

Government In Action

Ohio and United States



A Content Manual for Teachers with Classroom Applications

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TABLE OF CONTENTS

Chapter I. The Nature of Government

A. Introduction.....	1 - 2
B. The Nation-State.....	2 - 4
C. Functions of Government.....	5 - 8
D. Types of Government.....	8 - 11
E. Ideas for the Classroom.....	12 - 21
• "The Purposes of Government," pp. 12, 15-17	
• "How Important a Purpose of Government?", pp. 12-13, 18	
• "The Limits of Law," pp. 13, 19	
• "What Qualities for Citizenship?", pp. 13, 20	
• "Becoming an American Citizen," pp. 13-14, 21	

Chapter II. Our Federal System of Government

A. Introduction.....	22 - 24
B. Fundamental Principles in the Constitution of the United States.....	24 - 31
C. The Distribution of Power.....	31 - 41
D. Ideas for the Classroom.....	42 - 50
• "How Much Do You Know About the Constitutional Convention?" pp. 42, 45-46	
• "Who Should Have the Power?", pp. 42-43, 47	
• "Uniform Highway Traffic Laws: Yes or No?", pp. 43, 48	
• "Does Congress Have the Authority?", pp. 43-44, 49-50	

Chapter III. Ohio's History and Constitution

A. Introduction.....	51 - 52
B. How Ohio Came to Be.....	52 - 57
C. A Framework for Government in Ohio.....	57 - 67
D. Ideas for the Classroom.....	68 - 78
• "Sequencing Events in Ohio's History," pp. 68, 71-72	
• "Situating Ohio," pp. 68-69, 73	
• "How Much Do You Know About Ohio and Ohio's Constitution?", pp. 69, 74-75	
• "Comparing the Constitutions of Ohio and the United States," pp. 69, 76-77	
• "Ohio's Bill of Rights," pp. 70, 78	

Chapter IV. The Legislative Branch in Ohio

A. Introduction.....	79 - 80
B. Types of Laws.....	80 - 82
C. The Ohio General Assembly.....	82 - 93
D. The Law-Making Process.....	93 - 98

E. Ideas for the Classroom.....	99 -108
● "Uses of Law," pp. 99, 102-103	
● "Types of Laws," pp. 99, 104-105	
● "How a Bill Becomes a Law," pp. 100, 106-107	
● "Analyzing a Law," pp. 100-101, 108	

Chapter V. The Executive Branch in Ohio

A. Introduction.....	109-111
B. The Office of Governor.....	111-121
C. The Office of Lieutenant Governor.....	121-122
D. The Office of Secretary of State.....	122-123
E. The Office of Auditor of State.....	123-124
F. The Office of Treasurer of State.....	124-125
G. The Office of Attorney General.....	125
H. Executive Branch Agencies.....	125-128
I. Local Government in Ohio.....	128-131
J. Ideas for the Classroom.....	132-144
● "Whose Responsibility Is It?," pp. 132, 136-137	
● "If You Were Governor of Ohio," pp. 133-134, 138-139	
● "Qualities of a Governor," pp. 134, 140	
● "The Ohio Civil Rights Commission," pp. 134-135, 141-144	

Chapter VI. The Judicial Branch in Ohio

A. Introduction.....	145-147
B. Ohio's Trial Courts.....	147-151
C. Ohio's Appellate Courts.....	151-152
D. Judges and the Ohio Courts.....	152-154
E. How Trial Courts Operate.....	154-161
F. How Appellate Courts Operate.....	161-164
G. Ideas for the Classroom.....	165-176
● "Facts About Ohio's Courts," pp. 165, 169-170	
● "Distinguishing Between Original and Appellate Jurisdiction," pp. 165-166, 171-172	
● "Juries and Jury Service," pp. 166, 173	
● "The Supreme Court of Ohio," pp. 167, 174-175	
● "No Vehicles in the Park," pp. 167-168, 176	

Chapter VII. Ohio and Its Juvenile Justice System

A. Introduction.....	177
B. "Child": A Legal Classification.....	177-178
C. The Evolution of the Juvenile Court.....	178-186
D. Jurisdiction of Juvenile Courts in Ohio.....	186-190
E. How Juvenile Courts Operate.....	190-195

F. Ideas for the Classroom

- "Comparing Juvenile and Adult Court Proceedings," pp. 196, 200-201
- "Is It Delinquency?", pp. 197, 202
- "Examining State Statutes," pp. 197-198, 203
- "What Direction for Juvenile Court?", pp. 198-199, 204

CHAPTER I. THE NATURE OF GOVERNMENT

A teacher and a businessman were having a conversation in front of the school at which the teacher was employed. The businessman offered the teacher a cigarette. Although a smoker, the teacher, who had been a member of that school's faculty for a number of years, refused the cigarette. He explained that he could not smoke now because the school had a rule prohibiting teachers from smoking on school grounds. The businessman expressed surprise at the teacher's explanation. He then said that he would never become a teacher because he could not stand the restrictions schools placed on teachers. The teacher was surprised by the businessman's reaction.

A version of this story appears in sociologist Willard Waller's classic work, The Sociology of Teaching (1967 edition, p. 420). Waller uses it to describe the acculturation process that teachers undergo in their professional lives. He notes that the teacher in this story initially resented the smoking restriction, though he complied with it. Over time, however, the teacher's objections to the rule diminished. Gradually, the teacher came to accept it. He no longer viewed the anti-smoking rule as an intrusive restriction on his personal behavior. "When the teacher has internalized the rules which bind him," Waller wrote, "he has become truly a teacher." Waller added:

Other professions have other rules, and place different restrictions upon behavior.... The point is that a person is not free in any occupation until he has made conformity a part of himself. When conformity is the most natural thing for him, and he conforms without thought, the teacher is free, for freedom is only an optical illusion that results from our inability to see the restrictions that surround us (p. 420).

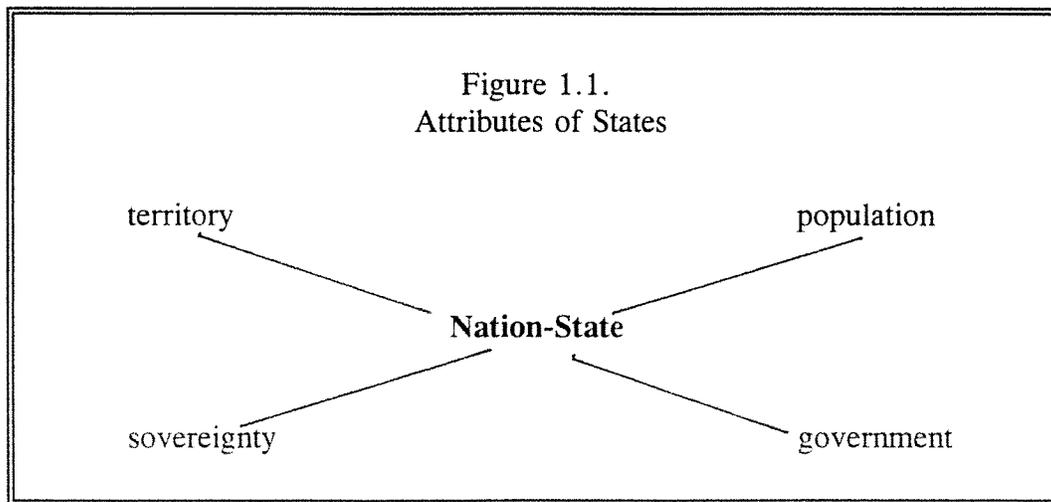
Waller's story and interpretations provide an allegorical perspective for thinking about government and teaching young people about it. Like the teacher in the story, most Americans consider themselves to be free persons living under a system of government in which personal freedom is prized. Though restrictions on personal freedom obviously exist, many people choose to ignore them. Like the teacher in Waller's story, they have internalized the rules that govern their lives, accepted the great majority of them, and shaped their behavior accordingly. They consider themselves free, for they no longer see or are concerned about the restrictions that surround them. On the other hand, other Americans, like the businessman in Waller's story, are very conscious of those restrictions. They find them oppressive, question their legitimacy, and even seek to alter or remove them.

As young people mature and develop, they learn about our system of government. In both formal and informal ways, they become more aware of laws and the impact those laws have on personal behavior. There is a tendency for adolescents to focus on the restrictive nature of laws, and they respond in various ways to that assessment, including resistance, passive acceptance, or informed consent. In the process, adolescents raise questions about the nature of government and the need for it.

This chapter explores some fundamental ideas about government to provide a context for examining law and government in Ohio. It begins with the concept of nation-state, giving particular attention to that concept's essential attributes. A discussion of the functions of government follows. The chapter concludes with three ways that governments differ: (1) whether autocratic or democratic; (2) whether limited or unlimited; and (3) whether unitary, federal, or confederal.

THE NATION-STATE

Throughout history, societies have found the need to create some type of formal political system. This has resulted in the formation of political units, known as nation-states. A nation-state is a political community with an organized government that has sovereign authority to make and enforce laws within a defined territory. Today, there are nearly 200 nation-states in the world. Though they differ widely, every nation-state shares four fundamental characteristics: (1) population; (2) territory; (3) sovereignty; and (4) government (see Figure 1.1).



Population

A nation-state cannot exist without people. Citizens are persons who have legal membership in a nation-state. Citizens acquire both rights (e.g., own property) and obligations

(e.g., military service), which vary among nation-states. Nation-states establish criteria for granting citizenship. Typically, citizenship results from birth in the nation-state or birth to one or more parents who are citizens of the nation-state. In addition, others become citizens through naturalization, a legal process involving specific criteria (e.g., residency, knowledge, economic status).

Nation-states vary in population. Liechtenstein is one of the world's least populous nation-states. Less than 30,000 people live there. By contrast, the People's Republic of China is the world's most populous nation-state, estimated to have nearly 1.2 billion inhabitants (more than one-fifth of the world's population!). The United States has the third largest population in the world (i.e., nearly 260,000 inhabitants).

Nation-states also vary considerably in the degree to which their populations are homogeneous. In some, nearly all of the people share the same language, history, customs, ethnic/racial features, and religious beliefs. In other nation-states, great variety exists among one or more of these characteristics. How homogeneous a nation-state's population is has important implications for its ability to govern its citizens effectively. The larger the size and the more heterogeneous the population, the more difficult governing becomes.

Territory

Just as a nation-state needs people, it also needs land. Every nation-state claims a unique and distinct location on the Earth's surface as its own -- a geographic area with boundaries that separates its territory from that of other nation-states. The size of territory claimed by nation-states varies widely. San Marino is one of the smallest nation-states; its territory spans approximately 24 square miles. Following the break-up of the Soviet Union, Russia now occupies the largest land area in the world -- approximately 6.6 million square miles. Canada (3.85 million square miles) is the largest nation-state in the Western Hemisphere. The United States, with 3.7 million square miles of territory, is a close second.

The location and integrity of a nation-state's political boundaries is a matter of great concern. Boundary disputes (i.e., where they are located and the ability to control the flow of people across them) are a frequent source of conflict among nation-states. Often one nation-state will seek to expand its territory at the expense of another nation-state, citing national defense needs, historical rights, cultural or religious ties, or something else to justify its actions. Wars among nation-states are commonly rooted in territorial disputes.

Sovereignty

Sovereignty means that a nation-state has the authority to govern within its territory. It recognizes no higher political authority. A sovereign nation-state is free to determine its own form of government, make and enforce its own laws, and shape its own foreign policy. In theory, all nation-states are equals; no nation-state has the right to interfere with the internal affairs of another nation-state. In practice, however, this principle is often violated. History

is replete with examples of nation-states violating other nation-states' sovereignty by interfering in their internal affairs.

Although the United States refers to its subdivisions as "states," those subdivisions are not nation-states. Ohio, California, Texas and the other 47 states have considerable authority to govern, but they do not have sovereignty. As part of a federal union, each of the 50 states is subject to the Constitution of the United States, which is the supreme law of the land. America's 50 states have a population, a defined territory, and a government, but they lack sovereignty.

Government

Every nation-state has some form of government. A government is a political system, or structure, for exercising authority over people in a particular geographic area. Government consists of people, institutions, and procedures for making, executing, and enforcing laws.

Laws are society's rules enforced by government. There are five basic types of law: (1) constitutional law; (2) statutory law; (3) ordinances; (4) administrative law; and (5) case law. Constitutional law deals with the fundamental structure of a government. It sets forth broad legal principles and specifies how power is allocated between those who govern and those who are governed. Statutory law consists of laws passed by a legislative body. It addresses the full range of government responsibilities and relationships between government and the people governed. Ordinances are laws made by political subdivisions (e.g., county, city, village). Administrative law is made by government officials responsible for carrying out statutory requirements, such as members of a government agency (e.g., United States Environmental Protection Agency, Ohio Public Utilities Commission). Case law results from rules judges establish through their decisions in legal cases. Judges must interpret the meaning of constitutional, statutory, ordinance, or regulatory language and determine how legal rules or principles apply in specific situations. Judges seek consistency with prior decisions in comparable cases. New rulings are made if prior decisions do not exist, or are determined to be inadequate in a particular case. This results a new legal principle, or precedent, that has the effect of law. It will be followed by other judges in future cases.

Once made, laws become binding on the members of the political community to which they apply. Laws function as formal social norms. A government uses various types of power -- from moral persuasion to physical force -- to obtain compliance with its laws.

Through the process of political socialization, most people come to accept the laws governments make. They regard them as valid and commit themselves to obeying them willingly. Acceptance of the rule of law is rooted in the belief that a government has the right to rule (i.e., make and enforce laws), and the people living within its borders have an obligation to obey its laws. In some instances, however, resistance occurs, especially when a government is perceived as acting illegitimately (e.g., fails to follow established procedures, enacts unjust laws). When such a belief becomes widespread, rebellion and revolution may break out.

FUNCTIONS OF GOVERNMENT

"[W]hat reason is there for the existence of government?" Italian anarchist Errico Malatesta asked in Anarchy, a pamphlet he published in 1907. "Why," he inquired,

abdicate one's own liberty, one's own initiative in favor of other individuals? Why give them the power to be the masters, with or against the wish of each, to dispose of the forces of all in their own way? Are the governors such exceptionally gifted men as to enable them, with some show of reason, to represent the masses and act in the interests of all men better than all men would be to act for themselves? (in Horowitz, 1964, 76).

Like the businessman in Waller's allegorical account, Malatesta and other anarchists find government oppressive, unnatural, and, therefore, unnecessary. For them, government prevents human beings from realizing their "true selves," their natural state. Anarchists regard "natural man" as one who is essentially good and prone to cooperate, rather than compete or be driven by self-interest. "*The propensity of natural man,*" wrote Irving Horowitz when describing the anarchist position, "*is voluntary association based on the practice of mutual aid*" (p. 20). Hence, anarchists reject the proposition that without government, disorder, confusion, and chaos will necessarily follow.

John Locke offered a different opinion. In Two Treatises of Government (1689), Locke articulated a rationale for government. He posed the following question: "*If a man in the state of nature be... absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom... and subject himself to the dominion and control of any other power?*" Then Locke answered his question as follows:

...[The] obvious... answer [is] that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others... the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit a condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others... for the mutual preservation of their lives, liberties, and estates which I call by the general name property... (in Stearns, 1961, p. 239).

Most people reject the anarchists' position and subscribe to a position similar to Locke's. However, they are likely to disagree about the form, character, and extent of government authority. Nevertheless, common agreement is often found regarding the following functions of government: (1) maintaining social order; (2) providing for the common defense; (3) managing conflict; (4) protecting the rights of citizens; (5) facilitating economic activity; and (6) providing for the common good. A brief discussion of each of these six functions of government follows.

Maintaining Social Order

"*Order*," wrote the philosopher Goerg Wilhelm Hegel, "*is the first requisite of liberty*." Many would agree, believing government has a basic responsibility to ensure that life is safe, peaceful, and predictable, within reason. To discharge this responsibility, governments acquire police powers -- the authority to act to protect the life, safety, and property of those living under their jurisdiction. In return, inhabitants surrender some of their freedom. They are obligated to respect and comply with laws made for those purposes and the government officials who enforce those laws.

Providing for the Common Defense

Sovereignty depends on the ability of a government to protect the nation-state and its people from hostile acts by other states. A government may create armed forces to defend its territory, intelligence agencies to collect information about other states, and internal security agencies to protect itself against spying and treason. It may form alliances with other nation-states to provide mutual defense against common enemies. A government may negotiate treaties to preserve harmony with other nation-states, and, in extreme situations, wage war. Providing for the common defense is one of the most basic functions of government. Unless a government can do this successfully, it will cease to exist.

Managing Conflict

Given human nature, governments must develop peaceful ways to contain and resolve conflict within their respective political communities. Governments establish formal institutions and procedures for that purpose. They promulgate laws to specify acceptable and unacceptable behavior, implement those laws and secure compliance with them, and provide formal and informal means for resolving disputes arising from those laws and their application.

Governments may extend opportunities for people to express themselves politically as a means of managing conflict. For example, they may provide for freedom of speech, press, and assembly. They may extend voting rights to let people have a say in the laws and policies made and in the persons who hold positions in the government. In these ways, governments do more than manage conflict peacefully. They also benefit from the product of competing ideas and beliefs by promoting values and norms that help to manage, and not suppress, conflict within a context of tolerance and civility.

Protecting the Rights of Citizens

Governments establish a basic framework for protecting individual rights within a political community. The actual rights that people exercise depend upon the institutions and processes governments establish for that purpose. Constitutional democracies protect individual rights from encroachment by individuals, groups (i.e., including the majority), and government itself. The legitimacy of government in constitutional democracies depends on how well the

government protects the rights of its citizens.

The Constitution of the United States identifies the rights that belong to the members of its political community. That document also provides an effective framework for interpreting and safeguarding those rights. But not all governments are like this. Autocratic governments deny many of the rights Americans take for granted. Those governments have few, if any, restrictions on their ability to encroach on the rights of individuals.

The definition of individual rights varies among nation-states. The existence and extent of universal human rights is debated among nation-states. Obvious differences exist in such matters as: (1) the rights of accused persons (e.g., some governments permit arbitrary arrest and torture); (2) the right to religious freedom (e.g., some governments restrict or deny this); and (3) the right to marry and bear children (e.g., some countries restrict the choice of spouse and number of children). The United States government has not yet ratified the two 1966 comprehensive United Nations covenants on human rights -- the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

The extent of rights that a government recognizes may change over time. For example, at one time it was permissible in the United States for some people to own other human beings. The Thirteenth Amendment (1865) abolished the institution of slavery. The Fifteenth Amendment (1870) provided that the right to vote could "*not be denied or abridged on account of race, color, or previous condition of servitude,*" but women did not get the right to vote until 1920, when the Nineteenth Amendment was ratified. The right of privacy has grown considerably in recent years. Its applicability to such matters as abortion and homosexual relationships constitutes some of the most hotly debated issues of the 1990s.

Facilitating Economic Activity

Government plays an important role in facilitating economic activity within a nation-state. In a command economy, government assumes responsibility for making virtually all important decisions, including what to produce, how much to make, and how to distribute it. In market-oriented economic systems, government plays a different, more limited role. Though it controls some aspects of the economy, it permits individuals to make many key economic choices themselves and to retain control over the wealth they produce. Governments determine the mix of command and free market elements that will exist in their economic systems. No nation-state's economic system is completely one type or the other.

Governments need to create and maintain a framework that permits economic activity to develop and flourish. This includes a system of standard weights and measures, standardized units of currency, a stable monetary system, and the minimizing of internal trade barriers. It involves developing monetary (supply of money) and fiscal (taxing/spending) policies to promote full employment, stable prices, and economic growth. Economies work most effectively when property rights are clearly defined, contracts are enforced, and political stability prevails. Government has an important role to play in ensuring that these factors are in place.

Providing for the Public Good

Governments provide goods and services to improve the quality of life in a political community. Examples include roads and bridges, schools and libraries, and police and military forces. Each helps meet a specific public need (e.g., an efficient transportation system, an educated citizenry, safety from internal or external danger). Many of the goods and services governments provide would be difficult, if not impossible, for individuals to furnish for themselves.

In deciding public policy, governments make judgments about perceived benefits (e.g., the public versus private good) and costs (e.g., have all citizens share equally or differentially). For example, some programs seek to promote the economic security of citizens. Directly or indirectly, these programs result in the redistribution of wealth, with some segments of the community benefitting at the expense of others. Likewise, some programs seek to preserve and protect the natural environment for the benefit of all citizens. In the process, these programs restrict freedom of action and impose monetary costs on business owners. In both instances, efforts to provide for the public good necessitate judgments regarding which segments of the population receive benefits and which must assume the costs.

How extensively should government carry out these six functions? What is the appropriate balance between government responsibility and individual responsibility? Abraham Lincoln's words suggest one response. He said, "*The legitimate object of government is to do for a community of people whatever they need to have done but cannot do at all, or cannot do so well for themselves in their separate and individual capacities. In all that the people can individually do as well for themselves, government ought not to interfere.*" Lincoln's advice is worthy of consideration.

TYPES OF GOVERNMENT

All governments make and enforce laws, but all governments are not alike. They have different political structures and they operate in different ways. Governments can be distinguished in three fundamental ways: (1) autocratic or democratic; (2) limited or unlimited; and (3) unitary, federal, or confederal. Various factors account for these differences, including a nation-state's: (1) history; (2) political culture and ideology; (3) level of economic development; (4) geography; and (5) demographic characteristics.

In some governments, the state is viewed as the source of political authority. For example, the divine right of kings theory held that political authority was vested in God, who, in turn, allocated it to kings. The following excerpt, taken from a speech by James I of England (1603-1625) before the houses of Parliament in 1609, expresses this viewpoint. In that speech, James I said:

The state of monarchy is the supremest thing upon earth; for kings are not only God's lieutenants upon earth, and sit upon God's throne, but even by God himself they are called gods....

Kings are justly called gods, for... if you will consider the attributes of God, you shall see how they agree in the person of a king.... [Kings] make and unmake their subjects, they have power of raising and casting down, of life and of death, judges over all their subjects and in all causes and yet accountable to none but God only.... And to the king is due both the affection of the soul and the service of the body of his subjects... (in Stearns, 1961, p. 216).

According to the divine right of kings theory, God ruled the heavens and used kings as stand-ins to rule on earth. As the French Bishop Jacques Benigne Bossuet claimed in 1678, royal authority was therefore "sacred," "paternal," "absolute," and "in accordance with reason" (in Stearns, p. 245). The people were morally bound to obey the king in earthly matters, just as they were bound to obey God in heavenly matters.

A more modern assertion was the Fuhrer (i.e., leader) principle in Nazi Germany. Ernst Rudolf Huber (1939) described that theory as follows:

The Fuhrer Reich of the [German] people is founded on the recognition that the true will of the people cannot be disclosed through parliamentary votes and plebiscites but that the will of the people in its pure and uncorrupted form can only be expressed through the Fuhrer....

The Fuhrer is the bearer of the people's will; he is independent of all groups, associations, and interests.... [T]he Fuhrer has nothing in common with the functionary... who exercises a mandate delegated to him and who is bound to the will of those who appoint him. The Fuhrer is no "representative" of a particular group whose wishes he must carry out. He is... no mere executive agent. He is rather the bearer of the collective will of the people. In his will the will of the people is realized....

The Fuhrer principle rests upon unlimited authority... (as quoted in Stearns, 1961, pp. 811-812).

The Fuhrer was held to be the embodiment of "the people's will." His authority in Nazi Germany was absolute. According to this theory, the Fuhrer, and only the Fuhrer, knew what was best for the people and the nation-state.

The Declaration of Independence contains a very different point of view. Issued on July 4, 1776, the signers of that important political document asserted that political authority rested in the hands of the people, not the state. They wrote:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed....

Similarly, the Constitution of the State of Ohio (1851) takes this position, as revealed in the following excerpts, that declare:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary... (Article I, Section 2).

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people (Article I, Section 20).

These two constitutional provisions were also part of Ohio's original Constitution of 1802.

The contrast between these two positions is vivid. The divine right of kings theory and the Fuhrer principle illustrate rationales for autocratic government. Political authority is centered in the state, and one person (e.g., king, queen, emperor, Fuhrer, dictator) or a small group of people (oligarchy) rules with absolute power. The people are the subjects of government, and are obligated to obey the will of the rulers. The excerpts from the Declaration of Independence and Ohio's Constitution articulate rationales for democratic government. Political authority belongs to the people, not the state. The people create government to accomplish desired ends. They exert political authority, either directly (i.e., direct democracy) or indirectly through elected representatives (i.e., democratic republics, constitutional monarchies). This perspective depicts government as the product of a "social contract" between those who govern and those who are governed. Government has limited power that is to be used to promote the public good. If their government violates that contract, the people have the right to alter or replace it.

Identifying the explicated source of political authority is one way to distinguish between governments. Another way is to determine whether governments are limited by the rule of law. In limited governments, the power of the state is constrained by enforceable written or unwritten constitutions. Unlimited governments lack the effective means to restrain the power of the state. The mere existence of a written constitution does not guarantee that a government will be limited. For example, the Union of Soviet Socialist Republics (USSR) was an unlimited, authoritarian government. Its Constitution of 1977 proclaimed otherwise, as the following excerpts reveal:

The Union of Soviet Social Republics is a socialist state of the whole people, expressing the will and interests of the workers, peasants, and intelligentsia, the working people of all the nations and nationalities of the country (Chapter 1, Article 1).

All power in the U S S R belongs to the people... (Chapter 1, Article 2).

In practice, however, the government of the USSR was unchecked by the rule of law. It was "a government of men" rather than "a government of laws." Government officials were not constrained by enforceable legal mechanisms.

The United States of America is an example of a limited government. The Constitution of the United States effectively limits the power of government to act. Government functions are divided among three branches, and a checks-and-balances system restricts the ability of government officials to exercise political power. Citizens possess rights that the government must respect. As stated in Article 6, Section 2: "*This Constitution and the laws of the United*

States which shall be made in pursuance thereof, and all treaties made... under the authority of the United States, shall be the supreme law of the land..." If government officials exceed their authority, as determined by the federal courts, their actions are declared unconstitutional. No government official is above the law. Thus, the rule of law distinguishes limited from unlimited forms of government.

Governments also differ in the way that political power is apportioned. Some governments consolidate political power in one level of government. These are known as unitary governments. In unitary governments, political authority is centralized in a national government. Political sub-divisions may be created to assist the national government in carrying out various government functions, but those units of government hold no power independent of the national government. Unitary governments may be democratic or autocratic, limited by the rule or law or unlimited. The unitary system is the most common form of government in the world today.

In confederal governments, the national government is weak but the regional governments (e.g., states) are strong. The regional governments retain much political authority. The national government is created by agreement among the various regional governments, and exists only to help the regional governments meet common needs, such as defense or foreign policy. Desirous of maintaining as much independence as possible, regional governments make it difficult for the national government to act in ways contrary to their individual interests. America's experience with the Articles of Confederation was an example of this type of government. The United Nations -- an international organization -- is an example of this form of government. Today, however, there is no nation-state with a confederal form of government.

Federal governments, like confederal governments, consist of regional governments and a national government. In this arrangement, political authority is shared more equally. The United States is an example of a federal government. The people in the respective regional governments, called states, delegate specific powers to the national government, but reserve others to the state governments. The states and the national government also share some powers. In addition, both the national and state governments are denied certain powers. The Constitution of the United States sets forth the division of powers between the national and state governments.

The other chapters in this manual describe America's federal system of government and Ohio's role in it. Chapter Two addresses our federal system of government. Chapter Three focuses on Ohio's Constitution and the structure of government it creates. Chapters Four, Five, and Six deal with the legislative, executive, and judicial branches of Ohio's government. The manual concludes with Chapter Seven, which examines Ohio's juvenile justice system.

CHAPTER I.

THE NATURE OF GOVERNMENT: IDEAS FOR THE CLASSROOM

Exercise One: "The Purposes of Government" [pp. 15-17; completed version provided]

Understanding the purposes of government is one of the cornerstones of democratic life. Standard I.A in the National Standards for Civics and Government (1994) emphasizes the importance of having students become knowledgeable about the purposes of government. In this exercise, excerpts from four historical documents provide a focus for students to consider reasons for government. The chart format enables students to identify the purposes for government stated in each of these four documents, and compare and contrast those reasons. A set of questions extends the discussion.

In this lesson, students identify current situations at both the federal and state levels that illustrate achievement of the purposes for government identified in the four documents. They explore potential conflicts in these stated purposes of government (e.g., liberty versus security; public good versus private good) and consider why such conflicts exist. The lesson concludes by having students think of other purposes for government that were not included in the four documents they previously examined.

Lesson Two: "How Important a Purpose of Government?" [p. 18]

Why do governments exist? What purposes do they serve? What purposes are most important? These fundamental questions provide appropriate themes for a lesson based on this exercise. Drawing on recommendations in the National Standards for Civics and Government (i.e., Standard I.A.2 -- Grades 5-8 and Standard I.A.3 -- Grades 9-12), this exercise lists eight purposes of government. Students rank order each purpose, from most important to least important. Take time to clarify the eight purposes of government included in the list. Be sure to give examples of each of the eight choices (e.g., live by a common set of religious principles -- Iran under Ayatollah Ruholla Mussau Khomeini). Consider dividing students into groups and having each group find information about one or two of the purposes of government in the list. For example, students could find information about advocates of the stated purpose (e.g., philosopher; politician; group leader) and/or examples of governments or groups organized to achieve the stated purpose. This information could also be given prepared reading material.

an immigrant who is unable to meet the requirements for naturalization. The case study is real. Ensure that students know what a private bill is and how it relates to this case. Use the questions to enhance students' understanding of the rights and responsibilities of American citizens. A decision-T format will provide an appropriate structure for considering the issue and enhancing decision-making skills. Write the question in item four on the chalkboard, and put two columns beneath it. In one column, list reasons students give to support the law exempting Michael Wu from the test and making him a citizen. In the other column, list reasons in opposition to the law. Take a devil's advocate approach to stimulate student reasoning (e.g., is it fair to do this for Michael Wu but not for all other mentally retarded persons?), especially if students coalesce around one position. Throughout the discussion, focus on the importance of the public good as well as personal considerations. As a culminating activity, have students write individual position papers (e.g., "If I were in charge of naturalization, I would") stating the standards they would use for naturalization and reasons for their position. If students are interested, inform them that the private bill was passed making Michael Wu an American citizen.

THE PURPOSES OF GOVERNMENT

Instructions: The purposes of the government are addressed in various documents. Excerpts from four of them are provided here. As you read the excerpts provided here, look for the purposes of government each identifies. List them in the chart that is provided. Compare and contrast the entries in the chart. Then answer the questions below the chart.

Declaration of Independence (1776)

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed....

Preamble to the Constitution of the United States of America (1787)

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Constitution of Massachusetts (1780)

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

Constitution of the State of Ohio (1851)

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

Comparing the Purposes of Government

Document	Purpose of Government Included
Declaration of Independence 1776	
Preamble to U.S. Constitution 1787	
Constitution of Massachusetts 1780	
Constitution of Ohio 1851	

Questions for Discussion

1. What do you notice about the language used to set forth the purposes of government?
2. How are the purposes of government listed in these four documents alike? How do they differ? Why?
3. What is a recent event that illustrates an effort by the federal government to achieve one of these stated purposes? What recent event illustrates an effort by the State of Ohio to do this?
4. How may two or more of these purposes conflict? Think of an example.
5. Of the purposes identified in this chart, which one do you regard as the most important purpose of government? Why?
6. Are there other fundamental purposes of government, not mentioned in the excerpts from these four documents, that you believe should be added to the list of the purposes of government? List them here.

Comparing the Purposes of Government

Document	Purpose of Government Included
Declaration of Independence 1776	to secure the unalienable rights to life, liberty, and the pursuit of happiness
Preamble to U.S. Constitution 1787	to form a more perfect Union, to establish justice to insure domestic tranquility to provide for the common defense to promote the general welfare to secure the blessings of liberty to ourselves and our posterity
Constitution of Massachusetts 1780	to secure and protect the body politic to provide for the safe and peaceful enjoyment of life and one's natural rights to work for the common good
Constitution of Ohio 1851	to secure the blessings of freedom to promote the common welfare

Questions for Discussion

1. What do you notice about the language used to set forth the purposes of government?
2. How are the purposes of government listed in these four documents alike? How do they differ? Why?
3. What is a recent event that illustrates an effort by the federal government to achieve one of these stated purposes? What recent event illustrates an effort by the State of Ohio to do this?
4. How may two or more of these purposes conflict? Think of an example.
5. Of the purposes identified in this chart, which one do you regard as the most important purpose of government? Why?
6. Are there other fundamental purposes of government, not mentioned in the excerpts from these four documents, that you believe should be added to the list of the purposes of government? List them here.

Use either option as part of a cooperative learning Jigsaw structure. Have students complete the rank order activity prior to and/or following the gathering of additional information.

Lesson Three: "The Limits of Law" [p. 19]

"The Limits of Law" has students consider appropriate uses of government power. In a forced choice format, students indicate which of 12 laws are inappropriate uses of government power. Have students individually complete the exercise. Use a show of hands to tally class responses. Record the results on the chalkboard or a transparency. Focus initially on items having the greatest division of opinion. Elicit reasons for positions taken. During discussion, pose such questions as: (1) What is the purpose of this law? (2) Is this a legitimate purpose of government? (3) How far should government be able to intrude on the lives of its citizens? and (4) What makes the use of government power inappropriate? Explore the concept of government's police powers and the tension between the rights of the individual and the common good. This format should make for a lively class discussion. Extend the lesson by having students identify factors and/or values to use in setting appropriate limits for government. Have students consider the issue from a global as well as a national perspective.

Exercise Four: "What Qualities for Citizenship?" [p. 20]

Citizenship is a salient theme in social studies. It is emphasized in the Ohio model social studies curriculum (1995) and in various national standards for social studies, including the National Standards for Civics and Government and the National Council for the Social Studies' Expectations of Excellence: Curriculum Standards for Social Studies (1994). These documents emphasize the rights, responsibilities, and dispositions of a citizen. In "What Qualities for Citizenship," students consider these important topics by focusing on naturalization and the qualities successful applicants should have.

The graphic rating scale format enables students to indicate their feelings about the relative importance of the qualities listed. Tally and record results on the chalkboard or a transparency. Explore student reasoning for choices made. At an appropriate time, clarify which of the qualities on the list are currently required as part of the naturalization process (i.e., b, f, g, h, i, j). Identify other requirements not on the list (e.g., entered the country legally, take a loyalty oath, renounce allegiance to another foreign power). Extend the lesson by discussing current and historical issues related to naturalization (e.g., regulation of immigration; rights of documented and undocumented aliens; special preference policies for family members or desirable occupations).

Exercise Five: "Becoming an American Citizen" [page 21]

This exercise is related to the previous one. Here students explore a situation involving

HOW IMPORTANT A PURPOSE OF GOVERNMENT?

Instructions: Government can be used to serve various purposes. A number of them are listed below. Rank order them to show the relative importance that each of these purposes of government has for you. Place the most important at the top of the list next to number one and the least important at the bottom next to number eight. Arrange the remaining ones in order from most important to least important.

PURPOSES OF GOVERNMENT

Most Important: #1. _____

#2. _____

#3. _____

#4. _____

#5. _____

#6. _____

#7. _____

Least Important: #8. _____

Choices

- Advance the interests of a particular social class or group
- Defend the nation from internal and external threats
- Improve the moral character of citizens
- Live by a common set of religious principles
- Maintain law and order
- Promote economic prosperity
- Protect individual rights
- Work for the good of society as a whole

THE LIMITS OF LAW

Instructions: Below are some laws. Some may be appropriate uses of government power. Others may not be. Decide how you feel about each. Circle the response next to each number to indicate your position. Be prepared to share the reasons for your choices.

APPROPRIATE OR INAPPROPRIATE USES OF GOVERNMENT POWER?

- | | | | |
|-------------|---------------|-----|--|
| Appropriate | Inappropriate | 1. | A law prevents a man from having more than one wife. |
| Appropriate | Inappropriate | 2. | A law requires children between the ages of 6 and 16 to attend school. |
| Appropriate | Inappropriate | 3. | A law makes it illegal for anyone to sell or use cigarettes. |
| Appropriate | Inappropriate | 4. | A law bars people from killing dogs and cats for food. |
| Appropriate | Inappropriate | 5. | A law requires citizens to serve in the nation's armed forces. |
| Appropriate | Inappropriate | 6. | A law limits a woman to bearing only one child. |
| Appropriate | Inappropriate | 7. | A law requires people to pay taxes for services that benefit the community as a whole. |
| Appropriate | Inappropriate | 8. | A law requires employers to maintain clean and safe work places. |
| Appropriate | Inappropriate | 9. | A law requires parents to adequately feed, clothe, and house their children. |
| Appropriate | Inappropriate | 10. | A law sets conditions people must meet in order to drive a motor vehicle. |
| Appropriate | Inappropriate | 11. | A law forbids anyone from engaging in prostitution or supporting that activity. |
| Appropriate | Inappropriate | 12. | A law forbids any business activity on Sundays. |

WHAT QUALITIES FOR CITIZENSHIP?

Instructions: What should be required of immigrants wanting to become citizens of the United States? Listed below are factors that some people consider important. Decide how important you feel each is for becoming an American citizen.

HOW IMPORTANT A FACTOR?

	Not Important			Important	
A. Know someone who lives in the United States.....	1	2	3	4	5
B. Know about American History.....	1	2	3	4	5
C. Believe in God.....	1	2	3	4	5
D. Be of at Least Normal Intelligence.....	1	2	3	4	5
E. Be Able to Play Sports.....	1	2	3	4	5
F. Be Able to Speak, Read and Write English.....	1	2	3	4	5
G. Be Willing to Fight to Defend the U.S.A.....	1	2	3	4	5
H. Be of Good Moral Character.....	1	2	3	4	5
I. Lived in U.S.A. for a Certain Number of Years....	1	2	3	4	5
J. Understand the U.S. Constitution	1	2	3	4	5
K. Have Parent Who is an American Citizen.....	1	2	3	4	5
L. Be Healthy (i.e., have no serious disease).....	1	2	3	4	5

BECOMING AN AMERICAN CITIZEN

Instructions: Naturalization is the legal process by which a person becomes a citizen of another country. The Constitution (Article I, Section 8) gives Congress the exclusive right to set qualifications for naturalization. Requirements include residency in the U.S. for at least five years, being at least 18 years of age, being able to read, write, and speak English, being of good moral character, and having a knowledge and understanding of American history and government. The story that follows is about a man who wants to become an American citizen. However, he is unable to meet all legal requirements. Read the story and answer the questions that follow. If you were in charge of making the decision, would let this man become an American citizen?

TO BE OR NOT TO BE AN AMERICAN CITIZEN

Michael Wu is a 25-year-old immigrant from Taiwan. He wants to be an American citizen. He speaks fluent English and Chinese and is hard-working and patriotic. He has applied for citizenship, but his application has been denied. The problem is that Michael Wu cannot pass the naturalization test, which requires knowledge and understanding of American history and government. A spokesperson for the Immigration and Naturalization Service has called the test "necessary and fair."

Michael Wu has permanent resident status and cannot be deported. He also has Down syndrome, a form of mental retardation. Despite studying very hard for the test, Michael Wu has failed it repeatedly. His mother feels the test is too hard for her son. She has helped him study for it, but now believes he will never be able to pass it. Michael thinks that his mental retardation should not be a barrier to citizenship. He and his parents have asked their congressman to introduce a special bill to waive the test for Michael. This would permit him to become an American citizen. Assume you were a member of Congress. Would you vote for this special law? Should an exception be made in this case?

*Adapted from an article in USA Today (February 5, 1992)

Questions to Consider

1. What are some of the important responsibilities of citizenship? Make a list of them on a separate piece of paper. Place a check next to the ones you feel Michael Wu would be able to carry out.
2. Should immigrants who want to become American citizens be required to be able read, write, and speak English? Explain your reasoning.
3. Should immigrants who want to become American citizens be required to have knowledge and understanding of American history and government? Explain why.
4. Should a special law be passed letting Michael Wu become an American citizen without having to pass the test? Identify at least two reasons for supporting this law. Then identify at least two reasons opposing this law. What decision would you make?
5. If you were in charge, what qualifications would you set for naturalization?

CHAPTER II. OUR FEDERAL SYSTEM OF GOVERNMENT

On July 4, 1776, the Continental Congress ratified the Declaration of Independence and officially severed ties between the colonies and Great Britain. A new nation, guided by a set of revolutionary principles, was emerging.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed; That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute a new Government, laying its foundation on such principles and organizing its power in such form, as to them shall seem most likely to effect their Safety and Happiness.

The words in this excerpt from the Declaration of Independence are among the most familiar of any in our political documents. The assertions contained therein have become the bedrock of our way of life. They express our understanding of the fundamental relationship we, as a people, have with our government.

To believe that all people are born with the same fundamental human rights is to understand the relationship between a people and their government as one of delegator and delegatee. The people possess rights independent of government. To safeguard and ensure enjoyment of those rights, the people agree to restrict, or delegate, some of their fundamental rights to government. In so doing, they establish a fiduciary relationship with government, entrusting it with limited powers to achieve desired ends. If the government fails to honor that relationship, then the people have the right -- indeed, the duty -- to alter or abolish that government and put into place a new government that will responsibly discharge its obligations to safeguard the people's fundamental human rights.

Similar sentiments are expressed in constitutions the soon-to-be-states adopted in 1776 and thereafter. They were encouraged in this endeavor by the Second Continental Congress. New Hampshire (January, 1776), South Carolina (March, 1776), Virginia (June, 1776) and New Jersey (July, 1776) adopted their respective constitutions prior to the issuance of the Declaration of Independence. All told, 11 of the 13 former colonies adopted constitutions. New Hampshire, South Carolina, Virginia, New Jersey, Delaware, Pennsylvania, Maryland, and North Carolina adopted constitutions in 1776, Georgia and New York in 1777, and Massachusetts in 1780. The

latter was the only state to submit the document directly to its citizens for ratification. Two states, Connecticut and Rhode Island, did not adopt constitutions but continued to use their liberal colonial charters after deleting all references to the British government and King.

The 11 state constitutions had much in common. They echoed the principles embedded in the Declaration of Independence, especially that of the sovereignty of the people. Seven of the 11 state constitutions included a bill of rights. All provided for three branches of state government and, in reaction to their prior experiences, gave the bulk of power to the legislative branch. These state constitutions proved enormously influential in the development of the federal Constitution. Many of the principles embodied in them, particularly in the seven states' bills of rights, were eventually incorporated in the Constitution of the United States.

The Constitution of the United States followed less than a decade of experience under a different constitution known as the Articles of Confederation. This form of government was approved by the Second Continental Congress on November 15, 1777, but was not ratified until 1781, even though 11 states had approved it within a year (unanimity was required). That formal plan of government established a confederal form of government. Article 2 of the Articles of Confederation stated, "*Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.*" Thus the several member states possessed ultimate authority. There was a central government, known as the Congress of "The United States of America," but it had very limited powers -- only those "expressly delegated" by the member states.

Our first national constitution soon proved unequal to the task before it. The newly created government of the United States of America was beset by economic and political problems resulting from war and its aftermath and plagued by growing animosities among the states. The system of government established by the Articles of Confederation was unable to adequately to handle the tasks it faced. Resultant problems ultimately led to the call by the Congress of the United States, on February 21, 1787, for the states to send delegates to Philadelphia "*for the sole and express purpose of revising the Articles of Confederation...[to render the Articles] adequate to the exigencies of Government and the preservation of the Union.*" Instead of heeding that charge, the delegates to the Philadelphia meeting, conducting their proceedings in secrecy, drafted a new constitution.

The constitutional convention began May 25, 1787, on the first day that a quorum of the states was present. It concluded on September 17, 1787. In less than four months, the delegates produced a remarkable document, the Constitution of the United States. On the last day of the meeting, 39 of the 42 delegates present demonstrated their approval by signing their names to the completed constitution. Less than two weeks later, on September 28, the Congress assembled under the Articles of Confederation voted to transmit the Constitution to the states for approval. As stipulated in Article VII, each state needed to assemble a special convention to vote on whether to ratify the document. Nine states had to approve ratification for the Constitution to go into effect.

For the remainder of 1787 and until June, 1788, the merits and demerits of the new Constitution were debated. Two factions emerged -- the Federalists, who supported the new Constitution, and the Anti-federalists, who opposed it. Beginning in October 27, 1787, a series of essays (or letters to the public) written by "Publius" (originally "A Citizen of New York") appeared in New York City newspapers. These essays, ultimately 85 in all, addressed criticisms levelled against the Constitution and argued for its adoption. They were later published in book form as the Federalist. "Publius" was the penname used by Alexander Hamilton, James Madison, and John Jay. Hamilton wrote most of the essays; Jay wrote the fewest.

On June 21, 1788, New Hampshire became the ninth state to ratify the Constitution. Shortly thereafter, Virginia (June 25) and New York (July 26) followed suit. The first elections under the Constitution were held in the early months of 1789. The newly created Congress officially convened for the first time on March 3, 1789. On April 30, 1789, George Washington was inaugurated as the first President of the United States. On September 25, Congress submitted to the states 12 proposed amendments, of which ten were subsequently ratified by the states. In the interim, North Carolina (November) and Rhode Island (May, 1790) voted to ratify the Constitution. On December 15, 1791, the Bill of Rights became part of the Constitution.

Fundamental Principles in the Constitution of the United States

In 1987, the people of the United States celebrated the 200th anniversary of the Constitution. It is the oldest written national constitution still in use. Despite the tremendous societal changes that have occurred in the more than 200 years of its existence, the Constitution remains a vital part of our heritage and a force affecting all aspects of our daily lives.

Writing about the Constitution, Jethro Liberman (1987) asked, "*How could a shifting mixture of fifty-odd men sitting in a sweltering room in Philadelphia for four months lay down a charter under which we still live two hundred years later, in a world that would be unrecognizable to any of them?*" His response was as follows:

The short answer is that they gave their countrymen and their descendants a philosophy -- constitutionalism -- not a black-letter code. Philosophies, unlike codes, can outlast the conditions that give them birth. Far longer than codes, philosophies can shape the future. But the Founding Fathers did not need to anticipate the future; in prescribing a philosophy of politics by which they hoped to solve their own problems, they were progenitors of our own age -- the age of freedom.

By freedom, they assuredly did not mean license. They meant, rather, the power of the people to share in the government. Liberty is 'the happiness of living under laws of our own making'; hence, liberty is self-government. But freedom also came to be understood as something more: freedom from government as much as liberty to share in government (p. 10). [emphasis in the original]

The philosophy embodied in the document produced by that "*shifting mixture of fifty-odd*

men sitting in a sweltering room in Philadelphia for four months" represents a synthesis of a number of fundamental principles. Among them are:

- the principle of popular sovereignty;
- the principle of limited government;
- the principle of separation of powers;
- the principle of checks and balances;
- the principle of federalism;
- the principle of rule of law; and,
- the principle of peaceful change.

A brief discussion of each of these fundamental principles follows.

The Principle of Popular Sovereignty

The principle of popular sovereignty is most clearly expressed in the following words contained in the Preamble to the Constitution: "*We the People of the United States... do ordain and establish this Constitution for the United States of America.*" These words echo the phrase in the Declaration of Independence that "*governments are instituted among men, deriving their just powers from the consent of the governed.*" The phrase, "We the People," makes explicit where the power of government resides -- in the people. It is the people of the United States who delegate power to government, not the reverse. The Preamble also specifies six purposes to be achieved by government, thus explaining why the people are willing to delegate power to it. Those purposes are to: (1) "*form a more perfect union,*" (2) "*establish Justice,*" (3) "*insure domestic Tranquility,*" (4) "*provide for the common defense,*" (5) "*promote the general Welfare,*" and (6) "*secure the Blessings of Liberty to ourselves and our Posterity.*"

Provisions in the body of the Constitution that speak to the election of government officials by the people ensure that popular sovereignty will exist. For example, Article IV, Section 4 provides that the United States government guarantee a republican form of government to every state in the Union. Article I, Section 2 stipulates that members of the House of Representatives be chosen every two years "*by the people of the several States.*" Amendments have subsequently expanded this principle. The Sixteenth Amendment (1913) empowered the people, rather than state legislatures, to elect members of the United States Senate. The Fifteenth Amendment (1870) expanded the franchise by guaranteeing African-Americans the right to vote. The Nineteenth Amendment (1920) further broadened the franchise by guaranteeing women the right to vote. The Twenty-Third Amendment gave residents of the District of Columbia the right to vote for president and vice-president (i.e., three electoral

votes), and the Twenty-Sixth Amendment (1971) lowered the voting age to 18. In addition, the Twenty-Fourth Amendment (1964) outlawed the use of poll taxes in federal elections. This was followed by a Supreme Court decision in 1966 declaring unconstitutional the practice of using poll taxes in state and local elections. Together, these provisions ensure that the principle of popular sovereignty is alive and well in the United States.

The Principle of Limited Government

The principle of limited government flows from the principle of popular sovereignty. Power resides with the people. It is the people who delegate limited powers to government. Government may only carry out those powers delegated to it.

