

AP American Government and Politics / Mr. Lipman

The following questions are to be answered after reading the Lanahan readings which are posted on my teacher web page. Each reading has 4 questions. Type out the questions (**IN BOLD**) and then your answers.

Robertson reading on the Constitution (starts page 90)

1. Why does Robertson argue that the Constitutional founding fathers were politicians and not philosophers?
  2. Explain the key reasons that Robertson feels the founding fathers were successful in forming a new government in 1787.
  3. Describe the "state interests" that he argues were crucial for understanding why a balance between Federal and State Governments was necessary.
  4. Explain how the interests of the different representatives (house and senate) would be varied and why that was considered crucial for the success of the Constitution.
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Rimmerman reading on the Presidency (starts page 220)

1. Why did the founding fathers assume the legislative branch would become the key policy makers for the nation?
  2. Describe the characteristics of what Rimmerman asserts is behind the modern plebiscitary president.
  3. Explain why Rimmerman believes that other presidential scholars "failed to recognize" the danger of their theories.
  4. Describe the 2 key roles that Rimmerman feels presidents perform that in other nations are preformed by two different individuals. Do you feel this is a good or bad thing for government?
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Fallon reading on the Constitution and the Supreme Court (starts page 310)

1. Describe the argument behind the belief that the Equal Protection Clause of the 14<sup>th</sup> Amendment can be used to bar racial discrimination by Congress instead of merely against the states.
2. Describe Fallon's view that the court establishes its own rules to help implementation of its decisions rather than interpretation of the constitution.
3. Why is the Supreme Court's power to decide which cases to hear so important to its role in government and the expansion of its power?
4. Describe the theory of original understanding ("originality") as compared to interpretive methodology as practiced by the court today.

Nownes reading on Interest Groups (starts page 435)

1. Describe who profited from the "BP Disaster" and why they profited.
  2. Explain why Madison warned about the dangers of interest groups. Do you feel that the political world today has proven him correct?
  3. Explain what Nownes' argues is the most effective means of lobbying in today's political world.
  4. Explain why Nownes asserts that lobbyists have such bad reputations in the eyes of American voters.
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Nielsen reading on campaigns (starts page 528)

1. Describe what can be considered "mistakes" by support staffer Paula in her telephone contact in support of a candidate.
  2. According to Nielsen, how has the concept of "voter solicitation" changed in the computer age.
  3. Explain why political scientists feel that the "ground floor" political campaigning does not, by itself, decide elections.
  4. Describe what Nielsen observes about the attitudes of campaign staffers when it comes to "phones and doors".
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Bishop reading on political parties (starts page 558)

1. Describe how American's have "sorted themselves" around the nation. Do you feel you will pick a college in the same way?
2. Describe the differences Bishop sees between what Democratic voters do and Republican voters do? Do you feel he is accurate?
3. How does the political scientist Donald Green describe the selection of party affiliation?
4. Explain how Bishop uses the Texas vote on same sex marriage to prove his argument about "sorting".

## DAVID BRIAN ROBERTSON

### From *The Constitution and America's Destiny*

"Politicians, not philosophers, political scientists, or plundering speculators" that is how Professor David Brian Robertson describes the framers of the Constitution. They understood how compromises were made. Robertson takes us into the minds of the framers—or at least into what we think they were thinking. We learn about James Madison, in particular, and the pragmatic approach he took toward creating a document that all delegates could accept. In explaining Madison's strategy, Robertson mentions some of the key features of the Constitution that are basic to an understanding of American government. National and state governmental power, the roles of the House and the Senate, the power of the executive, the authority of the courts are all delicately balanced. The result, observes Robertson, is a system that is "hard to use." That was the plan. Only through the skillful use of the Constitution's many impediments and ambiguities can results be achieved. Many different groups must be brought together and kept together for any action to take place. Throughout American history, and today, smart politicians have known how to do this. That was the plan.

[T]here can be no doubt but that the result [of the Constitutional Convention] will in some way or other have a powerful effect on our destiny.  
 —JAMES MADISON to Thomas Jefferson, June 6, 1787

WHAT PROBLEMS WERE THE U.S. CONSTITUTION'S authors trying to solve? How did they imagine their Constitution would answer these problems? We know the framers intended to change America's destiny; and we know they succeeded. But how did they intend to transform the way American government uses its power and the way Americans use their government? What kinds of politics were the delegates to the Constitutional Convention trying to make—and what kinds of politics did their design make? For all that has been written about the Constitution, we do not have satisfactory answers to these questions.

Practicing politicians wrote the Constitution, and they expected politicians to use it. To understand the enduring effects of the Constitution on America's destiny, we need to know what its designers thought they were doing. We need to understand the circumstances that convinced these

### From *The Constitution and America's Destiny*

politicians that they could and should reconstitute the nation's government. We need to understand precisely how these circumstances shaped their strategies for building a new government. We need to reconstruct how these politicians used such strategies to design their Constitution, provision by provision. Better answers to these questions can help us better understand how Americans have used the government they have inherited. . . .

The delegates who made the Constitution were first and foremost politicians not philosophers, political scientists, or plundering speculators. These politicians had helped nurture a dozen infant state republics through a devastating war and the turbulence of economic depression. Circumstances forced them to learn the art of sustaining political support while conducting any government's most unpopular activities, such as collecting taxes. These republican politicians had mastered the skills of using policy to balance conflicting demands placed on government. A given set of economic policies could accommodate voters, pacify them, divide them, and selectively mobilize them. At the same time, economic policies could stabilize and grow state economies and secure the support of economic elites. These politicians fully understood that public policy makes politics, and the two are inseparable. Those who seek public office must promise to use government in some beneficial way and deliver on these promises, while those who seek public policy depend on those who win and hold government office.

These politicians set out to change the path of American politics, to alter the nation's destiny. They ultimately succeeded by changing the process for selecting national policy makers, by expanding national government authority, and by building a new process for using that authority. They succeeded, first, because pressing political and economic problems made it an opportune moment to reconstitute the national government. The convention met in a political climate that provided some intense but vague and unfocused support for change. Second, they succeeded because the convention's leaders drew on their own diagnosis of the national situation to propose remedies for these problems. These remedies provided a malleable starting point for deliberating constitutional design. Third, they succeeded because most were willing to come to acceptable political compromises about that design, even though none anticipated the final Constitution or found it fully satisfactory.

At the convention, these delegates behaved like republican legislators because most of them were legislators. Even though the convention lacked the features of an established legislature today, the delegates employed familiar legislative scripts to develop the Constitution as they would a ma-

for change of law: they agreed to rules for debate and voting, used a Committee of the Whole to facilitate the initial consideration of the agenda, took hundreds of votes on substance and procedure, created special committees to deal with difficult issues, and relied on a Committee of Detail to develop a provisional draft. Although they understood that a constitution had to be different from ordinary legislation, they conducted the *protes* for crafting the Constitution much the way they had made public policy in Congress or in state legislatures. The Constitutional Convention, then, can be studied with the analytical tools used to analyze other pathbreaking American policy developments, such as Reconstruction, the Sherman Anti-Trust Act of 1890, the Clayton Act of 1914, the National Industrial Recovery Act of 1933, the Social Security Act of 1935, the Civil Rights Act of 1964, the Clean Air Act of 1970, or other "super-statutes." Like legislators today, some delegates attempted to manipulate the terms of the debates and the scope of conflict, and adjusted provisions to enlarge their political support. Through persuasion, bargaining, threats, and evasion, the delegates built coalitions, undermined others, and produced a series of interdependent, politically satisfactory decisions. The Constitutional Convention, of course, was no ordinary legislative process. The stakes were higher. The Constitution affected a virtually unlimited range of politically significant issues, and the final product necessarily would be more general than a statute law.

The Constitution's design resulted from a series of compromises about substantive issues, policy making procedures, and the control of policy makers. The goals of the Constitution are the collective goals of the thirty-nine individuals willing to sign the final product. The central analytical problem for this book is to describe that zone of acceptable compromise and to explain how the Constitution's provisions together satisfied the framers' goals....

The delegates' strategies matter so much because the framers did not and could not write into the Constitution "directly and unerringly" the interests of the nation's propertied elites. The most influential delegates—particularly James Madison—were rebuilding the American state to make it stable and powerful enough to pursue the nation's long-term interests. Their government had to nurture the nation's prosperity long into the future. These state builders took it for granted that private property, free markets, and commercial expansion were essential for future prosperity, and they appreciated that propertied elites were key agents for expanding markets and driving economic development. But many framers viewed the interests of these elites as too narrow, short-term, uninformed, and conflicted to provide much reliable guidance for redesigning the nation's

basic political structure and recasting long-term policy. The framers were trying to balance the government's basic needs (especially for revenue), their own ambitions for the nation's destiny, the clashing claims of different economic interests, and the demands of the more numerous citizens of modest means. Even when they were inclined to implement propertied elites' preferences, policy makers had to balance economic development against the demands of the nation's emerging democracy. Legislators needed a broader constituency to win elections to office. They had to show some responsiveness to the grievances of those with modest means. At the very least, elected policy makers had to make any program of market-driven economic development acceptable and legitimate for a majority of the constituents to whom their political fates were tethered.

In any case, it is impossible to enter the mind of an individual delegate to determine how he balanced principles and interests when he took a position on an issue of constitutional design. Jack Rakove observed that "[w]hat is elusive is the interplay between ideas and interests" in the Constitution's design. A delegate's idealistic argument for strong national powers may have concealed a driving ambition to elevate his state or to seek the personal prestige and power of national office. Another delegate's defense of state prerogatives may have reflected sincere dedication to the principle of constituent representation and a deeply held belief in the superiority of the social, economic, and political order of his state. We can never know for certain. What is certain is that the delegates used ideas as rhetorical weapons to defend positions that closely matched their political interests. Political calculations shaped delegates' views of the stakes in most negotiations, not just abstract ideas, settled the disputes these choices engendered. By expanding the concept of interest beyond personal pecuniary gain and selfish parochialism to include political interests, it is much easier to see how closely the delegates' ideas and interests aligned with one another in their policy strategies.

James Madison's policy strategy requires an especially careful analysis because Madison's ideas set the convention's agenda and shaped its politics. Madison's Virginia Plan sought to establish a national policy-making system independent of the state governments and armed with most of the authority to govern the national economy. The national government would assume full authority to manage economic development for the interest of the republic as a whole. Even after the defeat of provisions crucial to his agenda, Madison and his allies fought to inject this strategy into national government powers and institutions such as the presidency. Undemanding the politics of the Constitution requires a careful understand-

ing of the way Madison defined the nation's problems and the way his plan would mitigate them. . . .

James Madison was in a superb position to shape the convention's initial agenda. Already an experienced politician though barely thirty-six years old, Madison was a knowledgeable and respected authority on American politics and public policy. He had helped write Virginia's Constitution of 1776, served in the state's House of Delegates, and represented Virginia in the Continental Congress. In Congress, he served on many key committees and worked behind the scenes to broker coalitions supportive of extending Congress's powers. He played a major role in initiating the Annapolis Convention of 1786.

Madison, a natural political strategist, had mastered the arts of republican politics and policy making. He was proficient at manipulating agendas, locating points of policy compromise, and building coalitions. He understood how procedural motions could be used tactically to gain leverage in the legislative process. He instinctively appreciated that he could advance his agenda by breaking apart legislative proposals (or by combining them). He creatively coupled problems and solutions to win allies for policy measures he favored. Just three months before the convention, for example, he used national security concerns to justify Confederation aid to Massachusetts for suppressing Shays's Rebellion.<sup>4</sup> Madison conceded that although "there might be no particular evidence" of British interference, "there was sufficient ground for a general suspicion of readiness in [Great Britain] to take advantage of events in this Country, to warrant precautions against her." He worked behind the scenes to cultivate allies in state legislatures and other political bodies where he had no direct influence. Madison was patient and tenacious in policy combat, displaying a doggedness that may have worn even on his allies. And when his efforts produced results that fell short of his goals, he repeatedly accepted half a loaf rather than none, "much disposed to concur in any expedient not inconsistent with fundamental principles."<sup>5</sup>

Madison was not chiefly a political philosopher but rather a policy strategist, adept at using broad theoretical ideas to advance his goals. It is difficult to read Madison's writings without appreciating his gift for ab-

<sup>4</sup>In the western part of Massachusetts in 1786, Daniel Shays, a Revolutionary War veteran, organized a group of poor farmers whose farms were being foreclosed due to their inability to pay the debts they owed. The mob was angry at judges and bankers who represented the propertied elite. Shays and his followers showed up in Springfield where they tried to attack the armory to seize weapons. Massachusetts was not able to control the mob effectively, causing American political leaders to question the ability of the Articles of Confederation to maintain property rights and leading them to call a convention in 1787 to form a new constitution with a stronger national government.—Eds.

### From *The Constitution and America's Destiny*

straction and generalization, his tendency to develop theory and then apply its logic to sort through facts, his propensity to use lists of general reasons to justify his claims, and his willingness to use global abstractions to combat adversaries. An opponent at the convention, William Paterson, may well have had Madison's style in mind when he noted that "A little, practicable Virtue [is] preferable to Theory" . . . .

The Constitutional Convention used no predetermined blueprint to lay out the national policy process. Republican principles demanded only that the powers to legislate, to execute the law, and to judge legal disputes be separated in some way. Practical experience encouraged a bicameral legislature, an executive with veto power, and courts divorced from the play of politics. The delegates assumed that skilled republican politicians would use the process to advantage themselves and their constituents. Beyond these indefinite guidelines, the convention built the policy process piece by piece. Decisions about the policy process were pushed along by an evolving web of agreements about whom each branch would represent, what powers the national government would have, and what role each institution would play in using this process.

As the delegates grew less certain about the consequences of their choices, political logic dictated that they should arm their favored agents with the will and ability to stop policies threatening to their vital interests. They could not agree on the exact boundaries of national authority, but they could agree that by building separate defenses for their vital institutions, they could reduce the danger that the national government would use its authority to take advantage of their constituents. Their choices in turn forced them to adjust the powers and independence of these institutions to one another. The Senate gained extraordinary powers to ratify treaties, confirm presidential appointees, and try impeachments. The House gained nominal authority to initiate revenue measures. The president gained influence over the policy agenda, major appointments, and foreign affairs. Courts gained more autonomy to interpret state and national laws. The convention rejected efforts to build institutional collaboration into national policy making, including proposals to require the joint exercise of veto power by the president and the Supreme Court, the creation of a privy council, and the eligibility of sitting members of Congress to serve in executive offices.

When their work was done, the delegates found that they had created a policy-making process with more complexity and rivalry of purpose than any of them originally anticipated. They had infused each institution with a different perspective on the nation's interests. They had given each institution the power to block the use of government. By doing so, they

made it difficult and costly to make effective national public policy; that is, to use the government for any purpose. Public policy would succeed only if it survived a gauntlet of institutions, each deliberately anchored by different constituencies, calendars, and powers.

Members of Congress would be tied to distinct geographical constituencies, and the interests of these constituents would shape their perception of national interests. Most U.S. representatives would concern themselves primarily with the welfare of regions smaller than a state. U.S. senators would act on behalf of the state governments and statewide constituencies. Representatives and senators could pursue reelection. Each Congress would have a two-year frame of reference, because the political dynamics in each house could change after every national election. Veto points would abound: the Senate and House effectively could veto each other, and the president could veto any bill on which they could agree. It would be relatively easy for one institution to exercise its independent power to stop legislation, but it would be relatively difficult to engineer the institutional cooperation required to enact laws. On the other hand, it would be difficult, costly, and time-consuming for representatives of existing regional interests to construct the political majorities necessary for lawmaking. Only an extraordinarily large geographical majority could win concurrent House and Senate approval for any public policy measure. For example, no law could be passed in the first Congress without, at a bare minimum, the consent of representatives of 55 percent of the American population. No treaty or major appointment could be made without the assent of senators representing nine of the thirteen states.

