



## **Les Notions de la Corpo**

Chers étudiants, ça y est, le semestre touche à sa fin. Mais pour bien profiter de l'été et éviter les rattrapages, la case des partiels semble inévitable !

Depuis maintenant 85 ans la Corpo Assas accompagne les étudiants dans tous les domaines de la vie universitaire, et pour la première fois cette année vous propose des fiches notions, ces fiches sont écrites par nos membres dans le but de favoriser l'entraide étudiants ainsi que de vous aider dans l'apprentissage de certaines notions clés d'une matière, sans reprendre le cours du professeur.

Effectivement, ces fiches sont là pour vous orienter, elles sont faites par des étudiants et ne sont en aucun cas un substitut à ce qui a été enseigné en TD ou en cours car elles ne se basent que sur les recherches et l'apprentissage personnelles de nos membres.

Si jamais il vous venait des questions, n'hésitez pas à nous envoyer un message sur la page Facebook Corpo Assas ou à contacter Elias Roussin ou Laurine Sertier.

**" Comment valider votre année ? Pour les L1 :**

Il faut tout d'abord rappeler que toutes vos notes se compensent. Pour valider de la manière la plus simple votre année, il vous faut valider votre bloc de matières fondamentales mais aussi votre bloc de matières complémentaires. Cependant, le calcul peut s'avérer plus complexe...

Chaque fin de semestre est marquée par des examens qui constituent l'épine dorsale de la validation de votre année. Bon nombre d'autres possibilités vous sont proposées pour engranger un maximum de points et limiter ainsi l'impact de vos partiels. Chacun de vos chargés de TD va vous attribuer une note sur 20 à l'issue du semestre. Vos TD de matières fondamentales comptent donc autant que l'examen écrit, lui aussi noté sur 20. Cet examen s'effectue en 3h et nécessite un exercice de rédaction. Sur un semestre, une matière fondamentale peut donc vous rapporter jusqu'à 40 points. Seuls 20 points sont nécessaires à la validation de la matière. Pour valider votre bloc de fondamentales, il vous faut donc obtenir 40 points en additionnant vos notes de TD et vos notes aux partiels. Si toutefois vous n'obtenez pas ces 40 points, vous repasserez en juillet

lors de la session de rattrapage, la ou les matières que vous n'auriez pas validée(s).

**Attention** : le passage par juillet annule votre note de TD obtenue dans la matière. Pour les L2 :

Le principe est similaire, à la différence qu'il y a plus de matières fondamentales et plus de matières complémentaires.

Conclusion simple : travailler toutes les matières un minimum en mettant l'accent sur les TD et les matières fondamentales (les plus gros coefficients) vous permettra de maximiser vos chances de valider votre année du premier coup et ainsi éviter l'écueil des rattrapages de juillet.

Si, au sein même des unités d'enseignement, les matières se compensent, les blocs peuvent aussi se compenser entre eux à la fin de l'année. Ainsi, si vous obtenez une moyenne générale sur l'année de 10/20, votre passage est assuré.

En cas d'échec lors des sessions de janvier et de juin, une seconde chance vous est offerte en juillet.

**Attention**, contrairement aux idées reçues, les rattrapages ne sont pas plus faciles, ils sont connus pour être notés plus sévèrement. Toutes les matières des blocs non validés où vous n'avez pas eu la moyenne sont à repasser. S'il s'agit d'une matière à TD, la note de TD est annulée (même si vous avez été défaillant), de sorte que la note obtenue en juillet compte double (8/20 revient à 16/40). Les points d'avance acquis lors de l'année (points au-dessus de la moyenne lors de la validation d'un bloc) sont valables après les rattrapages et permettent donc la compensation finale comme décrite précédemment.

A noter que le jury peut vous accorder quelques points pour l'obtention de votre année, notamment dans le cas d'un étudiant sérieux en TD... A bon entendeur !

Pour les L1, le passage en deuxième année peut aussi se faire en conditionnel, pour cela il vous faut valider les deux unités d'enseignement fondamental et une unité d'enseignement complémentaire tout en sachant que l'autre unité complémentaire sera à repasser en L2.

# LEGAL ENGLISH US

## Unit 1: The US Constitution and the Bill of Rights

- **The Constitution (C) of the USA is the oldest written constitution still in use**

→ It originally comprised seven articles but has since been augmented by 27 amendments.

→ first seven articles of the US C establish the federal government, the judiciary, interstate and federal-state relation

→ first ten amendments: the Bill of Rights → individual rights of citizens

- **Historical background**

→ England's first colony in North America was Virginia (commercial venture of Tabaco and slaves).