The principle of limited government is in evidence in many sections of the Constitution. Some parts of the Constitution delegate specific rights to government. Other parts specifically deny rights to government. For example, Article I, Section 8, expressly lists most of the powers the Constitution grants to the federal government. This part of the Constitution, which speaks to the legislative branch, delegates more than two dozen different powers to Congress. Article II, Section 2, delegates specific powers to the President. Apart from these affirmative delegations of power, the Constitution also denies authority to government. For example, Article I, Section 9 lists nine practices in which the Congress may not engage (e.g., may not tax exports, pass *ex post facto* laws, grant titles of nobility). Amendments 1 through 10 also directly or indirectly limit the powers of the federal government (e.g., "*Congress shall make no law respecting an establishment of religion...*"). In similar fashion, Article I, Section 10 lists practices in which the states may not engage. Amendments 14 and 15 impose other restrictions on the states.

The Principle of Separation of Powers

Recognizing the need for a central government but fearful that the consolidation of power would lead to tyranny, the framers crafted a structure that includes three separate functions of government, the processes used to select persons to fill positions in those three branches, and the length of time the persons in those positions hold office. The separation of the legislative, executive, and judicial functions is expressed in the first three articles of the Constitution as follows:

Article I, Section 1: "*All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.*"

Article II, Section 1: "*The executive power shall be vested in a President of the United States of America....*"

Article III, Section 1: "*The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.*"

Subsequent sections in each of these three articles articulate the specific powers delegated and denied to each of these branches of government.

In addition to separating government authority into three branches, the Constitution also establishes different constituencies and different term lengths for those holding offices in the three branches. Members of the House of Representatives, who have two-year terms, are elected directly by the people. Members of the Senate, who have six-year terms, were chosen originally by state legislatures, but since the passage of the Seventeenth Amendment in 1913, are elected directly by the people. The President of the United States has a four-year term, and is chosen by the members of the Electoral College, who are elected by the people of their respective states. Electors have no duties other than to choose the President of the United States. The members of the federal judiciary operate in accordance with a different set of procedures. Federal judges hold office "during good behavior" (i.e., receive lifetime appointments). They are appointed by the President and must be confirmed by the members of the Senate.

The Principle of Checks and Balances

The Constitution of the United States does more than just separate governmental functions into three branches. It also restricts the independence of the branches by a system of interdependent relationships known as checks-and-balances. These permit each branch to restrain (i.e., check and balance) the other two branches.

Presidential elections provide a good example of the checks-and-balances system at work. During a presidential campaign, candidates identify programs they favor and commit themselves to getting those programs enacted into law. After the election, the winning candidate takes office and seeks passage of laws to make favored programs a reality. The president, though, has no constitutional authority to pass laws. The president may only recommend legislation. The Congress has the constitutional authority to enact laws. However, the legislative authority of Congress is not absolute. A proposed law passed by both houses of Congress requires presidential action. The President may sign or veto proposed legislation. Except in situations in which less than ten days remain in a legislative session, Congress has the authority to override a presidential veto. To do so requires a higher percentage of votes approving such action (i.e., a two-thirds vote in both houses of Congress) than the percentage needed to pass the law originally (i.e., a majority vote). Assuming the necessary votes are obtained, the law is passed without presidential approval. However, another check on the law-making powers of Congress exists. If legally challenged as to its constitutionality, then the federal courts of the judicial branch become involved. Under the doctrine of judicial review, the federal courts have the authority to declare a statute passed by Congress to be unconstitutional. In this way, the three branches of the federal government check and balance one another.

Other examples could be cited. In recent years, the war-making powers of the federal government have involved checks-and-balances issues between the executive and legislative branches. So, too, has the president's authority to nominate members of the executive and

judicial branches, especially when nominations involve the Supreme Court. Such situations highlight the adversarial nature of the checks-and-balances system. On the other hand, many cooperative, non-adversarial relationships occur. The essential point is to recognize how the checks-and-balances system facilitates compromise and helps safeguard against tyrannical government.

The Principle of Federalism

The Constitution does more than separate legislative, executive, and judicial power at the national level and create a checks-and-balances system involving those three branches of government. It further disperses power by dividing authority between the national government and state governments. This is known as the principle of federalism. It is a compromise between a unitary form of government, in which power rests with the national government, and a confederal form of government, in which power resides with its constituent members (e.g., states). Federalism permits the national and state governments to exercise power in their respective areas of authority under the Constitution.

The Founding Fathers had experience with a monarchical version of unitary government and found it wanting. They also had experience with a confederal government under the Articles of Confederation. It, too, proved unsatisfactory. In creating a federal form of government, the Founding Fathers sought to draw on the strengths of the unitary and confederal forms of government while avoiding their respective shortcomings.

Federalism was the unique solution to the problem facing the Founding Fathers. At the time it was proposed, no other examples existed. This point was acknowledged by both critics and supporters of the newly drawn constitution. In Federalist Number 39, James Madison explained the proposed federal system in the following way:

The idea of a national government involves in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature.... [A]ll local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure.... [T]he proposed government cannot be deemed a national one, since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. [emphasis in the original]

Madison stressed in Federalist Number 46 that, "*the federal and state governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes.*" Limiting the powers of a national government to "*certain enumerated objects only*" and leaving "*to the several States a residuary and inviolable sovereignty over all other objects*" is the essence of federalism, and has proven to be one of the greatest contributions of the constitutional convention to the art of government.

The Principle of the Rule of Law

Constitutions are of little value unless they can be enforced. This issue is commonly expressed as whether there exists a government of laws or a government of men. In a government of laws, the rule of law prevails (i.e., the principle of constitutionalism). Individuals and government officials are required to act in accordance with established legal principles and practices, even when those legal principles and practices prove annoying, inconvenient, or inefficient. By contrast, in a government of men, expediency is the rule. Individuals and government officials are free to take actions they consider in their best interests, even though those actions violate established legal principles and practices.

Ours is a government of laws. In it, the principle of constitutionalism prevails, which assures that the rights of the people are protected and the power of government officials is limited.

In the Constitution of the United States, the supremacy clause contained in Article VI, Section 2 provides that the United States Constitution is "*the supreme law of the land.*" States are bound by federal law. They may not act in ways that conflict with the federal government's exercise of authority as granted by the Constitution. By the same token, the federal government may not exceed its authority. It, too, is bound by the Constitution and the provisions contained therein.

Judicial review is the key element of constitutionalism because it ensures that the rule of law will prevail. Judicial review permits the courts to decide whether government actions at the national, state, or local level are consistent with the provisions of the Constitution. Those actions the courts deem inconsistent with the Constitution are subsequently declared unconstitutional, making them null and void. Thus, the courts enforce the will of the people as expressed in the Constitution (i.e., the rule of law) against the disregard of that will by government officials (i.e., the rule of men).

The doctrine of judicial review is not specifically stated in the federal Constitution, although it is clearly implied. It resulted from the United States Supreme Court's Marbury v. Madison decision in 1803, which was the first instance that the Supreme Court held a law of Congress unconstitutional. In that decision, Chief Justice John Marshall explicated the principle of constitutionalism. He wrote:

The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory

of every such government must be that an act of the legislature repugnant to the Constitution is void....

In rendering the Court's decision, Marshall stressed that, "*It is emphatically the province and duty of the judicial department to say what the law is.*"

All federal and most state courts may exercise judicial review, although the Supreme Court of the United States is the ultimate authority on issues of constitutionality. Courts apply judicial review only in actual cases brought before them as part of the normal exercise of their judicial function to settle controversies. They do not consider questions of constitutionality apart from actual controversies that are properly before the court and therefore affect the rights of the parties involved.

The Principle of Peaceful Change

Recognizing the need for flexibility, the delegates at the Constitutional Convention included a procedure for formally changing the Constitution. Article V explicates that procedure. It consists of a two-step process involving the proposing of an amendment at the national level and the ratifying of that amendment at the state level.

There are two ways to propose an amendment. The first requires a two-thirds vote in favor of the proposed amendment in both the House of Representatives and the Senate. The second is by a national convention called by Congress upon application from two-thirds of the legislatures of the states (i.e., 34 states). Only the first of these two methods has been used. A national convention has never been held, although there have been several hundred attempts to do so. In recent years, two attempts to convene a national convention nearly succeeded. One, in the 1960s, was in reaction to two Supreme Court decisions requiring states to elect members to their respective legislatures from districts in accordance with the "one man, one vote" principle (i.e., all districts comprised of approximately equal population). Thirty-three of the state legislatures supported that initiative -- one less than the required minimum. The other attempt occurred in the 1980's in reaction to the refusal of Congress to propose a balanced budget amendment. That effort narrowly failed, falling two states short.

After an amendment has been proposed, it must be ratified, or approved, by three-fourths of the states (i.e., 38). There are two ways to do this. One involves approval by three-fourths of the state legislatures. The other calls for approval by three-fourths of specially called state conventions. The first method, which has been used for all but one of the amendments that have been added to the Constitution, permits the Constitution to be amended without direct voter participation. The other method, which permits greater voter involvement, was used only once -- whether to repeal the Eighteenth Amendment (Prohibition). Congress has the option of deciding which method of ratification will be used.

The process for changing the Constitution is necessarily difficult and involved. Since 1789, thousands of amendments have been proposed; only 27 have been ratified, including the

ten ratified in 1791 known as the Bill of Rights. Nevertheless, providing the opportunity to make formal changes in the Constitution in a peaceful manner constitutes an important right of the people and a safeguard against arbitrary government.

The Distribution of Power

Federalism is at the heart of the genius of the American system of government. It establishes both a central government and state governments, with acknowledged spheres of authority. The result is that we live in a nation of 51 separate constitutions -- a federal constitution and 50 state constitutions -- one federal and 50 state -- and are subject to at least two of them simultaneously -- the federal constitution and the constitution of the state in which we are present at any given moment.

As the supreme law of the land, the Constitution of the United States ensures that a basic structure and system of government will prevail in the face of differences that may exist in respective states. Nebraska is free to have a unicameral legislature, although all other states and the federal government have bicameral legislatures. North Carolina may choose to deny its governor the power of veto, though all other states and the federal government extend this power to their chief executives. In similar fashion, some states are involved in the liquor business, operating state stores for that purpose, and some in the gambling business, with casinos, lotteries, and/or off-track betting. Other states choose not to get involved. Overall, federalism affords the benefits that emanate from national unity and the advantages that accrue from diversity.

The Constitution of the United States creates and holds together our federal system. It provides the framework for dividing authority between the national government and the states, specifying the types of powers each enjoys and the types of obligations each bears.

The Division of Powers

Powers of the Federal Government

The Founding Fathers feared the concentration of power in a central government. They favored limited government and recognized the value of local self-government. At the same time, their experience under the Articles of Confederation convinced them of the need for a central government with sufficient power to meet the nation's needs. Their solution was to safeguard against potential abuse by delegating specific powers to a national government deemed necessary and proper to meet national needs. Thus, the federal government possesses only those powers granted to it by the Constitution. And, within those spheres, the states have no constitutional authority -- the federal government is supreme.

The federal government has three types of powers. One type, known as expressed or enumerated powers, consists of powers that are directly stated in the Constitution. A second

powers specifically allocated to the federal government in the Constitution. The third type, known as inherent powers, is more nebulous. These powers belong to the federal government by virtue of its very existence. An explanation of each of these three types of powers belonging to the government of the United States of America follows.

The Expressed Powers

Most of the expressly stated powers allocated to the federal government are vested in Congress, which makes up the legislative branch. They are found in Article I, Section 8 of the Constitution. Section 8 begins with these five words: "*The Congress shall have Power.*" Eighteen separate clauses follow, containing a number of different powers delegated to Congress. Included are such powers as the power to levy and collect taxes, to regulate commerce with foreign nations and among the states, to borrow money on the credit of the United States, to coin money and regulate its value, to establish post offices, to declare war, to raise and support armies, and to provide and maintain a navy. In addition, Article III, Section 3 gives Congress the power to declare the punishment of treason. And, Article IV, Section 3 gives Congress the power to admit new states to the Union and to make rules and regulations for governing territories and selling property belonging to the United States.

Article II, Section 2 allocates certain powers to the president. These powers include the right to serve as the Commander-in-Chief of the armed forces, to grant reprieves and pardons, to make treaties, and to appoint ambassadors, judges of the Supreme Court, and other federal officials. Article III specifies the jurisdiction of the federal courts (e.g., cases involving ambassadors, all cases of admiralty and maritime jurisdiction, controversies between two or more states) and the types of cases in which the Supreme Court shall enjoy original jurisdiction and appellate jurisdiction.

Amendments are another source of expressed powers. The Sixteenth Amendment, for example, grants to Congress the power "*to lay and collect taxes on incomes.*" The Nineteenth (granting women the right to vote) and Twenty-fourth (barring poll taxes in federal elections) Amendments delegate enforcement power to Congress. The Thirteenth (forbidding slavery), the Fourteenth (with its privileges or immunities clause, its due process clause, and its equal protection clause), and the Fifteenth (forbidding denial of the right to vote because of race, color, or condition of servitude) Amendments were most significant in altering the relationship between state governments and the federal government. These three amendments, which were the first grants of legislative power to Congress since the adoption of the original Constitution, greatly extended the power of the federal government over the states.

In his dissenting opinion in the 1995 term-limits decision (*U.S. Term Limits Inc. v. Thornton*), Justice Clarence Thomas of the Supreme Court of the United States spoke to the principle involved in enumerating the powers of the federal government. He wrote, "*Our system of government rests on one overriding principle: all power stems from the consent of the people. ... [T]he federal government enjoys no authority beyond what the Constitution confers; the federal government's powers are limited and enumerated....*" In so doing, however, he also

acknowledged another basis for the federal government's powers. The Constitution speaks "expressly" and "by way of necessary implication." Thus arise the concepts of implied powers and inherent powers.

The Implied Powers

Implied powers are those powers that emanate logically from expressed powers ("by way of necessary implication"). They enable the government to carry out those powers expressly delegated to it. James Madison addressed the inevitability of implied powers in Federalist Number 44. He wrote, "No axiom is more clearly established in law, or in reason, that whenever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included."

Article I, Section 8, Clause 18 is the constitutional basis for implied powers. That clause reads:

[Congress shall have the power] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The key phrase in this passage is "Laws which shall be necessary and proper." In determining what is "necessary and proper," Chief Justice John Marshall declared in McCulloch v. Maryland (1819), the case which upheld the doctrine of implied powers, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

The "necessary and proper" clause is often referred to as "the elastic clause." Like the proverbial rubber band, this clause is capable of being stretched far beyond its original shape, thus enabling the federal government to expand its powers significantly. Hence, the federal government has been able to do such things as: (1) establish the Federal Reserve System and insure savings accounts in banks and savings and loan institutions; (2) regulate conditions of employment, set a minimum wage and provide unemployment insurance; (3) create a series of federal crimes such as attacks on federal officials, kidnapping, illegal drugs, violent protests at abortion clinics, carjackings, and drive-by shootings; (4) build, maintain, and regulate roads and dams; and (5) prohibit discrimination in access or service to hotels, motels, theaters, restaurants, and other public accommodations on the grounds of race, color of skin, religion, or national origin.

In recent years, the federal government has extended its reach into various areas traditionally reserved to the states, including setting a minimum age for drinking alcohol and mandating maximum highway speed limits. Such actions have resulted from federal grant-in-aid programs, whereby the federal government makes money available to the states on condition that

federal funds be used for specific purposes and in accordance with specific guidelines. (i.e., conditions). Based on the power to tax found in Article I, Section 8, grant-in-aid programs illustrate how implied powers expand Congressional authority.

In 1984, Congress passed the National Minimum Drinking Age Act with the express purpose of establishing age 21 as the national minimum age for drinking. The law provided that any state which did not make 21 the minimum drinking age would be denied up to 15 percent of its total annual share of federal highway funds. When the state of South Dakota challenged this law as an unconstitutional usurpation of authority, the Supreme Court, in South Dakota v. Dole, disagreed. The Court ruled that Congress was within its constitutional authority to attach reasonable conditions to the grants-in-aid it makes available to the States. South Dakota, or any other state, is free to refuse to accept any federal grant whose conditions it deems unacceptable.

Throughout the history of the United States, the elastic clause has proven to be very expansive, especially in the twentieth century. But, as evidenced by the 1995 Supreme Court decision in United States v. Lopez, the concept of implied powers does not give the federal government the license to assume any and all powers. In that case, the Supreme Court ruled invalid the Gun-Free School Zones Act of 1990, which made the possession of a firearm within 1,000 feet of a school a federal offense. Authority to make such a law was based on implied powers related to the commerce clause in the Constitution. A federal appeals court characterized the law as "*a singular incursion by the federal government into territory long occupied by the states.*" The Supreme Court agreed, holding that the anti-gun law was "*a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms.*" In this 5-4 decision, Chief Justice William Rehnquist, writing for the Court majority, pointed out that,

Under the theories that the government presents in support of ...[this law], it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where states historically have been sovereign. Thus, if we were to accept the government's arguments, we are hard-pressed to posit any activity to an individual that Congress is without power to regulate....

In rendering this decision, the Supreme Court, for the first time since 1936, ruled a federal law unconstitutional on the grounds that Congress had exceeded its powers under the commerce clause. The implications of that decision have yet to be felt.

The Inherent Powers

Like implied powers, the concept of inherent powers deals with the assumption of powers by the federal government through interpretation. These powers are understood to exist by virtue of being a government (i.e., inherent in the very existence of government). Examples include the right of a government to add territory by discovery or conquest, to protect itself from invasion or rebellion, to regulate immigration, and to establish diplomatic relations with other

nations. Although such powers can be related to expressed powers, the Framers of the Constitution did not deem it necessary to do so. The absence of these powers in the Constitution may be attributable to the perception that, because such powers are considered inherent in any national government, it was unnecessary or superfluous to state them expressly.

Powers Denied the Federal Government

The Constitution delegates powers to the federal government; it also denies certain powers. For example, Article I, Section 9 specifically prohibits the federal government from suspending the privilege of the writ of habeas corpus except during invasions or insurrections, passing ex post facto laws and bills declaring persons guilty of a crime without a court trial (i.e., bills of attainder), taxing exports, passing laws favoring the trade and commerce of any state, spending government money without passage of an appropriation law by Congress, or granting titles of nobility. The Bill of Rights includes additional examples. The federal government cannot seize private property for public use without paying the owner a fair price. It may not conduct illegal searches or seizures, deny a person charged with a serious crime a speedy and public trial, or a trial by jury. Congress may not create or favor an official religion or limit the rights of the people to worship in their own way, speak and write their opinions freely, gather together in meetings, or petition the government to correct abuses. In addition to specific prohibitions, the Tenth Amendment also denies the federal government powers that have not been delegated to it. The meaning of this amendment is coming under increasing scrutiny by the courts, as evidenced by the 1995 Supreme Court decision in Term Limits Inc. v. Thornton, a case involving state and congressional efforts to establish term limits for members of Congress.

Powers of State Governments

Federalism permits state governments to enjoy an enormous range of powers. In contrast to the powers of the federal government, which are expressly stated in the Constitution, the powers of the states are unmentioned. They include all powers the Constitution does not delegate to the federal government or deny to the states.

Under the Constitution, states assume primary responsibility for matters affecting people on a day-by-day basis. Thus, car license, registration and inspection requirements, local speed limits and zoning laws, and schools are the province of state legislatures and local governments. In our federal system, states assume the central lawmaking role dealing with local and statewide concerns in accordance with local customs, traditions, needs, and wants. In contrast, the scope of authority of the federal government is broader, for it deals with matters of wider concern. State courts are autonomous in interpreting state law. Federal review is limited to federal questions -- that is, issues involving whether a state law or a state court decision is in conflict with a federal law or the Constitution itself.

Powers Denied State Governments

As discussed previously, the bulk of the federal government's powers are specified in

Article I, Section 8 of the Constitution. The next two sections contain lists of powers denied to government. Section 9 pertains to the national government; Section 10 pertains to the state governments.

States are denied authority to make treaties or alliances with other countries. Likewise, they may not, without the consent of Congress, enter into any agreements among themselves or with a foreign power. Without the consent of Congress, states may not raise an army or navy in peacetime or engage in war, unless they are actually invaded or in immediate danger of being invaded. With respect to taxation, the Constitution bars states from imposing port duties or taxing imports or exports without the consent of Congress. In addition, states may not coin money, grant titles of nobility, or pass bills of attainder, ex post facto laws, or laws impairing contracts.

Amendments have also restricted the powers of state governments. For example, the Fourteenth Amendment, among other provisions, prohibits state governments from making or enforcing any law that limits the rights of citizens of the United States, denies citizens the equal protection of the laws, or deprives citizens of life, liberty, or property without due process of law. With respect to voting, states may not prevent citizens from voting because of race or color (i.e., the Fifteenth Amendment), gender (i.e., the Nineteenth Amendment), or age, for persons who are at least 18 years old (i.e., the Twenty-Sixth Amendment). States are also prohibited from requiring citizens to pay a poll tax in order to vote in a federal election.

The Reserved Powers

As mentioned, the Tenth Amendment forms the basis for the powers possessed by state governments. It states, "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" Despite the limitations previously cited, state governments have a wide range of powers. Those powers fall into such broad categories as:

- **the power to promote public health** (e.g., requirements for inoculations; the regulation of doctors, nurses, and other health-related professionals; and regulations governing the development, distribution, and use of drugs);
- **the power to provide for the public safety** (e.g., requirements for and regulation of police and fire services, motor vehicle operations, and building construction);
- **the power to provide for the general welfare** (e.g., establishing unemployment, welfare, and dependent children programs; regulating public utilities; and creating parks and recreational facilities);
- **the power to protect public morals** (e.g., establishing standards relating to obscenity, prostitution, gambling, and the sale and use of alcohol and tobacco products); and

- **the power to provide for public education** (e.g., requiring school attendance; certifying teachers and other school personnel, and stipulating graduation standards).

In carrying out their powers, state governments are free to exercise authority in all areas in which they are not forbidden by the Constitution. However, the supremacy clause, found in Article V of the Constitution, ensures that states may not intrude on the powers of the federal government. In clashes between state government and the federal government, the state must yield if the federal government is acting within its constitutional authority.

The Powers of Local Governments

Local governments are the creation of state governments. Their very existence depends on the constitution of the state in which they are located. State governments are unitary, not federal, systems. Local governments are wholly dependent on the powers allocated to them by their respective state government, including whatever constitutional restrictions the people of the state decide to impose on their state government.

Powers Shared by the Federal and State Governments

Expressed powers are those powers specifically delegated to the federal government in the Constitution. Implied and inherent powers enlarge the federal government's authority beyond those powers expressly stated in the Constitution. In most instances, those powers may be exercised only by the federal government. However, some of the powers exercised by the federal government are exercised by state governments as well. For example, both the federal and state governments have the power to tax. Hence, Americans are subject to federal, state, and local taxes. The federal and state governments also have the power to make and enforce civil and criminal laws, to establish courts, and to set up and administer penal institutions. These are known as concurrent powers.

Concurrent powers are those areas of authority that both the federal and state governments have the right to exercise within their respective sphere of jurisdiction. The Constitution neither assigns those powers exclusively to the federal government nor denies them to the states. Both the federal and state governments exercise concurrent powers independent of each other and are limited only by provisions in the Constitution. If state constitutional provisions or laws conflict with the Constitution, the supremacy clause in the Constitution applies to the situation. States must modify their actions to comply with this important constitutional principle.

Obligations of the Federal and State Governments

The Constitution not only delegates and apportions power between the federal and state governments but also imposes obligations on each of them. These obligations are designed to ensure that essential elements of the federal system are maintained.

Obligations of the Federal Government

Ensure A Republican Form of Government for States

The federal government must guarantee a republican form of government to every state (Article IV, Section 4). However, the Constitution is silent on what constitutes a republican form of government and the courts have been reluctant to deal with this matter.

The question first arose in Rhode Island in the 1840's through an incident known as Doerr's Rebellion of 1842. In 1841, the people of Rhode Island voted to adopt a new constitution, replacing the existing constitution, an adaptation of the royal charter which had been in force since the American Revolution. The old constitution contained no provision for amendment. Thomas Doerr was elected governor under the new constitution. When the existing charter government declared the new government illegal, Doerr prepared to assert the authority of the new government by force. Faced with this possibility, the old government declared the State under martial law and called out the militia to put down the uprising. The existing governor appealed to President Tyler for support. Tyler recognized the governor under the charter government as the legitimate office holder and took measures to call out the militia to support his authority. That proved unnecessary and the existing government prevailed.

The Rhode Island dispute came before the Supreme Court in 1849 in Luther v. Borden. Martin Luther, a supporter of the new government, brought action, charging that Borden and other members of the state militia were guilty of trespass. He reasoned that, because the government the militia represented had been voted out by the people, it no longer had legitimate authority. Thus, Borden and the others had illegally invaded his home. To bolster his claim, Luther argued that the old government was not a republican form of government. The new government was and should be recognized as the legitimate government of Rhode Island.

The Supreme Court refused to decide which of the two governments was legitimate. Chief Justice Roger Taney held that such a determination was "*a question to be settled by the political power,*" not the courts. This decision gave rise to the Court's "*political question*" doctrine, by which the Supreme Court has avoided certain issues, asserting that they are matters to be decided by the other branches of government. The Court's refusal to intervene in the dispute over delegate credentials to the 1972 Democratic National Convention (O'Brien v. Brown) and in a 1973 case charging the Vietnam war was unconstitutional (Atlee v. Laird) are more recent applications of this doctrine.

During ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments, Congress confronted the issue of what constitutes a republican government, an issue that had been raised in the Rhode Island controversy. Faced with reluctant legislatures in southern states, Congress held that several of them did not have governments that were republican in form. It refused to seat the Representatives and Senators from those states until such time as those states ratified the proposed constitutional amendments and changed their constitutions to broaden the franchise and make their governments more representative.

Protect States Against Invasion and Domestic Violence

Article IV, Section 4 also specified that the United States government will protect the states against invasion and domestic violence. The obligation to protect states from invasion was included to ensure that an attack on one state would be considered an attack on all states. This principle was not at all well-established or certain at the time of the Constitutional Convention. Deemed important to include at the time the Constitution was written, this obligation is readily accepted today.

The states also received assurances that the national government would aid a state beset by domestic violence within its borders. The Constitution provides that such aid shall be given upon request of the state's legislature or governor. Throughout the history of the United States, federal troops have seldom been sent to a state to quell violence. President Lyndon Johnson used federal troops in response to racial violence that followed the assassination of Dr. Martin Luther King, Jr. However, President Eisenhower's use of federal troops to facilitate integration in Little Rock, Arkansas and President Kennedy's use of federal troops in Oxford, Mississippi following James Meredith's admission to the University of Mississippi are examples of actions taken without the request or concurrence of the state's legislature or governor. Authority for such action is based on the provision in Article II, Section 2 -- the president "*shall take Care that the Laws be faithfully executed*" (e.g., upholding a court order).

Respect The Integrity of Each State

Various provisions of the Constitution obligate Congress to respect the legal existence and physical boundaries of each state. For example, Article IV, Section 3 empowers Congress to admit new states to the Union. In so doing, Congress must safeguard the territorial integrity of each existing state. It is prohibited from approving the formation of new states resulting from the division or joining of parts of existing states without the consent of the state legislatures involved. Article V stipulates that no amendment can be passed that diminishes a state's representation in the Senate, unless that state is part of the action.

Obligations of State Governments

Article IV of the Constitution deals with relations among the states. It sets forth obligations of both state governments and the federal government. The first two sections of Article IV deal with state obligations.

Respecting Official State Actions

Article IV, Section One declares that, "*Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.*" That is, each state must respect and honor the laws and other official actions of all other states. Thus legal documents, such as contracts, deeds, birth certificates and marriage licenses, properly executed under the laws of one state must be recognized and considered valid by the other states. Court

judgments involving civil damage awards, probated wills, and disputed property claims, must also be honored. In other words, if a couple is married legally in New Jersey and they subsequently move to Ohio, their marriage will be considered valid in Ohio even though they were not married in that state. If a resident of Ohio dies, has a valid will, and leaves property owned in Kentucky to a relative living in Pennsylvania, all three states must respect the transfer of ownership to the Pennsylvania resident.

Extradition

Article IV, Section Two addresses situations involving a person accused of a crime in one state, fleeing that state and being apprehended in another state. It requires a state that captures such a person return the individual to the state in which he or she was charged with the crime. This is known as extradition. The legal process involves having the governor of the state in which the person was charged with the crime make a formal request for return of that individual to the governor of the state that captured the fugitive. Since 1936, states have followed the extradition procedures contained in the Uniform Criminal Extradition Act.

Granting Privileges and Immunities of Citizenship

States may not unfairly discriminate against the citizens of another state. Article IV, Section 2 obligates each state to extend to citizens of other states the same rights it gives its own citizens. Although the Constitution does not list them, the "privileges and immunities" of citizenship are assumed to comprise the ability to travel freely from state to state, to live and work in a state of one's own choosing, to buy, rent and sell property in other states, to take legal action in any state court, and to be accorded the equal protection of the laws.

The courts have interpreted the "privileges and immunities" clause as permitting states to make reasonable distinctions between residents and non-residents. One such area involves voting. A state may require new residents to live in the state for a specified period of time before they are permitted to vote or to hold public office. Another area involves state resources and institutions. A state may require nonresidents to pay higher fees for college tuition, hunting and fishing licenses, and admission to state parks. These resources are property held in common by state residents who pay state taxes to protect and maintain them.

Conducting Elections

States are responsible for conducting elections for members of Congress and the president and vice president of the United States. Subject to certain federal requirements, state legislatures have the authority to fix the boundary lines for Congressional districts, set voter qualifications, register voters, establish voting places, determine the means of voting (e.g., paper ballots, voting machines), monitor elections, count ballots and determine the results. Federal restrictions involve constitutional amendments that prevent states from denying citizens the right to vote on the basis of race, color, or gender, and from using poll taxes as a condition for voting. They also include federal legislation and court decisions that prevent states from employing

discriminatory practices, such as literacy tests, as a condition of voting.

In 1995, the Supreme Court invalidated congressional term-limit laws that had been passed by 23 states since 1990. In U.S. Term Limits Inc. v. Thornton, the Court held that neither state legislatures nor the Congress could pass legislation that limited the number of terms that members of Congress could serve. Such restrictions, the Court ruled, could only be imposed by amending the Constitution. Term-limit laws pertaining to the tenure of officeholders in state legislatures were not affected by the decision.

CHAPTER II.

OUR FEDERAL SYSTEM OF GOVERNMENT: IDEAS FOR THE CLASSROOM

Exercise One: "How Much Do You Know About The Constitutional Convention?" [pp. 45-46; completed version provided]

After gaining independence in the Revolutionary War (1775-1783), the former colonial governments struggled with self-government under the Articles of Confederation. Between 1783 and 1787, the new states and their new country were severely tested. The central government they created had little power to make decisions. As internal problems mounted, various leaders urged Congress to call a meeting of state representatives to address the problems caused by the weak central government. The national convention that met in Philadelphia in May, 1787, produced a new plan for government -- the Constitution of the United States.

This exercise will familiarize students with facts about the Constitutional Convention. Use it to assess the prior knowledge of students and to provide new information. When dealing with the first and ninth questions, have students identify the significance of each of the dates listed. For question three, ask why Rhode Island did not send delegates to the convention. When considering question four, share information about Benjamin Franklin (his age and condition of health), Patrick Henry (e.g., why he opposed the meeting and did not attend), and Thomas Jefferson (e.g., why he was not a delegate), as well as George Washington. Students are likely to find questions seven and eight intriguing. Elbridge Gerry (Massachusetts), Edmund Randolph (Virginia), and George Mason (Virginia) were three delegates who did not sign the Constitution. Gerry objected especially to the existence of a standing army. Randolph felt that the document did not sufficiently protect civil liberties. Mason had a number of objections, including: (1) the selection method for Senators was too distant from the people; (2) there was no bill of rights; (3) the "necessary and proper" clause prevented adequate limitation on the powers of Congress; (4) the House had no say in making treaties; (5) the president could use the power to pardon to cover-up illegal activities on his part; and (6) federal courts had too much power because they could overrule state courts.

Exercise Two: "Who Should Have the Power?" [p. 47]

In our federal system, the powers of government are divided between a national government and state governments. Local governments are created by states. They have only

those powers that state governments give them. These three levels carry out the functions of government. Some functions are handled more effectively at the federal level. Others are more effectively handled at the state or local levels. In this exercise, students identify the level of government they feel is best suited to handle the functions listed. The format encourages students to share and clarify their thinking about this topic. Extend the lesson by discussing federalism -- how these powers are constitutionally distributed. Have students consider whether changes are needed. For example, should the postal system continue to be the federal government's responsibility or should private industry take over this function? Should there be individual state or uniform national licensing standards for doctors, teachers, and other professionals? Focus on the criteria students use when making their decisions.

Exercise Three: "Uniform Highway Traffic Laws: Yes or No?" [p. 48]

"Uniform Highway Traffic Laws: Yes or No?" provides a contemporary application of federalism. As evidenced by the Congressional deliberations over the 1995 multi-billion dollar National Highway System bill, the topic of this lesson is controversial. At that time members of the Senate vigorously debated the merits of having the federal government set a maximum highway speed limit for cars and trucks throughout the nation, having a federal seat belt law, and having a federal motorcycle helmet law. Proponents of national standards included Senator Mike DeWine of Ohio, who emphasized the safety issue. He argued, "If we raise the speed limit and take the limits off, from a national perspective, people will die." Opponents included Senator Don Nickles of Oklahoma, who emphasized the state's rights issue. "I'm concerned about safety," he said. "I just happen to think that the state of Oklahoma and the state of Virginia are just as concerned about safety as the federal government."

Have students consider whether the federal or state governments should make regulations about the nine areas identified. Focus on student reasoning, eliciting pros and cons of uniform national standards for the operation of motor vehicles. Throughout the exercise, keep the focus on federalism. Extend the lesson by inviting one or more community resource persons (e.g., a lawyer, a police officer, a state legislator) to the classroom to discuss related issues. Provide opinion pages from magazines and newspapers to clarify issues and promote critical thinking skills.

Exercise Four: "Does Congress Have The Authority?" [pp. 49-50]

In this exercise, students consider the extent of the federal government's implied powers. The activity is based on the Supreme Court decision in United States v. Lopez (1995). In it, the Supreme Court ruled that the federal Gun-Free School Zones Act of 1990 was unconstitutional (see page 34).

In this hypothetical, students pretend that they are members of the United States Congress. The Gun-Free School Zones bill is before them. They must decide whether to vote

for or against the bill. To assist students in their deliberations, this exercise includes statements from five imaginary speakers, who give opinions about the constitutionality of the bill. Their statements are based on reasoning found in the Supreme Court's opinions in United States v. Lopez. Space is provided for students to state how they would vote on the proposed law and the reasons for their decision.

Focusing on the federal Civil Rights Law of 1964 is an excellent way to extend this lesson. That law also involved an interpretation of the commerce clause, but with different constitutional results. Use the powerfully written book, The Gold Cadillac, by Mildred Taylor (Dial Books, 1987), to establish context. Follow with excerpts from the actual oral arguments in Heart of Atlanta Motel v. United States (1964), which are available on audiotape in the May It Please the Court collection of landmark Supreme Court decisions (The New Press, 1993).

HOW MUCH DO YOU KNOW ABOUT THE CONSTITUTIONAL CONVENTION?

Instructions: This exercise contains facts about the Constitutional Convention. Some are well known. Others are not. How many do you know? Select the best answer for each item. Place the letter corresponding to it in the space provided to the left of the item number.

- _____ 1. In what year did the Constitutional Convention meet?
A. 1776; B. 1783; C. 1787; D. 1791.
- _____ 2. In what city was the Constitutional Convention held?
A. Boston; B. New York; C. Philadelphia; D. Washington, D.C.
- _____ 3. Twelve of the 13 states sent delegates to the convention. Which state did not send any?
A. Delaware; B. New Jersey; C. North Carolina; D. Rhode Island.
- _____ 4. Who was elected president of the Constitutional Convention?
A. Benjamin Franklin; B. Patrick Henry; C. Thomas Jefferson; D. George Washington.
- _____ 5. How long did it take to write the Constitution of the United States?
A. less than two months; B. four months; C. six months; D. nearly a year
- _____ 6. Much of what we know about what happened at the Constitutional Convention is due to the daily notes taken by one of the delegates. Who was he?
A. John Adams; B. Alexander Hamilton; C. James Madison; D. Gouverneur Morris.
- _____ 7. How many of the delegates present at the final session signed the Constitution?
A. all of them; B. all but three of them; C. only a bare majority; D. more than two-thirds.
- _____ 8. In what order did the delegates sign the Constitution?
A. alphabetically, beginning with delegates from Connecticut and ending with those from Virginia.
B. geographically, with the most northern state (NH) first to the most southern state (GA) last.
C. by population size, starting with the most populous state (VA) and ending with the least (DE).
D. by number of delegates attending, the state with the most (PA) signing first to the state with the least (DE) signing last.
- _____ 9. In what year was the Bill of Rights added to the Constitution?
A. 1783; B. 1789; C. 1791; D. 1803.
- _____ 10. In what city is the original copy of the Constitution on display today?
A. Boston; B. New York; C. Philadelphia; D. Washington, D.C.

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- C 2. In what city was the Constitutional Convention held?
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WHO SHOULD HAVE THE POWER?

Instructions: In the United States, the functions of government are carried out at three different levels -- federal, state, and local. Some functions are best handled at the federal level, some at the state, and some at the local. Still others need to be shared by two or all three of the levels of government. Below is a list of government functions. Decide which level(s) of government should handle each. Put the letter X in the appropriate column(s) to indicate the level(s) of government you feel should handle each function.

Who Should Have the Power to...	Federal Government	State Government	Local Government
A. collect and dispose of garbage.....	_____	_____	_____
B. raise and maintain armed forces.....	_____	_____	_____
C. levy and collect taxes.....	_____	_____	_____
D. coin money.....	_____	_____	_____
E. register voters and conduct elections.....	_____	_____	_____
F. protect the environment.....	_____	_____	_____
G. repair and maintain roads.....	_____	_____	_____
H. tax imported goods.....	_____	_____	_____
I. arrest, try, and imprison those who commit crimes....	_____	_____	_____
J. set a uniform standard for weights and measures.....	_____	_____	_____
K. license professionals, such as doctors and teachers...	_____	_____	_____
L. set standards for marriage and divorce.....	_____	_____	_____
M. establish and maintain public parks.....	_____	_____	_____
N. provide assistance to needy persons.....	_____	_____	_____
O. operate a postal system.....	_____	_____	_____

UNIFORM HIGHWAY TRAFFIC LAWS: YES OR NO?

What laws should there be about driving on public highways? Who should decide these matters? Are uniform national laws best in any, some, or all traffic law situations? This exercise gives you an opportunity to identify and share your views about these matters.

Instructions: First complete the "Who Should Decide?" activity. For each topic, place a check in the column labeled "Federal" if you believe that the federal government should establish a uniform standard for it. Place a check in the column labeled "State" if you believe the decision should be made on a state-by-state basis. Then write at least three reasons for the area, if any, that you indicated the federal government should decide. Do the same for the area, if any, that you indicated the states should decide. Be prepared to share your views.

Who Should Decide?

Federal State

- | | | |
|-------|-------|---|
| _____ | _____ | 1. the minimum age for getting a driver's license. |
| _____ | _____ | 2. the non-age requirements for a driver's license. |
| _____ | _____ | 3. the maximum driving speed on a public highway. |
| _____ | _____ | 4. whether to require drivers and/or passengers to wear seat belts. |
| _____ | _____ | 5. whether to require all motorcycle riders to wear helmets. |
| _____ | _____ | 6. the minimum age to consume and purchase alcoholic beverages legally. |
| _____ | _____ | 7. whether to require all drivers to have car insurance. |
| _____ | _____ | 8. what safety features new cars must have (e.g., seat belts; air bags). |
| _____ | _____ | 9. what environmental protection standards cars must meet (e.g., exhaust emissions) |

Reasons for Having National Standards: Write at least three reasons why you favor having a national standard (i.e., letting the federal government make the decision) for the area(s) you checked.

Reasons for Having State-by-State Standards: Write at least three reasons why you favor having individual state standards (i.e., likely to vary state by state) for the area(s) you checked.

DOES CONGRESS HAVE THE AUTHORITY?

The United States is a federal republic. The Constitution of the United States divides governmental power between the federal (i.e., national) government and the state governments. This is known as the principle of federalism. At times disputes develop about whether the federal government has the constitutional authority to act in particular matters. This activity involves one of those situations.

Instructions: Assume that you are a member of Congress. A law to deal with school violence has been proposed. You must decide whether to vote for or against this legislation. In making your judgment, reflect on what you know about the concept of federalism and the powers that the federal government and the state governments have. Consider the language of the proposed law and the views expressed by the five speakers that are provided here. When you have made your decision, write it and the reasons for that decision in the box provided entitled, "My Decision Is...."

SHOULD THIS PROPOSED LAW BE PASSED?

Violence in schools is a national concern. Reports about the number of students victimized by violence at our schools contain alarming statistics. For example, researchers at the University of Michigan recently estimated that students carry more than a quarter of a million guns to school each day. In a 1994 National School Boards Association survey nearly 40% of urban districts reported shootings or knife attacks. Slightly less than one-fourth of those districts reported having experienced drive-by shootings. A 1991 United States Justice Department survey found that school crime is not just an urban problem. Suburban and urban students are equally victimized by violent crime. Given such statistics, many people, including the President of the United States, have called for actions to be taken to deal with this problem.

Assume that you are a member of Congress. A "Gun-Free School Zones Bill" has been proposed. It would make it a federal offense for "any individual knowingly to possess a firearm within 1,000 feet of a place that the individual knows, or has reasonable cause to believe, is a school zone." If passed, this law would affect all schools in the United States. It could help make them safer places.

SPEAKER A: I am sick and tired of hearing about violence in our schools. We must do something about it! The "Gun-Free School Zones Bill" will keep guns out of our schools. By making it a federal crime to bring a gun into or near a school building, we will be able to protect our children and save lives. We have the right to act because this is a national problem and Congress is a national law-making body. I say pass this law and do it now!

SPEAKER B: I, too, am sick and tired of hearing about violence in our schools. We must do something about it, but not by passing this proposed law. Congress lacks the constitutional authority to act in this manner. Education is not an expressed power. Schools are subject to the authority of the individual states. We can urge the states to take action on their own to deal with this problem. We can recommend that each state legislature pass a law similar to the proposed "Gun-Free School Zones Bill." But Congress cannot pass a law like this. It would be unconstitutional to do so.

SPEAKER C: There is no constitutional problem here. The "Gun-Free School Zones Bill" is a valid exercise of Congressional authority under the commerce clause found in Article I, Section 8. This clause includes the power to regulate and protect interstate commerce. Let me explain how gun-related school violence relates to interstate commerce.

Possession of a firearm in a local school zone may result in violent crime. Violent crime affects the functioning of the national economy in several ways. First, the costs of violent crime are substantial. Insurance

(continues on next page)

companies, which are involved in interstate commerce, must pay for personal and property losses. That means that they must charge their customers higher premiums. Thus, people throughout the United States end up paying more for insurance. Second, violent crime reduces the willingness of individuals to travel to areas of the country that are believed to be unsafe. Thus, businesses in the areas surrounding schools are affected by school violence. This has a negative effect on the national economy. Third, the presence of guns in schools poses a substantial threat to the educational process. It disrupts the learning environment and makes it more difficult for students to concentrate on their school work. When students are prevented from learning as much as they could learn we have a less productive citizenry than we should have. This, in turn, will have a detrimental effect on the nation's economic well-being.

I say that Congress has the constitutional authority to pass this law. The Constitution delegates the commerce power directly to Congress. Using the reasons I have given here, it is clear that there is a significant factual connection between the activity we seek to regulate (i.e., keeping guns out of school zones) and interstate commerce. It is reasonable to conclude that the "Gun-Free School Zones Bill" substantially affects interstate commerce. That gives us the constitutional authority to pass this law.

SPEAKER D: The proposed "Gun-Free School Zones Bill" exceeds the authority of Congress. This is a criminal law that has nothing to do with "commerce" or any sort of economic enterprise. Under the theories suggested by the act's proponents, it is difficult to think of any limitation on federal power -- even in areas such as criminal law enforcement or education where states historically have been sovereign. If we were to accept the arguments given by this bill's supporters, there would be no activity that Congress would be without the power to regulate.

Clearly Congress has authority under the commerce clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools. The "Gun-Free School Zones Bill" is too far a reach. The Constitution does not give Congress a blank check. It rightly restricts Congressional authority. This is a matter for the states, not Congress. We must vote against this bill.

SPEAKER E: Who is to say that Congress lacks the constitutional authority to pass the "Gun-Free School Zones Bill"? Those favoring passage of this proposed law have made a persuasive case. The president has indicated he will sign this act into law. So let's vote for it. If this law is challenged, the courts must give Congress the leeway to make this type of judgment. After all, as the national legislative body, we are the elected representatives of the people. We reflect their interests and we are responsible for their safety and well-being. We are more likely that the courts to make an accurate and responsible assessment of how far our constitutional authority extends.

MY DECISION IS...

On this bill, I would vote: YES (pass it) NO (not pass it)

My reasons are:

CHAPTER III. OHIO'S HISTORY AND CONSTITUTION

Ask about Ohio and a common response is likely to be that it is one of the leading industrial states in the Union. (That is true.) Another common response is that Ohio is one of the most populous states. (That is also true. The 1990 census revealed that Ohio had 10,847,115 residents and was the seventh most populous state.) Some might point out that its name derives from an Iroquois Indian word meaning "great river" or "something great." (This is another accurate statement.) Others might even describe Ohio as the home of American presidents. (More presidents of the United States -- a total of seven -- were born in Ohio than any state except Virginia. All were members of the Republican party. See Table 3.1 for their names.) Such responses reveal a general familiarity with the state of Ohio.

Table 3.1
AMERICAN PRESIDENTS BORN IN OHIO

Presidents	Date of Birth	Place of Birth
Ulysses S. Grant	April 27, 1822	Point Pleasant, Ohio
Rutherford B. Hayes	October 4, 1822	Delaware, Ohio
James A. Garfield	November 19, 1831	Orange, Ohio
Benjamin Harrison	August 20, 1833	North Bend, Ohio
William McKinley	January 29, 1843	Niles, Ohio
William Howard Taft	September 15, 1857	Cincinnati, Ohio
Warren G. Harding	November 2, 1865	Consica, Ohio

NOTE: William Henry Harrison, though born in Virginia, is frequently included in the list of Ohioans who became presidents of the United States.

But there is much about Ohio that is not as well known. Land size is one example. Some are likely to be surprised to learn that compared to the other states on the basis of land size, Ohio is in the bottom third (34th of 50). Furthermore, other than Hawaii and Indiana, Ohio is the smallest state west of the Appalachian Mountains. Historical origins is another

example. Although most people know that Ohio was not one of the original 13 states, they are not as likely to know when Ohio joined the union and the circumstances under which that occurred.

This chapter addresses Ohio's history and constitution. It begins by reviewing how Ohio came to be one of the fifty states of the federal union, including a discussion of the Northwest Ordinance of 1787 and the process of statehood. Then it examines the framework for Ohio governmental system -- its two constitutions and the basic principles embodied in them. It briefly compares state and federal constitutions and concludes with a brief discussion of the principal features of the Constitution of the State of Ohio.

HOW OHIO CAME TO BE

Hundreds of years prior to the colonial period of American history, what we now know as Ohio was a land of lush forests and abundant wild life. It was sparsely inhabited by various groups of Native Americans. The Adena and the Hopewell are among the best known. They are called "mound builders" because of their propensity to build mounded earthen structures, some in the shape of animals. (Serpent Mound in southwest Ohio is the most famous of these structures.) First the Adena, and later the Hopewell, occupied the Ohio region. They built most of the more than 10,000 mounds that have been found in Ohio.

In the aftermath of the mound builders, other Native American groups came to inhabit "Ohio." Many were attracted by its favorable geographic features, including the area's abundant natural resources. Others settled in this area after being dispossessed from other areas by other Native Americans or the growing number of settlers on the eastern seaboard.

With the advent of European exploration and colonial settlements in North America, conditions in the Ohio region changed. European fur traders and explorers arrived, and rivalries developed, especially between the nations of Great Britain and France, who advanced competing claims to the land. Trading posts and forts were built. Ultimately disputes between Great Britain and France escalated. Fueled by long-standing rivalries on the continent of Europe, open warfare resulted. The French and Indian War (1754-1763) pitted the French and their Native American allies against the English and their Native American allies. After two years of fighting on the American mainland, this conflict expanded into a world war. Known in Europe as the Seven Years' War (1756-1763), it produced battles in the West Indies, in Europe, and in India.

The fall of Quebec in 1759 was the decisive battle of the American phase of the Seven Years' war. The war concluded with the signing of a peace treaty in Paris in 1763. By the terms of that treaty, France gave up all its land claims in North America. France ceded Canada and all other French territory east of the Mississippi River, except New Orleans, to Great Britain. The French gave New Orleans to Spain, along with their land claims west of the Mississippi. The land east of the Mississippi, which Great Britain received, became the

Northwest Territory. Included in it was what we now call the state of Ohio.

