The news media devotes most of its attention (and, as a result, directs most of the public’s attention to) the national government, particularly the actions of the president. While that certainly is important in your life, most of your day-to-day experiences with government are with local and state governments. You bathed in water delivered to your home by your municipal government. You drove to school on state highways and city streets. You may attend a state university. You were stopped on the way home by a county sheriff or state trooper for speeding—all state and local government functions. Decisions were made, taxes were raised, programs funded by your local government. And at the same time, the federal government may have provided funds to assist in these activities or have coinciding laws or regulations affecting your local and state governmental services.

The relationships between the various governments in our country are dynamic. The multiple levels allow citizens a variety of access points where they can get their voices heard; however, it also makes finding the appropriate place to make an argument a complex process that sometimes reduces a citizen's ability to effectively lobby government. Recent events have strengthened the hand of state governments in the federal bargain and the Supreme Court seems to be on a trend toward limiting the powers of the national government and enhancing those of the states. Therefore, it is becoming even more important to understand the nature of state and local governments.

This chapter is designed to introduce you to the nature and institutions of state and local governments. The main topic headings of the chapter are:

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

In each section, there are certain facts and ideas that you should strive to understand. Many are in boldface type and appear in both the narrative and in the glossary at the end of the book. Other ideas, dates, facts, events, people, etc. are more difficult to pull out of the narrative. (Keep in mind that studying for objective-style tests [multiple choice, T/F] is different than studying for essay tests. See the Study Guide section on test taking for hints on study skills.)

In general, after you finish reading and studying this chapter, you should understand the following:
• the evolution of state, local, and tribal governments
• the development of state constitutions and the major institutions of state governments, including state election trends
• different types of local governments, the foundation of their authority, and special traits of the institutions
• nature of grassroots power and politics
• the relationships between Indian nations and the national and state governments
• the budgeting process for state and local governments

Chapter Outline and Key Points

In this section, you are provided with a basic outline of the chapter and key words/points you should know. Use this outline to develop a complete outline of the material. Write the definitions or further explanations for the terms. Use the space provided in this workbook or rewrite that material in your notebook. This will help you study and remember the material in preparation for your tests, assignments, and papers.

The Evolution of State and Local Governments

local government created by—

Baker v. Carr (1962)—

one-person, one-vote—

recent trends in federalism affecting state and local governments—

State Governments

primary responsibilities of state government—

State Constitutions

state constitution—

The Northwest Ordinance of 1787—

Progressive Movement—

state constitution changes—
Governors

governor—
package or general veto—
line-item veto—
methods of limiting gubernatorial power—
pardon—
commute—
parole—
extradite—

State Legislatures

citizen legislators—
one-person, one-vote rule—
Baker v. Carr (1962)—
legislative houses in the states—
Nebraska state house—
legislative terms in the states—
term limits—

State Courts

primary function of courts—
most legal disputes are matters of state or federal law?—
inclusion—
state court structure—
how are most state judges selected for the bench?—
Missouri Plan—

**Elections and Political Parties**

- elections—
- recent trends in state legislative seats won by Republicans & Democrats—
- Arnold Schwarzenegger—
- party identification downplayed—

**Direct Democracy**

- direct initiative—
- indirect initiative—
- direct or popular referendum—
- advisory referendum—
- recall election—

**Local Governments**

**Charters**

- Dillon's Rule—
- charter—
- special charter—
- general charter—
- classified charter—
- optional charter—
- home rule charter—

**Types of Local Government**

- counties—
towns—
municipalities—
special districts—

**Executives and Legislatures**
town meetings—
political machines—
mayor—
city council—
professional managers—
district-based election—
at-large election—
commission form of government—
public corporation (authority)—

**Grassroots Power and Politics**
nonpartisan elections—
importance of ties and influence—
ad hoc, issue-specific organizations—

**Relations with Indian Nations**
domestic dependent nation—
trust relationship—
compacts—
reservation land—
trust land—
Indian Self-Determination and Education Assistance Act of 1975—

**State and Local Finances**

local governments depend on state assistance—

federal funding for state governments declining—

state governments rely primarily on what taxes?—

local government rely primarily on what taxes?—

segregated funds—

progressive taxes—

regressive taxes—

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### Research Ideas and Possible Paper Topics

1) Find a copy of your state's constitution and another state constitution from outside of your geographic region (i.e., Midwesterners look for a Western state, Southerners look for a New England state, etc.) and compare them. Are they similar or different? Why and how?

