

Citizen U Presents:
Ark of Power:
An Appraisal of American Government and Politics
AP U.S. Government and Politics Curriculum
2 Teachers
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Big Ideas in U.S. Government and Politics

1. **CONSTITUTIONALISM:** *The U.S. Constitution establishes a system of checks and balances among branches of government and allocates power between federal and state governments. This system is based on the rule of law that seeks to balance majority rules with minority rights.*
2. **LIBERTY AND ORDER:** *Governmental laws and policies balancing order and liberty are based on the U.S. Constitution and have been interpreted over time.*
3. **CIVIC PARTICIPATION IN A REPRESENTATIVE DEMOCRACY:** *Popular sovereignty, individualism, and republicanism are important considerations of U.S. laws and policy-making and assume citizens will engage and participate.*
4. **COMPETING POLICY-MAKING INTERESTS:** *Multiple actors and institutions interact to produce and implement possible policies.*
5. **METHODS OF POLITICAL ANALYSIS:** *Using various types of analyses, political scientists measure how U.S. political behavior, attitudes, and ideologies are shaped by a number of factors over time.*

Unit 1: Foundations of Democracy

The U.S. Constitution arose out of important historical and philosophical ideas and preferences regarding popular sovereignty and limited government. To address competing states' visions for the allocation of governmental authority, compromises were made during the Constitutional Convention and ratification debates, and these compromises have frequently been the source of debate and negotiation in U.S. politics over the proper balance between federal and state power and between liberty and social order.

- How did the founders of the U.S. Constitution attempt to protect individual liberty, while also promoting public order and safety?
- How have theory, debate and compromise influenced the U.S. Constitutional system?
- How does the development and interpretation of the Constitution influence policies that impact U.S. citizens?

BIG IDEA: Liberty and Order

1.1 Explain how democratic ideals are reflected in the Declaration of Independence and the U.S. Constitution.

Life is a power struggle. Collectively government reflects how we as a people resolve that struggle. The essence of our government has been codified in the words of the United States Constitution. Our limited government was and is rooted in historical tradition, theory, conflict and compromise. Both the writers of our constitution and the vast majority of voters today have settled upon a representative democracy. **A balance between governmental power and individual rights has been a hallmark of American political development.** Our limited government is rooted in the ideals of natural rights, popular sovereignty, republicanism and social contract. Political disputes invariably collide at the intersection of power and rights, legitimacy and authority.

Fundamentally our Founders maintained an essential commitment to a limited government. The United States government would set boundaries as laid out in explicit formal expressed powers. The new government would be comprised of three branches – the legislative, executive and judicial – all separate but responsible for checking and balancing each other. This separation of powers not only limited government but also fulfilled the promise of our revolution. Ultimate legitimacy and authority is found in the people. Popular sovereignty could only be safeguarded if government was limited. The Constitution diluted power even more by creating a federal form of government. In this way power and authority would be shared between central, state and local governments. In the end the rule of law would protect not only the liberty but also the equality of all.

The experiment that is American republican government is rooted in the laboratory of history. Certain individuals and the debates they initiated have proven to be critical in the development of the fundamental ideas that make up our political thought. Key documents instruct American thought on limited government, natural rights, popular sovereignty, republicanism and social contract.

The English commitment to the rule of law traces at least back to the Magna Charta (1215) when the nobles rose up and challenged the king's absolute rule. Yet arguably the truest ancestor of American representative democracy is Thomas Hobbes (1588-1679). In his seminal book *Leviathan* (1651) Hobbes found man to be "nasty and brutish" in his "state of nature." Therefore a just society required consent through a social contract, a constitution, in order to protect the rights and liberties of the "body politic." John Locke's *Second Treatise on Government* (1690) aimed to resolve the sovereignty question. The "laws of nature" established certain standards; equality of all for instance, and it was the role of government to protect these absolute rights. Locke also emphasized popular sovereignty as the legitimizing authority in building a social contract rooted in natural rights. Montesquieu's *Spirit of the Laws* (1748), however, gave form to many of these foundational commitments. Republicanism, representative democracy, cannot be preserved through virtue alone. The rights of man can only be protected when governments dilute their legitimate authority through the separation of powers. Montesquieu's clear delineation of legislative, executive and judicial functions provided a prototype of good government. Our democratic ideals can clearly be seen as offspring of these foundational texts.

The story of American government has its seminal texts as well. Historians note that some of our first colonists who signed *The Mayflower Compact* (1620) were committed to "equal laws" enacted for all peoples for the "general good." Yet it was the towering achievement of Thomas Jefferson credited for authoring the *Declaration of Independence* (1776). Along with help from John Adams and Ben Franklin,

Jefferson's transformative text still serves as a manifesto of freedom to oppressed peoples around the world. Written with the specificity of a lawyer's brief, our *Declaration* makes our purposes quite clear:

“We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”

There can be little doubt as to our first principles. Limited government, natural rights, popular sovereignty, republicanism and social contract can all be found in our *Declaration*. It was James Madison, however, who is credited for superintending the conflict and compromise in Philadelphia that ended up as our *United States Constitution* (1789). In the heat of a Philadelphian summer in 1787, 55 delegates codified into a social contract a constitution based upon democratic ideals. The work of George Washington, Alexander Hamilton, James Madison and members of the “Grand Committee” assembled a blue print for a unique form of political democracy in the United States. Today it still stands. The U.S. Constitution is the longest lasting and most durable government charter in human history. By adding a *Bill of Rights* our founders sealed a “body politic” that would have vindicated the work of Thomas Hobbes and those political theorists that could only have dreamed of a true and just commonwealth in their day.