With the French gone, struggles for control of the area continued. Native American uprisings led by such able leaders as Pontiac, the great Ottawa chief, produced a number of victories. But by late 1764, the British were able to gain control and establish relative peace that lasted for most of the next decade. In 1774, violence again erupted sparked by the building of more forts and the arrival of more fur traders. Once again, however, the British were able to quell it.

Relations between Great Britain and the colonists worsened in the years following the French and Indian War. War broke out in 1775, the year of Paul Revere's ride and the battles at Lexington, Concord, and Bunker Hill. With the issuance of the Declaration of Independence on July 4, 1776, what had been thirteen British colonies became 13 "free and independent states." By 1777, most of the colonies had replaced their colonial governments with independent state governments, while the Second Continental Congress appointed a committee to create a written form of government for the states as a whole. In November, 1777, the Congress adopted the committee's plan, which was called the Articles of Confederation. Not until 1781 did all 13 of the states ratify the Articles of Confederation. Joined together in a loose union of friendship, the Confederation government came into being in time to conclude the war and make the peace.

At the onset of the War for American Independence, the Ohio region was still a wilderness. It was a heavily forested and lightly populated area. Those who lived in it were almost exclusively Native Americans. Though most of the important battles of the revolutionary war were fought along the Atlantic coast, the Ohio Valley, and the Northwest Territory of which it was a part played an important role in the war. Typically, Native Americans sided with the British and armed conflicts centered around the control of forts.

The Battle of Yorktown, in 1781, was the decisive battle of the war. With the signing of the Treaty of Paris on September 3, 1783, war with Great Britain officially ended in victory for the 13 "*free and independent states*." By the terms of that treaty, Great Britain ceded territory from the southern border of Canada to the northern border of Florida and from the Atlantic Ocean to the Mississippi River. By these terms, "Ohio" and the Northwest Territory became part of what would soon be known as the United States of America.

The Northwest Ordinance

Conflicting land claims by several of the states complicated the Northwest Territory the situation. After Virginia, in 1783, surrendered its claims of vast parts of these western lands, Massachusetts, Connecticut and New Jersey subsequently took similar actions. Ultimately, on July 13, 1787, the Congress of the United States, as established under the Articles of Confederation, enacted the Northwest Ordinance to provide for the distribution and governing of these lands. Following ratification of the Constitution of the United States, this important legislative act was reaffirmed in 1789 as a federal statute by the new Congress of the United

States.

The Northwest Ordinance set forth the conditions for the orderly sale and settlement of the Northwest Territory, a vast area of more than 265,000 square miles. It also established the conditions for changing this huge land area from territorial status to state status within the Federal Union. The Northwest Ordinance provided that no less than three and no more than five states could be created from the territory. Under its terms, Congress could not refuse to grant statehood if a territory satisfied all the conditions for becoming a state as set forth in the ordinance. In 1803, Ohio became the first part of the Northwest Territory to obtain statehood. It was followed by Indiana (1816), Illinois (1818), Michigan (1837), and Wisconsin (1848). A small portion of the area also became part of Minnesota, which was admitted as a state in 1858.

The Northwest Ordinance set up a three-stage process for moving from a territorial district to an independent state on equal terms with the other states. The first stage applied when the population of a district within the territory comprised less than 5,000 adult males. During this stage, the U.S. Congress would rule the territory through an appointed governor, secretary, and three judges. The governor was given authority to appoint other officials and, along with the three judges, to make civil and criminal laws for the district. The second stage applied when the total population of the district reached 5,000 adult males. Retaining a governor, secretary, and three judges appointed by the U.S. Congress, the district was then entitled to a bicameral legislature. One house, known as a house of representatives, would consist of one representative per every 500 adult males elected by the adult males residing in the territory. The other house, called a legislative council, would consist of five members appointed by the U.S. Congress. In addition, the territory was entitled to elect a delegate to Congress. This person would have a seat in the U.S. Congress, with a right of debate but not the right to vote. The third stage applied when the territory's total population exceeded 60,000 inhabitants. At this point the voters in the territory would be eligible to elect delegates to write a state constitution and apply to the U.S. Congress for statehood. When approved, the new state would enter the Federal Union on an equal basis with all other states. During the interim, the terms of the new state constitution would determine the composition and functions of the territorial legislature and its government officials.

Another important part of the Northwest Ordinance was the rights it extended to territorial inhabitants. The ordinance contained six articles that guaranteed specific civil rights. Many of these rights would subsequently become part of the Constitution of the United States, but not until the addition of the Bill of Rights in 1791 and the Thirteenth and Fourteenth Amendments in 1865 and 1868.

- The first article guaranteed freedom of religion, specifically the right to worship as one pleased and the right to hold religious sentiments of choice.
- The second article guaranteed such protections as the writ of habeas corpus, the right to trial by jury, the right to bail, the right to due process of law, freedom from the infliction of cruel or unusual punishments, and the right of contract.

- The third article stressed the importance of education and assured that, "*[s]chools and the means of education shall forever be encouraged.*" It also provided that "*[t]he utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress....*"
- The fourth article affirmed that the territory and any states that were formed from it would forever remain as part of the United States of America and subject to its laws.
- The fifth article set forth the provisions for creating not less than three but not more than five states from the land in the Northwest Territory.
- The sixth article forbid slavery and involuntary servitude in the Northwest Territory, though it permitted an escaped slave residing in the territory to be lawfully reclaimed and returned to his or her owner in the state of origin.

To underscore the importance of these rights, the Northwest Ordinance specified that the six articles were "*articles of compact between the original states and the people and states*" in the Northwest territory. Furthermore, it stated that this compact, or agreement, was to "forever remain unalterable, unless by common consent" of the United States Congress and the people residing in the Northwest Territory.

Ohio Becomes a State

Shortly after the Northwest Ordinance was passed, Marietta became the first permanent non-Native American settlement in Ohio. The site was named in honor of Queen Marie Antoinette of France as an expression of gratitude for that country's help during the War for Independence. This was the same Marie Antoinette of "let them eat cake" fame who became a symbol of the extravagance of the French court. Within five years of the founding of Marietta, she would perish at the guillotine (i.e., in 1793).

Encouraged by the protections the Northwest Ordinance afforded new settlers, more people came to the Northwest Territory following the establishment of Marietta. Settlements sprung up at Cincinnati (originally called Losantiville) and other sites. Congress appointed General Arthur St. Clair, the president of the Continental Congress, as the first governor of the Northwest Territory. He held that position until Ohio became a state in 1803. St. Clair first took up residence at Marietta but moved to Losantiville in 1790, changing the name of that settlement to Cincinnati and making it the capital of the vast region of the Northwest Territory.

As an increasing number of settlers arrived, hostilities broke out between them and the Native Americans living in the area. Native Americans were angered because the treaties they had entered into years before with the British and the Americans were being disregarded. Angry

at losing their land, they fought back under Miami chief Little Turtle and other strong leaders. For several years, Ohio was a dangerous place to be for settlers, so the pace of settlement slackened.

In 1790, Governor St. Clair appealed to the federal government for help. Soldiers were furnished, but their efforts were largely unsuccessful during the first few years. Two campaigns failed, including one led by Governor St. Clair himself. The turning point came when President George Washington appointed Anthony Wayne in 1792 as the new commander of American forces in the Ohio region. The Battle of Fallen Timbers, fought near present-day Toledo on August 21, 1794, proved to be the decisive battle. This victory for Wayne's troops subsequently led to the unprecedented 50-day meeting with Little Turtle and the leaders of many other Native American tribes at Fort Greenville during the months of June and July, 1795. Representatives of all of the major tribes in Ohio were present. The result was the Treaty of Greenville (1795), which was signed by 90 Native American chiefs. By the terms of that treaty, the Indians ceded to the United States approximately two-thirds of what is now Ohio while retaining the northwestern part of present-day Ohio. The treaty brought peace in the region between settlers and Native Americans for many years.

The danger from Indian attacks abated and white settlers came to Ohio in increasing numbers. In 1796, Congress authorized construction of the first public road to be built in Ohio. The road, known as "Zane's Trace," facilitated travel within Ohio by land. It afforded settlers a mode of access in addition to what they had been using -- water transportation on Ohio's navigable rivers and Lake Erie. Settlements began to develop at Dayton, Portsmouth, Chillicothe, and Columbus (then known as Franklinton). The population of Ohio swelled. Within less than a decade of the signing of the Treaty of Greenville, Ohio would become the seventeenth state to join the union.

Governor St. Clair was not eager for Ohio to achieve statehood. Under pressure, he ordered a census in 1797. It revealed that over 5,000 eligible voters were living in the territory, so St. Clair was forced to call for the election of a general assembly. That body met at Cincinnati for the first time in 1799. William Henry Harrison was selected as the delegate to Congress. He succeeded in getting Congress to pass the Harrison Land Act in 1800. This law reduced the size of required land tracts settlers could purchase, thus reducing the cost of land for settlers. Its effect was to increase significantly the number of settlers in the region.

However, Governor St. Clair persisted in his efforts to thwart statehood, including advancing a proposal that Congress divide the Northwest Territory into three parts. His "divide and conquer" tactic was designed to disperse the population and keep it below the minimum 60,000 needed for implementing the third stage leading to statehood. His efforts failed.

When Thomas Jefferson took office in 1801, Congressional sentiments favored statehood for Ohio. In 1802, Congress passed a law giving the people of Ohio authority to elect delegates to a convention to write a state constitution. When Governor St. Clair attempted to block this, President Jefferson removed him from office. The constitutional convention met at Chillicothe

on November 1, 1802. In less than one month, the 35 delegates produced a constitution and submitted it to the U.S. Congress. On February 19, 1803 the U.S. Congress admitted Ohio as a state.

A FRAMEWORK FOR GOVERNMENT IN OHIO

The Purpose of a Constitution

The concepts of "constitution" and "constitutionalism" are fundamental to an understanding of American history and the American way of life. Though the term "constitution" has alternative meanings, it may be thought of as "*a set of fundamental customs, traditions, rules, and laws that set forth the basic way a government is organized and operated*" (Civitas, 1991, p. 169). It is important, however, to also think of the term as having two dimensions, one descriptive and the other normative.

The descriptive dimension of "constitution" consists of identifying and explaining how the political and governmental life in a specific nation is conducted. When used in this sense, it may be said that every nation has a constitution. Written or unwritten, every nation has "a set of fundamental customs, traditions, rules, and laws that sets forth the basic way [its] government is organized and operated."

The normative dimension of "constitution" embodies the concept of "constitutionalism." It goes beyond the mere description of how a government is organized and operates (i.e., what is) by focusing on how constitutional provisions limit and control the powers of those who govern (i.e., what ought to be). In other words, the normative dimension of "constitution" provides for limited government. It articulates the standards that guide and control the actions of government and government officials and establishes the legitimacy of political and governmental action in a nation.

When thinking about constitutions and constitutional government, it is helpful to distinguish between nations with constitutions that do not limit government power (e.g., former Soviet Union and the People's Republic of China) and nations that have constitutional governments (i.e., United States, Japan, United Kingdom). Not all countries with written constitutions have constitutional governments. For constitutionalism to exist, the constitution, written or unwritten, must limit government power in practice.

In the United States, our federal and state constitutions establish a framework for government and constitutionalism in their respective spheres of authority. These constitutions set forth basic principles and procedures for organizing and operating the governments, including the creation of specific roles, rights and responsibilities for citizens and public officials. Although the federal constitution is the supreme law of the land, each of the 50 states has its own unique constitution that specifies what the state and local governments within that state may and may not do. State constitutions commonly include:

- a preamble;
- a bill of rights of the people in the state;
- a framework for state government (i.e., legislative, executive, and judicial branches);
- a process for establishing local governments;
- procedures for setting up state agencies, boards, and institutions;
- provisions for managing state affairs (e.g., how funds are raised and spent); and
- methods for amending the constitution.

State constitutions typically receive little attention. That is a mistake, according to constitutional expert A.E. Dick Howard. Howard (1987) asserts that, "*A study of constitutionalism in the United States is incomplete if one considers only the Federal Constitution*" (p. 38). He emphasizes that we have a federal system of government, one that divides power between the national and state governments. An understanding of the nature of that system of government, he reasons, requires an appreciation of the role that state constitutions play, for it is through those constitutions that "*the people of the respective states structure governments closer to them than they find in Washington.*" Howard observes,

No function of a constitution, especially in the American states, is more important than its use in defining a people's aspirations and fundamental values. In state constitutions, the people of the states record their moral values, their definition of justice, their hopes for the common good. A state constitution defines a way of life.

...Maintaining the state constitutions in good repair and understanding their postulates help us move forward with a system of government that has served us well for two centuries and gives hope and promise for the next century and beyond (p. 38).

We now turn to an examination of Ohio and its experience with constitutionalism.

Ohio's Constitutions

About two-thirds of our 50 states have had more than one constitution since their admission to the federal union. Louisiana, with 11, and Georgia, with 10, lead the way. Ohio has had just two constitutions. Its first constitution was written in 1802 by the 35 elected delegates. They assembled in Chillicothe, the territorial capital, and accomplished their task in less than a month. Their handiwork, a precondition for statehood under terms of the Northwest Ordinance, was accepted by the United States Congress in February, 1803.

The Constitution of 1802 reflected the experiences of the people who wrote the document, especially with the provisions of the Northwest Ordinance. To guard against

arbitrary government and ensure consent of the governed, the delegates created three branches of government, and included a bill of rights and provisions for the people to amend the Constitution. Growing dissatisfaction with the powers given the territorial governor, Arthur St. Clair, led the delegates to severely limit the powers of the governor of the new state of Ohio and assign most of the power to the legislative branch.

The legislative branch was called the General Assembly. It was bicameral. Members of the lower house, known as the House of Representatives, had one-year terms. Members of the upper house, known as the Senate, had two-year terms. The General Assembly had the sole power to make laws, for the constitution denied to the governor what many would consider one of the fundamental checks and balances of government -- the power of the veto. Although the people elected the governor, the General Assembly chose the other constitutionally established state officers (i.e., the secretary of state, the treasurer, and the auditor) and judges of the state supreme court and lower courts.

Over time, problems developed as a result of the governmental structure the Constitution of 1802 created. Examples of legislative abuse became evident. For example, in 1810, the General Assembly removed all state judges in a partisan political action. At another time, the General Assembly impeached the justices of the Supreme Court of Ohio when that court held unconstitutional one of laws the General Assembly had passed. Prompted by a desire to reduce the power of the legislative branch and a wish to gain control over the selection of state officers, the people of Ohio, in 1849, voted for another constitutional convention. The Second Constitutional Convention gathered together in May, 1850. They met in Columbus during the remainder of that year and for part of the next year (except for a brief period when they met in Cincinnati). The new constitution they produced, subsequently approved by Ohio voters in June, 1851, became effective September 1, 1851.

The Constitution of 1851, the second in Ohio's history, remains in force today, though it has been modified by various amendments. The new constitution weakened the power of the legislative branch to control the executive branch. Though it still denied the governor the power of the veto, the new constitution gave the people, and not the General Assembly, the power to elect the secretary of state, treasurer, and auditor, and two newly created state-wide positions as well -- lieutenant governor and attorney general. The new constitution also included some major changes involving the judicial branch. It increased the number of Justices of the Supreme Court of Ohio from three to five, and abolished the requirement that the Supreme Court schedule a session in each county at least once a year. More importantly, the method of selection was changed to give the court greater autonomy. Instead of being chosen by the General Assembly, the justices would henceforth be chosen by popular vote.

Since 1851 two other constitutional conventions have convened in Ohio. The first was in 1873. The delegates to that constitutional convention wrote a new constitution but the voters subsequently rejected it. The second occurred in 1912. Instead of proposing a new constitution, the delegates to the fourth constitutional convention proposed 42 amendments to the existing Constitution of 1851. When submitted to the voters, all but eight of the proposed amendments

were approved. No constitutional conventions have been held since 1912, despite the provision (Article XVI, Section 3) requiring Ohio voters to vote on the following question every 20 years: "*Shall there be a convention to revise, alter, or amend the constitution.*" The general election of 1992 was the last time that the voters of Ohio voted on this question. They voted "no." The next time this question will be put before the voters of Ohio is November, 2012.

The 36 amendments added to Ohio's constitution in 1912 instituted a number of changes. Among them were:

- Article I, Section 16: Grants the right to sue the state for injury done to a person's "*land, goods, person, or reputation.*"
- Article II, Section 1: Provides for the power of the initiative (i.e., the right to propose and vote directly for a law or constitutional amendment) and the referendum (i.e., the right to invalidate a law the general assembly has already passed).
- Article II, Section 16: Grants authority to the governor to exercise the item veto (i.e., to veto an item of an appropriation bill). [Note: The governor finally gained the right of veto by a constitutional amendment in 1903.]
- Article II, Section 34: Grants authority to the state to pass laws "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees."
- Article V, Section 7: Provides for the use of direct primary elections for elective state, district, county, and municipal offices.
- Article VI, Section 3: Grants authority to the state to pass laws for the organization, administration, and control of the public schools.
- Article XII, Section 1: Abolishes the poll tax -- "*No poll tax shall ever be levied in this state, or service required...*"
- Article XII, Section 8: Grants authority to the state to levy an income tax.
- Article XVII, Sections 3 and 7: Grants authority to cities and villages to choose their own form of government and "*authority to exercise all powers of local self-government... not in conflict with general laws.*" [This article is known as the "home rule" amendment.]

Among the eight amendments that Ohio's citizens rejected was a women's suffrage proposal and a proposal to abolish capital punishment. The nature and scope of constitutional changes ushered in by Ohio's fourth constitutional convention reflect the reform spirit of the Progressive Era and

the desire to give more power to the common citizen. Those changes have had a significant effect on the state.

State and Federal Constitutions Compared

State constitutions tend to be much longer and more detailed than our federal constitution. The Constitution of the United States consists of approximately 7,500 words. By contrast, state constitutions are, on average, four times as long. Alabama has the longest constitution -- approximately 174,000 words. Vermont is the only state whose constitution has fewer words than the Constitution of the United States. Ohio's Constitution is somewhat average in length. It consists of approximately 27,000 words and has been amended more than 150 times.

Why are all but one of the state constitutions longer than our federal constitution? The reason lies in the nature of matters included in state constitutions and the degree of detail provided in them. Compare, for example, how the Ohio Constitution deals with the power of the state government to borrow money and incur debts. This is addressed in two places -- Article VIII and Article XII -- and in considerable depth. Article VIII, for example, is the longest article in the document. By contrast, in the Constitution of the United States this subject is dealt with almost exclusively in brief fashion in Article I (Sections 8 to 10). The result of this situation is that state constitutions elevate to constitutional status matters dealt with by statutory law at the federal level. In so doing, those constitutions spell out details as part of their constitutions that would be dealt with by the United States Congress and regulatory bodies at the federal level. In the process, state constitutions create specific rights that are not included in the United States Constitution.

Apart from their differences, state constitutions and our federal constitution have much in common. Each begins with a preamble that sets forth the purposes of the government. Ohio's Constitution begins with these words, "*We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.*" State constitutions, like the federal constitution, also incorporate such fundamental principles as the rule of law, separation of powers, checks and balances, division of power between the state government and smaller government entities, the opportunity to change or amend the constitution, and a bill of rights.

Principal Features of Ohio's Constitution

A Bill of Rights

Unlike our federal Constitution, to which a Bill of Rights was added at the end of the document, the Constitution of the State of Ohio begins with a Bill of Rights. The first two entries lay the cornerstone for constitutional democracy asserting the doctrine of inalienable rights and that of the sovereignty of the people. Following those powerful constitutional assertions, Ohio's Constitution goes on to list various rights of its citizens, most of which are found in the federal Bill of Rights.

State constitutions are often sources of rights that are more extensive than those found in the federal constitution. For example, from the time of its first constitution of 1802, the State of Ohio has include a provision barring slavery and involuntary servitude (see Article I, Section 6), practices which were prohibited by the Northwest Ordinance. Addressing this phenomenon, Robert Peck (1986) observed:

It is inherent in our federal system of government that state constitutions can provide better protection in some cases than does the U.S. Constitution. The federal charter, as 'the supreme law of the land,' provides the safety net of constitutional rights that must be accorded to individuals. No state constitution can provide for less than the federal one does.... However, states individually have the authority to raise that net to provide for greater rights...

State decisions can establish significant rights because state supreme court decisions based on state constitutional provisions are not reviewable by the U.S. Supreme Court. Just as the U.S. Supreme Court is the final arbiter of questions under the federal Constitution, state supreme courts have the last say about their constitutions. The test of whether the state decision is reviewable by the U.S. Supreme Court is whether the decision rests on grounds that are adequate to the decision reached and independent of any federal law (p. 28).

Thus, education rises to the status of a constitutional right in many states, including Ohio. Article VI, Section 2 of the Ohio Constitution specifies: "*The general assembly shall make such provisions... as... will secure a thorough and efficient system of common schools throughout the state....*" Many states include an explicit guarantee of equal rights for women in their constitutions. The federal Constitution does not. These are but two examples of instances in which state constitutions provide explicit guarantees of rights that go beyond those included in the Constitution of the United States.

Separation of Powers

The constitutions of all fifty states incorporate the principle of separation of powers. Law-making duties are assigned to a legislative branch that, except for the state of Nebraska, is bicameral in nature. An executive branch, headed by a governor, has responsibility for administering the laws, and a judicial branch has responsibility for interpreting the laws. As in Ohio, most state constitutions establish a court of last resort (usually called a supreme court) and a system of lower courts, and specify the powers and jurisdiction enjoyed by those courts. By separating government functions in this way, power is dispersed and the potential for abuse is lessened.

CONSTITUTION OF THE STATE OF OHIO

Article I: Ohio's Bill of Rights

- Article I, Section 1:** "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."
- Article I, Section 2:** "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary...."
- Article I, Section 3:** "The people have the right to assemble together, in a peaceable manner, to consult for their common good;... and to petition the General Assembly for the redress of grievances."
- Article I, Section 4:** "The people have the right to bear arms for their defense and security; but standing armies, in times of peace, ...shall not be kept up; and the military shall be in strict subordination to the civil power."
- Article I, Section 5:** "The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."
- Article I, Section 6:** "There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime."
- Article I, Section 7:** "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted.... Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its mode of public worship, and to encourage schools and the means of instruction."
- Article I, Section 8:** "The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety requires it."
- Article I, Section 9:** "All persons shall be bailable... except for capital offenses where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishment inflicted."
- Article I, Section 10:** "...[N]o person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury.... In any trial, in any court, the part accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.... No person shall be

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I (continued)

compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

Article I, Section 11: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press..."

Article I, Section 12: "No person shall be transported out of the state, for any offense committed within the same..."

Article I, Section 13: "No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law."

Article I, Section 14: "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

Article I, Section 15: "No person shall be imprisoned for debt in any civil action... unless in cases of fraud."

Article I, Section 16: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

Article I, Section 17: "No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by the State."

Article I, Section 18: "No power of suspending laws shall ever be exercised, except by the General Assembly."

Article I, Section 19: "Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads... or for the purpose of constructing and maintaining sanitary sewers or water lines by public agencies, a compensation shall be made to the owner in money; and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money... and such compensation shall be assessed by a jury..."

Article I, Section 20: "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people."

Checks and Balances

In addition to separating functions among three branches of government, both state and the federal constitutions incorporate additional protections against the abuse of power. Known as checks and balances, this principle operates through a system of interdependent relationships among the three branches of government. For example, in Ohio, legislation that originates in the General Assembly is forwarded to the governor for approval. If the governor disapproves, he or she may veto the proposed law, in which case the act is returned to the General Assembly for further action. Instead of the simple majority needed to pass the legislation initially, three-fifths of the members of both houses are required to override that veto [see Article II, Section 16]. As an additional check on legislative power, the Governor of Ohio has the item veto, permitting disapproval of any item in an appropriations bill while approving the other parts of the act. Another example of the principle of checks and balances is the power given to the General Assembly to impeach "*the governor, judges, and all state officers... for any misdemeanor in office*" [see Article II, Sections 23 and 24]. Yet another example of this important principle is the power of the judicial branch to review laws passed by the General Assembly or actions taken by the Governor or other members of the executive branch to determine if they are constitutionally appropriate.

The Constitution of the State of Ohio also gives check and balance authority to its citizens -- authority that the federal Constitution does not grant. By virtue of amendments added to the Constitution in 1912, Ohio citizens may use the power of initiative petition and referendum to propose, adopt, or reject any law or any amendments to the state constitution [see Article II, Section 1]. In addition, Ohio's Constitution recognizes the ultimate right of its people with respect to government, that being the right to "*alter, reform, or abolish*" that government "*whenever they may deem it necessary*" (Article I, Section 2).

Division of Power

At the federal level, the Constitution divides power between the national and the state governments. This is known as the principle of federalism. In accordance with this principle, the federal government is given exclusive powers in some areas (i.e., enumerated powers and implied powers), state governments are given exclusive powers in other areas (i.e., reserved powers), and both the federal and state governments share some powers (i.e., concurrent powers). In Ohio, a variation of this principle operates as power is dispersed among the state government and county, township, and municipal governments (see Article X and Article XVIII). Thus, Article XVIII, Section 3 provides, "*Municipalities [i.e., towns and cities] shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.*" Article XVIII, Section 7 adds, "*Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.*"

Opportunity for Change

State constitutions, like the federal Constitution, also include the important principle of legitimate change (i.e., the amending process). Given the level of specificity often found in state constitutions, this is an especially important component. It permits state constitutions to keep abreast of the times. Some states make great use of the amending process. California and South Carolina lead the way; each has passed more than 450 amendments to its respective constitution. Other states use the amending process sparingly. Vermont, whose constitution has been in effect since 1793, has only amended its constitution 50 times. Tennessee has amended its constitution, in effect since 1870, only 32 times.

As stated, since 1851 Ohio has added about 150 amendments to its constitution. Article XVI of the Ohio Constitution deals with the amending process. It provides that either branch of the General Assembly may propose amendments. When a proposed amendment receives three-fifths vote of the members of both houses, it is brought before the voters of Ohio. The language of a each proposed amendment and the manner of publicizing it are determined by a "ballot board," a five-person group established by the provisions in this article. If more than one proposed amendment is to be voted on at the election, each must be voted on separately. To become part of Ohio's constitution, a proposed amendment must receive a majority of the votes cast by Ohio voters.

The Ohio Constitution also provides for another way to amend its constitution. Article II, Section 1 gives Ohio citizens the constitutional right to bypass the members of the General Assembly entirely. Under the terms of Article II, Ohio citizens may propose amendments to their state constitution and vote on the acceptability of those proposed amendments.

Special state constitutional conventions are used in situations when requiring major overhauls of state constitutions. This was the process used to the adopt Ohio's second (and present) constitution, the Constitution of 1851. Article XVI, Section 2 discusses this topic. An interesting feature of Ohio's Constitution is the requirement in Article XVI, Section 3, that every twenty years Ohio voters are asked to decide at the general election the following question: "*Shall there be a convention to revise, alter, or amend the constitution?*" The constitutional status of this requirement ensures that the people of Ohio periodically assess their level of satisfaction with their state constitution and decide whether to revise or alter it. The most recent use of this constitutional provision occurred in 1992. Figure 3.1 is an example of that process.

Figure 3.1.
Sample Ballot for Proposed Constitutional Convention

BALLOT LANGUAGE AND EXPLANATION FOR A MANDATORY CONSTITUTIONAL QUESTION; BALLOT LANGUAGE, ARGUMENTS, AND THE FULL TEXT OF AMENDMENTS TO THE OHIO CONSTITUTION PROPOSED BY INITIATIVE PETITION; AND BALLOT LANGUAGE, ARGUMENTS, AND THE FULL TEXT OF A STATUTE PROPOSED BY INITIATIVE PETITION, ALL TO BE SUBMITTED TO THE VOTERS AT THE GENERAL ELECTION, NOVEMBER 3, 1992.

PROPOSED CONSTITUTIONAL CONVENTION

1 A question proposed in Article 16, Section 3 of the Constitution of the State of Ohio, to be submitted to the electors in the general election of November 3, 1992.

Article 16, Section 3 of the Constitution of the State of Ohio, reads as follows:

“At the general election to be held in the year one thousand nine hundred and thirty-two and in each twentieth year thereafter, the question: “Shall there be a convention to revise, alter, or amend the constitution,” shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.”

A majority yes vote is necessary for passage.

	Yes	SHALL THERE BE A CONVENTION TO REVISE, ALTER, OR AMEND THE CONSTITUTION OF THE STATE OF OHIO?
	No	

EXPLANATION OF QUESTION 1 (AS PREPARED BY THE OHIO BALLOT BOARD)

Article 16, Section 3 of the Ohio Constitution requires that every twenty years the electors of the State of Ohio be given the opportunity to decide if there should be a convention to change the Constitution of the State of Ohio. If the calling of a convention is approved by a majority vote, then the next session of the General Assembly must provide for the election of delegates and the assembling of the convention. If the convention agrees to amend the Constitution, those amendments must be submitted to the electors and approved by a majority vote before taking effect.

CHAPTER III.

OHIO'S HISTORY AND CONSTITUTION: IDEAS FOR THE CLASSROOM

Exercise One: "Sequencing Events in Ohio's History"

[pp. 71-72; completed version provided]

Standard One in the National Standards for United States History (Grades 5-12 Expanded Edition, 1994) states: "*Chronological thinking is at the heart of historical reasoning*" (p. 20). This standard emphasizes the importance of having students develop "*a strong sense of chronology -- of when events occurred and in what temporal order*" (p. 20). "Sequencing Events in Ohio's History" addresses that important goal. It requires students to organize chronologically important events in the history of Ohio and the United States. Events from Ohio's history include the enactment of the Northwest Ordinance, the signing of the Treaty of Greenville, Ohio's admission to statehood and the Union, and ratification of Ohio's current constitution. Events from American history include the American War for Independence, ratification of the Articles of Confederation, and ratification of the Constitution of the United States.

Extend this activity by having students create a large time line to display in the classroom. Bring the time line up to the present. Use equidistant intervals to designate time periods. Have students put the events listed in the exercise on the time line. Add other important events as well. Limit the number of entries in any one time interval to avoid clutter.

Exercise Two: "Situating Ohio" [p. 73]

The National Geography Standards call for creating and using "mental maps." In Geography for Life (1994), Standard Two defines mental map as "*an individual's internalized representation of some aspect or aspects of Earth's surface. It represents what the person knows about the locations and characteristics of places at a variety of scales...*" (p. 64). The standards document recommends that teachers encourage students "*to develop and update their mental maps to ensure that they continue to have essential knowledge of place location, place characteristics, and other information that will assist them in personal decision-making...*" (p. 66). This exercise provides such an opportunity. On a blank outline map, students locate Ohio and neighboring states, and three of Ohio's major cities. This exercise also asks students to produce a mental map of Ohio (i.e., draw an outline map of Ohio from memory). The mental

map can be drawn either before and/or after using this exercise. To make the task more challenging, have students draw a mental map of the region, including shapes and names of Ohio's contiguous neighbors.

Exercise Three: "How Much Do You Know About Ohio and Ohio's Constitution?" [pp. 74-75; completed version provided]

Have students use this exercise to assess their knowledge about Ohio's history and Constitution. Use it as a cooperative learning activity, such as Spencer Kagan's "pair check" structure (1994, 10:5-9). Divide the class into pairs of students. Give each pair a copy of the exercise to complete. When students answer as many questions as they can, combine the pairs to form groups of four to compare responses. Make additional resources available (e.g., textbooks, reference books) for group members to use to verify or find out more about items they could not answer. Set reasonable time limits for the teams to complete their tasks.

This exercise can be a catalyst for more in-depth study about state constitutions. Dick Howard's article in This Constitution (Winter, 1987), along with Robert Peck's article and Lucinda Peach's suggested classroom activity in the Spring, 1986 issue of Update on Law-Related Education, are excellent resources. Their perspectives add much to traditional presentations in civics or government textbooks. Controversial amendments recently added to state constitutions are sources of excellent contemporary case studies (e.g., Colorado's anti-homosexual amendment ratified in 1992, California's anti-immigration amendment ratified in 1994). Two articles in the Winter, 1995 issue of Update on Law-Related Education are particularly useful -- "Equal Protection and Sexual Orientation: A State Constitutional Amendment is Enjoined for Violating the Equal Protection Clause," by Jean Dubofsky, and "Teaching Strategy: Focus on Tolerance," by Marilyn Cover (which addresses Oregon's proposed "Minority Status and Child Protection Act" amendment that was defeated at the polls in November, 1994).

Exercise Four: "Comparing the Constitutions of Ohio and the United States"
[pp. 76-77; completed version provided]

The chart used in this exercise lets students make side-by-side comparisons between the Constitution of the State of Ohio and the Constitution of the United States. In view of the length and relative inaccessibility of Ohio's Constitution, this chart should be a helpful teaching tool and reference for students. One way to use the chart is to have students working individually, in pairs, or in small groups complete as much of the chart as they can. Have reference materials available (e.g., textbooks, copies of the two constitutions). Another way is to provide students with the necessary information to complete the chart using the lecture/discussion method. A third way is to give students with a completed version of the chart and have them compare the data. Whatever approach is used, put emphasis on making comparisons between the two constitutions. Encourage students to reflect on the differences and reasons for them.

Exercise Five: "Ohio's Bill of Rights" [p. 78]

Students often overlook the importance of state constitutions as sources of personal rights. This exercise gives them an opportunity to examine the enumeration of rights in Ohio's Constitution and to compare them with the rights included in the United States Constitution. For this exercise, give students copies of the two-page abridged version of Article I of the Ohio Constitution, which is found in text portion of this chapter (pp. 63-64).

Use the questions provided in the exercise to broaden students' understanding of their constitutional rights. Explore, for example, the significance of the location of a bill of rights in the two constitutions. Discuss why similar rights may be included in both constitutions (e.g., incorporation theory; significance of Mapp v. Ohio) and how the rights may differ in the two constitutions (e.g., right to bear arms). Point out differences in the level of specificity of rights found in both constitutions (e.g., right to religious freedom). Have students identify rights in Ohio's Constitution that are in the U.S. Constitution (e.g., right to alter, reform, or abolish government; slavery forbidden from the beginning; no imprisonment for debt). Ensure that student understand that additional rights appear in subsequent sections of the Ohio Constitution, just as they appear in subsequent amendments and other parts of the Constitution of the United States. Share these and other examples:

- *The general assembly shall make such provisions, by taxation, or otherwise, as... will secure a thorough and efficient system of common schools throughout the state....* (Article VI, Section 2),
- *Except in cases of extraordinary emergency, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract, or otherwise* (Article II, Section 37 - added in 1912), and
- *No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.*" (Article XII, Section 1 -- added in 1912).

Conclude the lesson by having students consider whether any important rights have been omitted from both constitutions (e.g., prayer in schools; non-discrimination based on sexual preference). Discuss the different ways for amending the two constitutions.

SEQUENCING EVENTS IN OHIO'S HISTORY

Instructions: Below is a list of twelve important events in the history of Ohio. Place them in their proper order using the numbers one through twelve. Put the number one in the space next to the event which occurred the earliest in Ohio history. Continue numbering the events until you put the number 12 next to the event that occurred most recently.

In What Order Did These Events Occur?

<u>Order</u>	<u>Historical Event</u>
___	American War for Independence begins
___	Articles of Confederation ratified
___	Capital of the State of Ohio moved to what is now Columbus
___	Constitution of the United States is ratified
___	First time a person born in Ohio assumes the office of president of the United States
___	French and Indian War ends; France gives up all land claims in North America east of the Mississippi River
___	Great Britain signs peace treaty with the 13 American states
___	Northwest Ordinance enacted
___	Ohio is admitted to statehood
___	Ohio's current constitution is ratified
___	Treaty of Greenville signed
___	Upon taking office, this Ohio-born man became the first and only person to have been both Chief Justice of the United States and president of the United States.

SEQUENCING EVENTS IN OHIO'S HISTORY

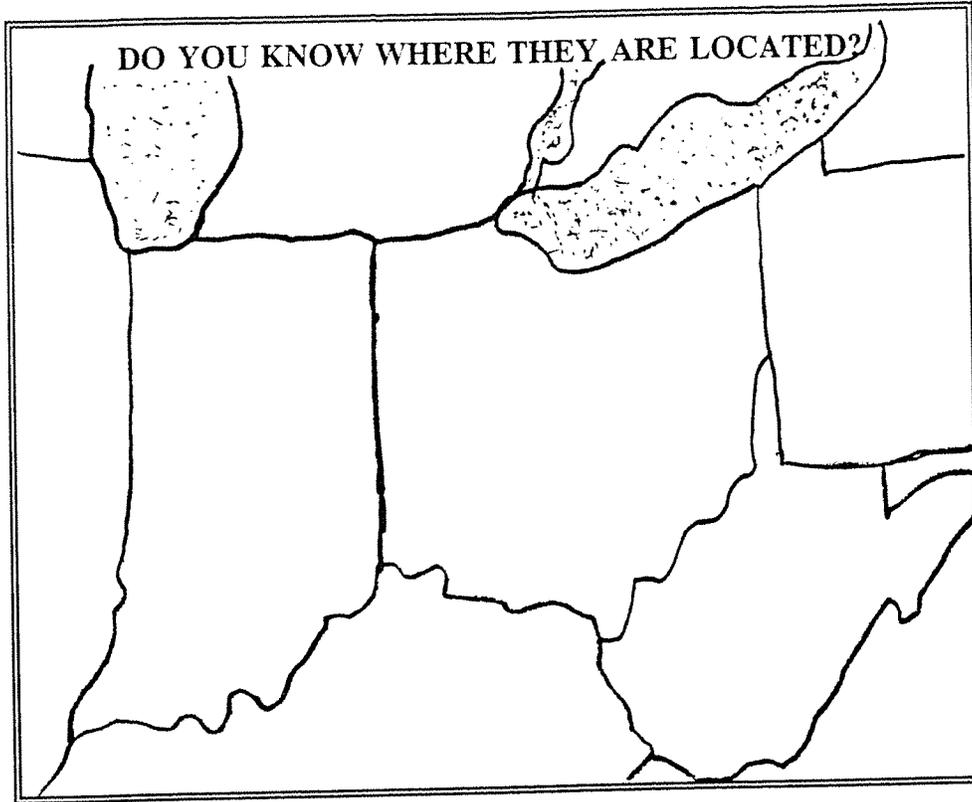
Instructions: Below is a list of twelve important events in the history of Ohio. Place them in their proper order using the numbers one through twelve. Put the number one in the space next to the event which occurred the earliest in Ohio history. Continue numbering the events until you put the number 12 next to the event that occurred most recently.

In What Order Did These Events Occur?

<u>Order</u>	<u>Historical Event</u>
<u> 2 </u>	American War for Independence begins (<i>in 1776</i>)
<u> 3 </u>	Articles of Confederation ratified (<i>in 1781</i>)
<u> 9 </u>	Capital of the State of Ohio moved to what is now Columbus (<i>in 1816</i>)
<u> 6 </u>	Constitution of the United States is ratified (<i>in 1788</i>)
<u> 11 </u>	First time a person born in Ohio assumes the office of president of the United States (<i>Ulysses S. Grant in 1969</i>)
<u> 1 </u>	French and Indian War ends (<i>in 1763</i>); France gives up all land claims in North America east of the Mississippi River
<u> 4 </u>	Great Britain signs peace treaty with the 13 American states (<i>in 1783</i>)
<u> 5 </u>	Northwest Ordinance enacted (<i>in 1787</i>)
<u> 8 </u>	Ohio is admitted to statehood (<i>in 1803</i>)
<u> 10 </u>	Ohio's current constitution is ratified (<i>in 1851</i>)
<u> 7 </u>	Treaty of Greenville signed (<i>in 1795</i>)
<u> 12 </u>	Upon taking office, this Ohio-born man (<i>William Howard Taft</i>) became the first and only person to have been both Chief Justice of the United States (<i>in 1921</i>) and president of the United States (<i>in 1912</i>)

SITUATING OHIO

Instructions: Below is an outline map of the region in which the State of Ohio is located. Use it to demonstrate your geographic understanding of this region.



QUESTIONS TO ANSWER

1. Place the letter A inside the outline of the state of Ohio.
2. Place different letters in each of the states that border Ohio. Identify those states by name and letter according to the following directions.
 - A. State(s) North: _____
 - B. State(s) East: _____
 - C. State(s) South: _____
 - D. State(s) West: _____
3. Use the number indicated to show the approximate location of the following Ohio cities -- Cincinnati (#1), Cleveland (#2), and Columbus (#3). Put a circle around the one that is Ohio's capital city.
4. Study the shape of Ohio. Take out a new piece of paper and draw it from memory.

HOW MUCH DO YOU KNOW ABOUT OHIO AND OHIO'S CONSTITUTION

Instructions: Ten statements about Ohio and its constitution appear below. Some of the statements are accurate. Some are not. Show you know the difference by circling "ACCURATE" next to each statement that is correct and "INACCURATE" next to each statement that is incorrect. Be prepared to explain your choice.

Accurate or Inaccurate?

- | | | | |
|----------|------------|-----|--|
| Accurate | Inaccurate | 1. | Ohio was one of the 13 original colonies to declare independence from Great Britain. |
| Accurate | Inaccurate | 2. | Ohio was originally part of the territory included in the Louisiana Purchase. |
| Accurate | Inaccurate | 3. | Throughout the history of the state, the people of Ohio have ratified only two state constitutions. |
| Accurate | Inaccurate | 4. | Ohio's state constitution has been in effect longer than the Constitution of the United States. |
| Accurate | Inaccurate | 5. | Of all the state constitutions, Ohio's is the shortest. |
| Accurate | Inaccurate | 6. | The first article of the Ohio constitution consists of a bill of rights. |
| Accurate | Inaccurate | 7. | The Constitution of the State of Ohio gives the people of Ohio the power to reject (make null and void) laws passed by the Ohio state legislature. |
| Accurate | Inaccurate | 8. | The Ohio constitution outlaws capital punishment (the death penalty). |
| Accurate | Inaccurate | 9. | From the beginning, Ohio's constitution forbid slavery from being practiced in the state. |
| Accurate | Inaccurate | 10. | Ohio's constitution recognizes the right of the people to bear arms for their defense and security. |
| Accurate | Inaccurate | 11. | The Ohio constitution limits to eight years the successive terms of state legislators, the governor, and the other five elected offices of the executive branch. |
| Accurate | Inaccurate | 12. | Ohio's constitution requires the people of Ohio to vote at least once every twenty years on whether to convene a convention to revise, alter, or amend the federal constitution. |

HOW MUCH DO YOU KNOW ABOUT OHIO AND OHIO'S CONSTITUTION

Instructions: Ten statements about Ohio and its constitution appear below. Some of the statements are accurate. Some are not. Show you know the difference by circling "ACCURATE" next to each statement that is correct and "INACCURATE" next to each statement that is incorrect. Be prepared to explain your choice.

Accurate or Inaccurate?

- | | | | |
|----------|------------|-----|--|
| Accurate | INACCURATE | 1. | Ohio was one of the 13 original colonies to declare independence from Great Britain. |
| Accurate | INACCURATE | 2. | Ohio was originally part of the territory included in the Louisiana Purchase. |
| ACCURATE | Inaccurate | 3. | Throughout the history of the state, the people of Ohio have ratified only two state constitutions. |
| Accurate | INACCURATE | 4. | Ohio's state constitution has been in effect longer than the Constitution of the United States. |
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COMPARING THE CONSTITUTIONS OF OHIO AND THE UNITED STATES

Instructions: How do the constitutions of the State of Ohio and the United States of America compare? This chart will help you find out. Use reference materials to find the appropriate information. Place it in the spaces provided. Then compare and contrast your entries to identify similarities and differences.

Areas of Comparison	Constitution of the State of Ohio	Constitution of the United States
Number and Names of Constitutions		
Date Most Recent Constitution Adopted		
Number of Articles		
Number of Words		
Type of Legislature		
Terms of Legislators		
Name and Term of Head of the Executive Branch		
Name, Size, and Terms of the Court of Last Resort		
Inclusion of a Bill of Rights		
Process for Amending		
Times Amended		
Power of Initiative and Referendum		

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Areas of Comparison	Constitution of the State of Ohio	Constitution of the United States
Number and Names of Constitutions	<i>Two; the Constitution of 1802 and the Constitution of 1851</i>	<i>Two; Articles of Confederation and Constitution of the U.S.</i>
Date Most Recent Constitution Adopted	<i>March 10, 1851</i>	<i>June 21, 1788</i>
Number of Articles	<i>18</i>	<i>Seven</i>
Number of Words	<i>approximately 27,000</i>	<i>approximately 7,500</i>
Type of Legislature	<i>bicameral; the General Assembly consists of the Senate and the House of Representatives</i>	<i>bicameral; the Congress consists of the Senate and the House of Representatives</i>
Terms of Legislators	<i>Senate -- maximum of two 4-year terms; House -- maximum of four 2-year terms</i>	<i>Senate -- unlimited six-year terms; House -- unlimited two-year terms</i>
Name and Term of Head of the Executive Branch	<i>Governor; four-year term; limited to two consecutive terms</i>	<i>President; four-year term; limited to two consecutive terms</i>
Name, Size, and Terms of Court of the Last Resort	<i>Supreme Court; 7 members; elected to 6-year terms. No limit on number of terms.</i>	<i>Supreme Court; 9 members; appointed for life (i.e., good behavior)</i>
Inclusion of a Bill of Rights	<i>Yes; begins with a Bill of Rights (Article I)</i>	<i>Yes; a Bill of Rights was added after ratification</i>
Process for Amending	<i>Three methods for proposing; one method for approval (i.e., vote by Ohio voters)</i>	<i>Two methods for proposing; two methods for approval. No direct vote by the people)</i>
Times Amended	<i>More than 150 times</i>	<i>27 times</i>
Power of Initiative and Referendum	<i>Includes both; added in 1912</i>	<i>Includes neither</i>

OHIO'S BILL OF RIGHTS

Instructions: This exercise provides the opportunity for you to become more familiar with your constitutional rights. To complete it, you will need to use the handout, "Constitution of the State of Ohio," and a copy of the United States Constitution.

1. Ohio's Constitution begins with a bill of rights (i.e., Article I). Where is a bill of rights located in the Constitution of the United States? _____
Why do you think they are located in different places?

2. Why do you think Ohio's Constitution contains a bill of rights? How important is it?

3. Find and list five rights that are in both the Ohio Constitution and the U.S. Constitution.
 1. _____
 2. _____
 3. _____
 4. _____
 5. _____

4. Find and list three rights that are in the Ohio Constitution but not in the U.S. Constitution.
 1. _____
 2. _____
 3. _____

5. Look at Article I, Section 20 of the Ohio Constitution. Explain its importance.

6. Have any important rights been left out of Ohio's Constitution or the U.S. Constitution? In your opinion, should any rights be added? Explain.

CHAPTER IV. THE LEGISLATIVE BRANCH IN OHIO

Laws are rules of society enforced by government. They have an enormous influence on the way we live our lives. Isidore Starr (1987) observes that law affects us "*from the moment we are hatched to the time when we are matched and finally dispatched*" (p. 48). Recognizing that law affects us even before we are born (e.g., regulation of drugs and medical procedures) and after we die (e.g., inheritance, organ donations), Starr's observation could be extended to say that law affects us from pre-womb to post-tomb! The far-reaching influence and impact of law in American society makes it an integral part of the human experience, past and present.

Laws are used in various ways. The National Standards for Civics and Government identifies a number of them (1994, pp. 18-19). Two of the most basic ways are establishing standards to enable society to operate in an orderly, predictable manner and in a manner that keeps people reasonably safe and secure. Examples of laws that provide order and predictability include traffic laws (e.g., driving on the right side of the road, stopping at red lights and moving ahead on green lights) and uniform weights and measures laws (e.g., enabling standardization for production, use, and sale of tools, machines, and building materials). Examples of laws that provide for personal and collective safety and security include laws dealing with the ownership, use, and protection of property (e.g., deeds and leases, privacy laws, laws against burglary, larceny, and fraud), and laws protecting personal privacy and safety (e.g., privacy laws, laws against assault, battery, and homicide). It is hard to imagine how society would be able to function without these types of laws.

Laws can also be used to promote the common good by establishing standards of acceptable behavior. They clarify and enforce standards relating to the ways people should act toward other people and toward property. Keeping one's word (e.g., contract law), respecting other people's privacy and property (e.g., the torts of defamation, trespassing, and battery), and acting with reasonable care (e.g., negligence law) are examples of standards of behavior rooted in civil law. Not taking the property of others without their permission (e.g., embezzlement, robbery), not using force to get people to act against their will (e.g., kidnapping; rape), and not taking the life of other people (e.g., murder, voluntary manslaughter) are examples of behavioral standards imposed by criminal laws.

Closely related to establishing standards for personal behavior is the use of law to establish standards for persons in authority, both those inside and outside of government. In constitutional governments, laws allocate and limit the exercise of political power. They impose structural arrangements restricting the ability of government officials and government bodies to act (e.g., separation of powers, checks and balances, independent judiciary). They also provide

the means for individuals to redress grievances and challenge arbitrary actions. Non-governmental persons having authority include those comprising such diverse groups as medical personnel, clergy persons, and parents. Examples of laws that check their exercise of power over those in their care are laws that safeguard confidentiality and those that protect against mental and physical abuse.