→ originally granted a charter in 1606 as a private company but was made a royal colony by 1624 (1620: concept of new England)

→ abolished and colonies emerged (diverse religion and economy)

→ keys to the success of England's colonies in North America was that they were not under the rigid control of the Crown or Parliament

→ following the Seven Year War (1754-63), the Parliament of Great Britain, to help defray war debts, imposed heavy taxes on its North American colonies.

→ early slogan of the American rev was "No Taxation without Representation"

→ 1773: imposit<sup>o</sup> of tax on imported tea → Tea Party → fighting had broken lead by Continental Army under GW.

- **The Declaration of Independence and the Articles of Confederation**

→ 4 July 1776: delegates from the 13 colonies signed the Declaration of Independence, primarily authored by Thomas Jefferson

→ Inspired by Thomas Paine's attack on monarchy and John Lock's theory of natural rights the document stated that King and Parliament had violated the colonists' constitutional rights.

→ 1781: colonies had ratified the Articles of Confederation

- **The Philadelphia Convention (1787)**

→ 55 delegates from every state except Rhode Island → the Virginia Plan (national government under a constitution, with a bicameral legislature, a strong executive, and an unelected judiciary)

→ The Great Compromise was reached. Article 1 of the US Constitution set up a bicameral legislature composed of the House of Representatives and the Senate. The

representation of each state in the House of Representatives is based on population, while each state is given equal representation with two senators sitting in the Senate.

→ Slave states sought to have slaves counted in the census calculations for representation in the House of Representatives

→ The Three-fifths Compromise (three-fifth of the slaves would be included in population totals for the purposes of calculating the number of representatives)

→ **Anti-Federalists demanded that a bill of rights, meant to protect the states and their citizens from federal interference, be added once the Constitution came into force.**

- **Federalism, Separation of Powers and Checks and Balances**

→ **The core principles of the US Constitution: federalism, separation of powers and checks and balances.**

→ **Designed to ensure that power would never rest wholly in one part of government and that each of the three branches could have oversight and influence on the other two.**

→ tyranny and despotism, which the Founding Fathers reviled, isn't possible under their new system of government.

→ **The Constitution created a federal republic and separated the power of the legislative branch or Congress, the executive headed by the President and the judiciary.**

## UNIT 2: Federalism

- Historical background

→ **US has a federal system, meaning that political power is distributed between a central authority (the “federal government”) and constituent units called states.**

→ the *United States* of America (formally founded in 1789)

→ The individual states, that later decided to unite, existed before the country itself.

→ The first colony, Virginia, was established in 1624, and enacted its Constitution in 1776.

→ **Colonies fought Great Britain because they no longer wanted to be ruled by the authoritarian, centralized British government.**

→ When they became independent, they rejected calls to replace the Crown with an authoritarian, centralized government of their own.

- The importance of federalism

→ **America’s federal system affords significant powers to the states.**

→ Significant health care policy decisions are left to the states, each state can decide for itself if it wants to use the death penalty, and each state may also choose whether to allow access to abortions.

→ **issues linked directly/indirectly to federalism: the heart of the Civil War (Could the federal government decide the future of slavery for the entire country, or should every state be able to make that decision for itself?)**

→ the question of “states’ rights” (fundamental conflict of the war) : whether slavery could continue in the United States.

→ the North’s victory in 1865 resulted in the abolition of slavery in the entire United States

- Facts

→ **similar debate regarding homosexual marriage rights**

→ The federal government refused to recognize those marriages until the Supreme Court compelled it to do so in 2013 with the *U.S. v. Windsor* decision and in the 2015 case *Obergefell v. Hodges*, the Supreme Court agreed with plaintiffs who challenged those states whose laws still prohibited same-sex marriage (The SC legalized same-sex marriage throughout the country, requiring all levels of government in all states to recognize homosexual marriage)

→ similar question arises today about marijuana (legal in some states, but still illegal in others and at the federal level).

- **Evolution of American federalism**

→ 10<sup>th</sup> amendment: “*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*”

→ powers of the federal government are the exception, and the Constitution explicitly defines them → Everything else belongs to the states or to the people.

→ The American Constitution gave more power to the federal government than the Articles of Confederation had originally done but the balance of powers still in favor of the states (autonomy).

→ the Fed gov has war, the army, foreign policy, printing money, adopting federal laws, and dealing with interstate commerce (domains that requires strong central power) and states have education, police, criminal law, etc...

