



*Photo courtesy: Damian Dovarganes/AP/Wide World Photos*

# 4

## State and Local Government

IN NOVEMBER 2002, California voters narrowly reelected their Democratic governor, Gray Davis. Davis was not especially popular, but his Republican opponent that year was viewed even more negatively, and voters chose to retain Davis for another four years. Eleven months later, however, Davis was booted out of office. Californians were exercising a rarely used mechanism in their state constitution that gives them the opportunity to petition for a vote on whether to recall one of their elected officials. Why had they used this against Davis?

When the extent of the state's budget shortfall—estimated to be \$38.5 billion—was announced a few months after Davis's 2002 reelection victory, and Davis indicated he would support some tax increases in order to meet part of the budget shortfall, Californians began circulating petitions to oust their governor. Davis argued that the national economic crisis was responsible for the state's budget mess, and he blamed intransigent Republicans in the state legislature for their unwillingness to compromise on emergency measures. But, Davis had alienated many in his first term by his messy handling of an electricity shortage in the state, leading to blackouts and exorbitant contracts with several energy suppliers. His nonstop fundraising during his first four years had also raised eyebrows, with many noting how Davis rewarded his financial supporters with lucrative state contracts or pay increases—such as a healthy raise for the state prison guards whose union contributed generously to his campaign. The release of the state's projected budget shortfall in early 2003 suggested massive program cuts and higher taxes, and voters were fed up. According to one reporter, "Californians want a target for their fiscal pain and frustration, and Davis has become the state insignia for economic ineptitude."<sup>1</sup> Another observer remarked about Davis, "Everybody hates him."<sup>2</sup>


Financed heavily by a Republican member of Congress from southern California who wanted to become governor himself, the recall petition drive obtained the required number of signatures by the summer of 2003, and a media circus set in. The recall election was scheduled for October, and the ballot would have two parts. Part one would be a simple question: should Governor Gray Davis be recalled? The second part of the question was an open election as to who would replace Davis if the "Yes" vote prevailed on part

### CHAPTER OUTLINE

- The Evolution of State and Local Governments
- State Governments
- Local Governments
- Grassroots Power and Politics
- Relations with Indian Nations
- State and Local Finances

one. Over 130 candidates made their way onto this ballot, including a handful of leading political figures, a porn star, a former child actor, dozens of celebrity wannabes, several earnest citizens, and former body-builder and movie action hero Arnold Schwarzenegger. For a while, it looked to much of the world as though Californians had gone crazy. But, when the official recall campaign entered its final month, it was clear that most voters would vote “Yes” on recalling Davis. In the words of one voter: “I never thought in a million years that I’d be for a recall, but it does send a message loud and clear—that we the people can do some-

thing.”<sup>3</sup> The well-known Schwarzenegger, a moderate Republican, ran an upbeat campaign, his speeches peppered with his famous movie catchphrases, such as “Hasta la vista, baby!” and “I’ll be back!” He did not give many hints as to what he would do as governor, but voters were ready for a change, and no other candidate could match his appeal. In the election, over 55 percent of the voters chose to recall Davis, and Schwarzenegger easily won the vote to replace him. Californians had participated in a rare display of direct democracy and changed their state’s governor between regular elections.

 THE RELATIONSHIPS AMONG THE VARIOUS GOVERNMENTS in our country are dynamic. The legal authority, the financial resources, and the political will of federal, state, and municipal governments are constantly changing. On the one hand, this provides groups and individuals with many points of access to government. On the other hand, the multiple, changing jurisdictions that govern our society can be a challenging puzzle. Californians who move to other parts of the country, for example, will find that most states do not have a recall provision, nor does the U.S. Constitution.

This chapter will present the basic patterns and principles of state and local governance so that you might readily understand how public policies in your community are made and applied.

- First, we will review *the evolution of state and local governments*.
- Second, we will describe the major institutions of *state governments*, including trends in state elections.
- Third, we will examine the different types of *local governments* and explain the bases for their authority as well as the special traits of their institutions.
- Fourth, we will identify the nature of *grassroots power and politics*.
- Fifth, we will discuss federal and state government *relations with Indian nations*.
- Finally, we will explain the budgeting process for *state and local finances*.

## THE EVOLUTION OF STATE AND LOCAL GOVERNMENTS

AS POINTED OUT IN CHAPTER 3, the basic, original unit of government in this country was the state. The thirteen colonial governments became thirteen state governments, and their constitutions preceded the U.S. Constitution. The states initially were loosely tied together in the Articles of Confederation but then formed a closer union and more powerful national government.

State governments, likewise, determined the existence of local governments. As we will later discuss in more detail, in some cases—such as counties and, for most

states, school districts—state laws *create* local governments. In others, such as towns and cities, states *recognize* and *authorize* local governments in response to petitions from citizens.

In other words, governance in the United States is not built from the bottom. Local communities do not form states, which then form the United States. Instead, states are the basic units, which on the one hand establish local governments and on the other hand are the building blocks of the federal government.

In the past, state and local governments were primarily part-time governments. Initially, almost all state and local elected officials were part-time. Except for governors and a handful of big-city mayors, people in office were farmers, teachers, lawyers, and shop owners who did public service during their spare time. This was true as well for many judges and local government bureaucrats.

As the responsibilities and challenges of government grew, more state and local officials became full-time. Increases in the need for urban services led to more full-time local governments. Despite this trend, states with high levels of urbanization did not always have governments that responded to the specific needs of urban populations. The boundaries of districts from which state legislators got elected did not change in response to population shifts in the post-Civil War period. As a result, state legislatures did not represent the character of their respective states. One legislator from a rural area might represent 50,000 people, whereas a legislator from an urban setting might represent as many as 500,000 constituents. Such a pattern led to low priority for urban needs.

This kind of misrepresentation remained in place until the 1960s. The ruling by the U.S. Supreme Court in *Baker v. Carr* (1962) became a watershed in the evolution of state and local governments. The Court applied the Fourteenth Amendment of the U.S. Constitution and decreed that equal protection and the **one-person, one-vote** principles required that there be the same number of people in each of the legislative districts within a single state. As a result, state legislatures became more representative, and the agendas of state governments became much more relevant to the needs of all constituents than they had been.

The 1960s and 1970s were a period in which the federal government added both to the responsibilities and to the efficiency of state and local governments. Federal programs to combat poverty, revitalize urban areas, and protect the environment were designed to be administered by state and local officials rather than federal agencies. With these programs came federal assistance and sometimes mandates to improve the capacities of subnational governments.

Since the 1970s, some trends in federalism have enhanced the importance of state and local governments. Conscious efforts since the Nixon administration were made to reverse the aggregation of power and authority in Washington, D.C. In part, this was philosophical, but it was also necessary. During the Reagan administration, the debt of the federal government more than tripled, and the flow of federal money and mandates that fueled much of the growth of state and local governments was reduced.

But, as noted in chapter 3, not all recent developments have enhanced the powers of state and local governments. In 2002, President George W. Bush signed a law that allows the federal government to force state and local authorities to turn over public schools to private businesses to manage if the schools are considered failing. In response to the terrorist attacks of September 11, 2001, the federal government expanded its role in domestic security, traditionally the responsibility of state and local police and public health officials.

Despite the conflicting messages, it is still clear that state and local governments have roles and responsibilities of increasing importance. For the most part, the political leaders of these jurisdictions relish these developments. Some states and cities, for

#### **one-person, one-vote**

The principle that each legislative district within a state should have the same number of eligible voters so that representation is equitably based on population.



*Photo courtesy: Gilles Peress/Magnum Photos*

■ The heroic work of New York City firefighters and rescue workers in response to the 9/11 terrorist attacks was a vivid reminder of the importance of state and local governments. We depend heavily on state and local agencies for our safety and for services that affect our daily living.

example, are taking bold initiatives and even establishing direct ties with other countries in order to spur economic growth.<sup>4</sup> Others, especially in smaller and medium-sized communities, are overwhelmed with all there is to do.

## STATE GOVERNMENTS

STATE GOVERNMENTS HAVE PRIMARY RESPONSIBILITY for education, public health, transportation, economic development, and criminal justice. The state is also the unit of government that licenses and regulates various professions, such as doctors, lawyers, barbers, and architects. More recently, state governments have been active in welfare and the environment, in part as agents administering federal policies and programs and in part on their own.

### State Constitutions

Whereas a major goal of the writers of the U.S. Constitution in 1787 was to *empower* the national government, the authors of the original **state constitutions** wanted to *limit* government. The Constitutional Convention in Philadelphia was convened, as you recall from chapter 2, because of the perception that the national government under the Articles of Confederation was not strong enough. The debates were primarily over how strong the national, or federal, government should be.

In contrast, the assumption of the authors of the first thirteen state constitutions, based on their backgrounds in the philosophy and experiences of monarchical rule, was that government was all powerful, and so the question was how to limit it. The state constitutions were written and adopted before the Constitutional Convention and included provisions that government may not interfere with basic indi-

#### state constitution

The document that describes the basic policies, procedures, and institutions of the government of a specific state, much as the U.S. Constitution does for the federal government.

# The Living Constitution

*The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any foreign State.*

— Eleventh Amendment

The Eleventh Amendment to the Constitution has been interpreted to grant the several states *sovereign immunity*; that is, a state cannot be sued in federal or state court without its consent. This amendment further defines the distribution of authority between federal and state governments, and it has been construed to give the states protection from the encroachment of federal power.