Protecting individual rights is another way in which laws can be used. The First Amendment is an example of this. It enables us to speak and publish our views freely, to associate with whom we wish, and to worship if and as we please. The Fourth Amendment protects from illegal searches and seizures and the Eighth Amendment from cruel and unusual punishments. The Sixth Amendment guarantees the right to a speedy and public trial by jury and the assistance of counsel. With respect to this function of law, the right of due process, guaranteed by both the Fifth and Fourteenth Amendments, is essential. It requires government to use fair procedures that respect the rights of individuals and the interests of society.

Laws can also be a means for society to provide and allocate benefits. Public education laws, for example, create schools and the means to support them, thus enabling children from all walks of life to receive a free public education. Social welfare laws enable those in need to obtain medical and financial benefits through such programs as Medicare, Medicaid, food stamps, and Aid to Dependent Children. And, transportation laws make it possible for streets, roads, bridges, railroads, and airports to be constructed and maintained.

Tax laws, which permit government to claim portions of citizens' wealth, illustrate yet another fundamental use of laws -- assigning burdens and responsibilities. Taxes differentially affect citizens, depending upon the size of one's annual income and other factors (e.g., whether married, a parent, an owner of property, a contributor to charities). Compulsory education laws require children between certain ages to attend the public schools or their equivalent. Military conscription laws require persons to perform military service. Family laws require parents to feed, clothe, house, and otherwise care for their offspring.

As this discussion reveals, laws can be and are used for many purposes. Some laws are restrictive, limiting what we can do. Other laws are facilitative, liberating and empowering us. Overall, American society consists of an interconnected system of different types of laws used for various purposes. These laws combine to provide the framework and mechanism within which we as a people seek to achieve peace and security within the country, protection from foreign enemies, the extension of fair treatment, the promotion of well-being, and the prevalence of freedom now and in the future.

TYPES OF LAWS

Constitutions set forth broad principles of government and specify how power is to be allocated between the people and government, and within the government itself. Because

constitutions establish the fundamental framework for government, constitutional law is the fundamental law of the land. It consists of provisions in a constitution and the interpretations of them. The Constitution of the United States is the most important source of law in our country. It is the supreme law of the land. Because we are a federal government, state constitutions are also important. Ohio's constitution is the ultimate authority within Ohio, its provisions superseded only by the Constitution of the United States.

Statutory law consists of the laws enacted by state and federal legislatures under the authority granted them by their respective constitutions. Statutes may not be in conflict with their respective state constitutions or the federal constitution. At the federal level, Congress enacts statutes. At the state level, the state legislature (known as the General Assembly in Ohio) enacts statutes for that state. Statutes address the full range of relationships among people and between people and the government (e.g., criminal law, juvenile law, contract law, consumer law, tort law, corporate law, environmental law). The scope of statutory law is narrower than constitutional law, but its level of specificity is greater, especially in relation to the federal constitution.

Case law results from rules made by courts when deciding cases brought before them. Consequently, this type of law is often referred to as "judge-made law." Courts are called upon to construe, or explain, the meaning of a constitutional provision or statute as it applies to a specific set of facts. For example, a substantial body of case law has developed over the meaning of such constitutional guarantees as "due process of law," "equal protection of the laws," "unreasonable search and seizure," "excessive bail," "impartial jury" and "assistance of counsel."

Courts seek clarity, predictability, and certainty. To achieve those desirable ends, they adhere to the doctrine of *stare decisis*; that is, they follow precedents established in prior cases that have similar fact situations. United States Supreme Court decisions on federal questions are binding on all lower federal courts and all state courts. Decisions rendered by the Supreme Court of Ohio are binding on all other Ohio courts. Courts are reluctant to overrule precedents because they threaten the goals of predictability and certainty. Nevertheless, new precedents are established. This occurs in one of two circumstances. The court may be presented with a fact situation that differs significantly from prior cases so that precedents do not apply. Or, the court may overrule a prior precedent given changing economic, political, or social conditions or values.

Ordinances are another type of law. They are similar to statutes, except that ordinances are laws passed by governmental sub-units within a state, such as counties, cities, towns or villages. They apply only in the area of jurisdiction possessed by the governmental unit that enacts them (e.g., a municipal ordinance passed by the Cincinnati City Council is enforceable only within the city limits of Cincinnati). Ordinances address situations we frequently encounter in our daily lives, such as parking regulations, speed limits on residential streets, zoning regulations, building permits, and the ownership and care of pets.

Government officials charged with carrying out statutory requirements are the sources of another type of law, known as administrative law. Administrative law consists of the regulations that are established by federal and state administrative bodies, such as departments, commissions, and agencies, as they enforce statutory law. The Internal Revenue Service (IRS) is an example of this type of administrative body. It is charged with enforcing federal tax laws. In discharging this responsibility, the IRS must necessarily interpret applicable federal statutes and case law. The interpretations arrived at by the IRS do much to shape the meaning of federal tax laws. At the state level, bodies such as the Ohio Department of Education, the Ohio Environmental Protection Agency, the Public Utilities Commission of Ohio are important sources of administrative law.

THE OHIO GENERAL ASSEMBLY

In 1803, Ohio became the seventeenth state to join the Union. Under its constitution, the legislative branch was very powerful. The judiciary and the office of governor were weak. During the state's nearly two hundred years of existence, that balance of power has been altered. The passage of a new constitution in 1851 and the addition of various amendments to it have reduced the power of Ohio's legislative branch and increased the power of the other two branches. Yet, Ohio's legislative branch of government remains powerful. It exerts a major influence over the lives of all who live within the state.

Size and Eligibility

Article II, Section I of the Ohio Constitution provides that, "*The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives....*" Like all other states but Nebraska, Ohio has a bicameral legislature. Similar to 18 other states, this bicameral legislature is called "the General Assembly." The Ohio General Assembly consists of a House of Representatives, comprised of 99 members, and a Senate, comprised of 33 members. Along with the great majority of other states, the Ohio General Assembly holds annual sessions. (Fewer than ten state legislatures still meet on an every-other-year basis.)

Article II of the Ohio Constitution sets forth the qualifications to serve in the General Assembly. Eligibility rules for both houses is the same. Candidates must be at least 18 years of age, qualified to vote (i.e., is not insane or been convicted of a felony), and have resided in the district to be represented for at least one year prior to the election. Ohio has a lower minimum age for serving in its state legislature than most states and, contrary to most states, does not have a different age requirement for the two chambers. Like the federal government, most states make an age distinction for membership in the two chambers.

Elections to Ohio's General Assembly are conducted in even-numbered years during the month of November. Members of the House of Representatives serve two-year terms; members

of the Senate serve four-year terms. Seventeen Senators are elected in one biennial election and 16 in the next biennial election. In 1992, Ohio voters supported a constitutional amendment establishing term limits for state legislators. Members of the Ohio House of Representatives are limited to four consecutive two-year terms. Members of the Ohio Senate are limited to two consecutive four-year terms. This provision went into effect beginning January 1, 1993. Thus, the first time these constitutional limitations will apply will be during election year 2000. State legislators affected by the limitation would have to wait at least four years before they could hold the same office again.

In 1992, Ohio voters also passed constitutional amendments limiting United States Senators from Ohio to two consecutive six-year terms and members of the United States House of Representatives from Ohio to four consecutive two-year terms. In May, 1995, the United States Supreme Court, in a 5-4 decision in U.S. Term Limits Inc. v. Thornton, barred states, and Congress itself, from limiting the terms of members of the United States Congress. By this action, the 1992 amendments to the Ohio Constitution pertaining to Ohio representation in Congress became null and void. The constitutional amendments that placed limitations on members of the Ohio legislature (and those limiting the six state-wide elective offices of the executive branch) were not affected by that decision.

When vacancies occur, most commonly through resignation or death, the Ohio Constitution (Article 1, Section 11) provides a process for obtaining replacements. A replacement is determined by vote of the members in that chamber who are of the same political party as the person last elected by the voters to the seat vacated. Hence, this process virtually assures that the replacement will be a person of the same political party as his or her predecessor.

Composition and Apportionment

Ohio's General Assembly, like the legislature of every other state, is made up of persons elected to office by the voters in their respective legislative districts. A legislative district is a demarcated geographic area of the state. The number of districts within a state depends on the number of seats in that state's legislature. Because Ohio's bicameral legislature is comprised of 99 members of the House of Representatives and 33 members of the Senate, the state is divided into 99 House of Representative districts and 33 Senate districts. By constitutional requirement (Article XI, Section 11), Senate districts must be "*composed of three contiguous house of representatives districts.*" The process of dividing a state into legislative districts is known as apportionment.

Today the size of an Ohio legislative district is based on population. This was not always the case. Prior to the 1960s, many states, including Ohio, used population as the primary, but not exclusive, means for configuring the size of their state legislative districts. States often used population as the basis for representation in one legislative chamber (often the lower house), and geographic area (e.g., a county) in the other chamber. Ohio provided that each of its 88 counties would have at least one representative in its House of Representatives, with additional

representatives given on the basis of population in accordance with a designated formula. Senate districts were apportioned more closely on the basis of population. These practices resulted in wide disparities in the ratio of representative to constituents, both within the Ohio House of Representatives as well as in the legislatures of other states. This system had the effect of giving rural areas greater influence in state legislatures than their populations merited. Urban areas were consequently under-represented in Ohio's General Assembly and in many other state legislatures.

The situation changed dramatically as a result of landmark United States Supreme Court decisions announced during the first half of the 1960s. Baker v. Carr (1962) and Reynolds v. Sims (1964) provided the basis for the Supreme Court to rule that such systems for apportioning state legislatures violated the equal protection clause of the Fourteenth Amendment. The effect of those decisions was a radical transformation of the make-up of state legislatures throughout the nation.

Key Constitutional Issues

Many state constitutions had provided for periodic reapportionment. But, during the twentieth century, as the population of cities grew and that of rural areas diminished, a potential shift in power within states began to surface. Reapportionment promised to give urban areas more representation and rural areas less representation. Faced with this prospect, a number of states disregarded the reapportionment mandate in their constitutions. Others sought to perpetuate a geographic area system for one of the two chambers of their legislature. Even though 36 states had constitutional requirements for redistricting as of 1960, 12 senates and 12 state houses of representatives had not been reapportioned for at least 30 years or more.

As dissatisfaction with this situation grew within various states, aggrieved persons sought relief in the courts. Reapportionment posed important constitutional issues regarding such key principles as separation of powers and federalism. State constitutions typically gave apportionment power to the state legislatures, both for state legislative districts and for federal congressional districts. What happens if a state legislature refuses to reapportion? Can the state's judicial branch intervene? Does the Tenth Amendment reserve apportionment power to the states, or can the federal government intervene? If the federal government intervenes, does Congress or the federal judiciary have the constitutional power to act?

What the Supreme Court Decided

The Supreme Court decision in Colegrove v. Green (1946) was the first important case in the sequence of court decisions involving reapportionment. This case involved the reapportionment of legislative districts for the United States House of Representatives. The Illinois state legislature had failed to change the districting of congressional seats since 1901 because to do so would have given the city of Chicago more representatives. Plaintiffs, who were from the Chicago area, argued that, given the disparity in size of the congressional district in which they lived (i.e., 914,053) and that of another Illinois district (i.e., 112,116), they were

being denied equal protection of the laws under the Fourteenth Amendment. They asked the federal courts to prevent Illinois from conducting congressional elections in 1946 under its current district pattern, and to reapportion to create more equal size congressional districts. In a four-to-three decision, the United States Supreme Court sided with the federal trial court's decision to dismiss the case for lack of jurisdiction. The Court majority expressed reluctance to enter what it termed "*a political thicket.*" The majority held that equal representation questions posed by state reapportionment practices was a "*political question*" to be answered by lawmakers, not the courts. Although the decision dealt with congressional reapportionment and not with that of state legislatures, the principle the Court set forth in Colegrove v. Green applied to both situations.

In 1962, the Supreme Court considered a case involving the state of Tennessee and the reapportionment of its state legislature. Although its constitution required reapportionment every ten years for both chambers of the state legislature on the basis of population, Tennessee had not reapportioned since 1901. In this case, Baker v. Carr (1962), the Supreme Court sided with the complainants and against the state in a six-to-two decision. For the first time, the United States Supreme Court ruled that the federal courts have jurisdiction in malapportionment cases. "*We conclude,*" wrote Justice Brennan for the Court majority, "*that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.*" Henceforth federal judges could review questions involving malapportionment under the equal protection clause of the Fourteenth Amendment.

The Baker v. Carr decision was the catalyst for a deluge of lawsuits involving reapportionment. Between 1962 and 1964, a total of 41 states were involved in such lawsuits. In 26 states, the state courts found the apportionment practices unconstitutional. The United States Supreme Court proceeded to clarify other remaining issues. Wesberry v. Sanders (1964) was the key case involving the malapportionment of congressional districts. In this case, the Court used the "one man, one vote" principle to hold unconstitutional a 1931 Georgia congressional apportionment law. Speaking for the Court majority, Justice Black declared:

We hold that, construed in its historical context, the command of Article I, Section 8, that Representatives be chosen "by the People of the several States" means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.... To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention....

While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.

The impact and significance of this decision are revealed by the following observation in Justice Harlan's dissenting opinion. Justice Harlan pointed out that the Court's holding "*places in jeopardy the seats of almost all the members of the present House of Representatives.... [T]oday's decision impugns the validity of the election of 398 Representatives from 37 States, leaving a 'constitutional' House of 37 members now sitting.*"

Four months after Wesberry, the Supreme Court, in Reynolds v. Sims (1964), addressed the composition of state legislatures. In Reynolds and in five other cases decided the same day, the Supreme Court struck down the legislative apportionment arrangements in six states and extended its "one man, one vote" principle to both houses of a state legislature. In an eight-to-one decision, Chief Justice Warren spoke for the majority. He declared:

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system....

State legislatures are, historically, the fountainhead of representative government in this country. But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. [This requires] that each citizen has an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

... A nation once primarily rural in character becomes predominately urban. Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged -- the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative reapportionment. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of "government of the people, by the people, [and] for the people."

Warren then stated the Court's conclusion, a principle that would fundamentally alter the character of state government in the future: "*We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.*"

The Aftermath of "One Man, One Vote"

Throughout the nation, howls of protest greeted the Reynolds decision. No longer could states maintain a system in which one chamber of the legislature would be based on population

and the other on geographic area (e.g., counties) if the latter system created numerically unequal-sized districts. Efforts in Congress were undertaken to deny to the federal courts any jurisdiction over state legislative apportionment and to overrule the decision by constitutional amendment. Those efforts failed. States subsequently enacted new plans to comply with federal court mandates. In 1968, the Supreme Court expanded the "one man, one vote" principle local governmental units in the case of *Avery v. Midland*.

In 1967, the voters of Ohio changed their constitution to comply with Supreme Court's "one man, one vote" principle. The size of the House of Representatives was reduced to 99 members and multi-member districts were abolished. Large counties were subdivided; smaller counties were combined into single-member districts. Among the key constitutional changes were:

- Article IX, Section 1, which gives responsibility for apportionment to a special six-person Apportionment Board. Membership includes the Governor, the Auditor of State, the Secretary of State, and three legislators -- one chosen by the Speaker of the House, one from the Senate of the same party as the Speaker, and one chosen by "*the legislative leaders of the two houses of the major political party of which the Speaker is not a member.*" This board prescribes "*the boundaries for each of ninety-nine house of representative districts and thirty-three senate districts.*"
- Article IX, Section 2, which establishes the mathematical formula for reapportionment (i.e., dividing the total population of the state, as determined by the federal decennial census, by 99 for the House and 33 for the Senate).
- Article IX, Section 3 and Section 4, which provide for "*substantially equal*" sized districts, with no more than a plus or minus five percent population variance for House and Senate districts.
- Article IX, Section 5, which stipulates single-member districts in both chambers of the state legislature.
- Article IX, Section 7, which requires districts to be "*compact and composed of contiguous territory*" bound by "*a single non-intersecting continuous line.*"
- Article IX, Section 11, which states that "*Senate districts shall be composed of three contiguous house of representatives districts.*"

The drawing of district lines has a significant effect on the political make-up of the General Assembly. Ohio's Constitution specifies that the Governor first convene the Apportionment Board between August 1 and October 1, 1971 and "*every tenth year thereafter.*" The political party that holds the majority of these positions at the time controls the apportionment process.

Contrary to state legislatures, only one of the two chambers of the United States Congress has representation based on population. Reapportionment for the federal House of Representatives occurs nationally every ten years following the federal census. As the population of the nation changes, it may result in changes in the number of seats individual states are entitled to in the House of Representatives. Because the number of representatives is fixed at 435, the ratio for determining state allocations changes in relation to the population of the nation (i.e., by dividing the number of seats by the total population). When a state gains or loses representation, it must establish new districts.

In Ohio, the General Assembly has authority to draw boundary lines for congressional districts. A plan is formulated and then introduced in the legislature like any other legislation. When passed by both houses of the General Assembly and signed by the governor, it becomes part of the Ohio Revised Code.

The process of legislative reapportionment has been and continues to be a controversial, politically-impacted process. Court decisions have firmly established the principle that legislative districts must be approximately equal in population. But the issue of the shape of a legislative district remains contentious. Ever since the Massachusetts legislature created an oddly shaped, "salamander like," district for political advantage in 1812, the issue the shape of a legislative district has been a concern.

Gerrymandering, the practice of drawing district boundary lines for political advantage, has most recently been used in so-called "majority-minority districts" in which race is used in drawing electoral districts to increase the likelihood of electing racial minorities. The legal rationale has been an interpretation of Section 2 of the federal Voting Rights Act of 1965, which guarantees minorities the right to "*participate in the political process and to elect representatives of their choice.*" After the 1990 census, states redrew their electoral boundaries. Some states used race to create majority-minority districts. Those actions were subsequently challenged.

In June, 1994 the Supreme Court, in Johnson v. DeGrandy, ruled on a case involving an effort to create additional minority-majority districts in the Florida state legislature. Miguel De Grandy, a member of the Florida House of Representatives, filed a complaint in federal district court charging that the newly formulated districts for the Florida legislature were unfairly drawn. He contended that house and senate redistricting plans failed to draw up as many Hispanic majority-dominated state legislative districts as were possible in Dade County. The federal district court rejected two of Florida's house redistricting plans, but accepted a plan De Grandy and other plaintiffs had devised. That plan increased the number of Hispanic-dominated house districts from nine to eleven. On appeal, the United States Supreme Court, in a 7 to 2 decision, overruled the lower court. The Court emphasized that once a minority group had achieved representation proportional to the size of its population, the creation of additional minority districts was unnecessary and unconstitutional.

In June, 1993, the United States Supreme Court, in Shaw v. Reno, held that the creation of a North Carolina congressional district (the 12th) deliberately gerrymandered to create a

minority-majority district might violate the rights of white votes. It remanded the case to a lower court for further consideration. In 1994, that court ruled that this district did not violate the constitution. In June, 1995, the high court again spoke on the issue. In 1992, Georgia redrew boundaries to create three congressional districts whose population was mainly African-American. All three elected African-Americans in 1992. In a 5-4 decision, the Supreme Court struck down Georgia's congressional districting, holding that race could not be the main factor in redrawing the boundaries of electoral districts. On behalf of the Court, Justice Anthony Kennedy wrote: "*Just as the state may not segregate citizens on the basis of race in its public parks, buses, golf courses, beaches and schools, it may not separate its citizens into different voting districts on the basis of race.*" The court also agreed to hear arguments against minority-majority districts in Texas and to rehear arguments against the black-majority 12th District in North Carolina during its 1995-1996 term. Decisions in those cases should further clarify the degree to which it is constitutionally permissible to use race or ethnicity for drawing electoral district lines.

Powers of the Ohio General Assembly

The General Assembly has broad authority to enact legislation on a wide range of matters affecting the lives of Ohio residents. Article II, Section I of the Ohio Constitution vests "*the legislative power of the state*" in the Ohio General Assembly. But, the legislature's ability to act is restricted by provisions in both the United States Constitution and the Ohio Constitution.

With respect to the Constitution of the United States, the General Assembly may not pass laws in areas where authority has been given to Congress. For example, the General Assembly may not set up an independent postal system for the State of Ohio or pass laws pertaining to the United States postal service. It may not create its own monetary system or pass laws impairing the monetary system of the United States. The United States Constitution grants Congress exclusive authority in those areas. Neither Ohio nor any of the other states may intrude in such areas.

The Ohio Constitution also establishes some limitations on the General Assembly's law-making powers. One way that it does this is by denying the General Assembly authority to pass certain types of laws. For example, the General Assembly not pass laws that:

- limit monetary awards in civil cases involving wrongful death: "*The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.*" Article I, Section 19-a);
- create retroactive laws: "*The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts....*" (Article II, Section 28);
- permit the state government to assume the debt of a local government: "*The state*

shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war." (Article VIII, Section 5);

- permit slavery: "*There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.*" (Article I, Section 6) [This provision was also part of Ohio's first constitution. Both provisions predated federal action on this issue.]

The greatest number of examples of limitations on the General Assembly are found in Article I of the Ohio Constitution, Ohio's Bill of Rights. Prior to the incorporation, or application, of the federal Bill of Rights to the states, the restrictions on Ohio's law-makers established in Article I of the Ohio Constitution were even more important for protecting the rights of Ohio citizens than they are today.

The Initiative

Ohio does not grant the General Assembly exclusive power to make the laws. It is one of 21 states that permit their citizens to take part in making state laws through a petitioning process known as initiative. In Article II, Section 1, the Ohio Constitution declares that:

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls.

The Ohio Constitution also stipulates that "*The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.*"

The initiative process permits a person, or group of persons, by a petitioning process, to propose a law or amendment to the General Assembly or to propose an amendment to the voters directly. The people's power of referendum (i.e., the right to vote for or against a particular measure) enables Ohioans to approve or disapprove of a proposed statute or amendment.

To use the initiative, supporters must obtain a petition signed by three percent of those who voted in the last gubernatorial election and file it with the Secretary of State no later than 10 days prior to the commencement of a session of the General Assembly. Signatures must be obtained from half of the state's 88 counties. The petition, or proposed law, becomes a bill to

be acted upon by the General Assembly. If the bill is not changed and approved by the normal legislative process, it becomes law. However, if the proposed law is not passed in four months, or if an amended, unacceptable version is passed, then it is possible to have the proposed law placed on the ballot and have Ohio voters themselves decide whether to approve or reject the measure. For this to occur, supporters have 90 days to gather signatures from an additional three percent of the voters. Ohio voters then vote on the proposed law at the next general election, 90 days after the petition is filed. If approved by the voters, the measure becomes law. The governor is not involved in the process. No veto is possible. In the event that the General Assembly had previously passed an amended version of the statute, that version would be replaced by the version approved by Ohio voters. Thus, the initiative power enables the people to deal with a recalcitrant legislature that has chosen to ignore an important issue or passed a bad law.

The Referendum

In addition to the initiative power, Ohioans also have the power of referendum. This permits voters to approve or reject a law, or a portion of a law, passed by the General Assembly. Except for emergency laws that go into effect immediately, new laws passed by the General Assembly do not go into effect for 90 days. During the interim, Ohioans may exercise the power of referendum. To do so, they must file a petition with the Secretary of State within the 90 day period. The petition must be signed by at least six percent of those who voted in the last gubernatorial election and include signatures from persons in at least half of the 88 counties. This puts the General Assembly's action on hold until it is submitted to voters at the next general election 60 days after the petition is filed. If the vote is affirmative, the law takes effect. If the vote is negative, the proposed law becomes null and void.

Apart from these types of limitations, the General Assembly makes use of its broad authority to enact a number of laws covering a range of matters affecting the health, safety, and welfare of Ohio citizens. Some of these areas are specifically mentioned in the Ohio Constitution. For example, education is one of the most important reserved powers the 50 states possess. The Ohio Constitution mandates action by the General Assembly in this area. Article I, Section 7 reads, "*it shall be the duty of the general assembly to pass suitable laws to ...encourage schools and the means of instruction.*" Article VI, Section 2 declares that, "*The general assembly shall make such provisions, by taxation, or otherwise, as ...will secure a thorough and efficient system of common schools throughout the state....*" Other areas for legislation are suggested rather than mandated. For example, Article II, Section 34 encourages the legislature to pass laws "*fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees.*" Article II, Section 35 provides for the General Assembly to pass worker compensation laws for death, injury, or disease resulting from employment and Article II, Section 36 specifies the conservation of natural resources as an appropriate exercise of legislative authority.

Along with broad authority to create laws, the General Assembly also possesses the power of the purse. The Ohio Constitution provides that no money may be drawn from the state

treasury without being appropriated by the General Assembly, and that no appropriation may exceed a two-year period (Article II, Section 22). The General Assembly has broad powers to raise money through taxation, to borrow money on behalf of the state, and to appropriate money to various government offices to carry out constitutional and legislative functions. The authority to raise money through taxation is provided for in Article XII, Section 4, which specifies: "*The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt.*" Because Article VIII, Section 1 limits the amount of debt that the State of Ohio may incur in a biennium to \$750,000, the General Assembly is forced operate on what amounts to a balanced budget. To do this, it has been forced to make use of its powers of taxation. Among the types of taxes the state imposes are:

- excise taxes on specific items (e.g., on cigarettes, liquor, horse racing, public utilities);
- highway user taxes (e.g., in the form of a tax on fuel and motor vehicle registration and license fees);
- a sales tax on all goods except "*the sale or purchase of food for human consumption off the premises where sold*" which Article XII, Section 3 forbids, which was first adopted in 1934; and
- an income tax, first adopted in 1971.

Other forms of taxation are also used (e.g., estate tax, corporation franchise tax). Real estate taxes, which may only be increased by a vote of the people living in the area affected, are a prime source of monies for schools and local governments.

The Ohio Constitution grants to the General Assembly the power to increase or diminish the number of justices of the Supreme Court of Ohio and judges of the courts of common pleas, and to establish other courts (Article IV, Section 15). A two-thirds vote of the members of each house is required.

The General Assembly is also granted the power to remove public officials from office. Article II, Section 24 stipulates that, "*The governor, judges, and all state officers, may be impeached for any misdemeanor in office.*" Article II, Section 23 grants to the House of Representatives the power of impeachment (i.e., by majority vote) and to the Senate the power to try the matter and render judgment (i.e., conviction requires a two-thirds vote). Article IV, Section 17 provides for the removal of judges "*by concurrent resolution of both houses of the general assembly, if two-thirds of the members, elected to each house, concur therein...*" In addition, Article II, Section 6 gives the General Assembly the power to judge the qualifications of its own members and to punish and expel them when deemed necessary (requires a two-thirds vote of the house involved).

The General Assembly also has a role to play in matters relating to amendments to the Ohio Constitution. Article XVI sets forth three methods for amending the Ohio Constitution. Two involve the General Assembly. The third method bypasses it.

The General Assembly may propose an amendment (a three-fifths vote in both chambers is required) with ratification achieved by a majority vote of Ohio voters casting ballots in the general election. The second method involves the General Assembly in convening a special state convention. This can occur in one of two ways. If two-thirds vote of the members of both houses recommend a special state convention be called and a majority of Ohio voters approve, the General Assembly must then arrange to elect delegates. The other way requires Ohio voters to initiate the call for a special state convention. This is triggered by the provision in the Ohio Constitution that requires Ohio voters to be asked in a general election every 20 years whether they favor convening a convention to revise, alter, or amend the constitution (Article XVI, Section 3). If a majority of voters support this, the General Assembly conducts the election for delegates. The last time Ohio voters were asked this question was in the November, 1992 general election. (They voted in the negative.)

In addition to these methods, Ohioans may constitutionally bypass the General Assembly altogether and have proposed constitutional amendments placed on the ballot using the power of initiative. This requires a petition, signed by 10 percent of the persons who voted in the last election. The attorney general must first certify a summary of the amendment. Then it as well as the full text of the amendment are filed with the secretary of state. Petitions are circulated and filed, and the secretary of state places the amendment on the ballot. The ballot wording, along with arguments for and against it (prepared respectively by the initiating group and by persons named by the legislature), are published once a week for three weeks in a newspaper in each county. If a majority of the voters approve the proposed amendment, it becomes part of the constitution. If this process results in conflicting amendments, then the measure that receives the highest number of votes prevails.

THE LAW-MAKING PROCESS

The General Assembly organizes itself in a way similar to the United States Congress. It adopts formal rules and procedures, establishes key leadership positions, relies heavily on committees for getting done the work involved in making laws, and uses party affiliation and influence for determining leadership positions and committee assignments.

Rules and Procedures

In accordance with the Ohio Constitution, each house of the General Assembly, upon convening, establishes the formal rules and procedures that will shape the way official business is to be conducted. The adopted rules include an official order of business to be followed, the

titles and official duties of leadership positions, the names of the standing committees, the duties and powers of committee chairmen, procedures used with committee meetings, when and how members may speak, the procedure for voting, and so on. Figure 4.1 shows an excerpt of the rules adopted by Senate of the 120th General Assembly, adopted on January 13, 1993.

The Ohio Constitution requires each chamber to hold public sessions unless the members present, by a two-thirds vote, decide otherwise. The public may observe proceedings on the floor of each chamber and committee sessions, although meetings of conference committees are seldom accessible to the public. Each house is also required by the Ohio Constitution to keep an accurate journal of its activities and legislative actions.

The order of business followed in the House of Representatives is:

1. Reading and approving, with or without corrections, of the Journal.
2. Consideration of Senate amendments.
3. Bills for third consideration.
4. Motions and resolutions.
5. Reports of standing and select committees and bills for second consideration.
6. Announcement of committee meetings.
7. Introduction of bills.

The Senate follows a similar order of business.

Key Roles and Responsibilities

As provided in the Ohio Constitution, the members of each chamber select their leaders. The following is a brief description of some of the key leadership roles and responsibilities in each chamber of the General Assembly.

Speaker of the House: The Speaker is the leader of the House of Representatives in title and practice. This representative is the most influential member of the majority party. The Speaker's duties, as stated in the rules adopted by the House of Representatives of the 120th General Assembly, include: (1) calling the House to order; (2) preserving order and decorum; (3) deciding questions of order and procedure, subject to appeal; (4) appointing all committee members; (5) appointing all committee chairmen; and (6) recognizing members who wish to speak during floor action. The last three duties are especially important.

President of the Senate: More than the titular leader of the Senate, this person is the leader in practice as well. Considered the most powerful member of the Senate, the President heads the majority party in the Senate and performs duties similar to those listed here for the Speaker of the House. In contrast to the United States Senate, in which the holder of this office is an elected member of the executive branch (i.e., the Vice President), the President of the Ohio Senate is an elected member of the Senate.

Speaker Pro Tempore: Technically, this person presides and discharges the duties and responsibilities in the absence of the Speaker of the House. In practice, the Speaker Pro Tempore seldom presides. He or she is an influential member of the majority party who works closely with the Speaker in achieving party goals.

President Pro Tempore: The duties and functions of this person are equivalent to the Speaker Pro Tempore in the House.

Majority Floor Leader, Assistant Majority Floor Leader, and Assistant Majority Whip: The representatives who hold these three leadership positions in the House work closely with the Speaker in managing and obtaining passage of as much of the majority party's legislative agenda as possible.

Majority Leader, Assistant Majority Leader, and Assistant Majority Whip: These three positions are important leadership positions in the Senate. They are analogous to the similarly named positions that exist in the House.

Minority Floor Leader, Assistant Minority Floor Leader, and Assistant Minority Whip: The Minority Floor Leader is the head of the minority party in the House of Representatives. The Minority Floor Leader advises the Speaker of the House in the assigning of members of the minority party to committees. As leader of the minority party, the Minority Floor Leader seeks to advance his or her party's legislative goals. The Assistant Minority Floor Leader and Assistant Minority Floor Whip work with the Assistant Minority Floor Leader in mustering needed support for legislation favored by the minority party.

Minority Leader, Assistant Minority Leader, and Assistant Minority Whip: These three senators perform similar roles as their counterparts in the House. The term "floor" as part of their counterparts' titles in the House is not used in the Senate.

Legislative Clerk: Both the House and Senate have the position of Legislative Clerk. This person oversees and is responsible for the discharging of clerical and administrative tasks, including the printing of documents (e.g., bills, calendar, journal) and the maintenance of an index record of all bills and resolutions introduced in both chambers (e.g., number, title, authorship).

How a Bill Becomes A Law

The formal legislative process is established in the Ohio Constitution. To pass a law, a bill must receive majority approval of the members of each chamber of the General Assembly. Bills must be considered by each chamber on three different days, unless two-thirds of the members of the chamber suspend this requirement. Every bill that passes both chambers must be signed by the presiding officers of the two chambers and forwarded to the governor for approval. Now known as an act, it becomes a law if the governor approves and signs it. The new law is filed with the secretary of state for final enrollment. It becomes a law after 90 days,

or immediately if designated emergency legislation.

If the governor vetoes an act of the General Assembly, he or she returns the act, with objections indicated in writing, to the chamber in which the bill originated. The act can become a law if three-fifths of the members of each house vote to override the governor's veto. If the governor does not sign the bill within 10 days after receiving it, Sundays excepted, the act becomes law without the governor's signature. If 10 or fewer days remain before the legislature adjourns and the governor objects to the act, the governor has 10 days after the General Assembly adjourns to file objections to the act with the Secretary of State. If that occurs, the act does not become law.

The governors of every state except North Carolina have the power to veto legislation. All but six of those 49 governors also have the power of the item veto. The item veto permits a governor to disapprove a specific item or specific items in a bill. Most states, including Ohio, restrict the item veto to appropriations bills. The item veto permits the governor to remove one or more lines appropriating money for purposes deemed inappropriate.

Given the formal requirements set forth in the Ohio Constitution, each chamber of the General Assembly has developed rules, procedures, and processes for enacting legislation. The actual work of making laws is done in committees. Table 4.1 sets forth the basic steps involved in a bill becoming a law. A proposed law, known as a bill, may be introduced in either chamber, with the exception of an appropriation bill, which must originate in the House. The steps involved in the law-making process are similar in both chambers.

Once a legislator decides to introduce a bill, it is first sent to the Legislative Service Commission that, by law, must ensure that all bill comply with the correct form before they are introduced. The legislator who introduces a bill is designated as its sponsor. Other legislators may serve as co-sponsors. The bill is then given a number and its first reading. Once introduced, bills go to the Reference Committee in the House or the Committee on Reference and Oversight in the Senate where they are assigned to a standing committee for further deliberation. Committees make determinations about the value of the bills assigned to them. Some are deemed unworthy and no further action taken. Others are judged to be worthy and are given further consideration. After establishing priorities, committees often schedule hearings at which interested parties, usually the persons potentially affected, appear and speak for or against the proposed legislation. At the conclusion of those hearings, the members of the committee vote on how to proceed. They may amend the original bill, rewrite it, or combine it with one or more similar bills. By a majority vote of all members (not just a majority of the members present), the committee decides whether to report the bill out (i.e., to send it to the Rules Committee for further action). The committee could also choose to take no action on the bill.

The Rules Committee schedules bills for action by the chamber's membership. If the Rules Committee opposes the bill, it may never be scheduled for floor action. After priorities are established by the leadership of the chamber involved, members debate and vote on proposed

TABLE 4.1.
BASIC STEPS INVOLVED IN HOW A BILL BECOMES A LAW

- **Introduced**: A bill can only be introduced by an elected member of the chamber that will consider it. It is first reviewed by the Legislative Service Commission to comply with correct form. The bill then receives an identifying number and its first reading on the floor of the chamber.
- **Referred**: The bill is sent to the House Reference Committee (or Senate's Committee on Reference and Oversight). It dies unless forwarded to a standing committee. If referred, the bill receives a second reading on the chamber floor and is sent to the designated standing committee.
- **Standing Committee Action**: A standing committee determines the merits of the proposed bill and whether to give it further attention. When judged meritorious, the committee arranges for a hearing on the bill. The majority of committee members subsequently vote to take no further action or to report out the bill to the Rules Committee, with a favorable or unfavorable recommendation.
- **Rules Committee Action**: The Rules Committee, chaired by the chamber's presiding officer, determines the fate of bills. It decides whether to take no action on the bill, refer it to another standing committee, or schedule it for floor action, debate, and vote by the chamber's full membership.
- **Debate and Vote by the Chamber's Membership**: When the Rules Committee schedules the bill for floor action, it will be read for a third time. Debate on the merits of the bill follows. Amendments may be offered. A vote is taken (by an electronic roll call system in the House and by voice vote in the Senate). To pass, a majority must vote to approve the bill with or without amendment(s).
- **Other Chamber Takes Action**: The approved bill is sent to the other chamber, where it follows a similar process. If it survives, the bill is brought to the floor for debate and vote. If the same version of the bill is passed, the bill becomes an act and is sent to the governor. If a different version is passed, a Conference Committee is appointed.
- **Conference Committee Action**: A Conference Committee consists of six members, three from each chamber appointed by its respective leadership. This committee seeks to work out a version of the bill that will be acceptable to both chambers. Upon agreement, the bill is returned to each chamber for further consideration and vote.
- **Action on the Conference Committee's Version of the Bill**: Both chambers must vote on the measure in the form agreed upon by the conference committee. If acceptable, the bill becomes an act, and is forwarded to the governor for further action.
- **Action by the Governor**: Upon receipt of an act, the governor has 10 days to sign or veto it. If signed, the act become law. If vetoed, the act is returned to the chamber in which it originated along with the governor's written objections.
- **Overriding a Veto**: By a vote of three-fifths majority in both chambers, an act can become law despite being vetoed by the governor.
- **Filed**: Acts which survive the process are filed with the Secretary of State for final enrollment. They become laws after 90 days (immediately if designated as emergency legislation).

bills brought before them. Bills approved by one chamber are transmitted to the other chamber for action. Majority approval is needed in both houses. When the House and the Senate pass different versions of the same bill, a conference committee, composed of members of each chamber, get together to develop a common and acceptable version of the bill. That version is then returned to each chamber for further action. If acceptable, the bill is sent to the governor for further action. Throughout, the political process greatly affects this legislative process. Compromise is the key to success.

CHAPTER IV. THE LEGISLATIVE BRANCH IN OHIO: IDEAS FOR THE CLASSROOM

Exercise One: "Uses of Law" [pp. 102-103; completed version provided]

Laws are rules of society enforced by government. They are an integral part of the human experience. The United States is a law-saturated society. Laws affect Americans from the moment of birth to the moment of death.

Consistent with content recommendations in the National Standards for Civics and Government (1994, pp. 18-19), this exercise identifies broad categories of law and asks students to give examples of specific laws within each category. It can be used initially as an individual, small-group, or large-group activity. As students share responses, they should increase their appreciation of the impact that law has on their lives and their society. When discussing responses, emphasize rationales for various categories of law. Consider both their restrictive and facilitative features. To enhance the value of the lesson, invite an attorney to the classroom to respond to and expand on student-generated examples. Include "what if this type of law did not exist" scenarios. Consider the potential for laws to overreach stated purposes.

Exercise Two: "Types of Laws" [pp. 104-105; completed version provided]

This exercise requires prior instruction about levels of government, federalism, judicial review, and other constitutional principles. Students need to know what a constitution is and how constitutional law differs from legislation passed by Congress or the Ohio General Assembly. They also need to understand the concepts of federalism and judicial review. With this background knowledge, students can use the exercise to enhance their understanding of these four important types of law -- constitutional law, case law, statutory law, and ordinances.

Divide students into pairs. Have each pair complete the exercise together. Then merge pairs so students can share and confirm responses. Reassemble students as a large group. Call on group representatives to identify any items they do not know or are unsure about. Clarify and discuss those items. Extend the discussion by eliciting student-generated examples in each of the four categories. Set aside an area of the room (e.g., bulletin board) to display student-collected newspaper articles about each of the four types of laws used in this exercise. Make this an on-going daily activity throughout the unit. Periodically refer to the articles.

Exercise Three: "How a Bill Becomes a Law" [pp. 106-107; completed version provided]

Commercial textbooks describe the process used to make federal laws. Their discussions of law-making at the state level are necessarily less detailed. The accompanying text material to these should prove helpful in this situation. For example, Table 4.1 (p. 97) contains a one-page summary of steps in the law-making process. Consider sharing copies with students.

This exercise requires students to sequence steps to make laws in Ohio's General Assembly. To complete it accurately, students must have knowledge of the process and the ability to sequence events. After completing the sequence accurately, have students compare the it with the sequence used in Congress, as described in their textbook. Extend this topic with the game developed by the Ohio Center for Law-Related Education -- "How A Bill Becomes Law in Ohio." In addition, invite a local state legislator and or a lobbyist to class to discuss the law-making process in greater detail.

Use the set of questions provided in the exercise to explore ways that the general public may get involved in the law-making process in Ohio. Ensure that students understand the initiative and referendum processes. Initiate a discussion of the pros and cons of these two processes. Have students investigate why these two procedures are part of Ohio's Constitution (1.e., when they were added, why they were added) and why they are not part of our federal Constitution.

Exercise Four: "Analyzing a Law" [p. 108]

Most laws passed by the General Assembly require a 90-day waiting period before taking effect, but some go into effect immediately. For the latter to occur, the legislature must designate the law to be an emergency measure "*necessary for the preservation of the public peace, health, and safety.*" A two-thirds vote in both houses of the General Assembly is required for emergency measures.

Use this exercise to have students examine the difference between these two types of laws and reasons for the distinction. The illustrative emergency law involves a lottery contestant, whose winning ticket has been mutilated. It should interest students and motivate them to find out more about emergency laws and situations in which they are used.

To enrich the discussion, share the constitutional bases for these two types of laws. The relevant portions of Ohio's Constitution are:

- Article I, Section 1-c: "*No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided....*" *This permit time for Ohio voters to exercise the power of referendum, should a law or part of a law passed by the*

General Assembly be deemed offensive."

- Article 1, Section 1-d: *"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law.... The laws mentioned in this section shall not be subject to the referendum."*

Have students consider why these two types of laws exist, including the relationship of the referendum to them. Then have students consider the "lottery winner law" they examined in light of the criteria for emergency laws. In their opinion, does such a law rise to the level of an emergency? How convincing is the rationale in the law itself?

Given the nature of the emergency law, questions seven and eight explore aspects of the state lottery. Question seven raises the topic of amendments -- why they are passed and how, especially given the phrase, *"shall forever be prohibited in this State."* The amended version of Article XV, Section 6, effective November 5, 1975, reads as follows:

Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State, except that the General Assembly may authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, provided the entire net proceeds of any such lottery are paid into the general revenue fund of the state and the General Assembly may authorize and regulate the operation of bingo to be conducted by charitable organizations for charitable purposes.

Use question eight to let students share their feelings about the lottery. Enrich this discussion with additional information about the Ohio lottery -- how it is run, the revenue it generates, how the revenues are used. Describe the work of the Ohio Lottery Commission and issues a state lottery raises.

USES OF LAW

Instructions: Laws can be used for various purposes. Some ways are indicated here. For each purpose listed, one sample law is given. Think of other examples. List several of them in the spaces provided. This exercise should help you recognize the many ways that law affects your life and those of others.

Some laws enable society to operate in an orderly, predictable manner.

Example of this type of law: Uniform weights and measures laws

Other examples are: _____

Some laws keep people and property safe and secure.

Example of this type of law: Deeds and leases make ownership clear

Other examples are: _____

Some laws promote the common good by establishing standards of acceptable behavior.

Example of this type of law: Contract laws encourage people to keep their word

Other examples are: _____

Some laws establish standards for persons in authority.

Example of this type of law: Child neglect and child abuse laws set standards for parents

Other examples are: _____

Some laws protect individual rights.

Example of this type of law: The First Amendment provides for freedom of the press

Other examples are: _____

Some laws are ways to provide and distribute benefits to members of society.

Example of this type of law: Education laws create schools and ways to support them

Other examples are: _____

Some laws assign burdens and responsibilities to members of society.

Example of this type of law: Military conscription laws require military service

Other examples are: _____

USES OF LAW

Instructions: Laws can be used for various purposes. Some ways are indicated here. For each purpose listed, one sample law is given. Think of other examples. List several of them in the spaces provided. This exercise should help you recognize the many ways that law affects your life and those of others.

Some laws enable society to operate in an orderly, predictable manner.

Example of this type of law: Uniform weights and measures laws

Other examples are: Traffic laws -- driving on the right side of the road

Compulsory education laws -- children in school between certain ages

Uniform monetary laws -- provide common currency readily accepted

Some laws keep people and property safe and secure.

Example of this type of law: Deeds and leases make ownership clear

Other examples are: Laws against burglary, larceny, and fraud protect property

Assault, battery and homicide laws protect personal safety

Privacy laws promote a sense of safety and security

Some laws promote the common good by establishing standards of acceptable behavior.

Example of this type of law: Contract laws encourage people to keep their word

Other examples are: Negligence laws establish standards of reasonable care

Kidnapping and rape laws -- not forcing others to act against their will

Murder and manslaughter laws -- not taking the life of other people

Some laws establish standards for persons in authority.

Example of this type of law: Child neglect and child abuse laws set standards for parents

Other examples are: 14th Amendment -- govt. agencies must extend due process of law

1st Amendment -- Congress cannot pass a law establishing a religion

Impeachment laws set standards for the behavior of public officials

Some laws protect individual rights.

Example of this type of law: The 1st Amendment provides for freedom of the press

Other examples are: The 6th Amendment -- provides right to a lawyer (Miranda rights)

The 8th Amendment -- protects against cruel and unusual punishment

The 19th Amendment -- gives women the right to vote

Some laws are ways to provide and distribute benefits to members of society.

Example of this type of law: Education laws create schools and ways to support them

Other examples are: Medicaid -- provide medical assistance for the indigent

Aid to Dependent Children law -- provides care for poor children

Transportation laws -- enable roads, bridges, airports to be built and maintained

Some laws assign burdens and responsibilities to members of society.

Example of this type of law: Military conscription laws require military service

Other examples are: Tax laws permit government to claim portions of citizens' wealth

Progressive tax laws -- more wealthy pay greater amount of taxes

Family laws -- parents must feed, clothe, house their children

TYPES OF LAWS

Instructions: All laws are not alike. They come from different sources and have different degrees of impact. Distinguish among four basic types of law -- case law, constitutional law, statutory law, and ordinances. In the space provided, write in the type of law the example illustrates.

- _____ 1. In Ohio, a child who violates any law of the state, the United States, or a political subdivision of the state which would be a crime if committed by an adult will be adjudged a delinquent child [Ohio Revised Code].
- _____ 2. The Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. [United States Supreme Court decision in Reynolds v. Sims].
- _____ 3. Although there are some exceptions, employers must pay employees a minimum hourly wage [federal Fair Labor Standards Act].
- _____ 4. Neither the federal government nor any state government may deny women the right to vote on account of their gender [Nineteenth Amendment].
- _____ 5. Cities, towns, and villages sometimes pass curfew laws requiring young people to be inside their homes after certain hours in the evening.
- _____ 6. Confessions and other incriminating statements made by persons under arrest must be made voluntarily and with knowledge of their constitutional rights, such as the right to remain silent [United States Supreme Court decision in Miranda v. Arizona].
- _____ 7. Congress may not make a law that abridges the freedom of speech or press [First Amendment].
- _____ 8. The use of land in a designated area of the city of "Lone Pine" can only be used for the building of single-family houses [Zoning law of the city of Lone Pine].
- _____ 9. Schools may not discriminate among students on the basis of gender in most school activities, including student athletic programs [Title IX of the federal Education Act of 1972].
- _____ 10. Persons may not be prosecuted for burning an American flag as a form of political protest [United States Supreme Court decision in Texas v. Johnson].

TYPES OF LAWS

Instructions: All laws are not alike. They come from different sources and have different degrees of impact. Distinguish among four basic types of law -- case law, constitutional law, statutory law, and ordinances. In the space provided, write in the type of law the example illustrates.

- State Statute 1. In Ohio, a child who violates any law of the state, the United States, or a political subdivision of the state which would be a crime if committed by an adult will be adjudged a delinquent child [Ohio Revised Code].
- Case law 2. The Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. [United States Supreme Court decision in Reynolds v. Sims].
- Federal Statute 3. Although there are some exceptions, employers must pay employees a minimum hourly wage [federal Fair Labor Standards Act].
- Constitutional 4. Neither the federal government nor any state government may deny women the right to vote on account of their gender [Nineteenth Amendment].
- Ordinance 5. Cities, towns, and villages sometimes pass curfew laws requiring young people to be inside their homes after certain hours in the evening.
- Case law 6. Confessions and other incriminating statements made by persons under arrest must be made voluntarily and with knowledge of their constitutional rights, such as the right to remain silent [United States Supreme Court decision in Miranda v. Arizona].
- Constitutional 7. Congress may not make a law that abridges the freedom of speech or press [First Amendment].
- Ordinance 8. The use of land in a designated area of the city of "Lone Pine" can only be used for the building of single-family houses [Zoning law of the city of Lone Pine].
- Federal Statute 9. Schools may not discriminate among students on the basis of gender in most school activities, including student athletic programs [Title IX of the federal Education Act of 1972].
- Case law 10. Persons may not be prosecuted for burning an American flag as a form of political protest [United States Supreme Court decision in Texas v. Johnson].

