United States of America

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The United States comprises 50 states, encompassing 9,631,418 square kilometres of territory and a population of 293 million people.[1] It is thus much larger and more populous than it was when the federal Constitution was drafted in 1787. Nevertheless, it makes sense to begin an analysis of the U.S. federal system with its origin, before tracing its development during the intervening 220 years.[2]

Delegates to the federal convention of 1787 generally concurred about the wisdom of establishing a more powerful federal government than the one established under the Articles of Confederation (1781), but they were equally firm in opposing a unitary government. The economies and political cultures of the Confederation's thirteen member-states were sufficiently diverse that it would have been impossible, much less advisable, to place them under a unitary government. It was difficult enough for delegates from southern and northern states to agree on issues such as the slave trade, mode of representation, and regulation of interstate commerce. It would have been much more difficult to resolve these disputes if the states had not been left intact and permitted to retain sovereignty in a number of areas. In any event, the states would not have accepted the kind of dramatic diminution of their power that would have been brought about by a unitary government, and so such a system would never have been approved by the ensuing state ratifying conventions.

Several issues about the nature of the federal system were settled by the ratification of the Constitution. On one hand, the federal government would exercise enumerated rather than plenary powers, and the states would have a significant role in the selection, composition, and operation of federal institutions. Congress would be a bicameral body, with the members of the House of Representatives apportioned among the states by population and the Senate comprised of two members from each state. The president would be selected independently of Congress, through an Electoral College system in which states played an important role. On the other hand, the states were given no direct role in the selection of the federal judiciary, which was expected to police the boundaries between the federal and state governments.

Other issues were resolved by subsequent events and developments, of which the most significant was the Civil War (1861-65). After many years during which southern and northern states had sparred over the extension of slavery and various tariffs, the election of President Abraham Lincoln prompted eleven southern states to secede and form the Confederate States of America. At the end of a war that claimed nearly as many American lives as all other American wars combined, the confederacy was defeated and the southern states brought back into the union. As a result, several questions that had been debated in Congress and by the general public for decades - such as whether states have a right to secede or to nullify acts of Congress - were, for all practical purposes, settled on the battlefield. Of additional importance was the passage of the Civil War amendments to the federal Constitution (the Thirteenth, Fourteenth, and Fifteenth Amendments), particularly the Fourteenth Amendment (1868), which provides that: "All persons born or naturalized in the United States ... are citizens of the United States and of the State wherein they reside." In addition, the states were prohibited from "abridg[ing] the privileges or immunities of citizens of the United States," "depriv[ing] any person of life, liberty, or property, without due process of law," or "deny[ing] to any person within [their] jurisdiction the equal protection of the laws." Moreover, Congress was given the "power to enforce, by appropriate legislation," each of these provisions.

Several late-nineteenth and twentieth-century developments also contributed to the centralization of power in the federal government. The Industrial Revolution and growth of corporate trusts prompted the federal government to assume more responsibility for regulating railroads and other corporations, particularly during the Progressive era (1900-20). Meanwhile, the ratification of the Sixteenth Amendment in 1913 gave Congress the power to levy an income tax, and although the states retained their independent taxing power, this amendment increased substantially the federal government's ability to raise revenue. In the 1930s President Franklin D. Roosevelt's New Deal legislation led to the

nationalization, in whole or in part, of several social insurance programs. Then, in the 1960s, President Lyndon B. Johnson's Great Society legislation brought another significant increase in federal participation in social welfare programs, including medical insurance for the poor and elderly.

The Civil Rights Movement in the 1960s contributed to a further centralization of power. Although the substantive goal of the movement was to eliminate discrimination against blacks in education, employment, and voting, the main governmental response was to increase national responsibility and to reduce state control over these areas. Thus the Civil Rights Act, 1964, was motivated by a desire to overcome discrimination in southern states, but it has had sweeping effects on the balance of power between the federal government and all state governments. Similarly, the Voting Rights Act, 1965, was intended to increase minority voter turnout in the South, but it also provided the vehicle through which federal courts and the U.S. Department of Justice were able to order state and local governments to make numerous and wide-ranging changes in their voting systems, most notably in regard to the drawing of legislative and municipal district boundaries and the elimination of many at-large and multimember districts.

The final decades of the twentieth century and the first part of the twenty-first century have seen a continuing centralization of power that has been driven by a desire on the part of Congress to achieve various national policy goals in ways that have diminished state autonomy and responsibility. In response to public concerns about drug trafficking and other crimes that were for many years prosecuted by state officials, Congress has federalized an increasing number of criminal offences since the late 1960s. Out of a desire to secure national uniformity in matters such as the drinking age (to take a leading example) Congress has made increasing use during this period of its power to place restrictions on the receipt of grants-in-aid as a way of bringing an end to the diversity of state laws on various subjects. In recent decades Congress has also taken increasing advantage of its power to preempt state legislation and regulation in various areas, such as by preventing state and local governments from taxing Internet service providers and various forms of Internet commerce. In an effort to secure national policy objectives without assuming responsibility for the associated costs, Congress also imposed numerous unfunded mandates on state and local governments up through the mid-1990s.

Additionally, the increased mobility and transience of the citizenry, coupled with the growth of national commercial and telecommunication networks, have contributed in recent years to a greater sense of a national community. This has led more people to consider themselves members of the nation rather than of their state. This general willingness of individuals to consider their primary attachment to be to the nation (many southern states are a significant exception) has been aided by the fact that state boundaries have for many years borne little relation to the residence patterns of racial, ethnic, and religious minorities. Certain states do have high concentrations of particular minority groups, but in no case does such a group make up a majority in a state. Thus Hispanics, who make up over 13 percent of the American population, are particularly concentrated in southern and southwestern states, including New Mexico, where they make up 42 percent of the state population. Blacks also make up over 13 percent of the population and are heavily concentrated in southern states, most notably Mississippi, where they make up 32 percent of the state population. Asians make up just over 4 percent of the U.S. population but are found in greater numbers in western states, most notably Hawaii, where they make up 42 percent of the population. Jews comprise just over 2 percent of the nation's population but are particularly well represented in several northeastern states, including New York, where they make up over 8 percent of the population.

FEDERAL INSTITUTIONS

Congress

The United States Congress is a bicameral legislature, with a House of Representatives and a Senate, each wielding effectively equal power in the legislative process. The only difference in the legislative powers of the two houses is that all revenue bills must originate in the House of Representatives. In terms of

other differences between the chambers, treaties negotiated by the president must receive the consent of the Senate (by a two-thirds vote), and presidential nominations of ambassadors, judges, and other officials must also be approved by the Senate (with a majority vote). In addition, the two houses are assigned different roles in the impeachment process, with the House of Representatives responsible for impeaching officials and the Senate responsible for trying impeachments.

