

Why Government?



Some food for thought...

- “Young people today have never known a time when most citizens paid attention to major political events. As a result, most of them have yet to get into the habit of following and participating in politics” (Edwards, 8)
- The goal of this course is to be persuaded that paying attention to politics and government is important!

Government



- Definition:
 - The institutions and processes through which public policies are made for society.
- This definition leads to two basic questions:
 - How should we govern?
 - What should government do?
 - All governments:
 - Maintain a national defense, provide public goods and services, preserve order, socialize the young and collect taxes.

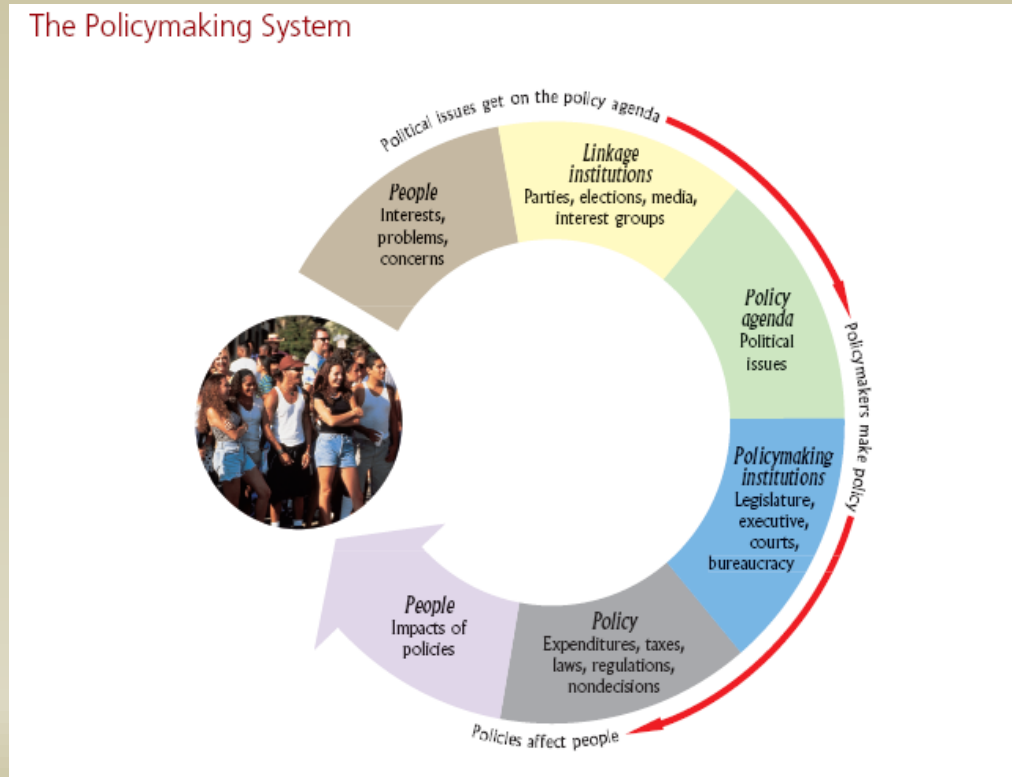


- Definition:
 - The process by which we select our governmental leaders and what policies these leaders produce. Politics produces authoritative decisions about public issues.
- Also consider Lasswell's definition:
 - *Who gets what, when and how.*

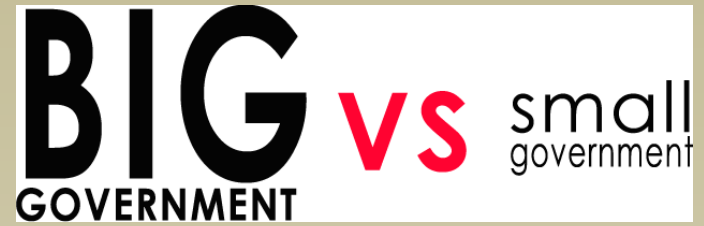


The Policymaking System

- The process by which policy comes into being and evolves over time
- How the government responds to the priorities of its people.
- People shape policy through **linkage institutions** (political parties, media, elections, interest groups)



Policy Agenda



- Political Issues
 - These arise when people disagree about a problem and how to fix it.
 - The great debate is always over the role and size of government in our nation.
- A government's policy agenda changes regularly and usually in response to current events (economic, social)
 - Changes in the population's ethnic/racial composition, age distribution, employment and lifestyle create demands for shifts in government policy.

Policymaking Institutions

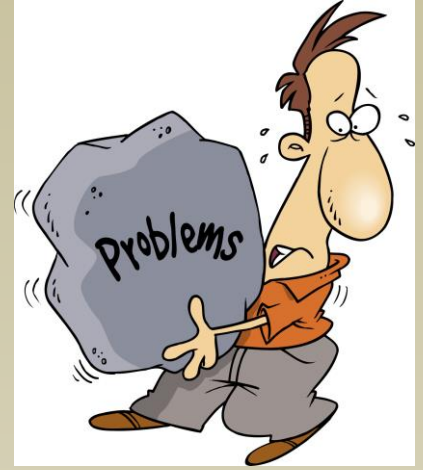


- Policy is created, reviewed and carried out by the major policy making institutions:
 - Legislature (Congress)
 - Executive (President)
 - Courts (Federal and State)
 - Bureaucracies (Federal and State)



Policy Impacts People

- Impacts of Policies:
- Does it solve the problem?
- Does it create more problems?
- Either way, the people send these messages back through the policymaking system and it all starts again 😊



Traditional Democratic Theory

- A system of selecting policymakers and of organizing government so that policy represents and responds to the public's preferences.
- 2 Types:
 - Direct: rule by the people themselves. Citizens create/vote on all laws
 - Impractical: reasons of time/expertise
 - Masses of people can make unwise decisions based on Emotions (Hitler was elected)
 - Majoritarianism: the tendency for gov't to do only what the majority of people want.

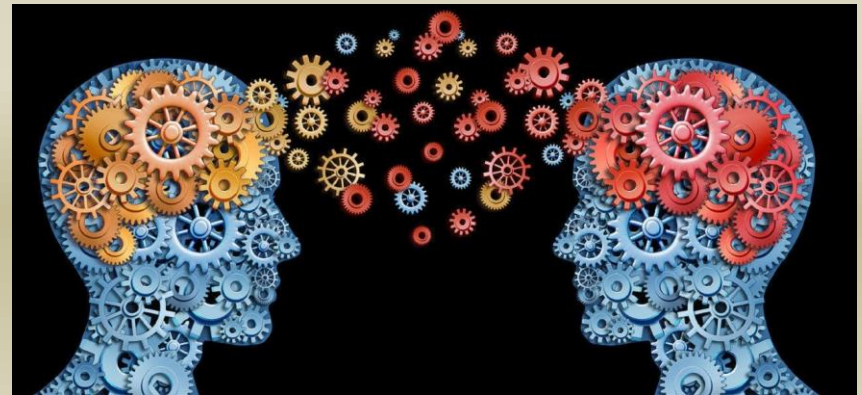


- Indirect: rule by elected representatives: Republic.
 - Citizens elect representatives
 - Reps are educated on issues at hand
 - Gov't mediates popular views and minority rights are more likely to be protected.
 - Prevents fast sweeping changes



Ideal Democratic Process

- Robert Dahl suggests that the ideal democratic process should have:
 - Equality in voting
 - Effective participation
 - Enlightened understanding
 - Citizen control of the agenda
 - Inclusion



~~Mini-FRQ!~~

- ~~• This is your first timed mini-FRQ. You have 20 minutes.~~
- ~~• See prompt.~~

Theories of U.S. Democracy

- Elitism (aka Class Theory): The upper class who controls the wealth also controls the power. A small number of people are the policy makers.
 - Marx (influence of the economic elite)
 - C. Wright Mills (influence of power elite)
 - Max Weber (influence of Bureaucracy)
- Not all groups are equal
- Policies benefit those with money / power



ELITISM

It's lonely at the top, but it's comforting to look down upon everyone else.

Contemporary Theories of U.S. Democracy

- Pluralist Theory
 - politics is a competition among groups to control and influence public policy and no one group dominates.
 - Political resources are so scattered that no single elite has a monopoly on them
 - Groups will work together to negotiate and bargain so that the voices of many are heard.
 - Policy is therefore the outcome of political haggling, innumerable compromises and ever-shifting alliances among groups.
- Public interest will prevail



Theories of U.S. Democracy

- Hyperpluralism
 - groups are so strong that government is weakened. There are too many ways for groups to control policy, making their decisions difficult to coordinate and implement.
- Confusing / contradictory policies
- Because of this public interest is not actually reflected in public policy.