Compared with Congress, the president and his appointees to the national courts would serve much larger constituencies, and their constituencies would greatly broaden their perception of national interests. The president would represent at least a large number of voters in many parts of the nation. Given a four-year term, the president would serve during two Congresses. The possibility of reelection to additional terms further lengthened his time horizon. The president's agenda-setting, administrative, and foreign-policy powers armed the office with the power to change the path of public policy. Presidents could frame policy agendas aimed at directing policy outcomes and building political support well into the future, and so would define the national interest in terms of prospective achievements that cultivate a chosen national constituency. Presidents could be expected to build new national political orders or to articulate existing ones. The president would tend to pursue national interests more proactively than Congress, more coherently, and for longer time horizons. While the Senate embodied [Rogers] Sherman's aspiration

to protect the interests of the states, the office of the president embodied Madison's ambition to instill in national policy makers the means and motive to pursue national interests, independent of the states.

No institution would view public policy in a longer time horizon than the national judiciary, whose judges would not have to cultivate voters to stay in office. Compared with Congress, and like the president, the national judiciary would have more latitude to define national interests broadly. But judges would lack the policy tools necessary for fine-tuning a future policy agenda. Judges' tools were reactive. They could only respond to disputes about actions already authorized by other institutions. Judges could settle disputes about existing national law and strike down laws inconsistent with the Constitution. Together, these powers would allow judges to defend existing political arrangements rather than to fashion new ones. Judges would have incentives to interpret national interest in the context of the political order in which they had been appointed. The national judiciary would tend to frame national interests more coherently than Congress but more reactively than the president.

The delegates' compromises, in short, produced a policy-making system that would be hard to use. Different institutions with different perspectives on national interest would share responsibility for major steps in the policy process, from setting the policy agenda to implementing law. . . .

The Constitution gave American politicians extraordinary responsibilities, while at the same time made it extraordinarily hard for them to fulfill these responsibilities. It gave the Congress the duty to make laws for the entire nation, but has encouraged its members to view public policy primarily through the lens of the short-term, parochial interests of their local constituents. It gave the president a duty to formulate plans for achieving future national interests, but limited his capacity to pursue these interests. It gave the courts the duty to ensure the supremacy of federal law, but insulated courts so they can only react to individual conflicts about public policy long after the policy's initiation. Founded on the principle of rule by the people, the Constitution tacitly gave unelected judges the duty of rising above politics to protect established national interests. Founded on the principle of majority rule, the Constitution has obstructed and complicated the construction of majorities.

While Americans revere their Constitution, its paradoxes have fostered frustration and cynicism about their government. These frustrations are rooted in the way the framers answered the agonizing questions they confronted: how can a popularly controlled government promote national well-being without also being a threat? James Madison, Roger Sher-

man, and the other delegates who wrote the Constitution understood this question just as well—and even better—than we do now. These politicians crafted an answer that suited both their ideals and their vital political interests. Politicians designed the United States Constitution. Ingenious politicians use it. Altering the U.S. Constitution therefore can offer no panacea for curing America's political frustrations. Changing the Constitution is hard, and the results are unpredictable. There are no guarantees that any politically feasible change in the Constitution today would do more good than harm. No one who reflects on presidents' struggle for power in the past forty years, for example, can be confident that making it easier for presidents to get their way would unambiguously benefit the nation.

Instead of changing their Constitution, Americans must learn to use it better. To repeat: making this national policy process work requires very broad-based political coalitions and sustained, concerted effort. To use this government, Americans must engage in politics. They must build and sustain the large political coalitions necessary to align the House, the Senate, the presidency, the courts, and a large number of states. Building coalitions requires understanding the interests of many different kinds of people, forging an understanding of the common interests of these people, locating a common set of objectives that can motivate their continuing cooperation, and working constantly to anticipate and remedy the endless, inevitable conflicts that threaten their cooperative effort. American history abounds with ingenious, tough-minded leaders who have constructed politics in this way. These leaders have spotted opportunities in the Constitution's structural constraints, and they have learned to mold the ambiguities of American politics into new possibilities for political cooperation.

## CRAIG RIMMERMAN

*From The Rise of the Plebiscitary Presidency*

*Scholars who examine American presidents look not only at individuals who have held the position but also at trends that mark different interpretations of the office. Here, Professor Craig Rimmerman builds on Theodore Lowi's concept of the "plebiscitary presidency," in which the president seeks to govern through the direct support of the American people. Likewise, ditto: Rimmerman believes this view to be vastly different from the Constitution's intent. He traces changes in the executive's power through several phases, mentioning the contributions of prominent scholars to an understanding of the presidency. From President Roosevelt onward, Rimmerman asks his readers to consider carefully the consequences of such an exalted and unrealistic vision of presidential power.*

THE CONSTITUTIONAL framers would undoubtedly be disturbed by the shift to the presidentially centered government that characterizes the modern era. Their fear of monarchy led them to reject the concept of executive popular leadership. Instead, they assumed that the legislative branch would occupy the central policymaking role and would be held more easily accountable through republican government.

Congress has failed, however, to adhere to the framers' intentions and has abdicated its policymaking responsibility. The legislature, with support from the Supreme Court, has been all too willing to promote the illusion of presidential governance by providing the executive with new sources of power, including a highly developed administrative apparatus, and by delegating authority for policy implementation to the executive through vague legislative statutes....

The president-centered government of the modern, plebiscitary era draws much of its power and legitimacy from the popular support of the citizenry, support that is grounded in the development of the rhetorical presidency and the exalted role of the presidency in the American political culture. Theodore Lowi is surely on target when he identifies "the refocusing of mass expectations upon the presidency" as a key problem of presidential governance since Franklin Delano Roosevelt and as a problem associated with the rise of the plebiscitary presidency.

*From The Rise of the Plebiscitary Presidency*

The plebiscitary presidency is characterized by the following: presidential power and legitimacy emanates from citizen support as measured through public opinion polls; in the absence of coherent political parties, presidents forge a direct link to the masses through television; and structural barriers associated with the Madisonian governmental framework make it difficult for presidents to deliver on their policy promises to the citizenry. The framers of the Constitution would hardly have approved of these developments, for they had no intention of establishing a popularly elected monarch. Moreover, the nature of the governmental framework that they created actually prevents occupants of the Oval Office from meeting the heightened citizen expectations associated with the plebiscitary presidency in terms of concrete public policy, especially in the domestic policy arena. This has become particularly clear in the modern era as presidents confront a more fragmented and independent legislature, a decline in the importance of the political party as a governing and coalition-building device, an increase in the power of interest groups and political action committees that foster policy fragmentation, and a bureaucracy that resists centralized coordination....

Throughout much of the nineteenth century, a passive president in domestic policymaking was deemed both acceptable and desirable. Congress took the lead in formulating public policy initiatives and expressed outright hostility toward presidential suggestions that particular legislation should be introduced. In fact, early in the nineteenth century it was commonly believed that the president should not exercise the veto to express policy preferences. The president's primary responsibility was to faithfully execute the laws passed by Congress. For the occupants of the Oval Office in the traditional period, the Constitution imposed "strict limitations on what a President could do." The constitutional separation of powers was taken seriously by all parties, and the prevailing view regarding the proper role of government was "the best government governed least." As opposed to the presidential government of the modern period, the traditional era was characterized by congressional leadership in the policy process.

In the foreign policy arena, however, the president did establish himself through the war-making power. Yet even here the president was restrained when compared to the occupants of the Oval Office in the twentieth century. A prevailing view in the nineteenth century was that the president should avoid involvement with foreign nations, although negotiation with foreign countries was occasionally required. The first president to travel abroad on behalf of the United States was Theodore Roosevelt. Prior to the twentieth century, some members of Congress even



argued that the president lacked the necessary legal authority to travel in this manner.

Presidential speechmaking also reflected the largely symbolic chief-of-state roles played by presidents in the traditional era. Jeffrey Tulis's content analysis of presidential speeches reveals that presidents rarely gave the kind of official popular speeches that characterize speech-making in the modern era. When speeches were given, they were considered "unofficial," and they rarely contained policy pronouncements. Tulis concludes that William McKinley's rhetoric was representative of the century as a whole: "Expressions of greeting, incantations of patriotic sentiment, attempts at building 'harmony' among the regions of the country, and very general, principled statements of policy, usually expressed in terms of the policy's consistency with that president's understanding of republicanism." Virtually all presidents of the time adhered to the same kind of presidential speechmaking. The only exception was Andrew Johnson, who attempted to rally support for his policies in Congress through the use of fiery denunciation; Johnson's "improper" rhetoric fueled his impeachment charge; yet it is this same kind of rhetoric that today is accepted as "proper" presidential rhetoric.

The reserved role played by the president in the nineteenth century was clearly in keeping with the intention of the constitutional framers. . . .

Yet as the United States headed into its second full century, this situation was to change, as congressional government began to yield to the presidentially centered form of governance that has characterized the modern period.

Students of the presidency have identified a number of factors that have led to the development of the modern, personal, plebiscitary presidency as we know it today. The personal presidency is "an office of tremendous personal power drawn from the people—directly through Congress and the Supreme Court—and based on the new democratic theory that the presidency with all powers is the necessary condition for governing a large, democratic nation. Its development is rooted in changes in presidential rhetoric, the efforts of the progressive reformers of the early twentieth century, the Great Depression and Franklin Delano Roosevelt's New Deal, the role of Congress in granting the executive considerable discretionary power, and Supreme Court decisions throughout the twentieth century that have legitimated the central role that the president should play in the domestic and foreign policy arenas. . . ."

Presidential scholars have contributed to the presidentially centered government and the accompanying citizen expectations of presidential performance that characterize the development of presidential power

since Franklin Roosevelt. The "cult of the presidency," "textbook presidency" or "savior model" was developed in response to FDR's leadership during the Great Depression, and it prevailed through the presidency of John F. Kennedy. Underlying this "cult" or model approach is a firm commitment to the presidency as a strong office and to the desirability of this condition for the political system as a whole. Political science texts written during this period concluded approvingly that the presidency was growing larger, while gaining more responsibilities and resources. The use of laudatory labels, such as "the Wilson years," "the Roosevelt revolution," "the Eisenhower period," and "the Kennedy Camelot years" also fostered the cult of the presidency and reinforced the notion that the president is the key figure in the American political system. . . .

Perhaps no other work contributed more to the development of this approach than Richard Neustadt's *Presidential Power*, which was first published in 1960. Representing a sharp break with the legalistic and constitutional approach that had dominated presidential scholarship up until that time, *Presidential Power* reinforced the notion that strong presidential leadership should be linked to good government. Neustadt eschewed strict legalistic interpretations of presidential power and instead conceived of power in the following way: "'Power' I defined as personal influence on governmental action. This I distinguished sharply—a novel distinction then—from formal powers vested in the Presidency." For Neustadt, the Franklin Delano Roosevelt activist presidency was the ideal model for presidential leadership and the exercise of power. Future presidents, according to Neustadt, should be evaluated on the basis of how well they achieved the standards set by Roosevelt. Like presidential scholars of his time and many since, Neustadt rejected the framers' view that the Congress should be the chief policymaking branch and that the president should be constrained by numerous checks and balances. Instead, Neustadt spoke of "separated institutions sharing powers."

As Neustadt and other scholars embraced a presidentially centered form of government, they failed to recognize the consequences of imposing a new interpretation of the political order on a governmental framework rooted in Madisonian principles. One such consequence has been that as presidents attempt to meet the heightened expectations associated with the modern presidency, they are sometimes driven to assert presidential prerogative powers in ways that threaten both constitutional and democratic principles. The Johnson and Nixon presidencies, in particular, provided empirical evidence to support this concern. In response, presidential scholars embraced a new model for evaluating presidential power: "the imperial presidency."

Concerns about excessive presidential power were articulated in light of Lyndon Johnson's legislative victories in the 1960s, Johnson's and Nixon's decisionmaking in the Vietnam War, the Nixon/Kissinger Cambodian debacle, and the Nixon presidency's disgrace in the wake of Watergate.<sup>2</sup> Presidential scholars began to question whether presidential strength would necessarily lead to the promotion of the general welfare. Scholars spoke of the pathological presidency, reinforcing many of the constitutional framers' fears regarding the consequences of concentrating excessive powers in the executive.

Writing in this vein and responding to presidential excesses in the conduct of the Vietnam War and the Watergate scandal, Arthur Schlesinger, Jr., developed the concept of the "imperial presidency." Schlesinger recognized that the system of checks and balances needed vigorous action by one of the three branches if the stalemate built into the system was to be overcome. Schlesinger believed that the presidency was best equipped to fill this role. Rather than rejecting centralized presidential power per se, he spoke of presidential abuses: "In the last years presidential primacy, so indispensable to the political order, has turned into presidential supremacy. The constitutional Presidency—as events so apparently disparate as the Indochina War and the Watergate affair showed—has become the imperial Presidency and threatens to be the revolutionary Presidency." Schlesinger placed much of the blame for the imperial presidency on presidential excesses in foreign policy. . . . Truman, Kennedy, Johnson, and Nixon interpreted the Constitution to permit the president to commit American combat troops unilaterally; and the prolonged Vietnam War encouraged foreign policy centralization and the use of secrecy. The imperial presidency, or "the presidency as *saan model*," can also be applied to the Nixon administration's domestic activities, including wiretapping, the use of impoundments, executive branch reorganization for political purposes, and expansive interpretations of executive privilege.

Schlesinger's analysis is an important contribution to the study of presidential power because it recognizes the limitations imposed by the framers and the potentially negative consequences of the plebiscitary presidency. . . .

The plebiscitary presidency has been a key source of presidential power since 1933. For presidents such as Ford and Carter, however, the heightened expectations associated with the personal, plebiscitary presi-

<sup>2</sup>Set in motion by strong presidents, these three episodes—the prolonging of the war in Vietnam, the bombing of Vietnam's neutral neighbor, Cambodia, and a presidential administration's heavy involvement in and coverage of the burglary of the Democratic Party's Watergate Hotel based election headquarters—all greatly divided the nation.—Ebs.

denry have also led to citizen unhappiness and characterizations of presidential failure. The Carter presidency, in particular, reinforced elements of the plebiscitary presidency. As a "trustee" president, Jimmy Carter reinforced the notion that as the elected representative of all the people, "the president must act as the counterforce to special interests" and provide the leadership necessary in setting the policy agenda and introducing "comprehensive policy proposals." Charles Jones makes a persuasive case that Carter's vision of the trustee presidency was anathema to a Congress that had just passed a series of reforms designed to tame the imperial Nixon presidency. When Carter tried to introduce unpopular energy conservation policies and cut back "unnecessary dams and water projects" because they represented the "worst examples of the pork-barrel," he challenged Congress and the American people to reject politics as usual. In this sense, he was displaying a style of presidential leadership unseen in recent years, one that reinforced the plebiscitary presidency while at the same time challenging some of the assumptions on which it is based. Unlike his immediate predecessors and successors, Carter at least tried to heighten the level of dialogue around resource scarcity concerns. He soon learned, however, that his unwillingness to cultivate congressional support for his policies and his call for a shared sacrifice on the part of the American people undermined the plebiscitary foundations of the modern presidency. His 1980 presidential challenger understood Carter's problems quite well and was determined not to repeat them. Ronald Reagan's campaign and governing strategies accepted and extended the plebiscitary presidency. This helps to account for his victories in both 1980 and 1984. . . .

In the American political system, presidents perform two roles that in other countries are often filled by separate individuals. As head of the nation, the president is required to play a unifying role of the kind played by monarchs in Britain, Norway, and the Netherlands or by presidents in France, Germany, and Austria. In addition, presidents serve as political leaders, "a post held in these other nations by a prime minister or chancellor." This dual role virtually guarantees that American presidents will occupy the central political and cultural role as the chief spokesperson for the American way of life. Political scientists, historians, and journalists have all reinforced and popularized the view that the presidency is an office of overwhelming symbolic importance.

