**Spring Final Exam Review**

**: Institutions: Presidency, Bureaucracy, Civil Rights and Liberties, and the Courts**

President

* Requirements for office

1. Natural born citizen
2. At least 35 years old
3. Resident of America for at least 14 years

* Powers as Commander in Chief (civilian power over military)

1. Head of Army and Navy
2. Head of National Guard

* Powers as Chief Executive of Government

1. “Faithfully execute” the laws
2. require opinions of heads of agencies
3. grant pardons except in cases of impeachment
4. nominate judges to federal courts and nominate cabinet (confirmed by senate)
5. call for special session of congress

* Powers in Foreign Affairs

1. appoint ambassadors
2. make treaties (to be confirmed by senate)
3. send troops anywhere in the world if Congress authorizes it or during national emergency (War Powers Act) The president has 48 hours to justify in writing to congress why troops were sent, and 60 days before he must withdraw troops (unless congress extends time)

* Legislative Powers

1. Give State of the Union address to Congress to push his agenda
2. recommend and suggest bills for congress
3. call special sessions of congress
4. veto bill (can be overturned by 2/3 of congress)
5. pocket veto – not signing a bill within 10 days and having Congress adjourn

* Cabinet – president picks (senate confirms) the heads of the 15 most important agencies, these agencies help execute the law

1. Department of Defense, Department of State, Department of Treasury…
2. **Office of Management and Budget** – writes budget (must be confirmed by the senate)

* **Council of economic advisers** – part of executive office, help advise the president on economic issues
* Informal Powers of the President

1. **Executive orders** – orders written by president or agency that have the weight of law. There are several ways to undo executive orders: president can rescind it, next president can rescind it, the supreme court can rule it unconstitutional
2. **Executive privilege** – right of president to keep certain documents private if pertaining to national security (in *USA vs. Nixon* the supreme court ruled that executive privilege is NOT unlimited)
3. **Agenda Setting** – president sets out the legislation he wants passed (he uses his bully pulpit)
4. **Impoundment** – ability to refuse to spend money appropriated by congress (this was ruled unconstitutional)

**Unit Five: The Bureaucracy**

* Bureaucracy – administrative system that divides work into specific departments carried out by non-elected officials
* The bureaucracy remains politically neutral through the **Hatch Act,** which bats bureaucrats from running for public office, making political speeches, or soliciting campaign funds from subordinates
* The bureaucracy has grown tremendously over the past 100 years, taking on more and more responsibilities
* Currently it employs 4 million people, 2.8 are civil servants, the rest are military
* Many other people are indirectly employed by the federal government
* The biggest department is the Department of Defense
* Over time, the bureaucracy has increased its **discretionary authority –** its power to choose course of action and make policies not explicitly spelled out by laws
* Many federal officials belong to the **competitive civil service –** government offices to which people are appointed on the basis of merit (by taking an exam); this ended the “spoils system” where government jobs were given in exchange for political support; managed by the **Office of Personnel Management (OPM)**
* It is very difficult to fire a bureaucrat
* At the higher levels there are more whites than African Americans, and there are more men than women
* Often many departments are responsible for similar tasks, there are many procedures bureaucrats must go through to do anything
* **Red Tape** – complex rules and procedures that must be followed to get stuff done
* Many people are critical of the large amounts of waste (pork) in the bureaucracy
* **Iron Triangle:** informal alliances that work together to formulate and implement policy in their area of interest; they are made up of:

1) particular industry and its lobbyists

2) the congressional committee dealing with that industry

3) the agency that is actually affected

* **Alliance** (or **issue**) **network:** coalitions of interest groups, members of Congress, and bureaucrats form a close working relationship (more complicated than a simple iron triangle)
* **Deregulation:** removing government restrictions and regulations; deregulation has occurred recently in the telecommunications and transportation industries
* The bureaucracy has 3 main roles:
  1. **Implementation** – carry out laws, executive orders (homeland security enforces airport security laws)
  2. **Administration** – routine administrative work (social security administration sends out social security checks, postal service delivers mail)
  3. **Regulation** – issue rules and regulations that impact the public (EPA sets out standards for clean air and water)

The Structure of the Bureaucracy

|  |  |  |
| --- | --- | --- |
| Component | Characteristics | Examples |
| Cabinet Departments | Comprised of the 15 main departments. Headed up by secretaries, secretaries are appointed by president, confirmed by senate. Each has its own budget | Department of Defense  Department of Treasury  Department of State |
| Independent Executive Agencies | Perform services on behalf of government. These are established by Congress outside of the Executive Branch | Social Security Administration  Central Intelligence Agency  Environmental Protection Agency |
| Independent Regulatory Commissions | Regulate economic activities, operate independently. Once appointed, leaders cannot be removed without cause. Leaders serve fixed terms  **Quasi-Legislative Agencies:** independent agencies responsible for filling in jurisdiction gaps and writing rules  **Quasi-Judicial Agencies:** responsible for rule enforcement and punishing violators | **Federal Reserve Board**  Federal Communications Commission (FCC)  **Federal Trade Commission (FTC)**  Interstate Commerce Commission (phased out)  Securities and Exchange Commission (SEC) |
| Government Corporations | Businesses established by government, serve a public need, intended to be profitable | US Postal Service  Amtrak  Corporation for Public Broadcasting |

Oversight

|  |  |  |
| --- | --- | --- |
| Presidential Oversight | Congressional Oversight | Judicial Oversight |
| The president controls the agencies’ budget access. President appoints heads to departments and can issue executive orders | Congress can create/abolish agencies. Senate confirms all presidential appointees to the bureaucracy. Congress must **authorize** agencies to spend money. Congress must also **appropriate** (fund) all government agencies and programs. In some cases congress may use **committee clearance** – the ability of a committee to review and approve decisions of agencies. Congress may hold **committee hearings** to hold agencies responsible, congress may also launch investigations of the bureaucracy. Congress can punish agencies by cutting their funding. | Federal Courts can use their power of judicial review to determine whether an act taken by a department was unconstitutional |

**The Judicial Branch and Civil Liberties**

* The judicial branch was never expected to grow as powerful as other branches
* 1787-1865 – Court asserts federal supremacy
* 1865-1937 – Court puts restrictions on government
* 1937-2010 – Court deals primarily with individual freedoms
* **Criminal Law –** type of law dealing with crimes and their punishments
  + Protects interests of state (state vs. individual)
  + Between prosecutor (government) and defendant
  + Defendant must be guilty “beyond reasonable doubt” to be convicted
  + Conviction results in removal of “life, liberty, or property”
* **Civil Law** – type of law dealing with the rights and relationships of citizens
  + Protects interests of individual (individual vs. individual)
  + Between plaintiff and defendant
  + A preponderance of evidence (above 50%) is necessary
  + If convicted, there are monetary penalities
* Based on principle of **judicial review** – allows judges to interpret the Constitution and deem something unconstitutional
* **Stare Decisis** – the rule of precedent, whereby a rule or law contained in a judicial decision is viewed as binding on judges whenever the same question is raised “let the decision stand”
* **Strict-constructionist approach –** the view that judges should decide cases strictly on the basis of the language of the laws and the constitution
* **Judicial Restraint –** principle that courts will not overturn previous decisions
* **Activist approach –** the view that judges should discern the general principles underlying the constitution, and apply them to modern circumstances. These justices typically try to overturn precedent