Fundamental Democratic Values

- Popular Sovereignty
- Respect for the Individual (state serves individual, not vice versa)
- Liberty
- Equality (more of opportunity than result)
- FDR Second Bill of Rights: economic security



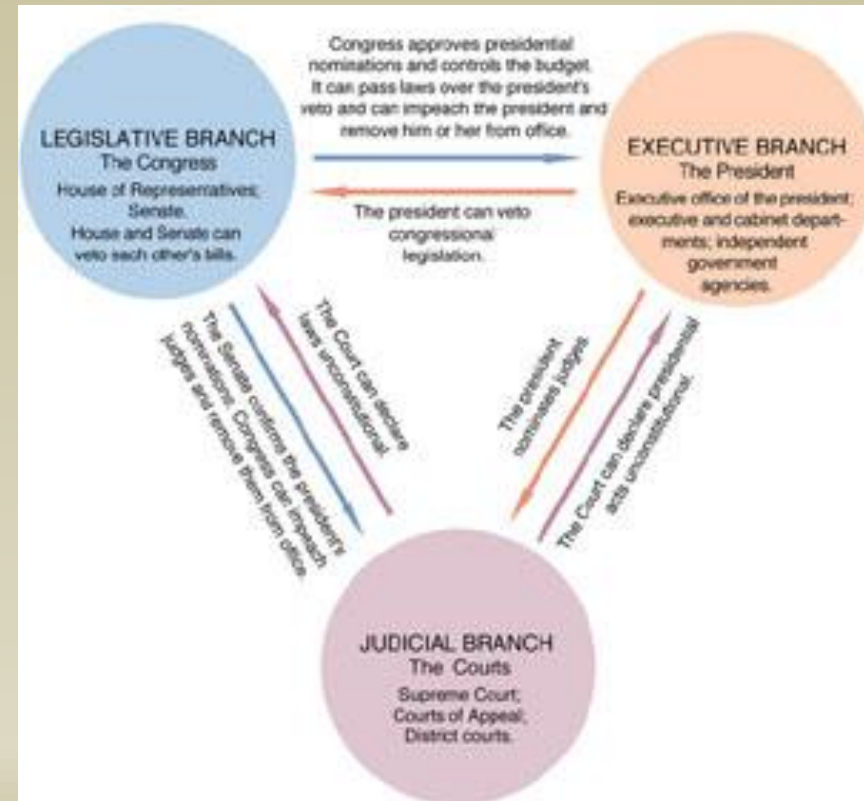
Fundamental Democratic Processes

- Free and fair elections, with competing political parties
- Majority rule with minority rights. Fear of “tyranny of the majority” led to protection of property rights
- Freedom of Expression
- Right to assemble and protest



Fundamental Democratic Structures

- Federalism
- Separation of Powers
- Checks and Balances
- Constitutionalism



Challenges to Democracy

- Increased Complexity of Issues
 - Difficult to be involved in democracy when the issues of our government are so complex and difficult to comprehend.
- Limited Participation in Government
 - Limited participation challenges the foundation of democracy.
- Escalating Campaign Costs
 - Raises concerns over the influence of wealth in politics.
- Diverse Political Interests (policy gridlock)
 - So many different interests are represented that the parties work against each other and nothing gets done.

American Political Culture

- The set of values that many Americans hold about our nation/government
 - Liberty
 - Egalitarianism (equal opportunity)
 - Individualism
 - Laissez-Faire
 - Populism (the rights of the average person)





The Constitution

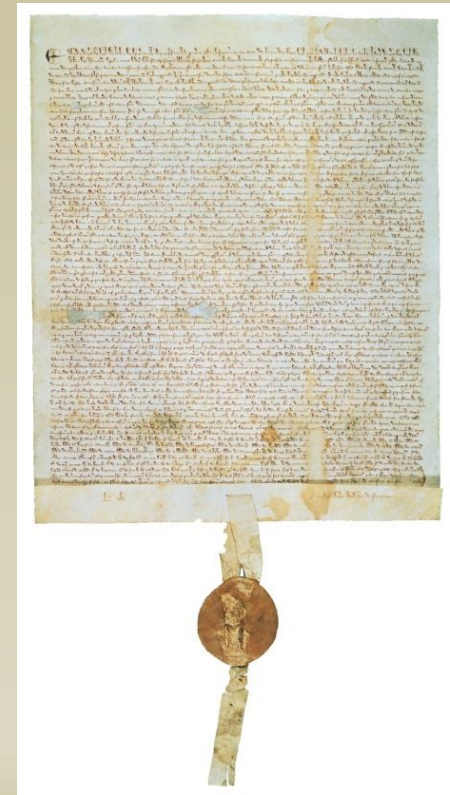
Chapter 2

Constitution

- Definition
 - A nation's basic law. It creates political institutions, assigns or divides powers in government, and often provides certain guarantees to citizens.
- Sets the broad rules of the game.
- The rules were not (still are not) neutral; some participants and policy options have advantages over others.
 - Examples?

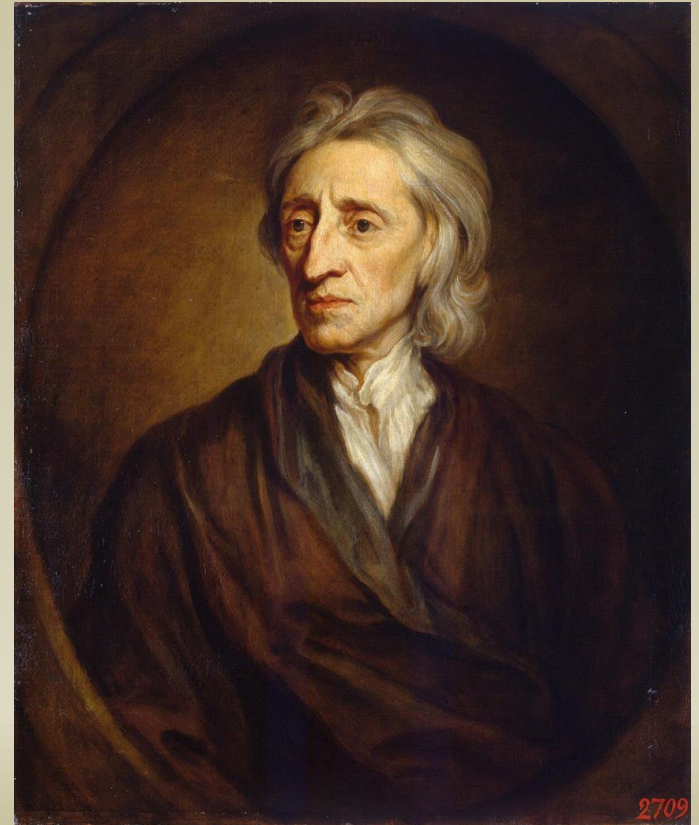
Sources of the Constitution

- British Customs and Traditions
 - Magna Carta, English Bill of Rights
- Colonial Experiences (the power of elected assembly)
- State Constitutions (example the introduction to the Mass. Constitution bears many similarities to the preamble)
- European Philosophers



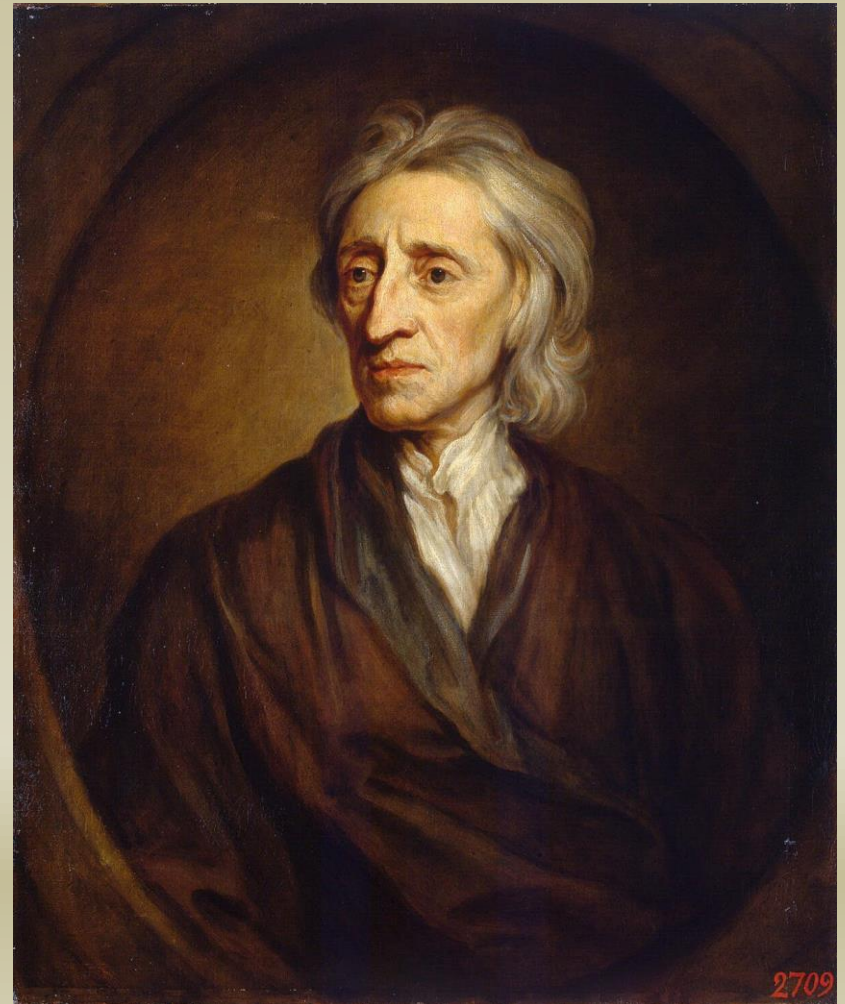
The English Heritage: John Locke

- Natural rights: rights inherent in human beings, not dependent on government
- Consent of the governed: government derives its authority by sanction of the people
- Limited Government: certain restrictions should be placed on government to protect natural rights of citizens



John Locke (1632-1704)

- People are born with natural rights (“life, liberty, and property”)
- People form governments to preserve their rights
- Government is based on the consent of the people
- Government is a contract with the people to uphold their rights
- If government does not uphold such a contract, the people can alter or abolish the government

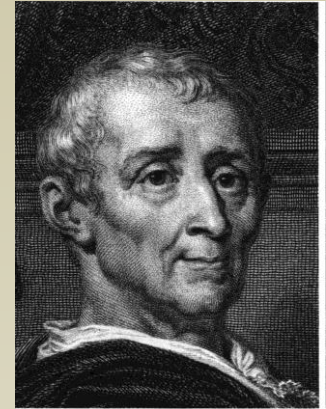


The French Heritage: Montesquieu

Montesquieu's *The Spirit of the Laws*

- Argued for division of power between branches of government.

