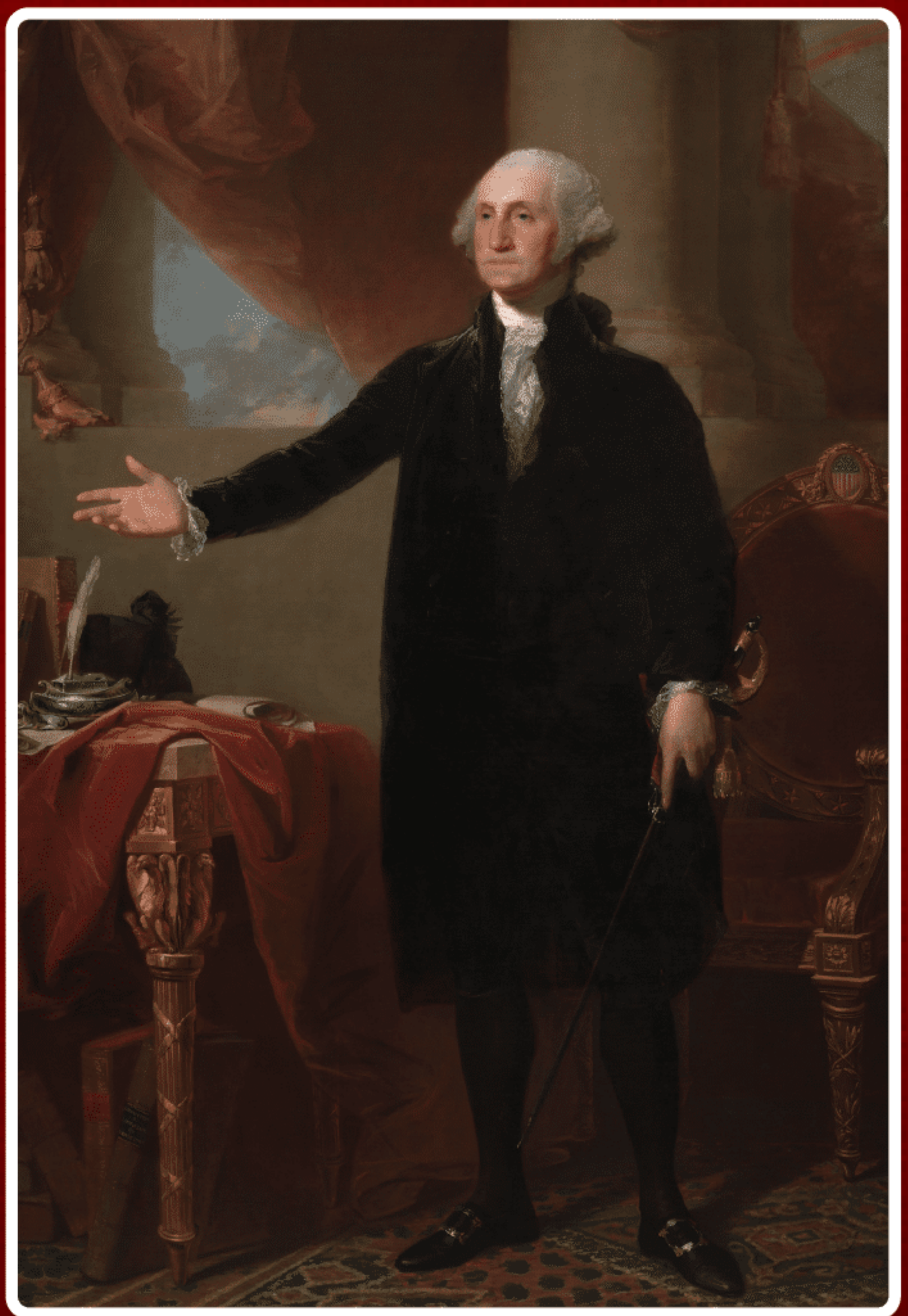
SETON PRESS

U.S. GOVERNMENT

FOR CATHOLIC STUDENTS



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U.S. Government
for Catholic Students

by Dr. Paul Clark

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St. Thomas More, Patron Saint of Politicians

Introduction

This textbook is unusual for a few reasons. First, it examines American government from a Catholic perspective, something that is not much done today. This means that this book evaluates government in general, and America's government specifically, in light of Catholic morality and social teachings. It heavily relies on the teachings of St. Thomas Aquinas and his philosophy of Law and Government, a rarity these days. This means that the way government functions in its laws and policies is gauged by the effect they have on the Church and society from a focus of Catholic moral and social teachings. Thus, the legalization of abortion, or the institution of slavery, or new definitions of "family" can only be seen as inherently immoral. While some may see such polices as morally neutral, the Catholic Church does not. Thus, while this is not a theology textbook, we must remember that the Church's moral and the social teachings can never be detached from good government. In other words, politicians cannot honestly claim to be "personally opposed" to evil, yet support it as much as possible.

Second, this book addresses the Framer's Intent in creating America's government. While this has been a traditional means of understanding our government, it has become somewhat less accepted by many who see the Constitution as systemically flawed, racist, and hopelessly outdated. However, in this textbook, we examine what the authors of the Constitution and the other laws that govern our nation meant when they created those laws. To that end, the book contains numerous sections of The Federalist Papers, which most people still consider the finest explanation of the U.S. Constitution ever written. Students will also read sections of Supreme Court opinions which have shaped America's government from *Marbury v. Madison* to more current decisions.

Finally, this text will trace the development and growth of government, often contrasting what the Founders intended with the way things actually are today and how they became that way. It will discuss the branches of the Federal government and their roles and duties. It will address the states and the powers and duties they possess. Also, it will discuss the Amendments and the rights that every American has. Knowing one's rights is vitally important in today's society as government on all levels becomes ever more powerful.

CHAPTER ONE
THE PURPOSE OF GOVERNMENT

GOD CREATED HUMANS TO BE SOCIAL ANIMALS

"It is not good for man to be alone." Genesis 2:18.

God created mankind as social animals.[1] As St. Thomas Aquinas (1225-1274) wrote in the 13th Century: "It is natural for man, more than for any other animal, to be a social and political animal, to live in a group."[2] Every human is born physically and mentally helpless. Even if a human infant miraculously survived in isolation from other humans and reached physical maturity, that person would not be able to speak — among other basic "human" qualities. Such a person would seem more like a beast than a human. Without speech, the ability to reason would be severely limited. Such a person would lack love, friendship, human companionship, and religion.

