Political Institutions

INTRODUCTION

When Americans think of the British, what likely comes to mind is drinking tea, good manners, and the Queen. They do not picture fist pounding and jeering as typical of British manners, unless they have a chance to watch the British prime minister respond to questions by members of the opposition party in the legislature. The prime minister is often met with jeers and boos and hisses as he or she must defend his or her policies against an unsympathetic opposition. One could not imagine the United States Congress erupting into similar levels of rowdiness when the president makes his yearly State of the Union Address, where the president typically receives numerous standing ovations, and the largest display of disagreement members of the US opposition make is not to clap when the president lays out accomplishments and goals to the Congress. In fact, when Republican Joe Wilson yelled “you lie” at President Barack Obama at Obama’s address before a joint session of Congress in 2009, Americans were somewhat shocked that a congressional representative would disrespect the office of the president in such a way. In Britain, such outbursts would not only seem common, but could be expected. Why? Because the United States and Britain not only have different political cultures, but they have very different political institutions.

This chapter digs deeper into the similarities and differences in the political cultures between liberal and social democracies highlighted in chapters 3 and 4 to demonstrate how differing beliefs about government translate into differing governing structures in the United States and other advanced industrial democracies. Chapter 4 highlighted how distinct American political culture is compared to the political cultures of other countries. This difference, combined with a different historical trajectory, led the United States down an institutional path that was distinct from other democracies. Interestingly, however, the United States shares some institutional similarities with many democracies, but the features do not line up with particular countries in any consistent manner. For instance, the United States is not the only liberal democracy in the world, but most other liberal democracies do not have presidents. Like other
democracies with high levels of ethnic and sociodemographic diversity, American political institutions keep any one social group or political interest from easily controlling government. The extensive American system of checks and balances, where three branches of government can each limit the power of the others, is complicated, confusing, and unique to the United States.

MAJORITARIAN AND CONSOCIATIONAL DEMOCRACIES

No single democratic institutional system universally trumps others. Instead, a democracy’s institutions must match the nature of a country’s society and political culture. If democracy was a “one size fits all” approach, when the United States spent most of the 2000s and early 2010s trying to build democracies in Iraq and Afghanistan, why wouldn’t the United States just have set up carbon copies of its own institutions in these countries? They have worked very well in the United States for over 200 years. Very few people would suggest that the political cultures or the nature of society in Iraq and Afghanistan were anything like the United States—or each other for that matter—so simply transferring democratic institutions from one context will not ensure success elsewhere. In fact, political observers and maybe even this book’s readers would chuckle at the notion that democratic institutions would be interchangeable.

Why can democratic institutions not be interchanged from one country to the next? If politics is about who gets what, when, and how, the political institutions tend to be the mechanism through which governments make these decisions. Particular institutions that may accomplish this for certain social and cultural conditions would fail miserably in other social settings. The institutions also have to produce social order, ensure the citizenry’s ability to drive government policy, and decide the best way to produce the common good while protecting civil liberties. How the institutional design best produces this hinges on how diverse or homogenous a country’s society is.

A country with a high level of ethnic, religious, linguistic, and regional homogeneity, or similarity, has an easier time keeping the political system and society unified. When decisions over who gets what, when, and how are made, they are unlikely to set off strong resistance because the outcome will not likely lead to great social division, so the governing institutions do not have to be designed as much to keep the peace as well as they do to decide who gets what. In societies with high ethnic, religious, linguistic, and regional diversity, governing institutions must both work out ways to decide who gets what, when, and how, but also be designed to do so in ways that do not lead to particular ethnic, religious, linguistic, or regional groups feeling like the system is stacked against them.

One preeminent institutional scholar, Arend Lijphart (b. 1936–), classified democracies into two types, majoritarian and consensual (or consociational), based upon the predominant institutional configurations found within the countries.1 Those institutional designs stem from the diversity of the society.
Each type—majoritarian and consensus—is an ideal type, meaning that no country perfectly embodies majoritarianism or consociationalism.

The United Kingdom best fits institutional features of the majoritarian institutional system, and Lijphart even refers to the ideal example of the majoritarian systems as Westminster systems, a reference to London's city center. Majoritarian democracies have more homogenous societies ethnically, religiously, linguistically, and regionally. Consequently, the institutions typically have election and party systems that leave a single party in control of government, and few institutional checks on the ability of that party to easily translate their majority status into public policy. The attraction of majoritarian democracies rests on the argument that decisive government is good government. With fewer internal social divisions, there can be fewer players involved in the policy-making process in a majoritarian system because there are fewer social groups and people to appease, and fewer people to derail certain policies. Consequently, majoritarian governments produce a greater number of laws because of the streamlined policy-making process.

Consociational democratic systems have deep social divisions, usually along the ethnic, linguistic, religious, or regional distinctions highlighted above. Institutions must spread power across different sectors of society to keep a balanced order among social groups. In contrast to majoritarian institutions, consociational institutions lean toward producing multiple competitive parties, which leads to more than one party controlling the legislation and execution of law. This, along with powers provided to regional governments, means that parties and political leaders must compromise and that public policies are the product of a consensus developed from numerous quarters of society. Such efforts take time and involve less efficient policy making compared to majoritarian systems, even if they provide governing representation to more sectors of society.

The basic argument for consensus democracies builds around the idea of representation. Scholars have argued that proportional representation in consensus democracies provides better minority representation. In short, consensus democracies, it has been argued, allow more players at the proverbial table and more voices heard when drafting policies. As a result, minority voices do not feel disenfranchised from the policy-making process.

The specific construction of democratic governing institutions in countries will be looked at in more depth below. The blend of these institutional arrangements—particularly how much power regional governments have in making their own policy decisions, how election rules encourage or discourage numerous political parties to compete for office (see chapter 8), as well as how much power is concentrated in a single party or person in the executive branch—differentiates democratic governments on a scale between the ideal types of majoritarian systems versus consociational systems. Lijphart developed scales to measure levels of majoritarian versus consensus institutional features on two dimensions. One measures the power of regional governments versus the national government in making public policy, referred to as...
the federal-unitary dimension. In effect, this dimension looks at the relative power distribution regionally in a country. Majoritarian systems should have institutions that concentrate power in the national government. Consociational systems should have institutions that provide regional governments with key public policy powers because those regions may reflect a particular ethnic, religious, linguistic, or regional group that prefers to craft policies that fit its own culture rather than the majority national culture.

A second dimension, called the executive-parties dimension, looks at the representational nature of the political system in terms of the number of political parties that compete and share power in the legislative and executive branch, the dominance of the executive branch over policy, and the degree to which interest groups are formally or informally represented in government. Majoritarian systems tend toward governing efficiency and stability by having institutions that promote a single party controlling both the legislature and executive, and strong executive control over policy. Consociational institutions promote multiple parties competing and winning seats in the legislature, and the executive branch tends to have to build a coalition among different parties to function. This ensures that different sectors of society have a voice in governing policy.

Countries typically hold majoritarian or consociational institutions consistently across both dimensions. Figure 5.1 illustrates where countries fall along a continuum of majoritarianism and consociationalism based upon the two dimensions, executive-parties and federal-unitary. This is merely meant as an illustration for the reader, and a country’s positioning along each continuum should not be treated as absolute. Nevertheless, a couple of countries exemplify how democratic institutions can differ greatly to produce decisive government from elections in majoritarian systems compared to providing different sectors of society representation and consensus building in policy in consociational systems.

**FIGURE 5.1** Spatial Representation of Democracies Based upon Lijphart’s Majoritarian/Consociational Criteria

<table>
<thead>
<tr>
<th>Majoritarian Democracy</th>
<th>Consensus Democracy</th>
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</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>France</td>
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</table>

Adapted from Arend Lijphart’s *Patterns of Democracy*
The United Kingdom’s institutions tend to lead to one party dominating legislative elections, producing a strong, single-party executive that easily passes and executes policy with few checks. It tends to be a model of decisive policy making born of a majority election victory. Thus it is majoritarian on the executive-parties factor. The United Kingdom’s national government has sovereignty, that is, right of rule, over the entire country, so it is majoritarian on the federal-unitary factor as well.

