

American Government

Since the advent of civilization, humans have had an impulse to form governments. It is an experiment thousands of years in the making.

This course asks a lot of fundamental questions about the nature of government and society. Among them:

- What is the purpose of government?
- What types of governments are there? What is a democracy?
- Where is the center of governmental power? Is it national or local?
- Is America's government too big? Too small? Constantly shifting with the times?
- What are the rights and responsibilities of each American citizen?

We do not answer these questions; that is up to you. Defining the role of government has been thousands of years in the making. Welcome to the laboratory of democracy.

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Foundations of American Government

Independence and the Articles of Confederation (2.1)



"Give me liberty or give me death!" Patrick Henry's oratory against British taxation of American colonies was key in inspiring the Founding Fathers to declare independence.

"No taxation without representation!"

"These are the times that try men's souls."

"Give me liberty or give me death!"

All are famous phrases that sparked the AMERICAN REVOLUTION. In the view of many colonists, British rule suppressed political, economic, and religious freedoms. Many of those that hesitated to support independence were soon convinced by the passionate words of [THOMAS PAINE](#), [SAMUEL ADAMS](#), [PATRICK HENRY](#), and eventually [JOHN ADAMS](#) and [Thomas Jefferson](#). The [Declaration of Independence](#) in 1776, the American Revolution, and the creation of the [Articles of Confederation](#) represent the American colonies' first attempt to become a nation. This incubation was tentative at best, but ultimately led to success.

The Declaration of Independence



Thomas Paine advocated the independence of the American colonies from Britain. The writings of Paine, Samuel Adams, and others convinced Americans to set up their own state and democratic government.

As tensions between Britain and the American colonies increased, a series of meetings were called, including that of the SECOND CONTINENTAL CONGRESS (1775-1776.) On July 4, 1776, the delegates approved the Declaration of Independence, the event that marks the birth of the United States. Thomas Jefferson, a delegate from Virginia, drafted the document primarily as a list of grievances against the king. His most important words, however, clearly shaped the philosophical basis of the new government. The famous introduction clearly reflected John Locke's SOCIAL CONTRACT THEORY: "...to secure these rights [Life, Liberty, and the pursuit of

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happiness], Governments are instituted among men, deriving their just powers from the consent of the governed." Jefferson further reasoned that since the British government had abused these rights, the colonists had the right "to alter or to abolish it, and to institute new Government."

The American Revolution and the Articles of Confederation



Shay's Rebellion showed the weaknesses of the Articles of Confederation. When the central government couldn't put down the rebellion, the first stirrings of federalism began to gather strength.

The British, of course, did not recognize the Declaration and continued to send troops to contain the rebellion. The war continued until 1783, so the new government had to be put in place in a wartime atmosphere. The Articles of Confederation, a compact among the thirteen original states, was written in 1776 but not ratified by the states until 1781. The loose "LEAGUE OF FRIENDSHIP" that it created reflected the founders' reaction to the central authority of King George III.

The government gave most powers to the states, and the central government consisted only of a legislature. Above all, the colonists wanted to preserve their liberties, but the central governments' lack of power proved to be disastrous. It could not regulate trade or keep the states from circulating their own currency. No chief executive could make real decisions, and no national court could settle disputes among states. And perhaps most importantly, they could not efficiently conduct a war nor pay the debts incurred once the war was over.



The Declaration of Independence reflected many of the ideals that the signers believed in. Ideas such as life, liberty, and the pursuit of happiness were products of the Enlightenment.

By 1786 the new country was in serious economic straits, and states were quarreling over boundary lines and tariffs. An economic depression left not only states in trouble, but also many ordinary citizens, such as farmers and merchants, were deep in debt as well. SHAYS' REBELLION, a revolt by angry farmers in Massachusetts, symbolized the chaos in the country. Even though the Massachusetts militia finally put the rebellion down, it pointed out the inability of the central government to maintain law and order. In reaction,



Alexander Hamilton of New York initiated the organization of a meeting in Philadelphia in 1787. This convention would eventually throw out the Articles of Confederation and draft the Constitution.

So, the freedom that the American Revolution sought to preserve proved to create a government under the Articles of Confederation that could not keep law and order. But the failure of the initial experiment helped the founders to find a more perfect balance between liberty and order in the Constitution they produced in 1787.

Foundations of American Government

Foundations of American Government (2.1, 2.2)



Sea travel expanded the horizons of many European nations and created prosperity and the conditions for the Enlightenment. In turn, the Enlightenment ideals of liberty, equality, and justice helped to create the conditions for the American Revolution and the subsequent Constitution.

Democracy was not created in a heartbeat. In a world where people were ruled by monarchs from above, the idea of self-government is entirely alien. Democracy takes practice and wisdom from experience.

The American colonies began developing a democratic tradition during their earliest stages of development. Over 150 years later, the colonists believed their experience was great enough to refuse to recognize the British king. The first decade was rocky. The AMERICAN REVOLUTION and the domestic instability that followed prompted a call for a new type of government with a constitution to guarantee liberty. The constitution drafted in the early days of the independent American republic has endured longer than any in human history.

Where did this democratic tradition truly begin? The ideas and practices that led to the development of the American democratic republic owe a debt to the ancient civilizations of Greece and Rome, the PROTESTANT REFORMATION, and GUTENBERG's PRINTING PRESS. But the Enlightenment of 17th-century Europe had the most immediate impact on the framers of the United States Constitution.

The Philosophes

Europeans of the 17th century no longer lived in the "darkness" of the MIDDLE AGES. Ocean voyages had put them in touch with many world civilizations, and trade had created a prosperous middle class. The PROTESTANT REFORMATION encouraged free thinkers to question the practices of the CATHOLIC CHURCH, and the printing press spread the new ideas relatively quickly and easily. The time was ripe for the PHILOSOPHES, scholars who promoted democracy and justice through discussions of individual liberty and equality.

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The ideas of 18th-century philosophes inspired the Founding Fathers to revolt against what they perceived as unfair British taxation. Washington Crossing the Delaware is one of the most famous depictions of the American Revolution.

One of the first philosophes was THOMAS HOBBS, an Englishman who concluded in his famous book, LEVIATHAN, that

people are incapable of ruling themselves, primarily because humans are naturally self-centered and quarrelsome and need the iron fist of a strong leader. Later philosophes, like VOLTAIRE, Montesquieu, and Rousseau were more optimistic about democracy. Their ideas encouraged the questioning of absolute monarchs, like the Bourbon family that ruled France. Montesquieu suggested a separation of powers into branches of government not unlike the system Americans would later adopt. They found eager students who later became the founders of the American government.

John Locke

The single most important influence that shaped the founding of the United States comes from JOHN LOCKE, a 17th century Englishman who redefined the nature of government. Although he agreed with Hobbes regarding the self-interested nature of humans, he was much more optimistic about their ability to use reason to avoid tyranny. In his SECOND TREATISE OF GOVERNMENT, Locke identified the basis of a legitimate government. According to Locke, a ruler gains authority through the consent of the governed. The duty of that government is to protect the natural rights of the people, which Locke believed to include LIFE, LIBERTY, AND PROPERTY. If the government should fail to protect these rights, its citizens would have the right to overthrow that government. This idea deeply influenced THOMAS JEFFERSON as he drafted the DECLARATION OF INDEPENDENCE.

Important English Documents

Ironically, the English political system provided the grist for the revolt of its own American colonies. For many centuries English monarchs had allowed restrictions to be placed on their ultimate power. The MAGNA CARTA, written in 1215, established the kernel of limited government, or the belief that the monarch's rule was not absolute. Although the document only forced KING JOHN to consult nobles before he made arbitrary decisions like passing taxes, the Magna Carta provided the basis for the later development of PARLIAMENT. Over the years, representative government led by a PRIME MINISTER came to control and eventually replace the king as the real source of power in Britain.

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The ideas of the French Enlightenment philosophes strongly influenced the American revolutionaries. French intellectuals met in salons like this one to exchange ideas and define their ideals such as liberty, equality, and justice.

to have a voice in the government. The ENGLISH BILL OF RIGHTS (1688) guaranteed free elections and rights for citizens accused of crime. Although KING GEORGE III still had some real power in 1776, Britain was already well along on the path of democracy by that time.

The foundations of American government lie squarely in the 17th and 18th century European Enlightenment. The American founders were well versed in the writings of the philosophes, whose ideas influenced the shaping of the new country. Thomas Jefferson, George Washington, James Madison, and others took the brave steps of creating a government based on the Enlightenment values of liberty, equality, and a new form of justice. More than 200 years later, that government is still intact.

THE PETITION OF RIGHT (1628)
extended the rights of "commoners"

The Bill of Rights (2,1, 2.4, 2.5)



By working to get the Bill of Rights passed, James Madison continued his support of Jefferson's policies. Jefferson supported the Constitution under the condition that basic human rights would be protected through a series of amendments.

Understandably, any people that fought a revolution over "TAXATION WITHOUT REPRESENTATION" would be cautious about the new Constitution created in 1787. For example, famous Virginian Patrick Henry refused to attend the Convention because he "smelt a rat."

States cherished their new freedom from British control, and ratification of the Constitution by state legislatures was by no means certain. All thirteen states finally ratified by 1790, but only with the addition of ten amendments, known as the Bill of Rights, that guaranteed citizens' rights and freedoms.

The Debate over Ratification

The debate polarized the new nation. Those who supported the Constitution became known as FEDERALISTS and those who opposed its ratification were called ANTIFEDERALISTS. The federalists supported a strong national government to preserve order. The antifederalists favored strong state governments and believed that the national government created by the Constitution was too strong.

	federalists	antifederalists
Political Beliefs	Believed the Union would fail without a strong central government	Wanted strong state governments (closer to the people)
Who Should Rule	Thought that elites were most fit to govern	Believed that ordinary people should have great input into government
Trusting the People	Distrusted rule by the people	Distrusted elites; thought they were corrupt
Who were they?	Property owners, landed wealthy, well-to-do	Small farmers, shopkeepers, laborers, merchants

In many ways the argument was the same old debate about the proper balance between order and liberty. Alexander Hamilton, James Madison, and JOHN JAY wrote compelling arguments in favor of ratification in a series of essays known as the FEDERALIST PAPERS. There were probably more antifederalists in America, but the federalists were better organized, controlled more newspapers, and were in greater positions of power. The two sides finally reached an acceptable compromise when they agreed to add some amendments to the Constitution that protected individual liberties and rights.

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The Bill of Rights



The piece of parchment that is called the Bill of Rights is a joint resolution of the House and Senate proposing twelve amendments to the Constitution. The final number of accepted amendments was ten, and those became known as the Bill of Rights.

In 1789 Virginian James Madison submitted twelve amendments to Congress. His intention was to answer the criticisms of the antifederalists. The states ratified all but two of them — one to authorize the enlargement of the House of Representatives and one to prevent members of the House from raising their own salaries until after an election had taken place. The remaining ten amendments, known as the BILL OF RIGHTS, were ratified in 1791.

They put limits on the national government's right to control specific civil liberties and rights, many of which were already protected by some of the state constitutions. Liberties protected included freedom of speech, press, religion, and assembly (FIRST AMENDMENT). The Bill of Rights also provided safeguards for those accused of crimes. Two amendments — the right to bear arms (SECOND AMENDMENT) and the right to refuse to have soldiers quartered in your home (THIRD AMENDMENT) — were clearly reactions to British rule. The antifederalists were pleased by the addition of the Tenth Amendment, which declared that all powers not expressly granted to Congress were reserved to the states.



Over the years the Bill of Rights has become an important core of American values. The compromise that created the Bill of Rights also defined what Americans would come to cherish above almost all else. Together with the Declaration of Independence and the Constitution, the Bill of Rights helps to define the American political system and the government's relationship to its citizens.

George Mason was one of the leading figures in creating the Bill of Rights. After storming out of the Constitutional Convention because the Constitution didn't contain a declaration of human rights, he worked to pass amendments that would protect citizens from an intrusive government.

Foundations of American Government

The Colonial Experience (2.2)



John Winthrop was the governor of the Massachusetts Bay Colony, one of the eight colonies governed by royal charter in the colonial period.

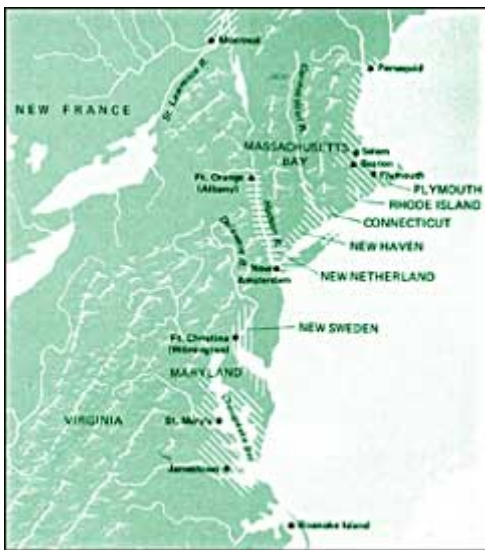
They created and nurtured them. Like children, the American colonies grew and flourished under British supervision. Like many adolescents, the colonies rebelled against their parent country by declaring independence. But the American democratic experiment did not begin in 1776. The COLONIES had been practicing limited forms of self-government since the early 1600s.

The great expanse of the Atlantic Ocean created a safe distance for American colonists to develop skills to govern themselves. Despite its efforts to control American trade, England could not possibly oversee the entire American coastline. Colonial merchants soon learned to operate outside British law. Finally, those who escaped religious persecution in England demanded the freedom to worship according to their faiths.

Colonial Governments

Each of the thirteen colonies had a charter, or written agreement between the colony and the king of England or Parliament. CHARTERS of royal colonies provided for direct rule by the king. A COLONIAL LEGISLATURE was elected by property holding males. But governors were appointed by the king and

had almost complete authority — in theory. The legislatures controlled the salary of the governor and often used this influence to keep the governors in line with colonial wishes. The first colonial legislature was the VIRGINIA HOUSE OF BURGESSES, established in 1619.



The colonies along the eastern coast of North America were formed under different types of charter, but most developed representative democratic governments to rule their territories.

Foundations of American Government

When the first PILGRIMS voyaged to the New World, a bizarre twist of fate created a spirit of self-government. These Pilgrims of the Mayflower were bound for Virginia in 1620, but they got lost and instead landed at PLYMOUTH in present-day Massachusetts. Since Plymouth did not lie within the boundaries of the Virginia colony, the Pilgrims had no official charter to govern them. So, they drafted the MAYFLOWER COMPACT, which in essence declared that they would rule themselves. Although Massachusetts eventually became a royal colony, the Pilgrims at Plymouth set a powerful precedent of making their own rules that later reflected itself in the town meetings that were held across colonial New England.

Trade and Taxation

Colonial economies operated under MERCANTILISM, a system based on the belief that colonies existed in order to increase the mother country's wealth. England tried to regulate trade, and forbid colonies from trading with other European countries. England also maintained the right to tax the colonies. Both TRADE and TAXATION were difficult for England to control, and so an informal agreement emerged. England regulated trade but allowed colonists the right to levy their own taxes. SMUGGLERS soon exploited the English inability to guard every port by secretly trading against Parliament's wishes.



A proprietary charter allowed the governor of the colony to rule with great power over his lands. In William Penn's Pennsylvania, that power was used to establish a land of religious tolerance.

This delicate agreement was put to test by the FRENCH AND INDIAN WAR. The war was expensive, and from the British point of view, colonists should help pay for it, especially considering that England believed it was protecting the colonists from French and Indian threats. The new taxes levied by the Crown nevertheless horrified the colonists. British naval measures to arrest smugglers further incited American shippers. These actions served as stepping stones to the Revolution.



Religious Freedom

Religious freedom served as a major motivation for Europeans to venture to the American colonies. Puritans and Pilgrims in Massachusetts, QUAKERS in Pennsylvania, and Catholics in Maryland represented the growing RELIGIOUS DIVERSITY in the colonies. Rhode Island was founded as a colony of RELIGIOUS FREEDOM in reaction to zealous Puritans. As a result, many different faiths coexisted in the colonies. This variety required an insistence on freedom of religion since the earliest days of British settlement.

