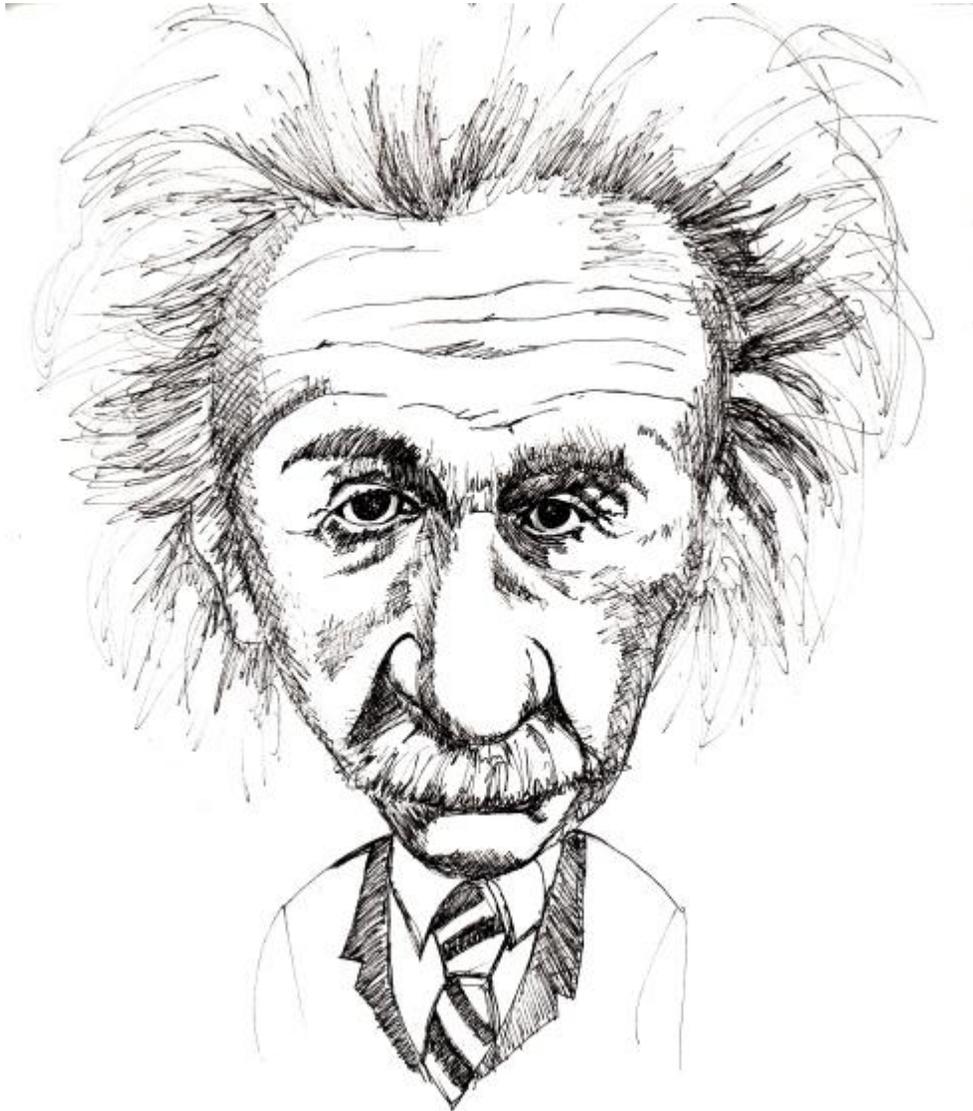


# **AP**

## **U.S. Government & Politics**

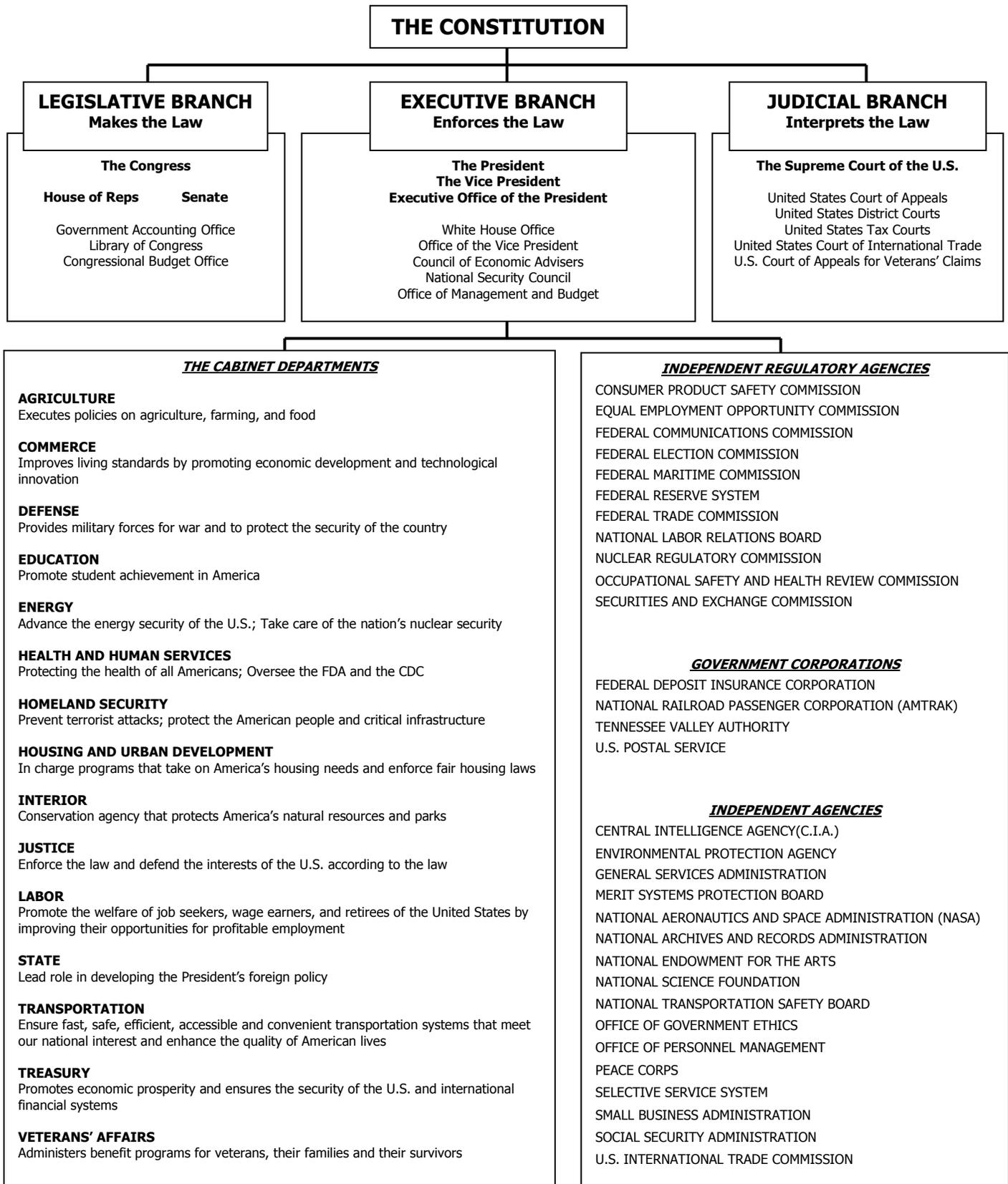
### **Quick Notes**



# **UNIT 1**

## **CONSTITUTIONAL UNDERPINNINGS**

# THE GOVERNMENT OF THE UNITED STATES



## CONSTITUTIONAL AMENDMENTS #1-#27

	<i>Date</i>	<i>#</i>	<i>Change or Addition to Constitution</i>
<b>Bill of Rights</b>	<b>1791</b>	<b>1</b>	Freedom of religion, speech, press, assembly, petition
		<b>2</b>	Right to bear arms would not be infringed (violated)
		<b>3</b>	No soldier in time of peace shall be quartered in a private citizen's home without the homeowner's consent
		<b>4</b>	People and their personal property cannot be searched without a warrant, issued by a judge
		<b>5</b>	Due process; No double jeopardy; No self-incrimination; Eminent domain
		<b>6</b>	Guarantee of a speedy trial; Guarantee of a public trial; The right to confront witnesses; The right to have legal counsel (an attorney); Impartial jury of your peers
		<b>7</b>	In a civil suit (lawsuit between two persons or groups), the defendant has the right to a trial by jury if the amount in question is over twenty dollars
		<b>8</b>	No excessive bail; No cruel and unusual punishment shall be used against a convicted criminal
		<b>9</b>	Powers that are not specifically granted to the national government are to be retained by the people
		<b>10</b>	Powers that are not specifically granted to the national government are to be retained by the states

