and police protection. The rural areas to which they moved, where crops were often viewed as more important than schooling, had not been providing these services, except for public schools. Demands were made for changes.

Most states provide for easy organization of such areas as new municipalities (a process called *incorporation*). Most states also discourage *annexation* by older municipalities of urban concentrations around them. So with some exceptions, such as Texas, incorporation is easy around central cities, and they can seldom annex newly developed areas. Our older cities, as a result, are surrounded by substantial numbers (often many hundreds) of small, incorporated suburban municipalities, each seeking to provide municipal services where none have been provided before.

Because of their substantial number and diversity, one could shop for a suburb that most closely corresponded to one's current or aspired station. One could seek a well-to-do Anglo community, a less well-to-do Anglo community, a middle-class Polish community, or an Italian community. Nearly all of these communities, however, lacked the size or wealth to deal with many of the problems that they soon faced. Where was an adequate water supply to be found? Where was the money to build a new high school? How was sewage to be disposed of? Who would pay for new arterial highways to speed workers into the city where they worked?

We refer to these numerous but insufficiently large governments in suburban areas as *fragmented governments*. They typically result in inadequate municipal services provided at high expense. Most avoid redistributive services. The poor are in other municipalities. There is redistribution from newer and wealthier to older and poorer municipalities only if the state provides it.

Texas allows most municipalities to annex adjacent surrounding areas by a simple majority vote of the city council doing the annexation. Furthermore, each city can announce its intent to take in land as far as five miles away, and no incorporation is allowed within that area. The Texas approach

might have prevented the fragmentation in metropolitan areas found in other states. Unfortunately, such annexation cannot take place retroactively.

A second rarely used solution was city/county consolidation. Many U.S. cities and counties held votes to do so, but most lost.¹⁹ The idea was simple. Most of these fragmented municipal governments and the central city that they surrounded were in a single county, which made county government more like one big municipality. This would not work in metropolitan areas located in multiple counties. Nor would it work where metropolitan areas overlap multiple states or even into another country. City/county consolidations no longer have many advocates.²⁰

There were other impediments to consolidation. One was opposition to the racial integration involved in joining white suburban areas with black core city areas. A second was the unwillingness of suburban residents to see their tax money paying for central city facilities. A third was the general hostility toward the central city and its politics that fueled the reform movement. These and other challenges contributed to the failure of this solution.²¹

It should be noted that such consolidation would have made municipal government larger and more remote. A positive aspect to fragmented government is that dissatisfied residents have more options to move to where they prefer the politics. As mentioned in Chapter 1, this practice is called "voting with your feet." Multiple distinct suburbs in the same area act as a supermarket for those considering relocation.

Creating *special districts* has emerged as an alternative to just living with fragmentation. When multiple suburban municipalities join to provide water, sewer, recreation, or transit district services, they have the scale to deal with the problem financially. The geographic area that they cover also may be sufficient to deal with many problems, such as finding a waste disposal site or a way to dispose of effluent from sewage. Finally, special districts eliminate much of the difficult and time-consuming bargaining required when municipalities cooperate with each other. As we saw earlier, special districts have proliferated since the 1950s.

Special districts and more ad hoc solutions, such as metropolitan planning agencies and councils of government, have partially coped with our

fragmented cities. Nevertheless, it still is the case that most metropolitan areas barely cope with day-to-day problems. Most metropolitan residents complain about congestion, poor or nonexistent services, and high government expense. There are no simple administrative or organizational solutions to these complex problems.

Democracy in Local Government

In Chapter 6, which deals with how people vote, we noted that there has been no systematic study of how people vote in local elections for the city council, school board, or county commission. We know from aggregate information, such as the number of votes cast and simple mass media accounts, that local elections suffer low public participation and involvement. The best additional information about the state of elections and democracy in local government comes from three sources: (1) surveys by the International City Management Association; (2) a study of city council members in 87 San Francisco Bay Area councils; and (3) a study of 35 Texas cities’ city councils and school boards and a follow-up study of 121 randomly chosen cities nationwide.

Local Elections

The International City Management Association has several times solicited questionnaire responses from cities concerning their city council and mayoral elections as well as on turnout in such local elections. Incumbent advantage is evident in U.S.

cities, since 72 percent of incumbent city council members seek reelection and 78 percent of them win; mayors have slightly less success.²² Later data show that 63 percent of incumbent mayors seek reelection and 85 percent win.²³ These rates are quite comparable to those noted in state legislative contests.

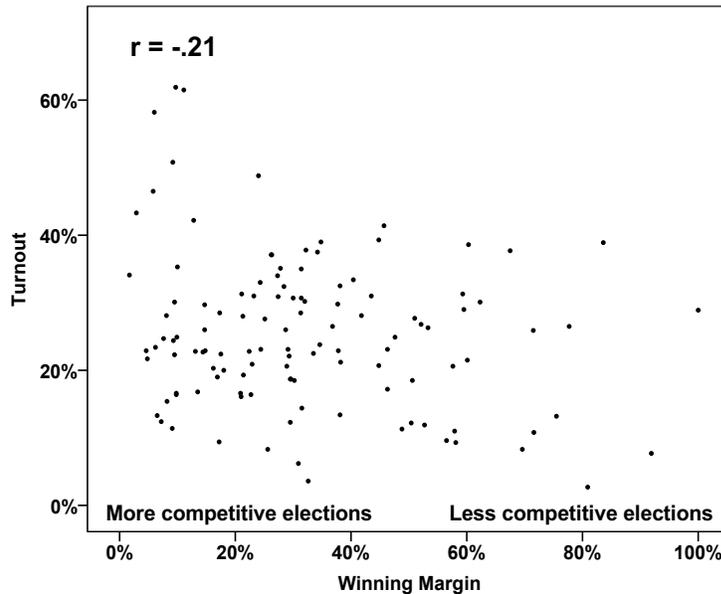
Nearly all (83 percent) of local elections are held at a time other than that for state and national elections. As a result, turnout is low, averaging 26 percent.²⁴ Overall, there would appear to be little potential for electoral accountability in our cities. Few vote, and incumbents overwhelmingly win. Council members typically devote several evenings a week to their duties for a 2 or 4-year term. Most city council members serve with little or no pay. The average member of a city council in the 1992 survey received \$7,600, but about 13 percent receive pay lower than \$500 per year.²⁵ Only in the largest cities can one make a living as a city council member. Certainly, there is prestige associated with being called “the honorable” or just “councilwoman” or “councilman.”

There are also negative aspects to being on a city council. No matter what the decision, some people want to complain or lobby for future actions. Many citizens feel it is their right to call council members to register complaints about garbage pickup, stray animals, annoying neighbors, and other imperfections that may or may not be within government purview. Many smaller cities cannot afford to buy insurance to protect individual members who are sued for council actions. Service on a city council does not bring wealth and fame. It

Figure 8.4
Electoral Competition For City Council in American Cities

	Minimum	Maximum	Average
Average winning percent of vote	2%	100%	32%
Candidates per seat	1.0	6.8	2.3
Percent of incumbents running for reelection	29%	100%	70%
Percent of incumbents winning	0%	100%	70%
Eligible adults voting	3%	62%	25%
Average years on city council	2.9	12.8	7.2

Figure 8.5
Competitive Elections and Turnout



is more likely to result in the opposite. Perhaps so few run because it is a thankless job.

Volunteers

The San Francisco Bay Area study of the motives of city council members is the most inclusive undertaken so far. It has two shortcomings, however. First, it centers on the overall characteristics of the 87 communities involved, ignoring variations. Second, California is probably unrepresentative of the United States. In New England, municipalities have responsibilities across a very broad range of services including public education. As one goes west and south, municipal governments shed services to special districts—beginning with education, as independent school districts are established.²⁶ California, with its sprawling suburbanization, represents the culmination of this trend; few services remain for municipal government, making serving on a city council largely symbolic. Thus, perhaps the most striking finding from this study, the eagerness of city council members to leave office, is explained by the irrelevancy of those offices.

Most Bay Area council members were first involved in voluntary civic roles, where we do not expect much public accountability. A sense of civic duty may drive people to volunteer for activities,

such as serving on the United Fund or the zoning board.²⁷ Volunteers do not expect criticism for the actions they take to serve the community. Additionally, about 12 percent run for office to repay the community for their successful businesses. About one-fourth are initially appointed, 80 percent win reelection, and given low turnouts, so few votes are necessary to win that an extended circle of friends can win the election for a candidate.²⁸ Finally, only about half say they will again seek office, and most who do will seek only one additional term to complete a project.²⁹ These council members seem mainly “volunteers,” who seldom face electoral challenge and who are unlikely to feel any obligation to constituents. They are only in office out of civic duty or for the praise of doing something for the city. Lacking ambition both for reelection and for higher office, they seem beyond public accountability.

If all of these characteristics were to apply to other elected officials, we might question whether democracy can function. It seems unlikely, however, that there is so little ambition for continuing in public office or moving up to higher offices in state legislatures or in the halls of Congress. Maybe these cities are unrepresentative of others across the country. Local officials thus might be the least responsive elected officials—certainly not what we might expect from the government closest to

the people.

Competition at the Local Level

A study of Texas local elections in 1985 found that members of city councils and school boards were not all volunteers.³⁰ Perhaps what was most surprising in this study was the variation found in Texas. Using these same measures of competition in a national study of 118 randomly chosen cities, Luttbeg found the results shown in Figure 8.4.

In two complete rounds of municipal elections, one city council's members won narrowly by only a 2 percent margin, while another city never saw any competitions for any of its candidates. The number of candidates vying for council seats ranged from one to 6.8. On average, there were 3.5 candidates in each election. Overall, the average winning margin was 32 percent, suggesting that strong challenges and close elections were rare.

Incumbents fared differently in the sample cities. While on average 70 percent of city council members ran for reelection, in one city only 29 percent of incumbents sought reelection in two complete rounds of elections. However, in several cities, over two rounds of elections all incumbents sought reelection.

Similarly, 76 percent of incumbents seeking reelection won. The variation was the greatest possible. In one city, incumbents never won. At the other extreme, in another city, all incumbents seeking reelection won.

Turnout varied greatly, also. While the average turnout of those eligible to vote was just over 25 percent, one city saw only 3 percent voting, while another experienced a 62 percent turnout. Finally, city council members served an average of 7.2 years. Averages for individual cities ranged from 2.9 to 12.8 years.

The variations evident in this study are useful because they allow assessment of how competition might be increased and what impact competition has on political systems. Although overall competition may not be evident, there are some competitive communities. Moreover, the complexity of competition underlines that political science lacks clear understanding of what is important. Do we want to encourage incumbents to seek reelection with the resulting dearth of challengers and low turnout but with occasional losses? Or do we want

to discourage reelection efforts, thereby promoting elections with open seats, multiple candidates, and higher turnout?

Figures 8.5, 8.6, and 8.7 describe the impact of competitive elections using an average winning margin in each city's election as the measure of competition. This competition measure is correlated with voter turnout, city taxes per capita, and expenditures per capita. Only the correlation between average margin and turnout is statistically significant.³¹ The negative correlation in this graphic means that cities with smaller margins—closer elections—have higher turnout. Citizens vote more where elections are close. The correlation coefficients for city taxing and spending are small and not significant. The size and scope of government are unaffected by how competitive elections are.

Until we have larger sample studies of local elections, we cannot assess how common volunteerism might be or what might reduce it, or whether or not we should want to do so. We also need more empirical evidence to assess the potential role of competition in city and school board elections.

State and Local Government Relations in Texas

One of the defining elements of Texas Conservatism is the principle that, whenever possible, states should make decisions rather than the federal government and local governments should make decisions rather than state government. Contemporary Texas statewide elected officials, all members of the Republican Party, frequently articulate the tenet that government that is most local governs best. For that reason, it is particularly noteworthy when Texas state officials consider whether or not to transfer authority to make certain decisions from local to state government.

Fracking

In November 2014, the City of Denton became the first Texas municipality to ban oil well fracking, hydraulic fracturing frequently used in combination with horizontal drilling, when residents voted overwhelmingly in favor of a ban. Opponents of fracking made it clear that they were not opposed to oil drilling in general—Denton had nearly 300 wells within city limits. They were not opposed to

Figure 8.6
Competitive Elections and Taxes

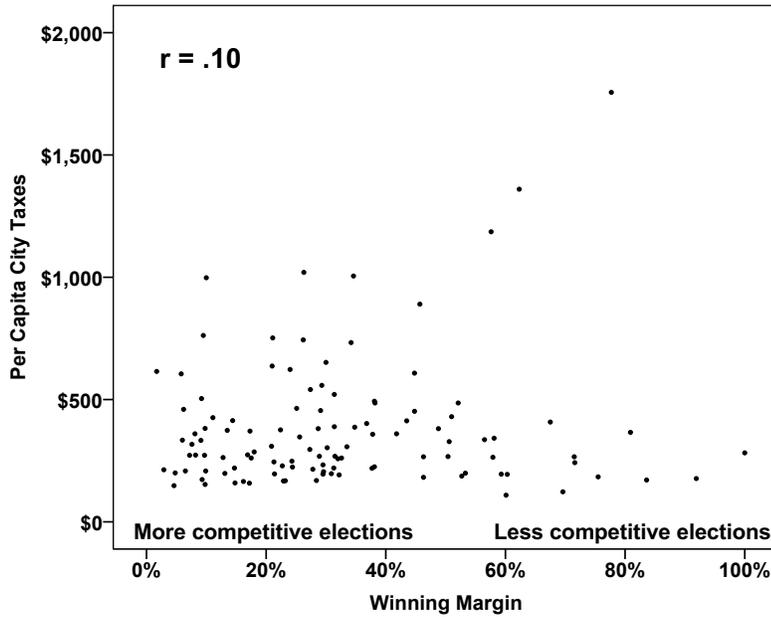
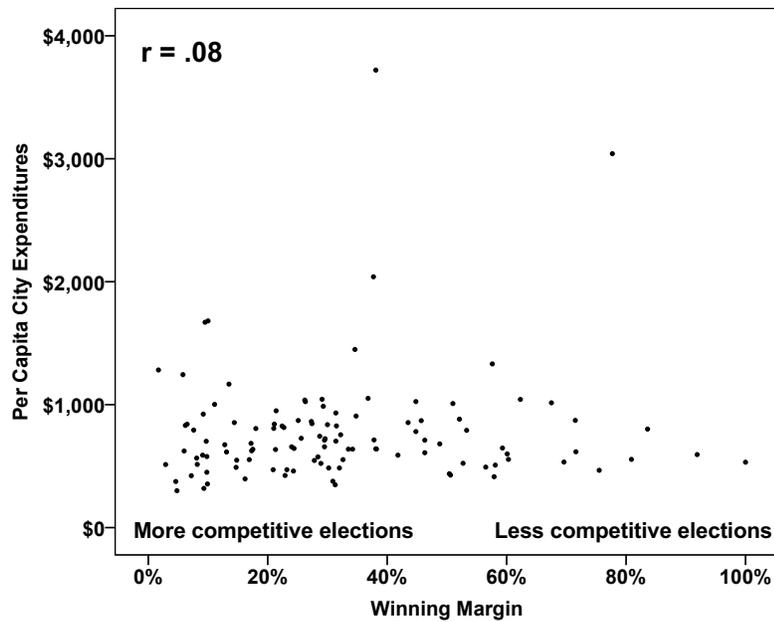


Figure 8.7
Competitive Elections and Expenditures



fracking per se, they were concerned by the prospect of a neighborhood being sandwiched by two gas well pad sites. “It was when people saw how close to homes they were drilling that we realized we had to look after each other here,” said Dr. Adam Briggie, a Denton resident and an environ-

mental studies professor at University of North Texas.³²

While Denton was the first to ban fracking, it wasn’t the first to ban drilling within city limits. That practice goes back years according to a survey by the Texas Municipal League that showed

about 30 Texas municipalities had general bans on drilling. Bastrop's ordinance banning drilling has existed since 2007. City Manager Mike Talbot said, "It's not something you want in a residential neighborhood. They're bringing those big rigs in, and it could be dangerous or cause a problem, so that's why a lot of cities have that ordinance."³³

The day after the Denton ban was passed, two lawsuits were filed in Austin. "What was at stake here were the rights of those families, mineral owners, that were being denied access to their property which is protected under the U.S. constitution," said Todd Staples, President of the Texas Oil and Gas Association. Staples was arguing that the property rights of mineral owners who do not live near well sites should supersede the property rights of homeowners and residents who do live near well sites.³⁴

Staples and others successfully lobbied the Texas Legislature to pass a bill in May 2015 that, in essence, prohibits bans on fracking. The Texas Legislature and Governor apparently agreed that the rights of mineral owners should take precedence over the rights of homeowners and residents. This conflict over property rights may ultimately be decided by Texas state courts or by federal courts.³⁵

Despite the principle of local control and despite the fact that other Texas municipalities banned oil drilling within city limits entirely, Denton was not allowed to ban one kind of oil drilling to protect a particular neighborhood. The 2015 law passed by the legislature does not prevent Texas local governments from continuing or starting to prohibit drilling in general.

Bathroom Use

In a one-day specially convened session on March 23, 2016 North Carolina's legislature passed a sweeping law that reversed a Charlotte ordinance that had extended some rights to people who are gay or transgender. The law passed by the General Assembly and signed that same night by Gov. Pat McCrory goes further than a narrow elimination of Charlotte's ordinance, which had generated the most controversy by a change that protected transgender people who use public restrooms based on their gender identity. The new law also nullified local ordinances around the state that would have

expanded protections for the LGBT community.³⁶ This action by North Carolina ignited a nationwide controversy over bathroom use despite no evidence that there were problems with individuals' choices of bathrooms in Charlotte, in North Carolina or in the United States. The status of legislation in the states is depicted in Figure 8.8.

On May 9, 2016, Texas Lt. Governor Dan Patrick called for the resignation of Fort Worth Independent School District Superintendent Dr. Kent Scribner over guidelines outlining bathroom use. "Campus safety should be of paramount concern for anyone in his position," Patrick said in a statement. "Every parent, especially those of young girls, should be outraged."³⁷

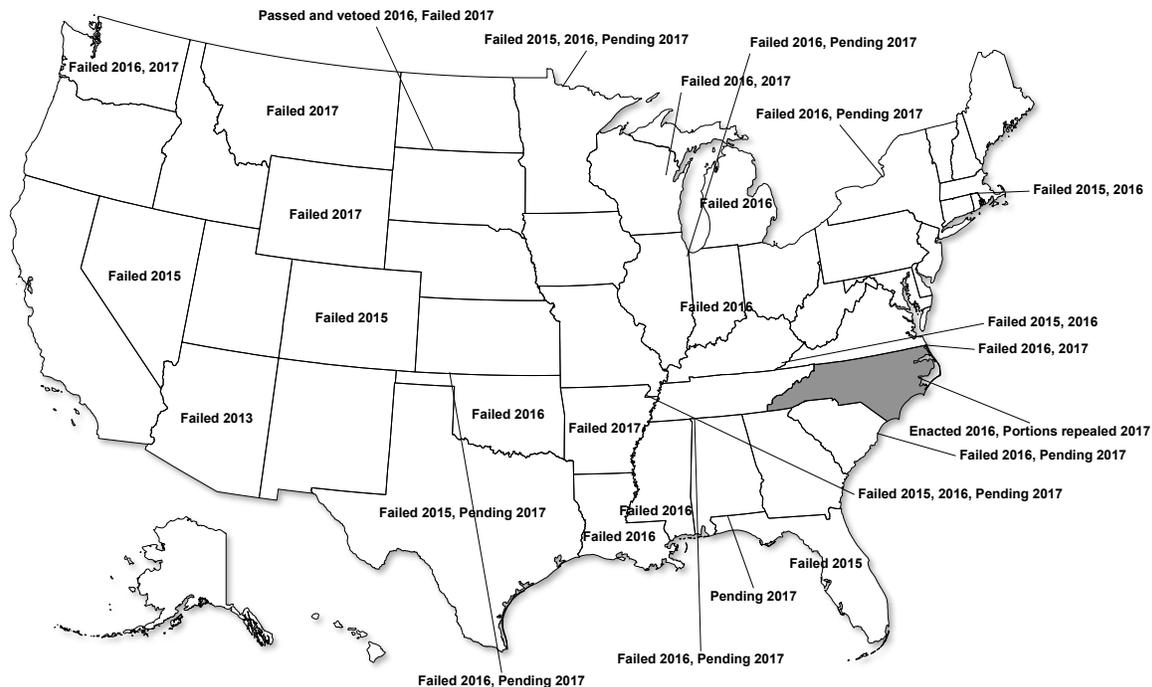
The Fort Worth Independent School District guidelines specified that schools must ensure students feel safe in their restrooms. If a student is uncomfortable using the bathroom with a transgender peer, the school must let the student use a single-stall restroom, a gender-neutral bathroom or a restroom where no one else is present.³⁸

The Fort Worth ISD had been discreetly handling the bathroom gender issue in the same way for at least 16 years without any problems, according to a district official who explained the history of its background. The issue comes up perhaps "one time a year" in a district with tens of thousands of students. The Fort Worth ISD policy was adopted in 2011 with extensive public input, according to former City Council member Joel Burns. A school official said the 2011 policy was strengthened as a result of an anti-bullying campaign launched nearly a decade earlier. The anti-discrimination policy adopted by the district in April 2014 specifically addressed gender identification.³⁹

Fort Worth School Board President Jacinto "Cinto" Ramos issued a statement in response to criticism of the school district by Lt. Governor Patrick and individuals and groups both inside and outside the school district. "Rest assured, the safety of ALL children is our highest priority on the Board. We are completely capable of handling this in Fort Worth. We are applying the existing policy to make sure ALL children feel safe at school. We are here to look out for ALL children; not some, not most, but ALL children."

On May 30, 2016, Lt. Governor Dan Patrick on Tuesday escalated his battle against guidelines

Figure 8.8
Status of “Bathroom Bill” Legislation 2017



in Texas and across the country that allow students to use the bathroom that corresponds with their gender identity. Patrick announced a number of new moves in the offensive, including a request for an opinion from Texas Attorney General Ken Paxton on whether the Fort Worth Independent School District broke the law when it adapted such guidelines. Patrick also said he was sending a letter to all Texas school districts advising them to ignore a similar directive issued this month by the federal government. Throughout his remarks, Patrick suggested that state lawmakers would have to step in if Fort Worth ISD did not reconsider its actions. He also repeatedly pushed back on the idea that he was intruding on a local matter, saying it was “this superintendent and school board that is prohibiting local control.”⁴⁰

Texas Attorney General Ken Paxton actively sought to bring a case against the federal government. Three days after the federal government released guidelines instructing school districts to let transgender students use the bathroom that corresponds with their gender identity members of

Paxton’s staff approached the Wichita Falls school board about pursuing a lawsuit on May 16. Board members ultimately decided against passing a policy that would make them party to a lawsuit against the federal government. Wichita Falls Superintendent Michael Kurht agreed with the school board, citing legal council that the school district’s current policies were in compliance with the new federal guidelines.⁴¹

Ten days after the Wichita Falls board meeting, Paxton announced that he had filed a lawsuit against the Obama administration to protect a different North Texas school district. At the same press conference, Harrold Independent School District Superintendent David Thweatt said the attorney general approached him about the policy, which his school board adopted three days earlier.⁴² The school board unanimously passed a policy that mandated students use the bathroom that corresponds to their gender at birth.⁴³

The Harrold school district has never had a transgender student among the 100 or so who attend as far as anyone can remember. But school

officials decided to pass a policy limiting bathroom access based on a person's birth certificate anyway.⁴⁴ Alabama, Wisconsin, West Virginia, Tennessee, Arizona's Department of Education, Maine Gov. Paul LePage, Oklahoma, Louisiana, Utah and Georgia joined Texas in the suit against the federal government. President Trump abolished the federal guidelines on bathroom use in public schools shortly after taking office in 2017.

After the elimination of the federal guideline and North Carolina's repeal of its bathroom bill, Lt. Governor Patrick made passing a bathroom bill one of his highest priorities for the 2017 regular legislative session. The Texas Senate approved such a bill, but the Texas House expressed concerns about economic problems in North Carolina and did not pass a bathroom bill. Governor Abbott included "privacy" to the agenda of a special session he called to begin July 18, 2017. Again in the special session, the Senate approved a bathroom bill and the House did not.

Ride Hailing

Municipal governments have had longstanding, unquestioned authority to regulate taxi services doing business within their boundaries. They have chosen to impose insurance requirements and mandated background checks on drivers before employment such as submitting fingerprints and checking for criminal records. Uber, Lyft and other ride hailing businesses claim to have a business organization distinct from taxi services. Taxi services hire drivers as employees; Uber and Lyft say their drivers are independent contractors. These new ride hailing services say their role is only linking potential riders with independent contractors and they are not responsible for employment benefits or extensive background checks of contractors.

Uber and Lyft have lobbied the Texas Legislature to eliminate local government oversight of their businesses. In its 2015 session, the Texas Legislature passed statewide insurance requirements, and forbade municipalities from imposing additional insurance requirements. The Texas Legislature considered but did not pass legislation concerning issues such as background checks.

Midland, Galveston and Austin passed specific requirements for fingerprinting and background checking, applying standards comparable to those

for taxi services to Uber and Lyft. The Austin decision was made by popular vote, and the new ride hailing businesses spent millions of dollars to defeat the proposals and also threatened to stop doing business in Austin. When they lost, they made good on their threats and ceased operations.⁴⁵

Several state leaders intend to consider whether there should be uniform state policy rather than local control. The Legislature has tried before — and failed — to come up with statewide regulations sought by industry heavyweights Uber and Lyft to free them from conflicting local rules. But the recent decision by voters in Austin — the conservative state's liberal capital — to reject rules sought by the ride-hailing giants has been a rallying cry for lawmakers. In its 2017 regular session, the Texas Legislature created a regulatory framework for ride-hailing companies overriding local measures.⁴⁶

Conflict Over Local Government Authority

For many state officials in 2017, the politics of state and local government in Texas took the form of state versus local government. "We don't live in a democracy," said Senator Don Huffines, R-Dallas. "All the authority cities have comes from the Legislature. They exist by the mercy of the legislature. So we have a distinct role in overseeing all political Subdivisions that we create, and we've got to make sure that they don't trample economic liberty, personal liberty and freedoms."⁴⁷

Representative Phil King, R-Weatherford, submitted a bill in 2017 that would require local governments to seek permission before putting initiatives on the ballot. Senator Huffines submitted legislation that said: "Unless expressly authorized by state statute, a local government shall not implement an ordinance, rule or regulation that conflicts with or is more stringent than a state statute or rule regardless of when the state statute or rule takes effect."⁴⁸ Neither passed, but they did get the attention of local government officials throughout Texas.

The politics of financing public K-12 education in Texas is perhaps the best example of state versus local government. Texas lawmakers have been steadily cutting the state's share of public education costs for more than a decade. In 2007, the state paid about 45 percent, the federal government paid about 10 percent and local school districts paid the

remaining 45 percent. In 2017, the federal share was still about 10 percent, but the state's share slipped to 38 percent and the local share — the share that's financed by that notoriously unpopular property tax — had risen to 52 percent. During the regular legislative session that ended in June 2017, state lawmakers approved a new two-year budget that spends less state money per public school student than the last budget.⁴⁹

In the special session he has called for July 17, 2017, Governor Abbott has asked the legislature to require school districts to increase teachers' salaries by an average of \$1,000 and pay for it with local funds. He has also asked the legislature to make it more difficult for other local governments to increase property tax revenues. Limiting local governments' property tax revenue is also a major goal for Lt. Governor Patrick. Texas has shifted to local governments the cost of programs formerly paid by the state, required local governments to spend even more, and then blamed local governments for raising more revenue from property taxes.

Texas' political leaders are unequalled in complaining about "federal overreach" and "unfunded federal mandates." They are among the first to sue the federal government to slow or reverse its policies. They seem much less concerned with the possibility of "state overreach" or "unfunded state mandates" as seen by Texas local government officials and Texas residents.

Summary

1. Although the institutional formats of our national and state governments differ little and are seldom changed, government at the local level is often altered and varies greatly.
2. Local governments include city or municipal governments, county governments, school district governments, and other special district governments.
3. Much of the change in local governments is directed toward improving efficiency and effectiveness and reducing corruption in government. There are many reforms that have been in favor at different times, but the "reform movement" of the late 1800s and early 1900s is most credited with

reforming our cities.

4. Strengthening the role of the public in government, or at least part of the public, is an explicit goal of local government reform. Most often, reforms seek reducing the role of politicians and enhancing the role of "better" elements of society, such as businessmen, women, and developers.
5. The little we know about how local governments differ suggests minimal causal impact of institutions on their elections, politics, or policies.
6. The principle of government closest to the people governs best is always supported in principal by Texas state officials but not always practiced.

Information Sources

Figure 8.1	American Fact Finder 2013 State & Local Summary Tables by Level of Government http://www.census.gov/govs/local/
Figure 8.2	American Fact Finder 2013 State & Local Summary Tables by Level of Government http://www.census.gov/govs/local/
Figure 8.3	NA
Figure 8.4	Norman R. Luttbeg, <i>The Grassroots of Democracy: A Comparative Study of Competition and Its Impact in American Cities in the 1990s</i> (Lanham, MD: Lexington Books, 1999)
Figure 8.5	Norman R. Luttbeg, "Multiple Indicators of the Electoral Context of Democratic Responsiveness in Local Government," a paper presented at the annual meeting of the Midwest Political Science Association, 1987
Figure 8.6	Norman R. Luttbeg, "Multiple Indicators of the Electoral Context of Democratic Responsiveness in Local Government," a paper presented at the annual meeting of the Midwest Political Science Association, 1987
Figure 8.7	Norman R. Luttbeg, "Multiple Indicators of the Electoral Context of Democratic Responsiveness in Local Government," a paper presented at the annual meeting of the Midwest Political Science Association, 1987
Figure 8.8	http://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx

Study Guide, Chapter 8

Essay Questions

1. According to the text, “local governments are in the construction business.” Explain and give examples. Do local governments compete with private sector construction companies? Why or why not?
2. In Texas, some school districts have “Independent” as part of their names and some have “Consolidated” as part of their names. What are the independent school districts independent of? What was consolidated to create a consolidated school district? Explain how independent and consolidated are important concepts in the history of American public school districts.
3. What are special districts? How are they created? Why do you think they are increasing in number more than all other local governments?
4. Compare and contrast the benefits and risks of merit-based systems of government employment with government employment systems without formal “merit requirements such as many states and localities currently have. Which system better reflects contemporary expectations of American governments? Explain why, specifying whether your answer varies by level of government.
5. What is the problem of fragmented local governments? Discuss three approaches to coping with difficulties caused by fragmented local governments. Can each approach be implemented throughout the United States? Why or why not?
6. In what ways are local elected officials such as city council and school board members more like volunteers than like local employees or like career politicians? Are Texas Aggies more likely than most to serve on city councils and school boards? Why or why not?
7. Texas state officials claim to prefer local governments making decisions rather than state government. Yet, Texas might be transferring authority from local governments to state government in issues such as banning oil fracking and bathroom use in public schools. Under what circumstances should state officials reduce the authority available to local governments? Under what circumstances might local government officials want state officials to reduce the authority of local governments?

Multiple Choice Questions

1. In the major/council form of government, “strong” mayors have _____ powers.
 - a. budget
 - b. veto
 - c. substantial formal
 - d. all of the above
2. In the council/manager form of government, city managers are _____.
 - a. elected
 - b. appointed by the mayor
 - c. appointed by the city council
 - d. appointed by the county judge
3. Which of the following is true about school districts?
 - a. The number of school districts has increased since World War II.
 - b. The number of school districts has decreased since World War II.
 - c. The number of school districts has remained the same since World War II.
 - d. There are no more independent school districts in the country.

4. Which of the following is not a form of local government in the United States?
- a. counties
 - b. school districts
 - c. special districts
 - d. all are forms of local governments in the United States

Notes

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- 20 David Rusk, *Cities Without Suburbs* (Washington, DC: Woodrow Wilson Center, 1995).
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42 <https://www.texastribune.org/2016/05/26/paxton-shopped-transgender-policy-second-school/>. There was widespread speculation that Attorney General Paxton sought a school district in North Texas so a lawsuit could be filed in the district of a federal judge more likely to rule in his favor. Careful analysis of where to file a lawsuit is called forum shopping and has become routine throughout the United States.

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Chapter 9

LEGISLATING POLICY AND REPRESENTING THE PEOPLE

In the next three chapters, we will focus on the three branches of state government. Much of what will be said applies also to our national and city governments. It might seem familiar from prior courses. Since our declaration of independence from England, the legislative branch has held center stage in our thoughts about government. We remain committed to the principle of “no taxation without representation.” The legislative branch provides the requisite representation for American governments to assess taxes and fees. We will consider it first.

The Functions of the Legislature

Like any institution, the legislature exists for a purpose. As we noted earlier, many institutions have seen their functions become more numerous and more complex as our society became more dependent on first municipal, then state, and, finally, federal or national government. Let us consider the functions of contemporary state legislatures.

Representation

Long ago, all people in a society could meet to consider how to deal with a problem. Each person could be heard, critical comments could be considered by all, and, with a pressing problem, a quick decision could be made. Hopefully, all would agree afterwards that they approved of the action taken. If needed, majority rule might have to resolve which actions to take. All in such a gathering could suggest solutions, participate in the debate, vote for the best options, and, having had their say, feel some obligation to comply with the group decision.

Of course, those who spoke without being informed or logical might be embarrassed when

others pointed this out. Probably, they would seek to be informed in the future or at least not to speak out when uninformed.

Such meetings were common in early Greek society and exist today in the town meetings of New England. Starting in 1992, at least one of the debates between the Republican and Democratic nominees for President of the United States use a format characterized as “town hall.” The presidential town hall debates have only one thing in common with the meetings described above: audience members could pose questions. Unlike legitimate town hall meetings, questions asked of presidential candidates were screened and selected by a moderator. Prior to every debate, candidates agreed on rules that strictly limited interactions, and audience members made no decisions.

At some point, a society gets too large and problems become too complex or too pressing for all to participate directly in making decisions. Some individuals must make governmental decisions for the others. We call these specialists in governmental decision-making representatives. They provide representation for the others in making society’s decisions. The Founding Fathers called such representative government “republican” government.

Representative government brings with it many troublesome concerns. Should representatives vote on the basis of their informed personal opinions or of those of their constituents? What is the constituent’s obligation to comply if his or her representative did not vote as the constituent preferred? Does a majority decision by the representatives equal a majority decision among the constituents? In other words, is the decision representative? And how do we ever know whether a decision is representative or not?

Making Laws

A key function of the legislative branch is to make law. All state legislatures make statutory laws, and most play a significant role in amending state constitutions. The executive and judicial branches play roles in implementing and interpreting laws. But those roles come after the legislative branch has acted. Representatives must have information before they can make good law. Such information may be provided from a variety of sources, including legislative staff, bureaucrats, interest groups, and citizen volunteers. Public hearings provide another opportunity for those concerned to engage legislators, present opinions, and propose solutions. Legislators then engage in further deliberations through committee meetings and meetings of the entire chamber. Finally, at least a majority of those voting in each legislative chamber must agree to an identical bill. Bills that pass state legislatures become law unless vetoed by the governor. In some cases, legislatures can override vetoes with supermajority votes in each chamber.

We should note that the laws made by legislators need not solve problems, or even be sincerely intended to solve problems. Laws may have symbolic importance but no substantive impact. One example is when a legislature authorizes programmatic change or a new program but does not provide necessary funding. Another is when a legislature prohibits certain behavior but imposes no penalties and provides for no enforcement. Observers commonly assume insincere and strategic behavior by legislators is intended to help them win reelection or maintain good political relations.

Constituent Service

Legislators provide constituent service when they help individuals and groups from their districts. This usually involves helping a constituent with unresponsive or negative bureaucracy, seeking relief for a constituent who was hurt by a law, or just communicating with a constituent who opposes a law. Thus, an individual charged too much in income taxes, a local restaurant owner who thinks a no-smoking law costs him too much, and the voter who opposes abortion all might seek services from a representative. The websites of state legislatures have “find your representative” pages. Individual

legislators’ home pages invite district residents to send messages with a single click.

State legislators have staffs that seek to respond to all communications. Staff also coordinate meetings, arrange tours, and welcome visitors. They also write to congratulate district residents on achievements such as success in athletic and other competitions, retirements, wedding anniversaries, and other significant life events reported in local newspapers. Sometimes members introduce resolutions that the legislature recognizes these achievements. These resolutions pass unanimously without serious consideration. Then, their representatives send copies to those being honored. Constituents regard these activities as gestures of recognition and respect. Legislators know their prospects in future elections are enhanced by all forms of constituent service.

Bringing Government Funds to the District

State government, as we saw in the first chapter, spends many billions of dollars providing or helping to provide services. A legislator who gets a disproportionate percentage of those dollars spent in his or her district might receive overwhelming support in the next election. Perhaps this and the previous function should be combined under the function of seeking to assure the reelection of incumbent (those presently in office) legislators.

State legislators are as active as members of Congress in seeking funds and programs to benefit their districts. Members of Congress typically take advantage of every opportunity to take credit for anything that boosts their districts. State legislators seem less inclined to do so. This leads to the question of why this is so. Perhaps state legislators feel more confident of their reelection and do not bother, or perhaps it is just the culture of Congress.

Legislators as Representatives*Geographic Representation*

Legislators throughout the United States and indeed in all democracies are chosen from districts defined geographically. Sometimes the districts are the states, such as for U.S. senators, governors, and other statewide executives. Most often, the districts are local or small portions of states, typically with

populations of below 500,000. State legislatures establish their own districts and the districts for members of the United States House of Representatives. Legislative bodies for counties, municipalities, school districts, and other local governments set their own districts.

Districts defined by geography date to a time when they were the only workable solution for selecting representatives. We should remember that in earlier times, many if not most constituents were illiterate, so only face-to-face communication could be effective. Candidates could not rely on newspapers or campaign literature to reach voters. The broadcast media, radio and television, had yet to be invented. Only if districts were small enough for voters to gather to hear the appeals of candidates could they communicate. They often did this in a picnic or by staging a debate. Similarly, voting required physically gathering people in polling places to cast their ballots. The information, communications, and transportation technologies of the 18th century made geographically defined districts the only alternative. They have been used ever since.

The U. S. Constitution specifies that each state shall have two senators. Seats in the House of Representatives are to be apportioned among the states according to population. Today, total population is used for apportioning House seats to the states, and we typically think of legislators as representing the people in their districts. Not only has this not always been the case, it is a relatively recent development. States originally set their own criteria for congressional and state legislative districts. Single-member congressional districts were not required until 1842. Population was added in 1872, but equality did not become a concern until the mid-1960s.¹

Compactness and *contiguity* were required for congressional districts starting in 1901. Briefly, *compactness* means that the district should closely match a square or rectangle, the most compact way to divide geographic area. This was an easy standard to meet because land was platted by local governments into square and rectangular sections. Counties typically also had these shapes. *Contiguity* means that all portions of the district must be in contact with each other. Districts are not contiguous if they have a little portion here and another several miles away. States added their own

requirements to geographical legislative districts. A common requirement was that districts not divide counties or municipalities.

Geometric compactness is no longer an important consideration for legislative districts. It was never specifically defined and enforced as a requirement. Contiguity remains the only spatial requirement for contemporary geographic districts.

Problems of Geographic Representation

The costs or liabilities of geographic representation were not great at one time. When government did not do much, there was little cost to gathering the necessary information to cast an informed vote and little reason to bother. Even the costs of being uninformed or misinformed were minor. Moreover, in a district where most grew their own food, natural events, such as the lack of rain, poor soil, or threatening insects, would affect all equally. In modern society, however, we pay high costs for geographic selection of representatives.

Chief among these costs is the difficulty of representing a *heterogeneous* district rather than the more *homogeneous* districts that once were common across the country. With a complex economy, most geographic districts now include constituents who share unanimously few views, if any. They are not equally affected by either natural events or by government policies directed at such events. A district may include poor farmers eager to sell their products at high prices and poor workers eager to buy farm products at low prices. It may contain many unemployed workers hoping to have extended unemployment insurance and owners of small businesses barely able to make a living because of present state taxes. This mix of different people is what we call a *heterogeneous* district.

A substantial minority of farmers or industrial workers within a district may cause their representatives to support policies that those constituents favor. The ignored majority of voters may have little choice but to endure their lack of representation. But what if the representatives' personal opinions favor them? As in so many other areas, the growing complexity of society has greatly complicated the procedures for selecting representatives as well as the actions of those representatives.

Modern efforts to retain geographic districts while making them ethnically more *homogeneous*

further aggravate the problem. To draw districts that include many minorities, it is often necessary to assemble pockets of minorities spread broadly across a state into districts that resemble bugs splattered on our car windshields. People in these districts may share little other than skin color; they may have little sense of who shares their district or a sense of community in the district. Moreover, the surrounding non-minority districts may share little other than the fact that they are not minority districts. Most modern districts lack compactness and any sense of *identity*.

Political scientists have often stressed that heterogeneous districts force the representative and his or her supporters to compromise even to win elections, and that this is essential to democracy. We have a continuing dilemma. *Homogenous districts make representation easier but force compromise to take place after elections; heterogeneous districts make representation difficult, especially for minorities, but encourage compromise to win voter support before elections.*

The winner of a heterogeneous district must appeal to a broad range of voters and opinions. To do so, he or she might say nothing of substance, thus offending the fewest people. Examples of such candidate statements include the following: “It is time for a change!” “Let’s get America moving!” “Everyone should feel safe on our streets!” and “Let’s get back to what made America great!” Some states may have *homogeneous* districts, but a great division of opinion may exist between those districts. We do not know if they experience difficulty in reaching the compromises that are necessary to make public policy.