So, the colonial experience was one of absorbing British models of government, the economy, and religion. Over the course of about 150 years, American colonists practiced these rudimentary forms of self-government that eventually led to their decision to revolt against British rule. The democratic experiment of American self-rule was therefore not a sudden change brought about by the Declaration of Independence. By 1776, Americans had plenty of practice.

Foundations of American Government

Creating the Constitution (2.3)

"Nothing spoken or written can be revealed to anyone — not even your family — until we have adjourned permanently. Gossip or misunderstanding can easily ruin all the hard work we shall have to do this summer." -George Washington, presiding officer



The Constitution was written in secrecy over a summer in Philadelphia. Twelve of the thirteen states were represented. Once the drafters signed the Constitution, as seen here, it began to make a slow path around the states in search of ratification.

Constitutional Convention

Most of the delegates at the CONSTITUTIONAL CONVENTION had already risked being hanged as traitors by the British. No wonder that they worried about their states' reactions to their decision to abandon the [ARTICLES OF CONFEDERATION](#) and create a whole new document.

Persuading the states to accept the Constitution was every bit as difficult as they predicted. It took two years for all thirteen states to ratify it. But their product was a blueprint for a new kind of government based on the principles of separation of powers, checks and balances, and federalism.

Separation of Powers



The Constitution is the basis of the United States government. All debates over laws have the few pages of the Constitution as their basis, and much political conflict has arisen due to different traditions of interpreting its clauses.

The CONSTITUTION provided for the structure and powers of Congress in [ARTICLE I](#). It created a BICAMERAL LEGISLATURE, set qualifications for holding office in each house, and provided for methods of selecting representatives and senators. It carefully enumerated powers, such as regulating interstate commerce and declaring wars. [ARTICLE II](#) vested the power to execute laws in a president of the United States. It set the president's term at four years, stated qualifications for office, and provided a mechanism to remove him from office.

Foundations of American Government

The PRESIDENT's constitutional powers are very modest, but they include commander-in-chief of the armed forces, negotiator of foreign treaties, and appointer of ambassadors, judges, and other "officers of the United States." [ARTICLE III](#) established a Supreme Court and defines its jurisdiction. The Founders disagreed on how much power to give the JUDGES, but they ultimately gave judges appointments for life and forbid Congress to lower their salaries while they hold office.

Checks and Balances

The Founders were ever mindful of the dangers of TYRANNICAL GOVERNMENT. So, they built a system in which the powers of each branch would be used to check the powers of the other two branches. Additionally, each house of the legislature could check one another. For example, both houses of CONGRESS must vote to enact laws, the president can veto legislation, and the Supreme Court can rule laws unconstitutional. Congress can override presidential vetoes. The president nominates Supreme Court justices, but the Senate can refuse to confirm the nominees. The Congress can impeach and remove the president or a member of the Supreme Court. As a result, a "balance" was created among the three branches.



He may have been an elegant and refined statesman, but Alexander Hamilton's temper got him involved in a duel with Aaron Burr that resulted in death.

Wide differences of opinion existed even among the 55 delegates concerning the proper balance between liberty and order. [ALEXANDER HAMILTON](#), for example, valued order more than liberty and supported the creation of a very strong executive. James Madison, influenced by his mentor Thomas Jefferson, conceded that an executive was necessary, but he saw the legislature as the preserver of liberty and an important check on the power of the executive. George Washington's experience as the head of the CONTINENTAL ARMY during the revolution convinced him that the chaotic government needed more structure. Thomas Jefferson did not attend the convention because he was serving as ambassador to France, but his belief that "a little rebellion now and then" was a good thing tilted his balance more toward liberty.

Foundations of American Government

Federalism

[ARTICLE IV](#) defined the relationship between the federal government and the states in a system of FEDERALISM, which divides the power of government between national and state governments. This federal system was meant to correct the chaos of the country during the Articles of Confederation. However, it was still mindful of the threat of a tyrannical central government. This article included mechanisms for admitting new states to the Union.



Alexander Hamilton was one of the most important proponents of federalism at the Constitutional Convention. He presented a plan to create a strong executive branch, out of a belief that order is more important than liberty.

The relationship between national and state governments was defined in many other parts of the Constitution. For example, Article 1, Section 10 forbids the states to form alliances or enter with foreign countries or to coin their own money. Federalism was further defined in Article VI in which the constitution was declared "the Supreme Law of the Land." This SUPREMACY CLAUSE, as well as the "ELASTIC" CLAUSE (Article I, Section 8) tilts the federalist balance toward national law.

[ARTICLE V](#) provides methods of amending the Constitution. Only 27 [AMENDMENTS](#) have been added to the constitution since the RATIFICATION in 1789.

The Founders acted boldly in 1787 when they threw out the Articles of Confederation and created the Constitution. The document they created has survived for more than 200 years. The risks that they took resulted in the longest lasting written constitution in world history.



Federalism (2.6)



Before the Constitution was written, each state had its own currency. This four-pound note from Philadelphia reads, "To Counterfeit is Death."

Did you ever wonder why you don't need a passport to go from New York to California, but if you were to move from one state to another, you would need a new driver's license? Or why you can use the same currency in all states, but not be subject to the same speed limits? Or why you have to pay both federal and state taxes?

The maze of national and state regulations results from federalism — the decision made by the Founders to split power between state and national governments. As James Madison explained in the "Federalist Papers," our government is "neither wholly national nor wholly federal."

Federalism as a System of Government

In creating a federalist system, the founders were reacting to both the British government and the Articles of Confederation. The British government was — and remains — a UNITARY SYSTEM, or one in which power is concentrated in a central government. In England, government has traditionally been centralized in London, and even though local governments exist, they generally have only those powers granted them by Parliament. The national government is supreme, and grants or retains powers to and from local governments at its whim.



The country we think of as Russia is part of the Russian Federation, a federal government with a variety of partially self-governing autonomous regions, or oblasts. Most of these, such as the Jewish Autonomous Oblast, are concentrations of non-Russian ethnic groups.

The Articles of Confederation represented an opposite form of government, a CONFEDERATION, which has a weak central government and strong state governments. In a confederation, the state or local government is supreme. The national government only wields powers granted by the states. Most confederations have allowed the local government to nullify a federal law within its own borders.

Federalism is a compromise meant to eliminate the disadvantages of both systems. In a federal system, power is shared by the national and state governments. The Constitution designates certain powers to be the domain of a central government, and others are specifically reserved to the state governments.

FEDERALISM

Advantages and Disadvantages of Unitary and Confederal Governments



Courtesy of Europäisches Parlament

The European Union has a multinational parliament which has regular sessions just as a national parliament would. A major issue in Europe today is what this body gets to decide and what remains under the jurisdiction of national governments.

	Unitary	Confederal
Advantages	Laws may be applied uniformly to all	Laws may be made to suit individual needs of the states
Government	Efforts seldom duplicate or contradict themselves	Tyranny can be avoided more easily
Decision-making	Fast and efficient	Government is closer to the people
Disadvantages	<p>Concentration of power can lead to tyranny If the country is large, a distant central government can lose control</p> <p>Central officials may not always understand the needs of their citizens</p>	<p>State governments are susceptible to quarrels The country has a tendency to split apart</p> <p>Sub-governments may lack resources that a central government has</p>

Although the federal system seems to strike a perfect balance of power between national and local needs, federations still have internal power struggles. Conflicts between national and state governments are common. In the case of the United States, the argument of state vs. federal power was a major underlying factor that led to the CIVIL WAR.

Fewer than thirty modern countries have federal systems today, including Australia, Canada, Germany, Mexico, and the United States. But even though few other countries practice it today, federalism has provided the balance that the United States has needed since 1787.



The Founders and Federalism (2.6)



Alexander Hamilton, James Madison, and George Washington were advocates of the federal system.

In their attempt to balance order with liberty, the Founders identified several reasons for creating a federalist government:

- to avoid tyranny
- to allow more participation in politics
- to use the states as "laboratories" for new ideas and programs.

As James Madison pointed out in *The Federalist*, No. 10, If "factious leaders kindle a flame within their particular states," national leaders can check the spread of the "conflagration through the other states." So, federalism prevents a person that takes control of a state from easily taking control of the federal governments as well.

Electing both state and national OFFICIALS also increases the input of citizens into their government. And if a state adopts a disastrous new policy, at least it would not be a catastrophe for everyone. On the other hand, if a state's new programs work well, other states can adopt their ideas and adjust them to their own needs.

The Constitution gives three types of power to the national government:

1. **DELEGATED** (sometimes called enumerated or expressed) powers are specifically granted to the federal government in Article I, Section 8 of the Constitution. This includes the power to coin money, to regulate commerce, to declare war, to raise and maintain armed forces, and to establish a Post Office. In all, the Constitution delegates 27 powers specifically to the federal government.
2. **IMPLIED POWERS** are not specifically stated in the Constitution but may be inferred from the elastic (or "necessary and proper") clause (Article I, Section 8). This provision gives Congress the right "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and other powers vested in the government of the United States." Since these powers are not explicit, the courts are often left to decide what constitutes an implied power.
3. **INHERENT POWERS** are not specifically listed in the Constitution, but they grow out of the very existence of the national government. For example, the United States has the power to acquire territory by exploration and/or occupancy, primarily because most governments in general claim that right.

FEDERALISM



Article I, Section 8 of the U.S. Constitution authorizes the federal government to issue a central currency for all states. The form of this currency has changed many times through the years.

The Constitution also identifies RESERVED POWERS, which are set aside for the states. Unlike delegated powers, they are not listed specifically, but are guaranteed by the TENTH AMENDMENT: "The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States

respectively, or to the people." Some traditional reserved powers include regulating trade within a state, establishing local government, and conducting elections.

Some powers of federal and state governments overlap. For example, both may — and do — levy taxes, make and enforce laws, and borrow money. These concurrent powers are not granted exclusively to the national government, nor are they denied the states.

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Prohibited powers are denied either to the national government, state governments, or both (Article I,

Section 9.) For example, the national government cannot exercise its powers in such a way as to interfere with the states' abilities to perform their responsibilities. States cannot tax imports or exports, nor can they coin money or issue bills of credit.

States also have responsibilities to one another, as explained in Article IV of the Constitution. One provision is that each state must give "FULL FAITH AND CREDIT" to the public acts, records, and civil judicial proceedings of every other state. Business contracts, then, are recognized by all states, as are marriages. Extradition, the legal process in which an accused criminal is returned to the state where the crime was committed, is also required by Article IV.



The founders very carefully divided powers between federal and state governments. They were responding to both the colonial aversion to the tyranny of King George III as well as the failure of the Articles of Confederation. Their careful separating and blending of state and national powers guarded against tyranny, allowed for more citizen participation in government, and provided a mechanism for incorporating new policies and programs.



Tipping the Scales Toward National Power (2.6)

Some issues have endured throughout American history. What is meant by CIVIL LIBERTY? Does (or should) Congress truly represent the people? Do the courts ensure that justice prevails? How much power should lie with the President?



Daniel Webster, standing to address the Senate in the lower right, became the Senator most associated with Federalism. His counterparts and sparring partners in the Senate were Calhoun and Clay.

All of these issues have been answered in different ways at different times, but they have endured and remain central to American politics. One of the most long-standing issues is the "proper" definition of federalism. The effective balance of power between state and federal governments is perhaps the most elusive question of all, and "STATES' RIGHTS" remain on

the political agenda.

In the mid-19th century the argument erupted into a great Civil War. In the 20th century, national power was strengthened by each President from the 1930s through the 1970s. And in recent years, the states have reasserted their rights.

McCulloch v. Maryland (1819)



John Marshall's decisions in McCulloch v. Maryland and other cases strengthened the federal government.

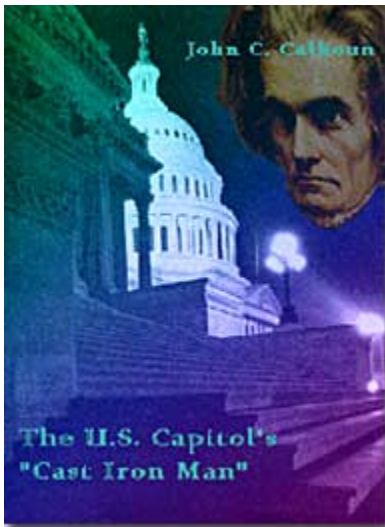
The Supreme Court often has defined the nature of federalism. MCCULLOCH V. MARYLAND (1819) began to establish the "SUPREMACY" OF THE FEDERAL GOVERNMENT with John Marshall's famous decision that a state government could not tax the FIRST BANK OF THE UNITED STATES. The case centered on the state of Maryland's decision to tax the Baltimore branch of the national bank. The bank's cashier, JAMES MCCULLOCH, refused to pay, and Maryland sued,



claiming that the bank was unconstitutional because the Constitution did not enumerate the creation of banks as a federal power.

Two questions were at the heart of the case. Was the bank constitutional? If it was, could a state tax it? Citing the elastic clause (ARTICLE I, SECTION 8) as the basis of the Court's decision, Marshall explained that even though the word "bank" cannot be found in the Constitution, the enumerated powers to tax, issue currency, and borrow money "implied" the power to create a bank. And no, the bank could not be taxed by a state because "the power to tax involves the power to destroy." States' rights supporters believed Marshall wrongly ignored the 10th Amendment, which reserved all powers not granted to the Congress to the states and the people.

Nullification and the Civil War



South Carolina Senator John C. Calhoun was a vocal opponent of federalism, especially when it interfered with slavery.

By the mid-19th century, when slavery and tariffs became controversial issues between North and South, states' rights were again a central focus. JOHN C. CALHOUN, senator from South Carolina and eventually Vice-President from 1825 to 1832, claimed that states had the right to NULLIFY, or reject, a federal law. For example, when a tariff act negatively affected South Carolina, Calhoun declared that the state could declare the tariff "NULL AND VOID" within its own borders.

Many feared that if a state rejected a new provision passed by Congress, then it also had the right to SECEDE from the union. Decades later, South Carolina tested this notion by declaring independence from the United States. When other southern states followed suit, PRESIDENT ABRAHAM LINCOLN objected, and the Civil War began. With the South's defeat in 1865, national supremacy was once again affirmed, and states have never again claimed the right to secede.

FEDERALISM

The New Deal



The Agricultural Adjustment Administration was one of a number of "alphabet soup" agencies created by the Roosevelt Administration to combat the Great Depression. Critics of the programs said these programs gave the federal government too much power.

Although the Civil War forever changed the nature of federalism, it did not destroy states' rights. Instead, the power of the central government remained quite limited until the economic crisis of the 1930s. The devastating effects of the Great Depression led many people to demand that the

federal government take drastic action. The innovative programs of Franklin Roosevelt's "New Deal" ushered in a new era in American politics.

The New Deal period was characterized by intense government action on the national level. The "ALPHABET AGENCIES," such as the CCC (Civilian Conservation Corps), the AAA (Agricultural Adjustment Administration), and the NRA (NATIONAL RECOVERY ADMINISTRATION), aimed to relieve poverty and economic distress of farmers, homeowners, businesses, laborers, and banks. These programs dramatically enlarged the power of the federal government, and though the states administered many of the programs, the tilt toward national power was clearly reinforced by the New Deal.

The 1960s saw another era of expansion for the national government under JOHN KENNEDY's NEW FRONTIER and Lyndon Johnson's Great Society. Many programs were initiated to declare a "war on poverty" across the United States. The federal government was growing ever larger, and taxes were growing ever higher to fund the new programs. Many Americans supported this trend and applauded the efforts of the national government to ease American social problems. But by the 1970s, others had decided that enough was enough



Federal-State Relations Today: Back to States' Rights? (2.6)



Ronald Reagan and George Bush are considered architects of New Federalism, a program that allowed states to make many decisions regarding local issues. However, states were also expected to pay the bill for their own decisions, and Reagan is criticized for getting states into debt.

