

## Chapter 6

# Political Institutions I: Institutional Structures



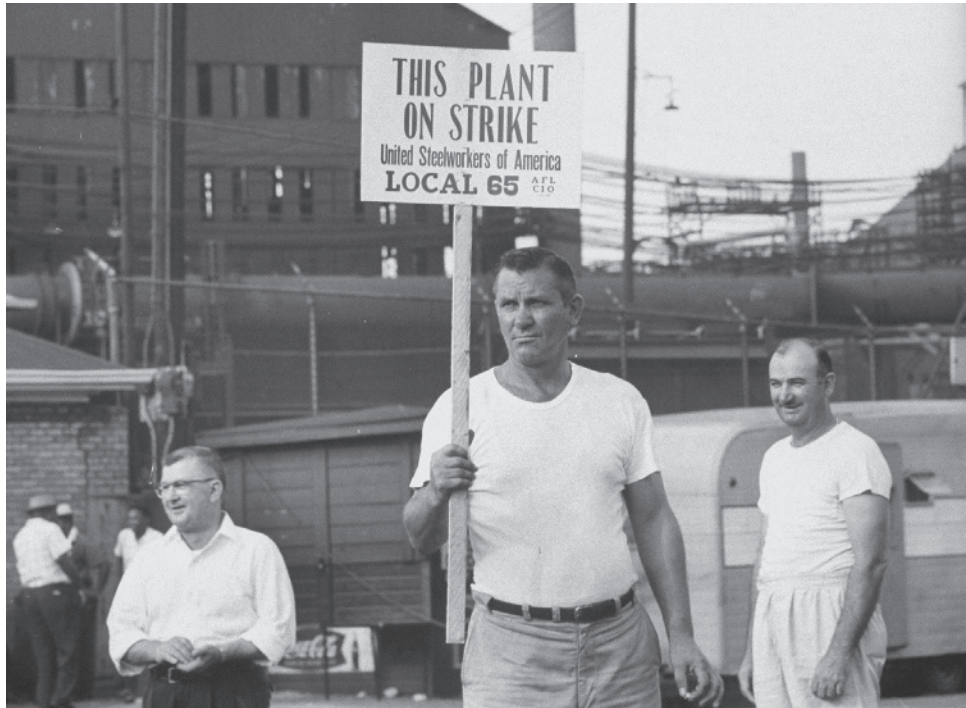
## Learning Objectives

- 6.1** Analyze the structure and roles of political executives.
- 6.2** Summarize the roles of the legislature.
- 6.3** Compare the functions and powers of political administrative systems.
- 6.4** Outline the major elements within judicial systems.

There was trouble on the Korean peninsula. Troops from communist North Korea had invaded noncommunist South Korea in 1950. U.S. President Truman authorized a “police action” and sent U.S. troops to South Korea to stop the invasion. As the conflict escalated into a major war, the Truman administration concluded that a stable U.S. economy was important for the war effort. However, a wage dispute resulted in a major strike by the steelworkers’ union against the steel mill industry. Truman feared this strike would seriously disrupt the steel supply and war-related production of many defense contractors and harm the U.S. economy as a whole.

Given these concerns, Truman seized the steel mill industry, placed it under the control of federal administrative agencies, and ordered the workers to end their strike. However, President Truman’s bold steps to control the industry did not follow the proper procedures outlined in acts of Congress. The president argued, with the support of the steelworkers, that he had inherent powers to seize the steel mills, especially in a time of crisis. The steel companies, led by Youngstown Sheet and Tube Company, challenged Truman’s justification and filed suit against President Truman and Secretary of Commerce Charles Sawyer. The companies claimed that the president did not have the authority to seize the steel mills without following the procedures that were specified in the legislation.

After hearing the case, the United States Supreme Court supported the position of the steel companies by a vote of 6 to 3. In the majority opinion, Justice Black wrote



On strike! Union members of the United Steelworkers of America picket outside a U.S. steel plant in support of their goals of higher wages and improved working conditions.

that the inherent power to order seizure of the steel mills would need to be based on either executive authority provided for in the U.S. Constitution or a statute passed by Congress. The court majority ruled that there was no such constitutional provision or statute. Chief Justice Vinson disagreed. In a dissenting opinion, Vinson argued that President Truman's actions were justified because Congress had not passed legislation expressly prohibiting this kind of action by the president and because previous presidents, including Abraham Lincoln, had taken similar actions in the past. Faced with the Supreme Court decision, Truman's administration withdrew its control of the steel mills, and the workers went back on strike. At that point, Congress became very concerned about the impacts of the strike on the Korean War effort. Congress then quickly passed legislation specifically providing the president with the power to seize the steel mills. In response, the workers ended their strike.

In this famous case, all the major political institutions of the U.S. national government were actively involved: the executive (the president), the legislature (Congress), the judiciary (the Supreme Court), and the administration (federal agencies). These four political institutions exist in every modern state. And every political system has grappled with serious questions regarding how to design, modify, and manage its set of political institutions and political arrangements to maintain an effective government that can achieve valued goals. As James Madison noted during the writing of the

U.S. Constitution: “In framing a government which is to be administered by men over men, the great difficulty is this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.”

**Political institutions** are the established roles, rules, procedures, and structures through which government operates. Political systems with well-developed institutions are more likely to be stable over time. To the extent that the institutions in any given country are easily replaced or ignored, the government will be more vulnerable to political, social, or economic upheaval.

Studying the institutional structures of the state raises questions such as: Which institution dominates a given policy sphere? How independent are the different institutions? How are the preferences of the citizens represented in the institutions? How are these roles allocated to specific people? What are the relationships among the executive, the judiciary, the administration, and the legislature? How powerful is the legislature? Are the courts independent of the other branches of government? How do the political system and the economic system intersect? What is the role of the constitution? How does the national government interact with sub-national governments?

Exploring these kinds of questions in Chapters 6, 7, and 8 helps us identify and compare the government structures and processes of political systems around the world. Initially, Chapter 6 provides an analysis of the four major institutional structures that are the basic components of contemporary political systems: *executives*, *legislatures*, *administrative systems*, and *judiciaries*. Chapter 7 will compare different institutional arrangements regarding matters such as executive–legislative relationships, the party system, and citizen democracy. Chapter 8 will analyze the ways in which the political system and the economic system are linked. The discussions in these chapters will emphasize broad patterns and generalizations. The usual qualifications apply: There are exceptions and variations across political systems and even within each political system as it is influenced by many factors such as forces in the environment, personalities, political culture, policy area, and so on. Let’s begin with a discussion of executives.

## Executives

### 6.1 Analyze the structure and roles of political executives.

The historical evidence indicates that as long as there have been political systems, there have been individuals or small groups who assume top leadership roles. Such leaders have the responsibility to formulate and especially to implement public policy, and they can be broadly called the *executive structure*. The word *executive* comes from the Latin *ex sequi*, meaning “to follow out” or “to carry out.” Thus, the particular role of the **executive** is to carry out the political system’s policies, laws, and directives.

One might be tempted to assume that a few individuals generally emerge as the leadership cadre in every political order. But there are some historical counterexamples, especially from Africa and Asia, of societies that are *acephalous*—that is, “without a head.” In such systems, many people in the community share power somewhat

equally as a collective leadership. Nonetheless, in most systems, a few people do assume the positions of executive power.

At the apex of the executive structure, there is usually an actor who can be called the chief executive. In a national political system, this might be a single person with a title such as president, prime minister, chief, premier, supreme leader, or queen. Or the top executive leader can be a role filled by two or more people. In this case, there might be a president and a prime minister (as in the French example described in Compare in 7) or a group exercising shared executive leadership (e.g., a junta).

A broader definition of the executive includes not only the chief executive but also the entire administrative system. Such a definition derives from the notion that the policy implementation function (the execution of policy) is shared by the chief executive and the administration. The top executive group cannot survive without the continuing support of an extensive system of people who interpret, administer, and enforce its policy directives. However, we examine the chief executive and the administration in separate sections of this chapter so that we can differentiate analytically among the major structures in most political systems.

## Roles of Executives

**LEADERSHIP ROLES** In the contemporary political world, political leadership is almost always associated with chief executives. The leadership role entails taking the initiative in formulating, articulating, and implementing the goals of the political system. The effective chief executive becomes the spokesperson for the aspirations of the people, attempts to galvanize the people's support for these goals, and develops strategies that facilitate their accomplishment.