<b>Early Post-Bill of Rights Amendments</b>	<b>1795</b>	<b>11</b>	A citizen from one state cannot sue a citizen from another state in federal court
	<b>1804</b>	<b>12</b>	Electors will vote for President and Vice President on separate ballots

<b>Amendments Arising from the Civil War</b>	<b>1865</b>	<b>13</b>	Slavery was abolished
	<b>1868</b>	<b>14</b>	Granted citizenship rights to former slaves; Incorporated the Bill of Rights amendments to apply to the States; Due process of the law; Equal protection of the law
	<b>1870</b>	<b>15</b>	African American males were guaranteed the right to vote

<b>20<sup>th</sup> Century Amendments</b>	<b>1913</b>	<b>16</b>	Congress shall have the power to lay and collect taxes on incomes
	<b>1913</b>	<b>17</b>	Senators elected directly by people of each state
	<b>1919</b>	<b>18</b>	The manufacture, transportation or sale of alcoholic beverages was prohibited
	<b>1920</b>	<b>19</b>	The right to vote cannot be denied because of a person's gender
	<b>1933</b>	<b>20</b>	Shortened the period of time between federal elections and the day that officials were sworn into office
	<b>1933</b>	<b>21</b>	Repealed a previously-ratified amendment; The Prohibition Era in America was over
	<b>1951</b>	<b>22</b>	President of the U.S. now limited to serving no more than two full terms in office
	<b>1961</b>	<b>23</b>	People who live in Washington, D.C. are allowed to vote for President and granted three electoral votes
	<b>1964</b>	<b>24</b>	People cannot be denied the right to vote in federal elections because they had not paid a tax on voting
	<b>1967</b>	<b>25</b>	Established procedures to follow in the case of presidential death and/or disability
	<b>1971</b>	<b>26</b>	18-year-olds granted right to vote
	<b>1992</b>	<b>27</b>	Congress may pass a law increasing members' salaries, but cannot collect it until after there has been a federal election

<b>Issues Addressed by the Amendments</b>					
<i>Issue</i>	<i>Amendments</i>				
<b>Civil Rights and Liberties</b>	<b>1-9</b>	<b>13</b>	<b>14</b>		
<b>Government Power &amp; Function</b>	<b>10</b>	<b>11</b>	<b>16</b>	<b>27</b>	
<b>Election Rules &amp; Office-Holding</b>	<b>12</b>	<b>17</b>	<b>20</b>	<b>22</b>	<b>25</b>
<b>Social Concerns</b>	<b>18</b>	<b>21</b>			
<b>Voting Rights</b>	<b>15</b>	<b>19</b>	<b>23</b>	<b>24</b>	<b>26</b>

## DEFINING DEMOCRACY

<b>WHAT IS THE MEANING OF DEMOCRACY?</b>	<ul style="list-style-type: none"> <li>• Formerly a term of derision - Positive meaning only in last 100 years</li> <li>• Distinguishing feature of democracy is that government derives authority from its citizens</li> </ul>
	<p><b>DIRECT DEMOCRACY</b></p> <ul style="list-style-type: none"> <li>• Practiced by Athens and other Greek cities</li> <li>• Modern day examples:                             <ul style="list-style-type: none"> <li>○ Direct primary - voters, rather than party leaders or other elected officials, select who may run for office</li> <li>○ Referendum - procedure for submitting to popular vote measures passed by the legislature or proposed amendment to a state constitution (can only be done at the state level)</li> <li>○ Initiative - procedure whereby a certain number of voters may, by petition, propose a law or constitutional amendment and have it submitted to the voters (can only be done at the state level)</li> <li>○ Recall - procedure for submitting to popular vote the removal of officials from office before the end of their term (can only be done at the state level)</li> </ul> </li> <li>• Founding Fathers feared direct democracy &gt;&gt; fear of mob rule or "mobocracy"</li> </ul>
	<p><b>REPRESENTATIVE DEMOCRACY</b></p> <ul style="list-style-type: none"> <li>• This is today's meaning of democracy</li> <li>• Representative democracy = republic</li> <li>• Republic                             <ul style="list-style-type: none"> <li>○ Same as indirect democracy</li> <li>○ Solves problems of direct democracy</li> <li>○ "Secures the advantages of direct democracy while curing its weaknesses"</li> </ul> </li> </ul>
	<p><b>CONSTITUTIONAL DEMOCRACY</b></p> <ul style="list-style-type: none"> <li>• Constitutional democracy refers to a government that enforces limits on those who govern and allows people to be heard through free and fair elections</li> <li>• Constitutionalism refers to how power is granted, dispersed, and limited</li> </ul>
<b>WHAT ARE THE CORE BELIEFS IN AMERICAN DEMOCRACY?</b>	<ul style="list-style-type: none"> <li>• <b>Individual liberty</b> <ul style="list-style-type: none"> <li>○ All individuals must have the opportunity to realize individual goals</li> <li>○ Every individual has rights; these rights are the source of all legitimate governmental authority and power                                     <ul style="list-style-type: none"> <li>▪ John Locke and the social contract theory</li> </ul> </li> <li>○ Freedom of expression</li> <li>○ The right to assemble and protest</li> <li>○ Opposite of statism (state supreme over individual)</li> </ul> </li> <li>• <b>Popular consent</b> <ul style="list-style-type: none"> <li>○ Governmental power from people</li> <li>○ A willingness to lose if majority removes support</li> </ul> </li> <li>• <b>Equality of opportunity</b> <ul style="list-style-type: none"> <li>○ Jefferson's Declaration of Independence statement ("All men are created equal")</li> <li>○ What kind of equality? Equality of opportunity? Role of FDR's 2<sup>nd</sup> Bill of Rights: economic security</li> </ul> </li> <li>• <b>Free and fair elections</b> <ul style="list-style-type: none"> <li>○ Held at frequent intervals; decided by majority rule</li> <li>○ All citizens should have equal voting power</li> <li>○ Existence of opposition political parties</li> </ul> </li> <li>• <b>Majority rule</b> <ul style="list-style-type: none"> <li>○ Those with the most votes assume power</li> <li>○ Majority still respects minority views</li> <li>○ Constitution reflects fear of tyranny by majority</li> </ul> </li> </ul>

## **THEORIES OF DEMOCRACY**

John Locke and other Enlightenment thinkers, such as Voltaire, Montesquieu, and Jean Jacques Rousseau, created theories of democracy that guided the Founders as they shaped the new government of the United States in the late 18<sup>th</sup> century.

Four theories of democracy have taken shape over time, each addressing the questions of who holds power and influence over public policy and decision making at the local, state, and national levels of government.