The membership of the House of Representatives is apportioned among the states by population. As James Madison wrote in Federalist 39, the House would "derive its powers from the people of America" rather than from the state governments. In this regard, the House of Representatives would be a "national" rather than a "federal" institution.[3] The number of representatives from each state is adjusted every ten years to reflect population changes since the previous census. The smallest states each elect a single representative. The largest state, California, now elects 53 representatives, nearly one-eighth of the total House members. The overall size of the House was allowed to increase for many years to keep pace with population growth but was finally fixed at 435 members by a 1911 federal statute.

The states were given significant discretion as to how to elect their representatives, and until the 1960s several states still elected some or all of their representatives on an at-large basis.[4] Currently, all states provide for single-member House districts, though there are various ways in which the states draw district boundaries, such as through the legislature or by independent commission. Congress has long required that House districts be compact and contiguous. Also, in a series of rulings handed down since the 1960s, the U.S. Supreme Court has required that House districts be equal in population[5] and that race not be a predominant factor in the line-drawing process.[6] However, as long as states adhere to these requirements, they retain control over redistricting and, potentially, the ability to use their line-drawing powers to influence congressional behaviour. There has been no move of any kind to withdraw this responsibility from the states.

House members may serve an unlimited number of two-year terms. If a House member fails to complete his or her term, the state governor calls a special election to fill the vacancy. However, the absence of term limits and the existing procedures for filling vacancies were the subject of discussion in the late twentieth and early twenty-first centuries. This began when a number of states, believing that incumbents enjoyed undue advantages in the electoral process, tried to impose term limits on their representatives. However, in 1995, in U.S. Term Limits, Inc. v. Thornton, the U.S. Supreme Court invalidated these laws before they could have any effect (although term limits for state legislators were deemed permissible and are in effect in numerous states).[7] Second, after the terrorist attacks of 11 September 2001, and in light of reports that the U.S. Capitol was an intended target, in which case House members might have been killed in such large numbers that it would have been impossible to obtain the majority quorum required by the Constitution to conduct business, Congress has considered ways to ensure that a quorum can be obtained without waiting for governors to call special elections to fill the vacancies. Constitutional amendments were introduced that, for instance, would have permitted governors to make temporary appointments in the event that more than half of the House seats became vacant.[8] To date, however, such amendments have not passed either chamber.

The Senate is comprised of two members from each state, and therefore has 100 members. Equal-state representation in the Senate was the product of a hotly contested compromise in the federal convention between large states that wanted to apportion both houses by population and small states that preferred equal-state representation in both houses. Not everyone was satisfied with the resulting compromise. However, even if there had been any desire to revisit this issue in later years, it would have been fruitless because Article V of the U.S. Constitution stipulates that "no State, without its Consent, shall be deprived of its equal suffrage in the Senate."

Originally, senators were appointed by state legislatures and were expected to represent their interests. As Madison explained in Federalist 39, the Senate would "derive its powers from the States as political and coequal societies; and these will be represented on the principal of equality"; thus it would be a "federal" rather than a "national" institution.[9] This was formally changed in 1913 with the passage of the Seventeenth Amendment, which provided for direct election of senators and brought an end to any sense in which senators might have been viewed as representing state interests. In fact, though, senators

had long ceased to represent state legislatures, given that by the mid-nineteenth century senators were no longer instructed by legislatures on how to vote in Congress and were rarely recalled on account of the votes that they cast. Moreover, one could say that the decline of the concept of senators as representatives of state legislatures was inevitable because the Constitution permitted the two senators from each state to cast their votes separately rather than as a bloc, as was the rule under the Articles of Confederation.[10]

Senators serve six-year terms and, as in the House of Representatives, can serve an unlimited number of terms. Unlike in the House, though, Senate vacancies may be filled immediately by gubernatorial appointment, and such appointees serve until the next regular election, when voters elect a permanent replacement to fill the remainder of the term. Also unlike the House, only one-third of senators stand for election every two years.

Of the two chambers, the Senate is the more prestigious body. Not only is it smaller than the House, with 100 as compared to 435 members, but its members are required by the Constitution to be slightly older (30 as compared to 25 years of age) and to have been a citizen for a slightly longer time (nine as compared to seven years). As a result, Senate seats are more highly prized than House seats and generally attract higher-quality candidates, many of whom have previously served in the House.

The Senate is also the more obstructionist chamber. This is due in part to its smaller size. With over four times as many members, the House rules are more strict and allow less leeway to individual members, whereas the Senate runs on unanimous-consent agreements and permits non-germane amendments. The obstructionist character of the Senate is also attributable to filibustering, which is allowed by the rules of the Senate but not the House, and which permits a minority of senators (currently 41 of 100) to prevent legislation from coming to a vote. For many years the filibuster was only employed in extraordinary cases, such as when southern states sought to prevent the passage of civil rights legislation in the 1950s and 1960s. In recent years, though, the filibuster has been used routinely, so that virtually all non-budget measures and many judicial nominees must attract the support of three-fifths of the senators.[11] In this respect, although the Senate no longer provides specific institutional protection for state governments, its procedural rules do have the effect of limiting the exercise of federal power.

Although the Senate is more obstructionist than the House, it should be emphasized that both houses of Congress exercise significant power in the U.S. political system, whether in terms of obstructing or promoting the passage of legislation. Certainly, the U.S. Congress is more powerful than are legislatures in parliamentary systems; it also wields more power than do legislatures in many other presidential systems. In fact, although different institutions can be said to take the lead role in the U.S. political system at different times, Congress is frequently the dominant actor, both in the sense of generating policy initiatives and in terms of frustrating, weakening, or delaying the enactment of initiatives developed in other institutions.

The Presidency

The United States has a presidential system, in which a president serves as chief executive and head of state and is elected independently of Congress. The Electoral College system of presidential selection is quite complicated and is governed in part by constitutional provisions, in part by congressional statutes, and in part by state laws. Each state, along with the District of Columbia, has a number of electoral votes equal to its representatives plus senators, for a total of 538 electoral votes. Thus, the smallest states have three electoral votes each, and California has the most electoral votes (55). The states are free to award their electoral votes as they see fit. In the late-eighteenth and early-nineteenth centuries, states allocated their electoral votes in all sorts of ways, including by legislative selection or district election. Today, however, all but two states award their entire slate of electoral votes to the winner of a plurality of the popular vote in their state. The exceptions are Maine and Nebraska, both of which provide for a division of their electoral votes, awarding two votes to the winner of the statewide popular vote and the remaining votes to the candidate who wins the popular vote in each U.S. House district. The candidate who obtains a majority (270) of electoral votes across the country wins the office and begins a four-year term. The same person may serve only two full terms, under the Twenty-Second Amendment (1951).

The Electoral College has been the subject of more than 700 constitutional amendment proposals throughout U.S. history, far more than any other constitutional provision. The procedure attracts particular attention on the rare occasions when the winner of the popular vote fails to win a majority of electoral votes.[12] The most recent such occasion (the other clear case was in 1888) was in 2000, when Al Gore won over 500,000 more popular votes than did George W. Bush but received five fewer electoral votes. Because most of the controversy in 2000 centred on how to count Florida's popular votes – Bush was eventually declared the winner of the state by 537 votes and awarded the state's 25 electoral votes – the Electoral College itself received less scrutiny than it otherwise would have done. Still, scattered calls were heard for reforming the system, and if future elections generate similar controversies, these reforms are likely to receive serious consideration.