To a large extent, the chief executive takes the initiative in policy formation. Executive policy leadership is especially crucial during times of crisis because the executive structure has the potential for a level of coherence and unanimity of action that is often lacking in the legislature. The basic logic is that the top executive is usually one person or a very small group that can make a decision and implement a plan of action more easily and rapidly than a large group. In most political systems, the chief executive also has the capacity to veto, either directly or indirectly, the bills that the legislature initiates. Increasingly, even the drafting of legislation is a function dominated by the executive because many major bills require the expertise and policy direction of the chief executive and its staff.

**SYMBOLIC AND CEREMONIAL ROLES** The actors in the executive role usually function as the unifying symbol of the entire society, becoming the ultimate mother/father figures for the people. This is especially true when the chief executive has a strong image, such as Thailand's King Bhumibol and King Mswati III in Swaziland (see Focus in 9). The executive's presence becomes central to many of the society's rituals and ceremonies, whether it is the Japanese emperor's wedding, the Kenyan president's official send-off of the national team to the Olympic Games, or the British queen's Christmas Day televised message to her subjects. The executive is often the

mourner-in-chief in times of sorrow, the primary cheerleader in times of triumph, and the one who articulates the hopes and dreams of the country.

**SUPERVISION OF THE ADMINISTRATION** In almost all contemporary political systems, the executive has primary responsibility for implementing the policies and laws of the political order. At the apex of this administrative hierarchy, which might include millions of public employees in the state's departments, bureaus, and agencies, is the top group of the executive structure. Most systems have an executive cabinet, with each member directly and personally responsible for some major area of administration. Given the scale and complexity of the activities in each area, these top executive actors can neither know nor control all of the actions that occur within their domain. Nonetheless, they are supposed to set the broad guidelines for policy implementation, and in many political systems, they are accountable for any major failures that occur. In parliamentary systems, for example, the minister of a department will probably resign if there is a serious shortcoming or blunder in her area of responsibility.

**SUPERVISION OF THE MILITARY AND FOREIGN AFFAIRS** Given the state's monopoly of the legitimate use of force, the top political executive usually has direct control over the military (including internal security forces). In such cases, the top executive is the commander in chief of the entire military system of the state, including personnel and other resources (aircraft, nuclear weapons, military intelligence, and so on). The chief executive must set policy and supervise the organization and utilization of the state's military capabilities, a task that can have the most serious consequences for the security and well-being of the country.

Associated with control of the military is the executive's responsibility for foreign affairs—the state's relations with other states. As Chapter 12 will describe more fully, the relations among states involve complex patterns of cooperation and conflict as each state attempts to accomplish its goals in the international environment. The chief executive (or the chief executive's delegates) represents the state in its dealings with other countries. Particular significance is often attached to situations in which the chief executives of different states meet directly, as in a state visit or a summit conference. In reality, such meetings among heads of state typically are symbolic gestures of cooperation or occasions for ratifying agreements that have been reached by the chief executives' representatives. But the concentration of the states' political power in the chief executives is so great that such meetings can provide opportunities for major breakthroughs in the relations among the states.

## Structural Arrangements

**FUSED VERSUS DUAL EXECUTIVE** Many political systems have a **dual executive**. One actor, the *head of state*, performs the more ceremonial aspects of top leadership, while another actor, the *head of government*, is responsible for the more political aspects of governance. The main advantage of the dual executive is that citizens can be angry or hostile toward the head of government while remaining loyal to the nation and to the political system through their affection and support for the more ceremonial head of state.

Constitutional monarchies are obvious examples of political systems with a dual executive. In these systems, there is a ruling king or queen (e.g., Queen Elizabeth II in Britain, Queen Margrethe II in Denmark, or Emperor Akihito in Japan) and a prime minister or other head of government. The monarch has little or no power to make authoritative policy decisions and serves mainly symbolic or ceremonial functions, as an embodiment of the nation and the people. Monarchs with limited powers also operate in some less democratic countries, such as King Norodom Sihamoni in Cambodia where the king is head of state but Prime Minister Hun Sen commands dominant political power as head of government.

Some countries have attempted to create a dual executive without a monarch, establishing a second executive office as head of state (such as the presidency in Germany,



Queen Elizabeth II, the head of state, opens Parliament each year by delivering a speech written by the prime minister, the head of government. The speech outlines the legislation the prime minister's government will introduce. The queen comes to Britain's House of Lords, whose members sit behind the Law Lords (the highest judiciary group, wearing the wigs). By tradition, the now powerful House of Commons members, including the prime minister, symbolically "demand" entry into the chamber and stand in the back (not visible in the photo).

India, and Ireland) that is typically insulated from the daily struggles of politics and thus can be a symbol of national unity. In countries where the culture is deeply grounded in a religious belief system, the head of the religion can function like a head of state, as in Iran, where the president (Hassan Rouhani) and legislature lead the political system, but the religious leader, Ayatollah Ali Khamenei (the Leader of the Islamic Republic and of the Nation), has formidable power over most aspects of political life.

Most political systems have a *fused executive*. Here, a single actor fulfills both the ceremonial roles associated with the head of state and the political functions associated with the head of the government. In such cases, it can be difficult or impossible to distinguish (dis)loyalty to a partisan political leader from (dis)loyalty to the nation. Clever chief executives use this fusion of roles to their advantage, "wrapping themselves in the flag." Such executives criticize or even punish their opponents by claiming that they are traitors to the political society (even though the opponents are usually criticizing only the political actions of the leader). For example, Zimbabwe's President Robert Mugabe used this tactic very effectively to intimidate and eliminate his rivals and to justify using violence against political opponents.

Some political systems have two actors who perform parts of the chief executive role but are not really dual executives in the sense described in the preceding paragraphs. For example, there are countries (e.g., France and Russia) where

both a prime minister and a president perform essentially political functions, although one usually has a stronger claim to the head-of-state role (see Focus in 7). Some political systems have both a political executive and a monarch who, in addition to serving as head of state, is a powerful political actor. Bhutan, Kuwait, Morocco, and Swaziland are examples where the monarch is the head of state and has greater political power than the prime minister.

**THE EXECUTIVE** While the term *chief executive* refers to the one person or small group at the top of the executive structure, **the executive** is a broader term, including *all the people and organizational machinery that are below the chief executive in the executive structure*. Thus, the executive encompasses high-level decision makers in all the departments, agencies, and other administrative units that are in the chief executive's chain of command. As was noted earlier, a definition of the executive far broader than the one in this book might include the entire administrative system.

In theory, and usually in practice, this is a hierarchical system of political control, in the sense that the actors in the executive structure are supposed to follow the directives of the chief executive. But the chief executive's power over the rest of the executive is rarely absolute. There are many reasons why the chief executive's directives might not be carried out:

- Units within the executive might be too disorganized or corrupt to act effectively.
- Units within the executive might lack the resources to carry out policies in the manner desired by the chief executive.
- Some units might be more involved in competing against other units than in coordinating their actions to meet the chief executive's policies.
- Units might misunderstand, resist, or defy the chief executive.
- Can you think of other reasons?

## The Age of the Executive?

Although chief executives have nearly always been evident, and usually ascendant, in political systems, some analysts call the twentieth century the "age of the executive." This label reflects the apparent concentration of power in executives and the relative decline of legislatures' powers. What might account for this concentration of power? To some extent, this is a chicken-and-egg issue: The reduced capacity of many legislatures to take coherent and decisive state action is linked to the emergence of more coherent and decisive executives.

In comparison with legislatures, the executive structure tends to be more streamlined and less prone to stalemate and inaction. Also, the executive, centered in a single person or small group, can offer a unified focus for a mass public that either desires simplicity and clarity in an age of great complexity or wants a form of heroic leadership. The chief executive typically speaks with one voice and, when effective, can assure the people that political power will be exercised with purpose and efficiency to respond to the pressures and demands in the society and in the international

environment. Even if a chief executive cannot deliver, she can at least promise decisive leadership in a manner that no other political structure can.

Can you suggest any conditions under which a state might be dominated by a structure *other* than the political executive?

## Legislatures

### 6.2 Summarize the roles of the legislature.

Nearly every country has a legislature as one of its basic structures of governance (Derbyshire 2000). Legislatures might have one or two “houses.” Examples include the Senate and the House of Representatives (United States), the Senate and the Chamber of Deputies (Chile, Mexico, and Venezuela, among others), the Legislative Assembly (Costa Rica), the National People’s Congress (China), the Majlis (Iran), the National Assembly (Egypt and Tanzania, among others), the Lok Sabha and the Rajya Sabha (India), the Knesset (Israel), the House of Representatives and the House of Councillors (Japan), and the House of Commons and the House of Lords (United Kingdom). The names differ, but most perform the same essential functions.