SOUND FAMILIAR?



- Separation of Powers: the principle of dividing the powers of a government among different branches to guard against abuse of authority.

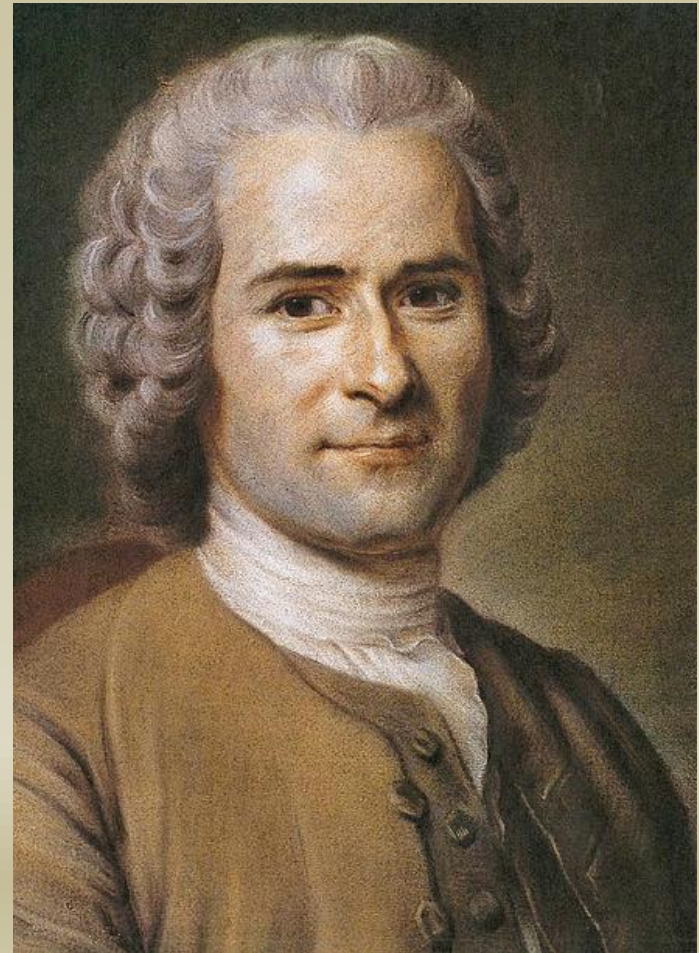
Charles Louis de Secondat (Baron de Montesquieu) (1689-1755)

- The ideal government is based on a separation of powers
- Powers are divided among the legislative, executive, and judicial branches
- Separation of powers protects the rights of the people by preventing one branch from gaining control of society



Jean-Jacques Rousseau (1712-1778)

- The ruler of a state does not have sovereign power
- The general will of an entire community is the source of power
- Rulers are the servants of the community
- Failure to carry out the people's will is grounds for removal
- All communities live according to a social contract that looks out for the rights of the whole as well as the individual



The Birth of a Nation

1783-1791



Setting the Scene: Independence!

- It is 1783
- The United States has won its independence from Great Britain (Treaty of Paris 1783) → YAY!



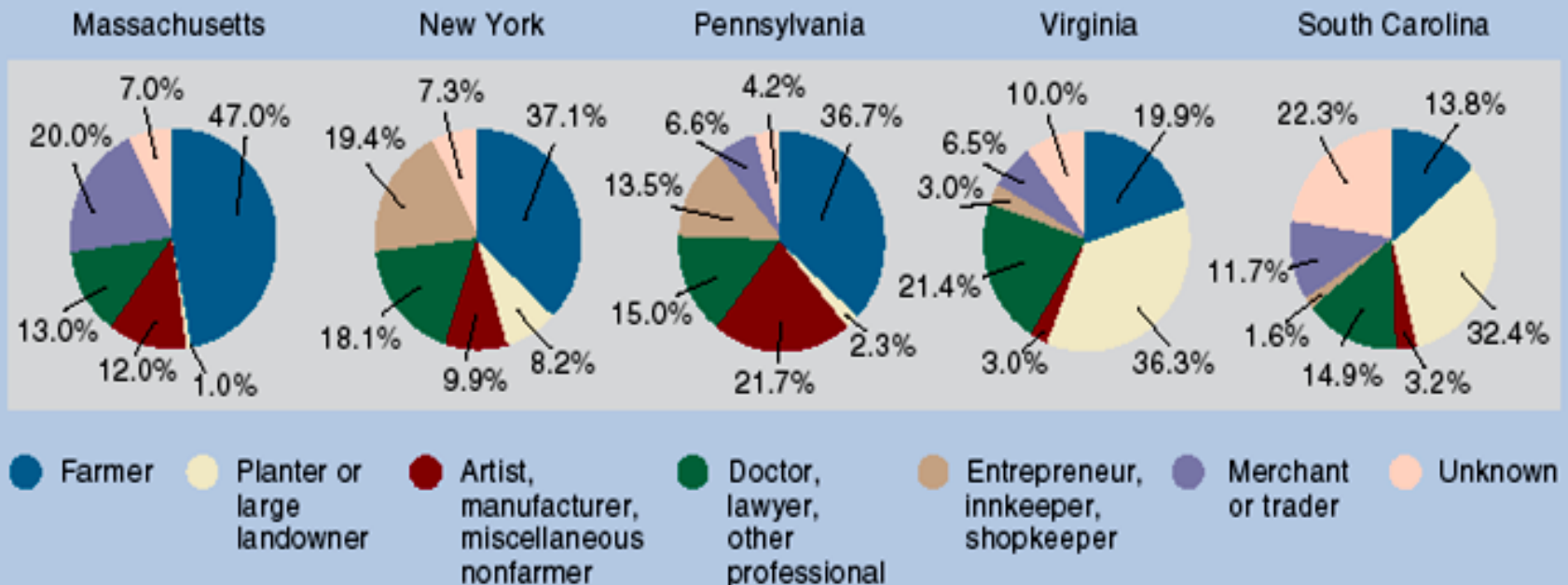
Now What?!



**What obstacles did the new
country face?**

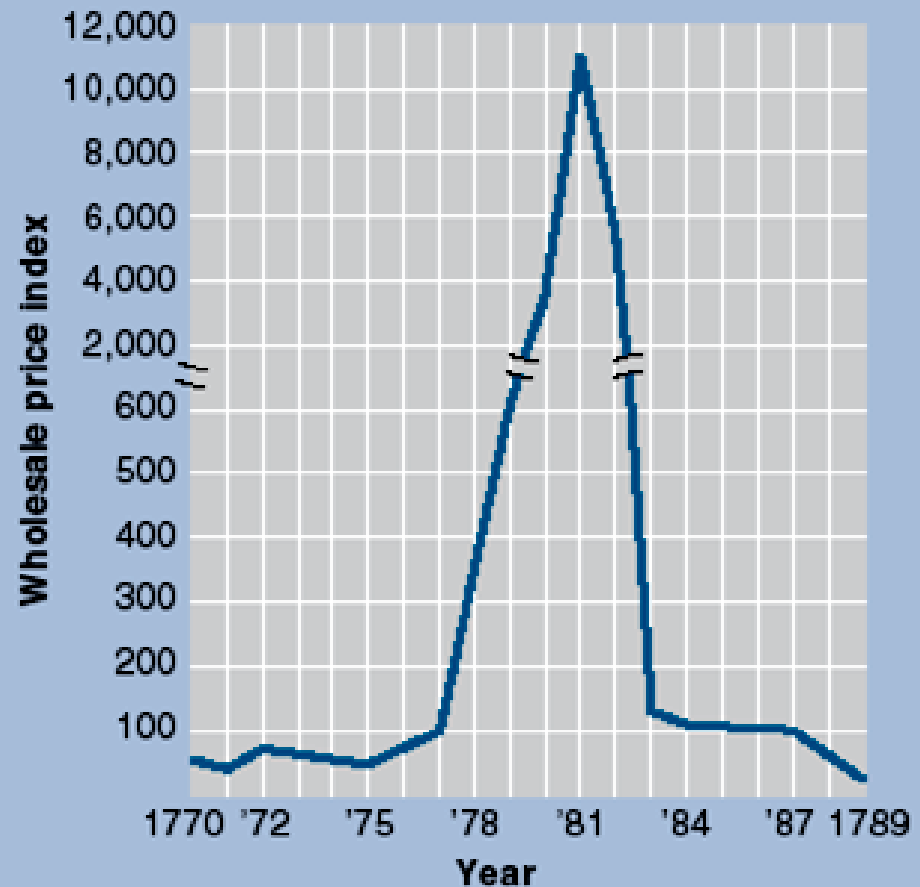
Occupational Composition of Several State Assemblies in the 1780s

Membership in the revolutionary assemblies reflected differences in the economies and societies of the various states. Those differences often generated political conflict throughout the Revolutionary era. What are the major differences between northern and southern state assemblies, and how do you explain them?