As long as the Electoral College is retained, it will continue to have an influence not only on presidential campaigns but also on presidential governance. The principal effect is to encourage candidates to target the 15 to 20 states that are sufficiently competitive in any given year to be considered battleground states. The remaining states receive few or no visits from presidential candidates and see few or no campaign commercials. The impact of the Electoral College can even be seen in the way that presidents behave once in office. During their first term, at least, presidents make more visits to what they perceive to be the likely battleground states in the next election, and they are particularly attentive to the needs and interests of these states when making policy decisions.

Although the Electoral College was originally intended to ensure that the president would be chosen by a select group of individuals "most likely to possess the information and discernment requisite to" the task, the institution is currently defended for quite different reasons. Among its other virtues, it encourages candidates to run a nationwide campaign and to be sensitive to state and local interests. It also lends support for the two-party system, through the winner-take-all rule in effect in nearly all states, as well as the constitutional requirement that a candidate obtain a majority of electoral votes to win the office.

In terms of the powers wielded by presidents, the constitutional powers of the office are actually rather modest. In regard to foreign affairs, the president is commander-in-chief of the armed forces and is responsible for negotiating treaties and receiving ambassadors. In regard to policy making, the president can veto bills passed by Congress, and a veto can be overridden only by a two-thirds vote in both houses of Congress. However, any list of formal powers cannot come close to describing the powers actually wielded by modern presidents. The "executive power" clause gives the president significant discretion in regard to the implementation of congressional statutes and the issuance of executive orders, which do not require congressional approval. Moreover, presidents have interpreted this clause as implying the possession of all sorts of additional powers, and, partly on this basis, they now routinely undertake military interventions without a congressional declaration of war. During the twentieth century, presidents also began to make use of various informal powers, such as televised public addresses and personal lobbying, to secure the passage of legislation.[13]

Although twenty-first century presidents wield significantly more power than did their predecessors, they are generally less powerful than are executives in other presidential, as well as parliamentary, systems. At times the president is the dominant actor in the U.S. political system, such as during wars or crisis situations or when his party holds extraordinary majorities in both the House and the Senate. However, at other times, presidents can be relatively ineffectual and are forced to engage in protracted bargaining with Congress in order to have any success in securing passage of their legislative initiatives.

The federal bureaucracy, whose control is shared by the president and the Congress, comes in different forms, with varying levels of responsiveness to the general public and to state and local officials. The heads of executive departments (e.g., the Department of Education) and executive agencies (e.g., the National Aeronautics and Space Administration) are nominated by the president and approved by the Senate and serve at the pleasure of the president. These bodies, while less responsive to public pressure than the executive and legislative branches themselves, are still more responsive than independent regulatory commissions (e.g., the Federal Communications Commission), whose members are also

nominated by the president and approved by the Senate but who cannot be dismissed except for wrongdoing.

Judiciary

The United States has separate court hierarchies: the federal court system and the court systems of the 50 states, the District of Columbia, and Puerto Rico. The federal courts wield extraordinary power. They can invalidate state or federal executive actions on the grounds that they are inconsistent with the U.S. Constitution or federal statutes. They can also invalidate state or federal statutes as inconsistent with the Constitution. Any federal court with proper jurisdiction may invalidate such acts (though those decisions are subject to appeal).

All told, the U.S. Supreme Court has invalidated more than 150 federal statutes and well over 1,000 state laws since 1789. In the last half-century alone, the Court has exercised its power of judicial review to end racial segregation, prohibit prayer in public schools, legalize abortion in the first two trimesters of pregnancy, and require police to abide by strict requirements in questioning suspects and conducting searches.

The authority of the federal courts is not completely unchecked. In fact, each of these controversial decisions generated efforts by the other branches to limit a judicial decision's reach or bring about its reversal. However, throughout American history, these efforts have produced few results. Congress can propose a constitutional amendment to overturn a Supreme Court decision, but this has been done successfully on only four occasions. In 1795 the Eleventh Amendment responded to Chisholm v. Georgia[14] by preventing federal courts from hearing suits brought by citizens of one state against a government of another state; in 1865, 1868, and 1870 the Thirteenth, Fourteenth, and Fifteenth Amendments, respectively, responded to Dred Scott v. Sandford[15] by securing the freedom and the civil and voting rights of African-Americans; in 1913 the Sixteenth Amendment responded to Pollock v. Farmers' Loan and Trust Co[16] by authorizing a federal income tax; and in 1971 the Twenty-Sixth Amendment responded to Oregon v. Mitchell[17] by reducing the voting age in state elections to eighteen.[18]

Congress can also remove matters from the appellate jurisdiction of the Supreme Court. For the most part, however, this has been no more than a threat. The power has been used to actually prevent a federal statute from being invalidated on only one notable occasion, when Congress sought to prevent the Supreme Court from striking down the Reconstruction Acts, 1867. The Court acquiesced in this congressional denial of jurisdiction in Ex parte McCardle (1869).[19] Technically, another threat lies in the possibility of legislation to increase the size of the Court, which currently has nine members. However, in the aftermath of the Senate's rejection of President Franklin Roosevelt's 1937 effort to respond to the Court's invalidation of portions of his New Deal program by increasing the membership to as many as fifteen justices – he would have added a justice for every sitting justice over age 70 – any future effort to change the Court's size would be met with significant resistance.

Turning from the power of the courts to their composition and organization, federalism plays a role in the structure of the federal judiciary in several ways. In organizing the federal courts, Congress uses state boundary lines to define the boundaries of the 94 federal judicial districts (each of which is wholly contained within a state), as well as the 12 appellate circuits (which comprise multiple states and do not divide any state between circuits).

With regard to the selection process, federal judges are nominated by the president and confirmed by the Senate, and serve during good behaviour. Although state governments have no formal role in the appointment process, senators exert significant influence in selecting appellate judges and, to an even greater extent, district judges. During this process senators may consult with and seek suggestions from state officials about potential candidates to be nominated by the president.

In terms of federal court jurisdiction, the system is also sensitive to federalism. State courts have complete jurisdiction over all matters except those that the Constitution authorizes Congress to vest in the federal courts. In practice, though, the boundaries between federal and state jurisdiction are not always defined clearly. For instance, certain acts can be prosecuted either as a federal or a state crime, and

prosecutors have discretion as to whether such an offence should be tried in state or in federal court. In addition, participants in civil suits can, under certain circumstances, petition for their cases to be moved from state courts to federal courts. Finally, any state case that runs its full course through the highest state court and raises any sort of federal question may be appealed to the U.S. Supreme Court, which has complete discretion as to whether to grant the appeal.