2) Go to the Internet and find the homepages of several different cities around the country. Compare the information you find on their methods of government, priorities, and revenues.

3) Does your community have direct democracy (initiative, referendum, and recall)? If so, research its use in your community and the rules regarding its use. If not, find a community that has these powers and do the same.

4) Using the library or the Internet, find out information on at least three Indian tribes. At least one tribe must not run casinos. Make sure they are from several different regions of the country as well. Discuss the quality of life of these three tribes. What kinds of decisions can tribes make? What is tribal life like? How are they governed? Compare the similarities and differences you find.

5) Find out how your community deals with finances. From where does their money come and where does it go? Is their budget balanced? What constraints does the local government operate under? How easy or difficult is it to get this information?
Web sites

The Web site for Governing Magazine, a magazine on state and local government, contains a good index of state and local government links.

http://governing.com

This site titled “State and Local Government on the Web” was created by the Piper Group, a private consulting firm, and lists links to all 50 state governments, along with federal sources, multi-state sources, national organizations, and other entities involved in state and local government.

www.statelocalgov.net/index.cfm

The Internet Law Library has links to all 50 state constitutions; it also includes Indian treaties, compacts as well as territorial laws.

www.lawguru.com/ilawlib/17.htm

The Council of State Governments Web site has news stories pertaining to the states that is updated every weekday.

www.csg.org

National Council of State Legislators site offers analyses and information on intergovernmental relations.

www.ncsl.org/statefed/afipolicy.htm

NGA On-Line. The National Governors' Council is a nonpartisan organization that looks at solving state-focused problems and provides information on state innovations and practices. The Web site has stories and articles of interest to the states and provides links to similar issues and organizations.

www.nga.org/governors/1,1169,00.htm

The Pew Center on the States offers a wide variety of information on the states. You can identify any state and find information about current hot issues, recent reforms, political make-up (who's in the legislature and executive, etc.), links to that state's Web sites, as well as state data on crime, taxes, education, and other key issues. You also have the ability to compare states' approaches to issues and their relative situations. You can also search by issue: welfare reform, utility deregulation, health care, taxes, budgets, and education.

www.stateline.org/

The National Organization of Counties collects information on county governments such as county officials, courthouse addresses, county seats, cities in a county, and maintains a collection of demographic data on counties.

www.naco.org/counties/counties/index.cfm

The National City Government Resource Center serves as a collection of municipal-related URL's from throughout the U.S. in the following categories: General City Links,
Functional City Links, Regional City Links and Other City-Related Links. You can access sites on most cities in the U.S. on this page by using City Guide or CityNet. This is a personal Web site maintained by a university professor who is also a professional city manager.

http://www.geocities.com/CapitolHill/1389/

The U.S. Department of Homeland Security’s Office of Domestic Preparedness hosts a Web page giving state and local governments information on programs, grants and assistance in counter-terrorism activities.

http://www.ojp.usdoj.gov/odp/

### Practice Tests

#### MULTIPLE CHOICE

1) The requirement that state legislative districts have approximately the same number of people so that legislative representation would be equitable was established in *Baker v. Carr* (1962). This decision led to decreased control in state legislatures by
   a. rural areas.
   b. big city political machines.
   c. the federal government.
   d. the Democratic Party.

2) Which of the following enhanced the importance of state and local governments?
   a. A 2002 law that allows the federal government to turn over failing public schools to private businesses to manage.
   b. Increased federal government authority in domestic security.
   c. Reduced federal mandates during the Reagan administration.
   d. The prohibition on the ability of states to establish direct ties with other countries to spur economic growth.