HOW A BILL BECOMES A LAW

Instructions: Listed below are key steps in the process of making laws in Ohio. Demonstrate your understanding of this process by arranging the steps in their proper sequence. Use numbers from one to twelve, with one indicating the earliest step in the sequence and twelve indicating the last step in the sequence. Assume that the bill has been introduced in the Ohio Senate. When you finish, answer the questions at the bottom of the page.

Steps in the Law-Making Process

- _____ The House of Representatives considers the bill.
- _____ It is filed with the Secretary of State.
- _____ Both chambers approve the same version of the bill.
- _____ The Rules Committee schedules the bill for floor action.
- _____ The Conference Committee meets.
- _____ Public hearings are held by a Standing Committee of the Senate.
- _____ The governor gets it.
- _____ The bill receives a number (for example, SB101).
- _____ The Senate passes the bill.
- _____ The bill is sent to the Committee on Reference and Oversight.
- _____ A member of the Ohio Senate decides to introduce a bill.
- _____ The House of Representatives passes a different version of the bill.
- _____ The General Assembly overrides the veto.
- _____ A Standing Committee of the Senate makes changes in the bill before reporting it out.

Questions to Consider

1. How can the general public get involved with this process?
2. What is the initiative? How is it used to make laws?
3. What is the referendum? How does it affect the law-making process?

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Steps in the Law-Making Process

- __ 8 __ The House of Representatives considers the bill.
- __ 14 __ It is filed with the Secretary of State.
- __ 11 __ Both chambers approve the same version of the bill.
- __ 6 __ The Rules Committee schedules the bill for floor action.
- __ 10 __ The Conference Committee meets.
- __ 4 __ Public hearings are held by a Standing Committee of the Senate.
- __ 12 __ The governor gets it.
- __ 2 __ The bill receives a number (for example, SB101).
- __ 7 __ The Senate passes the bill.
- __ 3 __ The bill is sent to the Committee on Reference and Oversight.
- __ 1 __ A member of the Ohio Senate decides to introduce a bill.
- __ 9 __ The House of Representatives passes a different version of the bill.
- __ 13 __ The General Assembly overrides the veto.
- __ 5 __ A Standing Committee of the Senate makes changes in the bill before reporting it out.

Questions to Consider

1. How can the general public influence the legislative process?
2. What is the initiative? How is it used to make laws?
3. What is the referendum? How does it affect the law-making process?

ANALYZING A LAW

Instructions: The box below contains the text of an Ohio statute passed in 1993. Read the text of the law. Then answer the questions that appear next to it.

AMENDED HOUSE BILL No. 268

Act Effective Date: 5-20-93
Date Passed: 5-19-93
Date Approved by Governor: 5-20-93
Date Filed: 5-20-93
File Number: 8
Chief Sponsor: SAWYER

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act is not of a general and permanent nature and does not require a Revised Code section number.

Emergency: Pursuant to O Const, Art II, § 1d, this Act was declared to be an emergency measure necessary for the preservation of the public peace, health, and safety. See Act section 2.

To authorize the State Lottery Commission to pay from its appropriate prize fund to Frank Louis III, in the normal manner, the prize money to which the holder of one winning 5 of 5 wager from the Commission's Buckeye 5 game would have been entitled if the ticket had not been torn and mutilated beyond recognition, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. In accordance with Section 29 of Article II, Ohio Constitution, upon the enactment of this legislation with the vote of two-thirds of the members elected to each branch of the General Assembly, the State Lottery Commission may pay to Frank Louis III of Jeromesville, Ohio, from its appropriate prize fund, the prize award of \$100,000 for a winning 5 of 5 wager from the Commission game known as "Buckeye 5," Game 3770:1-9-22, for the May 15, 1992, drawing. Such payment may be made only, however, if the \$100,000 prize from the May 15, 1992, Buckeye 5 drawing remains unclaimed until May 16, 1993. If that prize remains unclaimed until that date, the Commission shall pay the \$100,000 to Frank Louis III, minus required federal and state withholding taxes.

This action is taken upon the belief by the General Assembly that Commission records indicate that in all probability Frank Louis III was the purchaser of one of two winning 5 of 5 wagers from the May 15, 1992, Buckeye 5 drawing, and that it is the moral and equitable solution, as well as in the best interest of the State of Ohio, that such matters be resolved in this manner. This action by the General Assembly is necessary because Ohio Administrative Code rule 3770:1-8-01 prohibits the Commission from awarding a lottery prize without properly validating the ticket, which is not possible in this case because the ticket presented by Frank Louis III was mutilated beyond identification.

SECTION 2. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that this act must go into effect before May 15, 1993, the first anniversary of the lottery drawing for which Frank Louis III will be paid by this act. Therefore, this act shall go into immediate effect.

QUESTIONS TO CONSIDER

1. What is this law intended to do?
2. Why was it necessary to pass this law?
3. Most laws passed by the General Assembly do not go into effect until 90 days later. Why do you think Ohio's Constitution requires a 90-day delay? Do you think this is a good idea?
4. This law went into effect sooner than 90 days. How much sooner? Why?
5. According to Ohio's Constitution, what conditions must exist for an Ohio statute to go into effect earlier than 90 days? In your opinion, does this law fit these criteria?
6. Why did Mr. Louis receive less than \$100,000 when he claimed his lottery prize? Why does the government do this?
7. Prior to 1975, Article XV, Section 6 of the Ohio Constitution read: "Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State." Today we have a state lottery. How is that possible?
8. Do you think having a state lottery is a good idea? Explain your reasons.

CHAPTER V. THE EXECUTIVE BRANCH IN OHIO

The executive branch of government administers public policy. Within each of the 50 states, it is the largest of the three branches of government, employing more people and spending more money than the legislative or judicial branches. In Ohio, employees of the executive branch number in the tens of thousands. They are responsible for implementing state laws and policies on a day-to-day basis. For example, they build and maintain state highways, register motor vehicles, issue drivers' licenses, and promote safety on Ohio's roads. They oversee Ohio's public schools and colleges, administer its health and human services programs, safeguard its citizens against illegal discrimination, run its state parks, and protect its physical environment. Executive branch employees also collect state taxes, run the state lottery and the state fair, regulate Ohio's public utilities and businesses, operate Ohio's state correctional facilities, and monitor liquor sales, horse racing, and boxing matches within Ohio. This but a partial list of their activities. From these examples, it is clear that the employees of Ohio's executive branch of government have varied and extensive duties.

Ohio's executive branch consists of a number of state-wide departments (e.g., Agriculture, Commerce, Industrial Relations, Natural Resources), boards (e.g., Board of Regents, State Employment Relations Board, State Medical Board), commissions (e.g., Public Utilities Commission, Civil Rights Commission, Public Defender Commission, Lottery Commission), and other state agencies (e.g., Ohio Arts Council, Ohio Building Authority, State Library Board, Ohio Historical Society) that carry out the laws enacted by the General Assembly. Counties, municipalities (i.e., towns and cities), and townships, along with special districts (e.g., school districts, parks districts, soil and water conservation districts) are also part of the executive branch structure. They administer public policy within local areas of the state.

Six elected officials head Ohio's executive branch of government -- a governor, a lieutenant governor, a secretary of state, an auditor of state, a treasurer of state, and an attorney general, as provided for in Article III, Section 1, of Ohio's Constitution. These are elective offices. The governor and lieutenant governor run together on a single ballot. The other four state-wide elected officials run separately.

Election to these six offices occurs in even-numbered years between presidential elections (e.g., 1990, 1994, 1998). Candidates initially win in primary elections and then face one another in the general election, which is held during the month of November. In the unlikely case of a tie vote for any of these six offices, the winner is "*chosen by joint vote of both houses*" of the General Assembly (Article III, Section 3).

Ohio's Constitution establishes no special qualifications for governor or the other five executive branch officers, other than the following provision: "*No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector*" (Article XV, Section 4). This means that virtually any person qualified to vote in an election (e.g., an American citizen, 18 years of age, Ohio resident, non-felon) is constitutionally qualified to run for and hold any of these six offices. Hence, it is possible for a person as young as 18 years of age to be elected governor of the state.

Ohio's governor and the governors of 46 other states serves four-year terms. The governors in New Hampshire, Rhode Island, and Vermont serve two-year terms. Prior to 1959, Ohio's governor -- and four of the state's other executive branch officials -- had two-year terms. The auditor of state, who served a four-year term, was the exception. The situation changed as the result of a constitutional amendment passed by Ohio's voters in 1954 (designated as Article III, Section 2). This amendment increased the term of office for each of these five executive branch positions to four years, effective January 1, 1959, making them consistent with the auditor of state's term.

Slightly more than one-half of the states currently impose a two-consecutive-term limit on their governors. Ohio is one of these. Ohio's Constitution states, "*No person shall hold the office of governor for a period longer than two successive terms of four years*" (Article III, Section 2). This does not mean, however, that once a person has served two consecutive terms as governor he or she is forever ineligible to hold the office again. Governor James A. Rhodes demonstrated otherwise. As construed by the courts, this constitutional provision means that Ohio's governor can serve two consecutive four-year terms (e.g., as Rhodes did in 1963-1967 and 1967-1971), stay out of office for one four-year period (e.g., 1971-1975), and then be re-elected and serve two more consecutive four-year terms (e.g., 1975-1979 and 1979-1983). The cycle may be repeated. Rhodes' effort to do so failed in 1986, when he again ran for the office of governor but lost to incumbent Richard F. Celeste.

If any of the six statewide offices becomes vacant (e.g., through death, disability, resignation, or conviction on impeachment), then constitutional provisions are applied. For the office of governor, the line of succession is as follows: (1) the lieutenant governor, (2) the president of the senate, and (3) the speaker of the house. No person may serve simultaneously as governor and in one of these three positions (Article III, Section 15). If a vacancy occurs simultaneously in both the offices of governor and lieutenant governor prior to the first 20 months of a term, a new election must be held "*at the next general election occurring in an even-numbered year after the vacancy occurs, for the unexpired portion of the term*" (Article III, Section 17).

Article III, Section 22 of Ohio's Constitution (see insert) addresses the issue of disability -- a potentially troubling political issue. It grants to the Supreme Court of Ohio "*original, exclusive, and final jurisdiction*" to resolve disputes. The General Assembly, by joint resolution, can declare a governor disabled. But, if the governor contests that judgment, the seven Justices of the Supreme Court of Ohio decide which side prevails. If a vacancy occurs in the office of

ARTICLE III, Section 22
Constitution of the State of Ohio

Jurisdiction to Determine Disability; Succession

The supreme court has original, exclusive, and final jurisdiction to determine the disability of the governor or governor-elect upon presentment to it of a joint resolution by the general assembly, declaring that... [he or she] is unable to discharge the powers and duties of the office of governor by reason of disability. Such joint resolution shall be adopted by a two-thirds vote of the members elected to each house. The supreme court shall give notice of the resolution to the governor and after a public hearing, at which all interested parties may appear and be represented, shall determine the question of disability. The court shall make its determination within twenty-one days after presentment of such resolution.

If the governor transmits to the supreme court a written declaration that the disability no longer exists, the supreme court shall, after public hearing at which all interested parties may appear and be represented, determine the question of the continuation of the disability. The court shall make its determination within twenty-one days after transmittal of such declaration.

The supreme court has original, exclusive, and final jurisdiction to determine all questions concerning succession to the office of the governor or to its powers and duties.

auditor of state, treasurer of state, secretary of state, or attorney general, the governor appoints a person to fill the vacancy until the elected official's disability is removed or a successor is elected (Article III, Section 18).

Impeachment is the process used to remove a governor, other state officers, judges, or members of the General Assembly from office against that person's will (e.g., "*for any misdemeanor in office*"). Under Ohio's Constitution, it is a two-step process initiated in the House of Representatives by a majority of the members elected. Impeachments are tried by the Senate. Conviction requires the concurrence of two-thirds of the senators (see Article II, Section 23). Since becoming a state in 1803, no governor of Ohio has ever been impeached.

THE OFFICE OF GOVERNOR

Jimmy Carter, Bill Clinton, Ronald Reagan, Woodrow Wilson, William McKinley, and Rutherford B. Hayes share something in common. Each has been the President of the United

States, and was the governor of one of our 50 states. McKinley and Hayes share something else in common. Both were former governors of Ohio.

The position of governor of a state is a complex and potentially powerful office, especially in a state as large as Ohio. A comparison of state constitutions and the roles state governors assume in office reveals that the office of governor is similar in many ways to the office of President of the United States. Both a governor and the President, for example, have important executive, legislative, and judicial powers. Both serve as commander-in-chief of their respective government's military forces. Both are responsible for managing a large, complex, bureaucratic organization. In addition, both serve as the chief spokesperson for their government unit and political party within that government unit.

There are significant differences, of course. Noteworthy among the differences is that executive authority is not exclusively vested in the office of governor as it is in the office of President. Four other statewide officers have specific executive branch responsibilities -- the secretary of state, auditor of state, treasurer of state, and attorney general. Since these officials are independently elected, they may share a different philosophy and/or be a member of a different political party than the governor, thus creating the potential for weakening the governor's influence over state matters.

Ohio's governor serves three primary functions. As chief administrator of the state, the governor coordinates and oversees the work done by state executive agencies and their employees. As public policy leader, the governor helps to set state priorities, propose legislative initiatives (e.g., reforms, new programs), and implement administrative policies and practices. As political party leader, the governor works to advance party goals, party candidates, and party unity, while drawing on party influence and resources to win support for his or her ideas and programs.

The Governor as Chief State Administrator

The Constitution of Ohio provides that, "*The supreme executive power of this state shall be vested in the governor*" (Article III, Section 5), and makes the governor responsible for ensuring "*that the laws are faithfully executed*" (Article III, Section 6). Other parts of the Constitution specify the powers granted to the governor and the various duties he or she is obligated to perform.

As the chief administrator of Ohio, the governor is responsible for managing a vast and complex bureaucratic structure which provides the means (e.g., mechanisms, personnel) for carrying out statutory requirements. This structure includes:

- departments -- such as the Ohio Department of Human Services (which houses the Office of Medicaid), the Ohio Department of Rehabilitation and Correction (which administers and operates the state's adult correctional system), the Ohio Department of Mental Health (which operates state hospitals and oversees

community mental health programs and related services), and the Ohio Department of Taxation (which collects state taxes and enforces state tax laws);

- boards -- such as the Board of Regents (an influential, non-governing board that oversees higher education in Ohio), the State Employment Relations Board (which oversees and enforces collective bargaining among public employees), various professional licensing and examining boards that determine qualifications for admission to practice (e.g., State Medical Board, the Board of Embalmers and Funeral Directors, and the State Barber Board);
- commissions -- such as the Ohio Civil Rights Commission (which enforces state laws against discrimination), the State Racing Commission (which regulates and oversees horsing racing in the state), the State and Local Government Commission (which facilitates communication, cooperation, and problem-solving among local, state, and federal agencies), and the Public Utilities Commission of Ohio (which regulates the rates and services of telephone, electric, gas, water, sewer, and transportation companies); and
- other administrative groups -- such as the Ohio Arts Council (which promotes the arts in Ohio), the Ohio Historical Society (which maintains state archives and preserves historical sites), and the Ohio Consumers' Counsel (which functions as an advocacy group regarding utility services).

As chief administrator, the governor coordinates the work of this array of state government agencies. In doing so, a governor relies heavily on the support of agency heads -- especially department-level heads -- to administer effectively the programs their respective agencies direct. Typically, a governor establishes an advisory body, called a cabinet, to assist in developing and implementing administrative programs and policies. Top-level department administrators usually serve in this capacity. They offer advice, participate in planning decisions, and help coordinate the efforts of the various parts of the executive branch bureaucracy.

Commander-in-chief of Ohio's Armed Forces

As chief administrator, the governor is the commander-in-chief of the state's armed forces. Article III, Section 10 provides that Ohio's governor "*shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.*" The governor relies on the Adjutant General's Department to help him carry out this responsibility. Appointed by the governor, the adjutant general is the governor's chief military aide. The adjutant general commands the Ohio National Guard, the organized militia of the state, is custodian of all military property owned by the state or issued to the state by the federal government, and is the director of the Ohio Emergency Management Agency, which coordinates state emergency preparedness and civil defense activities.

Membership in the Ohio National Guard is voluntary. Originally established as part of

the Northwest Territory Militia in 1788, the National Guard is the organized military force of the state, except when ordered into federal service (e.g., the Korean War, the Vietnam War, Operation Desert Shield, Operation Desert Storm). As stated in The Adjutant General of Ohio Annual Report FY1993, the governor may order the National Guard "*to serve the state to suppress or prevent riot or insurrection, repel or prevent invasion, to protect persons or property from violence, or in the case of man-made or natural disaster.*" In the past, the National Guard has helped to save lives and property during such times of need as the 1936-37 Ohio River flood, the 1974 Xenia tornado, the 1978 statewide blizzard, the 1985 Niles tornado, and the 1990 Shadyside flood. In his letter to Governor Voinovich, included as part of his Fiscal Year 1993 report, Major General Richard C. Alexander, the Adjutant General, emphasized that, "*our Ohio National Guard is a ready force, able to respond to state emergencies in a moment's notice.*" He pointed out that it had:

responded to emergencies in all corners of the state, providing personnel for emergency medical assistance for a snow emergency in southern Ohio; engineers to assist with the clean-up and restoration of power to citizens in Cuyahoga County following severe weather; and over 1,000 personnel in response to the longest prison riot in U.S. history in Lucasville, Ohio.

The Emergency Management Agency (EMA) is charged with minimizing the effects upon the population caused by hazards of all kinds, natural or man-made (e.g., incident involving hazardous materials or a nuclear power plant). Each county in Ohio has an emergency management director who is responsible for handling disaster situations at the local level. The Ohio EMA controls the disbursement of federal funds to eligible counties, offers technical assistance and training opportunities on emergency management policies and procedures, and provides assistance if a situation exceeds the local government's ability to resolve it. During Fiscal Year 1993, the EMA provided emergency services to 59 of Ohio's 88 counties and administered \$22.1 million in federal and state assistance.

Other Administrative Powers

Access to information is a requisite for effectively discharging the governor's administrative responsibilities. Ohio's Constitution makes specific provision for the governor to have such access. It stipulates that the governor may require state officials (i.e., "*the officers in the executive department*") to provide "*information, in writing*" about "*any subject relating to the duties of their respective offices*" (Article III, Section 6). Another provision obligates the heads of the executive departments and public state institutions to provide the governor with annual reports about their respective areas of responsibility (Article III, Section 20).

The ability to select appropriate persons to serve in leadership positions within the state bureaucracy is another requisite for administration. Article III, Section 21, empowers the governor to act, with "*the advice and consent of the Senate,*" to appoint persons to a wide range of positions in the state bureaucracy. Table 5.1 illustrates the range of appointments a governor of Ohio makes. The information in the table comes from the first page of a long alphabetized

TABLE 5.1.
 Appointments Made by Governor George Voinovich
 Confirmed by the 120th General Assembly, 1993-1994

Person's Name	Position	Agency	Term and Date of Confirmation
Larry Ables	Member	State Board of Emergency Medical Services	1-29-93 to 11-12-95 Confirmed 4-13-93
Roger W. Ach, II	Member & Vice-chair	Ohio High Speed Rail Authority	4-13-93 to 6-24-98 Confirmed 6-15-93
Allyn R. Adams	Member	Ohio Tuition Trust Authority	10-25-93 to 1-31-97 Confirmed 1-19-94
John E. Adams	Member	Ohio University College of Osteopathic Medicine Advisory Board	4-26-94 to 11-16-99 Confirmed 5-25-94
Ronald c. Agresta	Member	State Medical Board	6-30-93 to 3-18-98 Confirmed 1-4-94
Amira N. Ailabouni	Student Member	The Ohio State University Board of Trustees	6-11-93 to 5-13-95 Confirmed 1-4-94
Mohammad Michael Abou Akrouche	Director	Ohio Department of Liquor Control	2-1-93 continuing at governor's pleasure Confirmed 3-23-93
John A. Albers	Member	Ohio Cemetery Dispute Resolution Committee	8-6-93 to 7-2-95 Confirmed 1-19-94
Kevin L. Alexander	Member	Scope of Optometric Practice Study Committee	9-10-92 continuing at governor's pleasure Confirmed 6-15-93
Madonna Allread	Member	Solid Waste Management Advisory Council	3-10-93 to 6-23-96 Confirmed 5-25-93
Warren E. Amling	Member	State Veterinary Medical Board	3-24-93 to 12-31-94 Confirmed 6-8-93
Paul N. Andre	Member	Ohio Soil and Water Conservation Commission	7-1-93 to 6-30-97 Confirmed 1-4-94

Source: Bulletin, 120th General Assembly of the State of Ohio, January 4, 1993, 1993-1994. Final Edition. Compiled under the direction of Martha L. Butler, Clerk of the Senate, p. 409.

list of appointments made by Governor George Voinovich and confirmed by the Ohio Senate during the 120th session of the Ohio General Assembly (1993-1994).

The constitutional authority to appoint persons to positions in various levels of state agencies gives Ohio's governor the potential to wield considerable power and influence. For example, the governor appoints heads of more than 20 administrative departments. These

departments exert considerable influence over the everyday lives of Ohio citizens. Table 5.2 lists the seven departments having the largest budgets in Fiscal Year 1995.

TABLE 5.2. State Funding for Executive Departments Seven Largest Appropriations, Fiscal Year 1995	
Executive Department	Budgeted Funds
Department of Human Services	\$ 6,294,646,871.
Department of Education	\$ 3,953,359,482.
Department of Rehabilitation & Correction	\$ 799,166,833.
Department of Mental Health	\$ 449,087,355.
Department of Taxation	\$ 414,248,787.
Department of Mental Retardation & Developmental Disabilities	\$ 308,315,850.
Department of Youth Services	\$ 169,787,504.

Source: Cincinnati Enquirer, June 29, 1995, p. A8.

The Department of Education is the notable exception to the governor's power to appoint executive department heads. The superintendent of public instruction is appointed by the State Board of Education, not by the governor. The State Board of Education, which sets the educational policies for Ohio, consists of 11 elected members. Membership is based on a ratio of one member for every three senate districts. During the onset of his second term of office, Governor George Voinovich sought authority from the General Assembly to change this situation. He wanted to be able to appoint the members of this body rather than having them elected. The change would have increased the potential of the governor to influence State Board of Education policy decisions. Voinovich's plan encountered resistance in the state legislature, although he succeeded in having the board enlarged and acquiring the authority to appoint eight school board members to serve alongside the 11 elected members.

The situation with the State Board of Education illustrates both the significance and limitations of the governor's power to appoint persons to positions in state executive branch agencies. The General Assembly has the power to create a board or commission (e.g., a County Jail Operations and Standards Commission in 1995), to revise the composition or duties of one (e.g., the State Board of Education in 1995), or to abolish one (e.g., the Ohio Health Care Board in 1995). In this way, the state legislature can facilitate or frustrate a governor's ability to influence and effectively discharge public policy. So, too, can legislative requirements that appointees possess particular characteristics (e.g., at least one of the five commissioners of the Public Utilities Commission of Ohio must be a lawyer and no more than three may be of the same political party).

The length of terms of office is another constraint on the governor's ability to influence

and manage the state bureaucracy. A governor is not free to appoint and remove officials at his or her pleasure. Terms of positions within different agencies vary in length and expire at different times (e.g. the five members of the Ohio Building Authority have six-year terms, but the five members of the board of commissioners of the Ohio Civil Rights Commission have five-year staggered terms). Hence, some persons appointed by the governor's predecessor continue to hold their positions despite a new administration. Such situations can prove frustrating and detrimental to a governor's ability to influence administrative policies and the operation of state executive agencies, especially during a governor's initial term of office.

The Governor as Public Policy Leader

Exercising leadership in public policy is another major function of a governor. As the state government's administrative head, the governor receives a constant flow of information from the various agencies within the executive branch. The information received helps the governor become aware of the issues and problems facing the state. Hence, the governor, perhaps more than any other public official in the state, is well-situated to identify, set forth, and implement priorities in an overall policy framework for state government. To discharge this important policy-making role, the governor must necessarily participate in the legislative process.

Several constitutional provisions enhance the governor's ability to shape public policy in Ohio. Article III, Section 7 obligates the governor to "*communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient.*" Hence, just as the President of the United States is obligated to deliver an annual State of the Union message to Congress, the Governor of Ohio must provide an annual "State of the State" message to the General Assembly. In the process, Article III, Section 20, which obligates government officials to submit annual reports to the governor, also obligates the governor to transmit those reports to the General Assembly, together with his annual message

A "State of the State" message affords the governor the opportunity to report on the condition of the State of Ohio from his or her perspective, to suggest future directions and policies for the state, and to build support for those policies within the legislature and among the general public. Appearing before a joint session of the General Assembly, the governor is able to outline his vision for the state in the forthcoming months and years and to suggest areas where legislative action is needed. Typically reported in newspapers throughout the state, the governor's "State of the State" message can be a useful mechanism for informing the public of the governor's vision for the state and garnering support for his or her legislative agenda.

A governor has other means available to help shape public policy. As the nominal leader of his or her political party within the state, the governor is in a position to help make personal goals the party's goals. Conversely, the governor can incorporate party goals into his or her vision for the state, including the proposals shared to make that vision a reality. Party leadership is useful in building and mobilizing political support within the legislature for

proposed ideas and getting them passed. It is also useful in generating grass roots support for pending legislation.

Ohio's Constitution assigns the governor specific roles in the legislative process. The governor is constitutionally empowered to recommend to the General Assembly "*such measures as he shall deem expedient*" (Article III, Section 7). The governor has a constitutional role in the passage of state laws, as stated in Article II, Section 16. He or she may approve or reject acts passed by the General Assembly. An act becomes law after 90 days, unless specified otherwise, if it is signed by the governor within 10 days of receipt (Sundays excepted) or if the 10-day period ends and the governor has neither signed nor vetoed the act. If vetoed by the governor, the act is returned, together with the governor's written objections, to the house in which the proposed legislation originated. If a three-fifths majority in both chambers votes to override the veto, the act becomes a law.

The governor's veto power includes the line item veto. Article II, Section 16, provides that, "*The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner prescribed by this section for the repassage of a bill* (i.e., securing three-fifths approval of both houses).

Article III, Section 8 gives the governor a seldom used, but potentially useful power -- the authority to convene the General Assembly by proclamation when it is not in session. In so doing, the governor is able to specify and limit the business that can be transacted at the special session. This constitutional provision permits the governor to force the General Assembly to meet and deliberate on a matter the governor deems important, including a matter the governor wants considered but the legislators have been hoping to avoid. Article III, Section 9 permits the governor to adjourn the General Assembly when the two houses disagree over the time of adjournment.

Developing the state budget is an important vehicle for establishing public policy. Article II, Section 22 of the Ohio Constitution provides: "*No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.*" By statute, the governor is required to submit a budget proposal in a timely fashion to the General Assembly that presents a detailed financial plan for government spending over a two-year period. The operating budget (i.e., monies to run the government) goes into effect as of July 1 in odd-numbered years. It ends June 30, two years later. The capital budget (i.e., monies for buildings, land acquisitions, and the like) becomes effective July 1 in even-numbered years. It ends June 30, two years later. No money can be spent without specific authorization from the General Assembly, which has the ultimate power to decide how the state's financial resources are to be expended.

In preparing a budget plan, the governor exerts substantial influence on the policies that guide the formation of the state's budget and the programs and expenditures that are incorporated into it. The governor's budget plan identifies the range of programs and services to be

supported, an estimate of anticipated expenditures, and potential sources of funding. Anticipated expenditures appear in line-item fashion showing how projected expenditures are to be allocated. This type of planning is a complex and politically-charged task in a state whose budget now exceeds \$30 billion per biennium. In 1995, the General Assembly adopted a budget for fiscal years 1996 and 1997 requiring a record \$33.5 billion, which was outlined in a 1,600 page spending plan.

The process of developing the budget enables the governor to plan and manage the operations of government more effectively and to incorporate certain policy decisions that he or she favors into a plan involving future state expenditures. The legislature has the constitutional authority to accept or change the governor's recommendations. The governor has the constitutional authority to veto any line in an appropriations bill that the General Assembly passes which makes it substantially more difficult for the legislature to authorize spending in areas or amounts the governor opposes.

Once the budget plan is prepared, the governor submits it as a bill to be introduced in the House of Representatives by the chair of the House Finance Appropriations Committee. Committee members carefully scrutinize the proposed appropriations bill. The committee and its subdivisions hold public hearings and engage in serious negotiations regarding budget priorities and amounts. Inevitably, the process culminates in an altered version of the original proposal -- a substitute bill -- that is subsequently acted upon by the total membership. Once passed, the bill is sent to the Senate for further action. Under the auspices of the Senate Finance Committee, public hearings and deliberations among state senators ensue. Senators normally approve a revised version of the House bill. A six-member Conference Committee (i.e., three members from each chamber) meets to resolve differences in the two versions, which are incorporated into another substitute bill. Once a compromise bill is produced, the members of both houses must approve or reject it without amendment.

Throughout this process, the governor and other members of the executive branch attempt to influence the outcome by having designated persons representing executive agencies provide legislators with written documentation and oral testimony supporting appropriation requests. As party leader, the governor attempts to capitalize on party loyalty to secure needed legislative support for favored programs and spending allocations. The governor may also take steps to generate public support for specific initiatives.

Once the General Assembly passes an appropriations bill for the forthcoming biennium, the legislation is sent to the governor. Armed with the item veto, the governor may eliminate portions of the act that he or she finds unpalatable. Typically, because monies need to be appropriated by June 30 of odd calendar years, biennium appropriations bills are passed under tight time constraints. This increases political pressures on all parties concerned. If agreement is not possible, a short-term interim budget is passed to permit the necessary expenditure of state funds, though providing additional time for resolving disputes.

Judicial Powers

Article III, Section 11 states that the governor "*shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment.*" A reprieve is a delay in carrying out a punishment imposed by a court. It is most often used to provide a convicted person with additional time to obtain evidence to prove his or her lack of guilt. The most common image of this power in action is that of a governor making a telephone call to the warden of a state prison just in time to save a prisoner from being executed in the electric chair or gas chamber. A commutation is a reduction in a sentence imposed by a court, such as from death to life in prison, or from a 30 year to 20 year sentence. A pardon is the dropping of charges, or the release from the legal penalties specified by a court for an offense committed. It may be absolute (i.e., all penalties waived) or conditional (i.e., some penalty required before the charges are dropped). President Ford's pardoning of former President Nixon for his role in Watergate is one of the most familiar instances of the use of the power of pardon by the head of an executive branch.

These judicial powers are often controversial when a governor exercises one or more of them. Because Ohio's Constitution specifies that they can be used only "*after conviction,*" the governor is in a situation in which he or she is dealing with a convicted person, most often a felon. A verdict has been rendered, guilt has been established in accordance with established legal procedures, and a punishment has been assigned by an officer of the court. Public opinion is often opposed to an action by the governor that prevents a specified punishment from being carried out. Why then, would a governor grant a reprieve, commute a sentence, or grant a pardon?

A governor may use these judicial powers to respond to official acts of government perceived to be unjust or to forestall an action perceived to be in opposition to the best interests of the state. For example, a governor may become aware of a case involving conviction of a person he or she believes to be innocent, or one who has been assigned an excessive punishment for the crime committed. A new legal defense may have surfaced (e.g., "battered woman syndrome") subsequent to the conviction of a person whose situation fits those circumstances. In such situations, a governor may feel a reprieve, commutation, or a pardon is warranted. By acting in this manner, the governor may not only provide relief for individuals, but also may help influence public attitudes regarding the matter and ultimately cause public policy to change in the direction his or her action leads.

The Governor as Party Leader and State Spokesperson

The goal of political party leaders is to gain and maintain control of the government by having as many party members as possible put in positions to exercise political power. Most typically, the way to achieve this goal is by having party-endorsed candidates win elections. The goal is also realized by having party members appointed to positions of leadership within the government. By virtue of the office held, a governor is a political party leader and a key figure

in helping his or her political party gain and maintain control of state government.

As political party leader, the governor is expected to be a positive representative and spokesperson for the party who is capable of rallying public opinion and mobilizing disparate groups to support party goals and party-endorsed candidates. In particular, the governor is expected to consult with other party leaders, to use his or her status and influence to endorse and party candidates and campaign for them, and to help the party raise funds to finance political campaigns and other party initiatives. By exercising the power of appointment, a governor is expected to place members of the party in crucial leadership positions within the executive branch of state government, and to reward faithful party members with appointments to various positions within the executive branch bureaucracy.

A governor exerts considerable influence on the development of party goals, and is a key figure in turning them into legislative and executive policy realities. Using the considerable resources of the office, a governor can promote the passage of desired legislation and shape policy directives to meet desired ends. Accomplishing these goals, especially getting laws passed by the General Assembly, requires a governor to be an effective politician with members of his or her own political party and those who are not. Coalition-building is an important and highly-desirable political skill.

The governor is also the primary representative and spokesperson for the State of Ohio, issuing all grants and commissions in the name, and by the authority, of the state (Article III, Section 13). As state spokesperson, the governor attends various functions and ceremonies at which he or she officially represents the state, inside and outside of Ohio. The governor may function as an official greeter of important political dignitaries from the federal government, other states, or other nations who are visiting Ohio in official or unofficial capacities. The governor may travel to other states or countries on behalf of Ohio. By virtue of the position, the governor also acquires membership on various groups (e.g., the National Governors' Association) and serves as the representative from Ohio.

THE OFFICE OF LIEUTENANT GOVERNOR

As with the President and Vice President of the United States, the governor and lieutenant governor of Ohio stand for election as a team, and they are elected by a common vote in the general election. The lieutenant governor succeeds to the office of governor if the latter is no longer able to fulfill the duties of office because of death, resignation, removal, or impeachment. If the governor becomes disabled, the lieutenant governor temporarily serves as governor, holding that office until the disability terminates (Article III, Section 15). In the event a governor's disability status is disputed, the Supreme Court of Ohio decides whether the governor is fit to regain control of the office (Article III, Section 22). If a vacancy occurs in the office of lieutenant governor, the governor, by virtue of a constitutional amendment passed in 1989, nominates a replacement, who takes office upon confirmation by both houses of the

General Assembly.

Forty-three states have a lieutenant governor. Like the Vice President of the United States, the office of lieutenant governor has few specific duties. In half the 50 states, the lieutenant governor serves as president of upper house of the legislature and has the power to break tie votes. At one time, Ohio's lieutenant governor was constitutionally assigned that role. A constitutional amendment eliminated that duty as of January, 1979. Today, Ohio's lieutenant governor has no official role to play in the General Assembly.

Ohio's lieutenant governor has few official duties. This state officer serves as an advisor to the governor and a member of the governor's cabinet. He or she also is chairperson of the State and Local Government Commission, a 13-member executive agency that focuses on issues affecting local, state, and federal governments. Beyond these duties, the role and scope of assignments of the lieutenant governor depend heavily on the governor for definition.

THE OFFICE OF SECRETARY OF STATE

All but three (i.e., Alaska, Hawaii, Utah) of the 50 states have a secretary of state. In those states that do not have a secretary of state, the lieutenant governor carries out the duties of this office. In Ohio, the secretary of state is the state's chief election officer and record-keeper. He or she maintains records and documents pertaining to elections, campaign financing, corporations, and the uniform code. All laws passed by the Ohio General Assembly, all municipal charters, all administrative rules adopted by agencies, and all executive orders issued by the governor must be filed with the secretary of state's office. This office also licenses ministers to perform marriages, registers travel agencies and tour promoters, issues certifications verifying signatures on documents going out of the country (known as apostilles), and registers alien land.

As the state's chief election officer, the secretary of state supervises the administration of Ohio's election laws. Candidates for statewide office must file their declarations of candidacy or their nominating petitions with the secretary of state's office. All statewide initiative and referendum petitions must be filed with and reviewed by the secretary of state. This elected office-holder also approves ballot language, chairs the Ohio Ballot Board (which approves ballot language for statewide issues), and canvasses votes for all elective state offices and issues. As required by Ohio law, the secretary of state receives reports of campaign finances for state-wide candidates and state ballot issues, and reports for state political action committees (PAC), state political parties, and legislative caucus campaign committees. The secretary of state investigates election frauds and irregularities, and appoints four of the five members of the Ohio Elections Commission, a state agency that hears charges regarding election law violations.

As statutorily provided, bi-partisan, four-member boards of election carry out the election process in each of Ohio's 88 counties under the auspices of the secretary of state. The secretary

of state appoints the members of these boards (i.e., two Republicans and two Democrats), selecting from nominees submitted by the leaders of the Democratic and Republican parties in each county. County boards of election maintain records of registered voters, select polling sites, provide necessary equipment, certify candidate petitions and nominating papers, and perform all other detailed tasks involved in an election. The boards of election also receive campaign finance information from local and district-wide candidates. If election disputes arise (e.g., whether to count disputed ballots) and a county board of election cannot resolve the matter, the secretary of state casts the deciding vote, as required by law.

The secretary of state spearheads efforts to register voters and encourage voter participation in the elections conducted within Ohio. For example, "Ohio First Vote," a program launched in 1992, provides eligible high school seniors the opportunity to register to vote in their high schools. In its first three years of operation, this program succeeded in registering more than 100,000 students.

Another important area of the secretary of state's responsibilities arises from the general corporation laws of Ohio. The secretary of state receives and approves articles of incorporation (the papers establish a corporation's legal existence), as well as limited partnerships and limited liability companies. This office also grants licenses to out-of-state corporations seeking to do business in Ohio, registers trade marks and trade names, approves and keeps a register of business names, and keeps a file of all amendments to filed documents, mergers, consolidations, and dissolutions of Ohio corporations.

The secretary of state is a member of the Apportionment Board with the governor, the auditor of state, and two other members -- one Republican and one Democrat -- appointed by state legislative leaders. This influential, five-member body meets following the decennial census to redraw boundaries for each of the 99 Ohio House and 33 Ohio Senate districts to reflect population changes.

THE OFFICE OF AUDITOR OF STATE

By statute, the auditor of state is designated the chief accounting officer of Ohio. This executive branch officer's major responsibility is to conduct audits of government agencies and political subdivisions within Ohio, including state departments, counties, municipalities, townships, school districts, public universities, and libraries. These audits verify that public funds allocated to the respective units of government are properly accounted for and have been properly spent.

The General Assembly appropriates monies, and executive branch units at the state, county, and local levels use those funds to meet budgetary needs as statutorily authorized. A political unit may not spend more money than it has been allocated. It must use allocated funds only for the purposes designated (e.g., money budgeted to pay for salaries is not spent for office

furniture or travel), and it may spend those funds only within the authorized time period. If errors are uncovered, the audit report makes recommendations for recovering the funds or for transferring funds from one account to another to correct the problem. It may also include recommendations for avoiding repetition of errors in the future.

Upon receipt of proper certification from the Office of Budget and Management, the auditor of state issues warrants, another important responsibility of this office. A warrant is an order, similar to a check, that directs the treasurer of state to release a specified amount of money to the bearer of the warrant. This process provides for a continuous accounting of the health of the state's financial condition and the legitimacy of expenditures prior to payment from the state treasury.

On a monthly basis, the auditor of state's office distributes state revenues to Ohio's local political subdivision (e.g., counties, municipalities, townships, school districts). These funds come from taxes and state subsidies collected on behalf of local governments. They enable local governmental units to pay for the goods and services they use and provide to citizens (e.g., to run schools; to provide police services; to construct, repair, and maintain local roads).

Like the governor and secretary of state, the auditor of state is a member of the influential Apportionment Board and is president of the Sinking Fund Commission, which administers the sale and redemption of voter-authorized bonds. The auditor of state serves on a number of other boards and commissions as well, including the three-member State Board of Deposit (the treasurer and attorney general are the other two members) and the five public employee retirement systems (public employees, teachers, school employees, police and fire fighters, and state highway patrol).

THE OFFICE OF TREASURER OF STATE

The treasurer of state performs several key functions -- collecting state revenues, investing and preserving state funds, and disbursing state funds. The treasurer's office oversees the collection of revenues derived from various taxes and fees. Taxes on income, sales, corporations, and utilities provide the biggest source of state revenue. A considerable portion of state revenue also comes from the federal government. Fees and other sources constitute much smaller amounts. Although the treasurer's office collects taxes, it is not responsible for administering or enforcing Ohio's tax laws. The Department of Taxation has the primary responsibility for that function.

Characterized as the state's banker and chief fiscal officer, the treasurer of state safeguards state and custodial funds (e.g., public pension system funds). He or she arranges for the state's money to be invested in conservative securities and in Ohio banks and savings and loan associations. Ohio financial institutions bid competitively to win state deposits, which are considerable.

The treasurer of state also disburses checks to pay the state's bills. Though the checks (warrants) are actually issued by the office of the auditor of state, the treasurer assures that funds in the state's checking accounts are sufficient to pay these obligations. The treasurer is also the sole issuer of bonds for Ohio's voter-authorized Infrastructure Improvements Program, which makes funds available to local governments for various infrastructure projects. As with the other state-wide elected officials, the treasurer of state serves as a member of various boards and commissions. The State Board of Deposit and the Sinking Fund Commission are two of the most important of these.

THE OFFICE OF ATTORNEY GENERAL

The attorney general serves as the chief legal officer for Ohio. To discharge the extensive legal duties required of this office, the attorney general employs and supervises a large staff of attorneys. These attorneys defend, protect, and promote the state's interests in various legal matters. They initiate and respond to lawsuits, serving as prosecutor, plaintiff, and defense attorney. Lawyers in the attorney general's office are involved in criminal and civil matters, including cases requiring the interpretation of state statutes and constitutional law. They argue cases in all of Ohio's trial and appellate courts, but most often in the Court of Claims and the Supreme Court of Ohio. In addition to representing the State of Ohio, the attorney general's office also provides legal counsel to all elected state officials, state departments and commissions, and the General Assembly.

The attorney general provides formal and informal legal opinions to a variety of state officials -- the governor, other elected state officials, members of the General Assembly, the heads of state departments and agencies, and the 88 county prosecutors across Ohio. These opinions advise state officials regarding the legality (e.g., conformance with statutory or constitutional provisions) of existing or proposed policies and actions.

The attorney general also works with state law enforcement agencies to enforce Ohio's criminal statutes (especially in such areas as consumer fraud and organized crime). In addition, this office helps provide investigative services to various law enforcement agencies within the state and programs to improve the training of police officers.

EXECUTIVE BRANCH AGENCIES

Administrative agencies carry out a myriad of mandates, programs, and policies of state government in Ohio. Organized into departments, boards, commissions, and the like, these administrative agencies perform the day-to-day work of state government. A brief overview of these important parts of the executive branch follows.

State departments are particularly important structures for administering government policy and providing government mandated services in Ohio. These large, multifaceted units have broad legal authority and large financial resources. Department heads function as members of the governor's cabinet and coordinate wide-ranging responsibilities within their designated areas of authority. Below is a list of some of Ohio's administrative departments, illustrating the nature and scope of responsibilities these important state agencies perform under the governor's oversight:

- the Ohio Department of Human Services, which deals with programs to help people in need of financial, medical and social services (e.g., family services, child support enforcement, Medicaid),
- the Ohio Department of Rehabilitation and Correction, which administers Ohio's adult correctional system, including operating its correctional institutions (22 throughout the state) and supervising its various alternatives to incarceration (e.g., parole board, probation, halfway houses),
- the Ohio Department of Youth Services, which operates nine correctional institutions, schools and educational programs within those institutions, and aftercare programs for young people, 12 and 18, who have committed felony offenses and are assigned to institutional care by the juvenile courts,
- the Ohio Department of Transportation, which coordinates and oversees planning, construction and maintenance as it relates to Ohio's highway, railway, water, and air transportation systems and facilities,
- the Environmental Protection Agency (a cabinet-level department), which regulates air and water pollution, solid waste disposal, and hazardous materials and supervises sewage treatment and public water supply facilities,
- the Ohio Department of Health, which enforces state health laws and works to improve the quality of and access to affordable health care,
- the Department of Highway Safety, which houses the Bureau of Motor Vehicles and the Ohio State Highway Patrol as part of an overall program to promote safety on Ohio's roads, and
- the Department of Industrial Relations, which promotes health and industrial safety laws through inspections of industrial equipment, facilities (e.g, factories, nuclear power plants, day care centers), and working conditions, and enforces minimum wage, age, and prevailing wage laws.

Typically, departments are comprised of divisions and other smaller administrative units. This permits department personnel to carry out statutory responsibilities by focusing on specific

areas and functions. Thus, the Department of Natural Resources consists of a number of specialized divisions, from a Division of Forestry (which protects and manages Ohio's state forests and fosters sound forest management among private landowners) to a Division of Watercraft (which licenses all watercraft using Ohio waterways, enforces boating laws, and provides water safety programs). The Department of Development includes a Division of Travel and Tourism, an International Trade Division, and other divisions. It also includes an Office of Local Government Services (which administers the federal Community Development Block Grant program), an Office of Small and Developing Business (which offers start-up and expansion programs for small minority- and women-owned businesses), and other subdivisions.

The governor must work closely with department heads, and counts on them to support and implement his or her policy initiatives. The governor has authority to appoint and dismiss department heads (with the exception of the Department of Education), and to recommend and support budget allocations. Despite this, the governor's ability to make major changes in departmental policies and personnel is limited. The General Assembly, not the governor, creates and empowers departments by statute. What the state legislature creates by law, it may also divide, dissolve, or restrict by law. Ohio's civil service system provides another check on the governor's power. It protects state employees from arbitrary removal, enabling most departmental personnel to remain in their positions, despite changes in gubernatorial administrations. This system helps provide Ohio with a stable work force of trained and knowledgeable employees, but it reduces a governor's ability to effect significant changes within an executive department, particularly within a short time span. Faced with these constraints, the governor's main sources of influence within departments consist of setting policy priorities and making budget allocations -- especially the latter.

Several other types of government agencies, most notably boards and commissions, play important roles in the administration of Ohio's laws. Examples include the:

- Ohio Public Utilities Commission, which regulates the rates and services of electric, gas, telephone, water and sewer, and transportation companies in Ohio;
- Ohio Lottery Commission, which operates the state lottery;
- Ohio State Racing Commission, which regulates horse racing in the state (i.e., thoroughbred, quarter horse, and standard-bred);
- State Employment Relations Board, which oversees collective bargaining practices among public sector employees (e.g., elections, labor practices, conflicts);
- Ohio Board of Building Standards, which formulates minimum state building code standards;
- Ohio Oil and Gas Board of Review, which hears appeals on decisions by the head of the Division of Oil and Gas of the Department of Natural Resources; and

- Community Mental Health Boards, which plan community programs, including needed services and facilities, on a county or joint county basis,

More limited in scope than departments, these state government agencies administer a relatively narrow area of public policy.

Though diverse in their respective policy areas, boards and commissions have some important features in common. Created by statute, they are headed by a panel, or group, of persons rather than by a single administrator. The governor appoints the members to these panels, with concurrence of the Senate. Sometimes specific qualifications apply (e.g., one or more may need to be a lawyer, doctor, et cetera). Members of ruling board or commission panels serve staggered and overlapping terms, which gives these agencies considerable independence. A governor is not able to completely replace a ruling group at a single time. Length of term varies from one board or commission to another; statutory limitations prohibit early removal except under unusual circumstances. The resulting independence means that a board or commission will not necessarily follow a governor's recommendations in its policy area.

State agencies employ a wide range of people. Most are hired, not appointed, and are subject to civil service regulations regarding hiring, promotion, and firing. State agency employees include lawyers, doctors, engineers, accountants, other professionals, carpenters, plumbers, mechanics, other skilled trades people, secretaries, data processors, and others. They are among the tens of thousands of the State of Ohio executive branch employees who make it possible for government policies and programs to become a reality in the lives of Ohio residents.

LOCAL GOVERNMENT IN OHIO

Local government, in contrast to federal or state government, has the greatest effect on the everyday lives of citizens. For example, local governments typically provide basic services, such as police and fire protection, traffic control, garbage collection, street paving, and snow removal. They develop policies affecting local land use (e.g., location of businesses, single-family, and multi-family units), personal behavior (e.g., curfews on minors, skateboarding), and ownership and behavior of dogs, cats, and other animals. A brief description of each follows.

Counties

Counties are the major local subdivisions of state government. Part of our English law heritage, they exist as state administrative agencies to enforce state policy in a specific geographical area. County governments exercise limited powers to carry out such functions as collecting taxes, providing law enforcement (e.g., police protection, operating courts, maintaining jails), conducting elections, maintaining public roads, bridges and other public

facilities, providing social services (e.g., public health and welfare programs), maintaining records, and regulating land use.

State law provides for the structure of county government, prescribing a commission form of government headed by a three-member board of county commissioners. Voters of a county may provide for a different form of county government by adopting a home rule charter, but in only one of Ohio's 88 counties -- Summit County in 1979 -- have they done so. The other eighty-seven counties use a commission form.