Only recently have political scientists begun to challenge this perspective and discuss the negative consequences of such hero worship in a country that purports to adhere to democratic principles. Barbara Hinckley captures these issues well in her recent analysis:

It is the magic of symbolism to create illusion. But illusion has costs that must be considered by journalists, teachers of politics, and future presidents. Is the nation best served by carrying on the symbolism or by challenging it? Should the two contradictory pictures, in a kind of schizophrenic fashion, be carried on together? If so, what line should be drawn and what accommodation made between the two? The questions are compounded by the peculiar openness of the office to changing interpretations. By definition, all institutions are shaped by the expectations of relevant actors. The presidency is particularly susceptible to such influences.

As we have seen in our study of the Reagan and Bush presidencies, presidents attempt to build on their symbolic importance to enhance their public opinion ratings and to extend the plebiscitary presidency. The upshot of this activity over the past sixty years is that the public equates the president with the nation and the values associated with American exceptionalism. A president, such as Jimmy Carter, who attempts to challenge traditional elements of presidential symbolism and demystify the trappings of the White House, is treated with disdain by the public, the press, and to a certain extent by political scientists. . . .

This book suggests that Presidents Reagan and Bush turned to foreign policy when they encountered difficulties in translating their domestic campaign promises into concrete public policy and in meeting the demands of the plebiscitary presidency. Presidents who are caught between citizens' expectations and the constraints of the Madisonian policy-making process\* look to the foreign policy arena in an effort to promote the values associated with American exceptionalism.

Any of the examples discussed . . . provide ample opportunity to explore these themes. The Iran-Contra affair,† in particular, raises compelling questions regarding presidential power in the foreign policy arena. In light of the aggrandizement of presidential power that characterized the Vietnam War period and Watergate and the resulting congressional response, it is important to ask students why a president and/or his staff would employ some of the same strategies in dealing with Congress, the media, and the American people. The role of covert activities in a democracy also deserves considerable attention.

If scholars of the presidency are truly concerned with developing a pedagogy and presidential evaluation scheme rooted in critical education

\*James Madison's plan for American government limits each branch by checking and balancing the power of one branch against another.—Eds.

†During President Reagan's administration, members of his National Security Council (NSC) were charged with secretly selling arms to Iran in order to fund anti-communist Nicaraguan Contra activities.—Eds.

for citizenship, then their students must be asked to consider why so little questioning generally occurs regarding the role of the president in committing American troops to war. The Persian Gulf war was a case in point.\*

If begged for serious discussion, reflection, debate, and questioning about the Bush administration's foreign policy decisionmaking. Some argued that those who dissented from the president's foreign policy strategy were un-American and unpatriotic and were trying to undermine the troops who were already in the Middle East. In fact, if citizens fail to question a president's decisionmaking, then they are giving the president virtually unchecked power to do what he wants with their lives. The failure to question a president abdicates all of the principles of a meaningful and effective democracy and embraces the dictates of an authoritarian and totalitarian regime. This is, of course, the logical consequence of the plebiscitary presidency.

Alexis de Tocqueville spoke of a blind and unreflective patriotism that characterized the American citizenry during the nineteenth century. He would surely see evidence of such patriotism in America today. There is little doubt that such patriotism can be connected to the relationship of the citizenry to the state and the office of the presidency. No modern president can expect to succeed without the support of the public. Yet this support must be grounded in a firm rejection of the unrealistic notion of presidential power. Citizens who respond to the presidency in a highly personalized and reverential manner are likely to be disappointed by presidential performance and are also likely to embrace political passivity and acquiescence in the face of presidential power. In the words of Benjamin Barber, "democratic politics thus becomes a matter of what leaders do, something that citizens watch rather than something they do." As this book has pointed out, Ronald Reagan and George Bush heightened these expectations even further by using techniques that emphasize the plebiscitary, personal character of the modern presidency. Ross Perot's 1992 presidential campaign was firmly rooted in plebiscitary principles. His proposals for nation-wide town meetings and an electronic democracy scheme reflected support for government by plebiscite. To Perot, running

\*The Persian Gulf War occurred within a two-month period in early 1991. Backed by House and Senate resolutions of support—not an actual declaration of war—President George H. W. Bush sent U.S. troops to the Persian Gulf as part of a multinational coalition to force Iraq President Saddam Hussein's military out of Kuwait. The United States experienced quick and dramatic success, with CNN coverage bringing the war directly to Americans daily. Years later, questions remained about the long-term effectiveness of the military strikes in weakening the Iraq threat. In 2003, President George W. Bush ordered an invasion of Iraq, claiming that Saddam Hussein possessed weapons of mass destruction, an allegation later found to be false.—Eds.

as an outsider, anti-establishment candidate, such a plan was desperately needed to challenge the gridlock growing out of the Madisonian policy process and two party system. His proposals also enabled him to emphasize his own leadership abilities and claim that he had the necessary leadership and entrepreneurial abilities to break governmental paralysis. In doing so, Perot reinforced the direct line between the presidency and the American people. Any course on the presidency should examine Perot's government-by-plebiscite proposals and the broader implications of his apparent willingness to bypass the congressional policy process and the two party system. The amount of attention and popularity that Perot's campaign garnered in a short period of time suggests once again that the plebiscitary presidency is an important explanatory construct. It also encourages political scientists to study with renewed vigor, the relationship between the presidency and the citizenry.

For many students, the presidency is the personification of democratic politics and, as a result, monopolizes "the public space." This view impedes the development of the meaningful and effective participation needed by citizens as they attempt to control decisions that affect the quality and direction of their lives. Presidential scholars have been developing a more realistic understanding of the changing sources of presidential power and how individual presidents have used these powers through the years. We would also do well to consider Murray Edelman's claim that "leadership is an expression of the inadequate power of followers in their everyday lives." This is particularly important as we begin to evaluate the Bush presidency. It is also the first step toward challenging the plebiscitary presidency and achieving a more realistic and successful presidency, one that is grounded in principles of democratic accountability and the development of citizenship.

## JACK GOLDSMITH

### *From Power and Constraint*

*Many of today's students of American government do not have a first-hand remembrance of September 11, 2001. Yet the events of that day—the attacks on the World Trade Center and the Pentagon and the crash of another hijacked airplane in Pennsylvania—marked the beginning of a War on Terror that has remained a key element of American foreign and defense policy in the years since. Jack Goldsmith looks at the way that President Barack Obama's administration hoped to change the Bush-era response to terrorism. Obama planned to make significant policy shifts, but once in office, he continued certain tactics when he faced the reality of threats to the nation's security. Goldsmith points out that presidential candidates who campaigned on a reduced role for the executive branch in military involvement have often had to change course once in office. "The 'vice' from the Oval Office" is a unique one. Future candidates for the presidency might do well to consider Goldsmith's admonition. Toward the end of the excerpt, readers learn what a presidential "synopsis" is. Though the term might be new and a little dense, presidents today are aware that "many can watch one," as Goldsmith says, and that presidential actions are checked and balanced by many forces in the American polity: "power and constraint."*

"TACTICALLY, THE CURRENT ADMINISTRATION chose to respond to the 9/11 attacks with [a] series of unnecessary, self-inflicted wounds, which have gravely diminished our global standing and damaged our reputation for respecting the rule of law," said Harold Hongju Koh, two months before the election of 2008, in a Senate hearing on "Restoring the Rule of Law." Koh was at the time the dean of Yale Law School. He was also the former Assistant Secretary of State for Democracy, Human Rights and Labor during the Clinton administration; a passionate leader of the human rights movement; and a leading critic of the Bush administration's counterterrorism policies. After summing up his indictment of Bush-era sins, the man who the following year would become Barack Obama's top State Department lawyer looked to the future. "As difficult as the last seven years have been," Koh said, "they loom far less important in the grand scheme of things than the next eight, which will determine whether the pendulum of U.S. policy swings back from the

## RICHARD FALLON

### From *The Dynamic Constitution*

The Supreme Court always gets a lot of public attention when vacancies occur and a new president nominates replacements whom the Senate must confirm. Yet behind the media spotlight accorded to Court nominees lie several basic principles necessary to understand the role of the Supreme Court in American government. Constitutional law professor Richard Fallon raises the issue of interpreting "a very old constitution." He discusses the importance of precedent, in terms of the tension between maintaining and overturning past decisions. Giving guidance to lower courts by creating "rules and tests" is another responsibility of the Supreme Court. By selecting the cases it will hear, the Court determines what areas of the law it will influence. Fallon explores several controversial topics in constitutional law today: the Court's relationship to the majority of Americans and to elected officials, the philosophy of "originalism" held by some Supreme Court justices, and the "moral rights" approach to jurisprudence. Cases mentioned in the excerpt such as *Brown v. Board of Education* and *Roe v. Wade* are familiar to students of American government. Ultimately, Fallon writes, the resolution of the complicated set of controversies that swirl around the Supreme Court comes from a less lofty, more practical consideration: decisions need to "produce good results overall," results that the American people endorse.

WRITING IN 1936 IN AN IMPORTANT CASE invalidating the centerpiece of the New Deal's farm program, justice Owen Roberts tried to blunt criticism by saying that the Supreme Court's job was not to exercise any independent judgment about the wisdom or even the possibly urgent necessity of challenged legislation, but simply "to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former." The Constitution's meaning, he implied, was almost invariably plain. In cases of doubt, others have suggested, research into the "original understanding" will ordinarily resolve any uncertainty.

... Roberts' portrait of the judicial role was more fanciful than realistic. (One wonders whether Roberts himself would not have acknowledged as much in less defensive moments—if not in 1936, then surely a year later, when his so-called "switch in time that saved nine" ended

the constitutional crisis that had provoked Franklin Roosevelt's Court-packing plan.) Often the Constitution's plain text will give no simple answer to modern constitutional questions: Which utterances lie within and without "the freedom of speech"? When is a search or seizure "unreasonable" and thus forbidden (rather than reasonable and thus permissible)? Which governmental classifications are consistent and inconsistent with "the equal protection of the laws"?

When the text gives no obvious answer, few would deny that the original understanding of constitutional language is relevant, but it is often hard to apply eighteenth- and nineteenth-century understandings to modern problems. . . .

What is more, many strands of judicial precedent seem inconsistent with the original understandings of constitutional language, and once precedents have been established, nearly everyone acknowledges that they, too, need to be reckoned with in constitutional adjudication. A particularly clear example involves the constitutionality of paper currency. The issuance of paper money very arguably exceeds the original understanding of Congress's power, conferred by Article I, Section 8, Clause 5 of the Constitution, to "coin Money." Had the framers wished to empower Congress to issue "greenbacks," they could easily have said so; the authorization to "coin Money" seems to speak more narrowly. But the Supreme Court held otherwise in 1871, and a reversal on this issue would provoke economic chaos.

Another example involves race-based discrimination by the federal government. Although it seems clear that no provision of the Constitution, even as amended, was originally understood to bar discrimination by Congress (as the Equal Protection Clause, enacted in the aftermath of the civil war, only limits action by the states), the Supreme Court has treated race-based discriminations by the federal government as "suspect" for more than sixty years now and has subjected such discriminations to "strict" or "searching" judicial scrutiny. Regardless of whether the earliest cases were rightly reasoned, the matter is now considered by nearly everyone to be settled by precedent and evolving moral understandings. Indeed, even Supreme Court justices who maintain in other contexts that constitutional adjudication should reflect "the original understanding" of constitutional language have accepted judicial precedents applying equal protection norms to the federal government (and, more controversially, have cited those precedents as authority for condemning federal affirmative action programs).

It is true, of course, that the Supreme Court is not absolutely bound by precedent. Sometimes it chooses to "override" itself. But the largely

discretionary judgment of when to follow precedent and when to overrule it only adds a further judgmental element to constitutional adjudication in the Supreme Court.

When the various relevant considerations are all put into play, I have suggested repeatedly now—largely following Professor Ronald Dworkin on this point—that Supreme Court justices typically decide how the Constitution is best interpreted in light of history, precedent, and considerations of moral desirability and practical workability. All of these factors are relevant. No clear rule specifies which will be controlling in a particular case. In this context, political scientists repeatedly emphasize that the voting patterns of Supreme Court justices tend to be relatively (though not perfectly) predictable on the basis of their political ideology. In view of the judgmental character of constitutional adjudication, it would be astonishing if the results were otherwise.

To say this is not to imply that the decisions of Supreme Court justices are crudely political. The justices function . . . as a constitutional "practice," which subjects them to a number of role-based constraints. They must reason like lawyers and take account of text and history as well as precedent. They work in the medium of constitutional law, not partisan politics, and the medium of law—with its characteristic techniques of reasoning—limits, shapes, and channels the justices' search for the best interpretation of the Constitution. Nevertheless, the nature of constitutional interpretation leaves abundant room for the exercise of legal and sometimes moral imagination.

Not, in assessing the scope of judicial power, is it always helpful or even strictly accurate to think of the Supreme Court as engaged solely in constitutional "interpretation." Among the Court's characteristic modern functions is to formulate rules and tests for application by lower courts in future cases. This process begins with an interpretive search for "the meaning of the Constitution." Before reaching a conclusion, however, the Court frequently needs to make a lot of practical judgments, informed by its sense of likely consequences. In my view many of the Court's rules are better viewed as devices to "implement" constitutional values than as "interpretations" of constitutional language. Among the clearest examples of constitutional "implementation" as a function distinct from pure "interpretation" comes from *Miranda v. Arizona* (1966), which introduced the requirement that the police give so-called *Miranda* warnings. Although admittedly an extreme case, the *Miranda* decision exemplifies a broader phenomenon. Many of the doctrinal tests . . . lack clear roots in either the Constitution's language or its history. The Supreme Court has devised them in order to implement constitutional values, but

they do not emerge from the Constitution through a process that would naturally be described as one of interpretation.

One final detail about the role of the Supreme Court deserves mention in a discussion of judicial power. Under the current statutory scheme, the Supreme Court enjoys almost complete discretion about which cases to hear and not to hear. Courts in the United States decide tens of thousands of cases every year. The Supreme Court could not possibly review every decision involving a federal constitutional question. After experimenting with various other schemes, Congress, by statute, has provided that the Supreme Court simply gets to choose which cases decided by lower courts it would like to review. In a typical year, the Court is asked to review more than 7,000 cases, out of which it has recently selected fewer than 100. For the most part, the Court agrees to decide those cases that the justices think most important. The Supreme Court's power to choose its own cases is an important one, which permits the Court to establish and pursue any agenda that it may wish to adopt—for example, by expanding constitutional fights or powers in some areas or pruning them in others. . . .

The breadth of the power exercised by courts, and especially by the Supreme Court, naturally gives rise to recurrent debates and anxiety. As lawyers and judges worry about whether and when it is legitimate for courts to invalidate legislation based on their interpretation (which others may not share) of a very old constitution, they have at least two concerns in mind. One involves public acceptance of judicial review: Under what circumstances, if any, might the American people simply refuse to put up with having courts invalidate legislation that popular majorities support? What would happen if a popular President defied a very unpopular judicial ruling? Might the people line up behind the President, rather than behind the Court? A second question involves the moral and political justifiability of judicial review, especially in light of the relatively free-wheeling way in which it is sometimes practiced: How, if at all, should courts go about deciding constitutional issues such that the American people *ought* to put up with their doing so?

These are perennial questions in American constitutional law and American politics. But they have arisen with special sharpness at some times in constitutional history—for example, during the *Leahy* era and then when Richard Nixon promised to appoint "strict constructionist" justices who would halt the excesses (as he saw them) of the Warren Court. In recent years conservative critics of the Supreme Court have found a focal point for criticism in the Court's 1973 decision in *Roe v. Wade*, which held that absolute prohibitions against abortion violate the

Constitution during the period before a fetus becomes viable or capable of surviving outside the womb. Although restrictions on abortion undoubtedly curtail "liberty," no one believes that the Due Process Clause—the provision on which the Court based its decision—was originally understood or intended to protect abortion rights. The Court based its ruling partly on precedent, partly on a contestable judgment that it is unreasonable to make women bear an unwanted fetus.