3) The federal government has expanded its role in domestic security despite the fact that it has traditionally been the responsibility of
   a. the United States Army.
   b. state and local police and health agencies.
   c. the United Nations.
   d. the Federal Bureau of Investigation.

4) State governments have primary responsibility for
   a. education.
   b. economic development.
   c. public health.
   d. All of the above.

5) The first state constitutions provided for
a. limits on the authority of state governors, legislatures, and courts.
b. checks and balances.
c. strong executives.
d. All of the above.

6) Direct voter participation was advocated in the states by the
a. Populists.
b. Progressives.
c. Republican Party.
d. Whigs.

7) In 43 states, governors have the power to
a. propose budgets.
b. veto an entire bill.
c. line-item veto.
d. package veto.

8) The authors highlight the extensive and creative use of the line-item veto by Governor
a. George W. Bush (TX).
b. Gray Davis (CA).
c. Tommy Thompson (WI).
d. John Engler (MI).

9) In 1962, the Supreme Court decided the case Baker v. Carr, the result of which was (were) that
a. legislatures more accurately represented their states.
b. agendas became more relevant and policies more appropriate.
c. state legislatures became more professional.
d. All of the above.

10) State and federal courts are
a. separate.
b. all part of a single system.
c. share rules, procedures, and routes for appeal.
d. overlap in virtually every circumstance.

11) The principle that municipalities owe their origins and derive their powers from the states is called
a. federalism.
b. Dillon's Rule.
c. charter power.
d. the township rule.

12) One of the most important features of home rule is that a local government is authorized to
a. legislate on any issue.
b. legislate on any issue that does not conflict with existing state law.
c. legislate on any issue that does not conflict with existing federal law.
d. legislate on any issue that does not conflict with existing state or federal law.

13) Half of all cities in the United States have what type of municipal government?
   a. mayor and council
   b. council and professional manager
   c. commission
   d. town meeting

14) Under U.S. law and the Constitution, Indian tribes are
   a. given the same rights and responsibilities as states.
   b. ignored completely.
   c. treated as totally foreign nations.
   d. considered domestic dependent nations.

15) Local and state government budgets rely on _______ as sources of revenue.
   a. sales taxes
   b. property taxes
   c. income taxes and fees
   d. All of the above.

TRUE/FALSE

1) States recognize and authorize the creation of local governments.

2) The state government is the unit of government that licenses and regulates professions such as doctors, lawyers, barbers and dentists.

3) The intent of the authors of the original state constitutions was to empower state governments.

4) State constitutions are relatively easy to amend and amendments occur frequently to many state constitutions.

5) All governors have line-item and package veto powers.

6) Originally, most states had part-time, citizen legislatures.

7) All judges in state courts are selected by nonpartisan elections.

8) Every state is divided into subunits that are called “counties.”
9) The commission form of city government is the most widely used form in the United States today.

10) Local governments rely primarily on sales taxes for their revenues.

COMPARE AND CONTRAST

- nonpartisan and partisan elections
- the goals of the writers of the state constitutions vs. those of the national constitution
- compacts, reservation land, and trust land
- the powers of state governors and those of state legislatures
- state and federal courts and laws
- methods of judicial selection: elections (partisan and nonpartisan), chosen by legislature or governor, merit plans
- initiative, referendum, and recall
- county, municipality, and special district governments
- municipal governments: mayor-council, mayor-manager, commission, town meeting
- types of gubernatorial vetoes

ESSAY AND SHORT ANSWER QUESTIONS

1) Discuss the nature of state constitutions.

2) What was the Northwest Ordinance of 1787, and why was it important?

3) How are state courts structured?

4) Discuss charters. What kinds are there and what impact do they have on local governments?

5) Compare and contrast the various forms of municipal government and their effectiveness.

6) Which people and what groups tend to exercise power at the state, local, and community levels, and what kinds of power do they wield?
7) For what policy areas do states have primary responsibility, and how do these responsibilities relate to the constitutions they have adopted?

8) Discuss the legal status, treaty obligations, and relationships between the national government and Indian nations.

9) What are the roles, powers, and prerogatives of state governors?

