

Unit One: **Foundations of American Democracy**

Mrs. Erinakes' AP U.S. Government & Politics

Unit One Lesson #1

- Textbook pages 1-7
- Age of Enlightenment
- Enlightenment Thinkers
- Influence on Founding Fathers
- Colonial Background
- Mobocracy Bad = Republic is the solution
- Core beliefs in American Democracy
- 3 Theories of Democracy

The Age of Enlightenment

The **Age of Enlightenment** refers to a period in which reason was advocated as the primary basis of thought and authority. Logic and rationality were used to explain the ways in which the world worked as opposed to old traditions and superstitions.

The American Enlightenment occurred during the 18th century among thinkers in British North America and the early United States and was inspired by the ideas of the British and French Enlightenments. Based on the metaphor of bringing light to the Dark Age, the Age of the Enlightenment shifted allegiances away from absolute authority, whether religious or political, to more skeptical and optimistic attitudes about human nature, religion and politics.



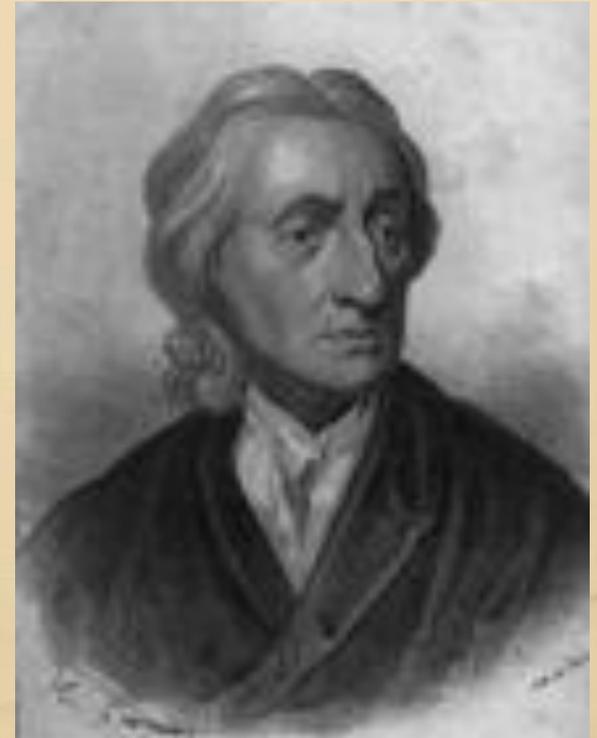
The Age of Enlightenment

In the American context, thinkers such as Thomas Paine, James Madison, Thomas Jefferson, John Adams and Benjamin Franklin invented and adopted revolutionary ideas about scientific rationality, religious toleration and experimental political organization—ideas that would have far-reaching effects on the development of the fledgling nation.

Free speech, individualism, and tolerance for other ways of life also became important ideas during this time. This period also coincided with the rise of nationalism and introduced great thinkers who later influenced developing democratic governments including the government of the United States.

Enlightenment Thinkers

John Locke was perhaps the foremost philosopher of the Enlightenment. He believed that a government was legitimate only if the people it ruled consented to its authority. He also believed the government should protect the natural rights of citizens and that all individuals should be equal under the law. These principles were influential in the development of many movements, including the American Revolution. American documents such as the Declaration of Independence demonstrate the influence of Locke's ideas.



Enlightenment Thinkers

Thomas Hobbes was perhaps the first person to develop social contract theory. He believed strongly that people naturally give up certain rights to a government in order to maintain social order. Hobbes' idea of social order was based on the thought that without government structure, people would fight each other and would never know peace. Hobbes states that "The natural state of men, before they were joined in society, was a war, and not simply, but a war of all against all." Hobbes believed that the only cure for such a war was the creation of a strong government with almost absolute power. He believed that people would freely give up their right to govern themselves in order to know peace.



Enlightenment Thinkers

Jean-Jacques Rousseau was a Swiss philosopher, writer, and Enlightenment thinker. Much of his philosophy influenced the French Revolution. Rousseau argued that each person is born free and cannot be made a subject of a government without his consent. If a person does not consent, he is not part of the social compact. Finally Rousseau reasoned that majority rule would bind the rest of citizens.



Enlightenment Thinkers

Charles-Louis Montesquieu was a French political thinker known for his ideas regarding the government's separation of powers. In his work entitled *The Spirit of the Laws*, Montesquieu argued against one large government structure controlling every aspect of law and instead proposed the idea of separate branches.



Influence on Founding Fathers

Citizens began to demand more of a voice in their government, as well as an end to the absolutist regimes that controlled their countries and limited the rights of citizens. Enlightenment ideas also inspired independence movements, as colonies sought to create their own country and remove their European colonizers. Governments also began to adopt ideas like natural rights, popular sovereignty, the election of government officials, and the protection of civil liberties.



United States

- British colonies are upset with their lack of representation in Parliament, oppressive taxes
- British colonies rebel against their mother country, resulting in the American Revolution
- Connection to Enlightenment:
 - Declaration of Independence - Right to life, liberty, pursuit of happiness; all men are created equal; right to overthrow government
 - Constitution - Based on popular sovereignty, created a new 3 branch government, used checks and balances
 - Bill of Rights - Protected the rights of free speech, religion, press, assembly

The Colonial Background

1607: Jamestown, Virginia = **representative assembly**

1620: Separatists & the **Mayflower Compact** (Plymouth, MA)

More and more colonies were Living under the ***rule of law***, based on the consent of the people.

More colonies, more government ; **limited government**



British Restrictions & Colonial Grievances



King George III (1738-1820) was king of Great Britain and Ireland from 1760 until his death on January 29, 1820. Under George III, the British Parliament attempted to tax the American colonies. Ultimately, exasperated at repeated attempts at taxation, the colonies proclaimed their independence on July 4, 1776.

- ✓ 1st Continental Congress
- ✓ 2nd Continental Congress
- ✓ Declaration of Independence

Key Words in Important Vocabulary

Look at the 5 words below and try to write a **BRIEF** definition for each **using as few words as possible**, **BUT** your few words should contain the **KEY words** that differentiate one from the other:

1. Democracy (16)
2. Direct Democracy (16)
3. Representative Democracy (19)
4. Constitutional Democracy (20)
5. Limited Government (20)

WHY WAS DEMOCRACY SEEN AS A BAD THING TO THE FOUNDING FATHERS?

Democracy has only enjoyed a positive meaning in the last 100 years

Distinguishing feature of democracy is that government **derives authority from its citizens**

DIRECT DEMOCRACY

- Rule by the people and
 - 1) individual participation on legislation or policy or
 - 2) making decisions without delegating authority to elected representatives
- Only example in original Constitution is the election of House of Representatives

Modern day examples:

- **Election of United States Senators** – 17th Amendment
- **Direct primary** - voters, rather than party leaders or other elected officials, select who may run for office
- **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)
- **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)
- **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)

Founding Fathers feared direct democracy >> fear of MOB RULE or MOBOCRACY

HOW WAS A REPRESENTATIVE DEMOCRACY (REPUBLIC) BETTER?

REPRESENTATIVE DEMOCRACY

- Authority is delegated to elected representatives to make decision on behalf of citizens
- People vote >> Representatives >> make law (public policy)
- This is today's meaning of democracy
- Representative democracy = republic
- Republic
 - Same as indirect democracy
 - Solves problems of direct democracy
 - “Secures the advantages of direct democracy while curing its weaknesses”

A Constitutional democracy is based on 3 relationships: federalism, separation of powers, and checks & balances. [3 minute video](#)

WHAT ARE THE CORE BELIEFS IN AMERICAN DEMOCRACY?

1. Individual liberty

- All individuals must have the opportunity to realize individual goals
- Every individual has rights; these rights are the source of all legitimate governmental authority and power
 - John Locke and the social contract theory
- Freedom of expression; Right to assemble and protest

2. Popular consent

- Governmental power from people
- A willingness to lose if majority removes support

3. Equality of opportunity

- Jefferson's Declaration of Independence statement (“All men are created equal”)
- What kind of equality? Equality of opportunity?

Theories of Democracy:

1. *Participatory Democracy*

- Relies on the direct participation of many, if not most, people in society. People vote directly for laws and other matters that affect them instead of voting for people to represent them.

2. *Pluralist Democracy*

- Citizens and groups (interest groups) organize to try and influence / control political decision-making.
- Pluralist theorists believe that the ideas and viewpoints in the U.S. are so varied and scattered that no single view can control the shaping of policy

3. *Elite Democracy*

- Elected representatives act as trustees and make the decisions for the people who elect them.
- Recognizes an inequity in the decision of power and believes the elites (people with resources and influence) dominate

ALL ARE THEORETICAL – NONE ARE CORRECT / INCORRECT
WHICH DO YOU BELIEVE MOST INFLUENCED OUR GOVERNMENT?

Unit 1 : Lesson #2: Government Power and Individual Rights

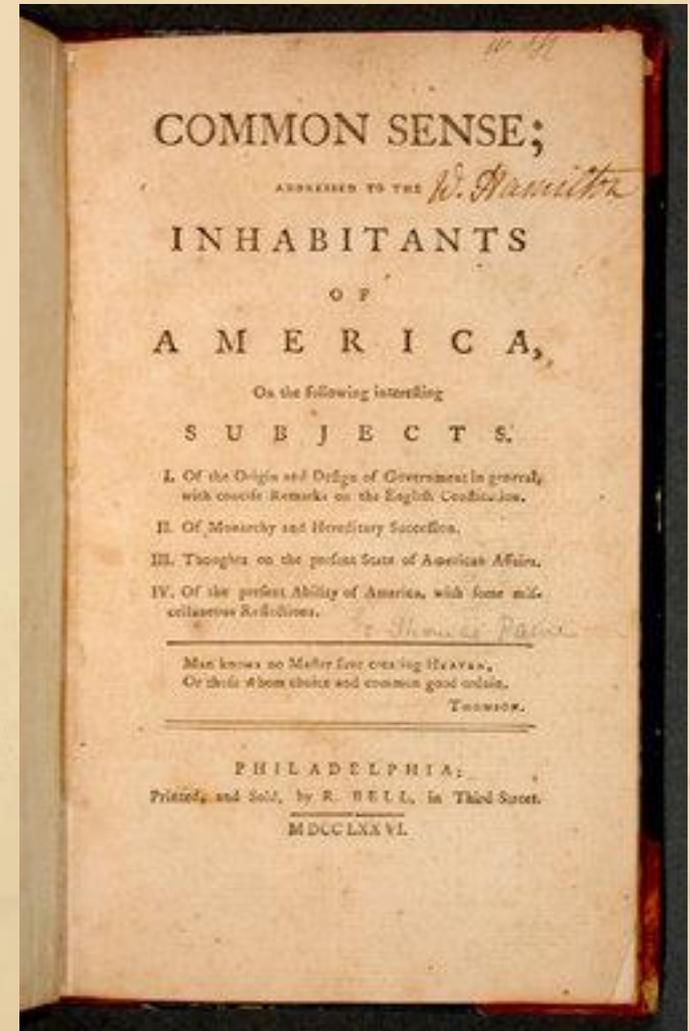
- Background to Declaration of Independence
- Thomas Jefferson / John Locke
- Purpose
- Parts
- Significance
- Reminders

The Declaration of Independence



Background

- January 1776 – Common Sense is distributed throughout colonies
- June 7, 1776 - Richard Henry Lee offers a resolution to Congress that “these United Colonies...ought to be free and independent”
- June 11, 1776 – Congress appoints a committee to write a Declaration of Independence: Benjamin Franklin, Roger Sherman, John Adams, Robert Livingston and Thomas Jefferson

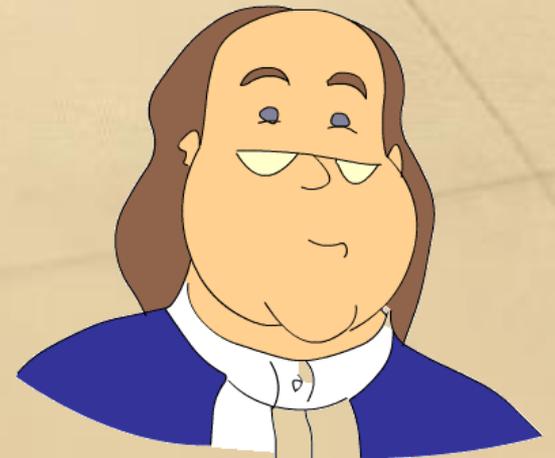


More Background

- July 4, 1776 – Declaration of Independence is adopted by Congress, John Hancock was the first person to sign it
- August 2, 1776 – Declaration of Independence is signed by 50 present members of Congress, Franklin remarks “We must all hang together or we shall hang separately.”

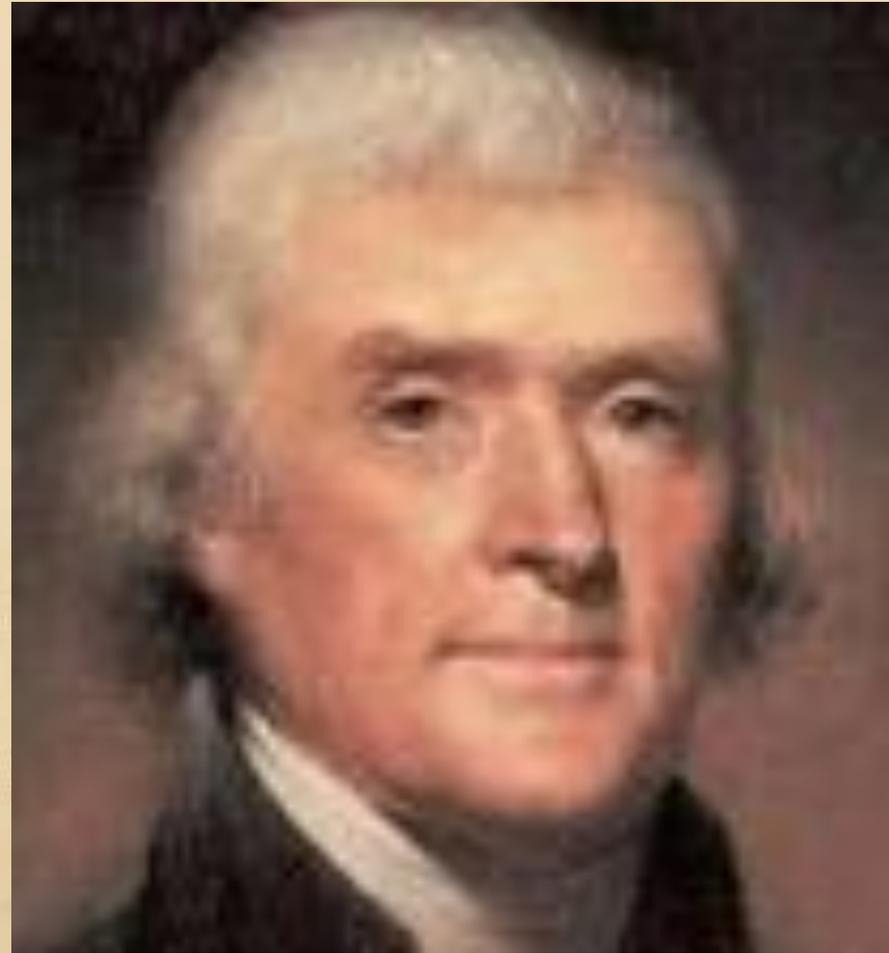


In your most obedt
Servt
John Hancock



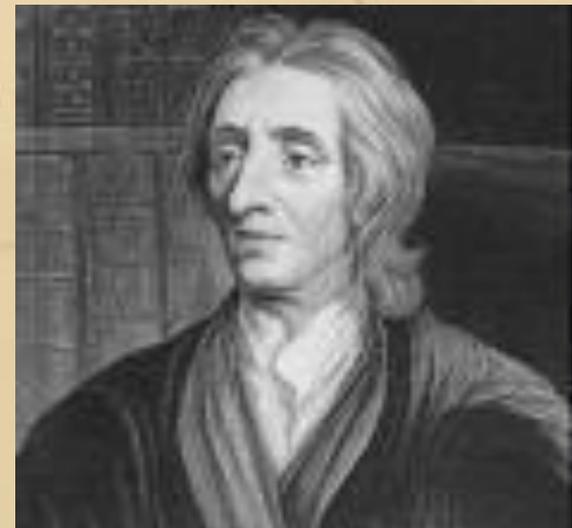
Main Author – Thomas Jefferson

- Although there were 5 men appointed to write the Declaration of Independence, Jefferson was the main author
 - Congress only accepted the Declaration of Independence after they cut a large portion that attacked slavery