Wholesale Price Index: 1770-1789

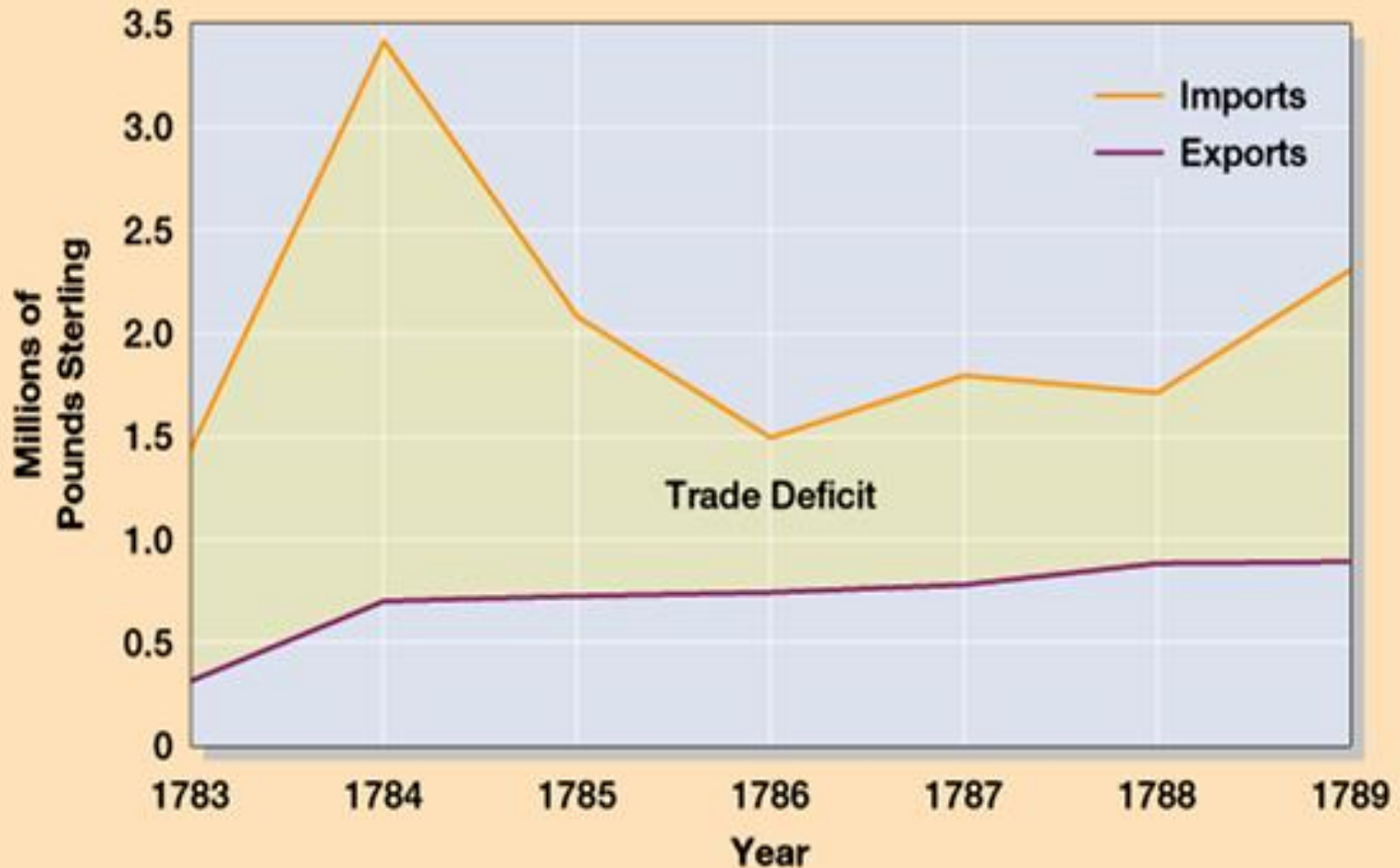
Prices skyrocketed as Congress and the state governments printed huge amounts of paper money to cover the costs of the war and as the British blockage reduced the supply of goods. The resulting inflation was the worst in U.S. history.



Note: 1850-1859 = 100

Source: U.S. Bureau of the Census.

American Exports, To & From Britain: 1783-1789



Creating a Government..

- What were the colonists' main complaints against the British before the Revolution?
- What type of government will they create in light of these complaints?
- National v. State Government Power?
- What does the government need to be able to do?

Liberty v. Order?

Background

- Decl. of Ind. → Rev War → Articles of Confederation
- Articles of Confederation
 1. National government = unicameral legislature.
 2. Equal representation per state (1 state = 1 vote)
 - 9 states needed to pass any legislation
 - 13 needed to amend
 3. No Executive or Judicial Branches
 4. Selection and payment of delegates to Congress by state legislatures.
 5. States retained sovereignty

Congress COULD

1. Make peace
2. Coin Money (sort of)
 - States WERE allowed to do this too!
3. Appoint officers for an army
4. Control the post office
5. Negotiate with Indian Tribes



YEAH BUT...

Congress COULD NOT

1. Tax

- Could only ASK states for taxes.

2. Raise an army

- Could only ASK states for troops.

3. Regulate Commerce

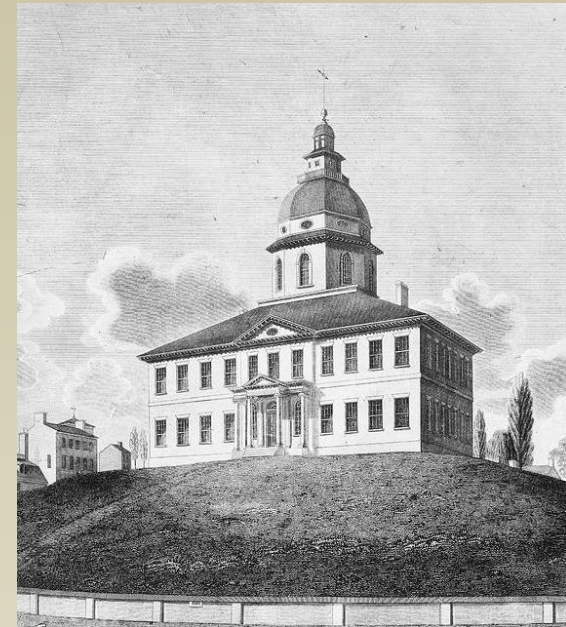
- States entered into trade agreements with each other and OTHER COUNTRIES



WHY CREATE A GOVERNMENT LIKE THIS?
(Liberty v. Order)

The Government That Failed

- The Aborted Annapolis Meeting
 - An attempt to discuss changes to the Articles of Confederation.
 - Specifically to address the barriers that limited trade and commerce between the states
 - Attended by only 12 delegates from 5 states.
 - NY, NJ, PA, DE, VA
 - Called for a meeting in May 1787 to further discuss changes and examine areas broader than just trade and commerce.



Shay's Rebellion: The Final Straw

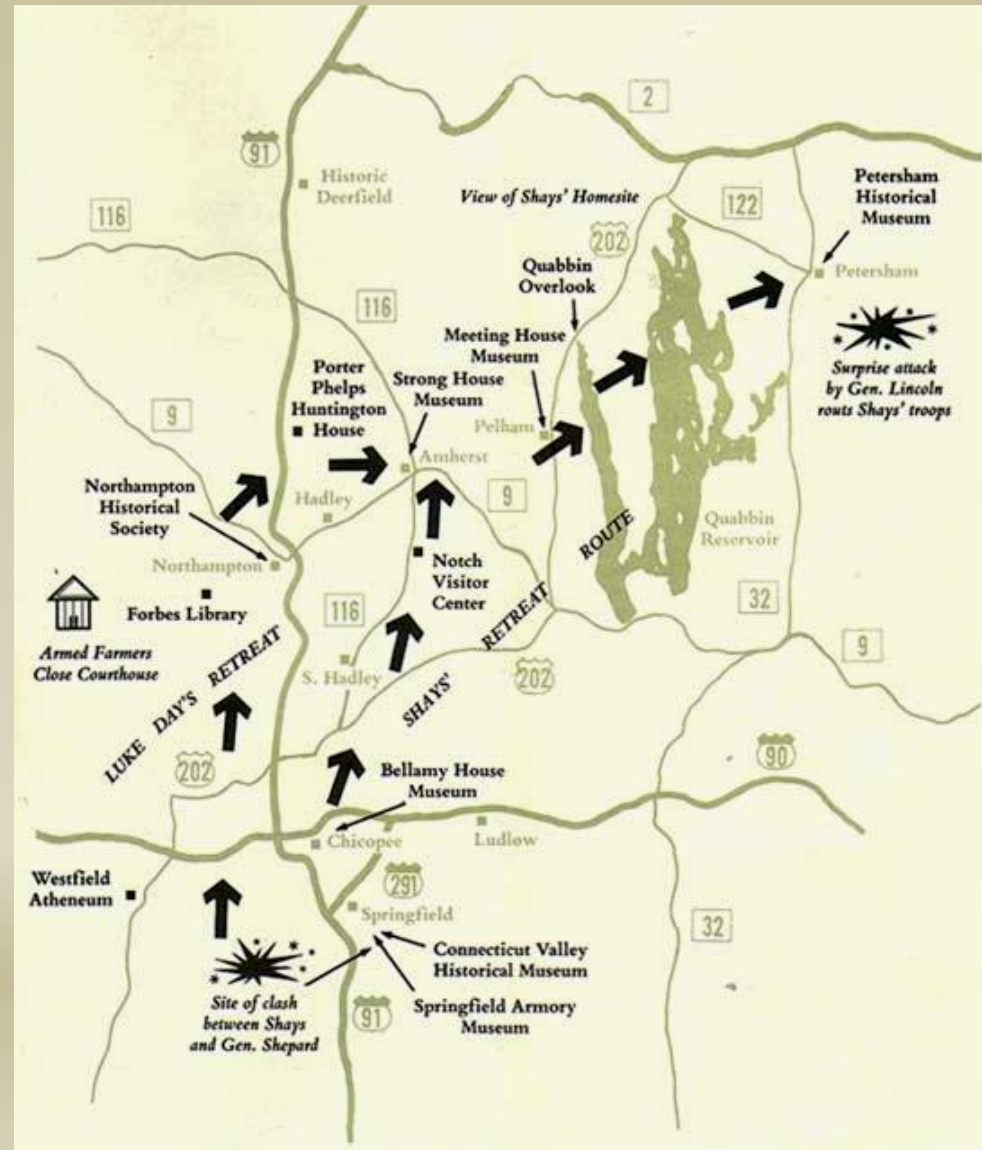
- 1786-87 → Daniel Shays leads a rebellion of farmers in W. Mass.
- Mass. Constitution favors the wealthy = must own property to vote
 - Lower & middle classes can't vote
- Former Continental Army volunteers waiting for war bonuses → Gov't has no money to pay them!
- Small farmers angered by crushing debts and taxes



Shay's Rebellion: The Final Straw

- Shay's and his men forcibly take the state courthouse in Springfield, MA.

