CHAPTER 1

The Constitution and the Structure of Government

Power

PREAMBLE

On the day after the presidential election of 2000, the news on ABC World News Tonight was anything but routine: candidates George W. Bush and Al Gore disputed the election results. Victory addresses and concession speeches were postponed, as the arduous process of challenging the vote in the pivotal state of Florida commenced.

As anchor Peter Jennings noted at the outset of the evening broadcast, “Uncertainty, intrigue and partisan politics make for a volatile mix.” But he ended the broadcast with a reassuring note, much as anchors had done following previous elections: “Finally, this evening, a very brief personal note. A colleague and I who have covered the transfer of power in many unfortunate parts of the world, very often at the point of a gun, agree today on the marvel of this democracy. For all the turmoil last night and today and perhaps tomorrow, Americans, unlike so many others, take the peaceful and orderly transition of power, ultimately, for granted. A gift from the founding fathers.”[1]

Jennings reiterated the conventional wisdom and reinforced public opinion about the wondrous design of American government contained in the Constitution. Yet his praise of the founders was misleading: in fact, the Constitution helped produce the “turmoil” of the 2000 presidential election. Presidents are selected by an Electoral College, a process whereby the winner of the popular vote in a state usually takes all of its electoral votes. Bush was able to win a scant majority in the Electoral College, even as more people voted for Gore nationwide.

The media have long been enthusiastic about the Constitution. They provided crucial assistance in the processes leading up to its adoption in the 1780s. They continue to venerate it today.

1. THE FIRST AMERICAN POLITICAL SYSTEM

LEARNING OBJECTIVES

After reading this section, you should be able to answer the following questions:

1. What was the Stamp Act Congress?
2. What was the Continental Congress?
3. What are the principles contained in the Declaration of Independence?
4. What were the Articles of Confederation?

We can understand what the Constitution was designed to accomplish by looking at the political system it replaced: the Articles of Confederation, the United States’ first written constitution, which embodied political ideals expressed by the Declaration of Independence.
1.1 From Thirteen Colonies to United States

By the mid-eighteenth century, Britain’s thirteen colonies on North America’s east coast stretched from Georgia to New Hampshire. Each colony had a governor appointed by the king and a legislature elected by landholding voters. These colonial assemblies, standing for the colonialists’ right of self-govern ment, clashed with the royal governors over issues of power and policies. Each colony, and the newspapers published therein, dealt with the colonial power in London and largely ignored other colonies.

The Stamp Act Congress

British policy eventually pushed politics and news across colonial boundaries. In 1763, the British antagonized the colonialists in two important ways. A royal proclamation closed off the frontier to colonial expansion. Second, the British sought to recoup expenses borne defending the colonies. They instituted the first ever direct internal taxes in North America. The most famous, the Stamp Act, required the use of paper embossed with the royal seal to prove that taxes had been paid.

Such taxes on commerce alienated powerful interests, including well-off traders in the North and prosperous planters in the South, who complained that the tax was enacted in England without the colonists’ input. Their slogan, “No taxation without representation,” shows a dual concern with political ideals and material self-interest that persisted through the adoption of the Constitution.

Among the opponents of the Stamp Act were printers who produced newspapers and pamphlets. The arduous technology of typesetting and hand-printing individual pages did not permit sizable production. Newspapers reached large audiences by being passed around—“circulated”—or by being read aloud at taverns. Printers’ precarious financial condition made them dependent on commissions from wealthy people and official subsidies from government, and thus they were eager to please people in power. Crusading journalism against government authorities was rare. The Stamp Act, however, was opposed by powerful interests and placed financial burdens on printers, so it was easy for newspaper printers to oppose it vigorously with hostile stories.

During the Stamp Act crisis, news began to focus on events throughout the thirteen colonies. Benjamin Franklin, postmaster of the British government for the colonies, developed a system of post roads linking the colonies. Printers now could send newspapers to each other free of charge in the mail, providing content for each other to copy. Colonial legislatures proposed a meeting of delegates from across the colonies to address their grievances. This gathering, the Stamp Act Congress, met for two weeks in 1765. Delegates sent a petition to the king that convinced British authorities to annul the taxes.

The Continental Congress

In 1773, the British government awarded the East India Company a monopoly on importing and selling tea to the American colonies. This policy, too, hurt powerful interests: colonial traders and merchants. Rebellious Bostonians ransacked the East India Company’s ships and pushed cartons of tea overboard. The British reacted harshly to this “Boston Tea Party”: they closed the port of Boston, deported rebels to England for trial, and restricted settlement in and trade to the west of the country.

Once again, delegates from the various colonies met, this time in a gathering known as the Continental Congress, to address the difficulties with Britain. But this congress’s petitions, unlike those of the Stamp Act Congress, were rebuffed. Repressive policies were kept in place. The Continental Congress launched a boycott of British products, initiated the Revolutionary War, and passed the Declaration of Independence.

Link

Declaration of Rights


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1.2 The Declaration of Independence

The Declaration of Independence, issued on July 4, 1776, announced that the thirteen colonies were independent of Britain. It was designed to be read aloud in public and to be sent to international audiences. Its point-by-point charges against British rule give equal weight to how the king damaged America’s economic interests and how he ignored principles of self-government.

FIGURE 1.2

The soaring phrases of the Declaration were crafted in part to be declaimed in public. Indeed, one of the copies owned by Jefferson himself—not a confident public speaker—shows where he marked the document to pause, perhaps for laudatory huzzahs and applause.

The Declaration is a deeply democratic document. It is democratic in what it did—asserting the right of the people in American colonies to separate from Britain. And it is democratic in what it said: “We hold these truths to be self-evident, that all men are created equal” and have inviolable rights to “life, liberty, and the pursuit of happiness.” The Declaration concludes that the people are free to “alter or abolish” repressive forms of government. Indeed, it assumes that the people are the best judges of the quality of government and can act wisely on their own behalf.

1.3 The Articles of Confederation

Drafted in 1777, the Articles of Confederation were the first political constitution for the government of the United States. They codified the Continental Congress’s practices and powers. The United States of America was a confederation of states. Although the confederation was superior to the individual states, it had no powers without their consent.

Under the Articles, the Continental Congress took over the king’s powers to make war and peace, send and receive ambassadors, enter into treaties and alliances, coin money, regulate Indian affairs, and run a post office. But the confederation could not raise taxes and relied on revenues from each of the states. There was no president to enforce the laws and no judiciary to hear disputes between and among the states.

Each state delegation cast a single vote in the Continental Congress. Nine states were needed to enact legislation, so few laws were passed. States usually refused to fund policies that hampered their own
interests. 

Changes in the Articles required an all-but-impossible unanimous vote of all thirteen delegations. The weakness of the Articles was no accident. The fights with Britain created widespread distrust of central authority. By restricting the national government, Americans could rule themselves in towns and states. Like many political thinkers dating back to ancient Greece, they assumed that self-government worked best in small, face-to-face communities.

**KEY TAKEAWAYS**

The first American political system, as expressed in the Articles of Confederation, reflected a distrust of a national government. Its powers were deliberately limited in order to allow Americans to govern themselves in their cities and states.

**EXERCISES**

1. What was it about the Stamp Act and the decision to award a monopoly on the sale of tea to the East India Company that helped bring the American colonies together? What were the motivations for forming the first Congresses?
2. In what way is the Declaration of Independence’s idea that “all men are created equal” a democratic principle? In what sense are people equal if, in practice, they are all different from one another?
3. What were the weaknesses of the Articles of Confederation? Do you think the American government would be able to function if it were still a confederation? Why or why not?

2. CREATING AND RATIFYING THE CONSTITUTION

**LEARNING OBJECTIVES**

After reading this section, you should be able to answer the following questions:

1. What was Shays’s Rebellion?
2. What was the Constitutional Convention?
3. What were the three cross-cutting divides at the Constitutional Convention?
4. What were the main compromises at the Constitutional Convention?
5. Who were the Federalists and the Anti-Federalists?
6. What factors explain ratification of the Constitution?

The Constitution was a reaction against the limitations of the Articles of Confederation and the democratic experiments begun by the Revolution and the Declaration of Independence.

2.1 The Case against the Articles of Confederation

The Articles could not address serious foreign threats. In the late 1780s, Britain denied American ships access to British ports in a trade war. Spain threatened to close the Mississippi River to American vessels. Pirates in the Mediterranean captured American ships and sailors and demanded ransom. The national government had few tools to carry out its assigned task of foreign policy.

There was domestic ferment as well. Millions of dollars in paper money issued by state governments to fund the Revolutionary War lost their value after the war. Financial interests were unable to collect on debts they were owed. They appealed to state governments, where they faced resistance and even brief armed rebellions.

Newspapers played up Shays’s Rebellion, an armed insurrection by debt-ridden farmers to prevent county courts from foreclosing mortgages on their farms. Led by Captain Daniel Shays, it began in 1786, culminated with a march on the federal arsenal in Springfield, Massachusetts, and wound down in 1787.

The Continental Congress voted unanimously to raise an army to put down Shays’s Rebellion but could not coax the states to provide the necessary funds. The army was never assembled.
Constitutional Convention

The gathering of delegates from twelve of the thirteen states who met in Philadelphia from June to September of 1787; originally authorized by the Continental Congress to consider amendments to the Articles of Confederation, they ultimately drafted the Constitution that replaced it.

Link

Shays’s Rebellion

To learn more about Shays’s Rebellion, visit the National Park Service online at http://www.nps.gov/spar/historyculture/shays-rebellion.htm.

Leaders who supported national government portrayed Shays’s Rebellion as a vivid symbol of state governments running wild and proof of the inability of the Articles of Confederation to protect financial interests. Ordinary Americans, who were experiencing a relatively prosperous time, were less concerned and did not see a need to eliminate the Articles.

2.2 Calling a Constitutional Convention

The Constitutional Convention was convened in 1787 to propose limited reforms to the Articles of Confederation. Instead, however, the Articles would be replaced by a new, far more powerful national government.

Twelve state legislatures sent delegates to Philadelphia (Rhode Island did not attend). Each delegation would cast a single vote.

Who Were the Delegates?

The delegates were not representative of the American people. They were well-educated property owners, many of them wealthy, who came mainly from prosperous seaboard cities, including Boston and New York. Most had served in the Continental Congress and were sensitive to the problems faced by the United States. Few delegates had political careers in the states, and so they were free to break with existing presumptions about how government should be organized in America.

Link

Constitutional Convention

To learn more about the delegates to the Constitutional Convention, visit http://www.archives.gov/exhibits/charters/constitution_founding_fathers.html.

The Constitutional Convention was a mix of great and minor characters. Exalted figures and brilliant intellects sat among nonentities, drunkards, and nincompoops. The convention’s driving force and chief strategist was a young, bookish politician from Virginia named James Madison. He successfully pressured revered figures to attend the convention, such as George Washington, the commanding officer of the victorious American revolutionaries, and Benjamin Franklin, a man at the twilight of a remarkable career as printer, scientist, inventor, postmaster, philosopher, and diplomat.
FIGURE 1.3
The unassuming and slight James Madison made an unusual teammate for the dashing, aristocratic ex-soldier Alexander Hamilton and the august diplomat John Jay. But despite these contrasts and some political divides, they merged their voices in the Federalist papers, published in New York newspapers under the pseudonym "Publius." Soon after the ratification of the Constitution, The Federalist was widely republished in book format. Scholars now regard it as the fullest explication of the logic underlying the Constitution.


2.3 Drafting the Constitution
Delegates to the Constitutional Convention first gathered on May 25, 1787, in what is now called Independence Hall in Philadelphia. Their goal was to devise a constitution, a system of fundamental laws and principles outlining the nature and functions of the government. George Washington presided. Delegates worked in an intimate setting without committees. The structure of power created by the Constitution in Philadelphia resulted from a deeply political process.