In objecting to decisions such as *Roe*, critics often maintain not just that the Court reached the wrong decision, but that it is not fair or "legitimate" for the unelected Justices of the Supreme Court to exercise a power to thwart the judgments of political majorities—at least when legislation is not in that contravention of the Constitution's originally understood meaning. This challenge, to which Alexander Bickel gave the label of "the counter-majoritarian difficulty," deserves to be taken seriously. But it bears emphasis that charges of "countermajoritarianism" can be leveled at conservative as well as liberal judicial decisions. . . . [I]n recent years, the five Justices of the Supreme Court who are generally labeled most "conservative" have invalidated numerous pieces of federal regulatory legislation, including the so-called Violence Against Women Act, on the ground that Congress lacks authority to enact it. Conservative Justices have also voted to subject federal affirmative action programs to strict judicial scrutiny, even though no provision of the Constitution was originally understood to bar affirmative action (or other forms of race-based discrimination) by the federal government. Conservative Justices have also voted to strike down popularly enacted restrictions on commercial advertising, even though it seems highly doubtful, at best, that the First Amendment was originally understood to protect commercial advertising.

Against the background of the countermajoritarian difficulty and related anxieties, judges and Justices openly debate questions of judicial role and interpretive methodology, often in the course of opinions deciding actual cases. Nor are debates about constitutional methodology confined to the courts. When Presidential candidates talk about the kind of judges and Justices that they would like to appoint, issues of proper interpretive methodology enter a broader public arena. Similar debates occur when the Senate considers whether to approve the nominations of candidates put forward by the President to become federal judges.

In recent years, at least two (highly conservative) Justices of the Supreme Court, Antonin Scalia and Clarence Thomas, have occasionally maintained that judges and Justices should renounce interpretive methodologies that require them to decide how the Constitution would "best" or most fairly be applied to modern conditions and should decide cases

based solely on the original understanding of constitutional language—what it was understood to mean by those who ratified it. Because virtually no one denies that the original understanding is relevant to constitutional adjudication, it is often hard to gauge the precise scope of the difference between so-called originalists and their opponents. But originalists often claim that their methodology is sharply distinctive.

Insofar as originalism is sharply distinctive, however, critics urge two forceful objections. First, the "original understanding" of some constitutional provisions may be far out of touch with current realities. For example, . . . the principal basis for claims of federal authority to regulate the economy is a constitutional provision empowering Congress to regulate "Commerce . . . among the several States." It is highly questionable whether Congress's regulatory authority in this vital area should depend entirely on the understanding that prevailed in what President Franklin Roosevelt, in championing the need for federal power to defeat the Great Depression, referred to as "horse and buggy" days.

A second problem, to which I have called attention already, is that a great deal of modern constitutional doctrine that is now too entrenched to be given up seems impossible to justify by reference to the original understanding. Originalists do not maintain otherwise. They generally concede that their theory must make an *exception* for issues settled by past, entrenched judicial decisions—or at least some of them. It is issues of consistency that give originalists trouble, for they do not contend that all erroneous precedents should be immune from correction. To take perhaps the best known example, prominent originalists insist tirelessly that *Roe v. Wade's* recognition of constitutional abortion rights ought to be overruled. But what distinguishes *Roe* from the precedents that originalists would leave unaltered? In essence, originalists reserve the right to pick which precedents to reject and which to accept, largely on the basis of their own judgments concerning which are important, desirable, and undesirable. Once it is recognized that Justices must make judgments of this kind, originalism fails in its own aspiration to exclude the Justices' moral and political views from constitutional adjudication. It is a philosophy available to be trotted out in some cases and ignored in others.

Confronted with objections such as these, originalists commonly insist that it takes a theory to beat a theory. Many originalists believe the best defense of their method is that it is the least bad of an imperfect lot. Others believe that alternative approaches to constitutional adjudication are better.

Another prominent theory of constitutional adjudication rests on the premise that the Constitution embodies "moral" rights. According to this

view, the Constitution's framers and ratifiers did not invent such rights as those to freedom of speech and religion and to the equal protection of the laws. Rather, they recognized that such rights already existed as moral rights, and they incorporated those moral rights into the Constitution. Those holding this view would say, for example, that the Equal Protection Clause extends as far as the moral right to treatment as an equal and thus justifies the result in *Brown v. Board of Education*, even if the framers and ratifiers of the Fourteenth Amendment would have thought otherwise. At its foundation, a "moral rights" approach to constitutional adjudication must posit that the courts are better at identifying moral truths than are members of Congress and the state legislatures, perhaps because the latter are subject to political pressures to which the former—who have more opportunity to be long-sighted and deliberative—are not. Critics of course maintain that this approach invites judges simply to impose their personal moral views. Judges, they insist, have no monopoly on, and indeed no special insight into, moral truth.

In view of the objections to both originalism and a "moral rights" approach, some observers call for greater "judicial restraint" in invalidating legislation. When members of Congress and state legislatures enact statutes, they have presumably considered whether the legislation violates the Constitution and determined that it does not. In light of this presumption, advocates of judicial restraint have long contended—since the *Lochner* era and even before—that the Supreme Court should accord "deference" to the constitutional judgments of other branches of government. According to one famous formulation of this position, the Court should invalidate statutes only when Congress or a state legislature has made a "clear mistake" about what the Constitution permits. This is by no means a wholly implausible position, but it would call for a dramatically reduced judicial role. It would also cast retrospective doubt on many of the Supreme Court's most celebrated decisions, including some that have protected the rights of racial minorities, safeguarded political speech, and enforced voting rights.

Believing that the Court should retain a robustly protective role in these areas, the late constitutional scholar John Hart Ely argued for deference to majorities *except* in cases involving claims of minority rights or rights to participate in the political process. He justified this approach by arguing that the Constitution's predominant commitment is to political democracy, and that courts should therefore intervene to make sure that the processes of political democracy function fairly. Among its implications, Ely's theory would stop courts from invalidating affirmative action programs (which disadvantage the white majority, not a racial minority)

and recently enacted statutes that discriminate against women (who are a numerical majority, not a minority, of the population). Ely did not claim that the Supreme Court actually follows his theory, only that it should.

Other participants in constitutional practice defend a more flexible approach to constitutional adjudication, such as they believe the Court has characteristically practiced, partly based on an analogy to the way that judges decided cases under the so-called common law. Well into the nineteenth century, Congress and the state legislatures still had enacted comparatively few statutes, and the most basic law—called the common law—was developed by judges on the basis of custom and reason. In deciding cases at common law, judges began with the rules as formulated in prior judicial decisions, but they also enjoy some flexibility to adapt those rules as circumstances change or as custom and reason require. Under the approach advocated by common-law constitutionalists, Supreme Court justices should employ a comparably flexible approach to deciding constitutional issues. They should always begin with the text of the written Constitution, with which any interpretation must at least be reconciled. And they should treat the original understanding as always relevant and often decisive. But, it is argued, judges and especially justices should also give weight to previous judicial decisions, including those that depart from original constitutional understandings, and they should take express account of what is fair, reasonable, workable, and desirable under modern circumstances, because we will get better constitutional law if they do so than if they do not. Critics, notably including originalists, argue that the common-law approach gives too large a role to judges, who are invited to thwart the wishes of democratic majorities based on their personal notions of justice and workability.

As the seemingly endless debate perhaps suggests, it may well be that questions of appropriate interpretive methodology admit no *general* answer—and that there can be no categorically persuasive rejoinder to the countermajoritarian difficulty either. The justification of the Supreme Court's role and interpretive methodology, if any, may well depend on the substantive fairness and popular acceptability of the particular decisions that it makes across the sweep of time. For now, at least, the people of the United States appear to have accepted a judicial role in adapting the Constitution to changing perceptions of need and fairness. But their acceptance of a flexible judicial role should surely be regarded as contingent, based on an assumption—grounded in our traditions—that judicial review as historically practiced has tended to produce good results overall. It is a useful device for promoting substantive justice and for reaching results that are broadly acceptable to the American public in ways that are at least



tolerably consistent with the constitutional ideal of "a government of laws, and not of men."

Alexander Bickel may have had a thought such as this in mind when he wrote, somewhat enigmatically, that the Court "labors under the obligation to succeed." If the Court must somehow succeed in order to justify the role that it plays, and if success depends on reconciling the contestable demands of substantive justice with sometimes competing imperatives of adhering to settled rules of law and of rendering decisions that the public deems acceptable, it is easy to understand why the practice of judicial review should provoke ongoing anxieties and debate. . . .

## MARCIA COYLE

### From *The Roberts Court*

*Legal analyst Marcia Coyle offers an inside look into the U.S. Supreme Court and its nine justices. The Court's decision on the constitutionality of the Affordable Care Act (called, for short, controversially, "Obamacare") provides the backdrop for Coyle's narrative. She sets the scene by addressing the tension between the Court's legal role and its political role. Which is true? Both, maybe. The Bush v. Gore decision that determined the winner of the 2000 presidential election has relevance, Coyle notes, as she explores the complex debate over whether the Supreme Court is a political branch of government. Coyle then recounts the events of March 2010 when the ACA's constitutionality was argued before the Court. There's an interesting cast of characters and some memorable instances: fog in the hall, at a critical moment. The justices ask questions, then deliberate among themselves. The players are many: Justices Sotomayor, Kennedy, Ginsburg, Breyer, Thomas, Alito, Kagan, Solicitor General, and Chief Justice Roberts, the key figure and at the center of the storm, to borrow David O'Brien's term (see #39). Although we all know that the Court upheld the ACA, Coyle's account is riveting, especially because of the unusual fault lines of the decision. Coyle's look at this important moment in the Roberts Court hints at the ongoing controversy throughout the nation in the years since the 5-4 decision in National Federation of Independent Business v. Sebelius.*

A BELL RINGS THROUGH the chambers of the nine justices of the Supreme Court just five minutes before they take their seats in the courtroom to hear arguments in the day's cases. The sound reminds them that it is time to go to the robing room, an oak-paneled room, containing nine closets, each with a brass nameplate of the justice whose robes are inside. As soon as more than one justice enters, the traditional handshake in which each justice shakes hands with each of the other eight begins. If someone is missed there, the next opportunity is the next stop: the main conference room off of the chief justice's chambers. Chief Justice John Roberts Jr. likes to be the first justice into the conference room in order to greet his colleagues as they enter.

The handshake is done before arguments and before each conference in which the justices discuss petitions for review and vote on cases. Chief

## RASMUS KLEIS NIELSEN

From *Ground Wars*

*High school and college students may be able to identify with Rasmus Kleis Nielsen's research approach for his book about "ground wars," to him, the person-to-person techniques of campaigning. He knocked on doors and made phone calls for several 2008 congressional candidates. Maybe you've done what the excerpt's volunteers have done, or maybe you plan to take part in this indignation, behind-the-scenes part of a future campaign. Regardless, don't be discouraged. Sometimes people on your list are home and even willing to listen. Occasionally, a phone is answered with positive results. Nielsen notes that face-to-face (or voice-to-voice) contact can have a significant impact on undecided voters. It can encourage loyal partisans to turn out to vote. And in two years or four years, the information gleaned from all those personal contacts may help at the next election. Still, the lists are long, the days long, and the explicitness aplenty. Welcome to politics at the very deepest of grassroots.*

### Episode 1.1

Charlene is in her late thirties, African American, and looking for a job. Her home is in Bridgeport, Connecticut, a decaying, de-industrialized city with an unemployment rate over 10 percent and about 20 percent of the population living below the poverty line. Right now she is making ten dollars an hour canvassing for the Connecticut Democrats' coordinated campaign—and gets a gas card every week too. "It helps pay the bills," she says. She finished her Microsoft Office User Specialist class at Workforce, Inc., this afternoon, and since then we have been out walking door-to-door, talking to voters.

Charlene knocks on the door, holding her clipboard with the Jim Himes for Congress flyers and a map of the area in one hand and a PalmPilot with our script, walk sheet, and talking points in her other hand. I stand a couple of yards behind her, clutching my own clipboard and PDA (personal digital assistant), watching the house for any signs of life. We are about to leave when an elderly white woman opens the door. We know from our list that she is probably Anna Rizzo, a seventy-seven-year-old registered Democrat who lives here. She is our target because she is an infrequent voter. Ms. Rizzo leaves the door chain on, and asks, "What do you want?" Charlene says, "We're here to tell you about Jim Himes, the Democratic congressional candidate." I finch as she says "congressional." She has done it before, just as she again ignored the script we have been instructed to use. Ms. Rizzo closes the door without a word. We write her down as "Not

From *Ground Wars*

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Home." She will be contacted again soon because she has been identified as a part of one of the target universes—sometimes called "lazy Democrats"—and because the campaign has her phone number and address.

"This is a bad list," Charlene says to me as we walk toward our next target, a couple of houses down the street. "I can't believe they've sent us out here. What a waste of time. Well, well—that's their problem."

### Episode 1.2

It is late afternoon in Fairwood, New Jersey. Linda Stender's hometown, a town she has served as mayor and state assemblywoman for years and now hopes to represent in Congress. Her campaign office is in a worn-down demolition-slated building just across from the train station. Today we are four people working the phones, calling voters to tell them about Stender and ask them a few questions about where they stand on the upcoming election. Everyone on the phones is a volunteer. All are well over sixty (except me). We sit in a room separate from where the staff works.

Paula gets what she calls "a live one," her first since she arrived twenty minutes ago. So far she has just been leaving messages. She reads the first lines of her script to the voter, asking who he plans to vote for in the fall. It turns out he is leaning toward Stender's opponent, state senator Leonard Lance. Paula immediately gets into an argument with him. "I can't believe you want to vote for a Republican after what Bush has done to our country! Dragged us into a criminal war for oil, undermined the Constitution, handed over billions in tax cuts to the wealthiest!" They talk for a few minutes. From what we can hear, it is a spirited discussion.

After she puts down the phone, Paula says to the rest of us, "I can't believe there are people out there who aren't Democrats." We all chuckle. Clearly, Stender's campaign staffers and her outside consultants have an inkling that there are some voters in the district who aren't Democrats. Stender ran as a progressive in 2006 and lost narrowly to the incumbent Republican, Mike Ferguson. This cycle she is running as a moderate for what is now an open seat, without using her party affiliation or the name of the Democratic presidential nominee in her literature and advertisements. But many of the volunteers still see her—and present her to voters—as the woman they support, "the old Linda."

### Episode 1.3

Election Day is only a week away, and the field organizers are struggling to whip the GOTV (Get Out the Vote) program into shape. People are on the phones constantly, calling paid part-time canvassers and potential volunteers, trying to get them to confirm their availability over the weekend. There are thousands of shifts to be filled, walk packets to be assembled, call sheets to be printed. This is a major logistical operation, with many moving parts, pursued under intense time pressure.

One of the field organizers complains that his volunteers are "faky" and won't commit. The field director is stressed out: "We need more bodies!" He

makes a call and then shouts to one of his deputies...who is technically employed by the state party and not the candidate...."We've got twenty more labor guys coming in. I need you to cut more turf. I'll send you the list." Jack, the volunteer coordinator, is calmer, almost serene. He leans back and comments on the conversation around us: "We'll have to close some locations; it'll never work with all those phone banks. Multiple locations: great in theory, bad in practice. But they won't listen. We don't have time for this."

Around 100 MILLION AMERICANS were contacted at the door or over the phone by various political organizations during the 2008 elections. Millions of volunteers and tens of thousands of paid part-time workers did the contacting. Thousands of full-time staffers organized their efforts. At the surface it looked like nothing new under the sun. Even if the number of contacts made varies over time (and it has increased dramatically from 2000 onward), canvassing voters, by foot or by phone, is a staple of American politics. In some ways the conversations among people in 2008 probably were not all that different from those of 1988 or 1968: "Who do you plan to vote for?" "Here is why you should support my guy." "Now, remember to go and vote." That is the basic blueprint as canvassers try to identify where people stand, sway the undecided, and bring out their supporters. Volunteers who cut their teeth on Michael Dukakis's or even Hubert Humphrey's campaign for the presidency can still use their experience at the door many years later when confronted with an uninterested, unfriendly, or otherwise unapproachable voter who does not care much for "that one," the man who later became President Obama. At the face of things, on the front stage, canvassing seems largely unchanged.

