

# Unit 1: CONSTITUTIONAL DEMOCRACY

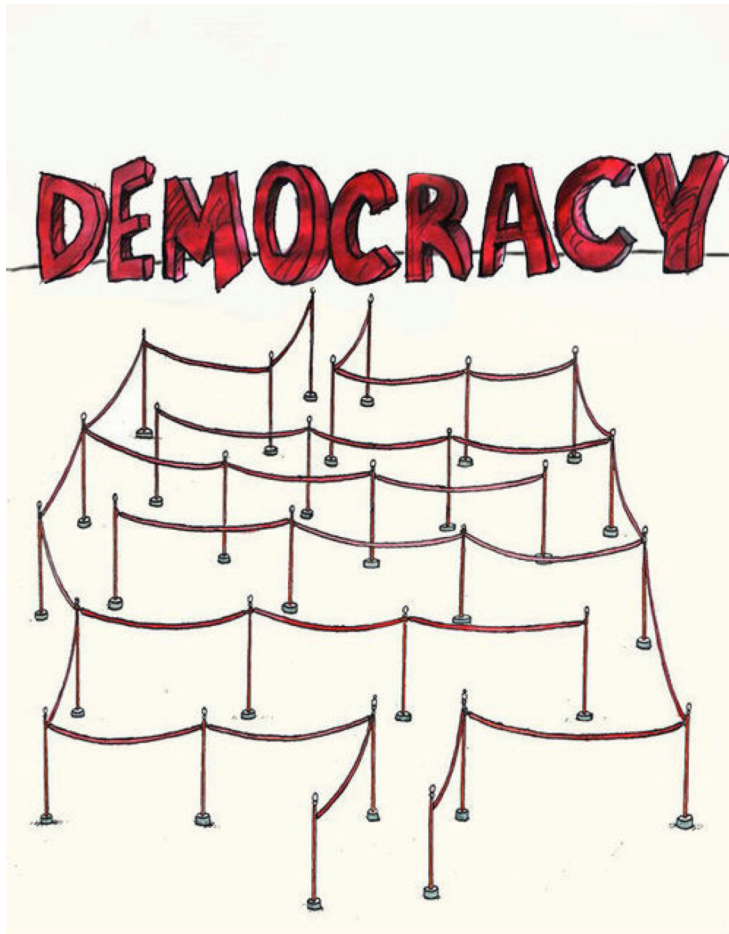
## DC TRIPS

Room 2B

*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.*

### MAKE SURE YOU UNDERSTAND:

1. A balance between governmental power and individual rights has been a hallmark of American political development. (Liberty and Order)
2. The Constitution emerged from the debate about weaknesses in the Articles of Confederation as a blueprint for limited government. (Constitutionalism)
3. The Constitution creates a complex competitive policy-making process to ensure the people's will is represented and that freedom is preserved. (Competing policy-making interests)
4. Federalism reflects the dynamic distribution of power between national and state governments. (Constitutionalism)



**What is so hard with  
building a democratic  
government?**

## Time to Assess How We are Doing.

After each DC TRIP assess how your voyage is going. Use the following guidelines.

Self-Assessment

**5 4 3 2 1 0**

How did I do today?

5 – Fully completed/observable collaboration  
 4 – Solid progress/collaborated well  
 3 – Solid progress/did not collaborate  
 2 – Little progress/collaborated well  
 1 – Little progress/did not collaborate  
 0 – Did not complete

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

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

5 4 3 2 1

*Without education, we are in a horrible and deadly danger of taking educated people seriously.*

G.K. Chesterton

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

Questions/Current Event

Essentials

1. The U.S. government is based on ideas of limited government, including natural rights, popular sovereignty, republicanism, and social contract.
2. The Declaration of Independence, drafted by Jefferson with help from Adams and Franklin, provides a foundation for *popular sovereignty*, while the U.S. Constitution drafted at the Philadelphia Convention and led by George Washington, with important contributions from Madison and Hamilton, and members of the “Grand Committee,” provides the blue print for a unique form of political democracy in the U.S.



1. What is the underlying idea of this cartoon?
2. The Declaration of Independence is almost 250 years old. Is it simply a museum piece or do its words still matter?

**The U.S. government is based on ideas of limited government, including natural rights, popular sovereignty, republicanism, and social contract.**

Provide a key example from American government for each of the following terms:

Limited government:

Natural rights:

Popular sovereignty:

Republicanism:

Social Contract:

Read the following excerpt from the **Declaration of Independence (1776)** and respond to the questions that follow:

“When in the Course of human events it *becomes necessary for one people to dissolve the political bands* which have connected them with another and to assume among the powers of the earth, the *separate and equal station to which the Laws of Nature* and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 of 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. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.”