Alternatives for Selecting Representatives

Given modern literacy and communication technologies, we need not retain the procedures for selecting representatives that once were necessary. We certainly no longer need to gather prospective voters to hear candidates’ appeals face to face. Although it is expensive, candidates depend on television and new style, negative campaigns costing many times more than what their elected positions pay in salaries. A candidate who can look like a “statesman” and appear “wise and honest,” as compared to the opponent who is “tricky” and just a “politician” is most likely to win. If interest

groups are willing to supply the money for such campaigns, all is well for incumbent legislators desiring to continue in office. They can win reelection time after time. Are they representative, however? Reelection may have nothing to do with how representatively a legislator acts.

Although it is not commonly used, technology now allows for vote gathering other than by having people visit polling places. Beginning in World War II, the states began to allow absentee voting by mail for those out of town on Election Day. Oregon is now using such mail ballots for its elections, and neighboring Washington has most voters voting that way. San Diego and other local governments have experimented with voting by mail. As discussed in Chapter 6, these efforts have made voting more convenient but have not increased voter turnout.

Much of our daily banking is conducted without interacting in person with bank personnel. Customers can use bank machines available at many locations. They can also do business at the locations of their choice through computers or telephones. Similar procedures for vote gathering could make voting as easy as visiting a website, making a telephone call, or visiting the counterpart of a cash card machine. Voters would no longer need to gather at polls. *Though geographically based districts were once technologically necessary, they are not the only option. Such districts are hard to represent. Most districts have few interests shared by the large majority of their populations.* Perhaps we should consider alternatives to basing representation exclusively on geography.

Non-Geographic Districts

With available computer technology and social data, governments now could assign segments of society likely to share opinions on governmental policies to virtual districts. If one-quarter of the state is agricultural, farmers could select one-quarter of the representatives. If appropriate, farmers could be further divided by acreage in production, income, or other factors. Similarly, if wealthy businessmen were to constitute only 2 percent of the state, they might get to choose only a single representative if legislative seats were apportioned based on occupation and income. Race, gender, and age are other bases on which such a system

might be constructed.

There is no question that there would be difficulties implementing such a system, but they are not insurmountable. Certainly many segments of society that are currently over-represented would oppose any such restructuring of procedures for selecting representatives. The purpose of abandoning geographic representation would be to increase the probability that representatives will be like those they represent.

Bias among present representatives, whether they are legislators, executives, or judges, will be a focus of our concern in the next several chapters. But while we are considering changes in the procedures of representation, let us be even more fanciful.

Entrepreneurial Representatives

Cyberspace social networking sites such as Facebook could serve as models for a system of entrepreneurial representation. Prospective legislators could solicit constituents similar to the way social networks encourage friendships. Each qualified voter could affiliate with one self-nominated candidate for the legislature during a specified campaign period. In a state with 150 members of its House of Representatives, the 150 candidates with the greatest number of affiliated voters would take office. Individual candidates might be successful without the backing of any political party.

The existing electoral advantage of candidates with personal wealth or wealthy supporters might be as strong in an entrepreneurial system as in our current system. If expensive mass media continue as the main arenas of campaigning, then entrepreneurial representation may not change the makeup of legislatures. We think another outcome is possible. Individuals could be successful by making themselves and their candidacies “viral.” Instead of the most important resources being campaign contributions and familiar partisan talking points, individual initiative and creativity could become paramount. Parties may become less important as individuals create their own constituencies based on contemporary common interests more than longstanding partisanship.

Cyberspace social networking could also serve as a model for legislators to communicate with their affiliates and others. Transparency of effort

and success would occur for individual legislators. Legislative compensation could be linked to size of affiliated voters. If representatives had one vote and one dollar a year in pay for each voter’s proxy they held, some representatives’ ideas and programs would attract many proxies and substantial income. Of equal importance, the unrepresentative and unresponsive could not survive.

Randomly Selected Representatives

Finally, we could simply choose our representatives by random selection. Within the limits of sampling error, every characteristic of the public would then be reflected within the halls of government. This would be somewhat similar to the way we presently select a pool of individuals as potential trial jurors, except that all would be eligible, none could be stricken for bias, and the sample would be the same size as the number of seats in the legislature.

Legislative compensation could be commensurate with the responsibilities that selected legislators undertook or were assigned. Representatives responsible for multi-billion dollar governments could be paid what private sector boards of directors or managers in companies of comparable size are paid. Perhaps the term of office would need to be limited to 1 or 2 years. Very few would have the luck of being selected, but all but the most extreme should find their ideas present in government. Only the most popular ideas, however, would be likely to become policy. Would those holding minority ideas accept majority-based decisions without having the opportunity to hear their side expressed in debate? Would seeing and hearing your opinions expressed by someone you could not vote against satisfy you?

Each of these proposals for representation based on something other than the traditional geography model has problems that would need to be resolved. *Each achieves representatives that better reflect the characteristics of the governed. Each better copes with the complexity of modern life and employs tools we now have to communicate and gather preferences for certain policies.* We challenge the reader to consider the advantages and disadvantages of state and local government that is truly representative of the entire population.

Apportioning and Districting Population

For the first 174 years under our current constitution, states had wide latitude to choose their own criteria and procedures for establishing legislative districts. Starting in 1963, court decisions and federal statutes made population the central criterion for legislative apportionment and districting. Supreme Court rulings all pursued the same goal: equalizing individual citizens' impact on legislative elections.

The only way to achieve this goal in contemporary America is making voting mandatory and severely punishing those who do not. Actions taken by the Supreme Court have actually increased variation in turnout across districts. Approved *gerrymandering* has made nearly a majority of legislative elections nationwide uncompetitive. The impact on American politics at all levels has been inestimable but not beneficial.

Equal Population Requirements

We noted in discussing geographic representation that in earlier times people were spread more evenly across the land. Most constituents were farmers then. Industrialization and the accompanying concentration of people in cities resulted in equal-sized geographic districts no longer including the same number of people. With many living in few urban counties and few living in many rural counties, selecting representatives from each county, which was the early practice, meant rural areas controlled legislatures.

Because those living in rural areas were in power and had no desire to give up that power, most state legislatures intentionally ignored their charge to apportion how many people live in each district within their states. State courts were also unresponsive to the under-representation of city residents.

The Supreme Court of the United States repeatedly ducked the issue of whether those living in urban areas were being treated unconstitutionally. With each urban representative expressing the desires of many more people than those in rural areas, policies were not those of the majority because those living in rural districts had too many votes in the legislature. The Court said that this was a political issue to be dealt with by legislatures.² Of

course, legislators over-representing rural areas had little reason to vote for change.

The U.S. Census of 1960 made the inequity all the more evident. For example, in Florida, state senate districts ranged in population from 10,000 to 935,000; and in California, Los Angeles, with 40 percent of the state's population, held only one of the 40 seats in the senate.³

The Supreme Court accepted a Tennessee case involving a poorly apportioned state legislative lower house. Surprisingly, in this case, *Baker v. Carr* (1962), the Court ruled that federal district courts could consider this issue. A federal district court then ordered reapportionment of the Tennessee lower house on the basis of population. In *Gray v. Sanders* (1964), Justice Douglas declared, "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."

The Supreme Court had made it clear that population-based equality was the prime criterion for apportioning seats in state houses of representatives.⁴ *Wesberry v. Sanders* (1964) applied it to the United States House of Representatives. Many argued that state senates should be allowed to retain representation on a geographic basis to protect rural interests such as farm-to-market roads and state assistance with agricultural problems. Chief Justice Earl Warren rejected these arguments in *Reynolds v. Sims* (1964) with his statement that "legislators represent people, not trees or acres." The Court held that the boundaries of legislative districts for both state chambers must be redrawn and that the "overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state." This pronouncement was dubbed the "one man, one vote" principle.

In addition to being sexist, the phrase "one man, one vote" is misleading. The courts have never required districts with equal numbers of voters. Instead, they have required districts with equal populations. Even though the stated goal has been to equalize individual citizens' impact on legislative elections, the courts have required a different kind of equality. They have required that each member of a legislative chamber have an equal

number of people in his or her district.

A case from Texas, *Evenwel v. Abbott* (2016), forced the Supreme Court to face the reality that equal population districts do not equalize voters. Two Texas residents argued that the use of total population to apportion legislative districts produced unequal districts when measured by voter-eligible population. Voter-eligible population, not total population, they urged, must be used to ensure that their votes will not be devalued in relation to citizens' votes in other districts.⁵

Plaintiffs Sue Evenwel and Edward Pfenninger lived in Texas Senate districts with particularly large eligible- and registered-voter populations. Their legal argument was that their votes were diluted in relation to voters in other Texas Senate districts, in violation of the one-person, one-vote principle of the Equal Protection Clause. They documented that the population difference between the largest and smallest Texas Senate districts was 8 percent. Using the number of eligible voters, the difference between the largest and smallest districts was 40 percent.

Ross Ramsey wrote: "It boils down to a question of which differences to correct: Is it better to give each voter an equal say in who represents them, or to give each resident equal access to an officeholder who has been elected? Is this about citizens, voters or residents? For congressional districts, it's the third group: Per the Supreme Court, each of a state's congressional districts has to have the same number of people in it when the political maps are drawn."⁶

Justice Ruth Ginsberg wrote the main opinion for the unanimous Supreme Court: use of total population, as a base for legislative apportion, is constitutional. "Nonvoters have an important stake in many policy debates — children, their parents, even their grandparents, for example, have a stake in a strong public-education system — and in receiving constituent services, such as help navigating public-benefits bureaucracies," Ginsburg wrote. "By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total population apportionment promotes equitable and effective representation."⁷

The Supreme Court changed "one-person, one-vote" from meaning equal voting power in an election to equal legislative representation for each resident. The Court ruled that states may use total

population, but total population is not necessarily the only acceptable apportionment base. In the late 20th century some excluded foreign nationals, military personnel assigned temporarily, and other citizens of the United States who were "permanent residents" of other states. Hawaii has used the "population" of registered voters. Throughout the 21st century, all states have used total population, as reported by the United States Census Bureau.

With the exception of the United States Senate, apportionment of legislative districts involves simple arithmetic. The total population number divided by the number of districts identifies the number of people that would make all districts perfectly equal. For some time, the rule of thumb for equal congressional districts was the largest and smallest districts must have populations within 1 percent of each other. In 1983, *Karcher v. Daggett*, the U.S. Supreme Court struck down a congressional redistricting plan that had an overall range of less than 1 percent. Deviations from perfect equality had to be justified by "some legitimate state objective."

Larger deviations from perfect equality have been permitted for the districts of state legislatures. The standard set in *Reynolds v. Sims* was "substantial equality of population." This has come to mean an overall range from smallest to largest of less than 10 percent. The 10 percent rule also applies to the districts of legislative bodies in local governments.

Court decisions have held that congressional districts must be "as equal in population as practicable," where practicable means capable of being done. Empirically, neither "less than 10 percent" nor "less than one percent" is a goal that can be met. For one matter, the United States Census is not perfectly accurate. For another, there is a long time period between the census count and the first elections after redistricting. The census is taken in April of years ending in zero. Data are conveyed to states for the use of their legislative sessions held in the year ending in one. For almost all states, the first general election using newly drawn districts is held in November of the year ending in two—2.5 years after the census.

There is compelling evidence that the normal movement of population in 30 months makes even the less than 10 percent goal unrealistic.⁸ The Supreme Court has chosen to ignore such considerations. Instead, it maintains the "legal fiction"

that redistricting plans based on a given census are constitutionally apportioned throughout a decade.⁹

Race and Ethnicity Requirements

The Voting Rights Act, originally passed in 1965 and extended and modified numerous times since then, requires that all laws and procedures concerning elections have no discriminatory effect against specified racial, ethnic, or language minorities. Amendments passed in 1982 make it illegal for a class of citizens protected by the law to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The law specifically states, “The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered.” In other words, minorities must have a fair chance to affect the outcome of an election.

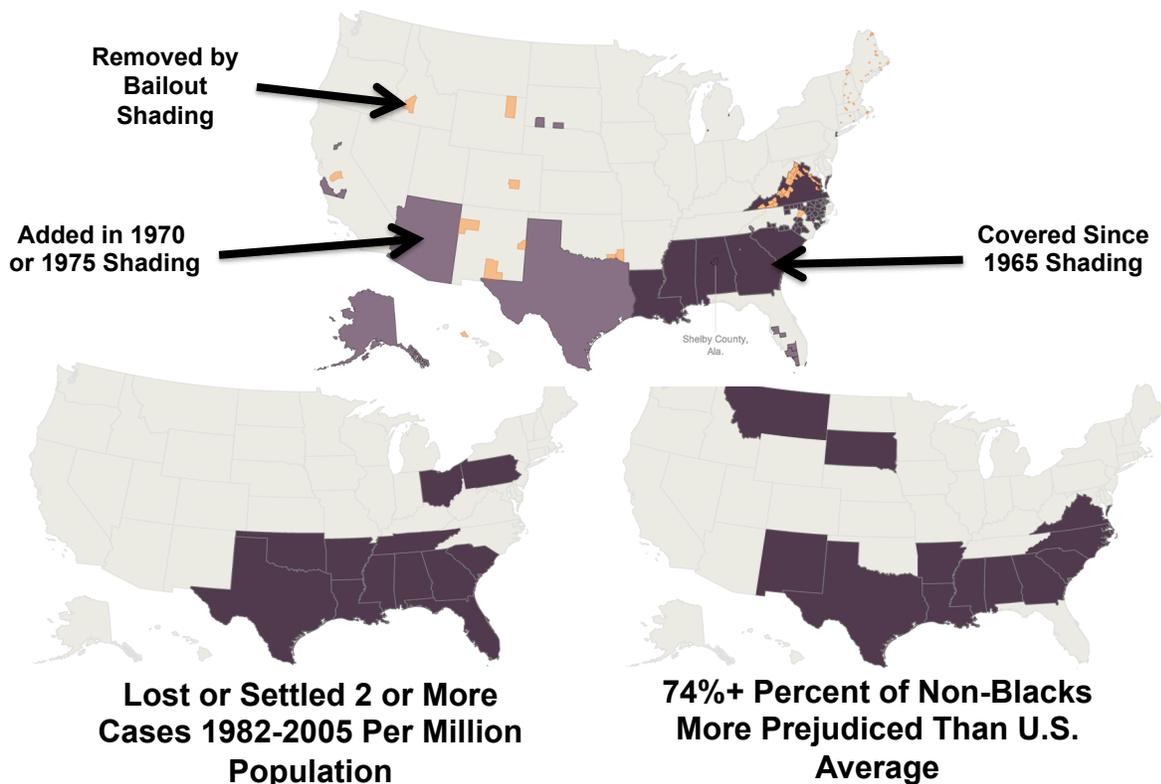
Additional circumstances to be considered are

whether minorities are politically cohesive, whether they are sufficiently large and geographically compact to constitute a majority in a single-member district, and whether bloc voting by the white majority usually defeats the minority’s preferred candidate.¹⁰

The Voting Rights Act requirements apply to all states. In addition, before the Supreme Court blocked its enforcement, Section 5 of the Voting Rights Act required certain areas of the country to obtain approval ahead of time—preclearance—from the United States Attorney General before implementing any changes that affect voting. The intent was to prevent jurisdictions that had a history of racially discriminatory electoral practices from developing new and innovative means to continue effective disenfranchisement of minority voters. The affected districts are identified in the top map in Figure 9.1

The covered jurisdictions include nine states in their entirety—seven of them former Confederate states—and specified counties in numerous other

Figure 9.1
Voting Rights Act Preclearance Jurisdictions 1970-2013
and Possible New Preclearance Criteria



states. Although Section 5 was intended as a temporary provision of the Voting Rights Act, it has been extended each time Congress has amended the Act. The 2006 amendments extended the preclearance requirement for an additional 25 years.¹¹

Jurisdictions could terminate or “bailout” from the preclearance requirement. To qualify for removal from preclearance requirements, a jurisdiction had to satisfy either the Justice Department or three-judge panel in the Federal District Court for the District of Columbia that, essentially, it had committed no violations for ten years. From 1975 to 2013, more than 100 jurisdictions successfully bailed out of preclearance requirements.

In July 2013, The United States Supreme Court held in *Shelby County v. Holder* (2013) that the criteria for identifying jurisdictions required to obtain preclearance in Section 5 were out of date and therefore unconstitutional.¹² Only the section of the Voting Rights Act concerning preclearance was ruled unenforceable.

The Supreme Court decision said that Congress could possibly enact new criteria for identifying jurisdictions subject to preclearance requirements. However, the decision gave no guidance concerning what requirements would be ruled constitutional.

Within hours of the *Shelby County v. Hold-*

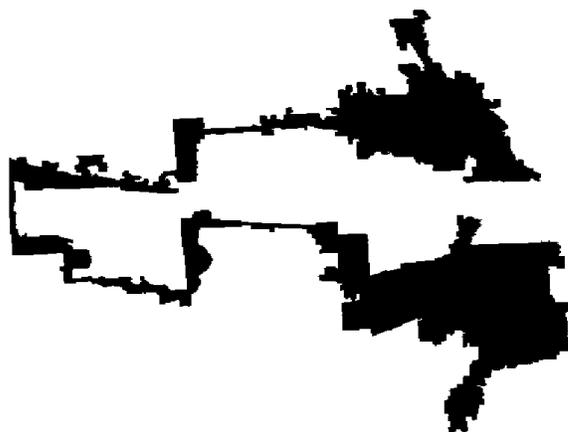
er (2013) decision, Texas officials said that they would begin enforcing a strict photo identification requirement for voters, which had been blocked by a federal court on the ground that it would disproportionately affect black and Hispanic voters. In Mississippi and Alabama, which had passed their own voter identification laws but had not received federal approval for them, state officials said that they were moving to begin enforcing the laws.¹³

In addition to showing jurisdictions previously subject to preclearance requirements, Figure 9.1 also shows which states would be covered by new criteria that may or may not be acceptable to the Supreme Court. The first criterion is losing or settling 2 or more cases per million residents from 1982-2005. As points of reference, the population of Texas in 2005 was 22.8 million, Georgia 8.9 million, Ohio 11.5 million, Pennsylvania 12.4 million.¹⁴ The second criterion is states with 74% or more of the non-Black population more prejudiced than the U.S. average.¹⁵ A familiar pattern is evident: former members of the Confederate States of America stand out as being different.

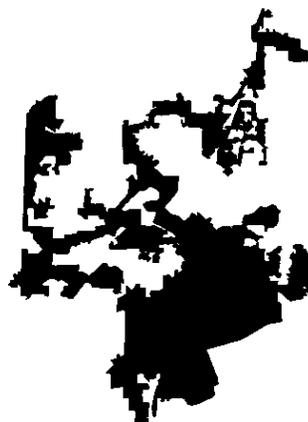
Shape and Compactness

As discussed earlier, there are no shape and compactness requirements for legislative districts.

Figure 9.2
Racially Gerrymandered Districts' Shapes



Illinois 4th Congressional District
from 1990s
Shape is Strange and Legal



Texas 30th Congressional District
from 1990s
Shape is Bizarre and Possibly Illegal

However, courts have used shape and compactness to detect districts that might be illegally based on race or ethnicity. Districts whose shapes are “bizarre” are unacceptable unless there is a compelling state interest that justifies such a shape. Figure 9.2 presents both a congressional district that has been found unacceptable and one that has been found acceptable.

The unacceptable Texas district created a majority African-American district in the absence of a compelling state interest to do so. In 1996, the Supreme Court found that race had been used as a proxy for partisanship. The real purpose was to create a district that could be won only by candidates from the party that drew the boundaries.¹⁶ The Illinois district was accepted because it furthered the compelling state interest of creating a majority Hispanic district without diminishing African American voting strength in three adjacent majority African-American districts. The fact that candidates from only one party could win in these districts was less important in the Illinois district than in the Texas district.¹⁷ To our way of thinking, neither bizarre shape nor compelling state interest has yet been clearly defined by the federal courts.

Partisan Gerrymandering

The term *gerrymandering*, which means creating districts that maximize partisan advantage, comes from a political cartoon in the early 1800s. The Jeffersonian Republicans had concentrated Federalist voters into a district where they would overwhelmingly win a single state legislative seat, while the surrounding areas could elect Jeffersonian. The cartoon exaggerated the appearance of this district to look like a dragon or salamander, or what the paper called a “*gerrymander*” because the governor involved was a Governor Gerry.

Given the opportunity, major political parties will seek to have districts created that work to their advantage and to the disadvantage of all others. State legislatures create districts for themselves and for the U.S. House of Representatives. The legislatures of 45 states allow partisan advantage to be a consideration—usually the most important consideration—in drawing district boundaries.¹⁸ Nebraska is an exception because members of its unicameral legislature are selected in nonpartisan elections. Louisiana, California and Washington

are exceptions because of their unique primary election systems that limit the power of parties. Iowa is an exception because its statutory law provides that districts shall not be drawn to favor any political party, an incumbent legislator or member of Congress, or any other person or group. In addition, a nonpartisan appointed advisory board has acted without regard to the interests of incumbents or parties. Other states also have advisory boards that have not been independent of such interests.

You may be surprised to learn that the United States Supreme Court has, in effect, said districts drawn to maximize partisan advantage violate neither federal statutory or constitutional law. In *LULAC v. Perry* (2006), the Court repeated a principle articulated in earlier cases: it is possible that *excessive partisanship* could in itself invalidate a redistricting plan. The case concerned congressional districts redrawn by the Texas Legislature to replace existing districts in 2003 immediately after Republicans gained control of both chambers for the first time. The Republican Party and the State of Texas openly admitted that the only purpose of redistricting was to remove incumbent Democrats and replace them with Republicans.¹⁹ *The Court held documenting that the only motive for drawing districts was partisan advantage was not sufficient to demonstrate excessive partisanship.* The goal of creating congressional districts in Texas that favored candidates from one party ruled unacceptable in 1996 was deemed acceptable in 2006.

Another finding in *LULAC v. Perry* (2006) enhances the prospects for future partisan gerrymandering. The Court found that redistricting between censuses was not a violation of federal law. Unless state constitutional or statutory law limits when legislative districts may be considered, legislatures may draw new lines whenever the majority party changes or whenever they please to do so.

Political parties are free to use—for political advantage—*gerrymandering* practices declared illegal when used for racial, ethnic, or language advantage. You probably know about *fracturing*—drawing district lines so that the minority party is broken up. This practice creates districts where the minority party is not strong enough to elect representatives. *Packing* is a complementary and even more important practice. *Packing* is drawing district boundary lines so that the members of the minority party are concentrated, or “packed,”

into as few districts as possible. They become a supermajority in the packed districts—70, 80, or 90 percent. They can elect representatives from those districts, but their votes in excess of a simple majority are “wasted.” They are not available to help elect representatives in other districts, so they cannot elect representatives in proportion to their numbers in the state as a whole.²⁰

Ironically, the best strategy for the majority party to maximize its advantage in the legislature is to create districts its candidates cannot win. The greater the number of all minority party districts created, the greater the number of districts where only majority party candidates can win. In 2018, the U.S. Supreme Court rejected challenges to partisan gerrymandering in Wisconsin, Ohio and Texas.

Contemporary Redistricting Standards

There are three standards that must be met when drawing legislative district boundaries. The first is contiguity. The second is population equality. The third is compliance with the Voting Rights Act. However, since President Trump took office, the Department of Justice has pursued no new voting rights cases and has withdrawn as a plaintiff in several lawsuits. There are also optional criteria that may or may not be considered. One is preservation of existing governmental boundaries and other communities of interest. Another is giving advantage to the majority party and/or incumbents. Yet another is geographic compactness.

The Results of Reapportionment

It is difficult to assess the impact of urban-rural reapportionment comprehensively. Urbanization and suburbanization continued unabated during the 1960s, 1970s, 1980s, 1990s, and 2000s, and state governments increasingly turned to urban problems.²¹ However, it is always difficult to say when two trends coincide that one is causing the other. For example, does the fact that family farms have declined swiftly since the reapportionment decisions demonstrate that urban and suburban legislators have ignored these constituents, resulting in the failure of small farms? Certainly there are more legislators from urban and suburban areas now than was the case before the early 1960s. There are

more Democrats from the cities in northern legislatures and more urban Republicans in the South. It seems nearly certain that reapportionment based on population has given legislators more desire to attack urban problems and to devote expenditures to those areas.²²

The impact of partisan *gerrymandering* is easier to assess. Every census since 1960 has resulted in more strategic and precise partisan districting. In the 21st century, those who draw district boundaries have potent tools to create the sort of legislative districts they prefer. Powerful computers link geographic information system programs with sophisticated databases. Demographic information is available for very small census tracts. Election turnout and results data are available at the precinct level. Many states have records of who voted in primary elections and which party's primary they voted in. Partisan consultants can purchase and use information such as publication subscriptions or political and charitable contributions to accurately estimate partisanship at the household level.

It is now the case that, for most Americans, the party affiliations of their congressmen and state legislators are determined at the time legislative districts are drawn. The particular individual who will take office is increasingly determined in primary elections. In 1992, there were 103 congressional districts with competitive elections between Republicans and Democrats. In 2012, there were only 35 competitive congressional districts. Only 20 congressional districts were competitive in 2016.²³

In Texas, challengers more often have defeated incumbents in primary elections than in general elections for more than a decade. In typical general elections, approximately two-thirds of Texas state legislature seats are contested by only one major party. In 2016, 75% of Texas Senate and 60% of Texas House general election contest had either no Republican or no Democratic party candidate. For 2018 there is unusually strong interparty competition. Only 13% of Senate contests and 35% of House contests do not have both a Republican and a Democratic party candidate.

There is also increased interparty competition in 2018 for Texas seats in the United States House of Representatives. In 2016, 28% of general election contests had only one major party candidate. In 2018, only 14% of general election contests

have only one major party contest. All 36 congressional districts have Democratic candidates in 2018. In five districts a Democrat has no Republican opponent.

As discussed in Chapter 8, primary elections are different from general elections in two important ways. First, turnout is lower—typically less than half that of the corresponding general election. Second, primary voters tend to be the strongest partisans. Incumbents continuously face the prospect of a primary election challenger alleging the incumbent is not sufficiently conservative or liberal, not a strong enough Republican or Democrat.

General elections no longer play a moderating role by making nominees from both parties vie for the support of less partisan voters. Contemporary primary elections push candidates away from the center toward the political edges. More so than ever before, partisan extremists populate legislatures with no experience in communicating with, let alone compromising with, the opposite party. One result of hyper-partisanship has been a popular perception of legislative gridlock.

A curious situation exists in many states. Executive elections contested statewide are competitive, and the two major parties are close in numbers within legislative chambers. Yet, at the same time, elections in legislative districts are uncompetitive. The votes of the large majority of Americans have no impact on who wins legislative general elections. In the near term, voters can have equal impact only if they all choose to vote in the primary elections of their districts' supermajority parties.

Districing in the Cities

The federal courts have also applied Voting Rights Act criteria to city councils and school boards to assure representation to minorities. What is used might be called court-ordered racial *gerrymandering*, with a racially based concentration of minorities in certain districts to assure their election. Going to at-large elections in which all representatives to a city council are elected citywide was an important element in the reform movement. The president of Cornell University (upstate New York) argued: “The work of a city being the creation and control of the city property, it should logically be managed as a piece of property by those who have

created it, who have title to it, or a real substantial part in it, and not by a crowd of illiterate peasants, freshly raked in from the Irish bogs, or Bohemian mines, or Italian peasant nests.”²⁴

The motive was the dilution of such minorities so that none won election to the council. With at-large districts, all voters choose all council members across the city. A minority of 25 or 30 percent of the vote would win no seats. In the South, this technique worked well in assuring under-representation of African-Americans.

In the 1970s, the representation of African-Americans on city councils fell far short of what their percentage within the population of most cities would suggest was “fair.” More recent studies suggest that most of this bias had been overcome in the 1980s²⁵ and even became over-representation in the 1990s.²⁶ The representation of Hispanics in city governance will no doubt follow the same pattern as the Irish, Bohemians, Italians, and African-Americans.

Size of the Legislature

Although it has not been the topic of systematic empirical investigation, the size of a state legislature may have an impact both on representation and on making laws. All lower houses in the states are larger than their senate or upper-house counterparts. The average lower house has 112 members, and the senate 40 members. This figure does vary greatly, with the smallest lower houses being Alaska (40), Delaware (41), and Nevada (42), and the largest being New Hampshire (400) and Pennsylvania (203). The smallest senates are in Alaska (20) and Nevada (21), and the largest are in Minnesota and New York (61).

There are two considerations in setting the size of a legislative house, neither of which probably concerned those who wrote state constitutions: time for debate and maximum size of constituency. Even with present technology allowing everyone to be heard even in a large hall and having votes gathered electronically, the upper limit on the size of a legislature involves time for debate. With thousands of bills to consider, each legislator's opportunity to speak on a bill would be restricted further if the house were larger. This situation is especially the case in those states that have short legislative sessions. To be certain, technology in

architecture as well as in public address systems allows the housing of quite large groups, such as in domed stadiums, as well as allowing individuals to be heard. Because lower houses are larger than senates, they typically have leaders of greater authority and limited debate.

Senators in California each represent over 931,000 people, and those in Texas represent more than 811,000 people. Texas' districts have more residents than Wyoming, Vermont, North Dakota and Alaska. California's districts are larger than the populations of two additional states: Delaware and South Dakota.²⁷

By contrast, New Hampshire's lower chamber members represent 3,300. The average lower house legislator nationwide represents about 66,000 people.²⁸ Can they thus give better representation than their senate counterparts in the populous states? California's senate would need 12,500 members to have the same representation ratio as the New Hampshire lower house! It might be possible to allow them to be heard, but each might have only a few seconds to speak on any bill. There are tradeoffs between allowing debate and facilitating representation.

We know that choosing 1,500 California legislators randomly would give quite accurate representation. Thus, 12,500 representatives would seem to be overkill. Nevertheless, representatives selected from low-population districts seem more likely to reflect those districts than would be the case in large districts. Large districts seem more likely to be varied and small districts more *homogeneous*.

We have considered several institutional features of present-day American legislatures. Many of these have been advocated as reforms that would improve not only the representation by legislatures but also their ability to cope with problems faced by the states. Later, we will use the variation from state to state on these variables to assess whether the institutional reforms might indeed help.

Legislators as Lawmakers

How Laws Are Made: "The Process"

Lawmaking is the primary product of state legislatures. Although they also must pass budgets, approve of nominations in the case of the upper house,

and fulfill the other functions of legislators enumerated earlier in this chapter, their main activity is to seek lawful solutions to society's problems, at least as they see them.

Most state legislatures play a role in amending state constitutions. State legislatures pass resolutions that are official communications to the United States Congress and other organizations. They also pass simple resolutions taking note of individuals, organizations, and achievements. However, the central work of state legislatures is considering bills that might be enacted into statutory law.

Figure 9.3 depicts, in a simplified manner, the many steps that must be taken in a legislature for an idea to become a law that affects our lives. All the bicameral states use this very complex process. Most charts of how a bill become law list steps in the chamber of origin and say "same in second chamber." We present each step in each chamber to underline how many positive decisions are required for a bill to be enacted.

Drafting a bill is a complex task in and of itself, since the language must be clear and many, if not all, eventualities must be considered. Legal and technical advice is quite important, as is research on other governments' efforts to deal with the problem in a similar manner and their success or failure with it. Although only members can submit bills for consideration in their chambers, others almost always draft the bills they submit. Political parties, interest groups, fellow legislators, staff, constituents, and executive branch departments all draft bills.

The **introduction of a bill** is the simple act of placing it on the desk or in a basket of the presiding officer, typically called the "speaker" in the lower chamber and the "president," "lieutenant governor," or "president pro tem" in the senate. After introduction, bills are assigned to committees, typically by the chamber presiding officer or by chamber majority party leadership. The act of introduction and assignment to a standing committee is called the **first reading**.

Bills are **assigned to standing committees** for consideration. As discussed earlier, a relatively small number of bills are not deliberated. Committee members deliberate the majority of bills. One element of deliberation involves seeking information from interested parties. Committees schedule public hearings to listen to the views of other legislators, invited experts, interest group representatives, and the general public. Participating in hearings requires

presence at the state capitol at certain times. This works to the advantage of those who work or live near the capitol or have the means to travel there or have the resources to engage the services of those who do. In a growing number of states, streamed video of committee meetings is available on the Internet, both as meetings occur and afterward. Digital technology has been used to expand the audience of public hearings to more of the public. This technology may be used in the future to expand opportunities to speak at hearings to more of the public.

Whether deliberated or not, most bills die in committee.²⁹ Committees have three options for bills they recommend for further consideration by the entire chamber. First, they may send forward an unchanged or “clean bill.” Clean bills tend to be those that are simple or uncontroversial. Second,

they may send forward a changed or “marked up” bill, sometimes called a committee substitute. A substitute usually adds to the original bill’s text some elements from other bills considered by the committee. Third, they may send forward a clean bill and recommended amendments to the bill. For these bills, the committee signals that the entire chamber should undertake further serious deliberation during floor consideration.

Bills recommended favorably by substantive committees are considered for placement on a *calendar* for floor consideration. In some chambers, calendar placement is automatic. In other chambers, a review committee assigns bills to one of several calendars that are considered in specified orders at designated times. Most chambers have emergency and consensus calendars to accelerate considerations of certain bills.³⁰ In some chambers,

Figure 9.3
The Legislative Process

Chamber of Origin	Second Chamber	Conference Committee
Bill is drafted		
Introduction and <i>First Reading</i>	Introduction and First Reading	Committee members chosen
Committee referral	Committee referral	Bill redrafted and sent to both chambers
Subcommittee	Subcommittee	If both chambers approve, sent to governor
Committee hearings	Committee hearings	
Committee Action	Committee Action	
Calendar placement	Calendar placement	
<i>Second Reading</i> floor consideration	Second Reading floor consideration	
<i>Third Reading</i> and floor vote	Third reading and floor vote	
Reconsideration	Reconsideration	
Sent to opposite chamber	If amended, returned to chamber of origin	
	If approved without amendment, sent to governor	

a review committee can kill a bill by not assigning it to a calendar.

The typical calendar specifies the order in which bills will receive further consideration on the chamber floor. This floor consideration is called the *second reading*. This is the debate and amending process we consider typical of legislatures. When a bill comes up on the calendar, legislators will have printed versions of the bill, as reported out by the committee, at their desks. They may speak for or against, often with time limits imposed in the lower chamber. *Amendments* can be introduced and passed or defeated. The chamber clerk or secretary sees that approved amendments are included in reprinted versions available to legislators when bills are next considered.

Although the purpose of the *third reading* is to *pass or defeat* the bill approved at second reading, further amendments are permitted. In the third and final reading, most often a recorded vote is taken. All states now use electronic voting machines. If a majority of those casting votes approve, the bill has been passed in that house.

In the 49 *bicameral* (two-house) state legislatures, each chamber must pass identical text for a bill to move forward. If there are differences, the first chamber has the option of accepting changes made by the second chamber. In most cases of disagreement, the first chamber calls for appointment of a *conference committee*, composed of members of both chambers, to iron out differences. Sometimes this task is easy, and other times it is all but impossible. If a conference committee fails to agree, the bill dies. If a conference committee agrees, the redrafted version is sent to both chambers for final consideration.

Bills that pass both chambers in identical form are sent to the governor for further action. A governor's signature is normally required for a legislatively enacted bill to become law. A *veto* occurs when the governor explicitly rejects a bill passed by the state legislature. As we shall see in the next chapter, some governors can veto portions of bills, especially bills appropriating money. In some states, bills not explicitly vetoed become law without the governor's signature.

The legislative branch can *override the governor's veto* if enough votes can be found in both chambers. In most cases, two-thirds of each chamber must vote for the legislation to override the

governor's veto. If that override vote is obtained, the legislation is enacted. Although governors often threaten them, vetoes are seldom used. Few vetoes, however, are overridden. In the 2011-2012 sessions of the state legislatures, average of 8 percent of the enacted bills were vetoed. In 2014, less than 4 percent were vetoed. Historically less than 15 percent of vetoes are overridden.³¹ The use of the veto by governors varies greatly over time, and one state may see great use in one year and little use thereafter.

Two other procedures further influence each new law. First, it is assigned to an agency to administer, which entails forms and procedures. These are called *administrative laws*. Either through misunderstandings or opposition by agency personnel or confusion between different sections of the law, the bureaucracy or agency can administer the law in a manner contrary to what the legislature and governor intended. If the problem is serious enough, the entire process can be used again to force the agency to follow legislative intent more closely. In effect, a new law can be passed to override the bureaucracy's administrative law.

Second, once the law is implemented, parties affected by it can bring a lawsuit arguing that it is unconstitutional. This process is called *judicial review*. In some states, the state attorney general can make a judgment on a bill's constitutionality. However, state supreme courts need pay no attention to such judgments. If the courts declare laws unconstitutional, they are null and void. This need not be the end. The legislature can propose *constitutional amendments*, at least to the state constitution, to override the courts. If ratified, amendments supersede court rulings.

The Real Legislative Process

When asked, state legislators say that the biggest and most important part of their work is *killing bad bills*. They define bad bills as those that harm the citizens of their states or harm the people in their districts. Bills that waste resources are deemed bad bills. Many legislators also use ideological criteria to identify bad bills.

Bills not reviewed by subcommittees, not reconsidered by either chamber and not referred to conference committees must succeed at a mini-

mum of 14 steps. Of course, bills are also subject to multiple amendment proposals in committees, at second reading and at third reading.

Discussion of how bills are passed and the Schoolhouse Rock song “I’m Just A Bill” mislead us into thinking bill passage happens most of the time. Legislators make effective use of their plentiful opportunities to kill bills. In the legislative sessions held in 2014, by conventional measures, state legislatures passed 26% of bills introduced. The other 74% failed of enactment.³²

A typical state legislature will have hundreds or thousands of bills on its agenda during a legislative session. The United States Congress ignores the large majority of bills submitted each session. State legislatures deliberate—actively consider—the large majority of bills submitted each session.

Although many thousands of bills are introduced in legislative sessions in most states, important bills probably number only in the hundreds. Among the unimportant bills are those that deal with one local area, such as reimbursing individuals for damages done by state employees, changing a local institution, or any number of minor changes that would interest no one other than the community and its local delegation to the upper and lower house. Bills such as these that harm none but benefit few are usually not regarded as bad bills. Members tend to vote for bills that help their colleagues’ districts and do not disadvantage their own districts. Other members return the favor. By tacit mutual agreement, incumbents help each other pass legislation to fend off challengers in future elections.

Contrary to what we might think, not all bills are submitted for the purpose of passing or even considering them. Many bills are introduced then die immediately with no further action taken. Sometimes these bills are introduced at the request of constituents, supporters, or potential future supporters. Some bills are submitted for symbolic purposes. One example is when a member knows that chamber leaders oppose a bill. By letting the bill die immediately, leaders are not offended and the member can later say, “I tried.” There is evidence that letting some bills die without deliberation is a strategy that allows legislators to pass their other bills.³³

Bills on the same topic are usually assigned to a single committee. Frequently, committees con-

sider multiple similar bills simultaneously, discarding some and combining others. Rather than send multiple related bills forward, committees typically prefer to recommend only one bill or two closely related bills for floor consideration. Thus, in describing how a bill becomes law below, we are also describing how important bills or batches of bills on the same topic are combined to become law.

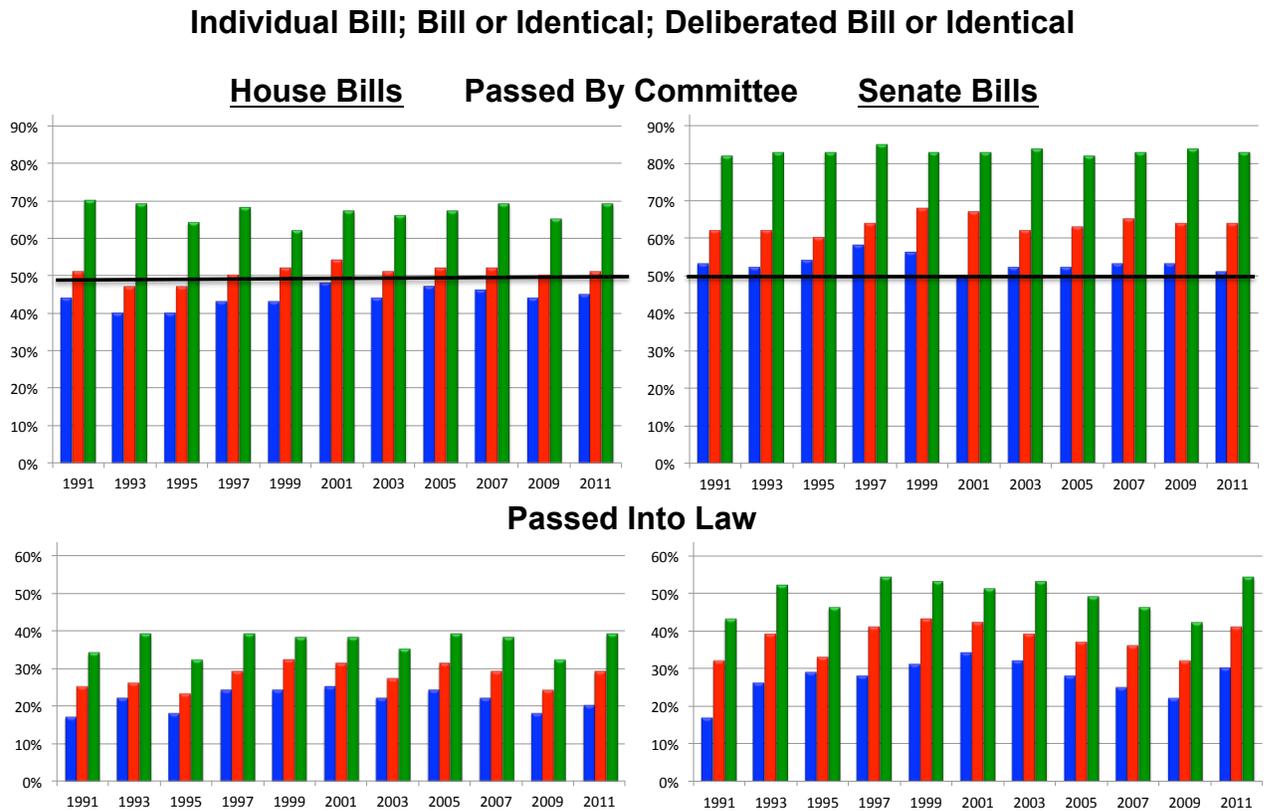
The conventional bill passage rates discussed so far assume all bills submitted are legitimate, independent candidates for enactment. That assumption is wrong. At least 28 states and the U.S. Congress identify similar and/or identical bills submitted in both chambers. These pairs are typically called companions. Identical bills are not submitted with the intention of passing them more than once. Introducing identical bills in both chambers is a strategy. Companions that clear their chambers first are substituted for bills still progressing through the opposite chamber. Rather than start at the beginning in the second chamber, these companion bills assume their twins’ places in the process.³⁴

Consider the following thought experiment. Imagine you are a legislator who wants to pass a certain bill into law. You make arrangements with a legislator from the opposite chamber to submit an identical companion bill and agree to coordinate efforts to get one of the twin bills pass. Now, imagine you also convince another member of your chamber—the chair of the committee the bill is likely to review the bill—to submit a third identical bill. You know from the outset that at least two of the identical triplet bills must die.