→ SC favor the fed gov (ex: *McCulloch v. Maryland* → gov can create a national bank despite the opposition of the state of Maryland)

→ SC based decision on 2 clauses of the C (necessary and proper clause (art I, sct° 8) and Supremacy clause (fed law superior to state law (art VI)).

→ reinforcement of the role played by fed gov (20<sup>th</sup> century): Franklin Roosevelt’s New deal (1930’s (born of social security (1935))), Lyndon Johnson’s Great Society (1960’s (Medicare and Medicaid (1965))), Barack Obama’s care act (Obamacare (2010) → should federal gov be responsible for providing health coverage?)

→ Each state has an executive power (the governor), a legislature (bicameral in every state except Nebraska), and a court system, including a supreme court for every state (Texas and Oklahoma, have two supreme courts (one for criminal law and one for all other cases))

→ states can levy their own taxes, adopt their own budget, build their own education system, and create their own criminal laws → their own constitutions with their own protections of rights and liberties, of which the state court systems are generally the final arbiters.

- **States: Laboratories of Democracy and Markets of Laws**

→ Each state is free to shape its state law as it wishes (respecting a “republican form” of gov and not interfering with Congress’s enumerated powers).

→ Delaware is an apt ex of a “market of laws.” (no sales tax so attracts many retail shoppers from neighboring states where the sales tax ranges from 5.62% to 8.48%) and policy towards corporation (pro-business approach so have flocked there for years seeking to minimize their taxes and avoid regulations that would make business more costly and transparent elsewhere)

→ legal home of Apple, Coca-Cola, Google, etc...

→ Massachusetts is the leader in the arena of social reforms: 1<sup>st</sup> state to grant marriage licenses to same-sex couples (2004), to pass legislation providing affordable health insurance coverage to all its residents (2006)



→ **Abortion is an issue on which the states have disagreed and pursued competing policies.**

→ For almost half a century, a Supreme Court ruling (*Roe v. Wade*, from 1973) had guaranteed a right to an abortion in all states but with regulations (conservative states took this to the limit authorized by the court)

→ But in the summer of 2022, in *Dobbs v. Jackson Women's Health*, the Supreme Court overturned *Roe* and returned the decision fully to the states (led in some states to immediate bans on almost all abortions)

→ abortion decision highlights one of the downsides of the “laboratories of democracy” theory: federalism allows for differences, which also allows for inequality → people have different rights within the United States based on where they live (ex: some states criminalize conduct that is legal elsewhere)

- **Articles IV (interstate relations) and VI (the Supremacy clause)**

→ **main characteristics of American federalism**

→ **Article IV's Section 1 is known as the Full Faith and Credit Clause (make sure that all laws and policies of one state gov would be respected by all other states) → citizens cannot escape justice by moving from one state to another and fugitives would be sent back to the state they fled from.**

→ Section 2 is known as the Privileges and Immunities Clause (prohibit interstate discrimination) → when a citizen of one state visits another state, they will have the same rights (privileges) and the same legal protections (immunities) as any citizen of that state.

→ Section 3 says that only Congress can decide the addition of new states to the Union.

→ Section 4 makes it an obligation for the fed gov to guarantee to the states the existence of a republican form of gov

→ **article VI section 2 is the supremacy clause (hierarchy of norms: the Constitution is the “supreme law of the land” and is superior to all other laws) → No federal or state law can contradict the Constitution and federal law is superior to state law.**



## UNIT 3: Article I - Congress

- **Article I create and delineates the Federal Legislative Branch (most important branch).**

→ **The power to legislate is « vested in a Congress of the United States ».**

→ separation of powers: legislative belongs to Congress and cannot be delegated.

→ bicameral body: House of Representatives and Senate

→ **GREAT COMPROMISE: states enjoy equal representation in the Senate and proportional representation in the House of Representatives**

### 1) House of Representatives

→ members:

→ elected every 2 years by residents of the 50 US states.

→ must be at least 25 years old.

→ US citizens for at least 7 years

→ live in the state where they are seeking election.

→ The House is based on state population, Constitution establishes a census of the people which takes place every ten years.

→ States are divided into congressional districts which representative each.

→ The House of Representatives elects a leader: the Speaker of the House who belongs to the majority who takes place in debates and votes on legislation.

→ The HOR has the « sole power of impeachment ».

→ **IMPEACHMENT: procedure to remove high officials**

→ charges must be established by a formal hearing followed by a majority vote of over 50 %

→ HOR under oath files formal accusation and decide if the accused is guilty.