The Eleventh Amendment was a response to the angry public outcry regarding the Supreme Court's decision in *Chisholm v. Georgia*—a decision in which the Court held that the Judiciary Act of 1789 gave it original jurisdiction in cases regarding suits between states and citizens of other states. The *Chisholm* decision was not only widely regarded as being an untenable intrusion on state authority, but it was also considered a confirmation of Anti-Federalist fears that such a reading of Article III would “prove most pernicious and destructive” to states' rights.

The amendment was proposed at the very first meeting of Congress following the *Chisholm* decision in March 1794, and it was consequently ratified with “vehement speed” by February 1795. Interpretation of the Eleventh Amendment has subsequently been subject to inconsistent and obscure construction, and it has been a source of considerable dispute for constitutional scholars. Beginning with the New Deal however, the federal government began to use the commerce clause to considerably expand its authority; the result was the increasing centralization and importance of the national government at the expense of substantial state power.

The Eleventh Amendment has received mounting scrutiny over the last decade because of the Rehnquist Court's use of the amendment to return numerous powers to the states, and thus to alter fundamentally the relationship the states have had with the federal government for over half a century. The trend of the current Court is to reestablish traditional state sovereignty as part of its quest to restore the constitutional principle of federalism.

vidual liberties. Although these provisions were integral parts of each of the state constitutions, they were added to the federal constitution as the first ten amendments: the Bill of Rights.

The first state constitutions provided for the major institutions of government, such as executives (the governors), legislatures, and courts, with an emphasis on limiting the authority of each institution.<sup>5</sup> These constitutions did not, however, fully embrace the principle of checks and balances that is found in the U.S. Constitution. The office of governor was particularly weak. Not surprisingly, the most powerful institution was the





## GRADUATED DRIVER LICENSING

Once upon a time, young adults who were sixteen years old and could pass the required tests could get a driver's license. Now all but thirteen states have Graduated Driver Licensing (GDL) programs that put restrictions on those licenses. Specific provisions vary among the states, but generally new drivers may not drive unsupervised by an older adult for the first thirty to fifty hours after receiving their license, and even after that they may not drive unsupervised between 10 p.m. and 5 a.m. In ten states, teenagers who drive may not have more than two passengers, and in another eight states, they may not have anyone (other than family members) younger than twenty years old in the car with them.<sup>a</sup>

State legislatures responded to parents, insurance companies, and the federal Department of Transportation's National Highway Traffic Safety Administration in passing GDL programs. Car crashes are the leading killer of teenagers. This age group has the highest accident rate of any cohort, and sixteen-year-olds crash more than twice as often as eighteen- and nineteen-year-olds. After North Carolina adopted GDL, it saw a 26 percent drop in crashes involving sixteen-year-olds. Michigan noted a 31 percent decrease, and in Kentucky it was 32 percent.<sup>b</sup> These are impressive records.

But, placing restrictions on novice drivers has also met opposition. Opponents argue that it is not fair for all sixteen-year-olds to have limits because some are bad drivers. Some families need help from their new drivers, and the GDL rules limit young drivers' abilities to share driving responsibilities without supervision. Those in rural areas, often without access to public transportation, have been particularly unhappy with GDL legislation. In some states, the restrictions are stricter than what many states use as punishments for those convicted of drunk driving.

Despite these arguments, legislators in thirty-seven states have placed conditions on young drivers. Law-makers in the remaining states are considering adopting GDL programs. Frequently a legislator proposes GDL in response to a specific tragedy involving a new driver. The tragedy sets the agenda. Then, the pressure of the federal government and local advocates, armed with data about the reduction in accidents where there are GDL laws, generates the support to enact the law.

<sup>a</sup> "U.S. Licensing Systems for Young Drivers: Laws as of June 2002," Insurance Institute for Highway Safety (Arlington, VA).

<sup>b</sup> State Legislative Fact Sheets, <http://www.nhtsa.dot.gov/people/outreach/stateleg/graddriverlic.htm>.

legislature. In fact, initially only South Carolina, New York, and Massachusetts gave their governors the authority to veto legislation.

The first state constitutions set the pattern for what was to come. In one of its last actions, the national congress under the Articles of Confederation passed the Northwest Ordinance of 1787, which addressed how new states might join the union. Law-makers were responding primarily to settlers in what is now Ohio but extended coverage to the territory that includes Wisconsin, Illinois, Michigan, and Indiana—which the people in the original states considered the “northwest.” The basic blueprint included in the ordinance was that a territory might successfully petition for statehood if it had at least 60,000 free inhabitants (slaves and American Indians did not count) and a constitution that was both similar to the documents of existing states and compatible with the national constitution. The first white settlers in the territory covered by the Northwest Ordinance were originally from New York and Massachusetts, with some individuals and families direct from Europe. Not surprisingly, the initial constitutions of these states were almost identical to those of New York and Massachusetts.<sup>6</sup>

The Civil War had a profound impact on the constitutions of southern states. Southern states adopted new constitutions when they seceded and formed the Confederacy. After the Civil War, they had to adopt new constitutions acceptable to the Congress in Washington, D.C. These constitutions typically provided former slaves with considerable power and disenfranchised those who had been active in the Confederacy. These were not realistic constitutions. They divorced political power from economic wealth and social status, formal authority from informal influence. White communities simply ignored government and ruled themselves informally as much as



possible. After less than ten years of this, whites reasserted political control and rewrote state constitutions.

The new documents reflected white distrust of government control and provided for a narrow scope of authority for state governments. Governors could serve for only two-year terms. Legislatures could meet for only short periods of time and in some cases only once every other year. Law enforcement authority, both police and justices of the peace, rested squarely in local community power structures.

Western states entered the union with constitutions that also envisioned weak governments. Here the central concern was to avoid the development of political machines. In large cities in the Northeast and Midwest, machines based on bloc voting by new immigrants wrested political control from traditional elites. New states in the West sought to keep machine politics from ever getting started in the first place.

The most effective national anti-machine effort was the **Progressive movement**, led by such figures as Woodrow Wilson, Theodore Roosevelt, Robert M. La Follette, and Hiram Johnson, who advocated changes that involved direct voter participation and bypassed traditional institutions.<sup>7</sup> These reforms included the use of primaries for nominating candidates instead of closed party processes, the initiative for allowing voters to enact laws directly rather than go through legislatures and governors, and the recall for constituents to remove officials from office in the middle of their term (such as the 2003 recall of California's governor, discussed in the chapter opening vignette). Progressives succeeded in getting their proposals adopted as statutes in existing states and in the constitutions of new states emerging from western territories.

Though weak state government institutions may have been a reasonable response to earlier concerns, the trend since the 1960s, throughout the United States, has been to amend state constitutions in order to enhance the ability of governors, legislatures, and courts to address problems. In the 1970s alone, over 300 amendments to state constitutions were adopted. Most were to lengthen the terms of governors and provide chief executives with more authority over spending and administration, to streamline courts, and to make legislatures professional and full-time.<sup>8</sup>

Constitutional changes have also reflected some ambivalence. While there has been widespread recognition that state governments must be more capable, there is also concern about what that might mean in taxes and in the entrenchment of power. Thus, reforms have included severe restrictions on the ability of state and local governments to raise taxes and limits on how long legislators in some states might serve. Historic distrust of government continues.

Compared with the U.S. Constitution, state constitutions are relatively easy to amend. Every state allows for the convening of a constitutional convention, and over 200 have been held. Also, every state has a process whereby the legislature can pass an amendment to the constitution, usually by a two-thirds or three-fourths vote, and then submit the change to the voters for their approval in a referendum. Seventeen states, mostly in the West, allow for amendments simply by getting the proposal on a statewide ballot, without involvement of the legislature or governor.

An implication of the relatively simple amendment processes is frequent changes. All but nineteen states have adopted wholly new constitutions since they were first admitted, and almost 6,000 specific amendments have been adopted. Another effect of the process is that state constitutions tend to be longer than the U.S. Constitution and include provisions that more appropriately should be statutes or administrative rules. The California constitution, for example, not only establishes state government institutions and protects individual rights but also defines how long a wrestling match may be. Arkansas includes in its constitution what colors should be used for copies of registration documents.

### Progressive movement

Advocated measures to destroy political machines and instead have direct participation by voters in the nomination of candidates and the establishment of public policy.



- Wisconsin's Robert M. La Follette, a Republican, championed Progressive reforms both as governor from 1901 to 1906 and as a U.S. senator for nearly twenty years.

*Photo courtesy: Wisconsin Historical Society*



## Governors

### governor

Chief elected executive in state government.

### package or general veto

The authority of a chief executive to void an entire bill that has been passed by the legislature. This veto applies to all bills, whether or not they have taxing or spending components, and the legislature may override this veto, usually with a two-thirds majority of each chamber.

### line-item veto

The authority of a chief executive to delete part of a bill passed by the legislature that involves taxing or spending. The legislature may override a veto, usually with a two-thirds majority of each chamber.

**Governors** have always been the most visible elected officials in state governments. Initially, that visibility supported the ceremonial role of governors as their primary function. Now that visibility serves governors as they set the agenda and provide leadership for others in state governments. (See Figure 4.1.)