The Secrecy of the Constitutional Convention
Deliberations took place in secret, as delegates did not want the press and the public to know the details of what they were considering ("Comparing Content"). Newspapers hardly mentioned the convention at all, and when they did, it was in vague references praising the high caliber of the delegates.
Comparing Content

The Convention’s Gag Rule

Press coverage of the Constitutional Convention cannot be compared because one of the first decisions made in the Constitutional Convention was that “nothing spoken in the House be printed, or otherwise published or communicated.”¹⁶ The delegates feared that exposure through newspapers would complicate their work. The delegate who is today regarded as the great defender of civil liberties, George Mason, wrote to his son approvingly: “This I think myself a proper precaution to prevent mistakes and misrepresentation until the business shall have been completed, when the whole may have a very different complexion from that in the several crude and indigested parts might in their first shape appear if submitted to the public eye.”¹⁷

This gag rule was rigorously enforced. One day the presiding officer, George Washington, noticed that an inattentive delegate had dropped his notes on the floor when leaving the hall. Washington broke his usual silence and rebuked the unknown infractor: “I am sorry to find that some one Member of this Body, has been so neglectful of the secrets of the convention as to drop in the State House a copy of their proceedings, which by accident was picked up and delivered to me this morning. I must entreat Gentlemen to be more careful, least [sic] our transactions get into the News Papers, and disturb the public repose by premature speculations.”

Throwing the notes on the table, Washington exclaimed, “I know not whose Paper it is, but there it is, let him who owns it take it.” Delegate William Pierce, who recorded this tale, noted that Washington “bowed, picked up his Hat, and quitted the room with a dignity so severe that every Person seemed alarmed.”¹⁸

The founders were not unanimous about the threat posed by the press. Thomas Jefferson was in Paris as an ambassador. In August 1787, he wrote to his counterpart in London, John Adams, that there was no news from the convention: “I am sorry they began their deliberations by so abominable a precedent as that of tying up the tongues of their members. Nothing can justify this example but the innocence of their intentions, & ignorance of the value of public discussions. I have no doubt that all their other measures will be good & wise.”¹⁹

In 1787, the powers of the press were identified in ways we recognize in the twenty-first century. Washington was concerned that news about the political process might produce rumors, confusion, worry, and public opposition to worthwhile policies. But as Jefferson recognized, the news can also lead to productive public debate, dialogue, and deliberation.

FIGURE 1.4

The membership of the Constitutional Convention was so small—never more than fifty on a given day—that they could proceed largely in “a committee of the whole.” This size enabled them to continue their discussions in private at their preferred boardinghouses and taverns—and to keep a tight lid on public discussion.


The Cross-Cutting Divides

The delegates immediately discarded the Continental Congress’s mandate that they recommend amendments to the Articles of Confederation. They agreed to draft a new Constitution from scratch in order to create a national government superior to and independent of the states.

This crucial decision was followed by disagreement about exactly how to create a national government. The states varied widely in economic bases, population sizes, and numbers of slaves.

Three cross-cutting divides existed among the states:

1. Large states versus small states²⁰
2. Cosmopolitan, centrally located states (Connecticut to Virginia) versus parochial states on the northern and southern borders

3. Southern states, reliant on slavery in their economies, versus Northern states, which were not

The powers and structures of the Constitution resulted from a series of compromises designed to bridge these three divides.

Large and Small States

The most threatening split in the convention emerged initially between large and small states.

Large states fired the first salvo. The Virginia Plan, drafted by Madison, foresaw a strong national government that could veto any state laws it deemed contrary to the national interest. The central institution was a bicameral (two-chamber) legislature. The people would elect the lower house, which would in turn select the members of the upper house; the two chambers together would then elect the executive and judiciary. Breaking with the Articles of Confederation’s equal representation of states, the Virginia Plan allotted seats to both chambers of the legislature by population size alone.[21]

Cosmopolitan, centrally located states, provided strong initial support for the Virginia Plan against scattered opposition from border states. But Madison could not hold this coalition behind both a strong national government and a legislature allocated by population. Delegates from the small states of New Jersey, Delaware, and Maryland liked a strong national government, but they feared being overpowered. Delegates from populous Massachusetts and three fast-growing Southern states joined the two largest states, Virginia and Pennsylvania, to support legislative districts based on population, but they disliked the Virginia Plan’s sweeping powers for the national government.

On June 15, the small states proposed an alternative. The New Jersey Plan enhanced the national government’s powers to levy taxes and regulate commerce but left remaining powers to the states. The plan had a federal executive, elected by the legislature, to enforce states’ compliance with national law, and a federal judiciary to settle disputes among the states and between the states and the national government. Any national law would become “the supreme law of the respective States.” The New Jersey Plan preserved the core of the Articles of Confederation—equal representation of states in a unicameral (single-chamber) legislature.

Only three states voted for the New Jersey Plan, but the Virginia Plan’s vulnerability was exposed. Facing an impasse, delegates from Connecticut suggested a compromise. Borrowing the Virginia Plan’s idea of a bicameral legislature, they proposed that one chamber, the House of Representatives, be made up of representatives from districts of equal population, while in the Senate each state would be equally represented with two senators.

This Connecticut Compromise (also known as the Great Compromise) was adopted by the convention with only Virginia and Pennsylvania in opposition. Thus the configuration of today’s Congress emerged not so much from principled deliberations between the Constitution’s founders as from the necessity for compromise between competing state interests. In essence, the founders decided to split the difference.[22]

North and South

After this vote, North versus South displaced the divide between large and small states. The convention became preoccupied by how the new government would be empowered to deal with slavery. Northerners feared the South’s growth and room for expansion. Southerners worried that the North would threaten the practice of slavery, which, although legal in all states, was a central part only of Southern economies.

Northern interests in a strong national government acceded to Southern demands on slavery. Southerners argued that slaves should be counted when allocating legislative seats. Eventually, the convention settled on a three-fifths clause: 60 percent of the enslaved population would be counted for purposes of representation. Northern delegates, convinced that the largest slave-holding states would never have a majority in the Senate, gave in.

Link

The Three-Fifths Clause

Aaron Magruder’s comic strip The Boondocks ran this installment during the 2004 presidential campaign. Showing a depressed black man talking about the three-fifths clause, it powerfully illustrates the Constitution’s long-lasting affront to African Americans, almost all of whom were enslaved and thus, for the purpose of the census (and of representation in Congress and the Electoral College), would be counted as three-fifths of a person.
As the convention considered the national government’s powers, an alliance of delegates from New England and the Deep South emerged to defend local control and their states’ economic self-interest. Southerners sought to maintain slavery, while New Englanders wanted national tariffs to protect their commerce. They struck a deal that resulted in New England delegates voting to require the return of fugitive slaves and to prevent Congress from regulating the slave trade until 1808.

The delegates did not confront slavery head on (indeed, the word “slavery” is not directly mentioned in the Constitution). As a result, the issue of slavery would overshadow much of federal politics until its bloody resolution in the Civil War of the 1860s.

**The Executive**

By now, the Constitutional Convention could not break down, because the document had something for everybody. Small states liked the security of a national government and their equal representation in the Senate. The Deep South and New England valued the protection of their economic bases. Pennsylvania and Virginia—the two most populous, centrally located states—foresaw a national government that would extend the reach of their commerce and influence.

The convention’s final sticking point was the nature of the executive. The debate focused on how many people would be president, the power of the office, the term of the office, how presidents would be elected, and whether they could serve multiple terms.

To break the logjam on the presidency, the convention created the Electoral College as the method of electing the president, a political solution that gave something to each of the state-based interests. The president would not be elected directly by the popular vote of citizens. Instead, electors chosen by state legislatures would vote for president. Small states got more electoral votes than warranted by population, as the number of electors is equal to the total of representatives and senators. If the Electoral College did not produce a majority result, the president would be chosen by the popularly elected House, but with one vote per state delegation. With all sides mollified, the convention agreed that the office of president would be held by one person who could run for multiple terms.

**Bargaining, Compromise, and Deal Making**

The Constitutional Convention began with a principled consensus on establishing a stronger national government; it ended with bargaining, compromise, and deal making. State delegations voted for their political and economic self-interests, and often worked out deals enabling everyone to have something to take home to constituents. Some complex matters, such as the structures of the executive and judicial branches, were left up to the new congress. As one scholar writes, the Constitution is “a patch-work sewn together under the pressure of both time and events by a group of extremely talented…politicians.”

**2.4 Ratifying the Constitution**

The signing of the Constitution by the delegates on September 17, 1787, was just the beginning. The Constitution would go into effect only after being approved by specially elected ratifying conventions in nine states.

Ratification was not easy to win. In most states, property qualifications for voting had broadened from landholding to taxing, thereby including most white men, many of whom benefited from the public policies of the states. Popular opinion for and against ratification was evenly split. In key states like Massachusetts and Virginia, observers thought the opposition was ahead.

**The Opposition to Ratification**

The elections to the ratifying conventions revealed that opponents of the Constitution tended to come from rural inland areas (not from cities and especially not from ports, where merchants held sway). They held to the ideals of the Declaration of Independence, which favored a deliberately weak national
government to enhance local and state self-government. They thought that the national government’s powers, the complex system of government, lengthy terms of office, and often indirect elections in the new Constitution distanced government from the people unacceptably.

Opponents also feared that the strength of the proposed national government posed a threat to individual freedoms. They criticized the Constitution’s lack of a Bill of Rights—clauses to guarantee specific liberties from infringement by the new government. A few delegates to the Constitutional Convention, notably George Mason of Virginia and Elbridge Gerry of Massachusetts, had refused to sign the document in the absence of a Bill of Rights.

The Campaign for Ratification

Despite such objections and obstacles, the campaign for ratification was successful in all thirteen states. The advocates of the national political system, benefiting from the secrecy of the Constitutional Convention, were well prepared to take the initiative. They called themselves not nationalists but Federalists. Opponents to the Constitution were saddled with the name of Anti-Federalists, though they were actually the champions of a federation of independent states.

By asking conventions to ratify the Constitution, the Federalists evaded resistance from state legislatures. Federalists campaigned to elect sympathetic ratifiers and hoped that successive victories, publicized in the press, would build momentum toward winning ratification by all thirteen states.

FIGURE 1.5

The Federalists’ media strategies included images, too. A famous woodcut at the start of the Revolution was of a serpent cut into thirteen sections with the admonition “Join or Die.” Federalists provided a new twist on this theme. They kept track of the ratification by an edifice of columns, elevated one by one as each state ratified. The next state convention on the list would be represented by a hand lifting the column, often accompanied by the confident motto “Rise It Will.”

Anti-Federalists did not decry the process by which the Constitution was drafted and ratified. Instead, they participated in the ratification process, hoping to organize a new convention to remedy the Constitution’s flaws.

Newspapers and Ratification

The US newspaper system boosted the Federalist cause. Of the approximately one hundred newspapers being published during the ratification campaign of 1787–88, “not more than a dozen…could be classed as avowedly antifederal.” Anti-Federalist arguments were rarely printed and even less often copied by other newspapers. Printers followed the money trail to support the Federalists. Most newspapers, especially those whose stories were reprinted by others, were based in port cities, if only because arriving ships provided good sources of news. Such locales were dominated by merchants who favored a national system to facilitate trade and commerce. Newspapers were less common in rural interior locations where Anti-Federalist support was greatest.
Federalists also pressured the few Anti-Federalist newspapers that existed. They wrote subscribers and advertisers and urged them to cancel. Anti-Federalist printers often moved to other cities, went out of business, or began reprinting Federalist articles. Federalists hailed such results as the voice of the people. When an Anti-Federalist paper in Philadelphia halted publication, Federalists exulted, “There cannot be a greater proof that the body of the people are federal, that the antifederal editors and printers fail of support.”[30]

Today the most famous part of this newspaper campaign is the series of essays (referred to earlier) written by Alexander Hamilton, John Jay, and James Madison, and published in New York newspapers under the collective pseudonym “Publius.” The authors used their skills at legal argumentation to make the strongest case they could for the document that emerged from the Constitutional Convention. These Federalist papers, steeped in discussion of political theory and history, offer the fullest logic for the workings of the Constitution. However, they were rarely reprinted outside New York and were a minor part of the ratification campaign.