But behind the scenes hundreds of specialists toiled at their computers to make it all possible, to maximize the instrumental impact, and to try to keep it all under control. Away from the doors and off the phones, staffers, volunteers, and part-timers used new information and communication technologies ranging from by now mundane things like cell phones and email, to emerging tools like social networking sites, and to specialized technologies like tailor-made campaign Web pages and dedicated software solutions for targeting and management. In Washington, D.C., and in innumerable offices and coffee shops around the country, consultants crunched numbers to make sure their client campaigns made the most of it all. The work done to sort index cards with voter information and to physically cut and paste the walk sheets for a canvass in 1968 or 1988 had little to do with what it took to update detailed Web-accessible voter files, synchronize personal digital assistants, and print turf maps in 2008. In

political campaigns new technologies have not replaced older forms of communication as much as they have revived them.

The backstage changes are not only technological, they are also institutional. When Barack Obama topped the ticket in 2008, many of the organizations that had provided much of the manpower to knock on doors for Dukakis and Humphrey—most importantly labor unions and local Democratic Party organizations—were no longer what they used to be. Candidates and their staffers today have to piece together their own campaign operations from a wider, less structured, and more unruly universe of allies, volunteers, and paid part-timers. The supposedly old-fashioned practice of contacting voters directly on behalf of a candidate or party is deeply intertwined with the most recent advances in online-integrated software and database management; it is also deeply influenced by contemporary changes in how the major parties and their closest allies organize and are organized. Like campaign practices in general, these various forms of voter contact are characterized by both change and continuity.

This book deals with how American political campaigns pursue what I call "personalized political communication"—premediated practices that use *people* as media for political communication. The main forms of this method of communication are door-to-door canvassing and phone banking; central parts of what political operatives call the "ground war." I analyze this subject not to assess its impact on electoral behavior, but to identify the implications that ground war practices have for how we understand processes of political communication, for how we understand campaigns, and for how we understand what it means to take part in them—an important form of political participation, a part of what it means to have a government that is created at least partially "by the people." How campaigns are waged matters, not only for electoral outcomes but also for what democratic politics is.

Personalized political communication on the large scale we have seen in recent elections requires resources that are well beyond those commanded by campaign organizations built around individual candidates. I show how this type of communication is pursued instead by wider "campaign assemblages" that include not only staffers and consultants but also allied interest groups and civic associations, numerous individual volunteers and paid part-timers, and a party-provided technical infrastructure for targeting voters. Close scrutiny of how such campaign assemblages engage in personalized political communication leads me to challenge the dominant view of political communication in contemporary America—that it is a tightly scripted, controlled, and professionalized set of practices

that primarily represses turnout and turns people off politics in its cut-throat pursuit of victory. I highlight how even as they bankroll negative advertisements, feed the horse race coverage, and resort to direct mail attacks, campaigns also work hard to get out (especially partisan) voters and get people involved in (instrumental) forms of political participation. Analysis of how campaign assemblages wage ground wars leads me to dispute the widespread idea that American politics is increasingly the province of a small coterie of professionals as well as the romantic notion that canvassing and the like represents some purer form of "grassroots politics." I demonstrate how even well-funded competitive campaigns for federal office continue to rely on a wide range of nonprofessional elements, how the campaign organizations themselves are at most unevenly professionalized, and also how even the most seemingly innocent volunteer canvass is tied in with specialized targeting technologies and staff expertise.

Finally, attention to campaigns' and staffers' instrumental need for people to engage in the labor-intensive work of personalized political communication, of contacting voters one at a time, at the door or over the phone, leads me to suggest that when elections are competitive and ambition is thus still made to counteract ambition, today's political operatives and political organizations have a renewed self-interest in getting people to participate in the political process as volunteers and voters. Ground war campaigns are highly instrumental in their orientation; they pick and choose who they talk to and try to turn out, discriminate consciously and unconsciously in who they mobilize as volunteers, and have not even a semblance of internal democracy. But they actively encourage participation and generate higher turnout, and that is a good thing for a democracy plagued by widespread indifference and a sense of disconnect between people and politics.

Ground war campaigns and practices of personalized political communication offer a privileged point for observing American democracy in action. Working for a candidate or a party at election time is a paradigmatic form of political participation, something millions of people do every year. Most of them, whether they are volunteers or part-timers, will be asked to knock on doors or make calls and talk to voters. Canvassing and phone banking are intensely social, organized, and outward-oriented activities; they cannot easily be done in isolation from the privacy of one's living room like making an online donation to a candidate or writing out a check to be mailed to a campaign committee. Personal contacts confront participants with parts of the electorate, bring them together with others who are involved, and introduce them to the organizational and

technological intricacies of contemporary campaigns. They offer an opportunity to try to influence (however slightly) electoral outcomes; meet people with a passion for, or a professional commitment to, politics; and, as one volunteer put it, "take a real-life lesson in practical politics." To understand practices of personalized political communication is therefore to understand a crucial component in civic and political life.

My analysis of recent ground wars is based primarily on ten months of ethnographic fieldwork on the Democratic side in two competitive congressional districts during the 2008 elections: Connecticut's 4th district and New Jersey's 7th district. . . .

Every single one of the countless knocks and calls made served one or more of the same three instrumental purposes: to persuade swing voters (those who have no fixed political allegiances and whose votes can thus determine election results), to motivate base voters to turn out, and to gather more information about the electorate for further contacts. Every call or knock was predicated upon the participation of players well beyond the core of full-time staffers in the campaign organization itself. Every one of these contacts entailed potentially fraught encounters with voters, came with numerous organizing challenges, and had to be effectively targeted to be worth the effort.

To demonstrate what such ambitious ground war campaigns mean for political communication and for how we understand contemporary forms of political organization and political participation in America, the rest of this book deals not only with the act of contacting voters but also with the organizing and targeting that make these countless conversations possible. Together, processes of contacting, organizing, and targeting define how personalized political communication works. The episodes scattered throughout the text include some of the elements that must be considered in this type of communication—the different communities of staffers, volunteers, and part-timers involved; the various technologies they use; the data their work is based on; the different motivations and conceptions of politics at play; and the whole heterogeneous edifice that is constructed around candidates in competitive districts to conduct field operations, to wage ground wars, to pursue personalized political communication.

Political practice on the ground does not single-handedly decide elections or define levels of political participation. Political scientists have long demonstrated the importance of broad economic trends, demographic developments, and party identification for electoral outcomes. Sociologists have established the importance of socioeconomic status and social ties for civic engagement. But campaigns matter—at the margin for

who wins and who loses, and in terms of political participation because they constitute one of the pathways by which people can get involved in politics. The central role played by formal and informal intermediaries in encouraging, shaping, and sustaining civic engagement has led to detailed studies of, for example, anti-abortion activism, environmentalist groups, and movements for urban renewal, but, curiously, not of political parties and campaigns.

Close attention to the work that goes into fighting ground wars brings to light an everyday life in campaigns that is far from the glamour that some associate with politics. Personalized political communication is rarely covered by journalists, who are more interested in who said what to whom and who is ahead. It plays no part in television drama series like *The West Wing* (1999–2006; much loved by many campaign staffers). It receives little breathless commentary on cable channels or political blogs. Field operations belong to the electoral backstage, where people who are not candidates, policy specialists, or high-profile consultants work hard in relative obscurity to bring about these countless contacts. To make visible the daily practices that make personalized political communication possible on a large scale, this book focuses on what I actually saw people say and do on the ground in the campaigns, and not on how canvassing and phone banking are depicted in the press or by prominent political operatives marketing themselves and their work. It is only on the basis of such firsthand evidence that a clear analysis of the logics at play, and the implications they have, becomes possible....

### Episode 3.1

Since four o'clock on this warm and sunny August afternoon, I have been canvassing with Allen in affluent, suburban Trumbull, Connecticut. He is a college senior doing an internship with Himes for Congress over the summer. We are walking a list with about a hundred targeted voters distributed across roughly eighty households. It will take us something like four hours to knock on every door in a terrain like this. We expect to speak to maybe thirty people. The canvassing director will come back to pick us up around eight.

Three more canvassing teams are working in pairs to "knock through" other parts of the area. We are staying out of some parts of Trumbull to avoid getting the candidate entangled in a primary fight between two well-connected local Democrats who both want a shot at the state Senate.

Allen walks up to a large, well-kept house, looking for signs of life. He rings the bell and waits for about twenty seconds. He pounds on the solid wood door and shouts, "Hello?" Ten seconds later, he sticks a Himes for Congress flyer under a potted plant next to the doorstep and walks back down toward me. As he reaches the road, where I'm waiting, he says, "Not home," and wipes the sweat off of his increasingly sunburned face.

### Episode 3.2

I am phone banking with Paula and the other volunteers in Farwood, New Jersey. Most of us have been on the phones for more than an hour, and the pace is increasingly sluggish. It is around five in the afternoon. Today, we are calling women over sixty-five who are registered as independents. The first hour, I made forty calls and had five contacts. I am on my second hour, and I have lost some pace. I have made fewer than thirty calls and have had only one contact. I feel no particular urge to punch in the number for the voter next on my list.

But I do it. And I sit with the phone in my hand listening to the dial tone while I count toward twenty-in-my-head. After about fifteen seconds, I hear a robotic voice: "The person you have called is not available to take your call at this moment. Your call has been forwarded to an automatic voice-mail service. At the tone, please record your message. When you have finished recording, you may hang up or press one for more options."

I look down on the script in front of me, wait for the tone, then start reading. "Hi, my name is Rasmus. I'm a volunteer with Victory '08. I just wanted to call you to tell you about Linda Stender and the Democratic ticket. Linda Stender believes that the Bush administration has led our country in the wrong direction, and she will fight to get us back on the right track. Linda Stender will work to jump-start our economy and create good, new jobs; stop the war in Iraq and bring our troops home safely and soon; fight for affordable health care for every American; and develop a national energy policy that ends our dependence on foreign oil and brings down the price at the pump. Linda Stender will bring the change that New Jersey families need. If you would like to know more or perhaps to get involved in the campaign, please contact the Victory '08 office at 908-490-1380. This call was paid for by the New Jersey State Democratic Committee and Linda Stender for Congress. It is authorized by Linda Stender for Congress. Thank you, and have a good day."

This takes about forty seconds. I've read it into something like forty voicemail systems today.

### Episode 3.3

It is October and late in the game. Linda Stender's opponent has been nipping his game recently with a new television ad, and the Republican Congressional Campaign Committee has just sent out an aggressive direct mail piece to potentially undecided voters.

Kevin is on the phones, calling through a list of people who previously have been identified as undecided by other callers or canvassers, or are believed to be so on the basis of statistical analysis of the data available to the campaign. He has been in to "help out" a few times, being, as he puts it, "between things" right now. Given his previous experience working in telemarketing, it is no surprise that he is good on the phones—polite but firm, usually unwavering, and hardworking.

He dials the next person on the list and waits. The second he hears the "Hello?" at the other end, his whole body language changes. He straightens his back, brightens a dazzling smile, and launches into his spiel: "Good evening, sir. Why,

name is Kevin, and I'm a volunteer calling you on behalf of Linda Stender. She is a—" He stops speaking and hesitates for a second, then holds out the receiver while looking at it. He turns to me and says, "He told me to go fuck myself!"

#### *Episode 3.4*

Charlene and I are canvassing together in the outskirts of Bridgeport, Connecticut. While not quite as depressed as the inner city, the area we are in is still poor, especially by Fairfield County standards. A few houses are vacant, many are for sale, and most are somewhat worse for wear. Though we are nowhere near the end of our list and are supposed to go on until eight-thirty, Charlene has announced that she wants to call it a day at seven-thirty. "Nobody wants to talk later anyway," she says. I know the canvassing director won't approve, but I say nothing. The part-timers seem to work slightly shorter hours with each passing week.

With ten minutes to go, I have a couple of houses left on the street we are on, so I have been rushing things a bit, knocking on doors and leaving after ten seconds or so if I sense no reaction. I have skipped some of the houses that seemed obviously empty to me, though maybe I shouldn't—it is sometimes hard to balance between acting like my fellow canvassers and following staff instructions. I sort of want to finish this row, but I half dread running into a "talker" who will go on forever and make Charlene have to wait for me in the car.

I need not fear. The only person I speak to on this street is a man in his late seventies who has even less time for me than I have for him. I ring the bell next to his open front door and say "hello" as he is watching television in his living room. He turns toward me in his chair without getting up and shouts to me, over the loud chatter of CNN pundits, "What is it?" I speak as loudly as I can without shouting, trying to get through to him while Dr. Sanjay Gupta is making some point in a faraway studio: "Hi, my name is Rasmus. I'm just out walking the streets for the Democratic Party, talking to folks about the fall elections. Have you thought about—" The man interrupts me: "Yeah, yeah, you don't need to read me the whole speech. I'll vote the ticket." He turns away and fidgets with the remote control. I hesitate for a moment, then turn around and walk away. On my 11DA I put him down as a "solid Democrat" and a "definite supporter" of the various Democratic running....

This is what personalized political communication looks like up close. Episodes like these are likely familiar to anyone who has been part of the field side of an American campaign. For those who have not, they provide a glimpse of what the countless contacts made are actually like. It is easy to lose sight of the texture of this in the face of political operatives and their talk of so-and-so many "knocks" and "calls." In the quantitative terms that campaign staffers favor, individual encounters are all alike and can be recorded in the clear-cut categories used to gather response data for further targeting: "hot home," "undecided," "solid Democrat," and so

on. But for people like Kevin... Charlene, and millions more like them, who have taken it upon themselves to serve as media for personalized political communication, there is something more at stake in every attempt to contact a voter. Staffers in both campaigns were puzzled that I continued to take part in both canvassing and phone banking throughout my fieldwork. As one said, "You knock on the door and deliver the script. What's the big deal?" The big deal is what personalized political communication entails for those who are directly involved: uninvented interactions with total strangers. What is at stake here is not simply a chance to deliver a message and gather some information about voters, all on behalf of a campaign, but also the right to assume a certain role while doing so. The challenges involved make it difficult to keep personalized political communication "on message" and make it a draining and sometimes unpleasant experience for those involved....

Canvassing voters and working the phones is widely seen as stressful. Almost everyone seems to be in agreement on this. One staffer remarked, "Honestly, I hate making phone calls." Some volunteers, clearly anticipating what they will be asked to do, arrive at campaign offices announcing, "I don't do phones, and I don't do doors, but I'll do anything else I can to help." (This is quite a headache for staffers who need help with "doing" phones and doors more than they need help with anything else.) Other volunteers are more stoic: "I don't like this, but if that's what I can do to help, so be it." Part-timers voice their concerns too: "I don't know how long I can continue doing this" (a remarkable verdict on a part-time job that will last at most two months). During my fieldwork I have seen everyone from senior staffers supervising dedicated volunteers to the most conscientiously loyal part-timers shirk from the job at hand. Some people fake phone calls by punching in imaginary numbers and holding the receiver while the error message sounds at the other end. Dozens admitted in private conversations to not actually knocking on doors they have walked up to and to sometimes fabricating response data about contacts that did not take place. No one stands by such behavior, but most of those who admitted to it explain it with reference to the wear and tear of seemingly endless numbers of often unpleasant conversations with voters. This is what most of those involved found most draining, uncomfortable, and ultimately stressful about personalized political communication. Not the hours spent on the phone or walking the streets, but the interactions themselves. (This helps explain why people strongly dislike productivity-enhancing technologies like auto-dialing systems for phone banking.

Most people are reluctant to make calls for more than an hour or two at the normal rate of thirty or so calls an hour. Computerized systems can ramp that up to a hundred or more, making the work even more taxing.)