God created mankind to know, love, and serve Him in this world and to be with Him and the Community of Saints in Heaven.[3] Moreover, God created humans in His image and likeness, and God is a Trinity or community of persons. So physically, emotionally, intellectually, and spiritually, God designed us to exist as part of a community.

God might have designed us differently. God created angels to be self-sufficient, invulnerable, and with infused knowledge. "If men were angels,

St. Thomas Aquinas

[1]Aristotle, Pol. I.
[2] Aquinas, On Kingship.
[3]Catechism of the Catholic Church section 1

***The Month of September,* from the Grimani Breviary**

Medieval workers bring in the harvest under the supervision of their lord.

no government would be necessary."[4] Humans are not angels, so we depend upon each other and upon the greater community not just to survive, but to flourish, that is, to reach our full potential as intellectual and spiritual animals made in the image and likeness of God.

As creatures made in the image and likeness of God, we have reason and free will. There are other social animals in the world. Ants and bees, for example, work together. Ants and bees do not have free will. Chemicals guide them to behave in certain ways. Ants and bees are biologically compelled to cooperate for the well-being of the hive. Humans, also, need to cooperate to survive and flourish. Yet, "reasonable minds can differ." To use a simple example: should we drive on the left side of the road or the right? Neither option is intrinsically better than the other. In a society that has roads and vehicles, we need some sort of mechanism, or "authority," for determining which side of the road to use.

In every human community there will be legitimate differences of opinion about how to cooperate, where no option is inherently better than the alternatives. In every community, even with the best of intentions, there will be accidents and injuries and disagreements about how to allocate scarce resources. Sadly, in every community, there will be people who deliberately harm others. Every society needs some sort of social organization and mechanism for making decisions to deal with these problems and allow a group of unique, rational individuals to cooperate and live in harmony with each other. As Pope St. John XXIII (1881-1963) wrote in *Pacem in Terris* quoting St. John Chrysostom (347-407):

> God has created men social by nature, and a society cannot "hold together unless someone is in command to give effective direction and unity of purpose. Hence every civilized community must have a ruling authority, and this authority, no less than society itself, has its source in nature, and consequently has God for its author."[5]

Humans form all sorts of different communities for a variety of purposes, but the two most basic and universal societies are the family and the state.

HUMAN NATURE IS EMPIRICALLY VERIFIABLE.

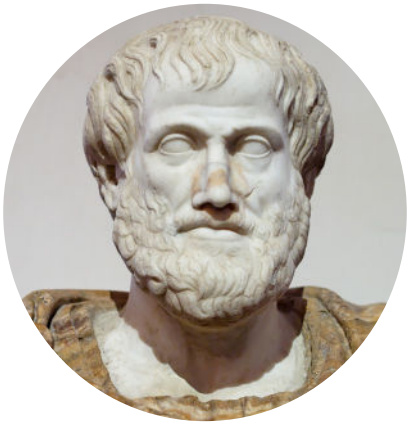
The above discussion assumes that humans, like ants and bees, have a basic, unchanging nature. There have been a number of ideologies that have insisted either that there is no such thing as "human nature," or if there is "human nature" it is malleable. There remain some "utopian" ideologies that insist that there is no fixed human nature. However, cultural anthropologists now accept

[4]James Madison & Alexander Hamilton, Federalist 51
[5]*Pacem in Terris,* sec. 46.

that all humans and human societies, since time immemorial, share a wide variety of common traits and practices.

Some of these traits are obvious and undisputed. For example, humans smile when they are happy. But the common behavior of humans goes well beyond mere physical responses such as smiling. Other than the rare sociopath, all humans have a sense of right and wrong. Again, even secular anthropologists have established that historically, virtually all human societies have shared some fundamental behavioral patterns. Some of the basic features common to all human societies from the beginning of time until the late 20th century, include marriage (the enduring union of a man and a woman), the family, the father as the recognized head of the family, and the fact that people care more for their own children than they do for strangers. Every language ever encountered has a distinct word for "mother" and "father." In other words, there is no language in the history of the human race that simply has a generic word "parent" without a sex-specific "mother" and "father." This fact strongly implies that humans have always considered the roles of mothers and fathers to be distinct, and based on natural differences. Accordingly, secular anthropologists agree that human nature is real and empirically verifiable.[6] One of the most notorious modern atheists, Steven Pinker, has argued that human nature is real, verifiable, and includes a basic sense of right and wrong.[7]

Of course, Aristotle (384-322 BC), Augustine (354-430) and Aquinas all said the same thing, but we now possess even more evidence to support this view. Theists and atheists disagree about what to make of human nature. Atheists assume that human nature is simply a result of random evolution. Christians know that human nature was designed by God. Atheists acknowledge that religiosity is a basic part of human nature but insist that religiosity is purely a result of random chance, because thousands of years ago religious people had a survival advantage over non-religious people. However, St. Augustine points out that humans are fundamentally spiritual because God made them this way. Humans care more for their own children than for strangers, and humans ought to care more for their own children, because God made humans this way.



Aristotle (384 B.C.-322 B.C.)

St. Augustine (354 AD-430 AD)

IF HUMAN NATURE IS EMPIRICALLY VERIFIABLE, SO IS NATURAL LAW.

By observing and reflecting upon human nature, and to some extent the rest of the natural world, humans are able to discern God's plan for us. **The Natural Law is the set of moral principles that are discernible from nature and flow from human nature as created by God.** We can use the terms "Moral law," "Natural Law," and "Natural Moral Law" interchangeably, but it should be noted that some theorists refer to a "Moral Law" as a law that is not based in nature but in something else.

The Natural Law is not self-evident. We must use our reason to discern the Natural Law. However, some principles of the Natural Law are so obvious that there is rarely disagreement. For

[6]Donald E. Brown, *Human Universals and Their Implications* (2000).
[7]Steven Pinker, *The Blank Slate* (2002).

example, no one really disagrees that humans should not kill each other without some serious justification. Other requirements of the Natural Law require more reflection.

Some moral theories, like Utilitarianism, argue that all humans should be treated equally and humans should NOT give preference to their own children over any other human in the world. Natural Law theory rejects the view that humans are interchangeable units of utility. A Natural Lawyer would survey humans and note that giving preference to one's own children is a universally embraced practice. Humans *by nature* have a built-in desire to protect their children. We can even see this in other non-human animals. Other species of mammals also protect their offspring. If we reflect rationally on the issue, we recognize that infants rely much more on their parents than on strangers, and parents have the knowledge and emotional commitment to help their own children far more than strangers. While more can be said on this issue, the point is that the Moral Law is not self-evident. It should also be noted that this issue of giving preference to certain people will arise again in the responsibilities of government. Some people argue that governments should not prioritize their own citizens, but should treat every human as equally important. Of course, it should be obvious that the Natural Law applies to all human actions whether the person is a private citizen or a president.