If one of the identical bills is enacted into law, does it matter whether it is your bill or one of the other two triplets? The simple conventional measure will conclude only one of the three passed, a success rate of 33 percent. You and your colleagues will think the success rate is 100 percent. A more sophisticated measure of bill passage would count all identical bills as passed if one were enacted. Such an analysis is presented for the Texas Legislature in Figure 9.4.

Figure 9.4 presents passage rates at two points in the legislative process: passage by committee and enactment into law. Three measures of success are used. The first is the conventional measure of individual bills. The second credits all identical bills with the progress of the bill that went furthest in the process. The third is a variation of the

Figure 9.4
Bill Success in the Texas Legislature 1991-2011



second that includes only bills that are deliberated by a committee—or an identical bill is deliberated. This measure excludes bills members let die without hearings to assess only the bills they work actively to pass.

The two alternative passages rates must always be higher than the conventional rate. After you review Figure 9.4, you will probably agree that the differences are important. Texas House bills or identical bills pass chamber of origin committees at an average rate of 44% by conventional measures but 51% or 66% by other measures. Senate bills pass chamber of origin committees at an average rate of 53%, 64% or 75%. *The conventional wisdom that most bills die in first chamber committees does not hold if passage of identical bills is part of the success measure.*

The conventional measure identifies 21% of Texas House bills and 28% of Texas Senate bills enacted into law, on average, for the 1991-2011 legislative sessions. Measures that credit all identical bills with the progress of the most successful

ascertain enactment rates of 28% for House bills and 38% for Senate bills.

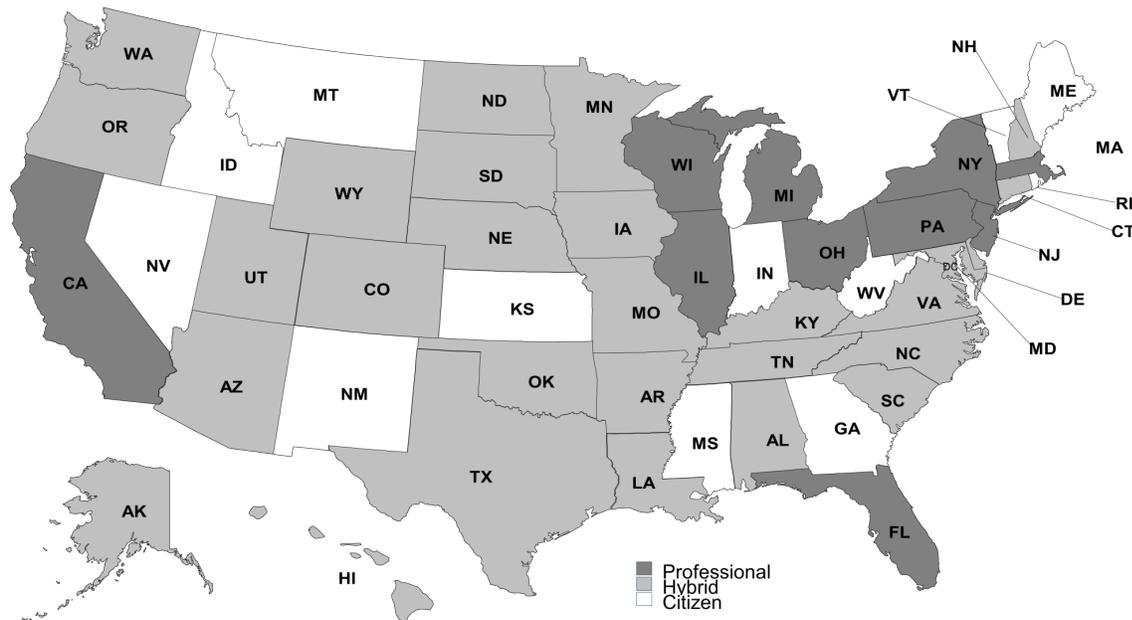
Measures that consider the fates of identical bills still identify some successes as failures. For one example, many bills that die are similar, but not identical, to bills that later pass. For another example, some bills that die are appended as amendments to other bills that pass.

One last point must be made before leaving the topic of bill success and failure. We should not focus on bill passage to the extent that we forget that legislators view killing bad bills as more important than passing good bills. Members view killing bills as successes. Since they rarely say so publicly, we cannot measure successful kills. It is likely that every bill killed is viewed as a successful outcome by at least some legislators.

Assessing Service to Constituents and Districts

While legislators in some states no doubt provide more services to constituents to obligate them for

Figure 9.5
Legislative Styles



support in elections as well as being more responsive to such demands, no one collects such data. Similarly, some legislators may rival members of Congress in taking credit for the tax dollars spent in their districts, what is commonly called “pork,” but again no one gathers such data. We cannot, therefore, assess the impact of such differences. But few reformers have seriously suggested changes in institutions to alter these functions of legislatures.

The Virtues of a Professional Legislature

Since, with the exception of Nebraska, all states use the same three-reading-plus-conference procedures, we cannot say whether alternative procedures might improve enacting quality legislation. There is, however, a difference among the states in terms of how much this entire process is compressed into a limited number of days.

All state legislatures began as *Citizen Legislatures*. They were intended to meet for short periods of time to conduct the people’s business. Members were essentially volunteers. They received little compensation other than personal expenses involved in meeting at state capitols. It was expected that they would serve a term or two before withdrawing.

The opposite style is Professional Legislatures.

Instead of meeting for short sessions, Professional Legislatures meet year round. Members certainly do not act volunteers. They are well compensated for their services with salaries, expense accounts and generous retirement benefits. They are expected to have residences in the state capitol as well as in their home districts. Professional Legislatures provide help for members in the form of staff for both home and district offices. There are also staffs for individual committees and services for research, bill drafting, information technology, public relations, and so on.

Hybrid legislatures combine elements of the other two styles. In hybrid legislatures, the workload expands in doing the public’s business but outside employment is still the norm. Figure 9.5 maps the three styles used by state legislatures. No regional patterns are evident.³⁵

Figure 9.6 shows how the three styles of legislatures differ on session lengths, workloads of bills introduced and enactments. Citizen legislatures are generally on the low end, hybrid legislatures are in the middle and professional legislatures are on the high end, as expected.

The Impact of Professionalism

Figure 9.7 presents correlations between legislative professionalism and characteristics of legislators

Figure 9.6
Legislative Styles and Legislative Activities

	Citizen Legislature Average	Hybrid Legislature Average	Professional Legislature Average
Length of Regular Session	85	90	137
Number of Bills Introduced	1456	1901	4478
Number of Bills Enacted	341	459	356
Percent of Bills Enacted	27	32	11

to assess whether professionalism has an impact on who serves. There are no relationships between legislative professionalism and gender or racial/ethnic group percentages. There are no relationships with turnover of legislators or with interparty competition of partisan control. We can only conclude that level of legislative professionalism is not systematically related to who serves in state legislatures.³⁶

Figure 9.7 also presents correlations between legislative professionalism and workloads. More *professional legislatures* have longer legislative sessions, an element of the professionalism index. Professionalism is negatively related to percent of bills enacted. Professionalism is unrelated to number of bills introduced and number enacted.

If the reformers advocating the *Professional Legislature* style are correct, states with more *professional legislatures* should have better public policies. Their argument is the superior research capability, quality law-drafting, thorough debate, and expertise of professional full-time legislatures result in such better decisions. The opposing view is that *Citizen Legislatures* should make better decisions. The reasoning is that amateur legislatures are closer to and more like their constituents. They are more representative. The result should be better public policies because legislatures make decisions preferred by their constituents. We cannot measure “better” policies, but we measure different policies in Figure 9.8.

The correlations in Figure 9.8 offer scant evidence that legislative professionalism is systematically related to state policies. Professionalism is positively related to tax burdens. It is not related to other financial measures, including revenue, expensive, tax regressivity and debt. It is unrelated to reliance on personal or corporate income taxes. It

is unrelated to welfare and education spending and unrelated to abortion policies.

Those who argue that more professional legislatures produce better policies could legitimately argue that our measures of professionalism are imperfect and our measures of policies are incomplete. We agree. However, at this point, we conclude only that convincing empirical support for their argument based on contemporary state differences has yet to be made.

Are State Legislators Like State Residents?

Measures of Population Similarity

To become a state legislator, one typically has to be a citizen, a resident, and above a certain age. This minimum age is typically 21 years old for the lower house and 25 for the upper house or senate.³⁷ So common are some characteristics of legislators that they might be called “informal requirements.” Although it is possible to be elected without meeting these informal requirements, it is improbable.

Figure 9.9 presents the distribution of state legislators’ occupations from 1976 to 2015³⁸. Clearly, legislators occupy predominantly professional or managerial and upper-middle-class occupations. Lawyers and businessmen are particularly over-represented in state legislatures.

The national percentage of attorneys in state legislatures has dropped from 22 percent nationwide in 1976 to 14 percent in 2015. A declining percentage of legislators are business owners, but an increasing number are business executives or managers. Many of the shifts in business percentages are the result of legislators changing how they describe their occupations. To an unknown extent, those who would have described themselves in the

Figure 9.7
Legislative Professionalism Correlations With Members
and Legislative Workloads 2010

	Legislative Professionalism
Percent of Women in Legislature	.17
Percent of Latinos in Legislature	.16
Percent of African Americans in Legislature	.11
Legislative Turnover	-.04
Interparty Competition	.08
Republican Control of House	-.24
Republican Control of Senate	-.09
Republican Control of Legislature	-.17
Length of Regular Session	.39
Number of Bills Introduced	-.21
Number of Bills Enacted	.14
Percent of Bills Enacted	-.54

past as working in insurance or real estate or as business non-managers now describe themselves as business executives, managers, or consultants. We think it is safe to conclude that there are fewer from agriculture and the legal profession, as well as fewer government employees. We conclude there are more who call themselves retired and full-time legislators.

Figure 9.10 compares several characteristics of state legislators and the American public. Women, African-Americans, and Hispanics are underrepresented. Attorneys, the largest occupation group of state legislators, are overrepresented—there are more than 37 times as many attorneys in state legislatures as in the workforce. The average age of legislators, 56, is much older than the public, 47. Obviously, in terms of occupation and demography, state legislators do not accurately represent their constituents.

Impact of More Accurate Representation

Earlier, we loosely used the term “representative.” Unfortunately, while few would deny that legislators should be representative, few agree on what that means. Do we mean that a legislature should enact the same policies that the public would enact if there were direct democracy? Some argue that since legislators won elections, they are representative because they received a mandate from a majority of voters for what they supported. Others, however, would see representatives who are unlike those they represent as hardly likely to enact policies in the interest of the public. It may be that our best evidence of how representative a state legislature is rests on whether demographically it reflects its public.

We might expect that accurate reflection results in the legislature passing laws that the public would pass were it able. We cannot assess this relationship empirically because we lack good measures about what policies each population group

Figure 9.8
Legislative Professionalism Correlations With Policy 2010

	Legislative Professionalism
Per Capita State and Local Revenue	.21
Per Capita State and Local Expenditure	.28
State and Local Tax Burden	.44
Regressivity of State and Local Taxes	.10
Per Capita State and Local Long Term Debt	.23
TANF Monthly Family Benefit	.23
Per of Families Children in Poverty Receiving TANF	.21
Education Spending Per Child K-12	.01
Restrictiveness of Abortion Policies	-.14
Percent Revenue from Personal Income Tax	.22
Percent Income From Corporate income Tax	.02

Figure 9.9
Occupations of State Legislators

Occupation	1976	1986	1993	1995	2007	2015
Attorney	22%	16%	17%	16%	15%	14%
Full-Time Legislator	3%	12%	15%	14%	16%	11%
Business Owner	16%	14%	10%	12%	9%	14%
Agriculture	10%	10%	8%	8%	5%	5%
Business Other						13%
Retired	*	7%	7%	8%	12%	8%
Business: Executive/Manager	5%	6%	6%	5%	9%	
Educator: K-12	8%	6%	6%	6%	4%	6%
Business: Non-manager	4%	5%	5%	4%	3%	
Consultant/Professional/Nonprofit	6%	3%	4%	5%	8%	12%
Real Estate	5%	4%	3%	4%	4%	
Insurance	5%	3%	3%	3%	2%	
Communications/Arts	3%	2%	2%	2%	2%	
Medical	*	2%	2%	3%	4%	
Government Employee: Local	3%	1%	2%	2%	1%	
Educator: College	*	2%	2%	2%	2%	
Homemaker	*	1%	1%	1%	1%	
Engineer/Scientist/Architect	*	1%	1%	1%	2%	
Accountant	*	1%	1%	1%	1%	
Government Employee: State	*	0%	0%	0%	1%	
Clergy	*	0%	0%	0%	1%	
Labor Union	1%	0%	0%	0%	0%	
Student	*	0%	0%	0%	0%	
Information Not Available	*	0%	0%	0%	0%	5% [%]
Insufficient Information/Other	9%	3%	3%	3%	0%	12%

Figure 9.10
Characteristics of Legislators and Constituents 2015

	Public	Legislators
Women	51%	24%
Hispanics	17%	5%
African Americans	13%	9%
Not White/Caucasian	76%	82%
Attorneys	0.4%	14%
Average Age	47	56

prefers. We can ask whether there are empirical relations between accurate population reflection and our measures of state policies. Figure 9.11 presents correlations between policies and how accurately demographic measures of state legislators match those of their constituents.

More accurate representation of Latinos and African Americans is not empirically related to any of the policy differences we have measured. More accurate representation of women is positively related to welfare benefit levels, families with children in poverty receiving welfare benefits and

less restrictive abortion policies. Accurate representation of women is related to four of the policy measures. These empirical relationships between accurate representation of women and policies may or may not be causal. They could be spurious. We do not know what would happen were many more women suddenly elected to a state legislature that poorly represents women. We also do not know what would happen if Latinos and African Americans were accurately represented in state legislatures. It is conceivable that the lack of empirical links now is a function of very low levels of repre-

Figure 9.11
Accurate Representation Correlations With Policy 2015

	Age	Women	Latinos	African American	Non White/Caucasian
Per Capita State and Local Revenue	-.18	.15	.17	-.10	-.26
Per Capita State and Local Expenditure	-.23	.10	.18	-.11	-.23
State and Local Tax Burden	.32	-.03	.08	.24	.38
Regressivity of State and Local Taxes	.17	-.09	-.06	-.10	.06
Percent Own Source Revenue from Personal Income Tax, 2013	.14	.08	.07	.21	.08
Percent Own Source Revenue from Corporate Income Tax, 2013	-.22	.13	-.06	.00	-.04
Percent Own Source Revenue from Sales Tax, 2013	.21	-.14	-.07	.21	.08
Percent Own Source Revenue from Property Tax, 2013	.11	.41	.22	.31	.19
Per Capita State and Local Long Term Debt	.12	.30	.31	.05	.17
TANF Monthly Family Benefit	-.10	.43	.29	-.10	-.05
Percent of Medicaid Paid By State and Local Governments	.02	.20	.07	.10	-.13
Education Spending Per Child K-12	-.02	.23	.26	.04	.03
Restrictiveness of Abortion Policies	-.06	-.51	-.26	-.37	-.27

Figure 9.12
Party Control of State Legislatures 2002-2017
 (January of Each Year)

	2002	2004	2006	2008	2010	2012	2014	2017
Alabama	Dem	Dem	Dem	Dem	Dem	Rep	Rep	Rep
Alaska	Rep	Rep	Rep	Split	Split	Split	Rep	Split
Arizona	Rep							
Arkansas	Dem	Dem	Dem	Dem	Dem	Dem	Rep	Rep
California	Dem							
Colorado	Rep	Dem	Dem	Dem	Dem	Split	Dem	Split
Connecticut	Dem							
Delaware	Split	Split	Split	Dem	Dem	Dem	Dem	Dem
Florida	Rep							
Georgia	Split	Rep						
Hawaii	Dem							
Idaho	Rep							
Illinois	Dem	Split						
Indiana	Split	Rep	Split	Split	Split	Rep	Rep	Rep
Iowa	Rep	Split	Dem	Dem	Dem	Split	Split	Rep
Kansas	Rep							
Kentucky	Split	Rep						
Louisiana	Dem	Dem	Dem	Dem	Dem	Rep	Rep	Rep
Maine	Dem	Dem	Dem	Dem	Dem	Rep	Dem	Split
Maryland	Dem							
Massachusetts	Dem	Split						
Michigan	Rep	Rep	Split	Split	Split	Rep	Rep	Rep
Minnesota	Split	Split	Dem	Dem	Dem	Rep	Dem	Rep
Mississippi	Dem	Dem	Dem	Dem	Dem	Rep	Rep	Rep
Missouri	Rep							
Montana	Rep	Split	Split	Split	Split	Rep	Rep	Rep
Nebraska	NA							
Nevada	Split	Split	Split	Dem	Dem	Dem	Dem	Split
New Hampshire	Rep	Rep	Dem	Dem	Dem	Rep	Split	Rep
New Jersey	Split	Dem						
New Mexico	Dem	Split						
New York	Split	Split	Split	Dem	Dem	Split	Dem	Dem
North Carolina	Split	Dem	Dem	Dem	Dem	Rep	Rep	Rep
North Dakota	Rep							
Ohio	Rep	Rep	Rep	Split	Split	Rep	Rep	Rep
Oklahoma	Dem	Split	Split	Rep	Rep	Rep	Rep	Rep
Oregon	Split	Split	Dem	Dem	Dem	Split	Dem	Dem
Pennsylvania	Rep	Rep	Rep	Split	Split	Rep	Rep	Rep
Rhode Island	Dem							
South Carolina	Rep							
South Dakota	Rep							
Tennessee	Dem	Split	Split	Rep	Rep	Rep	Rep	Rep
Texas	Rep							
Utah	Rep							
Vermont	Split	Dem						
Virginia	Rep	Rep	Rep	Split	Split	Split	Split	Rep
Washington	Split	Dem						
West Virginia	Dem	Rep						
Wisconsin	Rep	Rep	Split	Dem	Dem	Rep	Rep	Rep
Wyoming	Rep							

sentation. Things could change once representation meets a threshold we cannot currently identify.

There are grounds for expecting inevitable demographic changes in the future will result in better representation for some. In particular, we expect better representation of rapidly increasing state Hispanic/ Latino populations. On the other hand, powerful interests are opposed to more equal representation of certain population groups. Political actors are motivated more by the prospect of acquiring power than the goal of achieving equal representation. Indeed, political parties and current officeholders frequently act to deny more equal representation.

Republican and Democratic parties are eager to continue creating legislative districts that give them the greatest possible partisan advantage. State and local governments previously required by the Voting Rights Act to obtain preclearance from the United States Attorney General or a federal district court no longer have to do so. Unless federal and state judges can be convinced to issue injunc-

tions before purported discriminatory practices are implemented, compliance with Voting Rights requirements will require lawsuits that will not be resolved until after one or more rounds of elections have occurred. In the meantime, members will have served and made public policy decisions.

In this chapter, we have seen there are few linkages between policies and demographic characteristics of legislators. However, in Chapter 7, we saw there are important differences between policies enacted in states controlled by Republicans and by Democrats. In general, Hispanic/Latino voters and African American voters support Democrats more than Republicans. The link between demography and policy is intermediated by partisanship.

States controlled by Republicans have enacted and are enacting voting laws intended to reduce the participation of minority groups in elections. Many decades ago, within the lifespan of people in your grandparents' age cohorts, Democrats were the party seeking to suppress minority participation. Although members of both major parties pay homage

Figure 9.13
Control of State Legislature by Same Party 2002-2017
 (13+ of 17 Years)

Arizona	Rep
California	Dem
Connecticut	Dem
Florida	Rep
Georgia	Rep
Hawaii	Dem
Idaho	Rep
Illinois	Dem
Kansas	Rep
Maryland	Dem
Massachusetts	Dem
Missouri	Rep
New Jersey	Dem
New Mexico	Dem
North Dakota	Rep
Rhode Island	Dem
South Carolina	Rep
South Dakota	Rep
Texas	Rep
Utah	Rep
Vermont	Dem
Washington	Dem
West Virginia	Dem
Wyoming	Rep

to the “sacred right to vote,” they are also working to make voting easier for their supporters and more difficult for their opponents. Politics is concerned with winning and losing. We should always expect political actors to work in their own self-interest to gain and retain power.

The Long Term Impact of One Party Control

In your lifetime, partisan gerrymandering of state legislative districts has made all but a small proportion of general elections uncompetitive. The winning party is decided when a district is drawn. The winning candidate is decided by partisan primary elections. Uncompetitive general elections confirm the results of primary elections. In many states, including Texas, incumbent legislators are more likely to be defeated in primary elections than in general elections. They lose to challengers who say they can be more extreme than the incumbents.

This pattern has been the norm in a large number of states in the 21st century. As a result, there are many state legislatures that have been

controlled by one party for all or almost all of the years 2002-2017. Figure 9.12 is a data visualization of single party control for these years: darkest background is Republican Party control, white background is Democratic Party control and gray background is divided or split party control. Figure 9.13 identifies the 24 states that have been controlled by the same party for all or at least 14 years of the 16-year time period.

Virtually all state and local government policies are developed over a long period of time. In a single year, a new majority party cannot make major changes in policies that involve taxing and spending. Such changes take a prolonged period of time. In Figure 7.10, analysis of correlations between Republican Party control in 2015 and a number of state policies was presented. Five of eleven correlations were greater than the plus or minus .30 standard and all were in the correct prediction. The analysis concluded, “If the pattern of one-party control of state governments continues, we might well see stronger relationships between state partisanship and policy.”

Figure 9.14 analyzes the policies of Figure 7.10

for the 22 states with at least 14 of 16 years from 2002-2016 with the same party in control of the state legislature. Because the number of states in the analysis is small, Figure 9.14 presents average values for both states controlled by the Republican Party and States controlled by the Democratic Party. Averages that are significantly different from each other are in gray cells.

In one sense, the results of Figure 9.14 are essentially the same as those of Figure 7.10. Six correlations were strong and all were in the direction we would predict. In Figure 9.14, five differences between averages are strong and all in the direction we would predict. As was the case with the correlations for one year, all but one of the differences between averages over 15 years are in the direction we would predict. The only exception in both analyses is percent of Voting Age Population registered to vote in the 2014 election.

For some, the different averages in Figure 9.14 for long term Republican and Democratic Party control are easier to understand than the correlations in Figure 7.10. If we consider that Figure 9.14 reports analysis of only 22 states, we could conclude any differences in findings are linked to

measurement error. Findings for party control for one year and fifteen years both show considerable differences between policies followed by the two major parties. Unlike the Federal government, the majority party in almost all states has sufficient power to enact its policies. Part of that power is from single party control and part is from the absence of extreme, make-no-compromises and take-no-prisoners partisanship that exists at the federal level.

Conclusion

With representative government, the elected legislative bodies are supposed to be representative; otherwise, their policies are not what the public prefers. Historically, geographically based representative districts have been used more to prevent equal representation than to promote it.

In contemporary America, all politicians speak often and urgently about preserving the right to vote and to be represented. At the same time, few have the opportunity to vote in meaningful elections that choose the partisan affiliation of those who will represent them. This will continue as long

Figure 9.14
Long Term Single Party Control of Legislature and State Policies 2015

	Republican Control Average	Democratic Control Average
Per Capita State and Local Revenue	\$8,459	\$9,974
Per Capita State and Local Expenditure	\$9,327	\$10,798
State and Local Tax Burden	8.4%	10.1%
Regressivity of State and Local Taxes	5.8%	5.4%
Per Capita State and Local Long Term Debt	\$6,701	\$11,185
Percent of VAP Registered to Vote, 2014 General Election	60%	58%
TANF Monthly Benefit Family of 3	\$406	\$579
Educational Spending Per Child in ADA	\$14,147	\$13,308
Percent Medicaid Paid by State and Local Government	37%	42%
Poverty Rate	13.9%	12.9%
Violent Crime Rate	331	365
Property Crime Rate	2,589	2,446
Prisoners Per 100,000 Population	419	293
New Prisoners Per 100,000 Population	13,469	11,517

as partisans who will subsequently contest elections draw determine the boundaries of representative districts.

Summary

1. The legislative branch not only is expected to check and balance the executive branch in making public policy but also is expected to represent constituents. Representation is difficult to achieve.
2. Although it was once necessary given communication difficulties and illiteracy, geographically based selection of legislators is no longer necessary and no longer allows representatives to have a consistent constituency that is easy to represent.
3. State legislatures apportion their states' populations into both state upper chamber (senate) and lower house districts and U.S. congressional districts. The drawing of district lines can greatly disadvantage the minority party that has little say in the matter. Recent court decisions have increased the likelihood that partisan considerations will dominate how legislative districts are drawn in the future.
4. The process of enacting a bill involves the "three-reading" procedure that was adopted from England. By conventional measures, few bills pass the hurdles of this procedure. State legislators say killing bad bills is more important than passing legislation.
5. There is insufficient empirical evidence to support the contention that states with more and less professional legislatures pursue systematically different policies.
6. The representativeness of legislatures varies greatly in terms of representing women and minorities. No one state or group of states stands out as most representative.
7. Some policies are linked to better representa-

tion of women. The relationships are not necessarily causal.

8. The relationships between policies and party control of legislatures for a single year reported in Chapter 7 are largely found when party control is measured over a much longer period of time.

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Figure 9.14	Sources identified in Figure 9.12 and Figure 7.10.

Study Guide, Chapter 9

Essay Questions

1. What are the functions of the state legislatures other than making laws? How would you make the case that lawmaking is the most important function? How would you argue that lawmaking is not the most important function?
2. The communication and transportation technology of the 18th century made state legislative districts based on geography the only realistic option. What are the advantages and disadvantages of this approach to representation in the 21st century? Are geographic districts still the only realistic option? If so, why? If not, why are any options better than geographic districts?
3. How did *Evenwel v Abbott* (2016) clarify the meaning of one-person, one-vote? What principle from *Reynolds v Sims* (1964) was changed?
4. Who can introduce a bill in a state legislature? What is the series of events that happen to successful bills after they are introduced? Why is it easier to kill a bill than to pass a bill? How can partisanship play a key role at each step?
5. Is it accurate to say that every bill is submitted with the intention that it be enacted into law? Why or who not? If not, what are three alternatives for introducing legislation?
6. What are the key arguments for why a state legislature should or should not accurately reflect the population it represents by sex and race/ethnicity? Does it matter whether Republicans or Democrats control a state legislature for many years in a row? Why or who not?
7. Why is there concern about partisan redistricting? Explain the arguments some make for why gerrymandering is not just a harmless political game but constrains legislative representation and, perhaps, threatens our democracy.

Multiple Choice Questions

1. Compared to their constituents, members of state legislature are
 - a. older
 - b. more male
 - c. less Hispanic or Latino
 - d. all of the above
2. Which of the following is NOT a legal requirement for drawing district lines?
 - a. contiguity
 - b. population equality
 - c. compliance with Voting Rights Act
 - d. incumbent advantage
3. The majority of bills submitted to state legislatures and Congress
 - a. are passed into law
 - b. are not passed into law
 - c. are symbolic bills
 - d. propose constitutional amendments
4. Which of the following is correlated with professionalism in state legislatures?
 - a. percent women in the legislature
 - b. number of bills introduced
 - c. Republican control of the legislature
 - d. none of the above

Notes

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Chapter 10

EXECUTING THE LAWS AND REPRESENTING THE PEOPLE

Much information pertaining to the executive branch in our national government applies to the executive branches of the states and communities. Since the bicameral legislature and executive checks and balances in the national Constitution copied the government form of the states and municipal governments at the time, this should not be surprising. The Massachusetts' constitution written in 1780 served as a model for the federal constitution of 1787. More importantly, English city government followed the same pattern beginning hundreds of years earlier.

The generalization that governors are similar to the president is of limited utility because the powers of the governors differ from one state to another. Different powers given to state governors allow us to inquire whether they affect the actions that are taken by the states. The governor, as the top official of the executive branch of state government, is expected to provide leadership in solving social problems. We also expect this of the president at the national level. Besides providing leadership, governors are supposed to be representative of and responsive to the public. Americans have not always had such high expectations of our governors.

Ambivalence Toward The Executive

American ideas about state government's executive branch, and the governor in particular, have ranged widely over our history. Americans initially viewed the governor with outright hostility, given their experiences with the king's governor. Ten of the original 13 states initially had a single-year term for their governors, believing that they could quickly remove those who acted irresponsibly.¹ At present, the executive is expected to provide policy

leadership. We expect governors to be "vigorous incisive, and thoroughly trained leaders"² This change has been caused by the competition of states in a very complex world economy as well as by the problems, such as crime and urban decay, inherent in the concentration of people in metropolitan areas.

As we initially noted in Chapter 9, representation was primarily expected of only the legislature. Before the Declaration of Independence, the king of England had appointed the governor. His lack of accountability had led the colonies to demand powers for the representative legislative branch. Similar demands for powers for the legislative branch had long existed in England. When they threw off the influence of the king's governor, most states simply weakened the office of governor to the point of being irrelevant. Several state constitutions, including Massachusetts's 1780 constitution, however, used the office to offset what was seen as a too-powerful legislature, representative though it might have been. This concept, of course, is the basis of "checks and balances."

Andrew Jackson's idea that the president should also be a *representative* of the public, along with the growing role of the public in selecting the president, influenced thinking among the states about governors.³ His perspective on presidential politics included the idea that "to the victor belonged the spoils" of government. In the resulting *spoils system*, the winning president or governor appointed supporters to all available governmental offices, as a reward for their support in winning the election. With a turnover in the executive branch, supporters of the new officeholder would replace all previous government workers.

Although some were entirely satisfied with this situation, the "better elements" of society sought

to reform the executive branch to make “merit” the basis of public employment. We have already discussed this concept in Chapters 4 and 6. At any rate, powers were taken from the executive branch. The Southern states certainly supported this trend, given their experience with Reconstruction era “carpetbagger” governors. Ideas at this time called for a governor who could check the legislative branch but was otherwise weak. Until states experienced the need to use government to cope with the new problems of industrialization, it mattered little whether the governor was weak or strong.

The situation changed as states filled the need to address problems such as crime, regulation of business and industry, the inequitable distribution of wealth in local school districts, and other problems that come with contemporary economies and

urban life. Legislatures tend to be reactive rather than proactive institutions. They rarely are venues of creativity. Instead, they most often deliberate ideas that originate elsewhere. The office of the governor was well positioned to coordinate the substantive knowledge of executive branch bureaucrats and draft proposals for problem-solving legislation. Executive leadership from the governor thus became urgent in our expectations. “Good-time Charlies” could no longer be tolerated as governors.⁴

Partisan Control Trifectas

Figure 9.13 documented that, in 22 state legislatures, one party had majority control of both chambers for 14 or more of the years 2002 to 2017.

Figure 10.1
Trifecta Control of Legislature and Governor 2002-2017
 January for each year except 2017, which is based on 2016 election results.



Figure 10.2
Trifecta Control States, January of Each Year

Year	Rep Trifecta	Dem Trifecta	Total
2002	11	11	22
2004	12	9	21
2006	12	7	19
2008	9	14	23
2010	9	17	26
2012	21	11	32
2014	23	13	36
2016	22	7	29
2017	24	6	30

The Republican Party had long-term control in 12 states; the Democratic Party had control in 10 states. A partisan control trifecta is when one party controls both chambers of the legislature and the office of governor. Figure 10.1 is a visualization of trifecta party control in January from 2002 to 2017. Figure 10.2 identifies trifectas and controlling party for each two-year period.

Starting in January 2010, a majority of states have had trifecta control. The largest number was 36 states in January 2014. In January 2010, Democratic Party trifectas outnumbered Republican Party trifectas. Starting in January 2012, Republican Party trifectas are the majority. This change reflects the gains made by Republicans in the first midterm election of the Obama Presidency. The continuing majority of Republican Party trifectas through 2017 show the success of Republican gerrymandering of state legislative districts.

In Chapter 9, the policies of states with legislatures controlled by Republicans or Democrats for 14 years or more of the period 2002-2016 were compared. A similar comparison for long-term trifecta control by Republicans and Democrats is not possible. Figure 10.3 shows that Republicans had long-term trifecta control in 10 states; Democrats had control in one state. Important differences in averages between two groups of states cannot be found when one of the two has only two states.

The Modern Governor

The institutional powers of governors vary across the states largely because of the different feelings toward the office noted above. Powers derived from the state constitutions include length of term, veto powers, fragmentation of the state executive and appointive powers for lesser offices, and budget-making powers. Some governors have strong powers and thus might be expected to have more influence on what their state does, whether for good or for bad.

Term of Office

At the low point in recent gubernatorial powers, most governors were elected for two-year terms. So were members of lower legislative chambers in most states. These short terms encouraged responsiveness and representativeness. With only two years between elections, representatives must always be aware that the voters may defeat them for failing to act the way voters prefer. At least this was the argument for such short terms. Some states, such as Alabama, when George Wallace was governor, would not even allow a governor to serve consecutive two-year terms. Wallace sought unsuccessfully to avoid this by having his wife win the governorship for the next two-year term, presumably to be followed by George Wallace the term after that. Short terms handicap governors seeking to change state policies. Legislators and

Figure 10.3
Trifecta Control By Same Party 2002-2017
 (13+ of 17 Years)

Florida	Rep
Georgia	Rep
Idaho	Rep
North Dakota	Rep
Ohio	Rep
South Carolina	Rep
South Dakota	Rep
Texas	Rep
Utah	Rep
Washington	Dem
West Virginia	Dem
Wyoming	Rep

bureaucrats could simply stall until the next election when someone else would win office. Longer terms would seem to strengthen the governor's opportunity to influence policy.

A four-year gubernatorial term has become the norm. Since 1955, nineteen states have switched from two to four year gubernatorial terms.⁵ Only two states now retain a two-year gubernatorial term: New Hampshire and Vermont. Neither limits the number of such terms.

There are differences in how many terms the governor may serve. Fourteen states impose no limits whatsoever. Eight states have an absolute limit of two terms. Twenty-three states require that a governor leave after two terms for a 4-year period and may then return. Four states limit service to 8 or 8 of 16 years, and Virginia allows a 4-year term and then 4 years off.⁶

Since limits have been placed on legislative terms only recently, governors with limits on the number of their terms would seem weaker with regard to dealing with the legislature.⁷ In states with no limits, a governor theoretically might be continually reelected and make a career as governor of that state. In actuality, however, few governors serve more than 8 years. Rick Perry of Texas became governor in 2000 when Governor George W. Bush became President. Governor Perry was reelected in 2002, 2006 and 2010. He had served 14 consecutive years when he decided not to seek reelection in 2014.

Veto Powers

As previously noted, a bill passed by a state legislature does not become law if rejected by the governor. Governors disallow bills by exercising *veto power*. Governors typically make statements about why they are declining bills in their veto messages. All state governors now have the power to veto bills in their entirety. The president also has such a power, but many governors have an even more flexible power, the *item veto*.

All but six states give their governor the power to veto portions of a bill while allowing the remainder to become law.⁸ Typically, item vetoes are limited to appropriation bills. With this power, the governor need not negotiate minute details with the legislature to get a budget passed. He or she can item veto those budget items not desired. Sometimes the governor can merely reduce the money given to an agency or program.⁹

As we have seen, legislatures can override gubernatorial vetoes but seldom do. Governors without item veto power are less able to influence legislation. As noted in Chapter 9, vetoes and veto overrides are uncommon. Only 15 legislatures had more than 10 bills vetoed in regular sessions held in 2015.¹⁰ In previous legislation sessions, governors' vetoes were rarely overridden, typically around 15%.

Fragmentation of the State Executive

The president and vice president of the United States are the only nationally elected executives. The president appoints all other executives, such as the secretaries of state and defense, with the approval of the Senate. They are the president's assistants and may be asked to resign for "personal reasons," if the president asks. The governor of New Jersey is the only state chief executive who appoints all other top executives. Most governors share power in the executive branch with many others, some of them also selected in statewide elections.¹¹

The position of lieutenant governor exists in 45 states. In West Virginia, the President of the Senate is also the lieutenant governor. The other 44 states choose lieutenant governors by election. Governors and lieutenant governors are elected as a team and will be from the same party in 26 states. Elections for lieutenant governor in 18 states are independent of elections for governor, and it is possible for governors and lieutenant governors to be from different parties.¹²

Fortunately for governors, most lieutenant governors are like the vice president. They exercise few powers and wait in the wings in case the governor has to be replaced.

All states have the office of attorney general, but governors appoint attorneys general in only 5 states. The governor appoints the secretary of state in only 8 of 46 states that have the office. The large majority of these two executive officials must seek their own reelection and owe their election success to their own efforts rather than to anything done by the governor. Governors seeking their cooperation cannot threaten to fire them. And their cooperation with a successful governor may win them little support at the polls when they seek to be reelected. Finally, the federal courts have even undercut the governor's ability to fire appointive officeholders.¹³

Appointive Powers

When executive offices are not elected, often the governor can appoint them. For many positions, state senates must consent to appointments. This arrangement is not unlike the president's appointments of cabinet members, but there is an important difference. Presidents name all cabinet mem-

bers at the time they take office. Many states have important agencies governed by appointed boards rather than individuals. Board members serve staggered terms. As a result, new governors can name only a minority of board members at the time they take office.

Control by the new governor does not occur shortly after he or she takes office. Appointed boards may not have a majority of members named by new governors until more than half-way through the governors' first terms in office.

In Texas, most appointed boards have 9 members and governors appoint only 3 every two years. When it was written, the Texas Constitution gave governors a two-year term of office. A governor would have to win three consecutive elections to appoint all board members. Subsequently, the term of office was amended to four years and, as noted earlier Governor Rick Perry served 15 consecutive years. He had appointed all members of all boards for at least two membership cycles. The authors of the Texas Constitution did not contemplate this would ever occur.

Sometimes agency heads are not appointed but rise through civil service, again owing nothing to the governor. Governors with more appointments should have more resources for making public policy. Some states do not have positions that commonly exist in most states. For example, many states lack a comptroller. This would seem to neither help nor hurt the governor.

Budget-Making Powers

A budget can enormously influence what the state does. Those who control the budget or purse strings control policy. A policy with no funding for enforcement or implementation is empty, and governors differ in their influence on budgets. Governors in Texas and South Carolina, for example, cannot independently develop both their own revenue estimates and expenditures proposals. In other states, governors have access to information not available to the legislatures. This advantage strengthens the governor's hand. Furthermore, they have the opportunity to submit to state legislatures comprehensive proposals for revenues and expenditures. Legislatures are inclined to consider only relatively small adjustments to these proposals.

Other Powers of the Governors

The above powers are institutional powers written into state constitutions and statutes, but there are other sources of influence avail to governors, as there are for presidents. Probably chief among them is the **power of personality**. Many governors are effective administrators but lack the personality that could make them memorable as a “great governor. Obviously, a governor with few institutional powers and having a “dry” personality will little affect a state. Few governors are memorable once out of public office.

With few exceptions, governors are members of one of the major political parties. This gives them the **power of party organization**. Recalcitrant legislators in their governor’s party can be pressured to support the governor for the good of the party and their own reelections. The expectation is that in subsequent elections, voters will reward that party for good policies enacted. This approach works more effectively when there is unified party control. **Unified party control** exists when a governor’s party also holds the majority of seats in both chambers of the state legislature. **Divided government** exists when both parties have control of either the governor’s office or one of the legislative chambers.¹⁴

Only the Republican governors of Florida, Idaho, North Dakota, Ohio, and South Dakota enjoyed unified party control for all 12 years. The Republican Party enjoyed greater success in this decade. It is important to note that 27 states experienced unified government under both major parties at different times.

Another power of the governor from political parties was provided by the patronage system or spoils system. When the party faithful could be given jobs with the state, their loyalty could be rewarded and their continuing actions in support of the party’s position encouraged. Patronage workers failing to comply with the governor’s program could be fired and replaced with those more supportive of the program.

The *merit system* changed this scheme. Reformers sought this structure as a way of weakening the support political machines might gain with offering people public jobs. Employment in such a system uses a civil service testing procedure. For each government job, there are associated tasks

for which people take competency examinations. Those passing such examinations are ranked on a listing of eligible applicants. The top names are sent to an agency needing someone with those skills. The agency must hire one, for a probationary period. Once that probationary period has passed, the government employee can be fired only for a specific reason.