Enlightenment

- Jefferson used the Enlightenment ideas of JOHN LOCKE
 - People are born with certain natural rights: life, liberty and property
 - People form governments to protect these rights
 - If governments interfere with these rights, the people have the right to OVERTHROW them



Purpose

- To show why the colonies were revolting against Britain and Declaring their Independence



Parts of the Declaration of Independence

- Introduction/**Preamble**
- Declaration of Natural Rights
- Indictment/List of Grievances/ Denunciation
- Resolution of Independence/Conclusion
- Signatures



PREAMBLE

- First part of the Declaration of Independence
- Introduction
- *Explains why the Continental Congress wrote the Declaration of Independence*

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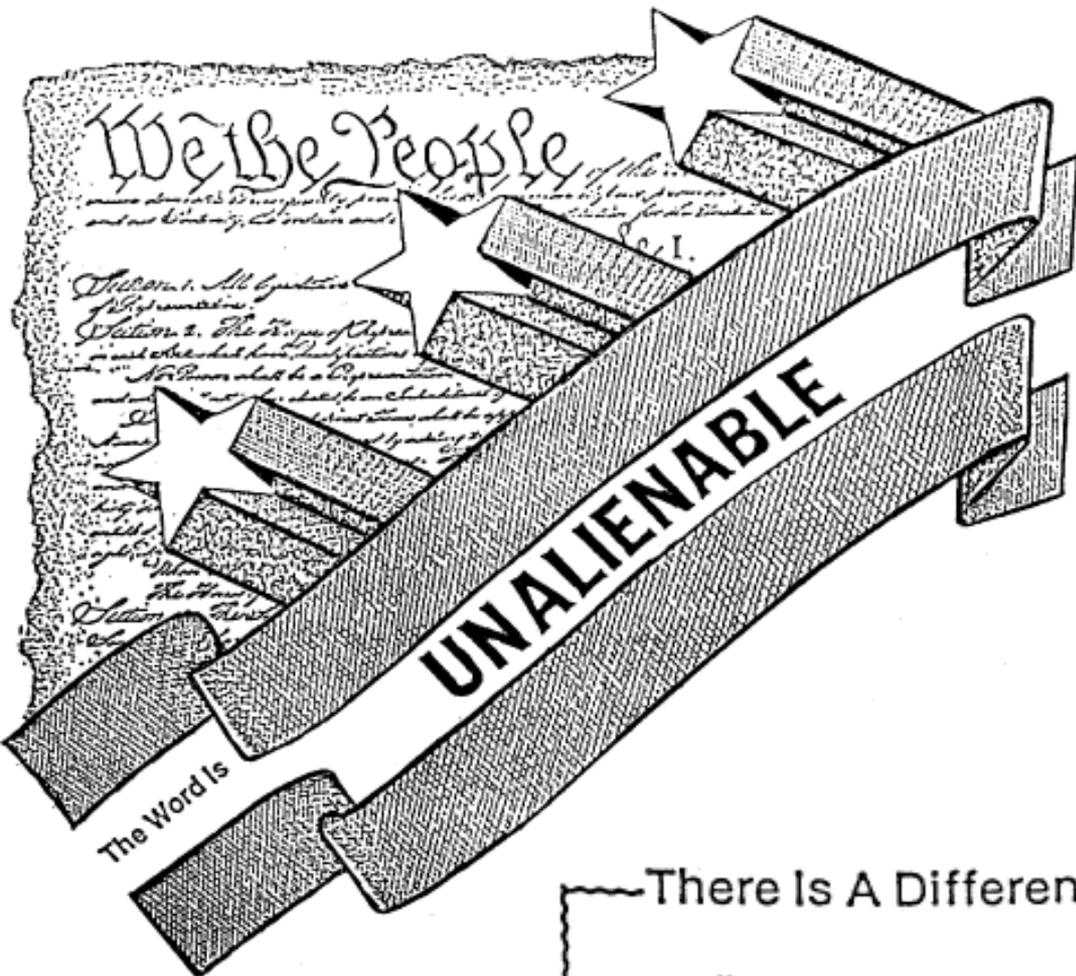
*“When in the Course
of human events, it
becomes necessary
for one people to
dissolve the
political bands
which have
connected them
with another...a
decent respect to
the opinions of
mankind requires
that they should
declare the causes
which impel them
to separate.”*

Preamble

When it is
necessary for
people to separate
from their
government, these
people need to tell
others the reasons
why they are
separating.

Declaration of Natural Rights

- Second part of the Declaration of Independence
- Lists the rights of the citizens
- *Explains that in a republic, the government is there to protect the rights of the people*
- *Jefferson calls these rights UNALIENABLE rights, which means they can never be taken away*



The Word Is

UNalienable

... NOT INalienable, when referring to our UNALIENABLE RIGHTS!

Our Founding Fathers referred to our 'Unalienable rights to life, liberty and the pursuit of happiness.'

Over the years, the dictionaries have gradually been altered to put more emphasis on INalienable than on the word UNalienable.

There Is A Difference!

UNalienable

is that which CANNOT be separated, surrendered or taken away.

INalienable

is that which SHOULD NOT be separated, surrendered or taken away.

Declaration of Natural Rights

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.”

- Only men are mentioned in the Declaration
- These ideas are taken from the Enlightenment thinker, *John Locke* who said people have natural rights like life, liberty and property.



Declaration of Natural Rights

“That to secure these rights, Governments are instituted among Men, deriving their powers from the consent of the governed...”

- Only Men mentioned
- Government’s job is to protect the rights of the people
- Governments should get their power from the people they govern

Declaration of Natural Rights

“ That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it...it is their right, it is their duty, to throw off such Government and provide new Guards for their future security.”

- If a government is not protecting the people's rights the people have the right AND obligation to overthrow that government and start a new one.

List of Grievances / Indictment / Denunciation

- Third part of the Declaration of Independence
- *List of the colonists' complaints with England*
- *They specifically blame King George III*
- There are 28 grievances, or complaints, that are listed in this section of the Declaration of Independence

Here are some of the complaints:

- *British soldiers in colonies without permission*
- *Quartering British troops in the colonies*
- *Not punishing these troops when they harm colonists*
- *Cutting off the colonists' trade with the rest of the world*
- *Taxing the colonists without their permission*

**NAVIGATION
ACTS**

**QUARTERING
ACT**

**TEA
ACT**

**INTOLERABLE
ACTS**

**STAMP
ACT**

Resolution of Independence / Conclusion

- Final part of the Declaration of Independence
- *Declares that the colonies are “Free and Independent States”*
- *Includes the signatures of the signers of the Declaration of Independence*



Resolution of Independence



- These states have the power to:
 - Declare war
 - Trade with other countries
 - Form alliances

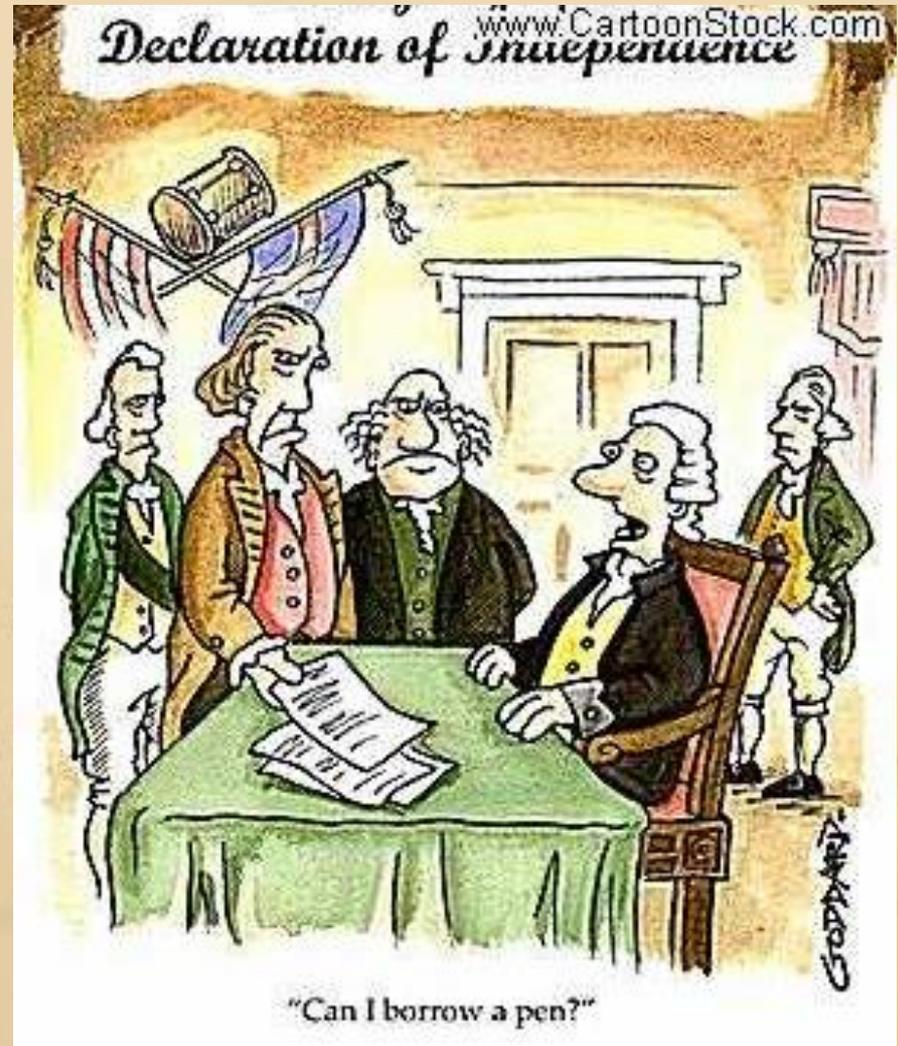
John Hancock was the first person to sign the Declaration of Independence.

(He signed it very largely so King George could see it all the way from England.)

There were 56 signers of the Declaration from all of the 13 colonies.

Signing the Declaration was considered treason, punishable by death

The Signers



Significance

- Marks the **FIRST TIME EVER** that a group of revolutionaries explained in detail why they had the right to change their government
- Ideas of the Declaration of Independence influenced the French Revolution and revolutions in South America.



Remember...

1. Main idea of Declaration of Independence and Constitution – **governments should be based on the consent of the governed**
2. Declaration of Independence states that people have the right to overthrow **an oppressive government**
3. The main purpose of the Declaration is to justify the **colonists' revolt against England**
4. **John Locke** contributed to the Declaration (natural rights...overthrow unjust government)

Unit One Lesson #3

- Articles of “CONFEDERATION”
- Structure of the Articles
- Pros & Cons
- Shays’ Rebellion
- Constitutional Convention & Consensus

WHY DID WE COME UP WITH THE ARTICLES OF **CONFEDERATION**

👉 👉 👉 **LOOK AT THE NAME OF OUR COUNTRY** 👉 👉 👉

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

The 1st U.S. government which began as a **confederation** (a “firm league of friendship”)

The Articles of Confederation

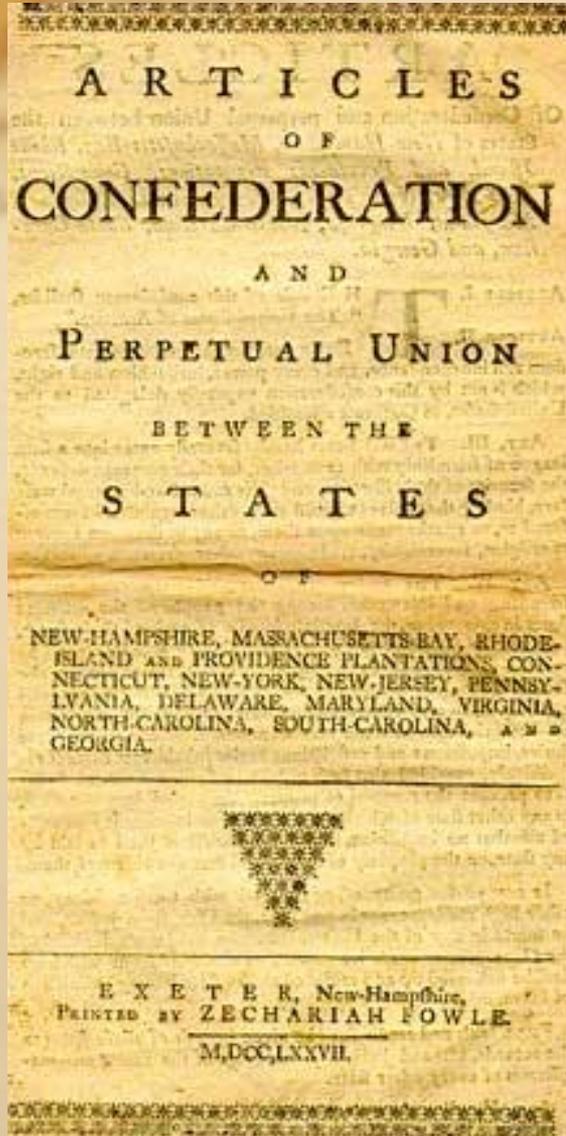
- **Article II**

- *“Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.”*

- **Article III**

- *“The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.”*

Structure of the Articles



- **Unicameral national legislature**
- **NO executive or judicial branches**
- **Equal representation of each state with one vote**
- **9 of 13 states required to pass legislation**
- **Unanimous votes to amend the Articles**

Articles Powers & Limits

COULD

- Borrow money
- Create army and navy
- Declare war
- Establish post offices
- Form treaties

COULD NOT

- Tax states, citizens, goods, income
- Institute a draft
- Regulate commerce
- Regulate national currency