**Put into your own words the following *ideals* found in our Declaration of Independence:**

*Endowed...with certain unalienable rights*

*Life, Liberty and the pursuit of Happiness*

*Consent of the governed*

*Right...to alter or to abolish it*

Using the **U.S. Constitution (1787)**, what you already know and appropriate search engines answer the following questions:

1. The overarching themes of our form of government are: (1) *popular sovereignty*, (2) *separation of powers*, and (3) *civil liberties*. Explain how EACH are specifically exemplified in our Constitution.
2. Taking a casual glance at the Constitution, which branch was intended to be MOST powerful? LEAST?
3. Collectively, the first ten amendments to the U.S. Constitution are referred to as . . . ?
4. Which amendments are typically classified as “ the Civil War amendments”? How did they dramatically change the original document?

**MAKE SURE YOU UNDERSTAND:** A balance between governmental power and individual rights has been a hallmark of American political development. (Liberty and Order)



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

Questions/Current Event

Essentials

1. Representative democracies can take several forms along this scale:  
Participatory democracy/Pluralist democracy/Elite democracy
2. Different aspects of the U.S. Constitution as well as the debate between Federalists and Anti-Federalists in Federalist 10 and Brutus I reflect the tension between the broad participatory and the more filtered participation of the pluralist and elite models.
3. The three models of representative democracy continue to be reflected in contemporary institutions and political behavior.



1. What is the underlying idea of this cartoon?
2. Representative democracies can take several forms. What form is represented in this cartoon? What about the common adage, "There is always strength in numbers"?

**1. Representative democracies can take several forms along this scale:  
Participatory democracy/Pluralist democracy/Elite democracy**

Provide an advantage and disadvantage for each of the following forms of democracy. Find a contemporary example for each:

*Participatory*

Advantage

Disadvantage

Example

*Pluralist*

Advantage

Disadvantage

Example

*Elite*

Advantage

Disadvantage

Example

What form of democracy **is** most prevalent in the United States today?

What form of democracy **should be** most prevalent in the United States today?

**2. The U.S. Constitution reflects the tension between the voices of Federalists and Anti-Federalists.  
Compare and contrast these revolutionary factions.**

SIMILARITIES

DIFFERENCES

**3. YESTERDAY. TODAY. FOREVER. Use the three models of representative government to  
answer the following three prompts: Participatory democracy/Pluralist democracy/Elite  
democracy**

What model did our Founding Fathers prefer?

What model do you prefer?

What model will prevail in your future?