### **1) TRADITIONAL (MAJORITARIAN) THEORY**

*Government depends on the consent of the governed, which may be given directly or through representatives.*

- ◆ This theory promotes majority rule without violating minority rights, maintaining the willingness to compromise, and recognizing the worth and dignity of all people. This participation can occur either by direct or representative vote. For voting to be effective at any level, people need access to information, so they can make informed decisions.
- ◆ **RESULT** – Everyone has the right to participate in government. Everyone has a voice in the government.

### **2) PLURALIST THEORY**

*Interest groups compete in the political arena, with each promoting its policy preferences through organized efforts.*

- ◆ This theory holds that people with common interests form organized groups to promote their causes and influence the political agenda. It also asserts that a healthy competition exists in the development of the policy agenda and in the selection of the policy makers. Examples of special interest groups that represent the needs and agendas of the public include the National Rifle Association (NRA), National Organization of Women (NOW), the American Civil Liberties Union (ACLU), and the American Association of Retired Persons (AARP). Conflict among groups may result, requiring bargaining and compromise so that opposing views are represented in the eventual public policy.
- ◆ **RESULT** – No single group, industry, or government agency dominates politics.

### **3) ELITE THEORY**

*A small number of powerful elite (corporate leaders, top military officers, government leaders) form an upper class, which rules in its own self-interest.*

- ◆ This theory maintains that the majority of political power and influence is held by a small number of individuals, groups, and industries. People who support this theory argue that government policies disproportionately favor the elite over everyone else. For example, the oil industry and many others have been known to funnel millions of dollars into political campaigns for the candidates who support lenient pollution standards.
- ◆ **RESULT** – Democracy is not based on the will of the people, but that there is a relatively small, elite class that makes almost all the important decisions for the nation.

### **4) HYPERPLURALISM**

*Democracy is a system of many groups having so much strength that government is often "pulled" in numerous directions at the same time.*

- ◆ This theory suggests that people who share interests form groups to advance their causes. Groups are so strong that government is weakened. It is an extreme, exaggerated form of pluralism in which so many groups wield power and influence on the government. For example, when a group does not like a policy passed by Congress, it can take its cause to court. Several important court decisions have been reached in civil rights and environmental cases thanks to the efforts of strong special interest groups. The factionalism that Madison and Hamilton warned about in *Federalist Papers* #10 and #51 come into play in this scenario.
- ◆ **RESULT** – Total gridlock of government. There are too many groups vying for power but lacking the cohesion necessary to force compromise.

Although quite different, all four theories of democracy share a common idea: people, either as individuals or groups, can make a difference in government. Involvement is the key to effecting change and making sure the government responds to its citizens.

## APGoPo 1-5

# ROOTS OF THE AMERICAN CONSTITUTIONAL EXPERIMENT

During the Revolutionary War, the Continental Congress wrote the Articles of Confederation to provide unity for the separate states that loosely formed the new country. The Articles allowed state governments to retain their powers, and the newly formed central government had severe limitations.

Declaration of Independence >> Revolutionary War >> Articles of Confederation (1781-1789) and its weak central government

- *U.S. began as a confederation (a "firm league of friendship")*
  - Weak national government – true power is in the hands of the state legislatures
  - States retained sovereignty
  - States retained all powers not specifically granted to Congress
  - Unicameral Congress in which each state had one vote, regardless of population or size
  - No executive branch or judicial branch
- *Flaws*
  - Congress lacked the power to levy taxes; had to ask the states for revenue
  - Congress lacked the power to regulate or promote commerce among the states
  - No chief executive and no national judiciary
  - No national currency
  - Amendments required unanimous consent of all 13 states
  - Weak and inadequate central government

The weaknesses evident in the Articles of Confederation allowed the states to focus on their own powers. With no central government to control them, the states taxed each other, printed their own money, made treaties with foreign governments, and often refused to uphold the laws of the Confederation government. States quarreled over borders and tariffs, the country was badly in debt, and foreign countries saw the lack of a strong central government as weakness that could easily be exploited. Many leaders began to push for a government strong enough to settle disputes, to regulate commerce, and levy limited taxes. An important turning point occurred when farmers in western Massachusetts, in debt and unable to pay their taxes, rebelled against foreclosures, forcing judges out of court and freeing debtors from jails. Shays' Rebellion was eventually controlled, but it encouraged leaders to seek a stronger central government.

<b>Weaknesses of the Articles of Confederation</b>	<b>How the Constitution Remedied Weaknesses</b>
Articles created a "league of friendship" between the states	→ Constitution created a federal system of government
Congress could not tax; Only request contributions	→ National government was given the power to tax
Congress could not regulate interstate trade/foreign commerce	→ Congress given power to regulate commerce and foreign trade
No separate executive to enforce the acts of Congress	→ Article II created a separate executive department whose job is to enforce the laws of Congress
No national judiciary to handle state disputes	→ Article III created a national judiciary with a Supreme Court and lower courts as established by Congress
States and national gov't had the authority to coin money	→ Only the national government has the authority to coin money
Each state had one vote, regardless of size or population	→ States are represented based on population in the House of Representatives and equality in the Senate
Nine of 13 states required to pass legislation	→ Bills need a simple majority in both houses of Congress
Unanimous consent required to amend the Articles of Confederation	→ Two-thirds of Congress and three-fourths of the states are necessary to amend the Constitution

### CONSENSUS AT THE CONVENTION

The founders' common belief in a balanced government led them to construct a government in which no single interest dominated. They were concerned with the "excesses of democracy" demonstrated by Shays' Rebellion and they agreed with John Locke that government should protect property.

Benjamin Franklin - a strong proponent of liberty and equality - proposed that all white males have the right to vote, but most delegates believed that only property owners should have the franchise. In their view, ordinary people would either scheme to deprive property owners of their rights or become the "tools of demagogues." In the end the founders did not include specific voting requirements in the Constitution, leaving each state to decide voter qualifications for its citizens.

The founders had consensus on the following issues:

- All delegates supported republican government (representative republic); scrap Articles
- Common philosophy was a general framework of government favoring the protection of property
- States would determine voting qualifications; suffrage for property owners only
- Provisions designed to increase the economic powers of the central government
- Agreed on national government consisting of a supreme legislative, executive, and judiciary branch
- Agreed on the need for a strong executive and an independent judiciary
- Stronger national government, but not tyrannical

# CONFLICT AND COMPROMISE

A major issue at the convention was the balance of power between the large states and the small. The large states favored a strong national government that they believed they could dominate, and the small states wanted stronger state governments that could avert domination by the central government. These different interests are apparent in the first discussions of representation in Congress. Most favored a bicameral, or two-house, legislature, similar to the organization of most state legislatures since colonial times.

- **The Virginia Plan** (favored by more populous states)
    - Representation in each house based on population and/or monetary contributions to the national government by the state
  - **The New Jersey Plan** (favored by small states)
    - Representation in house would be equal among the states
  - **The Connecticut Compromise**
    - Called for one house in which each state would have an equal vote – to be selected by the state legislatures – (New Jersey Plan = Senate) and a second house in which representation would be based on population – only form of direct democracy in original Constitution for elected officials – (Virginia Plan = House of Reps) and in which all bills for raising or appropriating money would originate
- 

Another disagreement at the Convention was based on North/South differences, particularly regarding the counting of slaves for purposes of apportioning seats in the House. The South wanted to count slaves in order to increase its number of representatives, and the North resisted. The delegates finally agreed on the Three-fifths Compromise, which allowed southern states to count a slave as three-fifths of a person, allowing a balance of power between North and South.

- **North-South Compromises**
    - Issue of representation in the House of Representatives was resolved by the three-fifths compromise – counting of slaves (North gets taxes, South gets reps)
    - Slave Trade compromise - forbidding Congress the power to tax the export of goods from any State, and, for 20 years, the power to act on the slave trade
    - Southern delegates insisted on a two-thirds majority in the Senate before presidents could ratify treaties
- 

Another debate concerned the selection of the president. The initial decision was for the president to be selected by Congress, but the delegates were concerned about too much concentration of power in the legislature. On the other hand, they feared direct election by the people, especially since the House of Representatives were to be popularly elected. The Compromise was to leave the selection of the president to an electoral college - people selected by each state legislature to formally cast their ballots for the presidency.