Articles Good & Bad

Accomplishments

- Treaty of Paris
- Land Ordinance of 1785
- Northwest Ordinance of 1787

Failures

- Economic conflicts between states
- Depressions
- Foreign trade
- Shays's Rebellion (1786-1787)
 - Western Massachusetts farmers

SHAYS' REBELLION

- **The national government under the Articles also lacked the power to raise an army or navy. Fears of a standing army in the employ of a tyrannical government had led the writers of the Articles of Confederation to leave defense largely to the states. Although the central government could declare war and agree to peace, it had to depend upon the states to provide soldiers. If state governors chose not to honor the national government's request, the country would lack an adequate defense.**
- **The weaknesses of the Articles of Confederation became apparent as a result of Shays' Rebellion. In 1786, farmers in western Massachusetts were heavily in debt, facing imprisonment and the loss of their lands. Many of them were veterans, who owed taxes that had gone unpaid while they were away fighting the British during the Revolution. The Continental Congress had promised to pay them for their service, but the national government did not have sufficient money. Moreover, the farmers were unable to meet the onerous new tax burden Massachusetts imposed in order to pay its own debts from the Revolution.**

SHAYS' REBELLION

- **Led by Daniel Shays, the indebted farmers marched to a local courthouse demanding relief. Faced with the refusal of many Massachusetts militiamen to arrest the rebels, with whom they sympathized, the governor of Massachusetts called upon the national government for aid, but none was forthcoming. The uprising was finally brought to an end the following year by a privately funded militia.**
- **Shays' Rebellion brought home the weaknesses of the Articles of Confederation. The U.S. government had both failed to pay its veterans and failed to raise a militia in order to put down a rebellion. It had become clear the U.S. government's inability to impose taxes, regulate commerce, or raise an army hindered its ability to defend the nation or pay its debts.**
- **To find a solution, members of Congress called for a revision of the Articles of Confederation. In 1787, delegates from 12 of the 13 states met in Philadelphia to craft a new Constitution.**

Constitutional Convention



- **Shays' Rebellion (text p.46) acted as a catalyst to strengthen the Articles of Confederation**
- **Annapolis Convention in 1786 called for a convention to amend the Articles of Confederation**
- **55 delegates from all states
no Rhode Island
Well-educated men of means**

CONSENSUS – WHAT WERE THE THINGS THAT THEY AGREED UPON AT THE START?

- ✓ **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**

Lesson #4: Conflict & Compromises

- Virginia v. New Jersey Plans
- Grand Committee & Great (Connecticut Compromise)
- North / South Compromises
- Compromises Over the Presidency
- Federalists v. Anti-Federalists
- Bill of Rights & Ratification
- First Constitution (Articles) v. New Constitution

CONFLICT AND COMPROMISE – ON THE ISSUE OF REPRESENTATION

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)

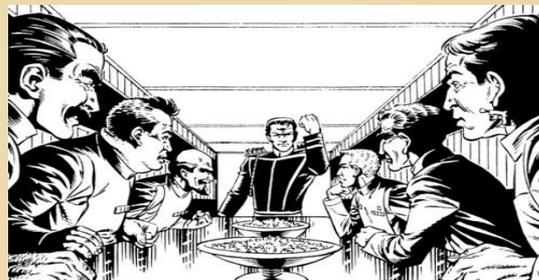
Representation in house would be equal among the states

•The Connecticut Compromise

Created a bicameral (2 house)

- One 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 (aka revenue bills) would originate**
- Second house in which each state would have an equal vote (New Jersey Plan = Senate)**

THE GRAND COMMITTEE



Question facing the Convention: How to apportion representatives in the national legislature?

- Answer: Refer to a committee composed of one delegate from each of the eleven states that were present at that time at the Convention. The members of this **Grand Committee**, in its report to the Convention, offered a compromise.
- The large states had opposed the Connecticut Compromise, because they felt it gave too much power to the smaller states. The Grand Committee's proposal added the requirement that revenue bills originate in the lower house and not be subject to modification by the upper house (although this Origination Clause would later be modified so that revenue bills could be amended in the upper house, or Senate).

VIRGINIA PLAN VS. NEW JERSEY PLAN

(Large State Plan vs. Small State Plan)

Description	Virginia Plan	New Jersey Plan
Representation	Representation will be based on population (The bigger the population, the more representation)	Representation would be based on equality (meaning that all the states would have equal representation)
Legislative Branch	<p>Two Houses</p> <p>House of Representative will be voted by the people</p> <p>The Upper House (Senate) will be voted by the House of Rep from nominations by State Legislatures</p>	Continue the unicameral Congress of the Articles of the Confederation
Executive Branch	Chosen by the legislative branch	Chosen by Congress, but would have more than just one president. Have three presidents, one from each region of the U.S.
Judicial Branch	Chosen by the executive branch	Chosen by the executive branch

Would either of these plans worked?

THE GREAT COMPROMISE

Representation will be different among the states. If a state has a large population, they get more representation. Smaller population, you get less representation.

Each state gets 2 senators each no matter how big the state population is.

Both sides couldn't agree with either plan, until both ideas were combined together.

Virginia Plan

Connecticut Compromise or Great Compromise

New Jersey Plan

Combining both plans together would create a two chamber (bicameral) house.

- The House of Representatives would be based on the Virginia Plan, meaning representation is based on state population.
- The Senate would be based on the New Jersey Plan and representation would be equally divided among the states.

CONFLICT AND COMPROMISE – NORTH-SOUTH COMPROMISES

Ratification of treaties

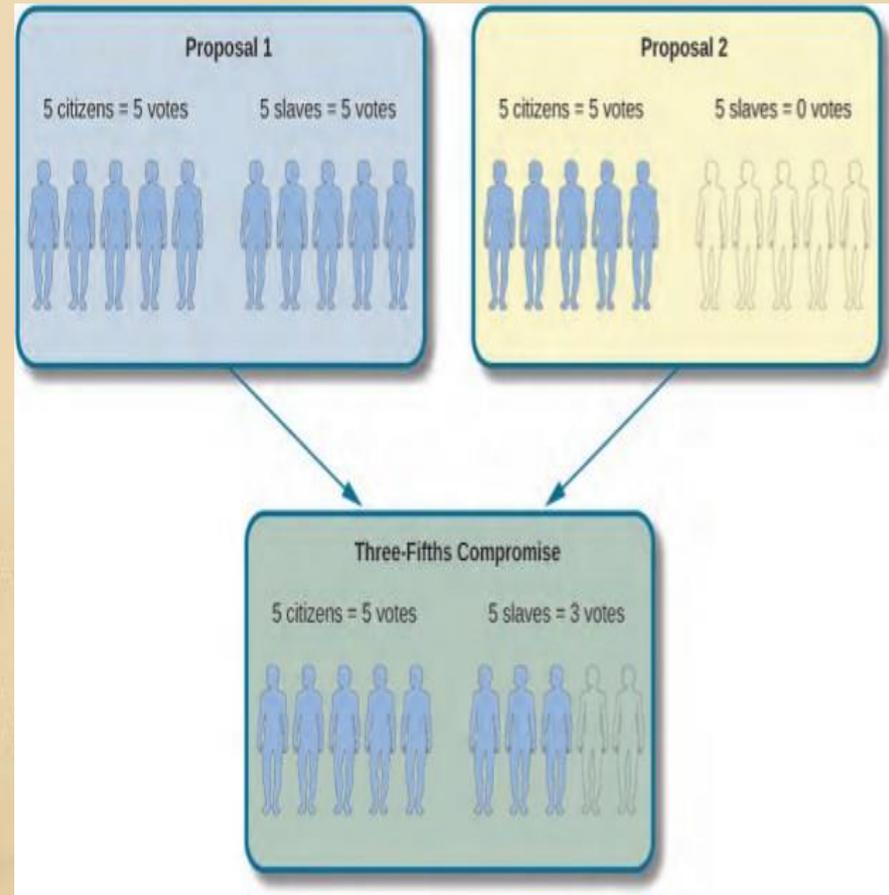
- Southern delegates insisted on a **two-thirds vote (supermajority)** in the Senate before presidents could ratify treaties

Three-fifths Compromise

- Issue of counting slaves for representation in the House of Representatives
- For every five slaves, they would count as three people for representation in the House
- North happy because South has to pay more taxes
- South happy because they get more 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.



SLAVERY ISSUE

<p>SOUTHERN STATES</p>  <p>I WANT SLAVES TO BE COUNTED FOR POPULATION SO WE CAN HAVE MORE REPRESENTATIVES IN COURT, BUT I DON'T WANT THEM TO COUNT FOR TAXES. THAT WAY WE CAN HAVE MORE REPRESENTATION THEN THE NORTHERN STATES AND STILL GET OFF THE HOOK FOR TAXES</p>	<p>THE 3/5 COMPROMISE</p> <p>TO MAKE IT FAIR FOR BOTH SIDES, 3/5 OF THE SLAVES IN A STATE WOULD BE COUNTED AS POPULATION AND TAXES.</p>	<p>NORTHERN STATES</p>  <p>I WANT SALVES TO BE COUNTED FOR TAXES, SINCE WE DONT HAVE MANY SLAVE UP HERE IN THE NORTH. THOUGH I DON'T WANT THEM TO COUNT FOR POPULATION BECAUSE THAT WOULD GIVE THE SOUTHERN STATES MORE POWER IN CONGRESS, AND WE DONT WANT TO BE OVER POWERER BY THE SOUTHERN STATES</p>
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Slave Trade Compromise:

- **An agreement during the Constitutional Convention of 1787 protecting the interests of slaveholders by forbidding Congress the power to act on the slave trade for 20 years.**

CONFLICT AND COMPROMISE: THE PRESIDENT

Method of election:

- Some wanted election by Congress
- Some wanted election by state legislatures
- Some wanted direct election

Compromise: Electoral College system; created for two reasons:

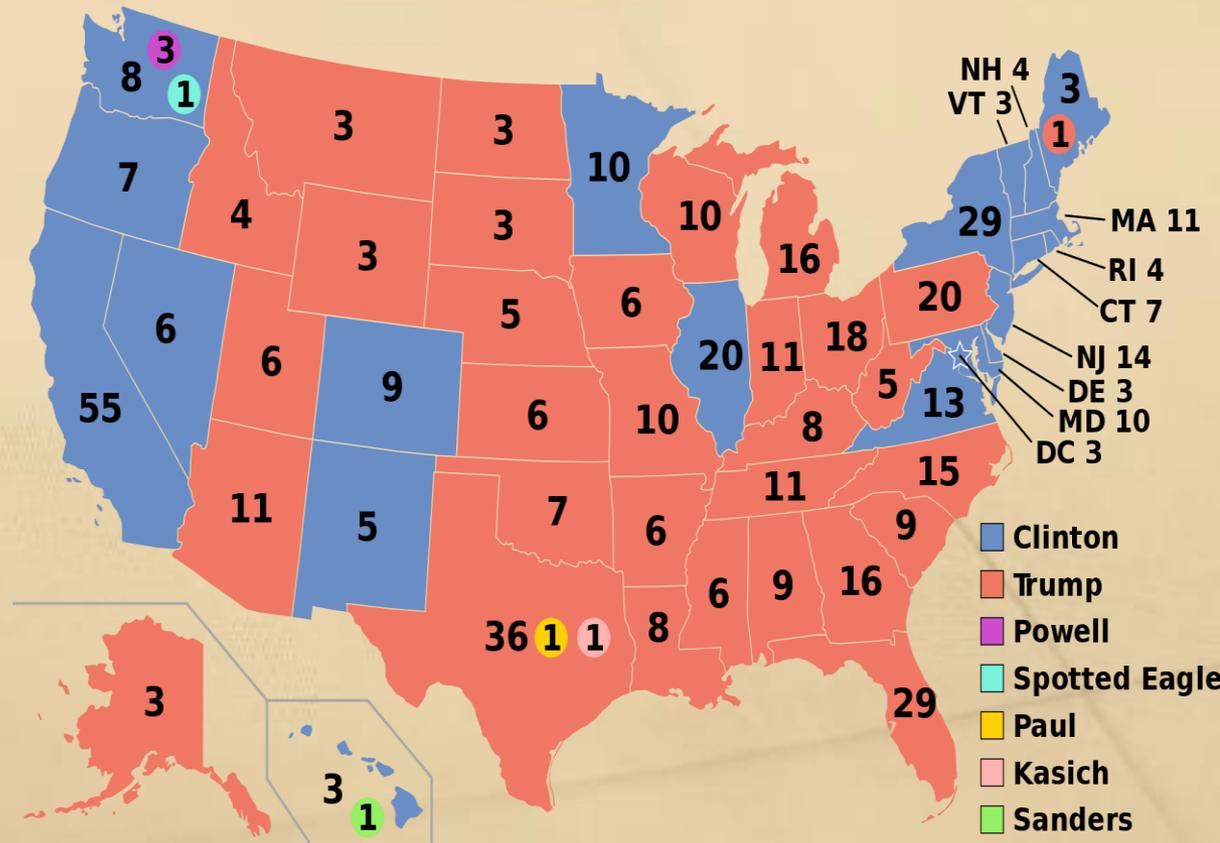
- **First** - Buffer between the people and the selection of a President
 - The founding fathers were afraid of direct election of presidency
 - Feared a tyrant could manipulate public opinion & come to power
- **Second** - Structure of the government that gave extra power to the smaller states
 - Small states had more power in selection of president
 - Under the system of the Electoral College each state had the same number of electoral votes as they have representative in Congress, thus no state could have less than 3 >> disproportionate power to the smaller states

ELECTORAL COLLEGE

With Presidential Elections, the Founding Fathers believed that the average American was not well educated enough and couldn't trust them to elect a president.

Founders created the Electoral College, which created electors in each state (# House Members + 2 Senators = Number Electoral vote) will cast votes.

Popular helps elect the electors, but many Americans believe that their vote doesn't matter. Why?