WHAT CAN THE
NATIONAL
GOVERNMENT DO?



Shay's Rebellion: The Final Straw

- Congress asks states for troops to put down the rebellion
- Every state but Virginia refuses.
- It became glaringly obvious that we needed a strong central government to deal with these issues.

There could be no stronger evidence of the want of energy in our governments than these disorders.
~ George Washington

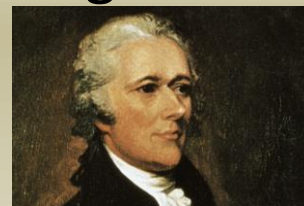
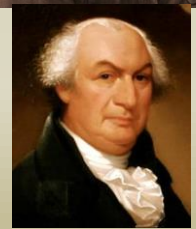
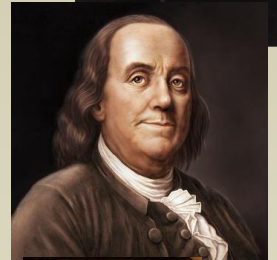
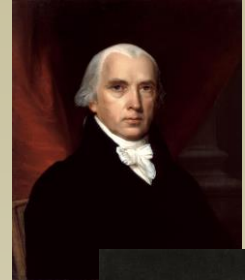
Making a Constitution: The Philadelphia Convention

- Gentlemen in Philadelphia
 - 55 men from 12 of the 13 states
 - Mostly wealthy planters & merchants
 - Most were college graduates with some political experience
 - Many were coastal residents from the larger cities, not the rural areas
 - Most were landowners
 - ‘well-read, well-bred, well-fed, and well-wed’



Important Participants

- Madison: Father of the Constitution: Only delegate to come to the convention prepared with a plan. Debate centers around his plan of government. Madison's philosophy on government becomes the central philosophy of the Constitution
- Washington: Presiding officer, strong supporter of a centralized gov't
- Franklin: "Elder Statesman"
- Morris: Largely responsible for the final wording of the Constitution
- Hamilton: Most forceful advocate for strong central government



Charles Beard's Economic Interpretation of the United States

(1913)

- Beard's points:
 - Constitution was written by the propertied class: it naturally reflected those interests. Not a conspiracy per se, but noteworthy
- Rebuttals
 - Most people owned property
 - Even the poor, in hopes of someday owning property, wanted to protect property
 - Establishing a democratic government involved risks and dangers → need to build in safeguards and protections.



Issue: The Articles, to scrap or not to scrap?

- Convention began on May 25, 1787
- Most who favored replacing the Articles with a stronger central government were already present at the convention.
- Nationalists far outnumbered 'republicans' (proponents of the Articles).
- Some proponents of the Articles were present, but few were considered credible.
- Articles supporters lack urgency, underestimated the possible success of the convention.

RESULT? Nationalists outflanked their opponents and moved forward with plans to replace the Articles of Confederation.

Areas of Agreement

- Scrap the Articles of Confederation
- Establish a republican government
- Establish a constitutional government
- Establish a balanced government where no single interest dominated
- Suffrage for property owners only
- Stronger central government than under the Articles
- Protection of property rights: the main purpose of government
- Keep the proceedings secret

Issue: Congress

- Virginia Plan
- Large/slave state
- Bicameral Legislature
- Based on population
- New Jersey Plan
- Small/free state
- Unicameral legislature
- Equal representation per state.

Resolution: The Connecticut Compromise.

- Proposed by Roger Sherman and William Johnson
- House of Representatives – based on state population
- Senate – based on equal representation (2 members per state)

Effect? Less populous states do have disproportionate influence in the Senate. The ten least populous states have 20% of the Senators but represent but 3% of the population.

Issue: Representation

Who to count and how often?

- Slave States: Smaller free population, wanted slaves to be counted fully toward representation in the House. Also, some wanted wealth to factored in.
- Free States: Demanded that slaves not be counted at all toward representation in the House.
- ECONOMIC AND POLITICAL POWER Both sides were looking toward the future and which interests will have the most power in Congress
- THE CENSUS
- South: Anticipated larger growth, wanted count to be often
- North: Feared southern power, wanted count to be less often

Resolution? 3/5 Compromise

- Proposed by James Wilson and Charles Pinckney:
- Of a state's entire slave population, 3/5 would be counted for free white representation in the House of Representatives. Also applies to direct taxation.
- Slave Trade ends in 1808
- EFFECT? South would hold a disproportionate amount of power in Congress for years to come.

Issue: Election of the President

- Life term or annual election?
- Compromise is a 4-year term
- Method of Election
 - Some wanted election by Congress
 - Some wanted election by state legislatures
 - Some wanted direct election
 - COMPROMISE: Electoral College System

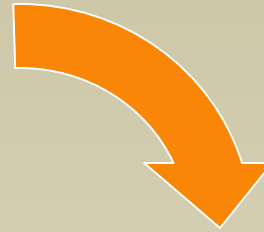
Other Issues and Resolutions

- Slave Trade
 - The importation of slaves would not be permitted to be abolished until 1808, protecting the practice for another 20 years.
- Fugitive Slaves
 - Property in slaves was to be protected by federal law. No non-slave state could grant freedom to a slave escaping from a slave state.
- Commerce
 - Federal government has the power to regulate interstate commerce and to impose duties on imports.
- Individual Rights
 - Federal government prohibited from suspending habeas corpus; Congress and states prohibited from passing ex post facto laws and bills of attainder; preserves trial by jury in criminal cases; prohibits religious tests for holding office.

Economic Issues: Commerce

PROBLEM

- Congress does not have the authority to regulate interstate and foreign trade



Solution

- Congress regulates interstate trade (Commerce Clause)
- Can tax imports not exports

TABLE 2.3

Economics in the Constitution

Powers of Congress

1. Levy taxes.
2. Pay debts.
3. Borrow money.
4. Coin money and regulate its value.
5. Regulate interstate and foreign commerce.
6. Establish uniform laws of bankruptcy.
7. Punish piracy.
8. Punish counterfeiting.
9. Create standard weights and measures.
10. Establish post offices and post roads.
11. Protect copyrights and patents.

Prohibitions on the States

1. States cannot pass laws impairing the obligations of contract.
2. States cannot coin money or issue paper money.
3. States cannot require payment of debts in paper money.
4. States cannot tax imports or exports from abroad or from other states.
5. States cannot free runaway slaves from other states (now defunct).

Other Key Provisions

1. The new government assumes the national debt contracted under the Articles of Confederation.
2. The Constitution guarantees a republican form of government.
3. The states must respect civil court judgments and contracts made in other states.

Individual Rights Issues

Some were written into the Constitution:

1. Prohibits suspension of writ of habeas corpus (a writ ordering a person be brought before a judge to determine if his detention is lawful)
2. No bills of attainder (an act of the legislature declaring a person or group guilty of a crime and punishing them w/o a trial.)
3. No ex post facto laws (a criminal law that applies retroactively, thereby criminalizing conduct that was legal when originally performed)
4. Religious qualifications for holding office prohibited
5. Strict rules of evidence for conviction of treason

The Finished Product: Constitutional Principles

- Federalism
- Separation of Powers
- Checks and Balances
- Limited Government
- Popular Sovereignty

How do these principles balance Liberty and Order?

Ratifying the Constitution: The final product was done, but now 9 of the 13 states needed to ratify it.

- Federalists:
 - Supporters: property owners, creditors, merchants
 - Views:
 - Elites most fit to govern
 - Feared 'excesses' of democracy
 - Favored a strong central government
 - Leaders: Hamilton, Madison, Washington, Jay.
- Antifederalists
 - Supporters: small farmers, frontiersmen, debtors, shopkeepers
 - 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— their strongest argument
 - Leaders: Henry, Mason, Gerry

Federalist Advantages

- Were better represented in state legislatures
- Controlled the press
- Began ratification procedures quickly before the anti-federalists could get organized
- Agreed to a bill of rights after the ratification of the constitution

- Federalist Papers
 - A collection of 85 articles written by Alexander Hamilton, John Jay, and James Madison under the name “Publius” to defend the Constitution.
- Bill of Rights
 - The first 10 amendments to the U.S. Constitution, drafted in response to some of the Anti-Federalist concerns about the lack of basic liberties.