- **Election of the President**
  - Life term vs. annual election >> compromise of a 4-year term
    - There was NO LIMIT on the number of terms that a president could serve (until the 22<sup>nd</sup> Amendment)
  - Method of election:
    - Some wanted election by Congress
    - Some wanted election by state legislatures
    - Some wanted direct election
    - Compromise: Electoral College system

## APGoPo 1-7

# FEDERALISTS VERSUS ANTI-FEDERALISTS

The delegates agreed that the Constitution would go into effect as soon as popularly elected conventions in nine states approved it. The debate over ratification - the formal approval of the Constitution by the states - raged throughout the country, with supporters of the new government calling themselves Federalists, and their opponents, the Anti-Federalists. The main debate was primarily about the scope of power of the central government.

- Federalists supported the greatly increased powers of the central government and believed that the Constitution adequately protected individual liberties.
- The Anti-Federalists believed that the proposed government would be oppressive and that more individual freedoms and rights should be explicitly guaranteed.

Pamphlets, newspapers, and speeches supported one view or the other.

FEDERALISTS	ANTI-FEDERALISTS
<ul style="list-style-type: none"><li>◆ Favored Constitution</li><li>◆ Led by Madison, Hamilton, and Jay</li><li>◆ Stressed weaknesses of Articles; strong central government needed to protect nation and solve domestic problems</li><li>◆ Checks and balances would protect against abuses</li><li>◆ Protection of property rights</li><li>◆ Constitution is a bill of rights with limitations and reserved powers for the states; state constitutions already had protections in bills of rights</li></ul>	<ul style="list-style-type: none"><li>◆ Opposed Constitution</li><li>◆ Led by Patrick Henry, George Mason, Samuel Adams</li><li>◆ Wanted strong state governments; feared a strong national government</li><li>◆ Created a strong executive similar to monarchy</li><li>◆ Wanted fewer limits on popular participation</li><li>◆ Wanted a bill of rights to protect individual liberty and citizens against government and individual</li></ul>

### THE FEDERALIST PAPERS

Ratification of the Constitution was defended by the *Federalist Papers*, written by Alexander Hamilton, James Madison, and John Jay. These documents contain some of the most basic and brilliantly argued philosophical underpinnings of American government. Two famous papers are *Federalist #10* and *Federalist #51*.

The *Federalist #10* addresses the question of how to guard against "factions", or groups of citizens, with interests contrary to the rights of others or the interests of the whole community and argued that separation of powers and federalism check the growth of tyranny: If "factious leaders...kindle a flame within their particular states..." leaders can check the spread of the "conflagration through the other states." Likewise, each branch of the government keeps the other two from gaining a concentration of power. Madison argues that a long-lived democracy must manage its interest groups, even though these factions can never be eliminated. Madison argued that a strong, big republic would be a better guard against those dangers than smaller republics—for instance, the individual states.

The *Federalist #51* explained why strong government is necessary: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." It also addressed means by which appropriate checks and balances can be created in government and also advocates a separation of powers within the national government. One of its most important ideas is the often quoted phrase, "Ambition must be made to counteract ambition."

### THE BILL OF RIGHTS

A compromise between Federalists and Anti-Federalists was reached with the agreement to add ten amendments that guaranteed individual freedoms and rights. With this agreement, the Constitution was finally ratified by all the states in 1789, and the Bill of Rights was added in 1791. Without these crucial additions, the Constitution would not have been ratified in several key states.

## APGoPo 1-8

# CHECKING POWER WITH POWER

The founding fathers wanted to create a constitution because James Madison was concerned that government would be controlled by majority or minority factions. He believed that factions would best be controlled by a large republic that operated under a constitution. The Constitution is the supreme and binding law that both grants power to the government and limits the power of the government.

The Madisonian plan also provided for a system of separation of powers, in which each of the three branches of government would be relatively independent so that no single branch could control the others. However, the powers were not completely separate: a system of checks and balances was established that reflected Madison's goal of setting power against power to constrain government actions.

<b>SEPARATION OF POWERS</b>	<ul style="list-style-type: none"> <li>Colonial experiences, e.g. excessive power in state legislatures &gt;&gt; need for strong executive</li> <li>To Madison, tyranny was government that controlled all 3 branches of government &gt;&gt; division of power among the legislative, executive, and judicial branches</li> <li>Allocation of constitutional authority to each of the three branches of the national government</li> <li>Each branch is politically independent of the others</li> <li>Danger of one branch combining forces with another branch &gt;&gt; checks and balances</li> </ul>
<b>CHECKS AND BALANCES</b>	<ul style="list-style-type: none"> <li>Background             <ul style="list-style-type: none"> <li>18<sup>th</sup> century view of government as something to be restrained, and modern view of government as something to be used for the common good.</li> <li>Fear of tyranny among Founders &gt;&gt; distrust of government &gt;&gt; checks and balances as means of intentionally building inefficiency in order to prevent government abuse of power.</li> </ul> </li> <li>Each branch has a role in the actions of others (veto, veto override, appointment and confirmation, treaty making and ratification, defense funding and Commander-In-Chief)</li> <li>Power struggles among three branches (especially Congress and the president)</li> <li>A majority of the voters can win control over only part of the government at one time. Staggering of terms within each branch &gt;&gt; a majority of voters can gain control over one part of government at one time, e.g. midterm congressional elections can serve as a check of the executive.</li> <li>Independent national courts are provided</li> <li>Political independence within each branch: no branch is dependent upon the other two for election (exception: judges are appointed by President) and continuance in office (life terms for judges eliminates presidential influence)</li> </ul>

Judicial review (the power of courts to hold executive and congressional policies unconstitutional) was not explicit in the Constitution, but was asserted by the Supreme Court under John Marshall in *Marbury v. Madison* (1803).

<b>JUDICIAL REVIEW</b>	<p><i>MARBURY V. MADISON</i> (1803)</p> <ul style="list-style-type: none"> <li>Framers did not specifically provide for judicial review</li> <li>Chief Justice John Marshall reasoned that judges should interpret the Constitution, not the President or Congress</li> <li>Judicial review became established due to this case</li> <li>A single person may challenge an existing law through judicial hearings</li> <li>Effects             <ul style="list-style-type: none"> <li>Litigation sometimes trumps legislation as a way to make public policy</li> <li><i>D.C. v. Heller</i> (2008) and <i>McDonald v. Chicago</i> (2010)</li> </ul> </li> </ul>
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## AMENDING THE CONSTITUTION

### **INFORMAL AMENDMENT PROCESS**

Although the United States Constitution has been formally changed only 27 times, there have been many changes in the way in which the American government operates. Thomas Jefferson believed each generation might need new Constitution. This hasn't occurred because of the changes that have allowed the Constitution to adapt to changing times (especially with Congress' use of implied powers). Most of those changes have come about through the informal amendment process and do not involve actually changing the wording of the Constitution. Informal changes in the Constitution may occur in the following ways:

- ◆ **Legislative Branch:** Congress has passed various acts that have altered or made clear the meaning of the Constitution. For example, under Article III Congress is given the authority to create lower courts, which they did through the Judiciary Act of 1789. Another example, the Commerce Clause allows Congress to regulate and promote interstate and international commerce. Over time, Congress has passed many laws that define the Commerce Clause, including regulations on forms of commerce that didn't exist in 1789, such as air routes and internet traffic.
- ◆ **Executive Branch:** Presidents may negotiate executive agreements with other countries, an authority not mentioned in the Constitution. The Constitution requires that foreign treaties be ratified by the Senate, but executive agreements do not. These agreements are used to circumvent the formal process, especially for routine matters that might simply slow the work of the Senate down. The use of executive agreements rather than treaties allows the president to bypass the Senate.
- ◆ **Judicial Branch:** Of all the branches, the judiciary has been the most influential in interpreting the Constitution. Article III defines the power of the judiciary very broadly, but does not specifically mention judicial review - the power of the courts to declare statutes unconstitutional and interpret the Constitution when disputes arise. That power was first established in *Madison v. Marbury* in 1803, when Chief Justice John Marshall claimed judicial review as a prerogative of the court in his famous majority opinion issued in the case.
- ◆ **Custom and usage:** Traditions that have been incorporated into the political system and which have lasted over time have changed the meaning of the Constitution. Senatorial courtesy in the Senate and the "no-third-term" tradition in the Presidency (until the Twenty-second Amendment made it part of the Constitution) are examples.