1.2 Explain how models of representative democracy are visible in major institutions, policies, events, or debates in the U.S.

Why government at all?

The word “government” is derived from a Latin word that means, “to manage.” As societies grew more and more complex governments were formed to help manage group norms. These norms are established in the form of laws and public policies. Here our norms have been collected in a written social compact, a constitution. American constitutionalism was established to clearly delineate legitimate policy-making power and to extend ultimate authority to all by giving equally certain inalienable rights. Loyal to a republican form of government, the United States was founded on popular sovereignty. Power and rights, legitimacy and authority are found in the hands of the people who have been endowed with certain inalienable privileges and prerogatives.

Certain salient concepts give breath to the grand American experiment in self-rule. Nevertheless, tension between governmental power and individual rights has characterized American political development.

Whereas direct democracy empowered the people to rule without representatives, the framers of our constitution opted for a representative democracy known to history as a republican form of government. In this way the untrustworthy passions of the people were insulated through the direct election of qualified representatives. Republicanism in theory hopes to represent all of the people and not just majorities. The original constitution only allowed for the direct election of the House of Representatives.

Tensions continue to exist over how best to sustain representative democracy in the United States. Three primary models of representative democracy can be observed in our major institutions, policies, events and

debates. The first model emphasizes *participatory democracy*. In this model civil society is maintained when the broadest selection of citizens engage in the political process. A second model emphasizes a *pluralist democracy*. In this model rival groups form to compete against each other in their desire to influence public policy. A third model emphasizes *elite democracy*. In this model the primary political decisions are made and enforced by a select group of advantaged citizens. All three models can be readily seen in the American political arena.

A close look at our Founding documents and the events that give them context suggest that all three representative democracy models have been present since our beginning. Early on in our political history Federalists and Anti-federalists debated the proper meaning and placement of power and rights in American representative democracy. In Federalist 10, one of many Federalist essays written to advance the new constitution, James Madison argued strongly for a pluralist democracy. The best way to protect the rights of the people from dangerous factions is to encourage a large republic of competing groups. Conversely the Anti-federalists argued a large pluralistic republic would result in an unwieldy polity. A large republic, they argued in an essay entitled Brutus 1, would increase the power and rights of certain elite while diminishing the power and rights of the people. This debate still continues.

So too today we see the tension between these three representative democracy models in our institutions, policies, events and debates. Groups like the Tea Party and Occupy Wall Street demonstrate the ability of everyday citizens to affect policy from the grassroots. Participatory democracy is alive and well in America today. So it can be said for pluralist democracy. Interest groups like the U.S. Chamber of Commerce and the Sierra Club compete against each other over environmental policy both locally and at the national level. Elite opinions as well continue to play a disproportionate role in our major institutions, policies and events. Elected officials, appointed public servants, corporate voices and even entertainment figures often guide and direct our most pressing debates.

From the beginnings of our republic the ideals of American representative democracy have been translated into reality in various ways. Three models of representative democracy – participatory, pluralist and elite – are reflected through our major institutions, policies, events and debates. Tension between governmental power and individual rights has characterized American political development. At stake nothing less than the legitimacy and authority of our government.

BIG IDEA: Constitutionalism

1.3 Explain how Federalist and Anti-Federalist views on central government and democracy are reflected in U.S. foundational documents.

With power and rights equally vested in the people the issue of popular sovereignty was settled following the American Revolution of 1776. Limited government, as protector of those rights, took form in a representative democracy as designed by the constitutional convention in 1787. But a bigger question continues to be asked as it was then. Where best to seat this government? Who to empower and where? Should governmental power be established in a centralized authority or decentralized in both state and local domains. The United States Constitution appears to answer yes to both options. A stronger central government was established but so too was a federal form whereby sovereignty is shared between many governing bodies. The vague language of our founding document further complicates navigating these distinctions. A strong government we needed but not too strong. The Federalists and the Anti-Federalists were two political parties who attempted to resolve this dispute.

The Federalist position on these critical questions of government can best be understood by reading a series of essays they published known as the *Federalist Papers*. The Federalists argued, in essay #10, for a stronger central government. They envisioned an American future with a large republic. In doing so they hoped to assuage the greatest threat to a government rooted in popular sovereignty, the “mischiefs of faction.” Democratic-based governments in history were spoiled either by the tyranny of majorities, or worse, single-minded interests that hijacked the greater good. Living in a state of liberty the causes of factions cannot be removed but its effects can. A strong central government overseeing a large republic provides the best means to guard the power and rights of the people. As stated here in Federalist 10, this had never been tried before but the ideas emanating from the American Revolution demanded nothing less.

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan, which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected.

Not everyone agreed with the Federalists.