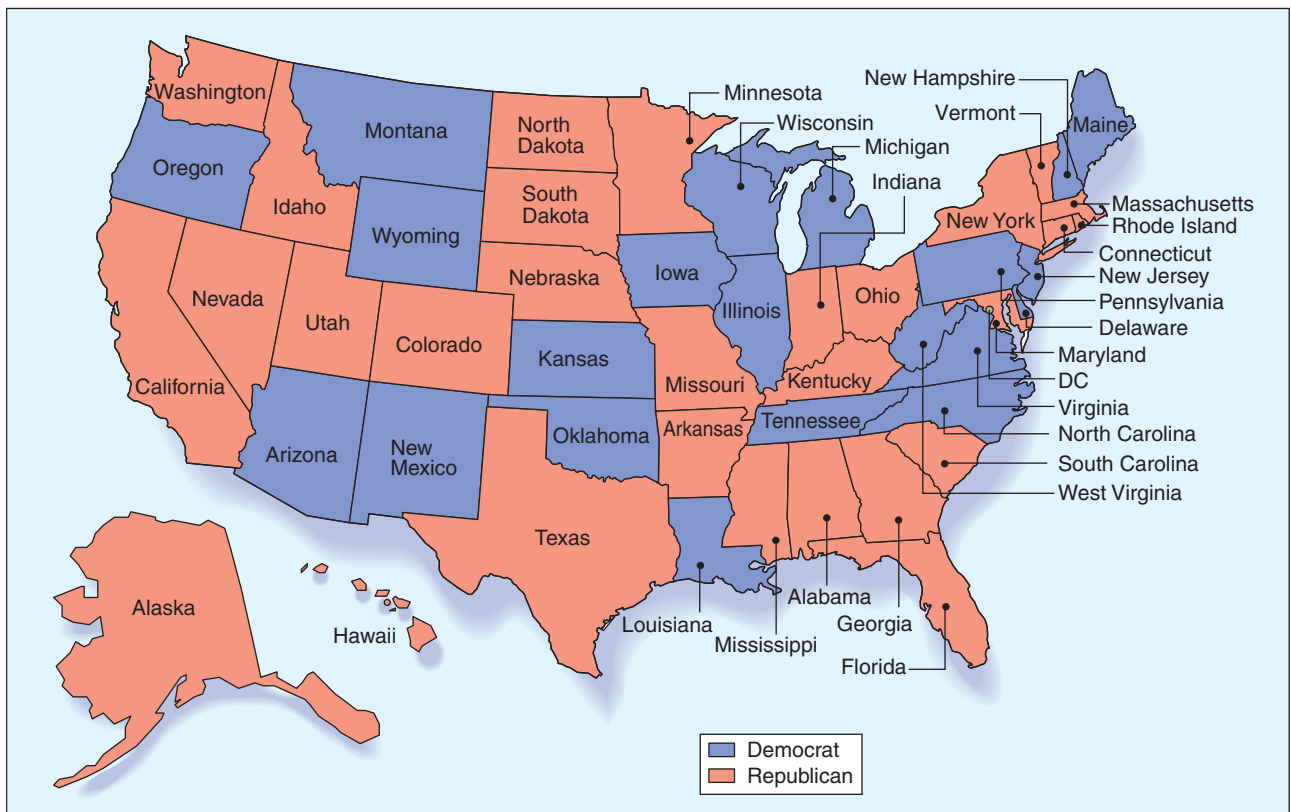
The most important role that current governors play is in identifying the most pressing problems facing their respective states and proposing solutions to those problems. Governors first establish agendas when they campaign for office. After inauguration, the most effective way for the chief executive to initiate policy changes is when submitting the budget for legislative approval.

Budgets are critical to the business of state governments. The ways in which money is raised and spent say a lot about the priorities of decision makers. Until the 1920s, state legislatures commonly compiled and passed budgets and then submitted them for gubernatorial approval or veto. As part of the efforts since the 1960s to strengthen the effectiveness of state governments, governors were, like presidents, given the major responsibility for starting the budget process. Now nearly all states have their governors propose budgets.

The role of governor as budget initiator is especially important when coupled with the governor's veto authority and executive responsibilities. Like presidents, governors also have **package or general veto** authority, which is the power to reject a bill in its entirety. In addition, governors in all but seven states may exercise a **line-item veto** on bills that involve spending or taxing. A line-item veto strikes only part of a bill that has been passed by the legislature. It allows a chief executive to delete a particular program or expenditure from a

**FIGURE 4.1** Party of State Governors, 2005

Republicans control a majority of the governorships, including those of the four most populous states. ■



Source: [http://www.ncsl.org/statevote2002/govParty\\_post2002.htm](http://www.ncsl.org/statevote2002/govParty_post2002.htm), and updates by the authors.

budget bill and let the remaining provisions become law. The intent of this authority is to enable governors to revise the work of legislators in order to produce a balanced budget.

When Tommy Thompson, U.S. Secretary of Health and Human Services from 2001 to 2004, was governor of Wisconsin, he was the most extensive and creative user of the line-item veto. He reversed the intent of legislation by vetoing the word “not” in a sentence and created entirely new laws by eliminating specific letters and numerals to make new words and numbers. Voters in Wisconsin were so upset with this free use of the veto pen that in 1993 they passed the “Vanna White amendment” to the state constitution, prohibiting the governor from striking letters within words and numerals within numbers. Not to be outmaneuvered, Governor Thompson then used his veto authority to actually *insert* new words and numbers in bills that had passed the legislature. The Wisconsin state supreme court, in 1995, upheld this interpretation of veto, as long as the net effect of the vetoes was not to increase spending.

While the Wisconsin case is extreme, it illustrates the significant power that veto authority can provide. Legislators can override vetoes, usually with a two-thirds vote in each of the chambers, but this rarely happens. Only 6 percent of gubernatorial vetoes are overturned.<sup>9</sup>

The executive responsibilities of governors provide an opportunity to affect public policies after laws have been passed. Agencies are responsible for implementing the laws. That may mean improving a road, enforcing a regulation, or providing a service. The speed and care with which implementation occurs are often under the influence of the governor.<sup>10</sup> Likewise, governors can affect the many details and interpretations that must be decided. State statutes require drivers of vehicles to have a license, but they typically let an agency decide exactly what one must do to get a license, where one can take the tests, and what happens if someone fails a test. Governors can influence these decisions primarily through appointing the heads of state administrative agencies.

One of the methods of limiting gubernatorial power is to curtail appointment authority.<sup>11</sup> Unlike the federal government, for example, states have some major agencies headed by individuals who are elected rather than appointed by the chief executive. Forty-three states, for example, elect their attorney general, a position that is part of the president’s Cabinet. The positions of secretary of state, treasurer, and auditor are also usually filled by elected rather than appointed officials. Some states elect their head of education, agriculture, or labor. The movement throughout states to strengthen the institutions of their governments has included increasing the number of senior positions that are filled by gubernatorial appointments so that governors, like heads of major corporations, can assemble their own policy and management teams.

Another position that is filled by presidential appointment in the federal government, but in most cases is elected in state governments, is judge. The structure of state courts and how judges are selected will be discussed later in the chapter. This is one more example of approaches that have been taken to restrict the authority of governors.

Nonetheless, governors are major actors in the judicial system. With the legislature, they define what is a crime within a state and attach penalties that should be meted out to those convicted of committing crimes. Once someone has been convicted, they will be institutionalized or supervised by an agency that is, in every state, headed by a gubernatorial appointment. Moreover, governors have authority to grant a **pardon** to someone who has been convicted, thereby eliminating all penalties and wiping the court action from an individual’s record. Governors may also **commute** all or part of a sentence, which leaves the conviction on record even though the penalty is reduced. In addition, governors grant **parole** to prisoners who have served part of their terms. Typically, governors are advised by a parole board on whether or not to grant a parole.

Finally, under the U.S. Constitution, governors have the discretion to **extradite** individuals. This means that a governor may decide to send someone, against his or her will, to another state to face criminal charges. When Mario Cuomo, who opposed the death penalty, was governor of New York, he refused to extradite someone to a state that used capital punishment. That refusal became an issue in Governor Cuomo’s

### **pardon**

The authority of a governor to cancel someone’s conviction of a crime by a court and to eliminate all sanctions and punishments resulting from the conviction.

### **commute**

The action of a governor to cancel all or part of the sentence of someone convicted of a crime, while keeping the conviction on the record.

### **parole**

The authority of a governor to release a prisoner before his or her full sentence has been completed and to specify conditions that must be met as part of the release.

### **extradite**

To send someone against his or her will to another state to face criminal charges.

unsuccessful bid for reelection in 1994. The newly elected governor, George Pataki, ordered the extradition shortly after he was inaugurated. In fact, with the support of Governor Pataki, New York adopted the death penalty.

Gubernatorial participation in the judicial process has led to some of the most colorful controversies in state politics. James E. Ferguson, as governor of Texas, granted 2,253 pardons between 1915 and 1917. His successor, William P. Hobby, granted 1,518 during the next two years, and then Governor Miriam “Ma” Ferguson outdid her husband by issuing almost 3,800 during her term. Texans were used to shady wheeling and dealing in politics, but this volume of pardons seemed a bit excessive. The Texas constitution was amended to remove authority to grant pardons and paroles from the governor; this power was placed in the hands of a board. Governors of the Lone Star State now have the lowest amount of authority among the fifty state chief executives to check actions of the judiciary.<sup>12</sup>

The general trend since the 1960s has been an increase rather than decrease in the power and authority of governors.<sup>13</sup> Given the historic desire to have weak chief executives, some of the enhancement of gubernatorial powers has come at the cost of the prerogatives of other institutions. This is particularly the case with veto authority and the role in the budgetary process.