Switzerland demonstrates the consociational case well. Switzerland has three large ethnic/cultural/linguistic groups that tend to be concentrated in particular regions, one French-speaking, one Italian-speaking, and one German-speaking. To not slight any of these ethnic, linguistic, and regionally divided groups, the Swiss institutions promote multiple parties for the legislature and executive branch. Eleven parties won seats to the Swiss National Council in the last election—its main legislative body—with six of those parties winning double-digit seats in the two-hundred-seat legislative body. The Swiss Federal Council heads the executive branch. In contrast to the US president who leads the executive branch as a single person, there are seven people in the Federal Council from numerous parties to reflect the diversity of Swiss society. On the executive-parties factor, Switzerland, then, is extremely consociational in order to ensure that all sectors of its very ethnically/linguistically divided society have representation in the legislature and executive.

Further, the Swiss are highly consociational on the federal-unitary factor. Each regional government (there are 26 cantons) is given far-reaching policy-making power on issues like education, public safety, and social welfare. The cultural preferences of these differing groups can be expressed in policy and not subject to a singular majority policy preference.

As you would expect given the comparison of American political culture to other democracies, the US institutional structure shares many features with other democracies, but it also has very unique features. In the two examples provided above, it shares some key features with Britain on the executive-parties factor. It provides many more checks and balances than the British system does, however. In turn, it also shares many features of the Swiss federal-unitary factor. Not surprisingly, this is an exceptional and some would say somewhat strange mix.

Most advanced industrial democracies are either majoritarian along both dimensions or consociational along both dimensions. The United States, however, is majoritarian on the executive-parties dimension and consociational on the federal-unitary dimension. The Scandinavian countries are nearly the mirror opposite of the United States, with high consociationalism on the executive-parties dimension and majoritarian in terms of the federal-unitary dimension, a mixture much more common among advanced democracies if a country is going to have a mixing among dimensions.

Whether or not a country is majoritarian or consensus is more than just an academic exercise. There is a debate when constructing new types of government as to which type of institutional configuration is “best.” The basic argument
for consensus democracies builds around the idea of representation of different social groups in government, while the argument for majoritarian government comes from its decisive election result–public policy connection and ability to quickly make and execute policy. What is most important is that what is best for one society might lead to policy failure, ineffective governance, or even civil war in other social settings. The connection between a country’s political culture and its political institutions is tight, and it is the reason why the American institutional system is very unlike other countries’ institutional systems.

The following section focuses on the specific institutional designs of advanced industrial democracies. The institutional structures of different countries should not be viewed as independent items chosen by a country like some sort of à la carte menu items. Rather, the institutions were adopted to fit the majoritarian or consociational goals of a country’s political culture. Table 5.1 details Lijphart’s (1984, 2012) institutional traits along with other important components—party system, interest groups, and elections—talked about in subsequent chapters. The next section identifies how executive, legislative, and judicial powers are set up across different democracies to produce the best democratic and policy goals for differing political cultures and social diversity. Democracies differ greatly on their institutional types. One clear conclusion that can be drawn is that the United States has an institutional system that is exceptional.

<table>
<thead>
<tr>
<th>TABLE 5.1</th>
<th><strong>Majoritarian versus Consensus Traits</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Institutional Design</strong></td>
<td><strong>Majoritarian</strong></td>
</tr>
<tr>
<td><strong>Executive Power</strong></td>
<td>One party and bare majority cabinets and majority party control of cabinet = one political party (the one with the most votes) controls the executive and that party also controls the cabinet; power is not shared</td>
</tr>
<tr>
<td><strong>Party System</strong> (see chapter 6 for discussion of party systems)</td>
<td>Two-party system = two main political parties; although smaller parties may exist, they do not garner enough votes for seats</td>
</tr>
</tbody>
</table>
### Governing Institutions

The two factors that Lijphart developed to differentiate democratic institutional systems explain how much power is concentrated or spread within the government and across the country regionally. These factors can be translated into the vertical organization of government and the horizontal organization of government. **Vertical organization** of government refers to layers of government

<table>
<thead>
<tr>
<th>Elections (see chapter 6 for discussion of elections)</th>
<th>Disproportionality of Elections = one party controls nearly all government positions as long as it gains a <em>plurality</em>, the most, of the votes</th>
<th>Proportionality of Elections = parties share positions and power in proportion to the amount of votes they receive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Groups (see chapter 7 for discussion of interest groups)</td>
<td>Pluralist = there are many different types of groups with competing policy preferences; no formal structure for influencing policy</td>
<td>Corporatist = there are fewer groups and groups have a formal seat at the table when negotiating government policy</td>
</tr>
<tr>
<td>Vertical Organization of Authority</td>
<td>Unitary structure</td>
<td>Federal structure</td>
</tr>
<tr>
<td>Houses of Legislature</td>
<td>Unicameral</td>
<td>Bicameral</td>
</tr>
<tr>
<td>Constitution</td>
<td>Constitutional flexibility = constitution can be easily adapted and changed; usually by the legislature</td>
<td>Constitutional rigidity = it is a difficult and arduous process to change the constitution</td>
</tr>
<tr>
<td>Judiciary</td>
<td>No judicial review = judiciary does not pass judgment on constitutionality of laws, merely enforces laws enacted by the legislature</td>
<td>Judicial review = judiciary passes judgment on the constitutionality of laws passed by the legislature</td>
</tr>
<tr>
<td>Central Bank</td>
<td>Executive control of central bank = the appointing of lead bankers and making of monetary policy is at the discretion of the executive branch</td>
<td>Independence of central bank = the central bank operates independently from any of the branches of government and sets its own monetary policy</td>
</tr>
</tbody>
</table>

from national (center) to subnational (below the center), which relates to the federal-unitary factor discussed above. The parties-executive factor relates to the horizontal organization of government, or to the relationship between the legislative, executive, and judicial branches of government at any level.

**VERTICAL ORGANIZATION OF GOVERNMENT:**
**UNITARY, FEDERAL, AND CONFEDERAL SYSTEMS**

Vertical organization refers to how many layers of government a country has and how the country distributes governing power across those layers of government (see Figure 5.2). As highlighted above, many democracies are unitary systems, where all significant legislative and executive power is vested in a single national (sometimes referred to as central) government with little to no independent power vested in lower levels of government. In unitary systems, lower levels of government exist “at the will of” the central government. This means that sovereignty rests with the central government, and the central government can create administrative units at lower levels, but can also abolish these units.

Federal systems provide two or more layers of government, which means a country has regional or local units of government with authority and powers independent of those of the national government. The fact that they have independent powers is important. Unitary systems may have regional or local offices, but as noted above, they do not have independent policy-making powers. Federal systems provide significant power over some extremely central governmental policies that often include issue areas like public safety, education, social welfare, and transportation.

Whereas unitary states concentrate sovereignty in the central government, and federal states have independent sovereignty in lower levels of government, confederal states are those where sovereignty is vested in lower levels of government, with lower levels having more authority than the central government. This is where confederal differs from federal. In federal systems, lower levels of government have independent sovereignty, but substantial if not superior power rests with the national government. In confederal systems it is the opposite; the lower levels of government is where the power lies. Students of American history will recall the Confederate States of America, the southern states, which among other things, were fighting for the idea that sovereignty should lie in the states and not the national government, during the Civil War years in the United States. Confederal systems are not common in the world, and especially not common among advanced industrial democracies. Switzerland and Belgium—the two closest democracies to a confederation—both have aspects of a confederation, but they are more similar to a federal system than a confederal system. The European Union and the United Nations are confederations. Their success comes from member states banding together for mutual interests. Their failure comes when member states, based on their sovereignty, refuse to follow...
through on the organization’s goals, which would devastate a country were it to have this governing structure. Indeed, the problems of the United States under the Articles of Confederation will be highlighted below.