The Anti-Federalists, an opposition party, addressed the Federalist positions in a series of essays of their own. Anti-Federalists feared that by centralizing governmental power individual liberty would be compromised. The wealthy class easily corrupted strong central governments in history. Aristocratic tendencies should be expected. In one of their strongest statements, entitled Brutus 1, Anti-Federalists advocated for smaller democratic units of government. As stated in Brutus 1 the future of good government was at stake:

In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

If good government was to be achieved, the greatest authority should be maintained in the state governments. Localized power is the best means of protecting one’s inalienable rights.

1.4 Explain the relationship between key provisions of the Articles of Confederation and the debate over granting the federal government greater power formerly reserved to the states.

The disputes over good government were tested in the crucible of time following the American Revolution. For many this was our most “critical period.” Many of the ideas espoused by the Anti-Federalists were embodied in the first constitution that governed our new nation. The government under the Articles of Confederation successfully waged war against England and negotiated its peace. It oversaw the expansion of the Northwest Territory including a plan for its proper settlement. It protected the rights of the people. Yet by most measurements the Articles of Confederation failed. A new constitution was called for in the summer of 1787. Better government was needed. **The Constitution emerged from the debate about the weaknesses in the Articles of Confederation as a blueprint for limited government.**

In establishing the Articles of Confederation in 1777 the 13 separate states agreed to join together and form the United States of America. As a “firm league of friendship” the 13 states joined together to defeat a common enemy in England. The Articles of Confederation posited the greatest political authority in the 13 respective states. When the struggle to defeat a common enemy was achieved the new unified government under the Articles had difficulty maintaining its authority. There were many salient weaknesses that grew all the more apparent after the American Revolution was won.

On paper the Articles of Confederation created a weak central government. A unicameral legislature, made up of state appointed representatives, was entrusted with little power. Worse, there was no executive to enforce laws that were passed. Without the ability to tax the new national government had insufficient funds by which to govern. Commerce between the states could not be regulated. It was impossible to maintain a standing army. Each state was given one vote and unanimity was required to bring about any substantive changes. George Washington lamented that the government under the Articles of Confederation consisted of “little more than the shadow without the substance.” It would be events in Massachusetts, however, between the years of 1786-1787 that provoked delegates again to join together to imagine the best form to give good government.

Angry mobs under the leadership of Daniel Shays, a veteran of the Revolution, joined together to protest Massachusetts’ debt collection practices in late 1786. In January of 1787 over 2,000 angry militiamen attempted to seize the federal arsenal in Springfield, Massachusetts. The state of Massachusetts was ill prepared to defend its assets. And certainly the national government under the Articles of Confederation could be of little help. Leaders throughout the 13 states were alarmed at these events. A clarion call was made to meet up again in Philadelphia in the summer of 1787 to consider recommendations to improve upon the weaknesses of the Articles. The result of this convention was a new constitution.

The new U.S. constitution was written to address the weaknesses of the Articles of Confederation. Our Founders created a bicameral legislature, a House and the Senate, granting each representative a vote when making laws. Rooted in compromise between the large and small states members of the House would be based upon population and directly elected by the people. The Senate would be apportioned equally, two per state, appointed by state legislatures. This government and its laws would be enforced by an energetic president indirectly selected by an Electoral College. A national judiciary appointed by the president and confirmed by the Senate would interpret laws. This government could levy taxes. It could regulate interstate commerce. Change by way of amendment would require proposals to receive a two-thirds vote by Congress and ratified by three-fourths of the states. This constitution would need 9 of the 13 states to be ratified.

The new U.S. Constitution enabled the central government to live up to the charge of good government. It seated sovereignty in the hands of the people. It provided for their defense and protected their inalienable rights. The proceedings that took place during the summer of 1787 in Philadelphia appeared to settle the debate over granting power to the federal government formerly reserved to the states. The U.S. Constitution attempted to make the central government stronger but not too strong. The “body politic” could be strong when united under a centralized sovereign.

1.5 Explain the ongoing impact of political negotiation and compromise at the Constitutional Convention on the development of the constitutional system.

The weaknesses emanating from the Articles of Confederation emboldened the elite in the respective colonies to give good government another attempt. Meeting in Philadelphia in the summer of 1787 delegates recommended a new government charter. This government would address imminent needs. The central government would be stronger. The United States Constitution, the result of these efforts, was ratified in 1788. A new government was in place by 1789. The process was easier said than done. As we will see representative democracy relies upon meaningful deliberation and compromise. In the summer of 1787 compromise was essential if a new constitution was to be ratified.

Compromise is never easy. In political deliberations there are distorting influences, such as media and money. Conflicting mindsets make negotiations problematic. Compromise often requires the surrender of principles. The middle ground may in fact be rotten. Nevertheless as British statesman Edmund Burke said, “All government is founded on compromise and barter.” This could not be truer than in the summer of 1787 in Philadelphia. At stake was nothing less than our experiment in self-government. A functioning representative democracy would require changes to the Articles of Confederation but could we overcome our differences and divisions?

A stronger union would be a challenge to build due to the many differences found in our original 13 states. There was a gap between the interests of large states and small states. Profound political and economic issues divided Northern States from Southern States. Most noticeably, free States and slave States clashed over the future vision of America. If a new constitution were to be ratified the delegates would need to tread carefully through these political, economic and regional divisions. Without compromise a new constitution, a stronger functioning central government, would never have been ratified.