Although the number of federal judges and overall workload of the federal judiciary have grown steadily throughout American history, federal courts still hear only about 2 percent of the legal cases in the United States. All told, there are 1,748 federal judges, including district judges and other trial judges (i.e., bankruptcy judges), circuit court of appeals judges, and Supreme Court justices, who altogether hear a total of 2 million cases per year. Conversely, there are 30,842 state judges who hear 80 million cases each year, ranging from family, juvenile, and traffic suits all the way to capital cases.[20]

INSTITUTIONAL ARRANGEMENTS OF THE CONSTITUENT UNITS

Legislatures

The design and arrangement of state institutions are established by state constitutions, which were drafted in some states as early as the late 1770s (and therefore a decade prior to the drafting of the federal Constitution in 1787), and which have been the subject of revision and amendment well into the early twenty-first century.[21] State constitution makers enjoy a great deal of latitude in structuring their governing institutions, subject only to the stipulation in Article IV of the U.S. Constitution, which holds that every state is guaranteed a "Republican Form of Government." In fact, just over half of the states, primarily in the West, currently provide for the popular initiative and/or referendum (in contrast with the absence of any form of direct democracy in the federal sphere); since the mid-1970s these direct democratic institutions have become an increasingly important avenue for policy making in many of these states.

In many respects, the government institutions that emerge from the 50 state constitutions are structured along the same general lines as is the federal government, in that all states have presidential systems (though the chief executive is called "governor" rather than "president"). In addition, virtually all state legislatures are now and always have been bicameral, with the notable exception of Nebraska, which adopted unicameralism in 1934 and remains the only current unicameral state.

Bicameralism is seen as promoting deliberation in state legislatures, just as in the Congress. But whereas bicameralism in Congress is also seen as providing representation for the states in one house and for the population in the other house, this type of arrangement is not possible in state legislatures, at least since it was prohibited by the U.S. Supreme Court in Reynolds v. Sims.[22] As a result, states have chosen to distinguish their legislative chambers primarily by references to their size, term length, and powers. In every state the house has more members than the senate, usually by around a 2:1 or 3:1 margin. In a majority of states, house members also have shorter terms than do senators. Two-year house terms and four-year senate terms are the most popular arrangement, though some states provide for two- or four-year terms in both houses. Many states have also retained their long-standing requirements that revenue bills must originate in the lower house.

The rules governing the composition and selection of state legislatures are generally established in state constitutions, but federal statutes, constitutional provisions, and judicial decisions also govern particular aspects of state electoral systems. Of particular importance is the federal Voting Rights Act, 1965, as extended and amended in 1970, 1975, and 1982, and as implemented by the U.S. Department of Justice and interpreted by the Supreme Court.[23] Among other effects of the law, state legislatures are prevented from drawing legislative and congressional district lines that dilute the votes of racial and ethnic minority groups. Increasingly, in the 1980s and 1990s, this provision was interpreted as requiring the creation of majority-minority districts that could be counted on to elect a representative of a racial minority. In practice, of course, population patterns frequently make it impossible to draw enough majority-minority districts to produce a proportionate representation in the legislature of all minority

groups. As a result, blacks and Hispanics are generally underrepresented in state legislatures and in the U.S. House of Representatives. These minority groups are even more dramatically underrepresented in the U.S. Senate, where state boundary lines cannot be altered to create majority-minority districts.

State legislatures play several roles in the operation of the federal system, aside from drawing boundary lines for U.S. House districts. State legislatures play a part in selecting the president, in that they decide the rules by which their state's electoral votes will be allocated. State legislatures are also assigned an important role in proposing and ratifying amendments to the federal Constitution. Amendments may be proposed in one of two ways: either by a two-thirds vote in both houses of Congress or upon the request of two-thirds of the state legislatures to Congress. To date, the 33 amendments that have been formally proposed have all followed the former path. Amendments may also be ratified in one of two ways: either by three-fourths of the state legislatures or by three-fourths of state ratifying conventions elected by the people. All but one of the 27 amendments have been ratified through the first path.

The State Executive

All state constitutions provide for a governor who serves both as chief executive and head of state. In several important respects, though, the state executive branch departs from the national model, most notably in that virtually all states have a plural executive of sorts. For the federal government, the president and vice-president are elected on one ticket, and the president appoints, subject to Senate confirmation, the heads of executive departments and agencies. In the states, the governor is frequently elected independently of other executive branch officials. This is a product of the Jacksonian movement (named after President Andrew Jackson) of the 1830s, which sought to bring about more popular control over the executive branch by electing as many officials as possible. This was only partially reversed during the Progressive era in the early twentieth century, when reformers argued that popular control and accountability might actually be achieved through adoption of a short ballot and the election of fewer executive officials. As a result, the number of elected officials in the state executive branch ranges from one, as in New Jersey, all the way to thirteen, as in Georgia.[24] These independently elected executive officials occasionally wield significant power not only in their own states but also throughout the country. State attorneys general, who are elected by the people in 43 states, have been especially active in recent years. In particular, they were responsible for negotiating the 1998 Master Settlement Agreement between 46 states that, together with individual agreements with the other four states, required tobacco companies to pay $246 billion to state governments over the next quarter of a century, essentially setting national policy in regard to cigarettes.[25]

In other respects, the structure of the executive branches of the states is broadly similar to that of the federal executive (albeit without any use of the electoral college mechanism that operates in presidential elections). There is a governor in each state, who is popularly elected, for a four-year term in all but two states, and for a maximum of two terms in many states. Only Vermont and New Hampshire elect their governors for two-year terms. In regard to term limits, Virginia alone prohibits its governor from serving successive terms; a number of other states impose no term limits.[26] In part as a result of these limits, but also because of the valuable executive experience that they gain while in office, a number of governors choose to run for, and are viewed as particularly attractive candidates for, the presidency. In fact, four of the last five presidents (Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush) were governors.

In terms of the powers of state governors, all governors now possess the power to veto legislation. In some states, though, the gubernatorial veto can be overridden by less than the two-thirds legislative majority that is required for Congress to overturn a presidential veto. Moreover, all but six states entrust the governor with the item-veto power, which can be used to invalidate particular provisions in a statute and allow the remaining provisions to take effect.[27]

Finally, like the president, the governor is responsible for appointing the heads of various regulatory agencies. In some cases, these state agencies perform functions similar to their national

counterparts, as for instance with state environmental protection agencies. In other cases, there are state regulatory agencies not found in the federal government (e.g., state insurance commissions) due to the different responsibilities of state governments.

State Administration

For many years, the federal government refrained from requiring state governments to carry out functions on its behalf. It is true that state judges have long performed legal and administrative functions on behalf of the federal court system. Save for exceptional cases, though, state legislatures and governors were not pressed into the service of the national government.