We call these moral principles that govern human behavior "Law," because 1) God implanted in us a basic sense of morality; 2) God gave us reason and capacity to discern right from wrong; and 3) because God designed humans this way, it is appropriate to speak of God as The Lawgiver. Moral precepts of the Natural Law are not just good advice that humans are free to accept or reject. Violations of the Natural Law are violations of our own nature as rational, social animals, and a rejection of God's plan for our happiness and flourishing.

The most basic precepts of the Natural Law are unchanging, but applications of the Natural Law

will depend upon variables, so the Natural Law may be applied in different ways. According to the Natural Law, taking another's property with the intent to deprive the owner of the property permanently without compensation, is always wrong. However, the seriousness of theft will vary considerably depending on the circumstances. Moreover, questions regarding the punishment of theft may not have a clear answer: a fine, imprisonment, or corporal punishment might each be a reasonable response.

In other words, there are some basic commands of the Natural Law that are unchanging, such as, do not murder, do not steal. However, within the confines of the Natural Law, there is often latitude or discretion. The Natural Law governs all human actions, whether as individuals, members of a family, members of a society, or leaders of a country.

Justice is the part of the Natural Law that governs our interactions with other people. We sometimes use the word "justice" interchangeably with "morality." For example, it could be said that sloth or gluttony are "unjust" insofar as the Natural Law forbids gluttony and sloth. However, traditional philosophers, like Aristotle and Aquinas, say that we should use the term "justice" only to apply to our responsibilities towards other people. Aquinas defines *justice* simply as *giving to each person what is his due*.

THE FAMILY

The most fundamental human society is the family. God, Who is the Creator of the natural world, implanted in humans a basic desire to reproduce. In chapter 1 of Genesis, God's very first command to humans is: "Be fruitful and multiply." (Gen 1:28). Thus, the union of male and female

is not only essential to the survival of the species but part of God's plan for humankind. Again, because human infants are so helpless, support of the parents is also essential to the survival of mankind. Because of this, the union of a man and woman for the purpose of procreation should be lasting. This lasting relationship is called marriage. A marriage is not the same thing as a family, but marriage is one of the building blocks of family.

Aristotle said marriage is a partnership between a man and a woman. In a partnership, it is optimal if both partners agree; however, when a husband and wife cannot agree, the husband has the final say, according to Aristotle and Aquinas. St. Paul concurs in his epistle to the Ephesians. (Eph 5:22). In every association, there must be some final means of resolving disputes or the association breaks down. In a business partnership, when two partners cannot agree, sometimes the only solution is for the partnership to dissolve; however, a marriage is too important to be dissolved when there is disagreement. The evidence is that all societies, since mankind's earliest days until quite recently, regarded the father of a family as the highest authority. Even those who attack "patriarchy" as evil, acknowledge that "patriarchy" in the family has been the historic norm. This is why some ideologies advocate that the government should intervene in the family to destroy patriarchy.

A mother alone, who has just given birth, is often not in a strong position to care for an infant by herself. This was even more true historically before the advent of labor-saving devices. Even today, children who live in a house without a father have a significantly lower life expectancy and are far more likely to suffer from physical and mental illness. It takes years to support and educate a child, so it is natural for parents to remain together to educate and raise children. God has implanted in humans a fundamental desire to protect and love their children, and grandchildren. Children have a natural "attachment mechanism" whereby they tend to "cling to" their parents. These basic drives are built into the human genetic code. This is why the relationship between parents and children is the strongest and longest lasting of human relationships. Of course, people have free will and are able to abandon their children, but this is profoundly contrary to nature.

Historically, raising a child alone was difficult and larger families were more common. Most couples had many children, who often lived with, or in close proximity to, their parents and siblings. Grandparents, aunts, uncles, and older siblings typically helped to raise children. Regardless of the size of the family, the basic idea is the same: a family is a group of people related by blood.[8]

[8]There are also families, or relationships, such as adoption, by which people not related by blood are brought into the family and considered natural offspring.

***Marriage of the Virgin*, Pietro Perugino**

St. Joseph and the Blessed Virgin Mary are married.

Scene of a Farming Family, **Adolf Müller-Grantzow.**

THE COMMUNITY AND THE STATE

It should be noted that the English word "state" is sometimes used to apply to a political community and sometimes to the government of a political community, and sometimes to the community and the government taken together. Of course, a political community is not the same thing as the government. There can be a political revolution which results in an entirely new government, but the community itself continues. It should also be noted that there can be changes in government, short of revolution, where there is still basic continuity, for example, when a new ruler is inaugurated. So, the political community, the government, and the regime that controls the government, are different things.

Aristotle tells us that "the family is the association established by nature for the supply of men's everyday needs."[9] Nevertheless, the family is not self-sufficient, and a larger community is necessary for full human flourishing. For one thing, a community must be large enough to protect itself against criminals and invaders. Only a community composed of thousands of people will have the variety needed to allow for leisure and reflection. Therefore, if the family is natural, so too is the city or political community because both stem from human nature and serve basic human needs. The family provides the most basic everyday needs while the city provides more remote needs that are necessary for humans to reach their full potential.

A full-blown city contains a large variety of experts and artisans who are able to specialize in their craft. A city has professional lawyers, plumbers, carpenters, computer repairmen, cyber-security experts, and a thousand other professions. Specialization of this type greatly increases human prosperity, allows for leisure time, and the emergence of artists, poets, actors, historians, and philosophers. Aristotle and Aquinas agree that humans need both physical and mental periods of relaxation, such as reading, watching plays, or playing games.[10] This is why God ordained that at least one day a week be set aside for rest and relaxation.

[9]Aristotle. Pol. Bk 1 Ch 2.
[10]Summa Th. II-II, Q. 168.

REVIEW QUESTIONS

1. What is political authority?
2. Define Natural Law.
3. What are the precepts of Natural Law?
4. According to Robert Bellarmine, where does political authority reside?
5. How did Orestes Brownson justify American Independence?
6. What was John Paul II's view of a government that fails to protect the lives of its most vulnerable members?
7. What are the various elements of the "common good?"
8. According to St. Thomas Aquinas why is God the "lawgiver" of Natural Law?
9. What does the moral theory known as Utilitarianism teach?
10. How does St. Thomas Aquinas define "law"?
11. What is political liberalism?
12. What government does Natural Law require?
13. What is the Organic Theory of Government?
14. What is the Social Contract Theory of Government?
15. What is a person's obligation to worship God?
16. What is the central teaching of legal voluntarism?
17. What is the position of St. Thomas Aquinas regarding legitimate government?
18. What is Aristotle's view of the role of virtue in law?
19. What is Moral Subjectivism?
20. Who wrote *Rerum Novarum*?
21. What elements are common to all human societies?
22. What does Communism teach?
23. How does St. Thomas Aquinas define "justice?"
24. What does St. Thomas Aquinas say about Law and Virtue?
25. What is "the tragedy of the commons?"
26. What is the difference between Monarchy, Tyranny, and Dictatorship?
27. What is the difference between Republic and Democracy?
28. How do Aristocracy, Autocracy, and Anarchy differ?
29. What is the difference between Theocracy and Kleptocracy?