Roger Sherman, a delegate from Connecticut, provided the opening salvo when he proposed early on a bicameral legislature. He suggested proportional representation in a House of Representatives, but equal state representation in a Senate. His Connecticut Compromise attempted to address the fundamental issues facing large and small states, that being equal representation in the new government. This “Great Compromise” ultimately passed and led to the ratification of the new constitution.

A more difficult issue would be what some have called “the snake” of slavery. Although the word “slavery” did not appear in the original U.S. Constitution, the document ultimately ratified included certain implicit protections of that “the peculiar institution.” Slavery was both recognized and sanctioned by the original U.S. Constitution. As some have noted the compromise to do so must be seen in the greater context of both representation and sovereignty. The Articles of Confederation gave clear advantages to state sovereignty and thus to slavery. By returning greater sovereignty back to a stronger central government state prerogatives would be weakened. Southern States would need to be compensated. Three constitutional provisions appear to do just that. In no small way these must be seen as critical compromises to ensure ratification of the new constitution. The original constitution, similar to the Articles, included a three-fifths formula when counting slaves for the purpose of apportioning representation and calculating taxation. A clause was also inserted to allow for the importation of slaves for at least another twenty years, until 1807. The new constitution also

included strong language that protected owners when pursuing their “fugitive labor.” Together these provisions have made what some have called a pro-slavery Constitution. Yet to others these clauses must be seen in the greater context of constitutional compromise.

The compromises necessary to secure ratification of the Constitution left some matters unresolved. Perhaps it is for this reason that an escape hatch was included in the original constitution. Article V allowed for amendments to be added later. Proposed amendments could be offered by a two-thirds vote from either the U.S. Congress or from national conventions. Proposed amendments could be ratified by three-fourths of the states. Although formal amendments have been rare, unresolved disputes continue to generate discussion and debate throughout our political institutions.

Compromises made in the summer of 1787 not only addressed political, economic and regional divisions, they made possible the continuation of representative democracy, as we know it. Even today when we debate such issues as the continued use of the Electoral College we are reminded of compromises at the time of our founding. Our ability to compromise is the sine qua non of effective self-government.

After the 55 delegates to the Federal Constitutional Convention signed on to their recommendations in 1787 the work of nation building was far from over. George Washington referred to the next step as “the judgment seat.” The people must approve. The plan to reboot American government was contingent upon the ratifying conventions in the 13 States. Nine would be needed to implement the new social contract. It would be a mistake to think that the ratifying conventions held in the 13 respective states were a private matter. Certainly elite opinion played a disproportionate role in determining the outcomes, however, a broad national debate reverberated throughout a wide range of mediums. Any witness of this period would have recognized, as some have noted, the unleashing of a “festive” political culture. Discussion over the issues raised by the new constitution could be found in “newspapers, taverns, coffeehouses and over dinner tables.” The process of ratification witnessed unprecedented levels of political activity and voter interest.

Seemingly every clause had friends and foes. Where was a bill of rights? The new document was godless as it prohibited any kind of religious test. Many feared the Senate citing its lack of true representation. Would the regulation of interstate commerce interfere with the lucrative cotton trade in the south? Who or what would check the certain abuse of the necessary and proper clause? The president appeared monarchy like. Many thought the new government was no longer a republic but an aristocracy. Many in the north were dismayed at the Constitution’s implicit sanctioning of slavery. And no republic in history allowed for the creation of a permanent standing army. But most alarming, and debated most vociferously was the clear consolidation of power in a central government.

Federalists argued for the merits of this consolidation of power while the Anti-Federalists raised serious objections. In the New York ratifying convention Federalist Alexander Hamilton argued:

It has been asserted that the interests, habits, and manners of the thirteen states are different; and hence it is inferred that no general free government can suit them. This diversity of habits, &c., has been a favorite theme with those who are disposed for a division of our empire, and, like many other popular objections, seems to be founded on fallacy. I acknowledge that the local interests of the states are in some degree various, and that there is some difference in the manners and habits. But this I will presume to affirm, that, from New Hampshire to Georgia, the people of America are as uniform in their interests and manners as those of any established in Europe.

In the Virginia ratifying convention Anti-Federalist Patrick Henry argued:

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints towards monarchy; and does not this raise indignation in the [heart] of every true American?

The centerpiece of contention over a strong central government then as it is now continues to focus on how much power should be given to a central government? The issues raised in the ratification debate are reflected in ongoing philosophical disagreements about democracy and government power, even today.

Debating the ills of big government continues to be an American pastime. A narrative of federal aggrandizement has clearly characterized the story of American government since our founding. Nevertheless many continue to raise objections to a strong central government. Tensions continue to exist between the role of the central government, the powers of state governments and the rights of individuals. The issues we debate today are similar to those waged at the ratifying conventions over 200 years ago. Here are just a few examples:

In their attempt to keep us safe and secure following the attacks on September 11 has our national government compromised our individual liberties?

By mandating certain educational goals, procedures and outcomes has our central government become an obtrusive player in an arena that has been traditionally reserved for state and local governments?

Have we seen the growth of an imperial presidency?

Has “the night watchman state” turned into “a nanny state” whereby federal regulations and protocols now dictate more and more of our daily private choices?