## State Legislatures

The principles of representative democracy are embodied primarily in the legislature. Legislatures, as mentioned above, were initially established to be the most powerful of the institutions of state government. In over half of the original states, legislatures began without the check of a gubernatorial veto. Until the twentieth century, most state legislatures were responsible for executive chores such as formulating a budget and making administrative appointments.

These tasks were, even more than was envisioned for the U.S. Congress, to be done by “citizen legislators” as a part-time responsibility. The image was that individuals would convene in the state capitol for short periods of time to conduct the state’s business. State constitutions and statutes specified the part-time operation of the legislature and provided only limited compensation for those who served.

■ Only a handful of states do not allow capital punishment. In a speech in 2003, Governor Tim Pawlenty, a Republican, outlines his proposal to bring back the death penalty to Minnesota.

*Photo courtesy: Nathan Berndt/Getty Images*



As mentioned earlier, the one-person, one-vote ruling of the U.S. Supreme Court in *Baker v. Carr* (1962) marked a turning point in the history of state legislatures, and state governments generally. Once legislatures more accurately represented their states, agendas became more relevant and policies were more appropriate.<sup>14</sup> State legislatures not only became more representative; they became more professional. Legislators worked more days—some of them full-time. In 1960, only eighteen state legislatures met annually. As of 2005, forty-three met every year and only seven every other year. Moreover, the floor sessions were longer, and between sessions legislators and their staff increasingly did committee work and conducted special studies.<sup>15</sup> In 2004, California's newly elected Governor Arnold Schwarzenegger criticized the full-time role of state legislators, arguing that this made legislators think they had to enact more laws: "Spending so much time in Sacramento, without anything to do, then out of that comes strange bills."<sup>16</sup>

All states except Nebraska have two legislative houses. One, the senate, typically has fewer members than the other, usually called the "house" or the "assembly." The most common ratio between the two chambers is 1:3. In fourteen states the ratio is 1:2, and in New Hampshire it is 1:16. Another difference between the two bodies in thirty-four of the states is that senators serve four-year terms, whereas representatives in the larger house serve two-year terms. In eleven states, everyone in both houses serves two-year terms, and in the remaining, including Nebraska, everyone serves for four years.

Although it has been common to have limits on how many terms someone may serve as governor, **term limits** for legislators is a development of the 1980s and 1990s. By 2004, sixteen states had laws in effect limiting the number of years one might be a state legislator. Depending on the state, limits vary between six and twelve years. (See Table 4.1.)

Proponents of term limits included minority party leaders who calculated—sometimes in error—that they stood a better chance of gaining seats if incumbents had to leave after a certain period of time. Others saw term limits as a means of achieving the ideal of citizen legislator. Supporters of term limits embraced the concept of having people serve as a legislator in addition to whatever else they did in life, as opposed to pursuing a career as an elected official.<sup>17</sup>

#### term limits

Restrictions that exist in some states about how long an individual may serve in state or local elected offices.

**TABLE 4.1** States with Term Limits for State Legislators

	HOUSE		SENATE	
	Effective Date	Limit (years)	Effective Date	Limit (years)
Maine	1996	8	1996	8
California	1996	6	1998	8
Colorado	1998	8	1998	8
Arkansas	1998	6	2000	8
Michigan	1998	6	2002	8
Florida	2000	8	2000	8
Ohio	2000	8	2000	8
South Dakota	2000	8	2000	8
Montana	2000	8	2000	8
Arizona	2000	8	2000	8
Missouri <sup>a</sup>	2002	8	2002	8
Oklahoma	2004	12	2004	12
Wyoming	2006	12	2006	12
Louisiana	2007	12	2007	12
Nebraska	n/a	n/a	2008	8
Nevada	2010	12	2010	12

<sup>a</sup>Because of special elections, term limits were effective in 1998 for one senator and in 2001 for five House members.

Source: <http://www.ncsl.org/programs/legman/about/states.htm>, accessed April 19, 2004.



## TERM LIMITS AT THE STATE AND LOCAL LEVEL

**OVERVIEW:** According to the principle of federalism, state and local governments are understood to best represent the desires and address the needs of individual citizens. The closeness of local and state government to the daily lives of individuals was assumed to foster a type of intimacy between representatives and their constituents. After all, isn't it reasonable that citizens should have knowledge of and relatively easy access to those elected officials who affect the law and policies guiding our everyday actions and locales? Elected officials help make policy and law regarding such concerns as whether one may smoke in local restaurants and taverns, whether one may use a cell phone while driving, and whether property immediately adjacent to a major historical landmark such as Valley Forge is opened to commercial and residential development. Since state and local governments have a significant impact on how we live, shouldn't voters have the right to determine how long elected officials remain in office?

The term limits movement gained strength in the late 1980s as a response to the public's frustration with career politicians. Concerned about incumbency rates that in some cases exceeded 90 percent, a significant number of voters determined that term limits would be a way to compel an elected official to govern with an eye toward the well-being of his or her constituents, rather than governing with a view to a political career in the same office. Advocates of term limits argue that by having a stable turnover of elected officials, a continual stream of fresh ideas and new talent will be introduced into the political process, and American democracy will as a result benefit from active and innovative elected officials. Furthermore, advocates argue, democratic choice will be enhanced, since the frequent opening of electoral office will offer voters truly contested elections rather than an incumbent who uses

institutional power and prerogatives to deter potential challengers to his or her office. Advocates say that elected officials oppose term limits because they threaten the entrenched power of incumbents.

Those opposed to this movement argue that term limits actually deprive voters of choice, since term limits will force good, qualified officials out of office. This exodus then deprives constituents of the choice to reelect those officials who have not only demonstrated skill and competency in office, but have also earned the electorate's trust and esteem. Opponents argue that term limits prevent the development of an expert and experienced political class that can maintain governmental continuity and guide law and policy over the long term. Should voters become unhappy with an elected official's performance or conduct in office, voters can always remove the official or vote against him or her in the next election.

Current research is inconclusive in regard to the effects of term limits given that it has been only a few years since the first term-limited officials have retired from office, and it will be several more years until data are available to draw solid inferences on the effects of the term-limits movement.

### Arguments for Term Limits

- **Term limits help prevent a state's political institutions and policies from becoming stagnant.** Term limits statutes increase electoral competition by giving more capable and concerned citizens the chance to seek office. Talented citizens would thus be encouraged to run for office because more elective offices would become available as incumbents retired. Also, there is an increased likelihood that freshman officials would have an immediate impact on politics and policy because of the

State legislatures are still primarily part-time, citizen bodies.<sup>18</sup> Every election puts new members in about one-fourth of the seats. Only a handful of legislators in each state envision careers as state lawmakers. Those with long-term political aspirations tend to view service in a state chamber as a step on a journey to some other office, in the state capital or in Washington, D.C. For some, their goal is to don a black robe and preside in a courtroom.

### State Courts

Almost everyone is in a courtroom at some point. It may be as a judge, a juror, an attorney, a court officer, or a litigant. It may also be for some administrative function such

decreased control of incumbents over committees and other law- and policy-making institutions.

- **Term limits call truly public-spirited citizens to elective office.** Political office may no longer be seen as a career move but as a chance for those with other livelihoods to exercise public-spiritedness and discharge public duties. Office-seekers can make political, legislative, and policy considerations based on what they believe is best for their constituents and districts; moreover, the effects of interest group activity and lobbyists will be diminished, since elected officials will no longer depend on long-term relationships with these groups for campaign-finance and career considerations.
- **Voters overwhelmingly support term limits for elected officials.** Between 1990 and 2000, voters by overwhelming margins (on average 68%) passed term limits on elective offices in nineteen states. According to the Cato Institute, the term limits movement is “one of the most successful grassroots political efforts in U.S. history” — it has subjected over 17,000 local politicians in over 3,000 localities to term limits. Much like the Progressive movement’s reforms, the term-limit movement is an attempt by citizens to force elected officials to focus on governance rather than reelection and political careers.

### Arguments Against Term Limits

- **Term limits reduce professionalism in government.** Imposing term limits will reduce the numbers of experienced legislators. Long-term tenure in elected office allows law and policy makers to gain experience and deep knowledge of their governmental and political institutions, and this knowledge and experience allow them to govern effectively and efficiently. Continual turnover of elected officials introduces instability and the loss of

long-term cohesiveness into legislative bodies, since elected officials are primarily compelled to leave office just as they gain requisite experience.

- **Term limits enhance the influence of lobbyists and staffs.** Career politicians know where to go and whom to trust for policy and legislative information. Newly elected officials need information in order to govern well, and they may become too dependent on information and advice from career staffs, lobbyists, and interest groups in order to make informed decisions. Staffs and interest groups are likely to provide information that puts their particular policy preference in a favorable light.
- **Citizens should have the right to determine how long elected officials remain in office.** Term limits impose an infringement on the liberties of both voters and office holders. Voters lose the freedom to vote for whom they wish, and office holders lose the freedom to remain in office to ensure the well-being of their constituents and districts over the long term. The voters themselves enforce term limits when they vote not to return corrupt or incompetent elected officials back to office. The American people are wise enough to vote their interests.

### Questions

1. Who do you think has the better argument—those who advocate or those who oppose term limits? Why?
2. Is a professional political class necessary for good policy? Or does “new blood” in elected office bring about desired policy change?

### Selected Readings

- Gideon Doron and Michael Harris. *Term Limits*. Lexington Books, 2001.
- Thad Kousser. *Term Limits and the Dismantling of State Legislative Professionalism*. Cambridge University Press, 2004.

as an adoption, a name change, or the implementation of a will. Few of us will ever be in a federal court; almost all of us will be in a state court (except people who live in Washington, D.C., where *all* courts are federal courts).