Adding the Bill of Rights

- The Federalist Papers didn't get the Constitution ratified, the Bill of Rights did.
 - Did the Anti-Federalists win?
- Federalists (Especially Madison) agreed to add a Bill of Rights AFTER the ratification of the Constitution.
- Madison wrote most of the Bill
 - Used recommendations of state ratifying committees
- 15 amendments submitted to Congress → 12 passed to the states → 10 ratified (BOR)
- One of 2 not ratified by the states in 1791, was eventually ratified 203 years later in 1992...by a College student!

Ratification

- Ratification
 - 1788; by state ratifying conventions of popularly-elected delegates.

Ratification of the Constitution

Votes of State Ratifying Conventions

<u>State</u>	<u>Date</u>	<u>For</u>	<u>Against</u>
Delaware	December 1787	30	0
Pennsylvania	December 1787	46	23
New Jersey	December 1787	38	0
Georgia	January 1788	26	0
Connecticut	January 1788	128	40
Massachusetts	February 1788	187	168
Maryland	April 1788	63	11
South Carolina	May 1788	149	73
New Hampshire	June 1788	57	47
Virginia	June 1788	89	79
New York	July 1788	30	27
North Carolina	November 1789	194	77
Rhode Island	May 1790	34	32

Principles of the Constitution

- Separation of Powers
- Checks and Balances
- Limited Government
- Judicial Review
- Popular Sovereignty and representative government tempered by indirect elections
- Federalism

Separation of Powers: The Madisonian Model

- Madison arrives early to contemplate the dilemma of how to reconcile majority rule with the protection of minority interests.
- His main concerns were:
 - Limiting Majority Control
 - Separating Powers
 - Creating Checks and Balances
 - Establishing a Federal System

Separation of Powers

- To Madison tyranny was government that controlled all 3 branches of government
- His goal was to create a system that diffused power instead of concentrating it
- Influence by Montesquieu
- Influence of Colonial Experiences: excessive power in state legislatures needed to be curbed by a strong executive (but not too strong!)
- Danger of one branch combining forces with another branch → need for checks and balances!

Checks and Balances

- Background
 - 18th century view of government was that it was something to be restrained, whereas the modern view of government was as something to be used for the common good.
 - There was a strong Fear of Tyranny among the founders and distrust of government. Checks and balances were a means of intentionally building inefficiency in order to prevent government abuse of power.
- A system of restraints in which each branch can check the other two

Examples of Checks and Balances

- Veto/Veto Override, appointment/confirmation, treaty making/ratification, defense funding/Commander in Chief
- Political Independence within each branch: no branch is dependent upon the other two for election (exception: judges appointed by Pres) nor continuance in office (life terms for judges ameliorate the presidential influence.)
- Staggering of terms within each branch → majority of voters gain control over one part of government at one time, e.g. midterm congressional elections can serve as a check on the power of the executive!

Modifications of Checks and Balances

- Political Parties: In theory, parties should weaken checks and balances—a way of bringing branches together. The constitution is said to divide government but parties bring people in govt together.
 - In reality, parties are a weak influence: dominance of only 2 parties each of which has a wide range of interests (too much disagreement within each party itself → difficult to assert strong control)
 - Prevalence of Divided Government- a president of one party and a congress controlled by the other.

Changes in Voting Methods

- Senators now chosen by people
- Congressmen also chosen by people (House)
- Presidents chosen by electors who (almost always) vote as the people have voted
- Thus, members of two branches are essentially chosen by the same electorate
 - This is a weakening of checks and balances, however split ticket voting has changed this some.

Growth of Federal Bureaucracy

- Development of numerous agencies with legislative executive and judicial functions
- Congress often grants broad authority to agencies and then lets them carry out the general will of Congress.
 - Congress created an IRS to collect taxes, and then granted the IRS authority to help write tax code, enforce tax code and settle disputes over tax code
- Thus the growth of Bureaucracy has generally caused a weakening of checks and balances.

Emergence of the US as a world Superpower

- Areas of national interest extend all around the world
- US is the leader of the free world, only remaining superpower after the Cold War
- With such heavy responsibilities any crisis seems to involve the US somehow.
- These responsibilities need to be dealt with in a strong and efficient manner, therefore power has concentrated in the executive branch → weakening the system of checks and balances.

The Status Quo

- Our system of checks and balances and separation of powers **favors the status quo**
- Those who want change must win at all points in policymaking process
- Those opposed to change only have to win once (e.g.- Presidential veto)
- The **results:**
 - Change comes slowly, if at all
 - encourages moderation, compromise
 - Property rights & personal freedoms have survived and been expanded

Limited Government

- Dilemma of wanting a more effective government, but also a limited government that did not become tyrannical
- Constitutional Government: Gov't has only those powers listed in the Constitution
- Bill of Rights as a safeguard against possible tyranny from a new, strong, distant government. Little fear of state gov't but great fear of the national gov't. Amendment 10 reflects the view that states would have substantial powers (central government could only exercise those powers delegated to it by the Constitution, states would have all other powers.
- Free elections, but potential of majority faction → Madison's auxiliary precautions (Fed 51)

Judicial Review

- Power of Courts to strike down laws or government actions
- Not explicitly provided for in the Constitution but
- Established by Marbury v. Madison, 1803
 - Facts of the Case: the end of Federalist control of gov't and appointment of the 'midnight judges' (by Adams), including Marbury. Jefferson (pres) ordered Madison (sec of state) not to deliver commissions to these judges. Marbury requests a writ of mandamus from the Supreme Court to order the delivery of his commission.
 - Decision: section 13 of the Judiciary Act of 1789 enabling the Court to issue a writ of mandamus through original jurisdiction in this type of case was unconstitutional.

Marbury v. Madison Analysis

- Marshall ruled that the constitution did not have the authority to issue the writ, but he paradoxically increased its power by establishing judicial review when the Court struck down section 13
- Jefferson couldn't really complain because the midnight judges didn't receive their appointments but he fumed because his enemy, Federalist John Marshall had just increased the power of the court.
- Effects of Judicial Review: Citizens can challenge constitutionality of laws in court by initiating lawsuits → litigation has become an important way of making public policy.

Print out the Constitution

- http://www.archives.gov/exhibits/charters/constitution_transcript.html
- This is a website that has it in a printer friendly version. This one is w/o the amendments. But the one you print should have them all.

The Amendment Process

Constitutional Change

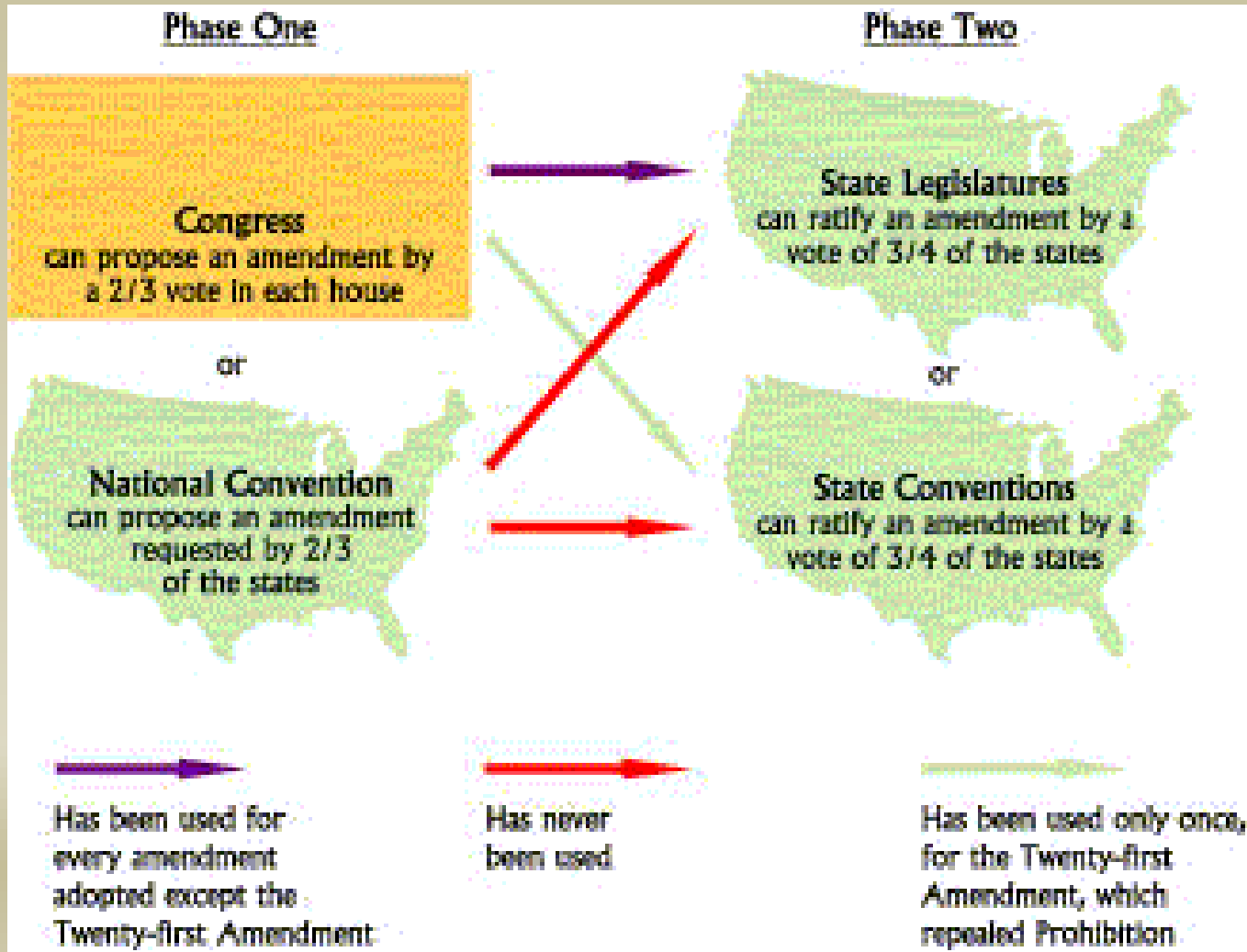


Figure 2.4

The Amendment Process: A Check Against Factions

- Legacy of the Articles: Unanimous vote to amend-→ impractical-→ desire to make the process easier, but not too easy.
- Each state counts as 1, regardless of population (unlike the electoral college)
- An amendment must be passed by passed by 38/50 states
 - Seems fair right?
- BUT...
 - An amendment opposed by the 12 LEAST populated states will not pass even if the 38 MOST populated states approve.
 - An amendment supported by the 38 LEAST populated states can be approved even if the 12 MOST populous states oppose it!