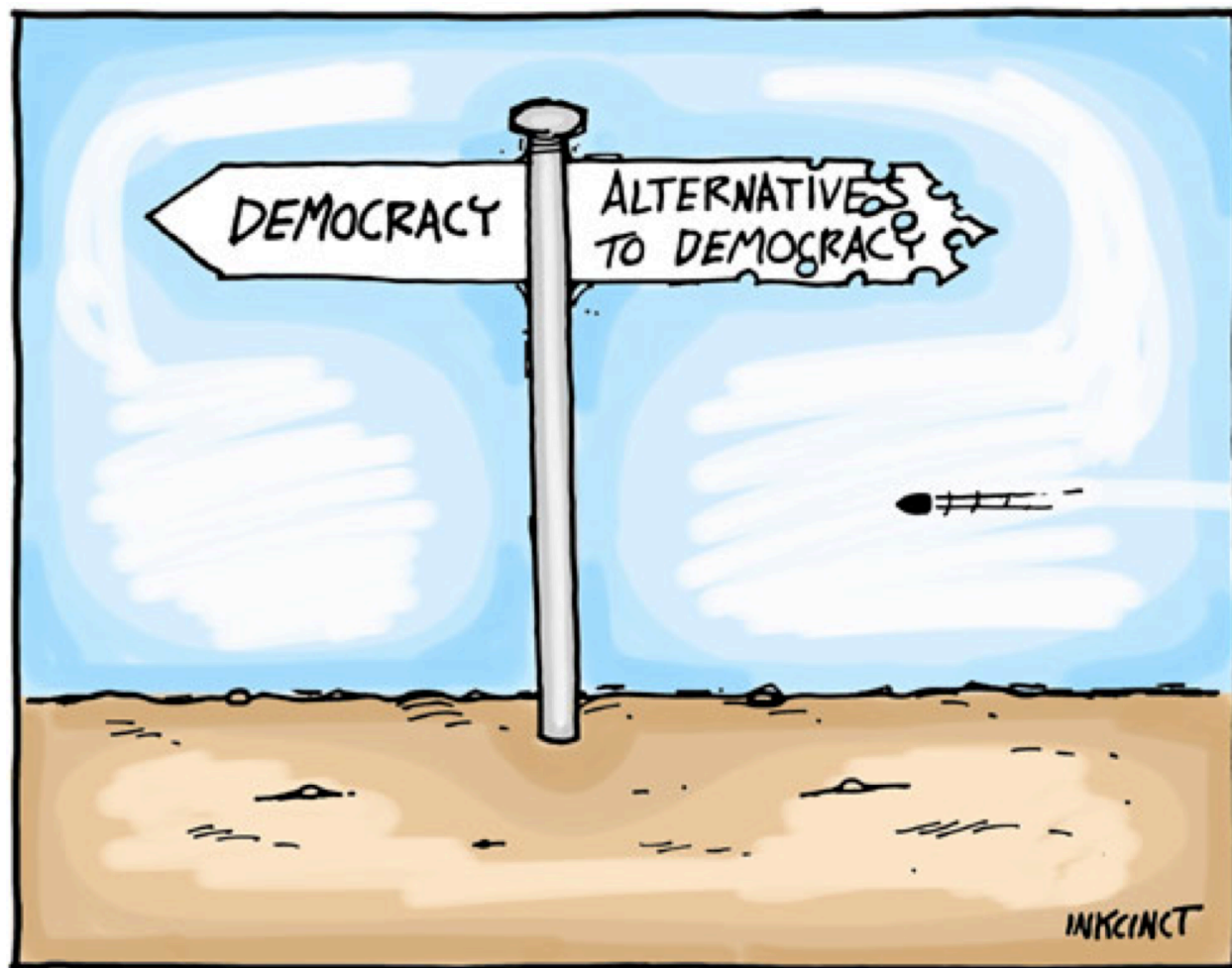
**MAKE SURE YOU UNDERSTAND:** A balance between governmental power and individual rights has been a hallmark of American political development. (Liberty and Order)

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

Questions/Current Event

Essentials

1. Madison's arguments in *Federalist 10* focused on the superiority of a large republic in controlling the "mischiefs of faction," delegating authority to elected representatives, and dispersing power between the states and national government.
2. Anti-Federalist writings including *Brutus 1* adhered to popular democratic theory that emphasized the benefits of a small-decentralized republic, while warning of the dangers to personal liberty from a large, centralized government.



20/11 2006-638 © John Ditchburn

1. What is the underlying idea of this cartoon?
2. On the floor of the House of Commons Winston Churchill said, "Democracy is the worst form of government except for all those other forms that have been tried..." Do you agree? But what form of democracy is best – representative or direct?

### 1.3 Compare and interpret Federalist and Anti-Federalist views on central government and democracy as reflected in U.S. foundational documents.

*Madison's arguments in Federalist 10 focused on the superiority of a large republic in controlling the "mischiefs of faction," delegating authority to elected representatives, and dispersing power between the states and national government.*

Using **Federalist 10 (1787)**, what you already know and appropriate search engines answer the following questions:

1. What was the intent of the Federalist Papers as written in 1787?
2. What synonyms do we use today for "faction"? What makes "factions" so mischievous?
3. Why does Madison argue that *a large republic* is best able to control the mischief of factions?
4. Madison also argues for the merits of a republic over a direct democracy. What is the difference? According to Madison, what makes a republic better? Do you agree?

*Anti-Federalist writings including Brutus 1 adhered to popular democratic theory that emphasized the benefits of a small-decentralized republic, while warning of the dangers to personal liberty from a large, centralized government.*

Using **Brutus 1 (1787)**, what you already know and appropriate search engines answer the following questions:

1. Who were the Federalists? Who were the Anti-Federalists? What was their primary dispute?
2. Why did Anti-Federalists fear a strong central government?
3. What contemporary political party best represents Federalist views? What contemporary political party best represents Anti-Federalist views? Explain by using examples.

**MAKE SURE YOU UNDERSTAND:** The Constitution emerged from the debate about weaknesses in the Articles of Confederation as a blueprint for limited government. (Constitutionalism)

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

Questions/Current Event

Essentials

Specific incidents and legal challenges that highlighted key weaknesses of the Articles of Confederation are represented by the:

- Lack of centralized military power to address Shays' Rebellion
- Lack of tax law enforcement power
- Requirement of unanimity of all states to amend the Articles



1. What is the underlying idea of this cartoon?
2. John Locke wrote, "...political power is that power which every man...has given up into the hands of the society, and therein to the governors...with tacit trust...for their good." But where best to seat that power? Should political power be found in a central government or more localized governments?