The United States has a federal organization of government. It is important to differentiate between the American federal government—the national government—and the federalism as a system of government. In this chapter, federal means a country in which local units of government have powers independent of those of the national government and in which authority is divided between the different levels of government. The independent policy-making powers that state and local governments have in American federalism include public safety and policing; primary, secondary, and higher education; transportation and infrastructure; social welfare; and economic development. These powers play out in very different forms throughout the United States, with different states and localities choosing very different ways to fund government, distinct definitions and laws about social order and decency, and regulations of individuals’ lives. Americans live a very different life relative to government depending on where they live.

Take the authors’ hometowns as examples. One of us lives in the city of Flagstaff, in Coconino County, Arizona. The other lives in Fort Wayne, situated in Allen County, Indiana. Beyond sharing a common president and vice president,
the authors have dozens of separate executive and legislative officials at the state, county, and city level, not to mention governing bodies such as water districts, fire districts, or solid waste districts. One author pays an Indiana state income tax of 3.4 percent compared to Arizona's income tax of 4.54 percent, but Fort Wayne has passed a local income tax of 1.35 percent that Flagstaff does not have. Hoosiers also cannot buy beer on Sunday, forcing some in Fort Wayne to drive the short distance to Ohio should they have not warehoused enough for the weekend. In Arizona, there is no such “problem.”

Other differences among localities are even starker. It is not hard to imagine that Las Vegas and Salt Lake City have very different standards of decency concerning exotic dancing, and citizens in Arizona would be infuriated if the state government had to inspect their jalopy for road-worthiness each year as is the case in many other states. Bars close early or late, marijuana can be or not be smoked, speed limits differ in rate and enforcement efforts, and codes exist or do not regulating whether people can have a bath tub as a flower planter in their front yard. The president will not dispatch the FBI on these matters; they are left up to local laws and local enforcement. Other advanced industrial democracies with federal systems include Canada, Germany, Australia, Belgium, Switzerland, Austria, and New Zealand (which switched to a federal system in the 1990s). While there are some differences between these countries, what they have in common is that all have lower levels of government with independent decision-making authority.

A federal structure of government is not a superior way for all countries to vertically organize a country, but it was the best way for the United States. It particularly made sense for a country whose original colonies were independent, as well as geographically and economically isolated from one another. After the American Revolution, the former colonies turning over their sovereignty to a central authority was not going to happen—it seemed too much like giving authority to the recently thrown-off king. Even after the Articles of the Confederation failed because they led to tyranny of the majority, the individual states still were distrustful of having too strong of a central government. Further, James Madison noted in Federalist 10 that tyranny would best be checked at the federal government level because the diverse interests of these states would lead them to seldom, if ever, agree enough to get a majority vote in the US Congress. Tyranny of the majority is solved not by controlling the tyrannical potential of human nature but by colliding parochial interests of states. Given the history and political culture in the United States, a federal system made the most sense in order to protect against tyranny of the majority from unchecked democracy or tyranny from a single individual.

Additionally, a federal system enhanced self-government, something that was key to framers in 1787 at the drafting the US Constitution. How is self-government enhanced in a federal system? As noted above, the distinctive patchwork of laws in different states in the United States allows citizens of each state to make rules and flavor their policies based on their population rather
than being imposed from a national government. At the time of our found-
ing, the federal structure was a unique experiment. It has been an experiment
that has worked and has since been emulated by other democracies preferring
consociational institutions on the unitary-federal factor. That said, a federal
system is not the only way to organize a government, and it is not appropriate
for all democracies.

While the United States’ federal system is familiar to an American stu-
dent reading this book, a student in France would likely react with puzzle-
ment. Indeed, many democracies, like the United Kingdom, France, Italy,
Japan, Spain, and the Scandinavian countries are unitary systems. Many of
these countries are social democracies with a generally homogenous popula-
tion that identifies itself strongly as a nation. The national government tends
to be trusted as a force for producing the common good for society. Further,
the administrative efficiency of one legislature and one executive making and
executing laws in such a society trumps the frequent inefficient replication or
complicated hodgepodge of policy-making efforts that can exist in federal sys-
tems. Centralization of authority can create efficiency and uniformity. There
was a time in France, for example, that a first-grade student in a public school at
3 p.m. on Monday, anywhere in the country, would be learning the exact same
thing. This is relaxing somewhat, but educational standards are still decreed
centrally. For example, all children in their last year of high school are required
to take a year of philosophy and the same written exam.

In these countries, regional governing offices tend simply to be admin-
istrative units of the national government. When lower levels of government
have any policy-making power, it can be broadened or narrowed at the will of
the central government, or delegated through devolution.

NATIONAL GOVERNING INSTITUTIONS

Countries all need their institutions to do three functional things: to leg-
islate law, to execute law, and to adjudicate whether laws have been violated
or whether the laws are just. These functions tend to be separated into three
branches: the legislative, the executive, and the judicial branch of government,
respectively. There are two main reasons governments split up these functions.
First, a division of labor helps the efficiency of these functions. Second, the
separation of powers ensures that no single person or group can be creator,
prosecutor, judge, and jury over society’s rules.

As the majoritarian-consociational ideal types showed above, there are sig-
nificant differences among democracies about the efficiency of policy making
coming from concentrated power versus providing diverse sectors with repre-
sentation in policy. Lijphart’s second factor emphasized separating institutions
in majoritarian and consociational democracies focused on the number of
competing parties in the executive and legislature of national governments, as
well as how streamlined the policy-making process is for the executive branch.
Devolution means the decentralizing of power, or the granting of power from a central state to a lower level of government. The United Kingdom, also called Great Britain, is a unitary state made up of four constituent parts—Scotland, Wales, England, and Northern Ireland—that each has a degree of autonomous devolved power. In Scotland there is the Scottish Parliament and in Wales, the National Assembly. In Northern Ireland, there is the Northern Ireland Assembly. This power, however, is only devolved and delegated by the central government, or the Parliament of the United Kingdom. The central government can roll back devolution (it has abolished the Northern Ireland Assembly four times—2000, twice in 2001 and from 2002–2007), and the devolved governments cannot challenge the Parliament of the United Kingdom. Devolution can mean that regional governments get more and more authority. The Scottish, who by far have the most devolved power of all the constituent parts of Great Britain in their Scottish Parliament, went to the polls in September 2014 to determine if they should completely break away and become independent from Great Britain. In polling just before the election, it looked as if the “No” and “Yes” votes were neck and neck. As election results rolled in on the morning of September 19, 2014, it became clear that in answering the question “Should Scotland be an independent country?” approximately 55 percent of the voting population (ages 16 and above) voted “No.” This is not to say that results were uniform across the country. In the city of Glasgow, approximately 54 percent of the voting population actually voted “Yes” for independence. The exact ramifications of this hard-fought campaign for independence will be seen in the coming years, and it is certain that there will be increased push for additional devolution. In fact, David Cameron, the British prime minister, has appointed a special chairman to oversee further devolution to Scotland. If this will be enough to satisfy a large portion of an electorate unhappy with British rule and a failed independence bid remains to be seen.

Some societies, particularly consociational democracies, provide key institutional checks to make sure power is distributed rather than concentrated in any department. Compared to the United States, however, these checks tend to come within the executive branch. This means that oppositional political parties “check” the power assertion of the party in power. In the American system, checks come strongly within and between branches of government. That is, each branch of government provides a “check” on the power asserted by other branches of government.

American students can likely recall the mantra of “checks and balances” as being key to a democracy. While, the idea that one branch of government “checks” the power of another branch of government is key to the organization of government in the United States, it is not like this in every democracy. Thus, while other democracies have three branches of government as well, the relationship between these branches is different in the United States.

This section will focus on institutions at the national level. While all democracies, and particularly federal democracies, have well-developed institutions of government at local levels, discussing institutions at these levels is beyond the scope of this book.

The Executive

The executive branches of most countries tend to have two main offices: head of government and head of state. A head of state is a ceremonial position that carries with it little to no real decision-making power. The Queen of England would be the example of a head of state. A head of government, the state’s chief political officer, is responsible for presenting and developing policies, and has decision-making authority. The British prime minister would be an example of a head of government.