The primary function of courts is to settle disputes, and most disputes are matters of state, not federal, laws. For the most part, criminal behavior is defined by state legislatures. Family law, dealing with marriage, divorce, adoption, child custody, and the like, is found in state statutes. Contracts, liability, land use, and much that is fundamental to everyday business activity and economic development also are part of state governance.

A common misunderstanding is that the courts in the United States are all part of a single system, with the U.S. Supreme Court at the head. In fact, state and federal

courts are separate, with their own rules, procedures, and routes for appeal. The only time state and federal courts converge is when a case involves a claim that a state law or practice violates a federal law or the Constitution or a state court judge has interpreted the Constitution. (See chapter 10 for more on the judiciary.)

Sometimes federal and state laws are directly related. If there is a contradiction between the two, then federal law prevails. A state statute that allowed or encouraged racial discrimination, for example, would directly conflict with the 1964 federal Civil Rights Act. Through a rule known as **inclusion**, state courts would be obliged to enforce the federal law.

**inclusion**

The principle that state courts will apply federal laws when those laws directly conflict with the laws of a state.

Since the 1970s, the U.S. Supreme Court has generally taken the position that, especially with regard to individual rights protected in the Constitution, state courts should be encouraged to regard the federal government as setting minimums.<sup>19</sup> If state constitutions and laws provide additional protections or benefits, then state courts should enforce those standards.

Like other state government institutions, courts have modernized in the past few decades. Many states reorganized their court systems in the 1970s to follow a model that relied on full-time, qualified judges and simplified appeal routes, which enabled state supreme courts to have a manageable workload. Figure 4.2 illustrates the court structure that is now common among the states.

Most court cases in urban areas begin in a court that specializes in issues such as family disputes, traffic, small claims (less than \$500 or \$1,000), or probate (wills) or in a general jurisdiction municipal court. Small towns and rural areas usually do not have specialized courts. If they do, the position of judge is part-time. Cases here start in county-level courts that deal with the full array of disputes.

Specialized courts do not use juries. A single judge hears the case and decides the case. Other courts at this level do have juries if requested by the litigants (parties in a case). A major responsibility of the judges and juries that deliberate on cases when they are originated is to evaluate the credibility of the witnesses and evidence. When cases are heard on appeal, the only individuals making presentations are attorneys.

Appellate courts have panels of judges. There are no juries in these courtrooms. An important feature of the court reorganizations of the 1970s is that a court of appeals exists between the circuit or county courts and the state supreme court. This court is to cover part of the state and is supposed to accept all appeals. In part, this appellate level is to allow supreme courts to decide whether or not they will hear a case. The basic principle is that all litigants should have at least one opportunity to appeal a decision. If the

**FIGURE 4.2** State Court Structure

Most state courts have the basic organization shown here. ■

	<b>Jury or Bench Trials</b>	<b>Jurisdiction</b>	<b>Judges</b>
<b>STATE SUPREME COURT</b>	Bench only	Appeal (limited)	Panel of judges, elected/appointed for fixed term
<b>APPEALS COURTS</b>	Bench only	Appeal (readily granted)	Panel of judges, elected/appointed for fixed term
<b>CIRCUIT OR COUNTY COURTS</b>	Jury and bench	Original and appeal	One judge per court, elected/appointed for fixed term
<b>MUNICIPAL AND SPECIAL COURTS</b>	Jury and bench	Original	One judge per court, elected/appointed for fixed term



state supreme court is the only place where an appeal can be lodged, that court is almost inevitably going to have too heavy a caseload and unreasonable backlogs will develop.

Most state judges are elected to the bench for a specific term. This differs from the federal government, where the president appoints judges for indefinite terms. Only six states use gubernatorial appointments. The first states had their legislatures elect judges, and that is still the case in Connecticut, Rhode Island, South Carolina, Vermont, and Virginia. As Table 4.2 shows, in sixteen states, voters elect judges and use party identification. In their efforts to limit and even destroy political machines, Progressives at the turn of the twentieth century advocated electing judges without party labels. Today, sixteen states use nonpartisan elections for selecting their judges. The remaining states went a step further and allowed for the election of judges but only after screening for qualifications. This process is referred to as the **Missouri** (or Merit) **Plan**. The governor selects someone from a list prepared by an independent panel and appoints him or her as a judge for a specific term of years. If a judge wishes to serve for an additional term, he or she must receive approval from the voters, who express themselves on a “yes/no” ballot. If a majority of voters cast a “no” ballot, the process starts all over. Five states (California, Kansas, Missouri, Oklahoma, and Tennessee) use the Missouri Plan for some judicial positions and nonpartisan elections for the others.

### Missouri (Merit) Plan

A method of selecting judges in which a governor must appoint someone from a list provided by an independent panel. Judges are then kept in office if they get a majority of “yes” votes in general elections.

## Elections and Political Parties

Elections are the vehicle for determining who will fill major state government positions and who will direct the institutions of state government. Almost all contests for state government posts are partisan. The major exceptions are judicial elections in many states, as noted above, and the senate in Nebraska’s unicameral legislature. Although party labels are not used and political parties are not formally participants in nonpartisan races, the party identity of some candidates may be known and may have some influence.

Political parties have different histories and roles in the various states. The chart in Analyzing Visuals: Patterns of Party Competition in State Legislatures shows the trends in the member of state legislative seats won by Republicans and Democrats. Most states have experienced significant competition between Republicans and Democrats since the Civil War. These states often have party control split between the two houses of the legislature and the governor’s office or have frequent changes in party control of state government. This pattern has applied to southern states only once since the 1990s.

Since 1994, the Republicans have made gains in state elections. One of the reasons for Republican success is that voters in the South who had been voting for conservative Democrats began voting for conservative Republicans. Southerners have supported Republican presidential candidates since the Democratic Party began asserting leadership for civil rights following World War II. Alignment with Republicans in contests for state and congressional positions has been a more gradual process, but the 2002 elections continued that trend. In short, Southerners no longer represent a significant minority within the national Democratic Party but instead are part of the majority within the Republican Party—nationally and regionally.

Republicans currently hold a majority of the nation’s governorships, with Arnold Schwarzenegger’s victory in California’s recall election in 2003 giving them executive control of the nation’s four most populous states. (See Figure 4.1.) Sonny

**TABLE 4.2** Judicial Selection Patterns

<i>Partisan Election</i>	<i>Nonpartisan Election</i>	
Alabama	Arizona	
Indiana	Arkansas	
Illinois	California	
Kansas	Florida	
Louisiana	Georgia	
Mississippi	Idaho	
Missouri	Kentucky	
New Mexico	Michigan	
New York	Minnesota	
North Carolina	Montana	
Pennsylvania	Nevada	
Tennessee	North Dakota	
Texas	Ohio	
West Virginia	Oregon	
	Oklahoma	
	South Dakota	
	Washington	
	Wisconsin	
<i>Election by Legislature</i>	<i>Appointment by Governor</i>	
Connecticut	Delaware	
Rhode Island	Hawaii	
South Carolina	Maryland	
Vermont	Massachusetts	
Virginia	New Hampshire	
	New Jersey	
<i>Missouri (Merit) Plan</i>		
Alaska	Iowa	Oklahoma
California	Kansas	Tennessee
Colorado	Missouri	Utah
Indiana	Nebraska	Wyoming

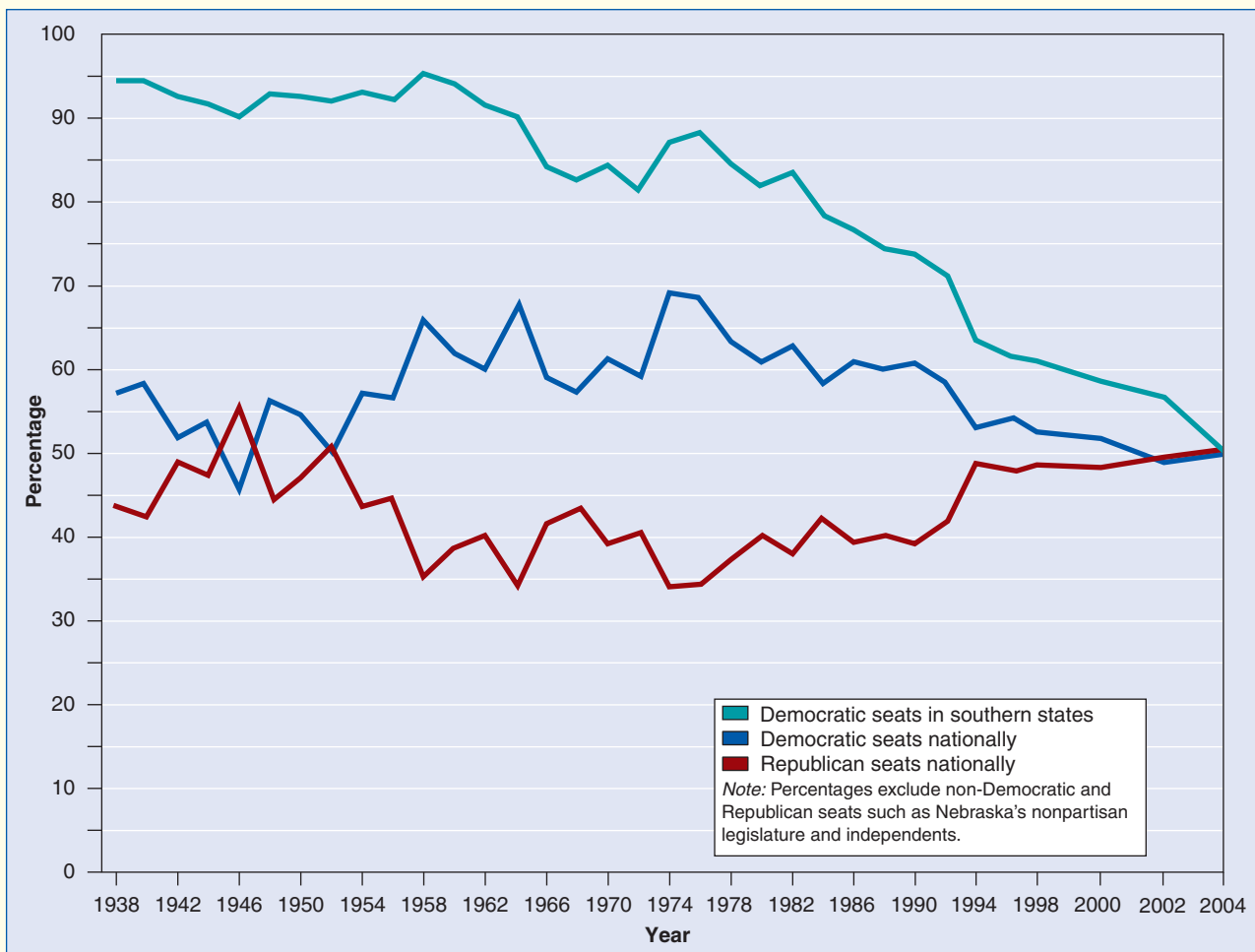
Source: *The Book of the States, 2000–2001*, 137–39. ©2000, Council of State Governments, with updates. Reprinted with permission.