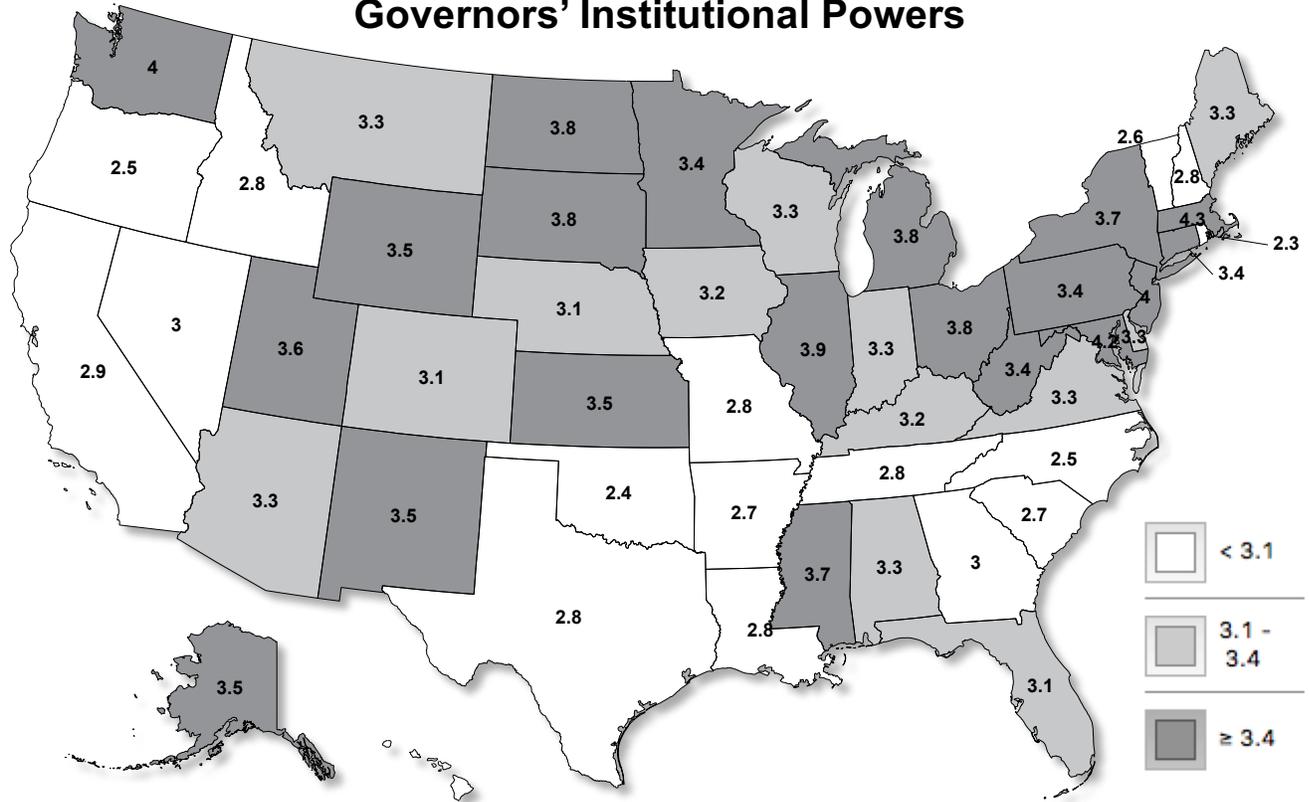
Obviously, merit employees owe no allegiance to a political party or to the governor. That was the reformers’ goal. A governor facing resistance in the bureaucracy for his or her program initiatives can do little against such civil servants. Their support and votes also cannot be expected in elections. Thus, the merit system weakens the governor and other elected executives.

Presidents can usually gain primetime access on the major television networks to address the U.S. public. With this access, they can “go over the head of Congress,” appealing directly to the public for its support and pressure Congress to respond as the president wants. This advantage might be called media power. Governors have very limited or no media power. The print and broadcast media in the United States are sometimes organized on the national level and sometimes organized on the community level. For example, there are national networks and newspapers and community broadcast stations and local newspapers.

Like the president, a mayor can seek access to the community through local television or radio stations or newspapers. There are no state-level media, however. The governor can tailor press releases, can visit localities and appear on their local stations, and can even make video messages available for use on television stations, but all can easily be ignored by local outlets.¹⁵ They are aware that other news stories sell newspapers or gain bigger television or radio audiences.

There is evidence that popular presidents have greater power over Congress than unpopular presidents.¹⁶ Popularity is also advantageous to governors as they deal with state legislatures. Rosenthal has assessed gubernatorial popularity in 12 states.¹⁷ The popularity of governors varies greatly from state to state and over time, but even after unpopular actions such as raising taxes, governors tend to be more popular than corresponding state legislatures. Some governors have been able to translate popularity into government actions that they pre-

Figure 10.4
Governors' Institutional Powers



fer.¹⁸ *Popularity is one of the important resources a governor can use.*

Assessing Governors' Powers

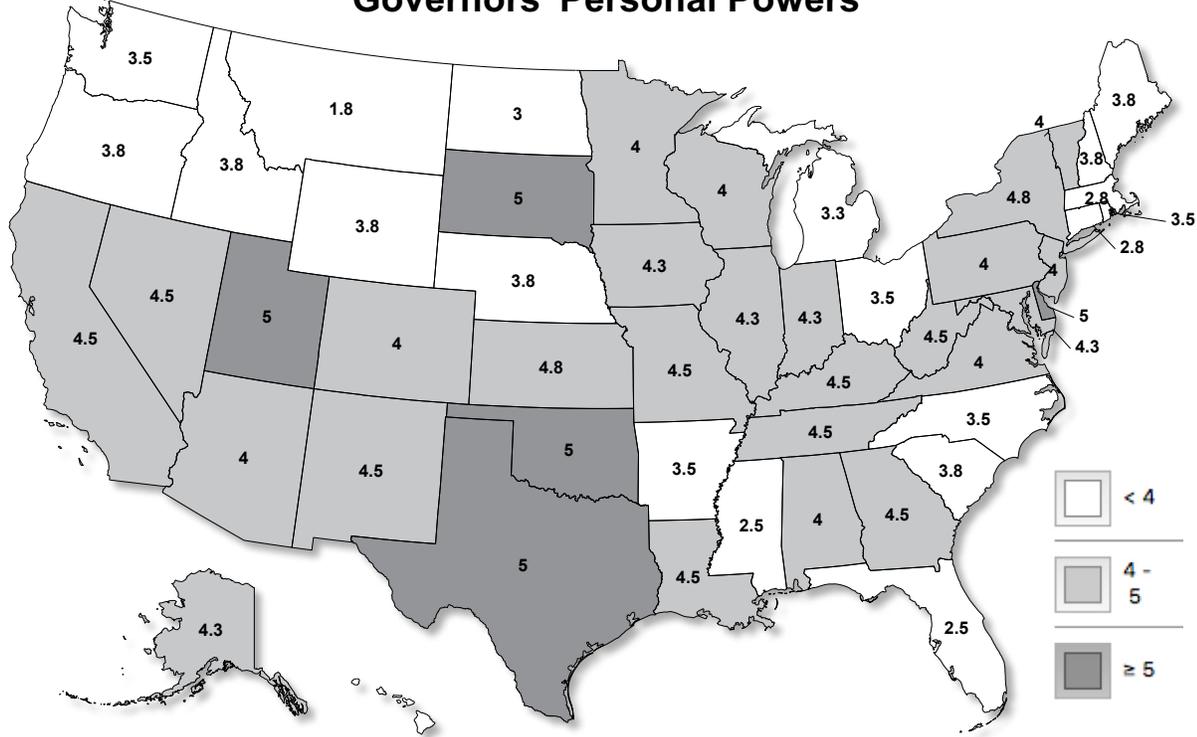
Using the institutional powers of governors as indicators of their strength, we can create a combined measure.¹⁹ Strengthened by additional institutional powers, a governor might provide better leadership. Figure 10.4 maps governors' institutional powers. The weak powers of Southern governors, with the exception of Mississippi, reflect those states' preferences for weak executives and limited government power. Governors in California, Oregon, Idaho and Nevada also have weak powers. There is no single region with most powerful governors. Powerful governors are in Eastern,

Midwestern and Western states.

Ferguson asked informants in each state to assess their governor's personal power. Her findings are summarized in Figure 10.5.²⁰ As we might expect, personal power is idiosyncratic to individuals. There are no regional patterns. Figure 10.6 documents personal power is unrelated to institutional power. The correlation is $-.09$. Clearly, power of governors is a challenging concept that is difficult to measure empirically.

All of this is not to say that state governors cannot be effective leaders and successfully deal with state problems. State legislatures and publics seem to expect governors to be strong leaders. Apparently, there is little or no consensus in the states about the powers and resources necessary for governors to be strong leaders.

Figure 10.5
Governors' Personal Powers



Impact of Gubernatorial Power on Policy

Do governors' powers matter? Figure 10.7 presents correlations involving three measures of governors' powers: institutional power, personal power and combined power, the sum of institutional and personal power. Twenty-three measures of states' financial and human resources, challenges and policies presented in earlier chapters are correlated with the three power indexes.

Quite simply, differences in state governors' personal powers and combined powers are not empirically related to other important differences across the states. None of the 46 correlations meet the .30 threshold. Correlations do meet the threshold for 7 of 23 correlations with Governor's institutional powers. None of the strong correlations involve measures of partisanship; all involve measures of state and local policy and per capita income. It should be noted that each of the 7 correlations is close to the threshold value and that none of the same correlations for policies in 2010 reported in the 9th edition of this text met the .30 threshold. Taken as a whole, these results suggest there are not strong ongoing relationships between governors' powers and state and local policies.

Gubernatorial Qualifications and Compensation

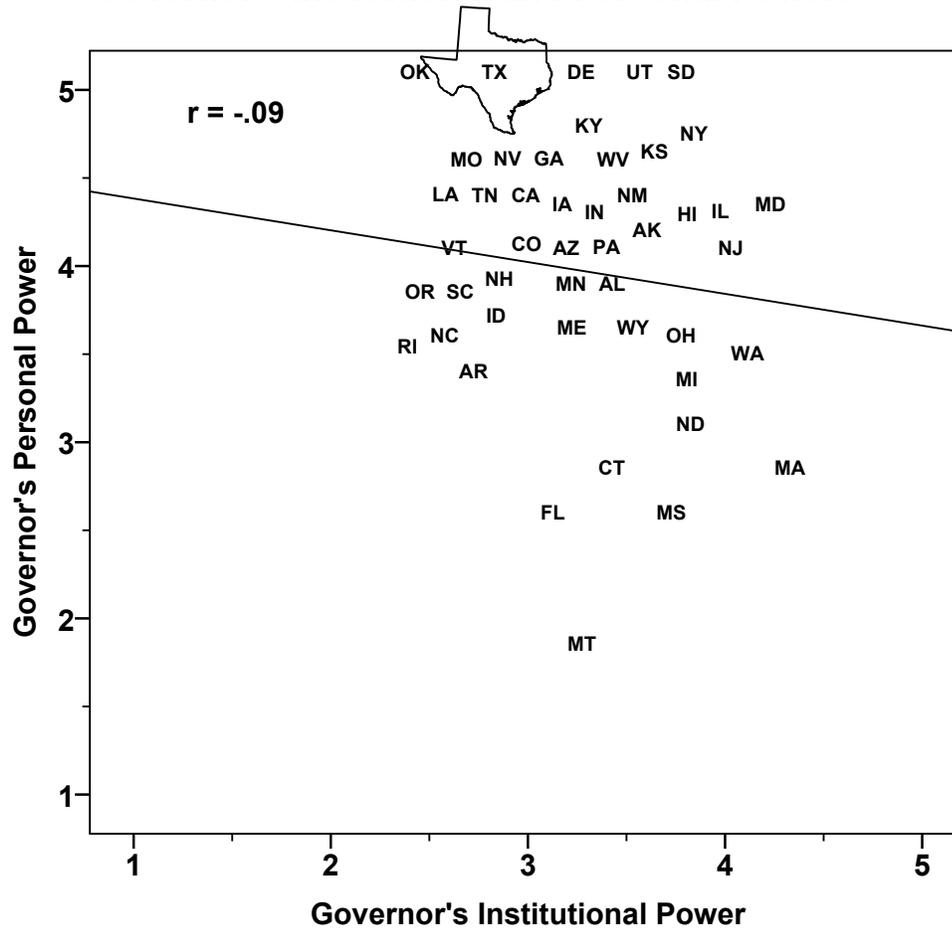
Qualifications

Massachusetts and Kansas have no minimum age requirement for becoming governor, but the other 48 states do. The minimum ages is eighteen in 7 states, twenty-five in 6 states, 30 in 34 states and 31 in Oklahoma. U.S. citizenship is a requirement in 44 states, and a minimum time as a state resident, ranging from 30 days to 10 years, is specified in 47 states. Thirty-seven states require qualification to vote in the state.²¹ Again, we note several "informal requirements" not written into the constitution but so common as to discourage those not conforming. In 2016, four Anglo women, one Hispanic woman, and one Hispanic man were governors. The other 44 governors were Anglo men.

The median age of governors serving in 2013 was 58, well above the median age of the American population, 37. All or nearly all governors have college educations and come from middle-class backgrounds.

Like legislators, governors are not representative of their constituents in these regards. In the period 1981-2011, only 11 percent of governors had not

Figure 10.6
Governors' Institutional and Personal Powers



held prior public offices. Many public service paths led to the statehouse, but previous service in the state legislature was on the resumes of 33 percent of governors. The position held immediately before governor was another statewide elective office for 23 percent, state legislature for 18 percent, and law enforcement for 17 percent.²²

The leading causes of governors leaving office are term limits and voluntary retirement. On leaving the governorship, most also retire from public life. Two 1970s governors, Carter and Reagan, of course, became presidents. Governors Clinton and Bush continued this pattern through 2008.

As we noted earlier, 36 states force the governor to leave the office, either temporarily or permanently, after either one or two terms. Governors can also be removed from office by impeachment in all states except Oregon or by recall in 19 states.²³ In impeachment, the lower house passes the charges against the governor (the articles of impeachment),

and the senate serves as jury. Eight governors have been removed by impeachment. The latest was Rod Blagojevich of Illinois in 2009.

Recalling a governor requires a certain number of registered voters to sign a petition for recall. The governor is recalled if a majority supports this action in the resulting election. There have been three gubernatorial recall elections held in U.S. history. In 2012, Wisconsin Governor Scott Walker survived a recall vote. In 2003, California voters successfully recalled Governor Gray Davis, and in North Dakota in 1921, voters removed from office Governor Lynn J. Frazier. California voters have initiated 32 gubernatorial recall attempts since 1911, but the 2003 recall of Governor Gray Davis was the first to ever reach the ballot. In 1988, Arizona voters filed enough signatures to trigger a recall election for Governor Evan Mecham. Arizona's House of Representatives impeached Mecham before the date of the scheduled recall election.²⁴

Figure 10.7
Correlations With Governors' Powers

	Institutional	Personal	Combined
Per Capita Income	.38	-.10	.14
Poverty Rate	-.20	.07	-.05
TANF Monthly Benefit Family of 3	.34	-.07	.14
Percent Medicaid Paid by State and Local Government	.26	.00	.16
Educational spending per child in ADA	.31	-.11	.09
Infant Mortality Rate Per 100,000 Live Births	-.10	.01	-.05
State and Local Tax Burden	.14	-.00	.09
Regressivity of State and Local Taxes	.18	-.02	.09
Per Capita State and Local Revenue	.32	-.01	.19
Per Capita State and Local Expenditure	.28	-.01	.17
Per Capita State and Local Long Term Debt	.28	.12	.28
Violent Crime Rate	-.04	.20	.15
Property Crime Rate	-.21	.08	-.05
High School Educational Attainment	.32	-.20	.01
College Educational Attainment	.32	-.08	.12
Percent Population Conservative	-.27	-.03	-.19
Percent Population Republican	-.11	-.08	-.01
Republican Percent of State Legislature	-.16	.13	.01
Prisoners Per 100,000 Population	-.35	.15	-.06
New Prisoners Per 100,000 Population	-.12	.21	.11
Restrictiveness of Abortion Policies	-.05	.06	.02
Percent Revenue from Personal Income Tax	.10	-.07	.01
Percent Income From Corporate income Tax	.06	-.04	-.01

Compensation

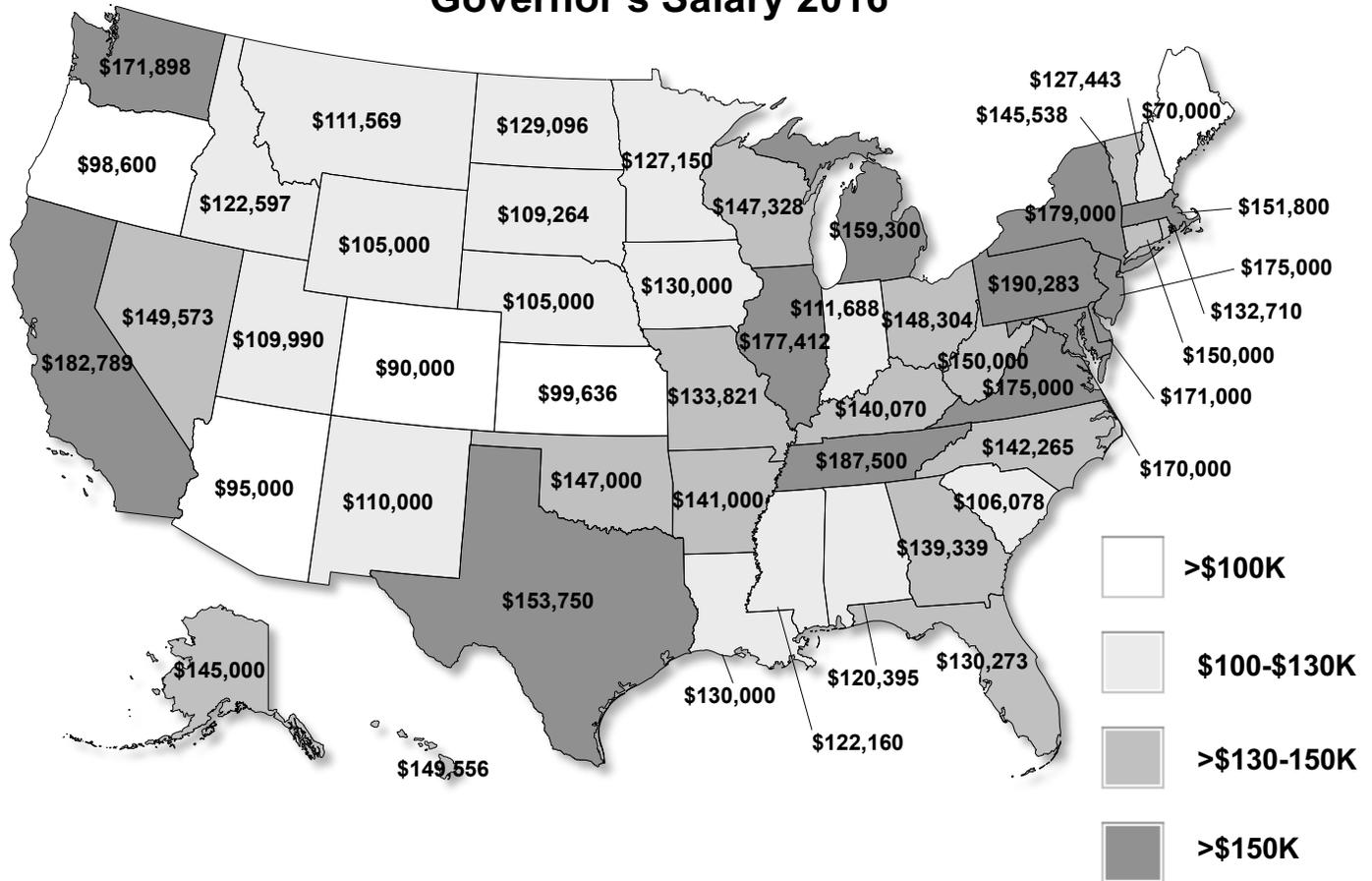
There is enormous variation in the salaries states will pay to their governors in 2016. The governor of Maine is the most poorly paid at \$70,000 per year, and Colorado at \$90,000 is next. By contrast, the figures are \$190,283 for Pennsylvania and \$187,500 for Tennessee. The highest-paid governor receives almost three times the salary of the lowest. Only five governors are paid less than \$100,000 each year.²⁵ We can see in Figure 10.8 that many of the mountain west states pay low salaries to their governors.

In his final years in office, Governor Rick Perry of Texas almost certainly received the largest annual income from state government. Financial disclosure statements filed for his candidacy for the

2012 Republican Party nomination for President of the United States indicated Perry had retired from state employment in January 2001. The sum of his \$150,000 salary as governor plus retirement pay brought his government-related annual income to \$242,388.²⁶

Governors receive the largest salaries paid to elected officials in each state. Governors are by no means the highest-paid state employees. If you attend a large public university, your school's president or chancellor probably receives a salary more than three times the state governor's salary. The salary paid to the President of Texas A&M is 6.5 times the salary paid to the Governor of Texas. Among the highest university football coaches' salaries are those of Texas and Texas A&M (33 times the Governor of Texas' salary) and Alabama (59

Figure 10.8
Governor's Salary 2016



times the Governor of Alabama's salary).²⁷ Governors' salaries are paid from funds appropriated by state legislatures. Total remuneration paid to administrators and coaches in public institutions of higher education are not paid entirely by appropriated funds.

Salary is only part of the compensation states provide governors. Housing is free at the governor's mansion. Automobiles, airplanes, helicopters, and travel and expense allowances are included. If they were not beforehand, governors become celebrities when they are elected. The status of being called governor, not only while in office but also after retiring from the office, probably is of great importance to those seeking the office.

What explains the differences in salaries states pay their governors? We might expect that gover-

nors with greater institutional powers will be paid higher salaries. This is not the case, as the correlations in Figure 10.9 show.

Salaries and institutional powers are unrelated. Salaries are also unrelated to financial resources of residents and of state and local governments. The only correlations above .30 are with per capita income, size of governor's staff and 4 measures of state legislators' activities, salaries and resources. Legislators may approve high salaries for their states' governors in order to give themselves high salaries. The highest correlation coefficient, .63, is between governors' salaries and legislators' salaries. This much higher correlation suggests, but does not prove, that governors' salaries are caused more by legislators' salaries than by the workload or leadership considerations.

Conclusion

This would suggest that the voters and legislators hesitate to give governors powers commensurate with their expectations for governors to provide strong and effective leadership. The media and public tend to think of governors as state chief executive officers, analogous to private sector CEOs. Yet, governors do not have CEOs' power to hire and fire, direct and oversee, and decide how to allocate resources. It is commonplace for the performance of state governments to be compared unfavorably with the performance of successful, large 21st century corporations. We suggest that such comparisons are unrealistic and inappropriate so long as state governors' powers closely resemble those of their 18th and 19th century counterparts.

Elections for Governor

The past two decades have seen changes in how and when governors are elected. Most governors now face elections in even-number years between presidential elections. In 2016, a presidential election year, 11 governor positions were contested in regularly scheduled elections and a special election was held following the mid-term resignation of Oregon Governor John Kitzhaber.

In 39 states, elections for governor are held in years different from elections for president. Elections are held in even years with no presidential election in 34 states and in odd years in 4 states. Kentucky, Louisiana and Mississippi held elections for governor most recently in 2015. The most recent election was held in New Jersey in 2013. New Hampshire and Vermont have two-year

Figure 10.9
Correlations With Governors Salary

	Salary
Governors' Institutional Powers	.20
Governors' Personal	.15
Governors' Combined Powers	.25
Per Capita Income	.35
Per Capita State and Local Expenditures	.19
Per Capita State and Local Total Revenue	.18
Number of bills submitted in legislature	.47
Number of bills passed by legislature	.22
Percent of bills passed by legislature	-.29
Legislators' salaries	.63
Legislative Professionalism	-.48
Length of legislative session	.33
Governor's staff	.31

terms for their governors, so every other election for governor coincides with a presidential election.

The intent of separating governor from presidential elections is to focus attention on state rather than national issues that so dominate in presidential election years. The result, however, has been a turnout decline of nearly 4 percent, since the hoopla associated with presidential elections attracts more voters to the polls.²⁸

A study of gubernatorial elections between 1970 and 2011 showed an average of 76 percent of governors could have run for reelection. Of those eligible, 78 percent did run, with 76 percent winning. Defeated incumbent governors were three times more likely to lose in a general election than in a primary election.²⁹

The success and retention rate for state legislators is higher. Given governors' great name familiarity, this may seem surprising. However, incumbent governors draw opponents--many with money to spend. Furthermore, the media are willing to report on elections for governor. As we will see shortly, both challengers and incumbents spend large sums in contemporary gubernatorial campaigns. Perhaps we should view the success rate of governors seeking reelection as extraordinarily high.

Do Voters Punish Governors for Unpopular Actions?

There has been much research to suggest that governors who are responsible for introducing taxes lose their reelection efforts afterward. Certainly, over the period from 1951 to 1989, some 20 percent of gubernatorial defeats could be attributed to raising taxes.³⁰ A definitive study of 407 gubernatorial elections for all states over the period 1957-1985 found any change or adoption of a sales tax or income tax preceding a reelection attempt resulted in the incumbent losing 3 percent of the vote he or she had received in the prior election.³¹ Obviously, if that prior election had been close, the incumbent might well have received "retribution" from the voters after the politically risky act of increasing taxes.

It is certain, however, that many incumbents can easily withstand the loss of 3 percent of their vote and win reelection. *Governors probably fear voter reactions to tax increases more than is justi-*

fied. On the other hand, legislators do not jeopardize their election prospects by voting to increase taxes. American voters punish the highly visible elected state official rather than those most directly responsible for increasing taxes.³²

With the weakening of political parties' ability to get their chosen candidates into office, these seekers of the governorship had to create their own campaign organizations and provide their own campaign funds. Many of these candidates' first ventures into public life were running for governor

In gubernatorial contests, the most expensive races occur in the largest states. The 2010 race for governor in California was the most expensive ever—more than \$192 million. The second most expensive race for governor was Florida in 2014, more than \$150 million. The third most expensive race for governor was Texas in 2010, more than \$102 million.³³

Other Statewide Elected Officials

Apart from the governor, there are many other statewide elected executives in most states. As discussed above, lieutenant governors in 45 states have few political powers. The Texas lieutenant governor is an exception. The nominal job of the position is presiding over the state senate. However, a combination of powers granted by the state constitution and legislative rules give the Texas lieutenant governor the opportunity to influence all legislative decisions and many executive actions.

It is rumored that, when asked if he would run for governor, one Texas lieutenant governor asked why, after holding the strongest executive position in Texas, that of lieutenant governor, would he be interested in running for the weakest, that of governor. Perhaps that is why the Texas Legislature, anticipating then Governor George W. Bush's successful presidential campaign in 2000, passed legislation clarifying that, when the governorship becomes vacant, the lieutenant governor must relinquish that position and become governor.

The *attorney general* is the second most often elected executive. The attorney general is popularly elected in 43 states and is appointed by the governor in 5 states. In Maine, the attorney general is selected by secret ballot of the legislature, and in Tennessee, by the state Supreme Court.³⁴

State attorneys general are more occupied with

civil law than criminal law. Responsibilities include giving legal advice and dealing with state-wide corrupt practices. Even before a bill is passed, the attorney general will often issue an opinion concerning its constitutionality and, after passage, opinions on interpretations of the meaning of the legislation. Although the courts can override these opinions, the attorney generals' statements carry great weight. Consumer protection matters, such as misstated product claims, bad insurance practices, poorly run and maintained health facilities, and corrupt officials, are also among the concerns of attorney generals.

The *secretary of state* is the chief clerk in 47 states. Secretaries of state are elected statewide in 35 states, appointed by governors in 9 states and chosen by state legislatures in 3 states.³⁵ A key responsibility is to collect, maintain and archive legally required reports. Almost all are responsible for administering elections. Most secretaries of state also charter businesses operating in their states, including corporations and partnerships. Term lengths for Secretaries of State match those of governors in the same state. Only sixteen states have maximum consecutive terms for Secretaries of State. Secretaries of state are first in the line of succession to become governor in 3 states and second in the line of succession, immediately behind lieutenant, governors in 8 states.³⁶

The *treasurer* deposits state money in banks. The *auditor* sees that state funds are properly and

legitimately spent. Other executives include the public utilities commissioners, who set rates on public utilities, such as electricity, natural gas, and telephones; the regents of public higher education institutions, who set policies and tuition for those schools; and various commissioners of agriculture, education, labor, and land.

Although some incumbents in these positions may face occasional election challenges, most are unknown in their states. Holders of minor state elective offices typically serve many consecutive terms until they decide to retire.

Bureaucracy

The numerous workers in the various agencies of government are frequently called the bureaucracy. The bureaucracy is the part of the executive branch of government called upon to administer and implement the many laws and programs passed by state government. What we typically have in mind when we hear this word is hundreds of clerical workers laboring in a large room.

In 2014, 15 percent of U.S. employees worked for state and local governments, but very few of these are clerical workers. About 57 percent of state and local employees were involved with primary and secondary education. The second biggest category of state and local employees (about 8 percent) included health care and hospital workers, many of whom are nurses. Police and

Figure 10.10
Representativeness of State and Local Government Employment 2013

	State and Local Government Employees	U.S Population
Male	54.3%	49.2%
Female	45.7%	50.8%
White	65.3%	63.9%
African-American	18.8%	12.3%
Hispanic	11.3%	16.3%

those involved in fire protection constituted about 7 percent of state and local employees; another 4 percent were employed in corrections.³⁷ Many government employees hardly match our ideas of a bureaucracy.

One thing we do expect of all government employees is that no one else receives better treatment than that we personally receive. We expect such employees to understand our personal circumstances. When we buy something from a private enterprise, we feel we can go elsewhere if dissatisfied. Government typically does not provide this option. Thus, generally, if the bureaucracy treats us impartially, we feel slighted; but if the bureaucracy treats others preferentially, we are offended. We view the forms used in administering programs as burdensome “red tape.” On the other hand, little of the information on these forms goes unused in impartially evaluating our particular circumstances and eligibility for government services.

The Political Significance of State and Local Employees

State and local employees are much more likely to vote than others. Even in state contests, upwards of 80 percent vote.³⁸ Often, their votes constitute more than 20 percent of the vote in local and state elections, which of course could easily shape the outcome. Schoolteachers especially are organized enough to affect election outcomes with their involvement. Unlike the legislative branch, state-wide executives, and, as we shall see, the judicial branch, state and local employees more accurately reflect the percentage of women and minorities within the state.³⁹ Thus, the bureaucracy’s participation would seem to influence state and local government toward the views of the general public.

Hatch Act

The Hatch Act of 1939 made most partisan involvement by federal employees illegal. Most states have copied this act in prohibiting much political activity among state and local government employees. The Supreme Court has upheld such acts. Thus, although state and local employees have great impact on elections by way of their heavy voting, they are relatively insignificant as sources of voluntary campaign activity, in running

themselves, or in contributing money.

Equal Opportunity and Diversity

Civil service’s stress on “objective merit” has reduced discrimination based on race, ethnicity, age, gender, and disability. State governments have addressed discriminatory practices or effects in their personnel systems in response by federal and state laws and court rulings. Figure 10.10 shows the representativeness of state and local government employees by sex and race/ethnicity in 2013. The proportion of female state and local government employees was only 5 percent less than would be expected based on their presence in the population. African-Americans’ share of state jobs exceeded their population by 6.5%. Hispanics were under-represented by 5%.⁴⁰ State and local government employees are much more like the population of the United States than are elected officials at any level of government.

Collective Bargaining

State employees in 30 states possess collective bargaining rights, but the consequences of collective bargaining for state administration are far from clear. Collective bargaining and civil service practices often coexist. But unions and civil service systems have some fundamentally different goals. Civil service systems use merit principles to determine promotions and salaries. Unions want these decisions to be based primarily on seniority.⁴¹ Although there was great concern about what collective bargaining would mean to efficiency and the quality of public service, careful consideration reveals few benefits or negative consequences. There is little systematic evidence that collective bargaining hampers productivity or reduces the quality of government services.⁴²

Unresponsiveness

As noted earlier, with the possible exception of county governments, the merit system of employment has greatly reduced the opportunity for politicians to have a say in who is employed by government. The old patronage system perhaps gave them too much say. Now that this change has been made, we can no longer expect always to be

successful when we ask politicians to get government employees who are unresponsive to public opinion out of government. As we noted in our discussion of how a bill becomes a law, even legislators may have difficulty ensuring that the law as administered corresponds with the actions they had intended.

Conclusion

The elected state executive, especially the governor, has seen an ebb and flow in public support throughout U.S. history. At the time of the Declaration of Independence, few wanted any political strength for governors. Governors were then strengthened to check and balance the legislative branch. Later, Southerners distrusted both governors and legislators. With modern complex state economies, many now demand that the leadership of the governor be strengthened. Many governors have seen their powers improved, but this strengthening is largely in length of gubernatorial terms in rural states and in governors' salaries in metropolitan states. Neither would seem to strengthen the governor's hand in battling the state legislature. Certainly, the presence or absence of other statewide elected executives has never been shown to matter much to the quality of political life or public policy. Similarly, strengthening the powers and especially increasing the salary of governors seems to follow states' movement into a more complex economy and to matter very little.

Summary

1. At various times in our history, we have sought to weaken or even to discard governors and the executive, and at other times, we have attempted to strengthen this office to help cope with problems raced by the states.
2. Governors vary in their institutional powers to influence the policies adopted by their states. Budgetary, appointment, and veto powers are prime examples.
3. There are not strong ongoing relationships between governors' powers and state and local governments' resources, challenges or policies.

4. Increasingly, governors are elected for 4-year terms with substantial salaries and other benefits, but it costs millions of dollars to win the office. Mostly, these campaign funds come from those anxious to get their way on state policies.

5. Most states have other statewide elected executives charged to deal with limited aspects of state services, such as controlling the investment of state surplus funds, acting as governor in the governor's absence, or having one's signature on state checks. Although these offices may serve as training grounds for governors, they have little other political significance.

6. Unlike federal, state and local elected officials, employees of state and local governments resemble the United States population in sex and race/ethnicity.

Information Sources

Figure 10.1	https://ballotpedia.org/Ballotpedia:Who_Runs_the_States,_Partisanship_Results,_Partisan_Control_of_Governorships ; https://ballotpedia.org/Gubernatorial_and_legislative_party_control_of_state_government#Trifectas
Figure 10.2	https://ballotpedia.org/Ballotpedia:Who_Runs_the_States,_Partisanship_Results,_Partisan_Control_of_Governorships ; https://ballotpedia.org/Gubernatorial_and_legislative_party_control_of_state_government#Trifecta
Figure 10.3	https://ballotpedia.org/Ballotpedia:Who_Runs_the_States,_Partisanship_Results,_Partisan_Control_of_Governorships ; https://ballotpedia.org/Gubernatorial_and_legislative_party_control_of_state_government#Trifectas
Figure 10.4	Margaret Ferguson, <i>Governors and the Executive Branch</i> , in Virginia Gray, Russell Hanson and Thad Kousser, eds, <i>Politics in the American States: A Comparative Analysis 10th Edition</i> . (Los Angeles; CQ Press, 2013).
Figure 10.5	Margaret Ferguson, <i>Governors and the Executive Branch</i> , in Virginia Gray, Russell Hanson and Thad Kousser, eds, <i>Politics in the American States: A Comparative Analysis 10th Edition</i> . (Los Angeles; CQ Press, 2013).
Figure 10.6	Margaret Ferguson, <i>Governors and the Executive Branch</i> , in Virginia Gray, Russell Hanson and Thad Kousser, eds, <i>Politics in the American States: A Comparative Analysis 10th Edition</i> . (Los Angeles; CQ Press, 2013).
Figure 10.7	Margaret Ferguson, <i>Governors and the Executive Branch</i> , in Virginia Gray, Russell Hanson and Thad Kousser, eds, <i>Politics in the American States: A Comparative Analysis 10th Edition</i> . (Los Angeles; CQ Press, 2013); BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70 ; http://www.census.gov/hhes/www/poverty/data/historical/people.html Historical Poverty Tables Table 3. Poverty Status of People, by Age, Race, and Hispanic Origin: 1959 to 2014 ; U.S. Census Bureau, Current Population Survey, 2014 Annual Social and Economic Supplement, Table 3 Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014; http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html Margaret Ferguson, <i>Governors and the Executive Branch</i> , in Virginia Gray, Russell Hanson and Thad Kousser, eds, <i>Politics in the American States: A Comparative Analysis 10th Edition</i> . (Los Angeles; CQ Press, 2013); National Council of State Legislatures, <i>Legislator Occupations</i> , http://www.ncsl.org/research/about-state-legislatures/who-we-elect-an-interactive-graphic.aspx# ; http://www.ncsl.org/programs/legismgt/ABOUT/OccupationNational.htm ; http://www.ncsl.org/research/about-state-legislatures/who-we-elect-an-interactive-graphic.aspx# ; Kaiser Family Foundation http://kff.org/other/state-indicator/distribution-by-raceethnicity/#table ; Guttmacher Institute, <i>State Policies in Brief, An Overview of Abortion Laws</i> , July 1, 2013 http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf http://www.electproject.org/ ; http://www.gallup.com/poll/15370/party-affiliation.aspx ; http://www.usgovernmentspending.com/compare_state_spending_2015dH0D ; http://www.itep.org/whopays/full_report.php ; http://taxfoundation.org/article/comments-who-pays-distributional-analysis-tax-systems-all-50-states ;

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Figure 10.8	<p>Book of the States 2016, Table 4.3 The Governors: Compensation, Staff, Travel and Residence; http://knowledgecenter.csg.org/kc/content/book-states-2016-chapter-4-state-executive-branch</p>
Figure 10.9	<p>Book of the States 2016, Table 4.3 The Governors: Compensation, Staff, Travel and Residence http://knowledgecenter.csg.org/kc/content/book-states-2016-chapter-4-state-executive-branch;</p> <p>Margaret Ferguson, Governors and the Executive Branch, in Virginia Gray, Russell Hanson and Thad Kousser, eds, Politics in the American States: A Comparative Analysis 10th Edition. (Los Angeles; CQ Press, 2013); BEA Regional Data GDP and Personal Income, SA1 Personal Income Summary: Personal Income, Population, Per Capita Personal Income, http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=6#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=xx&7027=2014&7001=421&7028=3&7031=0&7040=-1&7083=levels&7029=21&7090=70; http://www.usgovernmentspending.com/compare_state_spending_2015dH0D; National Association of State Budget Officers, Examining 2013-2015 ; http://www.usgovernmentrevenue.com/compare_state_revenue_2014bZ0a; http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk;</p> <p>Keith E. Hamm and Gary F. Moncrief, Legislative Politics in the States, in Politics in the American States: A Comparative Analysis, 10th Edition, Virginia Gray and Russell L. Hanson and Thad Kousser, (Eds.), (Los Angeles: CQ Press, 2013, pp. 164-165; Book of the States 2016, Table 4.3 The Governors: Compensation, Staff, Travel and Residence http://knowledgecenter.csg.org/kc/content/book-states-2016-chapter-4-state-executive-branch; Book of the States 2016, 2016 Regular Sessions, http://knowledgecenter.csg.org/kc/content/book-states-2016-chapter-3-state-legislative-branch Table 3.3 Table 3.9 Legislative Compensation and Living Expenses during Sessions; Table 3.19 Bill and Resolution Introductions and Enactments</p>
Figure 10.10	<p>Job Patterns for Women and Minorities in State and Local Governments (EEO-4), 2013; https://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo4/2013/index.cfm; https://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo4/2013/table1/table1.html;</p> <p>Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States, States, and Counties: April 1, 2010 to July 1, 2013; https://www.census.gov/popest/data/historical/2010s/vintage_2013/national.html</p>

Study Guide, Chapter 10

Essay Questions

1. What is a trifecta control state? Why might trifecta control be important to democracy?
2. Few governors use their veto powers very often. Does this mean that veto power is not important? Explain.
3. What is the fragmentation of the state executive and what are its possible implications for the office of governor and for the state?
4. List and explain the institutional powers of the office of governor. How and why are the institutional powers of Texas governors stronger or weaker than those of governors of other states?
5. Do states that give governors greater institutional powers experience more success in their policies?
6. Is there any evidence that governors' actions while in office have an impact on their levels of support in later elections? Provide reasons one might expect actions to affect later elections.
7. Discuss the responsibilities of state lieutenant governors, attorneys general, and secretaries of state. How would these job descriptions differ in states with weaker and stronger institutional power for their governors?

Multiple Choice Questions

1. Before the Declaration of independence, governor were
 - a. elected by the people
 - b. selected through an auction process
 - c. appointed by the king
 - d. appointed by Parliament
2. Which of the following is a state-imposed limit to the time an individual can serve as governor?
 - a. maximum of 8 years
 - b. maximum of 2 terms
 - c. no limitation whatsoever
 - d. all of the above
3. Which of the following is NOT an institutional power of the governor?
 - a. power to appoint board members
 - b. power to submit state budgets
 - c. power to veto bills
 - d. power of personality
4. Which of the following are empirically related to state governors' institutional powers?
 - a. infant mortality is negatively correlated with institutional powers
 - b. state and local tax burdens are positively correlated with institutional powers
 - c. state and local spending per capita is positively correlated with institutional powers
 - d. none of the above are correlated with governors' institutional powers

Notes

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Chapter 11

ADJUDICATING THE LAW: POLICY AND THE COURTS

Other than giving coverage to sensational trials, the mass media (newspapers, magazines, television, and radio) limit their coverage of the judicial branch of government largely to decisions announced by the U.S. Supreme Court. Thus, one might get the impression that only the federal courts are important in our society. Apart from the U.S. Supreme Court, the reality is just the opposite: only the state courts are very important. Nearly all trials and other court activities are in the state and local court systems, not in our federal courts.