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

### Articles of Confederation vs. U.S. Constitution Do You Believe in Second Chances?

With the signing of the Declaration of Independence in 1776 the new United States of America needed a government charter. The government structure first put in place was created under the Articles of Confederation. Though successful in creating a government empowered to organize the fight against the British the Articles of Confederation was hardly strong enough to carry out the expectations of our young republic. The Shay's Rebellion in Massachusetts in 1787, a grassroots violent uprising rooted in the post-war debt crisis, convinced leaders from almost all of the 13 States that the weaknesses under the Articles of Confederation had to be addressed. In the summer of 1787 55 delegates ended up drafting a new Constitution.

Using the word bank below fill out the comparisons between the two governing charters below. **What were the most important changes?**  
*Investigate which changes were the most difficult to make?*

ISSUES:	Articles of Confederation	US Constitution
---------	---------------------------	-----------------

Legislature		
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Members in Congress		
---------------------	--	--

Voting in Congress		
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Selection of members		
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Executive		
-----------	--	--

National Judiciary		
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New States		
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Amendments		
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Power to Coin Money		
---------------------	--	--

Taxes		
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Ratification		
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WORD BANK:

Consent of nine states required, President, One vote per member, Bicameral Congress – House of Representatives/Senate, Unicameral Congress – One House of Representatives, One per state, Appointed by state legislatures, No general national court system, Apportioned by Congress, collected by the states, Admitted with approval of nine states, House members elected by popular vote - Senate appointed by state legislatures, Supreme Court - Congress authorized to establish a national judiciary, Between two and seven per state, Unanimous consent required, National government only, When approved by all states, None, National government and the states, Two senators per state - House determined

**MAKE SURE YOU UNDERSTAND:** The Constitution emerged from the debate about weaknesses in the Articles of Confederation as a blueprint for limited government. (Constitutionalism)

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

Questions/Current Event

Essentials



- Compromise deemed necessary for adoption and ratification of the Constitution are represented by the: *Great (Connecticut) Compromise/Electoral College/Three-Fifths Compromise/Compromise on the importation of slaves*
- Debates about the self government during the drafting of the Constitution necessitated the drafting of an amendment process in Article V that entailed either a two-thirds vote in both houses or a proposal from two-thirds of the state legislatures, with final ratification determined by three-fourths of the states.
- The compromises necessary to secure ratification of the Constitution left some matters unresolved that continue to generate discussion and debate today.

Chattanooga Times Free Press Bennett



'I know, let's compromise and build it out of twigs.'

1. What is the underlying idea of this cartoon?
2. What makes compromise so difficult? Charles Sumner wrote: "From the beginning of our history the country has been afflicted with compromise." Is compromise an affliction or a blessing?

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

*For each compromise deemed necessary for adoption and ratification of the Constitution report on both sides of the argument and cite the final agreement:*

*Great (Connecticut) Compromise*

*Electoral College*

*Three-Fifths Compromise*

*Compromise on the importation of slaves*

Debates about the self government during the drafting of the Constitution necessitated the drafting of an amendment process in Article V that entailed either a two-thirds vote in both houses or a proposal from two-thirds of the state legislatures, with final ratification determined by three-fourths of the states.

Review the Constitutional methods for amending the original document:

**Method 1**

**Method 2**



Which method has been used the most? How many times?

The compromises necessary to secure ratification of the Constitution left some matters unresolved that continue to generate discussion and debate today. List two (2) issues that in today's political arena continue to vex our government. Is any compromise in sight for these issues? Why? Why not?

**MAKE SURE YOU UNDERSTAND:** The Constitution emerged from the debate about weaknesses in the Articles of Confederation as a blueprint for limited government. (Constitutionalism)

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

Questions/Current Event

Essentials

1. The powers allocated to Congress, the president, and the courts demonstrate the separation of powers and checks and balances features of the U.S. Constitution.
2. Federalist #51 explains how constitutional provisions of separation of powers and checks and balances control abuses by majorities.



© Gary Varvel

1. What is the underlying idea of this cartoon?
2. Does the principle of the separation of powers infer co-equal branches? Should we be concerned if/when one branch becomes more powerful? What determines the authority of each branch?