TO ADOPT OR NOT TO ADOPT? FEDERALISTS VS. ANTIFEDERALISTS

Main debate was primarily about the scope of power of the central government

- **The Federalists wanted a stronger national government and weaker state governments (balanced relationship between federal and state governments)**
- **The Anti-federalists wanted a weaker national government and stronger state governments**

Federalists Views:

- **Elites most fit to govern**
- **Feared “excesses” of democracy**
- **Favored strong central government**

Antifederalists Views:

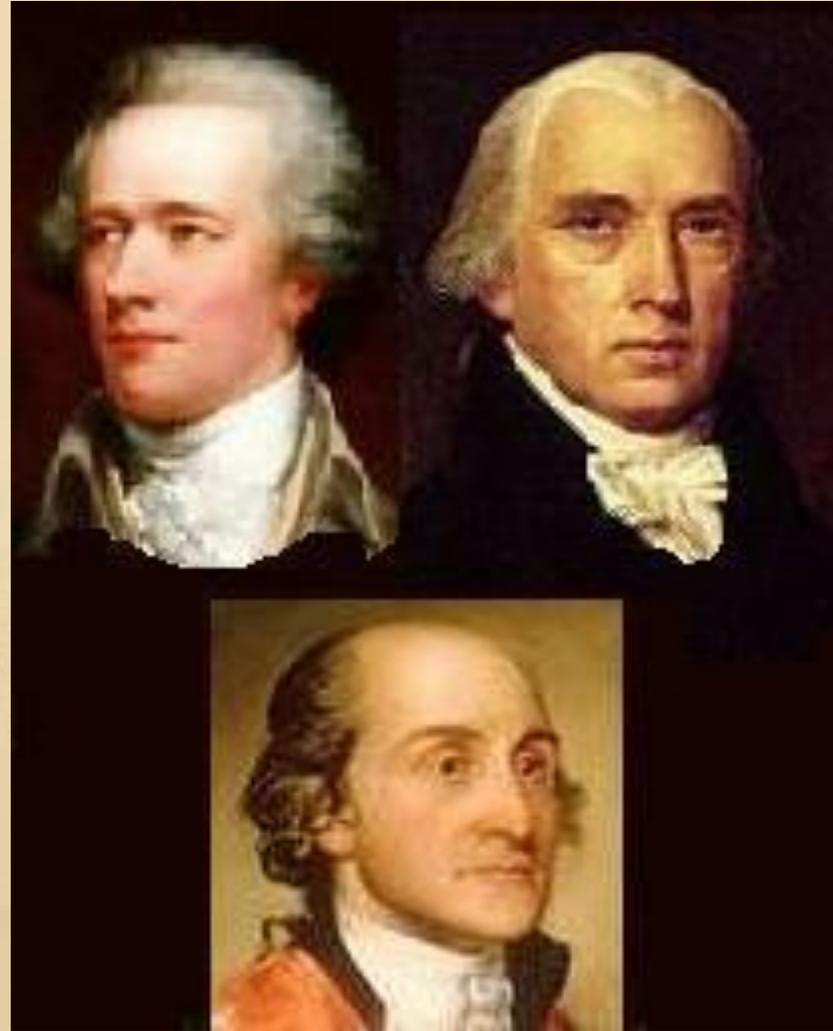
- **Feared concentration of power in hands of elites; Believed that government should be closer to the people**
- **Feared strong central government, favored stronger state governments**
- **Feared the lack of Bill of Rights (which would be added later to protect individual liberty) – their strongest argument**

The *Federalist* essays (written by Alexander Hamilton, James Madison, and John Jay) helped the ratification process

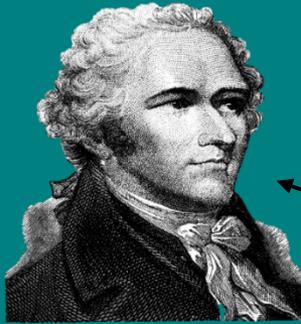
Federalists Essays

Authored by: **Alexander Hamilton**, James Madison, and John Jay

- *Federalist #10*
 - factions
- *Federalist #51*
 - Checks and balances
- *Federalist #70*
 - Chief executive
- *Federalist #78*
 - National judiciary



FEDERALISTS VS. ANTIFEDERALISTS



**Alexander
Hamilton
Federalist**



**Patrick
Henry
Anti-Federalist**

Description	Federalist	Anti-Federalist
Leaders	James Madison, Alexander Hamilton, and John Jay	Patrick Henry, Richard Henry Lee and George Mason
Backgrounds	Large landowners, wealth merchants, and professionals	Smaller farmers, shopkeepers, and laborers
Government Preferred	<ul style="list-style-type: none"> • Weaker state gov't • Strong national gov't • Indirect election of officials • Longer terms • Gov't by the elite • Expected few violations of individual liberties 	<ul style="list-style-type: none"> • Strong state gov't • Weak national gov't • Direct election of officials • Shorter terms • Rule by the common man • Strengthened protections for individual liberties

RATIFICATION – THE GREAT DEBATE

BILL OF RIGHTS – THE FINAL COMPROMISE

At stake – individual rights and the role of the national government in economic development

Federalists:

- Favored ratification of the Constitution
- Favored powerful federal government
- Saw Bill of Rights as unnecessary because federal powers were limited
- "The Federalist Papers"

Anti-Federalists:

- Opposed ratification of the Constitution
- Wanted weak federal government that would not threaten states' rights
- Wanted Bill of Rights to declare and protect the rights of the people

Ratification:

- ✓ Federalists promise addition of a Bill of Rights
- ✓ Ratification succeeded, new government formed 1789
- ✓ James Madison drafts 10 amendments to the Constitution (known as the U.S. Bill of Rights)

One of the many points of contention between Federalists, who advocated a strong national government, and Anti-Federalists, who wanted power to remain with state and local governments, was the Constitution's lack of a bill of rights that would place specific limits on government power. Federalists argued that the Constitution did not need a bill of rights, because the people and the states kept any powers not given to the federal government. Anti-Federalists held that a bill of rights was necessary to safeguard individual liberty.

Madison, then a member of the U.S. House of Representatives, altered the Constitution's text where he thought appropriate. However, several representatives, led by Roger Sherman, objected, saying that Congress had no authority to change the wording of the Constitution. Therefore, Madison's changes were presented as a list of amendments that would follow Article VII.

The House approved 17 amendments. Of these, the Senate approved 12, which were sent to the states for approval in August 1789. Ten amendments were approved (or ratified). Virginia's legislature was the final state legislature to ratify the amendments, approving them on December 15, 1791.

Conflict Avoided by adding a Bill of Rights

OVERALL VISION

FEDERALISTS wanted a strong central government and weak state governments

ANTIFEDERALISTS wanted power in the states, not the central government

KEY FEDERALISTS

Benjamin Franklin
Alexander Hamilton
John Jay
James Madison
George Washington

KEY ANTIFEDERALISTS

John Hancock
Patrick Henry
Richard Henry Lee
George Mason
Mercy Otis Warren

FAVORED DOCUMENT



BILL OF RIGHTS



Believed the Constitution **was** sufficient to protect individual rights



Believed the Constitution **was not** sufficient to protect individual rights

SUPPORT



Ratification

Article VII

- ✓ Ratification of the Constitution required 9 of 13 states
 - ❖ To be legitimate, needed Virginia and New York
- ✓ Federalists and the Anti-Federalists
- ✓ Constitution will be ratified on June 21, 1788
- ✓ Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, New Hampshire, Virginia, New York, North Carolina, Rhode Island

HOW WOULD THIS NEW CONSTITUTION FIX THE OLD “CONSTITUTION”?

Madison was concerned that government would be controlled by majority or minority factions >> factions best controlled by a large republic

- **Minority can be suppressed by majority rule; Majority is more difficult to control**

Constitution is a supreme and binding law that both grants power to the government and limits the power of the government

A Stronger National Government

Articles Problems

- No power to tax
- No power to regulate interstate and foreign commerce
- No executive branch
- No judicial branch
- Amendments need unanimous consent
- Supermajority to pass laws

Constitution Solution

- Lay and collect taxes
- Interstate and foreign commerce clause
 - No export taxes
- President
 - Electoral College
 - 4 year terms
- U.S. Supreme Court
- Article V – Amendments
 - 2/3 of both houses of Congress
 - 3/4 of state legislatures
- Presentment Clause
 - Simple majority by both houses
 - President's signature

Unit 1 : Lesson #5: Checks & Balances and Separation of Powers

- Madisonian Model
- Separation of Powers
- Checks & Balances
- Marbury v. Madison (1803)
- Amendment Process (Citizen's Powers)
- Formal Amendments
- Informal Amendments

MADISONIAN MODEL

Fear that majority and minority factions could threaten the government

Solution: Set up precautions that will prevent this from happening



SEPARATION OF POWERS

Separate the power between three branches of government



CHECKS AND BALANCES

Each branch can prevent the other branches from becoming omnipotent



FEDERALISM

Share the power between the national government and the state governments

WHAT WAS ONE OF MADISON'S THREE AUXILIARY PRECAUTIONS TO PREVENT TYRANNY?

SEPARATION OF POWERS

- Allocation of constitutional authority to each of the three branches of the national government
- To Madison, tyranny was government that controlled all 3 branches of government = division of power among the legislative, executive, and judicial branches
- Colonial experiences, e.g. excessive power in state legislatures = need for strong executive
- Danger of one branch combining forces with another branch = checks and balances



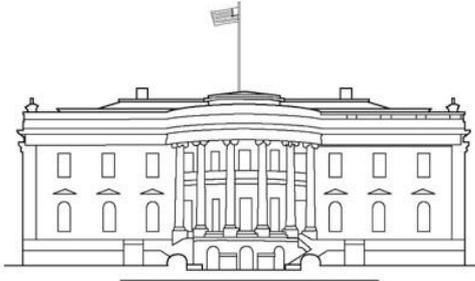
SEPARATION OF POWERS

Definition - Constitutional division of powers among the legislative, executive, and judicial branches, with the legislative branch making law, the executive applying and enforcing the law, and the judiciary interpreting the law.

Legislative Branch
Congress
Makes the Law



Executive Branch
President
Enforces the Law



Judicial Branch
Supreme Court
Interprets the Law



House elected by the people in the district

Senate originally selected by state legislators

Term is for 2 years

Term is for 6 years

Direct democracy

Indirect democracy

President elected by electoral college

Term is for 4 years

Indirect democracy

Judges selected by president

Term is for life

Indirect democracy

SEPARATION OF POWERS

Powers of the branches of government



Legislative branch

Executive branch

Judicial branch

Pass laws

Veto legislation

Declare laws unconstitutional

Declare war

Command armed forces

Hear cases on federal law

Impeach president and judges

Grant pardons

Preside over impeachment trials

Approve presidential appointments

Appoint judges, ambassadors, department heads

Declare presidential acts unconstitutional

Ratify treaties

Conduct foreign affairs and negotiate treaties

Levy taxes

Establish number of Supreme Court justices

Regulate Supreme Court's jurisdiction

After the Revolutionary War, the writers of the Constitution knew that the best system of government would involve a separation of powers. They gave the new government three branches. Each one would have its own jobs and responsibilities. The Constitution describes the duties that each branch has and the duties of the people who carry out these duties.

The legislative branch (Congress) makes laws for the nation. Congress is bicameral, it has two parts – the House of Representatives and the Senate.

The executive branch makes sure that the laws of the country are obeyed. The President is the head of the executive branch. He is also known as the Chief Executive of the country. The executive branch is very large because many people and groups are needed to help the President. (Vice President, Cabinet,...)

The judicial branch answers questions about the meaning of laws and whether or not they follow the Constitution. The highest court in the judicial branch is called the Supreme Court. Nine judges, or justices, make decisions about laws and other court matters. The head of the Supreme Court is called the Chief Justice.

WHAT WAS ONE OF MADISON'S THREE AUXILIARY PRECAUTIONS TO PREVENT TYRANNY?

CHECKS AND BALANCES

- **Background**
 - 18th century view of government as something to be restrained, and modern view of government as something to be used for the common good.
 - Fear of tyranny among Founders >> distrust of government = checks and balances as means of intentionally building **inefficiency** in order to prevent government abuse of power.
- 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)
- Each branch is politically independent of the others



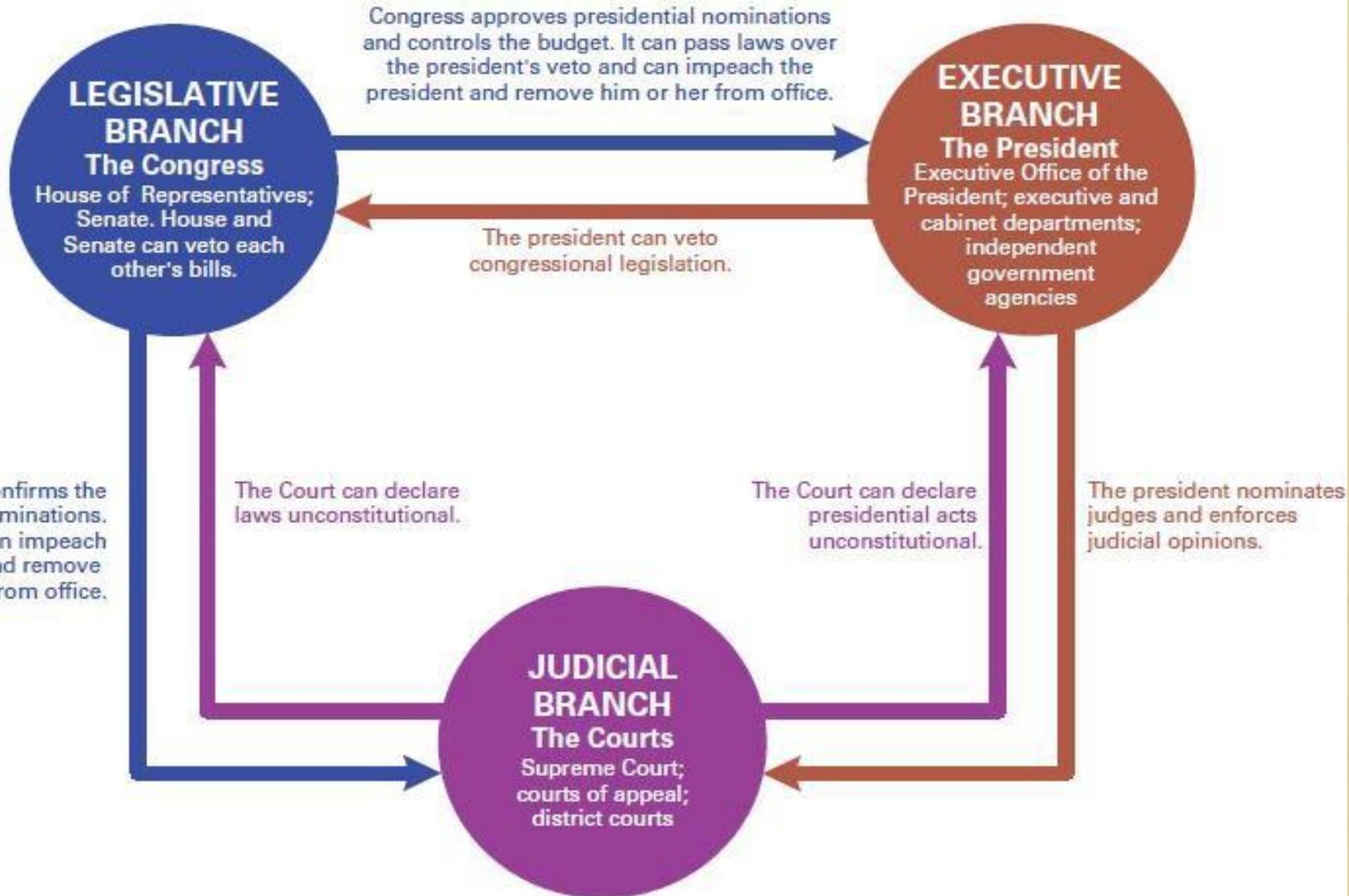
WHAT WAS ONE OF MADISON'S THREE AUXILIARY PRECAUTIONS TO PREVENT TYRANNY?