Structure of the Federal Courts

* Each state has at least one district court
* 94 district courts in the 50 states, the District of Columbia and the Commonwealth of Puerto Rico.
* District judges are bound by the precedents of higher courts
* Federal judges are appointed by the president, and confirmed by the senate
* If for whatever reason the supreme court is tied, then the precedent set forth by the previous court is maintained WITHIN THAT DISTRICT
* **District Courts –** the lowest federal courts, where federal trials usually go first, use jury
* **Courts of Appeals (circuit courts)** – Federal courts that hear appeals from district courts, no juries, decisions made by panels of appointed judges. To get here someone must claim that their constitutional rights have been violated
* **Supreme Court –** Hears appeals of appeal court rulings (somebody appeals the decision of the circuit court). 4 of 9 justices must agree to hear case (**writ of certiorari**). Supreme Court has original jurisdiction in cases between states or with foreign ambassadors

**The Supreme Court**

(original and appellate jurisdictions)

**Court of Appeals for the Armed Forces**

And other Legislative Courts

**Court of Appeals for the Federal Circuit**

(specialized appellate jurisdiction)

**12 Courts of Appeals**

(general appellate jurisdiction)

**94 U.S. District Courts**

(original jurisdictions)

Appointing Judges

1. The president’s staff presents him with possible nominees (typically other judges), FBI does background check, president looks at previous record of the individuals, conducts **litmus test** (determines political views), uses **senatorial courtesy** (uses preferences of senators from the district where the judge will serve) and finally selects nominee
2. The Senate Judiciary committee members and staff review candidates, interest groups campaign for/against nominees, senate judiciary committee holds hearing, asking nominee questions, finally votes up/down on whether to send recommendation to the full senate
3. The full senate has open floor debate on nominee, votes on confirmation
4. If confirmed, the judge is given an oath of office by the Chief Justice

* Because judges serve life terms, there is no political pressure on them to rule a certain way, and they are allowed to act independently

The Court

* To apply for writ of certiorari costs $300. A cheaper means is to use **in forma pauperis** – in which poor people have their cases heard in federal court for free
* Sovereign Immunity **–** rule that citizens cannot sue the government without the government’s consent
* Class-action Suit **–** a case brought by someone to help him or her and all others who are similarly situated
* Brief **–** a written statement by an attorney that summarizes a case and the laws and rulings that support it
* **Amicus Curiae –** brief submitted by a third party “friend of the court” (typically an interest group)
* **Opinion of the Court –** a signed opinion by the majority that decided the ruling in a case
* Concurring Opinion **–** a signed opinion that agrees with majority for other reasons
* **Dissenting Opinion –** a signed opinion from the justices on the losing side

Civil Liberties

* **Civil Liberties –** freedoms protected against government restraint, secured by 1st, 14th, and 15th amendments
* **Due Process Clause –** denies government the right to deny people of life, liberty, or property without due process of law (trial)
* **Selective Incorporation –** the process by which individual liberties originally only applied to the federal government are applied to the states (through the due process clause of the 14th amendment)
* **Equal Protection of the Law –** a standard of equal treatment for all Americans
* **Freedom of Expression –** right of people to speak, punish, assemble, and petition
* **Non-protected Speech –** libel, obscenity, fighting words, and commercial speech do not receive first amendment protection
* **Freedom of Religion –** people shall be free to exercise their own religion (**free exercise clause)** and government cannot establish an official religion (**establishment clause)**
* **Exclusionary Rule –** evidence that is obtained through illegal means cannot be used. This means that police can only conduct searches if they have search warrants and there is probable cause (4th amendment)
* No self-incrimination, right to a trial (**5th amendment**)

Notable Cases (highlighted cases especially important)

|  |  |
| --- | --- |
| Marbury v. Madison | Established Judicial Review |
| McCulloch v. Maryland | Established federal supremacy over states |
| Gibbons v. Ogden | Commerce Clause gives congress broad regulatory power |
| Dred Scott v. Sanford | Slaves are property, not citizens |
| Plessy v. Ferguson | “Separate but equal” is ok, allows for segregation |
| Schenk v. USA | Government can limit speech – “clear and present danger test” |
| Gitlow v. New York | Limits on speech if it threatens government (anarchy) |
| Korematsu v. USA | Government can detain citizens in emergencies |
| Brown v. Board of Ed | Overturned Plessy, rules segregation is unconstitutional |
| Mapp v. Ohio | Search warrants needed, otherwise evidence is thrown out |
| Baker v. Carr | Apportionment of districts must be as fair as possible “one man, one vote” |
| Engel v. Vitale | No school-led daily player allowed in public schools |
| Gideon v. Wainwright | States must provide attorneys to defendants |
| Griswold v. Connecticut | Information about birth control is protected under **right to privacy** |
| Miranda v. Arizona | Police must inform suspects of their rights (Miranda rights) |
| Terry v. Ohio | Police can search and seize with probable cause |
| Lemon v. Kurtzman | Some government aid to church schools is allowed as long as its fair to schools of all faiths. (Lemon test) The lemon test is the standard set by the Supreme Court to measure the constitutionality of state laws in regard to freedom of religion |
| NY Times v. USA (aka Pentagon Papers) | President cannot withhold pentagon papers from the press (no unlimited right to executive privilege) |
| Miller v. California | Obscenity is not protected under freedom of speech |
| Roe v. Wade | First trimester abortions are ok |
| US v. Nixon | Executive privilege is not unlimited |
| Gregg v. Georgia | Death penalty is ok |
| Buckley v. Valeo | Campaign money limits, independent expenditures ok |
| Texas v. Johnson | Flag burning is ok, freedom of expression (**symbolic speech**) |
| Allegany v. ACLU | Courts cannot prominently display religious symbols |
| Loving v. Virginia | Bi-racial marriage is ok |

**State and Local Govt Final Exam Review**

**I. STUDYING STATE AND LOCAL GOVERNMENTS IN THE TWENTY-FIRST CENTURY**

1. **From Sewers to Science: The Functions of State and Local Governments**

State and local governments must perform:

* + - efficiently.
    - effectively.
    - equitably.
    - **Evidence-based practices:** Making decisions based on the best research findings available.

1. **Our Approach**
   * + **Capacity:** Ability to respond effectively and efficiently and to manage conflict.
     + **Jurisdiction:** Territorial range of government authority.
     + **Federalism:** System of government that divides power between central and regional governments.

**II. THE CAPACITY OF STATES AND LOCALITIES**

* + - Innovation
    - Experimentation
    - **Proactive:** An anticipatory condition, as opposed to a reactive one.