This changed in the second half of the twentieth century, in part because federal statutes and judicial decrees increasingly required states and localities to carry out all sorts of tasks by mandating that certain actions be taken by state and local governing officials. However, the U.S. Supreme Court has also begun to impose certain limits in this regard. In New York v. United States[28] the Court ruled that Congress could not "commandeer" a state legislature by ordering it to dispose of nuclear waste in a particular fashion. In another case, Printz v. United States,[29] the Court prohibited Congress from ordering state executive officials to conduct background checks on handgun purchasers. In each case, the Court found that the congressional statute ran afoul of the Tenth Amendment, which provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Although Congress may not commandeer state legislators or executives for the administration of federal statutes, it can and frequently does secure the assistance of state officials in other ways. A favourite approach is to offer additional funding to state governments that require states to meet certain federal goals or to satisfy federal requirements as a condition of accepting federal funding. The U.S. Supreme Court ruled in South Dakota v. Dole[30] that this is an acceptable practice, and Congress has used the threat of withholding federal funds to achieve all sorts of goals, including the establishment of a uniform 21-year-old drinking age, a .08 percent blood-alcohol level for drunk driving, and the administration of annual tests to schoolchildren in the third through eighth grades. State officials frequently complain that they are unable to make a real choice in these instances because they cannot afford to lose federal funding for roads, schools, and other programs. However, this is an attractive way for Congress to achieve national goals and secure state participation in the administration of national programs, and there is every reason to expect Congress to continue to use its spending power in this fashion, especially given that the Supreme Court has foreclosed several other means of achieving federal goals.

State Judiciary

State courts have the same power as federal courts to invalidate executive and legislative acts. Any state court with proper jurisdiction can invalidate a state executive act as inconsistent with a statutory or constitutional provision. State courts can also invalidate state statutes as inconsistent with a constitutional provision.

In recent decades state courts have been quite aggressive in interpreting state constitutions to provide a greater level of protection for individual rights than is found through the U.S. Supreme Court's interpretation of the Bill of Rights of the U.S. Constitution. Moreover, as long as these state-court decisions are grounded solely in an interpretation of the state constitution, they cannot be appealed to the U.S. Supreme Court. For instance, although the U.S. Supreme Court has not recognized a federal constitutional right to same-sex marriage, in 2003 the Massachusetts Supreme Judicial Court interpreted the Massachusetts Constitution as requiring the state to issue marriage licences to same-sex couples.[31] Because the ruling rests on state constitutional grounds, it cannot be appealed beyond the state supreme court; therefore, same-sex marriage is legal in Massachusetts but in no other state. However, a state supreme court decision of this sort can be overturned by a state constitutional amendment, although a

proposed amendment to the Massachusetts Constitution has thus far been unsuccessful. Moreover, the decision can also be overturned by a federal constitutional amendment, and several such amendments to the U.S. Constitution have been debated in Congress in recent years.

The exercise of judicial review rightly attracts a great deal of scholarly attention, but the greater part of the workload of state, as well as federal, courts is concerned with other matters, such as resolving civil suits and hearing criminal trials. In organizing their court systems to deal with these matters, states have generally provided for trial courts, intermediate appellate courts, and a supreme court, though there is significant variation in state-court hierarchies.

In selecting judges to serve on these courts, most states differ significantly from the federal practice. Several states select judges by gubernatorial nomination and legislative confirmation, as is the case with federal-court judges, but the vast majority of states select their judges in some other fashion. Two states provide for legislative appointment of trial and appellate judges. A significant number of states provide for partisan or non-partisan popular election of judges. A growing number of states operate some sort of merit-selection plan. The usual procedure in merit-selection states is that a nominating commission assembles a list of judicial candidates; the governor appoints one candidate from the list; and after one term in office, the people vote on whether to retain the judge for another term or whether to begin the selection process anew.[32]

OTHER SPHERES OF GOVERNMENT

Local Government

There are 87,849 local governments in the United States. These include 3,034 county governments, which are found in 48 states (in Louisiana, parishes function as counties; in Alaska, counties are called boroughs), and which are general-purpose local governments. Two other types of general-purpose local governments are the 19,431 municipal governments and 16,506 townships (which are particularly prevalent in New England and the Midwest). Finally, there are 48,878 special-district governments, many of which are established to run school systems or to assume responsibility for environmental or transportation matters.[33]

Local government officials are selected in a variety of ways, depending on the form of government and on different assessments as to how best to provide effective governance. For instance, counties generally elect a board of commissioners or supervisors from at-large and/or single-member districts. A number of these counties also provide for the election or appointment of a county executive or manager, in addition to these board members. Other county officials typically include a sheriff, prosecuting attorney, treasurer, and clerk of court, among other officials.

Local governments are creatures of state governments and therefore exercise powers only as permitted by the state constitution or legislature. It is important to note, in this regard, that in the late-nineteenth and early-twentieth centuries a home-rule movement sought, through the passage of state constitutional amendments and statutes, to devolve power and give more flexibility to municipalities, in particular. As a result, local governments in a number of states enjoy a significant amount of discretion in structuring their governing institutions, levying taxes, and making policy.

Tribal Government

All told, there are 562 federally recognized American Indian tribes, and many members of these tribes live on reservations and possess sovereignty in regard to the governance of these reservations. Although a number of these reservations are quite small, covering just a few hundred acres of land, others are quite large, such as the Navajo Reservation, which spans 16 million acres across parts of three southwestern states.[34]

Congress may regulate tribal governments, but state and local governments have no power to regulate their internal affairs. In practice, though, there is a good deal of dispute about these

relationships, as state governments have increasingly sought to subject tribal governments to various regulations and as the U.S. Supreme Court has increasingly tended to uphold these regulations.[35] Gaming policy has been a source of particular controversy in recent years. After 1988, in particular, the federal Indian Gaming Regulatory Act, 1988, led a number of tribal governments to begin operating casinos, thereby enabling them to amass significant revenue, some of which is contributed to state political campaigns with an eye towards influencing state policy.

INTERGOVERNMENTAL RELATIONS

In comparison with some other federal systems, the U.S. Constitution provides for very little formal cooperation among federal, state, and local officials. States can and do form interstate compacts, whether among several neighbouring states (e.g., the Port Authority of New York and New Jersey) or among all or nearly all states (e.g., the Emergency Management Assistance Compact). Such interstate compacts, which cannot be created without the consent of Congress, are in some cases intended to establish a joint authority for governance in a certain policy area; in other cases, they are designed primarily to facilitate communication among state officials in participating states.[36] However, the federal Constitution does not establish any formal institutions that require the participation of state and local officials or that encourage collaboration among federal, state, and local officials.

There are a number of opportunities for informal cooperation, particularly among state and local officials. Governors are members of the National Governors' Association. State legislators attend meetings of the National Conference of State Legislatures (with many conservative state legislators attending meetings of the rival American Legislative Exchange Council). For state attorneys general, there is the National Association of Attorneys General. Meanwhile, officials from the major state administrative agencies are members of similar organizations. These state intergovernmental organizations – local officials have their own groups – provide forums to discuss common problems, learn about experimental solutions, and, most important, pool information and resources to lobby the federal government. State officials also meet in smaller groups, including by region (i.e., the Western Governors' Association) and by party (i.e., the Republican Governors' Association). There are also plenty of opportunities for ad hoc cooperation among particular groups of state officials. For instance, the Republican governors of the four most populous states – California, Texas, New York, and Florida – recently announced a plan to pool their resources to lobby the federal government to secure increased federal funding for roads and other projects.[37]

There are fewer opportunities for informal communication and cooperation between officials from comparable elected offices in the state and federal spheres. However, administrative officials from federal, state, and local agencies often work together. For instance, the federal Environmental Protection Agency works closely with state environmental agencies. But there simply are not many opportunities for communication among elected officials in the various spheres of government. State legislators, especially, would appear to have much to say to federal legislators, whether in terms of advice during the drafting of federal legislation or regarding the effects and burdens of federal legislation once enacted. But with the direct election of U.S. senators, there is no need for federal legislators to listen or cater to the needs of state legislators, other than every ten years when state legislators draw boundary lines for congressional districts.