## Analyzing Visuals

### PATTERNS OF PARTY COMPETITION IN STATE LEGISLATURES

This graph presents the trends of Republican and Democratic Party success in winning seats in state legislatures. Until the 1960s, the Democratic Party dominated the legislatures of southern states and the Republican Party did best outside that region. Based on the information presented in the graph and the chapter discussion on the parties in state legislatures, answer the following critical thinking questions: What trends do you see in the regional

patterns of party competition? Do the regional trends allow you to make a summary statement about the national picture of parties in state legislatures? What major movement nationally led to the decline of Democratic dominance in southern states? What major national event contributed to a surge in Democratic strength in the mid-1970s? How would you explain the even competitiveness of the Republicans and Democrats since the mid-1990s?



Source: National Conference of State Legislatures, [http://www.ncsl.org/statevote/legpartycontrol\\_post2004.htm](http://www.ncsl.org/statevote/legpartycontrol_post2004.htm). Updated by the authors.

Perdue, a Republican, won the gubernatorial race in Georgia in 2002, the last southern state that had elected only Democratic governors since the Reconstruction era after the Civil War. That same year, GOP candidates also defeated Democratic incumbent governors in Alabama and South Carolina. Still, Democrats in 2002 recaptured the governorships in several states, including Illinois, Pennsylvania, Michigan, and Wisconsin, all

of which had been under Republican executives for eight years or more. Republicans took over the governorships of Mississippi and Kentucky in 2003, while a Democrat won the Louisiana governorship that November. In the 2004 elections, Missouri and Indiana replaced Democratic governors with Republicans, and New Hampshire and Montana replaced Republicans with Democrats.

It is easy to exaggerate the importance of partisanship in state politics. A few normally Republican states—Wyoming and Kansas, for example—currently have Democratic governors, while some normally Democratic states—such as Massachusetts, Maryland, and Hawaii—have Republican governors. Whether at the state or the national level, the differences between Republicans and Democrats are important but not always drastic. While party labels and organizations matter, campaigns are primarily centered on individual candidates. Voters often have an opportunity to meet face to face with those contending for state government offices. A common strategy of candidates is to downplay their party identification, both to emphasize their strengths as individuals and to appeal to independent voters. After the election, party labels are important in determining who is in the majority in the legislature and therefore who will control committees and who will preside. That affects the agenda and the dynamics of policy making, but even here parties typically lack the homogeneity and the discipline to determine outcomes.

Elections since the 1960s have led increasingly to ethnic and racial diversity among state and local officials. It is now common for African Americans, Latinos, and women to be mayors, including in some of the largest cities. In 2002, 22 percent of the 7,424 state legislators were women. This percentage was the lowest in the southern states, and the range nationally was from 8 percent in Alabama to 39 percent in Washington State. Also in 2002, ten women succeeded in becoming their party's candidate for governor in the general election, and four of them ultimately won. As of 2005, seven states had women governors.

## Direct Democracy

Ballots almost always include state and local referenda and initiative questions, as well as the names of candidates. (There is no provision for a national referendum or initiative.) As mentioned earlier, a Progressive reform meant to weaken parties was to provide opportunities for voters to legislate directly and not have to go through state legislatures and governors.<sup>20</sup> That process, known as the **direct initiative**, is available in eighteen states, most of them in the West. (See Table 4.3.) Citizens in these states have been able to enact laws as wide ranging as legalizing physician assisted suicide, limiting property taxes, building mass transit systems, protecting endangered species, and establishing prison terms for certain criminal behaviors.

A disadvantage of the direct initiative is the possibility that a law may be passed solely because of public opinion, which might be shaped largely by thirty-second television commercials and short slogans. Unlike the process when a legislative body debates a measure, there is no easy opportunity for making amendments to successful initiatives.

Sometimes initiatives are passed and then set aside by courts because they violate the state or federal constitution or because the federal government preempts the state. When California, for example, passed Proposition 187 in 1994 denying most public services to unregistered immigrants, federal courts kept the state from implementing the law because it trespassed on federal immigration policy and violated the U.S. Constitution.

Debate, deliberation, and amendment are included in the **indirect initiative**. In this process, legislatures first consider the issue and then pass a bill that will become law if approved by the voters. The governor plays no role. Of the eleven states that have the indirect initiative, five also have the direct initiative.



Photo courtesy: Daily Star, Kari Wheeler/AP/Wide World Photos

■ In a close election against a Republican opponent who was an African American, Kathleen Blanco was elected governor of Louisiana in November 2003. Blanco, a Democrat, is the state's first woman governor.

### direct initiative

A process in which voters can place a proposal on a ballot and enact it into law without involving the legislature or the governor.



The Initiative and Referendum

### indirect initiative

A process in which the legislature places a proposal on a ballot and allows voters to enact it into law, without involving the governor or further action by the legislature.

**TABLE 4.3** Authority for the Initiative and Popular Referendum

<i>State</i>	<i>Direct Initiative</i>	<i>Indirect Initiative</i>	<i>Popular Referendum</i>
Alaska		x	x
Arizona		x	x
Arkansas	x		x
California	x		x
Colorado	x		
Florida	x		
Idaho	x		x
Illinois	x		
Kentucky			x
Maine		x	x
Maryland			x
Massachusetts		x	x
Michigan	x	x	x
Mississippi		x	
Missouri	x		x
Montana	x		x
Nebraska	x		x
Nevada	x	x	x
New Mexico			x
North Dakota	x		x
Ohio	x	x	x
Oklahoma	x		x
Oregon	x		x
South Dakota	x		x
Utah	x	x	x
Washington	x	x	x
Wyoming		x	x

Source: Based on *The Book of the States, 2001–2002*, 211. ©2001 Council of State Governments; and Fact Sheet: Information on the Statewide Initiative Process in the United States, Initiative and Referendum Institute at the University of Southern California.

Voters in twenty-three states have the opportunity to veto some bills. In these states, voters may circulate a petition objecting to a particular law passed in a recent session of the legislature. If enough signatures are collected, then an item appears on the next statewide ballot, giving the electorate the chance to object and therefore veto the legislation. This is known as a **direct** or **popular referendum**.

#### direct (popular) referendum

A process in which voters can veto a bill recently passed in the legislature by placing the issue on a ballot and expressing disapproval.

All state and local legislative bodies may place an **advisory referendum** on a ballot. As the name implies, this is a device to take the pulse of the voters on a particular issue and has no binding effect. In addition, voter approval is required in a referendum to amend constitutions and, in some cases, to allow a governmental unit to borrow money through issuing bonds.

#### advisory referendum

A process in which voters cast non-binding ballots on an issue or proposal.

Finally, eighteen states provide for some form of **recall** election. As discussed in regard to the California recall at the beginning of this chapter, voters in these states have the power to petition for an election to remove an officeholder before the next scheduled election. Although not often used, judges, state legislators, and other officeholders are occasionally the subject of a recall campaign. Unlike California, most states that allow a recall require a higher threshold of voters to petition for such an election, and some of those allow for a recall only if certain criminal or immoral behavior has been committed by the elected official.<sup>21</sup>

#### recall

A process in which voters can petition for a vote to remove officeholders between elections.

## **LOCAL GOVERNMENTS**

THE INSTITUTIONS AND POLITICS of local governance are even more individualized than those of state governments. In part this is because officials are friends, neighbors, and acquaintances living in the communities they serve. Except in large cities, most

elected officials fulfill their responsibilities on a part-time basis. The personal nature of local governance is also due to the immediacy of the issues. The responsibilities of local governments include public health and safety in their communities, education of children in the area, jobs and economic vitality, zoning land for particular uses, and assistance to those in need. Local government policies and activities are the stuff of everyday living.