1. **How States and Localities Increased Their Capacity**
   * + Modernized the constitution
     + Amended the constitution
     + Strengthened the power of the governor by statute
     + Improved bureaucracy
     + Unified the court system
2. **Increased Capacity and Improved Performance**

**Improved Revenue Systems**

* + - Increased user fees, gas taxes, and sin taxes
    - **Rainy day funds:** Money set aside for use in bad financial times.
    - Legalized gambling
    - Expanded sales tax

**Expanding the Scope of State Operations**

**Faster Diffusion of Innovations**

**Interjurisdictional Cooperation**

**Increased National-State Conflict**

**\* It’s Your Turn: Should Governments Have Innovation Offices?**

1. **Challenges Facing State and Local Governments**
2. **Fiscal Stress**
   * + **Downsize:** Reduce the size and cost of government.
3. **Increased Interjurisdictional Conflict**
   * + **Rebrand:** Change how a state or city is perceived.
4. **Political Corruption**

**\* Controversies in States and Localities: Creating an Image, Rebranding a Place**

**III. THE PEOPLE: DESIGNERS AND CONSUMERS OF GOVERNMENT**

1. **Ethnic-Racial Composition**
   * + Development of cultural diversity
     + Problem of illegal immigration
2. **Population Growth and Migration**
   * + Shift in power from **Frostbelt** to **Sunbelt**
     + **Sunbelt**: An unofficial region consisting of the South and West.
     + **Frostbelt**: An unofficial region consisting of the Northeast and Midwest.
3. **Political Culture**
   * + **Political Culture:** Attitudes, values, and beliefs that people hold toward government.
       - * **Moralistic**: Politics is viewed as an effort to establish a good and just society.
         * **Traditionalistic**: Politics is viewed as a method for preserving the existing order.
         * **Individualistic**: Politics is thought of as a marketplace where people compete to achieve private goals.
4. **Culture Wars**
   * + **Culture wars:** Political conflicts that emerge from deeply held moral values.
     + Same-sex marriage
     + Religious freedom
     + COVID-19 poses public health against personal freedom.

**IV. LINKING CAPACITY TO RESULTS**

* + - Diversity
    - Competitiveness
    - Resiliency

Vocabulary

**capacity** The ability of government to respond effectively to change, make decisions efficiently and responsibly, and manage conflict.

**culture** A set of attitudes, beliefs, and sentiments in which politics is viewed as an effort to establish a good and just society.

**culture wars** Political conflicts that emerge from deeply held moral values.

**downsize** To reduce the size and cost of something, especially government.

**evidence-based practices** Making decisions based on the best research findings available.

**federalism** A system of government in which powers are divided between a central (national) government and regional (state) governments.

**Frostbelt** An unofficial region of the United States, generally comprising the Northeast and the Midwest. The label *Rustbelt* is sometimes used as a synonym.

**individualistic political culture** A set of attitudes, beliefs, and sentiments in which politics is thought of as a marketplace in which people compete to achieve private goods.

**jurisdiction** The territorial range of government authority; “jurisdiction” is sometimes used as a synonym for “city” or “town.”

**moralistic political culture** A set of attitudes, beliefs, and sentiments in which politics is viewed as an effort to establish a good and just society.

**political culture** The attitudes, values, and beliefs that people hold toward government.

**proactive** An anticipatory condition, as opposed to a reactive one.

**rainy day funds** Money set aside when a state’s finances are healthy for use when state revenues decline. Formally called “budget stabilization funds.”

**rebrand** An effort to change how a state or city is perceived by the public, to create a new image of a place.

**Sunbelt** An unofficial region of the United States, generally consisting of the South and the West.

**traditionalistic political culture** A set of attitudes, beliefs, and sentiments in which politics is viewed as a method of maintaining the existing order.

**transparency** A characteristic of a government that is open and understandable, one in which officials are accountable to the public.

States and Federalism

**I. The CONCEPT OF FEDERALISM**

* 1. **Unitary, Confederate, and Federal Systems**
* **Unitary system:** All government authority is derived from one centralized government.
* **Confederation:** A league of sovereign states in which a limited central government exercises few independent powers.
* **Federal System:** A means of dividing the power and functions of government between a central government and a specified number of geographically defined regional jurisdictions.
  1. **The Advantages and Disadvantages of Federalism**

**Strengths**

* A federal system helps manage social and political conflict.
* Federalism promotes administrative efficiency.
* Federalism encourages innovation.
* A federal system maximizes political participation in government.

**Weaknesses**

* Conflicts can lead to regional or ethnic strife.
* A federal system can create coordination problems across governments and boundaries.
* Obstructions and delays can cause ineffective programs and priorities.
* Broad participation encourages local biases harmful to national interests.

**II. THE HISTORY OF U.S. FEDERALISM**

1. **Early History**

* Followers of Thomas Hobbes
* Committed to controlling factions

1. **The Move Toward Federalism**
2. **The Articles of Confederation**

* Federal government was unable to carry out responsibilities.
* National government could not regulate commerce.
* Anarchy and warfare between states were a concern.

1. **The Constitutional Convention**

* Federalism with features of both unitary and confederate governments
* Willing to compromise that led to federalism
* Developed a system of enumerated (delegated) powers and concurrent powers

1. **State-Centered Federalism**

* Early years of nation’s **state-centered federalism**
* **Reserved powers of Tenth Amendment**
* **Compact theory**
* Developed over time into **nation-centered federalism**

1. **The Growth of National Power Through the Constitution and the Judiciary**
2. **The National Supremacy Clause**

* **National supremacy clause:** National laws superior to state laws.

1. **The Necessary and Proper Clause**

* **Necessary and proper clause:** Gives Congress the power to enact all laws necessary and proper to carry out its responsibilities.
* **Implied powers:** Not expressly granted by the Constitution but inferred.

1. **The Commerce Clause**

* **Commerce clause:** Gives Congress the power to regulate trade with foreign countries and among states.

1. **The General Welfare Clause**

* **General welfare clause:** Provides for the general welfare of the United States.

1. **The Fourteenth Amendment**

* **The Fourteenth Amendment:** This amendment contains citizenship rights, due process, and equal protection provisions that states must apply to all citizens.

**\* Controversies in States and Localities: What Level of Government Should Take the Lead for Pandemic Threats?**

1. **The Growth of National Power Through Congress**
2. **Taxing and Spending Power**

* **Sixteenth Amendment**

1. **Federal Preemption**

* **Federal preemption:** Principle that national laws take precedence over state laws.

1. **Smothering (Then Resuscitating) the Tenth (and Eleventh) Amendments**
2. **Federalism and the Courts Today**

**III. MODELS OF FEDERALISM**

1. **Dual Federalism (1787–1932)**

* **Dual federalism:** Model in which the responsibilities and activities of the national and state governments are separate and distinct.

1. **Cooperative Federalism (1933–1964)**

* **Cooperative federalism:** A model of federalism that stresses the linkages and joint arrangements among the three levels of government.

1. **Contemporary Variations on Cooperative Federalism (Since 1964)**

* **Creative federalism:** A model of cooperative federalism in which many new grants-in-aid, including direct national–local financial arrangements, were made.
* **New federalism:** A model that represents a return of powers and responsibilities to the states.
* **Devolution:** The delegating of power and programs from the federal government to state and local governments.
* **Coercive federalism:** A form of federalism in which the national government uses regulations, mandates, conditions, preemptions, and other actions to impose national priorities on the states.