The Bureau of Labor Statistics reported 44,800 jobs in the United States for category “Judges and Hearing Officers”. There are 860 positions in federal courts; the other 44,000 are in state and local judicial systems. More than 98 percent of Judges and Hearing Officers are employed at the state and local levels.¹

State and local courts dealt with 99.5 percent of new civil and criminal cases filed. As Figure 11.1 shows, in 2016 and 2017, 62.7 million criminal cases were filed in state courts and only 74,885 in federal courts; state courts dealt with more than 99.8 percent of all criminal cases. Similarly, state and local courts, rather than the federal courts, adjudicate civil cases.² Of 22 million civil cases filed, more than 98 percent were in state courts.³

State courts are most central to American criminal justice because nearly all laws that people can violate are state laws. If accused and brought to trial, proceedings will be held within state court systems. Statutes that prohibit certain behaviors, from murder to jaywalking, are typically state laws. *State or local governments most frequently prosecute criminal cases.* The more serious violations are called *felonies* and carry substantial fines and imprisonment penalties. Less serious crimes are

misdemeanors.

Civil cases involve disputes between two or more individuals where individuals include both people and legal entities such as corporations, partnerships, sole proprietor business organizations, and nonprofit organizations. Most often, disputes concern contracts. Plaintiffs avow that defendants have caused them to suffer losses and file lawsuits seeking compensation. Across the United States, there will be millions of court trials every working day in state and local courts. You probably will be called multiple times in the future to fulfill your civic duty to serve on a jury involving a criminal or civil case. On each occasion, the probability is 99 percent that you will be called to a state or local court. There is only a very small chance that you will ever be called for service in a federal court.

Organizing The Courts

We have a dual court system. Wherever you live, there are two court systems, one state and one federal. The state court systems and our federal court system share the same basic organization. At the bottom of both federal and state court systems, as shown in Figure 11.2 are the trial courts. They have various names, but “district” court is most common. The federal system trial court is named district court.

Most Americans have criminal trial courts in mind when they think about courts of law. In criminal cases, the state’s attorney argues for the conviction of the accused, based on evidence presented in court; the defense attorney presents evidence of the defendant’s innocence; a jury decides the guilt or innocence mainly by unanimous agreement among 12 jurors (defendants may choose to have judges

Figure 11.1
Total Incoming Cases, 2016
State Courts in Millions

Total Cases	84.3
Total Criminal	62.7
Criminal	17.8
Traffic/Violations	44.9
Total Civil	21.6
General Civil	15.3
Civil Domestic Relations	5.0
Juvenile	1.3

Federal Courts April 1, 2017-March 31, 2018

Criminal	74,885
Civil	277,010
Total	351,895

rather than juries make these decisions); and a judge, in robes, assures fair procedures. With rare exception, only trial courts hold trials.

It is also in the criminal trial courts that you have the “bill of rights” protections from the U.S. Constitution. Rights for the criminally accused in the individual state constitutions also apply. In the years after World War II, the U.S. Supreme Court extended the same rights in criminal procedures in federal courts to those charged in state courts. But if the state constitution offers additional protection, those rights are accorded to you as well. You have the following constitutional rights in a criminal case in state or federal courts (emphasis added):

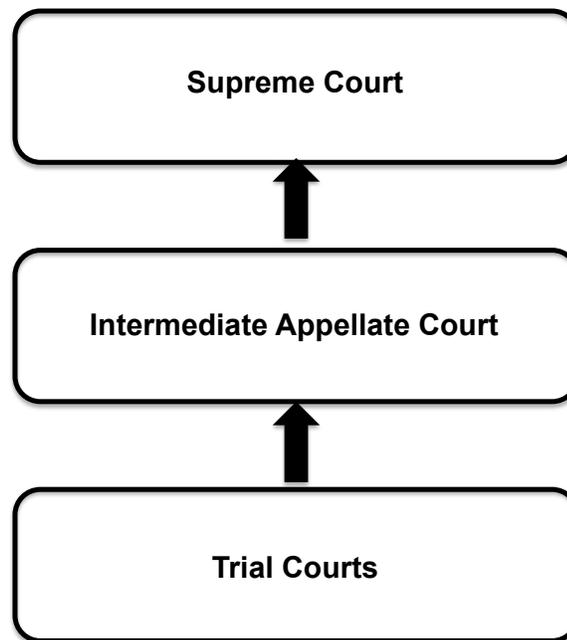
Amendment V [rights of accused persons in criminal trials] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or *indictment of a Grand Jury*, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or in public danger; nor shall any person be *subject/or the same offense to be twice put in jeopardy of life or limb*; nor shall be compelled in any criminal case to be a witness against himself, nor

be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI [right to speedy trial and more criminal trial protections] In all criminal prosecutions, the accused shall enjoy the right to a *speedy and public trial, by an impartial jury* of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be *informed of the nature and cause of accusation*; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the *assistance of counsel for his defense*.

Amendment VIII [bails and punishments] *Excessive bail* shall not be required, nor excessive fines imposed, nor *cruel and unusual punishments* inflicted. In addition, Amendment VII assures, in civil cases, a trial by jury and compliance with common law. Most of these provisions now apply in state courts whether or not they are also in the state’s constitution. Notice that a 12-person jury of one’s peers and a unanimous verdict are not mentioned, although they are available to defendants in

Figure 11.2
Typical Configuration of State Courts



federal criminal cases. This is an example of how legal tradition supplements a brief constitution that lacks detail.

Criminal trials result in defendants being judged guilty or not guilty. Punishments are assessed against defendants convicted of crimes. Civil trials result in judgments for plaintiffs or defendants. Damages are awarded to plaintiffs who prevail. Once a trial is complete, the loser may then “appeal” to an *intermediate appellate court*.⁴ Appeals claim that serious errors occurred during the trial. Appeals argue that, absent these errors, a result more favorable to the loser would have occurred. Appellate courts may be required at least to consider such appeals. But, apart from review by one appellate court judge and staff, few receive any serious attention.

When an appellate court accepts a case, multiple judges examine the court record from the trial. Public hearings are held for judges to ask questions of the attorneys representing those involved about trial courts’ “errors in procedures,” and “consistency with other court decisions.” Incompatibility with the state or national constitutions, what is

called “unconstitutionality,” also is a major consideration by these courts. *They do not retry the case.*

Substantive decisions--whether or not defendants are guilty in criminal cases or liable for damages in civil cases--are not reviewed by appellate courts. Appellate courts review procedural decisions made during trials and decide whether to uphold or overrule those decisions. When decisions are upheld, trial outcomes are sustained. When trial court procedural decisions are overruled, trial conclusions concerning guilt and liability are vacated. Such cases are remanded, returned for retrial. Appellate courts can also decide that the criminal or civil laws applied during trials are unconstitutional. Laws determined to be unconstitutional are declared invalid and cannot be the bases for retrials.

Losing parties in appellate cases can appeal to what is usually called the state supreme court. This court is the final appellate court, *the court of last resort* at the state level. Texas and Oklahoma have two courts of last resort, one that considers only criminal cases and one that considers only civil cases. A separate appeal to the federal court system may be possible if there is a procedural issue sub-

ject to federal law. Federal courts decide whether or not to accept these appeals.

As with the intermediate appellate court, the state supreme court need not give much consideration to cases appealed to it. However, state supreme courts review all death sentences.

Again, cases are not retried if accepted by supreme courts. Rather, they review the court records and previous appellate court considerations of the case. Individuals and groups not involved in the original trials may submit documents that give advice about issues in cases to appellate courts. These arguments are called *amicus curiae* (“friend of the court”) briefs. The justices may then hold public hearings and ask additional questions of the attorneys in the case. Courts of last resort either uphold or reverse appellate court decisions. Trial results may be upheld, results may be vacated and cases returned for retrial, and laws may be found unconstitutional.

As you might expect, intermediate appellate courts accept few cases from trial courts, and even fewer are considered by the supreme courts. About 0.09 percent of all cases—civil, criminal, juvenile, and traffic—reach the intermediate courts, and 0.01 percent reach the state supreme courts.⁵ The cost of attempting an appeal is expensive. For most, the low probability of an appeal being accepted makes the cost prohibitively expensive. The result is corporations are the most likely parties to seek appeals.

Many states divide their trial court levels into a tangle of courts, each with limited jurisdiction. This means, for example, they might deal only with juvenile cases, only with cases involving penalties of less than \$1,000, or only with cases involving no jail terms. Local courts with extremely narrow jurisdictions, such as small claims and traffic courts, also further complicate this level of courts.

Most states have phased out justice of the peace courts as outdated and subject to fraud. Judges in some such courts receive pay as a percentage of fines imposed, and therefore more fines mean more pay. Unpopular “speed traps” in rural areas typically may involve cooperation between local police seeking to gain revenue for their cities and justices of the peace eager to earn more money.

Although uncommon, state cases can be appealed to the U.S. Supreme Court. The most

frequent basis is the argument state law or legal procedure conflicts with the United States Constitution. The U.S. Supreme Court accepts fewer than 200 cases each year, so few cases will make the jump. Supreme Court justices choose cases that will let them address points of law they wish to resolve. Usually, cases must first work their way up the state court system.

Appellate Court Activity

Once appellate courts accept cases, they can judge the constitutionality both of the laws involved and the way they are administered. This is the way the judicial branch checks and balances the behavior of the legislative and executive branches. States vary considerably in the extent to which appellate courts can accept or reject individual cases on appeal.

In 2016, state appellate courts accepted approximately 257,000 new cases. Courts of last resort handled 29 percent of those cases; lower appellate courts handled 71 percent. As always, there were important differences across the states. California appellate courts accepted more than 15,000 new cases. Wyoming appellate courts accepted 260 new cases. The quantity and quality of appellate court activity vary from state to state.⁷

Appellate Court Activism

The phrase *judicial activism* means different things to different people. Most frequently, those who dislike court decisions use the phrase. They intend it as an insult, not as a concept that is defined precisely and used consistently. When pundits speak of *judicial activism*, they are saying, “I am not happy.”

Conservative critics prefer a more limited role for the courts as interpreters of the law rather than makers of the law, which they call *judicial restraint*. They argue that the courts should defer to the elected legislative and executive branches. These branches are closer to the people and more likely to follow the will of the majority. They have articulated this view so frequently and successfully that most Americans assume or believe that all court limitations on legislative and executive branch decisions are liberal. Although courts also uphold legislative and executive branch actions, commentators typically disregard those decisions.

They focus on activist liberal decisions and disregard activist conservative decisions.

Political scientists, seeking an objective, valid and reliable measure, define *judicial activism* as decisions that find government laws or behavior unconstitutional.⁹ In other words, judicial activism occurs when courts play their balancing role of checking the legislative and executive branches. Some researchers have studied decisions systematically and classified individual decisions as activism or restraint. They have contemplated the possibility of conservative activist and liberal restraint outcomes.

Empirical evidence from academic research shows the examples stressed by conservative pundits are not representative of the way courts behave. Thomas M. Keck argues that the U.S. Supreme Court has been more active in finding federal statutes and executive procedures unconstitutional since 1995, when a majority of justices were conservative, than at any previous point in the Court's history.¹⁰

More recently, the Supreme Court under Chief Justice John Roberts has made a series of conservative decisions finding legislatures and executives took unconstitutional actions.¹¹ Comprehensive analyses find that, for more than 15 years, the U.S. Supreme Court made more activist conservative decisions than activist liberal decisions. However, the liberal activist decisions have received the greatest publicity.

Some state courts have been identified as judicially active because they have made high profile "liberal" decisions declaring certain state-imposed limitations on personal rights unconstitutional with respect to their state constitutions' bills of rights.¹² Courts in California and New Jersey have frequently been identified as the most activist or the earliest activist.

However, when activist decisions are defined as those that overturn actions by executive and legislative branches, results do not support the view that activism equals liberal decisions.

Figure 11.3 presents results from a study of state courts from 1981 to 1985 that defined judicial activism as finding executives or legislatures violated state constitutions.¹³ The juxtaposition of New York, West Virginia, Alabama, and Montana as most active demonstrates that activism in state

courts is not strongly related to state liberalism or liberal decisions.

The State Supreme Court Data Project gathered information on 21,000 decisions made by state supreme courts from 1995 to 1998.¹⁴ State constitutionality was an issue in 5% of cases. Federal constitutionality was an issue in 3% of cases. Violations of state constitutions were declared in 21% of germane cases. Violations of the U.S. Constitution were declared in 14% of germane cases. State courts found violations in 18% of germane cases overall. The large study of decisions from 1995 to 1998 found constitutionality issues were rarely reviewed. When reviewed, almost one in five cases involved a violation.

Federal and state courts participate fully in the system of checks and balances through the exercise of judicial review, which empowers courts to invalidate the actions of the other branches of government inconsistent with state or federal constitutions.¹⁵ The most highly publicized decisions are those involving the most controversial issues on the American political agenda. These decisions are most often defined in terms of liberal and conservative positions. Although small in number, they dominate popular discussion of judicial activism and the role the courts play in federal and state politics.

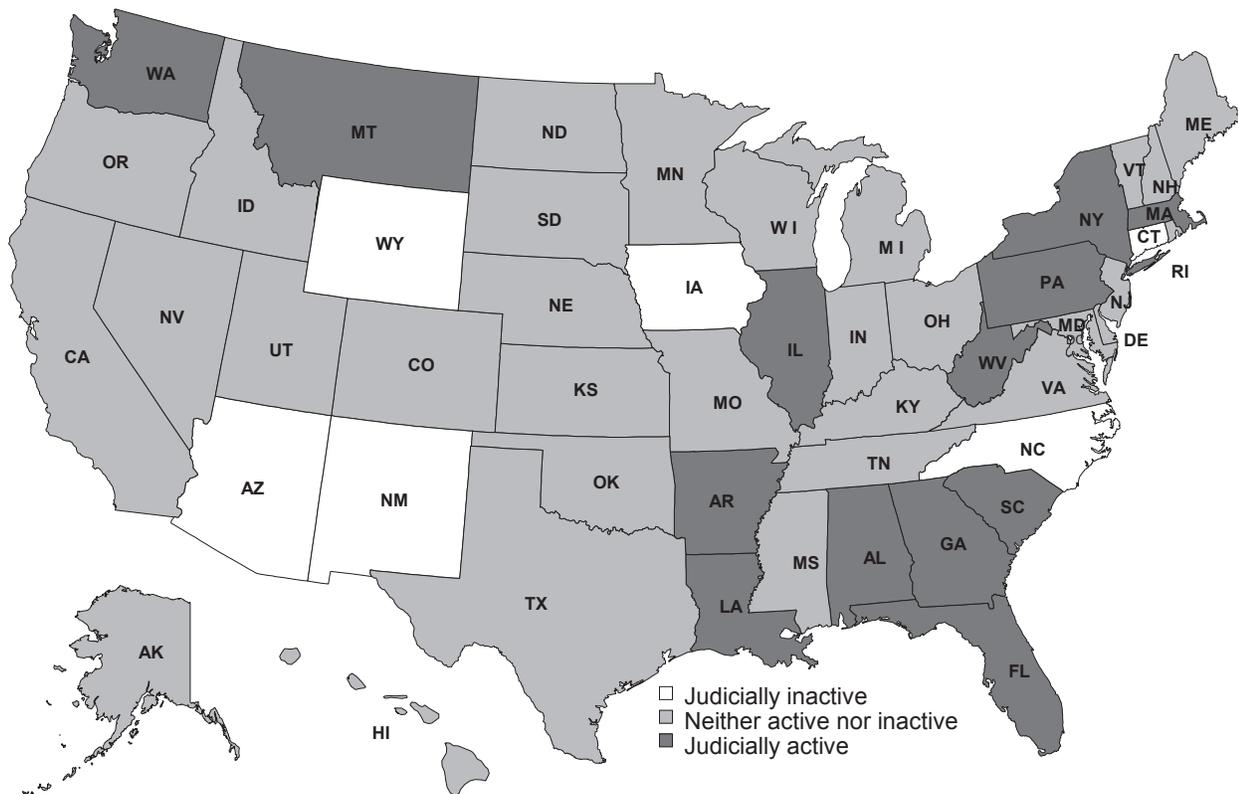
Minority Rights

Decisions by courts to declare statutory laws and executive procedures as unconstitutional have been depicted as being counter to the majority rule principle fundamental to American democracy. Almost all government systems worldwide profess to follow the majority rule principle. Even hereditary monarchs and religious officials who hold power in theocracies claim the majority supports them.

We think the great genius of the American political system is that it is concerned with both *majority rule* and *minority rights*. The United States is among the small number of countries worldwide that make minority rights the more important, more fundamental concern.

As our constitutional system has evolved, we have come to recognize that, given the opportunity, majorities frequently choose to withhold from

Figure 11.3
Activism in State Supreme Courts 1981-1985



unpopular minority groups rights and privileges they enjoy themselves. The legislative and executive branches are structured to be more responsive to majority preferences. As a result, their actions have sometimes been detrimental to out-of-favor minorities.

Courts have been more active than the other two branches in championing the cause of minority rights under the law because that is the role assigned to them by federal and state constitutions. Although not all court decisions do so, judges have acted frequently to uphold and expand equal protection and equal application of criminal and civil laws.

Equal Protection Under Criminal Law

In the United States, only a minority of citizens are accused or convicted of serious crimes. Those who are accused or convicted are an unpopular minority. Beginning in the 1950s, the U.S. Supreme Court has, in a large number of its decisions, applied the federal minimum standards of justice in our nation-

al Constitution to state criminal procedures. Three principles stand out in their importance to state criminal procedures.

The first is the “exclusionary rule,” which excludes illegally seized evidence from being presented in trials. The case is *Mapp v. Ohio* (1961). When Ms. Mapp refused to allow police to search her home, they ignored her and did so anyway. They found no evidence connecting her to a bombing for which she was suspected but rather found pornographic materials that were unlawful. She was arrested and convicted based on the gathered evidence. The Supreme Court overturned her conviction because without a search warrant specifying pornographic materials, the evidence was unlawfully obtained. Such evidence is to be excluded from the courts.

Although the initial principle was clearly drawn, the Supreme Court has weakened it with more recent decisions.¹⁶ The Court has established exceptions to the exclusionary rule to ensure the benefits of Fourth Amendment rights to privacy are not outweighed by the rule’s social costs. In July

2016, it made a major modification in the exclusionary rule in *Utah v. Strieff* (2016). The court held that the exclusionary rule does not apply when an officer makes an illegal stop (a stop without probable cause), runs a warrant check on the suspect's ID, learns that the suspect has an outstanding warrant, and then searches the suspect incident to arrest on the warrant. The court held that the evidence seized was admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.¹⁷

The second principle is the right to legal representation established in *Gideon v. Wainwright* (1963). Bari Gideon, unable to afford an attorney, unsuccessfully defended himself on a charge that he rifled a soda machine in a pool hall. While in prison, he studied law and successfully appealed his case to the Supreme Court. He maintained that it was unconstitutional for him to have been allowed to defend himself. Rather, he argued, the state should have provided an attorney. The Court agreed. His case involved a felony, a serious crime, but this principle has since been extended to even lesser crimes, misdemeanors, potentially involving incarceration. Moreover, now the assistance of an attorney is to be provided at the time one becomes the prime suspect.

The third principle is the right to remain silent, first established *Miranda v. Arizona* (1966). Miranda confessed to a crime but was not told he could speak to an attorney and remain silent. The Supreme Court said the police had violated his rights to be informed. They had not told him that he had the right to remain silent, that anything he said might be used against him, and that he had a right to an attorney. This procedure of the police enumerating these rights has become called "Mirandizing" the accused.

The *Miranda Warning* card reads as follows: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Because of these and other decisions by the

federal courts, the right to counsel has been defined and expanded. This right is not restricted to those who can afford it. It is not limited to adults. It is not restricted to trials. One might think that the legal counsel one has a right to must be qualified or competent, but the U.S. Supreme Court has not explicitly stated what level of competence is required to satisfy the right to counsel. In the absence of a national standard, states have determined their own standards. These standards vary widely.

States disagree on whether "qualified" requires previous experience or previous success in criminal law. In Texas, a defense attorney need only be qualified at the time he or she is appointed; previous or subsequent suspension of the attorney's license to practice law need not be considered.¹⁸ States disagree on whether or not the following are grounds for determining that defense counsel was inadequate: doing no work in preparation for trial, calling no witnesses, not challenging incompetent expert witnesses, permitting false testimony, sleeping during legal proceedings, having a debilitating medical condition, being disinterested in defending the accused because of racism, and having undisclosed business or romantic relationships with others involved in the case, including judges, prosecuting attorneys, and witnesses.

Death Penalty

The use of the death penalty has become an important criminal law issue in contemporary America. The number of states with death penalty punishments peaked in 1995 at 38. In 2016, 18 states have abolished the death penalty; the governors of five states have declared moratoriums on executions and four states have not had executions in the last ten years.¹⁹

The U.S. Supreme Court has not declared the death penalty unconstitutional, but it has acted to restrict its application. In 2002, the Court barred the execution of mentally retarded defendants. In 2005, it ruled that the Constitution bars the death penalty for crimes committed before the age of 18. The most recent restriction was in 2008. In *Kennedy v. Louisiana* (2008), the Court struck down as unconstitutional a Louisiana statute that allowed the death penalty for the rape of a child where the victim did not die.

The *Kennedy v. Louisiana* majority opinion stated that the 8th Amendment's protection against excessive or cruel and unusual punishments "draw[s] meaning from the evolving standards of decency that mark the progress of a maturing society." The court explicitly acknowledged "difficulties in administering the penalty to ensure against its arbitrary and capricious application."

Arbitrary and capricious application of the death penalty denies the equal protection guaranteed by the federal constitution and all 50 state constitutions. Throughout our history, African-Americans have been more likely to be convicted of capital crimes and more likely to be executed. The differences far exceed the standards for the statistical significance we use in this text. Even if capital punishment is constitutional in principle, the apparent inability or unwillingness of at least some state governments to administer it without racial bias may be arbitrary and capricious.

The growing number of cases in which individuals convicted and sentenced to death and subsequently exonerated by DNA tests and other physical evidence casts additional serious doubt that the death penalty can be administered accurately, let alone equally or fairly. Since 1973, 138 inmates were found to be innocent and released from death row.²⁰ In a 2011 Gallup Poll only 52 percent of Americans said the death penalty is applied fairly.²¹

The procedure of execution by lethal injection has become an issue. In 2011, the European Union banned export of drugs used for legal-injection to the United States. In addition, a number of pharmaceutical companies in the United States stopped manufacturing drugs used for lethal-injection. When death-penalty states ran out of drugs used successfully in the past, they changed to different drugs. A series of botched executions by lethal injection in 2014 resulted in delays of executions and appeals that lethal-injection violated the U.S. Constitution's Eighth Amendment prohibition of cruel and unusual punishment. In *Glossip v. Gross* (2015) the Supreme Court ruled that Oklahoma's use of lethal injection did not violate the ban on cruel and unusual punishment. The vote was 5-4, with the conservative justices in the majority.²²

Evidence of wrongful executions and racial bias notwithstanding, the American public favors the death penalty for persons convicted of murder. With the exception of the years 1957-1967, this has

been true since polling began in 1937. According to the Gallup Poll, support for the death penalty peaked at 80 percent in 1994 and was 61 percent in 2015.²⁴ So long as the decision is made by majority rule, the death penalty will continue in the United States in the foreseeable future. Only if the courts determine that the administration and implementation of the death penalty violates equal protection standards or the constitutional ban on cruel and unusual behavior is it likely to be abolished.

Equal Protection Under Civil Law

Perhaps the most important actions taken by courts to enhance equal protection under civil law have involved declaring criminal statutory laws unconstitutional and forbidding the states from criminalizing and punishing the behaviors involved. Voiding criminal laws and guaranteeing equal protection as a civil right under federal and state constitutions have advanced equal protection under civil law.

Consensus on which individuals and groups should receive equal protection has greatly changed since the Declaration of Independence and the Constitution of 1789 were written. Originally, women and slaves had limited legal rights and no political rights. Even after slavery was changed from legal to illegal, state and local governments throughout the nation denied equal protection under law to African-Americans. In some states, inequality resulted from unequal application of laws. In other states, laws required separation of races. In every case, separation meant that African-Americans were denied opportunities available to others. It is worth noting that racial inequality occurred in more places after the abolition of slavery than before. Post-reconstruction racial discrimination was expanded from slaves to all African-Americans. Discrimination affected not only former slaves and their descendants but also individuals who had not been slaves--whether or not they had been in the United States or even alive when slavery was legal.

Today, the courts have established that equal protection cannot be arbitrarily withheld from individuals and groups on the basis of sex, race, national origin, religion, age, or disability. The contemporary legal standard is that government must have a legitimate reason for differential treatment. All three branches of the federal government

have taken action to advance civil rights. Typically, action by some state governments to expand civil rights has come before comparable federal action. Nevertheless, it is the U.S. Supreme Court that has led the way in declaring unconstitutional many occurrences of majority groups denying to unpopular minorities legal rights or privileges they grant to themselves.

The U.S. Supreme Court's landmark decision *Brown v. Board of Education* (1954) is one of the most important in the Court's history. Prior to *Brown*, states had the option of operating dual, racially segregated public schools. Such segregation did not violate equal protection constitutional guarantees of due process or equal protection so long as segregated facilities and services were arguably equal. In *Brown v. Board of Education*, the Supreme Court declared that "separate but equal" public schools were inherently unequal and impermissible under the constitution. All public school systems were to be desegregated with "all deliberate speed." Southern states succeeded in delaying racial desegregation of public schools, but they were unable to prevent it.

Southern states' efforts to prevent interaction between races included laws forbidding certain interracial activities. African-Americans had to use different restrooms and drinking fountains, wait for trains in separate areas, and ride in different sections of trains and buses. It was also a violation of criminal law for "whites" and "non-whites" to marry. Furthermore, couples legally married in other states committed criminal offenses by behaving as married couples in states where such marriages were forbidden. Illegal intermarriage was a felony punishable by many years in prison.

The U.S. Supreme Court decision *Loving v. Virginia* (1967) declared that racial limitations on marriage violated the due process guarantees of the 14th Amendment. Not only did the Court decriminalize interracial marriage, it declared that marriage was one of the basic civil rights and the right to marry was a fundamental freedom. At one time or another, 41 states had laws making marriage or cohabitation between "whites" and "other races" illegal, although the definition of "other races" varied from state to state. All but 16 states had repealed these laws prior to the *Loving v. Virginia* decision.

In *Lawrence v. Texas* (2003) the U.S. Supreme

Court found that state laws could not make private sexual practices between consenting adults of the same sex criminal. The decision stated that, under the due process clause of the federal constitution, two adults have the right to engage in private conduct without government intervention. The majority opinion stated, "The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life." The *Lawrence v. Texas* opinion expressly overruled the Court's decision in *Bowers v. Hardwick* (1986), which had come to an opposite conclusion. At the time, Texas was one of 13 states proscribing sodomy. Laws in four of those states, including Texas, made only homosexual sodomy illegal.²⁵ *Lawrence v. Texas* also established privacy rights for both opposite sex and same sex couples.

The courts have placed important restrictions on states' legal authority to define private conduct between consenting adults as criminal. The states remain free to define adulthood. As always, they reach different decisions. There are multiple definitions of adulthood across states and within states for different purposes.

You may be familiar with the concept "age of consent" but probably don't know that states can and frequently do have different ages of consent for marriage without the approval of one's parents and ages of consent for adult private conduct. Most states have multiple exceptions to their nominal ages of consent. With those caveats in mind, Figure 11.4 identifies age of consent for private adult conduct by state. The minimum age is 16 in 30 states, 17 in 8 states and 18 in 12 states.²⁶

There is another limitation on private conduct between consenting adults related to marital status. Adultery is a criminal offense in about half the states, although there is no common definition of adultery. In some states, adultery is defined as relations between any two people not married to each other. In other states, at least one of the individuals involved must be married. In yet other states, adultery involves a married woman having relations with someone other than her husband. The criminal penalties for those found guilty range from a misdemeanor fine of \$10 to a felony life sentence in prison. In the U.S. military, adultery is a potential court-martial offense. The civilian statutes are rarely enforced, if ever. It is very difficult for the administration of any rarely enforced law to meet

the equal protection standard.

The issue of who has the right to civil marriage has arisen again in your lifetime. The legal issue is whether same sex couples should have the same marriage rights as eligible opposite sex couples. Civil marriage is distinct from and more limited in scope than religious marriage. Civil marriage involves only contract agreements and property rights between partners. Religious marriage contains these secular elements but also includes religious sanctification. Holy matrimony involves ceremony, tradition, beliefs, faith and social commitments.

Religious marriage authorizes sexual relations between partners. For many believers, relations without religious marriages are sinful. Sexual behavior is a central concern of religious marriage. The decision in *Lawrence v. Texas* (2003) effectively removed issues of sexual relations from civil marriage.

With few exceptions, federal and state governments are forbidden from prohibiting private sexual conduct between consenting adults. Court rulings have removed the overlap between sinful and illegal behavior. However, for most Americans, conflated notions of sinful and illegal sexual conduct endure.

The central legal issue of contemporary civil marriage in the United States is simply whether government has a legitimate basis for granting civil marriage contract and property rights to opposite sex couples while denying those rights to same sex couples. The Supreme Court issued two important decisions on same sex marriage, one in June 2013 and the other in June 2015.

In *United States v. Windsor* (2013), the court struck down the Section 2 of the 1996 Defense of Marriage Act (DOMA) that denied federal benefits to same sex couples that were granted to opposite sex couples. The Court ruled that DOMA violated the Fifth Amendment's guarantee of equal protection of the law to persons of the same sex who were legally married under the laws of their state. The Court ordered the federal government to treat legal opposite sex marriages and same sex marriages equally.

The majority opinion in *United States v. Windsor* (2013) contained the following statements:

- DOMA is unconstitutional as a deprivation of the equal liberty of persons that is protected by the

Fifth Amendment.

- DOMA's history of enactment and its own text demonstrate that interference with the equal dignity of same sex marriages, conferred by the States in the exercise of their sovereign power, was more than an incidental effect of the federal statute. It was its essence.

- DOMA's principal effect is to identify and make unequal a subset of state sanctioned marriages. It contrives to deprive some couples married under the laws of their State, but not others, of both rights and responsibilities, creating two contradictory marriage regimes within the same State.

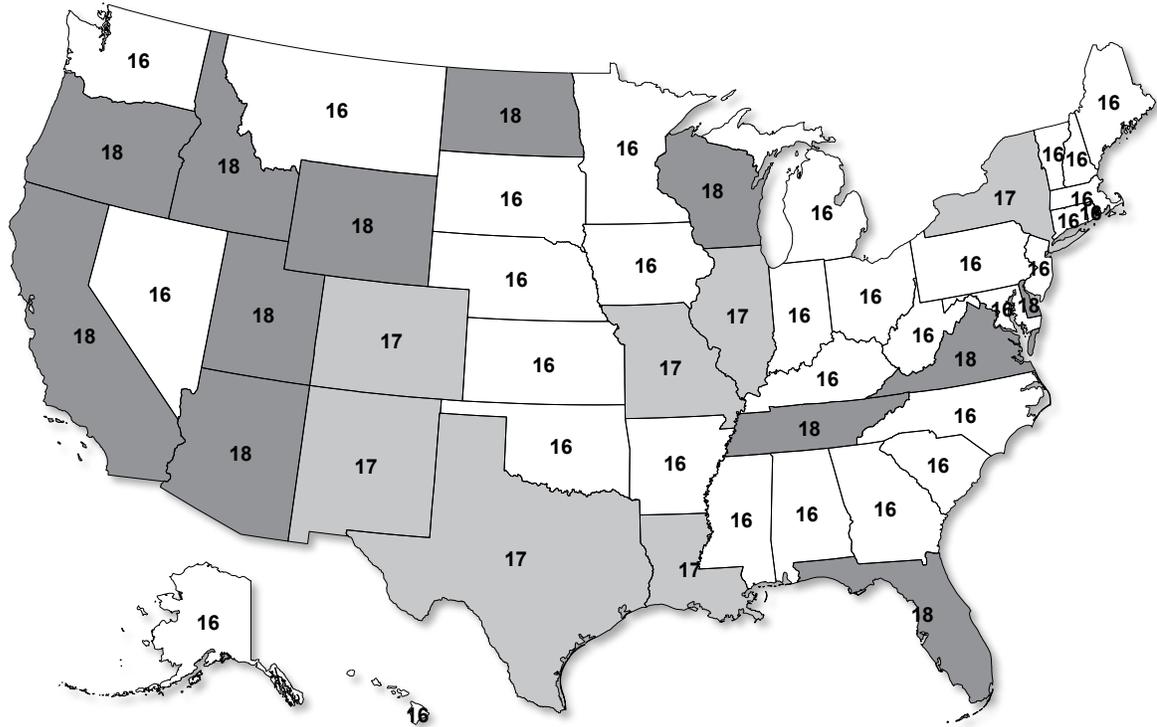
United States v. Windsor (2013) did not address the central legal issue of civil marriage for state governments. Section 2 of the Defense of Marriage Act explicitly allowed states to refuse to recognize same sex marriages performed under the laws of other States. *United States v. Windsor* (2013) did not directly challenge Section 2 and the Supreme Court did not rule on it. The federal government had to recognize all legal same sex marriages. The states were free to set their own policies.

A large number of lawsuits were filed in both state and federal courts pressing the question: If the U.S. Constitution requires the federal government to recognize same sex marriages performed in states where they are legal, does the same requirement apply to the states? Other lawsuits pressed the question: Does the logic of the *United States v. Windsor* (2013) decision mean that states must sanction marriage for both opposite sex and same sex couples?

From July 2013 to June 2015, state courts issued 18 decisions, federal district courts issued 41 decisions and federal appellate courts issued 5 decisions requiring marriage equality. However, the U.S. Court of Appeals for the 6th Circuit upheld same sex marriage bans in Kentucky, Michigan, Ohio and Tennessee.²⁷ Given the conflicting decisions of federal appellate courts, the Supreme Court had to resolve the central issue of marriage rights once and for all.

On June 26, 2015, the Supreme Court issued its decision on whether or not states can sanction marriage for opposite sex couples and deny marriage for same sex couples. The Court held in *Obergefell v. Hodges* (2015) that the Fourteenth Amendment requires states to license civil marriage between two people of the same sex and to recognize a

Figure 11.4
State Age of Consent 2016



marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.²⁸

Immediately, civil disobedience to the ruling, and to instructions issued by governors and other state authorities, occurred among clerks and other court employees in Alabama, Louisiana, Mississippi, Kentucky, Ohio, Tennessee, and Texas.²⁹ Some Texas county clerks refused to issue marriage licenses to same sex couples. Others chose to stop issuing any marriage licenses. A few county clerks in Texas, Mississippi and Arkansas resigned rather than issue marriage licenses.

Three days after the Supreme Court decision was announced, Texas Attorney General Ken Paxton issued a statement calling the Supreme Court decision a “lawless ruling.”³⁰ Paxton’s statement also said “It is important to note that any clerk who wishes to defend their religious objections and who chooses not to issue licenses may well face litigation and/or a fine. But, numerous lawyers stand ready to assist clerks defending their religious beliefs, in many cases on a pro-bono basis, and I will do everything I can from this office to be a public voice for those standing in defense of their rights.”

The Texas Attorney General was not making a legal argument that the Supreme Court decision was lawless, and he was not offering legal assistance from his office to those who chose to disobey the Supreme Court ruling. He was making a political statement supporting the preferences of the very socially conservative Texans who are the majority of those who vote in Republican primary elections in non-presidential election years.

The legal position of the Texas Attorney General’s Office was made clear on July 1, 2015. The Texas Attorney General’s Office wrote to the U.S. 5th Circuit Court of Appeals conceding that the state’s ban on same sex marriage and failure to recognize lawful marriages performed out-of-state were unconstitutional.

Symbolic opposition to same sex marriage will undoubtedly continue across the states for a long time. Proposals have been made to amend the United States Constitution to forbid same sex marriage. Other proposals have been made to stop appointing federal judges for unlimited terms and to allow voters to remove judges who make unpopular decisions.

Many political actors have chosen to exploit

public confusion between civil and religious marriage for their own purposes rather than educate the public on the differences. Arguments that religious organizations will be forced to conduct same sex marriages in violation of their religious doctrines are untrue and intended to frighten. Arkansas Governor Asa Hutchinson noted the Supreme Court's decision was aimed only at states, and is not a directive for churches or pastors.³¹ Most scholars, even among gay rights advocates, believe that the Constitution protects clergy from being required to officiate at marriages for same sex couples and churches from being forced to allow same sex couples to marry in their sanctuaries.³²

In September 2016, the Texas Supreme Court refused to accept an appeal of a ruling by a lower court that upheld benefits to same sex spouses of Houston city employees. In October 2016, Governor Greg Abbott, Lt. Governor Dan Patrick and Texas Attorney General Ken Paxton requested that the all-Republican court reconsider and accept the case. The Texas Supreme Court agreed. Their ruling in the case was announced June 30, 2017. The Texas Supreme Court refused to extend spousal benefits to same-sex couples. The unanimous decision interpreted the U. S. Supreme Court's ruling in *Obergefell v. Hodges* (2015) narrowly, questioning whether it compels states to treat same-sex couples equally to opposite-sex couples in any context outside of marriage licensing. Arkansas recently raised this argument at the United States Supreme Court and lost earlier in June 2017.³³

Texas both provides child welfare services directly and outsources child welfare services. In legislation passed in June 2017, private organizations in Texas are allowed to deny adoptions and other services to children and parents based on "sincerely held religious beliefs." Faith-based organizations can also place a child in a religious school; deny referrals for certain contraceptives, drugs or devices; and refuse to contract with other organizations that don't share their religious beliefs. Soon thereafter, a faith-based organization, the U.S. Conference of Catholic Bishops, denied the opportunity for a married same-sex couple, both faculty members at Texas A&M University, to become foster parents for refugee children because they didn't "mirror the Holy Family." When the couple asked specifically about LGBT refugee children, they were told that none of the

700 unaccompanied refugee children they sought to care for were LGBT. Rather than acting directly to discriminate against same-sex married couples, Texas is reassigning government responsibilities for foster care to religious organizations who discriminate against same-sex married couples. At the same time, Texas is under federal court oversight to improve what the courts have characterized as a "broken" foster care system.³⁴

Selecting State Judges

The President of the United States, with the advice and consent of the Senate, appoints federal judges for life. They cannot be held accountable, either to the public, to Congress, or to the president, after they have assumed their positions. Only infirmity, voluntary retirement, or death will remove them from the bench. In sharp contrast, the voters elect most state judges for a limited term of office.

There are five basic methods used in the states for selecting judges. Several states, however, use more than one system. The oldest is probably that of *appointment with state senate advice and consent*. The governor appoints judges with the consent of a majority of the state senate, often from a listing of qualified judges from special commissions. Connecticut, Delaware, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York (at the appellate level), Rhode Island, South Carolina, and Vermont use this method.

Two states continue to use *legislative appointment*. Most South Carolina and Virginia judges gain their seats by a majority vote of the state legislature. At least in South Carolina, most judges selected are former state legislators, probably as a reward for legislative service.³⁵

Partisan elections are another older method. Under this system, Democrat and Republican candidates contest all judgeships. The voter must cast a vote for a Democrat or a Republican candidate for judge. Partisan elections are used to choose judges in Alabama, Illinois, Indiana, Kansas, Louisiana, Missouri, New York, Ohio, Pennsylvania, Tennessee, Texas, and West Virginia. Six of these states use this method nearly exclusively.

The newest method of selecting judges is called the *Missouri Plan*, because Missouri first adopted it. Under this system, a judicial selection or nomination committee with representation of attorneys

or the state bar association submits a listing of three to six “qualified” candidates to the governor, who fills the vacant judgeship from this list. After serving 1 to 3 years, the appointee must stand for a retention election, which is merely a yes or no vote. If a majority votes yes, the judge serves a full term before again standing for a retention election. If a majority votes no, a vacancy is declared and the procedure begins anew. This procedure is supposed to choose more qualified judges and to relieve judges from needing to make promises to defeat challengers in elections. They run on their records as judges, not against opponents.