CHECKS AND BALANCES

- Power struggles among three branches (especially Congress and the president)
- A majority of the voters can win control over only part of the government at one time. **Staggering of terms within each branch** >> 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.
- Independent national courts are provided
- 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 ameliorate presidential influence)



CHECKS AND BALANCES



Separation of Powers & Checks and Balances

Separation of Powers

The separation of the powers of government among three branches— legislative, executive, and judicial—so that each branch has to cooperate with the others in order to accomplish policy making goals.

Check & Balances

The Framers gave each branch the power to check, or stop, the actions of the other two branches in meaningful ways.



JUDICIAL REVIEW - *MARBURY V. MADISON* (1803)

- Framers did not specifically provide for judicial review
- Court could not enforce an unconstitutional law (Section 13 of Judiciary Act)
- Chief Justice John Marshall reasoned that judges should interpret the Constitution, not the President or Congress
- Judicial review became established due to this case

EFFECTS:

- Litigation sometimes trumps legislation as a way to make public policy
- Examples – Modern-day gun issues
 - *District of Columbia v. Heller* (2008) - Supreme Court held that a Constitutional right to gun ownership - irrespective of service in a state militia - did exist.
 - *McDonald v. Chicago* (2010) - The Second Amendment right to keep and bear arms for self-defense in one's home is fully applicable to the states through the Fourteenth Amendment.

Formal & Informal Amendments



If the Founding Fathers created a perfect Constitution, why did they allow us to change it?

- **An amendment is a change or addition to the Constitution.**
- **When drafting the Constitution, the Framers detailed an amendment process in Article V that gave citizens avenues to change the Constitution.**

WHY DO WE NEED AN AMENDMENT PROCESS?

- The Constitution of the United States was ratified in 1789, making it 230 years old, the oldest constitution in the modern world. It was created for our “posterity” (think Preamble).
- The Framers could not have foreseen the changes the United States would experience.
 - What can we do to update the Constitution to address these new issues?
 - Solution: citizens could add changes to the Constitution.
- Process for amending, or changing, the Constitution in Article V.
 - **Framers intended for the amendment process to be difficult**
 - Although the federal government could propose amendments, three-fourths of states have to ratify every amendment.

CHANGING THE LETTER OF THE CONSTITUTION: FORMAL AMENDMENTS

Formal Amendments are written changes that are added to the Constitution

- **Constitution should not change as an expression of basic and timeless personal liberties, but should adapt to changing conditions (amendment process)**
- **Legacy of the Articles: Unanimous vote to amend = impractical = desire to make process easier, but not too easy**
- **Process of amending reflects federal system.**
- **First 10 = Bill of Rights = some rights are fundamental and should not be subject to majoritarian control. (Anti-Federalist Demand that the Bill of Rights be added)**

PROPOSING AND RATIFYING FORMAL AMENDMENTS

- 1) Proposed by 2/3 vote of each house of Congress
→→→ Ratified by 3/4 of the state legislatures – **used 26 times**

 - 2) Proposed by 2/3 vote of each house of Congress
→→→ Ratified by special conventions in at least 3/4 of the states – **used once....do you know for which amendment?**
- A more directly democratic way. People elect delegates who state their positions on the proposed amendment. Citizens are in essence casting their votes on the amendment by voting for the appropriate delegates.

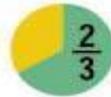
PROPOSING AND RATIFYING FORMAL AMENDMENTS

- 3) 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 – **never used**
- 4) 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 – **never used**
- **Constitutional Convention method never used because fear of “runaway” convention that might get out of hand and implement wholesale changes in the Constitution.**
 - Disturbing questions: Will convention stick to only the matter at hand? Will it take on other issues? Who gets to be delegates? How are they selected? How is representation among the states to be determined?
 - **Seven year period provided for ratification (generally: do you know of an exception?); Congress has the power to decide on a time period**

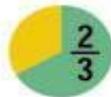
HOW CAN THE CONSTITUTION BE AMENDED?

Step 1 Amendment Is Proposed

Proposed by Congress by
a $\frac{2}{3}$ vote in both houses

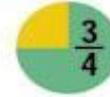


Proposed at a national convention
called by Congress when
requested by $\frac{2}{3}$ (34) of
the State legislatures

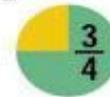


Step 2 Amendment Is Ratified

Ratified by the State
legislatures of $\frac{3}{4}$ (38)
of the States



Ratified by conventions held
in $\frac{3}{4}$ (38) of the States



HOW CAN THE CONSTITUTION BE AMENDED?

Amending the Constitution

Proposed

Amendment is proposed by a two-thirds vote of each house of Congress.



Amendment is proposed by a national convention called by Congress at the request of two-thirds of the state legislatures.

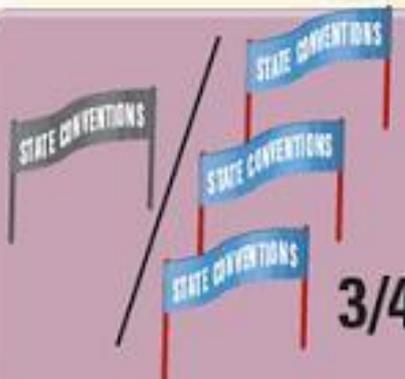


Ratified

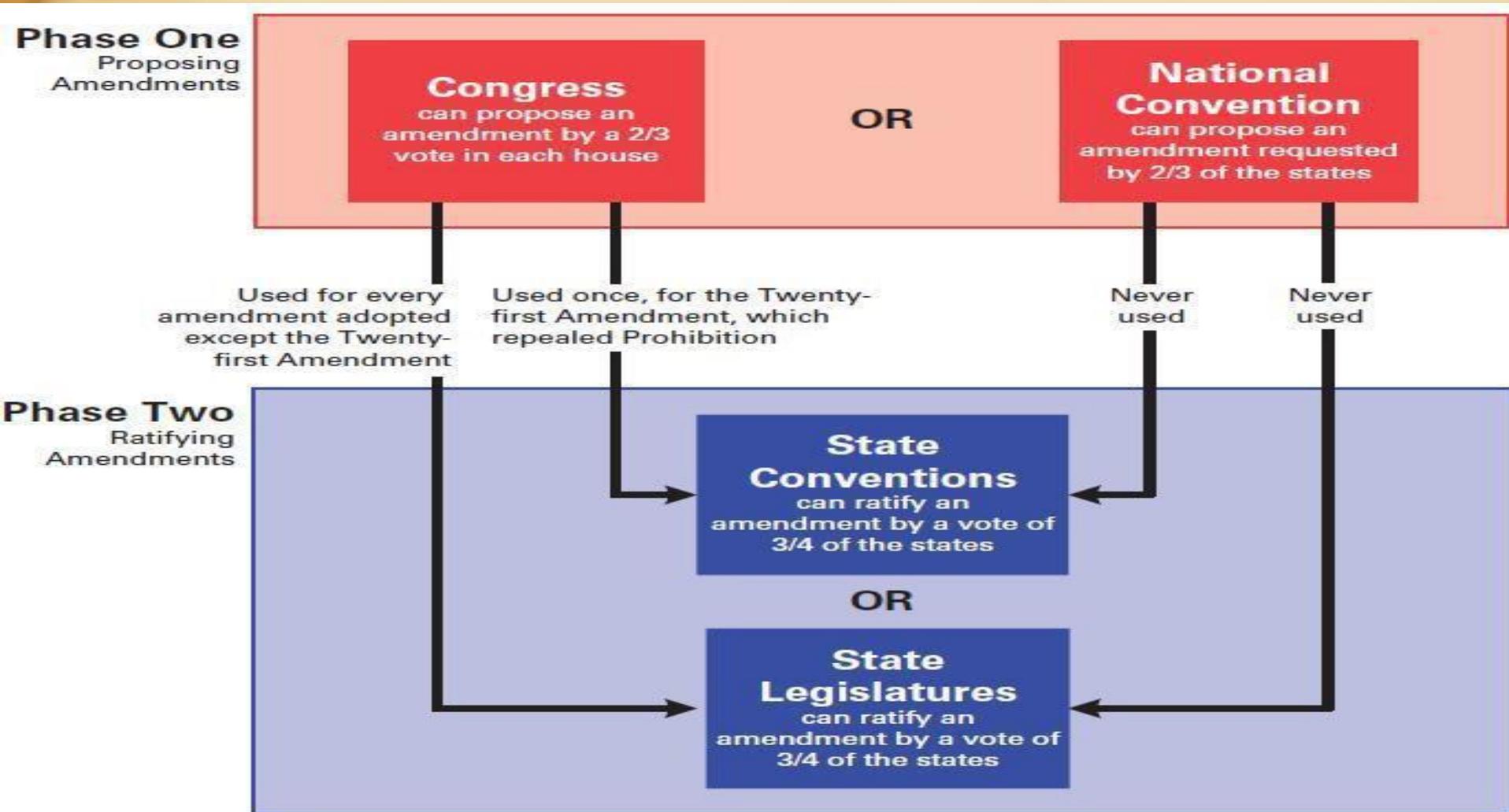
Amendment is ratified by three-fourths of the state legislatures.



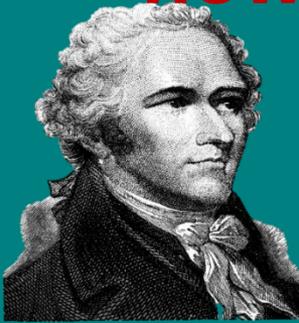
Amendment is ratified by three-fourths of the state conventions.



HOW CAN THE CONSTITUTION BE AMENDED?



HOW MANY AMENDMENTS HAVE BEEN PROPOSED? HOW MANY HAVE BEEN PASSED?



Problem #1:

No single party has ever controlled two-thirds of the House or Senate. With different ideological goals, getting two-thirds of Congress to agree on a change to the Constitution is nearly impossible without some level of cooperation.



Problem #2:

Every amendment must receive support from three-fourths of state conventions or state legislatures. It's incredibly difficult to get that many states to agree on a permanent change to the Constitution.

INFORMAL AMENDMENTS

- **What?**

- DEFINITION - Changes to the Constitution that do not involve actually changing the wording of the Constitution
- Alters the meaning of the words already in the Constitution

- **Why?**

- “Constitution belongs to the living, not the dead” (Jefferson)
 - gets new blood over time (laws, amendments)
- Jefferson believed each generation might need a new Constitution.
- This hasn’t occurred because of the informal changes that have allowed the Constitution to adapt to changing times (especially with Congress’ use of implied powers)

INFORMAL AMENDMENTS

2. PRESIDENTIAL ACTIONS

- Executive privilege/executive orders (latter has the force of law)
- Executive agreements with other countries
- Right to send armed forces into hostilities
- Right to propose legislation to Congress and work to secure its passage



INFORMAL AMENDMENTS

3. JUDICIAL ACTIONS

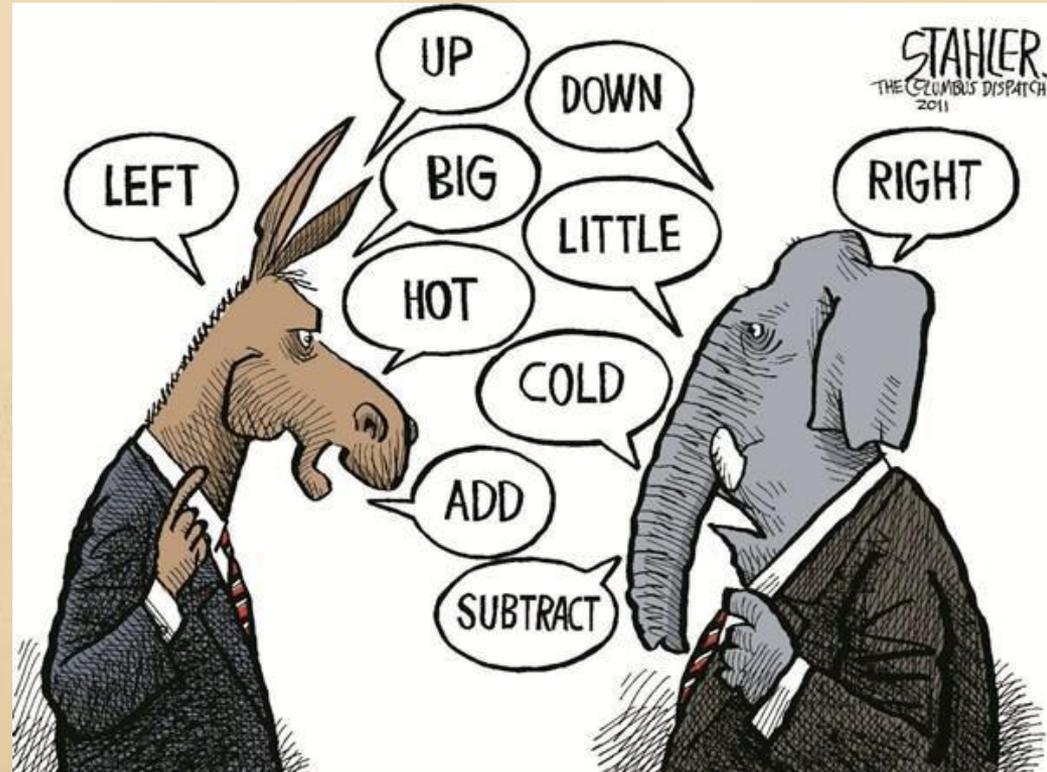
- The judiciary has been the most influential in interpreting the Constitution
- Article III defines the power of the judiciary very broadly, but does not specifically mention judicial review
- Supreme Court has changed constitutional interpretations to reflect new social economic conditions (*Brown v. Board*, *Texas v. Johnson*)



INFORMAL AMENDMENTS

4. CUSTOM AND USAGE

- Has democratized our Constitution (presidential and vice presidential TV debates)
- Examples - Cabinet, parties, committee system in Congress, senatorial courtesy, legislative veto, presidential nominating conventions



Unit One Lesson #6:

Constitutional Federalism: The Powers of Government

- Constitutional Breakdown
- Powers of the National Government
- Expansion of Central Government Functions
- Concurrent Powers
- Powers of the States
- Balance of Power Debate

Constitutional Breakdown

- **Article I - Legislative**
- **Article II - Executive**
- **Article III - Judicial**
- **Article IV – The States**
- **Article V - Amendments**
- **Article VI - Supremacy**
- **Article VII – Ratification**

“L E G S A S”

POWERS OF THE NATIONAL GOVERNMENT

Powers granted **ONLY** to the national government are known as **exclusive powers** (Not all national powers are exclusive - such as tax)

1. Enumerated (a.k.a.: expressed, delegated) powers

- Actually stated in the Constitution
- Many are listed (enumerated) in Article 1, Section 8

Enumerated Powers Granted to Congress Article I, Section. 8.

4. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
7. To constitute Tribunals inferior to the supreme Court;
9. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
12. To raise and support Armies, but no Appropriation of Money to that Use shall be for longer Term than two Years;
15. To provide and maintain a Navy;
17. To make Rules for the Government and Regulation of the land and naval Forces
19. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

POWERS OF THE NATIONAL GOVERNMENT

2. Implied powers

- Not stated explicitly, but suggested implicitly
- Importance of necessary and proper clause (**elastic clause**)
- Allow the national government to extend its powers beyond those enumerated in the Constitution



Necessary and Proper Clause – AKA . . .