**IV. INTERGOVERNMENTAL RELATIONS**

1. **Tribal Governments**
2. **Interstate Cooperation**
3. **Cooperation under the Constitution**

* The full faith and credit clause
* The interstate rendition clause
* The privileges and immunities clause
* Interstate compact clause

1. **Informal Cooperation among the States**
2. **Intergovernmental Financial Relations**

* **Grant-in-aid:** An intergovernmental transfer of funds or other assets, subject to conditions.

1. **Discretion of Recipients**

* **Categorical grants:** A form of financial aid from one level of government to another to be used for a narrowly defined purpose.
* **Block grants:** A form of financial aid from one level of government to another for use in a broad, functional area.

1. **Conditions for Grants**

* **Formula grant:** A funding mechanism that automatically allocates monies based on conditions in the recipient government.
* **Project grant:** A funding mechanism that awards monies based on the strength of an applicant government’s proposal.

**V. FEDERAL PURSE STRINGS**

1. **The Importance of Federal Funds**

* Federal grants are an important component of state and local revenue.
* States battle each other for national money.

1. **Here’s the Money and Here’s What You Must Do with It: Mandates and Preemptions**

* **Federal mandate:** A requirement that a state or local government undertakes a specific activity or provides a particular service as a condition of funding.
* Set-asides

VI. THE FUTURE OF FEDERALISM

* Increased state role
* Innovation
* Development
* Implementing

**Vocabulary**

**block grant** A form of financial aid from one level of government to another for use in a broad, functional area.

**categorical grant** A form of financial aid from one level of government to another to be used for a narrowly defined purpose.

**coercive federalism** A form of federalism in which the national government uses regulations, mandates, conditions, preemptions, and other actions to impose national priorities on the states.

**commerce clause** Part of Article I, Section 8, of the U.S. Constitution, which gives Congress the power to regulate trade with foreign countries and among the states.

**compact theory** A theory of federalism that became the foundation for states’ rights arguments.

**concurrent powers** Those granted by the Constitution to both the national and the state governments.

**confederation** A league of sovereign states in which a limited central government exercises few independent powers.

**cooperative federalism** A model of federalism that stresses the linkages and joint arrangements among the three levels of government.

**creative federalism** A model of cooperative federalism in which many new grants-in-aid, including direct national–local financial arrangements, were made.

**devolution** The delegating of power and programs from the federal government to state and local governments.

**dual federalism** Model in which the responsibilities and activities of the national and state governments are separate and distinct.

**enumerated (delegated) powers** Those expressly given to the national government, primarily in Article I, Section 8, of the Constitution.

**federal mandate** A requirement that a state or local government undertakes a specific activity or provides a particular service as a condition of funding.

**federal preemption** The principle that national laws take precedence over state laws.

**federal system** A means of dividing the power and functions of government between a central government and a specified number of geographically defined regional jurisdictions.

**formula grant** A funding mechanism that automatically allocates monies based on conditions in the recipient government.

**Fourteenth Amendment** Enacted in 1868, this amendment contains citizenship rights, due process, and equal protection provisions that states must apply to all citizens.

**general welfare clause** The portion of Article I, Section 8, of the Constitution that provides for the general welfare of the United States.

**grant-in-aid** An intergovernmental transfer of funds or other assets, subject to conditions.

**implied powers** Those that are not expressly granted by the Constitution but that are inferred from the enumerated powers.

**nation-centered federalism** Theory holding that the national government is dominant over the states.

**national supremacy clause** Article VI of the Constitution, which makes national laws superior to state laws.

**necessary and proper clause** Portion of Article I, Section 8, of the Constitution that authorizes Congress to enact all laws “necessary and proper” to carry out its responsibilities.

**new federalism** A model that represents a return of powers and responsibilities to the states.

**project grant** A funding mechanism that awards monies based on the strength of an applicant government’s proposal.

**reserved powers** Those powers residing with the states by virtue of the Tenth Amendment.

**Sixteenth Amendment** Enacted in 1913, this amendment grants the national government the power to levy income taxes.

**state-centered federalism** Theory holding that the national government represents a voluntary compact or agreement between the states, which retain a dominant position.

**Tenth Amendment** The amendment to the Constitution, ratified in 1791, reserving powers to the states.

**unitary system** One in which all government authority is derived from a central government.

State Constitutions

**I. THE HISTORY AND DEVELOPMENT OF THE FUNDAMENTAL DOCUMENTS**

* + - * + Constitutions represent the fundamental law of a state, superior to statutory law.

**II. THE EVOLUTION OF STATE CONSTITUTIONS**

1. **The First State Constitutions**
   * + - * Natural rights and popular sovereignty identified
         * Territorial integrity not well defined
         * Extensions of colonial charters
2. **Legislative Supremacy**
   * + - * **Legislative supremacy:** The legislature’s dominance of the other two branches of government.
3. **The Growth of Executive Power**

**III. WEAKNESSES OF CONSTITUTIONS**

1. **Excessive Length**
2. **Problems of Substance**
   * + - * The long ballot
         * A glut of executive boards and commissions
         * A swamp of local governments
         * Restrictions on local governmental authority
         * Discriminatory treatment

**IV. CONSTITUTIONAL REFORM**

* + - * + **Model State Constitution** developed in 1921
* **Two state constitutional traditions are evident today:**
* **Positive-law tradition:** A state constitutional tradition based on detailed provisions and procedure.
* **Higher-law tradition:** A state constitutional tradition based on basic and enduring principles that reach beyond statutory law.

1. **The Essential State Constitution**

**Bill of Rights**

**\* Controversies in States and Localities: New States’ Rights?**

**Power of the State**

**Suffrage and Elections**

**The Legislative Branch**

**The Executive Branch**

**The Judicial Branch**

**Finance**

**Local Government**

**Public Education**

**Civil Service**

**Intergovernmental Relations**

**Constitutional Revision**

**Constitutions Today**

**V. METHODS FOR CONSTITUTIONAL CHANGE**

1. **Informal Constitutional Change**
   * + - * One informal and four formal methods for amending state constitution exist.

* The informal route is **interpretation**.
* **Judicial review:** The power of the U.S. Supreme Court or state supreme courts to declare unconstitutional actions of the executive and legislative branches, as well as decisions of lower courts.

**\* It’s Your Turn: Should Washington, DC, Become the 51stState?**

1. **Formal Constitutional Change**
   * + - * **Ratification:** The formal approval of a constitution or constitutional amendment by a majority of the voters of a state.
2. **Legislative Proposal**
   * + - * **Legislative proposal:** The most common means of amending a state constitution, wherein the legislature proposes a revision, usually by a two-thirds majority.
3. **Initiative**
   * + - * **Initiative:** A proposed law or constitutional amendment that is placed on the ballot by citizen petition.