### Roles of the Legislature

**Legislatures** are *structures in which representatives of the people discuss, assess, and enact public policies*. Indeed, the root of the name of the first modern legislature, the British Parliament, suggests this crucial function—the French word *parler* means “to talk.” Most early legislatures were created to provide advice to the political executive, typically a monarch, and to represent politically relevant groups. Legislatures also became responsible for enacting public policies. The roots of the word *legislature* are the Latin words *legis*, meaning “law,” and *latio*, “bringing or proposing.” Some of the earliest legislatures, such as the Roman Senate (ca. 500 B.C.E.–100 C.E.), had great power to discuss and enact laws. Thus, most modern legislatures have three broad roles: (1) enacting legislation; (2) representing the citizenry; and (3) overseeing the executive.

**ENACTMENT OF LEGISLATION** It might seem obvious that legislatures draft, modify, and then ratify public policy in the form of legislation. In some political systems, many laws are initiated and written by the legislature. However, most contemporary legislatures do not play the dominant role in policymaking; this role has passed to the executive and the administration. Although executives often set the policy course, most legislatures retain the right to investigate, legislate, and appropriate. They need the authority to investigate in order to determine what they ought to legislate about, and they need the power to appropriate to ensure that what they legislate can be implemented. Indeed, appropriation, the power to enact laws that raise revenue and authorize its expenditure, is one of the most significant responsibilities a legislature has.

The source of the legislature’s power in the policymaking process is, in most political systems, a constitutional provision that a majority vote of the members of



the legislature is required to authorize the passage of any law (legislative enactment). In some systems, legislatures have special committees that thoroughly assess and can amend all proposed legislation under the committees' jurisdiction. Each step of the legislative process provides an opportunity for those opposed to legislation to derail it. Although citizens might feel their legislature moves too slowly, legislatures are slow by design. Collective decision making usually takes more time than the decision of one person, and legislatures are designed as institutions of collective decision making. There are many members of the legislature, and each member can face complicated issues of representation.

**REPRESENTATION OF THE CITIZENRY** The second major role of the legislature is to represent the opinions and interests of the citizenry. One of the many institutional puzzles for every political system is how to convert the votes of citizens into a legislature that reflects the voters' preferences. Focus in 6 explores these issues of the electoral system and legislative representation with a case study of South Africa.

Another complicated issue is how the legislator determines whose interests she represents. The concept of *representation* is not straightforward because there are at least six different views of the broad interests that a legislator might represent: (1) all of the citizens in the legislator's constituency (geographic area); (2) the people within her constituency who voted for her; (3) the group that is most dominant in the legislator's constituency, possibly a social class, religious group, or ethnic group; (4) the political party to which the legislator owes loyalty; (5) the country as a whole, whose broad interests might transcend those of any area, group or party; or (6) the legislator's own conscience, which provides moral and intellectual judgment about appropriate political action (a position made famous in a brilliant justification by British parliamentarian Edmund Burke in his 1774 "Address to the Electors of Bristol" [1790/1955: 219–222]).

Is it possible for a legislator to represent all six interests simultaneously? Most contemporary legislators do not do so, for reasons such as these:

- In the Burkean ideal, a legislator could act against the views of her constituents, those who voted for her, or her party to follow a policy she believes is in the country's best interest.
- A legislator could deliver specific benefits to her own constituents (e.g., "pork barrel politics"), even though these are not the best use of resources to meet the needs of the country as a whole.
- The legislator could vote for a policy that is not the preference of her constituents but is part of a vote trade with other legislators to gain support for another policy she prioritizes.
- A legislator could vote on an issue primarily in exchange for financial or other support from a particular interest group.
- A legislator holding office in some systems must follow the dictates of the political leadership and acts as little more than a "rubber stamp." This is the position of a legislator in an undemocratic regime like North Korea, for example.

- Some legislators are deeply committed to adhering to their political party's line, or they must obey the party to survive politically. Such party discipline is usually the situation for members of the British House of Commons, for instance.
- Some legislators have such deep loyalty to a particular ideology or group that they rarely feel obligated to consider how they might represent other groups among the electorate. Members of religious parties, such as Shas in Israel, can have this perspective, as do members of extremely ideological factions, including some Tea Party Republicans in the United States.

## Focus in 6

### Electoral Systems and Legislative Representation: South Africa

Even before South Africa began dismantling the system of apartheid in 1990, there were extensive discussions about how to transform the political system into an effective democracy. Given the deep social cleavages and widespread citizen mistrust of the government, one critical issue was how to establish an **electoral system** that *translates the citizens' votes into a fair and representative legislature*. During apartheid, South Africa had elected its legislature by a form of **plurality voting**: *the candidate who receives the largest number of votes is elected* in each constituency. The plurality system is most often used in single-member districts, where just one legislator is elected to represent each region.

To ensure that each nation-based group in South Africa received legislative seats that approximated the group's electoral strength, the 1994 constitution implemented a system of **proportional representation (PR)**: *The seats are allocated to a party's candidates in close proportion to a party's share of the total votes*. Thus, when the African National Congress Party received 62.1 percent of the votes in 2014, it was allocated 249 (62.0 percent) of the 400 seats in the National Assembly. Although there are nearly 50 countries that utilize plurality voting for their legislatures (including Great Britain and the United States), the majority of countries now utilize some form of PR (Reynolds, Reilly, and Ellis 2005: 31). The box (on page 145) offers a simple example of how plurality and PR would work in the mythical countries of Zeta and Theta.

The PR system requires that legislative districts be multimember, meaning that two or more legislators are elected to represent a region. South Africa is divided into nine multimember regions, which each sends between 4 and 46 representatives to the National Assembly. Two hundred (of the 400) seats are distributed proportionately, based on the votes in each of these nine regions. The other 200 seats are filled with candidates elected for the entire country. For both these groupings of seats, the South African electorate chooses from "closed lists." This means that each party determines its own priority list of candidates, indicating to voters the order in which candidates will be elected if the party wins seats.

South Africa differs from most PR countries that have large districts because there is no minimum threshold of votes that a party must win nationally to win seats in the legislature. Thus, South Africa currently has seven small parties that received less than 1 percent of the national vote but have one to three members in the National Assembly. In other PR systems, minimum electoral thresholds are implemented (for instance, a party gets no seats unless it receives at least 5 percent of the national vote in Germany). The higher the minimum threshold requirement, the more difficult it is for smaller parties to obtain seats (Klingemann 2009).

There is an active debate in South Africa about whether to modify this electoral system. Some argue that the problem with PR in general, and especially with closed lists, is that the parties have too much control over the specific candidates who will be

elected because the parties produce candidate lists. Some countries (e.g., Finland) utilize an “open list” PR system, which allows the voters to select (from the parties’ lists) the specific candidates they want to elect. Others object to the multimember districts, arguing that there is very little connection between the individual voter in a particular district and the numerous legislators who represent the district. For instance, South Africa averages more than 20 legislators per district. This limits the direct representational link between a legislator and a specific constituency of people to whom she provides services. Thus, some South Africans propose that some or all of the members of the National Assembly should be elected in single-member districts with plurality voting.

The debate in South Africa mirrors the discussion in many countries about how to establish an

electoral system that blends several goals. Plurality systems have the virtue of increasing the electorate’s control over the legislator who serves them, increasing *accountability*. In contrast, PR systems generally produce a distribution of seats across parties that closely approximates the overall distribution of votes, increasing *fair representation*. Regarding *effective governance*, plurality systems tend to reduce the number of significant parties in the legislature, resulting in a more adversarial democracy—a system of majority government and minority opposition. In contrast, PR produces multiple successful parties, encouraging a more consensual democracy because more parties usually must cooperate to produce a legislative majority (Norris 2004: Ch. 2). South Africans continue to debate changes in their electoral system to increase its effectiveness for both representation and governance.

Zeta and Theta each have a 250-member national legislature. Zeta uses a plurality electoral system. Assume that in each of the 20 individual legislative seats in one region of Zeta, the candidate for Party A garners 31 percent of the votes, more votes than the candidate of any other party. Party A wins all 20 seats. In Theta, the same region utilizes PR and has the same 20 seats. Here, Parties A and B would each send six legislators, D would send four, B would send three, and E would send one. While the example for Zeta is probably unrealistic (some other party might get the plurality of votes in some of the individual seats), it is not uncommon that, in a plurality system, the largest parties win far more seats than their share of votes in the election, and small parties tend to get few or no seats.