### **FORMAL AMENDMENT PROCESS**

One major weakness of the Articles of Confederation was the amendment process, which required unanimous approval for amendments to become effective. The framers of the Constitution anticipated the need to change the Constitution and provided a process to amend the Constitution (Article V) that required both state and national action (a form of federalism). Amending the Constitution requires proposal, a national function, and ratification, a state function. Amendments may be proposed in Congress by two methods and ratified in the states by two methods, creating four possible methods for formally amending the Constitution.

The Founders designed the amendment process to be difficult enough that Congress could not add so many amendments that the original document would end up with little meaning.

Formal amendments are written changes to the Constitution. They add to, change the wording of, or delete language from the Constitution. Only 27 formal amendments have been added to the Constitution since its adoption. The first ten amendments, the Bill of Rights, were added in 1791.

### **THE CONSTITUTION MAY BE FORMALLY AMENDED IN FOUR WAYS:**

<b>1</b>	Proposed by 2/3 vote of each house of Congress	→→→	Ratified by 3/4 of the state legislatures	<i>Used 26 times</i>
<b>2</b>	Proposed by 2/3 vote of each house of Congress	→→→	Ratified by special conventions in at least 3/4 of the states	<i>Used once 21<sup>st</sup> Amendment</i>
<b>3</b>	Proposed by a national constitutional convention called by Congress at the request of 2/3 of the state legislatures	→→→	Ratified by 3/4 of the state legislatures	<i>Never used</i>
<b>4</b>	Proposed by a national constitutional convention called by Congress at the request of 2/3 of the state legislatures	→→→	Ratified by special conventions in at least 3/4 of the states	<i>Never used</i>

# DEFINING FEDERALISM

Since the founding of the United States, society has changed, and federalism has evolved to meet the changes and challenges.

The earliest (1789-1932) interpretation of federalism is the concept of **dual federalism**, which views the national and state governments each remaining supreme within their own sphere of influence. This form of federalism is often referred to as "layer cake federalism," because each level of government is seen as separate from the other, with the national government having authority over national matters and state governments having authority over state matters. The early beliefs that states had the sole responsibility for educating their citizens and the national government had the sole responsibility for foreign policy issues are examples of dual federalism.

In the 1930s the interpretation of federalism shifted to that of the national and state governments sharing policymaking and cooperating in solving problems. **Cooperative federalism** or "marble cake federalism" as it came to be known, grew from the policies of the New Deal era and the need for the national government to increase government spending and public assistance programs during the Great Depression. The cooperation of the national and state governments to build the national interstate highway system is an example of cooperative federalism. The expansion of cooperative federalism during (President Lyndon B. Johnson's) Great Society required even greater cooperation from the states in return for federal grants.

## FEDERALISM

- Constitutional division of powers between the national government and the states; both get their powers from a Constitution, not each other
- Constitution (federally based) replaced the Articles (confederation based)
- Federal system is NOT as efficient as a unitary system (which can be good)
- Federalism issues are at the top of the political agenda along with the issue of devolution
- Since the New Deal in the 1930s to today, there has been a shift of power from the states to the national government; since 1994 elections there has been an attempt to return power to the states
- Federalism debates depend upon issues at stake and rival philosophies of national action vs. decentralization

## DUAL ("LAYER CAKE") FEDERALISM

- Prevalent through ~ 1937
- State governments and national government each remained supreme within their own spheres.
- Proper relationship between government and the states, portraying the states as powerful components of the federal government -- nearly equal to the national government.
- Powers and policy assignments of the layers of government were distinct, as in a layer cake.
- Suggested that the powers of the national government should be interpreted narrowly (Constitution gives the federal government limited powers and the rest should be to the states).

## COOPERATIVE ("MARBLE CAKE") FEDERALISM

- Prevalent since ~ 1937
- Mingling of responsibilities between the state and national government.
- Sharing powers & policy assignments, like a marble cake.
- Acknowledges a need for cooperation between state and federal governments.
- Suggests that powers of the national government should be interpreted broadly.

## DIFFERENCE BETWEEN DUAL AND COOPERATIVE

- A critical difference between dual and cooperative federalism is how they interpret the elastic clause and Tenth Amendment.
- These two sections of the Constitution define the relationship between state and national governments.
  - Article 1, Section 8, lists the enumerated powers of congress and ends with the elastic clause, which gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers" meaning the enumerated powers.
  - The Tenth Amendment reserves for states or the people powers not assigned to the national government or denied to the states by the Constitution.
- Dual federalism insists that powers not assigned to the national government are only for states and the people, and claims that the elastic clause is inflexible.
- Cooperative federalism restricts the Tenth Amendment and suggests supplements to the elastic clause.

## APGoPo 1-11

# ADVANTAGES AND DISADVANTAGES OF FEDERALISM

Few Americans believe that the federalist system should be abandoned, but the nature of federalism is still a controversy today, and Americans still disagree about the balance of power between national and state governments.

An individual's attitude about federalism depends partly on how much he or she values equality vs. freedom. Uniform laws passed by a unitary government tend to emphasize equal treatment of citizens. Diverse laws by their very nature allow a great deal of individual freedom.

### ADVANTAGES OF FEDERALISM

- *Federalism checks the growth of tyranny*
  - Inhibits formation of a single-interest majority
  - If tyranny occurred in a few states, federal government could prevent its spread to others (e.g. Shays' Rebellion).
  - National government has only those powers granted to it - all others belong to states through Amendment 10.
- *Federalism allows unity without uniformity*
  - No need for consensus on every divisive issue
  - More suitable for geographically large nation – allows for differences among states
  - More suitable for heterogeneous people – allows for differences
- *Federalism encourages experimentation*
  - States are "laboratories" for public policy experimentation (gambling in NV, med marijuana in CA)
  - States have been in the forefront on health care, voting, air pollution control programs
- *Federalism provides training for future national leaders*
  - Training ground for state and local politicians to gain experience
  - 20 of nation's 44 presidents served as governor of a state = executive office experience
- *Federalism keeps government closer to the people*
  - Provides numerous arenas for decision-making
  - Local and state politics involve citizens in large numbers (most Americans had a stronger allegiance to their state and state government)
  - Multiple points of access for citizens

### DISADVANTAGES OF FEDERALISM

- Promotes inequality because of states differ in the resources they can devote to providing services.
- Enables local interests to delay or even thwart majority support for a policy.
- Creates confusion because the different levels of government make it difficult for citizens to know what different governments are doing.

### ALTERNATIVES TO FEDERALISM

All political systems may be evaluated according to their geographic distribution of power. A unitary system is one that concentrates all policymaking powers in one central geographic place; a confederal system spreads the power among many sub-units (such as states), and has a weak central government. A federal system divides the power between the central government and the sub-units.