→ punishment: removal of the office if 2/3 Senate decides to convict ⇒ art.II sect.2 and 4 : « treason, bribery, high crimes and misdemeanors »

→ Three US Presidents have been impeached: Johnson, Clinton, and Trump but none were removed from the office.

## 2) The Senate

→ The fifty US states of the United States are represented in the Senate, by 2 senators each, because of equal representation.

→ senators elected for six-years terms.

→ election of 1/3 of the Senate every 2 years

→ 30 years old, US citizen for 9 years and resident of the state they represent.

→ Senate presided by the Vice-President of the US who does not vote.

→ replaced by the president pro tempore when absent.

→ the real leader of the Senate is the Majority Leader.

→ The Senate has the « sole power to try all impeachments » and make the final decision.

→ When President impeached, Vice-President replaced by the Chief Justice of the United States Supreme Court.

## 3) Elections

\* States are responsible for the organization of the elections and Congress has the authority to set standards: first Tuesday after first Monday of November is election day (1845).

## 4) Rules

→ A quorum (half the members being present) is necessary for either house to conduct official business.

→ Each house has the power to refuse elected members if it's considered not worthy of sitting and set respective rules of expulsion and punishment for disorderly conduct.

→ **FILIBUSTER**: refusing to stop speaking when one has the floor to obstruct the passage of a bill

→ time limit for HOR and no limit for Senate

→ cloture: 3/5 of the senators duly chosen and sworn (60/100) can invoke it under Senate.

→ Rule XXII to end the filibuster.

→ **SILENT FILIBUSTER**: when more than 40 senators support the idea of a filibuster, law not even debate and put aside to avoid filibuster because no cloture is possible.

→ **COMMITTEES**: (not in Constitution) scrutinize and approve proposed legislation before it is voted by the entire body. Decide which bill should go forward.

→ standing committees: HOR and Senate working on their own.

→ joint committees: HOR and Senate working together.

## 5) Compensation and privileges

→ Congress members paid by US treasury and enjoy immunity from arrest during session.

→ what they are saying when sitting cannot be held against them and they cannot hold another government office at the same time.

## 6) Legislative process, veto

→ Bills may start in either house except for revenue bills (money bills) which must originate from HOR to ensure that the « power of the purse » would be a prerogative of the legislative body closer to the people.

→ part of the compromise between large and small states with equal representation in Senate – larger states have greater influence.

→ The houses had to establish procedural rules:

- bill is introduced by a member of either house.
- goes to the appropriate house committee where's examined.
- debating and passed
- goes to the other chamber.
- must be approved in identical form.
- goes to the House of the President (the desk)

→ The President has 10 days to act:

→ approves the bill : comes a law

→ veto's it and send it back unsigned (+reasons) to the House where it was introduced. If both houses disagree with veto, they can override it with a 2/3 majority and bill becomes a law.

→ pocket veto: do nothing during 10 days. If the 2 houses are still sitting after this delay, it becomes a law without signature but if adjourns before the delay is over, the bill is dead.

## 7) Legislative powers

→ Powers of the Legislative branch:

→ enumerated powers.

- power to tax
- power to borrow money.
- power to regulate the economy.

⇒ *Bibbons v. Ogden* (1825) the Commerce Clause the most important source of federal power

- power to enact laws governing immigration and naturalization.
- power to coin money.
- power to establish Post Office
- power to declare war, to constitute tribunals inferior to the Supreme Court

→ implied powers:

- power « to make all laws which shall be necessary and proper »: Necessary and Proper Clause »/« elastic clause »
- powers that not specifically granted to Congress by the Constitution are reserved to the states (amendment 10) → *McCulloch v. Maryland* (1819)

## 8) Constitutional limits on Congress

→ Several limits on Congress and members of Congress:

- Congress cannot suspend the writ of Habeas Corpus (except invasion/rebellion)
- Congress cannot issue bills of attainder that will go against the system of separation of powers.
- ex post facto laws are forbidden.

- **SECTION TEN: Prohibitions on States**

→ States cannot carry out foreign affairs, coin money, declare war, regulate exports...

→ Powers that not specifically granted to Congress by the Constitution are reserved to the states (amendment 10)

## **UNIT 4 - Article II, sections 2, 3 and 4: The Executive Power (the Powers of the President)**

- **Facts**

→ **Main reason of the American War of Independence is that Americans no longer wanted to be controlled by a king.**

→ **The first American constitution (1781) didn't even include an independent executive power because Americans thought that having a President too close to being a king.**

→ **The system was inefficient; Congress was not structured to carry out executive functions.**

→ independent executive was necessary (« necessary evil »)

→ **Drafters of Constitution of 1787 had to create an executive branch powerful enough but not so powerful to ensure democracy (President should not turn into a king).**

→ article II creates a presidency with limited powers that can be controlled by the other branches - Congress was supposed to be dominant.