For almost 200 years, the federal-state relationship has shifted more and more toward national supremacy. But some observers today believe that over the past twenty years, the balance of power is beginning to tilt back toward the states. Presidents Richard Nixon, Ronald Reagan, and George Bush tried to slow down the growth of the national government under the banner of "NEW FEDERALISM."

RICHARD NIXON declared an open attempt to reverse the flow of power to the federal government back to the states. In his winning campaign of 1980, RONALD REAGAN claimed that the federal government, in its attempts to improve society, was actually eroding individual freedoms. Then in 1994, when Republicans took control of both houses of Congress, the leaders of the "DEVOLUTION REVOLUTION" attempted to return many functions to the states. But the controversial task has not been easy, since so many national responsibilities are now shared with the states.

Before the Great Depression and New Deal, experts often compared federalism to a layer cake. Each layer of government — national, state, and local — had responsibilities separated clearly by a distinct covering of "icing." This interpretation is known as DUAL FEDERALISM, which each level of government dominating its own sphere. The Supreme Court served as an umpire between the national government and the states in case of a dispute. But FRANKLIN ROOSEVELT changed all that.

The federal New Deal programs cast the states in supporting, cooperative roles with a clearly dominant national government. However, since both levels participated in the programs, the layers began to blur.

New Federalism

One sign of the growth of the national government was the large number of categorical grants that existed by the 1960s. Congress appropriates these grants to states for a specific purpose. Funds are allocated by a precise formula with detailed conditions imposed by the national government. Often states must contribute money to match federal funds, but categorical grants almost always come with a great many "strings" that demonstrate the "supremacy" of the national government.

FEDERALISM



Richard Nixon was a major mind behind New Federalism. Nixon eased the restrictions on money that was sent to the states, believing that they were in a better position to know how to spend the money than the federal government.

For example, there is no national drinking age. In the past, some states allowed people 18 years of age or older to drink alcohol, while others set the legal DRINKING AGE at 21. Passing a national drinking age might be unconstitutional, unless Congress could prove that such legislation was "NECESSARY AND PROPER" to carry out their expressed powers. Congress avoided the controversy by requiring all states that receive federal highway funds to set a legal drinking age of 21. No state could afford to lose these funds, so they had no choice but to comply.

When Richard Nixon became president in 1969, he backed a revenue sharing plan that channeled federal dollars back to the states, but without the strings of categorical grants. President Reagan (1981-89) coined the movement "NEW FEDERALISM" — an attempt to return power to the states.

The REAGAN ADMINISTRATION'S budget and policies radically altered the relationship between the federal government and the states. For the first time in many years federal aid to states declined, and Reagan pushed to consolidate categorical grants into BLOCK GRANTS, which had few strings and much broader categories, such as "education" or "highways." Because New Federalism meant that states often had to pay the tab for their new responsibilities, Reagan was criticized for weakening the states with debt — an opposite effect from his stated intention

Today the issue of the proper balance between national and state powers is as viable as it was in 1789. States' rights have remained a controversial topic for more than 200 years. Americans are divided about which laws should be federal, and which should be reserved to the states.

Should the right to an abortion be regulated by individual states, or should the federal government set a uniform policy? Should individual states permit the use of marijuana for medical purposes, or is drug policy a large enough problem to be decided on the federal level? Should individual states have the power to allow doctor-assisted suicide? These questions and many others shape the modern debate over state and federal power.

[Take the Federalism Quiz Online](#)

The Supremacy and Commerce Clauses of the United States Constitution: How they Relate to Tribal Nations Within the Boundaries of the United States (2.6)

By Shana Brown (Yakama descendant)

The framers, or writers, of the United States Constitution, realized that it was important deal with tribes as sovereign nations, and they made rules about the relationship they wanted to have. Those rules are in two places in the United States Constitution: the Supremacy Clause and the Commerce Clause.

The Commerce Clause says, "The Congress shall have power...to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." (Article I, Section 8, Clause 3). What this means is that the United States buys, sells, and trade goods and services with Indian nations much like they do with any other foreign nation.

But there is a difference. Because Indian Nations reside within the borders of the United States—and must obey federal laws and pay federal taxes— they have unique status that other countries like Canada and Mexico do not. In exchange for permission to live on tribal land, the United States made promises to provide certain things for Indians, such as education and healthcare. These promises, in the form of treaties, are still in force today.

The United States takes those promises very, very seriously. Our Constitution says, "...the laws of the United States...and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land..." U.S. Article VI, Clause 2 This "Supremacy Clause" is a fancy way of saying that treaties agreements are some of the most important laws in our country. In fact, treaties can override—or cancel out—local, state, and federal laws that ignore treaty agreements.

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Congress: the People's Branch?

Congress: The People's Branch? (2.7)



The United States Capitol building, the home of both the House of Representatives and the Senate.

The Congress makes laws.

Despite promises made by presidential candidates, the President has no direct power to pass any LEGISLATION. This very important power lies solely with the House of Representatives and the Senate.

The People's Influence

Americans elect their Senators and Representatives. One very important question posed by a democratic government involves how elected representatives should behave once sworn into office. Should members of Congress reflect the will of the people, or should they pay attention to their own points of view, even if they disagree with their constituents? Many considerations influence the voting patterns of members of Congress, including the following:



Congress is a symbol of the people's political power. Here, a Texas Congressman talks with students about violence in schools.

- **Constituents' Views.** Members of Congress often visit their home districts and states to keep in touch with their CONSTITUENTS' views. They also read their mail, keep in touch with local and state political leaders, and meet with their constituents in Washington. Some pay more attention than others, but they all must consider the views of the folks back home. Completely ignoring one's CONSTITUENCY would be foolhardy if the politician hoped at all to be reelected.

Congress: the People's Branch?

- **Party Views.** Congress is organized primarily along party lines, so party membership is an important determinant of a member's vote. Each party develops its own version of many important bills, and party leaders actively pressure members to vote according to party views. It is not surprising that Representatives and Senators vote along PARTY LINES about three-fourths of the time.
- **Personal Views.** What if a Representative or Senator seriously disagrees with the views of his constituents on a particular issue? How should he or she vote? Those who believe that PERSONAL VIEWS are most important argue that the people vote for candidates whose judgment they trust. If the people disagree with their decisions, they can always vote them out of office.

The Nature of Democratic Discourse

GRIDLOCK can occur when the legislative branch of Congress and the executive branch of the President are led by different political parties. Coming to agreement on new legislation during these periods of divided government can prove difficult. American voters can become frustrated by the inability of their leaders to move forward.



The Continental Congress (1774-1789) began as a tool to organize against Britain but became the body that would discuss the responsibilities of independence.

Yet this expectation for a smoothly running government contradicts the very nature of democratic discourse. How can representatives resolve the differences if they do not discuss them, argue about them, and eventually take sides on a solution? The nature of democratic discourse is to hear from everyone, hammer out compromises, and make decisions based on the process.

Voters may think of their own Representatives or Senators as good people fighting the corruption and selfish greed of the others. Incumbent candidates often encourage this thinking like by claiming to have "saved" the district from disaster through their good works. It helps them win elections.

Despite all the complaints about divided government, Americans seem to prefer it based on their voting patterns. Since 1981, the same party has controlled the presidency, the House, and the Senate for only two years. Divided government prevents any one party from moving too quickly with their legislative agenda. Perhaps this cautious approach to new legislation is exactly what Americans want.

Congress: the People's Branch?

The Powers of Congress (2.7)



In 1789, Federal Hall in New York City became the home of the first U.S. Congress. By 1790, Congress moved to the new capital of Philadelphia.

At its creation in 1789, the legislative branch was the most innovative.

Rule by kings and emperors was an old style of government, and the legislature in many ways represented the new.

Almost certainly, the founders intended Congress to have more important powers than the President and the Supreme Court. However, they placed many checks and balances on the legislature that have prevented absolute power in the hands of one branch. Founders controlled power not only by checks from the other branches, but by creating a bicameral, or two house, Congress — the SENATE and the HOUSE OF REPRESENTATIVES. The powers of Congress, then, are both constitutional and evolutionary.

Constitutional Powers



Metallica drummer Lars Ulrich testified before the Senate Judiciary Committee investigation into Napster and other music "piracy" websites. Power over the copyrights he tried to protect are addressed in Article I of the Constitution.

The Constitution specifically grants Congress its most important power — the authority to make laws. A BILL, or proposed law, only becomes a law after both the House of Representatives and the Senate have approved it in the same form. The two houses share other powers, many of which are listed in Article I, Section 8. These include the power to declare war, coin money, raise an army and navy, regulate commerce, establish rules of immigration and naturalization, and establish the federal courts and their jurisdictions.

Article I of the Constitution

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.



Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.\

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons [Modified by Amendment XIV]. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof [Modified by Amendment XVII], for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies [Modified by Amendment XVII].

No Person shall be a Senator who shall not have attained to the Age of thirty Years and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States. The Senate

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shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on OATH OR AFFIRMATION. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.



When the federal budget is not approved by Congress, employees don't get paid and many federal services stop. There have been multiple government shutdowns in the last 20 years.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December [Modified by Amendment XX], unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a JOURNAL OF ITS PROCEEDINGS, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except TREASON, FELONY and Breach of the Peace, be privileged from Arrest during their Attendance at

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the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising REVENUE shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of ADJOURNMENT) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; To borrow Money on the credit of the United States;

To regulate COMMERCE with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States; To establish Post Offices and post Roads;

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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;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the MILITIA to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No TAX or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State

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over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the TREASURY, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No TITLE OF NOBILITY shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any TREATY, ALLIANCE, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or DUTIES on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep TROOPS, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

The Constitution also gives each house of Congress some special, exclusive powers. Such powers given to the House of Representatives include the following:

- **REVENUE BILLS** must originate in the House of Representatives. Although this power is still honored today, it tends to have blurred over the years. Often budget bills are considered simultaneously in both houses. For example, current discussions of possible tax cuts are taking place not only in both houses, but in the executive branch as well.
- **Impeachment power**, the authority to charge the President and other "civil officers" with wrongdoing, is given to the House. A simple majority vote can impeach an elected official.

Special, exclusive powers given to the Senate include the following:

- **Major presidential appointments** must be confirmed by the Senate. The Senate offers "ADVICE AND CONSENT" to the President by a majority vote on the appointments of federal judges, ambassadors, and Cabinet positions.
- **Treaties with other nations** entered into by the President must be approved by a TWO-THIRDS VOTE by the Senate. This provision is an illustration of checks and balances, and it has served as a very important restriction to foreign policy powers of the President.

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- **An IMPEACHMENT TRIAL** occurs in the Senate. If the House votes to impeach an elected official, the accused party gets a hearing in the Senate. A two-thirds majority can convict the individual and remove him or her from office.

Important Constitutional Differences Between the House and the Senate

House	Senate
Initiates all revenue bills	Must confirm many major presidential appointments
Initiates impeachment procedures and passes articles of impeachment	Tries impeachment officials
Two-year terms	Six-year terms (One-third up for reelection every two years)
435 members (apportioned by population)	100 members (two from each state)
	Approves treaties

Evolutionary Powers

The "elastic," or implied powers, clause gives Congress the authority to pass laws it deems "necessary and proper" to carry out its enumerated functions. Many Congressional powers that have evolved over the years are based on this important clause. Here are a couple.

- Oversight of the budget. Congress reviews and restricts the ANNUAL BUDGET prepared by the executive branch. When a law is passed setting up a government program, Congress must pass an authorization bill that states the maximum amount of money available. When the nation's budget is set, only Congress can set the appropriations — the actual amount available in a fiscal year — for each program that it has authorized.
- INVESTIGATION. Congress may investigate both issues that warrant study and wrongdoings by public officials. Through COMMITTEE HEARINGS, Congress has examined issues such as crime, consumer safety, health care, and foreign trade. Although Congress must abide by protected individual rights, their committees have examined many allegations against elected officials. Famous recent investigations include the WHITEWATER and the Clinton-Lewinsky hearings.

The American Congress has more power than any legislature among the world's modern democracies. The parliaments of Europe are often "arena" legislatures that provide a forum for debate on policies proposed by a powerful prime minister or president. Only the American democracy enables its legislature with the critical role of setting the lawmaking agenda.

Congress: the People's Branch?

Leadership in Congress: It's a Party Matter (2.7)



Republicans and Democrats in Congress continually battle each other on party lines, even though many claim that the parties are essentially the same.

Is walking the plank dangerous? Certainly, for a pirate. But for a politician, it may be prudent.

PARTISANSHIP — or fierce loyalty to one's political party — generally is not admired in the United States today. Many people today call themselves independent voters and bickering between the parties in

Congress is often condemned. But parties are very important in both the House of Representatives and the Senate today. Even though political parties do not play as big a role in elections as they once did, they still provide the basic organization of leadership in Congress.

After each legislative election the party that wins the most representatives is designated the "MAJORITY" in each house, and the other party is called the "MINORITY." These designations are significant because the majority party holds the most significant leadership positions, such as Speaker of the House. Usually, the same party holds both houses, but occasionally they are split. For example, from 1983-1985, the House majority was Democratic, and the Senate majority was Republican.



Coalition groups like the Blue Dog Democrats are trying to bridge the party gap in Congress.

At the beginning of each new Congress, the members of each party gather in special meetings to talk party policy and themes and to select their leaders by majority vote. Democrats call their meeting a "CAUCUS," and the Republicans call theirs a "CONFERENCE." Next, when each house convenes in its first session, Congressional leaders, such as the SPEAKER OF THE HOUSE and the MAJORITY LEADER in

the Senate, are selected. And even though the whole house votes for its leaders, the majority party makes the real selections ahead of time behind the scenes when they select party leaders.

House Leadership

Because the House has 435 members to the Senate's 100, House leaders tend to have more power over their membership than do Senate leaders. With 435 people trying to make decisions together, their sheer numbers require leaders to coordinate the lawmaking process. Political parties choose all top leadership positions.

Congress: the People's Branch?

Speaker of the House. The Speaker is the most powerful member of the House of Representatives, and arguably, the most influential single legislator in both houses. Always a member of the majority party, the speaker's influence depends partly on strength of personality and respect of colleagues, but also on several important powers.



Speaker of the House Paul Ryan must address the media almost daily on issues discussed in the House of Representatives.

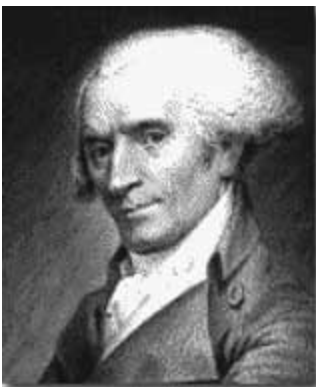
The Speaker:

- presides over proceedings on the House floor
- influences which bills go to which committees
- influences committee assignments for new members
- appoints the party's other leaders
- rules on questions of parliamentary procedure

THE MAJORITY LEADER usually the second ranking member of the majority party, is the party leader on the floor. Often hand-picked by the Speaker, the majority leader helps plan the party's legislative program. Many Speakers came to their positions by serving as majority leader first.

THE MINORITY LEADER heads and organizes the minority party. Because the party has less voting power than the majority party has, this person's influence is usually limited. If the minority party succeeds in the next congressional election, the minority leader could well be the next Speaker.

Senate Leadership



Elbridge Gerry was an early architect of partisanship. His election to the Massachusetts Senate was aided by redrawing district boundaries to include a majority of his own party members. This practice is called gerrymandering.

The Senate leadership is characterized by its highest positions actually having very little power. By Constitutional provision, the president of the Senate is the VICE PRESIDENT of the United States, who only can cast a vote in case of a tie. The Vice President rarely sits with the Senate, so a PRESIDENT PRO TEMPORE is selected to take his place. This role too is largely ceremonial, so the chair is often passed to a junior Senator.

Congress: the People's Branch?



The floor leaders are the real leaders in the Senate, although they generally have less power than do leaders in the House. The majority leader is usually the most influential person in the Senate. He has the privilege of beginning debates on legislation, and he usually influences choices for committee assignments. He shares his power with the minority leader, who leads the other party. Usually the two leaders cooperate to some extent, but the leader of the majority party always has the upper hand.