Elastic Clause

Imagine the elastic clause as a giant pair of sweatpants.

The elastic clause, or the necessary and proper clause, is a constitutional clause that gives Congress the power to make all laws “necessary and proper” for executing its powers.

In other words, it means that it is implied that Congress has the power, for instance, to set up a national banking system, even though it’s not expressed in the Constitution.



POWERS OF THE NATIONAL GOVERNMENT

3. Inherent powers

- Not stated explicitly, but held by the national government by virtue of its being a national government.
- Some of these powers come from the Preamble (certain foreign policy powers such as immigration, diplomatic recognition, or acquiring territory).



U.S. Immigration
and Customs
Enforcement

Expansion of Central Government Functions

These constitutional powers expand the power of the federal government

1. The Supremacy Clause
2. The Power to Regulate Interstate and Foreign Commerce (**Commerce Clause**)
3. The War Power
4. The Power to Tax and Spend



Expansion of Central Government Functions

1. The Supremacy Clause

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

Supremacy Clause - A Ladder of Laws

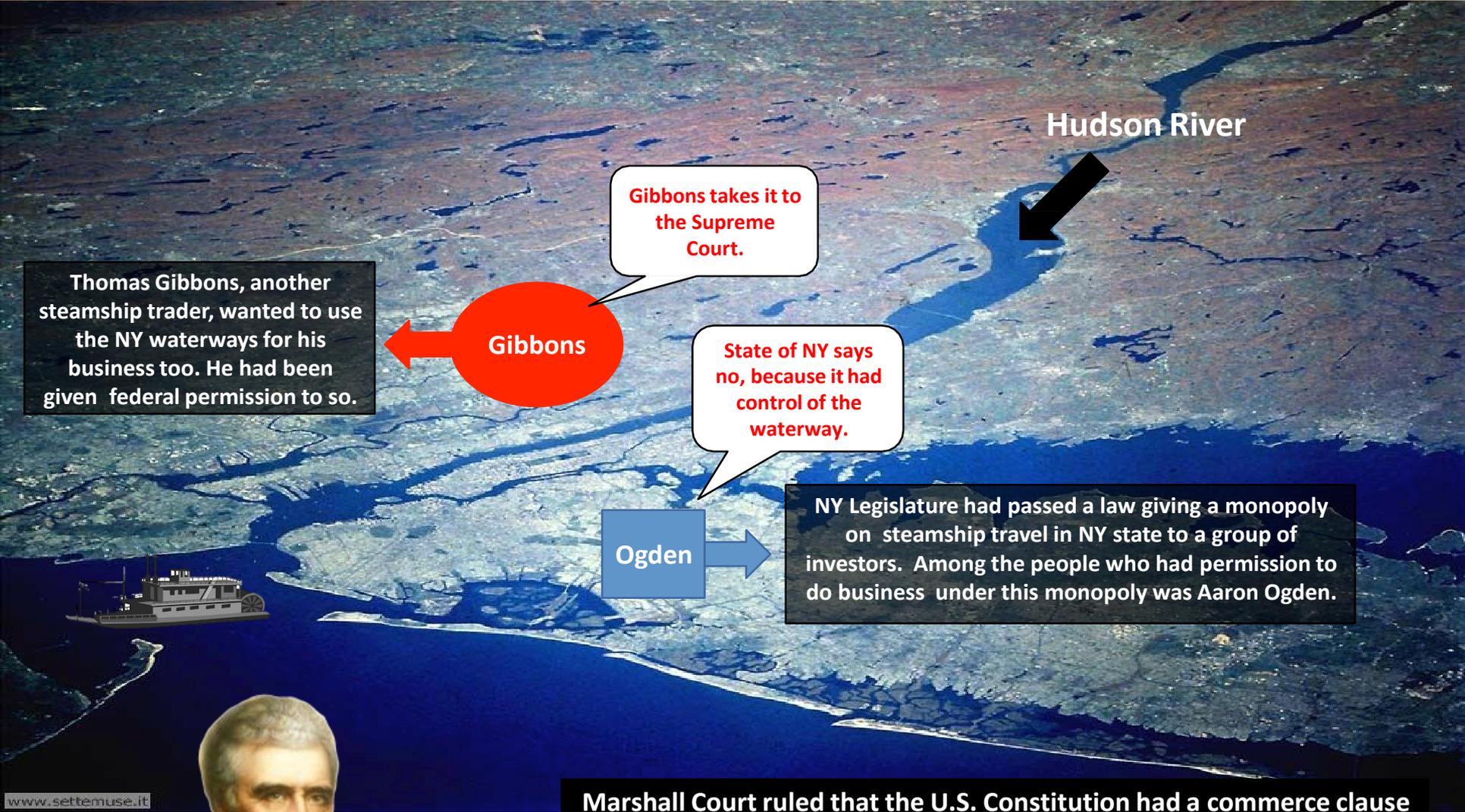
- 
1. U.S. Constitution
 2. Federal Laws and Treaties
 3. State Constitutions
 4. State Laws
 5. Local Laws

Expansion of Central Government Functions

2. 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, private businesses in the interest of promoting interstate travel
 - Civil Rights Act of 1964 applied to private businesses because customers come from out-of-state

Gibbons v. Ogden (1824)



Thomas Gibbons, another steamship trader, wanted to use the NY waterways for his business too. He had been given federal permission to so.

Gibbons takes it to the Supreme Court.

State of NY says no, because it had control of the waterway.

NY Legislature had passed a law giving a monopoly on steamship travel in NY state to a group of investors. Among the people who had permission to do business under this monopoly was Aaron Ogden.

Marshall Court ruled that the U.S. Constitution had a commerce clause that allowed the federal government to regulate commerce and believed that the U.S. government had the "necessary and proper" or "elastic clause" to regulate interstate commerce.

Expansion of Central Government Functions

3. 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

4. The Power to Tax and Spend

- By attaching conditions to its grants of money, Congress may regulate what it cannot directly control by law
 - Congress can't technically legislate everything, but it can spend 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 the federal government could require people to have healthcare

CONCURRENT POWERS

- Each state has concurrent powers with the national government
- **Granted to Congress, but not denied by Constitution or courts to the states >> held by both national and state governments**
- **Examples:**
 - Taxing
 - Borrowing
 - Establishing court system
 - Establishing law enforcement agencies
- Questions of federal/state authority are decided by courts

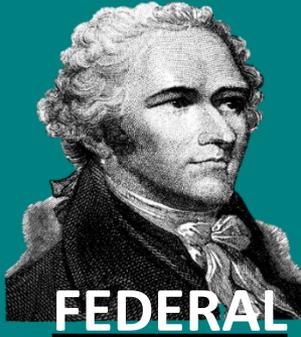


Concurrent powers are shared by both the Federal and State governments.

POWERS OF THE STATES

- States have **RESERVED POWERS**: the Constitution reserves for the states all powers not granted to the national government, subject only to the limitations of the Constitution
- **Amendment # 10** states that any powers not granted to the national government are reserved for the states
- **Examples:**
 - Establishing voting requirements
 - Running elections
 - Establishing education
 - Licensing professionals
 - Protecting community health
 - Establishing a vehicle code and state police

BALANCE OF POWER DEBATE



FEDERAL

Fourteenth Amendment:

Constitutional Amendment that grants citizenship, equal protection, and due process under the law to all people born in the United States.

Over the years, the Fourteenth Amendment has been used to require states to protect most of the same federal freedoms granted by the Bill of Rights.

Example: African American voting rights.



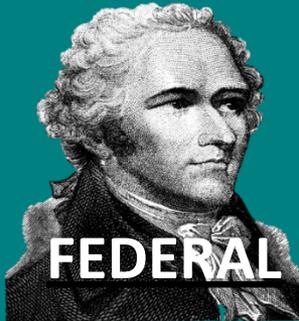
STATE

Tenth Amendment:

Constitutional Amendment that stipulates that all powers not given to the federal government are reserved to the States or the people.

This guarantee protects states' reserved powers to regulate such things as marriage, divorce, and intrastate transportation and commerce, and to pass laws affecting education and public health and safety.

BALANCE OF POWER DEBATE



Implied powers:

Powers of the federal government that are not explicitly named in the Constitution but are implied by the "necessary and proper clause" so that the federal government can carry out its enumerated powers.

STATE



Reserved powers:

Powers that only the state governments can carry out, such as setting up schools or running elections. The concept of reserved powers is defined in the 10th Amendment, which states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively." In other words, if the Constitution does not give a certain power to the federal government and does not explicitly say that the states are not allowed to carry out that responsibility, then it is reserved for the state.



Unit One Lesson #7: Dual and Cooperative Federalism

- Federalism
- Dual v. Cooperative Federalism
- 10th Amendment v. 14th Amendment
- Devolution Revolution
- Alternatives to Federalism
- Advantages / Disadvantages of Federalism
- Centralists v. Decentralists
- McCulloch v. Maryland (1819) & U.S. v. Lopez (1995)
- Federal v. State Courts

FEDERALISM

DEFINITION - Constitutional division of powers between the national government and the states; both get their powers from Constitution, not each other

Constitution (federally based) replaced 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 the 1994 elections there has been an attempt to return power to the states

Federalism debates depend upon issue at stake and rival philosophies of national action vs. decentralization

FEDERALISM



The states and central government must work together and balance each other out, like a set of chairs around the table.

TWO TYPES OF DIVISION OF POWERS

PRE NEW DEAL

Layer Cake Federalism



Programs and authority are clearly divided among the national, state, and local governments.

DUAL FEDERALISM

POST NEW DEAL

Marble Cake Federalism



Programs and authority are mixed among the national, state, and local governments.

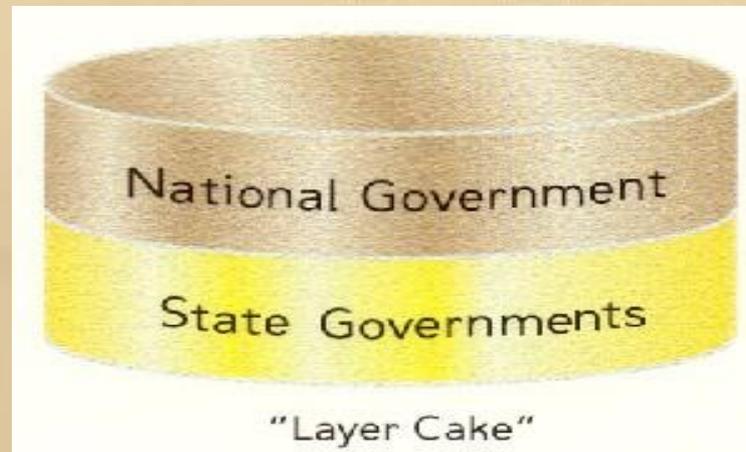
COOPERATIVE FEDERALISM

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).

DUAL (“LAYER CAKE”) FEDERALISM

- **Dual federalism**
 - Each government unit -- nation and state -- is sovereign within its sphere.
 - The relationship between nation and states is best characterized by tension rather than cooperation.
 - The national government has a limited set of constitutional purposes. All remaining powers belong to the states.
- **Of primary importance in dual federalism is states' rights, which reserve to the states all rights not specifically conferred on the national government by the Constitution. According to the theory of dual federalism, a rigid wall separates the nation and the states.**



COOPERATIVE (“MARBLE CAKE”) FEDERALISM

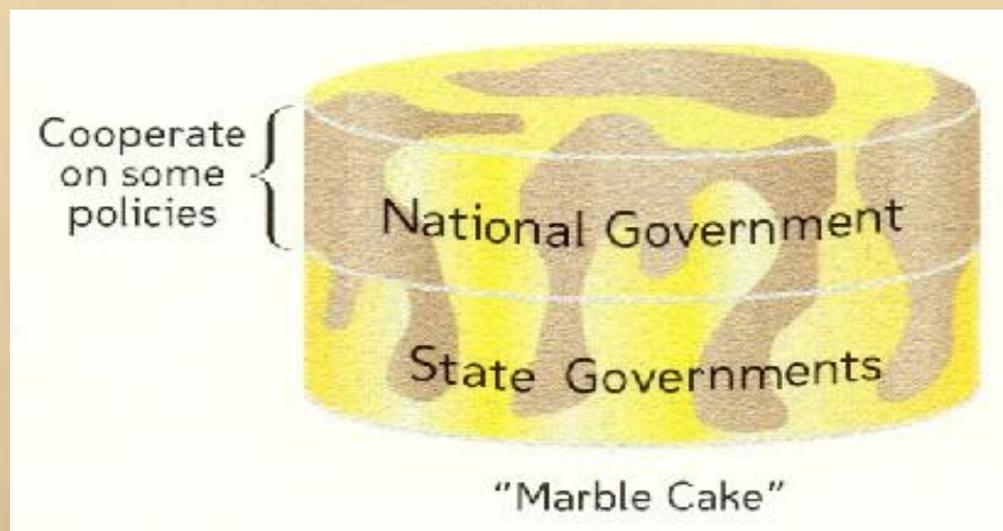
- **Prevalent since ~ 1937**
- **Mingling of responsibilities between the state and national government.**
- **Sharing powers & policy assignments, like a marble cake.**
- **Acknowledges a need for cooperation between state and federal governments.**
- **Suggests that powers of the national government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



COOPERATIVE (“MARBLE CAKE”) FEDERALISM

Cooperative federalism rejects that state and national government must exist in separate spheres

- National and state agencies typically undertake government functions jointly rather than exclusively and routinely share power.
- Power is not concentrated at any government level or in any agency. The fragmentation of responsibilities gives people and groups access to many venues of influence.



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 that 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 10th 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 10th Amendment and suggests broad powers of the elastic clause.**

10th Amendment vs. 14th Amendment

The arguments presented to the Supreme Court of the United States in *Plessy v. Ferguson* involve two competing amendments to the Constitution. The Fourteenth Amendment says states may not deny people equal protection of the law and the Tenth Amendment reserves broad, undefined powers (often referred to as police powers) for the states.

State Power

Tenth 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.

Federal Power

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Plessy argued that by restricting him to a separate train car, the State of Louisiana violated his Fourteenth Amendment rights. However, the State of Louisiana countered that it had the power under the Tenth Amendment to create laws that preserve order and public peace.

DEVOLUTION REVOLUTION

- **Shifting of some authority from national government back to the states**
- **Associated with Nixon, Reagan, and especially associated with 104th (1995-1997) and 105th (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)**



DEVOLUTION REVOLUTION

Supreme Court actions consistent with devolution:

- **Struck down Gun Free School Zones Act in 1995**
 - Congress overextended itself when it linked gun control laws to the interstate commerce clause of the Constitution.
- **Struck down part of the Violence Against Women Act in 2000**
 - Rape victims could not sue their attackers in federal court because it was up to the states – not Congress – to give such help to women victimized by violence.
 - Again, the Court said that the Congress overextended itself with the use of the interstate commerce clause in passing the Act.
- **Struck down Religious Freedom Restoration Act in 1993**
 - This act had restricted the power of the states to regulate religion >> this ruling gave states greater authority to regulate religion.
- **Struck down Brady Act in 1997**
 - Law required local law enforcement agencies to do background checks on gun buyers.