Link

The Federalist


Newspapers instead played on public sentiment, notably the adulation of George Washington, presiding officer of the convention, and his support of the Constitution.[31] The most widely disseminated story concerned his return trip from Philadelphia to Virginia. A bridge collapsed but Washington escaped unharmed. The tale implied that divine intervention had ensured Washington’s leadership by "the providential preservation of the valuable life of this great and good man, on his way home from the Convention.”[32]

Not all states were eager to ratify the Constitution, especially since it did not specify what the federal government could not do and did not include a Bill of Rights. Massachusetts narrowly voted in favor of ratification, with the provision that the first Congress take up recommendations for amending the Constitution. New Hampshire, Virginia, and New York followed this same strategy. Once nine states had ratified it, the Constitution was approved. Madison was elected to the first Congress and proposed a Bill of Rights, the first ten amendments to the Constitution. Only after the Congress had approved the Bill of Rights did North Carolina and Rhode Island ratify the Constitution.

KEY TAKEAWAYS

We have shown that the Constitution was a political document, drafted for political purposes, by skillful politicians who deployed shrewd media strategies. At the Constitutional Convention, they reconciled different ideas and base self-interests. Through savvy compromises, they resolved cross-cutting divisions and achieved agreement on such difficult issues as slavery and electing the executive. In obtaining ratification of the Constitution, they adroitly outmaneuvered or placated their opponents. The eighteenth-century press was crucial to the Constitution’s success by keeping its proceedings secret and supporting ratification.

EXERCISES

1. From what James Madison says in Federalist No. 10, what economic interests was the Constitution designed to protect? Do you agree that the liberty to accumulate wealth is an essential part of liberty?
2. What did James Madison mean by “factions,” and what danger did they pose? How did he hope to avoid the problems factions could cause?
3. Why were the Constitutional Convention’s deliberations kept secret? Do you think it was a good idea to keep them secret? Why or why not?
4. What were the main divisions that cut across the Constitutional Convention? What compromises bridged each of these divisions?
3. CONSTITUTIONAL PRINCIPLES AND PROVISIONS

L E A R N I N G  O B J E C T I V E S

After reading this section, you should be able to answer the following questions:

1. What is the separation of powers?
2. What are checks and balances?
3. What is bicameralism?
4. What are the Articles of the Constitution?
5. What is the Bill of Rights?

3.1 The Principles Underlying the Constitution

While the Constitution established a national government that did not rely on the support of the states, it limited the federal government’s powers by listing (“enumerating”) them. This practice of federalism (as we explain in detail in Chapter 2) means that some policy areas are exclusive to the federal government, some are exclusive to the states, and others are shared between the two levels.

Federalism aside, three key principles are the crux of the Constitution: separation of powers, checks and balances, and bicameralism.

Separation of Powers

Separation of powers is the allocation of three domains of governmental action—law making, law execution, and law adjudication—into three distinct branches of government: the legislature, the executive, and the judiciary. Each branch is assigned specific powers that only it can wield (see Table 1.1).

<table>
<thead>
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<th>Branch of Government</th>
<th>Term</th>
<th>How Selected</th>
<th>Distinct Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House of Representatives</td>
<td>2 years</td>
<td>Popular vote</td>
<td>Initiate revenue legislation; bring articles of impeachment</td>
</tr>
<tr>
<td>Senate</td>
<td>6 years; 3 classes staggered</td>
<td>Election by state legislatures</td>
<td>Confirm executive appointments; confirm treaties; try impeachments</td>
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<tr>
<td>Executive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>President</td>
<td>4 years</td>
<td>Electoral College</td>
<td>Commander-in-chief; nominate executive officers and Supreme Court justices; veto; convene both houses of Congress; issue reprieves and pardons</td>
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<tr>
<td>Judicial</td>
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<tr>
<td>Supreme Court</td>
<td>Life (during good behavior)</td>
<td>Presidential appointment and Senate confirmation (stated more or less directly in Federalist No. 78)</td>
<td>Judicial review (implicitly in Constitution but stated more or less directly in Federalist No. 78)</td>
</tr>
</tbody>
</table>
FIGURE 1.6
In perhaps the most abiding indicator of the separation of powers, Pierre L’Enfant’s plan of Washington, DC, placed the President’s House and the Capitol at opposite ends of Pennsylvania Avenue. The plan notes the importance of the two branches being both geographically and politically distinct.

This separation is in the Constitution itself, which divides powers and responsibilities of each branch in three distinct articles: Article I for the legislature, Article II for the executive, and Article III for the judiciary.

Checks and Balances
At the same time, each branch lacks full control over all the powers allotted to it. Political scientist Richard Neustadt put it memorably: “The Constitutional Convention of 1787 is supposed to have created a government of ‘separated powers.’ It did nothing of the sort. Rather, it created a government of separated institutions sharing powers.”[33] No branch can act effectively without the cooperation—or passive consent—of the other two.

Most governmental powers are shared among the various branches in a system of checks and balances, whereby each branch has ways to respond to, and if necessary, block the actions of the others. For example, only Congress can pass a law. But the president can veto it. Supreme Court justices can declare an act of Congress unconstitutional through judicial review. Figure 1.7 shows the various checks and balances between the three branches.

Source: http://commons.wikimedia.org/wiki/File:L%27Enfant_plan_original.jpg.

checks and balances
The Constitution’s approach whereby every branch is equipped with powers at least partially countervailing those of the other two branches.

judicial review
The power of the Supreme Court to render acts of Congress or decisions of the executive null and void on the basis that they violate the Constitution.
bicameralism
The practice of having two separate chambers within the legislature; in the Constitution, this means that Congress is made up of a House of Representatives and a Senate.

The logic of checks and balances echoes Madison’s skeptical view of human nature. In Federalist No. 10 he contends that all individuals, even officials, follow their own selfish interests. Expanding on this point in Federalist No. 51, he claimed that officeholders in the three branches would seek influence and defend the powers of their respective branches. Therefore, he wrote, the Constitution provides “to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.”

bicameralism
Government is made yet more complex by splitting the legislature into two separate and distinct chambers—the House of Representatives and the Senate. Such bicameralism was common in state legislatures. One chamber was supposed to provide a close link to the people, the other to add wisdom. The Constitution makes the two chambers of Congress roughly equal in power, embedding checks and balances inside the legislative branch itself.

Bicameralism recalls the founders’ doubts about majority rule. To check the House, directly elected by the people, they created a Senate. Senators, with six-year terms and election by state legislatures, were expected to work slowly with a longer-range understanding of problems and to manage popular
The Bias of the System

The US political system is designed to prevent quick agreement within the legislature and between the branches. Senators, representatives, presidents, and Supreme Court justices have varying terms of offices, distinctive means of selection, and different constituencies. Prospects for disagreement and conflict are high. Accomplishing any goal requires navigating a complex obstacle course. At any point in the process, action can be stopped. Maintaining the status quo is more likely than enacting significant changes. Exceptions occur in response to dire situations such as a financial crisis or external attacks.

3.2 What the Constitution Says

The text of the Constitution consists of a preamble and seven sections known as “articles.” The preamble is the opening rhetorical flourish. Its first words—“We the People of the United States”—rebuke the “We the States” mentality of the Articles of Confederation. The preamble lists reasons for establishing a national government.

The first three articles set up the branches of government. We briefly summarize them here, leaving the details of the powers and responsibilities given to these branches to specific chapters.

Article I establishes a legislature that the founders believed would make up the heart of the new government. By specifying many domains in which Congress is allowed to act, Article I also lays out the powers of the national government that we examine in Chapter 2.

Article II takes up the cumbersome process of assembling an Electoral College and electing a president and a vice president—a process that was later modified by the Twelfth Amendment. The presidential duties listed here focus on war and management of the executive branch. The president’s powers are far fewer than those enumerated for Congress.

The Constitutional Convention punted decisions on the structure of the judiciary below the Supreme Court to the first Congress to decide. Article III states that judges of all federal courts hold office for life “during good Behaviour.” It authorizes the Supreme Court to decide all cases arising under federal law and in disputes involving states. Judicial review, the central power of the Supreme Court, is not mentioned. Asserted in the 1804 case of Marbury v. Madison (discussed in Chapter 13, Section 2), it is the ability of the Court to invalidate a law passed by Congress or a decision made by the executive on the basis that it violates the Constitution.

Article IV lists rights and obligations among the states and between the states and the national government (discussed in Chapter 2).

Article V specifies how to amend the Constitution. This shows that the framers intended to have a Constitution that could be adapted to changing conditions. There are two ways to propose amendments. States may call for a convention. (This has never been used due to fears it would reopen the entire Constitution for revision.) The other way to propose amendments is for Congress to pass them by a two-thirds majority in both the House and Senate.

Then there are two ways to approve an amendment. One is through ratification by three-fourths of state legislatures. Alternatively, an amendment can be ratified by three-fourths of specially convoked state conventions. This process has been used once. “Wets,” favoring the end of Prohibition, feared that the Twenty-First Amendment—which would have repealed the Eighteenth Amendment prohibiting the sale and consumption of alcohol—would be blocked by conservative (“dry”) state legislatures. The wets asked for specially called state conventions and rapidly ratified repeal—on December 5, 1933.

Thus a constitutional amendment can be stopped by one-third of either chamber of Congress or one-fourth of state legislatures—which explains why there have been only twenty-seven amendments in over two centuries.

Article VI includes a crucial provision that endorses the move away from a loose confederation to a national government superior to the states. Lifted from the New Jersey Plan, the supremacy clause states that the Constitution and all federal laws are “the supreme Law of the Land.”

Article VII outlines how to ratify the new Constitution.
The Constitution has remained essentially intact over time. The basic structure of governmental power is much the same in the twenty-first century as in the late eighteenth century. At the same time, the Constitution has been transformed in the centuries since 1787. Amendments have greatly expanded civil liberties and rights. Interpretations of its language by all three branches of government have taken the Constitution into realms not imagined by the founders. New practices have been grafted onto the Constitution’s ancient procedures. Intermediary institutions not mentioned in the Constitution have developed important governmental roles.

Amendments
Many crucial clauses of the Constitution today are in the amendments. The Bill of Rights, the first ten amendments ratified by the states in 1791, defines civil liberties to which individuals are entitled. After the slavery issue was resolved by a devastating civil war, equality entered the Constitution with the Fourteenth Amendment, which specified that “No State shall…deny to any person within its jurisdiction the equal protection of the laws.” This amendment provides the basis for civil rights, and further democratization of the electorate was guaranteed in subsequent ones. The right to vote became anchored in the Constitution with the addition of the Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments, which stated that such a right, granted to all citizens aged eighteen years or more, could not be denied on the basis of race or sex, nor could it be dependent on the payment of a poll tax.

Constitutional Interpretation
The Constitution is sometimes silent or vague, making it flexible and adaptable to new circumstances. Interpretations of constitutional provisions by the three branches of government have resulted in changes in political organization and practice.

For example, the Constitution is silent about the role, number, and jurisdictions of executive officers, such as cabinet secretaries; the judicial system below the Supreme Court; and the number of House members or Supreme Court justices. The first Congress had to fill in the blanks, often by altering the law.

The Supreme Court is today at center stage in interpreting the Constitution. Before becoming chief justice in 1910, Charles Evans Hughes proclaimed, “We are under a Constitution, but the Constitution is what the Court says it is.” By examining the Constitution’s clauses and applying them to specific cases, the justices expand or limit the reach of constitutional rights and requirements. However, the Supreme Court does not always have the last word, since state officials and members of the national government’s legislative and executive branches have their own understanding of the Constitution that they apply on a daily basis, responding to, challenging, and sometimes modifying what the Court has held.

New Practices
Specific sections of the Constitution have evolved greatly through new practices. Article II gives the presidency few formal powers and responsibilities. During the first hundred years of the republic, presidents acted in limited ways, except during war or massive social change, and they rarely campaigned for a legislative agenda. Article II’s brevity would be turned to the office’s advantage by President Theodore Roosevelt at the dawn of the twentieth century. He argued that the president is “a steward of the people…bound actively and affirmatively to do all he could for the people.” So the president is obliged to do whatever is best for the nation as long as it is not specifically forbidden by the Constitution.
Intermediary Institutions

The Constitution is silent about various intermediary institutions—political parties, interest groups, and the media—that link government with the people and bridge gaps caused by a separation-of-powers system. The political process might stall in their absence. For example, presidential elections and the internal organization of Congress rely on the party system. Interest groups represent different people and are actively involved in the policy process. The media are fundamental for conveying information to the public about government policies as well as for letting government officials know what the public is thinking, a process that is essential in a democratic system.