* **Direct initiative:** A procedure by which the voters of a jurisdiction propose the passage of constitutional amendments, state laws, or local ordinances, bypassing the legislative body.
* **Indirect initiative:** Similar to the direct initiative, except that the voter-initiated proposal must be submitted to the legislature before going on the ballot for voter approval.

1. **Constitutional Convention**
   * + - * **Constitutional convention:** An assembly of delegates chosen by popular election or appointed by the legislature or the governor to revise an existing constitution or to create a new one.
2. **Constitutional Commission**
   * + - * **Constitutional commission:** Often called a *study commission*, it is usually established to study an existing constitution to recommend changes to the legislature or to the voters.

**VI. STATE RESPONSIVENESS AND CONSTITUTIONAL REFORM**

* + - * + Constitutions are designed to meet the needs of the state.
        + Constitutions reflect the political culture, history, and economics of the state.
        + State constitutions were the original guardians of individual rights.
        + Newer documents are more modernized.
        + Source of change in governmental behavior

**Vocabulary**

**constitutional commission** Often called a *study commission*, it is usually established to study an existing constitution to recommend changes to the legislature or to the voters.

**constitutional convention** An assembly of delegates chosen by popular election or appointed by the legislature or the governor to revise an existing constitution or to create a new one.

**direct initiative** A procedure by which the voters of a jurisdiction propose the passage of constitutional amendments, state laws, or local ordinances, bypassing the legislative body.

**fundamental law** The basic legal and political document of a state; it prescribes the rules through which government operates.

**higher-law tradition** A state constitutional tradition based on basic and enduring principles that reach beyond statutory law.

**indirect initiative** Similar to the direct initiative, except that the voter-initiated proposal must be submitted to the legislature before going on the ballot for voter approval.

**initiative** A proposed law or constitutional amendment that is placed on the ballot by citizen petition.

**interpretation** An informal means of revising constitutions whereby members of the executive, legislative, or judicial branch apply constitutional principles and law to the everyday affairs of governing.

**judicial review** The power of the U.S. Supreme Court or state supreme courts to declare unconstitutional actions of the executive and legislative branches, as well as decisions of lower courts.

**legislative proposal** The most common means of amending a state constitution, wherein the legislature proposes a revision, usually by a two-thirds majority.

**legislative supremacy** The legislature’s dominance of the other two branches of government.

**Model State Constitution** An ideal of the structure and contents of a state constitution that emphasizes brevity and broad functions and responsibilities of government.

**positive-law tradition** A state constitutional tradition based on detailed provisions and procedure.

**ratification** The formal approval of a constitution or constitutional amendment by a majority of the voters of a state.

St

**State Legislatures**

**I. THE ESSENCE OF LEGISLATURES**

* *Policy making*—enacting laws and allocating funds
* *Representation*—constituency representation as voice and advocate to bureaucracy
* *Oversight*—examining the performance of the bureaucracy
* **Casework:** Legislative assistance on behalf of constituents that have a problem or grievance with a state agency.

**II. LEGISLATIVE DYNAMICS**

* 1. **The Senate and the House**
* Bicameral
* Senate: four-year term; House: two-year term
* Average size: forty members for senate, and hundred members for house
* State legislators in the United States: 7,383
* 1,972 senators; 5,411 representatives
  1. **Legislative Districts**
* Based on population
* Single-member districts
* Few with **multimember districts (MMDs)**

**1. Malapportionment**

* **Malapportionment:** Skewed legislative districts.
* **Reapportionment:** Reassignment of seats.

**2. Redrawing District Lines**

* **Redistrict:** Redrawing of district lines.
* **Gerrymander:** Design districts to favor a political party.

**\* Controversies in States and Localities: Do-It-Yourself e-Redistricting**

* 1. **Compensation**
* As low as $100 and up to $100,000 plus
* Large states higher; small states lesser
* Increase cost for staff, building maintenance, and technology
  1. **Leadership**
* Senate
* President
* President pro tempore
* House
* Speaker
* Speaker pro tempore
* **Lame duck:** An elected official who cannot serve beyond the current term of office.
* Leaders responsible for moving legislation through process
* More women leaders today than in past
* Leadership linked to political parties
* More competitive parties; more partisan legislature
* Leaders today do fundraising for their party.
* **War chest:** A stash of funds accumulated in advance of a campaign.
  1. **The Committee System**
* Functions
* Hear testimony.
* Amend bills.
* Approve or reject bills.
* Committees are divided into subcommittees.
* Committee system produces knowledge and expertise in members.
* Job of committee is to get its major legislation passed on floor.

**III. LEGISLATIVE BEHAVIOR**

1. **Norms of the Institution**
2. **Legislative Cue Taking and Decision Making**

* Political party
* Personal conscience
* Interest groups
* Committee leaders
* Colleagues
* Constituents
* **Delegate:** A legislator who functions as their constituency wants.
* **Trustee:** A legislator who votes their conscience and best judgment.
* **Politico:** A legislator who functions as either a delegate or a trustee depending on circumstances.

**IV. HOW A BILL BECOMES A LAW (OR NOT)**

* Bill must pass both houses
* Long and difficult process
* Results in conflict at each step of the process
* Has resulted in some reform
* **Policy entrepreneur:** People who bring new ideas to a policy-making body.

**V. LEGISLATIVE REFORM AND CAPACITY**

1. **The Ideal Legislature**

* Functional
* Accountable
* Informed
* Independent
* Representative

1. **The Effects of Reform**

* State legislatures becoming more like Congress
* Less turnover
* More functional, accountable, informed, independent, and representative (FAIIR)

**\* It’s Your Turn: Should State Legislatures Be More Professionalized?**

1. **Term Limits**

* Term limits have produced changes.
* Limits the power of veteran legislators
* Increase in number of first-term legislators
* Increase in number of underrepresented groups
* Shift in power to governor and lobbyists

**VI. RELATIONSHIP WITH THE EXECUTIVE BRANCH**

1. **Dealing with the Governor**

* Institutional conflict occurs due to divided government.
* Governor has media advantage.
* Governors who served in the legislature have easier time.

1. **Overseeing the Bureaucracy**

**1. Policy and Program Evaluation**

* Select auditors
* Oversee reviews

**2. Legislative Review of Administrative Rules**

* Gatekeeper role of the legislature
* Way to avoid administrative abuses
* **Legislative veto** ruled unconstitutional at national level but used in some states

**3. Sunset Legislation**

* **Sunset legislation:** Automatic expiration dates for specified agencies and organizations.

**4. Review and Control of Federal Funds**

* Attempted oversight
* Can investigate

**VII. LEGISLATURES AND CAPACITY**

* Dynamic institutions
* Have undergone modernization

Concern that legislatures are being marginalized in some states due to citizen initiative

**Vocabulary**

**legislative veto** An action whereby the legislature overturns a state agency’s rules or regulations.

**malapportionment** Skewed legislative districts that violate the “one person, one vote” ideal.

**multimember districts (MMDs)** Legislative districts containing more than one seat.

**policy entrepreneurs** People who bring new ideas to a policy-making body.

**politico** A legislator who functions as either a delegate or a trustee, as circumstances dictate.

**reapportionment** The reallocation of seats in a legislative assembly.

**redistrict** The redrawing of legislative district lines to conform as closely as possible to the “one person, one vote” ideal.