## Charters

Romantic notions of democracy in America regard local governments as the building blocks of governance by the people. Alexis de Tocqueville, the critic credited with capturing the essence of early America, described government in the new country as a series of social contracts starting at the grass roots. He said, “the township was organized before the county, the county before the state, the state before the union.”<sup>22</sup> It sounds good, but it’s wrong.

A more accurate description comes from Judge John F. Dillon. In an 1868 ruling, known as **Dillon’s Rule**, Dillon proclaimed: “The true view is this: Municipal corporations owe their origins to and derive their power and rights wholly from the [state] legislature. It breathes into them the breath without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control.”<sup>23</sup> Dillon’s Rule applies to all types of local governments.

There are many categories of local governments. Some of these are created in a somewhat arbitrary way by state governments. Counties and school districts are good examples. State statutes establish the authority for these jurisdictions, set the boundaries, and determine what these governments may and may not do and how they can generate funds.

Local governments must have a **charter** that is acceptable to the state legislature, much as states must have a constitution acceptable to Congress. Charters describe the institutions of government, the processes used to make legally binding decisions, and the scope of issues and services that fall within the jurisdiction of the governmental body being chartered. There are five basic types of charters:

1. **Special Charters.** Historically, as urban areas emerged, each one developed and sought approval for its own charter. To avoid inconsistencies, most state constitutions now prohibit the granting of special charters.
2. **General Charters.** Some states use a standard charter for all jurisdictions, regardless of size or circumstance.
3. **Classified Charters.** This approach classifies cities according to population and then has a standard charter for each classification.
4. **Optional Charters.** A more recent development is for the state to provide several acceptable charters and then let voters in a community choose from these.
5. **Home Rule Charters.** Increasingly, states are specifying the major requirements that a charter must meet and then allowing communities to draft and amend their own charters. State government must still approve the final product.

An important feature of home rule is that the local government is authorized to legislate on any issue that does not conflict with existing state or federal laws. Other approaches list the subjects that a town or city may address.



Photo courtesy: Dob Daemmrlich/Stock Boston, Inc.

■ Responsibilities of local governments are wide ranging—from collecting the garbage in Minneapolis and filling potholes in Buffalo to patrolling the beach at Corpus Christi on spring break (shown here).

## Dillon’s Rule

A court ruling that local governments do not have any inherent sovereignty but instead must be authorized by state government.

## charter

A document that, like a constitution, specifies the basic policies, procedures, and institutions of a municipality.



## COLLEGE TOWNS AND BINGE DRINKING

Local governments in communities with a college campus confront the challenge of binge drinking among students. Some may argue that students are just having fun and that bar owners are simply running a business. But, what might be regarded as individual choice and private socializing can have public consequences. City officials face pressure from their constituents to curb disruptive and illegal behavior from college students.

According to a study by the Harvard School of Public Health, 44 percent of U.S. college students engage in binge drinking.<sup>a</sup> Binge drinking is defined for men as having at least five drinks in a row, and for women, at least four drinks—a drink equals a twelve-ounce bottle of beer or wine cooler, a four-ounce glass of wine, or a shot of liquor, either by itself or in a mixed drink. A frequent binge drinker is someone who engages in this behavior at least three times in two weeks.

The Harvard study found that 50 percent of male college students and 39 percent of female students acknowledged that they were binge drinkers. Seventy-three percent of the men and 68 percent of the women said that the reason they drank alcoholic beverages was to get intoxicated.

There are no significant differences in the ages or classes of students and the pattern of binge drinking. Some binge drinkers are not yet twenty-one years old and therefore are breaking the law. Binge drinking, regardless of the legal drinking age, is associated with rowdiness, vandalism, fights, and sexual assault. The Harvard study demonstrated that binge drinkers are more likely than other students to miss class, get behind in school work, have unplanned sexual activity, engage in unprotected sex, damage property, and be hurt or injured.

Local and state governments are responsible for issuing licenses to sell alcoholic beverages. Inevitably, they must balance the pressure from bars and restaurants to do business

freely and the need to ensure that alcohol is sold and consumed responsibly. An issue for local governments as well as for universities is that laws are broken when underage students drink and when binge drinking leads to assault and vandalism. Also, neighbors in campus areas want quieter, safer nights on the weekend. More central is the concern for health and safety—of the drinkers as well as of those around them.

An initial and obvious response of local governments has been to enhance policing focused on illegal drinking and unlawful behaviors related to the consumption of alcohol. Cities have revoked liquor licenses from businesses that make little effort to ensure that they are not serving underage drinkers. More innovative and proactive measures have included working with bar owners as well as fraternities and sororities to make sure that alcohol is not served to those who show signs of having had enough, educating students about the effects of binge drinking, eliminating sponsorship of events and programs by the alcohol industry, and sponsoring nonalcoholic alternatives for socializing and having fun. A few universities have sought to keep bars from having special deals during a “happy hour,” since offering cheaper drinks in a relatively limited amount of time can encourage binge drinking from patrons trying to “get their money’s worth.” Some bar owners object strongly that these policing efforts interfere with their businesses.

Universities, health officials, police, and city governments all agree that binge drinking by college students is a serious problem. Attempts to curb the problem, however, have met with only limited success. Local government policies and university programs have not fared well as they confront business and individual choice.

<sup>a</sup> Henry Wechsler, George W. Dowdall, Andrea Davenport, and William DeJong, “College Alcohol Study,” <http://www.hsph.harvard.edu/cas/>.

### Types of Local Governments

There are about 87,000 local governments in the United States. The four major categories are as follows.

#### county

A geographic district created within a state with a government that has general responsibilities for land, welfare, environment, and, where appropriate, rural service policies.

1. **Counties.** Every state has **counties**, although in Louisiana they are called parishes, and in Alaska, boroughs. With few exceptions, counties have very broad responsibilities and are used by state governments as basic administrative units for welfare and environmental programs, courts, and the registration of land, births, and deaths. County and city boundaries may and do overlap, although state actions have merged city and county in New York, San Francisco, Denver, St. Louis, Nashville, and Honolulu.
2. **Towns.** In the first states and in the Midwest, “town” refers to a form of government in which everyone in a community is invited to an annual meeting to elect

officers, adopt ordinances, and pass a budget. Another use of this term is simply to refer to a medium-sized city. (See Global Perspective: Cities in the World.)

3. **Municipalities.** Villages, towns, and cities are established as **municipalities** and authorized by state governments as people congregate and form communities. Some of the most intense struggles among governments within the United States are over the boundaries, scope of authority, and sources of revenue for municipal governments.
4. **Special Districts.** **Special districts** are the most numerous form of government. A special district is restricted to a particular policy or service area. School districts are the most common form of special district. Others exist for library service, sewerage, water, and parks. Special districts are governed through a variety of structures. Some have elected heads, and others, appointed. Some of these jurisdictions levy a fee to generate their revenues, whereas others depend on appropriations from a state, city, or county. A reason for the recent proliferation of special districts is to avoid restrictions on funds faced by municipalities, schools, or other jurisdictions. The creation of a special park district, for example, may enable the park to have its own budget and sources of funding and relieve a city or county treasury.

The reasons that a particular municipality or special district was established may be sound, but having multiple governments serving the same community and controlling the same area can create confusion. The challenge is to bridge the separation between cities, school districts, counties, and state agencies to effectively address an issue. A specific response to youth violence, for example, may be to provide a youth center or skateboard rink for young people in a community so they can hang out in a safe and healthy setting. Such a project poses questions about which jurisdictions will provide funding and ensure staffing. Land may have to be rezoned and building permits acquired. Will a park district be involved? Will schools count on this facility for after-school programming? What will be the role and approach of the police department? Who will be in charge?

*Photo courtesy: Keven Jacobus/The Image Works*



### **municipality**

A government with general responsibilities, such as a city, town, or village government, that is created in response to the emergence of relatively densely populated areas.

### **special district**

A local government that is responsible for a particular function, such as K–12 education, water, sewerage, or parks.

■ One type of informal local government body is the neighborhood association. Whether such associations succeed in communicating clearly and resolving their problems is an open question.





## CITIES IN THE WORLD

For many Americans, the cornerstone of government in the United States is local government. It is *their* government, the one with which they are most immediately in touch. It is here that such problems as fighting poverty, keeping the environment clean, providing affordable housing, running a cost-efficient transportation system, and offering high-quality educational opportunities take on a very personal character. According to the 2000 Census, to 79 percent of Americans, local government means urban government.

We are not alone in this view of local government: in fact, only two of the world's ten most populous urban areas are in the United States. The trend toward greater urbanization is one of the most significant global population trends. By 2015 it is estimated that for the first time in human history the majority of the world's population will live in urban centers. By 2025 it is estimated that two-thirds of the population of the developing world will live in urban areas, and that very soon twenty-seven of the world's thirty-three megacities (those with a population of over 8 million) will be found in these developing countries.

The problems the world's cities face are both immense and varied. Consider Lagos, Nigeria. Its urban-area population is around 13 million. In some parts of the city, the population density reaches 200,000 people per square kilometer. In 1995, only 80,000 residents out of 10 million had direct connections to clean water. Sewage is largely disposed of in open ditches. Lagos is also considered one of Nigeria's HIV/AIDS hotspots, with somewhere between 8 and 21 percent of its population being infected with the disease. Complicating the task of addressing these problems is the fact that over twenty different governing bodies operate in Lagos.