KEY TAKEAWAYS

The Constitution established a national government distinguished by federalism, separation of powers, checks and balances, and bicameralism. It divided power and created conflicting institutions—between three branches of government, across two chambers of the legislature, and between national and state levels. While the structure it created remains the same, the Constitution has been changed by amendments, interpretation, new practices, and intermediary institutions. Thus the Constitution operates in a system that is democratic far beyond the founders’ expectations.

EXERCISES

1. Why was conflict between the different branches of government built into the Constitution? What are the advantages and disadvantages of a system of checks and balances?
2. How is the Constitution different from the Articles of Confederation? How did the authors of the Constitution address the concerns of those who worried that the new federal government would be too strong?
3. What do you think is missing from the Constitution? Are there any constitutional amendments you would propose?

4. THE CONSTITUTION IN THE INFORMATION AGE

LEARNING OBJECTIVES

After reading this section, you should be able to answer the following questions:

1. How do the media portray the Constitution?
2. How do the media depict the politicians charged with fulfilling the Constitution’s vision of public life?
3. What are the effects of the media’s depiction of the Constitution?

We have seen that the Constitution is a political document adopted for political reasons in a highly political process. Yet the text of the Constitution, and the structure of power it created, are almost entirely above political controversy. It is an object of pride for almost all Americans.

4.1 The Constitution as a Sacred Document

The official presentation of the Constitution in public buildings show it as a sacred document, demonstrating its exalted status. The original document is ensconced in what is called a “Shrine” at the National Archives.
The media rarely show the Constitution or the structure of the political system as a cause of political problems. However, media depictions of the politicians charged with fulfilling the Constitution’s vision in public life are far less positive.

Let us return to our discussion at the beginning of this chapter. The news declared a “constitutional crisis” during the aftermath of the 2000 presidential election. The covers of Time, Newsweek, and US News & World Report all displayed the manuscript of the Constitution and its boldly emblazoned preamble, “We the People.” The stories reported the 4–3 vote by the Florida Supreme Court, which ordered a statewide recount of that state’s vote (the vote that would decide the national outcome), and the US Supreme Court’s 5–4 order to halt the recount and hear the Bush campaign’s appeal. Both Newsweek and US News & World Report superimposed the word “CHAOS” on the Constitution; Newsweek showed the word looming menacingly beneath the torn, seemingly fragile document.

All three news magazines lamented that the Constitution was threatened by unscrupulous, self-interested politicians intruding into the realm of dispassionate principle. To quote Newsweek, “The endless election has not been a grand contest of famous legal gladiators contesting broad constitutional principles…[but] a local fight, a highly personal shoving match driven by old grudges and vendettas.”[44] Yet it was the complex electoral and federal system devised in the Constitution itself that caused much of the crisis.

Entertainment media occasionally present stories about the Constitution and the structure of power it created. Consider the familiar tale of a lone individual bravely fighting to restore a wayward political system to its virtuous roots. In the 1930s, Director Frank Capra perfected the genre in a series of Hollywood movies that reached its height in the classic 1939 film Mr. Smith Goes to Washington (“Enduring Image”).

### Enduring Image

**Mr. Smith Goes to Washington**

James Madison’s portrayal in the Federalist papers of sacrosanct institutions and fallible politicians finds its movie version in Frank Capra’s Mr. Smith Goes to Washington.[45] Upon its 1939 release, it was hugely popular and a critical success, second only to Gone with the Wind in box-office receipts and Oscar nominations. The title alone has recurred repeatedly in political talk across the decades ever since.

Mr. Smith begins when a senator dies. The governor, pushed to appoint either a party hack or a reformer, picks instead his son’s “Boy Ranger” leader, resonantly named Jefferson Smith (James Stewart). The naïve Smith heads to the capital under the wing of the state’s senior senator, Joseph Paine (Claude Rains), who entrusts Smith to the dead senator’s cynical secretary, Clarissa Saunders (Jean Arthur). Paine is a onetime associate of Smith’s father, a crusading editor, and has sold out to the state’s political boss. At Paine’s urging, Smith submits a bill proposing a national boys’ camp but later learns that the site has been bought by the boss to sell at a huge profit to the government for a dam Paine is proposing. Smith refuses to back down, and a fake corruption charge is launched against him with devastating results. About to resign in disgrace, Smith visits the Lincoln Memorial. Sustained by the love and political know-how of Saunders, Smith fights back by a filibuster on the Senate floor. The Washington reporters who had earlier scorned his innocence are transformed into his supporters by his idealism. But his home state hears little of this: the boss controls all radio stations and newspapers and brutally quashes any support. Smith faints in exhaustion when confronted with baskets full of trumped-up hate mail, but is saved when the guilt-ridden Paine tries to shoot himself and confesses to the corrupt scheme. The movie ends in a blaze of jubilation as the Senate president, apparently satisfied with Smith’s vindication, gives up gaveling for order.

Many observers see the message of Mr. Smith as reassuring: the system works, preserved by the idealist individual American hero. The founders and their handiwork are viewed as above criticism. During the climactic filibuster, Smith reads the Declaration of Independence and the Constitution, lecturing the senators, “Great principles don’t get lost once they come to light—they’re right here.”

The film endures because it is richly challenging: Mr. Smith is both a celebration in theory and an indictment in practice of the American political system.
Mr. Smith has been a template for media depictions of the American political system. The Reese Witherspoon vehicle *Legally Blonde 2: Red, White and Blonde* (2003) follows the same formula of an idealistic individual going to Capitol Hill and redeeming the promise of the political system against crooked politicians.

### 4.2 Media Interactions: Why the Media Love the Constitution

Why do the media today present a rosy picture of the Constitution and the political system it created? One historic reason is that opposition to the Constitution collapsed after the Bill of Rights was added to it in 1791. Within a few years, the Constitution was no longer an object of political controversy. Even during the Civil War, the ultimate “constitutional crisis,” both sides were faithful to the cherished principles of the Constitution—at least as each side read them.

The Constitution is the essential framework for the work of reporters as well as politicians. Reporters rely on order and regularity to perform their job day in, day out. The procedures established by the Constitution—such as how presidents are elected; how a bill becomes a law; how the president, Congress, and the Supreme Court vie for power—are the basis for continuing sagas that reporters narrate across days, months, even years.\(^{[46]}\)

The Constitution also gives the media an easy symbol with which they can display their idealism, a perhaps unattainable (and un-Madisonian) political system in which officials work efficiently, cooperatively, and selflessly in the public interest.

### 4.3 Media Consequences

This positive media portrayal of the Constitution encourages reverence for the political system even when there is much criticism of the officials in that system.\(^{[47]}\) Typical are the results of a public opinion poll conducted during 1992, a year marked by high public unhappiness with government. Not surprisingly, the survey showed that the public was highly critical of how the president and members of Congress were handling their jobs. But the public did not criticize the institutions of Congress and the presidency themselves. Ninety-one percent said they approved of “the constitutional structure of government.”\(^{[48]}\) Political scientists John Hibbing and Elizabeth Theiss-Morse who conducted the research concluded, “People actually see two quite different political systems…Anything associated with the constitutional system elicits a positive response…To the extent there are problems with the political system it is because we have deviated from what was outlined in the Constitution, not because that outline was flawed.”\(^{[49]}\)

Yet many of the media’s indictments against politicians are for behaviors encouraged by the Constitution. Reporters and the mass media often criticize American politicians for “squabbling” and “bickering.” But the separation of powers, as the founders designed it, is supposed to encourage conflict within the legislature and between the three branches.

The Constitution is a remarkably terse document. Generations have worked to evolve its meanings in over two centuries of politics and policies. Americans may rarely question the Constitution itself, but they surely disagree and debate over how its principles should be applied. In the chapters to follow, we will see many contemporary examples of politics around the Constitution in the information age—from constitutional amendments, to disputes between the branches over the powers of each, to the meanings of the Constitution’s clauses when applied in public policy.

### KEY TAKEAWAYS

The media usually portray the Constitution and most of the institutions it established favorably and above politics. Yet, the Constitution was—and remains—a political document created and developed in political ways for political purposes. In part because of the media’s presentation, the public finds little to criticize in the Constitution, even as it is quick to disparage public officials. Nonetheless, the Constitution continues to be the object of political engagement in the twenty-first century.
Civic Education

Gregory Watson and the Twenty-Seventh Amendment

The message of civic education is the relevance and importance of politics. If the workings of the American political system are not what we like, there are ways to change structures, policies, and political practices.

An unusual example is provided by Gregory Watson, in 1982, as a sophomore at the University of Texas at Austin, Watson found a stimulating topic for a government class essay: The Bill of Rights, as drafted by Madison and passed by Congress, originally included twelve amendments. Only ten were ratified by the states and included in the Constitution.

In 1982, congressional pay raises were controversial, and Watson concluded that this issue made one of the two unratified amendments pertinent: “No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.” Only six of the thirteen states had ratified this amendment by 1791. But Watson noticed that the amendment had no time limit. In his essay, he laid out the history of the amendment and urged that it be ratified by thirty-two more states. His instructor, dubious that a constitutional amendment could be revived after almost two hundred years, gave Watson’s paper a C.

Undeterred, Watson launched a campaign to get state legislatures to pass this congressional compensation amendment. His first successes were with Maine in 1983 and Colorado in 1984. The news media began paying attention. The story of legislators voting themselves pay raises and news of scandals over congressional perks of office resonated with the public; the momentum shifted in Watson’s favor. In 1992, Michigan became the thirty-eighth state to ratify the amendment. Congress recognized Watson’s efforts in what became the Twenty-Seventh Amendment to the Constitution—203 years after their congressional forebears had passed it.

5. RECOMMENDED READING


6. RECOMMENDED VIEWING

Founding Brothers (2002). This History Channel documentary based on Joseph Ellis’s best-selling account explores the policies and personalities of post-Revolutionary America.

The Great McGinty (1940). Preston Sturges’s first effort as director is a comedy about a hobo rising through the ranks of a party machine to become governor and spoiling it all by going honest.

Mr. Smith Goes to Washington (1939). Frank Capra’s classic drama of a lone, idealistic individual single-handedly (but with a woman’s love and help) fighting corrupt individuals within a sacrosanct political system.
The Patriot (2000). A South Carolina farmer and veteran of the wars with France (Mel Gibson) reluctantly takes up arms as a guerrilla fighter in the Revolution and struggles with his political identity and the meaning of self-government.


1776 (1972). The movie adaptation of the Broadway musical comedy hit vividly portrays the high-minded and self-interested political struggles leading to the Declaration of Independence.


14. Political scientists have revealed the degree to which the Constitutional Convention and the ratification conventions can be understood to be the result of manipulation of parliamentary rules, strategic voting, shifting coalitions, and the "agenda-setting" and "framing" use of mass communication. Our analysis draws on these authors, especially John P. Roche, "The Founding Fathers: A Reform Caucus in Action," American Political Science Review 55 (December 1961): 815; see also David Brian Robertson, "Madison's Opponents and Constitutional Design," American Political Science Review 99 (2005): 225–44.


37. See Mark Fishman, Manufacturing the News (Austin: University of Texas Press, 1980).


41. This example is taken from Richard B. Bernstein and Jerome Abel, Amending America: If We Love the Constitution So Much, Why Do We Keep Trying to Change It? (New York: Times Books, 1993), chap. 13.
CHAPTER 2
Federalism

PREAMBLE

The war in Iraq was dragging on long past President George W. Bush’s declaration in May 2003 of the end of formal hostilities. In 2004, the Defense Department, wary of the political pain of reviving the military draft, called up most of the National Guard. The Guard consists of volunteers for state military units headed by the state’s governor but answerable to the commander in chief, the president. Most Guard volunteers expect to serve and keep the peace at home in their states, not fight in a war overseas.