**sunset laws** Statutes that set automatic expiration dates for specified agencies and other organizations.

**trustee** A legislator who votes according to his or her conscience and best judgment.

**war chest** A stash of funds accumulated in advance of a campaign.

**I. THE OFFICE OF GOVERNOR**

1. **History of the Office**

* Originally elected by the legislature
* Plural executive in Pennsylvania and Georgia
* Office strengthened by:
  + - longer term.
    - popular vote.
    - veto power.

1. **Today’s Governors**

* High pressure; physically and emotionally demanding job
* Expected to be skilled administrator and politician
* Hard on personal life
* Office attracting well-qualified politicians
* Becoming more representative of population with more women and Latinos

1. **Getting There: Gubernatorial Campaigns**

* Campaigns are expensive.
* Money is the most important factor in winning office.
* Incumbency is an important aspect of candidate’s profile.

**\* Controversies in States and Localities: Is Private Sector Experience the Best Preparation for the Governorship?**

**II. BEING GOVERNOR: DUTIES AND RESPONSIBILITIES**

1. **Developing and Making Policy**

* Initiator of public policy
* Must deal with certain issues, such as education, health, and welfare, each year
* Aided by knowledgeable staff in public policy

1. **Marshaling Legislative Action**

* Governor needs to negotiate with key legislators.

**Relationship with the Legislature**

* Partisanship a factor
* Personality clashes often leads to conflict
* Different constituencies
* Effected by size of majority and minority parties, personalities, nearness of an election year

**Executive Influence on the Legislative Agenda**

* Dominates policy agenda
* State of the State address important
* Use of pork barrel politics to win support
* **Pork barrel:** Favoritism by a governor or other elected official in distributing government monies or other resources to a particular program, jurisdiction, or individual.
* Can use staff to lobby legislature

1. **Governors and the Courts**
2. **Administering the Executive Branch**

* Chief administrator
  + - Establishes priorities
    - Often criticized by interest groups and legislators
    - Must spend long hours at job

1. **Restraints on Management**
   * + Separation of powers limits gubernatorial powers.
     + Administrative decisions often require legislative approval.
     + Ability to hire and fire is limited by courts, merit-system rules, and collective bargaining contracts.
2. **Governor as Managers**
   * + Differing management styles
     + Potential job liability
     + Expands a lot of political capital
3. **Master of Ceremonies**

* Helps in reelection effort
* Examples:
  + - Cutting ribbons
    - Opening state fair
    - Welcoming dignitaries to state

1. **Coordinating Intergovernmental Relations**

* Point of contact with the national government
* Engage in gubernatorial organizations
* Most have a Washington office

1. **Promoting Economic Development**

* Recruit businesses and tourism
* Attend trade fairs

1. **Leading the Political Party**

* Controls state’s party apparatus
* Influential in nominating candidates
* Helps set public policy agenda

**III. FORMAL AND INFORMAL POWERS OF THE GOVERNOR**

* **Formal powers:** Powers of the governor derived from the state constitution or statute.
* **Informal powers:** Powers of the governor not derived from constitutional or statutory law.

1. **Tenure**

* Duration
* Number of terms
* Both components expanding

1. **Appointment Power**

* Most important administrative power
* Weakened by the plural executive system
* **Plural executive:** More than one member of the executive branch is popularly elected statewide.
* Many state agencies, boards, and commissions not controlled by governor
* Diminishes accountability
* Reformers prefer consolidation

1. **Professional Jobs in State Government**

* Civil service now dominant
* Still some patronage
* **Patronage:** Informal power of a governor to make appointments on the basis of party membership and to dispense contracts or other favors to party supporters.

1. **The Power to Fire**

* Power to fire difficult

**\* It’s Your Turn: Should Executive Branch Officers Be Elected?**

1. **Veto Power**
2. **Types of Vetoes**

* **Package veto:** Reject entire bill.
* **Line item veto:** Reject parts of a bill.
* **Pocket veto:** Refuse to sign bill when legislature adjourned.
* **Executive amendment:** Veto and recommend changes.

1. **Use of the Veto**

* Varies from state to state
* Occurs most often in states with divided government
* Average: about 4 percent of bills that reach the governor’s desk

1. **Budgetary Power**

* Helps set legislative agenda
* Budget requests usually amended by legislature
* Places governor in difficult political position in times of economic austerity

1. **Reorganization Power**

* Historically, this power resided with legislature.
* Some states allow executive orders that enable the governor to make administrative changes.
* **Executive order:** A rule, regulation, or policy issued unilaterally by the governor to change executive branch operations or activities.

1. **The Politics of Reorganization**

* Often results in legislative/executive conflict
* Most reorganization plans rejected

1. **Staffing Power**

* Used for policy analysis and advice
* Liaison with the legislature
* Help with performing all gubernatorial roles
* Average: about sixty-two people
* Led by chief of staff

1. **The Relevance of the Formal Powers**

* Recent partisan turnover in legislature has resulted in review of formal powers in some states.
* Table 7.2: Weakest governors are in Rhode Island, North Carolina, and Oregon; strongest is in Alaska.

**IV. INFORMAL POWERS**

1. **Tools of Persuasion and Leadership**

* Popular support
* Prestige of the office
* Public relations and media skills
* Negotiating and bargaining skills
* Pork barrel and patronage

1. **Characteristics of a Successful Governor**

* Leadership
  + - * Courage
      * Integrity
      * Compassion
* Leadership qualities need to be blended with formal and informal powers of office.
* Need to have limited political agenda

**V. LEAVING OFFICE**

* + - Impeachment
    - Die in office
    - Forced to resign for misconduct
    - Take another position, such as one at national level

**VI. OTHER EXECUTIVE BRANCH OFFICIALS**

1. **Lieutenant Governor**

* The office was created for two reasons:
  + - to provide orderly succession to a governor who is unable to fulfill a term because of death or other reasons, and
    - to provide for an official to assume the responsibilities of the governor when the incumbent is temporarily out of state or incapacitated.
* This office can sometimes be a “springboard” to the governor’s office.
* Confrontation can result when this office is elected independently.

1. **Attorney General (AG)**

* Responsibilities:
  + - Chief legal officer of state
    - Renders written opinions
    - Represents state in cases where the state is a party

1. **Treasurer**

* Responsibilities:
  + - Chief financial officer of state
    - Collects and distributes state funds
    - Signs state employee paychecks

1. **Secretary of State**

* Responsibilities:
  + - Record keeper of state
    - Administers elections
    - Registers corporations, securities, trademarks

**VII. THE CAPABILITY OF U.S. GOVERNORS**

* Performance has increased governor’s power.
* Office is becoming more efficient, effective, accountable, and responsible.
* Reforms have extended the formal powers and improved the performance of office.
* Personal profile of the governor is improving in areas, such as level of education and political experience.

**Vocabulary**

**executive amendment** A type of veto used by the governor to reject a bill and also to recommend changes that would cause the governor to consider the bill’s approval.