→ **Today, the American President is often described as the most powerful person on the Earth (A. Schlesinger Jr 1973 « imperial » institution).**

→ article II hasn't changed so same powers today.

→ **Progressive reinforcement of the presidential institution can be explained by three factors :**

- **emergence of the US as the world's most dominant superpower and President is the representative of this country.**
- **inability of the other powers to defend their constitutional prerogatives.**
- **capacity of the presidency to use some parts of the Constitution 's lack of clarity and precision to its advantage.**

- **ARTICLE II, SECTION 2 (war powers, treaties, and nominations)**

- **WAR POWERS:**

→ **President is the « Commander in Chief of the Army and the Navy of the United States », founding fathers wanted a civilian rather than a member of the military.**

→ **Even though the President is the Commander in chief of the army, he cannot declare war.**

→ he can only decide how to conduct the war when declared by the legislature.

⇒ **5 of the wars were declared by the President and not Congress.**

→ **With the atomic bomb, war became a matter of minutes and waiting for Congress became impossible.**

→ **War Power Act 1973: President has to notify Congress within 48 hours of deciding a military action and limited any military action decided by the President to 60 or 90 days.**  
→ making the presidential war powers official.

• **TREATIES:**

→ **President should have the approval of 2/3 of Senate to conclude a Treaty.**

→ **But the presidency created tools « executive agreements » which are treaties.**  
→ not called « treaties » so do not need the approval of Senate and President can conclude with other nations.

⇒ **United States v. Belmont 1937: Supreme Court legitimize this practice.**

→ **President now almost the only responsible of foreign policy.**

→ **United States v. Curtiss-Wright 1936 : the ultimate interpreter of the Constitution is the President as the « sole organ » of the foreign policy of the US**

⇒ **decision in 2015 Zivotofsky v. Kerry: saying that he has the constitutional authority to recognize foreign states.**

• **NOMINATIONS:**

→ **Section II says that the President shall nominate Ambassadors, Ministers and Consuls, judges of the Supreme court and all other officers of the US with consent of Senate.**

→ all federal judges and Supreme Court justices are nominated by the President with simple majority of the Senate.

→ federal judges appointed for life: direct influence on some issues.

→ **The increasingly important role played by the federal judges makes the President's right to nominate justices more important.**

→ **Section 2 gives the President the right to pardon no matter what crime they committed (except if impeachment).**

→ power given as a check on judiciary

• **ARTICLE II, SECTION 3 (Take Care Clause, State of the Union, Recommendations)**

• **TAKE CARE CLAUSE:**

→ **President shall make sure that the laws are faithfully executed: take care clause**

→ **reminder that President of US is the leader of the executive branch and must make sure that the laws are properly executed.**

• **STATE OF THE UNION:**

→Section 3 focuses on the rôle of President in the legislative process because of the checks and balances system: each branch is responsible for its own powers but must be able to control the other branches.

→President shall give Congress information on the state of the Union: presidential speech every year on the state of the Union – the State of the Union Address

→ 20th century: opportunity for the President to propose his own agenda to Congress.

→ most of the laws are proposed by the US President, even federal budget.

⇒ Clinton Rossiter « Chief legislator »

#### • RECOMMENDATION CLAUSE:

→President can impose his own agenda because of the « recommendation clause » which allows President to recommend to Congress any measure that he finds « necessary and expedient. »

→President can also use his veto to influence the legislative process which forces Congress to get 2/3 of each House to make a law.

→ 90 % of the vetoes led to the bill not to become a law.

→Section 3 also give to the President the right to convene Congress in exceptional circumstances and to receive Ambassadors and other public ministers.

#### • ARTICLE II, SECTION 4 (Impeachment)

→If the President or any member of the US government clearly violates the law, then Congress can remove them. Three US President have been impeached but acquitted every time and never removed from the office.

#### • INHERENT POWERS:

→Presidential powers not explicitly written in the Constitution:

- the bully pulpit: President has the unique capacity to communicate directly with the American people.

- unilateral powers: administrative tools to shape public policy without going through Congress (executive order, executive agreements...)

- executive privilege: President has the right to keep some information's secret.