The major leadership positions — Speaker of the House, and majority and minority leaders in both houses — are based almost exclusively on party membership. Does this system encourage party loyalty above all else in members of Congress who want to get ahead? If that is the case, the impatience that Americans have with "partisan politics" is understandable.

Congress: the People's Branch?

The Importance of Committees (2.7)



A special committee investigated the government's actions in the 1993 tragedy involving a religious cult in Waco, Texas.

Bills begin and end their lives in COMMITTEES, whether they are passed into law or not. Hearings from interest groups and agency bureaucrats are held at the committee and subcommittee level, and committee members play key roles in floor debate about the bills that they foster.

Committees help to organize the most important work of Congress — considering, shaping, and passing laws to govern the nation. 8,000 or so bills go to committee annually. Fewer than 10% of those bills make it out for consideration on the floor.

Types of Committees

There are four types of congressional committees:

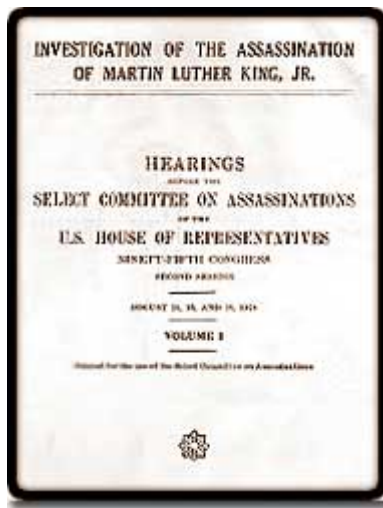
1. **STANDING COMMITTEES**, which continue from one Congress to the next, are probably the most important type because they consider and shape the vast majority of proposed laws. Standing committees can be combined or discontinued but most of them have been around for many years. Standing committees also conduct investigations, such as the Senate Banking Committee's investigation of President Bill Clinton's Whitewater investments.
2. **SELECT COMMITTEES** are temporarily formed for specific purposes, often to study a particular issue. They usually do not draft legislation. Some, like the select committees to investigate the assassinations of John F. Kennedy and Martin Luther King, are obviously intended to have limited lives. Others, like the Select Committee on Aging and the Select Committee on Indian Affairs, have existed for a number of years actually produce legislation. Sometimes long-standing select committees eventually become standing committees.



Most standing committees, such as the House Committee on Small Business, have their own websites and monthly journals to disseminate information to the people.

Congress: the People's Branch?

3. **JOINT COMMITTEES** have similar purposes as select committees, but they are made up of members from both the House and the Senate. They are set up to conduct business between the houses and to help focus public attention on major issues. Some joint committees handle routine matters, such as supervising the Library of Congress.



A select committee of Congress was established to investigate the assassination of Reverend Dr. Martin Luther King, Jr.

4. **CONFERENCE COMMITTEES** are specially created when the House and the Senate need to reconcile different versions of the same bill. A conference committee is made up of members from the House and Senate committees that originally considered the bill. Once the committee agrees on a compromise, the revised bill is returned to both houses of Congress for their approval.

Committee Assignments

After each CONGRESSIONAL ELECTION, political parties assign newly elected Representatives and Senators to standing committees. They consider a member's own wishes in making the assignments, but they also assess the needs of the committees, in terms of region of the country, personalities, and party connections.

Since the House has 435 members, most Representatives only serve on one or two committees. On the other hand, Senators often serve on several committees and SUBCOMMITTEES. Committee assignment is one of the most important decisions for a new member's future work in Congress. Usually, members seek appointment on committees that will allow them to serve their districts or state the most directly. However, a member from a "SAFE" DISTRICT — where his or her reelection is not in jeopardy — and who wants to be a leader in Congress, may want to be named to a powerful committee, such as Foreign Relations, Judiciary, or the HOUSE WAYS AND MEANS. There they are more likely to come into contact with current leaders and perhaps even gain some media attention.



Standing Committees of Congress

HOUSE COMMITTEES	SENATE COMMITTEES
Agriculture	Agriculture, Nutrition, and Forestry
Appropriations	Appropriations
Armed Services	Armed Services
Banking and Financial Service	Banking, Housing, and Urban Affairs
Budget	Budget
Commerce	Commerce, Science, and Transportation
Education and the Workforce	Energy and Natural Resources
Government Reform	Environment and Public Works
House Administration	Finance
International Relations	Foreign Relations
Judiciary	Governmental Affairs
Resources	Health, Education, Labor, and Pensions
Rules	Indian Affairs
Science	Judiciary
Small Business	Rules and Administration
Standards of Official Conduct	Small Business
Transportation and Infrastructure	Veterans Affairs
Veterans Affairs	
Ways and Means	

Congress: the People's Branch?

Who Is in Congress? (2.7)



Congressional candidates must visit with thousands of potential voters to show their compassion and to demonstrate their strength as leaders.

A paunchy, older, silver-haired man with no facial hair wearing an ill-fitting dark suit. This is the image evoked in the minds of many Americans when they try to picture a Representative or Senator. This stereotype is actually

grounded in truth, although the makeup of Congress has changed a great deal in the past few decades.

Personal Characteristics

Senators and Representatives come from all parts of the United States, but they do not reflect a true cross section of America. Overall, members of Congress tend to be older, wealthier, and better educated than those they represent. Nearly half of them are lawyers, and a large number come from business, banking, and education. Most of them are married with children, and about 60% are Protestants. Nearly all went to college, and many have advanced degrees as well.

However, this mix has changed considerably in recent years. For example, the 106TH CONGRESS (1999-2001) had 58 female Representatives and 9 female Senators. Although this does not reflect the ratio of the general population, it represents big increases over past years. The number of African American Representatives has also increased significantly, and there is a growing number of Representatives from other ethnic minorities.

Incumbency



This picture was taken on Pennsylvania Avenue in 1895, showing a gritty winter view of the nation's capital.

For the first 50 years after the ratification of the Constitution, Representatives and Senators usually only served for short periods of time. Travel was difficult, and before air-conditioning and the massive

swamp-draining that improved the comfort of Washington, D.C., the nation's capital was a pretty miserable town. Most served one or two terms and returned home to take local or state level office. Perhaps they had been rewarded with a federal judgeship. Today many Representatives and Senators are reelected as incumbents repeatedly.

Congress: the People's Branch?

As career POLITICIANS, members actually live in two worlds. They must work with party leaders, colleagues, and lobbyists in Washington, as well as maintaining contact with their constituents at home. Most travel back to their home districts many times during the year. They give speeches, have meetings, discuss problems, and observe with their own eyes the needs of their district or state. Most have staffs in both places, and no matter which place they are, they must keep up with what is going on in the other.

Pay and Perks



Legislators dictate congressional salaries and authorize pay raises for the incoming Congress.

How well are members of Congress paid? Of course, the best part is that they get to set their own salaries. In the year 2000, the basic yearly salary for members of Congress was \$136,673. Congressional leaders, like the Speaker of the House and the Majority and Minority leaders, get more.

So, members of Congress are among the top 1% of the nation's wage earners. However, they are prohibited by law from supplementing their income through HONORARIA or paid speaking engagements. Also, legislators have expenses that most people do not have — two homes, entertainment of constituents, and campaign debt. And then of course, they do have some pretty big responsibilities.

Members of Congress are sometimes criticized for the number of perquisites — or perks — that they receive. For example, each member has an office, a large expense account, generous travel allowances, pension plans, and low-cost health coverage. They even have free postal service, a perk known as the FRANKING PRIVILEGE.

They come from all over the country. They still tend to be older white males, and most of them have been in office for a number of years already. They are well paid, but they have a great many important responsibilities. The calling of public service certainly has its benefits, but political life generates headaches that many Americans would just as soon do without.

Congress: the People's Branch?

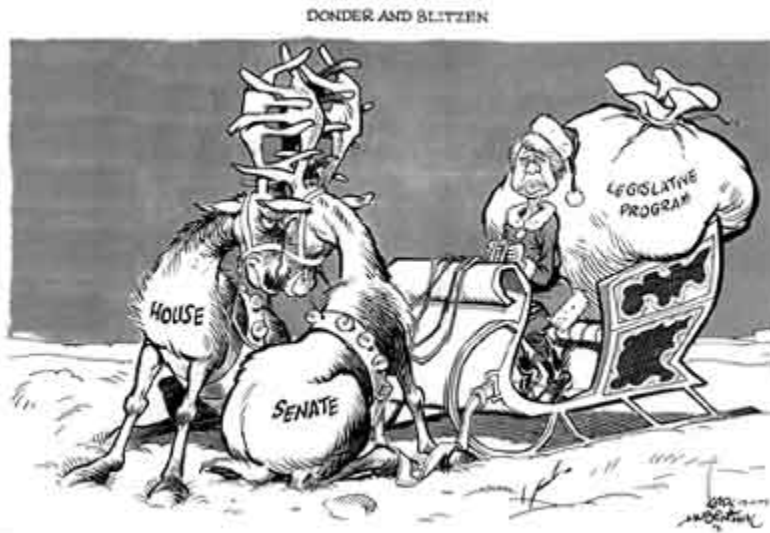
How a Bill Becomes a Law (2.7)



Congresswoman Barbara Lee speaks in favor of legislation for campaign finance reform. Speaking in the well of the House of Representatives is a typical part of the debate process on new bills.

Creating legislation is what the business of Congress is all about. Ideas for laws come from many places — ordinary citizens, the president, offices of the executive branch, state legislatures and governors, congressional staff, and of course the members of Congress themselves.

CONSTITUTIONAL PROVISIONS, whose primary purposes are to create obstacles, govern the process that a bill goes through before it becomes law. The founders believed that efficiency was the hallmark of oppressive government, and they wanted to be sure that laws that passed all the hurdles were the well-considered result of inspection by many eyes.



Former President Jimmy Carter is characterized here as a Santa Claus whose presents to the people are held up by Congress locking horns.

Before a bill becomes a law, it must pass both houses of Congress and signed into law by the President. It may begin its journey at any time, but it must be passed during the same congressional session of its proposal, a period of one year. If it does not complete the process, it is dropped, and can

Congress: the People's Branch?

only be revived through reintroduction and going through the whole process again. Not surprisingly, less than 10% of proposed bills become laws.

There are many opportunities to kill a bill before it becomes law. In each house, a bill must survive three stages:

When bills are marked up, in Congress, they may be changed to sneak in unapproved spending or overspending on programs. The spending is called "pork" and the tactic, "pork barreling."

1. **Committee consideration** — New bills are sent to standing committees by subject matter. For example, bills on FARM SUBSIDIES generally go to the Agriculture Committee. Bills that propose tax changes would go to the House Ways and Means Committee. Since the volume of bills is so large, most bills today are sent directly to subcommittee. Most bills — about 90% — die in committee or subcommittee, where they are pigeonholed, or simply forgotten and never discussed. If a bill survives, hearings are set up in which various experts, government officials, or lobbyists present their points of view to committee members. After the hearings, the bill is marked up, or revised, until the committee is ready to send it to the floor.



The filibuster king Strom Thurmond kept the Senate floor for over one day, with only one brief bathroom break.

2. **FLOOR DEBATE** — In the House only, a bill goes from committee to a special RULES COMMITTEE that sets time limits on debate and rules for adding amendments. If time limits are short and no amendments are allowed from the floor, the powerful rules committee is said to have imposed a "GAG RULE." Rules for debate on the Senate floor are much looser, with Senators being allowed to talk as much about each bill as they like. No restrictions on amendments are allowed in the Senate. This lack of rules has led to an occasional FILIBUSTER in which a senator literally talks a bill to death. Filibusters are prohibited in the House. Both houses require a QUORUM (majority) of its members to be present for a vote. PASSAGE OF A BILL generally requires a majority vote by the members present.



Congress: the People's Branch?

3. **Conference committees** — Most bills that pass the first two stages do not need to go to conference committee, but those that are controversial, particularly important, or complex often do. A conference committee is formed to merge two versions of a bill — one from the House and one from the Senate — when the two houses cannot readily agree on alterations. The members are chosen from the standing committees that sponsored the bill who come up with a compromise. The revised bill then must go back to the floors of each house and be passed by both houses before it can be sent to the President for signing.

Many people criticize Congress for its inefficiency and the length of time that it takes for laws to be passed and enacted. Although the process is long and difficult, the founders intentionally set it up that way. Some modern critics believe that the system is arcane and simply too slow for a fast-paced country like the United States. A process in which only a few people were responsible for making laws certainly would be more efficient. But of course, it wouldn't be very democratic. The many hurdles that bills must face help to ensure that those that survive are not just passed on a whim but are well considered and deliberate.

The Presidency: The Leadership Branch?

The Presidency: The Leadership Branch? (2.7)

Barrack Obama won the 2008 presidential election and was re-elected in 2012. He is the 44th President of the United States.

Research indicates that the first person that most American children remember beyond their immediate circle of family and friends is the President of the United States.

Who is this person that creates such a strong impression on children, arguably the most powerful individual in the world today? The founders certainly did not intend to create such a powerful presidency. They saw the presidency as a "necessary evil," or an executive to carry out and coordinate decisions made by [Congress](#). What is the nature of the modern presidency, this office so powerful and yet so limited?

Presidential Qualities



George Washington's warnings against party politics and entangling foreign alliances still permeate American political culture.

The PRESIDENCY was created in the image of [GEORGE WASHINGTON](#), the man everyone believed would first occupy the office. Washington's personality shaped the expectation that the President should be wise, moderate, dignified, and nonpartisan. Of course, the President could not be all-powerful like the king of England. This person had to be sensitive to treading on individual rights and liberties. But especially for the fledgling nation, strong leadership was necessary.

And so, the paradox was created with the new nation. Americans want a strong leader, but they also want someone who understands the anti-government, anti-authority streak that is part of being an American. It is not at all surprising, then, that Americans quibble about how much power the President should have. When Presidents take charge and try to run the country, they are often criticized as aggressive and dictatorial. If they let Congress take the lead, they are seen as weak and ineffective.

The Presidency: The Leadership Branch?

Great Expectations

Americans set very high expectations for our Presidents. They want someone who provides a sense of purpose, and who represents all the hopes and dreams of Americans. Yet the President must also pay close attention to practical matters, such as jobs, peace, and prosperity. The President must be tough, decisive, and competent. Because of these great expectations, most modern Presidents have come up short.



The American public feels involved in the private lives of their Presidents. Here, Richard Nixon's daughter Tricia is shown at her White House wedding to Edward Finch Cox.

Perhaps this situation happens partly because the modern media has brought Americans "closer" to Presidents, making them seem more human than before. They are seen with their families in their personal lives. Newspapers report who cuts

their hair and how much it costs. Their lives are investigated in the most minute detail for scandal. This demystifying of the presidency, as well as the general increase in mistrust of government in recent years, makes being President a tough job.

Gridlock

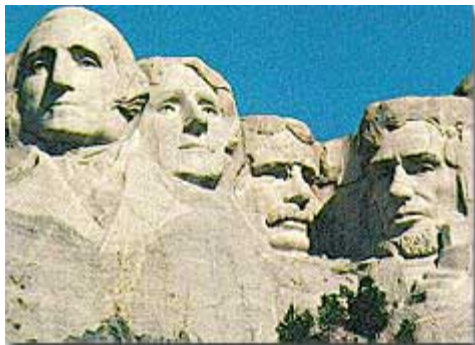
The Affordable Care Act was supported by President Obama and most Congressional Democrats, but strongly opposed by Republicans. In 2013, the government shut down for 16 days as a result.

Even today, Congress limits the President's powers. Gridlock, or inaction, occurs when the President wants one thing and Congress wants another. Just as the Constitution ensures that the lawmaking process in Congress is not easily seized by the power of a few people, it also places checks on the power of both Congress and the President. This balance is the primary reason for gridlock — an inefficiency that many critics see as a major fault in American government.

Few individuals are willing to endure the hardships of a campaign. Even fewer are willing to open even the most private aspects of their lives to public scrutiny. Some say that the burdens placed on presidential aspirants make the job undesirable to many qualified candidates. But for those who survive the process, the opportunity for true leadership awaits.