The stress that people feel surely has multiple roots. Some battle a sense of futility, despite staffers' protestations to the contrary: "Personal contacts have been shown to be one of the most effective ways of influencing voters!" As made clear, much research suggests that staffers are right and yet people wonder, "Why are we doing this?" "Does this make any difference?" Brought up on mass-mediated politics, it may be counterintuitive even to the people involved that talking to people one at a time may actually add up in a demonstrably effective way. Others complain of the tedious work involved: "I'm soo bored. . . ." "One more phone call and I'm going to shoot myself!" And though the interactions with voters are rarely the same, the work of contacting them surely is repetitive and a long way from the drama some news coverage and fictionalized accounts suggest surrounds politics. As one college intern put it, "I didn't realize how much hard work goes into campaigns!"

PART TWELVE

# Political Parties

## BILL BISHOP

From *The Big Sort*

Although Americans are not aware of it, we are "forming tribes," observes Bill Bishop. If he were writing about people getting their news from cable television or the Internet, he'd call it macrotribing. If Bishop's more interested political parties, he'd use the term party polarization. But the author is commenting about a "sort" that's much more measurable and spatial: Americans choose to move to states, towns, towns, neighborhoods that contain people who are similar to them in attitudes. Aided by the demographic analysis of Robert Cuthbert, Bishop finds that places differ in their like- and dislikes. Maybe it's not a 100% consensus choice when looking the morning car to head out to a new locale. But for many folks, moving to another part of the nation—even to a particular neighborhood—is not heaving out so parts unknown. Perhaps the U.S. embraces diversity in a broad way, but in individuals, own here, others, it sought. How do people know where to find those who share their norms and values? Bishop says that people just know: "... you get a vibe." The implications of this "big sort" are, well, big for politics, with many fewer competitive congressional districts now than in the past. For example, in mid-2015, The Cook Political Report found that only 36 out of 435 House of Representatives seats could be termed competitive for 2016, with Larry Sabato's Crystal Ball citing a similar number of seats that are up for grabs. Returning to the demographic facts, you can test Bishop's thesis by looking at the university you chose to attend, the city you moved to, and the neighborhood in which you settled. Is it a good fit for your attitudes and beliefs? Cars and dogs figure into the answer, too.

THE "RED" AND "BLUE" STATES SHOWN ON television maps during the past several national elections depict a country in a static standoff. On this scale, politics is a game of Risk. What will it take for Republicans to capture Michigan? For Democrats to regain Ohio? But people don't live in states. They live in communities. And those communities are not close to being in equipoise, even within solidly blue or red states. They are, most of them, becoming even more Democratic or Republican. As Americans have moved over the past three decades, they have clustered in communities of sameness, among people with similar ways of life, beliefs, and, in the end, politics. Little, if any, of this political migration was by

From *The Big Sort*

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design, a conscious effort by people to live among like-voicing neighbors. When my wife and I moved to Aisen, we didn't go hunting for the most Democratic neighborhood in town. But the result was the same: moving to Travis Heights, we took a side and fell into a stark geographic pattern of political belief, one that has grown more distinct in presidential elections since 1976.

Over the past thirty years, the United States has been sorting itself, slicing at the more microscopic levels of society, as people have packed children, CEOs, and the family bound and moved. Between 4 and 5 percent of the population move, each year from one county to another—100 million Americans in the past decade. They are moving to take jobs, to be close to family or to follow the sun. When they look for a place to live, they run through a checklist of amenities: Is there the right kind of church nearby? The right kind of coffee shop? How close is the neighborhood to the center of the city? What are the rents? Is the place safe? When people move, they also make choices about who their neighbors will be and who will share their new lives. Those are now political decisions, and they are having a profound effect on the nation's public life. It wasn't just my neighborhood that had tipped to become politically monogamous. In 1976, less than a quarter of Americans lived in places where the presidential election was a landslide. By 2004, nearly half of all voters lived in landslide counties.

In 2004, the press was buzzing about polarization, the inability of the leaders of the two political parties to find even a patch of common ground. All the measures of political ideology showed widening divisions between Democratic and Republican political leaders, and unbridled partisanship in national politics became a topic for Sunday news shows and newspaper columnists. Meanwhile, unnoticed, people had been reshaping the way they lived. Americans were forming tribes, not only in their neighborhoods but also in churches and volunteer groups. That's not the way people would describe what they were doing, but in every corner of society, people were creating new, more homogeneous relations. Churches were filled with people who looked alike and, more important, thought alike. So were clubs, civic organizations, and volunteer groups. Social psychologists had studied like-minded groups and could predict how people living and worshipping in homogeneous groups would react: as people heard their beliefs reflected and amplified, they would become more extreme in their thinking. What had happened over three decades wasn't a simple increase in political partisanship, but a more fundamental kind of self-perpetuating, self-reinforcing social division. The like-minded neigh-



barhood supported the like-minded church, and both confirmed the message and beliefs of the tribes that lived and worshipped there. Americans were busy creating social resonators, and the hum that filled the air was the reverberated and amplified sound of their own voices and beliefs.

This was not an area of concern for most of those who wrote about politics. Migration wasn't thought to be much of a factor in politics. People moved, sure, and some states gained votes while others lost. But the effects were thought to be essentially a wash. Frankly, I only stumbled upon this trend in American politics—and that was only after I stumbled upon Robert Cushing.

I had previously worked for a small paper in the coalfields of Eastern Kentucky, and my wife and I had owned a weekly newspaper in rural Texas. From my experience living in small towns, I had become interested in why some communities develop vibrant economies while others stagnate, and I had written about this question as a newspaper columnist in Kentucky and then a reporter in Austin. Cushing was a sociologist and statistician who had recently retired from the University of Texas. My parents were friends with a cousin of Bob's wife, Frances. Through that tenuous connection, we met for breakfast one morning.

I remember telling Bob I had some data about Austin's economy but didn't know quite what to do with it. "I do," Bob responded. That was typical Bob, a guy who had paid his way through graduate school by working summers fighting forest fires as a Smokejumper in Montana. He did know what to do with the pile of data I had collected, and we began collaborating on projects for the *Austin American-Statesman*. We would decide on a question we wanted to answer and Bob would begin clicking, programming, and calculating. Often in the middle of the night, a new set of charts and Excel files would arrive in my e-mail inbox, and I'd see that Bob had made another remarkable discovery. . . .

People don't check voting records before deciding where to live. Why would anyone bother? In a time of political segregation, it's simple enough to tell a place's politics just by looking. Before the 2006 midterm elections, marketing firms held focus groups and fielded polls, scouring the countryside to find the gateway to a person's political inclination. Using the most sophisticated techniques of market profiling, these firms compiled a rather unsurprising list of attributes.

Democrats want to live by their own rules. They hang out with friends at parks or other public places. They think that religion and politics shouldn't mix. Democrats watch Sunday morning news shows and late-night television. They listen to morning radio, read weekly newsmagazines,

watch network television, read music and lifestyle publications, and are inclined to belong to a DVD rental service. Democrats are more likely than Republicans to own cats.

Republicans go to church. They spend more time with family, get their news from Fox News or the radio, and own guns. Republicans read sports and home magazines, attend Bible study, frequently visit relatives, and talk about politics with people at church. They believe that people should take more responsibility for their lives, and they think that overwhelming force is the best way to defeat terrorists. Republicans are more likely than Democrats to own dogs.

None of this is particularly shocking. We've all learned by now that Republicans watch Fox News and Democrats are less likely to attend church. Okay, the DVD rental clue is a surprise, and Democrats in my part of town own plenty of dogs, but basically we all know these differences. What is new is that some of us appear to be acting on this knowledge. An Episcopal priest told me he had moved from the reliably Republican Louisville, Kentucky, suburbs to an older city neighborhood so that he could be within walking distance of produce stands, restaurants, and coffee shops—and to be among other Democrats. A journalism professor at the University of North Carolina told me that when he retired, he moved to a more urban part of Chapel Hill to escape Republican neighbors. A new resident of a Dallas suburb told a *New York Times* reporter that she stayed away from liberal Austin when considering a move from Wisconsin, choosing the Dallas suburb of Frisco instead. "Politically, I feel a lot more at home here," she explained. People don't need to check voting records to know the political flavor of a community; they can smell it. . . .

To explain how people choose which political party to join, Donald Green, a Yale political scientist, described two social events. Imagine that you are walking down a hall, Green said. Through one door is a cocktail party filled with Democrats. Through another is a party of Republicans. You look in at both, and then you ask yourself some questions: "Which one is filled with people that you most closely identify with? Not necessarily the people who would agree were you to talk policy with them. Which group most closely reflects your own sense of group self-conception? Which ones would you like to have your sons and daughters marry?" You don't compare party platforms. You size up the groups, and you get a vibe. And then you pick a door and join a party. Party attachments are uniquely strong in the United States. People rarely change their affiliation once they decide they are Democrats or Republicans. No wonder. Parties represent ways of life. How do you know which party to join?

Well, Green says, it *felt* right. The party is filled with your kind of people.<sup>5</sup>

How do you know which neighborhood to live in? The same way: because it feels right. It looks like the kind of place with boys and girls you'd like your children to marry. You just know when a place is filled with your kind. That's where you mentally draw a little smiley face of approval, just as my wife did as we moved from Kentucky to Austin in 1999.

Texas voted in 2005 on whether to make marriage between people of the same sex unconstitutional. Starewied, the anti-gay marriage amendment passed with ease. More than seven out of ten Texans voted for it. In my section of South Austin, however, the precincts voted more than nine to one *against* the measure. The difference between my neighborhood and Texas as a whole amounted to more than 60 percentage points. It's not coincidence that in our narrow slice of Austin, a metropolitan area of more than 1.4 million people filling five counties, the liberal writer Molly Ivins lived just five blocks from the liberal writer Jim Hightower—and at one time we lived five blocks from both of them.

During the same years that Americans were slowly sorting themselves into more ideologically homogeneous communities, elected officials polarized nationally. To measure partisan polarization among members of Congress, political scientists Howard Rosenthal, Nolan McCarty, and Keith Poole track votes of individual members, who are then placed on an ideological scale from liberal to conservative. In the 1970s, the scatter plot of the 435 members of the House of Representatives was decidedly mixed. Democrats tended toward the left and Republicans drifted right, but there was a lot of mingling. Members from the two parties overlapped on many issues. When the scholars fast-forward through the 1970s, 1980s, and 1990s, however, the votes of the 435 representatives begin to split left and right and then coalesce. The scatter plot forms two swarms on either side of the graph's moderate middle. By 2002, Democratic members of Congress were buzzing together on the left, quite apart from a tight hive of Republicans on the right. In the mid-1970s, moderates filled 37 percent of the seats in the House of Representatives. By 2005, only 8 percent of the House could be found in the moderate middle.

<sup>5</sup>Sociologist Paul Lazarsfeld, working in the 1940s, saw the same kind of policy-free connection between parties and people. In his book *Learning a Study of Opinion Formation in a Presidential Campaign* (Chicago: University of Chicago Press, 1954) Lazarsfeld wrote: "The preference for one or another party rather than another must be highly similar to the preference for one

Members from the two parties used to mingle, trade votes, and swap confidences and allegiances. (In 1965, half the Republicans in the Senate voted for President Lyndon Johnson's Medicare bill.) That kind of congressional compromise and cross-pollination is now rare. More common is discord. *The Washington Post's* Dana Milbank and David Broder reported in early 2004 that "partisans on both sides say the tone of political discourse is as bad as ever—if not worse." Former Oklahoma congressman Mickey Edwards said that on a visit to Washington, D.C., he stopped at the barbershop in the Rayburn House Office Building. "And the barber told me, he said, 'it's so different, it's so different. People don't like each other; they don't talk to each other,'" Edwards recalled. "Now, when the barber in the Rayburn Building sees this, it's very, very real! . . ."

Is the United States polarized? Maybe that's the wrong term. What's happening runs deeper than quantifiable differences in a grocery list of values. Despite the undeniable sameness of places across America—is a PeSmart in a Democratic county different from a PeSmart in a Republican county?—communities vary widely in how residents think, look, and live. And many of those differences are increasing. There are even increasing differences in the way we speak.<sup>6</sup> Over the past thirty years, communities have been busy creating new and different societies, almost in the way isolated islands foster distinct forms of life, but without a plan or an understanding of the consequences.

The first half of the twentieth century was an experiment in economic specialization, as craft production gave way to assembly lines, cabmenmakers became lath operators or door assemblers. The second half of the century brought social specialization, the displacement of mass culture by media, organizations, and associations that were both more segmented and more homogeneous. We now worship in churches among like-minded parishioners, or we change churches, maybe even denominations, to find such persons. We join volunteer groups with like-minded companions. We read and watch news that confirms our existing opinions. Politics, markets, economies, culture, and religion have all moved along the same trajectory, from fragmentation in the nineteenth century to conglomeration in the twentieth century to segmentation today, just as coun-

<sup>6</sup>Linguist William Labov of the University of Pennsylvania, one of the authors of *The Atlas of North American English*, said National Public Radio in February 2006 that "the regional dia-

des have grown more distant from one another politically; regional economies are also separating—some booming and vibrant, others weak and dissipating. Mainline religious denominations gained parishioners through the first half of the twentieth century, the age of mass markets, but lost members beginning in the mid-1960s to independent churches designed for homogeneous communities. Media, advertising, city economies—they've all segmended, specialized, and segregated....

The tale we've been told and have come to tell ourselves is that society cracked in 1968 as a result of protests, assassinations, and the meteor in the streets of Chicago. Informed by the Big Sort, we can now see 1968 more as a consequence of gradual change than as a cause of the changes that followed. Old political, social, religious, and cultural relationships had begun to crumble years earlier. American culture had slowly shifted as people simultaneously grew richer and lost faith in the old institutions that had helped create that wealth: the Democratic Party, the Elks, the daily newspaper, the federal government, the institution of marriage, the Presbyterian Church, Party membership, newspaper circulation, trust in government, and the number of people in the pews of mainline churches all declined at the same time.

The old systems of order—around land, family, class, tradition, and religious denomination—gave way. They were replaced over the next thirty years with a new order based on individual choice. Today we seek our own kind in like-minded churches, like-minded neighborhoods, and like-minded sources of news and entertainment. As we will see later in this book, like-minded, homogeneous groups squelch dissent, grow more extreme in their thinking, and ignore evidence that their positions are wrong. As a result, we now live in a giant feedback loop, hearing our own thoughts about what's right and wrong bounced back to us by the television shows we watch, the newspapers and books we read, the blogs we visit online, the sermons we hear, and the neighborhoods we live in.

Politicians and parties have exploited this social evolution, and in doing so, they have exacerbated partisanship and division. Elites have always been more partisan, more extreme, and more ideological than regular voters. But today moderates on all sides are rebuffed, and those who seek consensus or compromise are squeezed out. Paul Mishin, Democratic presidential hopeful Howard Dean's pollster in 2004, explained it this way:

If I had to say one true statement about the entire process you are describing, I think that at the national or state level, it's making life increasingly difficult for people who are trying to thread the needle, to find the swing voter in a way Karl Rove and Howard Dean and [Dean campaign manager] Joe Trippi were all right here. It's probably one of the things that's driving our politics into a more polar-

ized situation. While the swing vote and the classic vote in the middle still matter, you are much more willing to say now that you ignore at your peril your own base. Because as everything spreads apart, the base becomes more important because they are demographically more together. You don't have a whole bunch of 51-49 communities out there. You have more and more 60-40, 65-35, 70-30 places. Well, you better damn well be sure you maximize your 70-30 votes, whether it's inner-city African Americans or liberal educated Democrats or whether it's suburban, conservative Republicans or small-town, main-street, or Evangelical Republicans. We have to maximize our base, and they have to maximize their base. Ergo, polarization.