Alaska, Arizona, California, Colorado, Iowa, Kansas (other than in smaller district courts), Nebraska, New Mexico, Utah, and Wyoming use this plan to select most of their judges regardless of whether the judge is to serve in the appellate courts or trial-level courts. Florida, Kansas, and Oklahoma use the Missouri Plan for appellate judges and nonpartisan elections for trial-level judges. Interestingly, Missouri selects some lower-level judges

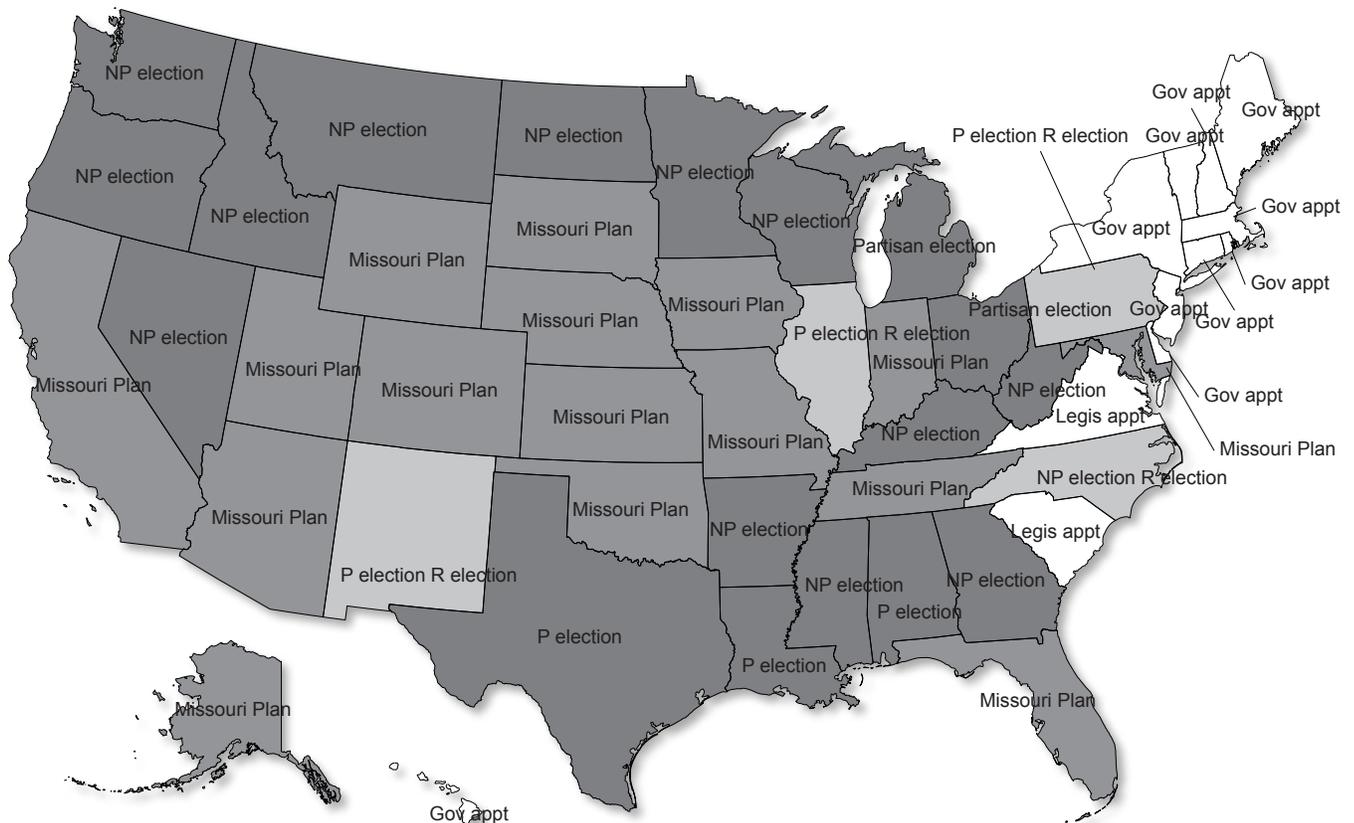
by partisan ballot.³⁶ Indiana and Tennessee do this as well. New Mexico, Pennsylvania and North Carolina use a variation of the Missouri Plan. Judges are originally selected by election rather than by appointment. Judges who wish to continue when their terms are up must stand for retention elections.

Figure 11.5 shows the national pattern of these procedures for selecting judges in appellate courts of last resort. The major changes in the last 4 decades have been adoption of the Missouri Plan; change from partisan to nonpartisan elections, and adding retention elections if the Governor does not appoint judges.

Clearly, older selection methods, such as gubernatorial appointment with state senate confirmation, legislative appointment, and even partisan election, are preferred by the older states, while the West uses nonpartisan elections and the Missouri Plan. The South proves very diverse.

In summary, the selection of state judges follows many patterns. Often, appellate-level judge-

Figure 11.5
Selection of Justices For State Courts of Last Resort 2016



es and trial level judges are selected differently. Reformers would advocate the Missouri Plan or at least nonpartisan elections. There is little evidence that the method of selecting judges has much impact on the quality of those judges in Missouri or elsewhere.³⁷ Selection of judges follows the pattern of popular ideas present when the selection process was chosen, and there are, as a result, many mainly regional differences.

Regardless of the method of electoral selection, incumbency advantage is very common for the judicial branch. Very few incumbents lose elections.

The Term of Office

State court judges in Rhode Island are appointed for life. State court judges in Massachusetts and New Hampshire may serve until age 70. The other states limit judges in courts of last resort to individual terms of 6 to 14 years. Appellate court judges in states that limit service serve terms of up to 12 years. District court judges in other states serve terms of 4 to 14 years. State Supreme Court judges serve an average term of just over 8 years.³⁸ The most common terms are as follows: 17 states have 6-year terms, 12 have 8-year terms, and 12 have 10-year terms. Trial-level judges typically serve 6 to 8 years before needing to seek reelection. All states provide for impeaching judges in their state legislatures, but few permit recall votes to remove them from the bench.

Qualifications for Judgeships

With the exceptions of Massachusetts and New Hampshire, all states require that judges be licensed to practice law. Almost all of them also require membership in the state bar, often for at least 5 years. Attorneys, thus, are even more highly overrepresented in the judicial branch than in the other branches. Twenty states also set minimum ages for serving as trial or appellate court judges. The most frequent minimum age is 30. Other age requirements range from 18 to 35 years.³⁹

Judges, like their counterparts in the executive and legislative branches are overwhelmingly male, white, middle class, better educated, and wealthier. The racial and gender composition of the state court appellate bench has been reported as strikingly similar to the U.S. Court of Appeals, where

about 31 percent of the judges are women or racial minorities. Hurwitz and Lanier report that 37 percent of judges in state courts of last resort and 34 percent of judges in intermediate appellate courts are women and racial minorities.⁴⁰

Like legislators, elected judges enjoy overwhelming incumbency advantage in winning reelection. For example, from 1986 to 2004, the rate of incumbent defeat in state Supreme Court elections was never higher than 12.3 percent. The average rate of incumbent defeat was less than 9 percent. This suggests that, although they are viewed as held accountable to the public, judges are largely out of the public view, with few thinking to vote against them for their actions on the bench. There were major differences in incumbent success rates across different election systems. The defeat rate in retention elections was 2.1 percent, in nonpartisan elections 5.2 percent, and in partisan elections 28.1 percent.⁴¹

After notable successes in reducing partisan judicial elections, the focus of judicial selection reformers has shifted toward ending judicial elections altogether. The American Bar Association is the leading proponent of this change, charging that judicial elections, both partisan and nonpartisan, have become “noisier, nastier, and costlier.”⁴²

There is some evidence that an ethnic or partisan bias among judges may influence justice. If you are, for example, the defendant in a criminal case, the wife in a divorce, a debtor, the victim of an employee in jury case, or a government agency in a business regulation case you likely will get more favorable justice from judges who are from minority backgrounds.⁴³ Not unexpectedly, Democratic judges, at least in appellate courts, also tend to side with that group.⁴⁴ These findings are not surprising and probably still hold true, although more recent research would be desirable.

Compensation

State Supreme Court judges receive the highest salary of state judges. California presently pays its Supreme Court judges the highest at \$232,060, and those in Mississippi receive the lowest at \$126,293. The average is approximately \$162,000. Intermediate appellate courts are the next best paid. Finally, the trial court level pays the lowest, typically \$120,000 to \$160,000.⁴⁵ Most Americans could

live comfortably on such salaries, but most judges could earn more as private attorneys. At least this is the commonly made claim for why their salaries need to be high.

Caseload, Crime and Punishment

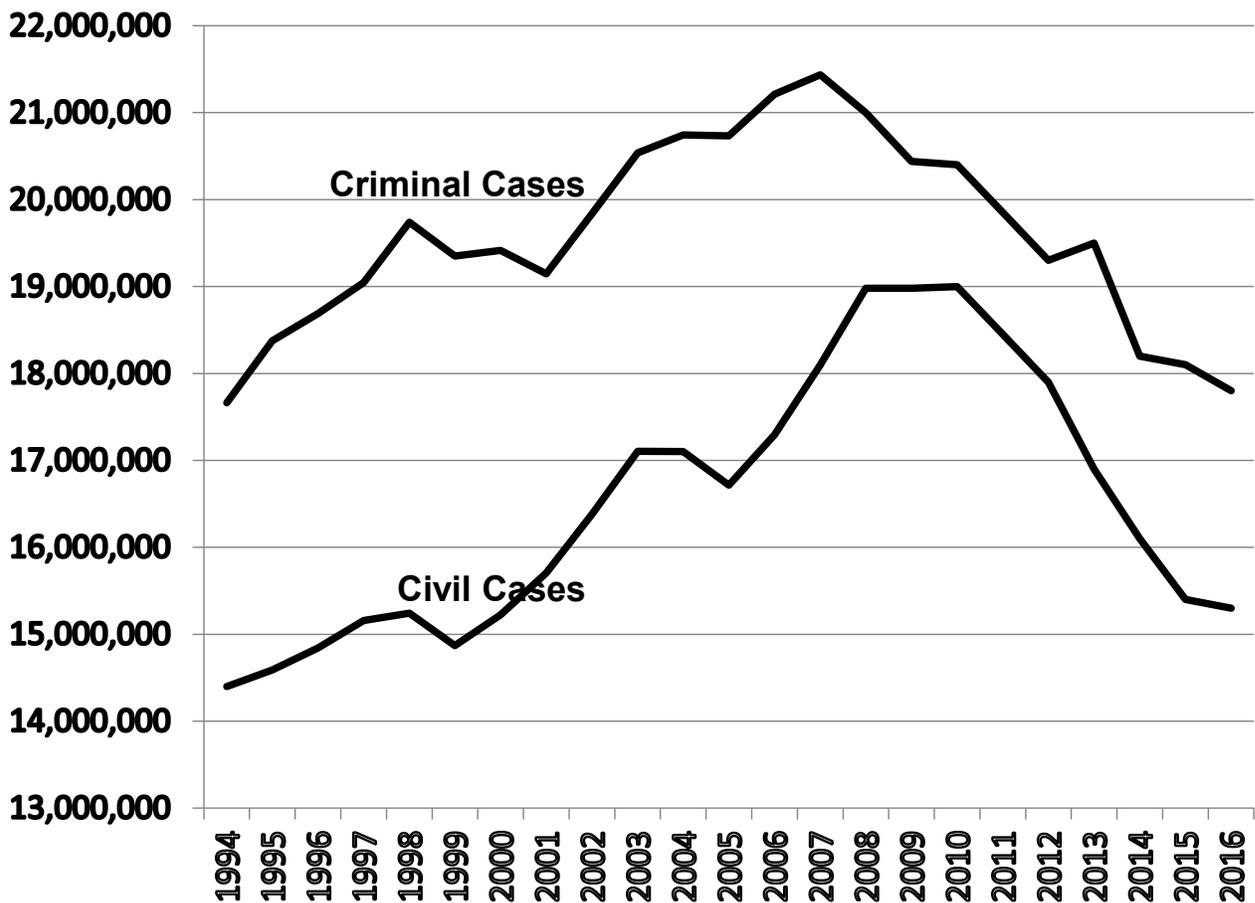
The United States is often depicted as a litigious society, one in which being sued is common. Most Americans believe crimes against individuals and property are increasing, widespread and threatening. We will assess civil litigation and criminal cases with empirical data. Figure 11.6 plots the number of new criminal and civil cases filed each year from 1994 to 2016. New criminal cases increased through 2007 and then decreased fairly consistently through 2016. New civil cases

increased from 1994 to 2010, then began an uninterrupted decrease. During these years, the population of the United States increased more than 20 percent.⁴⁶

Figures 11.7 and 11.8 show the pattern of the violent and property crimes for which the Federal Bureau of Investigation keeps statistics. From 1994 to 2016 the number of annual violent and property crimes decreased 33 percent and 35 percent respectively. The disparity in crime and case numbers is not easy to explain.

Figure 11.9 plots the number of persons supervised by state adult correction agencies from 1994 to 2016. Probation is the most frequent form of supervision. Prison is the next most frequent followed by jail and parole, which are essentially tied. The total number of persons supervised increased

Figure 11.6
New Criminal and Civil Cases Filed in State Courts 1994-2016



through 2009 and then declined. Total incarceration, the sum of prison and jail, peaked in 2010 and then remained at the same level. Clearly, crime decreased but punishment increased in this period.

Relationships Involving Crime and Punishment

Using national data, there is no evidence to support the hypothesis that there is a positive relationship between crime and punishment. If anything, the data suggest a negative relationship. However, while these data provide useful descriptions of crime and punishment trends, they do not control for population size.

Summing state crimes and punishments each year for the entire nation makes no use of information on how the states differ. Our criminal justice system does not administer a national policy. States and their local governments define for themselves what is criminal and determine their own punishment policies. If there is a link between crime and punishment, it must be assessed comparing the states, not with summed state data.

Figures 11.10, 11.11 and 11.12 present correlations between state incarceration rates and other

correctional supervision rates and variables measuring crime rates, social conditions, politics and policies, and attributes of state populations. The single-year comparative state analyses for 2013 reverses the direction of the longitudinal results for the country as a whole from 1994 to 2010.

In Figure 11.10, incarceration rates are positively correlated and above the .30 threshold, for 7 of 9 crime rates. The correlations below .30 are .29 and .25. This suggests that state incarceration is a reaction to crime. The highest correlation is between murder rates and incarceration rates, $r = .74$. There is unimpressive evidence of a similar link between crime rates and other correctional supervision rates. Only three of 9 correlations meet or slightly exceed .30.

Figure 11.11 explores relationships between state punishment rates and variables other than crime rates. Incarceration rates are positively or negatively correlated and above the .30 threshold for 11 of 13 measures. Other correctional supervision is negatively correlated above the .30 threshold for 2 of 13 measures. Incarceration rate is positively correlated with poverty rates, infant mortality rates, restrictiveness of abortion policy

Figure 11.7
Number of Violent Crimes 1994-2016

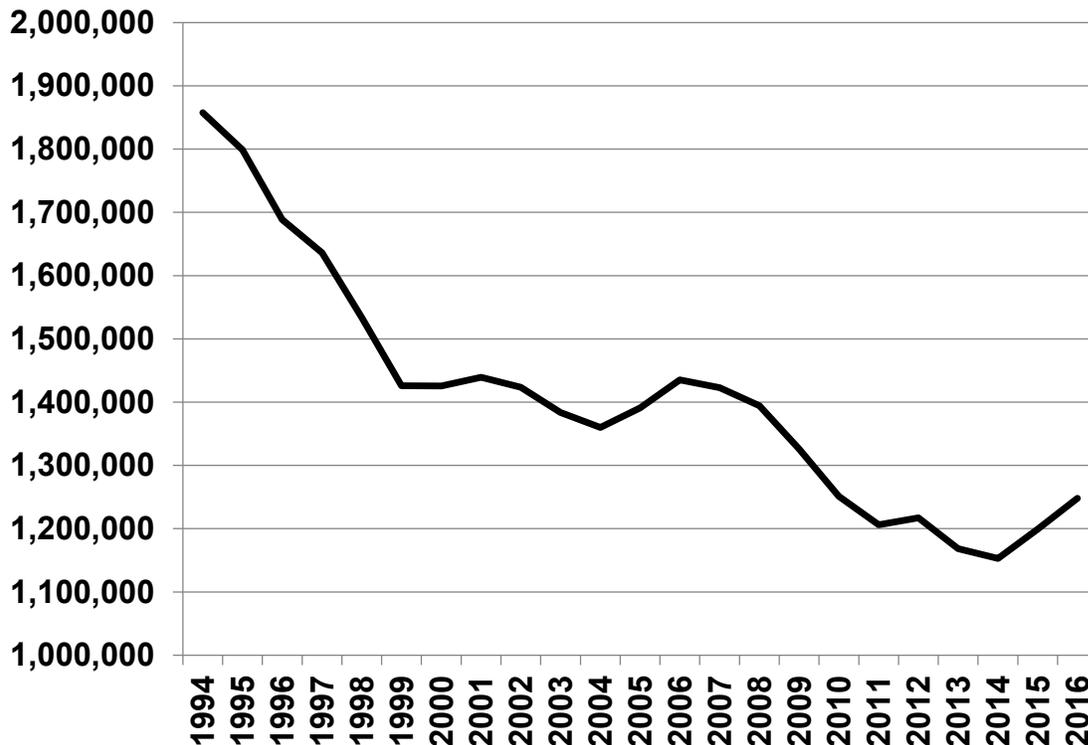
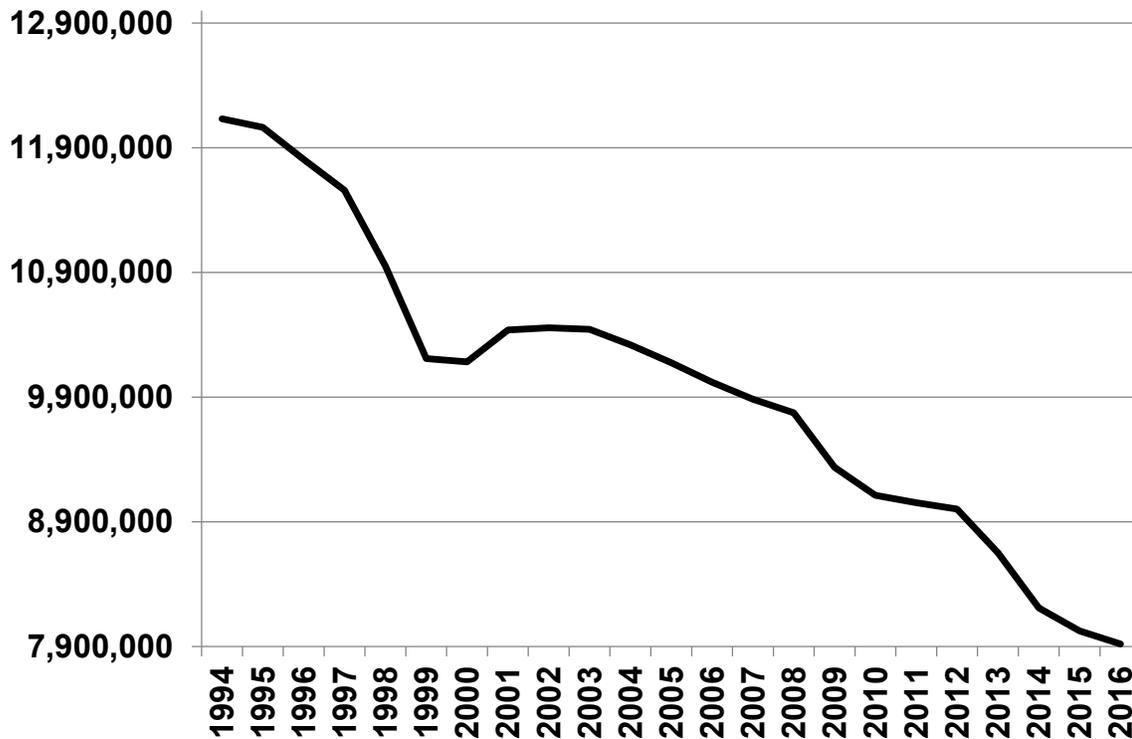


Figure 11.8
Number of Property Crimes 1994-2016



and percent republicans in the state legislature. Incarceration rate is negatively correlated with per capita income, TANF benefits, and families with children in poverty receiving TANF benefits, state and local tax burden, state and local revenue per capita, voting age population and voting eligible population turnout.

Correlations between state punishment rates and state population attributes are summarized in Figure 11.12. Once again, incarceration rates have more strong relationships than other correctional supervision rates. Incarceration rates are positively correlated above the .30 threshold with age adjusted death rate, percent conservative and percent African American. Incarceration rates are negatively correlated above the .30 threshold with measures of educational attainment, median age and Anglo population.

State incarceration rates are strongly related to crime rates and criminal cases prosecuted. Incarceration rates are also related to measures of social need, resources brought to bear, politics and values and race/ethnicity. Untangling spurious relation-

ships from potential causal relationships is a daunting task.

Additional Issues

States with substantial criminal or civil caseloads must pay the costs of providing the courts and judges necessary to deal with the burden of cases. Both the trial and possible appeals can be avoided by *plea-bargaining*. If someone accused of a criminal offense agrees to plead “guilty,” no trial needs to be held. Usually, however, the accused have to be encouraged into such a plea, with the more serious offense being dropped in return for a guilty plea on a lesser offense. Certainly, plea-bargaining relieves an overburdened court system. Critics, however, note that the criminal does not pay the prescribed penalty for the offense committed, which may mean that he or she will return more quickly to society and commit another crime.

While there are no exact estimates of the proportion of cases that are resolved through plea-bargaining, scholars estimate that about 90 to

95 percent of both federal and state court cases are resolved through this process.⁴⁷ Trying these cases in court might require a tenfold increase in court capacity. Few politicians are likely to advocate such additional expense, regardless of their rhetorical displeasure with plea-bargaining.

Despite the *Gideon v. Wainwright* (1963) decision’s assurance of legal counsel there is no provision that such an attorney will be a good one. In *Bell v. Cone* (2002), the U.S. Supreme Court addressed the issue of how effective the counsel guaranteed by the 6th Amendment must be. The court ruled that the inadequacy has to be so extreme as to amount to not just bad legal representation, but the equivalent of an absence of legal representation. Anything short of that requires the defendant to argue and prove that, but for the lawyer’s performance, the outcome of the trial would actually have been different. The Court’s action in a related case, *Cockrell v. Burdine* (2002), established that an attorney sleeping throughout trial proceedings was an example of absence of legal representation. Even among those who can afford to hire an attorney, few can afford the best. A popular cartoon portrays an attorney asking of a client, “How much justice can you afford?” All legal proceedings in the United States are expensive, and the *wealthy probably get better justice*.

No one would argue that criminal justice administered by the states is perfect, but the fre-

quency of wrongful convictions is substantial, and the impact on the lives of unjustly imprisoned individuals and their families is tragic. There is no national effort to identify and correct wrongful convictions caused by pre-DNA testing procedures, mishandling of evidence, laboratory mistakes use of subsequently discredited “scientific” tests or misconduct by police or prosecutors.

Through June 2016, Texas had paid 101 men and women who were wrongfully sent to prison \$93.6 million according to data from the state comptroller’s office. Individuals declared to be “actually innocent” after conviction are eligible for \$80,000 for each year of incarceration and become eligible for monthly annuity payments for the rest of their lives, unless they are later convicted of felonies.⁴⁸

The National Registry of Exonerations reported 149 exonerations in in 2015. Texas led the nation in overall exonerations with 54. New York was a distant second with 17. Of the 54 Texas exonerations, 43 were in Harris County alone. The conviction review section of the Harris County District Attorney’s office identified 42 of the 47 wrongful drug convictions recorded for the entire country in 2015. Conviction integrity units identified 58 nationwide wrongful convictions in 2015. Conviction integrity units are optional, and only 24 existed in the United States in 2015.⁴⁹

Figure 11.9
Persons Supervised By State Adult Correctional Status 1994-2016

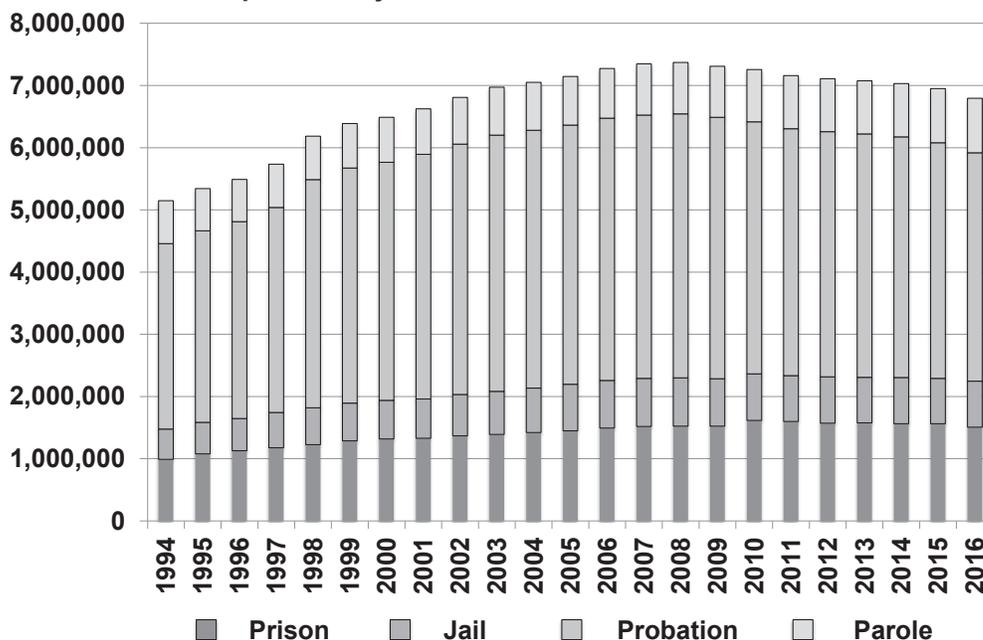


Figure 11.10
Punishment and Crime Rate Correlations 2014

Crime Measure	Incarcerated per 100,000 adult population	Correctional Supervision per 100,000 adult population
Violent crime rate	.53	.14
Murder rate	.74	.33
Rape rate	.25	-.01
Aggravated assault rate	.52	.06
Property crime rate	.58	.30
Burglary rate	.64	.33
Robbery rate	.35	.27
Larceny rate	.51	.26
Motor vehicle rate	.29	.15

Figure 11.11
Punishment Rate and Social Conditions, Policies and Politics Correlations 2014

Measure	Incarcerated per 100,000 adult population	Correctional Supervision per 100,000 adult population
Per capita income	-.52	-.26
Poverty rate	.64	.24
TANF benefits per family	-.61	-.33
Pct. Families with children in poverty receiving TANF	-.61	-.33
Infant mortality rate	.61	.29
State and local tax burden	-.52	-.09
State and local revenue per capita	-.33	-.21
State and local spending per capita	-.24	-.17
Restrictiveness of Abortion Policy	.50	.24
Voting age population turnout	-.33	-.13
Voting eligible population turnout	-.43	-.13
Percent of voting age population registered to vote	-.03	-.05
Percent Republicans in legislature	.56	.14

Figure 11.12
Punishment Rate and Population Attributes Correlations 2014

Measure	Incarcerated per 100,000 adult population	Other Correctional Supervision per 100,000 adult population
High school educational attainment	-.54	-.24
Higher educational attainment	-.61	-.20
Median age	-.37	-.20
Age adjusted death rate*	.64	.24
Gallup Poll percent conservative	.62	.14
Percent Anglo	-.32	-.24
Percent African American	.52	.43
Percent Hispanic/Latino	.16	.03

*2013

Finally, *justice is not uniform across the country*. In some areas, acts that are criminal behaviors elsewhere are perfectly legal and, more commonly, the severity of the penalty for a criminal act varies greatly from state to state. There is also variation within a state. Prosecuting attorneys are typically based in geographical districts that differ in population size, makeup, and values. Particularly at the county level, prosecutors may be more or less active in pursuing cases involving so-called victimless crimes. The probability of being prosecuted or found guilty, as well as the severity of any penalty, varies greatly both between states and within states.

There is some evidence, furthermore, to suggest that the mass media's emphasis on numbers of crimes rather than the crime rate results in more numerous guilty verdicts and more severe punishments.⁵⁰ There is also the use of grand juries by prosecutors largely for their own political careers. They may gain notoriety by using the grand jury's inquiry into possible crimes as a springboard to higher office.

The Constitution guarantees only a trial by an impartial jury, not one by one's peers. Regardless, there is good reason to believe that the typical trial

jury is neither. Most states call jurors from the rolls of those registered to vote, which makes even the initial draw biased against those who are unregistered. Additionally, states typically excuse students, mothers of small children, and small businessmen whose livelihood might be affected by serving on a jury. Thus, additional bias is added to prospective juries.

Furthermore, attorneys for the two sides in criminal and civil cases may excuse prospective jurors because they seem unlikely to vote for their clients. Many persons are employed to assist attorneys in "tailoring" juries into being the most favorable possible jury for their clients. Neither the plaintiffs' nor defendants' attorneys seek unbiased jurors. On the contrary, they all seek jurors biased in favor of their clients. *Given all of these biasing influences on our trial juries, it is thus improbable that a defendant will be judged by an impartial jury of his or her peers.*

Summary

1. In the United States, we have a dual court system with both state and federal courts. Each system has trial courts where cases are tried, as well as

appellate courts that may hear cases on appeal.

2. The generalization that activist courts make liberal decisions is not based on comprehensive analyses of decisions. Analysis of all cases with a valid and reliable measure of activist decisions concludes that, in recent years, the U.S. Supreme Court has made more activist conservative than activist liberal decisions.

3. The Constitution affords those accused of crimes many protections in federal courts. Most of these protections have been extended to those accused in state courts, whether or not they were also included in state constitutions. Several U.S. Supreme Court decisions, such as *Mapp v. Ohio*, *Gideon v. Wainwright*, and *Miranda v. Arizona*, have also structured how the courts, in particular state courts, deal with crime in the courtroom.

4. Consensus on which individuals and groups should receive equal protection under law has changed throughout American history. The courts have taken the lead role in this issue.

5. Who has the right to marriage sanctioned by state government is a highly publicized and important contemporary civil rights issue. The United States Supreme Court has essentially ruled that states must treat opposite sex and same sex marriages the same way. The extent to which nondiscrimination laws apply to same sex couples varies across the states. Disputes about decisions related to same sex marriage will result in ongoing litigation.

6. State judges are selected in a variety of ways and the Missouri plan is the most popular. In this method, a knowledgeable committee selects applicants with merit for final selection by the governor. Voters later get to approve or disapprove of the

individual selected. Three states use the retention election element of the Missouri Plan.

7. At the national level, numbers of crimes have decreased since 1994, but numbers of criminal cases and prisoners incarcerated have increased. At the same time, analyses of state rate measures show strong links between crime and incarceration punishment. Incarceration rate is also correlated with a large proportion of social, policy and demographic measures across the states.

8. Plea-bargaining, better justice for the wealthy, and other problems plague our modern courts, and there seems little chance to solve them. There are only a few conviction integrity units within state governments. The states have yet to make a comprehensive effort to identify and rectify the problems of wrongful convictions.

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Figure 11.11	Sources for Figure 11.10
Figure 11.12	Sources for Figure 11.10

Study Guide, Chapter 11

Essay Questions

1. Which court system is more important to Americans in their daily lives: federal or state? What empirical evidence supports your answer? What empirical evidence does not support your conclusion?
2. Explain the different responsibilities of trial courts and appellate courts. How do the different procedures in each court reflect their different responsibilities?
3. Provide four examples of how court decisions have changed the concept of “equal protection under the law” in criminal cases. Have these cases most often been decided in state or federal courts? Why?
4. Why are courts more likely to champion minority rights than the other two branches of government? Does this mean that the courts are more liberal? Why or why not?
5. How have court cases over the years changed the concept “equal protection under civil law” in civil cases? Have these cases most often been in state or federal courts? Why?
6. Is there empirical evidence to support the contention that there is a positive relationship between state crime rates and state punishment rates? If there were a causal relationship between crime and punishment, what evidence would be sufficient to prove it? Could we determine which is the cause and which is the effect?
7. Is the American system of federal courts and state courts set up to guarantee that all individuals accused of crimes will be treated equally? Why or why not? Provide examples.

Multiple Choice Questions

1. Generally, Americans are affected more by,
 - a. the federal court system
 - b. the state court system
 - c. the federal courts in criminal cases
 - d. the federal courts in civil cases
2. What is the typical name of a state’s court of last resort?
 - a. district court
 - b. court of criminal or civil appeals
 - c. state supreme court
 - d. federal district court
3. Which of the following statements is true?
 - a. The legislative branch is more active in championing minority rights than are the other two branches.
 - b. The executive branch is more active in championing minority rights than are the other two branches.
 - c. The judicial branch is more active in championing minority rights than are the other two branches.
 - d. The judicial branch is more active in championing majority rule than are the other two branches.
4. In *United States v. Windsor* (2013), the U.S. Supreme Court ruled
 - a. the federal government must recognize all marriages legal under the laws of the states where marriages took place
 - b. all governments must recognize all marriages legal under the laws of the states where marriages took place
 - c. states must legalize same sex marriage or establish comparable domestic partner status within four years
 - d. states have the constitutional authority to chose to recognize marriages from some states and not others, but if they recognize a state’s opposite sex marriages they must also recognize that state’s same sex marriages

Notes

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Chapter 12

EDUCATION, POVERTY, AND HEALTH: STATE AND LOCAL EFFORTS

Liberals and conservatives take opposite positions on many controversial issues. Policies dealing with education, poverty, and crime find perhaps the greatest consistency of such positions across policy areas.¹ Conservatives strongly believe in *individual responsibility*. Conservatives view criminal behavior as evidence of a *character fault* of the individual. Some are drawn to crime; society is safe only after such individuals are incarcerated.

The liberal, by contrast, notes that criminals are overwhelmingly uneducated and poor. For this reason, they argue crime results from *society's failure* to meet the needs of many, in effect forcing the poorly educated and poor into a life of crime.

Liberals share with conservatives the belief that some crimes must be punished as offenses against society, including murder, rape, and most violent crimes. The liberal, however, is likely to forgive individuals who have repaid society for criminal acts, perhaps even granting a second chance. The conservative, seeing a faulty individual, is less likely to do so. The rhetoric of conservatives today includes the idea of “three strikes and you’re out.” This does not rest on an analogy to baseball but rather to an older style of justice, whereby a first offense resulted in cutting off the left hand; the second, the right hand; and the third, the head. Many would argue that three strikes are too many.

Conservatives also apply the principle of *individual responsibility* to poverty. They see those living in poverty as having failed to make the effort necessary to have a job and pay their own way. If society provides the minimum amount of money for food and housing, in the conservative’s view, the practice removes the incentive for those on welfare to get a job. From the conservative perspective, most people on welfare have a character fault; they

are lazy.

The liberal views poverty as *society's failure* to provide some people with the skills needed to get a job paying above minimum wage. Both liberals and conservatives, however, share the belief that some are poor through no fault of their own. Society, they both believe, should show compassion toward children, the severely disabled and the elderly. They strongly disagree on whether compassionate help should come through the involuntary taxation of government or through the voluntary contributions of individuals and charitable organizations.

Conservatives apply the principle of *individual responsibility* to health issues. To a large extent, medical problems are caused by individual choices. Alcohol or drug addiction is evidence of a *character fault* of the individual. So are obesity, tobacco-related cancers and other illnesses, most communicable diseases and unwanted pregnancy. Those with genetic predispositions to medical problems should be responsible about prevention and early detection. It is their responsibility to carry sufficient health insurance.

Liberals view most health issues as *society's responsibility*. The most vulnerable, the very young and very old, should not be held responsible for their own health when they lack financial means or physiological abilities or intellectual capacity. Purchasing private health insurance is an investment many of the young and healthy are willing to forego. Government must play a role in limiting the causes and damages of communicable disease because responsible individual behavior alone will not provide sufficient protection.

Conservatives and liberals agree that those suffering debilitating health problems should receive compassion and care. Conservatives argue the

Figure 12.1
Beneficial Educational Attainment Correlations 2014

	HS	College
ECONOMIC		
Per Capita Income	.43	.76
Poverty	-.80	-.67
HEALTH		
Life Expectancy at Birth	.61	.62
Age Adjusted Death Rate	-.49	-.76
Percent Obese Population	-.40	-.73
Infant Mortality Rate	-.43	-.65
Percent Low Birth Weight	-.61	-.37
Teen Birth Rate	-.59	-.82
CRIME		
Violent Crime Rate	-.45	-.31
Property Crime Rate	-.44	-.39
Incarceration Rate	-.54	-.61
New Prisoner Rate	-.15	-.41
State Correctional Supervision Rate	-.24	-.20

responsibility rests with individuals and charitable organizations. Liberals argue that government must play a role, particularly when other efforts are insufficient.

Finally, the liberal believes public education offers society the leverage needed to change individuals. By educating everyone equally to the highest standards, society grants all an opportunity for a good life. If public education fails to educate children, it dooms them to difficulties in finding employment. Poverty and the absence of legal employment prospects might lead to criminal behavior. Poor success in educating students, the liberal would argue, is *society's failure*.

The conservative accepts the need for public educational opportunities as a benefit to society. However, if an individual fails to use educational opportunities, the fault rests with the individual, not the educational system. Society's role is to offer opportunity, not to guarantee educational success or economic success.

Conservatives and liberals agree that government has important roles to play in dealing with crime, poverty and public health issues. They agree quality public education should be provided. They disagree on the role government should play. They also frequently disagree on goals. They disagree on whether threshold public education quality or equal access to the highest quality public education should be the goal. They disagree on the appropri-

ate role of private sector and religious schools.

Conservatives and liberals disagree on appropriate punishment for crime, acceptable levels of poverty, public health and education. Accordingly, they disagree on how to deal with each of these issues.

If society embraced totally the conservative perspective, we might seek to identify the faulty characters as early as possible. Once identified, they could be removed. Society could then save the money that would otherwise be wasted in futile attempts to educate them, to compensate for their poverty, and to deal with their criminal acts. We currently lack the capacity to distinguish with certainty, for example, poorly performing students from those whose capacity to learn falls below an acceptable threshold. Would conservatives want to use means to identify the hopeless cases if we had them?

There are some who speculate that, in the future, human medical and behavioral science may permit us to assess each individual's capacities and prospects on a limitless number of dimensions. Even if this should be the case, liberals would still oppose conservatives. They would surely argue that the tools capable of identifying those doomed to failure might also provide the means to heal or cure them.

Who is right? Probably, neither side can convince the other of the error in its thinking. Both

liberals and conservatives should object to our one-dimensional characterization of their views from disagreement on a single idea. The adherents of neither philosophy agree unanimously on appropriate courses of action when we do have accurate information about individuals' prospects. Both conservatives and liberals would rather not contemplate cases of medical conditions involving both unspeakable suffering and certain death.

Neither conservatives nor liberals offer one-size-fits-all solutions to all the problems we face. No state has yet committed itself totally to either the conservative or the liberal way of thinking. Some states, however, target more financial and other resources than others. We now ask whether or not these differences matter.

The Importance of Education

We have previously noted that some states have better educated publics, some have more living in poverty, and some have more crime. There may be a pattern to these differences. At the individual level, we might well expect poorly educated individuals to be poor and more likely to engage in criminal behavior. Certainly this would be the connection seen by liberals, but conservatives also might expect a character fault to overlap into poor use of educational opportunities, laziness in getting

out of poverty, and crime.

Education is empirically linked to many beneficial results of importance across the states. Figure 12.1 summarizes some of them.

More educational attainment by state residents is related to higher income and lower poverty. We have seen in earlier chapters that higher income is related to more government revenue, lower tax burdens, and higher government spending.

Educational attainment is also related to health outcomes we prefer. Educational attainment is positively related to life expectancy at birth. Educational attainment is negatively correlated with death rates, obesity, infant mortality, low birth weight and teen birth rate.

Educational attainment is negatively correlated with both property crime rate and violent crime rate. It is also negatively correlated with rate of total incarceration. We have seen earlier that government efforts to deal with crime through law enforcement and prisons are reactive. If the relationships between crime variables and educational attainment are causal, achieving greater educational attainment is a proactive means to reduce the incidence of crime and the cost of criminal justice.

Figure 12.2 lists correlations with two measures of educational attainment, high school graduation and college degree completion. Only three of 26 coefficients are below our .30 strength thresh

Figure 12.2
Educational Attainment and Poverty Rate Correlations Over Time

	HS	College		HS	College
1970	-0.72	-0.40	2002	-0.76	-0.58
1980	-0.68	-0.49	2003	-0.80	-0.60
1989	-0.66	-0.60	2004	-0.74	-0.60
1990	-0.69	-0.36	2005	-0.74	-0.62
1991	-0.66	-0.58	2006	-0.73	-0.57
1993	-0.74	-0.57	2007	-0.78	-0.58
1994	-0.69	-0.46	2008	-0.79	-0.61
1995	-0.66	-0.49	2009	-0.77	-0.57
1996	-0.64	-0.46	2010	-0.82	-0.65
1997	-0.63	-0.47	2011	-0.75	-0.61
1998	-0.65	-0.47	2012	-0.70	-0.62
1999	-0.63	-0.46	2013	-.079	-0.65
2000	-0.63	-0.53	2014	-0.80	-0.67
2001	-0.63	-0.57			

old. Sometimes high school attainment has the higher correlation and sometimes college attainment has the higher correlation.

Table 2.1 in Chapter 2 showed that the relationships between educational attainment and per capita income are consistently strong over many years. In addition, correlations between per capita income and college completion have become larger, while correlations with high school completions have become smaller over time. Figures 12.2 through 12.5 contain correlations over time between the two measures of educational attainment and poverty, infant mortality, violent crime and property crime.

Poverty rate (Figure 12.2) is consistently more strongly negatively correlated with high school completion rates than with college completion rates over the entire 1970 to 2014 time period. Infant mortality (Figure 12.3) is more strongly negatively correlated with high school completion than college completion from 1950 to 1997. From 1998 to 2011, the correlations are strongly negative, but essentially the same. From 2012 to 2014, infant mortality is more strongly negatively correlated with college completion than college completion.

Correlations between educational attainment

and crime rates are not so consistent over time. Violent crime rate (Figure 12.4) is consistently negatively correlated with high school completion from 1995 to 2014, but not before. Violent crime rate and college completion are not correlated above the threshold of .30 until 2013.

Property crime rate and high school completion (Figure 12.5) are negatively correlated ten of the eleven years from 2004 to 2014. Correlations between property crime rate and college completion are negatively correlated from 2006 through 2014, but not before. However, greater educational attainment was related to higher property crime rates in 1990 and earlier.

The beneficial relationships between educational attainment and crime rates are inconsistent between attainment measures and exist only for the most recent few years. The beneficial relationships between educational attainment and poverty rates and educational attainment and infant mortality rates are consistently negative for both measures of attainment. Clearly, the desirable empirical relationships between problem level and educational attainment are consistent for only some policy areas.