State and local governments made it known that they were being adversely affected by the war. At the 2004 annual meeting of the National Governors Association, governors from both political parties fretted that the call-up had slashed the numbers of the National Guard available for states’ needs by as much as 60 percent. Their concerns made the front page of the *New York Times*. The story began, “Many of the nation’s governors complained…that they were facing severe manpower shortages in guarding prisoners, fighting wildfires, preparing for hurricanes and floods and policing the streets.”[1]

Governors mingling—speaking at the National Governors Association. The annual meeting of the National Governors Association provides an opportunity for state officials to meet with each other, with national officials, and with reporters.

This involvement of state governors in foreign policy illustrates the complexity of American federalism. The national government has an impact on state and local governments, which in turn influence each other and the national government.

The story also shows how the news media’s depictions can connect and affect different levels of government within the United States. The governors meet each year to exchange ideas and express common concerns. These meetings give them an opportunity to try to use the news media to bring public attention to their concerns, lobby the national government, and reap policy benefits for their states.

But the coverage the governors received in the Iraq case was exceptional. The news media seldom communicate the dynamic complexity of government across national, state, and local levels. Online media are better at...
enabling people to negotiate the bewildering thicket of the federal system and communicate between levels of government.

**Federalism** is the allocation of powers and responsibilities among national, state, and local governments and the intergovernmental relations between them. The essence of federalism is that “all levels of government in the United States significantly participate in all activities of government.” At the same time, each level of government is partially autonomous from the rest.

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### 1. FEDERALISM AS A STRUCTURE FOR POWER

#### LEARNING OBJECTIVES

After reading this section, you should be able to answer the following questions:

1. What is federalism?
2. What powers does the Constitution grant to the national government?
3. What powers does the Constitution grant to state governments?

The Constitution and its amendments outline distinct powers and tasks for national and state governments. Some of these constitutional provisions enhance the power of the national government; others boost the power of the states. Checks and balances protect each level of government against encroachment by the others.

#### 1.1 National Powers

The Constitution gives the national government three types of power. In particular, Article I authorizes Congress to act in certain enumerated domains.

**Exclusive Powers**

The Constitution gives exclusive powers to the national government that states may not exercise. These are foreign relations, the military, war and peace, trade across national and state borders, and the monetary system. States may not make treaties with other countries or with other states, issue money, levy duties on imports or exports, maintain a standing army or navy, or make war.

**Concurrent Powers**

The Constitution accords some powers to the national government without barring them from the states. These concurrent powers include regulating elections, taxing and borrowing money, and establishing courts.

National and state governments both regulate commercial activity. In its commerce clause, the Constitution gives the national government broad power to “regulate Commerce with foreign Nations, and among the several States and with the Indian tribes.” This clause allowed the federal government to establish a national highway system that traverses the states. A state may regulate any and all commerce that is entirely within its borders.

National and state governments alike make and enforce laws and choose their own leaders. They have their own constitutions and court systems. A state’s Supreme Court decision may be appealed to the US Supreme Court provided that it raises a “federal question,” such as an interpretation of the US Constitution or of national law.
Implied Powers

The Constitution authorizes Congress to enact all laws “necessary and proper” to execute its enumerated powers. This necessary and proper clause allows the national government to claim implied powers, logical extensions of the powers explicitly granted to it. For example, national laws can and do outlaw discrimination in employment under Congress’s power to regulate interstate commerce.

1.2 States’ Powers

The states existed before the Constitution, so the founders said little about their powers until the Tenth Amendment was added in 1791. It holds that “powers not delegated to the United States…nor prohibited by it [the Constitution] to the States, are reserved to the States…or to the people.” States maintain inherent powers that do not conflict with the Constitution. Notably, in the mid-nineteenth century, the Supreme Court recognized that states could exercise police powers to protect the public’s health, safety, order, and morals. [4]

Reserved Powers

Some powers are reserved to the states, such as ratifying proposed amendments to the Constitution and deciding how to elect Congress and the president. National officials are chosen by state elections. Congressional districts are drawn within states. Their boundaries are reset by state officials after the decennial census. So the party that controls a state’s legislature and governorship is able to manipulate districts in its favor. Republicans, having taken over many state governments in the 2010 elections, benefited from this opportunity.

National Government’s Responsibilities to the States

The Constitution lists responsibilities the national government has to the states. The Constitution cannot be amended to deny the equal representation of each state in the Senate. A state’s borders cannot be altered without its consent. The national government must guarantee each state “a republican form of government” and defend any state, upon its request, from invasion or domestic upheaval.

1.3 States’ Responsibilities to Each Other

Article IV lists responsibilities states have to each other: each state must give “full faith and credit” to acts of other states. For instance, a driver’s license issued by one state must be recognized as legal and binding by another.

No state may deny “privileges and immunities” to citizens of other states by refusing their fundamental rights. States can, however, deny benefits to out-of-staters if they do not involve fundamental rights. Courts have held that a state may require newly arrived residents to live in the state for a year before being eligible for in-state (thus lower) tuition for public universities, but may not force them to wait as long before being able to vote or receive medical care.

Officials of one state must extradite persons upon request to another state where they are suspected of a crime.

States dispute whether and how to meet these responsibilities. Conflicts sometimes are resolved by national authority. In 2003, several states wanted to try John Muhammad, accused of being the sniper who killed people in and around Washington, DC. The US attorney general, John Ashcroft, had to decide which jurisdiction would be first to put him on trial. Ashcroft, a proponent of capital punishment, chose the state with the toughest death-penalty law, Virginia.

1.4 “The Supreme Law of the Land” and Its Limits

Article VI’s supremacy clause holds that the Constitution and all national laws are “the supreme law of the land.” State judges and officials pledge to abide by the US Constitution. In any clash between national laws and state laws, the latter must give way. However, as we shall see, boundaries are fuzzy between the powers national and state governments may and may not wield. Implied powers of the national government, and those reserved to the states by the Tenth Amendment, are unclear and contested. The Constitution leaves much about the relative powers of national and state governments to be shaped by day-to-day politics in which both levels have a strong voice.
1.5 A Land of Many Governments

“Disliking government, Americans nonetheless seem to like governments, for they have so many of them.”[5] Table 2.1 catalogs the 87,576 distinct governments in the fifty states. They employ over eighteen million full-time workers. These numbers would be higher if we included territories, Native American reservations, and private substitutes for local governments such as gated developments’ community associations.

**TABLE 2.1 Governments in the United States**

<table>
<thead>
<tr>
<th>National government</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>States</td>
<td>50</td>
</tr>
<tr>
<td>Counties</td>
<td>3,034</td>
</tr>
<tr>
<td>Townships</td>
<td>16,504</td>
</tr>
<tr>
<td>Municipalities</td>
<td>19,429</td>
</tr>
<tr>
<td>Special districts</td>
<td>35,052</td>
</tr>
<tr>
<td>Independent school districts</td>
<td>13,506</td>
</tr>
<tr>
<td>Total governmental units in the United States</td>
<td>87,576</td>
</tr>
</tbody>
</table>

Source: US Bureau of the Census, categorizing those entities that are organized, usually chosen by election, with a governmental character and substantial autonomy.

**States**

In one sense, all fifty states are equal: each has two votes in the US Senate. The states also have similar governmental structures to the national government: three branches—executive, legislative, and judicial (only Nebraska has a one chamber—unicameral—legislature). Otherwise, the states differ from each other in numerous ways. These include size, diversity of inhabitants, economic development, and levels of education. Differences in population are politically important as they are the basis of each state’s number of seats in the House of Representatives, over and above the minimum of one seat per state.

States get less attention in the news than national and local governments. Many state events interest national news organizations only if they reflect national trends, such as a story about states passing laws regulating or restricting abortions.[6]

A study of Philadelphia local television news in the early 1990s found that only 10 percent of the news time concerned state occurrences, well behind the 18 percent accorded to suburbs, 21 percent to the region, and 37 percent to the central city.[7] Since then, the commitment of local news outlets to state news has waned further. A survey of state capitol news coverage in 2002 revealed that thirty-one state capitols had fewer newspaper reporters than in 2000.[8]

**Native American Reservations**

In principle, Native American tribes enjoy more independence than states but less than foreign countries. Yet the Supreme Court, in 1831, rejected the Cherokee tribe’s claim that it had the right as a foreign country to sue the state of Georgia. The justices said that the tribe was a “domestic dependent nation.”[9] As wards of the national government, the Cherokee were forcibly removed from land east of the Mississippi in ensuing years.

Native Americans have slowly gained self-government. Starting in the 1850s, presidents’ executive orders set aside public lands for reservations directly administered by the national Bureau of Indian Affairs (BIA). During World War II, Native Americans working for the BIA organized to gain legal autonomy for tribes. Buttressed by Supreme Court decisions recognizing tribal rights, national policy now encourages Native American nations on reservations to draft constitutions and elect governments.[10]
Since the Constitution gives Congress and the national government exclusive “power to regulate commerce…with the Indian tribes,” states have no automatic authority over tribe members on reservations within state borders. As a result, many Native American tribes have built profitable casinos on reservations within states that otherwise restrict most gambling.

Local Governments

All but two states are divided into administrative units known as counties. States also contain municipalities, whether huge cities or tiny hamlets. They differ from counties by being established by local residents, but their powers are determined by the state. Cutting across these borders are thousands of school districts as well as special districts for drainage and flood control, soil and water conservation, libraries, parks and recreation, housing and community development, sewerage, water supply, cemeteries, and fire protection.

KEY TAKEAWAYS

Federalism is the American political system’s arrangement of powers and responsibilities among—and ensuing relations between—national, state, and local governments. The US Constitution specifies exclusive and concurrent powers for the national and state governments. Other powers are implied and determined by day-to-day politics.

EXERCISES

1. Consider the different powers that the Constitution grants exclusively to the national government. Explain why it might make sense to reserve each of those powers for the national government.
2. Consider the different powers that the Constitution grants exclusively to the states. Explain why it might make sense to reserve each of those powers to the states.
3. In your opinion, what is the value of the “necessary and proper” clause? Why might it be difficult to enumerate all the powers of the national government in advance?
2. THE MEANINGS OF FEDERALISM

LEARNING OBJECTIVES

After reading this section, you should be able to answer the following questions:

1. How has the meaning of federalism changed over time?
2. Why has the meaning of federalism changed over time?
3. What are states’ rights and dual, cooperative, and competitive federalism?

The meaning of federalism has changed over time. During the first decades of the republic, many politicians held that states’ rights allowed states to disobey any national government that in their view exceeded its powers. Such a doctrine was largely discredited after the Civil War. Then dual federalism, a clear division of labor between national and state government, became the dominant doctrine. During the New Deal of the 1930s, cooperative federalism, whereby federal and state governments work together to solve problems, emerged and held sway until the 1960s. Since then, the situation is summarized by the term competitive federalism, whereby responsibilities are assigned based on whether the national government or the state is thought to be best able to handle the task.

2.1 States’ Rights

The ink had barely dried on the Constitution when disputes arose over federalism. Treasury Secretary Alexander Hamilton hoped to build a strong national economic system; Secretary of State Thomas Jefferson favored a limited national government. Hamiltonian and Jeffersonian factions in President George Washington’s cabinet led to the first political parties: respectively, the Federalists, who favored national supremacy, and the Republicans, who supported states’ rights.

Compact Theory

In 1798, Federalists passed the Alien and Sedition Acts, outlawing malicious criticism of the government and authorizing the president to deport enemy aliens. In response, the Republican Jefferson drafted a resolution passed by Kentucky’s legislature, the first states’ rights manifesto. It set forth a compact theory, claiming that states had voluntarily entered into a “compact” to ratify the Constitution. Consequently, each state could engage in “nullification” and “judge for itself” if an act was constitutional and refuse to enforce it. However, Jefferson shelved states’ rights when, as president, he directed the national government to purchase the enormous Louisiana Territory from France in 1803.