CHAPTER THREE

INDEPENDENCE AND SELF-GOVERNMENT

By the rude bridge that arched the flood,
Their flag to April's breeze unfurled,
Here once the embattled farmers stood,
And fired the shot heard round the world.

"Concord Hymn" by Ralph Waldo Emerson

"THE SHOT HEARD ROUND THE WORLD"

The First Continental Congress adjourned on October 26, 1774, determined to reconvene the following year, the Second Continental Congress. Initially, neither the First nor the Second Continental Congress were legislative bodies with authority to make law or assert independence. The state legislative assemblies appointed delegates who were only authorized to consult with each other and report back to their home state.

However, in April 1775, English soldiers in Boston tried to seize a cache of weapons that the colonial militia had stored in Concord (about 19 miles from Boston). The citizens' militia had been a cornerstone of Anglo-American law since at least the 8th century and the citizens' militia of Massachusetts were not about to disband without a fight. On the morning of April 19, about 700 English soldiers marched out of Boston to confiscate or destroy the colonial weapons.

When the English soldiers were about halfway to Concord, they were confronted by a group of Massachusetts militia. Who fired first has been a matter of debate ever since. A few days later, the commander of the militia, Captain John Parker, swore under oath that the militia simply stood by the road in an attempt to convince the English not to continue, but the English fired first and "killed eight of our party, without receiving any Provocation."

After a series of skirmishes, the English were forced to retreat back to Boston, suffering about 300 casualties in the fighting. These skirmishes are known as The Battles of Lexington and Concord. They were the first Battles of the American War for

***Stand Your Ground*, Don Troiani**

Independence. Years later, the opening salvo of the battle was proclaimed to be "The Shot Heard Round the World." War had started and neither side was prepared to back down. In May 1775, the English dispatched another 4,500 soldiers to Boston. The first big battle of the War was fought at Bunker Hill on June 17, 1775, where the English suffered over 1,000 casualties.

THE SECOND CONTINENTAL CONGRESS AND THE *DECLARATION OF THE CAUSES AND NECESSITY OF TAKING UP ARMS*

The Second Continental Congress convened on May 10, 1775. Once again, 12 of the 13 colonies participated.[1] Despite an undeclared rebellion underway in Massachusetts, Congress drafted another appeal, known as the Olive Branch Petition, asking King George III to rescind the Intolerable Acts and re-affirm self-government for the colonies. Somewhat incongruously, almost the same day Congress approved the Olive Branch Petition it also approved "A Declaration Setting Forth the Causes and Necessity of Taking Up Arms." The July 6, 1775 Declaration began by denying that parliament had any authority over the American colonies. The Declaration asserted that God never "intended a part of the human race to hold an absolute property in, and an unbounded power over others." It went on to explain:

> The legislature of Great Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom … have thereby rendered it necessary for us to close with their last appeal from reason to arms. Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our cause.

[1]Georgia was in the middle of a fight with Native Americans and needed the protection of the British army so felt it could not afford to antagonize England by attending the Congress.

Effectively, this was a declaration of war. Nevertheless, the Declaration stated that, "We have not raised armies with ambitious designs of separating from Great Britain, and establishing independent states." Rather, the colonies simply demanded that they be allowed the self-government under the crown that the colonies had been granted in the Royal Charters of the 17th century. The Declaration concluded:

> In our own native land, in defense of the freedom that is our birthright, and which we ever enjoyed till the late violation of it—for the protection of our property, acquired solely by the honest industry of our forefathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

Thus, the colonists claimed to be defending their "own native land" against invaders and aggressors. On June 15, 1775, Congress voted to appoint George Washington as commander of the united colonial forces. From this point forward, there was war between the Americans and the English.

INDEPENDENCE

On May 4, 1776, the Rhode Island legislature enacted a statute legally severing all relations between Rhode Island and the British government. The official reason was because the king and his government had violated "the compact most solemnly entered into, ratified and confirmed to the inhabitants of the Colony by his illustrious ancestors." This was not a claim to a violation of some mythical social contract; rather, it was the literal, historical grant of self-government made to Rhode Island in the 17th century. The final provision of the Rhode Island Act stated: *PROVIDED, nevertheless, that nothing in this act contained shall render void or vitiate any commission, writ, process or instrument heretofore made or executed[.]* So this was not a revolution, it was a separation. All laws previously in effect remained in effect.

On May 6, 1776, a constitutional convention met in Virginia to create a new constitution to replace the old colonial charter. On May 15, the Convention declared that the colonial government of Virginia was "dissolved" and replaced by a Republic with a new constitution. That day the British "Union Jack" was taken down from flying over the Virginia Capital. On June 29, 1776, Patrick Henry became the first governor of the independent Commonwealth of Virginia.

Patrick Henry

Meanwhile, back in Philadelphia, the Continental Congress re-convened on May 10, this time with all thirteen colonies in attendance.[2] One of Congress' first actions was approving a resolution stating:

> That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs have been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.

Congress could only "recommend" that a colony act and this resolution carefully avoided the appearance of demanding or ordering a colony to do anything. The recommendation was clear however: colonies that had not yet done so, should follow the example of Massachusetts, Rhode Island, and Virginia to form their own governments on the basis of popular sovereignty. In the spring of 1776, most of the colonies were already planning constitutional conventions but the Congressional Resolution helped encourage the rest to move forward.

As late as May 1776, several colonies still refused to vote for outright independence. For

[2]By this point, Loyalists were no longer in control in Georgia and the new leaders realized they needed to join the other colonies in the War of Independence.

example, on May 21, 1776, the Maryland Convention voted against full independence. This began to change in June 1776. On June 15, New Hampshire and Delaware authorized their delegations to support independence. The following week, New Jersey agreed to independence but then went a step further. On July 2, 1776, New Jersey's constitutional convention approved a new constitution declaring New Jersey to be independent and explaining:

> whereas George the third, King of Great Britain, has refused Protection to the good People of these Colonies … all civil Authority under him is necessarily at an End, and a Dissolution of Government in each Colony has consequently taken Place.