Figure 12.3
Educational Attainment and Infant Mortality Rate Correlations Over Time

	HS	College		HS	College
1950	-0.45	0.08	2001	-0.37	-0.34
1960	-0.34	0.07	2002	-0.50	-0.44
1970	-0.54	-0.21	2003	-0.45	-0.44
1980	-0.67	-0.26	2004	-0.46	-0.50
1989	-0.56	-0.43	2005	-0.53	-0.58
1990	-0.57	-0.41	2006	-0.52	-0.58
1991	-0.63	-0.52	2007	-0.56	-0.60
1993	-0.64	-0.50	2008	-0.48	-0.56
1994	-0.52	-0.36	2009	-0.46	-0.52
1995	-0.60	-0.50	2010	-0.52	-0.58
1996	-0.43	-0.39	2011	-0.49	-0.57
1997	-0.54	-0.42	2012	-0.48	-0.63
1998	-0.47	-0.47	2013	-0.46	-0.59
1999	-0.51	-0.39	2014	-0.43	-0.65
2000	-0.51	-0.54			

Figure 12.4
Educational Attainment and Violent Crime Rate Correlations Over Time

	HS	College		HS	College
1960	-0.18	0.09	2002	-0.41	0.01
1970	-0.14	0.21	2003	-0.44	-0.05
1980	-0.02	0.23	2004	-0.45	-0.07
1989	-0.20	0.10	2005	-0.43	-0.12
1990	-0.28	0.13	2006	-0.43	-0.17
1991	-0.30	-0.01	2007	-0.46	-0.25
1992			2008	-0.48	-0.21
1993	-0.31	0.02	2009	-0.50	-0.22
1994	-0.26	-0.04	2010	-0.45	-0.21
1995	-0.33	-0.06	2011	-0.48	-0.29
1996	-0.33	0.10	2012	-0.49	-0.27
1997	-0.34	0.04	2013	-0.45	-0.33
1998	-0.34	-0.03	2014	-0.45	-0.31
1999	-0.44	-0.12			
2000	-0.45	-0.10			
2001	-0.38	-0.05			

Figure 12.5
Educational Attainment and Property Crime Rate Correlations Over Time

	HS	College		HS	College
1960	0.53	0.47	2001	-0.13	-0.11
1970	0.52	0.63	2002	-0.19	-0.08
1980	0.50	0.60	2003	-0.26	-0.15
1989	0.17	0.29	2004	-0.31	-0.19
1990	0.12	0.46	2005	-0.23	-0.16
1991	0.13	0.27	2006	-0.33	-0.31
1992			2007	-0.40	-0.35
1993	0.08	0.23	2008	-0.46	-0.31
1994	0.12	0.12	2009	-0.47	-0.34
1995	0.07	0.03	2010	-0.44	-0.34
1996	-0.01	-0.02	2011	-0.47	-0.36
1997	-0.03	-0.02	2012	-0.45	-0.40
1998	-0.03	-0.01	2013	-0.41	-0.39
1999	-0.16	-0.08	2014	-0.44	-0.39
2000	-0.15	-0.13			

Can State Policy Proactively Increase Educational Attainment?

How can we achieve greater educational attainment? We have been using two measures of formal education in state populations. Percent of the population age 25 and older that has completed high school or the equivalent measures success in primary and secondary education. Every state has maximizing high school graduation rates as a cen-

tral education policy goal. Although all states claim their goal is universal high school graduation, none achieve it. In 23 states, more than 90 percent of residents have completed high school. The map of high school completion rates in Chapter 2, Figure 2.2 shows the familiar regional pattern of Southern states with distinctly lower achievement.

Percent of the population age 25 and older that has a bachelor’s or more advanced degree measures success in higher education attainment. States

There were 4 states in 2014 with below average in high school completion located above the regression line. They have more residents with college degrees than predicted by their numbers of residents with high school completion. Texas, North Carolina, Georgia, New Mexico also seem to be doing well in their balance of trade in residents with college degrees. Texas has the lowest high school graduation rate but may be the most successful of the below average high school graduation states in attracting college graduates.

Unfortunately, data do not exist to track changes in state educational attainment caused by in-migration and out-migration. Data also do not exist about deaths by state and educational attainment level. Population relocation is clearly an important factor in state educational attainment, but we lack the means to study it with comprehensive comparative information.

State Resources for Education and Educational Attainment

Do states that invest more funds in education realize more educated residents? This is a more

complicated question than one might imagine. The evidence is sufficiently mixed that both liberals and conservatives can confirm their beliefs by focusing on supporting evidence and ignoring contrary evidence.

Figure 12.7 does not provide consistent evidence that states with higher expenditures per K-12 student achieve higher high school graduation rates. The correlation is positive but below our threshold for being deemed strong for 12 of 24 years. The correlations between educational spending and college attainment are consistently positive and higher than .30.

There is no consistent relationship between contemporary K-12 education spending and high school educational attainment. There is a consistent positive relationship between contemporary K-12 education spending and college educational attainment. If there is a causal relationship between spending and college attainment and an inconsistent causal relationship between spending and high school attainment, it must be that educational attainment causes educational spending, not vice versa. Educational attainment can cause education spending if, for example, more highly

Figure 12.7
Correlations Between Contemporary State Spending Per Child in Average Daily Attendance and Educational Attainment

	HS	College			HS	College
1970	0.45	0.42		2002	0.25	0.48
1980	0.50	0.51		2003	0.20	0.48
1989	0.38	0.51		2004	0.25	0.48
1990	0.37	0.38		2005	0.24	0.46
1991	0.37	0.50		2006	0.25	0.44
1993	0.31	0.44		2007	0.25	0.47
1994	0.34	0.46		2008	0.25	0.54
1995	0.34	0.56		2009	0.32	0.52
1996	0.33	0.49		2010	0.30	0.53
1997	0.27	0.48		2011	0.36	0.47
1998	0.28	0.47		2012	0.33	0.47
1970	0.45	0.42		2013	0.33	0.52
1999	0.23	0.42		2014	0.37	0.52
2000	0.21	0.46				
2001	0.20	0.48				

educated residents demand more spending in the public schools, both for their children and others' children.

It is *not* possible for expenditures on education to cause rates of educational attainment in the same year. Contemporary spending on primary and secondary education promotes educational achievement for current students, ages 5-19. Now, recall that the measure of state high school completion is *limited to the percent of population 25 years and older*. Kindergarteners today will not enter this group for another 20 years.

The full impact of contemporary spending will take place when student beneficiaries of spending are all in the cohort used to measure educational achievement. Thus, a proper empirical analysis of educational spending on educational achievement must measure achievement 20 years *after* spending. Figure 12.8 presents such an analysis.

Lagged correlations between earlier educational spending and later high school attainment are consistently higher than contemporary correlations and consistently above the threshold of .30. On average, the correlation is .13 larger. Clearly, educational attainment is strongly and consistently linked to spending when the cohort of school children joins the cohort adults whose educational attainment is measured. The correlations between

lagged primary and secondary spending and college attainment are also usually higher, but the average difference is only .01. However, lagged spending correlations with higher education attainment greatly exceed those for high school attainment starting in 2005.

If it were possible, we would want to control also for people who currently live in a state other than where they received their higher education. The quantity and quality of data necessary are not obtainable and not likely to become available.

There are very strong and consistent correlations between what states spend on primary and secondary education and what states get in educational attainment when the beneficiaries of spending join the cohort measured for educational attainment. The link between what might be cause and what might be effect is separated by 20 years. This gives rise to at least two time issues. First, spending on primary and secondary education is long-term investment in human capital. Benefits come, but they do not come in the short term. Second, the time period for education return-on-investment and the political time horizons of elected government officials are severely disconnected. State and local officials cannot receive credit personally for good spending decisions or be held accountable for bad spending decisions.²

Figure 12.8
Correlations Between State Spending Per Child in Average Daily Attendance Twenty Years Earlier and Educational Attainment

	HS	College		HS	College
1970	0.70	0.47	2003	0.38	0.41
1980	0.66	0.48	2004	0.38	0.42
1989	0.51	0.49	2005	0.42	0.42
1990	0.47	0.44	2006	0.40	0.51
1991	0.49	0.48	2007	0.43	0.58
1993	0.39	0.52	2008	0.40	0.61
1994	0.42	0.52	2009	0.38	0.59
1995	0.38	0.42	2010	0.37	0.59
1996	0.50	0.58	2011	0.37	0.57
1997	0.55	0.48	2012	0.35	0.56
1998	0.49	0.42	2013	0.35	0.52
1999	0.48	0.38	2014	0.32	0.53
2000	0.38	0.46			
2001	0.39	0.43			
2002	0.45	0.41			

It is easy for those who believe that greater spending on education produces waste rather than results to present as supporting evidence one of the small contemporary correlations in Figure 12.7. This false conclusion can be communicated in a 15-second sound bite, a graphic, or even a cartoon. Much more time and audiences with longer attention spans are necessary to explain a more complex pattern between past support for education and contemporary achievement levels.

Primary and Secondary Education Quality

The United States has one of the least centralized education systems in the world. State and local governments do not merely execute federal plans and orders. American states are the central actors in public education. Almost all states delegate major responsibility for primary and secondary education to local school districts. States themselves play the central roles in public higher education.

The federal government has always played a small role in primary and secondary education. Grants to stimulate use of better practices and to aid economically impacted areas have always been less than 15 percent of total spending on primary and secondary education. The larger federal role has been to act as a clearinghouse of information on educational successes and failures.

The major national efforts to improve education under President George W. Bush in 2001 emulated programs put into place in the state of Texas when he was governor. The reason for following the lead of Texas is certainly not because of its success in education. As Figure 12.6 documents, Texas residents have the lowest high school completion rate in the nation. Texas' proportion of population with bachelor's degrees or more higher education is below average. The impetus for emulating Texas was probably largely political and personal.

The major elements in the federal No Child Left Behind Act of 2001 were put into place earlier in Texas. They were:

- Emphasize scores on standardized tests as a primary measure of educational achievement.
- Have separate testing standards for higher and lower performing groups of students.
- Evaluate schools and school districts based on test results.

- Promise financial incentives to schools for improving test scores.
- Impose financial penalties on schools for not improving test scores.
- Retain decentralized choice as an immutable principle.
- Permit inconsistent evaluation criteria and exemptions from evaluation.
- Provide insufficient funding from the more central government.

From the perspective of the local schools, the Texas and federal education reforms were unfunded mandates. Teachers objected to evaluating education quality solely on test scores. The emphasis on statewide achievement testing has peaked and is in decline. In 2013, the Texas Legislature decreased the number of end-of-course exams from 15 to 5 and reduced their importance for high school graduation. It also replaced minimum, recommended and distinguished high school curricula with a simplified foundation graduation program.³ The results of tests required for high school graduation were disregarded in 2016.

No Child Left Behind required testing, but states could choose which tests. The inconsistent results from various tests were embarrassing and looked unprofessional. The National Governors Association and the Council of Chief State School Officers, whose members are top-ranking state education officials, worked together to create a single set of standards and a common grading criteria that came to be known as the Common Core. It is being used in 42 states.⁴

Federal agencies did not create the Common Core, but the Obama administration encouraged its adoption through its \$4 billion grant program to states, Race to the Top.⁵ All but two states, Alaska and Texas, applied for grants. Texas Governor Rick Perry explained his reasons for rejecting Race to the Top in a February 2010 op-ed essay published in Texas newspapers. The reasons included:

- RTTT threatens state sovereignty to determine how best to educate their children.
- Turning down strings-attached money will ensure Texas children get the best education possible.
- Education of Texas children is too important to entrust to some federal bureaucrat toiling in a distant federal building.

- Texas is fighting to maintain freedom to hold our children to high standards.⁶

Governor Perry’s essay was not an attempt to use factual information to explain his decision. His purpose was to state forcefully partisan and ideological beliefs shared by his base of political support. He acted on those beliefs again when he insisted that the 2011 Texas Legislature decrease

state funding of K-12 education by \$5.3 billion dollars for 2012-2013, even though the number of school children was increasing.

The federal Race to the Top grant program was made even more flexible in 2012. Individual school districts became eligible to apply for grant funds, even if their states did not. Of 372 applications that year, one was from an Alaska school district and 36 were from Texas school districts.⁷

Figure 12.9
Poverty 1960-2016

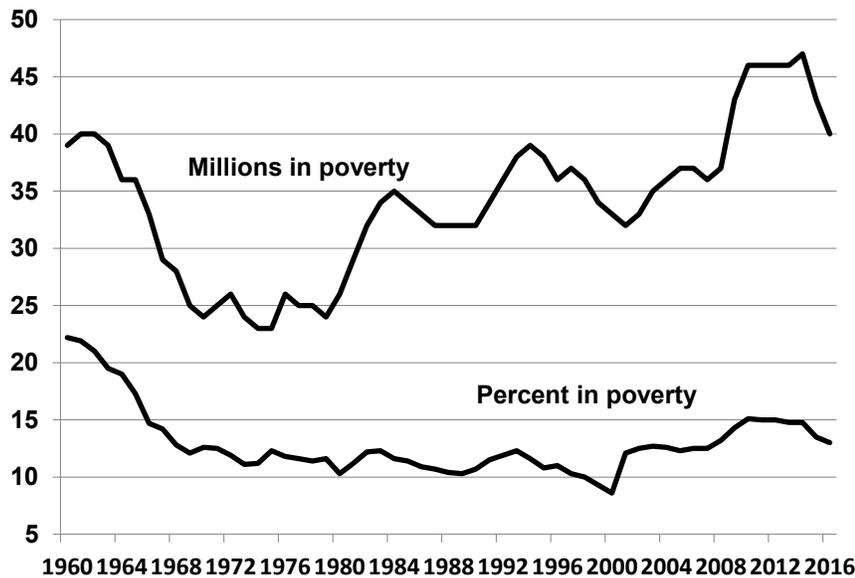
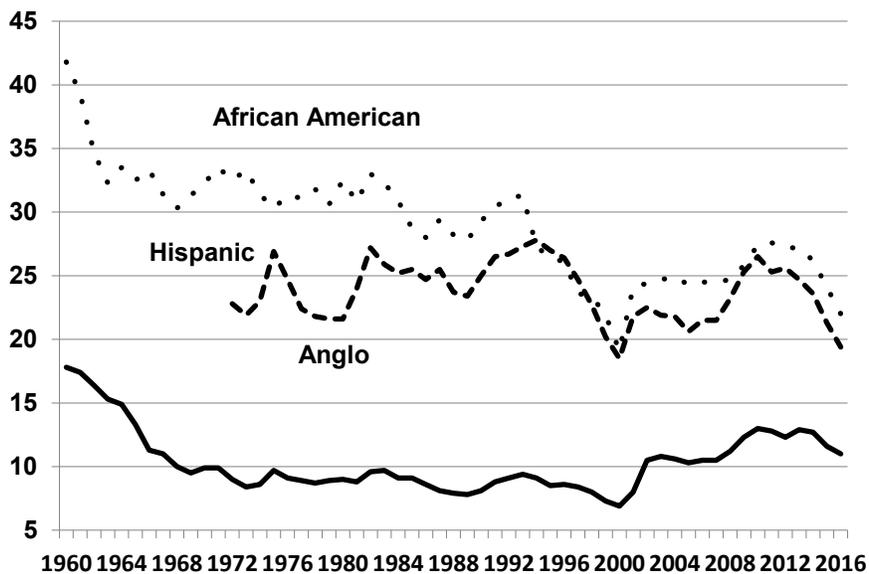


Figure 12.10
Poverty by Race/Ethnicity 1960-2016



Can Proactive State Policy Decrease Poverty?

Poverty remains a major problem in our society. In 2014, a family of four with an income below \$23,850 was defined as living in poverty.⁸ The corresponding amount for 2016 is \$24,300.⁹ The percentage of Americans living in poverty has fluctuated over time, as shown in Figure 12.9. In general, poverty rates decreased from 22.2 percent in 1960 to 8.6 percent in 2000. Poverty then increased and peaked at 15.2 percent in 2010. In 2016, the poverty rate was 13 percent.

Figure 12.9 provides a clear data visualization of the difference between measuring poverty in raw numbers and measuring poverty as a rate. The 47 million Americans living in poverty in 2014 exceeded the 40 million in 1962 and was the highest the United States has ever experienced. At the same time, the 13 percent poverty rate in 2014 is much lower than the 22.2 percent rate of 1960.

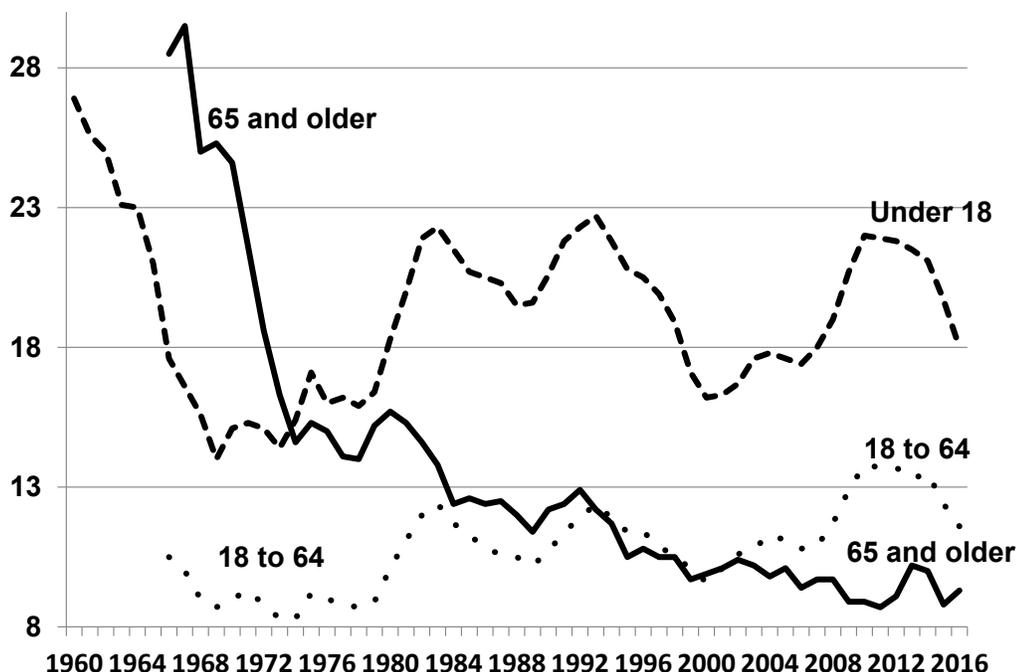
Poverty is a greater problem for some groups than for others. Figure 12.10 shows poverty rates by race and ethnicity. Poverty has consistently affected African-Americans and Hispanics more than Anglos

Figure 12.11 shows poverty rates by age. A major change has occurred since 1960. The problem of poverty has been shifted from the oldest to the youngest. In 1959 poverty rates increased with age: under 18 years 17 percent, 18 to 64 years 27 percent, and 65 and older 35 percent. In 2016 poverty rates decreased with age: 65 and older 9.3 percent, 18 to 64 years 11.6 percent and under 18 years 18 percent.

The group least dependent on employment for themselves or their caretakers was essentially immune to widespread unemployment. Poverty was also transferred from the group with highest voter turnout to those with lowest voter turnout and to those too young to vote.

Poverty rates declined from 1993 to 2000 and then increased again. As was the case with declining poverty during the 1960s and 1970s, the relative contributions of welfare reform and an extremely robust economy are subject to debate. Increasing poverty after 2000 suggests that not all periods of increasing prosperity result in poverty reduction. What is not subject to debate is the

Figure 12.11
Poverty by Age 1960-2016



transfer of the burden of poverty from the oldest to the youngest.

Public Assistance Programs

Unlike education policy, the federal government—or the states in the guise of the federal government—has taken the lead in developing public assistance programs to ameliorate or reduce poverty. There are multiple programs, but all involve a partnership between federal and state governments. The federal government establishes a framework of eligibility and benefit rules and provides a baseline level of funding. State governments have the option of adjusting eligibility and benefit rules. For all except the Supplemental Nutrition Assistance Program, states can supplement federal contributions with state resources.¹⁰

There is no federal Department of Poverty and no state has a Department of Poverty. Nevertheless, there are multiple programs for dealing with poverty. They fall under efforts with titles such as social insurance, income security, human services, and health and nutrition.

The most expensive social welfare programs are Social Security and Medicare. They are national programs that serve the elderly, not the poor. State governments administer a broad variety of public assistance or means-tested programs. Rom notes that much, but not all, public assistance is considered an entitlement. Any person eligible for benefits can obtain them and government is obligated to provide the resources necessary to fill all claims.¹¹

The largest public assistance program by expenditure is Medicaid, which provides medical care for persons eligible by state policy. Medicaid alone accounts for about 60 percent of public assistance spending. In 2014 Medicaid served 70 million individuals. Medicaid expenditures in 2014 were \$476 billion; 60 percent paid by the federal government and one-third paid by states. By 2016, more than 72 million were enrolled in Medicaid.¹² Medicaid reimburses health care providers directly. Medicaid recipients receive no money directly.

The second largest program is Temporary Assistance for Needy Families (TANF). Total expenditures by federal and state governments in 2014 were \$31.9 billion; 52 percent from federal funds and 48 percent from state and local funds. TANF

replaced a program created to provide money directly to needy families with children. However, TANF is a federal block grant program and states may choose how to spend the funds they receive. In 2014, only 30 percent of TANF spending provided cash assistance.¹³

The next largest public assistance program is the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program, or SNAP. SNAP helps low-income people and families buy food. Under the current program, benefits are provided on an electronic card that is used like an ATM card and accepted at most grocery stores. Previously benefits were provided through vouchers called food stamps.

The federal government pays the full cost of SNAP benefits and splits the cost of administering the program with the states, which operate the program. SNAP expenditures in 2014 were \$70 billion, down from \$76 billion in 2013. The average monthly benefit per person in 2014 was \$125. SNAP is a need-based program, and the cost of benefits is inversely related to the state of the economy. The USDA expects SNAP expenditures to decline to \$39 billion in 2016.¹⁴

The smallest public assistance program is the Children's Health Insurance Program, CHIP. It funds purchase of health insurance from private sector companies for low-income children whose family income is above a state's Medicaid eligibility level. CHIP expenditures in 2014 were \$13 billion, and more than 8 million children were covered.¹⁵ States receive federal funds based on a formula that uses data on previous CHIP spending and state matching funds. The federal government paid 70 percent overall, although federal and state contributions vary by state.

Might any or all of these four public assistance programs reduce poverty? If so, states with higher benefits per recipient should have lower poverty rates. Analysis of a possible linkage between public assistance and poverty does not pose the same time lag issues as education policy. Public assistance aid provides contemporary benefits to recipients.

Public assistance programs are not intended to eliminate poverty by supplementing the income of those below the poverty level to an income above the poverty level. If they did so, no one would have an income below the poverty level. Welfare policy

contemplates both contemporary and longer-term processes and goals. The purpose is probably closer to creating the opportunity for individuals to bring themselves out of poverty.

Figure 12.12 reports correlations between state poverty rates and assistance per recipient for the public assistance programs in 2014. Each of the public assistance programs' benefit per recipient level is negatively correlated with state poverty rate. Medicaid and TANF spending per beneficiary are negatively correlated with poverty level and meet the threshold of .30. TANF had the strongest correlation, -.63. Medicaid had the next strongest correlation -.41. Correlations for SNAP and CHIP were below the threshold of .30.

It is tempting to conclude there is evidence that states with more generous public assistance programs have lower poverty rates. Unfortunately, correlations alone are not sufficient to establish causal relationships. These findings are sufficient for us to conclude that poverty does not cause public assistance. If it did, the correlation coefficients would be positive, not negative.

We cannot rule out the possibility that the strong negative welfare-poverty relationships are spurious. Perhaps income and wealth have causal linkages with both state public assistance benefits and poverty levels. For example, it may be that states with few living in poverty can afford higher per capita expenditures on public assistance. If this is true, there will be few opportunities for policymakers in less prosperous states to reduce the number of people living in poverty.

We saw in Figure 12.1 that high school attainment rates have a very high negative correlation with poverty rates, -.80. That does not necessarily mean high school completion causes lower poverty. The relationship could be spurious.

There is another basis for thinking the apparent

beneficial impact of public assistance on poverty is a spurious relationship. We will not argue that some states prefer higher levels of poverty for some or all of their residents. However, we will suggest that some states might have much higher tolerances for poverty than others. If so, that tolerance for poverty could cause both public assistance benefits and poverty levels. Southern states have the highest poverty and the greatest devotion to traditionalistic political culture that contemplates the smallest possible role for government. One element of contemporary conservatism in Southern and other states is the desire to keep taxes as low as possible, even if it means fewer government services.

The impact of any welfare program is complicated by the state of the national and local economy. Public assistance programs linked to employment are likely to be most successful when employment opportunities are most readily available. Our empirical analyses are for 2014, a year in which unemployment was high and the economy was beginning to recover from recession. The recession thrust an unprecedented number of Americans into poverty. Correlations for 2014 may not be typical in the future. Even with these caveats in mind, it may be that successful government public assistance programs can reduce poverty.

Abortion Policy: Policy-Making When Spending Is Not Important

Legal Principles and Irreconcilable Conflict

We now turn to an issue that, while highly charged emotionally, costs relatively little money to implement: abortion restrictions. The Supreme Court's 1972 decision *Roe v. Wade* held that a woman's right to an abortion fell within the right to privacy

Figure 12.12
Correlations Between Poverty and Public Assistance
Spending Per Recipient 2014

Medicaid spending per beneficiary	-0.41
TANF benefit level	-0.63
SNAP benefit level	-.07
CHIP spending per recipient	-.14

protected by the 14th Amendment. The decision gave women total autonomy over pregnancies during the first trimester, before fetal viability. States could not place undue burdens on obtaining abortion during the first trimester. States had greater power to restrict and regulate abortions in the second and third trimesters.¹⁶ The court subsequently clarified that fetal viability was a key criterion. States' could not unduly restrict access to abortion prior to fetal viability.

The Supreme Court's later ruling in *Webster v. Reproductive Health Services* (1989) clarified that states retained the power to place restrictions on how abortion services are provided. The decision also made clear that states were not obligated to provide services directly or to support financially those they authorize to provide services. In *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Supreme Court established the principle that a provision of a law is constitutionally invalid if the purpose or effect of the provision is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.

A June 27, 2016 Supreme Court set criteria for identifying when health regulations constitute undue burdens imposed by state policy. In *Whole Woman's Health v. Hellerstedt* (2016), the Court found Texas' restrictions — requiring doctors to have admitting privileges at nearby hospitals and clinics to meet the standards of ambulatory surgical centers — violated Casey's prohibition on placing an "undue burden" on the ability to obtain an abortion.¹⁷

The Court's decision clarified that the prohibition of undue burden requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer. The Court concluded that neither the admitting privileges requirement nor the ambulatory surgical center standard requirements imposed by Texas offered medical benefits to justify the burdens on access they impose. Texas could not document that the restrictions advanced Texas' legitimate interest in protecting women's health. When asked directly at oral argument whether Texas knew of a single instance in which the new requirements would have helped even one woman obtain better treatment, Texas admitted it had no evidence.¹⁸

Texas' intent in passing its restrictions, charac-

terized at the time as among the most severe in the nation, was to reduce or eliminate access to abortion, not to safeguard women's health. This will be discussed in greater detail below.

We will apply the same kind of comparative empirical analyses of comprehensive data presented earlier in this text to abortion policies and rates. It is challenging to discuss the topic of abortion from an impartial perspective because the vocabulary of abortion is itself biased. The fundamental conflict between those who favor and oppose the legality of abortion is irreconcilable.

Abortion adversaries want *Roe v. Wade* (1972) reversed to give states the option of recriminalizing abortion. Short of that goal, they advocate eliminating public funding and making abortions more difficult for medical professionals to offer and more cumbersome for seekers to obtain. If possible, they want to eliminate abortion through regulation. The other side opposes recriminalizing abortion and opposes restrictions that impose hardships on women, particularly in the first trimester of pregnancy.

Each uses language that reflects their own views and demonizes the other side. Abortion opponents refer to their position as "pro-life." By implication, those who disagree are "anti-life." In their vocabulary, the immediate result of conception is a baby, and ending the life of a baby intentionally is immoral and ought to be illegal. At the extreme, they want all pregnancies to result in births.

Proponents of legal abortion say they are pro-life, and certainly do not support killing babies. However, they define baby differently. They make a distinction between zygote, embryo and fetus. For them, fetal viability is the bright line that signals when abortion is morally unjustifiable. They refer to themselves as "pro-choice" in the sense that women should have the right to make their own reproductive choices before fetal viability. They believe women should also have the right to use contraceptives to prevent unplanned pregnancy.

Those who call themselves pro-life disagree that they are anti-choice. They focus on the choice to engage in sexual relations. They reject the concept of unplanned or unintended pregnancy, although some make exceptions for pregnancy resulting from illegal intercourse. Many also

disagree that unmarried women should have access to contraception. Some would also forbid access to contraception to married women.

We will call each side by its preferred label, pro-life or pro-choice. At the same time, we recognize the adversaries define life and choice in ways that make their own standpoint the only possible position.

Comparative State Analysis of Abortion Policies and Results

We will measure abortion rate as number of abortions divided by the number of fertile women. The contemporary definition of fertility is between the ages of 15 and 44 years. Abortion rate is expressed as number of abortions per 1,000 women. We use data collected by the Alan Guttmacher Institute, a pro-choice organization, because they are generally regarded as the most valid. Federal and state governments also use these data, as do abortion policy adversaries.

Starting in 1998, the Guttmacher Institute has compiled information on state abortion policies that can be compiled in indexes describing how restrictive state policies are. An index from state policies in 2009 was used in Chapters 9, 10 and 11.¹⁹ Figure 9.11 included a correlation indicating restrictiveness of state abortion laws is negatively related to more accurate representation of women

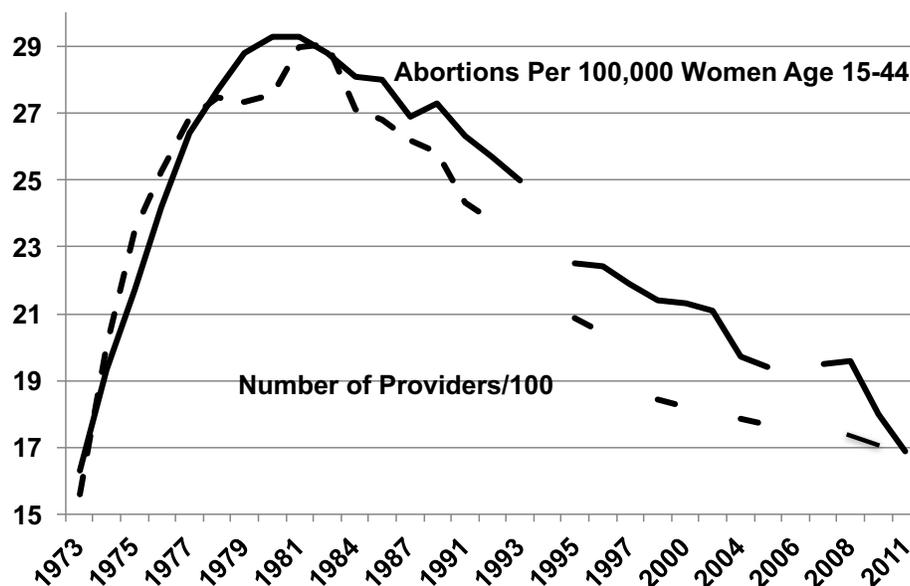
and African Americans in state legislatures. Figure 10.7 showed no relationship between governors' powers and abortion policy. Figure 11.11 showed abortion policy is positively related to incarceration rate.

Abortion policy restrictiveness in the states has increased rapidly and the changes continue. In the analysis that follows, we will use a summary of state policies from a 2014 Guttmacher Institute report on state laws that classifies states as not hostile, hostile or extremely hostile to abortion rights.²⁰

Because during each session many state legislatures consider laws to make abortion more difficult for providers and seekers, any index is soon out of date. Accurate index construction is further complicated by so many state laws being voided by federal courts or subject to stays of execution pending court review. Losing parties almost always appeal. The indexes have limitations, but they do provide useful snapshots of state policies.

Figure 12.13 describes how the abortion rate and number of abortion providers has changed since 1973. Overall rates of abortion in the United States increased immediately after the procedure was legalized in 1973. They peaked in the early 1980s. Since 1981, rates have been declining in a fairly consistent pattern. The number of providers shows a similar pattern. Providers peaked in 1984 and have been declining since then. Both abortion

Figure 12.13
Abortion Rates and Providers 1973-2011



rates and providers began decreasing before states began enacting laws restricting abortions after the 1989 Webster decision.

Figure 12.14 is a scatterplot of abortion rates for the most recent year data are available. It plots abortion rates by occurrence and residence. Most states are very close to the line that suggests abortions essentially involve residents only. In some states, an unusually large proportion of residents go elsewhere for abortions. Wyoming, Mississippi and South Carolina are examples. Delaware, Kansas and Maryland have large proportions of women from other states coming for abortions.

Figure 12.15 presents correlations between abortion policy restrictiveness in 2014, measured as level of hostility to abortion rights, for 2010 and 2014 with intended consequences and likely unintended consequences. States with more restrictive abortion policies have lower abortion rates. Correlation coefficients are $-.38$ to $-.48$. States with more restrictive abortion policies do not succeed in achieving fewer providers. Abortion policies are also unrelated to decrease in abortion rates from

2008 to 2011.

More restrictive abortion policies are positive-ly related to infant mortality rates and low birth weight rates. These empirical relationships may be unintended consequences or they may be spurious. More restrictive state abortion policies are positively related to teen birth rate. All states have at least nominal programs to lower teen birth rates. However, a successful policy to increase the proportion of all pregnancies resulting in births will inevitably produce a higher teen birth rate.

Figure 12.16 is a scatterplot of abortion policy restrictiveness in 2010 and 2014. Restrictiveness of state abortion laws in 2010 and 2014 are strongly related. The correlation is $.75$.

States with more restrictive abortion laws have fewer abortions. But does that mean more restrictive laws cause fewer abortions? The reader will probably not be surprised that the answer to this question is neither easy nor unambiguous. Abortion rates from different years are consistently correlated at the highest levels. The matrix in Figure 12.17 establishes abortion rates for 1998, 2004, 2008 and

Figure 12.14
Abortion Rates State of Residence and Occurrence 2011

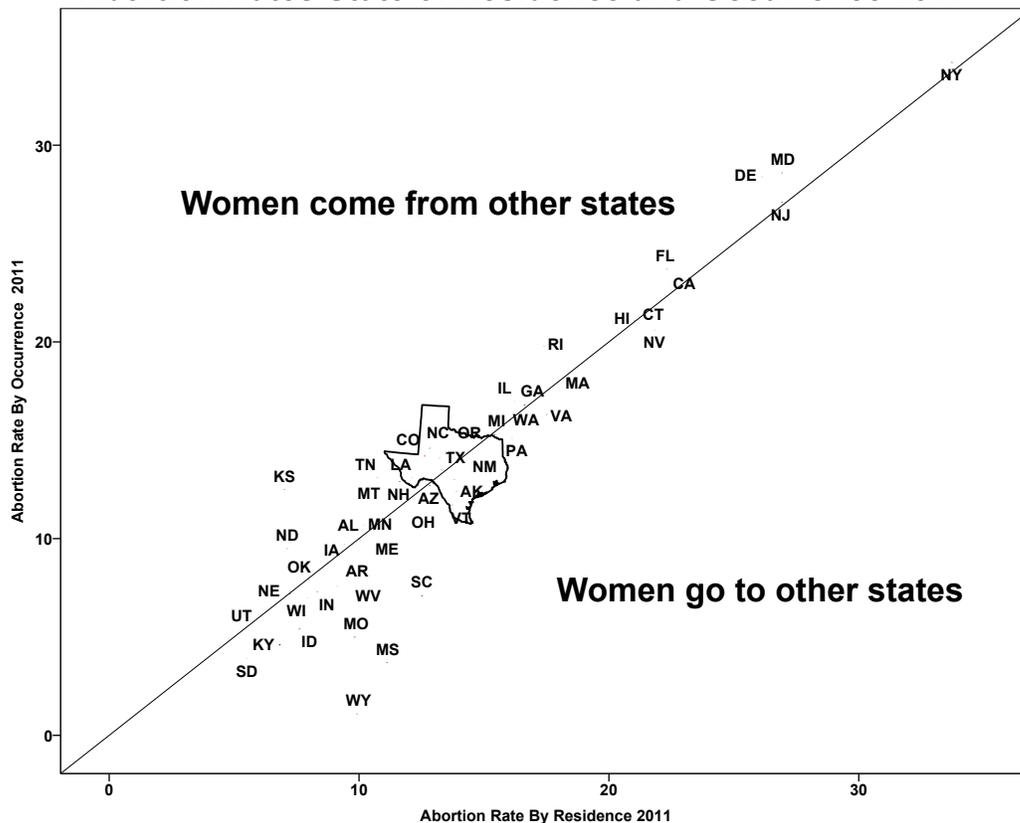


Figure 12.15
Abortion Policy Restrictiveness and Results Correlations

	2010 Hostility to Abortion Rights	2014 Hostility to Abortion Rights
INTENDED CONSEQUENCES		
Abortion rate by occurrence 2011	-0.38	-0.43
Abortion rate by residence 2011	-0.36	-0.48
Number of abortion providers 2011	-0.18	-0.21
Percent decrease in abortion rate by occurrence 2008-2011	-0.14	-0.06
Percent decrease in abortion rate by residence 2008-2011	-0.19	-0.07
UNINTENDED CONSEQUENCES		
Infant mortality rate 2014	0.54	0.53
Percent low birth weight 2014	0.31	0.19
Teen birth rate 2014	0.34	0.43

2011 are all highly and positively correlated with each other close to the highest possible values. We suggest that, while there is an empirical link between policies and rates, it is likely the case that states have enacted abortion policies over time that more accurately reflect their ongoing abortion rates.

Before we conclude that abortion rates cause abortion policies, let us consider some additional relationships. If abortion policies and rates are spuriously related, what might be the missing linking variable or variables? The recent enactment and Supreme Court rejection of Texas’ abortion regulations, perhaps the most restrictive in the nation by Texas may provide insights.

As discussed above, the law known as HB 2 required doctors to have admitting privileges at nearby hospitals and clinics to meet the standards of ambulatory surgical centers. Texas politicians claimed that their only goal in enacting the two new major restrictions on abortion providers was to protect the health and safety of women. That was never their goal; it was a political talking point.

In *Whole Woman’s Health v. Hellerstedt* (2016), the United States Supreme Court noted several empirical realities that belied the claim of promoting the health and safety of women:

- The admitting privileges requirement provides few, if any health benefits for women, but did re-

sult in approximately one-third of abortion providers ceasing to provide abortions

- The admitting-privileges requirement led to the closure of half of Texas’ clinics, or thereabouts.
- Many medical procedures, including childbirth, are far more dangerous to patients, yet are not subject to ambulatory surgical-center or hospital admitting-privileges requirements
- Abortion “is at least as safe as other medical procedures routinely performed in outpatient settings”
- The statutory provision requiring all abortion facilities to meet all surgical center standards does not benefit patients and is not necessary
- The surgical-center requirement provides no benefit when complications arise in the context of an abortion produced through medication
- Nationwide, childbirth is 14 times more likely than abortion to result in death, but Texas law allows a midwife to oversee childbirth in the patient’s own home.
- Texas partly or wholly grandfathers (or waives in whole or in part) the surgical-center requirement for about two-thirds of the facilities to which the surgical-center standards apply. But it neither grandfathers nor provides waivers for any of the facilities that perform abortions.

The Court could have noted, but did not, that Texas’ argument that many women could reduce

travel time by going to New Mexico or Mexico contradicted the main goal of protecting the health and safety of women’s health. Neither New Mexico nor Mexico mandated its abortion providers to meet the admitting privileges or the surgical-center requirements of Texas’ law.

The Court also could have recognized that many state officials involved in the decision stated explicitly that the goal was to eliminate abortion providers in Texas.

During the special legislative session when HB 2 was passed, Lieutenant Governor Dewhurst tweeted a message to supporters indicating the goal was to nearly eliminate abortion through regulation. His message indicated up to 36 existing abortion clinics would be forced to close, leaving only 6 clinics operating in Texas.²¹

A few hours later, Mr. Dewhurst attempted to play down his original post, saying that both he and the bill were “unapologetically pro-life” and for women’s health. Opponents said his first message demonstrated that the legislation was a backdoor statewide ban on abortion. In January, Mr. Perry had told those gathered at an annual anti-abortion rally in Austin that his goal was to “make abortion, at any stage, a thing of the past” and that the ideal world was a world without abortion.²² He had made similar statements in the past

to religious organizations.