In constitutional monarchies, the positions of head of state and head of government are held by two different people, with the head of the royal family occupying the position of head of state and an elected chief executive occupying the position of head of government. Other advanced industrial democracies other than the United Kingdom and Commonwealth countries (more on these below) with a ceremonial monarch as head of state include Belgium, Denmark, Japan, Luxembourg, Netherlands, Norway, Spain, and Sweden. In other republics, like Germany, there is a dual executive, but the head of state is not a hereditary position passed down through a royal family, but rather indirectly elected.

In the United States and France, the positions of head of state and head of government are held by one person, the chief executive, or the president. This may seem like a bonus for the American president, and it does provide some important benefits to be the unifying figure representing the entire United States. In times of national crisis or national pride, people often rally around the president likely less due to his policies than as an embrace of the head of government.
In constitutional monarchies and kingdoms that are advanced industrial democracies, the monarch serves as head of State. Currently in the United Kingdom and for all other Commonwealth countries, this is Queen Elizabeth II. The queen serves a largely ceremonial role as a figurehead and symbol of the state. She does not hold any real political power. Although, convention does maintain that the head of government in the United Kingdom seeks permission from the queen to form a government and notifies her before elections. The queen retains certain constitutional powers over the military and other areas of lawmaking, but since the United Kingdom and all other Commonwealth countries operate as constitutional monarchies, the queen only acts upon advice of the elected prime minister in each country. In fact, the queen’s speech each year before parliament sets out the prime minister’s policy goals and is written by the prime minister’s office.

When we say that the queen is head of state to not only the United Kingdom, but to Commonwealth countries as well, this refers to the countries that were once part of the United Kingdom. Commonwealth countries outside of the United Kingdom with Queen Elizabeth as their head of state include: Antigua and Barbuda, Australia, Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, and Tuvalu.

Photo 5.2: Queen Elizabeth II, head of state in the United Kingdom and other Commonwealth countries.

From http://www.nasa.gov.
state. Many of the most beloved American presidents are viewed through history by their strong roles as head of state as much or more than their policies. Historians refer to the Kennedy White House as Camelot because of the near-Royal family-type presence the handsome Kennedy family projected. The rugged actor Ronald Reagan had a personal approval rating that was always higher than his job approval. Views of presidents historically do not translate into contemporary presidential power, however. Juggling both roles can be difficult for presidents because the president must play both roles simultaneously or be judged negatively.

On one hand, the president was elected by supporters who want him to aggressively champion the policies he ran on. The president’s political opponents can aggressively criticize the president, but presidents must take more measured stances toward their opposition or be accused of not acting “presidential”—or in other words not properly acting with the respect expected of a head of state. To go with our example above, the British prime minister does not have this same burden and can unleash cutting criticism of his opponents and give full-throated advocacy to his or her positions without having to act like the queen, as discussed in the introduction to this chapter.

In turn, the president also has to warmly receive people as head of state with whom they would likely prefer to argue. Bill Clinton presented a Kennedy Center Honor for lifelong achievement to Charlton Heston, who at the time headed the National Rifle Association (NRA), which strongly opposed Clinton’s gun control policies. In a speech before the NRA, Heston said: “Mr. Clinton, sir, America didn’t trust you with our health-care system. America didn’t trust you with our 21-year-old daughters. And we sure, Lord, don’t trust you with our guns.” George W. Bush had to present the same honor to Elton John just weeks after Elton John said: “It’s a nightmare. Bush and this administration are the worst thing that has ever happened to America.” So while the president may have some benefits from holding both roles, it often ties one hand behind his back.

The greater role of the president is as head of government, or head of the executive branch of government that “executes” the laws passed by the legislative branch of government. In the United States, the president is the chief executive. The president tends to be referred to as the most powerful person in the world, so it seems like the US president should have considerable governing power within the United States. In actuality the powers of the president have risen and fallen over time because Article II of the Constitution is somewhat vague on the explicit powers of the president. Why? The founders, only a decade earlier, had fought a “tyrannical” king who threatened their liberty. In turn, the Articles of Confederation were ineffective because they provided no executive branch and insufficient power to stop tyranny of the majority. So in the drafting of the Constitution, the framers recognized the need for a vigorous
executive and provided for legislative checks, but they did not want to specify all details of presidential power because the controversy could have been a deal breaker for the Constitution. They had an ace up their sleeve in that they knew that George Washington would be the first president and set the precedent for following presidents. Washington did not seek power like other political actors. In fact, he took the presidency out of duty more than out of ambition. Consequently, he was the proper person to set a limited office.

However, not having explicit and exhaustive presidential powers enumerated in the Constitution has meant that presidents have been incredibly strong relative to Congress in some eras but undeniably weak relative to Congress in other eras. The balance of checks and balances and presidential power remains unclear, leaving presidents to struggle to control their agenda and often claiming that the Constitution not specifically denying them a certain activity means they could in fact do it.

In other words, the framers designed a system with an independent executive branch so that the branches could balance each other through a system of “checks and balances,” and considered “executive power” to be distinctly from “legislative power” given to Congress. The “balance” of these checks may favor or disfavor the president at different times and is specifically vague in the Constitutions because the framers needed to get the Constitutions ratified. This is not to say that the presidency is unhinged or unlike other executive positions in democracies. In fact, the type of government that separates the legislative and executive powers is known as a presidential system (Figure 5.3 and Box 5.3), named because the independent executive is led by a popularly elected president.

In the presidential system, the citizens elect a president who appoints his or her cabinet. The cabinet is a body of advisers to the president, composed of the heads of the executive departments of the government, who with the president and vice president compose the executive branch. In a separate election, citizens elect a legislature that often has to approve the president’s cabinet but also has control over legislation. Each branch of government provides a check on the other branch’s authority. The adoption of a presidential system makes the United States stand out from other advanced industrial democracies. While there are other presidential systems around the world, the United States is the only advanced industrial democracy with this system of government. Presidents in other advanced industrial democracies govern in “mixed presidential systems” highlighted below. This makes the American brand of presidential government unique. Students should be cautioned on one point: while the US president certainly is a powerful figure and occupies a powerful governmental position, at least in the US context, the presidential system does not imply presidential dominance. No one would suggest that the US Congress is also not a very assertive and powerful branch of government. In fact, relative to other executives, the American president may be more tightly checked by other branches.
BOX 5.3  Presidential System

In the presidential system, the electorate elects a president who appoints his or her cabinet. This is the executive branch. In a separate election, the electorate elects a legislature who provides approval for the president’s cabinet. This is the legislative branch.

FIGURE 5.3

Presidential System

Electroate elects President
Electroate elects Legislature

Executive Branch
President appoints Cabinet
Legislature approves Cabinet

Legislative Branch

BOX 5.4  Parliamentary System

In a parliamentary system, the electorate elects a parliament (legislative branch), and the parliament provides majority support for the prime minister and his or her cabinet (executive branch). The legislative and executive branches are said to be “fused” because the executive comes out of the parliament. “Provides majority support” means that the prime minister (or chancellor) comes from the majority party or majority coalition in the parliament.

FIGURE 5.4

Parliamentary System

Electorate elects Parliament provides majority support Prime minister and his/her cabinet

Legislative Branch Executive Branch
We can contrast the presidential system of government found in the United States with the **parliamentary system** (Figure 5.4 and Box 5.4), a system much more common among advanced industrial democracies. Every advanced industrial democracy besides the United States, Portugal, France, and the Czech Republic has a parliamentary system of government. In the parliamentary system, the executive and legislative branches of government are *fused*. The executive is composed of two units, a monarch or figurehead president who is head of state and a prime minister (also sometimes called a chancellor or premier) and cabinet who is *selected by and responsible to the parliament*. The cabinet is also often frequently called “the government.” Most often the prime minister and cabinet are chosen from members of the legislature. In a comparative sense, this would be like the US House of Representatives choosing the president and cabinet from among its members. There are two very different types of parliamentary systems depending on whether a country is a majoritarian or consociational democracy.