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

List the primary powers allocated to each of our branches of government:

*Congress* (Article One of the Constitution)

*President* (Article Two of the Constitution)

*Courts* (Article Three of the Constitution)

James Madison wrote the definitive apology for the separation of powers in the essay Federalist 51 (1788). Read the excerpt below:

*“...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...*

*...In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself...”*

What does this excerpt mean in real terms, “...the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments...”?

Borrowing from Madison, rewrite a contemporary rationale for the separation of powers.

**The events of 9/11 served as a watershed moment in a number of ways. Certainly the debate over the role of government and its relationship to global security changed. So too did the debate over balancing security with individual liberties.**

**Investigate the following laws passed by Congress in the wake of 9/11. Assess their effectiveness. Assess their constitutional legitimacy:**

*USA Patriot Act (2001)*

*Intelligence Reform and Terrorism Prevention Act (2004)*

*Foreign Intelligence Surveillance Act Amendments (2008)*

**MAKE SURE YOU UNDERSTAND:** The Constitution creates a complex competitive policy-making process to ensure the people’s will is represented and that freedom is preserved. (Competing policy-making interests)



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

Questions/Current Event

Essentials

1. Multiple access points for stakeholders and institutions to influence public policy flows from the separation of powers and checks and balances.
2. Impeachment, removal, and other legal actions taken against public officials deemed to have abused their power reflect the purpose of checks and balances.



1. What is the underlying idea of this cartoon?
2. Explain the impact of checks and balances on the impeachment process. In your opinion, what should the standard be for impeachment?

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

*Ironically, the separation of powers was devised to safeguard against corrupt government practices. Yet by creating more access points to influence public policy, governments may in fact be more susceptible to corruption. Explain.*

*Briefly explain the constitutional provisions for the impeachment of public officials.*

*Two American presidents have been impeached and certainly a third would have been had he not resigned first. For each investigate the root cause of their impeachment (or impending impeachment). For both Johnson and Clinton investigate the Senate vote. Explain.*

Andrew Johnson

Bill Clinton

Richard Nixon

*An important impeachment precedent occurred early in our history with the attempt to remove Associate Supreme Court Justice Samuel Chase (1804). For what issue was Chase impeached? How did the Senate act in this case? What has been the historical significance of the Chase impeachment?*

**MAKE SURE YOU UNDERSTAND:** The Constitution creates a complex competitive policy-making process to ensure the people’s will is represented and that freedom is preserved. (Competing policy-making interests)

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

### Questions/Current Event

## Essentials

1. The exclusive and concurrent powers of the national and state governments help to explain the negotiations over the balance of power between the two levels.
2. The distribution of power between federal and state governments to meet the needs of society changes, as reflected by grants, incentives, and aid programs, including federal revenue sharing, mandates, categorical grants, and block grants.



1. What is the underlying idea of this cartoon?
2. Federalism essentially creates multiple sovereign governments. Our Founding Fathers imagined that by creating more governments there would be less of likelihood that one government would be strong enough to threaten our individual liberty. Two hundred and fifty years later, still worth it? Doesn't federalism create inequalities, legal confusions and inefficiencies? Is federalism necessary?

## Federalism

Do the merits outweigh the demerits?

**James Bryce listed the following arguments on behalf of federalism:**

1. Federalism promotes national unity while permitting local “diversities” to continue.
2. Federalism prevents the rise of despotic central government and does not threaten “the private liberties of the citizen.” The states are “bulwarks” against the central encroachment of the federal government.
3. Federalism “stimulates” the interest of citizens in local affairs, thereby sensitizing the people to their civic duties.
4. Federalism encourages “experimentation” and reforms in political life that might not be tried initially at the federal level. In short, new political policies can filter up from the local-state level to the federal level. (Bryce, James. The American Commonwealth. New York: Macmillan. 1897)

**Detractors on the other hand, argue that federalism has number of disadvantages:**

1. Federalism encourages wasteful duplication of services between the levels of government and at times slows the political process to a snail’s pace (as in the lengthy appeals of the court system).
2. Diversity of state laws and procedures creates an unfair situation for citizens from a national perspective. (For example, the average felony conviction leads to 13 months in jail in South Dakota as opposed to 58 months in Massachusetts).
3. Dispensing more powers to the states may be an unwise decision, because there is ample proof that states run their respective governments no more efficiently than federal bureaucrats run the national government in Washington D.C.
4. Federalism can result in unequal opportunities, because the wealthier states can provide better schools, medical care, and other services far more effectively than the poorer states.
5. The fragmentation of authority under federalism can permit unscrupulous interested groups who are concentrated in specific states to acquire undue influence and political power in those states.