Throughout American history we were taught the benefits of a limited government. Government was not a solution but a problem. We were even told, “the era of big government is over.” If there is one lesson we have learned, however, from the ratification debates it is this: in time we will need a stronger central government and that time seemingly is still now.

BIG IDEA: Competing policy-making interests

1.6 Explain the constitutional principles of separation of powers and “checks and balances.”

Fortuitously “cautious revolutionaries” wrote the United States Constitution. Both history and theory instructed our Founding Fathers to be wary of consolidating the functions of government. Sovereign authority in one place only invited abuse. Therefore a tripartite government was established. The U.S. Constitution vests three branches of government with certain specialized power and authority. The legislative branch writes laws. The executive branch enforces laws and the judicial branch interprets laws.

The doctrine of the separation of powers was not an abstract principle but an integral expectation of how our government was to function. This is clearly evident when looking at the text of the constitution. The enumerated powers given to the Legislative Branch are expressed in Article 1; to the Executive Branch in Article 2; and to the Judicial Branch in Article 3. Each was given varying institutional characteristics and different sets of constituencies. James Madison, in the essay Federalist 51, stated most clearly the rationale for this essential principle:

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

The constitutional separation of powers was designed to protect liberty by dividing power and preventing both majority and minority tyranny. **The Constitution creates a complex competitive policy-making process to ensure the people's will is represented and that freedom is preserved.**

Notwithstanding the separation of powers, the Founders still feared potential abuses. The three branches seemingly invited corruption via the multiple access points. It was for this reason that an intricate system of checks and balances was also built into our founding document. As some have noted these checks were to be a “control mechanism.” It was thought that the best way to protect the people from an abusive government was to prevent any one branch from acting with unilateral power and authority. Democratic accountability and conformity with the rule of law was best safeguarded by a system of checks and balances. Here is a short list of examples:

The Legislative Branch can impeach [or remove] a President – the House impeaches and the Senate holds the impeachment trial; The Legislative Branch can override a Presidential veto; The Legislative Branch declares war; The Senate approves presidential appointments and treaties; The Legislative Branch can change the size and jurisdiction of federal courts.

The Executive Branch through the President can veto acts of Congress; The Vice President serves as the President of the Senate; The President is the Commander-in-Chief; The President can pardon; The President appoints federal judges.

The Judicial Branch through the federal courts practices judicial review – this power enables the courts to rule on the constitutionality of both Congressional and Presidential activity.

The equilibrium of power in our government is its most essential characteristic. Through the separation of powers and checks and balances our constitution intended to protect representative democracy. It provided for “the absolute central guarantee of a just government.” For this reason citizens of the republic grow wary when any one branch appears to overstep its authority. It would appear that Madison’s “auxiliary precautions” ultimately require us to become the final check and balance to our central government.

1.7 Explain the implications of separation of powers and “checks and balances” for the U.S. political system.

“The very definition of tyranny,” at the time of our Founding, was the concentration of sovereign power in one place or in one person. Separation of powers and checks and balances became part of our essential political DNA. Elihu Root called the separation of powers “one of the great underlying principles of our Constitution.” Creating a constitutional system defined by the separation of powers and characterized by checks and balances was not merely a simple choice of governance, but considered at the time an essential strategy of national security. Without such mechanisms our fundamental freedoms, rights and liberties faced certain attack from imperious forces. It should be remembered, however, that ideas have consequences. The separations of powers and checks and balances have distinct and measurable implications for our political system.

First and foremost the separation of powers means distinct functions have been given to our three branches of government. The legislative branch is empowered to make laws. The executive branch is empowered to enforce laws. And the judicial branch is empowered to interpret laws. No one branch was given the unilateral power to make public policy without the aid and support of the other branches. In doing so, the U.S. Constitution built a bulwark against man’s tendency toward the abuse of power. Government would be unable to violate the public trust or renege its constitutional prerogative to protect individual liberties.

Increasingly common in our political arena, related to the separation of powers, is the separation of parties. The separation of powers often results in an entrenched political impasse. With an expectation of providing functional responses to real problems, constitutional governments today are characterized by partisanship, polarization and gridlock. Divided government is a common feature. When operating within a system like ours, citizens have many doorways to influence public policy. Multiple access points for stakeholders and institutions to influence public policy flows from the separation of powers and checks and balances. Today the federal government employs well over two million civilian workers. Each are empowered in some way or another to legitimately carry out public policy. The separation of powers and checks and balances once considered as a bulwark against corruption now appears to be more vulnerable to the abuse of government power. Our ship of state can no longer prevent hazardous leaks from occurring. It can only hope that seepage due to corrupt behavior is on a scale too small to sink the entire ship.

It should not be assumed that the separation of powers and checks and balances makes a government immune from both the misuse and abuse of power. The warning of Lord Acton still applies to all – “Power tends to corrupt and absolute power corrupts absolutely.” Corruption is an endemic problem. Presciently our Founding Fathers included in our original constitution the means by which rotten apples can be removed from holding office. Impeachment, removal, and other legal actions taken against public officials deemed to have abused their power reflect the purpose of checks and balances.