In consociational systems, numerous parties receive seats in the legislature and so choosing the prime minister and cabinet requires bargaining among two or more parties (a handful in some systems like the Netherlands or Israel) to appoint a **coalition government**. The coalition may include parties that disagree on many policies and parties that have strong positions on some policy area may demand the relevant cabinet position leading that governmental department in the bargaining to build a government. (This concept will be discussed in more detail in chapter 8). This reflects consociationalism because the parties must come to *consensus* among many different partisan voices on any policy, which increases representation of voices in society, but decreases the efficiency of policy making. In fact, the government may not push particularly important issues for fear it could drive a wedge in the coalition and lead to the end of the government.

This differs from majoritarian parliamentary systems that typically occur in what is normally a two-party system like the United Kingdom. In these systems, one party tends to win a majority of legislative seats and gets to appoint the prime minister and all executive cabinet positions. In these cases the prime minister ends up dominating the legislation and execution of law. The prime minister commands loyalty from his or her party in the legislature because they control nominations for election and only select loyal partisans to the cabinet. In some systems the ballot lists only parties and not candidates, so the public votes for parties and the party gets to create a list of party members who will go to the legislature and/or be in a cabinet position. Either nomination for election or presence on a list requires loyal party voting.

To use the American case as an example again, this would be as if the party that won a majority in the House of Representatives selected the US president and his or her cabinet from among themselves, and then allowed the president to write all legislation while providing the president enormous power to command party loyalty in voting. The primary example of such a majoritarian parliamentary system is the United Kingdom, where prime ministers have long dominated the legislative process. Interestingly, in 2010 no single party won a
majority in the United Kingdom so the Conservative Party joined in a coalition with the Liberal Democrats. This is rare, however, as the most recent previous example of a British coalition government was Winston Churchill’s World War II coalition government. Other democracies have a similar type of limited coalition partnership where a large party only requires a “junior partner” to control the cabinet and the legislative process. Germany tends to follow this model. The German chancellor in this case largely controls the policy agenda and his or her party’s legislative support thereof. (Both types of cases will be discussed in more detail in chapters 7 and 8.)

The fusing of the different branches does not mean there are no checks on the prime minister, even in majoritarian parliamentary systems. In all parliamentary governments the chief executive (prime minister or chancellor) may not serve their entire term. If a controversy or controversial issue saps support for the government, the parliament can dissolve itself and hold new elections before a term is up. These votes are called votes of no confidence or confidence votes. Not surprisingly, they occur far more frequently in consociational parliamentary systems because a coalition of parties may divide on a large issue. In fact, in Italy, Israel, and other consociational parliamentary systems with multiple parties, the coalition may disband and recreate itself in order to avoid a vote of no confidence and not have to hold elections. This demonstrates the fragility of such consociational parliamentary systems, but it also shows the real checks they provide through political parties for multiple interests in society.

It is far more rare for a vote of no confidence to occur in a majoritarian parliamentary system. The last British vote of no confidence was in 1979 when Prime Minister James Callaghan’s Labour government lost a confidence vote by one vote, ushering in the Conservative Party’s nearly two-decade dominance. The previous such vote of no confidence was in 1924, so it is rare indeed because members of the prime minister’s own party would have to oust him or her and their cabinet and themselves face the public. Checks on authority come at election time when the public can choose to continue with the government’s platform or vote in a new party, thus changing the course of governmental policy. Further, British prime ministers can call for elections whenever they wish within a five-year window, so they often choose the moment of their highest approval to gain further governing power. So like the American president, prime ministers mainly enjoy a fixed term of office unless there are favorable electoral conditions. In the United States, even in cases of resignation (like with Richard Nixon in 1974) or death (like with John F. Kennedy in 1963), the vice president carries out the remainder of the term until the regularly scheduled election.

There is a third system of government, which is a hybrid of the presidential and parliamentary systems. We call this system the mixed (or semi-presidential) system of government (Figure 5.5 and Box 5.5) because it carries both elements of the parliamentary system and the presidential system. Like the presidential system, the executive and legislative branches hold separate elections; however, like with the parliamentary system, the executive must have the support of the parliament in order to stay in power. In mixed systems, we see a dual-executive where usually
a prime minister and a president share executive power. The prime minister (or premier as he is called in France) is the head of government, yet shares some of these responsibilities with the president who is head of state. The president’s powers go well beyond being a figurehead. In semi-presidential systems, the president selects the prime minister to lead the parliament but the prime minister must be acceptable to the parliament. Consequently, the president and prime minister share executive authority and they must cohabit as executives. The cohabitation is peaceful when the president and prime minister are from the same party but can be volatile when they come from different parties. Different worldviews and personalities can affect how well they work together too. Advanced industrial democracies with mixed systems include France, Portugal, and the Czech Republic. Although not considered a liberal democracy, Russia also has a mixed system.

BOX 5.5 Mixed System

Mixed, or semi-presidential, systems combine elements of presidential and parliamentary systems. There are separate elections for the executive and legislative branches, yet there is a dual executive. The prime minister (called premier) is technically the head of government, but he shares responsibility with the president, who is both head of government and head of state. In the mixed system, the president is usually the more powerful position.

FIGURE 5.5

While presidential and parliamentary systems are certainly different, there is no evidence that one is “better.” Further, there are considerable differences among parliamentary systems based on whether they require a coalition within the
executive branch or one major party dominates. What the “better” system is depends on the underlying homogeneity or diversity of the society, as well as key political cultural factors that lead to the public’s view that a government is legitimate. A parliamentary system that carries a homogenous society’s wishes quickly into policy is better for that country. That does not mean that it would work elsewhere, even given its efficiencies. Would other institutions work in the United States and what might they be like? Table 5.2 and Box 5.6 demonstrate some of the upsides and downsides to majoritarian parliamentarism versus presidentialism and what the United States would be like as a majoritarian parliamentary government.

Table 5.2 Positives and Negatives of Presidential and Parliamentary Systems

<table>
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<tr>
<th>Upsides</th>
<th>Presidential System</th>
<th>Parliamentary System</th>
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<tr>
<td>- stability: fixed term to govern, not easily removed by legislature</td>
<td>- clear mandate: election results translate public wishes into public policy</td>
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<tr>
<td>- independence: compete for executive functions in election separate from fortunes of legislative elections</td>
<td>- easy to hold leaders/parties responsible: it’s clear to electorate whom to punish for policy failures or reward for good governance</td>
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<tr>
<td>- checking power: executive branch power checks legislative branch</td>
<td>- can remove unpopular executive: legislature can quickly scotch prime minister, government, and legislature in bad times</td>
<td></td>
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<tr>
<td>- cooperation: requires branches and parties to compromise to govern</td>
<td>- can be left with unpopular president unless legislature takes difficult action like impeachment</td>
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<tr>
<th>Downsides</th>
<th>Presidential System</th>
<th>Parliamentary System</th>
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<tbody>
<tr>
<td>- instability of executive: lacking a set term, public can sack prime ministers and governments in bad times and may do so repeatedly—making it hard for leaders to adopt change that hurts in the short term but benefits society in the long term</td>
<td>- limited authority on legislation: often can only veto what the legislature has passed</td>
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<td>- lack of governing mandate: separate place on ballot and time provides no definite message for policy from elections</td>
<td>- lack of executive checks: prime minister largely controls legislation and execution of laws</td>
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<td>- voters struggle to hold officials responsible: presidents can blame legislature and vice versa for problems or both can take credit for good times, leaving the public without clear electoral target</td>
<td>- indirect selection of executive and government: head of government not directly chosen by the public</td>
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<tr>
<td>- government may be built post-election: coalition governments chosen by elite bargaining rather than by vote</td>
<td>- government can be left with unpopular president unless legislature takes difficult action like impeachment</td>
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In the latter half of 2013 pundits across the country were asking a similar question: Should the US switch to a parliamentary system? Why the sudden interest in the structure of American institutions? The United States was in the throes of yet another looming government shutdown, with the two houses of Congress and the president unable to reach agreement on the budget. Unable (or unwilling to) enact legislation that would appropriate funds for fiscal year 2014, the federal government shutdown from October 1–16, 2013. Hundreds of thousands of federal workers were furloughed without pay, and the dollar dropped immediately against foreign currency. Additionally, this shutdown threatened to once again lower the US credit rating and (if you listened to some commentators) spin the world in economic Armageddon. Was it time, some asked, to ditch the presidential system in favor of another model? The romanticism with the parliamentary system had to do with frustration over American gridlock between executive and legislative leaders, something you do not see in a parliamentary system.