County commissioners have staggered four-year terms. They have both legislative and executive powers that are limited by the state constitution and statutes. The primary function of county commissioners is executive which they share with eight other officials elected on a county-wide basis. These officials are also independently elected to four-year terms. They are the:

- sheriff, the chief law enforcement officer in the county, whose duties include providing police protection (primarily in the unincorporated areas of the county), executing court orders, and maintaining the county jail and courthouse;
- county prosecutor (must be an attorney licensed to practice in Ohio), the chief legal official in the county whose duties include prosecuting all persons accused of committing felonies occurring within the county, defending the county in lawsuits, and giving legal advice to the commissioners and other county and township officials;
- county coroner (must be a physician licensed for at least two years to practice in Ohio), whose duties involve determining causes of death (e.g., inquests, autopsies), issuing death certificates, and keeping records of deaths occurring in the county;
- county treasurer, whose duties include preparing tax notices, receiving county revenues from taxes and other sources, issuing warrants for payment of county obligations, and investing county funds;
- county auditor, whose duties include keeping county financial records (e.g., school funds, fees), recording all real estate transfers and tax records, approving payment of all county bills, and overseeing weights and measures;
- county engineer (must be a professional engineer), whose duties include preparing plans, specifications, and contracts for repairing and building county roads, bridges, and other public improvements with the exception of buildings;
- clerk of courts, whose duties include keeping court records, including judgments rendered by the courts, collecting court costs, serving summons, processing

petitions; and

- county recorder, whose duties include keeping records of deeds, mortgages, powers of attorney, and other required records.

The only control the county commissioners have over the other eight officials is through the county budget. County commissioners and other county officials receive a salary set by state law. Those serving in densely populated counties make more than their counterparts in sparsely populated counties.

County commissioner powers include managing the facilities, finances, and economic development of the county. They maintain county highways and all public buildings -- county offices, courthouse, jail. County commissioners manage solid waste and administer federal and state welfare programs. They can buy and sell land and buildings and levy a variety of taxes (i.e., property taxes, sales taxes, automobile license taxes, hotel and motel taxes, and a public utility tax), although, with the exception of property taxes, those taxes can be repealed in a referendum election.

Municipalities

Cities and villages are two of the most important forms of local government in Ohio. According to Ohio's Constitution, "*Municipal corporations... having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law*" (Article XVIII, Section 1). The decennial census triggers the process. After each, Ohio's Secretary of State issues a proclamation declaring the status of municipal corporations.

Ohio's Constitution and laws make possible the creation of cities and villages and the powers that those municipalities exercise. Therefore, cities and villages are creatures of the State of Ohio. Article XIII, Section 3 provides that, "*Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.*" Article XIII, Section 7 states that, "*Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.*" These two provisions extend "home rule" to cities and villages -- the authority to establish their own charter forms of government and to govern their own affairs. At times, the ability to exercise home rule raises jurisdictional conflicts that must be settled by the courts.

As units of local government, cities and villages affect the lives of Ohio citizens in many ways. They offer a range of government services affecting health, safety, and quality of life. Depending on the community, these municipal governments -- especially cities -- may provide police and fire protection, street lights and street maintenance, sidewalks, storm and sanitary sewers, and garbage disposal. They are likely to establish zoning regulations affecting land use

and the erection, use, and alteration of buildings, provide for various kinds of inspections to protect health and safety, and offer various kinds of public welfare and social services. To pay for these services, cities and villages have the power to levy taxes and borrow money, though that power is limited by the General Assembly. Statutory provisions govern procedures for forming municipal governments and extending their territory through annexation.

Townships

Townships carry out local government responsibilities in unincorporated areas within counties. First established by Congress in the Articles of Confederation, the township is one of the major political subdivisions in Ohio. Like cities and villages, townships may provide a variety of government services, including fire and police protection, road maintenance, waste disposal, and zoning regulations.

Special Districts

Special districts are a fourth type of local government in Ohio. Independent government units with their own independent governing body, special districts provide specific, limited services within a defined geographic area of the state. Local school districts are the most well-known examples. Other well-known examples are park districts, soil and water conservation districts, sanitary districts, and county library districts. These local government units may tax, make contracts, acquire and dispose of property, and exercise other powers granted to them by the General Assembly.

CHAPTER V. THE EXECUTIVE BRANCH IN OHIO: IDEAS FOR THE CLASSROOM

Exercise One: "Whose Responsibility Is It?" [pp. 136-137; completed version provided]

At the federal level, a president and vice-president head the executive branch. They run for office as a pair and are elected by the Electoral College. The situation is different at the state level. In Ohio, six elected officials head the state's executive branch of government -- a governor, a lieutenant governor, a secretary of state, an auditor of state, a treasurer of state, and an attorney general. The governor and lieutenant governor run together on a single ballot. The other four state-wide elected officials run separately. All are elected by direct vote of the people.

Each of the six elected offices of Ohio's executive branch has its own sphere of responsibility. In this exercise, students distinguish among the responsibilities borne by each of these six offices. Divide students into pairs. Let each pair of students work together to complete the exercise. Then merge pairs, so that one pair of students checks responses with another pair of students. Instruct the groups to put the 14 items into two categories -- (1) those items they feel they know, and (2) those items they are uncertain about.

Reassemble students as a large group to share responses. Write two categories on the chalkboard -- "Know About" and "Unsure About." Ask the groups of students to share those items they knew. Record in those items in the "Know About" column. Then elicit the items about which they are uncertain. Place them in the other column. Verify accuracy of the items in the "Know About" column. Have students analyze the results. Pose such questions as: (1) Which offices do we seem to know most about?; (2) Which offices do we seem to know least about?; and (3) What accounts for these differences? Build on these experiences by providing opportunities for students to learn more about the six offices.

To help students remember this information, consider using Spencer Kagan's cooperative learning design, "Color-Coded Co-op Cards" (1994, pp. 17:1-17:6). Students work together in a cooperative group structure that involves testing (i.e., pretest, practice test, final test), personalized flashcards, and drill-and-practice sessions. This approach features individual and team improvement scoring and individual, team, and class recognition.

Exercise Two: "If You Were Governor of Ohio" [pp. 138-139]

This exercise deals with the authority of the Governor of Ohio. Students consider six hypothetical situations. In each, "the governor" receives conflicting advice from two "advisors." Students apply their knowledge of the powers of the governor's office to decide which advice is sound. The correct responses are:

- Situation 1: Advisor B is correct. Article III, Section 10 of Ohio's Constitution provides that the governor "*shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.*" The Adjutant General is the governor's chief military aide. This person commands the Ohio National Guard, the organized militia of the state.
- Situation 2: Advisor A is correct. Article III, Section 21 of Ohio's Constitution empowers the governor to act with "*the advice and consent of the Senate*" to appoint persons to a wide range of positions in the state bureaucracy, including the Ohio Lottery Commission.
- Situation 3: Advisor A is correct. Article IV, Section 1 of Ohio's Constitution vests the judicial powers of the state in Ohio's courts. Article II, Section 1 vests "*the legislative power of the state*" in the Ohio General Assembly. The Ohio Revised Code (RC 2151.26) sets forth the criteria for the juvenile court to transfer jurisdiction to the adult court of common pleas. The governor has no authority over juvenile court judges, nor can the governor change the law.
- Situation 4: Advisor B is correct. The constitutional authority to appoint persons to positions in various levels of state agencies gives Ohio's governor the potential to wield considerable power and influence. But, the General Assembly has the power to create boards and commissions, specify requirements for appointees (e.g., on PUCO, at least one commissioner must be a lawyer, no more than three commissioners may be of the same political party), and set the length of terms of office. In this way, the legislative branch checks the power of the governor to influence and carry out public policy.
- Situation 5: Advisor A is correct. Article II, Section 16 of Ohio's Constitution provides that, "*The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner prescribed... for the repassage of a bill [i.e., three-fifths vote in both houses].*"
- Situation 6: Advisor B is correct. Exercising leadership in forming public policy is one of the governor's major functions. Article III, Section 7 of Ohio's Constitution empowers the governor to recommend to the General Assembly "such measures and he shall deem expedient." The governor also has a role in the approval of

legislation. In addition, as head of the executive branch and nominal head of his or her political party the governor is well-positioned to exert leadership and influence.

Exercise Three: "Qualities of a Governor" [p. 140]

Ohio's Constitution establishes no special qualifications for governor or the other five executive branch officers, other than the following provision: "*No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector*" (Article XV, Section 4). Voter qualifications include being: (1) a citizen of the United States, (2) at least 18 years old on or before the day of the general election, and (3) a resident of Ohio for at least 30 days before the election.

This exercise asks students to consider additional factors when voting for a governor. Using a graphic rating scale, students rate 17 factors. After students rate the factors, tally responses on the chalkboard using three columns -- "Minor Importance" (items receiving a one or two rating), "Some Importance" (items receiving a three rating), and "Major Importance" (items receiving a four or five rating). Focus initially on those factors receiving the highest and the lowest ratings. Have students explain reasons for their ratings. Then move to items having the greatest spread of opinion. Elicit student reasoning for the various positions held. Conclude by having each student select the five factors he or she thinks are most important and writing a short essay explaining why those five factors were selected.

An alternative approach is to put students into small groups. Have each group select the four or five factors they deem most important and the four or five factors they deem least important. Record group choices on the chalkboard. In a large group setting, compare and contrast group choices and reasons for them.

Exercise Four: "The Ohio Civil Rights Commission" [pp. 141-144]

Ohio's executive branch consists of a number of state-wide agencies (e.g., departments, boards, commissions, councils) that carry out state laws and policies. They perform the day-to-day work of state government. Departments are large, multifaceted units having broad legal authority and large financial resources. Boards and commissions are more limited in scope. They administer a relatively narrow area of public policy.

Boards and commissions are created by statute. They are headed by a panel of persons rather than a single administrator. Appointed by the governor with the consent of the Senate, panel members serve staggered terms. This gives panel members considerable independence, because a governor is not able to completely replace a ruling group at one time.

This exercise features the work of the Ohio Civil Rights Commission (OCRC). The five-

members of the commission, who serve five-year staggered terms, oversee the work of this important state agency. They appoint an executive director, who carries out commission policies and rulings.

This exercise emphasizes critical thinking skills by having students make inferences about the work of the OCRC. First, they analyze the commission's logo, which symbolizes its mission. Second, students examine an OCRC poster, using the questions provided. Third, students use the OCRC's charge to clarify its work. The exercise concludes by having students develop generalizations about the evolution of anti-discrimination laws in Ohio, using a list of anti-discrimination laws passed in Ohio between 1959 and 1990. Consider expanding this analysis by having students relate national events (e.g., 1964 Civil Rights Act, Equal Rights Amendment passed by Congress in 1972)) with legislation passed in Ohio.

WHOSE RESPONSIBILITY IS IT?

Instructions: Below are 14 situations involving an administrative duty of one of six elected officials in the executive branch of Ohio's state government -- governor, lieutenant governor, attorney general, secretary of state, treasurer of state, or auditor of state. Match the duty with the elected official.

OFFICIAL RESPONSIBLE

ADMINISTRATIVE DUTY

- _____ 1. This state official represents Ohio in all legal matters involving the state or in which the state has a significant interest.
- _____ 2. This state official is responsible for the efficient collection of taxes and fees owed to the state.
- _____ 3. This state official sees to it that all elections in the state are conducted appropriately.
- _____ 4. This state official is commander-in-chief of Ohio's National Guard and has the authority to order it into action in the event of a natural disaster or civil disturbance.
- _____ 5. This state official steps in when the governor is unable to carry out his responsibilities due to death, disability, resignation, or impeachment.
- _____ 6. This state official prepares a detailed budget for running the state government and submits it to the General Assembly every two years.
- _____ 7. This state official is responsible for examining the financial records of units of state and local government to ensure that public funds have been properly spent and can be accounted for.
- _____ 8. This state official serves as legal counsel to the governor, other statewide elected officials, the General Assembly, and all state departments, commissions, boards, and agencies.
- _____ 9. This state official appoints the heads of the administrative departments of the state and is responsible for overseeing their work.
- _____ 10. This state official is responsible for investing state funds.
- _____ 11. This state official enforces Ohio's laws involving consumer fraud, environmental protection, antitrust, and organized crime.
- _____ 12. This state official authorizes payment of State of Ohio funds for approved goods and services.
- _____ 13. This state official compiles and prints all laws and resolutions passed by the General Assembly and circulates those new laws to counties and other units of state government.
- _____ 14. This state official collects information about the condition of the state and communicates it to the General Assembly every year.

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IF YOU WERE GOVERNOR OF OHIO

Instructions: Below are situations that a governor of Ohio could face. After each situation, there are recommended courses of action from two different persons -- Advisor A and Advisor B. Only one of the advisors offers appropriate advice. Determine which is the proper course of action in each situation. Indicate your decision by circling either Advisor A or Advisor B.

Situation 1

A riot has broken out in one of Ohio's large cities. Many buildings are ablaze. Looting is occurring. People are being hurt. The city's police chief reports that his department is unable to restore order. The city's mayor makes an urgent plea for help from your office. As governor, you want to send in the Ohio National Guard (i.e., the state militia) to restore order. Do you have the authority to do this on your own?

- ADVISOR A says that you lack the authority to act on your own. This advisor recommends that you immediately send a letter to the Ohio General Assembly asking for the authority to send the Ohio National Guard to the riot-torn city.
- ADVISOR B tells you that you do not have to consult with the General Assembly. As governor, you have the authority to act on your own. Advisor B recommends that you immediately order units of the Ohio National Guard to go to the riot-torn city and restore order there.

Situation 2

One of the nine members of the Ohio Lottery Commission has resigned. A replacement is needed. People suggest various names to you. You favor one nominee above all others. You consult with your advisors to determine what you can do to have the person you favor become a member of the Ohio Lottery Commission.

- ADVISOR A believes that the Ohio Senate must approve your nomination. This advisor says that do not have the authority to act on your own. Advisor A recommends that you submit the name of the person you favor to the Ohio Senate and urge the senators to approve your nominee to the Ohio Lottery Commission.
- ADVISOR B tells you to ignore the Ohio Senate. This advisor claims that, as governor, you have the sole authority to appoint a person to the Ohio Lottery Commission. Advisor B recommends that you call a press conference and announce that the person you favor will be become a member of the commission one week later. If members of the Senate complain about not being consulted, remind them that, as head of the executive branch, you have sole authority to act in this matter.

Situation 3

The heat is on. Public opinion is inflamed. Recently, newspapers and television news programs around the state have run a series of stories about rising rates of violent crime committed by juveniles. Editorials have urged you to get involved. Citizens have called and written your office demanding action. You decide the answer is to have all juveniles, 16 years and older, who are accused of violent crimes be tried in adult courts. Currently, judges decide this on a case by case basis. You want to stop that.

- ADVISOR A recommends that you use your authority as governor to order all state judges with juvenile court responsibilities to transfer jurisdiction to adult court in all cases involving juveniles, 16 and older, who are charged with committing a violent crime.
- ADVISOR B says that you presently lack authority to order judges to do this. For this to happen, a new law must be passed. This advisor urges you to put pressure on the General Assembly to get them to pass a new law requiring all that juveniles, 16 years or older, who are charged with committing a violent crime, be tried as adults.

Situation 4

You said in your election campaign that you would work hard to bring new businesses to Ohio. To do this, you believe it is essential that low cost gas and electricity be available. The Public Utilities Commission of Ohio (PUCO) controls the rates utilities may charge. It also determines the services these companies must provide. You learn that PUCO is favoring large price increases in electric and gas rates. If these rate increases are granted, you believe Ohio will not be able to attract new businesses and companies currently operating in the state will leave. You want to know what you can do about this situation.

- ADVISOR A recommends that you immediately fire the PUCO commissioners who favor the price increases and replace them with persons more in tune with your thinking on utility rates. Advisor A reasons that you are the head of the executive branch. You have the power to appoint the commissioners to PUCO and the power to fire them at will.
- ADVISOR B cautions against trying to fire the present commissioners. This advisor points out that the commissioners serve five-year terms. As governor, you cannot remove them just because you disagree with their decisions. This advisor tells you to try and convince the commissioners of the need to keep gas and electric rates low. As vacancies develop, appoint persons who are sympathetic to your views.

Situation 5

The General Assembly has just passed an appropriations bill. It authorizes the State of Ohio to spend specific amounts of money for the particular purposes stated in the bill. You believe this bill would cause state government to spend more money than you think it should. You like many of the things included in the bill, but oppose expenditures in certain areas. You want to know how to proceed in this matter.

- ADVISOR A tells you that the problem is easy to solve. This advisor tells you that you have the authority to veto line items in the bill. Decide which line items you want deleted. Veto them. Approve the remainder of the bill. Unless the General Assembly overrides your veto, the revised appropriations bill will become law.
- ADVISOR B says that you have no other choice but to sign the appropriations bill as it has been sent to you. This advisor says that you must either accept or reject the bill as a whole. You do not have the authority to veto only those parts in the bill of which you disapprove. Because you like most of the appropriations bill, Advisor B recommends that you sign it into law.

Situation 6

The General Assembly is getting ready to vote on an important bill that you want passed. By all accounts, the vote will be very close. Most legislators have announced how they will vote. A small number have not yet made their position known. You want to do whatever you can to get this bill passed. You seek advice on what to do in this situation.

- ADVISOR A recommends that you do nothing at this point. The General Assembly makes laws, the governor does not. As head of the executive branch, you ensure that laws are carried out. You cannot interfere with or attempt to influence the General Assembly during the law-making process.
- ADVISOR B recommends that you personally contact each of the undecided legislators to explain the reasons why you want this bill to pass. Advisor B also suggests that you follow a "scratch my back, and I'll scratch yours" tactic. In exchange for their support of this legislation, offer to assist uncommitted legislators in achieving other goals that are important to them. This advisor stresses the importance of working with the members of the General Assembly to get them to pass laws that you favor.

QUALITIES OF A GOVERNOR

Instructions: What does it take to become governor of a state? What factors are most important? Listed below are some factors people consider when voting for a governor. Decide how important each of these factors is to you. Rate each factor. The higher the number, the more important you consider the factor to be.

	Not Important			Important	
Age.....	1	2	3	4	5
Personal Wealth.....	1	2	3	4	5
Intelligence.....	1	2	3	4	5
Race/Ethnic Background.....	1	2	3	4	5
Personal Appearance.....	1	2	3	4	5
Ability to Speak Well.....	1	2	3	4	5
Major Party Affiliation.....	1	2	3	4	5
Marital Status.....	1	2	3	4	5
Political Philosophy.....	1	2	3	4	5
Religious Views.....	1	2	3	4	5
Ability to Get Along with Others.....	1	2	3	4	5
Gender.....	1	2	3	4	5
Political Experience.....	1	2	3	4	5
Formal Education.....	1	2	3	4	5
Personal Life.....	1	2	3	4	5
Well-known Name.....	1	2	3	4	5
Military Experience.....	1	2	3	4	5

THE OHIO CIVIL RIGHTS COMMISSION

The Commission's Logo

A logo is a type of symbol that uses a combination of words and graphics to represent a group or an organization. Below is the logo of the Ohio Civil Rights Commission (OCRC). What can you tell about the OCRC from looking at its logo? Use the questions to help clarify your understanding.

- What is a commission?
- What are civil rights?
- What three words appear at the top of the OCRC logo? What do they mean? Why are they there?



An Ohio Civil Rights Commission Poster

The next page contains a copy of a notification poster distributed by the Ohio Civil Rights Commission. Use it to identify information about the work of the OCRC.

- With what Ohio law does this poster deal?
- To what groups of people does this law apply?
- On what basis is it unlawful to deny a person equal employment opportunity in Ohio?
- What is the minimum number of employees an employer must have to be affected by this law?
- What can people do if they feel that they have been denied equal employment opportunities?
- What is the nearest OCRC regional office to you?

After examining the OCRC poster, consider the following questions:

- Why do you think this law exists?
- In what other areas of life should discrimination be unlawful?
- What other grounds, if any, do you feel discrimination should be unlawful in Ohio?

It is UNLAWFUL in the State of Ohio to deny equal employment opportunity on the basis of

**race, color, religion, sex,
national origin, handicap,
ancestry, or age**

**Summary Provisions of the
OHIO FAIR EMPLOYMENT PRACTICES LAW**

(For complete text see Sections 4112.01 to 4112.11 and Section 4112.99 of the Ohio Revised Code)

It is unlawful:

For EMPLOYERS to deny equal opportunity in hiring, tenure, terms, conditions or privileges of employment;

For LABOR UNIONS to deny admission, limit or classify members;

For EMPLOYMENT AGENCIES to refuse or fail to accept, register, classify properly or refer for employment;

on the basis of race, color, religion, sex, national origin, handicap, ancestry or age.

Further, it is an unlawful discriminatory practice, prior to employment or admission to union membership, to request any information or keep records, print or publish notices or advertisements which indicate a person's race, color, religion, sex, national origin, handicap, ancestry or age.

This law applies to:

Employers of four or more persons, including the State or any political subdivision thereof;

Employment agencies operating with or without compensation;

All employers, labor organizations or joint labor-management committees controlling apprentice training programs;

Any person who obstructs or hinders compliance with this act.

The purpose of this law is to prevent and eliminate the practice of discrimination in employment against any person because of race, color, religion, sex, national origin, handicap, ancestry or age.

Any person or persons claiming to be aggrieved or having knowledge of alleged discrimination or the Ohio Civil Rights Commission on its own initiative may utilize this law by filing a charge affidavit.

For additional information, contact the regional office of The Ohio Civil Rights Commission. Addresses are listed below.

- Central Office
220 Parsons Avenue
Columbus, Ohio 43266-0543
614/466-2785
614/466-9353 (TTY)
- Cleveland Regional Office
Frank J. Lausche Building-Suite 885
615 West Superior Avenue
Cleveland, Ohio 44113
216/787-3150 (Voice/TTY)
- Dayton Regional Office
800 Miami Valley Tower
40 West Fourth Street
Dayton, Ohio 45402
513/285-6500 (Voice/TTY)
- Toledo Regional Office
Room 936
One Government Center
Jackson and Erie Streets
Toledo, Ohio 43604
419/245-2900 (Voice/TTY)
- Columbus Regional Office
220 Parsons Avenue
Columbus, Ohio 43266-0543
614/466-5928 (Voice/TTY)
- Akron Regional Office
Akron Government Center-Suite 205
161 S. High Street
Akron, Ohio 44308
216/379-3100 (Voice/TTY)
- Cincinnati Regional Office
200 Goodall Complex
324 West 9th Street
Cincinnati, Ohio 45202
513/852-3344 (Voice/TTY)

Ohio Civil Rights Commission Regions (6)



George V. Voinovich
Governor

Ohio law requires posting this notice in a conspicuous place.

Total copies printed: 10,000
Unit Cost: \$ 0.386
Publication date: 7/83

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- ADVISOR A believes that the Ohio Senate must approve your nomination. This advisor says that do not have the authority to act on your own. Advisor A recommends that you submit the name of the person you favor to the Ohio Senate and urge the senators to approve your nominee to the Ohio Lottery Commission.
- ADVISOR B tells you to ignore the Ohio Senate. This advisor claims that, as governor, you have the sole authority to appoint a person to the Ohio Lottery Commission. Advisor B recommends that you call a press conference and announce that the person you favor will be become a member of the commission one week later. If members of the Senate complain about not being consulted, remind them that, as head of the executive branch, you have sole authority to act in this matter.

Situation 3

The heat is on. Public opinion is inflamed. Recently, newspapers and television news programs around the state have run a series of stories about rising rates of violent crime committed by juveniles. Editorials have urged you to get involved. Citizens have called and written your office demanding action. You decide the answer is to have all juveniles, 16 years and older, who are accused of violent crimes be tried in adult courts. Currently, judges decide this on a case by case basis. You want to stop that.

- ADVISOR A recommends that you use your authority as governor to order all state judges with juvenile court responsibilities to transfer jurisdiction to adult court in all cases involving juveniles, 16 and older, who are charged with committing a violent crime.
- ADVISOR B says that you presently lack authority to order judges to do this. For this to happen, a new law must be passed. This advisor urges you to put pressure on the General Assembly to get them to pass a new law requiring all that juveniles, 16 years or older, who are charged with committing a violent crime, be tried as adults.

Situation 4

You said in your election campaign that you would work hard to bring new businesses to Ohio. To do this, you believe it is essential that low cost gas and electricity be available. The Public Utilities Commission of Ohio (PUCO) controls the rates utilities may charge. It also determines the services these companies must provide. You learn that PUCO is favoring large price increases in electric and gas rates. If these rate increases are granted, you believe Ohio will not be able to attract new businesses and companies currently operating in the state will leave. You want to know what you can do about this situation.

- ADVISOR A recommends that you immediately fire the PUCO commissioners who favor the price increases and replace them with persons more in tune with your thinking on utility rates. Advisor A reasons that you are the head of the executive branch. You have the power to appoint the commissioners to PUCO and the power to fire them at will.
- ADVISOR B cautions against trying to fire the present commissioners. This advisor points out that the commissioners serve five-year terms. As governor, you cannot remove them just because you disagree with their decisions. This advisor tells you to try and convince the commissioners of the need to keep gas and electric rates low. As vacancies develop, appoint persons who are sympathetic to your views.

Situation 5

The General Assembly has just passed an appropriations bill. It authorizes the State of Ohio to spend specific amounts of money for the particular purposes stated in the bill. You believe this bill would cause state government to spend more money than you think it should. You like many of the things included in the bill, but oppose expenditures in certain areas. You want to know how to proceed in this matter.

- ADVISOR A tells you that the problem is easy to solve. This advisor tells you that you have the authority to veto line items in the bill. Decide which line items you want deleted. Veto them. Approve the remainder of the bill. Unless the General Assembly overrides your veto, the revised appropriations bill will become law.
- ADVISOR B says that you have no other choice but to sign the appropriations bill as it has been sent to you. This advisor says that you must either accept or reject the bill as a whole. You do not have the authority to veto only those parts in the bill of which you disapprove. Because you like most of the appropriations bill, Advisor B recommends that you sign it into law.

Situation 6

The General Assembly is getting ready to vote on an important bill that you want passed. By all accounts, the vote will be very close. Most legislators have announced how they will vote. A small number have not yet made their position known. You want to do whatever you can to get this bill passed. You seek advice on what to do in this situation.

- ADVISOR A recommends that you do nothing at this point. The General Assembly makes laws, the governor does not. As head of the executive branch, you ensure that laws are carried out. You cannot interfere with or attempt to influence the General Assembly during the law-making process.
- ADVISOR B recommends that you personally contact each of the undecided legislators to explain the reasons why you want this bill to pass. Advisor B also suggests that you follow a "scratch my back, and I'll scratch yours" tactic. In exchange for their support of this legislation, offer to assist uncommitted legislators in achieving other goals that are important to them. This advisor stresses the importance of working with the members of the General Assembly to get them to pass laws that you favor.

QUALITIES OF A GOVERNOR

Instructions: What does it take to become governor of a state? What factors are most important? Listed below are some factors people consider when voting for a governor. Decide how important each of these factors is to you. Rate each factor. The higher the number, the more important you consider the factor to be.

	Not Important			Important	
Age.....	1	2	3	4	5
Personal Wealth.....	1	2	3	4	5
Intelligence.....	1	2	3	4	5
Race/Ethnic Background.....	1	2	3	4	5
Personal Appearance.....	1	2	3	4	5
Ability to Speak Well.....	1	2	3	4	5
Major Party Affiliation.....	1	2	3	4	5
Marital Status.....	1	2	3	4	5
Political Philosophy.....	1	2	3	4	5
Religious Views.....	1	2	3	4	5
Ability to Get Along with Others.....	1	2	3	4	5
Gender.....	1	2	3	4	5
Political Experience.....	1	2	3	4	5
Formal Education.....	1	2	3	4	5
Personal Life.....	1	2	3	4	5
Well-known Name.....	1	2	3	4	5
Military Experience.....	1	2	3	4	5

THE OHIO CIVIL RIGHTS COMMISSION

The Commission's Logo

A logo is a type of symbol that uses a combination of words and graphics to represent a group or an organization. Below is the logo of the Ohio Civil Rights Commission (OCRC). What can you tell about the OCRC from looking at its logo? Use the questions to help clarify your understanding.

- What is a commission?
- What are civil rights?
- What three words appear at the top of the OCRC logo? What do they mean? Why are they there?



An Ohio Civil Rights Commission Poster

The next page contains a copy of a notification poster distributed by the Ohio Civil Rights Commission. Use it to identify information about the work of the OCRC.

- With what Ohio law does this poster deal?
- To what groups of people does this law apply?
- On what basis is it unlawful to deny a person equal employment opportunity in Ohio?
- What is the minimum number of employees an employer must have to be affected by this law?
- What can people do if they feel that they have been denied equal employment opportunities?
- What is the nearest OCRC regional office to you?

After examining the OCRC poster, consider the following questions:

- Why do you think this law exists?
- In what other areas of life should discrimination be unlawful?
- What other grounds, if any, do you feel discrimination should be unlawful in Ohio?

It is UNLAWFUL in the State of Ohio to deny equal employment opportunity on the basis of

**race, color, religion, sex,
national origin, handicap,
ancestry, or age**

**Summary Provisions of the
OHIO FAIR EMPLOYMENT PRACTICES LAW**

(For complete text see Sections 4112.01 to 4112.11 and Section 4112.99 of the Ohio Revised Code)

It is unlawful:

For EMPLOYERS to deny equal opportunity in hiring, tenure, terms, conditions or privileges of employment;

For LABOR UNIONS to deny admission, limit or classify members;

For EMPLOYMENT AGENCIES to refuse or fail to accept, register, classify properly or refer for employment;

on the basis of race, color, religion, sex, national origin, handicap, ancestry or age.

Further, it is an unlawful discriminatory practice, prior to employment or admission to union membership, to request any information or keep records, print or publish notices or advertisements which indicate a person's race, color, religion, sex, national origin, handicap, ancestry or age.

This law applies to:

Employers of four or more persons, including the State or any political subdivision thereof;

Employment agencies operating with or without compensation;

All employers, labor organizations or joint labor-management committees controlling apprentice training programs;

Any person who obstructs or hinders compliance with this act.

The purpose of this law is to prevent and eliminate the practice of discrimination in employment against any person because of race, color, religion, sex, national origin, handicap, ancestry or age.

Any person or persons claiming to be aggrieved or having knowledge of alleged discrimination or the Ohio Civil Rights Commission on its own initiative may utilize this law by filing a charge affidavit.

For additional information, contact the regional office of The Ohio Civil Rights Commission. Addresses are listed below.

- Central Office
220 Parsons Avenue
Columbus, Ohio 43266-0543
614/466-2785
614/466-9353 (TTY)
- Cleveland Regional Office
Frank J. Lausche Building-Suite 885
615 West Superior Avenue
Cleveland, Ohio 44113
216/787-3150 (Voice/TTY)
- Dayton Regional Office
800 Miami Valley Tower
40 West Fourth Street
Dayton, Ohio 45402
513/285-6500 (Voice/TTY)
- Toledo Regional Office
Room 936
One Government Center
Jackson and Erie Streets
Toledo, Ohio 43604
419/245-2900 (Voice/TTY)
- Columbus Regional Office
220 Parsons Avenue
Columbus, Ohio 43266-0543
614/466-5928 (Voice/TTY)
- Akron Regional Office
Akron Government Center-Suite 205
161 S. High Street
Akron, Ohio 44308
216/379-3100 (Voice/TTY)
- Cincinnati Regional Office
200 Goodall Complex
324 West 9th Street
Cincinnati, Ohio 45202
513/852-3344 (Voice/TTY)

Ohio Civil Rights Commission Regions (6)



George V. Voinovich
Governor

Ohio law requires posting this notice in a conspicuous place.

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The Ohio Civil Rights Commission's Charge

The Ohio Civil Rights Commission was created by the Ohio General Assembly. It became operational on July 29, 1959. The Commission is charged with enforcing Chapter 4112 of the Ohio Revised Code. It has jurisdiction to investigate charges and enforce Ohio's laws prohibiting discrimination in the areas of employment, housing, public accommodations, credit and higher education. Discrimination may not be based on race, color, sex, religion, national origin, ancestry, handicap condition, or age.

Demonstrate your understanding of the charge given to the Ohio Civil Rights Commission by answering the following questions.

- Why was the OCRC created?
- What is the source of the its authority?
- On what grounds is it illegal to discriminate in Ohio?
- In what areas of life is discrimination on these grounds illegal?
- Of which branch of government does the Ohio Civil Rights Commission a part -- the legislative, executive, or judicial? Explain your reasoning.

The Constitution of the State of Ohio

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety. [Article I, Section 1]

QUESTIONS TO CONSIDER

- How do Ohio's statutes against discrimination relate to Article I, Section 1 of the Ohio Constitution?
- The handout, "A History of Ohio's Laws Against Discrimination," contains a chronology of civil rights laws passed by the Ohio General Assembly between 1959 and 1990. What generalizations can you make about the history of anti-discrimination laws in Ohio?
- What is your opinion about the value of laws against discrimination?

HANDOUT
A History of Ohio's Laws Against Discrimination
1959 to 1990

Below is a chronology of anti-discrimination laws passed in Ohio since 1959.

- 7-29-59: Enactment of Ohio's Fair Employment Practices Law that prohibits discrimination by reason of race, color, religion, national origin or ancestry. The Civil Rights Commission is established by the Ohio legislature as the executive agency responsible for enforcing laws against discrimination.
- 10-24-61: Enactment of law prohibiting discrimination in places of public accommodation.
- 10-30-65: Enactment of law prohibiting discrimination in housing.
- 11-12-69: Amendment of housing discrimination laws.
Enactment of law prohibiting discrimination in burial lots.
- 12-19-73: Enactment of law prohibiting discrimination by sex.
- 1-14-76: Enactment of law prohibiting discrimination in credit.
- 7-23-76: Enactment of law prohibiting discrimination by reason of handicap.
- 8-18-76: Enactment of law prohibiting discrimination by reason of age in credit.
- 11-13-79: Law against age discrimination is broadened.
- 7-26-84: Enactment of law prohibiting discrimination by reason of handicap in institutions of higher education.
- 9-28-87: Amendment to broaden the law against housing discrimination.
- 5-31-90: Discrimination by reason of age limit changed from ages 40 to 70 to 40 and above

CHAPTER VI. THE JUDICIAL BRANCH IN OHIO

The United States of America is a federal republic. Federalism requires a dual system of courts -- a federal system and a state system. National, or federal, courts operate in accordance with the provisions of the Constitution of the United States. The state system of courts operates independently in each of the 50 states. Though bound by the terms of the Constitution of the United States, each of the 50 state court systems is established by and operates in accordance with its own state constitution.

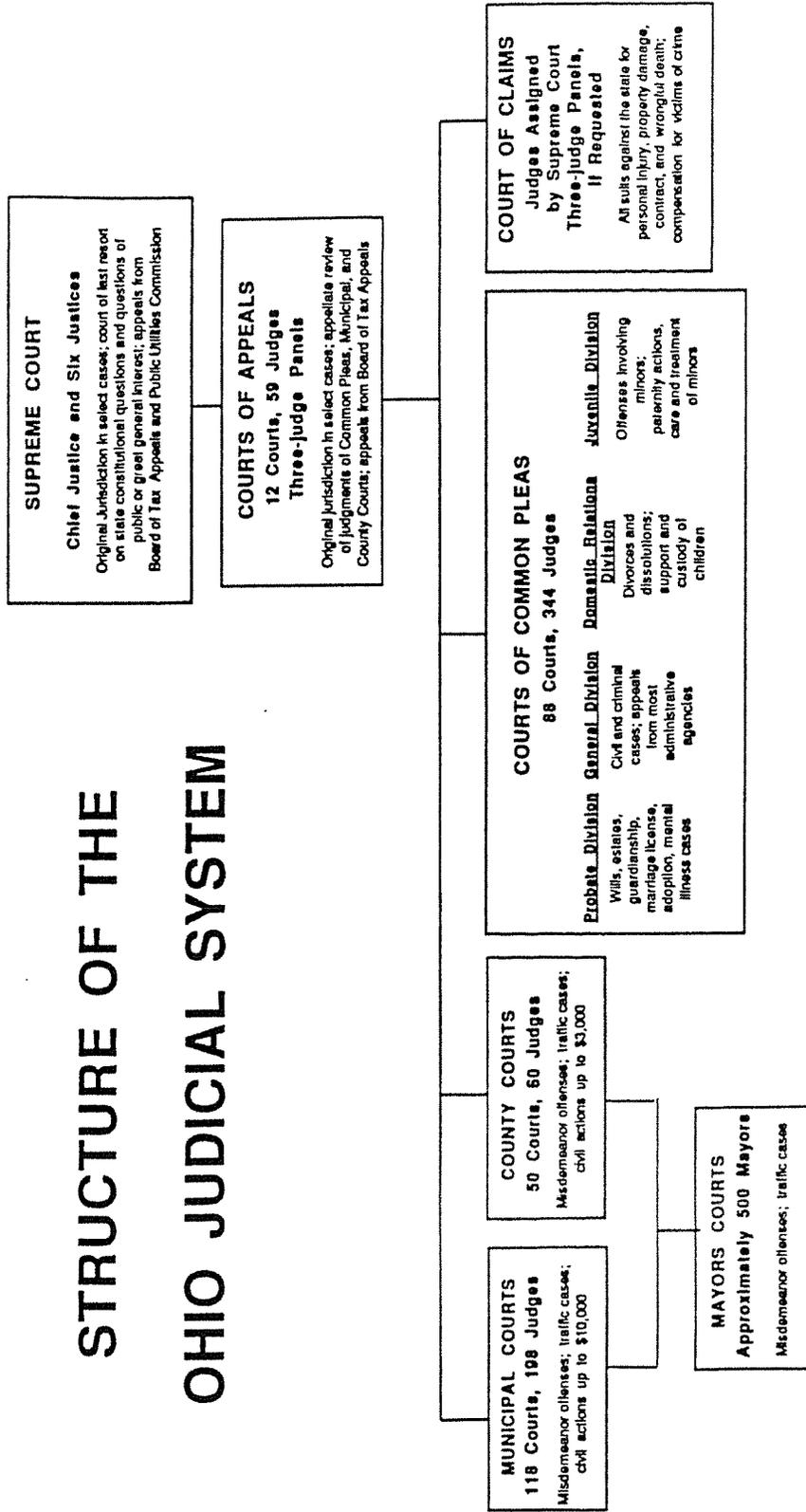
Article III of the United States Constitution establishes the judicial branch. Section One assigns the power to hear and decide cases to the Supreme Court and "*such inferior courts as the Congress may from time to time ordain and establish.*" This is the constitutional basis for the structure of the federal court system. Section Two sets forth the types of issues and disputes federal courts are authorized to handle, that is, their jurisdiction. It empowers federal courts to hear all cases involving the Constitution of the United States and the law made pursuant to it, treaties, and admiralty and maritime law. It also grants federal courts authority to hear all cases involving foreign diplomats and cases in which the United States government is a party. In addition, it extends federal court jurisdiction to disputes between citizens of different states, citizens of the same state claiming lands under the grants of different states, and citizens of a state, or the state itself, and another country or citizens of another country.

In each of the 50 states, a state constitution establishes a judicial branch and the structure for and jurisdiction of that state's court system. In Ohio, Article IV of the state constitution establishes the judicial branch. Article Four, Section One reads, "*The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.*" Sections Two through Five make clear the jurisdiction of these three types of courts. Sections Two and Five pertain to the Supreme Court of Ohio, Section Three the Courts of Appeals, and Section Four the Courts of Common Pleas. Figure 6.1 shows the three-tiered structure of the Ohio court system.

There are basically two types of courts -- trial courts and appellate courts. They differ significantly in their purpose and methods. Trial courts seek to discover the facts in cases that come before them, be they criminal cases or civil cases. They conduct trials for this purpose. At a trial, both parties are typically represented by attorneys. Each side has the right to call witnesses on its behalf and to elicit evidence from them. They also have the right to challenge the testimony of witnesses summoned by the other party who give testimony unfavorable to their side. A judicial officer (e.g., judge or referee) presides at the trial to ensure that the laws are

Figure 6.1.
Structure of the Ohio Judicial System

STRUCTURE OF THE OHIO JUDICIAL SYSTEM



properly applied and the process is conducted fairly. A jury or a judge (or, in death penalty cases, a panel of judges) determines the facts of the case. In a criminal trial, the jury or judge renders a verdict of guilty or not guilty. In a civil trial, the jury or judge decides whether the person bringing the suit will prevail. Once the trial court has made a decision, the losing party may be able to appeal the decision to an appellate court.

Appellate courts consist of two levels -- an initial appeals level (i.e., Ohio courts of appeals) and a court of last resort (i.e., the Supreme Court of Ohio). These courts rule on cases that have been decided previously by another court (i.e., a lower court). They determine if the proceedings in the prior court were fairly conducted and the law was properly applied. No witnesses appear. No juries are used. No judgment of fault (in a civil case) or of guilt (in a criminal case) is made. A panel of judges reviews the trial record (i.e., the trial transcript and pertinent papers) along with written arguments, called briefs, prepared by lawyers representing both sides to the controversy. They also hear brief oral presentations by lawyers representing the parties involved in the case. After considering this information, the judges render a decision, which they announce in the form of a written opinion. They may uphold the prior court's actions or order the case be returned to the trial court for subsequent action (e.g., dismissal or a new trial). The holdings of a court of appeals are binding on all lower courts in that appellate district. The holdings of the Supreme Court of Ohio are binding statewide. All Ohio courts must act in accordance with Supreme Court decisions unless the Supreme Court of the United States renders a decision overruling a Supreme Court of Ohio decision.

OHIO'S TRIAL COURTS

Courts of common pleas and their divisions, along with municipal and country courts, mayor's courts, and the Ohio Court of Claims, comprise the first of three levels of the Ohio court system. These are trial courts, which have original jurisdiction. They hear cases for the first time. The various trial courts differ primarily in the types of cases they are permitted to hear and the processes they use.

Courts of Common Pleas

The courts of common pleas are the only trial courts specifically created by the Ohio Constitution. Article IV, Section Four specifies that, "*There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state....*" Accordingly, there is a court of common pleas in each of the Ohio's 88 counties. Given county population variations and other factors, there are wide differences in the number of cases the courts of common pleas handle in each of Ohio's counties. Consequently, the number of common pleas judges varies by county. The General Assembly sets the number of judges for each county.

The courts of common pleas derive their authority from provisions in the Ohio

Constitution and statutes passed by the General Assembly. Article IV, Section Four stipulates that, "*The courts of common pleas and divisions thereof shall have such original jurisdiction overall justifiable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.*" The original jurisdiction of the courts of common pleas extends in criminal matters to all felonies (i.e., "serious crimes") and in civil matters to all cases involving amounts in excess of \$500. Their "*powers of review,*" or appellate jurisdiction, is limited to decisions of some state administrative agencies, such as workers' compensation claims and decisions by the state Labor Relations Board.

Given their extensive jurisdiction, most of the courts of common pleas have one or more specialized divisions in addition to a division of general jurisdiction. The Ohio Constitution provides for this, specifying that, "*there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law.*" Two other divisions exist, having been established by the General Assembly. These are the domestic relations division and the juvenile division. By establishing divisions of the common pleas court, judges are better able to narrow the range of legal matters with which they must deal. Only in the seven least populated counties of Ohio does one judge handle all three divisions, as well as general jurisdiction, in a single common pleas court.

Probate Division

When Ohio adopted its present constitution in the mid-nineteenth century, probate courts were set up as independent courts. Their jurisdiction encompassed establishing the validity of wills and supervising the administration of estates and guardianships. Over the years, the jurisdiction of probate courts broadened and their status changed. Their jurisdiction now includes matters involving the validity of wills and the administration of estates, but also marriage licenses, adoption proceedings, guardianships, the determination of sanity or mental competency, and certain eminent domain proceedings as well. In 1968, by constitutional amendment, probate courts became divisions of the courts of common pleas. Currently, of the 81 counties having one or more divisions of common pleas court, 14 counties have a separate probate division and 67 counties combine it with a juvenile division.

Domestic Relations Division

Domestic relations courts have jurisdiction in matters involving separation, divorce, and the dissolution of marriages. Their jurisdiction also encompasses alimony, child support, child custody, and child visitation. Twelve counties have a separate domestic relations courts. Six other counties combine domestic relations and juvenile jurisdictions in a separate division of common pleas court. The great majority of counties (i.e., 63), however, combine domestic relations jurisdiction with general jurisdiction. The remaining seven, which are the least populated counties in the state, have no separate divisions of their common pleas courts.

Juvenile Division

Juvenile courts deal with matters involving children. In Ohio, a "child" is defined by statute as a person under 18 years of age. Juvenile courts deal with children in matters involving delinquent and unruly behavior and dependent and neglected status. These courts also deal with adults in matters involving paternity, child abuse, non-support, contributing to the delinquency of a minor, and the failure to send children to school. Only eight of Ohio's 88 counties have separate juvenile divisions. The great majority of Ohio counties (i.e., 67) have a division that combines juvenile jurisdiction with probate jurisdiction. Six counties combine juvenile and domestic relations into a separate division. The remaining seven counties, the least populated, have no separate divisions of common pleas court.

Municipal and County Courts

The General Assembly, by statute, established municipal courts and county courts as trial courts with limited jurisdiction. Municipal courts outnumber county courts by more than two to one. Depending on their location in the state, the jurisdiction of municipal courts may be as narrow as a single incorporated municipality or as broad as a county. County courts serve areas of a county that are not served by a municipal court. Some counties have no county court because the jurisdiction of a municipal court encompasses the entire county.

Municipal and county courts are the busiest of all courts in the state, with well over two million new cases filed in them each year. Together, they handle approximately four times as many cases as the courts of common pleas, with municipal courts handling the great bulk of those cases. Municipal and county courts have limited jurisdiction over criminal and civil cases. Both deal with traffic offenses and less serious crimes, which are called misdemeanors. Both have preliminary jurisdiction over serious crimes, or felonies. Differences in the jurisdiction of municipal and county courts exist with respect to the amount of money involved in the civil cases that these two types of courts are permitted to hear. Municipal courts handle civil cases in which the amount of money in dispute does not exceed \$10,000. County courts are limited to civil cases involving \$3,000 or less. Civil cases that exceed these amounts are dealt with in common pleas court.

Both municipal and county courts have a small claims division. It provides citizens with a relatively quick and inexpensive method of resolving civil disputes in which low amounts of money are at issue. Hearings are relatively informal. Typically, attorneys are not involved. The parties represent themselves, and a judge or court-appointed referee handles the matter. Juries are not used.

Mayor's Courts

Mayor's courts exist in cities and incorporated villages in which a municipal court is not located. These courts are known as mayor's courts because a mayor or person designated by the mayor is the presiding officer. No juries are used. Approximately 500 mayors regularly hold court in their respective cities or villages. Mayor's courts are the only Ohio courts in which the presiding officer is not required to be a lawyer, although if a mayor designates another person

to preside, that person must be a lawyer, with at least three years of experience. As of July 1, 1992, mayors must complete an accredited training program each year in order to preside in mayor's court.

Mayor's courts are busy places, collectively handling as many as 500,000 or more cases a year, according to Ohio Municipal League estimates. The overwhelming majority of defendants plead guilty. Mayor's courts deal with minor violations of city or village ordinances, minor misdemeanor offenses, and traffic offenses. By statute, they can only deal with first time violations of drug-related and alcohol-related traffic offenses, and they may not deal with drunk-driving cases unless the mayor has completed six hours of training on drunk-driving laws. Mayor's courts are authorized to levy fines up to \$500, impose jail sentences up to six months, or both.

In contrast to other Ohio courts, mayor's courts are not "courts of record." That means that no formal verbatim record, or transcript, is kept of the proceedings. As a consequence, an appeal (as it is customarily understood), is not available in a mayor's court. Instead of having the proceedings in mayor's court reviewed by a court of appeals, a person dissatisfied with what has transpired there has the right to again have the case heard on its merits, but in a municipal or county court. In such situations, the case is treated as if it is being heard for the first time (i.e., a trial de novo). That which previously occurred in mayor's court is set aside and has no bearing on the case.

Court of Claims

In 1975, the General Assembly waived its sovereign immunity and gave citizens the right to sue the State of Ohio. At the same time, the state legislature created the Court of Claims, giving it exclusive jurisdiction in all civil actions against the State of Ohio. The legislature also gave the Court of Claims jurisdiction to administer claims for compensation of victims of crime, ranging from victims injured during the commission of a crime to police officers injured in crime-related situations.

There is only one Ohio Court of Claims. It sits in Franklin County and is the only Ohio court created by the General Assembly that has statewide jurisdiction. The Supreme Court of Ohio, created by the Constitution, is the only other Ohio court with statewide jurisdiction. Consequently, the Court of Claims handles all cases involving the State of Ohio and its subsidiaries, including its departments, boards, offices, agencies, commissions, and other instrumentalities. Political sub-divisions, such as public schools, municipalities, and counties, are not included. Actions against them are taken in regular trial courts.

With one exception, the Court of Claims operates in accordance with the same rules of law and procedures applicable in civil cases heard in trial courts. The exception is that juries are not used. The Clerk or Deputy Clerk of the Court of Claims decides matters involving claims of \$2,500 or less. A Court of Claims judge decides cases in excess of that amount. If a case presents novel or complex issues of law or fact, one or both parties may apply to the

Chief Justice of the Supreme Court of Ohio and request that a panel of three judges be assigned to hear the case.