- Unitary system
  - Places all governmental power in one, central, geographic area
  - Not used because too reminiscent of British rule (strong, distant government that becomes tyrannical)
  - More efficient than a federal system (which can be a bad thing)
- Confederal system (Confederation)
  - Allows central government to make regulations for constituent governments
  - Not used because too reminiscent of Articles (tried and failed)

# **CONSTITUTIONAL STRUCTURE OF AMERICAN FEDERALISM**

## **POWERS OF THE NATIONAL GOVERNMENT**

Congress has some powers that are expressly outlined in the Constitution, and others, called implied powers, that are not stated outright but that Congress may assume in order to carry out its expressed powers. This does not give Congress free rein. The implied powers must be "reasonably" drawn from expressed powers.

Another type of power granted to the federal government is inherent powers. These are powers of the national government in foreign affairs that the Supreme Court has declared do not depend on constitutional grants but rather grow out of the very existence of the national government.

## **POWERS OF THE STATES**

Reserved powers are those held by the states alone. They are not listed (as delegated powers are), but they are guaranteed by the 10<sup>th</sup> Amendment as reserved to the states respectively, or to the people. Reserved powers include establishing local governments and regulating trade within a state. States also have police power - the authority to legislate for the protection of the health, morals, safety, and welfare of the people. However, because these powers are not listed in the Constitution, there is sometimes a question about whether certain powers are delegated to the national government or reserved for the states.

## **CONCURRENT POWERS**

All powers not granted in the Constitution to the national government are reserved for the states. States, however, may hold some of the same powers that the national government has, unless they have been given exclusively to the national government, either by provision of the Constitution or by judicial interpretation. Concurrent powers are those that both national and state governments hold. Examples are the concurrent powers of levying taxes and establishing and maintaining separate court systems. Even so, federalism limits state powers in that states cannot "unduly burden" their citizens with taxes. Neither can they interfere with a function of the national government, nor abridge the terms of a treaty of the United States government.

## **DIVISION OF POWERS IN AMERICA**

- ◆ **Expressed powers:** also known as enumerated powers, those specifically given to the national gov't (Articles I-V)
- ◆ **Implied powers:** although not expressed, powers that may be reasonably inferred from the Constitution (Article I, Section 8, Clause 18 - the Necessary and Proper Clause or Elastic Clause)
- ◆ **Inherent powers:** powers that exist for the national government because the government is sovereign
- ◆ **Concurrent powers:** powers that belong to both the national and state governments
- ◆ **Reserved powers:** powers belonging specifically to the state because they were neither delegated to the national government nor denied to the states (Article IV; Amendment 10)

<b>National Powers (Expressed, Implied, Inherent)</b>	<b>National and State Powers (Concurrent)</b>	<b>State Powers (Reserved)</b>
<ul style="list-style-type: none"> <li>◆ Regulate <b>interstate</b> commerce</li> <li>◆ Coin and print money</li> <li>◆ Declare war</li> <li>◆ Establish federal courts below the Supreme Court</li> <li>◆ Conduct foreign relations</li> <li>◆ Make all laws "necessary and proper"</li> <li>◆ Acquire and govern U.S. territories and admit new states</li> <li>◆ Regulate immigration and naturalization</li> </ul>	<ul style="list-style-type: none"> <li>◆ Levy taxes</li> <li>◆ Borrow money</li> <li>◆ Spend for general welfare</li> <li>◆ Establish courts</li> <li>◆ Enact and enforce laws</li> <li>◆ Charter banks</li> </ul>	<ul style="list-style-type: none"> <li>◆ Regulate <b>intrastate</b> commerce</li> <li>◆ Establish local governments</li> <li>◆ Establish public school systems</li> <li>◆ Administer elections</li> <li>◆ Protect the public's health, welfare and morals</li> <li>◆ Regulate corporations</li> <li>◆ Establish licensing requirements for certain regulated professions</li> </ul>

## **PROHIBITED POWERS**

Powers that are denied to the national government, state governments, or both (Article I, Sections 9 and 10; Amendments); For example, neither the national government nor state governments may pass an ex post facto law or a bill of attainder.

## APGoPo 1-13

# EXPANSION OF CENTRAL GOVERNMENT POWERS

These constitutional powers expand the power of the federal government.

### THE SUPREMACY CLAUSE

Article VI of the United States Constitution contains the Supremacy Clause, which helps to resolve conflicts between national and state laws. Because two levels of government are operating within the same territory and over the same people, conflicts are bound to arise. The Supremacy Clause states that the Constitution, its laws and treaties shall be the "supreme law of the land." The Supreme Court upheld this supremacy in *McCulloch v. Maryland* (1819).

- States may not override national policies; this restriction also applies to local units of government, since they are agents of the states (Constitution and national laws are the supreme laws)
- The supremacy clause in the Constitution states that federal law takes precedence over state law when the laws conflict

### THE POWER TO REGULATE INTERSTATE AND FOREIGN COMMERCE

The national government has the responsibility to regulate commerce between the U.S. and foreign nations, as well as trade between states (interstate commerce). The commerce clause (Article One, Section 8, Clause 3) gives Congress the power "to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes." The government regulates a wide range of human activity, including agriculture, transportation, finance, product safety, labor relations, and the workplace. Few aspects of today's economy affect commerce in only one state, so most activities are subject to the national government's constitutional authority.

The meaning of the commerce clause was at issue in the 1824 *Gibbons v. Ogden* case. At issue was the definition of commerce and whether the national government had exclusive power to regulate interstate commerce. The New York legislature gave Robert Livingston and Robert Fulton exclusive rights to operate steamboats in New York waters and Aaron Ogden the right to operate a ferry between New York and New Jersey. Thomas Gibbons had received a national government license to operate boats in interstate waters. Ogden sued Gibbons and won in the New York courts; Gibbons appealed to the Supreme Court. The Marshall court defined commerce as including all business dealings, and the power to regulate interstate commerce belongs exclusively to the national government. Today, the national government uses the commerce clause to justify the regulation of numerous areas of economic activity.

The Commerce clause also has been used to sustain legislation outside of commercial matters. In 1964 the Supreme Court upheld the 1964 Civil Rights Act forbidding discrimination based on race in public accommodations because "Congress's action in removing the disruptive effect which it found racial discrimination has on interstate travel is not invalidated because Congress was also legislating against what it considers to be moral wrongs."

Discrimination affects interstate commerce, so Congress constitutionally could legislate against discrimination. Again, many years later, Hamilton's loose interpretation of the Constitution insured that the principle of national supremacy prevailed over that of states' rights.

- The Power to Regulate Interstate and Foreign Commerce
  - Through the commerce clause, Congress can regulate many activities and sustain other legislation as well
    - *Gibbons v. Ogden* (1824)
    - Only National government (Congress) may regulate interstate commerce
    - Power is not shared with the states
- The federal government's role has been greatly expanded through the interpretation of this clause.
  - *Heart of Atlanta Motel v. U.S.* (1964) - Congress has a right to regulate individual businesses in the interest of promoting interstate travel.

### THE WAR POWER

The national government is responsible for protecting the nation from external attacks and for declaring war when necessary. Today, defense includes not only maintaining a standing army, navy, and air force, but also the ability to mobilize industry and scientific knowledge to back the efforts of the military.

- The War Power
  - The national government has the power to wage war
  - The president can send troops because he is commander-in-chief of the military

### THE POWER TO TAX AND SPEND

Even when Congress lacks the constitutional power to legislate (for example, education and agriculture), its power to appropriate money provides Congress with a great deal of control. When Congress finances an undertaking, it determines how the money will be spent. Congress may threaten to withhold funds if a project does not meet federal guidelines. In recent years Congress has refused to finance any program in which benefits are denied because of race, color, or national origin, and more recently, gender and physical handicap.