The New Jersey Constitution additionally provided:

> That the Common Law of England, as well as so much of the Statute-Law, as have been heretofore practiced in this Colony, shall still remain in Force, until they shall be altered by a future Law of the Legislature[.]

Finally, on June 28, 1776, Maryland's Constitutional Convention instructed its delegates to support a Declaration of Independence. New York was the only colony that had not agreed to independence; but New York had repeatedly abstained in all votes, so a vote now would be 12-0 with one abstention. As it turned out, the New York delegation did abstain, but the New York Constitutional Convention issued a separate Declaration of Independence for New York on July 9, 1776.

THE DECLARATION OF INDEPENDENCE

With opposition to independence having fallen away, the Second Continental Congress authorized a committee to draft a formal Resolution or Declaration of Independence. Strictly speaking, the Continental Congress had no authority to make laws, and the statements passed by the Congress were non-binding resolutions. Thus, the Declaration of Independence has no legal status. It is not a law and confers no rights or duties on anyone. Nevertheless, the Declaration of Independence is the most famous document of this period and both symbolizes and embodies many basic American principles.

The Committee assigned to craft the Resolution agreed that Thomas Jefferson should write the first draft. However, it went through a series of revisions. The Declaration begins:

> ***The unanimous Declaration of the thirteen united States of America,***
>
> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

First, this is the unanimous Declaration of all the States. It had to be unanimous because each State was sovereign and independent. Note that "united" is not capitalized. "United" was not a name, it was merely an adjective describing the

The Signing of the Declaration of Independence

CHAPTER FOUR

THE LEGISLATIVE BRANCH: CONGRESS

THE STRUCTURE OF CONGRESS AND THE DIVISION OF POWERS

Article 1 section 1 of the Constitution begins:

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

This simple phrase contains two important points. First, the "legislative Powers" of the federal government are not unlimited. They are limited to those specifically "herein granted." Second, the Constitution says unambiguously that "All legislative Powers" are vested in Congress. Only Congress has authority to make law. Neither the president nor the courts may legislate, that is, make law. The president was given power to veto (reject) laws passed by Congress, subject to Congress "overriding" that veto, but Article II, Section 3 says explicitly "he [the president] shall take Care that the Laws be faithfully executed."

Despite the provision that all legislative powers are vested in Congress, the president promulgates "regulations" that are not approved by Congress. For all intents and purposes "regulations" are indistinguishable from a "law." Regulations even create criminal offenses.

All the laws passed by Congress, and currently in effect, encompass 38 large volumes and thousands of pages of text. The *Code of Federal Regulations* is organized into 50 titles, published in roughly 200 physical books, totalling about 190,000 pages of text. These aggregate numbers are somewhat misleading, however. In the two years 2017 to 2018, Congress enacted 442 laws encompassing just under 8,000 pages of text, or about 4,000 pages of new laws each year.[1] In contrast, there are about 4,000 new federal regulations each year totaling about 10,000 pages.[2] We should not lose sight of the reality that much regarding how laws are made do not apply to federal regulations. Indeed, the Constitution's carefully constructed systems of "checks and balances" are largely eliminated by the president simply issuing regulations.

The Framers thought that the structure of the government was more important than paper barriers. Both Houses of Congress needed to agree on new legislation or a change in law, and

[1] Each "Congress" sits for two years. The "First Congress" sat from 1789 to 1790; the second from 1791 to 1792 and so forth. The Congress that sat from 2017 to 2018 is known as the 115th Congress. As of this writing figures for the 115 Congress are the most recent available.

[2] Congressional Research Service, "Counting Regulations," September 3, 2019.

the president also had an opportunity to veto new legislation. The constitution originally provided: "The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof." The Senate and the House of Representatives were chosen by different methods to represent different interests while the president was chosen by electors. Requiring the agreement of different institutions responsible to different groups and interests provided one of the basic checks on power. Madison, and other Federalists, thought that simple majority rule was dangerous and required some form of institutional restraint. Under the Articles of Confederation, nine of thirteen states needed to agree to any major action. Federalists thought this was too difficult to achieve, but they also did not want to make it too easy to enact new laws.

The passage of the 17th Amendment in 1913, providing for the direct election of Senators, represented a major change. If both houses are popularly elected, they are less likely to be at odds and check each other. Nevertheless, the equal representation in the Senate continues to serve this purpose, although to a more limited extent than it once did. Rural states with low populations, like Alaska and Wyoming, possess the same vote as huge states like California and New York. The Senate still makes it difficult for regional majorities to control the legislative process.

THE HOUSE OF REPRESENTATIVES

Article 1 created the Legislative Branch of the federal government which consists of two chambers: **The Senate** and the **House of Representatives.** Madison believed that it was crucial for one chamber of Congress to represent the common people. This was similar to England's Parliament, where there was a House of Lords and a House of Commons. This system very much accords with the view of St. Thomas that the best system of government is a combination of monarchy, aristocracy, and democracy; thus, this allows participation by the one, the few, and the many. Senators serve for six years and are few in number. The House of Representatives, which is based on population, is larger and its members are elected every two years. (Federal elections are held in November of even numbered years.) For convenience, members of the House of Representatives are usually referred to as "Congressmen" or "Congresswomen." In the first Congress, there were 26 senators but 65 congressmen. The number of Congressmen was expected to grow as the population increased. Initially, there was one representative for each 30,000 people.

The Constitution requires that Representatives be elected, but leaves the process largely up to the

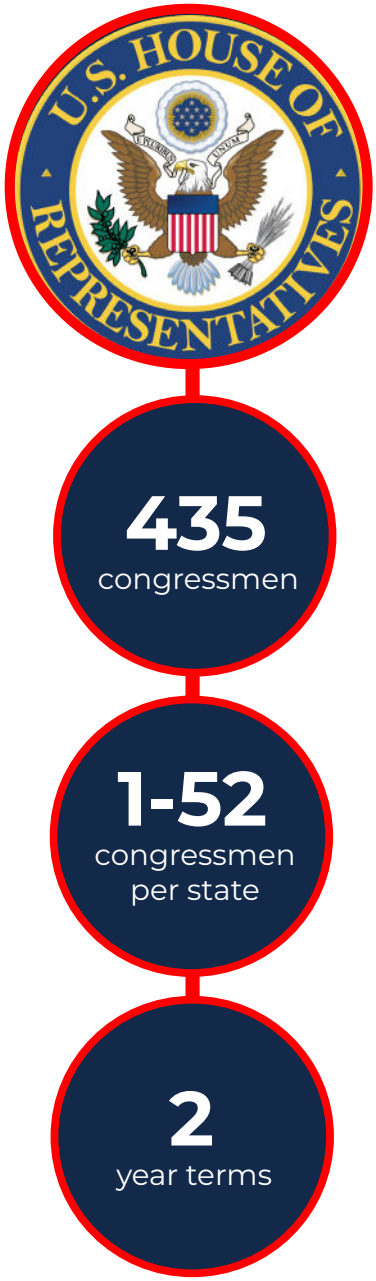
state. In England, members of parliament were elected from specific local areas, such as a county or town. Nothing in the constitution requires a state to divide the state into different districts. Theoretically, a state could elect all representatives in state-wide, so-called "at large," elections, but states have followed the English model and elected Congressmen on a district by district basis.