10) The Constitution grants states the power to regulate elections. Discuss the various types of elections held including state level, judicial, local, and federal elections. What impact do states have on these processes? Have patterns of party competition changed over the years and, if so, how?

ANSWERS TO STUDY EXERCISES

MULTIPLE CHOICE ANSWERS

1) a p. 127
2) c p. 127
3) b p. 127
4) d p. 128
5) a p. 128
6) b p. 131
7) c p. 132
8) c p. 133
9) d p. 135
10) a p. 138
11) b p. 143
12) d p. 143
13) a p. 148
14) d p. 150
15) d p. 152

TRUE/FALSE ANSWERS

1) T p. 127
2) T p. 128
3) F p. 128
4) T p. 131
5) F p. 132
6) T p. 131
7) F p. 139
8) F p. 144
9) F p. 148
10) F p. 153
CHAPTER 5
CIVIL LIBERTIES

Chapter Goals and Learning Objectives

Civil liberties are the individual rights and freedoms listed in the Bill of Rights that the federal government cannot abridge. Civil liberties protect citizens from excesses of the government and from the tyranny of the majority. They place limits on the power of government to restrain or dictate how people may act. The civil liberties we possess, however, are not absolute nor are these liberties simple to explain and understand. They are interpreted and reinterpreted by the Supreme Court and common practice over time. The liberty interest guaranteed by the Bill of Rights originally were designed to protect citizens only from the national government. Subsequently, following the adoption of the Fourteenth Amendment and through the use of the doctrine of selective incorporation, the Supreme Court passed most of the Bill of Rights protections onto the states, thus protecting citizens from their state governments as well as the federal government. The Court tries to balance rights between competing interests. For example, the Court has generally ruled that your right to free speech ends when you incite a riot that would cause immediate physical harm to others. Here the Court balances an individual’s right with the rights of the public at large. Each liberty interest faces a similar balancing act in its interpretation. In this chapter, we explore what the government may and may not do and which interests are being balanced at a given time.

This chapter is designed to inform you about the individual rights and freedoms granted to you by the Bill of Rights. The main topic headings of the chapter are:

- The First Constitutional Amendments: The Bill of Rights
- First Amendment Guarantees: Freedom of Religion
- First Amendment Guarantees: Freedom of Speech, Press, and Assembly
- The Second Amendment
- The Right to Keep and Bear Arms
- The Rights of Criminal Defendants
- The Right to Privacy

In each section, there are certain facts and ideas that you should strive to understand. Many are in boldface type and appear in both the narrative and in the glossary at the end of the book. Other ideas, dates, facts, events, people, etc. are more difficult to pull out of the narrative. (Keep in mind that studying for objective-style tests [multiple choice, T/F] is different than studying for essay tests. See the Study Guide section on test taking for hints on study skills.)

In general, after you finish reading and studying this chapter, you should understand the following:

- the Bill of Rights and the reasons for its addition to the Constitution
• the application of some rights in the Bill of Rights to the states via the incorporation doctrine
• the meaning of the First Amendment's guarantee of freedom of religion in the establishment clause and free exercise clause
• the meaning of the First Amendment's guarantees of freedom of speech, press, and assembly
• the interpretation and controversy over the Second Amendment; the right to bear arms
• rights of the accused or criminal defendant's rights in the Fourth, Fifth, Sixth, and eighth Amendments and how the U.S. Supreme Court has expanded and contracted those rights
• the meaning of the right to privacy and how it has been interpreted by the Court

Chapter Outline and Key Points

In this section, you are provided with a basic outline of the chapter and key words/points you should know. Use this outline to develop a complete outline of the material. Write the definitions or further explanations for the terms. Use the space provided in this workbook or rewrite that material in your notebook. This will help you study and remember the material in preparation for your tests, assignments, and papers.