→ recognized 1974 United States v. Nixon

#### • CHECKS AND BALANCES:

→US President still constrained by the system of checks and balances but can also control them :

- PR can control Congress through his veto power but Congress can override it (2/3)

- PR can control Judiciary by nominating federal judges but courts can review the constitutionality of presidential decisions



## Unit 5 : Article II: The Election of the President

- Article II, Section 1 of the U.S Constitution

→ **A candidate for the Presidency must be at least 35 years old, a natural-born citizen (not naturalized), and have been a resident of the United States for at least fourteen years.**

→ The Pres is elected for a four-year term, and, following the ratification of the 22nd Amendment in 1951, cannot serve more than two terms. This Amendment was passed after Franklin Roosevelt was elected to four consecutive terms from 1933-1945 (when he died in office)

→ Presidential elections are held in even years (ex: 2016, 2020, 2024) on the first Tuesday following the first Monday of November. The President is not elected directly by the population, but by the Electoral College, due to an indirect electoral system that reflects the federal structure of the United States.

### A) The electoral college:

At the 1787 Philadelphia convention there was two competing viewpoints on how best to elect the president

- Those who wanted the President to be elected by Congress.
- Those who wanted the President to be directly elected by the people.

Some Founders were uncomfortable with the popular legitimacy conferred upon a leader by direct elections and did not want the President to be able to use it to increase his powers. They also worried that the American people would elect someone they didn't know enough about because of the slowness of information.

→ To compile the Electoral College, each state is allocated a number of electors equal to its number of members of Congress (senators + representatives).

Ex: Wyoming, which has one representative (and two senators, like all states), has three electoral votes in the Electoral College. California, which will have 52 representatives in the 2024 election, will have 54 electoral votes.

Article II, Section 1 of the Constitution à State legislatures can appoint electors however they wish, with the caveat that federal office holders, such as senators or representatives, cannot be electors.

→ System that predominates today à Most states put the names of the presidential candidates on the ballot directly, rather than the names of the electors who would choose the President. Instead of electors running for office, parties would put forward slates of electors, and states would appoint the slate of the candidate who won the popular vote.

→ This shift towards a more partisan system has been upheld by the Supreme Court:

Ex: In *Ray v. Blair* (1952), the court ruled that parties could require their elector candidates to pledge to support their party nominee for President.

→ However, this still left a problem of faithless electors – electors who pledge to support their party’s presidential nominee but break their pledge and vote for another person.

Chiafalo v. Washington (2020), the Supreme Court unanimously ruled that states can sanction and replace faithless electors. 33 states and Washington, D.C. now have laws to this effect.

→ The Electoral College currently comprises 538 electors. 270 electoral votes are therefore needed to be elected President and Vice President

- Original text of the constitution: the winner of the Electoral College vote becomes President, and the second-place candidate becomes Vice President.

- In 1804, the 12th Amendment modified the electoral procedure so that electors vote for the President and Vice President in separate votes. Presidential and Vice-Presidential candidates run together as a “ticket”.

## **B) The primaries:**

Before the general election, primary elections are held to select each party’s presidential and vice-presidential nominees. Unlike the general election, the organization of primary elections is not outlined in the Constitution. Therefore, the parties have developed their own procedures, which are liable to change from election to election. Nevertheless, a general system has developed that is similar to both parties.

- Most of American history: the parties’ presidential nominees were chosen by party congressmen and/or leaders.

- In 1971, this commission recommended that the selection of delegates to the National Convention be open to all party members, so that delegates could no longer be chosen in secret by party leaders.

Like the Electoral College, the primaries are therefore an indirect electoral system. During the primaries, voters select delegates who vote for the party’s presidential nominee at the National Convention. The process involves a series of staggered elections in which voters in each state vote for their preferred presidential nominee for their chosen party.

→ Each state organizes and runs its own primary election, and we can distinguish between three main types:

- Closed primaries: only registered party members are allowed to vote in their party’s primary.

- Semi-closed primaries: registered party members can only vote in their party’s primary, but independent voters can choose to vote in whichever primary they choose.

- Open primaries: any voter can vote in any primary they choose, but they can only vote in one.

- Caucuses: Voters meet to discuss the candidates before electing delegates to county conventions à criticized for being less accessible and democratic than primaries, but defenders say they allow for a more informed decision

- The final step in the process is the National Convention, where all the delegates gather and vote for their party's presidential nominee. Each party has its own convention.
- If no candidate receives a majority of delegate votes on the first ballot, a brokered convention occurs.
- Each party also allows some elected officials and/or important party figures to vote at the National Convention. These delegates are often referred to as superdelegates.

### C) Campaign finance:

5.7 billion dollars was spent on campaigning in the 2020 United States presidential election. The remarkable amount of money spent in American elections is largely due to a series of Supreme Court decisions that have progressively struck down limits on campaign finance as contrary to the First Amendment's protection of freedom of expression.