The country may be more diverse than ever coast to coast. But look around: our own streets are filled with people who live alike, think alike, and vote alike. This social transformation didn't happen by accident. We have built a country where everyone can choose the neighborhood (and church and news shows) most compatible with his or her lifestyle and beliefs. And we are living with the consequences of this segregation by way of life: pockets of like-minded citizens that have become so ideologically inbred that we don't know, can't understand, and can barely conceive of "those people" who live just a few miles away.

tendency. The data raise a serious question about the validity of the proposition that special-interest groups are a universal form of political organization reflecting *all* interests. As a matter of fact, to suppose that everyone participates in pressure-group activity and that all interests get themselves organized in the pressure system is to destroy the meaning of this form of politics. The pressure system makes sense only as the political instrument of a segment of the community. It gets results by being selective and biased; *if everybody got into the act the unique advantages of this form of organization would be destroyed, for it is possible that if all interests could be mobilized the result would be a stalemate.*

Special-interest organizations are most easily formed when they deal with small numbers of individuals who are acutely aware of their exclusive interests. To describe the conditions of pressure-group organization in this way is, however, to say that it is primarily a business phenomenon. Aside from a few very large organizations (the churches, organized labor, farm organizations, and veterans' organizations) the residue is a small segment of the population. *Pressure politics is essentially the politics of small groups.*

The vice of the groupist theory is that it conceals the most significant aspects of the system. The flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent. Probably about 90 percent of the people cannot get into the pressure system.

The notion that the pressure system is automatically representative of the whole community is a myth fostered by the universalizing tendency of modern group theories. *Pressure politics is a selective process* ill designed to serve diffuse interests. The system is skewed, loaded and unbalanced in favor of a fraction of a minority. . . .

The competing claims of pressure groups and political parties for the loyalty of the American public revolve about the difference between the results likely to be achieved by small-scale and large-scale political organization. Inevitably, the outcome of pressure politics and party politics will be vastly different.

## ANTHONY NOWNES

### From *Interest Groups in American Politics*

The 2010 oil well disaster in the Gulf of Mexico sets the stage for Anthony Nownes's examination of interest groups in American politics. "In short, what was a disaster for many people was a boon to lobbyists. "The author points to the paradoxical view that we hold about interest groups: hating them but supporting those whose interests we identify with. While Nownes assures us that lobbyists who employ outright corruption (bribes, sex, alcohol) are the exception not the rule, he does give readers a few colorful reminders. He then goes on to the more usual "drinking, schmoozing, going out for lunch or dinner, playing golf. . . . providing gifts and doing favors" as standard lobbying techniques. All of these methods lead to personal relationships between public officials and lobbyists. Some students who study political science hope to become lobbyists, and here, Nownes gives us a look at the salary and work requirements for such. His final topic is the "revolving door" that brings many former government officials—elected and appointed—into the world of interest group lobbying after their government service has ended. It's all about "access."

FAMOUS FRAENCHMAN Alexis de Tocqueville remarked in 1834 that nowhere in the world were associations more ubiquitous and more important than they were in the United States. Over 175 years later, evidence that de Tocqueville's point still is incisive is everywhere. In Washington, DC, as well as in states, cities, counties, and everywhere else government decisions are made, interest groups are omnipresent. Their lobbyists roam the halls of government buildings, their advertisements fill the airwaves during election season, their membership pleas clutter our mailboxes, and their influence is blamed for everything from global warming and the financial crisis, to high gas prices and protracted war in the Middle East. . . .

On April 20, 2010, *The Deepwater Horizon*, an offshore oil drilling rig, blew up. The rig, which was located approximately 400 miles off the Louisiana coast in the Gulf of Mexico, was drilling what is called an "exploratory well" almost one mile below the ocean's surface. Just before 10 a.m. on the 20th, highly pressurized methane gas burst out of the drill column and then caught fire. Most of the people who were working on the rig

were rescued. But eleven people were never found. They are presumed dead. The fire raged for a day and a half, until on the morning of April 22nd, the crippled rig sank. On April 23rd, the company that leased the well, BP (formerly known as British Petroleum), reported that there was no oil leaking from either the sunken rig or the well. By the 24th, however, it was clear that BP was mistaken. No one knows for certain how many gallons of oil leaked from the wellhead before it was finally capped on July 15, 2010. But experts agree that the spill was the largest in U.S. history, far surpassing the *Exxon Valdez* spill that dominated headlines for a time in 1989. In all, hundreds of millions of gallons of oil spewed into the Gulf of Mexico. In the weeks and months after the explosion, the effects of the spill became obvious. Thousands of square miles of ocean were soiled with oil, endangering fish and other wildlife. In June, oil reached the Louisiana coast. By early July, oil had reached Alabama, Mississippi, and Texas.

The oil spill was disastrous for many people. It was most disastrous, of course, for the eleven workers who lost their lives. It was also disastrous for many of the people who live and work near the coastal areas of the Gulf states. But for some people the oil spill was a boon. Who? The answer is *lobbyists*. In the wake of the oil spill, BP, many environmental interest groups, and interest groups representing oil companies substantially ramped up their lobbying activities. Environmental groups hopped to use the spill as a justification for policies they had long championed—policies that would tighten regulations on oil drilling. Transocean Ltd., the company that owned the rig and leased it to BP, retained the services of a lobbying firm called Capitol Hill Consulting Group to help it stave off stricter federal regulations and to rehabilitate its image with the public and government decision-makers. For its part, BP hired a slew of well-connected lobbyists in an effort to preempt punitive policies proposed by various Washington decision-makers intent on punishing the company for the spill. The American Petroleum Institute, which represents energy producers including BP, stepped up its lobbying operations to make sure the federal government did not adopt new and onerous regulations that would add to the cost of doing business. Other organizations stepped up their lobbying efforts as well, including shallow water oil drilling companies that used the spill as an opportunity to tout their method of drilling as a safer and preferable alternative to the deep water drilling that led to the disaster. In short, what was a disaster for many people was a boon to lobbyists. . . .

Oil spills do not happen every day. And a gigantic oil spill is a once-in-a-generation phenomenon. Thus, it is certainly *not* the case that the

events that took place during the summer of 2010 represented "business as usual" in the nation's capital. Yet in one way the lobbying that took place *did* embody "business as usual"; for Washington, DC is a place where frenzied lobbying activity takes place almost all the time. For better or worse, in Washington as well as in cities, counties, towns, and states across America, interest groups and their lobbyists are everywhere government decisions are made.

The ubiquity of interest groups and their lobbyists worries many Americans. Lobbyists—the people who represent interest groups in front of government decision-makers—are not popular. Public opinion polls show that most Americans hold them in lower esteem even than auto mechanics, lawyers, and members of Congress. Americans believe that lobbyists are about as ethical and honest as car salespeople. Interest groups themselves are similarly despised by the public. While the military, the police, and small businesses generally are well respected by most Americans, interest groups are scorned.

Ordinary Americans are not the only ones who disdain interest groups. Politicians scorn them as well. Hardly a day passes without some high-ranking public official decrying the impact of "special interests" on government decisions. Presidents have proven especially contemptuous of interest groups. Every president since George Washington has taken time out from his busy schedule to castigate lobbyists and the organizations they represent. Even before the Constitution was adopted, for example, future president James Madison warned that interest groups posed a great danger to the republic because they worked to gain advantage for themselves at the expense of others. Similarly, upon retiring from office, President Dwight Eisenhower warned of the pernicious influence of powerful organizations that were part of "the military-industrial complex." More recently, throughout the 1990s, President Clinton regularly denounced conservative groups that dredged up allegations of phillandering. And President Barack Obama, frustrated by slow action on some of his signature initiatives, has repeatedly taken special interest groups to task.

Why all the fuss? What's *wrong* with interest groups attempting to influence government decisions? After all, most of us support *some* sort of interest group—be it conservative, liberal, moderate, or "none of the above." In fact, many of us actually *belong* to interest groups, and few of us can deny that there are at least some interest groups working to further our political goals. In the aftermath of the BP oil spill, for example, almost all possible viewpoints were represented by interest groups. As the vignette that opened this chapter attests, some interest groups lobbied for strict punishment of the people and companies responsible for the spill.

And some groups lobbied for more regulations on oil drilling, while others lobbied for a more measured approach to punishment and less onerous regulations. This is the case in many political battles—there are groups on all sides of the issue.

The theme of this book is that there is something paradoxical about the way Americans view interest groups. On the one hand, all of us are sympathetic to *some* interest groups. On the other hand, most of us say we hate lobbyists and the interest groups they represent. Why the contradiction? What explains this paradox—a paradox I call “the paradox of interest groups”? The answer lies in the complicated nature of interest group politics in the United States. . . .

It would be an exaggeration to say that interest groups are at the very center of American politics. In the end, the elected and appointed decision-makers who represent us in government are at the center of most political storms. And this is as it should be; for the founders of this country designed a democratic republic in which most authoritative decisions are left to government decision-makers. Yet government decision-makers are hardly the *only* players in the American political process. As the storm brewed over how to react to the BP oil spill, all sorts of interest groups got themselves involved. They met with government decision-makers, they mobilized citizens, they advertised on television and radio, they circulated petitions, and they held protests and rallies. What all these interest groups had in common is this: they participated in the American political process. And this is why we study interest groups—because they are important players in the American political process. . . .

For many years the conventional wisdom was that lobbying was all about giving government decision-makers free stuff and, to put it bluntly, “sucking up” to them. Lobbying was viewed by scholars and the media alike primarily as a personal business that involved favors and corruption rather than information. Today the conventional wisdom is quite the opposite. Lobbying, most scholars agree, is mostly about providing accurate and timely information to government decision-makers. “Sucking up” does not get you anywhere if you don’t know what you’re talking about. Nevertheless, there is no question that winning and dining, doing favors, and just “hanging out” are staples of the lobbying business. How common are such practices? What forms do they take? How often do they mutate into unethical and illegal practices? . . .

Throughout American history interest groups and their lobbyists have sometimes resorted to questionable practices to achieve their goals. As

political scientists Larry J. Sabato and Glenn R. Simpson have pointed out, political corruption “is truly a staple of our Republic’s existence.” Among the most common questionable lobbying practices are bribery and the use of sex and/or alcohol to gain favorable treatment from government decision-makers.

Bribing government decision-makers is not a common lobbying technique. Nonetheless, the use of bribery by lobbyists is not unheard of. Perhaps the most outrageous example of lobbyist bribery in our history took place in the early 1920s, in an incident known as the “Teapot Dome Affair.” Shortly after his election in 1920, President Warren G. Harding began to distinguish himself as one of the nation’s worst presidents. He was particularly notorious for his disastrous political appointments. His worst appointment was Interior Secretary Albert B. Fall of New Mexico, who left the Senate to join Harding’s cabinet, was financially strapped when he took over the Interior Department. In short order, however, Fall began buying huge and expensive chunks of land around his modest ranch in New Mexico. These purchases raised some eyebrows at the time, in light of his \$12,400 annual salary. The money, it turns out, came from oil companies that wanted favors from Fall. In late 1921, Fall asked the president to transfer control of some naval petroleum reserves from the Department of the Navy to the Department of the Interior. Fall then turned around and sold the drilling rights to two millionaire oilmen. The oilmen received immensely valuable land at a fraction of its value, and Fall received over \$400,000 for his work on their behalf. Eventually Fall was tried and convicted of graft. He was the first cabinet officer in history to go to prison.

Unfortunately, this is not the only example of lobbyist bribery in our history. Fifty years before Teapot Dome, a company called Credit Mobilier, which was hired to construct America’s first transcontinental railroad, staved off congressional inquiries about questionable billing practices by illegally distributing stock and cash to members of Congress. Ultimately a congressional investigation uncovered evidence that Vice-President Schuyler Colfax, Speaker of the House James G. Blaine, and others had received payoffs from the company. More recently, in the midst of his Watergate troubles, Richard Nixon asked for and received massive and illegal cash contributions from business lobbyists. In the last few decades, state legislators in Arizona, California, Kentucky, and South Carolina have been convicted of receiving bribes from lobbyists. And the last decade has been one of spectacular lobbying scandals. For example, in 2005, former Member of Congress Bob Ney (R-Ohio) pleaded guilty to corruption charges involving bribes from lobbyists. His Republican colleague, Randall Cun-

ntingham (R-California), is currently serving out a prison term for accepting millions of dollars in bribes from defense contractors. And of course there is Jack Abramoff, the Republican lobbyist who spent time in prison for a variety of charges including tax evasion, fraud, and corruption.

Sex and alcohol have also featured prominently in some lobbying scandals. Though lobbyists understandably often decline to discuss the role of either in public, periodic scandals show that both can be used as lobbying tools. For example, in one of the more bizarre political scandals ever, lobbyist Paula Parkinson reported that she regularly traded sex for votes in Congress in the late 1970s and early 1980s. Parkinson, a contract lobbyist and political consultant, admitted to winning, dining, and servicing several Republican members of Congress in exchange for their votes on legislation. Parkinson claims that one member paid for her 1980 abortion. No legislators have ever acknowledged having sex with Parkinson. As for alcohol, it has always been in ample supply in locales where government decisions are made. The relationship between alcohol and lobbying was particularly apparent in a 1986 episode in Tallahassee, Florida. It was there that after a night of carousing and drinking a state legislator and a lobbyist were involved in a hit and run accident. When the police caught up with the duo, the lobbyist quickly confessed that he was driving the car. The legislator later admitted that he had been driving the car. When asked about the incident, the lobbyist replied, "You know, I am a lobbyist, and you have to take the fall when you work for a legislator." More recently, reports indicate that disgraced lobbyist Jack Abramoff regularly entertained government decision-makers at his own restaurant (called Signatures), and alcohol was regularly served.

Despite the examples cited in this section, interest group scholars agree that bribery, sexual and substance-related misconduct, and illegal lobbying activities are not common. The public perception that lobbyists are sleazy, disreputable characters who regularly violate the law is mistaken. Like all professions, the lobbying profession has its "bad apples." These bad apples have occasionally engaged in behavior that has brought the worst aspects of the lobbying business to light. But virtually every scholarly study of lobbying ever conducted has concluded that most lobbyists abide by the law and conduct themselves in a thoroughly professional manner. Why, then, does the lobbying profession have such a bad reputation? There are two answers to this question.

First, media tend to focus on the bad apples rather than the "good eggs." Most of the time news media ignore lobbying. Covering lobbying extensively would be difficult and boring. There is nothing particularly

noteworthy about professional lobbyists testifying before legislative committees, filing lawsuits, or commenting on proposed federal regulations. However, lobbying becomes newsworthy and interesting when illegal behavior is involved. Bribery, sexual peccadilloes, and other unsavory practices—even if they occur infrequently—make the news. Thus, when the public at large hears about lobbying, it tends to hear things that make lobbying seem much dirtier than it is. Second, lobbying has a bad reputation because sometimes it takes place "behind the scenes." In other words, lobbyists sometimes meet with government decision-makers in informal settings outside of the halls of government. Many Americans seem to think that this shows a disregard for the law and democratic process. As we shall see, however, most informal contacts between lobbyists and government decision-makers are quite harmless. In fact, they generally entail the exchange of information and little more. However, the widespread use of informal lobbying techniques does raise legitimate questions about democracy, representative government, and the role of lobbyists in politics....

Occasional scandal is the inevitable result of a political system that allows lobbyists such high levels of access to government decision-makers. For better or worse, government decision-makers in the United States generally develop close relationships with lobbyists. These relationships generally develop from extensive informal contacts between lobbyists and government decision-makers. Both parties to the exchange of information between a lobbyist and a government official benefit from this closeness. For their part, government decision-makers obtain valuable information that helps them make decisions. As for lobbyists, closeness allows them access to the people who make the decisions that affect them and their clients.

One form of direct informal lobbying entails drinking, schmoozing, going out for lunch or dinner, playing golf, and otherwise hanging out with government decision-makers. These types of interactions are undeniable parts of lobbying. . . . [L]arge majorities of state lobbyists report engaging in these sorts of informal contacts with government decision-makers. Studies of Washington lobbyists suggest that engaging in informal contacts with government decision-makers is quite common among Washington lobbyists as well. Informal contacts often take place in bars and restaurants. Most state capitals have well-known watering holes, pubs, and grills at which lobbyists and government decision-makers mingle. In Washington, restaurants and bars along the "K Street corridor" serve as meeting places for government decision-makers, lobbyists, journalists, and others involved in Washington politics.