### Questions for Discussion

1. Which arguments, pro or con, seem most plausible? Why?
2. Assumes that the federal government took over many of the traditional powers of the states. Or suppose the states were abolished in favor of dividing the country into “administrative zones,” as some political scientists have urged. What are the respective advantages and disadvantages attached to such actions?

**There are over 900 grant programs offered by the 26 federal grant-making agencies.**

**BLOCK GRANTS:** Federal government money to state or local governments for a use in a general purpose. Examples: Community Development, Drug Abuse and Mental Health, Local Law Enforcement.

**CATEGORICAL GRANTS:** Federal government money to state or local governments for use in a narrowly defined purpose. About 90% of federal aid dollars spent this way. Examples: Head Start, Abestos School Hazard Abatement Act.

**earmark GRANTS:** Federal government money explicitly specified for local projects on a one-time basis. Often these are tucked inside large appropriations to induce the support of certain members.

1. What type of grants do you suppose are favored by the federal government? State and local governments? Explain.
2. TANSTAAFL – “There ain’t no such thing as a free lunch” is a common axiom. What exactly does this mean? How might this apply to federal grants?
3. Find examples of federal block grants/categorical grants/earmarks

**FEDERAL MANDATES:** “any provision in statute or regulation or any Federal court ruling that imposes an *enforceable duty* upon State, local, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.”(2 USCS § 1555) Examples: Americans with Disabilities Act (1990), Clear Air Act (1970), Motor Voter Bill (1993), No Child Left Behind Act (2001), Patient Protection and Affordable Care Act [Obamacare] (2010) [See *Unfunded Mandate Reform Act*, 1995]

1. Often federal mandates are unfunded. Duties are imposed without any money attached. Why do you suppose this is true? How do you suppose these mandates are received?
2. What are *legitimate* arguments for mandates? Under what *authority* are federal mandates constitutional?
3. List three (3) examples of federal mandates
- 4.

**MAKE SURE YOU UNDERSTAND:** Federalism reflects the dynamic distribution of power between national and state governments. (Constitutionalism)