The Presidency: The Leadership Branch?

The Evolution of the Presidency (2.7)



South Dakota's Mt. Rushmore memorializes four of America's greatest Presidents. Washington, Jefferson, Theodore Roosevelt, and Lincoln are carved into this spectacular monument.

The 21st Century dawned on a very different presidency than the one created at the end of the 1700s. Constitutional provisions limited the early presidency, although the personalities of the first three — [George Washington](#), [John Adams](#), and [Thomas Jefferson](#) — shaped it into a more influential position by the early 1800s. However, throughout the 1800s until the 1930s, [Congress](#) was the dominant branch of the national government. Then, throughout the rest of the 20th Century, the balance of power shifted dramatically, so that the executive branch currently has at least equal power to the legislative branch. How did this shift happen?

Constitutional Qualifications and Powers

Article II of the Constitution defines the qualifications, benefits, and powers of the presidency. The PRESIDENT must be at least 35 years old and must have resided in the United States for no fewer than 14 years. Presidents must be "NATURAL BORN" citizens. The [Constitution](#) states that the President should be paid a "compensation" that cannot be increased or decreased during a term. Congress determines the salary, which increased in 2001 to \$400,000, doubling the salary that was set back in the 1960s.

Article II of the Constitution

Section 1.

The EXECUTIVE POWER shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of

The Presidency: The Leadership Branch?

Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice President.]

*

*Changed by the Twelfth Amendment.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]*

*Changed by the Twenty-fifth Amendment.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following OATH or Affirmation: --"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.



He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by Law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

The Constitution assigned the following powers to the President:

- **MILITARY POWER.** The founders saw the importance of a strong military to protect the country and its citizens, but they named the President, a civilian, the "COMMANDER IN CHIEF" of the armed services. They were ever mindful of checking and balancing power, and they did not want a military general to seize the government.
- **DIPLOMATIC POWER.** The President was given the power to make treaties with foreign nations, but not without the "advice and consent" of the Senate. Two-thirds of the senators must agree to a treaty the President signs, and if they do not, the treaty is not valid. The Constitution also provides that the President "shall receive ambassadors and other public ministers," which includes the duty of recognizing new nations, representing the United States to other countries, and performing related ceremonial duties.
- **APPOINTMENT POWER.** The Constitution gives the President the responsibility to appoint "Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States." Again, the Senate gives its "advice and consent," so that all appointments must be confirmed by a majority of the Senators voting.
- **LEGISLATIVE POWER.** The President was given the power to veto legislation. Every bill that passes both houses of Congress must be submitted to the President, although Congress can get around the President in several ways. If the President fails to sign the bill within ten days, it



becomes law anyway. Also, Congress may override a presidential veto by a vote of two-thirds of each house.

The Strengthening of the Presidency

Because the Constitution gave the President such limited power, Congress dominated the executive branch until the 1930s. With only a few exceptions, Presidents played second fiddle to Congress for many years. However, those exceptions — [Andrew Jackson](#), Abraham Lincoln, Theodore Roosevelt, and [Woodrow Wilson](#) — provided the basis for the turning point that came with the presidency of Franklin Roosevelt in the 1930s.

ANDREW JACKSON, greatly loved by the masses, used his image and personal power to strengthen the developing party system by rewarding loyal followers with presidential appointments. Jackson also made extensive use of the veto and asserted national power by facing down South Carolina's nullification of a federal tariff law. Jackson vetoed more bills than the six previous Presidents combined.

ABRAHAM LINCOLN assumed powers that no President before him had claimed, partly because of the emergency created by the Civil War (1861-1865). He suspended HABEAS CORPUS (the right to an appearance in court), and jailed people suspected of disloyalty. He ignored Congress by expanding the size of the army and ordering blockades of southern ports without the consent of Congress.

THEODORE ROOSEVELT and WOODROW WILSON each expanded the powers of the presidency. Roosevelt worked closely with Congress, sending it messages defining his legislative powers. He also took the lead in developing the international power of the United States. Wilson helped formulate bills that Congress considered, and [WORLD WAR I](#) afforded him the opportunity to take a leading role in international affairs.

Franklin Roosevelt, who was elected four times to the presidency, led the nation through the crises of the [GREAT DEPRESSION](#) and [WORLD WAR II](#). Roosevelt gained power through his New Deal programs to regulate the economy, and the war required that he lead the country in foreign affairs as well.

So, the powers of the modern presidency have been shaped by a combination of constitutional and evolutionary powers. The forceful personalities of strong Presidents have expanded the role far beyond the greatest fears of the antifederalists of the late 1700s.

The Presidency: The Leadership Branch?

All the President's Men and Women (2.7)



The Office of the First Lady has increased in size since First Ladies such as Eleanor Roosevelt have become increasingly active in public life.

Just as the power of the presidency has grown tremendously in recent years, so have the numbers of people that surround the executive branch. George Washington began his first term with only one aide — his nephew — who he paid out of his own pocket.

Today many advisors in the White House office, the Cabinet, and the EXECUTIVE OFFICE assist the President. The Vice President and the FIRST LADY also have large staffs that complement all the President's aides.

The Cabinet

The informal advisory body known as THE CABINET is not mentioned in the Constitution. The founders had discussed the idea of some form of national executive council, and George Washington appointed four Cabinet members (SECRETARY OF STATE, SECRETARY OF THE TREASURY, SECRETARY OF WAR, and the ATTORNEY GENERAL) shortly after his inauguration.



Elizabeth Dole was the first person to hold two cabinet positions. She was Secretary of Labor under Reagan, and Secretary of Transportation under Bush.

By custom, each member of this advisory group heads a major department, so that their loyalties are almost always split.


Cabinet members must provide good advice to the President. But, they also must promote the well-being of their departments, sometimes at the expense of other Cabinet departments.

Cabinet members are appointed by the President and confirmed by the Senate. They may be dismissed at any time.

The size of the President's Cabinet has increased over the years as Presidents have recognized demands for services and governmental action. As the size of the Cabinet and their respective departments have grown, Presidents have come to rely more heavily on members of the Executive Office and the White House Staff.

The Presidency: The Leadership Branch?

THE U.S. CABINET

POSITION	YEAR CREATED
Secretary of State	1789
Secretary of the Treasury	1789
Secretary of War (Defense)	1789; 1947 (name changed in 1947)
Attorney General	1789
 <p>Cabinet members and members of the White House staff often undergo rigorous screening before their appointments.</p>	
Secretary of the Interior	1849
Secretary of Agriculture	1862 (elevated to Cabinet in 1889)
Secretary of Commerce	1903
Secretary of Labor	1913
Secretary of Health and Human Services	1953
Secretary of Housing and Urban Development	1965
Secretary of Transportation	1966
Secretary of Energy	1977
Secretary of Education	1979
Secretary of Veterans' Affairs	1989
Secretary of Homeland Security	2002

The Executive Office

Franklin Roosevelt created the Executive Office of the President in 1939 to administer his New Deal programs. Today it consists of several advisory agencies that have worked closely with Presidents, particularly in recent years. The advisers in the Executive Office play key roles in advancing the President's agenda. Three of the most important agencies include the following:



- The National Security Council advises the President on American military affairs and foreign policy. The NSC consists of the President, the Vice President, and the Secretaries of State and Defense. The President's National Security Adviser runs the staff of the NSC and advises the President.
- The Office of Management and Budget (OMB) is the largest office in the EOP, and it has the job of preparing the national budget that the President proposes to Congress every year.
- The National Economic Council helps the President with economic planning. The council consists of three leading economists and is assisted by about 60 other economists, attorneys, and political scientists. The NEC is the President's major source of advice and information about the nation's economy.

The White House Office

White House Office staff members are not subject to Senate confirmation, nor do they have divided loyalties. They serve the President as an "inner circle" of most trusted advisers. Many have offices in the West Wing of the White House, and they often compete for space as close as possible to the President's Oval Office. Their titles include Special Assistant, Counsel, Aide, and Press Secretary.

Staff members gather information, write reports, give advice, lobby lawmakers, and present the President's views to the media. The Chief of Staff is usually particularly influential as the director of all the operations of the White House Office.

The job of presiding over the nation's government requires many assistants and administrators. Some people have criticized recent Presidents for having such a large staff in the executive offices. Recent Presidents have tried to cut back, but they generally have found that this large, complex country would be difficult to run without them.

The Presidency: The Leadership Branch?

Selection and Succession of the President (2.4, 2.7, 4.1)

The founders feared the masses. Cautious about granting powers to the general voting public, they created a safety valve against popular will. The American people do not technically elect their President. Electors do.



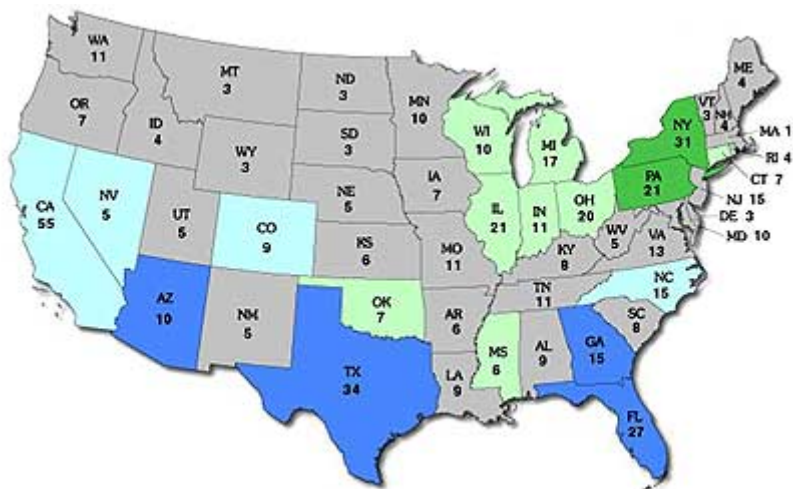
Grover Cleveland, shown on a \$20 Federal Reserve Note from 1914, won the popular vote in his second election, but lost the presidency because he failed to win the electoral college.

Selection

According to the Constitution, the President serves a four-year term of office. The 22nd Amendment further requires that a President may not be elected more than twice, nor serve more than a total of ten years. The Constitution also created an electoral college to select the President.

Some of the founders wanted to select a President by popular vote, but others did not want to put that much power into the hands of the voters. Others believed that Congress should select the President, but then, what would happen to separation of powers and checks and balances? So, they compromised and created a special body of electors to be selected by the states. The number of electors would be equal to the sum of a state's Senators and Representatives, so that large states would have more electors than the small ones.

The Presidency: The Leadership Branch?



Some people believe that the electoral college system gives some states more than their fair share of votes. For example, California's population makes up 11% of the total U.S. population, but they receive 20% of the nation's electoral votes. This map shows the changes made to the Electoral College based on the 2000 census.

Today many people believe that the Electoral College is out of date and that Presidents should be chosen by direct election, just as members of Congress are selected. By convention, state electors vote for the candidate that the people select in the general election, but they are not necessarily bound to do so.

The Electoral College also adds one nettlesome wrinkle — it is possible for a President to win more of the popular vote and lose the election. For example, if the Republican candidate gets even one more vote than the Democrat, all the state's electoral votes go to the Republican. Therefore, if a candidate wins small states by large pluralities and loses large states by narrow margins, it is possible to gain more votes than an opponent and win fewer electoral votes. Four presidents — John Quincy Adams, Rutherford B. Hayes, Benjamin Harrison, and George W. Bush — have been elected in this fashion.

Succession



Vice President Dan Quayle became the butt of many jokes when he misspelled the word "potato" while judging an elementary school spelling bee. Like most Vice Presidents before him, Quayle failed to win the next presidential election.



The Constitution originally said little about presidential succession. It only specified that powers and duties should "devolve on the Vice President." Numerous succession situations over the years have shaped the current policy, defined in the 25th Amendment, adopted in 1967.

25th Amendment

Section 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

What happens when the presidency is vacated before an election? The Vice President becomes President, and then selects a Vice President that must be confirmed by both houses of Congress. What if something should happen to the President and Vice President at the same time? Then the Speaker of the House takes the presidency, and the President pro tempore of the Senate becomes Vice President. The line of succession then goes to the Cabinet members, in the order of their creation.



Order of Succession to the Presidency

- 1 — President of the United States
- 2 — Vice-President of the United States
- 3 — Speaker of the House of Representatives
- 4 — President of the Senate Pro Tempore (becomes VP when Speaker becomes President)
(Cabinet Secretaries in Order of Post's Creation — see Unit 7)
- 5 — Secretary of State
- 6 — Secretary of the Treasury
- 7 — Secretary of Defense
- 8 — Attorney General
- 9, etc. — Remaining Cabinet Secretaries

The Vice President

What does the Vice President do? The only given constitutional duty is to preside over the Senate, a job with virtually no power since the Vice President can only vote in the event of a tie. Indeed, the nation's first Vice President, John Adams, called the post "the most insignificant office that ever the invention of man contrived."

The President, then, has almost total control over what the Vice President does. If he chooses to give him many responsibilities, The Vice President can have a significant amount of power if the President is willing to delegate it.

In recent years Presidents have given their Vice Presidents more and more to do. They have headed commissions and organized major projects. The Vice President often makes goodwill missions and attends ceremonies and celebrations. If the President regularly asks for advice, then the Vice President has some real, though indirect, power.

This dependency on the President has made it very difficult for a Vice President to successfully run for President. Only twice in American history has a seated Vice President been elected to the presidency. In 1837, Vice President Martin Van Buren succeeded Andrew Jackson, and in 1989, Vice President George Bush succeeded Ronald Reagan. In neither case, did they win reelection.

The Presidency: The Leadership Branch?

The President's Job (2.4, 2.7, 4.1)



President George Bush, seen visiting troops during a Thanksgiving trip to the Persian Gulf, was successful in combating a crisis in the Middle East, resulting in a leap in his approval ratings.

Just what exactly does the President do all day?

The evolving power and enlarging scope of responsibilities have made the modern presidency a very big job. Some even say that it is impossible for one person to handle it all.

Presidents as Crisis Managers

The Constitutional power as "Commander in Chief" has evolved into the very important modern role of "crisis manager." In the 20th century, as the United States gained world leadership powers, the President has become a key player in international crises. In the case of war — such as the Korean War, the Vietnam War, and the Persian Gulf War — or less famous regional conflicts — such as those in Kosovo, Somalia, or Haiti — the President must go into "emergency mode" and concentrate on the immediate problem. Domestically, crises may occur — such as urban riots, hurricanes, or forest fires — that require the President to schedule time to coordinate government responses to the situation.

Presidents as Symbols and Administrators

More than anyone else, the President symbolizes the country — its people and its beliefs. In this role, a President performs many ceremonial duties, such as receiving foreign dignitaries, throwing the first baseball of the season, and walking on red carpets while waving to crowds. These actions are not trivial. Strong Presidents must exude confidence, not just in themselves, but in the American people as well. The best ones have had an intangible charisma that engendered public confidence.

The Presidency: The Leadership Branch?



Presidential public appearances aren't always made from behind a podium. Here, President Clinton tours a Boys and Girls Club in Washington, D.C., on Martin Luther King Day.

As leader of the executive branch, the President is primarily responsible for seeing that the work of government is done. A famous sign sat on President Harry Truman's desk, "The buck stops here." The responsibility to administer and

execute the laws of the land squarely rests on the President's shoulders.

The president must therefore recruit and appoint many people to top government jobs. Cabinet members, many sub-Cabinet positions, federal judges including Supreme Court Justices, ambassadors, top military leaders, and heads of independent government agencies are all appointments filled by the President. Even though nominees are subject to consent by the Senate, the fact that Presidents control more than 4,000 appointments to government service makes this responsibility an important one.

Presidents as Agenda Setters



Presidents have considerable power in setting the agenda of lawmakers, especially in the field of foreign affairs. Ronald Reagan's strong stance against communism defined U.S. foreign policy in the final years of the Cold War.