Links

**Alien and Sedition Acts**
Read more about the Alien and Sedition Acts online at [http://www.loc.gov/rr/program/bib/ourdocs/Alien.html](http://www.loc.gov/rr/program/bib/ourdocs/Alien.html).

**Jefferson’s Role**
Read more about Jefferson’s role online at [http://www.loc.gov/exhibits/jefferson/jefffed.html](http://www.loc.gov/exhibits/jefferson/jefffed.html).

Slavery and the Crisis of Federalism

After the Revolutionary War, slavery waned in the North, where slaves were domestic servants or lone farmhands. In the South, labor-intensive crops on plantations were the basis of Southern prosperity, which relied heavily on slaves.

In 1850, Congress faced the prospect of new states carved from land captured in the Mexican War and debated whether they would be slave or free states. In a compromise, Congress admitted California as a free state but directed the national government to capture and return escaped slaves, even in free states. Officials in Northern states decried such an exertion of national power favoring the South. They passed state laws outlining rights for accused fugitive slaves and forbidding state officials from capturing fugitives. The Underground Railroad transporting escaped slaves northward grew. The saga of hunted fugitives was at the heart of Harriet Beecher Stowe’s 1852 novel *Uncle Tom’s Cabin*, which sold more copies proportional to the American population than any book before or since.
In 1857, the Supreme Court stepped into the fray. Dred Scott, the slave of a deceased Missouri army surgeon, sued for freedom, noting he had accompanied his master for extended stays in a free state and a free territory.\footnote{18} The justices dismissed Scott’s claim. They stated that blacks, excluded from the Constitution, could never be US citizens and could not sue in federal court. They added that any national restriction on slavery in territories violated the Fifth Amendment, which bars the government from taking property without due process of law. To many Northerners, the Dred Scott decision raised doubts about whether any state could effectively ban slavery. In December 1860, a convention in South Carolina repealed the state’s ratification of the Constitution and dissolved its union with the other states. Ten other states followed suit. The eleven formed the Confederate States of America (see “Enduring Image”).

Links

**The Underground Railroad**

**The Dred Scott Case**

Enduring Image

**The Confederate Battle Flag**
The American flag is an enduring image of the United States’ national unity. The Civil War battle flag of the Confederate States of America is also an enduring image, but of states’ rights, of opposition to a national government, and of support for slavery. The blue cross studded with eleven stars for the states of the Confederacy was not its official flag. Soldiers hastily pressed it into battle to avoid confusion between the Union’s Stars and Stripes and the Confederacy’s Stars and Bars. After the South’s defeat, the battle flag, often lowered for mourning, was mainly a memento of gallant human loss.\footnote{19}

The flag’s meaning was transformed in the 1940s as the civil rights movement made gains against segregation in the South. One after another Southern state flew the flag above its capitol or defiantly redesigned the state flag to incorporate it. Over the last sixty years, a myriad of meanings arousing deep emotions have become attached to the flag: states’ rights; Southern regional pride; a general defiance of big government; nostalgia for a bygone era; racist support of segregation; or “equal rights for whites.”\footnote{20}

**Confederate Flag**

© Thinkstock

The battle flag appeals to politicians seeking resonant images. But its multiple meanings can backfire. In 2003, former Vermont governor Howard Dean, a candidate for the Democratic presidential nomination, addressed the Democratic National Committee and said, “White folks in the South who drive pickup trucks with Confederate flag decals on the back ought to be voting with us, and not them (Republicans), because their kids don’t have health insurance either, and their kids need better schools too.” Dean received a rousing ovation, so he probably thought little of it when he told the *Des Moines Register*, “I still want to be the candidate for guys with Confederate flags in their pickup trucks.”\footnote{21} Dean, the Democratic front runner, was condemned by his rivals who questioned his patriotism, judgment, and racial sensitivity. Dean apologized for his remark.\footnote{22}
The South’s defeat in the Civil War discredited compact theory and nullification. Since then, state officials’ efforts to defy national orders have been futile. In 1963, Governor George Wallace stood in the doorway of the University of Alabama to resist a court order to desegregate the all-white school. Eventually, he had no choice but to accede to federal marshals. In 1994, Pennsylvania governor Robert Casey, a pro-life Democrat, decreed he would not allow state officials to enforce a national order that state-run Medicaid programs pay for abortions in cases of rape and incest. He lost in court.\[^{23}\]

### 2.2 Dual Federalism

After the Civil War, the justices of the Supreme Court wrote, “The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.”\[^{24}\] They endorsed dual federalism, a doctrine whereby national and state governments have clearly demarcated domains of power. The national government is supreme, but only in the areas where the Constitution authorizes it to act.

The basis for dual federalism was a series of Supreme Court decisions early in the nineteenth century. The key decision was *McCulloch v. Maryland* (1819). The Court struck down a Maryland state tax on the Bank of the United States chartered by Congress. Chief Justice Marshall conceded that the Constitution gave Congress no explicit power to charter a national bank,\[^{25}\] but concluded that the Constitution’s necessary-and-proper clause enabled Congress and the national government to do whatever it deemed “convenient or useful” to exercise its powers. As for Maryland’s tax, he wrote, “the power to tax involves the power to destroy.” Therefore, when a state’s laws interfere with the national government’s operation, the latter takes precedence. From the 1780s to the Great Depression of the 1930s, the size and reach of the national government were relatively limited. As late as 1932, local government raised and spent more than the national government or the states.

**Link**

*McCulloch v. Maryland*

Read more about *McCulloch v. Maryland* (1819) online at [http://www.pbs.org/wnet/supremecourt/antebellum/landmark_mcculloch.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_mcculloch.html).

On two subjects, however, the national government increased its power in relationship to the states and local governments: sin and economic regulation.

**The Politics of Sin**

National powers were expanded when Congress targeted obscenity, prostitution, and alcohol.\[^{26}\] In 1872, reformers led by Anthony Comstock persuaded Congress to pass laws blocking obscene material from being carried in the US mail. Comstock had a broad notion of sinful media: all writings about sex, birth control, abortion, and childbearing, plus tabloid newspapers that allegedly corrupted innocent youth.
As a result of these laws, the national government gained the power to exclude material from the mail even if it was legal in individual states.

The power of the national government also increased when prostitution became a focus of national policy. A 1910 exposé in McClure’s magazine roused President William Howard Taft to warn Congress about prostitution rings operating across state lines. The ensuing media frenzy depicted young white girls torn from rural homes and degraded by an urban “white slave trade.” Using the commerce clause, Congress passed the Mann Act to prohibit the transportation “in interstate commerce...of any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose.” The bill turned enforcement over to a tiny agency concerned with antitrust and postal violations, the Bureau of Investigations. The Bureau aggressively investigated thousands of allegations of “immoral purpose,” including unmarried couples crossing state lines to wed and interracial married couples.

The crusade to outlaw alcohol provided the most lasting expansion of national power. Reformers persuaded Congress in 1917 to bar importation of alcohol into dry states, and, in 1919, to amend the Constitution to allow for the nationwide prohibition of alcohol. Pervasive attempts to evade the law boosted organized crime, a rationale for the Bureau of Investigations to bloom into the Federal Bureau of Investigation (FBI), the equivalent of a national police force, in the 1920s.

Prohibition was repealed in 1933. But the FBI under J. Edgar Hoover, its director from the 1920s to the 1970s, continued to call attention through news and entertainment media to the scourge of organized crime that justified its growth, political independence, and Hoover’s power. The FBI supervised film depictions of the lives of criminals like John Dillinger and long-running radio and television shows like The FBI. The heroic image of federal law enforcement would not be challenged until the 1960s when the classic film Bonnie and Clyde romanticized the tale of two small-time criminals into a saga of rebellious outsiders crushed by the ominous rise of authority across state lines.

**Economic Regulation**

Other national reforms in the late nineteenth century that increased the power of the national government were generated by reactions to industrialization, immigration, and urban growth. Crusading journalists decried the power of big business. Upton Sinclair’s 1906 novel The Jungle exposed miserable, unsafe working conditions in America’s factories. These reformers feared that states lacked the power or were reluctant to regulate railroads, inspect meat, or guarantee food and drug safety. They prompted Congress to use its powers under the commerce clause for economic regulation, starting with the Interstate Commerce Act in 1887 to regulate railroads and the Sherman Antitrust Act in 1890 to outlaw monopolies.

The Supreme Court, defending dual federalism, limited such regulation. It held in 1895 that the national government could only regulate matters directly affecting interstate commerce. In 1918, it ruled that Congress could not use the commerce clause to deal with local matters like conditions of work. The national government could regulate interstate commerce of harmful products such as lottery tickets or impure food.

### 2.3 Cooperative Federalism

The massive economic crises of the Great Depression tolled the death knell for dual federalism. In its place, cooperative federalism emerged. Instead of a relatively clear separation of policy domains, national, state, and local governments would work together to try to respond to a wide range of problems.

**The New Deal and the End of Dual Federalism**

Elected in 1932, Democratic president Franklin Delano Roosevelt (FDR) sought to implement a “New Deal” for Americans amid staggering unemployment. He argued that the national government could restore the economy more effectively than states or localities. He persuaded Congress to enact sweeping legislation. New Deal programs included boards enforcing wage and price guarantees; programs to construct buildings and bridges, develop national parks, and create artworks; and payments to farmers to reduce acreage of crops and stabilize prices.
FIGURE 2.4  Dorothea Lange Photograph

The 1930s New Deal programs included commissioning photographers to document social conditions during the Great Depression. The resultant photographs are both invaluable historical documents and lasting works of art.

By 1939, national government expenditures equaled state and local expenditures combined. FDR explained his programs to nationwide audiences in “fireside chats” on the relatively young medium of radio. His policies were highly popular, and he was reelected by a landslide in 1936. As we describe in Chapter 13, the Supreme Court, after rejecting several New Deal measures, eventually upheld national authority over such once-forbidden terrain as labor-management relations, minimum wages, and subsidies to farmers. The Court thereby sealed the fate of dual federalism.

Links

The New Deal
Learn more about the New Deal online at http://www.archives.gov/research/alic/reference/new-deal.html.

Fireside Chats
Read the Fireside Chats online at http://docs.fdrlibrary.marist.edu/firesi90.html.

Grants-in-Aid

Cooperative federalism’s central mechanisms were grants-in-aid: the national government passes funds to the states to administer programs. Starting in the 1940s and 1950s, national grants were awarded for infrastructure (airport construction, interstate highways), health (mental health, cancer control, hospital construction), and economic enhancement (agricultural marketing services, fish restoration).

Grants-in-aid were cooperative in three ways. First, they funded policies that states already oversaw. Second, categorical grants required states to spend the funds for purposes specified by Congress but gave them leeway on how to do so. Third, states’ and localities’ core functions of education and law enforcement had little national government supervision.

2.4  Competitive Federalism

During the 1960s, the national government moved increasingly into areas once reserved to the states. As a result, the essence of federalism today is competition rather than cooperation.

Judicial Nationalizing

Cooperative federalism was weakened when a series of Supreme Court decisions, starting in the 1950s, caused states to face much closer supervision by national authorities. As we discuss in Chapter 14 and Chapter 15, the Court extended requirements of the Bill of Rights and of “equal protection of the law” to the states.

The Great Society

In 1963, President Lyndon Johnson proposed extending the New Deal policies of his hero, FDR. Seeking a “Great Society” and declaring a “War on Poverty,” Johnson inspired Congress to enact massive
new programs funded by the national government. Over two hundred new grants programs were enacted during Johnson’s five years in office. They included a Jobs Corps and Head Start, which provided preschool education for poor children.

The Great Society undermined cooperative federalism. The new national policies to help the needy dealt with problems that states and localities had been unable or reluctant to address. Many of them bypassed states to go straight to local governments and nonprofit organizations.\[35\]

### Link

**The Great Society**

Read more about the Great Society online at [http://www.pbs.org/johngardner/chapters/4.html](http://www.pbs.org/johngardner/chapters/4.html).

### Obstacles and Opportunities

In competitive federalism, national, state, and local levels clash, even battle with each other.\[36\] Overlapping powers and responsibilities create friction, which is compounded by politicians’ desires to get in the news and claim credit for programs responding to public problems.