ANALYSIS AND CONCLUSIONS

Constitutional Framework

The constitutions of the United States and of the 50 states take different approaches to the amount of detail they provide about institutional arrangements and to the ease with which these arrangements can be revised. The U.S. Constitution is a relatively short document that sets out general provisions about the composition, selection, and powers of governing institutions. It is also quite difficult to amend. Only 27

amendments have been adopted, and ten of these (which make up the U.S. Bill of Rights) were ratified just after the founding, in 1791.

One consequence of drafting a short national constitution with a rigid amendment process is that many details of the operation of national institutions are located in extra-constitutional sources, whether in statutes or institutional rules. An additional consequence is that the structure of national institutions has undergone few significant changes. Only a portion of the 17 amendments adopted since the Bill of Rights deals with the structure of government institutions, and only a fraction of these amendments have had important consequences for federalism. For instance, in 1795 the Eleventh Amendment immunized non-consenting states from federal suits brought by individuals in other states. In 1913 the Sixteenth Amendment authorized a national income tax, and the Seventeenth Amendment brought about the direct election of U.S. senators. No amendment has been more important in this regard than the Fourteenth Amendment, which in 1868 prohibited states from depriving persons of "life, liberty, or property, without due process of law" or denying "equal protection of the laws," and then gave Congress the power to enforce these provisions "by appropriate legislation."

The fact that there have been few constitutional changes to national governing institutions does not mean that significant changes have not taken place in the power and behaviour of these institutions. However, these changes have taken place outside the formal constitutional processes. For instance, twenty-first-century presidents wield significantly more power than did their predecessors; however, this is due not to the passage of any constitutional amendments but, rather, to actions taken by particular presidents, especially during the twentieth century. In addition, the power of the Supreme Court to invalidate legislation derives not from any express constitutional provision on this subject; rather, judicial review of congressional statutes was first exercised in 1803 as a result of Chief Justice John Marshall's interpretation of the underlying purpose of a constitution. Moreover, the increasing exercise of judicial review in the late nineteenth century (the Court did not invalidate another congressional statute until 1857) was due not primarily to any constitutional amendment adopted during this period but, rather, to the changing attitudes of particular justices and the increasing degree of governmental regulation of business and commerce during this period.

State constitutions, by contrast, are invariably longer and more easily amended. As a result, they contain more detailed rules about governing institutions. A number of state constitutions provide detailed legislative procedural rules that are designed to promote transparency in the legislative process, such as requirements that each bill be read three times before being approved and that each bill be limited to a single subject that is accurately described in the bill's title. The executive branch also receives detailed treatment in many state constitutions, such as in regard to the exercise of the pardon power. State constitutions are also more apt to provide detailed rules regarding the structure and operation of the judiciary, and some constitutions go so far as to regulate the number of judges for a quorum and the number and site of supreme court sessions.

As a result of their more flexible amendment procedures, state constitutions also permit a greater range of experimentation with the structure and composition of governing institutions. In terms of the legislative branch, four states have adopted unicameralism throughout American history, although three of them eventually decided to revert to bicameralism. In terms of the executive branch, states were able to provide for the election of numerous executive officials in the Jacksonian era and then to move back towards a short ballot during the Progressive era. As for the judiciary, the mid-nineteenth century saw a move towards the popular election of judges; by the mid-twentieth century, a number of states were drawn instead to merit-selection plans. In each of these cases, significant changes were made to state government institutions, and these changes were made through formal constitutional channels.

Interaction between Federalism and Representative Institutions

In assessing the interaction between federalism and representative institutions, it is helpful to take note of several important decisions made at the federal convention of 1787. In general, decisions about the presidency and the U.S. Supreme Court ensured that these branches would be agents of centralization. As

for Congress, the founders expected members of the House of Representatives and the Senate to be particularly responsive to state and local interests, but over the years these expectations have increasingly not been borne out.

As for the executive, the first crucial decision was to create a single president rather than a plural executive whose members might have represented different geographic regions. This decision, coupled with the requirement that presidential candidates must win a majority rather than a plurality of electoral votes, played an important role in the establishment of two national parties rather than multiple regional or state-based parties. Another important decision involved the establishment of a presidential system that enabled the president to wield power independently of Congress, including in ways that increased national power, and that, at an even more basic level, kept the nation together. Thus it is highly improbable that, in a parliamentary system, President Abraham Lincoln would have been able to take the actions that he did in early 1861 and throughout the Civil War to preserve the union.

It is true that several recent presidents have undertaken significant federalism initiatives, and thus there is nothing to prevent presidents from occasionally acting as agents of decentralization. In particular, both Richard Nixon and Ronald Reagan called for "New Federalism" programs and tried, with mixed success, to stem the centralization of power in the federal government and return responsibility for various federal programs to the states.[38] However, the dominant trend throughout American history has been for presidents to be more responsive to national pressures and less responsive to state interests. In this respect, current president and former governor George W. Bush's general lack of attention to federalism represents more of a continuation of, than a departure from, general patterns of presidential behaviour.

Throughout American history the U.S. Supreme Court has been a great engine of centralization, as would be expected in light of several choices made at the federal convention. The first key decision concerned the appointment process and, in particular, the denial to the states of any role in the selection of federal judges. To the extent, therefore, that Supreme Court justices are likely to be disposed towards either the federal government or the states in disputes between the two, one would expect them to favour the government of which they are a constituent part and to whose officials they owe their appointment.

A second decision that affected the judiciary was the move to permit Congress to exercise enumerated rather than plenary powers, which ensured that there would be a continuing struggle to define the boundaries of these powers. More important, some sort of institutional arrangement would have to be devised to police these boundaries, and although the states made several late-eighteenth- and early-nineteenth-century efforts to play a role in this regard, the task ended up falling largely to the federal judiciary. It is true that the Supreme Court has at times used its power to invalidate congressional statutes that exceed constitutional boundaries. Thus it issued several decisions in the Progressive and New Deal eras that blocked or delayed enactment of national social and economic reforms on the grounds that they exceeded Congress's enumerated powers. Then, after some 60 years in which the Court essentially refrained from striking down congressional statutes on federalism grounds, during the 1990s and early 2000s the Court limited congressional power to regulate the possession of guns near schools and to provide federal civil remedies in cases of gender-motivated violence (among other areas). Nevertheless, these state-protective decisions have been issued infrequently throughout American history and have generally had little effect on stemming the pace of centralization.