Recognizing the potential for new mass media to significantly increase the impact of money on election campaigns, Congress placed various limits on campaign donations and spending in the early 1970s.

- Buckley v. Valeo Supreme Court decision, 1976: The current unrestricted financing of election campaigns began to take form with this decision the court ruled that limits on campaign expenditures are unconstitutional because they reduce free expression. Limits on campaign contributions, on the other hand, were found to be constitutional because the state has a compelling interest in "the prevention of corruption or the appearance of corruption."

This has subsequently allowed wealthy individuals, such as Michael Bloomberg and, to a lesser extent, Donald Trump, to run well-funded campaigns with limited public contributions.

However the limits on campaign contributions upheld by the court in Buckley v. Valeo indirectly restricted campaign expenditures by most candidates.

However, these limits were greatly weakened by a pair of court cases in 2010: Citizens United v. FEC in the Supreme Court, and Speechnow.org v. FEC in the Court of Appeals for the D.C. Circuit

- Citizens United v. FEC: the court found that limits on independent expenditures in political campaigns (expenditures by third parties unaffiliated with candidates) are an unconstitutional violation of freedom of expression. à means that corporations, labor unions, non-profits, and other organizations can now spend unlimited funds on political campaigns.
- Speechnow.org v. FEC: the court ruled that the government cannot limit the size of contributions to groups that only make independent expenditures. à means that that while there are limits on the size of donations to candidates, there are no limits on the size of donations to independent groups that can campaign for or against candidates.
- Has led to the creation of Independent Expenditure Committees, commonly known as super PACs, which are organizations that can raise unlimited money to campaign for or against candidates, so long as there is no official coordination with the candidates' campaigns. Wealthy Americans can now spend unlimited funds on political campaigns by donating to super PACs.

→ The Citizens United decision has also led to the widespread use of “dark money” in American political campaigns. While official campaigns and super PACs are required by law to disclose their donors, this is not true of some types of nonprofit organizations like the National Rifle Association for example.

Public financing is available to presidential candidates in both the primary and general election stage. If candidates take public financing, they must agree to spending limits and a prohibition on use of their own personal funds on their campaign. However, since Barack Obama became the first candidate to decline public financing in the 2008 Democratic primaries and general election, the vast majority of serious candidates have eschewed public funding in favor of private contributions

## Unit 6. Article III: The Federal Judiciary

*“A great man once said the true symbol of the United States is not the bald eagle, it's the pendulum, and when the pendulum swings too far in one direction, it will go back.”*

- The Federal Court System Section 1 Article III

→ **To answer the need for federal judicial power, Article III established the Judicial Branch of the United States Government, beginning with Section 1.**

→ Judges would be able to interpret and apply the laws of this newly founded nation and resolve legal disputes between parties from different states.

→ **Section 1: identifies ‘one supreme Court’ = the United States Supreme Court (USSC)**

→ The Executive branch of government would nominate for review potential federal judges, BUT Congress elects and thus appoints these nominees to federal judge posts.

→ the independence of all federal judges was protected and once appointed, these judges would be able to keep their positions ‘during good behavior’ for a ‘life’ tenure or until they chose to retire = Judges could not simply be dismissed (only removable from office through impeachment for criminal acts) + their salaries could not be reduced

⇒ These protections are in support of the ‘balance of powers,’ = ∅ the President, ∅ Congress could put political pressure on acting judicial officers

- Historic note

→ **Before the American Revolutionary War, each of the ‘thirteen British colonies’ had courts under the judicial authority of their ‘governors’ (=individuals who were appointed by the British Government to oversee colonial activities and their revenues)**

→ **When these thirteen colonies collectively declared their independence: beginning of the drafting of a national Constitution + all but two of the new states drafted their own state constitutions with provisions to maintain and reorganize or expand their existing court systems.**

→ a few of these new state legal structures designed their judicial branches with an independence from their state executive (leadership) as well as their legislative (lawmaking) branches.