If the United States had a parliamentary system, you would not have seen the “great shutdown crisis” of 2013. This is because you would not get a situation where the executive branch leader is in a standoff with the legislative branch. In a parliamentary system, the president would have support from the majority party in the legislative branch. In the case of the 2013 shutdown, Barack Obama would have either led a majority of Democrats in the House, or more likely, John Boehner would have been prime minister, as leader of the majority party (the Republicans) in the legislature. With the Republicans in charge of both the legislative and executive branches, they would be able to pass their budget. The Democrats, as the opposition party, could scream and yell all they wanted about cuts to programs, but they couldn’t derail the legislative process. If the situation were flipped, with Barak Obama as head of a Democratic legislative majority, the budget of the president would have been passed among much Republican protestation, but the Republicans would not have been able to stop it. In short, since the executive leader would command support from his party in the legislature, in a parliamentary system you would not have a president at loggerheads with the legislative branch, leading to a shutdown. The executive and legislative branches would have been controlled by either the Republicans or Democrats, enabling the party in power to fully enact its platform.

If, say, the Republicans controlled the legislature in coalition with another political party (maybe the Tea Party), there could have been the chance that the coalition would have broken apart over the budget negotiation. In that case, a new negotiation would have taken place to find a new coalition partner, maybe the libertarians. Or, there could have been a “snap election” called, which is an election when no election has been previously scheduled. In this case, the voters would have settled the matter of the budget in short order, either electing the Democrats and Barack Obama into power, or affirming the Republican budget with a stronger majority.

Thus, parliamentary systems avoid standoffs and gridlock, something that was seen at its worst in the United States at the end of 2013. This does not mean that...
parliamentary systems are without their problems and would fit the American political culture. First, in public opinion polls, a majority of Americans prefer divided government and its checks over one-party rule. Second, parliamentary systems can bring their own gridlock in the government formation process. For example, in Belgium where there is a parliamentary system, a meltdown of the coalition led to new elections and nearly a year passed before a government could be formed to command support. In Greece, a country facing economic crisis, elections had to be called within a month of each other because a government could not be formed. The presidential system avoids such instability in government.

Thus, as pundits pondered a switch from the presidential to parliamentary system for the United States, they needed to weigh the problems associated with gridlock that eventually occur with a presidential system, a system “built for no” over the instability that can possibly come with a parliamentary system, where we could see sharp changes in governments in power and large swings in public policy.

For more punditry on this topic, see:
http://www.minnpost.com/eric-black-ink/2012/10/us-or-parliamentary-system-one-nearly-gridlock-proof-and-it-ain-t-ours
http://www.minnpost.com/eric-black-ink/2013/10/second-guessing-shutdown-would-parliamentary-system-have-avoided-crisis
http://www.npr.org/blogs/itsallpolitics/2013/10/12/232270289/would-the-u-s-be-better-off-with-a-parliament

THE LEGISLATIVE BRANCH

The legislative branch of government is responsible for writing and crafting laws. The United States is a republic, where representatives of the people are elected to make laws on their behalf. In the United States, these laws are made in a bicameral legislature. This means there are two legislative chambers. The House of Representatives, designed to represent the people, and the Senate, designed to give representation to the states. As Madison explains in Federalist 39 “The House of Representatives will derive its powers from the people of America. . . . The Senate, on the other hand, will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate.” When a bicameral system affords relatively equal power to both chambers of the legislature, we refer to this as symmetrical bicameralism.

A bicameral legislature is not the only type of legislature the United States could have chosen. Many advanced democracies (like New Zealand, Denmark, Sweden, Spain, and Israel) have unicameral, or one chamber, legislatures. These legislatures can pass legislation much quicker and more efficiently than the slow process of American bicameralism. Most democracies have bicameral legislatures as well, but they are asymmetrical, meaning that the two chambers do not share equal legislative power, as they do in the United States.
In asymmetrical bicameral systems scholars confusingly refer to the more powerful chamber as the “lower house” and the weaker chamber as the “upper house.” The lower house received this name because historically, it was “below” the upper house, or the house that was supposed to represent the nobility or upper classes. Over time, the lower house has evolved in all democracies to be the more powerful of the two houses and the one closest to the people. The lower house tends to actually write the legislation and the upper house may have some powers to review, delay, or advise on legislation, but they have no real role in crafting the legislation. Further, in prime ministerial systems, the prime minister is elected to and chosen by the lower house and as noted, ends up dominating the agenda and writing of legislation. So clearly the lower house is where the action is.

This fits the political culture of these countries. Checks among the legislative branch would diminish the ability of democracy to provide the common good through legislation. Citizens would not want to disrupt what an election or a representative democratic legislative body was doing to address policy to provide for the collective benefit. The difference comes from a political culture that would abhor legislative gridlock.

The US Congress does have power inequalities between the two chambers, but only in so far as they involve checks on the president. The more sober US Senate provides advice and consent to presidential appointments to the executive and judicial branches and ratifies treaties. But on the main role of Congress—legislation—both chambers must pass legislation with exactly similar language. This is not how bicameralism works elsewhere, when one chamber writes legislation with typically only token oversight by the other chamber.

The internal checks that Congress provides frustrate the American public. Americans have high expectations of businesses in the marketplace and would never accept a business that was inefficient and often never achieved its goals. Yet when considering congressional gridlock, people dislike it but do not work to overthrow the Congress. It is a situation where the alternative would be worse. A Congress that quickly kicked out legislation with few internal checks might move legislation that ended up being unpopular or even encroach on people’s liberties.

JUDICIARY

No institutional arrangement illustrates American exceptionalism as much as the role of the judicial branch in the United States. It differs greatly from the judicial systems of every other advanced industrial democracy, especially from the judiciaries of social democracies. The framers’ loyalty to principles of legitimate government being limited to protect life, liberty, and property can be seen in the judiciary by: 1) the power of the American judiciary as a political body relative to other branches of government, and 2) the role of the judiciary to protect citizens’ liberties in the criminal justice system.
One key distinction that drives the differences between the American and other advanced industrial democracies’ judicial systems stems from the type of judicial tradition the United States follows. As with most other former British colonies, America has a common law legal tradition. The far more common democratic judicial tradition, particularly among social democracies, is the civil law tradition.

**CIVIL LAW LEGAL TRADITION SYSTEMS**

Roman Emperor Justinian pushed to have Roman law put into a single written code in the sixth century AD, referred to thereafter as Corpus Juris Civilis, or Body of Civil Law. Following the fall of the Roman Empire, most European countries lacked any single coherent legal system through the Middle Ages. The resulting patchwork of folkways and laws that popped up in these societies lacked any consistency or coherence other than the Catholic Church’s Canon Law, which governed many areas of people’s lives. As a result, when European countries undertook their national revolutions, where modernized central governments began to extend their power to govern all geographical areas of a country with a singular set of laws and standards, they found little common foundation to build a national legal tradition.

It was vital for these national governments to develop a single set of laws and standards for the entire enterprise of nationalizing the country. The Justinian Corpus Juris Civilis became the foundation for many of these countries’ legal codes because it was a coherent code of laws governing public law (administrative rules, criminal law) and private law (commercial and trade law, family law). Further, the study of the Corpus Juris Civilis had begun in earnest in Italian universities in the twelfth century, so legal experts who could aid in the development of a country’s legal system were often trained in the legal science of the Roman code. Consequently, different countries borrowed heavily from the Corpus Juris Civilis but also tailored their own codes to fit national customs. Perhaps the clearest example of this is the French Civil Code of 1804, often referred to as the Napoleonic Code, which still has large residual components in the French legal system today.