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

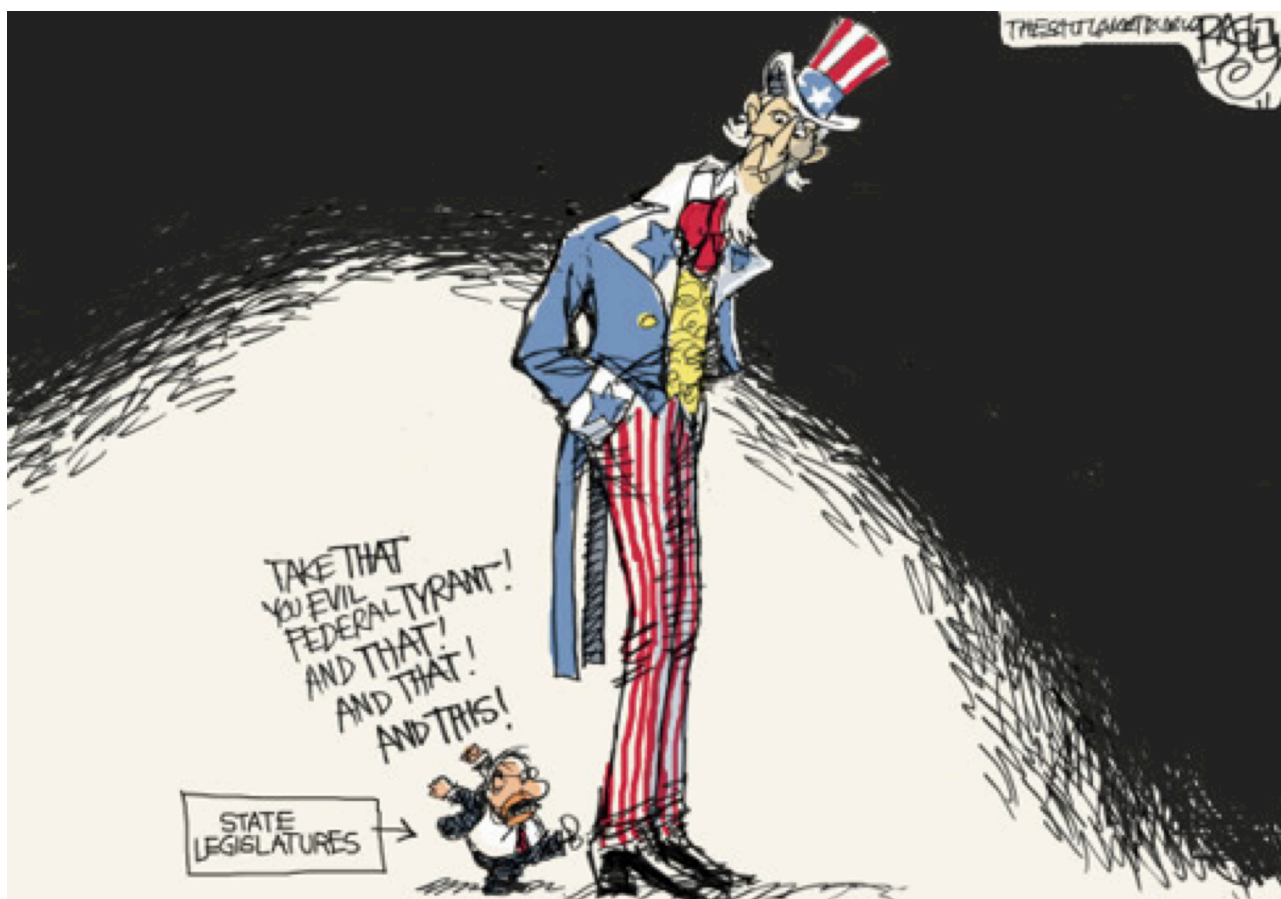
Questions/Current Event

Essentials

The balance of power between the national and state governments has changed over time based on U.S. Supreme Court interpretation of such cases as:

- *McCulloch v. Maryland* (1819)—which declared that Congress has implied powers necessary to implement its enumerated powers and established supremacy of the U.S. Constitution and federal laws over the states.
- *U.S. v. Lopez* (1995)—which ruled that Congress may not use the Commerce Clause to make possession of a gun in a school zone a federal crime, introducing a new phase of federalism that recognized the importance of state sovereignty and local control.

The interpretation of the Tenth and Fourteenth Amendments, 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.



1. What is the underlying idea of this cartoon?
2. The story of American government is the story of federal aggrandizement. What public policies are state and local governments still more prepared and able to accomplish better than a strong central government? Explain.



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

The balance of power between the national and state governments has changed over time based on U.S. Supreme Court interpretation of such cases as:

- *McCulloch v. Maryland (1819)*—which declared that Congress has implied powers necessary to implement its enumerated powers and established supremacy of the U.S. Constitution and federal laws over the states.
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The interpretation of the Tenth and Fourteenth Amendments, 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.

**For each of the following identify and state the significance to federalism:**

*Tenth Amendment*

*Fourteenth Amendment*

*Commerce Clause*

*Necessary and Proper Clause*

1. *McCulloch v. Maryland (1819)*
2. *Gibbons v. Ogden (1824)*
3. *Worcester v. Georgia (1832)*
4. *Lochner v. New York (1905)*
5. *Hammer v. Dagenhart (1918)*
6. *Gitlow v. New York (1925)*
7. *W. Coast Hotel Co. v. Parrish (1937)*
8. *South Dakota v. Dole (1987)*
9. *United States v. Lopez (1995)*
10. *United States v. Morrison (2000)*
11. *Raich v. Gonzalez (2005)*

### **“Here Comes the Judge”**

This is a short list of Supreme Court cases that dealt with the relationship between national and state government power.

1. Choose five (5) and provide a brief precedent.
2. Choose two (2) and provide additional background information.
3. Chose one (1) and ID the nine judges with their respective vote. Anything noticeable?

**MAKE SURE YOU UNDERSTAND:** Federalism reflects the dynamic distribution of power between national and state governments. (Constitutionalism)

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

Questions/Current Event

Essentials

1. Multiple access points for stakeholders and institutions to influence public policy flows from the allocation of powers between national and state governments
2. National policy-making is constrained by the sharing of power between and among the three branches and the state governments.

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"What about gridlock?"

1. What is the underlying idea of this cartoon?
2. Define what is meant by government gridlock. Is it possible that gridlock is what the Founding Fathers imagined for their new government? Explain.

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

*Brain drain (once called brain storming) as many constraints as possible placed on national policy making due to the sharing of power between and among the three branches and the state governments.*

*Is government inefficiency a positive or a negative? Explain.*

***TENTH AMENDMENT***

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

1. Restate the Tenth Amendment in your own words.
2. Why is the Tenth Amendment often referred to as the “reserved powers” amendment?
3. List three (3) authoritative opinions from political scientists, judges or elected officials regarding the meaning and reach of the Tenth Amendment. Explain each.
4. Do you think the Tenth Amendment is still relevant? What powers are still reserved exclusively to the states? Should there be more?