**executive order** A rule, regulation, or policy issued unilaterally by the governor to change executive branch operations or activities.

**formal powers** Powers of the governor derived from the state constitution or statute.

**informal powers** Powers of the governor not derived from constitutional or statutory law.

**line item veto** The governor’s formal power to veto separate items in a bill instead of the entire piece of proposed legislation.

**package veto** The governor’s formal power to veto a bill in its entirety.

**patronage** The informal power of a governor (or other officeholder) to make appointments on the basis of party membership and to dispense contracts or other favors to political supporters.

**plural executive** A system in which more than one member of the executive branch is popularly elected on a statewide ballot.

**pocket veto** The governor’s power to withhold approval or disapproval of a bill after the legislature has adjourned for the session, in effect vetoing the measure.

**pork barrel** Favoritism by a governor or other elected official in distributing government monies or other resources to a particular program, jurisdiction, or individual.

**I. PUBLIC EMPLOYEES IN STATE AND LOCAL GOVERNMENTS: WHO THEY ARE, WHAT THEY DO**

* Bureaucracy is paradoxical.
* Bureaucracy is often viewed negatively.
* Public employees often do an outstanding job of enacting public policy.
* Public employees should not be seen as scapegoats for all that is wrong with government.

**\* It’s Your Turn: Take the Children into Custody or Leave Them with Their Mom?**

* Facts about bureaucracy:
* About twenty million people are employed by state and local governments.
* The number of bureaucrats varies from state to state.
* Occupations are widespread, from police to doctors.
* One out of six Americans is a state and local government worker.

**II. BUDGETING IN STATE AND LOCAL GOVERNMENTS**

1. **The Budget Cycle**

* Formulation
* The initial phase of the budget cycle involves demands by groups that want their share.
* The budget includes all who seek government funds.
* Adoption
* Based on history of past budgets
* Often amended to satisfy the powerful
* Execution
* Protect the status quo and balance the budget
* Audit
* Fiscal audits are conducted to verify expenditure records.
* Performance audits examine agency activities to assure government efficiency, effectiveness, and accountability.

1. **The Actors in Budgeting**

* Interest groups
* Testify and lobby to get what they want
* Agencies
* Seek political strategies, such as always asking for more money
* The chief executive
* Designs budget to fit priorities
* The legislature
* Modifies the initiatives of the chief executive
* Reviews agency demands
* Responds to constituent desires

1. **Pervasive Incrementalism**

* Objectives unclear and often in conflict
* Not easy to determine rational process
* Resorts to **incrementalism**—essentially relying on previous budget with marginal changes

1. **Types of Budgets**

**Control Through Line Item Budgets**

* Specifies amount each agency receives
* Accounts for all expenditures
* Shows where money goes

**Budgeting for Performance**

* Allows for more rational and flexible decision making
* Seeks to ensure priorities are carried out
* Implements formal programs and policy evaluations
* **Performance budgeting:** Budgeting that takes into account outcomes.
* **Zero-based budgeting:** Budgeting that requires agencies to justify all expenditures greater than zero.

**Capital Budgets**

* Examines big-ticket purchases, such as hospitals, libraries, and bridges, over long periods of time
* Shows how debt is paid back
* Funded through general obligation bonds

**III. HUMAN RESOURCE POLICY IN STATE AND LOCAL GOVERNMENTS: PATRONAGE VERSUS MERIT**

1. **The Merit System**

* Merit principle is used to determine all personnel decisions.
* **Neutral competence:** Primary criterion for obtaining government jobs.
* Many states have enacted merit-based civil service.
* **Merit system** has had mixed results.

1. **State and Local Advances**

* Improving state and local personnel systems
* Making executive branch more efficient
* Using new methods such as pay-for-performance

1. **Merit System Controversies**
2. **Representative Bureaucracy**

* Bureaucrats have discretion.
* Workforce represents the public it serves.
* It provides symbolic evidence of a democratic form of government.
* Equal employment opportunity is mandated by law.
* A controversial problem is how to *achieve* representation without sacrificing merit.
* **Affirmative action** means hiring groups who have been discriminated against.

1. **Sexual Harassment**

* Sexual harassment can consist of various behaviors:
  + - Unwanted touching or other physical contact of a sexual nature
    - Implicit or overt sexual propositions
    - Extortion of subordinate by supervisor
    - Hostile working environment
* Sexual harassment is widespread in the workplace.
* Much sexual harassment goes unreported.

1. **Unions**

* Unions are a threat to merit principle.
* They are most powerful in Midwest and Northeast.
* About 29 percent of state and 39 percent of local government workers are unionized.
* Unions are most prevalent in education, highway departments, public welfare, police and fire protection, and sanitation.
* Public-employee unions yield considerable power.
* Unions engage in **collective bargaining**, but collective bargaining rights vary by state.
* In *Janus v AFSCME (2017)*, U.S. Supreme Court ruled that automatically collecting union dues from nonunion members was violation of First Amendment rights.

**IV. THE POLITICS OF BUREAUCRACY**

1. **Joining Administration and Politics**

* Bureaucrats are involved in public policy making.
* Civil servants have considerable **bureaucratic discretion.**
* Success of public policy depends on administrators.
* Power is derived from knowledge, expertise, information, and discretionary authority.

**V. NEW PUBLIC MANAGEMENT**

* **New Public Management (NPM):** The argument that government should manage for results, through entrepreneurial activity, privatization, and improvements in efficiency and effectiveness.

1. **Alternative Service Delivery Mechanisms**
2. **Intergovernmental Cooperation**
3. **Coproduction**
4. **Privatization**

* Shift state and local services to the private sector.
* The belief is that privatization will save money.
* Some state and local governments attempt competition among private businesses.
* Results have been mixed.

1. **E-Government and Social Media**

* Use of information technology
* Paperless offices
* Governmental services online
* Broader definition of e-government involves use of all kinds of new technologies to make government more efficient and effective

**VI. THE QUALITY OF PUBLIC ADMINISTRATION**

* Quality has improved.
* It is doing better at managing money, people, infrastructure, and information.
* In partnership with private sector, it is able to achieve more.

**\* Controversies in States and Localities: Social Media: Problematic or Panacea?**

**Vocabulary**

**affirmative action** Special efforts to recruit, hire, and promote members of disadvantaged groups to eliminate the effects of past discrimination.

**bureaucracy** The administrative branch of government, consisting of all executive offices and their workers.

**bureaucratic discretion** The ability of public employees to make decisions interpreting law and administrative regulations.

**capital budget** A budget that plans large expenditures for long-term investments, such as buildings and bridges.

**clientele groups** Groups that benefit from a specific government program, such as contractors and construction firms in state highway department spending programs.

**collective bargaining** A formal arrangement in which representatives of labor and management negotiate wages, benefits, and working conditions.

**coproduction** Service delivery through combined efforts of government, citizens, nonprofits, and/or businesses.

**e-government** The use of information technology to simplify and improve interactions between governments and citizens, firms, public employees, and other entities.

**incrementalism** A decision-making approach in the budgetary process in which the previous year’s expenditures are used as a base for the current year’s budget figures.