The most important founding decision that affected judicial power was the rejection of a proposal to empower Congress to veto state laws. Madison argued that it was essential that this power be lodged somewhere in the federal government in order to "control the centrifugal tendency of the States," and he tried repeatedly during the convention to give this power to Congress.[39] This proposal was rejected, but Madison was correct in foreseeing that the power to veto state laws was essential in a federal system, and this task soon came to be exercised by the Supreme Court. In the nineteenth century the Court wielded its power of invalidating state legislation to eliminate barriers to interstate commerce and thereby establish a national economic market. Then, in the late twentieth century, the Court used this power to implement national policy in regard to issues such as school desegregation, abortion, and the rights of criminal

defendants. In fact, in several of these areas, Congress lacked the power to fashion a national policy, and so federal judicial decisions were the only means of bringing about some degree of uniformity.

If the presidency and Supreme Court could have been expected to serve as nationalizing forces, based on the design of each of these institutions, Congress was expected to play a different role. The framers of the U.S. Constitution certainly expected that members of Congress would be responsive to state and local interests and that senators would be especially representative of state government interests. Moreover, several institutional developments throughout American history have helped make it possible for Congress to make good, at least in part, on this expectation. One such decision, which was not finalized until the federal Apportionment Act, 1842, and then reconfirmed in 1967, was the creation of single-member U.S. House districts. This meant that all members of Congress would be tied to a particular geographic area, whether to a state or a portion of a state, and ensured a certain degree of congressional responsiveness to state and local interests. A second decision, which was implemented through Senate Rule XXII, was the establishment of the filibuster in the Senate. The filibuster has generally made it quite difficult to enact federal statutes, in that a three-fifths vote is now required to invoke cloture and to force a vote on a filibustered bill. But it has also enabled southern states to prevent federal action contrary to their interests, both during the nineteenth century and then again when federal civil rights legislation was debated in the 1950s and 1960s.

However, the time has long passed when these aspects of the congressional design could be seen as enabling Congress to play an important decentralizing role in the U.S. political system. The adoption of the Seventeenth Amendment, with its provision for direct senatorial election, brought an end to any notion that senators were representatives of state interests. Additionally, although members of Congress are still more tied to local electoral constituencies than are members of the executive and judicial branches, members of both the House and the Senate have become increasingly responsive to national interest groups and media and to their desire for national responses to various problems and issues. As a result, Congress has in recent decades federalized a number of policy areas that were once the province of the states, whether in regard to crime, education, or environmental policy. Recent congresses have also preempted state power in a variety of policy areas and have issued mandates that have imposed significant costs on state and local governments.[40]

To be sure, as has been pointed out by scholars who have recently perceived signs of a "devolution revolution," members of Congress, along with state governors, were the chief advocates of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), 1996, which gave the states more discretion in regard to the administration of welfare policy. It is also true that members of Congress acceded to the entreaties of state and local government officials by passing the Unfunded Mandates Reform Act (UMRA), 1995, thereby making it more difficult for future congresses to continue issuing burdensome mandates to states and localities. However, it is important not to overstate the significance of these two recent statutes, given that PRWORA also contains a number of provisions that are highly centralizing, and given that UMRA may have stemmed the increase of unfunded mandates but is inapplicable to numerous federal requirements that are viewed by state and local officials as tantamount to mandates, such as are contained in the No Child Left Behind Act (NCLB), 2002. Moreover, PRWORA and UMRA remain exceptions to the dominant trend of congressional legislation in recent decades.[41]

These various founding decisions and institutional developments regarding the executive, judicial, and legislative branches have each had consequences for the federal system. However, there are also a number of contemporary issues and decisions that will shape the federal system in future years. It is appropriate to close by taking note of each of them.

One current issue concerns the possibility of reforming the Electoral College. The 2000 election led to some consideration of reforming the system, and if there are additional elections where a candidate wins the popular vote but loses the electoral vote, these reform proposals could well be adopted. A variety of proposals have been advanced – such as instituting a direct popular vote, encouraging more states to allow their electoral votes to be split among candidates, or having a number of large states establish an interstate compact whereby they would agree to cast all their electoral votes for the winner of the national popular vote – and it would be important to consider the full effects of each proposal on the

federal system. In particular, would alternatives to the current system lead presidential candidates to campaign and govern in ways that would be less responsive to state and local concerns? Would these proposals make it easier for candidates to win office with the support of much less than a majority of the populace, and thereby encourage the creation of multiple parties, some of which might be geographically based?[42]

Another issue is the possibility of reforming the process of drawing congressional districts so as to produce more competitive elections and increase the accountability of House members. In recent years, technological advances have made it possible for state legislatures to manipulate House district lines in such a way as to leave no more than 40 of 435 house races competitive in a given year. This has implications for the electoral system, in that few voters have an opportunity to participate in competitive House elections, and the only real competition often comes in party primaries to fill open seats. It also has implications for congressional governance. Given that there is little chance of being unseated in the general election (95-98 percent of incumbents who seek reelection are generally successful), few House members have any incentive to compromise with members of the other party or to move to the middle of the political spectrum.[43] For these reasons, a movement is afoot to entrust redistricting to state institutions other than legislatures. A small but growing number of states (including New Jersey, Washington, and Arizona, among others) entrusts this task to an independent redistricting commission. One state (Iowa) has chosen to assign this task to legislative staff members who are directed to ignore considerations of party and incumbency. In still other states, judges draw district lines when the legislature is unable to reach agreement on a legitimate redistricting plan, and they might be asked to handle this task on a routine basis.[44]

A final development that is being followed with keen interest is the series of recent Supreme Court decisions that have imposed limits on congressional power and upheld state sovereignty in the face of congressional encroachments. On one hand, some scholars applaud these decisions as a long-overdue effort to police the boundaries between federal and state governments and as a necessary reminder to Congress that it possesses enumerated rather than plenary powers; on the other hand, the vast majority of commentators have criticized these judicial decisions as an inappropriate intrusion into matters that should be determined by Congress or by voters who are free to unseat congressmembers when they exceed their constitutional powers. Despite disagreement about the propriety of these recent rulings (most of which have been decided by a five-to-four vote), there is general agreement that these decisions represent a significant departure from the Court's usual approach to federalism cases. Yet to be determined, though, is how far a majority of the Court is willing to go in issuing further decisions that limit congressional power (particularly with the replacement of Chief Justice William Rehnquist by John Roberts and the retirement of Justice Sandra Day O'Connor and the appointment of her successor, Samuel Alito) as well as whether these decisions will have real consequences in terms of influencing the exercise of congressional power vis-à-vis the states.[45]

Thus in this issue, as in the other issues, the debate about U.S. legislative and executive governance continues. At this point in time, the debates are not so much about fundamental questions of institutional design. These have long since been settled, and there have been few significant changes in the structure of the legislative or executive branches since the founding. Rather, the current debates raise narrower, but nevertheless important, questions about the performance of long-standing institutions.