Article One of the U.S. Constitution grants the House of Representatives with “the sole power of impeachment.” The Senate was given “the sole power to try all impeachments.” Charging and removing unfit government agents, according to our constitution, found merit in cases of “treason, bribery, or other high crimes and misdemeanors.” Impeachment was seen as a blunt weapon against entrusted civil servants who engaged in political malpractice and neglect of their delegated duties. It was to be used as a last resort and not subject to the whims of mere partisan differences.

Ordinarily federal officials are protected from being sued. Under the doctrine of sovereign immunity you could not bring legal suit against the king. Yet in 1946 the Federal Tort Claims Act was passed into law. This statute allowed private parties to sue the United States in federal court. The law holds “the United States liable...in the same manner and to the same extent as a private individual under like circumstances, but [is not] liable for interest prior to judgment or for punitive damages.” Individuals who are injured or whose property a federal employee damaged due to wrongful or negligent acts can make claims against the government of the United States.

The separation of powers is more than a mere type of government. There are implications when governed under such a system. For example, as we have seen here, “we the people” have greater access points to interact and interface with our government. Often this causes our government to be less efficient. We have also seen that checks and balances include more than simple oversight between branches of government. Checks and balances can result in impeachment, removal and even legal actions against public officials. In no small way our representative democracy is rooted in a constitution that promises to deliver what it inherently was created to do – provide for good government.

BIG IDEA: Constitutionalism

1.8 Explain how societal needs affect the constitutional allocation of power between national and state governments.

Theory, conflict and compromise have greatly influenced our Constitutional system. At its root is a power struggle. What is the scope of governing power? Who holds the power? How should this power be allocated? How best can this power be exercised? And who should benefit from this power? These are the fundamental questions facing all governments. Answers from previous eras, as we have seen, may in fact be insufficient for our times. “The Constitution belongs to the living and not to the dead,” Thomas Jefferson said. For this reason we continue to raise these essential questions even today. Answering them is no more or less easier than it has been throughout all of our history. Public policy disputes over social policy resonate even more.

Federalism reflects the dynamic distribution of power between national and state governments. The exclusive and concurrent powers of the national and state governments help explain the negotiations over the balance of power between the two levels. Understanding where the central powers end and the state powers begin has never been easy. The interpretation of the Tenth and Fourteenth Amendment, the commerce clause, the necessary and proper clause, and other enumerated and implied powers is at the heart of the debate over the balance of power between the national and state governments.

In so small way President Franklin D. Roosevelt in his Second Inaugural framed the scope of central power within a federal structure:

Instinctively we recognized a deeper need—the need to find through government the instrument of our united purpose to solve for the individual the ever-rising problems of a complex civilization. Repeated attempts at their solution without the aid of government had left us baffled and bewildered. For, without that aid, we had been unable to create those moral controls over the services of science which are necessary to make science a useful servant instead of a ruthless master of mankind. To do this we knew that we must find practical controls over blind economic forces and blindly selfish men.

We of the Republic sensed the truth that democratic government has innate capacity to protect its people against disasters once considered inevitable, to solve problems once considered unsolvable. We would not admit that we could not find a way to master economic epidemics just as, after centuries of fatalistic suffering, we had found a way to master epidemics of disease. We refused to leave the problems of our common welfare to be solved by the winds of chance and the hurricanes of disaster.

In this we Americans were discovering no wholly new truth; we were writing a new chapter in our book of self-government.

Such sentiments did not contradict, for FDR, our original social contract. Our Constitution, a covenant with the people, empowered a representative democracy to respond to our day-to-day problems. Global privatization and decentralization of power notwithstanding, the American experiment in self-government continues to demand creative solutions to contemporary demands.

A case in point would be the federal government response to natural disasters. National public policy now requires government action to insulate the people from natural phenomenon like hurricanes and tornados. Once considered simply acts of nature, these terrible events now fall under the authority of state and federal governments. Agencies like the Federal Emergency Management Administration (FEMA) help us cope and rebuild after natural calamities. Few debate the merits of such programs. We have come to expect a strong government, our government, to lend us a helping hand when needed.

Yet at other times we want our strong government to step back. Keep us safe but let us alone when we make private lifestyle choices. An example of this in our own time is State-level legalization of marijuana. Despite certain national laws The Controlled Substances Act (1970) gave the national government authority over much of our drug policy. Federalism, however, still reserves certain power and authority to state and local governments. Many states have fought back against national drug policies. Numerous states have now enacted marijuana policies that challenge even recent Supreme Court decisions to the contrary. See *Gonzales v. Raich* (2005). We the people, as the ultimate agents of power, want a strong central government but not too strong.

Note that in a federal system, however, policy making goes on not only within the national government and its three branches but also between the national government and state and local governments. The constitution has placed clear limits upon the scale and scope of the national government. It is prevented from doing whatever it wants. When the national government encroaches upon state and local prerogatives local governors and legislatures will let them hear about it. Yet increasingly the national government and its budgetary largesse can assist state governments fulfill their needs. The federal government provides monies to state and local governments through block grants and categorical grants. Block grants provide the most discretion whereas categorical grants are allocated to specific programs and projects. When cities, for instance, want help in fighting crime, improving their schools and/or build large infrastructure projects the national government often provides budgetary helps. Additionally, the national government at times can mandate, or require, states and local government to fulfill certain national priorities. For example the Americans with Disabilities Act (1990) was a federal mandate that, in part, required all public buildings to be wheel chair accessible. In this way the national government uses both sticks (mandates) and carrots (block grants and categorical grants) to interact with state and local governments in the policy making process.