ALTERNATIVES TO FEDERALISM

UNITARY SYSTEM (REMEMBER THE SINGLE CHAIR)

- Places all governmental power in one, central, geographic area
- More efficient than a federal system (which can be a bad thing)
- Why don't we use it?
 - Not used because too reminiscent of British rule (strong, distant government that becomes tyrannical)



A unitary government is like one really big chair, with all of the government's power sitting in one place.

CONFEDERATION (REMEMBER THE DIFFERENT CHAIRS)

- Sovereign states create a central government but carefully limit its power and do not give it direct authority over individuals
- States are supreme over central government
- Why don't we use it?
 - Not used because too reminiscent of Articles (tried and failed)



A confederation of states is like a bunch of different chairs grouped together. They hold power independently but work collectively.

ADVANTAGES OF FEDERALISM

1. FEDERALISM CHECKS THE GROWTH OF TYRANNY

- 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.

2. FEDERALISM ALLOWS UNITY WITHOUT UNIFORMITY

- No need for consensus on every divisive issue
- More suitable for geographically large nation – allows for differences among states

3. FEDERALISM ENCOURAGES EXPERIMENTATION

- States are "laboratories" for public policy experimentation (gambling in NV, marijuana in CO)
- States have been in the forefront on health care, voting, air pollution control programs

4. FEDERALISM PROVIDES TRAINING FOR FUTURE NATIONAL LEADERS

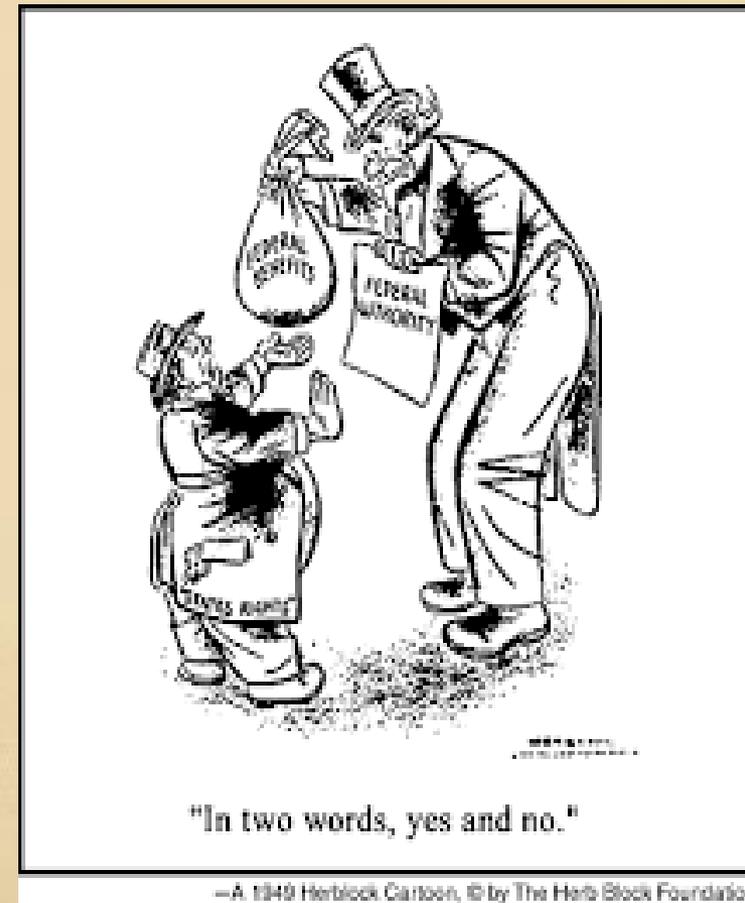
- Training ground for state and local politicians to gain experience
- 20 of nation's 45 presidents served as governor of a state = executive office experience

5. FEDERALISM KEEPS GOVERNMENT CLOSER TO THE PEOPLE

- Provides numerous arenas for decision making also Multiple points of access for citizens
- Local and state politics involve citizens in large numbers (most Americans had a stronger allegiance to their state and state government)

DISADVANTAGES OF FEDERALISM

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



DEBATE BETWEEN CENTRALISTS & 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
- Elastic, commerce, and taxing/spending clauses give great power to national government
- 14th Amendment grants citizenship, equal protection, and due process under the law to all people born in the United States
- Powers go to states only if they have been surrendered by national government
- Implied loose interpretation of the Constitution

DEBATE BETWEEN CENTRALISTS & DECENTRALISTS

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 10th Amendment prohibits the national government from using delegated powers to interfere with activities reserved for the states
- 10th Amendment gives broad powers to states
- Implies strict interpretation of the Constitution
- National government has gotten too big and impersonal; State governments are closer to the people

McCulloch v. Maryland (1819)

BANK

In 1816, the Federal gov't established the Second Bank of the United States in Baltimore, Maryland

In 1818, the State of Maryland passed an act entitled, "an act to impose a tax on all banks or branches thereof, in the State of Maryland, not chartered by the legislature.

With the bank refusing to pay such taxes, the case went all the way to the Supreme Court.



Chief Justice John Marshall ruled in favor of the banks and gave his ruling on two important parts:

- 1. The establishment of national banking system, even though it isn't stated in the Constitution, is constitutional under the "Necessary and Proper Clause."**
- 2. States do not have the right to tax a federal institution ("the power to tax is a power to destroy") based on Supremacy Clause.**

THE NATIONAL COURTS AND FEDERALISM – *MCCULLOCH v. MARYLAND (1819)*

BACKGROUND:

- Maryland attempted to close the Baltimore branch of the national bank by passing a law that forced all banks chartered outside of the state to pay a yearly tax. James McCulloch, the chief administrative officer of the Baltimore branch, refused to pay the tax. The state of Maryland sued McCulloch, saying that Maryland had the power to tax any business in its state and that the Constitution does not give Congress the power to create a national bank. McCulloch's attorneys argued that the establishment of a national bank was a "necessary and proper" function of Congress, one of many implied, but not explicitly stated, powers in the Constitution.

ISSUE:

- Did Congress have the authority under the Constitution to commission a national bank? If so, did the state of Maryland have the authority to tax a branch of the national bank operating within its borders?

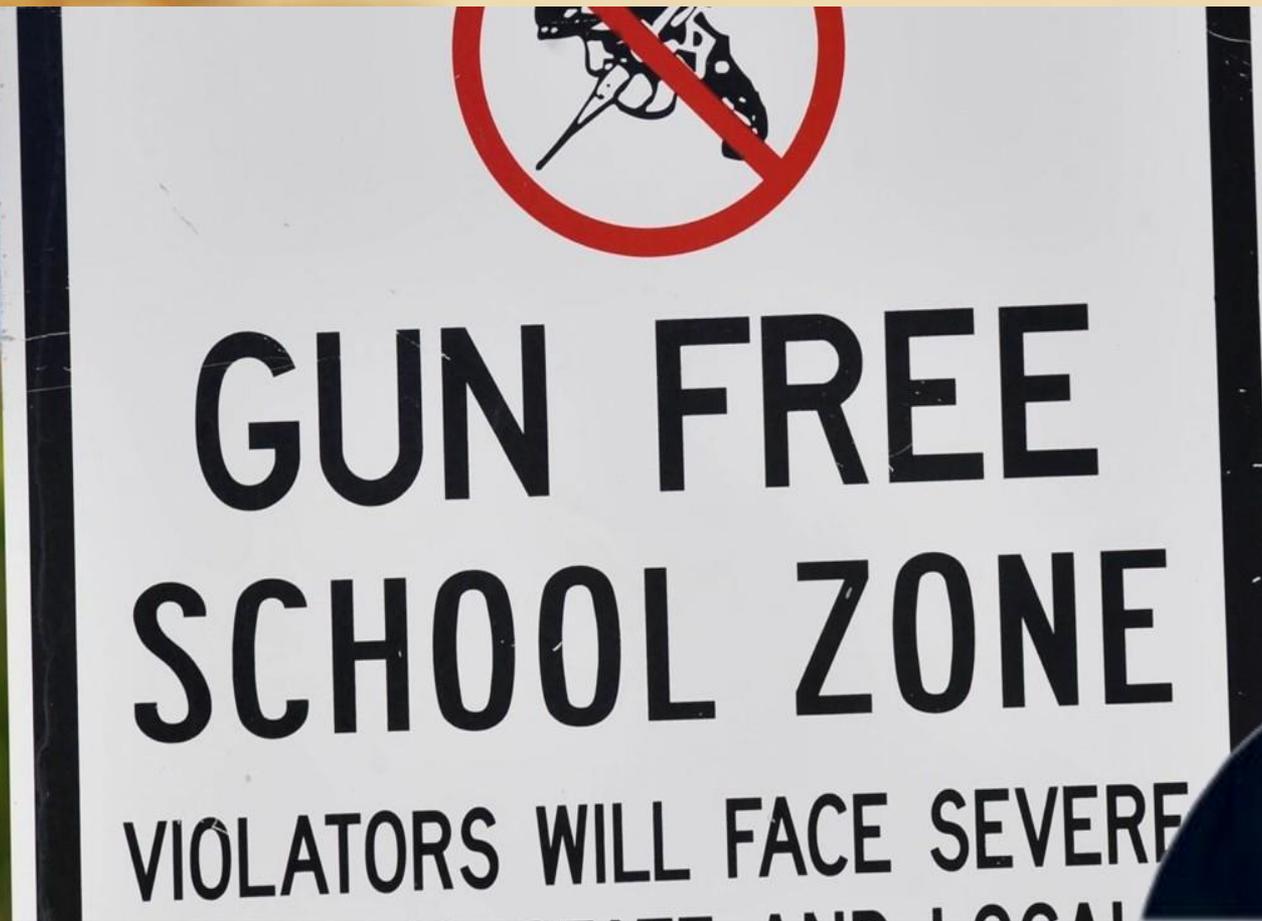
MAJORITY OPINION:

- Key Claim(s):
 - The Supreme Court determined that Congress did have the power under the Constitution to create a national bank. Even though the Constitution does not explicitly include that power, there is also nothing in the Constitution that restricts Congress's powers to those specifically enumerated.
- Reasoning used to justify the opinion:
 - The Necessary and Proper Clause gives Congress the authority to make "all laws which shall be necessary and proper" for exercising the powers that are specifically enumerated, and the establishment of a national bank is "necessary and proper" to exercising other enumerated powers.

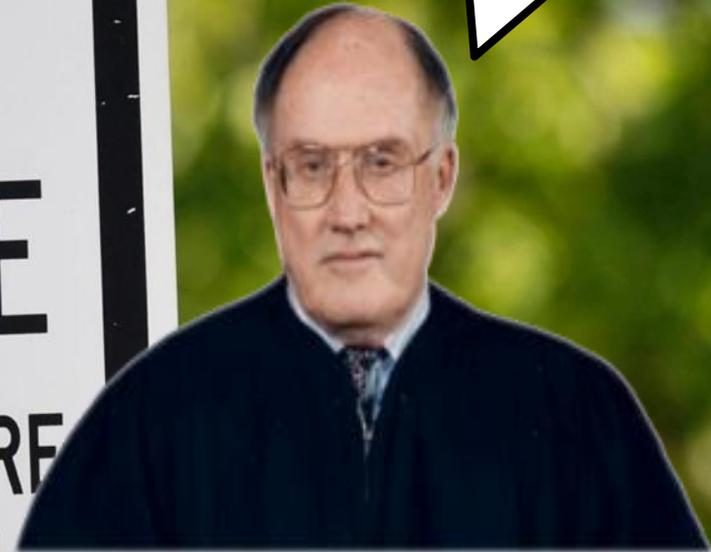
IMPLICATIONS:

- The Marshall Court declared that "the Constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them." Allowing a state to tax a branch of the national bank created by Congress would allow that state to interfere with the exercise of Congress's constitutional powers.

U.S. v. Lopez (1995)



The Court ruled in favor of Lopez because regulating guns in local schools is not sufficiently related to Congress' Commerce Clause power to pass Constitutional muster.



In 1990, the United States Congress, passed the Gun-Free School Zones Act of 1990, which made it a federal offense “for an individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.” Possession of a handgun near school is not an economic activity nor has a substantial effect on interstate commerce, and therefore CANNOT be regulated by Congress.

THE NATIONAL COURTS AND FEDERALISM – *U.S. v. LOPEZ (1995)*

BACKGROUND:

- Lopez took a concealed weapon into school and was charged under Texas law for having a weapon on school grounds. Federal agents then charged Lopez with violating the Gun-Free School Zones Act.

ISSUE:

- The question in the case related to the Commerce Clause and whether Congress had exceeded its authority under the clause.

MAJORITY OPINION:

- Key Claim(s):
 - The Gun-Free School Zone Act had nothing to do with interstate commerce or economic activity. Therefore, it was beyond the scope of Congress to regulate under the Commerce Clause.
- Reasoning used to justify the opinion:
 - The lawyers for the U.S. argued that since many guns have crossed state lines in the production and sale, then they should be considered interstate commerce. However, possessing a gun in a school zone is not, in itself, an economic activity that might affect interstate commerce.

IMPLICATIONS:

- With their decision, the Court stopped what many people saw as federal encroachment into issues that fall within the states' jurisdictions. The Court, following the idea of State Sovereignty Federalism, limited the federal government's involvement in areas that were not specifically related to interstate commerce.

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



Unit One Lesson #8: Fiscal and Regulatory Federalism

- Grants v. Mandates
- Fiscal Federalism “The Carrot”
- Regulatory Federalism “The Stick”
- Federal Grants: Block v. Categorical Grants
- Federal Mandates
- USA Patriot Act (2001)
- No Child Left Behind Act (2001)

**UNITARY SYSTEM – GOV'T MAKES
LAWS AND THE WHOLE COUNTRY
FOLLOWS THEM.**

**FEDERAL SYSTEM – NATIONAL
GOVERNMENT IS LIMITED IN
WHAT THEY CAN DO.**



The Feds want the States to do something,
the Feds can either...

tomorrow

(noun)

a mystical land where 99% of all
human productivity, motivation and
achievement is stored

1. **GRANT** the states money. States usually need more money so they accept the grants even if there are significant strings attached. Congress is able to use money to usurp state power because when the states voluntarily take the money they also sign on the dotted line to accept all the conditions of the grant.
2. **MANDATE** the states to do it. These mandates can either be fully, partially, or unfunded. Feds must have the constitutional authority to issue the mandate.