In *Federalist* 55, Madison explained his theory of representation. Some anti-federalists thought that representatives should represent fewer than 30,000 constituents. Madison agreed in principle that it is best to have a small number of voters for each representative, but the rapid growth of the United States meant that in fifty years, even at the 30,000 to 1 ratio, there would be 400 representatives.

The Constitution permitted Congress to decide on the number of representatives once the number initially prescribed by the Constitution reached 200. In the 19th century, as the population increased, Congress repeatedly adjusted the proportion and size of the House.

Since 1913, the number of House members has been set at 435. Accordingly, the size of a congressional district is the population of the United States divided by 435. This system of distributing representation among the states is known as **apportionment**. However, each state must have at least one representative, so some congressional districts are smaller, and some a bit larger. Wyoming and Vermont each have a population of about 600,000 and have one representative. Delaware, with a population of nearly one million, also has one representative.

Because the population of individual states changes, every ten years the federal government conducts a **census**, that is, counts the number of people in the state. Based upon changes in the state's population, the number of seats each state has in the House is **reapportioned**. The government has been conducting a census every ten years since 1790. As of the 2020 census, the average congressman represents 761,000 constituents. The Framers hoped that because Congressmen represented a small number of people, who came from the same general area, that they, unlike Senators who represented an entire state, would be more responsive to the needs of their constituents. Today, because Congressmen represent so many people, with such diverse beliefs and demands, it seems that can no longer be possible.



After the census, Congress determines how many seats each state receives in the House. Each state then decides how to elect these representatives and sets the boundaries of congressional districts. Depending on the census, states may gain or lose representatives, which means that the district boundaries need to be redrawn to reflect the population change. *Technically*, state legislatures should try to redraw the boundaries to include the

same number of people in each district. However, Congressional districts can be manipulated to achieve a desired outcome, usually giving Congressional seats to the party controlling the state legislature.

Suppose a state is evenly divided between Democrats and Republicans, with 50,000 of each. The Republican-controlled legislature seeks to divide these 100,000 voters into three districts, of 33,000 each. If they can somehow pack 33,000 Democrats into one district, then the other two districts each would have 25,000 Republicans and 8,500 Democrats. This would likely guarantee that Republicans win two out of three seats. This type of maneuver was made famous by an historical incident.

After the 1810 census, the Massachusetts legislature, which was controlled by the Democratic-Republican Party, redrew the districts for election to state senate. The legislature created several "safe" districts, which they were certain the Democrats would win, by stringing together different neighborhoods where Democrats lived. One of these districts looked so odd that people said it was shaped like a salamander. In 1811, Democrat **Elbridge Gerry** (1744-1814) was elected governor of Massachusetts. Gerry signed into law the redistricting plan which the Legislature passed. To criticize Gerry, and imply he was a bit unethical, Federalists newspapers throughout the country, published cartoons of this odd "salamander shaped" district that they mockingly called a "Gerrymander." Gerrymandering became the name given to redrawing electoral districts to benefit one side.

One particularly controversial type of such conduct is racial gerrymandering, which involves electoral districts being drawn based on racial demographics. Some people think that gathering a racial minority into their own district ensures that the minority will be represented. Others argue that all law should be "color-blind" and not based upon race.

Another criticism leveled against the large size of congressional districts is that it makes it difficult for "third party candidates," that is, candidates who are not Republicans or Democrats,

An 1812 political cartoon depicting the "gerrymander"

to win elections. In the 18th and 19th centuries, congressional districts represented 30,000 or 40,000 people, but the number of voters was much smaller. For example, when Abraham Lincoln was elected to Congress for Illinois in 1846, he received 6,340 votes. In 2020, the congressional candidate for the district Lincoln represented was elected with 249,383 votes. So, in the 19th century, a candidate did not need to be rich or famous to be elected to Congress. In 2020, the average cost of a candidate to run for congress was about $10 million. The majority of Congressmen and Congresswomen are millionaires.

Finally, under the Constitution, Congressmen need to meet certain requirements to be eligible to serve. They must be at least 25 years old, a citizen of the United States for seven years, and a resident of the state they intend to represent. In general, the eligibility requirements for Congress do not present obstacles to membership; although Congressmen and Senators are often criticized for moving to states where they have never lived to seek Congressional office. The most famous example is probably Hillary Clinton, who had been a resident of Arkansas for more than twenty-five years before moving to New York to run for the Senate in 2000.

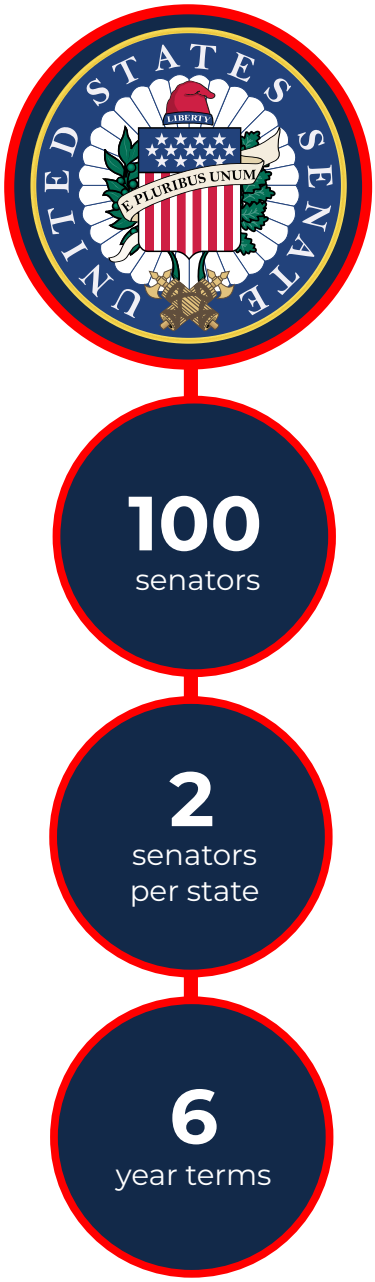
THE SENATE

The Senate, or the upper house of Congress, consists of two members from each state. It is clear from *The Federalist Papers,* that the Framers intended that the Senate be composed of men from the upper echelons of society and not likely to be influenced by the "common man." The Senate would serve as a check against the recklessness of the members of the House. Each state is constitutionally entitled to two Senators, who serve for six years. Originally, Senators were chosen by their state's legislature, but since the enactment of the 17th amendment in 1913, they are popularly elected. To be eligible to run for the Senate, a person needs to be at least thirty years old, a U.S. citizen for at least nine years, and a resident of the state they hope to represent.