**line item budget** A budget that lists detailed expenditure items such as personal computers and paper, with no attention to the goals or objectives of spending.

**merit system** The organization of government personnel to provide for hiring and promotion on the basis of knowledge, skills, and abilities rather than patronage or other influences.

**neutral competence** The concept that public employees should perform their duties competently and without regard for political considerations.

**New Public Management** The argument that government should manage for results, through entrepreneurial activity, privatization, and improvements in efficiency and effectiveness.

**performance budgeting** Budgeting that takes into account the outcomes of government programs.

**representative bureaucracy** The concept that all major groups in society should participate proportionately in government work.

**zero-based budgeting:** Budgeting that requires agencies to justify all expenditures greater than zero.

**I. INTRODUCTION**

* + State supreme courts are policy makers:
    - Final authority on laws and constitution
    - Rule on important questions
    - Protect minority interest
  + The judiciary deals with three types of cases:
    - **Civil case:** Disputes involving individual.
    - **Criminal case:** State against a person.
    - **Administrative case:** Government agency rules challenged.

**II. THE STRUCTURE OF STATE COURT SYSTEMS**

1. **The Two Tiers of Courts**
   * Trial courts
     + Minor—**limited jurisdiction trial courts**
     + **Major trial courts**
   * Appeals courts
     + **Supreme court:** Highest state court.
     + **Intermediate appellate courts:** First appeals level.
2. **Structural Reforms**
   * Most courts have considerable authority.
   * Unification is the goal.
     + Central management—standardization
     + Rulemaking
     + Record keeping
     + Budgeting
     + Personnel management
     + Improvement in information technology
     + Despite consolidation efforts, much about state courts remain decentralized.

**III. HOW JUDGES ARE SELECTED**

1. **Legislative Elections**
   * Used in South Carolina and Virginia
   * Choose former legislators most often
   * Not a popular method
2. **Popular Election**
   1. **Partisan Popular Election**
   * Used throughout the United States
   * Most often used in South
   * Maximizes accountability to voters
   1. **Nonpartisan Popular Election**
   * Popular with reformers in early twentieth century
   * Just names of candidates on ballot
   * Partisanship more subtle in this system
   1. **The Problems with Popular Elections**
   * Low turnout
   * Little accountability to voters
   * Incumbents usually win
   * Influence of campaign donations
3. **Merit Plan**
4. **Three Steps**

* Judicial nominating commission meets and recommends three or more names of prospective judges to the governor.
* The governor appoints the preferred candidate to the vacant judgeship.
* A retention election is held.

**2. The Politics of Merit Selection**

1. **Gubernatorial Appointment**
2. **Which Selection Plan Is Best?**

* No consensus
* Politics in all systems
* No one system produces superior judges.

**\* It’s Your Turn: Judges: Elected, Appointed, or Merit-Selected?**

1. **Removal of Judges**

* Impeachment is the most popular method.
* Mandatory retirement ages
* *Courts of the judiciary*
* Judicial discipline and removal commissions

**IV. JUDICIAL DECISION MAKING**

1. **In and Out of the Trial Court**

* Almost all cases (civil and criminal) are decided outside of court.
* **Plea bargaining** is a commonly used method.
* If a case is not plea bargained, then it goes to either **bench trial** or a **trial by jury**.

**\* Controversies in States and Localities: What If the Jury Pool Becomes a Puddle?**

1. **Inside the Appellate Court**

* Operates differently; ten trial courts
* Reviews records of low courts
* Decides by majority rule

1. **Influences of the Legal System**
2. **Institutional Arrangements**

* Trial court judges enforce the law.
* Appellate court judges interpret the law and create public policy.
* Judges are influenced by partisan electoral completion.

1. **Legal Procedures and Precedent**

* Apply principle of **stare decisis**or **precedent**.
* If conflicting precedent, the judge chooses one.

1. **Caseload Pressures**

* Caseload impacts decisions.
* Quality of judicial decisions is based on caseload.

1. **Access to the System**

* Wealthy citizens have an advantage.
* Interest groups, such as lawyers and business, have the advantage.
* Harshest sentences are to Latinos and African Americans.

1. **Personal Values, Attitudes, and Characteristics of Judges**

* Judicial decisions reflect judges’ individual backgrounds.
* Democrats and Republicans decide differently.

**V. JUDICIAL FEDERALISM**

* **Judicial federalism:** A trend in which state constitutional and statutory laws are consulted and applied before federal law.

1. **Judicial Activism in the States**

* Attempt to make new law
* Seen on both sides of ideological spectrum
* More prominent in state supreme courts

1. **Current Trends in State Courts**

* Not all courts are activists.
* Judges are unable to be as proactive as legislature.
* Activism can have negative effects.

**VI. ADMINISTRATIVE AND ORGANIZATIONAL IMPROVEMENTS IN STATE COURTS**

1. **Financial Improvements and Financial Pressures**

* Trials are very expensive.
* Bad times result in reforms such as EBS.

1. **Dealing with Growing Caseloads**

* Alternative dispute resolution—mediation and arbitration
* Fines against lawyers and litigants who use delaying tactics
* Case management systems
* New technology—to improve court operations
* Performance standards
* **Tort:** A civil case involving personal injury, misconduct, or negligence.

1. **Compensating the Judges**

* Salaries are high for public officials.
* Large states pay the most.
* Judges are not permitted outside income.

1. **Judicial Performance Evaluation**

* Election is supposed to provide public accountability.
* Some states use judicial performance evaluations.
* Judicial performance evaluation (JPE) can contribute to judicial self-improvement.

1. **State Courts Today**

* Many court systems have been modernized.
* Courts today have increased judicial activism.

**Vocabulary**

**administrative case** Usually, a case in which a government agency applies rules to settle a legal dispute.

**bench trial** Trial by a single judge, without a jury.

**civil case** A case that concerns a dispute involving individuals or organizations.

**common law** Unwritten law based on tradition, custom, or court decisions.

**criminal case** A case brought by the state against persons accused of violating a law.

**intermediate appellate court** A state appellate court that relieves the case burden on the supreme court by hearing certain types of appeals.

**judicial activism** The making of public policy by judges through decisions that overturn existing law or effectively make new laws.

**judicial federalism** A trend in which state constitutional and statutory laws are consulted and applied before federal law.

**limited jurisdiction trial courts** Those courts with original jurisdiction over specialized cases such as juvenile offenses or traffic violations.

**major trial court** Court of general jurisdiction that handles major criminal and civil cases.

**plea bargaining** Negotiation between a prosecutor and a criminal defendant’s counsel that results in the defendant pleading guilty to a lesser charge or pleading guilty in exchange for a reduced sentence.

**precedent** The legal principle that previous similar court decisions should be applied to future decisions.

**stare decisis** The legal doctrine that precedent set in earlier cases should guide judges’ rulings.

**supreme court** The highest state court, beyond which there is no appeal except in cases involving federal law.

**tort** A civil case involving personal injury, misconduct, or negligence.

**trial by jury** A trial in which a jury decides the facts and makes a finding of guilty or not guilty.