The First Constitutional Amendments: The Bill of Rights

civil liberties—
Bill of Rights—
George Mason, James Madison, and Anti-Federalists' concerns—
Ninth Amendment—

The Incorporation Doctrine: The Bill of Rights Made Applicable to the States

Barron v. Baltimore (1833)—
due process clause—
substantive due process—
incorporation doctrine—

Gitlow v. NewYork (1925)—
incorporation doctrine—

Near v. Minnesota (1931)—

Selective Incorporation and Fundamental Freedoms

selective incorporation—

Palko v. Connecticut (1937)—

fundamental rights—

First Amendment Guarantees: Freedom of Religion

Article VI “no religious test”—

First Amendment—

establishment clause—

wall of separation—

free exercise clause—

The Establishment Clause

Engel v. Vitale (1962)—

Lemon v. Kurtzman (1971)—

three-part Lemon test for establishment issues:

1)—

2)—

3)—

American Civil Liberties Union—

Equal Access Act of 1984—

Agostini v. Felton (1997)—

Zelman v. Simmons-Harris (2002)—
The Free Exercise Clause

free exercise clause—

*Employment Division, Dept. of Human Resources of Oregon v. Smith* (1990)—

Religious Freedom Restoration Act—

*Church of the Lukumi Babalu Aye v. Hialeah* (1993)—

**First Amendment Guarantees: Freedom of Speech, Press, and Assembly**

**Freedom of Speech and Press**

free exchange of ideas—

Supreme Court’s protection of thoughts, actions, and words—

**The Alien and Sedition Acts**

prior restraint—

Alien and Section Acts—

**Slavery, the Civil War, and Rights Curtailment**

*Ex parte McCardle* (1869)—

**World War I and Anti-Governmental Speech**

Espionage Act of 1917—

*Schenck v. U.S.* (1919)—

clear and present danger test—

*Brandenburg v. Ohio* (1969)—

direct incitement test—

USA Patriot Act of 2001—
Protected Speech and Publications

Prior Restraint


*Nebraska Press Association v. Stuart* (1976)—

Symbolic Speech

symbolic speech—

*Stomberg v. California* (1931)—


*Texas v. Johnson* (1989)—

Federal Flag Protection Act of 1989 and Supreme Court overturning a conviction based upon it—

Hate Speech, Unpopular Speech, and Speech Zones


free speech zones—


Unprotected Speech and Publications

Libel and Slander

libel—

slander—


actual malice—

Fighting Words

*Chaplinsky v. New Hampshire* (1942)—
Cohen v. California (1968)—

Obscenity

Roth v. U.S. (1957)—

Miller v. California (1973)—

Congress and Obscenity

NEA and Congress—

Communications Decency Act of 1996—

Reno v. ACLU (1997)—

Child Online Protection Act of 1998—

Ashcroft v. Free Speech Coalition (2002)—

Freedoms of Assembly and Petition

DeJonge v. Oregon (1937)—

The Second Amendment: The Right to Keep and Bear Arms

Second Amendment—

U.S. v. Miller (1939)—

Quilici v. Village of Morton (1983)—

Brady Bill—

National Rifle Association—

Million Mom March—

The Rights of Criminal Defendants

due process rights (also known as procedural guarantees, rights of defendants)—
The Fourth Amendment and Searches and Seizures

Fourth Amendment—
knock and announce—
reasonable suspicion—
warrant—
warrantless searches—
probable cause—
“open fields doctrine”—
thermal imager case—
automobile searches—
2002 border patrol officer case—

Drug Testing and DNA Sampling

Chandler v. Miller (1997)—
greater protection for public employees than private sector employees from drug screening—

The Fifth Amendment and Self-Incrimination

Fifth Amendment—
self-incrimination—
use of voluntary confessions—
Miranda v. Arizona (1966)—
Miranda rights—