	Percentage of Votes	Zeta: Plurality (of 20 single seats)	Theta: PR (of 20 seats in district)
Party A	31%	20 (wins in every constituency)	6
Party B	15%	0	3
Party C	29%	0	6
Party D	19%	0	4
Party E	6%	0	1

## Further Focus

1. Which aspect of the South African electoral systems seems least desirable? How would you alter it?
2. What would guide your decision about whether to implement a plurality or PR electoral system in a particular country (given your specification of conditions relevant to that decision)?

Most legislators are elected by a set of voters, and it is generally assumed that a key responsibility of a legislator is both to reflect and to serve the interests of those voters. But the different interests that are described above can sometimes place a legislator under serious cross pressures. Even the attempt to reflect the views of one’s constituents can be complicated. Some groups in the district might express their views loudly,



Voting matters. In a township near Johannesburg, South Africans wait for hours to cast votes for their representatives to the national legislature.

because they care passionately about the issue or because they have the resources to amplify their voices, while there is a “silent majority” whose views are different or unclear. And in a multimember electoral system like the one in South Africa, it can be difficult to determine exactly who one’s constituents are. For the conscientious legislator, the challenges of representation can be daunting.

**OVERSIGHT OF THE EXECUTIVE AND ADMINISTRATION** The third major role of legislators concerns their interactions with the executive and the administration. In general, the legislature is responsible for overseeing the political executive’s actions. Legislative powers to investigate, legislate, and appropriate are also the mechanisms for oversight. The legislature might have the constitutional right to select the executive, to approve the chief executive’s selection of key appointments, and to authorize major policy decisions by the executive. In the steel industry case, for example, the U.S. Congress resisted presidential action that went beyond executive powers they had authorized but then authorized the actions the president had taken for those circumstances only. In parliamentary systems, the cabinet and prime minister hold office and make policy only if they have the “confidence” of the majority of the members of the legislature (see Chapter 7 ). In some systems, such as in India, the president is actually chosen by the legislature (although it is the prime minister, not the president, who is the most powerful executive officer).

Many legislatures have the right to approve the executive’s selection of major appointments. The Israeli legislature must approve the cabinet as a whole. The U.S. Senate has the right to “advise and consent” on presidential appointments

such as cabinet members, ambassadors, and Supreme Court justices. The Senate's 1987 rejection of Judge Robert Bork, President Reagan's nominee for the Supreme Court, is an example of a legislature asserting its power over a top-level executive appointment.

The right of the legislature to scrutinize executive performance might include regular procedures by which the legislature can question and investigate whether the executive has acted properly in implementing public policies. At a minimum, the legislature serves as a discussion and debating chamber. Subjecting the political executive's plans and actions to public debate serves as a modest check on executive power. This investigative function can also shape the public debate about policy. Many legislatures have a regular opportunity, during their legislative sessions, to question the specific plans and actions of key members of the executive. In Britain, Italy, and South Africa, for example, ministers in the executive cabinet must appear before the legislature and respond to legislators' questions or criticisms about any actions taken by their department.

Most legislatures also have formal investigatory powers on a continuing or a case-by-case basis. The 2003 parliamentary investigation of British Prime Minister Tony Blair regarding the basis of his claims that Iraq had weapons of mass destruction and whether this justified Britain's military intervention is an example of such oversight. In addition, some legislatures have followed Sweden's innovative idea, setting up an *ombudsman*—an independent agency that investigates complaints regarding the actions of the executive branch and its administrative units. If legislative questioning, committees, or the ombudsman discovers inappropriate behavior by an administrative unit, the legislature can usually oblige the unit to alter its behavior. If the problem is with the executive, significant political pressure is exerted on the executive to correct it. Of course, if the executive resists such pressure, the ultimate resolution of the dispute entails either resolution through the courts or, in most cases, a power struggle between the executive and the legislature (DiPaolo 2010).

The most fundamental power of oversight held by some legislatures is their capacity to overturn the government. In a parliamentary system, the legislature can require or pressure the executive to resign from office by a vote of censure or of no confidence or by defeating a major bill put forth by the executive (see Chapter 7 ). In Italy, for example, the legislature forced the executive to resign about once a year—on average—between 1951 and 1994. Even in presidential systems, the legislature has the power to overturn the executive by means of extraordinary processes like impeachment or recall elections (Marsteintredet and Berntzen 2008). In 1992, Brazilian President Fernando Collor de Mello resigned after being impeached by the National Congress on corruption charges. And in 2008, Pakistan's President Musharraf resigned as the legislature began impeachment proceedings for treason. In the United States, no president has been removed from office because of impeachment and conviction. However, in 1868, President Andrew Johnson was acquitted on the House of Representatives' impeachment charge by only one vote in the Senate, Richard Nixon avoided an impeachment trial in 1974 only by resigning, and Bill Clinton was acquitted by the Senate on two articles of impeachment brought by the House in 1998.

## Legislative Structures

**NUMBER OF HOUSES** There is one very visible difference in the structural arrangements of various legislatures—the number of houses (often called *chambers*). There are *unicameral (one-chamber) legislatures* in more than half of the countries that have legislatures (Derbyshire 2000). The presumed advantages of a unicameral system are that political responsibility is clearly located in one legislative body and that risks of duplication or stalemate between parallel bodies are eliminated. More than two-thirds of the countries with a strong central government (see Chapter 7 on these “unitary states”) have unicameral legislatures, including Algeria, Bulgaria, China, Costa Rica, Denmark, Finland, Greece, Hungary, Israel, Kenya, New Zealand, South Korea, Sweden, Taiwan, and Tanzania.

Since 1990, there has been a considerable increase in the proportion of countries that have *bicameral legislatures*—those with two separate chambers. Bicameral systems are especially prevalent in countries that are federations (states in which a central government and regional governments share power). Bicameral federations include Australia, Brazil, Canada, Germany, India, Mexico, and the United States. There are bicameral systems in one-third of the unitary states, including France, Great Britain, Italy, and Japan (Derbyshire 2000).

Although passing laws is generally easier in a unicameral system, a bicameral system can be defended on several grounds. First, two legislative houses provide more careful deliberation on issues and laws. One body can act as a check on the other to ensure more broadly acceptable policy is implemented. Second, the two houses make it easier to accommodate different desirable models of representation. In about two-fifths of the bicameral legislatures (e.g., Germany and the United States), one house represents the regional governments and the other house more directly represents the numerical and geographic distribution of citizens. A few upper houses also represent functional groups in the society, as in the Republic of Ireland, where members are appointed as representatives of sectors such as agriculture, labor, industry, culture, and public services.

Over time, some bicameral systems have evolved toward unicameral systems, especially in cases in which the need for extensive checks and balances within the legislative branch has not seemed compelling and in which the problems of overlap and stalemate between the two chambers have become severe. Some political systems, such as those of Sweden and Costa Rica, have constitutionally abolished one chamber. In others, such as Norway, Japan, and Britain, the powers of one chamber have been so reduced that it can delay, but cannot veto, the decisions of the more powerful chamber. In fact, the United States is now the only bicameral political system in which the regional upper chamber (the Senate) is more powerful than the popularly based lower chamber (the House of Representatives) (Derbyshire 2000).

**SIZE OF LEGISLATURES** The number of members in legislatures varies enormously, with some houses having fewer than 10 members and others having thousands of members (e.g., the National People’s Congress in China has 2,987 members). The single house, or the lower house, typically represents “the people.” Each legislator is elected from a constituency of roughly the same size. In general, there is a

positive correlation between a country's population and its number of legislators (a ratio defined mathematically as a "cube root law" by Taagepera and Shugart 1989: 174–179). Among the more populous countries, however, there is no obvious principle for determining the optimal number of legislators. In the U.S. House of Representatives, 435 members are elected, a ratio of 1 member per 729,000 people. Of the 165 countries with a legislature, only India has a higher ratio of population to members than the United States. The United Kingdom, with less than one-third the U.S. population, has 650 elected members in its House of Commons, a ratio of 1 member per 97,000 citizens. More than half of all countries have a ratio of fewer than 65,000 people per representative (Derbyshire 2000).

Can you think of an appropriate criterion for deciding the number of members in a country's legislature? For example, are there good reasons why the upper house in the United States (the Senate) has two rather than three—or four or more—representatives from each state?