**MAKE SURE YOU UNDERSTAND:** Federalism reflects the dynamic distribution of power between national and state governments. (Constitutionalism)

## ***McCulloch v. Maryland* (1819)**

*McCulloch v. Maryland* (1819) is one of our most iconic Supreme Court precedents. According to James Bradley Thayer – “The chief illustration [of Marshall’s] “giving free scope to the power of the national government.” Marshall’s signature nation-building achievement, seemingly an “infinite increase in the powers of the federal government.” “Marshall’s capacious understandings of the Necessary and Proper Clause and the Commerce Clause were sufficient to accommodate the modern regulatory state.” Where federal and state governing actions collide, the national prerogatives are supreme. In the case of a national bank, federal supremacy holds that federal operations are immune from state taxation. The federal government, “though limited in its powers, is supreme within its sphere of action.” Supports broad constructions of Congress’ Commerce Clause and Necessary and Proper Clause powers. Federalism reflects the dynamic distribution of power between national and state government. When distributing power between national, state and local governments *McCulloch v. Maryland* (1819) made one thing perfectly clear, the power given to the national government is supreme.

### **Unanimous opinion of the Court written by chief justice John Marshall [excerpted here]**

“In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that State. The Constitution of our country, in its most interesting and vital parts, is to be considered, the conflicting powers of the Government of the Union and of its members, as marked in that Constitution, are to be discussed, and an opinion given which may essentially influence the great operations of the Government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision...

...But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department thereof...

...The power of Congress to create and, of course, to continue the bank...is no longer to be considered as questionable...

...The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared...

...We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States is unconstitutional and void...

...This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the Government of the Union to carry its powers into execution. Such a tax must be unconstitutional.”

1. Using what you already know and context clues from the *McCulloch* excerpt, what two (2) fundamental constitutional questions were answered in this landmark case?
  
2. In his opinion Marshall opens with the following: “*No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision.*” Provide contextualization to this case. Why were the issues addressed in this case, at that time, considered to be so important? How might our government look different had the Court ruled in favor of Maryland?
  
3. Identify other examples where our national government has exercised its implied powers using “the necessary and proper clause.”
  
4. Identify other examples where our national government has exercised its powers under “the supremacy clause.”
  
5. Imagine TWITTER was around in 1819, as a court reporter Tweet out a 140 character or less summary.



## ***United States v. Lopez* (1995)**

*The story of American government is the story of federal aggrandizement. Seemingly our central government is getting bigger and bigger. Are there no limits left? Federalism was supposed to be the dynamic distribution of power between national and state government. In U.S. v. Lopez (1995) we see the United States Supreme Court standing up, surprisingly, for commerce clause limits. In the Supreme Court case U.S. v. Lopez (1995) the national government was somewhat surprisingly reprimanded. The Court's admonishment was clear; Congress' use of the commerce clause has its limits. Congress may not use the commerce clause to make possession of a gun in school zone a federal crime. We are a nation of law and not men. Law sets limits. There are certain policies that are outside of the purview of the national government. We call this federalism. Federalism reflects the dynamic distribution of power between national and state government. According to the Supreme Court, at least, the national government cannot do whatever it wants. State governments still retain a certain level of sovereignty. Do you disagree? See you in court.*

### **Chief Justice Rehnquist delivered the opinion of the Court [excerpted here]**

In the Gun-Free School Zones Act of 1990, Congress made it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress "[t]o regulate Commerce ... among the several States .... "

...We start with first principles. The Constitution creates Federal Government of enumerated powers. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite," (The Federalist No. 45). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties," (Gregory v. Ashcroft, 1991). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in anyone branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in *Gibbons v. Ogden*, (1824):

"Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

...To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, ...and that there never will be a distinction between what is truly national and what is truly local, ...This we are unwilling to do.

1. Using what you already know and context clues from the *Lopez* excerpt, what is the fundamental constitutional question answered in this landmark case?
2. Early in Rehnquist's opinion he provided a brief civics lesson. Summarize the "first principles" of American government.
3. Identify the Court precedent in the *Lopez* decision. How does this opinion fulfill the "first principles" as mentioned by Rehnquist?
4. Despite the opinion in *Lopez*, the interstate commerce clause continues to be used to expand the power and authority of the national government. Identify a Court decision that affirmed the Congress' power to pass a law using the interstate commerce clause.
5. What policies are best implemented at the national level? What policies are best implemented at the state and local level? How would you define the limits the "interstate commerce clause"?