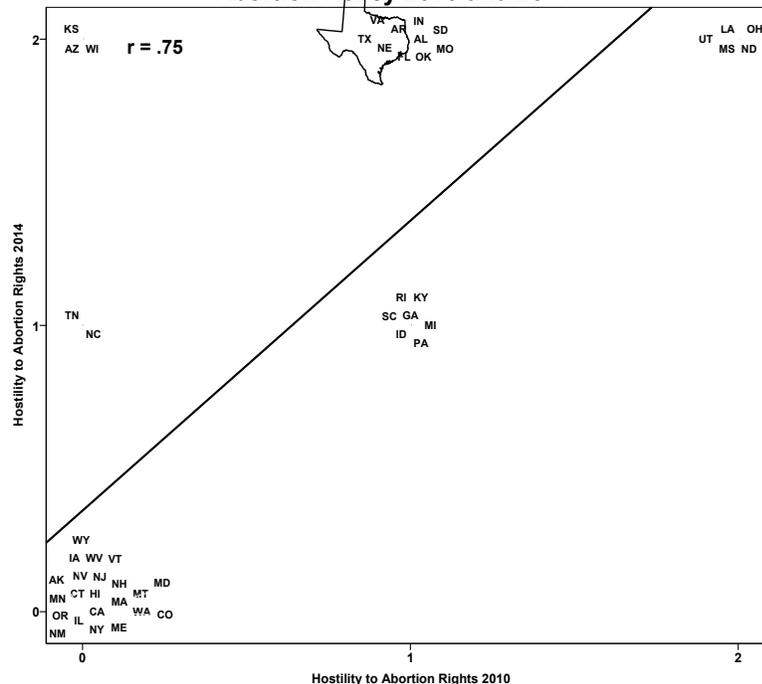
Just before the final Senate vote that would send the bill passed by the House to Governor Perry for his signature, Lieutenant Governor Dewhurst thanked both supporters and opponents and “even the press” for being there and asked for everyone “to love each other, as Christ loved the church, as we love all of those unborn babies.”²³

Dewhurst’s successor as Lieutenant Governor, Dan Patrick, has stated publicly on many occasions, including his inauguration speech in January 2015 and his campaign web site, “I am a Christian first, Conservative second and Republican third.”²⁴ He reportedly told Mike Huckabee he had a Christian obligation to ignore Senate rules if the lives of fetuses were at risk.²⁵

The strategy of placing burdens on women and abortion providers by arguing they will protect the health and safety of women seems untenable under current federal court rulings. The Right To Life Movement is pivoting from rhetoric focusing on women to rhetoric focusing on fetuses to justify further regulation of abortions. Texas began working to implement this new strategy even before the Supreme Court declared the HB 2 restrictions unconstitutional.

According to The Texas Tribune, Governor Abbott sent a fundraising email to supporters on July

Figure 12.16
Abortion Policy 2010 and 2014



21, 2016. Abbott cited a new administrative rule change initiated July 1, saying Texas is working to “turn the tides” against the abortion industry in the state and protect the “rights of the unborn.”

“I believe it is imperative to establish higher standards that reflect our respect for the sanctity of life,” Abbott said in the email. “This is why Texas will require clinics and hospitals to bury or cremate human and fetal remains.”²⁶ The new rules would prohibit abortion providers from disposing of fetal remains in sanitary landfills, instead allowing only cremation or interment of all remains — regardless of the period of gestation. Abortion providers currently use third-party special waste disposal services.

A similar requirement for abortion providers to bury or cremate fetal tissues in Indiana was suspended from going into effect by a federal judge. Planned Parenthood noted that the burial or cremation requirement could increase its expenses between two- and three-fold.²⁷

A similar requirement enacted in Louisiana is also on hold pending legal challenges. The Texas limitations would be far more stringent than regulations in almost every other state which all allow aborted fetal tissue to be disposed of in a similar fashion to human tissue.²⁸

Abortion rights groups contend the regulations could help deter abortions in the social conservative state. They would force providers to seek disposal through crematoriums or funeral homes, and those businesses could face a backlash if they are seen as being aligned with abortion providers.

Indiana, Louisiana and Governor Abbott contend that the burial or cremation requirement maintained dignity for the potential life represented

by the fetus.

The news media have portrayed the requirement as applying to abortion providers and hospitals. However, the Texas proposed rule specifies disposition methods for fetal tissue and other tissues that are products of *spontaneous or induced human abortion* (emphasis added). The rule explicitly applies to hospitals, ambulatory surgical centers, birthing centers, abortion facilities, free-standing emergency medical care facilities and emergency medical services. The new rule does not apply to miscarriages or abortions that occur at home or at other locations.

The rule makes health care providers responsible for ensuring compliance. The rule does not specify who will pay for the new requirements. When asked, Texas officials have responded they expect health care providers to pay.

The order was to be effective December 19, 2016. A lawsuit was filed by Whole Woman’s Health and other plaintiffs in federal district court on December 12. In addition to other issues, the plaintiff argued that the Texas rule did not promote the health and safety of women or of the general public. They requested that the court find Texas’ actions unconstitutional and forbid implementation of the new rule.²⁹ The federal court did stop enforcement of the rule pending the outcome of the lawsuit. Nevertheless, the Texas Legislature passed the order under court review as a statutory law in its 2017 regular legislative session. Federal courts will determine the legal status of both the rule and the law.

The Texas Legislature in 2017 passed and Governor Abbott signed another law intended to make illegal the most common, and medically safest,

Figure 12.17
Abortion Rate Correlations

	2004	2008	2011
1998	0.97	0.83	0.86
2004		0.88	0.92
2008			0.98

procedure for second-trimester abortions. Several abortion rights groups sued the state and the law was blocked by federal district court before it went into effect. Texas' appeal of this decision is pending.

Governors Perry and Abbott, Lieutenant Governors Dewhurst and Patrick and many other Texas Republican statewide elected executives and legislators have stated explicitly that they enacted policies pertaining to sexual intercourse that reflect their political and religious beliefs and values. Texas policies that instruct public schools to offer "abstinence only" sex education and restrict access to birth control resources also reflect their fundamentalist religious beliefs. They will not use government resources to fund or facilitate behavior they view as sinful. To the extent possible, they want to use government to eliminate sinful behavior, or, at least minimize it.

Recent events in Texas concerning abortion policy and outcome is that core religious and ideological values may be the link underlying a spurious relationship between abortion policies and abortion rates. Figure 12.18 offers analyses to assess this possibility across the fifty states.

Abortion policies and abortion rates are related most strongly to political ideology. With one exception, the correlations between values and abortion rates are larger than corresponding correlations between values and abortion policy. The correlations between both Conservative and Moderate or Liberal ideology and abortion policy and rates are nearly as strong as the correlations between policies and rates. Correlations between Very Religious residents are almost as large. The correlation between Conservative Ideology and Very Religious is .67. Correlations between partisanship of state residents and abortion policies and rates are also comparable to correlations between abortion policies and rates.

Political scientists expect politicians will sometimes act as their constituents prefer and sometimes as they themselves prefer. In the case of abortion policies, the two seem to overlap. Both the federal constitution and all state constitutions articulate the principle that government should not officially favor a particular religion. When religious beliefs and political ideologies overlap as they do on issues surrounding abortion, it is impossible to separate the two. Some powerful Texas elected

officials have made it clear that they are motivated primarily by their religious beliefs. This benefits them politically because they share beliefs with the small number of strong partisans who vote in Republican primary elections.

Conclusions

The challenges presented by education, poverty, and health will continue to trouble society. Despite having spent billions of tax dollars on these problems, they continue to require more resources. Not surprisingly, liberals and conservatives react predictably to failure to resolve these problems. The conservative sees a need for more efficiency and better performance. In addition to better public schools, more options in the private sector should be available and aided by funds from taxpayers. There should be less welfare fraud and less gentle treatment for criminals. The liberal sees a need to redouble efforts to assure adequate education and better future employment options to all.

Major differences of opinion on proper government activities programs existed during the 18th, 19th, and 20th centuries. For policies involving taxing and spending in particular, the arguing has generated considerable heat but little light.

There is no reason to expect resolution of these issues in the 21st century. Each side seems content with repeating its central tenets, identifying supporting evidence and ignoring opposing evidence. Neither perspective shows much interest in the possibility of learning from "experiments" being conducted in state "laboratories."

Can government be an effective means to improve our lives? The different choices made by the American states would seem to provide an excellent opportunity to address this important question with comprehensive empirical data. This chapter has concentrated on the policy areas of greatest expenditures by state and local governments.

Measurement is a major issue in comparative state and local government research. Quite simply, different measures will produce completely different results.

Our analyses of education spending identified some of the challenges. First, how should we measure education expenditures? The choice between

Figure 12.18
Abortion Policy and Rate Correlations With Population Values Measures

Population Measures from 2012	2014 Hostility to Abortion Rights	2011 Abortion Rate
Percent Very Religious	0.67	-0.43
Percent Christian	0.38	-0.08
Percent Conservative	0.61	-0.70
Republican Percent Population	0.49	-0.70
Percent Moderately Religious	0.12	0.30
Percent Moderate or Liberal	-0.60	0.68
Democratic Percent of Population	-0.47	0.66

per capita and per recipient spending is important. Research has documented that spending correlates positively and strongly with per recipient measures but not with per capita measures for both education and public assistance.²² When both per capita and appropriate per recipient measures are available, we think per recipient measures are superior. The important point is that those who want to find empirical relationships that support their beliefs can do so without difficulty.

Another measurement problem is that the information we seek is not always available. High quality information about spending in American governments becomes available at some point, but when data become available differs widely from policy to policy and from year to year. Some behaviors that we would like measured every year are not. As a result, the most current information may be 1 year old or many years old. There is no doubt that you can find data on the Internet that was not available to us when we wrote this sentence.

There are additional challenges for empirical

analysis when data are available on an irregular schedule, as is the case with abortion rates.

Another concern was raised in our discussion of education policy. Spending on public school students who are 5 to 18 years old today cannot “cause” rates of high school completion or baccalaureate degrees among adults age 25 and older today. Sometimes there must be a lag between what we think might be measures of cause and effect. Many lags are possible, and we do not know proper lags for every policy we want to study. In the case of education, the correct lag between spending and benefits is decades. Over long periods of time, relocation of population, births and deaths complicate research comparing the states.

Our best efforts at proper research using the best measures find many strong relationships between state and local efforts to deal with problems and desired results. Greater spending on education per pupil results, years later, in residents who have completed more formal education. States with higher Medicaid and TANF support levels have

lower poverty rates. States with more restrictive abortion laws have lower abortion rates.

Still, correlations do not prove causal relationships. It may well be the case that all or almost all the empirical relationships are spurious. We cannot rule out the possibility that, in some sense, the values and preferences of state populations cause both government efforts and the results we have measured. It may be that state wealth plays a role in facilitating results but is not an important causal factor. We think it is worth considering that “throwing money at a problem” is sometimes necessary to improve things but rarely--if ever--is sufficient to improve things.

Summary

1. Conservatives and liberals have inconsistent views of the roots of some problems and the possibility that government action can cause improvement. Conservatives see those not benefiting from education, victimized by poverty, and engaging in criminal behavior as having character faults. Liberals think inferior education leads to poverty and crime.
2. States whose populations have more formal education have greater income, lower rates of poverty, better health and lower crime.
3. There are positive correlations between lagged state spending per student and rates of high school completion and college degrees.
4. States that provide greater benefits to recipients have lower poverty rates. There are grounds to view Medicaid, TANF and SNAP as successful.
5. States with more restrictive abortion laws have lower abortion rates, and the relationship has become stronger over time. It seems abortion laws have changed to better correspond to ongoing abortion rate differences.
6. Interrelationships between abortion policy and abortion rates may be spuriously linked by the fundamental ideological and religious values of residents and elected officials.

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Figure 12.3	Sources for Table 12.2 and CDC Vital Statistics System, http://www.cdc.gov/nchs/nvss/
Figure 12.4	Sources for Figure 12.2 and http://www.ucrdatatool.gov
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Figure 12.16	http://www.cbpp.org/cms/?fa=view&id=3625 https://www.guttmacher.org/laws-affecting-reproductive-health-and-rights-2014-state-policy-review See Figure 12.7, and Guttmacher Institute, State Policies in Brief, An Overview of Abortion Laws, July 1, 2013, http://www.guttmacher.org/statecenter/snibs/s11lib OAL.pdf, http://kff.org/womens-

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Figure 12.18	State Facts About Abortion https://www.guttmacher.org/fact-sheet/state-facts-about-abortion?gclid=CPPg05fTis4CFQJsfgodfXYF9g ; http://www.cbpp.org/cms/?fa=view&id=3625 ; https://www.guttmacher.org/laws-affecting-reproductive-health-and-rights-2014-state-policy-review ; http://www.gallup.com/poll/125066/State-States.aspx U.S. State Political Data, U.S. Religion and Society Data, http://www.gallup.com U.S. State Political Data, U.S. Religion and Society Data, http://www.gallup.com

Study Guide, Chapter 12

Essay Questions

1. What do conservatives and liberals disagree on? What do conservatives and liberals agree on? (No, this is NOT a trick question!) What are the general patterns of agreement and disagreement between conservatives and liberals? Do empirical analyses support the views of one, of both or of neither?
2. State population rate of high school completion or higher and rate of baccalaureate degree completion were correlated $r=0.45$ in 2014. Why are some likely reasons that this correlation isn't very close to $r=1.00$? What changes in demography or policy would likely result in a correlation much closer to $r=1.00$?
3. Why should the relationship between state education expenditures and high school graduation rates be assessed with lagged rather than contemporary data? What is lagged data and when do you think it should be used? What problems would likely occur in analyses that ignore the need for lagged data?
4. A newly elected future governor of Texas wants to reduce poverty in the state. He or she asks for your expert opinion about what could be done to begin to decrease poverty rates in 4 years and then accelerate that decrease in 8 years. What is your advice? Why might another advisor urge the governor to be less aggressive in this policy area?
5. The United States Supreme Court overturned Texas' HB 2 requirements for abortion providers, partly because there was no evidence the restrictions advanced Texas' legitimate interest in protecting women's health beyond the requirements that existed before. The preliminary Texas rule requiring burial or cremation of fetal tissue says the "public benefit anticipated as a result of adopting and enforcing these rules will be enhanced protection of the health and safety of the public." Assume the courts will want a measure of how much the new requirements enhance protection of the health and safety of the public. What empirical measures could be used to assess the proper changes in the health and safety of the public after the new restrictions have been enforced? Why those measures, instead of others?
6. Discuss how the empirical analyses in Chapter 12 can help address the question "Can government be an effective means to improve our lives?" Do data analyses lean toward an affirmative answer? Do you agree or disagree? Why?
7. Discuss the role in Texas politics played by the ongoing confusion arising from equating "illegal behavior" and "sinful or immoral behavior." Which groups benefit from, or are penalized by, this confusion? What designated entity has the authority to determine what is sinful or immoral behavior for all the residents of Texas?

Multiple Choice Questions

1. Conservatives view criminal behavior as _____, while liberals argue that crime results from _____.
 - a. society's failure/character fault
 - b. society's influence/character failure
 - c. character fault/society's failure
 - d. laziness/incompetence
2. Prior to the 1960s, the poorest in our society were _____, and currently the poorest are _____.
 - a. age 18-64/under 18
 - b. age 65 and older/under 18
 - c. under 18/age 18-64
 - d. under 18/age 65 and older
3. There are beneficial correlations between educational attainment and
 - a. poverty
 - b. violent crime rate
 - c. infant mortality
 - d. all of the above

4. Adversaries on abortion policy agree on which of the following?
- a. when life begins
 - b. in some circumstances, the rights of pregnant women must supersede all other considerations
 - c. it is appropriate to base statutory law on religious doctrine if at least 75% of registered voters agree
 - d. none of the above

Notes

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Chapter 13

THE STATE OF THE STATES AND COMMUNITIES

The purpose of this final chapter is to highlight the major themes and findings of this text and comment from a broader perspective. To repeat what was written in the first chapter, if this were a more conventional textbook, readers would have had to trust that our statements were supported by appropriate interpretation of factual information. We took a different approach. We presented numerous empirical analyses about patterns of behavior across states and communities.

Our knowledge would be more advanced if social scientists could use the methodology common in the natural sciences: experiments. We could then assign states, local governments, and even families and individual Americans to treatment and control groups. Short of total experimental control, we could know more information sooner and with greater confidence if we had a bit of cooperation from those we wish to study. For example, it would help advance knowledge if, say, twenty state legislatures would agree to pass and implement a small number of bills drafted by political scientists and give us access to observe how they are deliberated and implemented. If new policies improved targeted social problems, we could make confident recommendations to the other states. Alas, human beings are not as cooperative with researchers as are cultures in Petri dishes, fruit flies, or laboratory rats.

Absent experimental control, our best alternative is to collect and gather the best data we can as the individuals and groups we study go about the business of living their lives. That has been the enterprise reported in this text. Below, we summarize some of what has come before.

States Behave Differently

Given the opportunity, American states differ in almost every conceivable way. Since the states are the primary units in American federalism, they almost always grant themselves wide latitude for making distinctive choices. The idea that the federal government imposes inflexible “one-size-fits-all” programs on the states is purely ideological rhetoric. Over the course of American history, Republicans, Democrats, Liberals and Conservatives have raised this phony complaint. The reality is the opposite. The states use the federal government to make themselves look good and further their own divergent goals.

The states vary greatly in the demographic attributes of their publics, including the fundamental distinction of how wealthy they are, their politics, their institutions of government, their histories and culturally shaping events, the problems they face, and the public policies they enact. This has been key to our comparative analyses but also is a central problem with assessing what differences are caused by political, institutional, and policy differences.

State and Local Governments Are Very Different From Federal Government

Students in American public schools study what they call national politics and government. We call it federal politics and government to emphasize the key role of the states. Congress receives more media attention than all state and local legislative bodies combined. The President of the United States receives more media attention than Congress. Our

popular culture focuses on one government and neglects the other 90,000.

The central elements of federal politics we know so well rarely apply to state and local politics. Three branches of government with checks and balances exist in state but not local governments. Some governors and mayors have institutional strength comparable to that of the president. Most elected local government officials have weaker powers and fewer support resources than their federal counterparts. The popular attention, turnout, and closeness of typical presidential elections rarely occur in state and local elections.

Government Revenue and Expenditure Policies Are Political

Nothing exemplifies that politics is concerned with winning and losing more than revenue and expenditure policies in American governments. Considerations of principle and fairness are trumped by personal gain. By design, government budgets are detailed and confusing. The process of making spending decisions is opaque and, for most, incomprehensible.

To the average citizen, tax policies are even more mysterious. Americans believe that the taxes they pay are far too high in the absence of information about other countries, other states, or other local governments. The winners in the conflict over who pays more or less for government have succeeded in convincing others that tax rates are the only important element. The truth is much more complex and requires knowledge of rates, bases, payments, income, tax burdens, tax shifting and tax incidence. Republicans are currently attempting to pass changes in federal tax laws that will shift even further the burden of paying from businesses to individuals and from wealthier to poorer individuals. By the time you read this in 2018 they may have been successful. The complexity of federal taxes allowed them to claim, falsely, the changes were reforms that would benefit primarily middle class Americans.

The Past Affects The Present

Few would disagree with the idea that our present reflects our past. But, sometimes our perceptions are distorted. Many of our most important ideas

and values in American government and politics are very old. Many of our notions about government date from periods when government acted differently than it does today. Americans no longer live on subsistence farms far from neighbors. Inevitably, some elements of conventional wisdom are out of date, based on myth, or simply incorrect.

Major changes in the way Americans live have resulted in governments becoming more active. The authors of the Declaration of Independence and the Constitution of 1789 did not consider that their federation would someday create interstate highways, regulate commercial and private air traffic, or license use of the airwaves. That is because they could not foresee modern automobiles, airplanes, telephones, radio, or television. The scope of government activity has grown because the public wanted it to grow to deal with new problems faced by society.

State and Community Governments Matter To You

The states and communities spend nearly half of all government revenues in providing most of the services we depend on daily. These governments typically provide education, law enforcement, homeland security, highways and streets, fire protection, water and electricity, and most other services. State and local courts handle nearly all criminal and civil court proceedings. Most crimes are violations of state laws, and state laws also shape civil cases. Changing which state you live in alters your life. You may face higher taxes, fewer services, domination by the other political party, different laws and institutions, and different demographic characteristics of those around you. Nevertheless, you would find greater differences were you to move to another country. We have been unable to identify a “best” state based on one state performing best across multiple standards.

Legislative Representation Poses Problems

Legislative representation is difficult to achieve. Our system of geographic-based selection of legislators, the only option in the 18th century, may be reconsidered as alternatives are developed in the 21st century. For now, it is most difficult to say which state legislature is most representative on all

dimensions.

Legislatures in metropolitan states have greater workloads and receive greater salaries. There is insufficient evidence to support the contention that states with more professional legislatures have more successful policies. Empirical data analyses do not permit rejection of the idea that more accurate representation of women is linked to more successful policies. The relationships might not be causal.

The Courts Are Misunderstood

The reality of American courts differs greatly from public perception. In novels, films, and television dramas, criminal cases and civil lawsuits result in courtroom trials. In reality, approximately 80 percent of criminal cases conclude with plea-bargain agreements, and approximately 90 percent of civil cases reach settlement without trials. The news media portray federal courts as most important, yet they typically handle between one and two percent of the nation's court workload. Population size drives crimes, arrests, court caseloads, and judges' salaries.

There is intensive media coverage of the U.S. Supreme Court, particularly in cases that overturn executive or legislative branch actions or judicial precedents. Media personalities who are commentator-entertainers have much to say about "liberal activist" judges and courts. The opinions they espouse are frequently linked to their own beliefs but need not be based on systematic analysis of appropriate comprehensive data. Recent courts have made more activist conservative than activist liberal decisions. The so-called liberal decisions frequently preserve or extend the rights of equal protection to unpopular minority groups. Courts play the lead role in limiting the principle of majority rule when it conflicts with the rights of individuals and groups who are disfavored by the majority.

Policies, At Least Those We Considered, Are Related to Results

Governments' policies are sometimes reactive to problems and sometimes proactive, and frequently both. State efforts, even when they are linked to lower problem levels, originate as reactions to

problems. States with more educated populations experience less poverty and less crime. States with greater poverty rates have larger crime rates.

We found evidence to support the contention that proactive government policies can be effective in achieving desired results. State educational attainment has beneficial relationships with many outcomes we care about. There is a positive relationship between state rates of expenditure on primary and secondary public school students and later rates of high school completion and bachelor's degrees.

States with larger Medicaid and TANF benefits per recipient have lower poverty rates. States with greater violent crime rates have greater rates of expenditure on police and corrections. States with more restrictive abortion laws have lower abortion rates and fewer providers.

Any of these empirical relationships could be spurious. For example, states whose publics favor individual choice on the issue of abortion may have less restrictive laws and higher abortion rates. Even if state legislators in such states preferred more restrictions, they might fear taking action would lead to defeat in the next election.

Causality Is Difficult To Determine

There is legitimate disagreement on how to measure government performance and its impact. Measurement choices always influence empirical findings. Even if all analyses presented in this text were based on the best possible measures, any of the relationships we identified could be spurious. Government activity and its impact are never caused by only one thing. Not all state and local governments are pursuing identical goals.

Cause and effect is not always immediate. Sometimes the impact of efforts to deal with problems is recognized decades later. In addition, sometimes governments take years to act "immediately." When we use everyday electronic devices that operate at light speed, it is easy to forget that change in large groups of human beings frequently requires many generations.

Do We Have A Democracy, Or Even A Republic?

Some would think it outrageous even to contemplate this question. There is an idealized version

of politics that many accept as a normative model for all American governments. Its elements include consensus on the proper role of government, informed and active citizens, responsible political parties, competitive elections with high voter turnout, responsive elected officials, and competent professional government employees. Unfortunately, at the state and local levels, the elements do not always exist individually and have never existed simultaneously.

Citizens disagree on fundamentals. Participation is primarily in the form of voting, and turnout levels are typically very low. New styles of campaigning and independent fundraising have weakened political parties' influence over candidates and officeholders. Both major parties have sought to draw election districts that are uncompetitive. Elections in such districts are typically uncontested. The most informed electorate cannot influence government if they have no choice at the polls. Even in competitive elections, incumbents are rarely defeated. Government officials receive massive input from businesses and organized interest groups but precious little from their "normal" constituents.

We should not forget that the American founders did not intend direct democracy. Indirect representative democracy was their model, and only a few officials were to be chosen by popular election. The rest were to be appointed. Over hundreds of years, we have changed those values and expectations to include suffrage for all, equal opportunity, and government transparency. American democracy is imperfect and evolving. In the long term and big picture, we think things have become better. To paraphrase an assessment commonly attributed to Winston Churchill, democracy as practiced in American state and local governments is the worst form of government except for all those others that have been tried.

Successful Innovations Can Be Hard To Achieve And Recognize

State and local governments have been the major source of successful innovations in America. When some stand out because of superior governance or policy, others follow their lead. Changes that involve significant allocation or reallocation of resources are most difficult to achieve. Some inno-

vations are relatively easy to recognize. Practices that save money by increasing energy efficiency or effectively using computer and other electronic technologies are examples. As discussed earlier, the rewards for investment in education and other improvements in human capital can take decades. Lag time between action and result, population relocation, and other factors further complicate recognizing better practices.

Americans' Views Of The "Proper Role Of Governments" Change

Americans value improvement and modernization. We have a history of adapting successfully to challenges. We remain committed to the goal of limited government even as our ideas about the proper balance between private and public sectors adjust to changing times. For most of the last three decades, the popular preference seems to have been a larger role for private businesses and a smaller role for governments. In the words of President Ronald Reagan in his 1981 inaugural address, "Government is not the solution to the problem, government is the problem."

In the second decade of the 21st century, America seems to be emerging from a depression that began in Wall Street and spread to the rest of the world. National and international financial markets have recovered, some more than others. However, few are confident that a "new normal" has been achieved that will be the foundation for economic expansion.

The U.S. housing and labor markets have not yet returned to pre-recession levels even though interest rates have remained at historic lows and corporate profits, including corporations who were saved from insolvency by government intervention, are at historic highs. This public sector reaction to private sector problems is not unprecedented. American history includes numerous cycles between greater and lesser public sector attempts to stimulate the economy and regulate the private sector.

The federal government has played an important role in dealing with the depression. However, many state governments have been active in pursuing the opposite of federal policy. Many chose to substitute federal stimulus funds for declining state revenues rather than to boost the economy by

retaining and creating jobs. Political leaders have declared as failures in their states federal programs they prevented from being implemented in their states. Logically, this is nonsense. Electorally, it is enormously successful.

The current conflict over economic policy will give way to different future conflicts over economic policy. We will continue to cycle between wanting governments to play larger and smaller roles. And some states will work to counter the efforts of others. Politics is the word we use to describe this phenomenon.

Red States Versus Blue States

The federal government is caught in a pattern of hyper partisanship where gridlock is normal and cooperation is rare. Republicans and Democrats in Congress are unwilling to cooperate with each other. The leaders of each party have worked actively against the initiatives of President Obama and President Trump. The Republican majorities in Congress were very effective in working against President Obama. When Republicans gained control of both chambers of congress and the Presidency in January 2017, there was widespread expectation that they would fulfill their longstanding promise to abolish Obamacare and replace it with something better. However, there was insufficient agreement within the Republican party either to abolish or replace Obamacare. President Trump is following President Obama's leadership style by issuing executive orders to circumvent Congress. In President Trump's first two years in office, Congress did manage to reduce federal tax burdens on corporations and the wealthiest taxpayers and to confirm conservative judges to serve on federal district and appellate courts, including the U.S. Supreme Court.

States have made this gridlock between and within parties possible by gerrymandering election districts and using government to maximize the political power of current majorities. It may take a new reform movement to restore general elections as institutions that moderate extremism and make communication, cooperation and compromise between parties necessary. Given the current hyper partisan nature of federal politics, such reform would have to be initiated and pursued by the states.

Hyper partisanship has had a different impact on the states. We are experiencing unified partisan control of executive and legislative branches in a near record number of states. The distinction between Red and Blue states reflects the current differences between Republican and Democratic parties. In the larger historical perspective, it is yet another iteration in the ongoing disagreement between ideologies and preferences characterized today as Conservative and Moderate. Conservatives have succeeded in making Liberal a taboo word.

Partisan state majorities can govern without cooperation from the opposite major party in close to half the states. Perhaps more so than ever in the past, they can use government to enact--their opponents would say impose--policies that reflect their core ideological values. Those essential principles include goals grounded in religious beliefs that are not subject to challenge by worldly events such as those we have used to compare state and local governments. Figures 13.1 and 13.2 contain analyses that suggest this process may be well underway.

Figure 13.1 shows a strong linkage between ideological and religious views and state and local government policies. Correlations linking residents' Conservative, Moderate or Liberal and Very Religious views are in the directions you would predict.

The same pattern holds for Figure 13.2 linkages between ideological and religious views and state and local results in education, economic development, and health. We may be on the verge of the experimental laboratory of the American States producing results that establish once and for all which practices are more and less successful. Whether or not that happens, states will continue to disagree on what constitutes success.

Time and again, data visualizations in this text have shown unmistakable regional distinctiveness between Southern and Non-Southern states. Whether these patterns will evolve into a durable Conservative-Moderate disagreement that affects all states remains to be seen.

The Present Affects The Future

You might not want to think about it now, but some day your generation will be as old as your parents' generation is today. Later, you will be as

Figure 13.1
Values and Policy 2014

	Conservative	Moderate Liberal	Very Religious
TANF benefit	-0.60	0.63	-0.71
Public assistance plus Medicaid per recipient	-0.36	0.31	-0.53
Welfare spending/poverty rate	-0.66	0.68	-0.66
Medicaid spending per beneficiary	-0.42	0.43	-0.44
SNAP benefit	-0.36	0.35	-0.20
K-12 spending per student	-0.61	0.59	-0.59
CHIP spending per enrollee	0.03	-0.00	0.05
Hostility to Abortion Rights 2014	0.60	-0.61	0.66
Incarceration rate	0.60	-0.64	0.65
State and local tax burden	-0.14	-0.22	.16
State and local tax regressivity	0.13	0.08	0.10
State and local debt per capita	-0.67	0.63	-0.43
State and local expenditure per capita	-0.35	0.37	-0.37
State and local revenue per capita	-0.39	0.41	-0.41

old as your grandparents' generation is today. You will face new challenges. You might have future employment in a job or field that does not exist today. As your life progresses and America moves forward, your expectations of and interests in state and local government will change. For some of the benefits of government to be available in the future, efforts must begin much sooner than you might think.

We have discussed the likely lag between investment and reward in public education. This principle applies to government investments and long-term projects in general. The roads, bridges, mass transit, storm protection, medical breakthroughs, and other benefits of your long-term future will be based on programs from the past, the present, and the near future. Much of the work necessary to provide what you will want in the future is already underway.

Texas Exeptionalism

Writing in *Democracy in America*, which set out to

explain why the American Revolution had succeeded while the French Revolution had failed, Alexis de Tocqueville observed Americans were “quite exceptional”, by which he meant different rather than better. Over the centuries, however, the idea has taken hold here that America is liberty’s staunchest defender, democracy’s greatest exemplar and home to the usually brave--a country like no other.¹

There is not unanimous agreement on the exact meaning and scope of American exceptionalism. For some it is an ideal, for others it is a self-evident description of our country, our people, our ethos, and our form of representative democracy. On the other hand, Texas exceptionalism does mean that Texas and Texans are different and better. This attitude is exemplified by the apocryphal story about advice a Texas father gave to his son. “When you first meet people, never ask where they are from. If they are from Texas, they will tell you soon enough. If they are not from Texas, you don’t need to embarrass them.”

Texans love Texas and are proud to tell one and

Figure 13.2
Values and Results 2014

	Conservative	Moderate Liberal	Very Religious
Per capita income	-0.70	0.71	-0.64
High school completion	-0.25	0.34	-0.51
College completion	-0.72	0.73	-0.59
Poverty	0.44	-0.50	0.55
Violent crime rate	0.14	-0.18	0.28
Murder rate	0.41	-0.46	0.58
Property crime	0.36	-0.36	0.45
Abortion rate 2011	-0.70	0.65	-0.41
Infant mortality	0.57	-0.57	0.69
Low birth weight	0.39	-0.47	0.55
Teen birth rate	0.70	-0.72	0.69
Adult obesity	0.67	-0.70	0.68
Life expectancy at birth	-0.58	0.64	-0.66

all. Texans walk with a swagger and are quick to remind non-Texans “It’s not a brag if it is true.” In 2012, 82% of people born in Texas lived in Texas. Since 1950, 79% to 82% of people born in Texas lived in Texas. In 2012, 61% of Texas residents were born in Texas, 22% were born in other states and 17% were born in other countries. The overwhelming majority of Texans regard time spent out of state as temporary.²

Texans have a romantic view of themselves and their state as independent. The success of Texas is of its own making. It is likely that many regret the nineteenth century decision to give up being a sovereign nation and join the United States. If Texas were an independent nation, its gross national product would be the 12th highest.³

It is a certainty that a majority view the federal government as an adversary. Very few recognize how much Texas relies on the federal government.

Electricity came to rural Texas, when most of Texas was rural, courtesy of the federal government. The Texas Legislative Budget Board estimates that 34% of Texas’ revenue in the 2016-2017 fiscal biennium comes from the federal government.⁴ In Bryan and College Station, the federal

government has paid for more than 90% of the cost of State Highway 6.

Texas’ state government officials want the federal government to leave Texas alone. They decry wasteful federal bailouts but forget the federal government bailed out Texas financial institutions that were the epicenter of the savings and loan meltdown in the 1980s.⁵ When natural disasters, such as hurricanes, floods, drought, tornados and fires strike, Texas governors do not call the legislature into special session to authorize funds to help residents and businesses recover. They write to the President of the United States and ask for federal funds. Texas also relied on the federal government during the Ebola outbreak of 2014 and is currently asking the federal government to fund recovery from Hurricane Harvey while it spends none of the money in its “rainy day fund.”

When a 2013 explosion in West, Texas killed 15 people and wiped out hundreds of homes, Texans, particularly Governor Perry, were outraged that FEMA did not respond immediately. Governor Perry did not publicize that FEMA’s legal mandate was to respond to natural disasters, not man-made disasters such as the explosion in

West. When he finally made the necessary request, FEMA responded immediately. No Texas official withdrew or amended the previous criticism.

Texas wanted federal emergency aid and funding to rebuild West, but it did not want any federal interference as the state retained control over regulations and inspections to prevent future explosions. To date, Texas has made no changes. Texas' McClellan County Sheriff's office and Texas Rangers opened criminal investigations with no tangible results. An investigation by the Federal Bureau of Alcohol, Tobacco and Firearms determined the explosion was deliberately set and was a criminal act. The agency is offering a \$50,000 reward to help find the person who committed the crime.⁶

Texas government officials' excoriating the federal government is part of the rhetoric all state officials use to distract attention from how much state and local government activities are financed by the federal government. Texas Republicans face little credible electoral opposition from Democratic opponents, so they run against Washington, D. C. When the President of the United States is a Republican, they criticize famous Democrats in the U.S. Senate and House of Representatives. When the President is a Democrat, they make the President the personification of federal abuse. If Republicans control both chambers of Congress, blame is placed on Democrats in Congress or on the federal cabal.

Again, political actors are not required to tell the truth, the whole truth and nothing but the truth and also to provide appropriate background information. Their view their responsibility as seeking and regaining political power, and are not averse to providing partially correct or totally incorrect information out of context if it helps meet those goals.

The ongoing political conflict in Texas has always been between political conservatives and moderates, not between Republicans and Democrats. Now, there is major conflict between conservative and ultraconservative Republicans. Republican control is not the fundamental problem. Texas has been a one-party state for almost all its history. If there is a problem, it is the loss of balance and consideration of multiple legitimate points of view combined with using beliefs, primarily religious beliefs, to make policy decisions.

Analysis of empirical information such as the information in this text is limited to a very small role.

Obamacare

The current conflict over implementation of the Affordable Care Act, or Obamacare, has been presented as a life and death struggle between conflicting political ideologies that define the Republican and Democratic parties. States are the fields of battle.

Obamacare is based on ideas originally suggested by Republicans to extend health care to all and lower total costs using private insurance companies. It is a typical public sector and private sector hybrid and a classic federal and state partnership based on policies implemented with great success in Massachusetts under the leadership of Republican Governor Mitt Romney. Yet, Republicans in Congress and most states controlled by Republicans have refused to cooperate. Many have denounced vociferously and worked openly to sabotage Obamacare. As a presidential candidate in 2012, Governor Romney had to disown his effective program.

In 2017, 31 states and the District of Columbia participated in the Obamacare program to expand health insurance coverage either through traditional Medicaid or by alternatives possible under the Affordable Care Act. Only one of the non-participating states, Idaho, has set up its own insurance marketplace. Ignoring their usual preference for state control, the other 18 states have relied on the federal government to establish and administer insurance marketplaces.

Leaders of non-participating states have said that increasing insurance coverage by expanding Medicaid eligibility is too expensive, even though federal funds were to pay for the first two years of increased eligibility and no less than 90% after that. Rejecting expansion of insurance coverage through the Affordable Care Act makes no economic or policy sense. State leaders making decisions not to participate must think it makes political sense. Even though the Republicans in Congress had the opportunity to abolish and/or replace Obamacare without any help from Democrats, they failed to do so in the first eighteen months of the Trump presidency. Both House and Senate bills, written in secret and passed without

public hearings, were met with strong opposition from many Republican senators and governors as well as from Democrats in Congress and state governments. As President Trump said at a February 2017 meeting of state governors at the White House, “Nobody knew health care policy could be so complicated.”⁸

Republicans and Democrats exchanging previously held positions is not a new phenomenon. Neither is supporting or opposing policies depending on who receives credit for success. The pursuit of power through partisanship remains constant.

There is a conflict of interest between the gainfully employed young and healthy and the larger population. The conflict is an example of market failure. The young and healthy will not purchase health insurance voluntarily if they believe they will receive necessary care in the future whether they pay or not. You can understand that we are all better off if all participate, and that the market failure could be solved by strict government enforcement.

The Destiny Of Demography

You face the prospect of the largest proportion of retired people living with the smallest proportion of working people in our history. For most of your life, you will be in the smaller group who are employed. Simple arithmetic makes it clear that an ever-shrinking group of younger taxpayers cannot pay for ever-expanding benefits to the rapidly increasing number of those who have stopped working. It seems doubtful that current benefits to older

and/or retired Americans can be sustained.

The problems are difficult. The older and younger will have to work together to reassess and reconsider what is possible. Expectations for retirement will have to change. Some benefits currently provided to all who reach a certain age may have to be limited to those with the greatest needs.

Creative solutions will be necessary to resolve successfully the different preferences of older and younger. Businesses and non-profit and voluntary organizations must be major participants. But balancing conflicting needs and resolving public controversies are fundamental tasks assigned to governments. We expect that numerous American state and local governments will provide leadership.

We would like to conclude with the expectation that success in some states will be adopted in others. However, the states do not currently agree on which results are successes and which are failures. We will end instead with the observation that political conflicts within and between the states will continue. Whatever results from the conflicts, there will be winners and losers. There will be politics.

Information Sources

Figure 13.1 and Figure 13.2	See Figure 7.8, 10.7, 12.1, 12.15, 12.18 National Vital Statistics Reports December 23, 2015 Table I-9 Low birth weight births by race and Hispanic origin of mother: United States, each state and territory 2014
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Study Guide, Chapter 13

Essay Questions

1. Does the current federal system in the United States inhibit states from making their own decisions? If so, to what degree? How much opportunity do states have to behave differently? Why do states like to claim that the federal government exceeds its authority?
2. To what extent do the defining elements of federal politics also apply to state and local politics?
3. Discuss how Americans' current ideas about what government "should be" sometimes come from times when problems and government activities were quite different from what they are today.
4. Do you think it is appropriate for Americans to speak of "the government" without recognizing there are multiple levels of government in the United States? Do you think graduates of Texas A&M University should be mindful of differences between federal, state and local government in the United States? Why or why not?
5. Is there reason to think that state and local governments can be successful in attempts to achieve some goals by being proactive? If so, what empirical evidence supports your answer? If not, what empirical evidence supports your answer?
6. Why do elected officials and candidates criticize the federal government so often? Is there sufficient evidence in this chapter to support the view that the federal government is at war with Texas? Why or why not? Is there sufficient evidence elsewhere? If so, what is it?
7. Has your view on the "proper role of government" changed as a result of reading this text? Why or why not? How would you articulate a mission statement in 1 or 2 sentences?

Multiple Choice Questions

1. Which of the following statements is FALSE?
 - a. states behave differently
 - b. state and local governments are very similar to federal government
 - c. state and local government is very different from federal government
 - d. state and community governments matter
2. Correlations between government efforts and success in dealing with problems are sufficient in and of themselves to prove which causal relationship(s)
 - a. with appropriate effort, state and local governments can always solve problems or make things better
 - b. state and local governments' efforts do more harm than good
 - c. problems are exacerbated by government efforts more often than government efforts are successful
 - d. correlations alone are never sufficient to prove causality
3. Which of the following beliefs exemplify the idea of Texas exceptionalism?
 - a. Texans are better than residents of other states
 - b. Texas governments make better decisions and policies than the federal government
 - c. Texas is self-sufficient and receives very little tangible assistance from the federal government
 - d. all of the above
4. Which of the following is highly probable in the future?
 - a. the American population will consist of its largest proportion of retired people and its smallest proportion of working people
 - b. Republicans and Democrats at the state level will insist that members of Congress end gridlock or be removed from office by state party officials exercising the power of partisan recall
 - c. Voters will insist that state legislatures reassign the job of drawing election district boundaries to independent commissions with instructions to make elections in every district as competitive as possible
 - d. a majority of Americans age 65 and older will voluntarily give up some Medicare and Social Security benefits on the condition that funds be used to reduce poverty among those youngest.

Notes

- 1 <http://www.bbc.com/news/world-us-canada-35438548>
- 2 http://www.nytimes.com/interactive/2014/08/13/upshot/where-people-in-each-state-were-born.html?rref=upshot&abt=0002&abg=1&_r=0#Texas
- 3 <http://gov.texas.gov/files/ecodev/IfTXWereANation.pdf> http://www.bea.gov/newsreleases/regional/gdp_state/2015/gsp0615.htm
- 4 Fiscal Size-Up 2016-2017, May 2016, http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_Size-Up.pdf
- 5 “Savings and Loan Crisis” Federal Reserve History <http://www.federalreservehistory.org/Events/DetailView/42>
- 6 <http://www.nbcnews.com/news/us-news/deadly-west-texas-fertilizer-plant-explosion-was-criminal-act-feds-n572231>
<http://crimeblog.dallasnews.com/2013/05/mclennan-county-sheriffs-office-texas-rangers-open-criminal-investigation-in-to-west-plant-explosion.html/>
- 7 <http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/>
- 8 <http://www.cnn.com/2017/02/27/politics/trump-health-care-complicated/index.html>