Or, consider Shanghai, China, whose urban area is home to 12 million people. Its population is one of the most skilled in China, enjoying a high standard of living in which virtually all permanent residences possess piped water and electricity. But all is not well. Twelve percent of the population is older than sixty-five, and average life expectancy is now seventy-seven. This large aging population places a huge burden on younger citizens to provide for them through high taxes. Moreover, Shanghai also has a large "floating population" that lives in slums and does not share in the city's wealth. Estimates place the number of new immigrants arriving in Shanghai each year at between 500,000 and 1 million.

Local government leaders recognize that they cannot meet the challenges before them by acting alone. In the United States, part of the answer lies with the National League of Cities, whose members range in size from New York City to Bee Cave, Texas. Cities around the world have also begun to partner. One notable organization is the International Council for Local Environmental Initiatives (ICLEI), made up of over 400 local governments around the world with a total population of nearly 300 million. U.S. member cities include: Atlanta, Georgia; Chattanooga, Tennessee; Honolulu, Hawaii; Miami-Dade County, Florida; Muncie, Indiana; New York, New York; Newark, New Jersey; and Tucson, Arizona.

One of the major initiatives undertaken by the ICLEI is Local Agenda 21, which pledges members to embrace sustainable development as a strategy for meeting the challenges of urbanization. Sustainable development holds that in using our natural resources, we must balance the needs of today against the needs of future generations. In Africa, for example, thirty-one cities have signed on to participate in the African Sustainable Cities Network. It is designed to help local governments in Africa to involve citizens in environmental planning. In the United States, the key ICLEI document is Communities 21, which pledges cities to work to protect the environment while improving the quality of life and increasing prosperity. Among those participating are Seattle, Washington, and Santa Monica, California.

World's Ten Largest Urban Areas in 2003

City	Country	Population (in millions)
Tokyo	Japan	31.1
Mexico City	Mexico	21.2
New York	United States	21.2
Seoul	South Korea	20.0
Sao Paulo	Brazil	18.8
Jakarta	Indonesia	17.9
Osaka	Japan	17.6
Delhi	India	17.0
Mumbai (Bombay)	India	17.0
Los Angeles	United States	16.4

### Questions

1. When you think about local government in your home town, how do its problems compare to those noted here? How capable is it of solving them?
2. Which is a more important partner for cities in solving their problems: state governments, or Washington, D.C.? Why?



Formal and informal arrangements among local governments exist that allow them to cooperate and coordinate their work in a single area. Miami and Dade County in Florida have been an early and visible example. The two jurisdictions have merged their

public health services, jointly administer parks, operate a unified mass transit system, and together plan for development and land use. Saint Paul and Minneapolis in Minnesota have also pioneered cooperative arrangements. The establishment of the 911 emergency service can be a catalyst for cooperation by various police, fire, and paramedical agencies in a metropolitan area. Still, there continues to be conflict between governments on occasion and often a failure to even communicate. Local officials and citizens alike find the legacies of past actions creating local governments a serious challenge.

## Executives and Legislatures

Except for the traditional New England **town meeting**, where anyone who attends may vote on policy and management issues, local governments have some or all of the following decision-making offices:

- Elected executive, such as a mayor, village president, or county executive.
- Elected council or commission, such as a city council, school board, or county board.
- Appointed manager, such as a city manager or school superintendent.

Local government institutions are not necessarily bound to the principles of separation of powers or checks and balances that the U.S. Constitution requires of the federal government and most state constitutions require of their governments. School boards, for example, commonly have legislative, executive, and judicial authority. School board members are, with few exceptions, part-time officials, so they hire superintendents and rely heavily on them for day-to-day management and for new policy ideas. It is the school board, however, that makes the policies regarding instruction and facilities. The board also does the hiring and contracting to implement those policies. Similarly, the school board sets student conduct rules, determines if a student should be expelled, and then hears appeals from those who are disciplined.

The patterns of executive and legislative institutions in local government have their roots in some of the most profound events in our history. The influx of immigrants into urban areas in the North after the Civil War prompted the growth of **political machines**.<sup>24</sup> New immigrants needed help getting settled. They naturally got much of that help from ethnic neighborhoods, where, for example, a family from Poland would find people who spoke Polish, restaurants with Polish food, and stores and churches with links to the old country. Politicians dealt with these ethnic neighborhoods. If the neighborhood voted to help provide victory for particular candidates for **mayor** and **city council**, then city jobs and services would be provided. Political machines were built on these quid pro quo arrangements. The bosses of those machines were either the elected officials or people who controlled the elected officials.

As part of their efforts to destroy the political machines, Progressives sought reforms that minimized the politics in local government institutions.<sup>25</sup> Progressives favored local governments headed by professional **managers** instead of elected executives. Managers would be appointed by councils, the members of which were elected on a nonpartisan ballot, thus removing the role of parties.

As another way of sapping the strength of ethnic bloc voting, Progressive reformers advocated that council members be elected from the city at large rather than from neighborhood districts. The choice between **district-based elections** and **at-large elections** now, however, raises concerns about discrimination against Latinos and African Americans. At-large elections may keep minority representatives from being elected. On the other hand, a city could be divided into districts that might have an ethnic group constitute a majority within a district. The at-large elections, in short, have the same minimizing effect on these ethnic groups that was intended by Progressives on white ethnic groups.



Photo courtesy: Annie McCormick/Reuters/Corbis

■ Philadelphia's Mayor John F. Street, a Democrat, won reelection to a second term in 2003.

### town meeting

Form of local government in which all eligible voters are invited to attend a meeting at which budgets and ordinances are proposed and voted on.

### political machine

An organization designed to solicit votes from certain neighborhoods or communities for a particular political party in return for services and jobs if that party wins.

### mayor

Chief elected executive of a city.

### city council

The legislature in a city government.

### manager

A professional executive hired by a city council or county board to manage daily operations and to recommend policy changes.

### district-based election

Election in which candidates run for an office that represents only the voters of a specific district within the jurisdiction.

### at-large election

Election in which candidates for office must compete throughout the jurisdiction as a whole.



Photo courtesy: © Bettmann/CORBIS 2003

■ In the aftermath of the devastating 1900 hurricane in Galveston, Texas, the commission form of city government came into being. Although abandoned by Galveston, the model spread quickly, and by 1917 almost 500 cities had adopted the commission form of government.

**commission**

Form of local government in which several officials are elected to top positions that have both legislative and executive responsibilities.

**public corporation (authority)**

Government organization established to provide a particular service or run a particular facility that is independent of other city or state agencies and is to be operated like a business. Examples include a port authority or a mass transit system.

Progressives argued that the **commission** form of government was an acceptable alternative to mayors and boss politics. The commission evolved as a response to a hurricane in 1900 that killed almost 10,000 people in southern Texas. After the disaster, a group of prominent business leaders in Galveston formed a task force, with each member of the force assuming responsibility for a specific area, such as housing, public safety, and finance. Task force members essentially assumed the roles of both legislators making policy and managers implementing policy. The citizens of Galveston were so impressed with how well this worked that they amended their charter to replace the mayor and city council with a commission, elected at-large and on a nonpartisan basis. The model spread quickly, and by 1917 almost 500 cities had adopted the commission form of government.

As Table 4.4 indicates, half of all U.S. cities have an elected mayor and a council. Mayors differ in how much authority they have. Some are strong and have the power to veto city council action, appoint agency heads, and initiate as well as execute budgets. The charters of other cities do not provide mayors with these formal powers. Except for the largest cities, mayors serve on a part-time basis.

Slightly more than one-third of the municipalities have the Progressive model of government, with an appointed, professional manager and an elected city council. This is the most common pattern among medium-sized cities, whereas the very large and the very small have mayors and councils. Some jurisdictions have both mayors and managers.

Only 2 percent of U.S. cities use the commission form of government. Tulsa, Oklahoma, and Portland, Oregon, are the largest cities run by commissions. Galveston, however, is one of the cities that has abandoned this structure.

Over 1,800 of the almost 3,000 county governments are run by boards or councils that are elected from geographic districts and without any executive. Committees of the county board manage personnel, finance, roads, parks, social services, and the like. Almost 400 counties elect an executive as well as a board, and thus follow the mayor-council model. Almost 800 hire a professional manager.

School districts, with very few exceptions, follow the council-manager model. Other special districts have boards, sometimes called **public corporations** or **authorities**, that are elected or appointed by elected officials. If the district is responsible for services such as water, sewerage, or mass transit, the board is likely to hire and then supervise a manager.

**TABLE 4.4** Major Forms of Municipal Government

Form of Government	1984	1988	1992	1996	1998	2002
Council-Manager	3,387 (48.5%)	3,232	2,760	2,441	2,356	2,290 (34.7%)
Mayor-Council	3,011 (43.1%)	2,943	3,319	3,635	3,686	3,686 (55.8%)
Commission	143 (2.0%)	146	154	168	173	176 (2.7%)
Town Meeting	337 (4.8%)	333	365	363	369	370 (5.6%)
Representative Town Meeting	63 (.9%)	65	70	79	82	81 (1.2%)
Total <sup>a</sup>	6,981	6,719	6,668	6,686	6,666	6,603 (100%)

<sup>a</sup>Totals for U.S. local governments represent only those municipalities with populations of 2,500 and greater. There are close to 30,000 local governments with populations under 2,500.

Source: Statistics from "Inside the Year Book: Cumulative Distributions of U.S. Municipalities," *The Municipal Year Books 1984-2002*, International City/County Management Association (ICMA), Washington, DC.