The key distinction between the civil law tradition and the common law tradition is the primacy of the legal code in the judicial system. The code is the supreme source of justice in a society and is meant to provide the common good for society. The code is meant to be comprehensive in all areas of law, leaving no gaps between the law and human interactions in governing administration, crime and punishment, commercial relations, social and family life, and social norms of society. Ideally, the national legal code provides citizens with a sort of handbook about citizen rights, responsibilities, and the law. In this way, it would in principle be both simple enough to understand and broad enough to foresee all areas where law would need to be applied in a society.
The role of the legal code means that legislative bodies that craft such codes hold substantial power because it is to be carried out and adjudicated as written. Democratic reformers in European societies in the 1700s through 1800s viewed the judiciary with suspicion because democratic reforms often had been frustrated by courts. Consequently, the design of democratic governments left little power for the judiciary to check the law-making authority of legislatures. With the legal code as the main source of legal power, little room was left for judicial interpretation other than situations where wording of the law does not meet a situation with complete clarity.

This means the role of the judiciary and the actors within the judiciary end up being very different in most social democracies from the role seen in American and other common law tradition legal systems. The appetite to restrict judges’ powers centuries ago meant that judges in civil law countries now do not end up playing the prestigious role presiding over the court that Americans are used to. Rather, judges often study a particular area of law—criminal law, family law, administrative law—and then begin their careers as judges immediately out of their law degree. In the American system, a judgeship is the culmination of a prestigious legal career, not a starting point. Judges in countries with a civil law tradition tend to be mostly civil servants who lack an ability to interpret law, but are more like “expert clerks,” whose job is to find the relevant provision of the legal code that covers the situation. The civil law tradition is often referred to as inquisitorial because the judge often investigates the facts of the case in pretrial actions, and plays a key role questioning witnesses collecting evidence. The role of the judge is to apply the legal code rather than interpret the constitutional fairness of the legal code or the process.

The process of trials in civil law tradition tend to be non-adversarial relative to the American system, where one side lays out a case against the other side in front of a neutral judge whose job it is to ensure a fair trial. As mentioned above, judges often play an active role in the investigation of a case prior to the court hearing. The prosecutor’s job is to investigate and argue cases, but also to provide an argument about the public interests involved in a case, not the one-sided pro-prosecution role that Americans would be familiar with. In civil law tradition courts, cases also lack the courtroom argumentative drama of American courts because trials actually take place in multiple meetings over time and rely on written evidence more than oral arguments and court testimony.

Just as the political culture of social democracies places more weight on the common good rather than individual liberties compared to the United States, so too does the civil law tradition seek to resolve cases based more on whether the legal code—the embodiment of the common good—was followed. In criminal cases, defendants are expected to testify and answer questions, and even though they may refuse to do so, that is taken into consideration. Conversely, the clear presumption of innocence in the American system means that whether a defendant testifies or not, the court and the process treat them with a presumption...
of innocence. The presumption of innocence does not occur in the same way that it does in the US system because a judge and court will not continue a case if it is clear the legal code was not violated. This does not mean that civil law tradition systems assume a defendant is guilty or lacks any civil rights provided to American defendants. Rather, it is more that the American system puts at its core whether a defendant’s life, liberty, or property should be taken away and Americans would prefer to let a guilty person go free rather than wrongly take away a defendant’s life, liberty, and property. Fitting with American political culture, Americans believe their legal system needs to ensure a fair process even if the outcomes are not fair. In other democracies, outcomes need to be fair. In particular, the focus is whether the legal code was followed.

COMMON LAW LEGAL TRADITION SYSTEMS

The civil law tradition grew out of a useful legal code being adopted as the basis of law for countries with weak national laws and the weak application of law. Consequently, the codes that were adopted were done so comprehensively to produce national control. The legal system was defined at the moment of modern governance and national administration. The common law tradition started out differently. English kings recognized the need to administer the entire country far earlier and began to develop laws incrementally, with new laws built from previous legal findings. Rather than a single comprehensive code, common law is the continuous pragmatic development of a nation’s legal system built from the precedent set by earlier legal decisions rather than by a fixed, established, comprehensive legal code.

When the Normans conquered England in 1066, they brought their significant administrative skills and applied them to the existing English social customs that served as the legal basis of the country. This established a government that could administer and apply standards to the whole country built from the existing English customs. Another key step occurred in 1215, when the king of England agreed to limit the monarchy’s power over land-owning lords or barons. The Magna Carta—or Great Council—resulted, which was made up of lords who swore allegiance to the king in return for assurances that the king would follow set legal processes when dealing with any potential illegality by lords, and a set of the lord’s peers would decide whether the lord had broken any custom or law (a precursor to the modern jury).

Giving lords and their peers the ability to limit the king required them to establish whether legal procedures and the king’s legal decrees were fair. The Great Council that emerged would be the precursor to the House of Lords, the upper house in the United Kingdom, but also triggered the development of professional legal minds within the king’s court to deal with legal problems in the country. As a result, some of the king’s ministers were sent around the country to hear cases, and this developed a professionally trained group of legal experts who based decisions off of earlier decisions made by colleagues under similar
conditions. The legal system grew to develop a law common to the entire country but with an ability to slowly and organically build public and private laws as society changed. The existence of a professional legal class also kept Roman legal codes from finding purchase as the basis of the legal system.

The role of judges in these cases is to ensure that the balance of citizen rights and governmental criminal justice are upheld based on the precedent set by earlier cases’ findings. The system is referred to as adversarial (rather than inquisitorial in the civil law tradition) because the court and judges act as neutral actors, while two opposing sides argue their case before a jury. The role of the judge is to ensure that the procedure fits with the precedent set in earlier cases. While both the United Kingdom and the United States have common law-based judicial systems, the American common law tradition differs from the British common law tradition in important ways. First, Britain has no single constitution. So, precedent about the proper legal procedures and balance of citizen rights with the criminal justice interests of a government rely on precedent set in earlier cases. The United States has a Constitution that sets most of the core rights and liberties of citizens, but even then the courts are left to interpret constitutionality of particular situations based on precedent established in earlier decisions. The First Amendment, for instance, provides for freedom of the press, but it does not firmly establish what that completely means in the Internet age. Can anyone lodge false stories about someone on a blog post and be protected as a member of the press? Clearly the Framers did not see every application of freedom of the press, but the idea is that precedent built over time concerning newspapers and other media should provide judges with precedent to apply freedom of the press in this new era.

Another strong distinction between the American common law tradition and the British common law tradition relates to the power of the judicial branch. First, the actors in the judiciary—the judges, in particular—are there to ensure the fair legal process for those being accused of a crime or being sued in a civil trial. Second, American courts often settle disputes after problems have arisen in the marketplace and the marketplace of ideas, but this keeps regulation from constricting risk taking in society.

So Americans are often suing each other in civil trials because regulation did not keep problematic products or ideas from causing harm. Thus, in order to avoid rampant vengeance against people who have harmed others, the US government provides courts as a neutral conflict resolution institution. Other democracies regulate their marketplace and the marketplace of ideas more than the United States, which leads to fewer lawsuits among private actors, but also may be a disincentive to individual risk taking and not fit the American political culture. So, Americans dislike of people suing each other does not mean the alternative of greater regulation would be better.

Finally, American courts have tremendous judicial review, or oversight of legislative or executive actions by the judiciary—powers uncommon elsewhere. In civil law tradition, there is no judicial review because judges tend to
be lower-level officials and the supremacy of the legal code means that the collective good embodied through the legal code should not be undone by judges. In Britain there is no established constitution that clarifies constitutionality, so precedent provides the guideposts for legal decisions. The House of Lords used to have, and the United Kingdom's Supreme Court now has, the role of checking legislation passed by the lower House of Commons. This power was limited to legislative oversight, but the House of Commons retained legislative, or the ultimate power to make law.