Setting a political agenda has been a role that has grown in recent years. The founders clearly intended that Congress take the lead in setting priorities and determining policies. Today, Presidents have plans for Social Security, welfare programs, taxes, inflation, and public education. In foreign

policy, they often act first, and then consult Congress. Virtually all recent Presidents regularly recommend legislation to Congress.

Strong Presidents have used the State of the Union address, given yearly at the start of each congressional session, to set an agenda. Modern Presidents now use the media to bring attention to their proposals and to place pressure on legislators. A President may threaten a veto before the bill gets to the Oval Office. This action lets legislators know the President's agenda and pressures them to rethink bills that they know will be vetoed.

Can any one person hope to be able to successfully hold the President's job? The great author John Steinbeck commented, " We give the President more work than a man can do, more responsibility than a man should take, more pressure than a man can bear." Yet, recent Presidents somehow have managed to endure — although the job has exacted a tremendous toll on each of them.

The Presidency: The Leadership Branch?

Presidential Character (2.4, 2.7, 4.1)

Harry S Truman — man of the people. John F. Kennedy — bold, articulate leader with a great deal of charisma. Richard Nixon — introspective President with a deep knowledge of and interest in foreign policy. Each person who has held the office of President has brought to it a unique style. Each style reflects a President's character.



President Bill Clinton was investigated by Independent Counsel Kenneth Starr for his relationship with former White House intern Monica Lewinsky. The nature of the relationship, in addition to the President's evasion during the investigation, brought the issue of presidential character to the forefront of public discourse.

Barber's Research



James Barber published a well-known study of presidential character in which he studied personalities to predict presidential performance. Barber believes that Presidents can be categorized as having "positive" or "negative" attitudes, and as being "active" or "passive." His findings indicate that "positive active" Presidents are more successful than passive/negative ones. For example, Theodore and Franklin Roosevelt had positive active personalities. According to Barber, their personalities cause them to approach the presidency with enthusiasm and a drive to lead and succeed.

The American public was charmed by John F. Kennedy. The image of a Naval war hero and devoted family man played well in the Cold War era.

This research is controversial, but it is based on the assumption that presidential character and personality are extremely important in determining how successful a President is in office.

The Presidency: The Leadership Branch?

Rating the Presidents

Most Americans have their own ideas about which Presidents deserve to be called great, and which ones were failures. Historians even get into the ratings game, with Harvard professor Arthur M. Schlesinger starting the modern game with his invitation to 55 prominent historians to rate the Presidents. Although the lists have varied over the years, some Presidents consistently rate at the top. Abraham Lincoln, George Washington, and Franklin Roosevelt have locked up the top three spots in nearly every ranking survey. Others with high scores are Thomas Jefferson, Andrew Jackson, Theodore Roosevelt, Woodrow Wilson, and Harry Truman. Usually near the bottom are James Buchanan, Ulysses Grant, and Warren Harding. Historians are reluctant to rank modern Presidents, because not enough time has passed to assess their legacies.

Some common leadership qualities that good Presidents appear to have are the following:

- A strong vision for the country's future



Thomas Jefferson's advice to a child encouraged good character, although his own character is sometimes questioned. His ownership of the slaves listed here seems to contradict his statement that "all men are created equal," leading some modern critics to call him hypocritical.

- An ability to put their own times in the perspective of history
- Effective communication skills
- The courage to make unpopular decisions
- Crisis management skills
- Character and integrity
- Wise appointments
- An ability to work with Congress

All Americans have different ideas about the importance that character plays in the job performance of the President. Considering all the hats that a President must wear, perhaps the symbolic role that the President plays is most affected by character. Presidents must somehow symbolize what American citizens believe to be the essence of their country. They must represent what is valued now and in the past. But even more importantly, they embody the direction of America's future.

The Bureaucracy: the Real Government

The Bureaucracy: The Real Government (2.7)

Red tape. Paper pushers. Bean counters. Vast, cookie-cutter buildings with fluorescent lighting and thousands of file cabinets.



This building in Washington, D.C., houses the Bureau of Engraving and Printing, a bureaucratic agency.

These are the images that come to mind when many Americans think of government bureaucracy. A bureaucrat is someone who works in administrative capacity for the government. How important are bureaucrats and their government agencies in actually running the United States government? According to some, they are the real government — the ones behind the scenes who go to work when the politicians are enjoying the spotlight.

Max Weber's Bureaucracy



Max Weber is known as the founder of modern sociology.

Max Weber, a German sociologist was one of the first people in modern times to think seriously about the importance of bureaucracy. The term actually comes from the French word "bureau," a reference to the small desks that the king's representatives set up in towns as they traveled across the country on king's business. So, bureaucracy literally means "government with a small desk."

Weber wrote about Germany during the early 20th century, when developing capitalism was spawning more and more large businesses. The changing economic scene had important implications for government. Weber saw bureaucracy as a rational way for complex businesses and governments to organize. He did not see them as necessary evils, but as the best organizational response to a changing society.

According to Weber, model bureaucracies have the following characteristics:

- A chain of command that is hierarchical; the top bureaucrat has ultimate control, and authority flows from the top down
- A clear division of labor in which every individual has a specialized job
- Clearly written, well-established formal rules that all people in the organization follow
- A clearly defined set of goals that all people in the organization strive toward

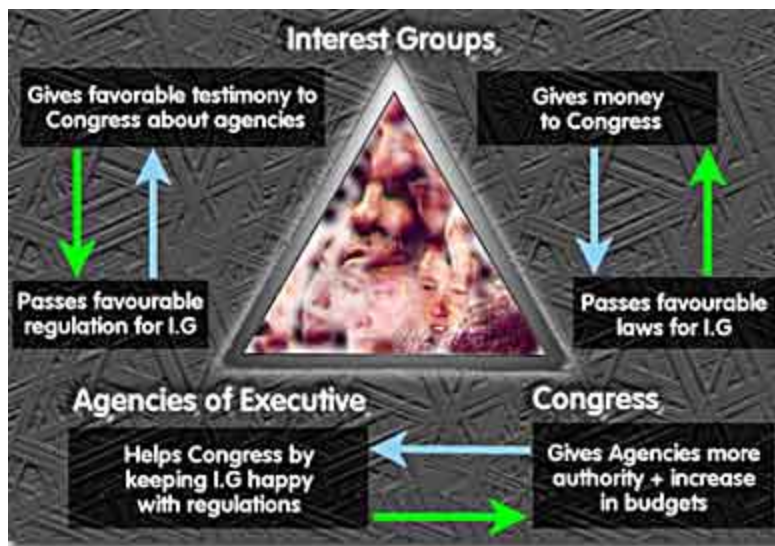
The Bureaucracy: the Real Government

- Merit-based hiring and promotion; no granting of jobs to friends or family unless they are the best qualified
- Job performance that is judged by productivity, or how much work an individual gets done

Weber emphasized the importance of the bureaucracy in getting things done and believed that a well-organized, rational bureaucracy is the secret behind the successful operation of modern societies.

The Iron Triangle

Observers of the modern American government often point to an iron triangle that best demonstrates who really does the work of government. The iron triangle, sometimes called a subgovernment, consists of interest groups, members of congressional subcommittees, and agency bureaucrats.



Who really governs the United States? Many political analysts believe policy is set by the participants in the "Iron Triangle" rather than elected officials.

According to the theory, agencies and departments usually keep close contacts with interest group lobbyists who want to influence their actions. Interest groups may provide valuable statistics to government agencies, and they are motivated to have their point of view heard. Both lobbyists and bureaucrats value contact with congressional subcommittees that shape the laws that govern their interests. Working together, these three groups set most government policies.

An example of such an iron triangle would be the American Association for Retired People (AARP), the House Subcommittee on Aging, and the Social Security Administration all working together to set government policy on Social Security.

Advisers, bookkeepers, secretaries. So, it is not only the famous people — the President, the Chief of Staff, the Speaker of the House, or the Senate Majority Leader — who make the real decisions in government. Often, the real players in government are the agency bureaucrats — the people behind the scenes.

The Bureaucracy: the Real Government

The Development of the Bureaucracy (2.7)



Andrew Jackson cemented the spoils system (also called rotation-in-office) during his presidency. He formed his own group of advisors from his friends and political allies, known as the "Kitchen Cabinet," to support his goals for the nation.

The original bureaucracy of the federal government consisted only of employees from three small departments — State, Treasury, and War. The executive branch employs today almost three million people. Not only have the numbers of bureaucrats grown, but also the methods and standards for hiring and promoting people have changed dramatically.

Patronage

George Washington promised to hire only people "as shall be the best qualified." Still, most of his employees belonged to the budding Federalist Party — the party toward which Washington leaned. When Democratic-Republican Thomas Jefferson became President, he dismissed many of the Federalists and filled their jobs with members from his party. With this action, he began a long tradition of filling government positions through patronage, a system of rewarding friends and political allies in exchange for their support.

Andrew Jackson is regarded as the President who entrenched the patronage, or "spoils" system. Following the old saying, "to the victor go the spoils," he brought a whole new group of "Jacksonian Democrats" into office. Jackson argued that the spoils system brought greater rotation in office. He thought it was healthy to clear out the government workers who had worked for predecessors, lest they become corrupt.



The U.S. Postal Service has changed along with the nation. From the Pony Express to today's uniformed postal workers, these bureaucrats deliver the mail every day, regardless of the weather.

During the 1800s, while more and more federal employees were landing their jobs through patronage, the bureaucracy was growing rapidly as new demands were placed on government. As the country expanded westward new agencies were needed to manage the land and its settlement. And as people moved into the new areas, a greatly expanded Post Office was necessary. The Civil War sparked the creation of thousands of government jobs and new departments to handle the demands of warfare.



After the war, the Industrial Revolution encouraged economic growth and more government agencies to regulate the expanding economy.

The Pendleton Act

The spoils tradition was diluted in 1881 when Charles Guiteau, a disappointed office seeker, killed President James Garfield because he was not granted a government job. After Garfield's assassination, Congress passed the Pendleton Act, which created a merit-based federal civil service. It was meant to replace patronage with the principle of federal employment on the basis of open, competitive exams. The Pendleton Act created a three-member Civil Service Commission to administer this new merit system. At first only about 10 percent of federal employees were members of the civil service. Today, about 85 to 90 percent take this exam.

Growth in the 20th Century

In reaction to the excesses of Gilded Age millionaires, many Americans demanded that the government regulate business and industry. As a result, a group of independent regulatory commissions emerged as the 20th century dawned. The first of these agencies was the Interstate Commerce Commission, set up in 1887 to monitor abuses in the railroad industry. Reform movements of the early 20th century demanded that government regulate child labor, food processing and packaging, and working and living conditions for the laboring classes.



The Civilian Conservation Corps was part of Roosevelt's New Deal programs to battle the Depression. Aimed at employing men between the ages of 18 and 25, over 3,000,000 men joined the CCC and became members of the federal bureaucracy between 1933 and 1941.



The largest growth of the bureaucracy in American history came between 1933 and 1945. Franklin Roosevelt's New Deal meant bigger government, since agencies were needed to administer his many programs. With the American entry into World War II in 1941, the needs of the war elevated the number of federal agencies and employees even more. During those 12 Roosevelt years, the total number of federal employees increased from a little over half a million in 1933 to an all-time high of more than 3.5 million in 1945.

After World War II ended in 1945, the total number of federal employees decreased significantly, but still has remained at levels between about 2.5 and 3 million. Contrary to popular opinion, the federal bureaucracy did not grow in numbers significantly during the last half of the 20th century. Federal bureaucrats did, however, greatly increase their influence.

The Bureaucracy: the Real Government

The Organization of the Bureaucracy (2.7)



Along with the Vice President, the President's Cabinet members are his most important advisors. This picture shows President Reagan, Vice President Bush, and Cabinet members in the Oval Office.

Even the experts can't agree on the total number of federal government agencies, commissions, and departments.

Most estimates suggest there are probably more than 2,000 of these. They each have an area of specialization — some much broader than others — but their duties often overlap, making administration more difficult. To complicate things even more, many agencies have counterparts at the state and local level. Its size, complexity, and overlapping responsibilities leave the federal bureaucracy open to constant attempts to reorganize and streamline.

Congress has the power to create, organize, and disband all federal agencies. Most of them are under the control of the President, although few of them have direct contact with the White House. So, the bureaucracy has two masters — Congress and the President. The bureaucracy generally falls into four broad types: Cabinet departments, government corporations, independent agencies, and regulatory commissions

Cabinet departments

- Department of State
- Treasury Department
- Department of Defense
- Department of Justice
- Department of the Interior
- Department of Agriculture
- Department of Commerce
- Department of Labor
- Department of Transportation
- Department of Housing and Urban Development
- Department of Health and Human Services
- Department of Energy
- Department of Education
- Department of Veterans Affairs
- Department of Homeland Security

The Cabinet Departments

The 15 Cabinet departments are each headed by a Secretary who sits on the President's Cabinet. The exception is the Justice Department, which is headed by the Attorney General, who is also a member

The Bureaucracy: the Real Government

of the President's Cabinet. The Secretaries are responsible for directing the department's policy and for overseeing its operation. Cabinet secretaries are usually torn between their responsibilities as presidential advisers and heads of their departments.



As the first woman Cabinet member, Frances Perkins served for 12 years, helping draft legislation such as the Social Security Act and the first federal minimum wage laws.

Each has a special area of policy, although their responsibilities are still very broad. The organization of each is quite complex, but they have some things in common. All Secretaries have a Deputy or Undersecretary, as well as a host of Assistant Secretaries, who all direct major programs within the department.

Most departments are divided into bureaus, divisions, and sections. For example, the FBI lies within the domain of the Justice Department, and the Secret Service is currently within the Treasury

Department agency, but soon to be moved under the auspices of the Department of Homeland Security.

Government Corporations

Government corporations do not belong to any department — they stand on their own. Probably the best-known government corporations are the United States Postal Service and Amtrak. They are different from other agencies in that they are businesses created by Congress, and they charge fees for their services. Like any other business, government corporations have private competition — such as Federal Express and United Parcel Service — and sometimes state competition — such as the New Jersey Transit Authority.



At the time of its creation, NASA was assumed by many to be a defense-related agency. Today, it brings nations together in highly publicized efforts like the International Space Station shown here.

Independent Agencies

Independent agencies closely resemble Cabinet departments, but they are smaller and less complex. Generally, they have narrower areas of responsibility than do Cabinet departments. Most of these agencies are not free from presidential control and are independent only in the sense that they are not part of a department.



Congress creates them as separate agencies for many reasons, practical as well as symbolic. For example, when the National Aeronautics and Space Administration (NASA) was established, many members of Congress assumed that it would be a part of the Department of Defense. However, it is an independent agency because the space program has many other purposes than the defense of the nation.

Regulatory Agencies

These agencies regulate important parts of the economy, making rules for large industries and businesses that affect the interests of the public. Because regulatory commissions are "watchdogs" that by their very nature need to operate independently, they are not part of a department, and the President does not directly control most of them. Each commission has from 5 to 11 members appointed by the President, but the President cannot remove them for the length of their terms in office.

Examples of these commissions are the Securities and Exchange Commission, which regulates the stock market, brokers, and investment practices. Another well-known commission is the Federal Reserve Board that governs the nation's monetary policy. The Environmental Protection Agency serves as a guardian over the nation's environment, making and enforcing standards for the industrial and commercial sectors.

With over 2,000 different agencies, the federal bureaucracy is almost certain to run into problems with organization, overlapping responsibilities, and efficiency. Almost every recent President has come into office determined to refashion and trim the bureaucracy. However, none has been able to make more than minor adjustments. Well-established agencies have lives of their own and are difficult to change. Besides, the country has large, complex, needs requiring special attention. A large bureaucracy is a part of the government's attempt to meet those needs.

The Bureaucracy: the Real Government

Who Are the Bureaucrats? (2.7)



Brigadier General Clara L. Adams-Ender, Chief of the Army Nurse Corps, represents the changing face of today's bureaucracy as more women and minorities enter government service.

The image of the faceless federal employee is completely false.