Because the Senate has fewer members than the House, it is less formal. Thus, for example, Senators can speak on the floor of the Senate almost as long as they wish, something known as the **filibuster**. A filibuster occurs when a senator, or senators, keep talking about a bill to prevent a vote. Although Senators usually speak about the bills they oppose, Senators have been known to read recipes and phone books. South Carolina Senator Strom Thurmond, who filibustered for more than 24 hours, holds the record for the longest speech. Interestingly, the most famous filibuster was a fictional one, delivered by Jimmy Stewart in Mr. Smith Goes to Washington. While it is not a constitutional requirement, the practice in the Senate for decades has been to require three-fifths of all seated Senators (currently sixty when no vacancies exist) to vote to cut off discussion, a process called **cloture**.

Unlike the House, there are fewer checks, with respect to certain powers, granted to the Senate. These powers are found in Article 2, section 2 which provides:

> [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.



This means the House of Representatives does not have a say in some important decisions,

including approving treaties and confirming Supreme Court Justices. With respect to **treaties**, which are formal agreements between nations, while only the Senate votes, it requires the approval of a two-thirds majority. Note the clear supremacy of the legislative branch over the president. The president cannot appoint anyone to his administration unless allowed by Congress. Congress generally permits the president to hire and fire most executive officers, but this is entirely at the discretion of Congress.

The removal of officers is another important power for which the Senate holds the final authority. Article 2 section 4 provides that the president, or any other executive official, can be "removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Article 1 section 2 gives the House power to "impeach," but Article 1 section 3 gives the Senate power to "try all Impeachments" and requires a two-thirds vote of the senators to remove an executive official or a judge. While both Houses of Congress are allowed to vote, it is much harder to get a two-thirds vote in the Senate than a bare majority in the House.

Historically, most members of Congress have been white, Protestant men, as they constituted the vast majority of voters until the end of the 19th century. However, as women and blacks were granted the vote, and the Catholic population increased, they also began joining Congress. The Congress elected in 2022 contains more women and ethnic minorities than any prior Congress. The vast majority identify as Christians, with 303 belonging to a Protestant denomination and 148 the Catholic Church. Additionally, this Congress also contains a small number of Jews, Mormons, and Orthodox Christians.

CONGRESSIONAL ELECTIONS

The method of electing members of Congress is mostly left to the states; although Congress has power to regulate federal elections. For example, in 1872, Congress decreed that every state should hold federal elections on the same day: the Tuesday following the first Monday in November, during even-numbered years. In 1971, the 26th amendment lowered the voting age from 21 to 18, primarily because 18-year-olds were subject to the draft and being sent to fight in Vietnam.

Throughout most of American history, congressional elections have been "winner take all," which means that the candidate who receives the most votes wins, even if they receive less than a majority. A few states have begun to change this. Georgia, for example, has a system where if no candidate receives a majority of votes, then the top two vote-getters have a run-off election. Alaska has recently adopted "ranked choice voting," which allows a voter to vote for more than one candidate in his order of preference. For example, a voter could list George Washington as first choice and John Adams as second choice. If Washington does not receive a majority he is eliminated and the second choice vote is counted. Some people prefer these options as it provides voters more choices and reduces the dominance of the two main political parties.

Finally, the states determine rules for elections, such as whether there will be paper ballots or electronic ballots; to what extent mail-in ballots are accepted; and whether identification is required to vote. Both parties have accused the other of manipulating voting rules to favor their side. For example, Democrats have argued that requiring voters to present identification before voting discriminates against Democrats because their voters are less likely to have identification. Republicans counter that *not* requiring voters to have identification allows Democrats to engage in voting fraud.

CONSTITUTIONALLY-CREATED LEADERSHIP POSITIONS IN CONGRESS

Like any organization, Congress needs people to lead it and decide what laws it will consider. The Constitution creates three positions of leadership in Congress: the Speaker of the House, the president of the Senate, and the president *pro tempore* (of the Senate). These officers are elected by the members

of the House and Senate respectively.

Article 1, Section 2 establishes that the House "shall choose their Speaker." The **Speaker of the House** leads the House of Representatives. To be elected Speaker, a majority of the House needs to vote for him or her. This means that the party which controls the House elects the Speaker. The Speaker is incredibly powerful. The Speaker assigns members to House committees (discussed below) as well as determines which proposed laws, called **bills**, will be presented to the House for a full vote. The Speaker can delay action on a bill simply by refusing to allow debate. A majority of Representatives can force a vote on a Bill by signing a "**discharge petition**," but this rarely happens as most Representatives do not want to run afoul of the Speaker. Moreover, the Speaker is third in line for the presidency after the vice-president.

Section 3 names the vice-president as "**President of the Senate**." Historically, the position lacks both power and prestige. John Adams, the first president of the Senate, spent a great deal of time actually presiding over the Senate. However, the Senators generally ignored him, and even he felt that in a life filled with great accomplishments, his eight years as vice-president and president of the Senate, were a waste of time. The problem is that unless there is a tie vote, the president of the Senate possesses almost no political power. Although he or she technically presides over the Senate, unlike the Speaker, the President of the Senate can neither vote nor participate in debate. Most vice-presidents never voted to break a tie. Statistically, John Adams actually voted rather often, twenty-nine times. However, Kamala Harris holds the modern record with thirty-six tie-breaking votes.