## The Decline of Legislatures

Many observers claim that for more than 100 years, there has been a general decline in the power of legislatures relative to executives and administrations. While it is very difficult to measure power relations over time with precision, several types of circumstantial evidence suggest legislative weakness. First, national budgets are often structured by the executive rather than the legislature (Schick 2012). Controlling the finances is one of the most powerful aspects of governance.

Second, most legislatures do not provide a coherent structure within which power can be concentrated and exercised effectively. Many legislatures have relatively slow and cumbersome procedures for the lawmaking function, especially when there are regular legislative committees that amend legislation. This complexity in the legislative process is even more evident in bicameral systems because there is often disagreement between the two chambers.

Third, most legislatures react to policy initiatives from the executive more than they create policy. The legislatures almost never have the level of support services that is available to the executive. Their budgets, facilities, staff sizes, and even the legislators' own salaries are significantly lower than those of top members of the executive and administrative structures. Similarly, the technical expertise and knowledge resources available to legislatures are far less than those available to the executive and administrative structures, a major liability when legislators attempt to deal with the complex subjects facing governments in modern societies.

Fourth, some analysts also suggest a social-psychological weakness of legislatures: Most citizens desire clear, dynamic, identifiable, and singular political leadership, but legislatures are composed of many people, and most citizens feel the legislators are either indistinguishable (when party discipline is very strong) or offer too many different identities. In the United States, for example, it is usually possible to answer this question: What does the president think about issue Y? But there is no easy answer to the question: What does the legislature think about issue Y?

Not only are there two chambers and two parties, there also is a great diversity of opinions among the individuals and factions within the legislature. As discussed in Chapters 2 and 4, even the parties, which send cues to voters about their views on issues, sometimes have open disagreement in their ranks. Thus, although legislatures usually have spokespersons and leaders, no one can truly speak for all the individual members of the legislature. One might conclude that the legislature in a democratic society tends to fulfill one of its roles *too* well: Its members too accurately represent the diversity of political beliefs among the society's population, and thus they speak with many voices.

Although the power of legislatures has not kept pace with that of other institutions, especially the executive and the administration, not all legislatures are weak or diminished institutions. Certain national legislatures remain extremely powerful political structures, such as those in Italy, Japan, Sweden, and the United States. In most other relatively democratic political systems, legislatures have significant impacts on the governing process through their roles in enacting legislation, in representation, in framing the issues for the public, and in oversight. And in almost all societies that have a legislature, its members can exercise political power in many subtle ways. At the least, members of the legislature have much more political power than most other citizens.

## Administrative Systems

### 6.3 Compare the functions and powers of political administration systems.

**Administration** is the general term used to describe *the machinery and the processes through which the state's rules and policies are applied and implemented*. While the executive (discussed above) denotes the top managers of the policy implementation function, the administrative system consists of the thousands, or even millions, of public employees who do the ongoing business of interpreting and implementing the policies enacted by the state. These employees are divided into organizational units called departments, ministries, agencies, and bureaus. Administrative units perform important activities such as providing publicly provided goods and services (e.g., national security, roads, education, solid-waste disposal, health care, monetary aid for the needy), maintaining order, collecting revenues, keeping records, and regulating or controlling aspects of the economy (e.g., the power grid, provision of transportation, finance system, growth and distribution of food).

### Administrative Functions and Power

The scale of activity of a state's administrative structure depends on the political system's definition of *res publica* (recall page 119). In political systems that penetrate a larger sphere of the society and economy, there is a corresponding need for more extensive administrative structures because the administration is the basic apparatus through which the state interprets, implements, and monitors all of its policies and



activities. The administrative structures in contemporary political systems perform five broad functions:

1. **Provision of public goods and services.** The essential work of the actors in the administrative structure is the constant interpretation and application of policies that provide public goods and services to individuals and groups.
2. **Regulation and enforcement of behavior.** Administrators are also responsible for interpreting and applying many public policies that set guidelines for the behavior of individuals or groups. These can vary greatly, from monitoring collusion among corporations to enforcing traffic laws to protecting the civil rights of ethnic minorities.
3. **Provision of knowledge.** Many administrators develop great expertise within their specialized areas. This knowledge can be of enormous utility for almost every decision and action undertaken in that area by the political system.
4. **Information management.** Administrators are responsible for the collection, storage, and analysis of huge amounts of information about the people and processes in the society. This information provides a crucial database—for recording activities and conditions in the society and for providing information relevant to every stage of the policy process (see Chapter 9).
5. **Resource management.** In roles such as collector of revenues from citizens and businesses or operator of state-owned companies producing goods and services, the administrative structure is in charge of many tasks that extract and utilize resources for the political system.

This brief list of functions suggests the enormous breadth and depth of the administrative structure and its activities. Some observers argue that in the complex, extensive, and knowledge-based political systems of the early twenty-first century, the power of administrative institutions is supreme. Although the administrators are, in theory, “servants” of their political masters and their clients, in reality these roles might be reversed. Civil servants have such unmatched knowledge and experience in their specialized domains that generalist politicians rarely have sufficient expertise to question their information, recommendations, or actions (Weber 1958a). Also, their power to grant or withhold benefits provides them with considerable leverage over clients. And most administrators are career employees who have quasi-permanent tenure, while politicians and clients come and go. The modern administrative structure has such wide-ranging power and competence that it is typically credited with keeping the political system functioning when executives and legislatures are ineffective, as in the Third and Fourth Republics in France and in many modernizing states in Africa and Asia. Indeed, Max Weber, the great German sociologist, observed that “in the modern state, the actual ruler is necessarily and unavoidably the bureaucracy” (Weber 1958a: 211).

## Bureaucracy as One Form of Administration

Weber’s quote about bureaucracy is a reminder that administration and bureaucracy are often treated as synonymous concepts; but in the attempt to clarify our language of political analysis, it is helpful to distinguish them. Weber provided the definitive

definition of bureaucracy: a particular structure and set of processes through which the administration can operate. Structurally, **bureaucracy** is an *organization that is hierarchical and specialized, by means of an elaborate division of labor*. Weber also defined the concept of bureaucracy by a key process: its members (1) apply *specific rules of action* to each case; therefore, the resulting treatment of each case is (2) *rational*; (3) *non-discretionary*; (4) *predictable*; and (5) *impersonal* (Weber 1958a: 196–244).

In some countries, governments have deeply incorporated this rational bureaucratic style of administration. A well-structured bureaucracy can help citizens navigate their government and can act as a deterrent to corruption (Dahlstrom et al. 2012). But there are also many contemporary political systems, and even more examples historically, in which public administrators treat people unpredictably or with clear biases. Compare in 6 characterizes five different forms of administration.

In complex societies, calling an organization “bureaucratic” is not usually intended to be a compliment. Some criticisms of bureaucracy are really directed at all large administrative structures that exercise increasing control over people’s lives and that seem too large and too powerful. Fundamentally, the bureaucracy label has come to connote a system that is too inflexible and impersonal. And the bureaucrats themselves are seen to be relatively free of political accountability because they are protected by professional norms and employment rules that give them job security and insulate them from political pressure. Despite criticisms of its occasional excesses in practice, most people conclude that they would prefer a Weberian bureaucracy to one that is arbitrary, discriminatory, or corrupt. Every country is a mix of the five styles described in the Compare in 6, but the variations in that mix are huge. Personal contacts and bribes (in various societies called *chai*, *baksheesh*, *mordida*, or *dash*) are still essential for success in dealing with the administrative system in many countries.