OHIO'S APPELLATE COURTS

The courts of appeals and the Supreme Court of Ohio comprise the second and third levels of Ohio's court system. They are primarily courts of appellate jurisdiction, although the Ohio Constitution gives both courts some original jurisdiction. Their task is to ascertain if the law has been properly interpreted and applied in the cases that come before them.

Courts of Appeals

The courts of appeals are the first level of appeals for cases heard in Ohio's trial courts. As courts of appellate jurisdiction, they rule on matters that have been decided in a trial court. The Ohio Constitution, in Article IV, Section Three, gives courts of appeals the authority "*to review and affirm, modify, or reverse judgments or final orders*" of the trial court or "*to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.*" Ohio grants every litigant in a civil case and every defendant in a criminal case the right to have a higher court review an adverse determination in a trial court. The courts of appeals are required to hear all appeals brought before them.

There are 12 appellate districts in Ohio. A court of appeals sits within each, having jurisdiction over the trial courts situated in the county or counties comprising that appellate district. (The Tenth District Court of Appeals, which sits in Franklin County, also hears appeals from the Ohio Court of Claims.) When an appeal is initiated, the court of appeals must determine if the law was correctly applied. Each case is heard and decided by a panel of three judges.

Decisions by a court of appeals are binding only on the trial courts within their respective appellate district. They do not apply statewide unless appealed to and sustained by the Supreme Court of Ohio. In instances where courts of appeals in different districts make contradictory determinations in similar fact situations, the matter may be certified to the Supreme Court of Ohio for review and resolution.

The Ohio Constitution grants both courts of appeals and the Supreme Court of Ohio original jurisdiction in matters involving several types of court orders, known as writs. This includes the writ of habeas corpus (an order to obtain the release of persons unlawfully imprisoned or committed), the writ of mandamus and the writ of procedendo (orders to force a public official to perform a required act), the writ of prohibition (an order to a lower court to cease an unlawful act), and a writ of quo warranto (an order to take actions against a person or corporation for usurpation, misuse, or abuse of public office, corporate office, or franchise). In these matters, persons file applications directly with the courts of appeals or Supreme Court

as opposed to first taking action in a lower court.

The Supreme Court of Ohio

The Supreme Court of Ohio is the highest level of courts in the state. It is known as the "court of last resort:" no Ohio court possesses equal or greater power than it enjoys. The Supreme Court of Ohio is the only constitutional court whose jurisdiction extends throughout the entire state. Its decisions are binding on all other state courts in Ohio.

Though primarily a court of appellate jurisdiction, the Supreme Court of Ohio has limited original jurisdiction, including the five writs previously described. In addition, Article IV, Section Two of the Ohio Constitution grants to the Supreme Court sole authority over "[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law." Hence, it is the Supreme Court of Ohio -- not the General Assembly -- that sets standards for being licensed to practice law in Ohio and for continuing education and professional behavior of those who have been admitted to the practice of law in the state. Article IV, Section 5 grants to the Supreme Court the power of general superintendency over all courts in the state and for prescribing rules governing practice and procedure in all courts of the state. Accordingly, the Court has established rules governing record keeping and administration applicable to all Ohio courts and adopted procedural rules, including Rules of Evidence, Rules of Civil Procedure, and Rules of Appellate Procedure.

Because the Supreme Court is primarily an appellate court, most of the cases it considers are appeals from the 12 district courts of appeals. Whereas those courts are obligated to hear all appeals filed with them, the Supreme Court is not. The Ohio Constitution requires the Supreme Court to accept appeals in certain specific cases, such as these in which the death penalty has been affirmed, but gives the Court latitude to determine the other "cases of public or great general interest" it will hear. Consequently, the Supreme Court agrees to hear only a small percentage of the appeals made to it.

JUDGES AND THE OHIO COURTS

Federal judges are appointed by the President of the United States and confirmed by the United States Senate. Most hold their offices "*during good behavior*," a constitutional phrase equivalent to "for life" because these judges may be removed only by death, resignation, or impeachment. Throughout the history of the United States, only 13 federal judges have ever been impeached by the House of Representatives. Of them, eight were convicted by the Senate, including three within the past ten years (i.e., one in 1986 for filing false tax returns and two in 1989, one for perjury and the other for charges of bribery and the giving of false testimony). Judges in certain Congressionally-created federal courts, such as the Tax Court, the Court of Military Appeals, and territorial courts, are exceptions to the life-term rule. These federal judges have specified terms of office.

States vary in the way they select judges for their courts. In most states, some or all judges are elected, either in partisan (i.e., the names of the judges appear on the ballot with party labels) or non-partisan elections (i.e., party labels are not used). A small minority of states give their state legislatures (i.e., Connecticut, South Carolina, Virginia) or their governors (i.e., Delaware, Massachusetts, New Hampshire) exclusive power to appoint all state judges. Others permit the governor to appoint some or all judges, either with concurrence of the state senate or as part of an appointment-election process known as the Missouri plan. Under this system, the governor appoints judges from a list of names recommended by a nonpartisan nominating commission. Those judges serve at least one year after which voters are asked whether each should remain in office.

Selection of Ohio's Judges

Ohio judges are popularly elected in non-partisan elections, as provided for in Article IV, Section Six of the Ohio Constitution. The exceptions are the Court of Claims, whose judges sit by temporary assignment of the Chief Justice of the Supreme Court of Ohio, and mayor's courts. Article IV, Section Six also stipulates that Ohio's judges serve six-year terms, and are not be elected or appointed after attaining the age of 70.

The seven members of the Ohio Supreme Court are elected in a statewide election. Every even-numbered year, the voters of Ohio elect two Justices of the Supreme Court of Ohio, because the terms are staggered. Every six years, Ohio voters elect a Chief Justice as well. Therefore, during that year, two Justices and a Chief Justice are elected. Voters last voted for a Chief Justice in 1992. Judges in the courts of appeals, the courts of common pleas, and the municipal and county courts are elected the voters residing within the geographic area, or district, in which the particular court has jurisdiction.

Removal of Ohio's Judges

Other than by resignation or death in office, Ohio judges may be removed from office in one of several ways. Defeat in an election and attainment of age 70 are the two most common ways. Impeachment and concurrent resolution are the two least common ways. Article II, Section Twenty-three provides for the impeachment of the "*governor, judges, and all state officers... for any misdemeanor in office.*" The Ohio House of Representatives has the sole power of impeachment, which requires a majority vote of its members, and the Ohio Senate has the sole power to try the matter. Conviction requires the concurrence of two-thirds of the senators. The fourth way is by a concurrent resolution of the General Assembly. As provided in Article IV, Section Seventeen of the Ohio Constitution, this process requires a formal written complaint, notice of the charges and the opportunity to be heard, and a concurrent resolution passed by two-thirds vote of the members of the Ohio General Assembly.

Requirements

Only attorneys with at least six years of experience practicing law are eligible to serve

as members of the Supreme Court of Ohio, the courts of appeals, the courts of common pleas, and the municipal courts. Prior judicial experience is not required for any judicial office. The only other requirement is that persons must be less than 70 years of age prior to assuming office. County court judges need only have two years of experience in the practice of law. Mayor's courts are the only Ohio courts in which the presiding officer is not required to be a lawyer.

HOW TRIAL COURTS OPERATE

Trial courts determine the facts in a case. Once determined, trial courts apply the law to that set of facts. Appellate courts review decisions made by other courts. They are responsible for determining whether the law was properly applied in the previous proceeding (e.g., if a trial was fairly conducted). The processes used in both types of courts vary considerably.

A trial may be thought of as a peaceful and orderly confrontation between opposing sides. Adversarial in nature, a trial amounts to a contest in which each side does its best to prevail. The court oversees this adversarial contest, ensuring that each side operates in accordance with established rules and constitutional guarantees. A judge or a jury decides which facts are to be believed and which side prevails. The underlying assumption of the trial process is that truth will most likely emerge when opposing parties vigorously present information favorable to their side and vigorously challenge information opposed to it. This is known as the adversary system. It is the cornerstone of the American legal system.

Key Roles and Responsibilities

Various persons are involved in a trial. All trials involve the opposing parties, one or more witnesses, and a judicial officer (e.g., a judge, a referee, a mayor). Most trials also include attorneys. A minority of trials use juries. A brief discussion of the nature of these roles and their respective responsibilities follows.

Defendant. A defendant is the person accused of committing a crime or the person against whom a civil suit is brought. In criminal cases, defendants are presumed to be innocent until proved guilty beyond a reasonable doubt. Hence, the prosecution, not the defendant, bears the burden of proof. Defendants have no obligation to prove that they are not guilty of the offense(s) with which they have been charged. In civil cases, the person bringing the suit has the burden of proving his or her case by a preponderance of the evidence, a lesser standard of proof than required in a criminal case. The presumption of innocence is not specifically guaranteed in the Constitution of the United States nor the Ohio Constitution, yet it constitutes one of the most fundamental assumptions of the American judicial system.

Defense Attorney. The defense attorney represents the defendant in a criminal or civil proceeding. He or she must ensure that the defendant's rights are protected and the law is upheld. The right to counsel is one of our most fundamental rights.

Grand Jury. Grand juries consider evidence presented by a prosecuting attorney prior to a criminal trial. Their task is to determine if sufficient evidence exists to believe that a felonious act (i.e., a felony) has probably been committed and that the individual accused of its commission has probably committed that crime. When a grand jury concludes in the affirmative, the person is indicted, or formally charged with the felony, and a trial is subsequently held. Grand juries are not directly involved in trials.

Judge. A judge is the presiding officer of the court. The judge is responsible for ensuring that a trial, hearing, or other legal proceeding is conducted fairly, orderly, and efficiently. At a jury trial, the judge rules on matters of law; a jury decides issues of fact. At a non-jury trial, the judge decides both matters of law and of fact. A trial judge has a broad range of authority, including the issuance of warrants and other court orders, the determination of conditions for bail, the admissibility of evidence, the imposition of fines and/or other punishments, and the right to dismiss a case.

Plaintiff. The plaintiff is the person, or party, who initiates formal legal action against another party (i.e., the defendant). The plaintiff asserts that he or she has been harmed in some way as a result of the other party's failure to accept or otherwise discharge a duty imposed by law. In a criminal case, the State of Ohio, not the victim, is the plaintiff. Charges are brought against the accused in the name of the state.

Prosecuting Attorney. The prosecuting attorney is the government's attorney. The prosecuting attorney's office is responsible for determining whether sufficient evidence exists to pursue a criminal complaint made against an individual by a civilian or the police. The prosecuting attorney's office files formal charges and represents the State of Ohio during trial and its aftermath. Throughout a criminal trial, the prosecuting attorney bears the burden of proof. The prosecuting attorney must present sufficient evidence to establish beyond a reasonable doubt that the crime was committed and that the individual charged with that crime committed it.

Trial Jury. Technically known as the petit jury, the trial jury renders verdicts in criminal and civil trials. Comprised of ordinary citizens, a jury must assess the credibility of witnesses and determine the weight of the evidence presented. In criminal trials involving felonies, juries are composed of 12 members. In criminal trials involving misdemeanors, they are composed of eight members. In each situation, the verdict must be unanimous. In civil cases, the situation is different. Juries

are composed of eight members, three-fourths of which (i.e., six) must concur in the verdict.

Witness. A witness is a person who gives testimony at a criminal or civil trial, hearing, or other legal proceeding. Under oath, and subject to the rules of evidence, witnesses relate that they personally observed, heard, or believe in some aspect of the case. Both parties have the right to summon witnesses on their behalf and to cross-examine, or question, the witnesses produced by the opposing party. This is one of our most basic and important constitutional rights.

The Handling of Criminal Cases

Crimes are offenses against society and so designated by state statute or local ordinance. Actions are filed in the name of the government. Article IV, Section Twenty of the Ohio Constitution stipulates that, "*all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, 'against the peace and dignity of the state of Ohio.'*" The prosecuting attorney of each of Ohio's 88 counties represents the State of Ohio and is responsible for prosecuting all felonies in the county.

Persons accused of committing a crime, be it a felony or a misdemeanor, are entitled to legal representation. The court will appoint an attorney for those defendants who are unable to afford private counsel. The defense attorney has the responsibility of representing the defendant's interests and ensuring that the defendant receives a proper defense.

Following arrest, the accused is brought before a municipal or county court judge for the initial appearance. At that time, he or she is informed of the charge(s), given the opportunity to obtain legal representation, and asked to render a plea of not guilty, guilty, or no contest (i.e., admit to the facts but contend that those facts do not constitute a crime). If the judge determines there is sufficient reason to support the charge(s), a bond is set and the accused faces the next step in the proceeding.

A criminal case involving a felony is initiated by Grand Jury indictment. It comes to the Common Pleas Court in one of two ways, either a bind over from the municipal or county court, or direct indictment by the grand jury. The bind over is the formal mechanism by which jurisdiction is transferred from municipal or county court to the common pleas court. It involves a preliminary hearing held in a municipal or county court. The judge hears evidence presented by the prosecuting attorney and determines if there is probable cause to believe that the defendant committed the crime for which he or she was charged. If the judge decides that sufficient evidence exists, the judge "binds over" the defendant to the grand jury for further action. Direct indictment may be used in lieu of a bind over. It occurs when the case is taken directly to the grand jury, thus bypassing the preliminary hearing.

The grand jury stage provides the first opportunity for ordinary citizens, representing the community at large, to participate in the criminal justice process. Grand juries are composed

of 14 citizens, nine members and five alternates. Only the prosecuting attorney meets with the grand jury. No judge or defense attorney is present. The accused may only be present when and if requested to appear. The prosecuting attorney must convince seven of the nine regular members of the grand jury that there is probable cause to believe that a crime has been committed and that the accused has committed that crime. When that occurs, the grand jury will issue an indictment formally charging the accused with the commission of one or more felonies.

Upon issuance of an indictment, the accused appears before a common pleas court judge. If the defendant pleads guilty or no contest, no trial is necessary and sentence is subsequently pronounced. If the defendant pleads not guilty, he or she has the right to a speedy public trial, with guilt or the lack of guilt determined by a jury or judge. Ohio law requires felony cases to be brought to trial or otherwise resolved within 270 days of the arrest of the defendant. Each day in jail constitutes three days for purposes of this computation. Hence, if the person remains in jail throughout, the case must be tried or resolved within 90 days of arrest. Failure to meet this deadline results in mandatory dismissal of the case, unless the defendant has initiated actions to delay the process. The defendant has the choice of a jury trial or bench trial (i.e., a judge rather than a jury). After learning of the defendant's preference, the presiding judge sets a date for the trial.

The defending attorney has the right to obtain certain information about the case from the prosecuting attorney prior to the trial. This is known as the process of discovery and is provided for in the Ohio Rules of Criminal Procedure. The defendant's attorney is entitled to obtain the defendant's prior criminal record and any oral or written statements the defendant may have made to the police or grand jury. In addition, the defendant's attorney is entitled to receive any objects or documents related to the crime or that will be used at trial, including test reports and the names and addresses of witnesses. The prosecuting attorney, in similar fashion, is entitled to receive information from the defendant's attorney. The exception is confidential communication between the defendant and the defense attorney. That information is protected by the attorney-client relationship.

The defense attorney and prosecuting attorney may choose to meet informally or formally prior to the trial to resolve issues that have arisen. One reason for this pre-trial meeting is to have the court rule on the admissibility of evidence that will be used at the trial. Another reason is to explore the possibility of plea bargaining. Plea bargaining is a process by which the prosecuting attorney agrees to reduce the number or severity of the charges against the defendant in exchange for a guilty plea to the reduced charges. In these circumstances, the defendant benefits by obtaining a less severe penalty than would result if a trial was held and a guilty verdict was returned. The prosecuting attorney benefits by obtaining a conviction, and forgoes the risk and expense of a trial. If such an agreement is struck, a formal session of the common pleas court is held, at which the defendant enters a guilty plea.

Criminal trials proceed in a specific order. Key steps in the sequence are as follows:

Jury Selection. When a jury trial is requested, the trial begins with jury selection, a

process known as voir dire examination. This process permits both sides to examine potential jurors to assess their objectivity and acceptability. The attorneys may request removal of potential jurors that appear unable to render a fair and impartial verdict in the case - a procedure known as removal for cause. They may also remove a limited number of other potential jurors without stating a reason through the use of peremptory challenges.

Opening Statements. Each side has the opportunity, but not the obligation, to make an opening statement. The prosecuting attorney speaks first, followed by the defense attorney. Opening statements permit the attorneys to preview the case for the trier of fact (i.e., the jury or judge) by indicating the principal witnesses favorable to their side that are to appear at the trial and the testimony they anticipate those witnesses will provide.

Presentation of Evidence by the Prosecuting Attorney. The prosecuting attorney has the burden of proof in a criminal case. He or she must present sufficient evidence at this time to establish each and every element of the crime and the defendant's involvement in it, or the case will be dismissed for lack of evidence. Witnesses are called to testify, and documents, tests, and other types of evidence are entered into the official court record. The defense attorney has the right to challenge and cross-examine witnesses and to take issue with tests and other types of evidence the prosecuting attorney seeks to introduce.

Presentation of Evidence by the Defense Attorney. The defense attorney may, but is under no obligation to, present evidence supporting the defendant. The defendant is not required to testify. No witnesses need be called and no documents, tests, or other types of evidence need be presented. The burden of proof rests solely on the shoulders of the prosecuting attorney. It is the prosecuting attorney who must convince the trier of fact that the defendant is guilty beyond a reasonable doubt. The defense attorney need only demonstrate that insufficient evidence exists to sustain the charge(s) or establish that there is reasonable doubt to believe that the defendant is not guilty as charged.

Closing Statements. Both the prosecuting attorney and defense attorney have the opportunity to summarize the evidence presented and describe how it supports their respective positions. The prosecuting attorney has two opportunities to speak -- first and last, whereas the defense attorney has but one opportunity.

Jury Instructions. In jury trials, the judge informs the jury how to proceed in making its decision. The judge explains the law, clarifies the issues that need to be resolved, and describes the possible verdicts that could be returned.

Deliberation and Verdict: The trier of fact, be it a judge or jury, retires to deliberate on the case. When a decision is reached, the trial resumes and the verdict is read.

If found not guilty, the defendant will be released and can never be tried on the same charges again. If found guilty, the judge will pronounce sentence immediately, or delay sentencing pending the obtaining of additional information about the defendant.

If convicted and sentenced, the defendant may appeal to the court of appeals on the grounds that error occurred during his or her trial, the nature of which was so serious as to prevent him or her from obtaining a fair trial. The courts of appeal review the court record to determine if errors occurred and, if any are uncovered, to decide whether those errors were serious enough to require a new trial.

The Handling of Civil Cases

A civil case begins when one party, the plaintiff, is allegedly injured as the result of another party's (i.e., the defendant's) action or inaction. The injury may have been intentionally inflicted (e.g., battery, invasion of privacy, or trespass) or the result of a person's negligence (e.g., a car accident, failure to keep a building in a safe condition). The injured party seeks to recover damages to make up for the harm caused by the other party.

Legal action is initiated when the plaintiff's attorney files a formal complaint with the court that sets forth the plaintiff's case. The plaintiff's attorney also prepares a summons, a legal document that formally notifies the defendant that a lawsuit has been initiated against him or her. The defendant must respond, in writing, within a stated period of time. This is known as "filing an answer." The answer may solely address the complaint, or it may also involve counter-claims or cross-claims (i.e., claims against the plaintiff or other parties named in the complaint) or third-party claims (i.e., others not yet named). Failure to take such action results in an adverse judgment against the defendant. The plaintiff's complaint and the defendant's answer constitute the initial pleadings.

At this point, preparation for trial proceeds. Both parties begin to gather evidence. Legal procedures permit the obtaining of relevant documents and testimony in the form of oral and written statements, known as depositions or interrogatories. A deposition is a formal procedure outside of the court in which a party or witness is examined under oath. Both parties have the right to be represented and question the person giving the deposition. Verbatim testimony is usually taken by a court reporter, although videotaped depositions are occasionally made when the witness cannot attend the trial. Interrogatories involve the actual parties to the suit, rather than witnesses, and require written responses to questions submitted by the attorneys representing the parties in the lawsuit.

If an out-of-court settlement is not possible, final arrangements are made for taking the case to trial. At the trial, the plaintiff has the burden of proving the allegations in the complaint. The standard is less rigorous than that used in a criminal trial. Instead of "beyond a reasonable doubt," the plaintiff need only establish that the weight, or majority, of the evidence, supports his or her position. This is known as the "preponderance of the evidence" standard.

Civil trial procedures are similar to those used in a criminal trial. The major phases of the trial consist of the following:

Jury Selection. Known as voir dire examination, this process is designed to ensure that the jury is capable of rendering a fair and impartial verdict. The process permits both sides to examine and remove potential jurors for bias or preconceived opinions about the case. Civil cases are heard by eight-member juries.

Opening Statements. Opening statements, which are optional, permit the attorneys of the both parties to give an overview of their cases prior to the presentation of evidence. The plaintiff's attorney speaks first. The defendant's attorney has the option of making a statement at this time or deferring it until the conclusion of the plaintiff's case.

Presentation of Evidence by the Plaintiff's Attorney. The plaintiff's attorney begins the formal presentation of evidence by calling witnesses and offering documents to substantiate his or her client's claim. During this stage the defendant's attorney has the opportunity to challenge the admissibility of evidence and cross-examine all witnesses.

Presentation of Evidence by the Defendant's Attorney. At the conclusion of the plaintiff's presentation, the defense attorney may offer motions to dismiss the case for lack of evidence. If unsuccessful, the defense counters the plaintiff's case with witnesses and documents favorable to its position.

Rebuttal. Based on the testimony provided, each side is permitted in this phase of the trial to present additional witnesses and documentation to rebut the opponent's claims and support its own case.

Closing Arguments. Following the presentation of evidence, the opposing attorneys summarize their respective positions.

Jury Instructions. In jury trials, the judge must instruct the jury as to the laws that apply to the issues in this case, the meaning of those laws, the points in conflict, and the possible verdicts that could be rendered.

Deliberation and Verdict: In jury trials, the jury normally decides which side wins and the damages (i.e., how much money), if any, to be awarded. (A judge does this in the absence of a jury.) Verdicts need not be unanimous. Six members of the eight-person jury are required to render a verdict. After the jury has made its decision, the judge formally renders the judgment and the terms for its implementation.

Either party may appeal the court's decision, but only on the grounds that the judge erred in

interpreting or applying the law during the trial. If the case is tried without a jury, the appellate court can weight the evidence as well. Otherwise, the courts of appeals rule only on matters of law, not matters of fact.

HOW THE APPELLATE COURTS OPERATE

Appellate courts review actions taken by lower courts. Appeals arise when one party in a criminal or civil case asserts that an unfavorable judgment rendered in the lower court was the result of error. For example, a defendant in a criminal case may charge that pre-trial publicity prevented a fair trial or that the trial judge permitted the use of statements the defendant made following arrest that were obtained in violation of the Miranda (i.e., constitutional) requirements. The losing party in a civil case may contend that the judge improperly interpreted a statute (e.g., imposing legal liability where none existed), improperly overruled a motion to dismiss the charges, or gave an improper charge to the jury.

The principle of judicial review gives the courts the power to review the laws and actions of government officials to ensure that they are consistent with constitutional provisions. If the courts conclude that a statute or rule does not meet that test, then the offending law is declared to be "null and void." Similarly, if the court concludes that the actions of a government official are at variance with constitutional requirements, those actions must cease.

The legislative branch makes laws, the executive branch carries them out, and the judicial branch interprets the laws, thus clarifying their meaning in practice. When the provisions of a statute are clear and definite in meaning, the courts do not need to interpret it. But, when the language of a statute is ambiguous or contradictory, the courts are called upon to construe, or interpret, its meaning. The courts also ensure that a law, or the actions of a government official, are not in conflict with rights or provisions included in the Ohio Constitution or the Constitution of the United States. It is important to understand that the courts use the power of judicial review only when necessary to resolve a real controversy in a specific case that a court is considering.

Appellate Court Procedures

In carrying out their responsibilities, appellate courts make decisions that have the effect of law. For example, once the court majority construes the meaning of a statute and its application in a specific situation, it renders its judgment in the form of a written opinion. The opinion constitutes a precedent that applies not only in the particular case under consideration but also to future cases. Because precedents have the effect of law, they are referred to as case law or judge-made law.

The principle of stare decisis provides that courts follow precedents. This principle is rooted in the assumption that the law should be clear, predictable, and certain so that ordinary

citizens can rely on it to shape their behavior and conduct their ordinary affairs in accordance with established principles and practices. Accordingly, once the Supreme Court of Ohio decides an issue of state law, that decision constitutes a binding precedent on all other courts in the state. The precedent remains in force until such time as the Supreme Court of Ohio reverses its decision in a subsequent case, the Ohio Constitution is amended, or, if a federal question is involved, the Supreme Court of the United States overrules the Ohio Court's decision. Time and circumstances may cause courts to abandon precedents, but, in general, both state and federal courts are very reluctant to overrule them.

Decisions made by the courts of appeals in Ohio's 12 appellate districts apply only to the lower courts located within their respective appellate district (i.e., a delimited geographic area). The Supreme Court of Ohio resolves conflicts when the courts of appeals in different appellate districts reach conflicting decisions. The decisions of the Supreme Court of Ohio are binding on all Ohio courts. They are not binding on the courts of other states.

Key Roles and Responsibilities

An appellate court is a deliberative body. In the cases before them, a panel of judges examines written materials, including the trial record and legal briefs prepared by attorneys representing the opposing parties. In private, the judges discuss those cases among themselves and make decisions regarding them. Their decisions are announced in the form of written opinions. What follows is a brief overview of key roles involved in the appellate court processes and the responsibilities of each.

Appellant. An appellant is the person or party who initiates, or files, the appeal. This person or party seeks to have the appellate court reverse or otherwise modify a decision made by a lower court.

Appellant's attorney. As the appellant's legal representative, the appellant's attorney must identify legal error committed during the lower court proceedings and convince an appellate court that the error was of such magnitude as to deny the appellant the right to a fair trial. In so doing, the appellant's attorney must develop the appropriate arguments, prepare the required forms, and assemble the necessary documentation to bring this matter properly before an appellate court.

Appellee. An appellee is the person or party against whom an appeal has been filed. The appellee seeks to have the appellate court affirm the decision made at the lower court level.

Appellee's attorney. As the appellee's legal representative, this lawyer must mount the necessary arguments and assemble the requisite documentation to refute the claims of error, or the magnitude thereof, made by the appellant. The mere existence of error is not sufficient to reverse a lower court's decision. Some errors are judged to be harmless (i.e., they did not materially affect the outcome of the

proceeding).

Court reporter. The court reporter is responsible for publishing court opinions, orders, notices, and other documents in an accurate and timely manner. The court reporter, who is an attorney, plays a major role in editing those materials.

Judges. Appellate court judges sit as a panel of three in the courts of appeals, or a panel of seven in the Supreme Court. These judges must familiarize themselves with the cases before them by reading the written briefs filed by the attorneys representing the appellant and the appellee, examining the trial record (i.e., transcript and documents), and listening to and questioning the attorneys during oral argument. They must determine if the matters alleged by the appellant are sufficient to reverse or otherwise change the judgment of the lower court. Appellate court judges render decisions by majority vote in the form of written opinions. Judges that disagree with the majority of their colleagues may issue separate opinions stating their viewpoint.

Law clerks. Law clerks play an important behind-the-scenes role in appellate courts. Law clerks conduct legal research at the direction of the judge to whom they are assigned, and may help prepare and edit drafts of opinions that appear under the signature of that judge.

The Handling of Appeals

The right to appeal is a cherished right that recognizes the fallibility of human beings and affirms the fundamental value of fairness that undergirds our legal system. This right safeguards from arbitrary and capricious government. It ensures that the actions of one court is reviewed by an independent group of judges to determine if the original actions taken are in compliance with established laws and legal procedures, including an individual's constitutional rights.

To initiate an appeal, the appellant must file a notice of appeal with the court of appeals in the appropriate appellate district. Attorneys representing both parties submit written briefs specifying the nature of the alleged error in the lower court proceeding and reasons why the actions in question did or did not comprise reversible error. When preparing briefs, attorneys do legal research to uncover pertinent cases and develop an appropriate line of reasoning to support their respective positions. They make ample use of favorable precedents established in prior cases to support the position they are seeking to develop.

A panel of three judges meets to review the trial record and briefs. At oral argument, the appellant's attorney and appellee's attorney meet before the three-judge panel. Each is given a relatively brief period of time (e.g., 15 minutes) to state their position. The judges may listen during the allotted time period but, more typically, they interrupt and ask questions. At the conclusion of oral argument, the judges retire and deliberate. Subsequently they announce their decision in the form of a written opinion.

If the case is not resolved at the courts of appeals level, an appeal may be made to the Supreme Court of Ohio. That court is constitutionally mandated to hear some appeals. Such appeals involve "matters of right" (e.g., "*Cases originating in the courts of appeals*;" and "*Cases involving questions arising under the constitution of the United States or of [Ohio]*"). Other appeals are discretionary. They come "by leave" of the Court. If an appeal is discretionary, the appellant must file a memorandum with the Supreme Court arguing why, to use the language of the Ohio Constitution, the case is "*of public and great general interest.*" The Supreme Court justices review these memoranda and decides whether to hear the case on its merits. Only a small number of this type of appeals are accepted.

Attorneys prepare briefs and schedule oral argument for all appeals the Supreme Court of Ohio hears. Prior to oral argument, the Justices read the briefs and familiarize themselves with the legal arguments presented in the case. At the time of oral argument, the Justices are free to ask questions as they wish. Typically, each side has 15 minutes for its argument. Justices of the Supreme Court of Ohio generally hear four or five cases during any one day.

When deliberating on cases, the Justices meet in private around a large circular table in a conference room rimmed by bookcases filled with legal resources. Seniority determines the seating pattern around the table. The Chief Justice presides and initiates deliberation by giving a brief review and analysis of a particular case. At that time, the Chief Justice may state a preliminary position on the case. Other Justices do likewise; those with the greatest amount of seniority speak first and those with the least speak last. Following discussion, a vote is taken. When voting, the Justice with the least seniority votes first, the Justice with the most seniority votes next to last, and the Chief Justice votes last. At least four votes are needed to decide a case. These procedures are designed to promote independence and individual accountability.

The Ohio Constitution requires that all actions of the Supreme Court be published. Written opinions are issued for all decisions made. One type of opinion is known as a majority opinion. It is so-named because it expresses the position of the majority of the Justices of the Supreme Court. A majority opinion contains the Court's decision in the case and the reasons for that decision. Another type of opinion is known as a concurring opinion. It is written when a Justice agrees with the Court's decision but for reasons different from those stated by the majority. The third type of opinion is the dissenting opinion, written when a Justice disagrees with the decision of the Court. In that situation, the Justice indicates opposition and explains the reasons for the disagreement. One or more other Justices who disagree with the Court's decision, or reasoning, may join with the author of a concurring opinion or dissenting opinion, or write one of them himself or herself.

Majority opinions determine the outcome of the case and set precedents for similar cases in the future. Dissenting and concurring opinions are also important. They make clear areas of disagreement and sometimes signal future directions of the Court. As society changes, or the composition and views of the members of the Court change, the positions expressed in dissenting or concurring opinions may help shape future majority opinions.

CHAPTER VI. THE JUDICIAL BRANCH IN OHIO: IDEAS FOR THE CLASSROOM

Exercise One: "Facts About Ohio's Courts" [pp. 169-170; completed version provided]

The principle of federalism gives rise to a dual court system -- state courts and federal courts. Accordingly, each state has established its own court system. Students may not be very familiar with Ohio's court system. Use this exercise to uncover what they know about it. Have students complete the exercise individually, in pairs, or in small groups. Tally responses on the chalkboard or a transparency. Debrief, clarifying misconceptions and adding information and insights.

Like this publication, Ohio Courts in Action (Naylor, 1991) is a content manual for teachers, with classroom applications. Also published by the Ohio Center for Law-Related Education, it focuses exclusively on the judicial branch, with emphasis on Ohio's court system. Ohio Courts in Action provides more detailed information than this chapter on the judicial branch. It should prove a useful resource for substantive questions about Ohio's courts and teaching activities related to the courts.

Exercise Two: "Distinguishing Between Original and Appellate Jurisdiction" [pp. 171-172; completed version provided]

Jurisdiction is the power or authority of a court to hear a particular matter. It determines what issues and disputes a particular type of court may handle. Courts of original jurisdiction hear cases for the first time. They conduct trials, hear witnesses, and render judgments on matters of law and fact (e.g., guilty or not guilty, at fault or not at fault). Courts of appellate jurisdiction review decisions made by lower courts. They focus on questions of law and their application (e.g., was the proceeding conducted fairly; was the law properly interpreted).

This exercise asks students to distinguish between procedural differences in trial courts and courts of appeals. While debriefing of the items in the chart, have students hypothesize reasons for the differences in procedures. Use the "Name the Courts" section below the chart to identify particular types of Ohio courts that have original jurisdiction, appellate jurisdiction, or both.

If possible, either before or after using this exercise, arrange to take students to observe a trial court and a court of appeals in your area. While there, encourage students pay particular attention to the procedures used in both types of courts. If possible, make arrangements for students to meet and speak with a trial judge and an appellate court judge.

Exercise Three: "Juries and Jury Service" [p. 173]

The National Standards for Civics and Government (1994) stress the importance of having students "*evaluate, take, and defend positions on issues regarding civic responsibilities of citizens in American constitutional democracy*" (p. 132). To achieve this standard (i.e. Standard V-C-2), educators are advised to have students:

- (1) *evaluate the importance of each citizen reflecting on, criticizing, and reaffirming basic constitutional principles,*
- (2) *evaluate the importance for the individual and society of... serving as a juror...* [among other responsibilities listed], and
- (3) *evaluate whether and when their obligations as citizens require that their personal desires and interests be subordinated to the public good* (p. 132).

The exercise, "Juries and Jury Service," fits with these recommendations. It provides the opportunity for students to consider issues related to jury service, express their beliefs and attitudes about it, listen to the views of others in the class, and suggest ways to make jury service more fair and effective.

An "agree-disagree" format permits students to identify how they feel about each of the 12 statements. Give each student a copy of the exercise to complete. Tally and record responses on the chalkboard or a transparency. Use probing questions to elicit students' beliefs and attitudes about jury service. Deal with the purpose of jury service and jury service as a responsibility of citizens along with specific issues raised by items in the exercise. At the appropriate time, direct attention to the "Issue to Consider" box. It deals with how juror pools are selected. Explore various possibilities, addressing the pros and cons of each alternative. Conclude by having students write a short essay describing their position on this issue.

To extend this lesson, invite several persons from the community who have served as jurors to come to class and share their reactions to that experience. If possible, invite a county official to discuss the procedures used to select jurors. Another alternative is to have students do research on the jury system.

Exercise Four: "The Supreme Court of Ohio" [pp. 174-175; completed version provided]

The Supreme Court of Ohio is the state's court of last resort. It is the only Ohio court with the power to review and affirm, modify, or reverse judgments of Ohio's other courts. Unless a case or controversy involves a federal constitutional issue, the action taken by the Supreme Court of Ohio is the final determination on the matter.

Students are likely to be more familiar with the Supreme Court of the United States than the Supreme Court of Ohio. This exercise seeks to change that situation. It contains five sets of statements about the Supreme Court of Ohio. In each set, two of the statements are accurate and one is inaccurate. Students identify the inaccurate statement.

As students complete this exercise they should realize that the Supreme Court of Ohio differs from the United States Supreme Court in a number of ways. For example, the Supreme Court of Ohio has fewer justices, the justices are elected (not appointed), and the justices serve limited terms (rather than unlimited, "for good behavior," terms). The method used to assign authorship for majority opinions should be of particular interest to students. At the federal level, the Chief Justice determines which Associate Justice writes the opinion. Ohio's highest court uses a very different procedure. Each Justice is assigned a number, from one to seven. When the Justices decide a case, small balls, with numbers corresponding with the numbers assigned to each of the Justices in the majority, are placed into a black leather bottle. The senior Justice shakes the bottle and pours out one ball. The Justice having the same number as the one on the ball writes the opinion for the Court in that case.

In 1991, the Ohio Center for Law-Related Education, in cooperation with the Media Law and Law-Related Education Committees of the Ohio State Bar Association, completed "Supreme Court Live." This project featured the first live telecast of oral argument before the Supreme Court of Ohio. The Ohio Courts in Action publication was also part of that project as were several video tapes. One of them was of the oral argument -- "Supreme Court Live: Ken Miller Hearing." Consider using it to show students what this procedure is like. Another videotape -- "Supreme Court Live #4: Conclusion" -- is an interview between Terence J. Clark, an attorney, and Chief Justice Thomas Moyer of the Supreme Court of Ohio. This video tape provides insights into how the high court conducts its business and shows where the Justices meet to deliberate. Excerpts from these videotapes enhance student interest and understanding of the Supreme Court of Ohio. For more information, contact the Ohio Center for Law-Related Education.

Exercise Five: "No Vehicles in the Park" [p. 176]

"No Vehicles in the Park" is one of the staples of law-related education. It has been used in different variations. The activity is built on a simple premise -- laws inevitably produce interpretation and application difficulties. In this instance, a five-word ordinance is passed --

"No Vehicles in the Park." Difficulties emerge when the law is applied.

Students read a hypothetical situation and then assume the role of municipal court judge. Their task is to interpret the law. As different situations are presented, questions arise, such as: (1) What is a vehicle?, (2) Does no really mean no?, and, (3) What exceptions, if any, should be made? The activity makes for interesting and lively discussion. Emphasize that the legislative branch makes the laws, the executive branch carries them out, but the judicial branch interprets their meaning. The process of construing meaning is complex, but very important. Under our constitutional system, judicial review enables us to be a limited, government of laws as opposed to an unlimited, government of men.

FACTS ABOUT OHIO'S COURTS

Instructions: Select the best answer for each item. Place the letter corresponding to it in the space provided to the left of the item number.

HOW MUCH DO YOU KNOW ABOUT OHIO'S COURTS?

- _____ 1. How many justices are on the Supreme Court of Ohio?
A. five; B. seven; C. nine; D. twelve.
- _____ 2. Who is the Chief Justice of the Supreme Court of Ohio?
A. Thomas Moyer; B. William Rehnquist; C. George Voinovich; D. Stanley Aronoff.
- _____ 3. Which article of the Ohio Constitution deals with the judicial branch?
A. Article I; B. Article II; C. Article III; D. Article IV.
- _____ 4. How long a term does a Justice of the Supreme Court of Ohio serve?
A. four year term; B. six year term; C. eight year term; D. life term.
- _____ 5. How are judges selected in Ohio?
A. appointed by the governor and confirmed by the Ohio Senate.
B. elected by the voters of Ohio using a partisan ballot (name and political party appear).
C. elected by the voters of Ohio using a non-partisan ballot (political party does not appear).
D. nominated by the Ohio House of Representatives and confirmed by the Ohio Senate.
- _____ 6. Which court hears cases involving persons accused of committing felonies (i.e., serious crimes)?
A. county courts; B. courts of common pleas; C. mayor's courts; D. municipal courts.
- _____ 7. Which type of jury hears evidence and determines guilt or non-guilt in criminal cases?
A. a grand jury; B. a hung jury; C. a petit jury; D. a stacked jury.
- _____ 8. What person or group sets standards for practicing law in Ohio?
A. Attorney General; B. General Assembly; C. Ohio Bar Association; D. Supreme Court.
- _____ 9. What types of cases require the use of a 12-member jury in Ohio courts?
A. criminal cases involving felonies; B. criminal cases involving misdemeanors;
C. civil cases; D. all criminal and civil cases.
- _____ 10. What types of cases are decided by less than unanimous jury verdicts in Ohio courts?
A. criminal cases involving felonies; B. criminal cases involving misdemeanors;
C. civil cases; D. none; unanimous verdicts are required in all jury trials.
- _____ 11. What is the standard of proof used in civil cases?
A. beyond a reasonable doubt; B. preponderance of the evidence;
C. probable cause; D. reasonable belief.
- _____ 12. What is the Latin phrase meaning that courts follow legal precedents?
A. habeas corpus; B. prima facie; C. stare decisis; D. voir dire.

FACTS ABOUT OHIO'S COURTS

Instructions: How much do you know about Ohio's courts? Take this quiz and find out. Select the best answer for each item. Place the letter corresponding to it in the space provided to the left of the item number.

HOW MUCH DO YOU KNOW ABOUT OHIO'S COURTS?

- B 1. How many justices are on the Supreme Court of Ohio?
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DISTINGUISHING BETWEEN ORIGINAL AND APPELLATE JURISDICTION

Instructions: Jurisdiction is the power or authority of a court to hear a particular matter. Court proceedings involving original jurisdiction have a different purpose and operate differently than court proceedings involving appellate jurisdiction. For each characteristic listed in the chart, identify the type of jurisdiction involved. Place a check in the appropriate column(s) to indicate whether the characteristic involves original jurisdiction, appellate jurisdiction, or both. When you finish, go to the "Name the Courts" section. Provide the information requested.

CHARACTERISTIC OF THE COURT PROCEEDING A court with this type of jurisdiction:	TYPE OF JURISDICTION	
	Original	Appellate
1. makes its decisions on the basis of majority vote.		
2. has authority to deal with both civil cases and criminal cases.		
3. relies heavily on reviewing legal briefs and the court transcript.		
4. involves attorneys representing their clients.		
5. gathers evidence by having witnesses testify in court.		
6. consistently uses a panel of judges to make decisions.		
7. seeks to ensure that an individual's constitutional rights are upheld.		
8. renders guilty or not guilty verdicts.		
9. may use a jury to determine the facts in the case.		
10. conducts its proceedings in public.		
11. uses a proceeding known as oral argument.		
12. handles the most cases in a year.		

NAME THE COURTS

1. Name two types of Ohio courts of original jurisdiction.

2. Name two types of Ohio courts of appellate jurisdiction.

3. Name a federal court of original jurisdiction and a federal court of appellate jurisdiction.

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CHARACTERISTIC OF THE COURT PROCEEDING A court with this type of jurisdiction:	TYPE OF JURISDICTION	
	Original	Appellate
1. makes its decisions on the basis of majority vote.		X
2. has authority to deal with both civil cases and criminal cases.	X	X
3. relies heavily on reviewing legal briefs and the court transcript.		X
4. involves attorneys representing their clients.	X	X
5. gathers evidence by having witnesses testify in court.	X	
6. consistently uses a panel of judges to make decisions.		X
7. seeks to ensure that an individual's constitutional rights are upheld.	X	X
8. renders guilty or not guilty verdicts.	X	
9. may use a jury to determine the facts in the case.	X	
10. conducts its proceedings in public.	X	X
11. uses a proceeding known as oral argument.		X
12. handles the most cases in a year.	X	

NAME THE COURTS

- Name two types of Ohio courts of original jurisdiction.
Courts of Common Pleas; Municipal Courts; County Courts; Mayor's Courts; Court of Claims
- Name two types of Ohio courts of appellate jurisdiction.
Courts of Appeals; Supreme Court of Ohio
- Name a federal court of original jurisdiction and a federal court of appellate jurisdiction.
District Courts (original); Courts of Appeals or Supreme Court (appellate)

JURIES AND JURY SERVICE

Instructions: Below are statements about juries and jury service. Circle the response that indicates how you feel about each statement. Then compare your responses with others in your class.

HOW DO YOU FEEL ABOUT JURIES AND JURY SERVICE?

- | | |
|----------------|--|
| Agree Disagree | 1. Jury trials make people more confident in our judicial system. |
| Agree Disagree | 2. Jury service is a privilege rather than a duty. |
| Agree Disagree | 3. Jury trials take too long and are too costly. |
| Agree Disagree | 4. Serving as a member of a jury helps to make sure that fellow citizens are treated fairly. |
| Agree Disagree | 5. Jury service should be voluntary, not required. |
| Agree Disagree | 6. The average jury is a representative cross-section of the community. |
| Agree Disagree | 7. The state of Ohio should change to a less-than-unanimous jury verdict system in criminal trials. |
| Agree Disagree | 8. Too many people are excused from jury service. |
| Agree Disagree | 9. Jury trials should be eliminated because legal cases are too complicated for the average citizen to understand. |
| Agree Disagree | 10. Juveniles should have the option of a jury trial in juvenile court. |
| Agree Disagree | 11. Voter registration lists should not be used for selecting potential jurors. |
| Agree Disagree | 12. Attorneys should not be able to cause potential members of a jury to be removed. |

ISSUE TO CONSIDER

Some people are frequently called for jury duty. Others are never called. The reason is that, in Ohio, jurors are picked at random from registered voter lists. Some people choose not to vote because they do not want to serve as jurors. Others want to serve, but seldom get called, if ever. Is there a better way to select jurors? For example, should different lists be used, such as motor vehicle and drivers license lists, telephone lists, electric lists, or property and income tax lists? Is there a better alternative? What do you think should be done to ensure that jury selection is efficient, fair, and effective?

THE SUPREME COURT OF OHIO

Instructions: Below are sets of statements about the Supreme Court of Ohio. In each set, two of the statements are true. One is false. Identify the false statement by placing the letter X in the space next to the statement.

WHICH STATEMENT IS FALSE?

Set I:

- A. There are seven members of the Supreme Court of Ohio.
- B. Justices of the Supreme Court of Ohio are nominated by the governor and confirmed by the Ohio Senate.
- C. Justices of the Supreme Court of Ohio serve six-year terms.

Set II:

- A. Only lawyers are eligible to serve as members of the Supreme Court of Ohio.
- B. Prior judicial experience is required to serve on the Supreme Court of Ohio.
- C. Persons who are 70 years of age or older are ineligible to become a Justice of the Supreme Court of Ohio.

Set III:

- A. The Supreme Court of Ohio has both original and appellate jurisdiction.
- B. No witnesses appear at sessions of the Supreme Court of Ohio.
- C. Justices of the Supreme Court of Ohio determine the innocence or guilt of persons involved in the cases that come before them.

Set IV:

- A. Supreme Court decisions require a two-thirds vote by the Justices.
- B. The sessions of the Supreme Court of Ohio are open to the public.
- C. Supreme Court Justices may issue majority, concurring, or dissenting opinions.

Set V:

- A. The United States Supreme Court may overrule decisions of the Supreme Court of Ohio.
- B. The Supreme Court of Ohio uses a random method to determine which Justice writes the majority decision in a particular case.
- C. If the Supreme Court of Ohio makes an unpopular ruling, Ohio voters can use the referendum to overrule that decision.

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NO VEHICLES IN THE PARK

Instructions: Read the following description involving the park in the city of Greenfields. Then assume the role of municipal court judge. You must decide how to interpret the ordinance in each situation listed. When making your decisions, consider the wording of the ordinance and the intent of city council.

The city of Greenfields is proud of its city park. It is a large park, with grassy fields, mature trees, and lots of plants and flowers. Many people use the park. But this summer problems have developed. Large numbers of cars, trucks, and motorcycles are using park roads, especially on weekends. Noise and pollution have become major problems. Safety is also a concern, since children often play in the park. As complaints mount, the members of city council decide to take action. They want the park to be a safe and restful place. To achieve those goals, they pass a local ordinance making it illegal for vehicles to be used in the park. The following sign is then posted at all park entrances: "City Ordinance 1327: No Vehicles in the Park. Violators Will Be Fined \$100."

YOU BE THE JUDGE

After the signs are posted, the police begin to arrest violators of the ordinance. As these cases come before your court, people raise questions about the meaning of the ordinance. Some say that they are being treated unfairly. The following cases come before you. How will you rule in each of them?

- A. Harley Smith enjoys riding his motorcycle. He wants to be able to drive around in the park because he enjoys its scenery. He says the ordinance applies only to cars and trucks, not motorcycles.
- B. Arthur McCable is confined to a wheelchair. A motorized wheelchair makes it possible for him to enjoy the park. He says the ordinance does not apply to him.
- C. Before going to work, Jennifer Totten drives her two children to the local elementary school, which is near the park. She wants to use the park as a shortcut. It will save her 15 minutes driving time.
- D. Forrest Goetz drives a sanitation truck driver. He was arrested collecting the trash left in waste cans throughout the park. He says the law does not apply to him. He needs access to keep the park clean.
- E. Mildred Carlyle drives a private ambulance. She says it is necessary to drive through the park while transporting injured persons to the hospital. It will save lives.
- F. Leroy Roberts was arrested for riding a bicycle in the park. He enjoys bicycle riding, says the park is a safe place to ride, and emphasizes that riding bicycles is good exercise.
- G. Alicia Schwartzman drives a delivery truck. She was stopped on her way to deliver supplies to the concession stands located in the park. She says she has no other good way to deliver her goods.

CHAPTER VII.

OHIO AND ITS JUVENILE JUSTICE SYSTEM

The terms "childhood," "adolescence," "children's rights," and "juvenile justice" have meaning in our society. But that is not true of other societies, nor has it always been the case in American society. In fact, throughout most of the history of humankind, these concepts have not applied. The transition from infancy to adulthood occurred quickly. There were no intervening stages during which young people were accorded a separate status with a distinct set of expectations and entitlements. Instead, children were regarded simply as "little adults" and expected to assume the same type of responsibilities, engage in the same types of activities, and bear the same consequences for their behavior as the adults in their society. The concepts of children's rights and juvenile justice were non-existent. But, today that situation has changed dramatically, especially in the United States.