What happens at informal meetings between lobbyists and government decision-makers? First of all, lobbyists provide information. In other words, informal get-togethers, meetings, and encounters are forums at which lobbyists pass on policy analytical, political, and/or legal information to government decision-makers. In other words, informal meetings over food, coffee, or liquor are yet other avenues through which lobbyists provide information to government decision-makers. Second, lobbyists receive information from government decision-makers. In their roles as monitors, lobbyists often use informal meetings to gather information about political happenings. A lobbyist may, for example, inquire about the status of a given piece of legislation. Or he/she might ask a legislative staffer when a certain piece of legislation is "going to the floor" for a vote. Alan Rosenthal, the preeminent scholar of state lobbying, has noted that lobbying often "comes down to basic human relationships." He concludes: "Whatever the political system or culture, the lobbyist's goal is to make connections and develop close relationships" with as many government decision-makers as possible. According to Rosenthal, building relationships allows lobbyists to prove their credibility, honesty, and reliability. He concludes that lobbyists try to develop relationships "that allow them to demonstrate the worthy attributes they themselves possess, which is prerequisite for promoting their client's wares." Developing relationships is also important because it leads to increased access to government decision-makers. For example, if a lobbyist strikes up a friendship with a legislator, it may translate into more invitations to congressional hearings or greater input during the markup of a bill.

Drinking and eating are not the only ways lobbyists informally lobby government decision-makers. There is also *providing gifts and doing favors* for government decision-makers. . . . [Fifty-four] percent of state lobbyists say that they do favors for legislators. Again, studies of Washington lobbyists suggest that a similar proportion of Washington lobbyists engage in this sort of behavior. More specific survey items aimed at state government decision-makers show that 15 percent do favors for executive agency personnel and 14 percent do favors for the governor. As for gifts, we do not have good data on how often Washington lobbyists provide them to government decision-makers, but the results of the state lobbyist survey . . . show that 19 percent of state lobbyists report giving gifts to legislators, while only 2 percent report giving gifts to the governor. As for specific gifts, studies show that lobbyists provide everything from perishables such as flowers, candy, cigars, and peanuts, to free babysitting, tickets to athletic events, and rides to work.

While most gifts and favors are small and apolitical, lobbyists agree

that they help build relationships. Gifts and small favors help government decision-makers see a lobbyist's clients in a favorable light. One of the most popular gifts is the "junkie," which is a free trip. Junkies are generally provided to legislators and their aides, as many other government decision-makers are barred from accepting them. Junkies can take many forms. Until 1995, when Congress adopted a law that banned some types of junkies, the typical federal junkie consisted of an all-expenses-paid trip to a "conference" or "forum." Expenses included airfare, luxury hotel accommodations, meals, drinks, and incidentals. Interest groups that could afford to, usually held these conferences or forums at well-equipped hotels and resorts in Hawaii, the Virgin Islands, Las Vegas, San Diego, or Florida. Members of Congress defended such junkies, of course, saying that they provided them the opportunity to listen to their constituents and learn about important issues. Though Congress banned some types of junkies for its members in 1995, they are alive and well in the form of trips for "fact-finding missions" and "conferences" at which legislators serve as panelists or speakers. Junkies are also common in the states. While some states and localities have laws that essentially prohibit junkies, many others have laws that allow them. Moreover, even in places where junkies are banned, some government decision-makers, especially legislators and their aides, find ways to go on trips with lobbyists. . . .

In sum, informal lobbying techniques—winning, dining, schmoozing, gift-giving, and providing travel—are alive and well wherever lobbying takes place. Surveys suggest that chatting with government decision-makers over food or coffee is the most common form of informal lobbying. Giving gifts, doing favors, and providing travel are not unheard of. However, it is important to realize that despite the disproportionate media attention given to these types of lobbyist-government-decision-maker interactions, they are quite uncommon compared to other techniques of lobbying. While informal interaction is common, it is arguably less common than the kind of formal interaction that takes place in the actual halls of government. It is important to keep this in mind as we evaluate the worth and appropriateness of informal lobbying. . . .

Like the interest groups they represent, lobbyists are ubiquitous in the United States. . . . The number has been in the 10–15,000 range for the past fifteen years. Because some lobbyists are not required to register, there are probably closer to 25,000 professional lobbyists working in Washington. There are tens of thousands of additional lobbyists operating in states and localities across the country. For example, in 2010, over 1,500 lobbyists were registered to lobby in Texas, over 800 were registered in Montana, and over 500 were registered in Iowa. And most big cities and



countries have hundreds of lobbyists, and even small cities and counties have dozens (and in some cases hundreds).

The term "lobbyist" evolved from the term "lobby agent," which was first used in the early 1800s to describe association representatives active in New York state politics. Popular mythology has it that lobby agents were deemed so because they waited in the corridors of power to buttonhole legislators. The term was subsequently shortened to "lobbyist." Political scientists generally distinguish between two basic types of lobbyists: *association lobbyists* and *contract lobbyists*. An association lobbyist is one who works for, and is employed by, a single interest group. In contrast, a contract lobbyist is a lobbyist who has a number of clients and works for whomever hires him/her. Newspaper and magazine stories on lobbyists tend to focus on powerful contract lobbyists. Yet while these "super lobbyists" make for fascinating copy, they are the exceptions rather than the rule in national, state, and local politics. Studies show that between 75 and 80 percent of lobbyists are association lobbyists. It is important to note, however, that many interest groups have their own lobbyists and "hire out" for special lobbying services. Thus, though association lobbyists outnumber contract lobbyists, the latter are used at one time or another by many interest groups.

One reason why the media focus on contract lobbyists is that their numbers have increased in recent decades. The recent proliferation has produced a new player in interest group politics: the *lobbying law firm*, which is a law firm that employs a number of contract lobbyists. The number of lobbying law firms is on the rise in Washington and state capitals and big cities. A lobbying law firm provides "one-stop shopping" for its clients. Today's all-purpose lobbying law firm provides a wide variety of services to interest groups including public relations, fundraising, direct lobbying, indirect lobbying, media services, and political consulting. The trend toward all-purpose lobbying shops has seemingly accelerated as lobbying has become increasingly technological.

As for the question of who lobbyists actually are, over 40 years ago political scientist Lester Milbrath found that the typical lobbyist was a well-educated, upper- or middle-class, 40-60-year-old white male. Virtually every subsequent study of lobbyists has painted a similar picture. There is some evidence, however, that the lobbying community is becoming more diverse, as women and ethnic and racial minorities invade previously inaccessible "good ol' boy" lobbying networks.

Many lobbyists make a pretty good living. One recent study found that the average lobbyist makes a little over \$98,000 annually. It is not unusual for a high-profile Washington lobbyist to make between \$500,000

and \$1 million per year, while some particularly well-connected lobbyists (especially former members of Congress) make well over \$1 million. Many state lobbyists are similarly well paid. Some of the top lobbyists in big states such as California and Texas, for example, make over \$1 million annually. Moreover, even in smaller states such as Colorado and Arkansas a number of lobbyists make six-figure salaries, while the average lobbyist makes approximately \$50,000.

Though lobbying is an elite occupation, few children grow up aspiring to lobby for a living. Most people who become lobbyists do so via other jobs. Government is the primary training ground for Washington, state, and local lobbyists. Studies suggest that over half of all Washington lobbyists and a similar proportion of state lobbyists have some sort of government experience. Among the most common government positions previously held by lobbyists are legislator, legislative aide, chief executive aide, and executive agency official. Not all lobbyists come from government. Many association lobbyists, for example, serve their employers in other capacities before they become lobbyists. Excluding public service, the two occupations that produce the most lobbyists are law and business. All told, lobbying is an elite profession. Many of its practitioners are well educated, well off, well paid, and well traveled. There's a reason for this: lobbying is not a job for slackers—as the communications theory of lobbying implies, it requires expertise. Policy analytical information, for example, often requires substantive knowledge about the "ins and outs" of a specific policy area. Similarly, most political analysis requires an intimate understanding of the powers, roles, and motives of government decision-makers, as well as the intricacies of the government decision-making process. Finally, legal analysis requires legal expertise—familiarity with the law and the legal process. Where does one get expertise? The career paths of lobbyists tell the story. Both policy and political expertise come from a combination of education and government experience. Not surprisingly, legal expertise often comes from going to law school and subsequently practicing law.

Expertise is essential if a lobbyist is to make his/her case. But valuable as expertise is, it may be less valuable than *access*—having the opportunity to present your case to government decision-makers. Access is the ability to put your expertise to work for you. Virtually all forms of direct lobbying require some level of access. And, of course, access is critical if a lobbyist wishes to have face-to-face contact with any government decision-maker. The importance of access explains why most lobbyists have government experience. As the previous section notes, having a close relationship with government decision-makers is important to lobbyists.

And building a relationship with government decision-makers is not necessary if you already have a relationship with government decision-makers.

Interest groups, realizing the importance of access and closeness, often go out of their way to hire ex-government decision-makers as lobbyists. One recent study showed that "in the past 10 years" alone, "Nearly 5,400 former congressional staffers have left Capitol Hill to become federal lobbyists." Another study showed that "Of the 352 members of Congress who . . . left office" between 1998 and 2011, a whopping 79 percent became lobbyists. In fact, all manner of high-profile erstwhile government decision-makers are the subject of bidding wars by lobbying firms and interest groups wishing to cash in on their connections. Some of the most influential and important government decision-makers of the past twenty-five years are working as lobbyists. For example, former Senator Chris Dodd (D-Connecticut) now works for the Motion Picture Association of America; former House Majority Leader Dick Armey (R-Texas) works for an interest group called FreedomWorks; former Attorney General of the United States John Ashcroft has his own lobbying law firm called the Ashcroft Group; and former Senator Tom Daschle (D-South Dakota) works for the lobbying law firm DLA Piper. Wherever lobbying takes place, lobbying firms and interest groups pay big bucks to land ex-government decision-makers. The reason they do this is clear—they believe that erstwhile government decision-makers have the connections and/or expertise that make them more effective lobbyists.

The prevalence of "in and outers"—government decision-makers who become lobbyists after they quit or are removed from government—has raised eyebrows among critics who fear that this "revolving door" may harm the integrity of government. The revolving door issue raises a number of ethical questions. First, like informal lobbying, junkets, and gifts, it may bias interest group representation in favor of the few. Because ex-government decision-makers are very expensive to hire, the richest interest groups are generally the ones that can afford to hire them. Second, many critics believe that the revolving door may make government decision-makers, while they are in office, more responsive to potential future employers than to their constituents. For example, a member of Congress who plans to retire before the next election may make decisions while in office that are designed to make him/her attractive to certain interest groups that may hire him/her after the election. Similarly, a bureaucrat at the Department of Defense may do what he/she can while employed by the agency to curry the favor of weapons manufacturing companies in hopes of receiving a lucrative job offer after he/she quits.

Finally, the revolving door raises questions about the propriety of selfishly parlaying a government job into a lucrative lobbying career. Political analyst Pat Choate once imagined the following scenario. An individual is working for the Department of Commerce on trade issues. He/she is doing so at the taxpayers' expense. While working for the U.S. government, he/she receives invaluable experience in matters of international trade. After a few years on the job, the government employee quits. He/she is then quickly hired at a salary several times higher than that he/she received at the Department of Commerce by a foreign business firm. As the head lobbyist for the company, this person works hard to help the firm compete more effectively against American companies. The scenario, says Choate, is played out on a daily basis in Washington. Choate asks: Why should taxpayers subsidize interest groups by training their future employees, especially when these employees often work against the interests of vast numbers of Americans?

Over the years, a number of government decision-makers have paid lip-service to ending the revolving door. When he first took office, for example, President Clinton issued new rules that forbade former presidential appointees from lobbying their former employers for five years after they left government. These rules, like most others designed to thwart the revolving door, proved ineffective. One of Clinton's first appointees, deputy chief of staff Roy Neel, left the White House in late 1993 to take a job with the United States Telephone Association—a trade association. Technically Neel was not a lobbyist and did not directly contact the White House. He did, however, begin immediately to supervise lobbyists who regularly contacted the White House. More recently, when President Barack Obama took office, he announced that he would make all of his top political appointees sign a pledge saying that if they left the White House to become lobbyists they would not lobby the White House at all while Obama was in office. However, since Obama took office many of his aides have left government to become lobbyists, avoiding running afoul of the pledge they signed by lobbying other parts of the government (e.g., Congress) instead of the White House, and "supervising" other lobbyists who *do* lobby the White House. In short, the revolving door continues to spin unabated. The real reason the revolving door continues to operate is that government decision-makers like it. Ex-government decision-makers believe they should be able to do whatever they want with their lives when they leave government. Moreover, many government decision-makers enjoy politics and become lobbyists to remain involved and active. . . .

Public opinion polls and surveys show that overwhelming majorities of Americans believe that "special interests" dominate government decision-making. Are the public's perceptions accurate? Do interest groups get what they want from government while the views of ordinary citizens are virtually ignored? My answer to this question represents a bit of an anticlimax. For in the end, I must answer with a resounding: *It depends.*

The primary message of this chapter is this: sometimes interest groups get what they want from government and sometimes they don't. Anyone who tells you that interest groups always win or that ordinary citizens always "get the shaft" is wrong. The real world of politics, as scholars of policy domains have noted, is too messy, contentious, and unpredictable to support broad and sweeping generalizations about the power and influence of interest groups. Each and every government decision is the result of an exceedingly complex and multifaceted process that involves many factors. Interest group lobbying is one of these factors. In some battles—those, for example, where the public is unengaged and uninvolved—interest groups typically exert some (often a great deal of) influence over government decisions. In other battles—those, for example, that involve highly salient, ideologically charged issues or those where the public is heavily involved and highly engaged—interest groups typically exert little or no influence.

In the end, it is clear that interest groups are powerful players in American politics. As pluralists noted fifty years ago, interest groups are left out of very few important political battles. It is just as clear, however, that interest groups do *not* dominate and control American politics. Despite considerable public cynicism, there is plenty of evidence that "when push comes to shove," government decision-makers do what their constituents want them to do—even if this conflicts with the desires of powerful "special interests."

*Citizens United v. Federal Election Commission  
Justice Stevens' Concurrence and Dissent  
Commentary by Jack Fruchtman Jr.*

*Supreme Court decisions often create strong reactions among people. Here's a case that is a particular source of controversy among Americans who follow politics closely: Citizens United v. Federal Election Commission deals with the financing of campaigns, in particular the right of corporations and labor unions to use their money in ways that go well beyond federal campaign finance rules. Some Americans love the decision. Others hate the decision. To understand the Court's stance, we first get some needed background and analysis from Professor Jack Fruchtman. With his clear and careful guidance, we can then read excerpts from Justice Anthony Kennedy's majority opinion and Justice John Paul Stevens's dissent. First Amendment, Hillary: The Movie, campaign spending, McCain-Feingold—still unsure where you stand? The decision was 5-4 and maybe it's not the last word on the subject.*

CONGRESS FIRST RESTRICTED corporate contributions in federal elections in 1907 with the passage of the Tillman Act, named for Democratic Senator Benjamin Tillman of South Carolina, who was an avowedly white supremacist. Although President Theodore Roosevelt had accepted corporate contributions for his reelection in 1904, he strongly supported the act; he also advocated prohibiting corporate funding of state elections and the use of corporate money to influence legislation. The Supreme Court upheld such limitations as recently as 2003 when the justices reviewed various provisions of the Bipartisan Campaign Reform Act of 2002, also known as the McCain-Feingold Campaign Reform Act (*McConnell v. Federal Election Commission*, 540 U.S. 93). *McConnell* was largely based on a 1990 decision when the Court outlawed corporate funding of campaign advertisements, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652.

The Bipartisan Campaign Reform Act, co-sponsored by Republican Senator John McCain of Arizona and Democratic Senator Russell Feingold of Wisconsin, was designed to regulate so-called "soft money," which is unregulated funding that wealthy contributors and corporations use for advertisements to attack candidates they wished to see defeated. Contributors did not direct money to official campaign organizations, but rather to Political Action Committees or PACs, set up for the purpose of skirting federal limitations on campaign contributions. Some sixty percent of the total amount of soft money spent in the 2000 election—