## Compare in 6

### Five Styles of Administration

For many people in the most advanced democracies, the words *bureaucracy* and *bureaucratic* have a negative connotation, as in “that is so bureaucratic!” Bureaucracy is only one style of the administrative function. While its rigid, rule-following approach can seem mechanical and inefficient, let’s compare it to four alternative styles of administration by exploring variations on a single scenario:

You are driving in another country and are given a ticket for speeding—driving 80 kilometers per hour (kph) in a 40 kph zone. You plead your case to the traffic officer: You are unfamiliar with the metric system, you don’t understand how to read the traffic signs, you can’t figure out the speedometer in this

rental car, you are sorry, and you are a friendly tourist! What happens next? Here are five alternatives:

1. The officer listens patiently. Your pleading makes no difference. She explains that Rule 3.207 of the Vehicle Code governs this case—you are traveling more than 10 kph over the posted limit. The rules state that you must follow her to the local judge’s office, pay a fine of 125 rupesas, and you will then be free to continue your journey. The judge is also unmoved by your arguments, repeating that the law is clear. You pay the 125 rupesa fine and you leave. This is a classic case of *Weberian bureaucracy* in action: There are explicit rules, and you

- are merely a case in which all the representatives of the organization apply the rules exactly and with no consideration of your personal circumstances.
2. When you plead your case, the officer seems sympathetic. She says that she understands how tourists might be confused by the rules in her country and that she will reduce the reported speed on the ticket from 80 kph to 60 kph, which will result in only a 50 rupesa fine. You try your pleas again with the judge, promising to obey the all the country's laws. The judge senses your contrition and suspends the fine, after giving you a stern warning. You leave quickly, before anyone reconsiders. This is *humane administration* because those with authority do not merely apply the rules—they try to understand your personal circumstances and adjust their actions to be responsive to your particular situation. Humane administration seems preferable to the bureaucratic style; however, once the rules are no longer applied impersonally and predictably, other styles (numbers 3–5 below) are much more likely.
  3. When none of your arguments work with the officer, you point out that other cars were passing you just before you were stopped. Why you? The officer just shrugs. At the judge's office, your arguments again are ineffective. The judge then announces your fine is 200 rupesas. You are shocked and say that the traffic officer said that the fine would be about 125 rupesas. The judge looks sternly at you, and responds that the fine is whatever she decides it should be. Did you want to question her decision? If so, she might have to increase the fine even further. Or perhaps you'd like to spend the night in jail, thinking about your dangerous driving? You flinch, pay, and get out of the building as fast as you can. This is *arbitrary administration*. You are singled out for ticketing among others who are equally guilty. Why? You are given a higher fine than stated in the rules. Why? The answer is that those with authority can use their discretion to decide when and how to administer the rules. Discretion worked in your favor under humane administration, but in arbitrary administration, you are just as likely to be placed at a disadvantage by flexible, unpredictable and non-rule-following actions.
  4. When you try your arguments on the traffic officer, she notices your foreign accent. Where are you from, she asks? You say, I am from the United States! She frowns and mutters that Americans need to be taught a lesson. In front of the judge, you are asked your religion, and reply that you are a Protestant. The judge responds: "Do you know this is a Catholic country and we believe in following the rules? Your fine is 175 rupesas." You have a sense that if you had been from a different country or were Catholic, you might have gotten off easier. In this situation of *discriminatory administration*, you might be right. In cases of discriminatory administration, the authorities treat people differently on the basis of their ethnicity, religion, gender, social class, or some other marker that distinguishes among groups. Unfortunately, in this situation, you are in groups that are not favored.
  5. After the officer listens impassively to your pleadings, she tells you that things will not go well with the judge. You will pay a very big fine of about 250 rupesas and might go to jail because you were traveling over 150 kph. You are stunned by these "facts" and scared, but decide to take a risk. As you hand your license to the officer, you also fold a 50 rupesa note underneath the license. The officer examines your license and hands it back to you, but the 50 rupesa note is gone. She says if you pay a 60 rupesa fine on the spot, you will not need to go before the judge. You hand over another 60 rupesas. She returns to her motorcycle and rides off. This is *corrupt administration*. There are many ways in which bribes are solicited, collected, and distributed in such systems. If you are lucky, you'll handle the bribe transaction successfully and not end up in jail.

## Further Questions

1. How could a non-Weberian bureaucracy operate like number 2 above without significant risk of becoming one of the less desirable approaches (3, 4, or 5)?
2. Why is corrupt administration probable in many countries, especially those with lower levels of individual wealth?

# Judiciaries

## 6.4 Outline the major elements within judicial systems.

In a Hobbesian state of nature (see Chapter 2), disputes among people would normally be resolved by force or the threat of force. In such a setting, “might makes right.” Thus, a primary reason for the social contract is to authorize the state to intervene in the potential and actual disputes among individuals and groups by creating and enforcing rules regarding proper forms of behavior. Every society holds that those who violate its rules and laws (i.e., its policies) must be sanctioned. The specific rules in a given society emerge from its unique culture, history, and politics. However, in all legal systems there are usually ambiguities regarding the rules:

- What does the rule mean?
- Has a rule been violated?
- Who are the “guilty” actors?
- How serious is the offense?
- What sanctions are appropriate?

These kinds of ambiguities are resolved through the adjudication function in every political system. Most political systems have established judicial structures whose primary role is adjudication.

## Aspects of Adjudication

The **adjudication** function attempts to *interpret and apply the relevant rules or laws to a given situation*, addressing the five questions above. There are several different types of laws. When the issue involves *civil law*—the rules regarding relations between private actors (individuals or groups)—the main objective of adjudication is to *settle the dispute*. Examples include the rules dealing with divorce, contracts, and personal liability litigation.

The situation involves *criminal law* when an individual or group behaves in a manner interpreted as an offense against the social order. Here, adjudication can be an important mechanism of *social control*. Examples of offenses are murder, substance abuse, theft, bribery, extortion, and environmental pollution. The state represents the public interest and enforces the social contract, ensuring that the relations among actors are within the boundaries of acceptable social behavior. Just as the definition and scope of *res publica* differ greatly across political systems, the definition of acceptable social behavior varies dramatically. In some countries, social control entails little more than regulation of violent behavior among people. In contrast, other countries might enforce rules that prohibit spanking one’s child or wearing certain clothing.

Adjudication can also consider cases involving *constitutional, administrative, or statutory law*. Here, the activities center on *arbitration regarding the behavior of the political system itself*. The main issues for adjudication involve questions about the legitimate domain of action by a governmental actor in its relations with other governmental

units or private actors. Such a dispute might concern a highly technical disagreement over the implementation of a specific policy (e.g., is a person with vision correctable to 20/400 qualified to receive state-subsidized services intended for the “visually impaired?”), or it might raise fundamental constitutional questions about the distribution of political power (e.g., can the chief executive seize control of an industry in the absence of authorization from the constitution or legislature?).

Finally, **international law** is comprised of the *rules that attempt to prevent and resolve disputes between states or other global actors*. Adjudication entails interpreting written agreements about interactions that cross state borders or laws formulated by international legal bodies such as the International Court of Justice within the United Nations. As Chapter 11 will detail, there are substantial difficulties in enforcing international law, especially when a state determines that the law is not in its national interest.

## Judicial Structures

Most political systems have specialized structures of the **judiciary**—*the system of courts and personnel that determines whether the rules of the society have been transgressed and, if so, whether sanctions ought to be imposed on the transgressor*. (Some broad definitions of judicial structures even include agencies of law enforcement, such as police and security forces, as well as agencies that apply sanctions against rule breakers, such as prisons, although in this book these are considered administrative structures.)

While there are significant crossnational variations, most political systems have a hierarchical system of judicial structures, with appeal processes possible from lower- to higher-level courts. The United States has one of the world’s most complex judicial structures, with its Supreme Court and extensive system of federal, state, and local courts, including judges, prosecuting attorneys, defense attorneys for the indigent, court clerks, and so on. Most judicial systems also have subsystems that are responsible for different aspects of adjudication. For example, the French judicial structure separates the criminal and civil law system from a second system that handles administrative law. In Ukraine, one major system handles criminal and civil law, and a second major system is composed of special prosecutors who monitor actions in all types of cases and who can challenge, retry, or even withdraw cases from the regular courts. In Great Britain, one major judicial system is responsible for criminal law and a second handles civil law.

Among the contemporary countries that do not have judicial structures as part of the government are the Islamic countries that adhere to sharia law. Sharia is the divine law, detailed in the Koran and further elaborated in the *hadith*, the teachings of Muhammad. It is sharia, not the laws of humans, that is the dominant judicial framework in countries such as Iran, Saudi Arabia, and Sudan. The Koran prescribes all aspects of social, spiritual, and moral life. As part of that prescription, the sections on law provide the details of what in Western jurisprudence includes criminal law, civil law, and administrative law. Sharia is applied by religious courts, and the punishments for many violations of the law are specified in the Koran.

The constitutions of many states include provisions meant to create an independent judiciary. The notion that a judicial system is independent means that the judicial

actors are not under the direct control of any other political structure. It does not mean that the judiciary is *apolitical*. The legal system and the set of judicial structures in *every* political system are political. Adjudication, by its very nature, entails crucial decisions that distribute values and shape meanings for a society. Also, the judicial officials in most systems are either appointed by those with political power or elected in a political process by the voters.