The 4 million Americans who work for the federal government have many faces and do many jobs. For starters, over 1.4 million are in military service. Overall, they represent much more of a cross section of the American population than do members of Congress or federal judges. About 43% are women, and 28% represent minority groups.

Surprising Facts

Many other misconceptions exist about federal employees. Consider the following:

- Only about 10% of civilian employees work in the Washington, D.C. area. Postal workers and forest rangers live and work across the country, for example. California alone has more federal employees than does the District of Columbia.
- About 30% of the civilian employees work for the army, the navy, the air force, or some other defense agency.
- Even though bureaucrats work at a variety of jobs, most are white-collar workers like secretaries, clerks, lawyers, inspectors, and engineers.
- The number of federal employees per 100 people in the United States population has decreased from over 14 per 100 in the early 1970s to a little over 10 per 100 by the late 1990s.



Rangers like this fellow at the Grand Canyon have many duties. Some are responsible for wildlife preservation, others educate visitors about parks and monuments. Park Service employees also work as attendants at buildings like the White House and the Smithsonian museums.



What Do Bureaucrats Do?

Most people think that bureaucrats only follow orders. They carry out the decisions that the President or members of Congress make. Of course, anyone who works in the executive branch is there to implement decisions, but the reality of their work is more complicated. The power of the bureaucracy depends on how much discretionary authority it is granted.

Congress passes laws, but it cannot follow through on all the little decisions that have to be made as the law is translated into action. Bureaucrats, then, may make policies and choose actions that are not spelled out in advance by laws.

Congress delegates substantial authority to administrative agencies in several areas:

1. Paying subsidies — government support money — to farmers, veterans, scientists, schools, universities, and hospitals
2. Transferring money to state and local governments for grants-in-aid, such as highway building, city improvements, or educational programs.
3. Devising and enforcing regulations, such as who owns television stations, what safety features automobiles have, and what kinds of scientific research will be specially encouraged.



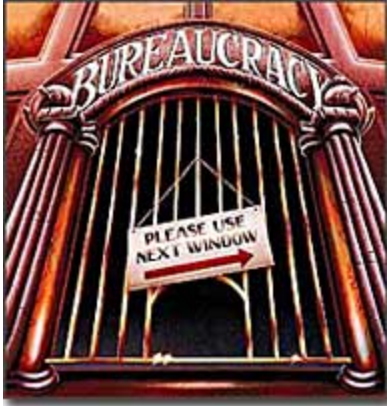
Vince and Larry, U.S. Department of Transportation crash test dummies, have been used in ad campaigns encouraging motorists to wear seatbelts and discouraging drunk driving. The Department of Transportation is instrumental in enforcing regulations regarding automobiles, railroads, and aviation.

About 90% of all federal bureaucrats are hired under regulations of the civil service system. Most of them take a written examination administered by the Office of Personnel Management (OPM) and they meet selection criteria, such as training, education levels, or prior experience. Some of them take special tests and meet special criteria, such as postal employees, FBI agents, CIA intelligence officers, foreign-service officers, and doctors in the Public Health Service.

The variety of people who work for the federal bureaucracy is greater than most people realize. They may do scientific research, clerk in welfare offices, decide burn policies for national forests, or do undercover intelligence work. They are all a part of the process whereby the government fulfills the many expectations that Americans have for it today.

The Bureaucracy: the Real Government

Reforming the Bureaucracy (2.7)



The bureaucracy is notorious for being out of touch with the people and difficult to navigate, a fact illustrated in cartoons, jokes, and even video games.

Since 1980, virtually every presidential election included a debate over the size of the federal government. Americans who believed the bureaucracy had become too large, too expensive, and too powerful were becoming more numerous, and as a result many politicians began to demand reform.

Bureaucracies move slowly. One hand doesn't always know what the other is doing. Federal employees have so much job security that there is little fear of being fired for incompetence. There are so many agencies organized in such confusing ways.

How can the ordinary citizen feel connected to government when everything is so impersonal? Public criticism of bureaucratic inefficiency is commonplace. In response, many people, including most Presidents, have tried to reform and reorganize the bureaucracy.

The Merit System and the Hatch Act



Government employees may not wear campaign buttons (like this one of President McKinley) at work, or while wearing a uniform or driving a government vehicle, according to the provisions of the Hatch Act.

The merit system tries to ensure that the best-qualified people get government jobs and that party politics is limited. In 1939, Congress passed the Hatch Act, which required employees, once they were hired, to have as little to do with political parties as possible. The Hatch Act forbids employees from engaging in many party activities. For example, they could not run for public office or raise funds for a party or candidate, nor could they become officers in a political organization or a delegate to a party convention.

In the early 1970s some bureaucrats complained that their First Amendment rights were being violated. The issue made its way to the Supreme Court, where the justices ruled that the Hatch Act did not put unreasonable restrictions on employees' rights. However, in 1993 Congress softened the Hatch Act by making many forms of participation in politics permissible. Federal bureaucrats still cannot run as candidates in elections, but they may be active in party politics.

Requiring Accountability

The Bureaucracy: the Real Government

One criticism of our merit-based bureaucracy is that once a person is employed there are no requirements that he or she be held accountable for their work. Since they no longer lose their jobs when a new President takes office, some criticize that they become complacent and inflexible. Some suggestions for making civil servants more accountable for their work include the following:

- Limiting appointments to 6-12 years. After the appointment expires, the bureaucrat would then have to go through reexamination and their performance would be reviewed for possible rehire.
- Making it easier to fire a bureaucrat. Civil service rules that are meant to protect workers from partisan politics have made it difficult to fire anyone for poor performance. Reformers want to remove those rules.
- Rotating professionals between agencies and from outside. Reformers believe that this practice would bring "new blood" to agencies and encourage workers to get a broader view of government service.



One of the public's greatest complaints about the bureaucracy is red tape. Many feel that the government's methods of solving problems is to drown them in a sea of paperwork.

Cutting "Red Tape"

One common complaint about bureaucracy is that "red tape" — the maze of government rules, regulations, and paperwork — makes government so overwhelming to citizens that many people try to avoid any contact. Filling out forms, standing in line, and being put on hold on the telephone all have resulted in many people being discouraged from ever applying for benefits they rightfully deserve.



Al Gore presents the report of the National Performance Review (now the National Partnership for Reinventing Government) to President Clinton in 1994.



In response, Presidents of the 20th century offered no fewer than eleven major reorganizations of the federal bureaucracy. The latest was the National Performance Review, conducted by Vice President Al Gore in 1993. The NPR report contained many horror stories about useless red tape for both citizens and government officials themselves. The NPR called for less centralized management, more employee initiative, fewer rules, and more emphasis on customer satisfaction. As of the year 2000, few of the recommendations have been followed.

One reason that it is so hard to reform the bureaucracy is that it has two masters — the President and Congress. Especially during periods of divided government, one branch can be suspicious that the other is trying to gain control. As a result, one branch or the other resists reform. Finding the practical solutions that have bipartisan support is a difficult process, largely because the system of checks and balances is not particularly efficient. Nevertheless, bureaucratic reform is often attempted by the President and Congress. Meanwhile, the red tape remains rather sticky.

THE JUDICIAL BRANCH

The Judicial Branch (2.7)



Lady Justice's blindfold, sword, and scale are reminders that justice should be administered in an impartial, firm, and balanced manner.

"See you in court!"

"You can't do that. I know my rights!"

"I'm going to take this all the way to the Supreme Court!"

These cliché sentences reflect a core American belief: citizens of the United States can seek redress through the judicial system.

But how do courts protect citizen rights?

How does a case even get to the Supreme Court? How are basic rights preserved? Where do citizens go when freedoms, rights, or equality is

threatened? Does justice prevail?

Throughout history, the American people have gone to the courts, seeking justice. The court system, then, is a cornerstone of democracy in the United States.

Justice Is Blind



The Constitution of the United States establishes the judicial branch and defines many of the rights the judiciary protects.

Congress passes laws, and the president and the executive branch make recommendations and set policy. According to American ideals, judges often make impartial and wise decisions that elected officials find difficult to make.

Members of Congress, state governors, and the president must always worry about elections and popular opinion. As a result, they may lose sight of the need to preserve American values, and they sometimes set hasty or unjust policies.

Under the guidance of constitutional principles, the courts serve as watchdogs for the other branches of government. Without the justice system, democracy might easily veer off course.

Is Justice Blind?

THE JUDICIAL BRANCH



Does the American justice system always work? In 1966, Rubin "Hurricane" Carter was convicted of a triple murder he did not commit. He spent almost 20 years in prison, losing his family ties and a promising career in boxing.

But in reality, does the American justice system uphold these ideals? There are plenty of stories about innocent people held in prison and even prisoners executed for crimes they did not commit. Judicial critics abound. Some protest that the wealthy or the well-connected receive preferential treatment in courts.

Other critics of the judicial system cite statistics they believe to be evidence of racial and social discrimination. For example, a disproportionate number of prisoners are young, African American,

and male.

Legal defense lawyers for the poor are sometimes criticized for being incompetent or apathetic. Cases in both federal and state courts are often backed up for years, making a mockery of "the right to a speedy public trial" as guaranteed by Amendment VI of the Bill of Rights.

Congress and the president are often at loggerheads over appointments of federal judges. Because the Republicans don't like a Democratic president's nominees (and vice versa), judgeships stay vacant for months, sometimes years.

Judge for Yourself



This federal courthouse in Boston, Massachusetts, won a Federal Design Achievement Award in 2000 for expressing the solemn, dignified, and open nature of the United States judicial branch.

Yet despite all these criticisms, courts remain powerful protectors of freedoms.

Freedom of speech has been protected, whether the speaker has been a critic of unjust government policy or a burner of the American flag.

Segregation of public facilities ended partly because brave people took their cases to court. Freedom of religion interpretations have banned involuntary school prayer, preserving the separation of church and state, while stirring up criticisms that the Judeo-Christian heritage on which the nation was founded is slowly being eroded.



Although the wheels of justice often grind slowly, judges' decisions are usually the final word in interpreting basic constitutional principles. Almost from its beginning, the American judicial system has played a major role in defining and preserving freedom, equality, and justice.

Don't believe it? Read on and judge for yourself.

THE JUDICIAL BRANCH

The Creation of the Federal Courts (2.7)



John Marshall was chief justice of the United States from 1801 to 1835. His decisions defined constitutional law and judicial precedent.

"An act of the legislature repugnant to the Constitution is void — it is emphatically the province of the judicial department to say what the law is." -John Marshall, *Marbury v. Madison* (1803)

The Constitution painstakingly defines the structure and functions of the legislative (Congressional) branch of the government. It clearly (although less thoroughly) addresses the responsibilities and powers of the president.

But, it treats the judicial branch almost as an afterthought. Article III specifically creates only one court (the Supreme Court), allows judges to serve for life and to receive compensation, broadly outlines original and appellate jurisdiction, and outlines the trial procedure for and limitations of congressional power against those accused of treason.

That's all.

Marshall Marshals the Court



William Marbury's lawsuit gave Marshall the opportunity to institute the power of judicial review.

The framers of the Constitution were clearly more interested in their experiment with legislative government than in the creation of a judicial system. Had it not been for John Marshall, the third chief justice of the Supreme Court, the judicial branch might well have developed into a weak, ineffective check on the legislature and the presidency.

But Marshall changed everything by interpreting a power "implied" by Article III. Judicial review, or the power of the courts to overturn a law, was the vehicle he used to create the most powerful judicial branch in the history of the world.



Article III of the Constitution

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Office during good Behaviour, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.



As secretary of state, James Madison refused to deliver the commissions of a number of "midnight judges," judges who had been appointed by John Adams in the last days of his term.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority, — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction, — to Controversies to which the United States shall be a Party; — to Controversies between two or more States, — [between a State and Citizens of another State;](1) between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, [and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.] (2)

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury, and such Trial shall be held in the State where the said Crimes shall have been committed but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

(1&2) Changed by the Eleventh Amendment.



Marbury v. Madison (1803)

The power of judicial review may be traced to the famous 1803 court case of Marbury v. Madison. The election of 1800 gave that the presidency to an opposing political party for the first time. Fearing that the newly elected Thomas Jefferson, a Democratic Republican, would undo his policies, Federalist president John Adams, sought to "pack" the courts with Federalist judges. He worked feverishly on the judicial appointments until the very end of his presidency. When he left office, several of the orders were left on the secretary of state's desk, waiting to be delivered.

The new secretary of state, James Madison, saw what Adams was up to, and refused to carry out the commissions. William Marbury, a Federalist whose commission was not delivered, sued Madison and demanded that the Supreme Court force Madison to act. Marbury's demand was based on the writ of mandamus, a power given to the Court by the Judiciary Act of 1789 to command actions by officials of the executive branch.

Chief Justice Marshall faced a huge dilemma. What if he commanded Madison to deliver the commissions and the secretary of state ignored his command? What could Marshall do to enforce the decision? The Court had no army, nor any other means to back up the command. If Marshall did nothing, the quarrel could spill over to Congress and tear the new country apart before it even got off the ground.

The Writ Stuff

More Information ...

A writ is a written court order requiring a party to perform or cease to perform a given act.

Marshall's decision was to declare the writ of mandamus unconstitutional, claiming that Congress had passed a law "repugnant to the Constitution." He declared that because Article III did not grant the judicial branch the power of the writ of mandamus, and so the Supreme Court was unable to order Madison to act. Of course, Jefferson and Madison were happy with the decision, and the crisis passed, with only a disgruntled prospective justice (Marbury) to protest.

The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it....

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void....

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and



interpret that rule. If two laws conflict with each other the courts must decide on the operation of each. So, if a law be in opposition to the constitution: if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. John Marshall, *Marbury v. Madison* (1803)



The Supreme Court Gets the Final Word

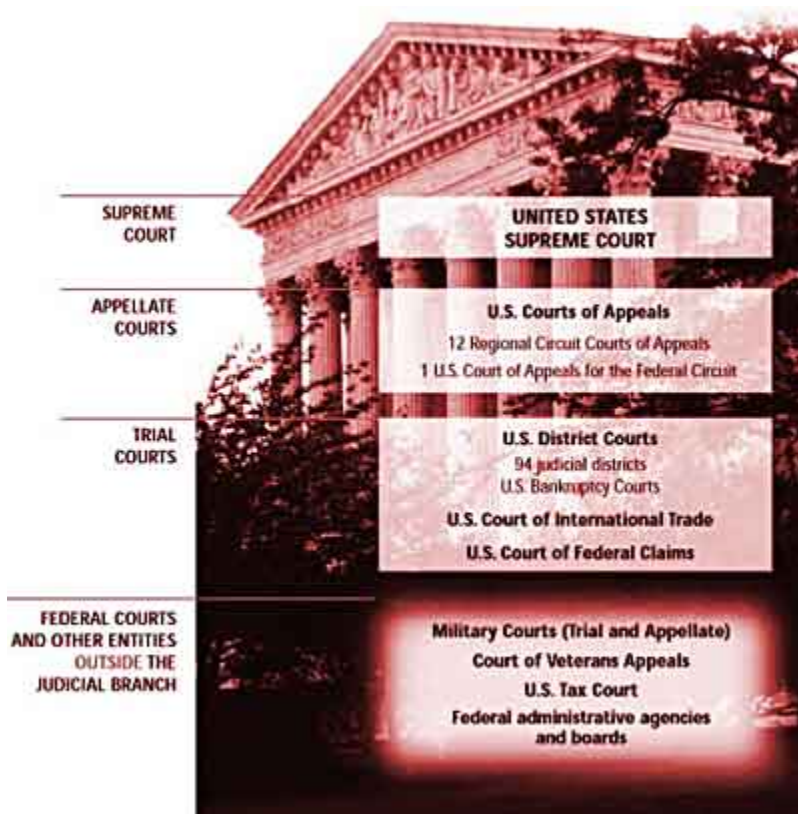
No one seemed to understand the grand implications of what Marshall had done: he had created the power of judicial review. This established the precedent that only the federal courts could interpret the Constitution. This power has given federal judges the final word in settling virtually every major issue that has challenged the government in American history.