1.9 Explain how the appropriate balance of power between national and state governments has been interpreted differently over time.

State sovereignty was not abolished with the ratification of a new constitution in 1787. On the contrary, as another example of compromise and prudence, the United States Constitution recognized the importance and sovereignty of individual state governments. The U.S. Constitution and the Bill of Rights distribute power not only to the people and the respective branches of the national government but also to innumerable state and local governments. **Federalism reflects the dynamic distribution of power between national and state governments.** The practical effects of federalism have been contested and mediated throughout our history.

Federalism provided for the separation of power between national, state and local governments. In essence our constitution welcomed dual sovereignty. Though the national government was supreme, state and local governments had reserved powers that existed outside the reach of the central government. Though federalism encouraged efficacy by placing significant political authority in the hands of local officials, it also was seen as a natural safeguard to individual liberty.

The relationship between these sovereign governments has never been easy to navigate. The relationship between governments at all levels, however, should not be perceived of as a layer cake. Rather our evolving federal model looks more like a marble cake. The duties and responsibilities of government at every level are now most likely shared. When the national government appropriates money for new roads they count on the local and state governments to oversee these shovel-ready projects. The money comes from Washington but the details including the construction crews are hired at the local level.

Delegated powers are those given exclusively to the national government. These would include the ability to go to war and negotiate foreign policy. Concurrent powers are those that are shared between national and state governments. An example of a concurrent power would be health care. National, state and local governments generally share health care costs. Reserved powers, as guaranteed in the Tenth Amendment, are given exclusively to the state governments. Though there are fewer and fewer examples, many reserved powers today deal with licenses and much of our education policy. The Tenth Amendment reserves powers to the states by declaring:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Supreme Court serves as the ultimate arbitrator when disputes arise. Disputes over the balance of power between the national and state governments have characterized much of our political history.

In most cases these disputes increased and consolidated power at the national level. The story of American government is a story of the aggrandizement of the national government. Over time the national government has taken on more and more authority and power. This has been somewhat expected due to the supremacy clause found in our constitution. The Supreme Court empowered the national government even more in the case *McCulloch v. Maryland* (1819). In this case the court expounded upon the meaning of the necessary and proper clause found in Article 1, Section 8 of the constitution. The particulars involved the creation of a national bank. No such bank had been enumerated in the original text. Nevertheless the court ruled in the national government's favor. The court has also affirmed broad use of the commerce clause to expand the reach of the national government. In fact, the commerce clause has been used more than any other section of our constitution to expand the power of the national government.

Wars and economic crises help explain this consolidation of power. Both during and in the wake of the American Civil War the national government took on greater responsibility for the general welfare of the American people. In particular the abolition of slavery required an extraordinary act of political will power by the national government. Constitutional amendments would ultimately help in sealing this transfer of power. The Thirteenth Amendment freed the slaves. The Fourteenth Amendment extended to all citizens the following unprecedented protection:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fifteenth Amendment extended suffrage to all African-Americans. With this new authority the national government assumed more and more power to help overcome discrimination against all marginalized groups. Securing individual liberties has increasingly become a national priority. Economic crises that followed the Civil War would also extend the authority of the national government.

The Great Depression of the 1930s, more so than any economic crises, welcomed an ever-expanding role for the national government. Franklin Roosevelt's New Deal programs consolidated unparalleled powers. The National Industrial Recovery Act (NIRA) of 1933, for example, empowered the national government to regulate American business in new ways. Regulatory powers over the economy would continue to expand.

The aggrandizement of the national government has not gone unnoticed. Conservatives have traditionally been the party of limiting the authority of the national government. Groups like the Tea Party and others have organized around the goal of reducing the size of the federal government. This is not new. Republicans over forty years ago called for a New Federalism. Another name for this is devolution. New Federalism or devolution was an idea to shift power away from the national government and toward state governments. New Federalism has often been called a return to States rights. New Federalism is an attempt to return to classical federalism. This movement has had marginal success. Welfare reform during the 1990s returned much of the authority over poverty programs to State initiatives. Conservatives in Congress also passed the Defense of Marriage Act (1996) to protect certain state prerogatives. The U.S. Supreme Court also played a role in devolution in such cases as *U.S. v. Lopez* (1995).

This case proved that federalism is not a dead letter. The national government has grown exceedingly strong but it still has limits. In *U.S. v. Lopez* (1995) the Supreme Court ruled that the Gun-Free School Zones Act of 1990 went beyond what the Constitution's Commerce Clause could allow. For the first time since the New Deal the Court limited the scope and reach of the Commerce Clause. This heralded a triumph for conservatives who still championed federalism and states rights.

Attempts made to reduce the size of the federal government may have achieved rhetorical success but little in the way of real reform. In the end the Defense of Marriage Act (1996) would not survive the test of time. With the attacks on September 11 the national government took on even more power and authority when protecting the lives of American citizens. With policies such as No Child Left Behind (2001) and the Affordable Care Act (2010) the national government took on greater responsibility for education and health care respectively.