Competition between levels of federalism is a recurring feature of films and television programs. For instance, in the eternal television drama *Law and Order* and its offshoots, conflicts between local, state, and national law enforcement generate narrative tension and drama. This media frame does not consistently favor one side or the other. Sometimes, as in the film *The Fugitive* or stories about civil rights like *Mississippi Burning*, national law enforcement agencies take over from corrupt local authorities. Elsewhere, as in the action film *Die Hard*, national law enforcement is less competent than local or state police.

### Mandates

Under competitive federalism, funds go from national to state and local governments with many conditions—most notably, directives known as mandates.\[37\] State and local governments want national funds but resent conditions. They especially dislike “unfunded mandates,” according to which the national government directs them what to do but gives them no funds to do it.

After the Republicans gained control of Congress in the 1994 elections, they passed a rule to bar unfunded mandates. If a member objects to an unfunded mandate, a majority must vote to waive the rule in order to pass it. This reform has had little impact: negative news attention to unfunded mandates is easily displaced by dramatic, personalized issues that cry out for action. For example, in 1996, the story of Megan Kanka, a young New Jersey girl killed by a released sex offender living in her neighborhood, gained huge news attention. The same Congress that outlawed unfunded mandates passed “Megan’s Law”—including an unfunded mandate ordering state and local law enforcement officers to compile lists of sex offenders and send them to a registry run by the national government.

### Key Takeaways

Federalism in the United States has changed over time from clear divisions of powers between national, state, and local governments in the early years of the republic to greater intermingling and cooperation as well as conflict and competition today. Causes of these changes include political actions, court decisions, responses to economic problems (e.g., depression), and social concerns (e.g., sin).

### Exercises

1. What view of federalism allowed the Confederate states to justify seceding from the United States? How might this view make it difficult for the federal government to function in the long run?

2. What are the differences between dual federalism and cooperative federalism? What social forces led to the federal state governments working together in a new way?

3. How is federalism portrayed in the movies and television shows you’ve seen? Why do you think it is portrayed that way?
3. WHY FEDERALISM WORKS (MORE OR LESS)

LEARNING OBJECTIVES

After reading this section, you should be able to answer the following questions:

1. How do national, state, and local governments interact to make federalism work more or less?
2. How are interest groups involved in federalism?
3. What are the ideological and political attitudes toward federalism of the Democratic and Republican parties?

When Hurricane Katrina hit New Orleans and the surrounding areas on August 29, 2005, it exposed federalism’s frailties. The state and local government were overwhelmed, yet there was uncertainty over which level of government should be in charge of rescue attempts. Louisiana governor Kathleen Blanco refused to sign an order turning over the disaster response to federal authorities. She did not want to cede control of the National Guard and did not believe signing the order would hasten the arrival of the troops she had requested. President Bush failed to realize the magnitude of the disaster, then believed that the federal response was effective. In fact, as was obvious to anyone watching television, it was slow and ineffective. New Orleans mayor C. Ray Nagin and state officials accused the Federal Emergency Management Agency (FEMA) of failing to deliver urgently needed help and of thwarting other efforts through red tape.

Hurricane Katrina was an exceptional challenge to federalism. Normally, competition between levels of government does not careen out of control, and federalism works, more or less. We have already discussed one reason: a legal hierarchy—in which national law is superior to state law, which in turn dominates local law—dictates who wins in clashes in domains where each may constitutionally act.

There are three other reasons. First, state and local governments provide crucial assistance to the national government. Second, national, state, and local levels have complementary capacities, providing distinct services and resources. Third, the fragmentation of the system is bridged by interest groups, notably the intergovernmental lobby that provides voices for state and local governments. We discuss each reason.

3.1 Applying Policies Close to Home

State and local governments are essential parts of federalism because the federal government routinely needs them to execute national policy. State and local governments adjust the policies as best they can to meet their political preferences and their residents’ needs. Policies and the funds expended on them thus vary dramatically from one state to the next, even in national programs such as unemployment benefits.

This division of labor, through which the national government sets goals and states and localities administer policies, makes for incomplete coverage in the news. National news watches the national government, covering more the political games and high-minded intentions of policies then the nitty-gritty of implementation. Local news, stressing the local angle on national news, focuses on the local impact of decisions in distant Washington (see “Comparing Content”).

Comparing Content

Passage of No Child Left Behind Act

The No Child Left Behind (NCLB) Act vastly expanded the national government’s supervision of public education with requirements for testing and accountability. Amid the final push toward enacting the law, Washington reporters for national newspapers were caught up in a remarkable story: the bipartisan coalition uniting staunch opponents President George W. Bush and liberal senator Edward Kennedy (D-MA) civilly working together on a bold, historic piece of legislation. Dana Milbank’s Washington Post story was typical. Milbank termed the bill “the broadest rewriting of federal education policy in decades,” and he admired “Washington’s top bipartisan achievement of 2001.” The looming problems of funding and implementing the act were obscured in the national media’s celebration of the lovefest.
By contrast, local newspapers calculated the benefits and costs of the new legislation on education in their states and localities—in particular, how much money the state would receive under NCLB and whether or not the law’s requirements and deadlines were reasonable. On January 9, 2002, the Boston Globe's headline was “Mass. Welcomes Fed $$; Will Reap $117M for Schools, Testing,” and the Denver Post noted, “Colorado to Get $500 million for Schools.”

Local newspapers sought out comments of state and local education officials and leaders of local teachers’ unions, who were less smitten by the new law. The Sacramento Bee published a lengthy front-page story by reporter Erika Chavez on January 3, shortly before Bush signed the law. Chavez contrasted the bill’s supporters who saw it as “the most meaningful education reform in decades” with opponents who found that “one crucial aspect of the legislation is nothing more than a pipe dream.” Discussing the bill’s provision that all teachers must be fully credentialed in four years, a staffer at the State Department of Education was quoted as saying: “The numbers don’t add up, no matter how you look at them.” The California Teachers’ Association’s president called it “fantasy legislation,” adding, “It’s irresponsible to pass this kind of law and not provide the assistance needed to make the goals attainable. I can’t understand the reason or logic that went into this legislation. It’s almost a joke.”

3.2 Complementary Capacities

The second reason federalism often works is because national, state, and local governments specialize in different policy domains. The main focus of local and state government policy is economic development, broadly defined to include all policies that attract or keep businesses and enhance property values. States have traditionally taken the lead in highways, welfare, health, natural resources, and prisons. Local governments dominate in education, fire protection, sewerage, sanitation, airports, and parking.

The national government is central in policies to serve low-income and other needy persons. In these redistributive policies, those paying for a service in taxes are not usually those receiving the service. These programs rarely get positive coverage in the local news, which often shows them as “something-for-nothing” benefits that undeserving individuals receive, not as ways to address national problems.

States cannot effectively provide redistributive benefits. It is impossible to stop people from moving away because they think they are paying too much in taxes for services. Nor can states with generous benefits stop outsiders from moving there—a key reason why very few states enacted broad health care coverage—and why President Obama pressed for and obtained a national program. Note, however, that, acknowledging federalism, it is the states’ insurance commissioners who are supposed to interpret and enforce many of the provisions of the new federal health law.

The three levels of government also rely on different sources of taxation to fund their activities and policies. The national government depends most heavily on the national income tax, based on people’s ability to pay. This enables it to shift funds away from the wealthier states (e.g., Connecticut, New Jersey, New Hampshire) to poorer states (e.g., New Mexico, North Dakota, West Virginia).

Taxes of local and state governments are more closely connected to services provided. Local governments depend mainly on property taxes, the more valuable the property the more people pay. State governments collect state income taxes but rely most on sales taxes gathered during presumably necessary or pleasurable consumer activity.

Link

Tax and Budget Information for Federal, State, and Local Governments

Find more information about government budgets and taxes.

Federal
http://www.census.gov/compendia/statab/cats/federal_govt_finances_employment.html

State
http://www.census.gov/compendia/statab/cats/state_local_govt_finances_employment/state_government_finances.html

Local
http://www.census.gov/compendia/statab/cats/state_local_govt_finances_employment/local_government_finances.html
The language of “no new taxes” or “cutting taxes” is an easy slogan for politicians to feature in campaign ads and the news. As a result, governments often increase revenues on the sly, by lotteries, cigarette and alcohol taxes, toll roads, and sales taxes falling mostly on nonresidents (like hotel taxes or surcharges on car rentals).[48]

3.3 The Intergovernmental Lobby

A third reason federalism often works is because interest groups and professional associations focus simultaneously on a variety of governments at the national, state, and local levels. With multiple points of entry, policy changes can occur in many ways.[49]

In bottom-up change, a problem is first identified and addressed, but not resolved at a local level. People, and often the media, then pressure state and national governments to become involved. Bottom-up change can also take place through an interest group calling on Congress for help.[50] In 1996, pesticide manufacturers, fed up with different regulations from state to state, successfully pushed Congress to set national standards to make for more uniform, and less rigorous, regulation.

In top-down change, breaking news events inspire simultaneous policy responses at various levels. Huge publicity for the 1991 beating that motorist Rodney King received from Los Angeles police officers propelled police brutality onto the agenda nationwide and inspired many state and local reforms.[51]

Policy diffusion is a horizontal form of change.[52] State and local officials watch what other state and local governments are doing. States can be “laboratories of democracy,” experimenting with innovative programs that spread to other states. They can also make problems worse with ineffective or misdirected policies.

These processes—bottom-up, top-down, and policy diffusion—are reinforced by the intergovernmental lobby. State and local governments lobby the president and Congress. Their officials band together in organizations, such as the National Governors Association, National Association of Counties, the US Conference of Mayors, and the National Conference of State Legislatures. These associations trade information and pass resolutions to express common concerns to the national government. Such meetings are one-stop-shopping occasions for the news media to gauge nationwide trends in state and local government.

3.4 Democrats, Republicans, and Federalism

The parties stand for different principles with regard to federalism. Democrats prefer policies to be set by the national government. They opt for national standards for consistency across states and localities, often through attaching stringent conditions to the use of national funds. Republicans decry such centralization and endorse devolution, giving (or, they say, “returning”) powers to the states—and seeking to shrink funds for the national government.

Principled distinctions often evaporate in practice. Both parties have been known to give priority to other principles over federalism and to pursue policy goals regardless of the impact on boundaries between national, state, and local governments.[53]

So Republicans sometimes champion a national policy while Democrats look to the states. In 2004, the Massachusetts Supreme Court ruled that the state could not deny marriage licenses to same-sex couples, and officials in cities like San Francisco defied state laws and began marrying same-sex couples. Led by President George W. Bush, Republicans drafted an amendment to the US Constitution to define marriage as between a man and a woman. Bush charged that “activist judges and local officials in some parts of the country are not letting up in their efforts to redefine marriage for the rest of America.”[54] Democrats, seeking to defuse the amendment’s appeal, argued that the matter should be left to each of the states. Democrats’ appeal to federalism swayed several Republican senators to vote to kill the amendment.

“The American Recovery and Reinvestment Act,” enacted in February 2009, is another example. This was a dramatic response by Congress and the newly installed Obama administration to the country’s dire economic condition. It included many billions of dollars in a fiscal stabilization fund: aid to the states and localities struggling with record budget deficits and layoffs. Most Democratic members of Congress voted for the legislation even though it gave the funds unconditionally. Republicans opposed the legislation, preferring tax cuts over funding the states.

3.5 Economic Woes

The stimulus package was a stopgap measure. After spending or allocating most of the federal funds, many states and localities still faced a dire financial situation. The federal government, running a huge
budget deficit, was unlikely to give the states significant additional funding. As unemployment went up and people’s incomes went down, states’ tax collections decreased and their expenditures for unemployment benefits and health care increased. Many states had huge funding obligations, particularly for pensions they owed and would owe to state workers.

State governors and legislators, particularly Republicans, had promised in their election campaigns not to raise taxes. They relied on cutting costs. They reduced aid to local governments and cities. They fired some state employees, reduced pay and benefits for others, slashed services and programs (including welfare, recreation, and corrections), borrowed funds, and engaged in accounting maneuvers to mask debt.