The Fourth and Fifth Amendments and the Exclusionary Rule

Weeks v. U.S. (1914)—
exclusionary rule—
good faith exception—

inevitable discovery—

The Sixth Amendment and Right to Counsel

Sixth Amendment—

_Gideon v. Wainwright_ (1963)—

actual imprisonment standard—

The Sixth Amendment and Jury Trials

impartial jury—

exclusion of African Americans from jury (_Batson_)—

_Maryland v. Craig_ (1990)—

The Eighth Amendment and Cruel and Unusual Punishment

Eighth Amendment—

_Furman v. Georgia_ (1972)—

_Gregg v. Georgia_ (1976)—

_McKleskey v. Kemp_ (1987)—

_McKleskey v. Zant_ (1991)—

2002 mentally retarded convicts case (_Atkins v. Virginia_)—

Illinois moratorium on executions—

DNA testing and executions—

The Right to Privacy

Birth Control

_Griswold v. Connecticut_ (1965)—

“penumbras” of the Constitution—
Abortion

*Roe v. Wade* (1973)—

*Webster v. Reproductive Health Services* (1989)—

*Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)—

gag rule—

*Stenberg v. Carhart* (2000)—

Partial Birth Abortion Ban Act of 2003—

Homosexuality

*Lawrence v. Texas* (2003)—

The Right to Die

1997 Supreme Court case on physician-assisted suicide (*Vacco v. Quill*)—

U.S. Attorney General Ashcroft and Oregon assisted suicide law—

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Research Ideas and Possible Paper Topics

1) Find out if your campus has a “speech code.” (If it doesn't, find a nearby college or university with one.) Would this code stand up to a constitutional test? Why or why not? According to your understanding of the First Amendment, are speech codes constitutional? Do some research at the campus newspaper and see if there was any controversy surrounding the adoption of the speech code and discuss it in class.

2) Explore the current docket of the Supreme Court. What civil liberties issues are going to be or are being heard this term? How do you think they will be decided and why? Follow the process until the rulings are made and see if you are right.

3) Under Chief Justice Rehnquist, the Court has reduced many of the due process rights granted under the Warren and Burger Courts. Find examples of how these rights have changed and why. What has the role of public and political opinion been in these changes?
4) Call your local branch of the American Civil Liberties Union. Visit or ask for written information about their activities and issues. Find out what they do and why. Also check their Web site (see below) for information.

5) The 2003 Supreme Court decision in *Lawrence v. Texas* has far-reaching implications for gay rights in the United States. The *Lawrence* decision precipitated activity, for example, in the states and in national politics regarding same-sex marriages. What effects did the *Lawrence* decision have on that and other issues relating to gay rights and American politics?

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### Web sites

The [Legal Information Institute](http://www.law.cornell.edu/topics/first_amendment.html) of Cornell University has an excellent site that offers extensive information about civil liberties. There is a section focused on the First Amendment with definitions, historical background, Supreme Court decisions, and links to numerous First Amendment-related sites. There are also sites at LII for prisoners' rights, employment rights, and constitutional rights generally.

**American Civil Liberties Union (ACLU)** offers information on the entire Bill of Rights including racial profiling, women's rights, privacy issues, prisons, drugs, etc. Includes links to other sites dealing with the same issues.

[www.aclu.org](http://www.aclu.org)

The [U.S. Information Agency of the Department of State](http://usinfo.state.gov/products/pubs/constitution/amendment.htm) offers an annotated version of the full text of the Bill of Rights and other constitutional documents.

[http://usinfo.state.gov/products/pubs/constitution/amendment.htm](http://usinfo.state.gov/products/pubs/constitution/amendment.htm)

The [Cato Institute](http://www.cato.org/ccs/issues.html), a Libertarian think-tank, hosts a Constitution Studies page on its Web site, examining Amendments 1, 2, 4, 5, 9 and 10 as well as other constitutional issues.

[www.cato.org/ccs/issues.html](http://www.cato.org/ccs/issues.html)

**First Amendment Cyber-Tribune (FACT)** is a Web site hosted by the Casper Star-Tribune and is an extensive resource on the many liberty guarantees of the First Amendment. The site is continually updated and expanded.


**PBS** offers a Web page that presents the background and issues relating to *Texas v. Johnson* and *U.S. v. Eichman*, the flag-burning cases, freedom of expression cases.

[www.pbs.org/jefferson/enlight/flag.htm](http://www.pbs.org/jefferson/enlight/flag.htm)

**Freedom Forum** is an organization that studies and reports on First Amendment issues, particularly matters relating to freedom of the press.

[http://www.firstamendmentcenter.org](http://www.firstamendmentcenter.org)