- The Power to Tax and Spend
  - By attaching conditions to its grants of money, Congress may regulate what it cannot directly control by law
    - While Congress cannot technically legislate on everything, it can spend funds on virtually anything.
    - States don't have to accept federal money, but if they do, they must follow federal guidelines (e.g. federal highway funds can be denied if a state's alcohol purchasing age is less than 21, federal education funds can be denied if states do not comply with No Child Left Behind Act) – Federal "strings" attached to funding are ways in which the federal government can get its way on things.
    - Recent example: Obamacare – Supreme Court ruled it was a tax and that gov't could require people to have healthcare

# THE NATIONAL COURTS AND FEDERALISM

### **MCCULLOCH V. MARYLAND (1819)**

The Supreme Court dealt with the issues of the necessary and proper clause and the supremacy clause when Maryland imposed a tax on the Baltimore branch of the Second National Bank of the United States. Chief cashier James McCulloch refused to pay the tax, Maryland state courts ruled in the state's favor, and the United States government appealed to the Supreme Court. Marshall ruled the Maryland law that established the tax unconstitutional with his famous statement: "The power to tax is the power to destroy." The power to destroy a federal agency would give the state supremacy over the federal government, so the states may not tax a federal agency. The court ruled that although no provision of the Constitution grants the national government the expressed power to create a national bank, the authority to do so can be implied by the necessary and proper clause (Article I, Section 8, Clause 18). This ruling established the implied powers of the national government and national supremacy, the basis used to strengthen the power of the national government.

- John Marshall established the doctrines of implied national power and national supremacy
- *McCulloch v. Maryland* was significant in providing support for nationalism
- Maryland attempted to tax a branch of the Bank of the U.S.:
  - It argued that taxing was one of its reserved powers.
  - In addition, it argued that the Bank was unconstitutional, anyway.
- The Court's decision (under Marshall):
  - Need for more flexible interpretation of the Constitution so that it would endure >> Bank was "necessary and proper" >> establishment of implied powers.
  - "Power to tax involves power to destroy" >> states clearly not free to destroy the national government >> establishment of national supremacy.

### **FEDERAL COURTS AND THE ROLE OF THE STATES**

- Actions by state and local officials can be challenged before a federal judge
- Preemption - federal laws take precedence over state and local laws (civil rights, water quality)
- Supreme Court has generally favored powers of federal government over the states

### **THE CONTINUING DEBATE BETWEEN CENTRALISTS VERSUS DECENTRALISTS**

- *The CENTRALIST (nationalist) position*
  - The Constitution is a supreme law established by the people; it was intended that the central government's powers be liberally defined.
  - The national government is a government of all the people, and each state speaks for only some of the people.
  - Constitution created by people ("We the people...") and not the states.
  - Elastic, commerce, and taxing/spending clauses give great power to national government.
  - Powers go to states only if they have been surrendered by national government.
  - When in doubt, matter should be resolved in favor of national government.
  - Implied loose interpretation of the Constitution.
  - Size of bureaucracy has remained relatively constant for last 40 years.
  - While state gov'ts may be closer to people, some of those state governments have violated people's basic rights (e.g. South during first 70 years of 20<sup>th</sup> century) – national government has been key protector of rights.
- *The DECENTRALIST (states' rights) position*
  - The national government is nothing more than an agent of the states, and every one of its powers should be narrowly defined.
  - Constitution carefully limits national authority to delegated powers.
  - The 10<sup>th</sup> Amendment prohibits the national government from using delegated powers to interfere with activities reserved for the states.
  - 10<sup>th</sup> Amendment gives broad powers to states.
  - When in doubt as to which holds a power, matter should be resolved in favor of states.
  - Implies strict interpretation of the Constitution.
  - National government has gotten too big and impersonal.
  - State governments are closer to the people.

### **THE "DEVOLUTION REVOLUTION"**

Although the trend toward national supremacy has continued throughout most of American history, a movement has begun in recent years to devolve more responsibilities back to the states. The movement began as a Republican initiative shortly after the 1994 elections, when the Republicans became the majority party in both houses of Congress. The new conservative leadership looked for ways to scale back the size and activities of the national government. A major focus was the welfare system, and as a result, the welfare to work legislation passed in 1996 has led to a major shift of responsibility for welfare programs from federal to state governments. The national government continues to give block grants to states, but overall federal funding for welfare programs has decreased dramatically. The federalist system is rooted in the Constitution, and governmental powers certainly will continue to be shared among national, state, and local levels.

- Shifting of some authority from national government back to the states
- Associated with Nixon, Reagan, and especially associated with 104<sup>th</sup> (1995-1997) and 105<sup>th</sup> (1997-1999) Republican Congress: "Devolution Revolution"
- 1980s (Reagan) started shifting the responsibilities and costs for many programs to state governments
- Example: use of block grants in Welfare Reform Bill of 1996 (Ended welfare as federal entitlement program and gave control to the States)
- Unfunded Mandates Reform Act of 1995 restricted future unfunded mandates
- Use of block grants to replace categorical grants

## FISCAL FEDERALISM

The national government's patterns of spending, taxation, and providing grants to influence state and local governments is known today as fiscal federalism. The national government uses fiscal policy to influence the states through granting or withholding money to pay for programs.

<b>FISCAL FEDERALISM – "THE CARROT"</b>	<ul style="list-style-type: none"> <li>• The national government's primary means of influencing state governments is giving money to states in the form of grants-in-aid (or grants).</li> <li>• Since World War II, states have come to rely heavily on federal money.</li> <li>• Likewise, the national government has also relied on the states to administer some federal policies &gt;&gt; fiscal federalism.</li> <li>• The nation's leaders originally designed them to help fund agriculture, land grant colleges, and farm-related education.</li> <li>• They grew to encompass many other types of funding such as public housing, urban development, and school lunch programs.</li> <li>• To use a common metaphor, the national government uses the need for fiscal assistance as both a carrot and a stick.</li> <li>• The carrot is the federal dollars needed by the state, which come in the form of grants-in-aid.             <ul style="list-style-type: none"> <li>◦ As citizens' needs expand, the states look to the national government to assist in meeting the financial aspects of fulfilling those needs.</li> </ul> </li> </ul>
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WHAT ARE FEDERAL GRANTS?	PURPOSE OF FEDERAL GRANTS
<ul style="list-style-type: none"> <li>• <i>Federal revenue given to state and local governments to establish minimum national standards in important areas (urban development, education, transportation, water quality)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>To equalize resources among the states (both rich and poor)</i></li> <li>• <i>To attack national problems, yet minimize the growth of federal agencies (reduces growth of federal bureaucracy &gt;&gt; federal government simply provides money to states and has states run the programs - <u>under federal guidelines</u>, of course)</i></li> </ul>

<b>TYPES OF FEDERAL GRANTS</b>	<ul style="list-style-type: none"> <li>• <b>CATEGORICAL GRANTS</b> <ul style="list-style-type: none"> <li>◦ Congress appropriates funds for specific purposes (e.g. roads, airports, housing, bilingual education)</li> <li>◦ States don't <u>have</u> to accept these, but if they do they must comply with federal standards &gt;&gt; weakens the power of state governors and legislators</li> </ul> </li> <li>• <b>BLOCK GRANTS</b> <ul style="list-style-type: none"> <li>◦ Granted to support a collection of general programs (e.g. transportation, urban development, education) &gt;&gt; more state leeway in spending of the money = few federal restrictions</li> <li>◦ Associate these with 104<sup>th</sup> and 105<sup>th</sup> <i>Republican</i> Congress and devolution of power back to states</li> </ul> </li> </ul>
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### THE POLITICS OF FEDERAL GRANTS

*Democrats have generally favored greater funding, but with more "strings" associated with categorical grants.*

- Categorical grants are appropriated by Congress for specific purposes - highway or airport building, welfare, or school lunches. These grants usually require the state to "match" (put up money) the federal grants, although the matching funds can vary widely. There are hundreds of categorical grant programs, but a few, including Medicaid and Aid to Families with Dependent Children (AFDC), account for almost 85% of total spending for categorical grants. State and local officials complain that these grants are often too narrow and cannot be adapted easily to local needs.