Examples of Formerly Proposed Amendments

- Anti-miscegenation Amendment (1912) → forbid interracial marriages
 - Federal Marriage Amendment → Proposed numerous times since 2003; It would define marriage as between a man and a woman.
 - Balanced Budget Amendment → Proposed numerous times ; it would force Congress to balance the budget
 - Term Limit Amendment (2009) → Would limit congressional terms for Senators and Representatives
- ARE THESE AMENDMENTS MORE EVIDENCE OF FACTIONS?

Process of Amending Reflects Federal System

- Proposal
 1. 2/3 vote from both houses of Congress (all done this way). No presidential veto possible
 2. Constitutional Convention called by Congress at the request of 2/3 of the states → serious implications and fears of such a gathering.
 1. Never been used before
 2. Fear of a 'runaway' convention that might get out of hand and implement wholesale changes in the Constitution
 3. 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?

Ratification: 2 methods, Congress decides which shall be used

- $\frac{3}{4}$ of state legislatures
 - All but one of the amendments were passed this way (21st)
 - Most state legislatures ratify with simple majority, but some require a supermajority ($\frac{3}{5}$, $\frac{2}{3}$, $\frac{3}{4}$)
- Ratifying conventions in $\frac{3}{4}$ of states
 - Amendment 21 done this way
 - 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.
- Time limit for Ratification is 7 years.

Changing the Constitution Informally

- Constitution was designed as a framework, details to be filled in later.
- Due to difficulties of formally changing the Constitution, informal ways developed.
 - Acts of Congress (ex. Judiciary Act of 1789)
 - Judicial Rulings (Plessy v. Ferguson, Brown v. Board of Ed, Texas v. Johnson, Lawrence v. Texas)
 - Presidential Actions (executive privilege, impoundment)

“Constitution belongs to the living, not the dead” Jefferson

- Jefferson believed that each generation might need a whole new constitution
- This hasn't occurred because of the informal changes that have allowed the Constitution to adapt to changing times.
- The US Constitution is the world's oldest and longest lasting governing document.
- It is shockingly short → only 8,000 words
- It is irritatingly vague → it does not prescribe every detail.
- The intention of the founders was to create a document that would stand the test of time.
- One that could adapt without having to be changed often.
 - Only 27 amendments → most passed in the last 100 years!

Homework

- Go to www.constitutioncenter.org/constitution
- Go to select an amendment, and use the links along with the analysis

Federalism

Chapter 3

What is Federalism?

- Who's job was it to clean up after Hurricane Katrina?



Federalism

- The constitutional division of power between the national government and state governments. Both get their powers from a Constitution, not each other.

Reasons for Federal System in the U.S.

- What else is there?
- Unitary System: where a central government rather than a constitution delegates power, was undesirable---too reminiscent of British rule, fear of a strong distant government.
- Confederate System: Spreads government power among many sub units (states) too reminiscent of the Articles

Why Federalism works for US

- Allows unity, but not uniformity → allows for differences among the states.
- More suitable for geographically large nations → allow for differences among states
- More suitable for heterogeneous people, allows for differences among states
- More likely to check tyranny
 - If tyranny occurred in a few states, federal government could prevent its spread to others
 - National government has only those powers granted to it, all other belong to the states through amdt. 10

Continued

- Frees national government to concentrate on truly national matters
- Frees states from excessive intrusion on strictly state/local matters
- Encourages experimentation → states as laboratories of democracy. (legalized gambling in Nevada has spread to other states, decriminalization of medicinal marijuana is spreading too)
- Keeps government closer to people. Multiple points of access for citizens.

Constitutional Basis of Federalism

- Not specifically mentioned in the Constitution
 - Founders clearly defined the powers of the states and national governments (sort of...)
- National powers: National government has 3 categories of powers that are delegated to it. Here are the categories of the delegated powers:
 - Expressed (enumerated): actually stated in the constitution
 - Implied: not stated explicitly, but suggested implicitly. Importance of the **elastic clause**.
 - Inherent: not stated explicitly but held by the national gov't by virtue of its being a national gov't. Any gov't is entitled to certain foreign policy powers such as diplomatic recognition, acquiring territory or defending itself.

Delegated Powers

- The War Power
 - Nat'l gov't responsible for protecting the country
 - Includes raising army, navy, air force, mobilizing industry
- The Power to Regulate Interstate and Foreign Trade
 - Commerce Clause - regulates many human activities (agriculture, transportation, finance, product safety, labor relations). Most activities affect commerce in more than one state → subject to the national government's authority.
- The Power to Tax and Spend
 - Congress has power to appropriate \$\$
 - If it finances an activity it determines how the money will be spent → Can withhold funds for multiple reasons.

State Powers: Reserved

- Amendment 10 states that any powers not granted to the national gov't are reserved for the states
- Examples: Establishing voting requirements, running elections licensing professionals, protecting community health, establishing vehicle codes.
- Controversial powers because they are not listed in the Constitution.
 - Debates between state and local gov't over their roles

Concurrent Powers

- Granted to Congress but not denied by the Constitution or courts to the states → essentially held by both
- Examples: taxing, borrowing, establishing court systems, establishing law enforcement agencies
- Questions of federal/state authority are decided by courts.

Constitutional Basis of Federalism

Obligations of the National Gov't to the states

- National Supremacy (Article VI: Supremacy Clause): National government is supreme in cases of conflict. Constitution is the supreme law of the land
 - However, national government cannot usurp state powers. 10th Amendment.
- Guarantee each state a republican form of gov't
- Protect each state against invasion or domestic violence
- Grant new states the same rights as other states

Obligations of State Governments

- Full Faith and Credit Clause: each state must honor the public acts, records and legal proceedings of other states (birth certs, marriage certs, debts)
 - Exception: 32 states have legalized same-sex marriage. However in the 1990's Congress passed the Defense of Marriage Act, which allowed each state to define marriage and in effect not recognize gay marriage if the state defined marriage as the union of a man and a woman.

Obligations of State Gov't con't.

- Privileges and Immunities Clause: Each state must grant to citizens of other states the same rights and privileges that they grant to their own citizens. i.e. states cannot unreasonably discriminate against citizens of other states.
- Extradition: Governors must return suspects to the states in which they allegedly committed their crimes
- Interstate compacts require consent of Congress.

Homework

- Federalism Case Studies
 - Use your textbooks and the provided reading to write case studies for the following cases:
 - *McCulloch v. Maryland (1819)*
 - *Gibbons v. Ogden (1824)*
 - *Barron v. Baltimore (1833)*
 - *U.S. v. Lopez (1995)*

Historical Developments of Federalism

- Dual Federalism
 - Definition: A system of government in which both the states and the national government remain supreme within their own spheres, each responsible for some policies.
 - Powers and policy assignments of the layers of gov't were distinct, as in a layer cake
 - Suggested that the powers of the national gov't should be interpreted narrowly.
 - Prevalent through about 1937

Historical Developments of Federalism

- Cooperative Federalism
 - Definition: A system of government in which powers and policy assignments are shared between states and the national government.
 - Shared costs, shared administration, shared policy assignments, like a marble cake.
 - Prevalent since about 1937

Cooperative Federalism

- Categorical grants and federal mandates premier tool of cooperative federalism

Q: How do you get the states to do what they normally wouldn't do?

A: Money

- Cooperative Federalism also called “Fiscal Federalism”
- In the 1930's-70's the federal gov't used money as a tool to get states to implement policy
 - Categorical Grant → Federal \$\$\$ with strings attached
 - New Deal public works projects
 - Federal Mandate → Requirement that a state undertake an activity or provide a service
 - Great Society environmental and civil rights laws

Dual and Cooperative Federalism

American Federalism

Marble Cake Or Layer Cake?



Marble Cake Federalism is based on a pragmatic mixing of authority and programs among the national, state, and local governments.



Layer Cake Federalism is based on a clear delineation of authority and programs among the levels of government.

Historical Developments of Federalism

- New Federalism: Shifting of some authority from national government back to the states
- Drastic cuts in federal funds and income taxes
- Attempted to re-establish the power of state governments
- Tool of New Federalism
 - Block Grants → \$\$\$\$ given to states with a broad purpose and few strings attached.
- Associated with Nixon, Reagan and especially associated with the 104th and 105th Republican Congress (Late 1990's)
 - Example: use of block grants in welfare reform bill of 1996 (more later!)

Devolution Revolution

- **Devolution** → Return power to state governments
 - Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Clinton Welfare Reform)
 - Returned welfare to the states in the form of Block Grants
- **Unfunded Mandates Problem**
 - Federal aid to states decreased
 - Federal mandates did not
 - States were asked to comply with federal mandates but did not have appropriate funds
- **Devolution Solution**
 - Unfunded Mandates Reform Act of 1995
 - Congress must debate how to pay for a mandate.