"CHILD": A LEGAL CLASSIFICATION

Like many other states, Ohio treats children as a special class. By statute, a "child" is *"a person who is under the age of eighteen years..."* (RC 2151.011). Persons who possess the status of child receive special protections and treatment unavailable to adults.

The Fourteenth Amendment guarantees equal protection of the laws, but equal protection does not mean treating all people exactly the same in all situations. The courts have long recognized that classification is an inevitable part of law-making, and permitted legislators to pass laws that make legal distinctions among groups of people. For example, legislators may enact tax laws that treat married persons differently from non-married persons or those who own homes differently from those who rent. States can require non-residents to pay higher fees than residents for hunting and fishing licenses or higher tuition to attend a state university. The traditional standard for making legal distinctions among groups of people is the standard of reasonableness -- the classification must be reasonable and "rationally related to the object of the legislation." Some classifications (e.g., those based on race, national origin, or alien status) face a more stringent standard. For them, the legislature must show that "a compelling interest" exists for establishing the classification and treating people differently on the basis of that classification.

The standard for establishing the legal status of child and distinguishing it from that of "adult" (or age of majority) is that of reasonableness. The fundamental justification for

according children a special status is the belief that the state needs to protect children from the negative consequences of their own immaturity and vulnerability. Thus, laws obligate parents or guardians to provide appropriate food, clothing, shelter, education and care for their children. Laws restrict employers regarding the age at which they may hire children, the types of jobs they may have children perform, the number of hours children may work, and the conditions under which children may work. But, there is a cost to the benefits that this special legal status gives children. The special laws and practices established to protect children may, in practice, restrict their liberty, subject them to arbitrary procedures, and/or give parents, guardians, and government officials the right to make intrusive invasions of their privacy.

This chapter examines the juvenile court -- its origins, philosophy, development, and processes. In so doing, it identifies and discusses key Supreme Court cases that fundamentally altered the character and practices of the juvenile court. This chapter also describes the jurisdiction of the juvenile division of the courts of common pleas, including the categories of delinquent child, unruly child, dependent child, and neglected child. The chapter concludes with a description of key roles and responsibilities of persons involved in juvenile court proceedings and an overview of how the juvenile court operates.

THE DEVELOPMENT OF JUVENILE COURTS

Origins

The concept of juvenile justice has evolved over hundreds of years. Recognition that children should be treated differently from adults has come about slowly. Gradually, during the sixteenth and seventeenth centuries, the belief that children were in need of special assistance and protection grew. By the nineteenth century, that belief had become more widespread. Significant social and economic changes recast our nation from a rural society dependent on agriculture to more of an urban, industrialized society. The United States was in the midst of an industrial revolution. Factories were burgeoning. So, too, were America's cities, populated in part by a huge influx of immigrants. Alarmed by growing problems of poverty, crime, and social class hostilities, social reformers launched a variety of initiatives to deal with an ever-rising tide of social problems besetting the country.

Concerns over the plight of urban children occupied reformist interest throughout the nineteenth century. Many urban children were suffering from the lack of proper support, supervision, and care. Many of them were also involved in the commission of various criminal acts. Reformers sought to save children in this situation by rehabilitating them in institutional settings. The "houses of refuge" movement, which flourished during much of the nineteenth century, was one of these efforts. Houses of refuge sought to separate youth from the corrupting influences of their environment and rehabilitate them. Their goal was to equip deviant youth with the values and skills deemed necessary for them to become contributing members of their society. Underfunded and overcrowded, the houses of refuge fell far short of their espoused goals. But the principles on which the houses of refuge were founded remained vital. Other

alternatives for the treatment of urban youth also developed during these years (e.g., reformatories for young offenders), and had mixed success.

As social and economic problems continued, so did efforts to deal more effectively with troubled youth. These efforts gave rise to the creation of a separate court with a separate system to deal with young people based on the ideals of reform and rehabilitation rather than punishment. The first officially recognized juvenile court was established in Cook County, Illinois, in 1899. The Illinois legislature gave it jurisdiction over dependent children, neglected children, and children engaged in criminal activity. In 1903, the state of Illinois broadened the juvenile court's jurisdiction, allowing it to intervene in matters involving incorrigibility (i.e., what Ohio terms "unruly" behavior).

The juvenile court movement was founded on the doctrine of *parens patriae*. Literally meaning parent of the country, this doctrine empowers the state (originally the king, now the court as the state's representative) to act in the capacity of parent (known as *in loco parentis*), whenever a child's welfare is threatened by his or her own actions or the acts and influence of others. The assumption is that by serving the best interests of the child, the state serves its best interests as well. Though challenged and weakened by court challenges, *parens patriae* remains the guiding doctrine of juvenile courts today.

Characteristics

From their inception, juvenile courts were intended to be child-oriented. Acting under the doctrine of *parens patriae*, the juvenile court is empowered to supervise the home environment and a child's activities within the home, or to remove him or her and place the child in a setting more appropriate to his or her needs, be it foster care or a state institution. In seeking to address the child's needs, the court may elect to use the services of physicians, psychologists, social workers and other professionals. Even for serious offenders, commitment to a reformatory or other youthful jail-type facility is regarded as a last resort option. The primary treatment is to rehabilitate the child within the home or community under the supervision of the court.

Given the goal to protect, prevent, and rehabilitate the child rather than to establish guilt and punish, juvenile courts stand in marked contrast to adult judicial proceedings. Juvenile courts were designed to be non-adversarial in nature. Their focus was to be on the child rather than the determination of innocence or guilt. Juvenile courts used different terminology to emphasize how they differed from adult courts. They called their proceedings hearings, not trials. They rendered findings, or adjudications, not verdicts, and offenders received dispositions, not sentences. Attorneys, the staple of the adversary system that characterizes adult trials, were typically not present during juvenile court proceedings.

In addition to being non-adversarial, juvenile court proceedings were also confidential and informal in nature. The public was often barred from attending proceedings. No juries were used and no formal record of the proceeding was maintained. The emphasis on procedural

safeguards that so characterize adult judicial proceedings was absent. Juvenile courts had wide latitude for conducting their proceedings and enforcing their dispositions. They tolerated ambiguous charges and, because witnesses often did not appear, hearsay testimony. In the absence of formal rules of procedure, juvenile court proceedings more closely resembled a discussion between a kindly parent and child than a formal adult judicial inquiry.

During the early years of the twentieth century, the juvenile court movement spread rapidly throughout the United States. Within 10 years, separate juvenile courts existed in ten states. Ohio established its first juvenile court in 1902. By the mid-1920's, juvenile courts were operative in all but two states. Despite minor differences among them, juvenile courts across America shared three characteristics. Their proceedings were non-adversarial, informal, and conducted behind doors closed to the public.

Challenges and Changes

Over the years, as the juvenile court system continued to evolve, it came under increasing scrutiny and criticism. A perceived disparity emerged between the ideals on which the court was founded and the realities of the court in operation. The court had not been able to stem juvenile criminality. The informal nature of its proceedings caused some juveniles to be treated very harshly. Social services support was often lacking or non-existent due to inadequate funding. Finally, the quality of judges often left much to be desired.

A 1967 report by the President's Commission on Law Enforcement and Administration of Justice is an example of the type of criticisms that were being voiced. Entitled The Challenge of Crime in A Free Society, this influential report made juvenile court judges a special target. The report lamented, "*One crucial presupposition of the juvenile court philosophy -- a mature and sophisticated judge, wise and well versed in law and the science of human behavior -- has proved in fact too often unattainable*" (p. 80). The commission cited findings of a study that found that half of the juvenile court judges had no undergraduate degree, a fifth of them were not members of the bar association, three-fourths of them devoted less than a quarter of their time to juvenile and family matters, and "*judicial hearings often turn out to be little more than attenuated interviews of 10 to 15 minutes duration*" (p. 80).

Growing dissatisfaction with the way juvenile courts were operating resulted in the filing of formal challenges in the courts. From 1966 and 1971, a span of less than six years, the Supreme Court of the United States rendered a series of rulings that fundamentally altered the way juvenile courts operate in the United States.

Kent v. United States (1966)

Three years after Gideon v. Wainwright and during the same year as Miranda v. Arizona, the United States Supreme Court, in 1966, heard the first in a series of cases dealing with the adequacy of juvenile court procedures. The case of Kent v. United States involved a waiver hearing to transfer the case from juvenile court in the District of Columbia to an adult

court, the United States District Court for the District of Columbia. It raised a number of disturbing issues involving the practices used in juvenile courts. In ruling on this case, the Court questioned the practice of denying to children in juvenile court proceedings the constitutional rights that adults have in adult court. In Kent, the Supreme Court's ruling was limited, but it foreshadowed more sweeping changes to come.

The facts of the Kent case clearly demonstrate some key problems with juvenile court. Morris Kent, a 16-year-old youth, was apprehended by the police when his fingerprints matched those found in the apartment of a woman who had been robbed and raped at that location. When questioned, Kent eventually admitted his involvement in the offense and revealed that he had also participated in a series of similar offenses involving burglary, robbery, and rape. Despite motions filed on his behalf by an attorney that Kent's mother had hired to represent him, the juvenile court judge waived jurisdiction to an adult court. In so doing, the judge held no hearing nor did he confer with Kent, Kent's parent's or Kent's lawyer. The judge made no findings on the acts and gave no reasons for the waiver. Kent was subsequently indicted by a grand jury and stood trial in the District Court. He was convicted of six counts of housebreaking and robbery but not guilty "by reason of insanity" on the two counts of rape.

In appealing the conviction, Kent's attorney raised a number of substantive and procedural issues. Limiting its ruling to a consideration of procedural errors, the Supreme Court ruled that the waiver to adult court was invalid. Writing for the Court, Justice Fortas declared:

The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure. The statute does not permit the Juvenile Court to determine in isolation and without the participation of any representation of the child the "critically important" question whether a child will be deprived of the special protections and provisions of the Juvenile Court Act.

...[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony -- without hearing, without effective assistance of counsel, without a statement of reasons.

On behalf of the Court, Fortas proceeded to explore other aspects of juvenile court procedure, raising a series of concerns about it. He wrote:

The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct...Because the State is supposed to proceed in respect of the child as parens patriae and not as adversary, courts have relied on the premise that the proceedings are "civil" in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment....

While there can be no doubt of the original laudable purpose of juvenile courts,

studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults.... There is evidence...that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

This concern, however, does not induce us in this case to accept the invitation to rule that constitutional guaranties which would be applicable to adults charged with the serious offense for which Kent was tried must be applied in juvenile court proceedings concerned with allegations of law violation.

Nevertheless, the Court held that, at a minimum, the juvenile court must conduct a hearing prior to entering a waiver order, must extend the right of counsel to the child in connections with a waiver proceeding, and must grant to the lawyer representing the child access to the child's social records. The waiver hearing may be informal, but it "*must measure up to the essentials of due process and fair treatment.*" The Court added, "*The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.*" By these holdings, the Supreme Court attacked the *parens patriae* doctrine that undergirds the juvenile court concept and began to transform the court's traditional non-adversarial, informal character.

In re Gault (1967)

One year after Kent, the Supreme Court heard the case of In re Gault (i.e., in the matter of Gault), a case that shocked the conscience of the Court and nation. In re Gault revealed some of the worst abuses that could result when children are denied fundamental constitutional rights in juvenile court proceedings. In dealing with this case, the Supreme Court issued a landmark ruling that would transform the character of juvenile court. Many of the requirements of due process were held to be applicable to juvenile court proceedings in matters involving delinquency.

This case involved Gerald Gault who, at age 15, had been accused of making an obscene telephone call to a Mrs. Cook, his neighbor. At the time, Gerald Gault was on probation for having been in the company of another boy who had stolen a wallet from a woman's purse. Following the conclusion of proceedings in the Juvenile Court of Gila County, Arizona, Gault was committed as a juvenile delinquent to the State Industrial School, a reformatory, to remain there until age 21. Had he been an adult, the maximum penalty would have been a fine of from \$5 to \$50 or imprisonment in jail for not more than two months. As a juvenile, however, he was eligible for a harsher penalty -- a maximum of six years in a state reformatory. In addition to the much lighter penalty he would have received had he been an adult, Gault would also have been entitled to the following rights: (1) notice of the charges; (2) right to counsel; (3) right to confront and cross-examine witnesses; (4) privilege against self-incrimination; (5) right to a transcript of the proceedings; and (6) right to appellate review. Because he was a juvenile, none of these rights were available to him in the juvenile court proceeding.

As in Kent, Justice Fortas wrote the opinion of the court. After reviewing the record, the Court concluded that the only difference between the juvenile court proceeding Gault experienced and "a normal criminal case is that safeguards available to adults were discarded in Gerald's case." The court opined, "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court." Consequently, the Court held that, "in connection with a juvenile court adjudication of 'delinquency'....," [that proceeding] "must measure up to the essentials of due process and fair treatment." In its opinion, the Court made clear what the essentials of due process and fair treatment entailed regarding delinquency proceedings in juvenile court. Those rights include:

- notice of charges: "Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'"
- the right to counsel: "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him.'... "[T]he child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child."
- the right to confront and cross-examine witnesses: "We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements."
- the privilege against self-incrimination: "It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children." "The participation of counsel will, of course, assist the police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."

As sweeping as the ruling in Gault was, the Court stopped short of ruling on whether juveniles had a constitutional right of appeal from a juvenile court or whether they had the right to a transcript or recording of the hearings.

In re Winship (1970)

In 1970, three years after the Gault decision, the Supreme Court again dealt with questions involving the rights of juveniles in juvenile court. This time the issue revolved around the level of proof required to sustain a finding of delinquency. This went to the heart of the question of whether juvenile court was essentially a civil or a criminal court proceeding. "Preponderance of the evidence," the level of proof used in civil cases, was also the standard applied in juvenile court. Criminal cases require a more demanding standard of "beyond a reasonable doubt."

The facts of the case were as follows. Samuel Winship, a 12-year-old, was charged with the theft of \$112 that was discovered missing from a woman's purse inside a locker in a New York City store. The matter was heard in the Family Court of Bronx County, New York. Family members testified that Samuel was home at the time the locker theft was supposed to have taken place. The judge acknowledged that the evidence presented might not establish guilt beyond a reasonable doubt, but he rejected the claim that the higher level of proof was required in the case. Instead, the judge adjudicated Winship a delinquent using the "preponderance of the evidence" standard.

In In re Winship, Justice Brennan delivered the opinion of the Court. The Court framed the key issue as follows: *"the single, narrow question [is] whether proof beyond a reasonable doubt is among the 'essentials of due process and fair treatment' required during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult."* In a footnote, Justice Brennan attempted to refute critics who charged that the Supreme Court was assuming that all juvenile proceedings were criminal prosecutions. He emphasized that the current holding related only to cases of delinquency and only to the adjudicatory stage.

The Court first dealt with whether the "beyond a reasonable standard" was constitutionally mandated in criminal proceedings. Although this standard is not explicitly stated in the Constitution, the Court stressed that *"it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required."* The Court subsequently added, *"Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause [requires it]...."*

Having resolved the matter regarding adult criminal proceedings, the Court then considered whether the reasonable doubt standard applied to delinquency hearings as well. Their answer was in the affirmative, reasoning as follows:

We turn to the question of whether juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with violation of a criminal law. The same considerations that demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child....

...[C]ivil labels and good intentions do not themselves obviate the need for

criminal due process safeguards in juvenile courts, for [a] proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution....

In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault....

McKeiver v. Pennsylvania (1971)

In 1971, one year after Winship, and four years after Gault, the Supreme Court considered another case involving the further extension of constitutional rights to juveniles involved in delinquency proceedings in juvenile courts. This time the issue was jury trials. Does the due process clause of the Fourteenth Amendment assure juveniles the right to trial by jury in the adjudicatory phase of a state juvenile court delinquency proceeding? The Court, in McKeiver v. Pennsylvania, provided the answer to that question.

McKeiver was a consolidation of several cases involving juvenile court proceedings in the states of Pennsylvania and North Carolina. Writing for the Court majority, Justice Blackmun addressed critics who had argued that the Court's previous decisions had threatened the very existence of the juvenile court system. The Court majority pointed out that, "*The Court...has not yet said that all rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceeding. Indeed, the Court specifically has refrained from going that far.*" The Court added that its earlier decisions "*do not spell the doom of the juvenile court system or even deprive it of its 'informality, flexibility or speed.'*" That having been said, the Court turned to the key issue in McKeiver, stating, "*We conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement.*"

In rendering this decision, the Court majority presented a series of reasons supporting their position. Among them were the Court's belief that:

- juries are not an essential component of accurate fact-finding: "*There is much to be said for it, to be sure, but we have been content to pursue other ways for determining facts. Juries are not required... in workmen's compensation, in probate, or in deportation cases.*"
- requiring jury trials threatens the juvenile court's ability to function in a unique way: "*There is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceedings into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.*"
- requiring jury trials will likely change the character of juvenile court proceedings: "*If the jury trial were to be injected into the juvenile court system as a matter of*

right, it would bring with it into that system the traditional delay, the formality and the clamor of the adversary system and, possibly, the public trial. It would not remedy the defects of the system... and would tend once again to place the juvenile squarely in the routine of the criminal process."

The Court concluded with these words: *"If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it."*

JURISDICTION OF JUVENILE COURTS IN OHIO

As juvenile courts evolved, states enacted statutes establishing appropriate jurisdiction for these courts. Today Ohio, and approximately three-fourths of the other states, use age 18 as the upper limit for juvenile court jurisdiction. Most of the others use age 17 as the upper limit. A few use age 16. Under certain circumstances, Ohio's juvenile courts may transfer jurisdiction to adult courts for juveniles age 15 or older.

The Juvenile Division of the courts of common pleas has exclusive original jurisdiction over children (i.e., persons under age 18) in the State of Ohio. The court's jurisdiction also extends to adults in matters involving paternity, non-support and abuse, contributing to the delinquency of a minor, and the failure to send children to school. As provided in the controlling statute (i.e., R.C. 2151.01), Ohio's juvenile courts are established for the following four purposes:

- (1) *"To provide for the care, protection, and mental and physical development of children subject [to the court];"*
- (2) *"To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute a program of supervision, care and rehabilitation;"*
- (3) *"To achieve the foregoing purposes, whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or the interests of public safety;"* and
- (4) *"To provide judicial procedures... in which the parties are assured of a fair hearing and their constitutional and other legal rights are recognized and enforced."*

Table 7.1 shows the five types of cases most frequently filed in Ohio's juvenile courts (i.e., filings and reactivations only; pending cases excluded). The common denominator among the traffic violations, juvenile delinquency, and unruly cases is that they involve children whose

behavior violates a statute, ordinance, or regulation. The other two types of cases involve children who are in need of care -- dependent children, neglected children, and abused children. A brief discussion of each of these designations follows.

TABLE 7.1. Types of Cases Filed Most Frequently in Ohio's Juvenile Courts, 1992	
Type of Case	Number
Traffic Offenses	106,226
Delinquency	93,104
Parentage	32,010
Dependency, Neglect, Abuse	27,992
Unruly	20,855
Source: Supreme Court of Ohio, Ohio Courts Summary, 1992	

Delinquency and Traffic Offenders

A "delinquent child" is a person under age 18 who commits an act that would be a crime if committed by an adult. A "juvenile traffic offender" is similarly defined, except that this category is limited to the violation of traffic laws. The statutory definitions of a "delinquent child" and a "juvenile traffic offender" are:

- **delinquent child:** As specified in the Ohio Revised Code 2151.02, a delinquent child is "*any child who violates any law of this state, the United States, or any ordinance or regulation of a political subdivision of the state, which would be a crime if committed by an adult... [except for juvenile traffic offender] and who violates any lawful order of the court made under this chapter.*"
- **juvenile traffic offender:** As specified in Ohio Revised Code 2151.021, a juvenile traffic offender is "*a child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state... [other than a parking violation].*"

In both instances, the acts alleged to have been committed would have been crimes or statutory offenses if the juvenile had been an adult at the time. But, by virtue of their age, these young people are under the jurisdiction of the juvenile court, as opposed to an adult court which would otherwise handle the case.

The delinquent child statute enables the juvenile court to treat children who commit

crimes in ways differently than adults are treated in adult courts. Statutory provisions permit Ohio's juvenile courts to conduct hearings in an informal manner, without juries, and outside the presence of the general public. The required standard of proof is "beyond a reasonable doubt" in all delinquency, unruly, and juvenile traffic offense cases. A record of all proceedings must be maintained. Juveniles appearing before the court are entitled to representation by counsel at all stages of proceedings. Attorneys representing juveniles before the court have a right of access to all reports prepared or used by the court.

In some circumstances involving youths age 15 and above, the juvenile court may transfer jurisdiction to the adult court of common pleas. These circumstances are specified in the Ohio Revised Code (R.C.) 2151.26. That statute requires the juvenile court to transfer jurisdiction of a juvenile when the following circumstances prevail: (1) the juvenile is charged with committing what would be murder or aggravated murder if he or she were an adult; (2) the court finds probable cause to believe that the juvenile committed the offense; and (3) the juvenile has been previously adjudicated a delinquent child for having committed what would have been an act of murder or aggravated murder had he or she been an adult at the time. In other situations, the court has discretion to decide whether to transfer jurisdiction. To do so, the court must determine that: (1) the juvenile is 15 years of age or older at the time the act occurred; (2) there is probable cause to believe the person committed the act alleged; (3) there are reasonable grounds to believe that the person "*is not committable to an institution for the mentally retarded or mentally ill,*" "*is not amenable to care or rehabilitation... in any facility designed for the care, supervision and rehabilitation of delinquent children*" and "*the safety of the community*" requires placing the juvenile "*under legal restraint, including, if necessary, for the period extending beyond his majority.*" Ohio law also provides that a juvenile court judge give special consideration in favor of transferring jurisdiction when the alleged acts of the juvenile are violent offenses, involve a victim who is 65 years or older, or involve a person who is permanently or totally disabled.

Unruly Children

Ohio's juvenile courts have jurisdiction over those alleged to have violated the unruly child statute. This statute forbids children from engaging in certain types of behaviors that are illegal for juveniles but not for adults. The statutory definition of an unruly child, as used in sections 2151.01 to 2151.04, inclusive, of the Ohio Revised Code,

includes any child:

- (A) *Who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;*
- (B) *Who is an habitual truant from home or school;*
- (C) *Who so deports himself as to injure or endanger the health or morals of himself or others;*
- (D) *Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority;*

- (E) *Who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons;*
- (F) *Who engages in an occupation prohibited by law, or is in a situation dangerous to life or limb or injurious to the health and morals of himself or others;*
- (G) *Who has violated a law applicable only to a child.*

This statute encompasses a wide range of behaviors known as status offenses, because the acts are illegal only for persons of a particular status, in this instance juveniles under the age of 18. Given its breadth, this statute greatly extends the potential for state intervention into the lives of children.

For many years, states treated status offenders in the way they treated delinquent children. That situation began to change in the mid-1970's in the wake of a "decriminalization" movement designed to prevent the juvenile court from confining status offenders in state institutions. The 1974 Federal Juvenile Justice and Delinquency Prevention Act, which provides funding to states for this purpose, was a catalyst. Two states -- Washington and Maine -- have gone so far as to eliminate juvenile court jurisdiction over status offenses. Other states, including Ohio, have not. The names various states use to describe status offenders suggest why these states choose to maintain court jurisdiction over them. Ohio calls its status offenders "unruly children." Other states call their status offenders "children in need of supervision" (CHINS), "persons in need of supervision" (PINS), "minors in need of supervision" (MINS), or other similar titles. As suggested by the appellation, the rationale is the belief that parents, schools, and the community need juvenile court authority to help them deal effectively with young people (e.g., those who blatantly disobey their parents, those who are habitually truant from school, those who run away from home). The trend has been for states to retain juvenile court jurisdiction over status offenders and to develop diversion programs to treat them in noninstitutional settings.

Neglected Children

Children who suffer deprivation as a result of the faults of their parents or guardians are considered to be "neglected children" under Ohio law. Essentially, a neglected child is a child whose parents or guardians neglect or refuse to provide him or her "*with the proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals or well-being.*" Under the terms of this statute (R.C. 2151.03), abandoned children are considered neglected children, as are children whose mental condition requires special care and their parents neglect or refuse to provide it. Abused children are also considered neglected children. Abused children are defined as: (1) victims of sexual activity; (2) endangered; or (3) suffering from injury or death inflicted by other than non-accidental means.

For neglect, the state must prove that the parents or guardians were willfully at fault in abandoning or neglecting the child or refusing to perform their parental duties. To establish

this, state law permits the juvenile court to use a lesser standard of proof -- the "clear and convincing evidence" standard. This standard is somewhat less demanding than the level of proof required in adult criminal trials but somewhat more than what is required in adult civil trials.

Dependent Children

Dependent children are children who lack needed care and support and whose parents or guardians are not able to provide. Ohio law (R.C. 2151.04) defines a dependent child as:

any child:

- (A) who is homeless or destitute, or without proper care or support, through no fault of his parents, guardian, or custodian;*
- (B) who lacks proper care or support by reason of the mental or physical condition of his parents, guardian, or custodian; or*
- (C) whose condition or environment is such as to warrant the state, in the interests of the child, in assuming his guardianship.*

In dependency cases, the issue is whether the children are receiving proper care and support. The focus is on the children rather than the fault of the parents or guardians. In neglect cases, the issue is the same, but the focus is on the culpability of the parents or guardians.

HOW JUVENILE COURTS OPERATE

The juvenile justice system operates in a number of ways similar to the adult justice system. Yet, as has been discussed, there are some significant differences. Juvenile court proceedings involve many -- but not all -- of the same roles found in criminal and civil trials. Differences include the absence of a jury and the general public, the inclusion of the juvenile probation officer and, on occasion the guardian ad litem, and the nature of the role of the judge and defense attorney. Together, these differences combine to create a somewhat different legal proceeding.

Key Roles and Responsibilities

Defense Attorney. United States Supreme Court decisions and Ohio law have affirmed the right of juveniles to be represented by an attorney. The juvenile's family may hire a private attorney. If the family is unable to afford an attorney, counsel will be appointed. The attorney is responsible for representing the juvenile's interests and assuring that the juvenile's rights are not violated during the juvenile justice process. In contrast to adult proceedings, attorneys are used with much less frequency.

Guardian ad Litem. In delinquent child and unruly child cases where the accused child

lacks an appropriate adult to represent his or her interests, the court may appoint a person to represent those interests. That person is called a guardian ad litem. Throughout juvenile court proceedings, the guardian ad litem assumes the responsibility for attending to the legal rights of the child and "best interest of the child" concerns. A guardian ad litem may be appointed when the child has no parent, guardian, or legal custodian to safeguard his or her interests or when the parent appears to be mentally incompetent to render assistance to the child. This may also occur when the court uncovers a conflict of interest between the child and his or her parent or guardian or when the child is involved in a proceeding concerning alleged abuse or neglect.

Judge. In juvenile court, as in adult court, the judge is the presiding officer. As such, the judge is responsible for assuring that the hearing is conducted fairly, orderly, and efficiently. Since juries are not used in juvenile court, the judge determines both matters of law and issues of fact in all cases before him or her. The judge decides if there is sufficient evidence to sustain the allegations in the petition, and, if so, what remedy is most appropriate. In transfer hearings, when discretion permits, the judge must decide if the juvenile, 15 years or older, should be dealt with in a juvenile court or an adult court.

Juvenile Probation Officer. Juvenile court judges rely heavily on the reports of juvenile probation officers. These officers conduct social background investigations on youth referred to the juvenile court. Judges use these written reports to make appropriate decisions, ranging from diversion to dispositions. Juvenile probation officers supervise those juveniles who are placed on probation and released in the community. In the process, they spend a great deal of time counseling children and maintaining a written record of their activities.

Police. In the course of their daily activities, police encounter a number of situations involving children, ranging from the delinquent and unruly to the neglected and abused. Consequently, many police agencies have officers specifically designated to deal with juvenile matters. Many of the juveniles who come to the attention of the juvenile court, especially those involved in delinquency, are referred to the court by the police. Thus, the police are important sources of information for the juvenile court. They provide details that help the court support or refute allegations, develop accurate social histories, and monitor activities of youth on probation.

Prosecutor. The prosecutor, an attorney who represents the State of Ohio, examines the nature of the evidence and determines its sufficiency to sustain the nature of allegations that have been made. When an affirmative decision is made, the prosecutor, working with juvenile court officials, determines whether to file a formal petition with the juvenile court. At the adjudicatory hearing, the prosecutor presents evidence through witnesses to sustain the allegations that have

been made.

Referee: Though not required by statute to be an attorney, referees are usually lawyers. They are appointed by juvenile court judges to assist in administering the juvenile justice system. Referees hear testimony of witnesses and make findings and recommendations. Juvenile court judges oversee the work of referees and may overrule them when deemed necessary.

The Juvenile Court Process

Referrals initiate the juvenile court process. They bring children to the attention of the court. Police, schools, social service agencies, and families themselves are the sources of referrals. In some situations, a referral results in the child being placed in custody, such as when police apprehend a suspected runaway or catch a perpetrator in the commission of an illegal act. In the latter instance, the child is placed in a juvenile detention home or similar type facility pending an initial hearing. The purpose of the detention center is to keep the child temporarily in a secure and appropriate place.

Intake

Once a juvenile has been detained, the intake process begins. Intake is an informal screening process consisting of a preliminary investigation to ascertain the initial facts of the case and the condition of the child. The prosecutor determines whether sufficient evidence exists to sustain the allegations and issue a formal petition specifying them. Court officials gather information about the child to create a social history (e.g., prior court record, family history, medical condition).

In Ohio, children must be given a hearing within 72 hours following their placement in detention. The child is entitled to representation by an attorney at this and subsequent proceedings. At the initial hearing, the court uses the information that has been gathered to determine whether to dismiss charges or proceed to an adjudicatory hearing. When reaching the latter decision, the court must decide what to do with the child prior to the adjudicatory hearing. The court could decide to release the child into the custody of his or her parents, with or without some form of supervision from the court. The court could also decide to refer the child to a community agency to receive needed services, or the court could decide to continue to hold the juvenile in detention.

To keep the juvenile in detention, the court must find that an offense was committed and that sufficient cause exists to believe the child committed the offense. The court must also find that continued detention is needed because the child is a danger to himself or herself or to others, is likely to abscond, or is without parental supervision. Ohio law permits a child to be detained until final disposition of his or her case, not to exceed 90 days. State law also specifies that a juvenile detention home is an agency of the court and that it is *"to be furnished and carried on, as far as possible, as a family home...in a non-punitive neutral atmosphere."*

Adjudicatory Hearing

The adjudicatory hearing is the equivalent of a trial. The process is initiated by the filing of a petition which specifies the allegations and provides formal notification of them and the date of the hearing to the child and his or her parents. The purpose of the adjudicatory hearing is to ascertain the facts of the case. The hearing is conducted in a more informal manner than a trial. Some states permit jury trials, even though they are not required by the United States Constitution. Ohio does not permit jury trials. The prosecutor is charged with proving the allegations beyond a reasonable doubt. Witnesses appear and may be cross-examined. The child may be represented by an attorney, although (because of the "best interest of the child" principle) the attorney-client relationship is somewhat different in juvenile courts than in adult courts.

At the onset of juvenile court, attorneys were the exception rather than the rule. The United States Supreme Court subsequently extended the right to counsel to children whenever they were subject to a loss of liberty. Ohio law guarantees this. Yet, the use of attorneys in juvenile courts is still not widespread nationally. A 1989 study indicated that as many as half of the young people who appear before our country's juvenile courts for delinquency and status offenses are not represented by an attorney. When attorneys are involved, some feel torn between what the child wants and what is in the child's best interest. Another problem arises when parents, who hire the attorney, want one thing and their child wants something else.

Dispositional Hearing

If the allegations are sustained, the judge will enter a "finding" which is the equivalent of a verdict in adult court. After being adjudicated a delinquent child or an unruly child, the child next faces the dispositional hearing. At this hearing, the judge determines what should be done with the child. In making this decision, the judge makes use of a case history prepared by the juvenile probation officer. It includes information about the child's past dealings with the court, school and attendance records, family situation, and other information pertaining to the child's situation. The judge considers this information when determining which type of sentence, or disposition, is most appropriate in this case. A range of options are available, including:

Dispositions Available for Unruly and Delinquent Children

- remaining with parents under specified conditions
- removal from the home through temporary or permanent custody
- probation (i.e., may remain in the home or community while subject to specific conditions and court supervision for a specified period of time)
- suspension or revocation of driver's license

Dispositions Available for Delinquent Children Only

- a fine not to exceed \$50, and court costs
- restitution (i.e., repay victims for damages caused with cash, by doing repair

work, by doing work for the victim or community or by rendering community service)

- temporary commitment to a school, camp, institution or facility for delinquent children
- commitment to the Department of Youth Services at an institution for juvenile delinquents for a minimum of six months with a maximum not to exceed attainment of age 21 (i.e., for commission of what would have been a third or fourth degree felony if any adult)
- commitment to the Department of Youth Services at an institution for juvenile delinquents for a minimum of one year, with a maximum not to exceed attainment of age 21 (i.e., for commission of what would have been a first or second degree felony if an adult)
- commitment to the Department of Youth Services at an institution for juvenile delinquents until attainment of age 21 (i.e., for commission of what would have been murder or aggravated murder if any adult)

Victims who have suffered a personal or property loss as a result of a child's delinquent behavior may be entitled to recover compensatory damages from the child's parents. The juvenile court is obligated to notify victims after the disposition has been determined. Ohio law (R.C. 3109.09) provides that property owners (e.g. boards of education, individual persons) who suffer theft offenses or willful damages to their property may recover compensatory damages up to \$6,000 and court costs from the parents of the delinquent child involved in the offense. Victims of assaults by "*means of force likely to produce great bodily harm*" may recover up to \$2,000 in compensatory damages from the parents of the delinquent child.

Expungement

The philosophy of the juvenile court system is to address children's needs more than it is to assign guilt and punish. Barring the public from juvenile court hearings is one manifestation of that philosophy. Treating juvenile court records as confidential and limiting public access to them is another. So, too, is the process of "expungement," or "sealing the record." It permits a juvenile who has been adjudicated delinquent or unruly to have the record of that action officially treated as if it had never occurred. The process is designed to be an incentive for juvenile offenders to learn from their mistakes, rehabilitate themselves, and start anew without having their future tainted by a court record.

"Sealing a record" involves removing a juvenile's record from the main files and securing it in a separate file accessible only to the juvenile court. All other copies of the record in the possession of other government agencies (e.g., the police) are destroyed. When a record is sealed, the person and the legal system deem the matter to have never happened.

When "unruly child" charges are not sustained, the juvenile's record is expunged automatically. When "delinquent child" charges are not sustained, the juvenile's record is expunged upon petition by the juvenile. Those who have been adjudicated an "unruly child" or

a "delinquent child" must wait until after the conclusion of their case (i.e., after the hearing and completion of the terms of disposition) to have their records sealed.

CHAPTER VII.

OHIO AND ITS JUVENILE JUSTICE SYSTEM: IDEAS FOR THE CLASSROOM

Exercise One: "Comparing Juvenile and Adult Court Proceedings"

[pp. 200-201; completed version provided]

Comparing terminology is an effective way to illustrate differences between juvenile and adult courts. In this matching exercise, terms commonly associated with adult court proceedings are listed in one column. Students match those terms with their juvenile court equivalents in the other column. Terms in both columns are alphabetized for facilitate the matching task.

The follow-up questions suggest ways to expand on the matching exercise. For example, the question about a *guardian ad litem* illustrates the paternalistic philosophy of the court and leads to the court's role with abused, neglected, and dependent children. Appointed at the first hearing on a complaint, the role is set forth in Ohio law (RC 2151.281).

(A) The court shall appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when:

(1) The child has no parent, guardian, or legal custodian;

(2) The court finds that there is a conflict of interest between the child and his parent, guardian, or legal custodian.

(B)(1) The court shall appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged abused or neglected child....

(2) The guardian ad litem... may bring a civil action against any person, who is required [by Ohio law]... to file a report of known or suspected child abuse or child neglect, if that person knows or suspects that the child... is the subject of child abuse or neglect and does not file the required report and if the child suffers additional injury or harm after the failure to file the report.

(C) In any proceeding concerning an alleged or adjudicated delinquent, unruly, abused, neglected, or dependent child in which the parent appears to be mentally incompetent or is under eighteen years of age, the court shall appoint a guardian ad litem to protect the interest of that parent....

(I) The guardian ad litem for an alleged or adjudicated abused, neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, guardian, monitoring court proceeding, and monitoring the services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child (R.C. 2151.281).

Inviting to class an attorney who has served as a *guardian ad litem* will add important perspectives. Other juvenile court personnel (e.g., referee, prosecutor, defense attorney) will further enrich understandings about the juvenile court.

Exercise Two: "Is It Delinquency?" [p. 202]

Consider using this exercise as an introductory activity to a discussion of "delinquent child" and "unruly child," as defined by Ohio law. Have students complete the exercise individually. Tally and discuss their responses. Then have students write out responses to the first two questions. Follow with Exercise Three, "Examining State Statutes." Have students use these Ohio statutes to verify or alter their initial responses. Items A, D, E, G, H, I, and J are acts of delinquency. They would be crimes if committed by an adult. Items B, F, and K are status offenses. They would not be crimes if committed by an adult. Items C and L are acts committed by adults, not minors. They are crimes punishable in adult court. This exercise may also be used to check student understanding following Exercise Three.

Use question three to initiate discussion in small groups and/or as a class. Record responses related to the types of acts (e.g., murder) and the circumstances (e.g., age of child, prior record) students identify. Subsequently share requirements stipulated in RC 2151.26 (see discussion for Exercise Three).

Exercise Three: "Examining State Statutes" [p. 203]

In the State of Ohio, who is considered a minor? Who is a "delinquent child?" Who is an "unruly child?" Each of the three concepts is a legal status, whose defining attributes are set forth in state statutes. The answers to these three questions are found in the Ohio Revised Code.

This exercise includes relevant sections of three Ohio statutes that define "minor," "delinquent child," and "unruly child." When students read the portions of the applicable state statutes, they not only find out what the legal definitions of these three concepts are, but they also become more familiar with how laws are written. The questions included as part of the exercise check students' understanding of these laws. The first question is a literal question. The second requires students to compare and contrast the two concept definitions. The third question clarifies the meaning of status offenses -- those acts that are offenses for children, but not adults. The fourth question extends a literal understanding of a statute by having students think of possible examples of laws "applicable only to a child" (e.g., curfew laws). The fifth question is open-ended. It is a prompt for students to share reactions to these three concepts and their definitions.

When discussing the meaning of "delinquent child," consider including a discussion of the waiver of jurisdiction by the juvenile court. This is the process required to have a minor tried in adult court. The applicable statute is Section 2151.26 of the Revised Code (i.e., Relinquishment of Jurisdiction for Purpose of Criminal Prosecution). It reads:

(A)(1) Except as provided in division (A)(2) of this section, after a complaint has been filed alleging that a child is a delinquent child for committing an act that would constitute a felony if committed by an adult, the court at a hearing may transfer the case for criminal prosecution to the appropriate court having

jurisdiction of the offense, after making the following determinations:

- (a) The child was fifteen years of age or older at the time of the conduct charged;*
- (b) There is probable cause to believe that the child committed the act alleged;*
- (c) After an investigation, including a mental and physical examination of the child... and after consideration of all relevant information and factors.... that there are reasonable grounds to believe that:*

- (i) He is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children;*

- (ii) The safety of the community may require that he be placed under legal restraint, including, if necessary, for the period extending beyond his majority.*

(2) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would constitute aggravated murder or murder if committed by an adult, the court at a hearing shall transfer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, if the court determines at the hearing that both of the following apply:

- (a) There is probable cause to believe that the child committed the alleged act.*

- (b) The child previously has been adjudicated a delinquent child for the commission of an act that would constitute aggravated murder or murder if committed by an adult.*

(B)(1) The court, when determining whether to transfer a case pursuant to division (A)(1) of this section, shall determine if the victim of the delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the act and whether the act alleged, if actually committed, would be an offense of violence, as defined in section 2901.01 of the Revised Code, if committed by an adult.... [These circumstances -- was an act of violence and the victim was 65-years or older or was permanently and totally disabled] shall be considered by the court in favor of transfer, but shall not control the decision of the court.

Use current examples of waiver rulings to add interest. Another option is to develop a simulation exercise based on real or hypothetical cases. Collaborate with a local attorney, referee, or judge to develop the cases and simulation.

Status offenses provoke considerable controversy. Extend the lesson by having students identify possible rationales for Ohio's "unruly child" statute, the types of behaviors it includes, potential benefits and costs of having such a law, and what revisions, if any, they favor. Invite a local attorney to discuss relevant issues and concerns with students.

Exercise Four: "What Direction for Juvenile Court?" [p. 204]

Nationally, the juvenile court has come under criticism, particularly for the way it handles youthful offenders. While some argue that the juvenile court should continue to function in much the same way as it currently does, others call for substantial modifications or its elimination. For example, some charge that the court's paternalistic practices gives government too much power over the lives of children. Some holding this position call for extending the rights of children in juvenile court proceedings. Others advocate giving children the same rights as other people. Another group of critics charge that the court's philosophy makes it too soft on youthful offenders, especially those who commit major crimes. They call for replacing the court's emphasis on rehabilitation with an emphasis on punishment and deterrence.

"What Direction for Juvenile Court" asks students to consider the validity of the juvenile court concept for dealing with youthful offenders. Five characteristics of the court are indicated in question form. Along with each question, students are presented with an affirmative or negative response. The five questions and their alternative responses provide the basis for a fruitful discussion about the juvenile court. Enrich the discussion with articles from newspapers, magazines, and other sources. Elicit views from informed community members (e.g., have students conduct interviews, invite persons to speak with the class). Conclude by having students write a persuasive essay setting forth their views about the juvenile court.

COMPARING JUVENILE AND ADULT COURT PROCEEDINGS

Instructions: Column A contains terms commonly used in adult court proceedings. Column B contains equivalent terms used in juvenile court proceedings. Match the equivalent terms. Place the letter of the term in Column B next to the number of the equivalent term in Column A.

MATCH THE EQUIVALENT TERMS

COLUMN A

- I 1. Adult
- 2. Adversarial
- 3. Arrest
- 4. Conviction
- 5. Crime
- 6. Indictment
- 7. Guilty Plea
- 8. Jail or Prison
- 9. Not Guilty Plea
- 10. Pre-sentencing Report
- 11. Sentence
- 12. Trial

COLUMN B

- A. Adjudication
- B. Admission
- C. Custody
- D. Delinquency
- E. Denial
- F. Detention Center/Reform School
- G. Disposition
- H. Hearing
- I. Juvenile
- J. *Parens Patriae*
- K. Petition
- L. Social Investigation

QUESTIONS TO CONSIDER

1. Why do adult courts and juvenile courts use different terms to describe similar things?
2. Adult court proceedings are adversarial. Juvenile court proceedings are non-adversarial. What is the difference?
3. What is a *guardian ad litem*? Why is there no equivalent role in adult court proceedings?

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MATCH THE EQUIVALENT TERMS

<u>COLUMN A</u>	<u>COLUMN B</u>
<u> I </u> 1. Adult	A. Adjudication
<u> J </u> 2. Adversarial	B. Admission
<u> C </u> 3. Arrest	C. Custody
<u> A </u> 4. Conviction	D. Delinquency
<u> D </u> 5. Crime	E. Denial
<u> K </u> 6. Indictment	F. Detention Center/Reform School
<u> B </u> 7. Guilty Plea	G. Disposition
<u> F </u> 8. Jail or Prison	H. Hearing
<u> E </u> 9. Not Guilty Plea	I. Juvenile
<u> L </u> 10. Pre-sentencing Report	J. <i>Parens Patriae</i>
<u> G </u> 11. Sentence	K. Petition
<u> H </u> 12. Trial	L. Social Investigation

QUESTIONS TO CONSIDER

1. Why do adult courts and juvenile courts use different terms to describe similar things?
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IS IT DELINQUENCY?

Instructions: Sometimes young people break the law. When caught, they may be charged with delinquency. Below are descriptions of young people engaged in acts that are illegal in the State of Ohio. Circle the letters of the persons committing acts of delinquency, as defined by Ohio law.

- A. A 14-year-old boy breaks into his neighbor's house and drinks some of the liquor stored in a living room cabinet.
- B. A 13-year-old girl regularly avoids going to school. She claims "school bores me."
- C. After stealing a man's wallet at the YMCA locker room, a 19-year-old boy uses the man's credit cards to buy expensive clothes and shoes for himself.
- D. A 15-year-old girl is caught at school selling illegal drugs to other students.
- E. A 16-year-old boy shoots and seriously injures another teenager in a dispute over drugs.
- F. After parents refuse to give their permission to marry, a 15-year-old girl is caught trying to elope with her 17-year-old boyfriend.
- G. An 18-year-old boy is caught trying to steal a Walkman from a department store.
- H. Angry at the principal for suspending her, a 16-year-old girl uses spray paint cans to write obscenities on the outside walls of the school building.
- I. A 14-year-old boy sets fire to an abandoned building in the city.
- J. Finding keys in a stranger's car in the mall parking lot, a 12-year-old girl takes the car for a joyride.
- K. A 16-year-old boy consistently disobeys his parents by staying out late at night and associating with known criminals.
- L. An 18-year-old girl is caught working as a prostitute.

QUESTIONS

1. What is the legal definition of a "delinquent child" in Ohio?
2. What are the other two types of illegal actions called in Ohio?
3. Should those who commit acts of delinquency ever be tried in adult court? If so, under what circumstances?

EXAMINING STATE STATUTES

Instructions: Below are state laws pertaining to minors. Read the statutes and respond to the questions provided.

EXCERPTS FROM THE OHIO REVISED CODE

2151.011 Definitions.

(B) As used in this chapter:

- (1) "Child" means a person who is under the age of eighteen years, except that any person who violates a federal or state law or municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of his age at the time the complaint is filed or the hearing on the complaint is held and except that any person whose case is transferred for criminal prosecution [in adult court] pursuant to section 2151.26 of the Revised Code....
- (2) "Adult" means an individual eighteen years of age or older.

2151.02 Delinquent child defined.

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "delinquent child" includes any child:

- (A) Who violates any law of this state, the United States, or any ordinance or regulation of a political subdivision of the state, which would be a crime if committed by an adult, except as provided in section 2151.021 of the Revised Code ["A child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state other

than a (parking violation)..., shall be designated as a "juvenile traffic offender."].

- (B) Who violates any lawful order of the court made under this chapter.

2151.022 Unruly child defined.

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "unruly child" includes any child:

- (A) Who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
- (B) Who is an habitual truant from home or school;
- (C) Who so deports himself as to injure or endanger the health or morals of himself or others;
- (D) Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority;
- (E) Who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons;
- (F) Who engages in an occupation prohibited by law, or is in a situation dangerous to life or limb or injurious to the health and morals of himself or others;
- (G) Who has violated a law applicable only to a child.

QUESTIONS TO CONSIDER

1. According to Ohio law, at what age is a person no longer considered a child?
2. What is the difference between a "delinquent child" and an "unruly child"?
3. Which of the acts constituting an "unruly child" could an adult do without fear of violating the law? Why does this difference exist?
4. What does the phrase in RC 2151.022(G) mean? What is an example of "a law applicable only to a child"?
5. What changes, if any, would you make in these laws?

WHAT DIRECTION FOR JUVENILE COURT?

Instructions: The juvenile court system in America is nearly 100 years old. In recent years, critics have called for changes in the way the juvenile court operates. The statements below present a series of options for dealing with youthful offenders. Decide which you favor. Indicate your choice by circling YES or NO in each set.

WHAT POSITION DO YOU TAKE?

- Should there continue to be a separate juvenile court for youthful offenders?
YES: A separate court is needed to deal appropriately with youthful offenders.
NO: There is no need for a separate court system. Treat all offenders -- youths and adults -- the same way.
- Should the juvenile court continue to have a different philosophy toward offenders than adult courts?
YES: Juvenile court should focus on the offender more than on the offense. It should stress rehabilitation and treatment rather than punishment.
NO: Both courts should focus on the offenses committed and emphasize punishment and deterrence rather than rehabilitation.
- Should the juvenile court continue to emphasize confidentiality in its proceedings?
YES: It is more important to protect the privacy of youthful offenders than it is to satisfy the public's curiosity.
NO: Publicity will deter juveniles from committing offenses. The public has a right to know about juveniles who break the law.
- Should the juvenile court continue to keep the records of juvenile offenders confidential?
YES: It is unfair to saddle children with a criminal record. They are not as fully accountable for their actions as are adults.
NO: The public has a right to know what offenses juveniles have committed. The public needs this information to protect themselves from harm.
- Should the juvenile court continue to tailor dispositions to individual offender's situations and needs?
YES: Individualized justice is in the best interests of the youthful offender. All relevant factors should be taken into consideration, with dispositions tailored to the individual.
NO: Individualized justice results in unequal treatment and is open to abuse. Similar punishments should be given for similar offenses.

QUESTIONS TO CONSIDER

1. What are the benefits of having a juvenile court system?
2. What are the costs of having a juvenile court system?
3. What concerns do you have about the way our juvenile courts function?

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