Look into any crystal ball and you are likely to see that the age of big government is certainly not over.

1.10 Explain how the distribution of powers among three federal branches and between national and state governments impacts policy-making.

Despite noise to the contrary it should be recalled that sewn into the DNA of our constitution is a government that was meant to be functional. The Articles of Confederation were replaced because the national government could not adequately address the needs of the people. Collectively we agreed then and likewise today that government is a positive good. To protect the people from an abusive government, from tyranny, the Constitution has built in certain protective mechanisms, not the least being the separation of powers and checks and balances. For this reason government action, public policy making, is anything but easy. A whimsical government we do not have. Our national public policy making process is intentionally cumbersome. The Constitution and its amendments create a long, complex and competitive national policy making process.

The national public policy making cycle follows a number of important steps. First an issue needs to be identified. Agenda setting, the next step, is facilitated by money, power and influence. The issue needs to be recognized beyond narrow interests. Now the policy needs to be formulated. How best to address the stated problem? The aforementioned issue has to be seen as a national priority. At this point the problem needs to be legitimized as an issue under the purview of government responsibility. If and when this is so the national government implements a national public policy through laws, actions and/or rulings. Public policies are constantly being evaluated, debated and contested through the democratic process. The cycle is complete when government agents maintain or terminate the policy. The national public policy making cycle is often long, complex and competitive.

All three branches were created to participate in the national public policy making process. Congress, because of its legislative authority, is often seen as the leader in public policy implementation. With the growth of the administrative state, however, executive branch agencies and departments have taken on an increased role in public policy making. And now most would agree that even the judicial branch plays more than merely a legal role in our democracy. The United States Supreme Court is involved in agenda setting, formulation, implementation, evaluation and maintenance of national public policy making. The branches rarely work in isolation of each other. Rather their respective role in the national public policy making process is blended. When the legislative, executive or judicial branches do try to act in isolation of each other in the policy making process political red flags are raised. National public policy making battles are fought in the political arena.

Let's take a closer look at the national public policy making process by looking at three distinct examples; tax, commerce and immigration policy.

The issue of taxes here is as old as the American Revolution. Governments need revenue but how much and from what sources? The political arena is forever contesting the answers to these questions. One such issue where tax policy takes center stage is health care. Millions of Americans lack sufficient access to health care. Progressive voices along with political party members sought for years a viable national public policy to address health care needs. In 2010 Democratic president Barack Obama passed into law the Affordable Care Act. In all it is estimated that the original law combined with ongoing regulatory adjustments now approaches over 20,000 pages of text. Policy-making is complicated. Most importantly, however, as the Affordable Care Act was debated in the political arena it became clear that the U.S. Supreme Court would need to legitimize the effort. In the case *National Federation of Independent Business v. Sebelius* (2012) a narrow majority of the Court upheld the tax provisions of the Affordable Care Act. The Congress's power to "lay and collect taxes" was appropriately applied in the Affordable Care Act. Opponents of this national public policy continue to threaten its livelihood. Tax policy will forever be, as it has always been, at the center of all policy disputes.

If tax policy has been at the epicenter of our national political debate, race relations certainly can be called "the American dilemma." National public policy on race has caused nothing short of a civil war. We continue to debate policies that best address discriminatory practices against marginalized groups. Interestingly enough national public policy on race has often relied upon commerce as the conduit of legitimate national government action. Whereas the courts were used first to advance national public policies that broke down discrimination in American public schools, Congress followed up with an even more pervasive policy with the passage of the Civil Rights Act of 1964. In Title II it stated clearly that...

All persons shall be entitled to the full and equal employment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

But where did Congress have the authority to act with such a broad brush? Was its enforcement by the Executive Branch a legitimate use of federal power? The Supreme Court thought so. The Civil Rights Act of 1964 was validated under the U.S. Constitution's interstate Commerce Clause (Article 1, Section 8, Clause 3). In the case *Hearts of Atlanta Motel, Inc. v. United States* (1964) the court ruled that a ban on discrimination at the privately owned hotel was constitutional on the grounds that it catered to interstate travelers. The U.S. Constitution is empowered to regulate interstate commerce. Likewise in the case *Katzenbach v. McClung* (1964) the court found most of the food served in this privately owned barbecue was imported from out of state. Again the U.S. Constitution is empowered to regulate interstate commerce. So it can be seen that national public policy governing commerce has been used to advance the rights and privileges of certain minority groups.

Today immigration issues demonstrate the difficulty of creating, implementing and maintaining a national public policy. Few issues show how long, complex and competitive policy-making can be like immigration questions. The policy cycle continues to grind through identifying distinct problems, agenda setting, formulating specific answers, legitimizing government's proper role and implementing a comprehensive immigration policy. It requires all of our political players to engage and do their part. The Constitution and its amendments create a long, complex and competitive national policy making process.

Political science is the study of government systems, political activity and behavior. In this unit we have discovered that political science is ultimately a power struggle. Theory, conflict and compromise have defined our quest to be self-governing. The outcome of any study in representative democracy is an appreciation for how best to become agents of public policy. Be wary if your study slights both the history and context of our representative democracy. Tolstoy warned, "The leaves of a tree delight us more than the roots." The fruit of any meaningful study involves a close analysis of ones foundations.