Supreme Court Actions Consistent with Devolution

- Struck down Gun Free School Zones Act in 1995 in *US v. Lopez*: 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 *US v. Morrison* (2000) saying that 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 Congress overextended itself with the use of the interstate commerce clause in passing the Act

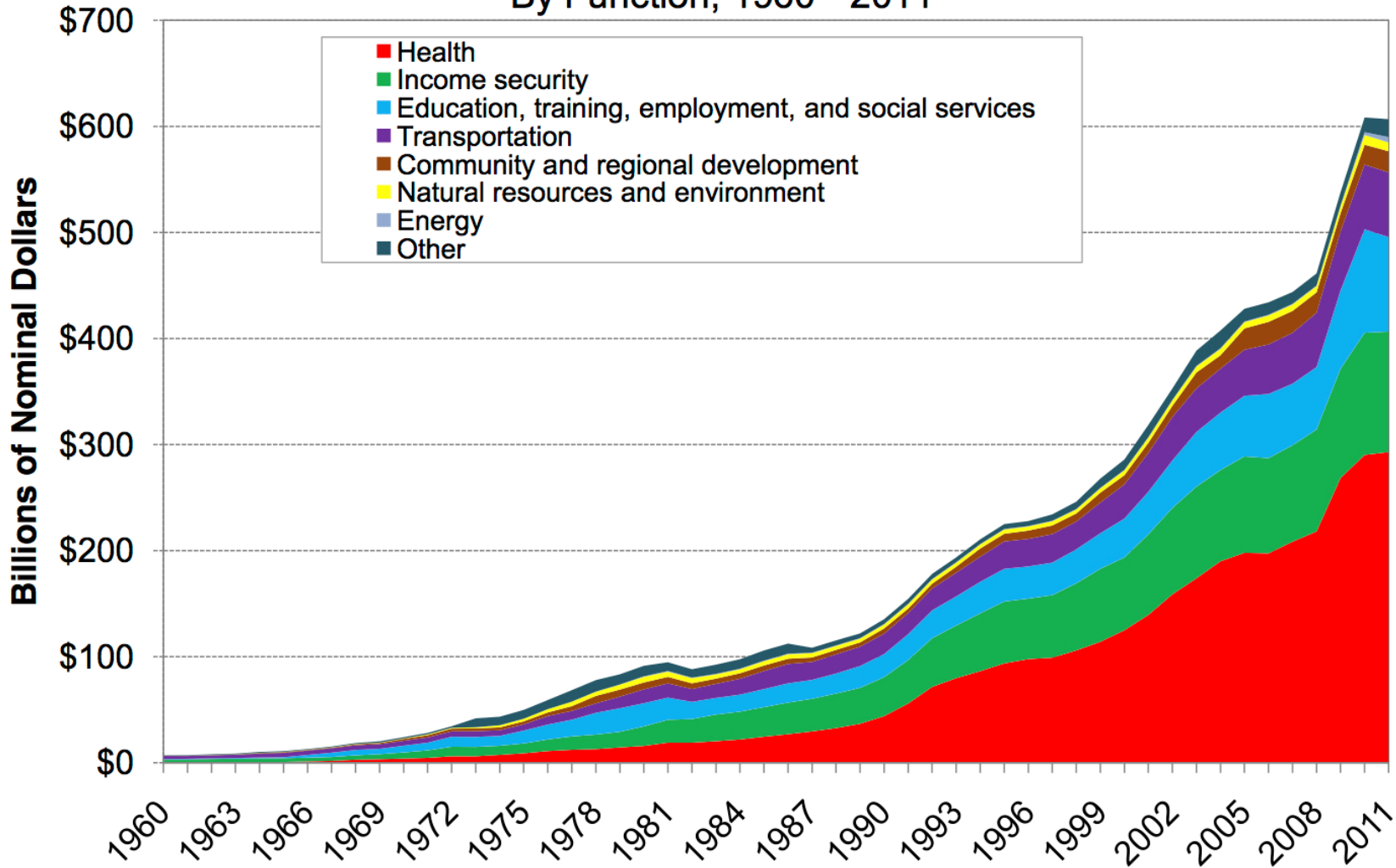
Supreme Court Actions Consistent with Devolution

- Struck down Religious Freedom Restoration Act in 1993: The 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 that required local law enforcement agencies to do background checks on gun buyers
- Upheld an Indiana Law that required photo ID for voting.

Grants and Mandates

- As national government has grown more powerful, it has used state and local governments to administer programs that are federally funded → development of federal grants to state and local gov't.
- Dollar amounts of these grants have consistently risen in last several decades, though there has been variation in grants as a percentage of federal expenditures.

Post-1960s Explosion of Federal Grants to State and Local Governments By Function, 1960 - 2011



Source: OMB, Historical Tables, Table 12.2

Produced by Veronique de Rugy, Mercatus Center at George Mason University

Purposes of Federal Grants

- Reduces growth of federal bureaucracy. Federal government simply provides money to states and has states run the programs (under federal guidelines)
- Supplies state and local governments with needed revenue
- Establishes minimum federal standards in important areas (air quality, water quality)
- Equalizes resources among rich and poor states.

Types of Grants

- Categorical
 - For specific programs (roads airports, housing)
 - National government agrees to pay a portion of the costs for these and the states pick up the balance → sometimes called formula grants because they are offered under a payment formula 80%/20%
 - States don't have to accept them but if they do they must comply with federal standards

Types of Grants

- Project
 - States apply for grants for specific projects
 - Grantsmanship: State competition for grants as led to development of the fine art of grant writing
- Block
 - Granted to support a collection of general programs (urban development, transportation) → more state leeway in the spending of the money
 - Associate these with 104th and 105th Republican Congress and the devolution of power back to the states.

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 to entitlement status of AFDC and federal guarantee of welfare checks with passage in 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act (welfare reform act)
- Welfare block grants therefore replaced welfare categorical grants. Even as a block grants, it involved several federal strings:
 - No fed funds go to those who have not worked w/in 2 years
 - No fed funds go to recipients who have received fed \$ for >5 years
 - States must spend at least 75% of what they ha previously spent on welfare to avoid complications.

No Child Left Behind (2002)

- An exception to the ‘fewer strings’ approach by the Republican Party is its support of the NCLB Act of 2002. In order to receive federal funds for education, states must:
 - Adopt subject matter standards
 - Test all students in grades 3-8 on those standards
 - Identify low-performing schools based upon that testing
 - Require low-performing schools to develop improvement plans
 - Allow parents of students in such schools that do not improve to transfer to other public schools.

Mandates

- A federal order imposed upon states
 - Americans with Disabilities Act
 - Clean Air Act, Clean Water Act
 - Individuals with Disabilities Education Act
- Purposes: to meet a goal of the federal government
- Impact on the States:
 - Financial burdens especially with unfunded mandates ex. ADA has imposed large costs upon states as they make reasonable accommodations for the disabled.
 - State complaints about federal heavy-handedness. If a state does not devise a plan and pay for the requirements of the Clean Air Act the federal government will impose its own plan upon the state.
 - State Complaints about federal blackmail. Ex. If a state doesn't comply with the Clean Air Act standards federal funds can be withheld in other programs.

No constitutional Reasons for Triumph of Big Government

- Growth of US in size and population → large problems only a national government could handle
- Problems tend to be more national (and even international) in scope (pollution, crime, global economy)
- Improved communication and transportation (DC is not longer that far away)
- Historical Developments created huge bureaucracies and constituencies to support a strong federal gov't. Once federal programs are started they are difficult to end because of the political support that has developed for them

Backlash Against Big Government

- General Consensus in late 70's that power had gone too far
- Questionable effectiveness of some federal programs
- Tax Revolt (anger over taxes required to support big gov't)
- Reduction of big federal aid to cities and restoration of principle that states should take on more responsibilities:
 - Reduction of categorical grants
 - Increased use of block grants
 - Reduction of federal regulations, e.g. granting waivers to states that want to experiment with welfare reform
 - Restrictions on future unfunded mandates

Effects of New Federalism and Devolution Revolution: a mixed bag

- Clinton declared in 1996 that the “era of big government is over”. Supporting evidence of this:
 - Welfare reform bill
 - Repeal of the national 55 mph speed limit
 - Restrictions on future unfunded mandates
 - More block grants/less categorical grants
 - Tax cuts under both Clinton and G.W.Bush

- However, even Republican Congresses increased national power.
 - 9/11 and an increase in big government to deal with terrorism
 - Wars in Afghanistan and Iraq led to huge military spending increases
 - USA Patriot Act of 2002 gave strong powers to national government to deal with terrorism
 - NCLB imposed significant burdens upon states
 - Huge growth in congressional ‘earmarks’ (pet projects)
 - The economic crisis of 2008-2009 led to massive federal spending bills to stimulate the economy and bail out failing corporations.

Final Analysis: Federalism

Federalism is Good

1. Encourages experimentalism
2. Decentralization of politics.
 - More opportunities to participate in government, increases access to government.
3. Decentralization of policies.
 - Two levels increase opportunities for government to respond to demands for policies.
4. If a party loses strength at the national level, it can rebuild at the state and local levels.
5. Diversity of opinions to be reflected in various policies among the states.
6. Reduces decision making and conflict at the national level

Federalism is Bad

1. Inequality among regions
2. Quality of services dependent on the state in which the service is provided.
3. Diversity in policy discourages states from providing services that would otherwise be available because poor people may be attracted from states with lower benefits.
4. Local interests impede national majority support of certain policies.
5. So many local governments make it difficult for many Americans to know which government is responsible for various functions.