*Republicans have generally favored less funding, but with fewer "strings" associated with block grants.*

- Block grants consolidate several categorical grants into a single "block" for prescribed broad activities, such as social services, health services, or public education. This type of grant was promoted by Ronald Reagan, and during the early 1980s, Congress consolidated a number of categorical grants into block grants. Later Presidents have advocated that more consolidation occur, but Congress has been reluctant to do so. Block grants give Congress less control over how the money is used, and representatives cannot take credit for grants to their particular districts. State governors generally have supported block grants, because they give states wide control of how and where the money is spent.

## REGULATORY FEDERALISM

<p><b>REGULATORY FEDERALISM – "THE STICK"</b></p>	<ul style="list-style-type: none"> <li>• The stick comes in the form of regulation and compliance with federal mandates to receive the money or to continue to obtain grants-in-aid.             <ul style="list-style-type: none"> <li>○ Regulations such as minimum wage, speed limits, and handicap accessibility are examples of "sticks," or mandates, that states must comply with to receive the national funds.</li> </ul> </li> <li>• One way for Congress to pass mandates is to impose regulations and standards on state and local governments.</li> <li>• In the past, Congress has forced state governments to meet certain federal guidelines. This is known as regulatory federalism.</li> </ul>
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### FEDERAL MANDATES

A recent federal control on the activities of state governments is a mandate, a rule that tells states what they must do in order to comply with federal guidelines. Often the mandates are tied to federal grants, but sometimes the mandates have nothing to do with federal aid.

Most mandates apply to civil rights and environmental protection. State programs may not discriminate against specific groups of people, no matter who pays for them. Today, anti-discrimination rules apply to race, sex, age, ethnicity, and physical and mental disabilities. States must comply with federal laws and standards regarding the environment, as well.

Mandates have been criticized strongly by state and local governments. From their point of view, it is easy enough for Congress to pass mandates when the states must foot the bills (known as unfunded mandates). For example, the 1986 Handicapped Children's Protection Act provided federal regulations meant to assure equal access and opportunity for disabled children. Federal guidelines included requirements for public schools to build access ramps and elevators, provide special buses and personnel, and widen hallways, all with no federal money to help schools comply.

- Mandate: a federal order imposed upon states. Examples:
  - Americans with Disabilities Act (governors and mayors don't like because of costs to remodel)
  - Various environmental acts (e.g. Clean Air Act, Clean Water Act).
  - Individuals with Disabilities Education Act.
- Purposes: to meet a goal of the federal government.
- Impact upon the states:
  - Financial burdens, especially with **UNFUNDED MANDATES** (e.g. ADA has imposed large costs upon states as they make "reasonable accommodations" for the disabled).
  - State complaints about federal heavy-handedness (e.g. if a state does not devise a plan and pay for the requirements of the Clean Air Act of 1990, the federal government will impose its own plan upon the state).
  - State complaints about federal blackmail (e.g. if a state doesn't comply with the Clean Air Act standards, federal funds can be withheld in other programs).
  - State complaints that federal government is altering the nature of federalism with its excessive power.

### NEW TECHNIQUES OF FEDERAL CONTROL (fall under the category of unfunded mandates)

- DIRECT ORDERS
  - State or local government must act under the threat of criminal or civil penalties
  - Pits the legal authority of Congress against the constitutional rights of the states.
- CROSS-CUTTING REQUIREMENTS
  - Conditions on one grant extended to all federally-supported activities
  - Requirements imposed on virtually all grants to further various national social and economic policies.
  - The federal government will force states to follow the law through the Civil Rights Act and if the state doesn't, it risks losing money on all federally funded projects
- CROSS-OVER SANCTIONS
  - Permit the use of federal dollars in one program to influence state and local policy in another
  - Failure to comply with the requirements of one program can result in reduced or terminated funds from another program that was separately authorized and separately begun.
- PARTIAL PREEMPTION
  - Federal law establishes basic policies but requires states to administer them usually without any federal funds
  - Total preemption: national governments power under the supremacy and commerce clauses to preempt conflicting state and local activity.
  - Some programs give states an option not to participate, but if a state chooses not to do so, the national government steps in and runs the program.

# KEY LEGISLATION

## **Judiciary Act, 1789:**

- Set the foundation for our judicial system; established federal court system.
- Permitted mandamus cases to come to the Supreme Court in its original jurisdiction. This part of the act was famously struck down by John Marshall in *Marbury v. Madison*.

## **Civil Rights Act of 1964:**

Title II bans discrimination in public places on basis of race, color, national origin, or religion.

Title VII:

- Prohibits employment discrimination on basis of all of the above plus sex. Allows employers to give racial preferences in hiring.
- Executive Order #11246 required federal contractors to adopt affirmative action programs.
- Allowed class action suits.
- Enforced by EEOC.

## **Age Discrimination in Employment Act, 1967:**

Bans age discrimination for jobs unless age is related to job performance.

## **Air Quality Act, 1967 and various Clean Air Acts, 1960s-1990s:**

- Established emissions standards for cars and factories.
- Established minimum standards for states.

## **Title IX of Education Act of 1972:**

- No institution of higher learning that receives federal funding may discriminate on the basis of gender.
- Schools forced to increase funding of women's programs, especially sports programs.

## **Gun-Free School Zones Act, 1980:**

- Using the commerce clause, Congress ordered schools free from guns.
- Declared unconstitutional in *U.S. v. Lopez* as an unreasonable application of commerce clause.
- Example of Conservative court unwilling to infringe upon state discretionary power.

## **Americans with Disabilities Act, 1990:**

- Bans job discrimination against disabled if "reasonable accommodation" can be made.
- Requires access to facilities for handicapped.

## **Brady Act, 1993:**

- Gun control act. Limited types of guns that could be purchased.
- The provision of this law in which Congress required local law enforcement officers to do background checks on gun buyers was declared unconstitutional in 1997 - it interfered with the discretionary powers of the states.

## **Unfunded Mandates Reform Act of 1995:**

- Requires CBO to analyze impact of unfunded mandates on states.
- Requires separate congressional vote on bills that impose unfunded mandates.

## **Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act of 1996):**

- Ended federal entitlement status of welfare.
- In its place, federal government gave block grants to states to administer welfare.
- "Strings" attached to these grants:
  1. Recipients must work within 2 years.
  2. Recipients cannot receive benefits for more than 5 years.

## **No Child Left Behind Act, 2001:**

- States must adopt education accountability standards.
- States must annually test students.
- Sanctions against schools that fail to meet adequate yearly progress.

## **USA Patriot Act, 2001:**

Strengthens the federal government's power to conduct surveillance, perform searches and detain individuals in order to combat terrorism.

# KEY COURT CASES – UNIT 1

**Marbury v. Madison (1803)** - Established judicial review; "midnight judges;" John Marshall; power of the Supreme Court.

**McCulloch v. Maryland (1819)** - Established national supremacy; established implied powers; use of elastic clause; state unable to tax federal institution; John Marshall; "the power to tax involves the power to destroy."

**Gibbons v. Ogden (1824)** - Congress can legislate and regulate all matters of interstate commerce as long as there is some commercial connection with another state.

**Heart of Atlanta Motel v. U.S. (1964)** - Congress has a right to regulate individual businesses in the interest of promoting interstate travel.

**U.S. v. Lopez (1995)** - Gun Free School Zones Act exceeded Congress' authority to regulate interstate commerce.