Notes

[1] U.S. Central Intelligence Agency, The World Factbook: United States, 11 May 2004; <http://www.cia.gov/cia/publications/factbook/geos/us.html>, viewed 16 December 2005.

[2] For more background and analyses of U.S. federalism, see also G. Alan Tarr, "United States of America," Constitutional Origins, Structure, and Change in Federal Countries, ed. John Kincaid and G. Alan Tarr (Montreal and Kingston: McGill-Queen's University Press, 2005), 382-408; and Ellis Katz, "United States of America," Distribution of Powers and Responsibilities in Federal Countries, ed. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown (Montreal and Kingston: McGill-Queen's University Press, 2006), 296-321.

[3] Alexander Hamilton, James Madison, and John Jay, The Federalist Papers (New York: Mentor, 1999), 212.

[4] See Randall G. Holcombe, From Liberty to Democracy: The Transformation of American Government (Ann Arbor: University of Michigan Press, 2002), 84-86.
[5] Wesberry v. Sanders, 376 U.S. 1 (1964).
[6] Shaw v. Reno, 509 U.S. 630 (1993).
[7] 514 U.S. 779 (1995).
[8] Christopher Lee, "House Argues over Replacement Plans," Washington Post, 21 April 2004, A21.
[9] Hamilton, Madison, and Jay, The Federalist Papers, 212.
[10] On the decline of senators as representatives of state legislatures, see William H. Riker, "The Senate and American Federalism," American Political Science Review 49 (June 1955): 452-469.
[11] See Sarah A. Binder and Steven S. Smith, Politics or Principle? Filibustering in the United States Senate (Washington, DC: The Brookings Institution Press, 1997).
[12] U.S. Department of State, "Frequently Asked Questions about the Electoral College" <http://usinfo.state.gov/dhr/democracy/elections/elect_college/faq_electoral_college.html>, viewed 16 December 2005.
[13] On twentieth-century presidents' increasing use of these informal powers, see Richard E. Neustadt, Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan (New York: Free Press, 1990).
[14] 2 U.S. 419 (1793).
[15] 60 U.S. 393 (1857).
[16] 157 U.S. 429 (1895).
[17] 400 U.S. 112 (1970).
[18] Several scholars have also made a case for the inclusion in this list of several other amendments that could be seen as overturning Supreme Court decisions. Thus, according to Henry J. Abraham, "Some would include the Seventeenth (direct election of U.S. Senators), the Nineteenth (women's suffrage, 1920), and the Twenty-Fourth (abolition of the poll tax in federal elections)." The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France, 7th ed. (New York: Oxford University Press, 1998), 366.
[19] 74 U.S. 506 (1869); Abraham, The Judicial Process, 343-344.
[20] See B. Ostrom, N. Kauder, and R. LaFountain, Examining the Work of State Courts, 2002: A National Perspective from the Court Statistics Project (Williamsburg, VA: National Center for State Courts, 2003).
[21] See G. Alan Tarr, Understanding State Constitutions (Princeton, NJ: Princeton University Press, 1998); John J. Dinan, The American State Constitutional Tradition (Lawrence: University Press of Kansas, 2006).
[22] 377 U.S. 533 (1964).
[23] See Chandler Davidson, "The Voting Rights Act: A Brief History," Controversies in Minority Voting: The Voting Rights Act in Perspective, ed. Bernard Grofman and Chandler Davidson (Washington, DC: The Brookings Institution, 1992), pp. 7-51.
[24] See The Book of the States, 2003, vol. 35 (Lexington, KY: Council of State Governments, 2003), 584-606.
[25] For the complete story, see Martha A. Derthick, Up in Smoke: From Legislation to Litigation in Tobacco Politics, 2nd ed. (Washington, DC: Congressional Quarterly Press, 2005).
[26] The Book of the States, 2003, pp. 199-200.
[27] Ibid.,188-189.
[28] 505 U.S. 144.
[29] 521 U.S. 898.
[30] 483 U.S. 203.
[31] Goodridge v. Department of Public Health, 440 Mass. 309 (2003).
[32] The Book of the States, 2003, 241-242.
[33] U.S. Bureau of the Census, Governments Division, Federal, State and Local Governments: 2002 Census of Governments, <http://www.census.gov/govs/www/cog2002.html>, viewed 16 December 2005.
[34] U.S. Department of the Interior, DOI Quick Facts, 29 February 2004; <http://www.doiu.nbc.gov/orientation/facts2.cfm>, viewed 16 December 2005.
[35] See David E. Wilkins and Keith Richotte, "The Rehnquist Court and Indigenous Rights," Publius: The Journal of Federalism 33 (Summer 2003): 83-110.
[36] See Ann O'M. Bowman, "Trends and Issues in Interstate Cooperation," Book of the States, 2004, vol. 36 (Lexington, KY: Council of State Governments, 2004), 34-40.
[37] Raymond Hernandez and Al Baker, "Governors Join as 'Big Four' to Pool Clout," New York Times, 20 July 2004, 1.

[38] See Timothy J. Conlan, From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform (Washington, DC: The Brookings Institution Press, 1998).
[39] Adrienne Koch, ed., Madison's Notes of Debates in the Federal Convention of 1787 (New York: W.W. Norton, 1966), 89.
[40] These developments are detailed in U.S. Advisory Commission on Intergovernmental Relations, Regulatory Federalism: Policy, Process, Impact and Reform (Washington, DC: ACIR, 1984); U.S. Advisory Commission on Intergovernmental Relations, Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues (Washington, DC: ACIR, 1992); U.S. Advisory Commission on Intergovernmental Relations, Federal Regulation of State and Local Governments: The Mixed Record of the 1980s (Washington, DC: ACIR, 1993); John Kincaid, "Trends in Federalism: Continuity, Change and Polarization," Book of the States, 2004, 21-27.
[41] For an assessment of these various and conflicting trends in regard to federalism in the contemporary era, see Martha Derthick, Keeping the Compound Republic: Essays on American Federalism (Washington, DC: The Brookings Institution Press, 2001), 153-161.
[42] For a representative critique of the Electoral College, see George C. Edwards III, Why the Electoral College is Bad for America (New Haven, CT: Yale University Press, 2004). For a defence, see Judith A. Best, "Presidential Selection: Complex Problems and Simple Solutions," Political Science Quarterly 119 (Spring 2004): 39-59.
[43] On the uncompetitive nature of recent U.S. House elections, see Sam Hirsch, "The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Redistricting," Election Law Journal 2 (2003): 179-216.
[44] For an analysis of these various redistricting mechanisms, see Michael McDonald, "Comparative United States Redistricting Institutions," State Politics and Policy Quarterly 4 (Winter 2004): 371-395.
[45] For assessments of the effects of these decisions, see John Dinan, "Congressional Responses to the Rehnquist Court's Federalism Decisions," Publius: The Journal of Federalism 32 (Summer 2002): 1-24; John Dinan, "Consequences of the Rehnquist Court's Federalism Decisions for Congressional Lawmaking," Publius: The Journal of Federalism 34 (Spring 2004): 39-67.