In the United States, courts check both the constitutionality of laws as passed, plus whether the president executes those laws constitutionality. This is an amazing power, as Lipset noted—nine justices can overturn the will of a majority of the American people and the democratic institutions that make and execute law. No other country concentrates judicial review of any such power with such a small group. Nevertheless, to avoid tyranny of the majority and protection of life, liberty, and property against government, the United States provides this constitutional body and the entire court profession of judges the power to protect the rights of the accused and those being sued—a key difference in the United States.

CONCLUSION
This chapter looked at the difference in the United States in terms of institutional configuration. Keeping in mind that the United States faced a different historical founding and has a different political culture than other democracies, we see that this has combined to create different institutions. This is not to say that the institutions in the United States are superior to institutions in other countries; it simply means that on many measures of institutional configuration, the United States is different than other advanced industrial democracies.

The design of democratic institutions differs based on whether countries prefer majoritarian or consociational institutions based on their societies and political cultures. Institutions do not pop up on their own and would not be easily imported or exported unless the nature of ethnic, religious, linguistic, and regional differences were extremely similar. Societies with large divisions choose institutions that represent differing sectors of society whereas homogenous societies tend toward more efficient institutions of majoritarian democracies. Countries have set up institutions vertically and horizontally in ways to produce efficient (majoritarian) or consensus-based decision making. The United States has a unique blend of institutions. For instance, the United States shares a federal structure with some democracies, like Germany, but this differs from the vertical organization of power in other countries, which have a more unitary structure. Perhaps the largest difference in the United States discussed in this chapter is the horizontal organization of power, discussed in terms of presidentialism. The United States is a presidential system, while most other democracies are parliamentary systems.
In this regard, we saw that the United States shares characteristics with some of its democratic cousins, but it has some very unique features that make categorizing the United States along the majoritarian or consociational system very difficult. One key reason stems from the extraordinary power that American democracy gives to the judicial system, which can toss out congressional laws and presidential actions. In the American political culture that values the protection of life, liberty, and property, even democratic majorities and representative institutions have pushed policies deemed unconstitutional; thus, the judiciary is there to provide this important check on possible tyranny.

Finally, could the United States thrive under a different set of political institutions? Many people argue it could. If you have not already, at some period in your life you will have someone tell you why the United States should be a parliamentary system. If you are reading this for class, hopefully the instructor will raise the issue. If not, you will likely hear it from some know-it-all at a bar, cocktail hour, or Thanksgiving dinner.

What also needs to be considered beyond the nuts-and-bolts of how institutional change could work in the United States is whether American political culture would accept any other institutional system—especially parliamentary government—in the case we discussed above. American political culture prefers individualism and limited government that does not infringe on life, liberty, and property. In deciding who gets what and how, the framers designed a system that would have tight checks among the branches and a federal system with big policies decided within states. They feared that too centralized or not centralized enough government could lead to tyranny, and they did so from their very experiences of tyranny by the king of England and by American voters under the Articles of Confederation. It is no wonder why Madison felt he dealt with the “mischiefs of faction” by making tyranny of the majority difficult to bring about through making majorities particularly hard to form. Further, Madison again felt the Framers had reigned in tyranny by unleashing the power-seeking goals of federal branches against each other through checks and balances. Would a man who said in *Federalist 51*: “If men were angels, no government would be necessary” really think that a fused executive and legislature would be good? Would Americans think so now?

**POINTS TO REMEMBER**

- Vertical organization of government refers to layers of government from national to subnational, or below the level of the central, national government.
- Horizontal organization refers to the relationship between governmental entities, or branches, at a single level of government.
- In a federal system, states, or lower levels of government, have sovereign power over some areas of policy and share power with the national level of government.
• In a unitary system, power is centralized in the national level of government and any lower levels of administration exist at the will of the national government.

• In a confederal system, states, or lower levels of government, have greater sovereignty independence than the central government.

• A head of state is a ceremonial position that carries with it little to no real decision-making power.

• A head of government is the state's chief political officer, responsible for presenting and developing policies, and has decision-making authority.

• The executive branch of government is the branch of government that "executes" the laws passed by the legislative branch of government. It is responsible for putting the laws into action.

• The legislative branch of government is responsible for legislating or making laws.

• In a bicameral legislature there are two legislative chambers, whereas in a unicameral legislature, there is one. The United States has symmetrical bicameralism, where both chambers have equal legislative powers. Most other democracies have asymmetrical bicameralism, where one chamber holds supreme power over legislation. This means there are fewer checks within the legislative branch in other democracies relative to the United States.

• A governmental system in which the executive branch of government is independent from the legislative branch of government and the two branches balance each other through a system known as "checks and balances" is called a presidential system.

• In the parliamentary system, the executive and legislative branches of government are fused. The executive and their cabinet typically dominate the creation of legislation.

• Majoritarian parliamentary systems tend to have one party that dominates the executive and legislative branches. Coalition parliamentary systems tend to have multiple parties in the executive and legislature branches to bring consensus to policy making among diverse groups in society.

• A mixed, or semi-presidential system has elements of presidential and parliamentary systems.

• Democracies can be classified as being either majoritarian or consensus (consociational) along two dimensions—executive-parties and federal-unitary.

• Elections tend to be the decisive element for policy making in majoritarian systems. In consociational systems there is a lot of post-election bargaining to establish who governs and the policy-making process. The United States also has more checks and balances, so post-election political bargaining is important as well.

• Whether or not a country is governed by a civil or common law code greatly influences the role of the judiciary in a system, including the presence and role of judicial review.

• In civil law tradition countries, judges have limited roles and court processes are driven by the legal code. Common law legal systems are more rare and are adversarial, and decisions tend to be based on precedent.
KEY TERMS

Adversarial (p. 100)  
Bicameral (p. 95)  
Cabinet (p. 88)  
Checks and balances (p. 74)  
Civil law (p. 97)  
Cohabitate (p. 92)  
Common law (p. 97)  
Commonwealth countries (p. 86)  
Confederal (p. 80)  
Confidence votes (p. 91)  
Consensus (p. 74)  
Devolution (p. 83)  
Executive branch (p. 87)  
Federal systems (p. 80)  
Head of government (p. 85)  
Head of state (p. 85)  
Horizontal organization (p. 80)  
Ideal type (p. 75)  
Inquisitorial (p. 98)  
Judicial review (p. 100)  
Legal code (p. 97)  
Legislative branch (p. 95)  
Magna Carta (p. 99)  
Majoritarian (p. 74)  
Mixed system (p. 91)  
Parliamentary system (p. 90)  
Precedent (p. 100)  
Presidential system (p. 88)  
Republic (p. 95)  
Snap election (p. 94)  
Sovereignty (p. 77)  
Symmetrical bicameralism (p. 95)  
Unicameral (p. 95)  
Unitary systems (p. 80)  
Vertical organization (p. 79)  
Westminster system (p. 75)

REVIEW QUESTIONS

1. What is the difference between a unitary and federal structure of government?
2. What is devolution?
3. Explain the difference between a head of state and a head of government. What are examples of each?
4. What does vertical organization of government refer to? What does horizontal organization of government refer to?
5. Explain the difference between presidential, parliamentary, and mixed systems of government. How does the United States compare to other democracies?
6. What variables describe a majoritarian system? A consociational system?
7. When we say a country can be majoritarian or consociational along two dimensions, what does this mean? What do the two dimensions measure? How does the United States compare to other democracies?
8. Why might the United States have ended up with a structure of government very different than the structures of government found in most European democracies?
8. Describe the key difference between civil and common law. In which way is the United States unique with regard to its judicial organization? What role does judicial review play in the United States, and why is it absent (or not as strong) in other countries?

SUGGESTED READINGS


NOTES


3. See, for example, Lijphart, *Patterns of Democracy in Thirty-Six Countries*.

4. The unitary-federal dimension is a factor scale comprised of the following variables: federalism-decentralization, bicameralism, constitutional rigidity, judicial review, and central bank independence.


7. This was an argument made by Madison in *Federalist 10*.


11. Ehrmann, *Comparative Legal Cultures*.

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17. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*.
27. Kempin, Jr., *Historical Introduction to Anglo-American Law*.