Today, the judicial branch not only provides strong checks and balances to the executive and legislative branches, it possesses a tremendous amount of policy-making power in its own right. This power rests more on the precedent (a principle that later justices followed) of judicial review set by Marshall in 1803 than on the provisions of the Constitution.



The Structure of the Federal Courts (2.7)

The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. -Article III, Section 1, The Constitution of the United States



In the federal court system, the Supreme Court has final appellate jurisdiction over all courts in the United States.

Notice that, according to the Constitution, Congress creates courts.

By implication, Congress also has the power to reorganize and even dismantle the court system. This clause provides one of many examples of the checks and balances in the Constitution, but it also reveals the Founders' intent to grant greater powers to the legislative branch than to the judicial.

The fact that most of the basic court structure has changed little since it was created by the Judiciary Act of

1789 is an indication that Congress does not readily use this power. The relative independence of the court system, as well as the evolutionary power of the judicial branch, has been generally respected by members of subsequent Congresses.

Constitutional Courts

Courts established by the Judiciary Act of 1789 are called constitutional courts because they are mentioned in Article III (they are the "inferior courts" in the quote above).

Judges who preside over these courts are nominated by the president, confirmed by the Senate, and serve lifetime terms as long as they exhibit "good behavior." Over the years, Congress has created other courts to handle cases for special purposes.

THE JUDICIAL BRANCH



The first Territorial Supreme Court was formed for the Dakota Territory in 1861 but didn't meet to hear appeals until 1867. This photograph shows the members of the court meeting to conduct business for the first time.

Legislative Courts

Those latter courts are referred to as "legislative courts." For example, by the early 20th century, Congress had set up the U.S. territorial courts to hear federal cases in the territories that the United States began acquiring during the late 1800s. Judges for legislative courts are also appointed by the president and confirmed by the Senate, but they serve fixed, limited terms.

The Judicial Circuits



The Eighth Circuit includes the states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

The federal court system is divided into 12 geographic circuits. For example, Circuit One includes the New England states of Maine, New Hampshire, and Massachusetts. Circuit Nine includes seven states in the far western part of the country. Originally, each state in each circuit was to have one district court, where all federal cases from the state originated.

Over time, as the population grew, additional district courts were added. Today, a total of 94 district courts exist; they are staffed by more than 600 judges. Some circuits have more than others, based on population, but each circuit still has only one court of appeals. Cases not settled in the courts of appeal may be appealed further, but only to the Supreme Court.

THE JUDICIAL BRANCH

District Courts and Courts of Appeals



Each U.S. district court has a different seal, a different jurisdiction, and different local rules.

Most cases that deal with federal questions or offenses begin in district courts, which are almost always granted original jurisdiction. District courts hear appeals cases only in the rare case of a constitutional question that may arise in state courts. About 80 percent of all federal cases are heard in district courts, and most of them end there. The

number of judges assigned to district courts varies from two to twenty-eight, depending on caseloads and population.

Courts of Appeal

By the late 19th century, so many people were appealing their cases to the Supreme Court that Congress created another type of constitutional court, the courts of appeals. Today, along with 12 courts of appeals (one for each circuit), a thirteenth court, the Court of Appeals for the Federal Circuit, hears cases that deal with patents, contracts, and financial claims against the federal government.



The Ninth Circuit Court of Appeals, located in San Francisco, is noted not only for its legal importance but its ornate architecture.

Courts of appeals never hear cases on original jurisdiction, and most appeals come from district courts within their circuits. They do sometimes hear cases from decisions of federal regulatory agencies as well.

Appeals courts have no juries, and panels of judges (usually three) decide the cases. Their decisions are almost always final. Their decisions may be appealed only to the Supreme Court, and because the Court is able to hear only a very small percentage of them, almost no cases go further than the appeals courts.

Thus, even though the Founders surely intended that Congress hold a great deal of power over the judicial branch, in reality the basic organization of federal courts has remained basically the same throughout U.S. history. Congress has created new courts and reorganized others, and the system has grown increasingly complex. The courts have a great deal of independence, however, and they have established the judicial branch as a strong coequal to Congress and the president.

THE JUDICIAL BRANCH

The Supreme Court: What Does It Do? (2.7)

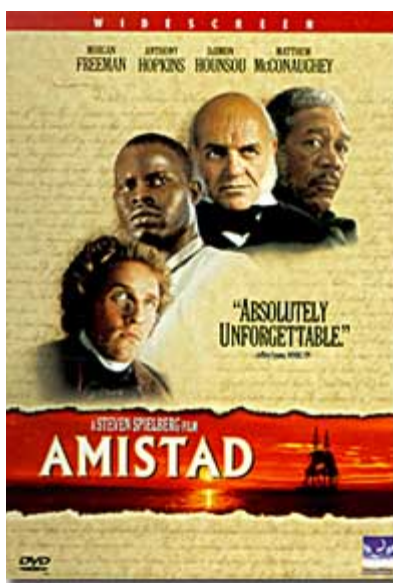


Chief Justice John Roberts and the eight associate justices have been appointed to the Supreme Court for life. They will remain on the Court until they retire, resign, are impeached, or die.

The justices are somehow different from other well-known figures in government. They dress in long black robes. They almost never appear on magazine covers, and they seem to stay on the court forever. They announce their decisions periodically, then disappear into their "Marble Palace."

In anger, President Franklin Roosevelt once called them "nine old men." What connections do they have to real-world government and politics, and what work do they do? The power of the Court is reflected in the work it does, and its decisions often shape policy as profoundly as any law passed by Congress or any action taken by the president.

The Power of Choice



*The Supreme Court chose to hear the case *United States v. the Claimants of the Amistad* (1841) because of its implications to the United States' foreign relations. The case was documented in Steven Spielberg's 1997 movie, *Amistad*.*

The Court receives about 7,000 petitions every year. It has almost complete control over which cases it will hear. The justices choose about 90 percent of their 100 to 120 cases by writ of certiorari, an order to send up a case record from a lower court.

Typically, the justices discuss any cases one of them has recommended from earlier readings. The Rule of Four governs their choices: if four justices vote to hear a case, all nine agree to it.

THE JUDICIAL BRANCH

How do they choose their cases? Generally, the Court considers only cases that have far-reaching implications beyond the two parties involved in the dispute. For example, a case in which a student sues an assistant principal for searching a locker may shape the privacy rights of all students in public schools. The court also tends to hear cases in which two lower courts have reached conflicting decisions. And it tends to look closely at lower court decisions that contradict earlier Supreme Court decisions.

Hearing and Deciding a Case



NAACP lawyers congratulate each other on the decision in Brown v. Board of Education of Topeka (1954). Attorney Thurgood Marshall, center, was later named the first African American justice of the Supreme Court.

Hearings begin in October every year, and the last cases are usually heard in June. The justices receive briefs, or summaries of arguments, from the lawyers ahead of time. Often, they receive amici curiae, or briefs prepared by interest groups or government agencies that support one side or the other. The hearings are open to the public and are strictly timed. Each side has 30 minutes to present its case, and the justices typically ask questions and even debate one another

during the allotted time.

After the public hearing the justices meet together privately to discuss the case. They share their opinions, debate the issues, and eventually come to a conclusion. Each justice takes a side individually, and because there are nine justices (an uneven number), one side always wins.

Announcing and Implementing a Decision

When the Court announces a decision, the individual justice's opinions are revealed. A unanimous decision (9-0) indicates that the justices were in total agreement. This vote is rare because the cases that have been chosen are the tough ones. Decisions are usually split 6-3, 7-2, or 5-4.

Along with the decisions, the justices release explanations for each side. A majority opinion is prepared (usually by the senior justice on that side), and the justices whose point of view did not prevail release a dissenting opinion. A justice who agrees with the majority decision but reaches the same conclusion for different reasons sometimes presents a concurring opinion.

THE JUDICIAL BRANCH



The Supreme Court comprises one chief justice, and a number of associate justices that is determined by Congress. Today, there are a total of nine justices.

The power of the Court to implement its decisions is limited. For example, in the famous 1954 case *Brown v. Board of Education of Topeka*, the justices ruled that racial segregation (separate but equal) in public places is unconstitutional. But, it took many years for school districts to desegregate.

The Court has no means (such as an army) to force implementation. Instead, it must count on the executive and legislative branches to back its decisions. In the Civil Rights Movement, the Court led the way, but the other branches had to follow before real change could take place.

Despite the Supreme Court's limitations in implementing decisions, the justices often set policies that lead to real social change. So even though justices don't do a great deal of their work in public, and most Americans don't have a good sense of what they do, their decisions are very important. The Supreme Court has real power in the American political system.



How Judges and Justices Are Chosen (2.7)



The Senate Judiciary Committee reviews the president's nominees to the federal bench before they are confirmed on the Senate floor. The committee holds its meetings in rooms such as this one, Committee Room 226 in the Senate Dirksen Office Building.

Legendary Justice Oliver Wendell Holmes once said that a Supreme Court Justice should be a "combination of Justinian, Jesus Christ, and John Marshall."

Why are venerable former justices sources of guidance in understanding necessary qualities for federal judges?

The Constitution is silent on judicial qualifications. It meticulously outlines qualifications for the House of Representatives, the Senate, and the presidency, but it does not give any advice for judicial appointments other than stating that justices should exhibit "good behavior." As a result, selections are governed primarily by tradition.

The Nomination Process

The Constitution provides broad parameters for the judicial nomination process. It gives the responsibility for nominating federal judges and justices to the president. It also requires nominations to be confirmed by the Senate. First, look at the numbers.

More than 600 judges sit on district courts, almost 200 judges sit on courts of appeals, and 9 justices make up the Supreme Court. Because all federal judges have life terms, no single president will make all of these appointments.

But many vacancies do occur during a president's term of office. Appointing judges, then, could be a full-time job. A president relies on many sources to recommend appropriate nominees for judicial posts.

Recommendations often come from the Department of Justice, the Federal Bureau of Investigation, members of Congress, sitting judges and justices, and the American Bar Association. Some judicial hopefuls even nominate themselves.

A special, very powerful tradition for recommending district judges is called senatorial courtesy. According to this practice, the senators from the state in which the vacancy occurs make the decision. A senator of the same political party as the President sends a nomination to the president, who almost always follows the recommendation. To ignore it would be a great affront to the senator, as well as an invitation for conflict between the president and the Senate.

Selection Criteria

THE JUDICIAL BRANCH



Supreme Court Justice Clarence Thomas was nominated to fill the position vacated by Thurgood Marshall. He served on the U.S. Court of Appeals before his nomination to the Supreme Court by George Bush.

Presidents must consider many factors in making their choices for federal judgeships:

- **Experience** — Most nominees have had substantial judicial or governmental experience, either on the state or federal level. Many have law degrees or some other form of higher education.
- **Political ideology** — Presidents usually appoint judges who seem to have a similar political ideology to their own. In other words, a president with a liberal ideology will usually appoint liberals to the courts. Likewise, conservative presidents tend to appoint conservatives.
- **Party and personal loyalties** — A remarkably high percentage of a president's appointees belong to the president's political party. Although political favoritism is less common today than it was a few decades ago, presidents still appoint friends and loyal supporters to federal judgeships.
- **Ethnicity and gender** — Until relatively recently, almost all federal judges were white males. Today, however, ethnicity and gender are important criteria for appointing judges. In 1967, Lyndon Johnson appointed the first African American Supreme Court justice, Thurgood Marshall. In 1981, Ronald Reagan appointed the first woman to the Supreme Court, Sandra Day O'Connor. All recent presidents have appointed African Americans, Latinos, members of other ethnic minority groups, and women to district courts and courts of appeal.

Because federal judges and Supreme Court justices serve for life, a president's nomination decisions are in many ways his or her most important legacy. Many of these appointments will serve long after a president's term of office ends. Whether or not the results are a "combination of Justinian, Jesus Christ, and John Marshall," these choices can have an impact on generations to come.



The Power of the Federal Courts (2.7)

Not everyone agrees on how much power the judicial branch should have. After all, federal judges and justices are appointed, not elected. As most Americans believe in democracy, shouldn't elected officials run the country?

On the other hand, perhaps American government would be fairer if judges had even more power. Because they do not have to worry about reelection, they are relieved of the outside pressure of public opinion.

After all, the majority is not always right. It is no accident that the Founders provided for elected officials in the legislature and appointed officials in the judiciary. They believed that freedom, equality, and justice are best achieved by a balance between the two branches of government.

Checks on Judicial Power



Although the Supreme Court ruled in favor of the Cherokee, its decision was not enforced. Nearly 4,000 Cherokee died on the Trail of Tears as a result of the Indian removals.

The president and Congress have some control of the judiciary with their power to appoint and confirm appointments of judges and justices. Congress also may impeach judges (only seven have actually been removed from office), alter the organization of the federal court system, and amend the Constitution.

Congress can also get around a court ruling by passing a slightly different law than one previously declared unconstitutional.

Courts also have limited power to implement the decisions that they make. For example, if the president or another member of the executive branch chooses to ignore a ruling, there is very little that the federal courts can do about it.

For example, the Supreme Court ruled against the removal of the Cherokee from their native lands in 1831. President Andrew Jackson disagreed. He proceeded with the removal of the Cherokee, and the Supreme Court was powerless to enforce its decision.



The Power of the Courts



1Will Counts/AP

*The 1954 Supreme Court decision in *Brown v. Board of Education of Topeka* regarding integration of schools was not enforced until three years later, when Central High School in Little Rock, Arkansas, was integrated. Elizabeth Eckford, one of the first African American students to attend Central, was heckled on her way to school each morning.*

The federal courts' most important power is that of judicial review, the authority to interpret the Constitution. When federal judges rule that laws or government actions violate the spirit of the Constitution, they profoundly shape public policy. For example, federal judges have declared over 100 federal laws unconstitutional.

Another measure of the Supreme Court's power is its ability to overrule itself. In 1954, the Supreme Court ruled in *Brown v. Board of Education of Topeka* that schools segregated by race were unconstitutional. This reversed the 1896 *Plessy v. Ferguson* decision that upheld the doctrine of "separate but equal."

For the most part, though, federal courts do have a great deal of respect for previous decisions. A very strong precedent called *stare decisis* ("let the decision stand") directs judges to be cautious about overturning decisions made by past courts.

An act of the legislature repugnant to the Constitution is void.... It is emphatically the province of the judicial department to say what the law is. John Marshall, *Marbury v. Madison* (1803)

Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment, may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The character of every act depends upon the circumstances in which it is done. Oliver Wendell Holmes, *Schenck v. the United States* (1919)

The judgments below, except that, in the Delaware case, are accordingly reversed, and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. Earl Warren, *Brown v. Board of Education of Topeka* (1955)

THE JUDICIAL BRANCH

I shall not today attempt further to define the kinds of material [pornography] ...[B]ut I know it when I see it.
Potter Stewart, *Jacobellis v. Ohio* (1964)



Charles Evans Hughes was first appointed to the Supreme Court in 1910 but left the Court to run for president in 1916. He was reappointed to the Supreme Court as Chief Justice in 1930.

Judicial Activism versus Judicial Restraint

The lack of agreement regarding the policy making power of courts is reflected in the debate over judicial activism versus judicial restraint. Judicial activists believe that the federal courts must correct injustices that are perpetuated or ignored by the other branches.

For example, minority rights have often been ignored partly because majorities impose their will on legislators. Prayers in public schools support the beliefs of the majority but ignore the rights of the minority. The Constitution is often loosely interpreted to meet the issues of the present. In the words of former Justice Charles Evans Hughes, "We are under a Constitution, but the Constitution is what the judges say it is."

Supporters of judicial restraint point out that appointed judges are immune to public opinion, and if they abandon their role as careful and cautious interpreters of the Constitution, they become unelected legislators. According to Justice Antonin Scalia, "The Constitution is not an empty bottle....It is like a statute, and the meaning doesn't change."

Despite the debate over what constitutes the appropriate amount of judicial power, the United States federal courts remain the most powerful judicial system in world history. Their power is enhanced by life terms for judges and justices, and they play a major role in promoting the core American values of freedom, equality, and justice.