The judiciary in some political systems has the substantial power to exercise **judicial review**, whereby *judicial structures establish the final interpretation of what the constitution and the laws mean*, including the right to reinterpret, revoke, or overrule the policy decisions of the other political structures, including the executive, the legislature, and the administrative branches. About 1 in 10 states has a strong system of judicial review, including Canada, Colombia, Germany, India, Israel, Italy, Mexico, Norway, Switzerland, and the United States. Research has revealed that judicial structures in many advanced democracies have exercised increasing power to redefine and overturn the actions of the other branches (Koopmans 2003: Ch. 4). Increasingly, international courts, like the European Court of Justice, are also exercising this type of institutional power and growth (Stone Sweet 2004; Stone Sweet and Brunell 2012). The Debate in 6 questions whether such judicial review is consistent with democratic premises.

However, even when judicial structures do strive to maintain some political independence, they still might respond to external pressure. First, the judiciaries in nearly all contemporary states are ultimately dependent on other political

## The Debate in 6

### Is Judicial Review Democratic?

In essence, judicial review means that the judiciary has the right not only to interpret what a particular rule means but also to assess the constitutional legitimacy of any law enacted by the legislature or any policy action implemented by the executive or the administration. The judiciary can uphold the authority of the government regarding the policy, or it can rule that the government's action violates fundamental laws, especially the constitution. Currently, more than half the world's democratic countries have some form of broad judicial review. It can be a key method of ensuring there is a strong countervailing power that prevents the legislature, executive, and administration from overstepping their authority. However, some critics argue that essential features of judicial review are actually inconsistent with the basic values and principles of a democratic society. Is judicial review democratic?

### Judicial Review Is Undemocratic

- The hallmark of representative democracy is that those who have great power over the laws of the society should have a direct mandate from the people by means of election. Yet in most countries, the judges who exercise the extraordinary power of judicial review are not elected by the people. Thus, Alexander Bickel (1962), a distinguished professor at Yale Law School, argues that judicial review is undemocratic because "it thwarts the will of representatives of the actual people of the here and now; it exercises control, not on behalf of the prevailing majority, but against it."
- High court judges making these decisions cannot be held accountable because they usually serve

for life and cannot be removed from office except in extraordinary circumstances (i.e., impeachment). Thus citizens have almost no capacity to replace the judges who make fundamental decisions about the restraints on the rulers or the rights of the ruled, a hallmark element of democracy (see Chapter 7). Indeed, “the people” have no significant influence on either what cases the judges consider or the decisions that the judges make.

- Crucial interpretations and decisions can hinge on a bare majority vote by a tiny number of people. The highest constitutional court in most countries makes decisions by simple majority, with fewer than 15 judges. In the United States, for example, fundamental judicial rulings are made by only five members of the Supreme Court, even when four of their colleagues on the court completely disagree with them.
- Even if the judges truly are independent (which is questionable), the grounds for a decision in cases of judicial review can be highly subjective. There can be deep disagreements among the judges about how the basic legal documents of the society should be interpreted and applied to specific cases.
- In short, crucial rulings about actions by the government are made when a handful of unelected and unaccountable individuals use their subjective reasoning to offer a contested interpretation of documents and statutes that can be generations old. And “the people,” the elected chief executive, and the elected national legislature have no recourse but to accept this judgment (Waldron 2006). What could be more undemocratic in a democratic society?

### Judicial Review Supports Democratic Processes

- In representative democracies, supreme power rests with the citizens, who then exercise that power to elect officials to serve them. Those officials, in turn, appoint many others to play important roles in governance. Even in countries where top judicial officials are appointed, their authority is derived directly from the elected

officials, whose power is based on popular consent. Thus, empowering appointed judges is fully consistent with democratic principles.

- Once appointed, high court judges are independent of those in other powerful roles in the political system. Unlike most other political actors in a democracy, judges engaged in judicial review do not need to curry favor to raise money for reelection and they have no need to compromise their positions to make deals with others in the political system. Thus, they are able to make reasoned interpretations of the fundamental laws of the land and rule on specific actions by the other branches of government, based solely on the constitutional merits of the case.
- A just democracy must be guided not only by majority rule but also by a commitment to protect the rights of the individual and minorities against a “tyranny of the majority.” An independent judiciary, including judicial review, is a key element in such protection. In making decisions on constitutional rights of the weak as well as the strong, these judges are not pressured or constrained by the current whims of the electoral majority because they do not need to stand for reelection.
- In *Federalist Paper No. 78*, Alexander Hamilton (2007) explains that judicial power does not “by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws.”
- In most democracies, the judges engaged in judicial review are highly qualified legal experts. They generally have years of experience in the legal system, and their judicial decisions are bound by the statutes and by precedent. While they might occasionally disagree on the interpretation of a constitutional issue, most of their decisions are by clear and unambiguous majorities and reflect shared analyses.

## More questions...

1. In a democracy, is it acceptable to have powerful decision makers who are neither elected by nor directly accountable to the citizens?
2. Might there be any serious problems if the binding interpretation of the constitution is made by elected officials?
3. If courts could not engage in judicial review, would judges simply become the agents of the other political actors in the system?
4. How does the considerable distance between the people and the highest judges in the judicial branch serve as an advantage? A disadvantage?

structures, especially the executive and the administration, to enforce their decisions. Second, when judicial officials displease the dominant power group, they can often be ignored, replaced, diluted, or even eliminated. In an extreme example, more than 150 high-level Argentine judges “disappeared” during the 1970s, and it is speculated that the Argentine government ordered their executions. In the United States, President Franklin D. Roosevelt became frustrated with decisions by the U.S. Supreme Court in the 1930s when it blocked his New Deal legislation expanding government policies in response to the Great Depression. He threatened to add members to the nine-member Supreme Court to get favorable decisions, but Congress did not support his threat. However, the Court did begin to rule favorably on his legislation. While it cannot be proven empirically that Roosevelt’s threat to increase the size of the Court changed the judicial reasoning of the justices, it was punned at the time that “a switch in time saved nine.”

Third, because the people in top judicial positions have usually been socialized by those in the culture’s dominant socioeconomic groups, they are likely to share the values of those groups when they make judgments. Thus, one key consideration regarding an *independent* judiciary is assessing the extent to which the judicial structures make decisions and take actions that are *not* substantially influenced by their shared political orientations with and dependence on other powerful social, economic, and political structures in the society. While the rituals of the judicial structures offer the appearance of protecting impartial justice, the reality is that the judicial structures in many, perhaps most, countries serve the interests of the political and economic elite and that a truly independent judiciary is a rarity.

## Styles of Adjudication

Among the many styles of adjudicating disputes, several are prevalent. The **common law** tradition is grounded in the general laws and rules that have been enacted by legislatures and have evolved over time. The key goal of the legal system is to interpret existing precedents from previous judicial rulings. Innocence is presumed until evidence indicates guilt. The court system is adversarial, with the disputing sides making their points and the judge acting as a referee to ensure that the proceedings are fair. The common law style emerged in England and was generally adopted in countries strongly influenced by Britain or the United States.



In the **civil law** tradition, the key goal is the precise application of extremely detailed legal documents to the specific case. The court system is more inquisitorial, with the judge asking critical questions under the assumption that the party on trial is guilty of violating the law unless innocence can be proven. This system is associated with the legal approaches of ancient Rome and also France, with its development of the Napoleonic code. It is generally adopted in Continental Europe and the countries emerging from its colonial influence as well as many former communist countries. It is arguable that Sharia law is similar to civil law in its style of adjudication, although the laws of Sharia, as noted above, were promulgated by religious authorities, not legislatures and administrations as in civil law.

A third style of adjudication might be termed *dispute resolution*. Here, the goal is to find a ruling that is generally acceptable to all sides. Such an outcome might be based on negotiations led by a third-party arbitrator who works to develop a satisfactory compromise between the disputants. This third party might be appointed by the political system or might be respected members of the community. This style has been especially effective in some Arab and sub-Saharan African societies, and many countries attempt to handle some legal cases through dispute resolution approaches.

## Concluding Observations

Traditional political science assumed that a detailed description of political structures is the best way to explain how politics works. But empirical research revealed considerable diversity in the roles of particular political structures. Key political functions might occur in a wide variety of structures inside and outside the formal governmental arrangements. In response, there was a period during which political structures were viewed as so malleable that most analyses treated them as secondary elements, merely forming one of the contexts in which various political, economic, and social groups maneuver as they pursue their interests. More recently, many scholars have reemphasized the importance of institutional arrangements. For these “new institutionalists,” the particular configuration of political structures and rules can powerfully shape political actions and outcomes (March 2006; Bell 2011). And for the “neostatists,” the structures of the state—its institutional arrangements, the actors who have major roles in its institutions, and its policy activities—are autonomous and have fundamental impacts on political, economic, and social processes.