FISCAL & REGULATORY FEDERALISM

“THE CARROT” AND “THE STICK”

- To use a common metaphor, the national government uses the need for fiscal assistance as both a carrot and a stick.
- **The CARROT is the federal dollars needed by the state, which come in the form of grants-in-aid.**
 - As citizens’ needs expand, the states look to the national government to assist in meeting the financial aspects of fulfilling those needs.
- ***FISCAL FEDERALISM = THE CARROT***
- **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.**
 - 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.
- ***REGULATORY FEDERALISM = THE STICK***

The Carrot and the Stick

Stick =
The threat of
losing the
federal
\$/grants if the
state does
not comply
with specific
requirements
attached to
the \$

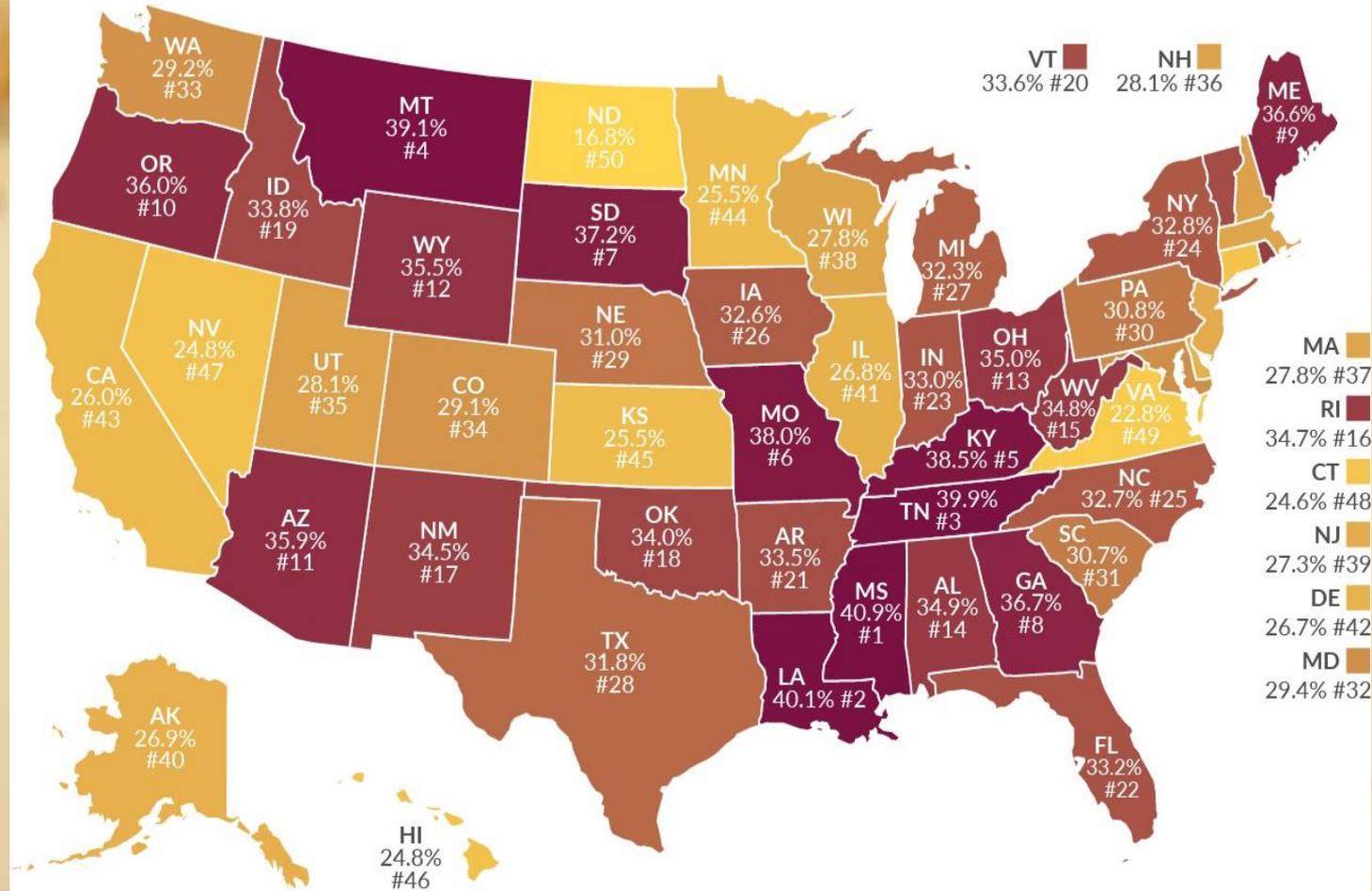


Carrot =
Federal \$
states
want/need
that they
get in the
form of
grants

Can you think of a state program that is federally funded? Are there requirements the state has to meet?

Which States Rely Most on Federal Aid?

Federal Aid as a Percentage of State General Revenue (FY 2014)

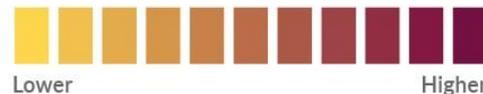


So how can the federal government make the state governments do what they want?

Notes: Figures are calculated by dividing each state's "Intergovernmental Revenue" by its "General Revenue." "General Revenue" includes all tax revenue but excludes utility revenue, liquor store revenue, and investment income from state pension funds. D.C. is designated as a local entity by the U.S. Census Bureau and thus not included here.

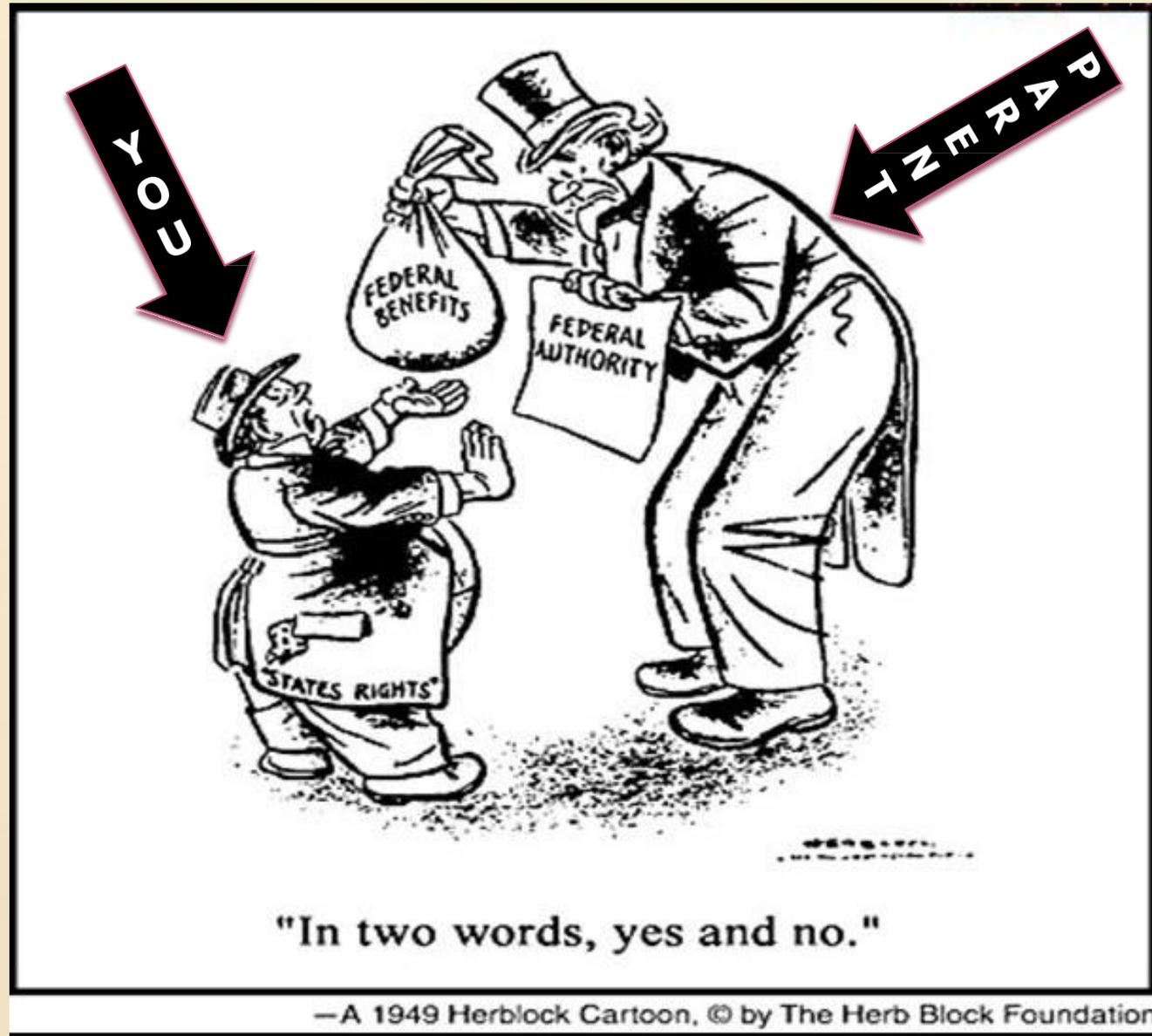
Source: U.S. Census Bureau; Tax Foundation.

Federal Aid as a Percentage of State General Revenue



Why does every state have a drinking age of 21?

Same reason most of you will do as your parents wish when you are in college!



—A 1949 Herb Lubart Cartoon, © by The Herb Lubart Foundation

FISCAL FEDERALISM (“THE CARROT”)

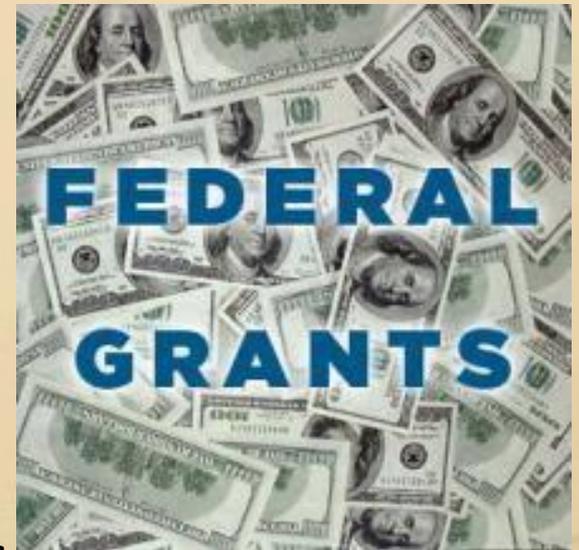
- Fiscal federalism is the model of spending, taxing, and providing grants in the federal government system.
- The national government’s primary means of influencing state governments is giving money to states in the form of grants-in-aid (or grants).
- Since World War II, states have come to rely heavily on federal money.
- Likewise, the national government has also relied on the states to administer some federal policies, a practice called fiscal federalism.
- The nation’s leaders originally designed them to help fund agriculture, land grant colleges, and farm-related education.
- They grew to encompass many other types of funding such as public housing, urban development, and school lunch programs.

WHAT ARE FEDERAL GRANTS?

Definition: Federal revenue given to state and local governments to establish minimum national standards in important areas (air quality, water quality, transportation, education)

PURPOSE OF FEDERAL GRANTS

- To equalize resources among the states (both rich and poor)
- To attack national problems, yet minimize the growth of federal agencies (reduces growth of federal bureaucracy >> federal government simply provides money to states and has states run the programs - under federal guidelines, of course)



GRANTS

BLOCK GRANTS

- Granted to support a collection of general programs (e.g. transportation, urban development, education)
- **LESS STRINGS ATTACHED** = States have more freedom to spend money how they see fit = fewer federal restrictions
- Associate these with 104th and 105th Republican Congress and devolution of power back to the states

CATEGORICAL GRANTS

- Congress appropriates funds for specific purposes (e.g. low-emission bus, low-income housing, STEM education)
- **MORE STRINGS ATTACHED** = States have less freedom to spend money how they see fit = more federal restrictions
- States don't have to accept these, but if they do they must comply with federal standards >> weakens the power of state governors and legislators

THE POLITICS OF FEDERAL GRANTS

- **DEMOCRATS** have generally favored greater funding, but with more “strings” associated with categorical grants.
- **REPUBLICANS** have generally favored less funding, but with fewer “strings” associated with block grants.
- **Welfare** is an example of this.
 - End of entitlement status of AFDC and federal guarantee of welfare checks with passage in 1996 of Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act of 1996).
 - Welfare block grants therefore replaced the welfare categorical grants.
 - Even as a block grant, the Welfare Reform Act involved federal “strings.”
 - No federal funds go to recipients who have not worked within 2 years.
 - No federal funds go to recipients who have received federal money >5 years.
 - States must spend at least 75% of what they had previously spent on welfare – this to avoid the “race to the bottom.”

REGULATORY FEDERALISM (“THE STICK”)

ALL STUDIES IN REGULATION AND FEDERALISM

USING FEDERALISM TO IMPROVE ENVIRONMENTAL POLICY

HENRY N. BUTLER
JONATHAN R. MACEY



- One way for Congress to pass mandates is to impose regulations and standards on state and local governments.
- **DEFINITION:** A federal mandate is a requirement or an order from the central government that all state and local government must comply with.
- In the past, Congress has forced state governments to meet certain federal guidelines. This is known as regulatory federalism.

FEDERAL MANDATES

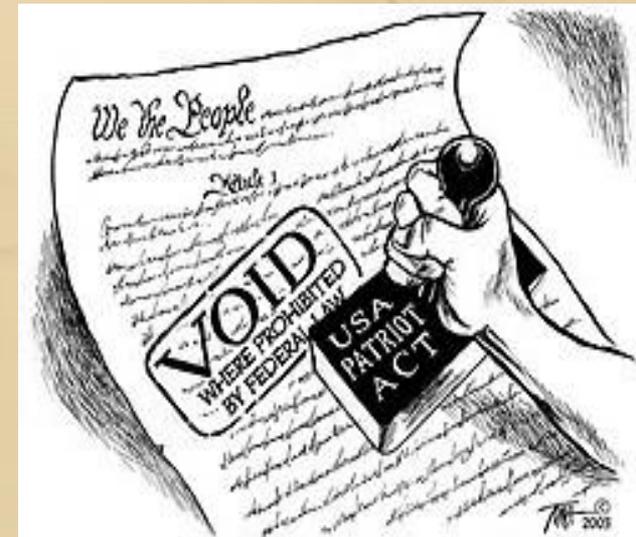
- **Mandate:** a federal order imposed upon states. Examples:
 - Americans with Disabilities Act (governors and mayors don't like because of costs to remodel)
 - Various environmental acts (e.g. Clean Air Act, Clean Water Act).
- **Purposes:** to meet a goal of the federal government.
- **Impact upon the states:**
 - Financial burdens, especially with unfunded mandates (e.g. ADA has imposed large costs upon states as they make “reasonable accommodaRons” 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).



GOVERNMENT SURVEILLANCE

USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) - 2001

- The law covered intelligence gathering and sharing by executive branch agencies, points of criminal procedure, and border protection. It also widened authority on tapping suspects' phones.
- Soon, people began to question the law's constitutionality and its threat to civil liberties.
- Some of the most controversial parts of the Patriot Act surround issues of privacy and government surveillance. The Fourth Amendment to the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" It requires law- enforcement officers to obtain warrants before making most searches.
- **Does the government have the right to collect phone and internet data from individuals?**



PUBLIC EDUCATION

No Child Left Behind Act – 2001

- An act to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.
- States must adopt education accountability standards. States must annually test students. Sanctions against schools that fail to meet adequate yearly progress.
- NCLB was criticized for growing the federal footprint in K-12 education.
- Education advocates also claim the law has been underfunded.
- **Does the federal government have the right to play a role in education in America?**