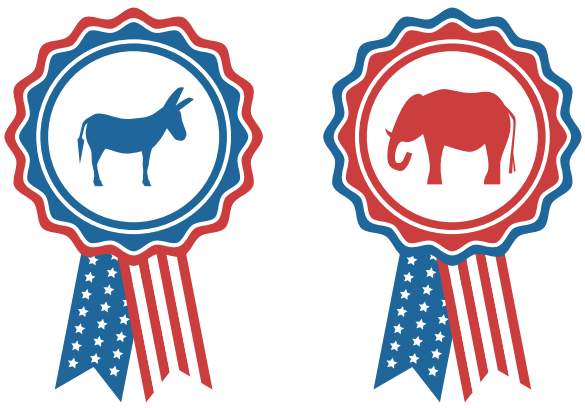
Because the office of President of the Senate is rather dull, the vice-president normally appears only to cast a tie-breaking vote. When the President of the Senate is absent, the president *pro tempore* (or pro temp) leads the chamber. Because the president pro temp is elected by their fellow Senators, the party in the majority elects one of its own.

POLITICAL LEADERSHIP IN CONGRESS

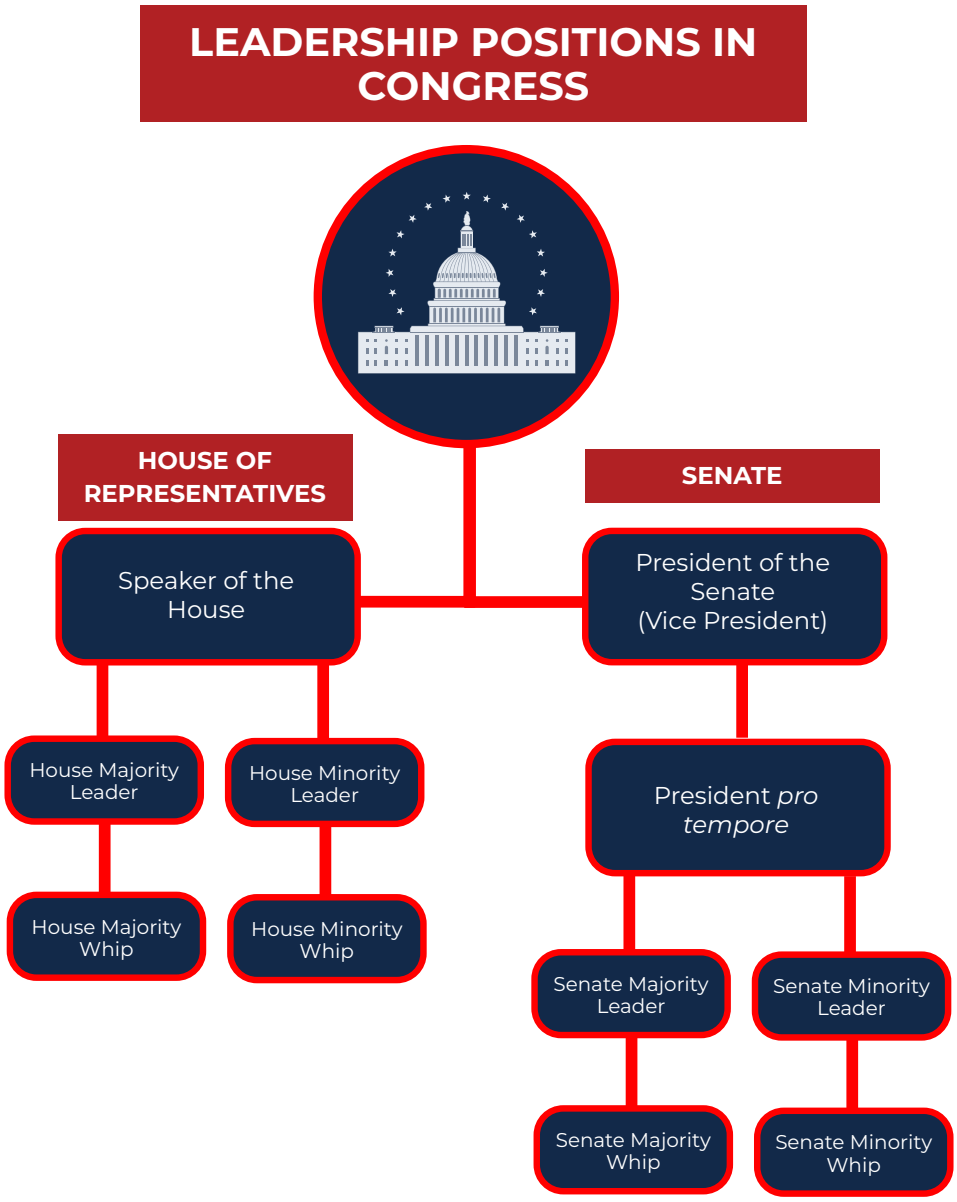
In addition to these *constitutionally*-established Congressional leaders, there are also a number of *political* leaders, who work to enact legislation favored by their constituents. While not necessarily the intent of the Founders, the United States almost immediately developed a government centered around a "two party," or **bipartisan**, system. In the 1780s, Americans were divided into federalists and anti-federalists, but these groups were more loosely structured than today's political parties. A **political party** can be defined as a group of people organized to acquire and exercise political power, generally by electing candidates to office.

George Washington was elected president without a Party. Soon after Washington's election, Hamilton began organizing like-minded people into a coalition to support his agenda. In the 1792 election, when Washington was elected to his second term, candidates for state and federal office were openly identifying themselves as Federalists and another party known as Democratic-Republicans. Thomas Jefferson led this party, but initially from behind the scenes because he was part of the Washington Administration until the end of 1793. In the 1796 presidential election, John Adams, the Federalist candidate, defeated Jefferson.

The current division between Democrats and Republicans dates back to 1854, when the Republican Party's signature issue was opposing the expansion of slavery. Ever since, Democrats



The symbol for the modern-day Democrat party is a donkey, while the Republican party is represented by an elephant.



and Republicans have dominated under a two-party system. Many countries possess multiple parties because their parliaments have proportional representation. Under these systems if a party receives only a few percentage points of a national vote that party still may obtain a seat or two in parliament. Small parties are able to gain a foothold in parliament under a proportional system. However, in the winner take all system of elections, it is difficult for new parties to elect anyone.

Because the United States has a two-party system, one can speak of the party with the most members in either chamber of Congress as the **majority party** while the party with fewer members is the **minority party**. As noted, the majority party in each chamber elects one of its own members to serve as the presiding member. The political leader of the majority party in both houses is known as the "Majority Leader." Although the Majority Leader of the Senate is a political, not Constitutional position, the Majority Leader of the Senate, in many ways, has become as powerful as the Speaker of the House. As noted, the Constitutionally-created Senate positions lack much real power. On the other hand, the Senate Majority Leader can delay bills and refuse to allow votes on bills or hearings on Supreme Court nominees.

In addition to the Majority Leader, each house