Thus, precise, behaviorally oriented and process-based analyses of politics now treat political structures more richly. In brief, institutions matter because they set the rules and roles of political behavior and interaction. A full understanding of the political world requires a clear grasp of the essential features of executive, legislative, administrative, and judicial structures. Institutional structures are the skeleton and organs of the body politic. Just as one could explain certain biological functions and processes of the body without explicit reference to the skeleton and organs, one could explain certain functions and processes of the political system without reference to structures. But such an abstract description of a biological organism would be

incomplete without indicating the way in which the structures constrain and shape the functions. Similarly, attempts to describe or explain politics, especially in actual settings, are much richer and more complete if they include a characterization of how key political institutions constrain and shape the political process (March and Olsen 1989; Lewis and Steinmo 2012). The next chapter will take us further in understanding political institutions as it analyzes how some of the key institutional structures interact to produce different forms of the body politic.

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## Key Concepts

adjudication, p. 154	executive, p. 137	ombudsman, p. 147
administration, p. 150	fused executive, p. 140	plurality voting, p. 144
bicameral legislature, p. 148	head of government, p. 139	political institutions, p. 137
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## For Further Consideration

1. Whom should a legislator represent on policy decisions? Develop an argument justifying the order of importance you attribute to representing the following entities: those groups who voted for the legislator, the constituency, the legislative coalition, the political party, the party leader, the nationality group, the country, the legislator's own best judgment.
2. Evaluate whether, on balance, it would be desirable to have an administrative system that is flexible and is sensitive to unique, individual circumstances in the handling of each case (that is, does not follow the principles of a Weberian bureaucracy).
3. The discussion of the judiciary asserts that every set of judicial structures is political. Is the notion of an independent judiciary a sham?
4. What are the benefits and shortcomings of a political system that has a weak chief executive? A fused chief executive?

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## For Further Reading

**Bishin, Benjamin G. (2009).** *Tyranny of the Minority: The Subconstituency Politics Theory of Representation*. Philadelphia: Temple University Press. Why do minorities sometimes get their way over majority preferences? This careful and methodologically

sophisticated book presents a vigorous exploration of the logic of representation.

**Derbyshire, Denis, with Ian Derbyshire. (2000).** *Encyclopedia of World Political Systems*. New York: M. E. Sharpe. A useful inventory (circa 2000) of the forms of contemporary political

institutions, as well as detailed descriptions of each national political system.

- Ginsburg, Tom, and Rosalind Dixon. eds. (2013).** *Comparative Constitutional Law*. Northampton, MA: Edward Elgar. This comprehensive (780 pages) and costly volume offers thoughtful essays on the nature of constitutional law, including current debates regarding such topics as constitutional design, human rights, and judicial review.
- Gormley, William T., and Steven J. Balla. (2012).** *Bureaucracy and Democracy: Accountability and Performance*. Washington, DC: Sage. How can you evaluate the accountability of the bureaucracy? The authors explore how democracies ensure proper administration, using approaches such as bounded rationality, principal-agent theory, interest group mobilization, and network theory.
- Helmke, Gretchen. (2012).** *Courts under Constraints: Judges, Generals, and Presidents in Argentina*. Cambridge: Cambridge University Press. This case study asks: When a democracy is unstable or collapsing, how do courts secure their institutional capacity to sustain the rule of law?
- Jackson, Donald W., Michael C. Tolley, and Mary L. Volcansek, eds. (2010).** *Globalizing Justice: Critical Perspectives on Transnational Law and the Cross-Border Migration of Legal Norms*. Albany, NY: SUNY Press. This edited volume examines the effect of globalization on judicial systems and courts in both the Global North and Global South.
- Kelleman, R. Daniel. (2011).** *Eurolegalism: The Transformation of Law and Regulation in the European Union*. Cambridge: Harvard University Press. The EU's fragmented institutional structure and prioritization of market integration has led to political incentives and functional pressures to enact transparent and judicially enforceable rules. This has opened a floodgate of public and private litigation as the rules are framed as rights.
- Koopmans, Tim. (2003).** *Courts and Political Institutions: A Comparative View*. Cambridge: Cambridge University Press. Koopmans, a former law professor and judge in the European Union, offers a persuasive analysis of the increasing power of the courts to engage in judicial decision making and to exercise influence and control over the actions of other political structures. The cases of Britain, France, Germany, and the United States are at the center of the study, but other constitutional court systems are also examined.
- Martin, Shane, Thomas Saalfeld, and Kaare Strøm, eds. (2013).** *The Oxford Handbook of Legislative Studies*. Oxford: Oxford University Press. A comprehensive set of recent analyses of legislative systems and processes with comparative and case study examples from many countries.
- Norris, Pippa. (2004).** *Electoral Engineering: Voting Rules and Political Behavior*. Cambridge: Cambridge University Press. A creative scholar considers the impacts of the various electoral systems with survey data and other empirical evidence from 32 countries. She assesses whether, given political culture, such engineering of institutional arrangements can influence such political behaviors as voting, the building of social capital, and democratic accountability.
- Osborne, David, and Ted Gaebler. (1993).** *Reinventing Government*. New York: Penguin. An influential critique of large, bureaucratic government and a framework (using examples from the United States) of how to make government (and especially the administrative system) more responsive and entrepreneurial.
- Peters, B. Guy. (2015).** *The Politics of Bureaucracy: A Comparative Perspective*. 7th ed. New York: Routledge. A rich, analytic comparison of the behavior and power of bureaucracies in many countries.
- Pitkin, Hannah F. (1972).** *The Concept of Representation*. Berkeley: University of

**California Press.** A thorough descriptive and normative exploration of political representation.

**Sparrow, Malcolm K. (2000).** *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance.* Washington, DC: **Brookings Institution.** Writing as much for those who work in the public service as for scholars, Sparrow offers a positive and persuasive argument in support of administrative regulation, detailing the role of regulators as important innovators and protectors of the public interest within the policy process.

**Toobin, Jeffrey. (2008).** *The Nine: Inside the Secret World of the Supreme Court.* New York: **Anchor.** A readable and fascinating description of the inner workings, politics, and personalities

of the U.S. Supreme Court during the recent period.

**Von Mettenheim, Kurt, and Bert Rockman, eds. (1997).** *Presidential Institutions and Democratic Politics: Comparing Regional and National Contexts.* Baltimore: **Johns Hopkins University Press.** A collection of essays, some written from a comparative perspective and others focused on a single country, that examines the behaviors and institutional frameworks of top executives.

**Wilson, James Q. (1991).** *Bureaucracy: What Government Agencies Do and Why They Do It.* New York: **Basic Books.** An interesting analysis of the performance of the U.S. national administration, identifying both the values and the flaws of the system.

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## On the Web

**<http://www.gksoft.com/govt/en>**

Governments on the Web provides a comprehensive database of governmental institutions on the Internet. The site contains 17,000 entries from 220 different countries. Most of the information is accurate, although there have been no updates for a decade.

**<http://www.gov.uk/en/index.htm>**

Directgov is the official Web portal of the government of the United Kingdom, and it provides extensive details about all the major political institutions and government agencies. The majority of the world's countries now have an official Web portal like this. They can usually be located by entering "Countryname" and "government portal" on a search engine. (For example, Canada is: <http://www.canada.gc.ca/home.html>.)

**<http://thomas.loc.gov/home/legbranch/cis.html>**

**<http://www.loc.gov/rr/news/fedgov.html>**

**<http://www.uscourts.gov>**

These three Library of Congress sites provide information about the legislative, executive,

and judicial branches of the U.S. government, respectively.

**<http://www.fedworld.ntis.gov>**

This site provides a huge central information network of the U.S. federal government, with searchable access to agencies and departments, documents, databases, and so on. It is a comprehensive site for searching for, locating, ordering, and acquiring government and business information.

**<http://www.thisnation.com>**

This electronic textbook provides an in-depth look at U.S. politics and includes links to other U.S. government-related Internet resources.

**<http://www.usa.gov>**

The U.S. government's official Web portal provides a wealth of government-related material, including access to the Internet sites of every major U.S. government agency.

**<http://lcweb.loc.gov/rr/news/extgovd.html>**

This site allows you to browse through Library of Congress electronic government resources.