At the University of California, for example, staff were put on furlough, which cut their pay by roughly 8 percent, teaching assistants were laid off, courses cut, library hours reduced, and recruitment of new faculty curtailed. Undergraduate fees (tuition) were increased by over 30 percent, provoking student protests and demonstrations.

At the local level, school districts’ budgets declined as they received less money from property taxes and from the states (about one quarter of all state spending goes to public schools). They fired teachers, hired few new ones (resulting in a horrendous job market for recent college graduates wanting to teach), enlarged classes, cut programs, shortened school hours, and closed schools.

**KEY TAKEAWAYS**

The federal system functions, more or less, because of the authority of national over state laws, which trump local laws; crucial assistance provided by states and local governments to execute national policy; the complementary capacities of the three levels of government; and the intergovernmental lobby. The functioning of the system is being challenged by the economic woes faced by government at all levels. The Democratic and Republican parties differ ideologically about federalism, although these differences can be changed to achieve political objectives.

**EXERCISES**

1. How do the perspectives of national, state, and local governments complement one another? What are the strengths of each perspective?
2. Why do you think Democrats are more likely to prefer to make policy at the national level? Why are Republicans more likely to prefer to leave policymaking to state and local governments?
3. How did conflicts between the national government and state and local governments contribute to damage caused by Hurricane Katrina? Why do you think federalism broke down in that case?

4. **FEDERALISM IN THE INFORMATION AGE**

**LEARNING OBJECTIVES**

After reading this section, you should be able to answer the following questions:

1. What are the strengths and weaknesses of the media in covering federalism?
2. How are some public officials in the federal system able to use the media to advance their political agendas?
3. What effects could the new media have on people’s knowledge of and commitment to federalism?

Federalism gives the American political system additional complexity and dynamism. The number of governments involved in a wide sweep of issues creates many ways for people in politics to be heard. These processes are facilitated by a media system that resembles federalism by its own merging and mingling of national, state, and local content and audiences.

4.1 **Media Interactions**

National, state, and local news and entertainment outlets all depict federalism. Now they are joined by new technologies that communicate across geographical boundaries.
National News Outlets

News on network television, cable news channels, and public broadcasting is aimed at a national audience. A few newspapers are also national. Reporters for these national outlets are largely based in New York and Washington, DC, and in a smattering of bureaus here and there across the country.

Local News Outlets

Local television stations transmit the news programs of the national networks to which they are affiliated. They broadcast local news on their own news shows. These shows are not devoid of substance, although it is easy to make fun of them as vapid and delivered by airheads, like Will Ferrell’s character Ron Burgundy in the 2004 comic film Anchorman. But they have only scattered national and international coverage, and attention to local and state government policies and politics is overshadowed by stories about isolated incidents such as crimes, car chases, and fires.

Almost all newspapers are local. Stories from the wire services enable them to include national and international highlights and some state items in their news, but most of their news is local. As their staff shrinks, they increasingly defer to powerful official sources in city hall or the police station for the substance of news. The news media serving smaller communities are even more vulnerable to pressure from local officials for favorable coverage and from advertisers who want a “feel-good” context for their paid messages.

From National to Local

Local newspapers and television stations sometimes have their own correspondents in Washington, DC. They can add a local angle by soliciting information and quotes from home-state members of Congress. Or, pooling of resources lets local television broadcasts make it look as though they have sent a reporter to Washington; a single reporter can send a feed to many stations by ending with an anonymous, “Now back to you.”

From Local to National

Some local stories become prominent and gain saturation coverage in the national news. Examples are the shootings at Columbine High School in Littleton, Colorado, in 1999; the murder of pregnant Laci Peterson in California on Christmas Eve 2002; the kidnapping in Utah of Elizabeth Smart in 2003; and the 2005 battle over the fate of the comatose Terri Schiavo in Florida. The cozy relationships of local officials and local reporters are dislodged when national reporters from the networks parachute in to cover the event.

In 2011, federalism took center stage with the efforts of Republican governor Scott Walker of Wisconsin, and related steps by the Republican governors of Indiana and Ohio, to save funds by stripping most of the collective bargaining power of the state’s public employee unions. Stories reported on the proposed policies, Democratic legislators’ efforts to thwart them, and the workers’ and supporters’ sit-ins and demonstrations.

Such stories expand amid attention from local and national news outlets and discussion about their meaning and import. National, state, and local officials alike find they have to respond to the problems evoked by the dramatic event. [55]

State News and State Politics

Except for certain governors and attorneys general, the local media give little space in their news to state governments and their policies. One reason is that there are only a few truly statewide news outlets like New Hampshire’s Manchester Union Leader or Iowa’s Des Moines Register. Another reason is that most state capitals are far from the state’s main metropolitan area. Examples such as Boston and Atlanta, where the state capital is the largest city, are unusual. The four largest states are more typical: their capitals (Sacramento, Austin, Tallahassee, and Albany) are far (and in separate media markets) from Los Angeles, Houston, Miami, and New York City.

Capital cities’ local news outlets do give emphasis to state government. But those cities are relatively small, so that news about state government usually goes to people involved with state government more than to the public in the state as a whole.

State officials do not always mind the lack of scrutiny of state government. It allows some of them to get their views into the media. Governors, for example, have full-time press officers as key advisors and routinely give interviews and hold news conferences. According to governors’ press secretaries, their press releases are often printed word-for-word across the state; and the governors also gain positive coverage when they travel to other cities for press events such as signing legislation. [56]
4.2 Media Consequences

The variety and range of national and local media offer opportunities for people in politics to gain leverage and influence. National policymakers, notably the president, use national news and entertainment media to reach a national public. But because local news media serve as a more unfiltered and thus less critical conduit to the public, they also seek and obtain positive publicity from them. State governors and big-city mayors, especially when they have few formal powers or when they face a state legislature or city council filled with opponents, can parlay favorable media attention into political power. At best, a governor (as one wrote in the 1960s) “sets the agenda for public debate; frames the issues; decides the timing; and can blanket the state with good ideas by using access to the mass media.”

Some state attorneys general are particularly adept and adroit at attracting positive media coverage through the causes they pursue, the (sometimes) outrageous accusations they announce, and the people they prosecute. One result is to put intolerable pressure on their targets to settle before trial. Another is reams of favorable publicity that they can parlay into a successful campaign for higher office, as Eliot Spitzer did in becoming governor of New York in 2006, and Andrew Cuomo in 2010. But to live by the media sword is sometimes to die by it, as Governor Spitzer discovered when the media indulged in a feeding frenzy of stories about his engaging the services of prostitutes. He resigned from office in disgrace in March 2008. (See the documentary Client 9, listed in our “Recommended Viewing.”) Indeed, news attention can be unwanted and destructive. After he was arrested in December 2008 for corruption, the widespread negative coverage Illinois governor Rod Blagojevich received in the national, state, and local media contributed to his speedy impeachment and removal from office by the state legislature the next month.

The media are also important because officials are news consumers in their own right. State legislators value news exposure to communicate to other legislators, the governor, and interest groups and to set the policy agenda. Thus legislative staffers in Illinois conclude that news coverage is a better indicator of public opinion than polls. The news may more heavily and quickly influence officials’ views of problems and policy issues than the public’s.

4.3 New Media and Federalism

New technologies that enable far-flung individuals quickly to obtain news from many locales can help people understand the many dimensions of federalism. People in politics in one state can, with a few keystrokes, find out how an issue is being dealt with in all fifty states, thus providing a boost for ideas and issues to travel more quickly than ever across state lines. The National Conference of State Legislatures, as part of its mission to “offer a variety of services to help lawmakers tailor policies that will work for their state and their constituents,” maintains a website, http://www.ncsl.org, with a motto “Where Policy Clicks!” allowing web surfers to search the latest information from a whole range of states about “state and federal issues A to Z.”

But new media create a challenge for federalism. They erode the once-close connection of media to geographically defined communities. Consumers can tune in to distant satellite and cable outlets as easily as local television stations. Cell phones make it as convenient (and cheap) to call across the country as across the street. The Internet and the web, with their listservs, websites, weblogs, chat rooms, and podcasts, permit ready and ongoing connections to groups and communities that can displace individuals’ commitment to and involvement in their physical surroundings.

In one sense, new technologies simply speed up a development launched in the 1960s, when, as one scholar writes, “one type of group—the place-based group that federalism had honored—yielded to groups otherwise defined, as by race, age, disability, or orientation to an issue or cause.” Yet the vitality of state and local governments, presenting so many opportunities for people in politics to intervene, reminds us that federalism is not about to wither and die. In the end, the new technologies may enable individuals and groups more efficiently to manage the potentially overwhelming amount of information about what is going on in policymaking—and to navigate quickly and adroitly the dazzling and bemusing complexity of American federalism.

KEY TAKEAWAYS

The US media system blends national, state, and local outlets. Issues and stories move from one level to another. This enables people in politics to gain influence but can undermine them. New media technologies, fostering quick communication across vast expanses, allows people to learn and understand more about federalism but challenge federalism’s geographical foundation. Federalism seems like a daunting obstacle course, but it also opens up many opportunities for political action.
Exercises

1. How do the perspectives of the national and local media differ? Why is there relatively little coverage of state politics in the national and local media?

2. Do you get any of your news from new media? How does such news differ from the news you get from the traditional media?

Civic Education

Michael Barker versus the School Board

As Hamilton predicted in Federalist No. 28, if the people are frustrated at one level of government, they can make their voice heard and win policy battles at another. Federalism looks like a daunting obstacle course, yet it opens up a vast array of opportunities for political action.

Michael Barker did not set out to push the Louisiana state legislature for a new law. In 2003, Barker, a seventeen-year-old high school junior from the town of Jena, had wondered if his school district might save money on computer equipment by making smarter purchases. He sent four letters to the LaSalle Parish School Board requesting information about computer expenditures. He was rebuffed by the superintendent of schools, who notified him that a state law allowed public officials to deny requests for public records from anyone under the age of eighteen.

Barker did not understand why minors—including student journalists—had no right to access public information. Stymied locally, he aimed at the state government. He conducted an Internet search and discovered a statewide nonprofit organization, the Public Affairs Research Council (PAR), that promotes public access. Barker contacted PAR, which helped him develop a strategy to research the issue thoroughly and contact Jena’s state representative, Democrat Thomas Wright. Wright agreed to introduce House Bill 492 to strike the “age of majority” provision from the books. Barker testified in the state capital of Baton Rouge at legislative hearings on behalf of the bill, saying, “Our education system strives daily to improve upon people’s involvement in the democratic process. This bill would allow young people all over the state of Louisiana to be involved with the day-to-day operations of our state government.”

But Barker’s crusade had just begun. A state senator who had a personal beef with Representative Wright tried to block passage of the bill. Barker contacted a newspaper reporter who wrote a story about the controversy. The ensuing media spotlight caused the opposition to back down. After the bill was passed and signed into law by Governor Kathleen Blanco, Barker set up a website to share his experiences and to provide advice to young people who want to influence government.

Recommended Reading


Recommended Viewing

Amistad (1997). This Steven Spielberg dramatization of the legal aftermath of a revolt on a slave ship examines interactions between local, state, national, and international law.
Anchorman (2004). This vehicle for comedian Will Ferrell, set in the 1970s, spoofs the vapidity of local television news.

Bonnie and Clyde (1967). Small-time criminals become romanticized rebels in this famous revisionist take on the expansion of national authority against crime in the 1930s.


Client 9: The Rise and Fall of Eliot Spitzer (2010). Alex Gibney’s interviews-based documentary about the interweaving of hubris, politics, enemies, prostitution, the FBI, and the media.

The FBI Story (1959). James Stewart stars in a dramatized version of the Bureau’s authorized history, closely overseen by FBI director J. Edgar Hoover.

First Blood (1982). When Vietnam vet John Rambo clashes with a monomaniacal local sheriff in this first “Rambo” movie, it takes everyone from the state troopers, the National Guard, and his old special forces colonel to rein him in.


Mystic River (2003). A state police officer investigating the murder of the daughter of a childhood friend faces “the law of the street” in a working-class Boston neighborhood.