→ **the Federal Court System began by working mainly on two levels trials in the lower federal courts and appeals heard by the USSC. BUT with territorial expansion, population growth and an increasing body of federal legislation, Congress found it necessary to set up more courts = intermediate level for appeal courts was created so that the USSC would take only the ‘most important cases’ (= US constitutional questions for final review and decision).**

- US District Courts

→ **94 federal trial court = federal courts of ‘first-instance’/ ‘original jurisdiction’ who hears civil cases (federal or diversity issues) and may hear criminal cases (defendants accused of violating federal criminal law).**

→ **Article III, Section 2, guarantees the right to a trial by jury for all federal crimes (or amendments VI and VII to ensure US Constitutional protections).**

- **US Circuit Courts of Appeals**

→ **divided into 13 sections (made up of clusters of entire states along with portions of other states), 11/13 are numerically called circuit courts (1st Circuit Court, 2nd Circuit Court...), 1 is called the D.C. Circuit Court and 1 the Federal Circuit Court.**

→ **Appeals from all the 94 district courts within these 13 circuit courts are heard by the corresponding federal court of appeals for that circuit.**

⇒ **appeals are possible when a losing or dissatisfied party after a trial (the **appellant**) goes against the **appellee** (or **respondent**) claiming that an **error of law** was made while the case was heard in a lower court.**

⇒ **A jury's (or judge's) **findings of facts** is rarely contested (unless the law remains in question)**

→ **for criminal questions if a criminal defendant is found ‘not guilty’ at trial, no appeal can be made against his or her **acquittal**.**

- **US Supreme Court**

→ **possesses immense power to check and balance the Federal Legislative Branch, the Executive Branch and state laws which they interpret as violations of the US Constitution.**

→ **The USSC is not given any direction for what cases they should hear.**

→ **The SC nine justices are appointed for a life tenure (Article II, Section 2)**

→ **Chief Justice John Roberts presides over the Court.**

→ **The justices themselves choose nearly all cases taken by the USSC → They have discretionary appellate jurisdiction to accept or refuse a party's petition for a writ of certiorari = petitions come from parties who lost cases in Federal courts of appeals or in the highest state courts.**

→ **A party who petitions is referred to as the ‘petitioner’ as they asked to have their case reviewed. A ‘respondent’ refers to the party being sued or tried and is also known as the ‘appellee.’**

⇒ **The rule of four: USSC will ‘grant cert’ if four justices agree to hear the case.**

⇒ **about 10,000 petitions filed annually, fewer than 100 per term (yearly sessions) have been accepted.**

→ **When the justices have heard **oral arguments** and deliberated, the majority **opinion**, constitutes the USSC’s reasoning behind a decision on a case = it then serves as a **precedent** that must be followed by all lower courts within the jurisdiction of the US, (federal laws and laws within the states).**

- **The limited jurisdiction of federal courts: Section 2 Article III**

→ defines the jurisdiction (judicial power) of the federal courts → clear limitations, leaving states to maintain relevant controls around certain topics within their jurisdictions.

→ More than 100,000,000 cases are filed every year in US state trial courts, while roughly only 400,000 cases are filed in federal trial courts.

→ A federal court's / federal courts' limited jurisdiction means that they can only hear judicial conflicts, known as 'cases and controversies', which, from the start, are supposed to exclude advisory opinions (ex: political questions).

→ the federal judiciary was only given jurisdiction in 'controversies' that might not, or could not, be handled appropriately by the courts that were part of a state's legal system.

→ To be heard in federal court, a case must fall under one of two broad categories of subject- matter jurisdiction: (1) federal questions (lawsuits in which plaintiffs are able to base their claims on federal law) and (2) diversity of citizenship.

→ federal issues are not recognized to deal with 'anticipated' matters = must come from a circumstance that has happened or is happening at the time a case is heard

→ cases are brought from an initial complaint brought before the courts for a harm that has been caused → concept of the 'well- pleaded complaint rule' = legal concept establishing that it could (or should) eventually be heard in front of a federal court (bringing in new jurisdiction possibilities).

- **Diversity of citizenship cases**

→ fed jurisdictions may apply in civil disputes arising under state law when the opposing parties in litigation (litigants) are geographically 'diverse'.

→ the terminology of 'citizen' or 'citizens' has been established to be individuals, and entities.

⇒ focus surrounding questions of diversity has been when the litigants are 'citizens' who have residence in different jurisdictions (ex: A patient from New Jersey sues a New York doctor for malpractice after an operation is mishandled and results in a harm to the patient)

- **Section 2 Article III**

→ includes the distinction between original jurisdiction (cases heard at first instance, at trials) and appellate jurisdiction (when parties contest trial decisions).

- **Treason – Section 3 Article III**

→ treason: levying (making) war against the US, being loyal to an enemy of the US or providing support to an enemy.



→ details procedure and sentencing → highlights the severity of the crime of treason and that Congress would hear accusations of treason brought against an individual.

Ex: no individual may be found guilty of treason unless at least two people testify to the same act of treason in an open court or the accused says in open court they are guilty of treason,