LOUISIANA HIGH SCHOOL CIVICS

Foundations of Freedom

Student Volume 1

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Congress

U.S. Constitution

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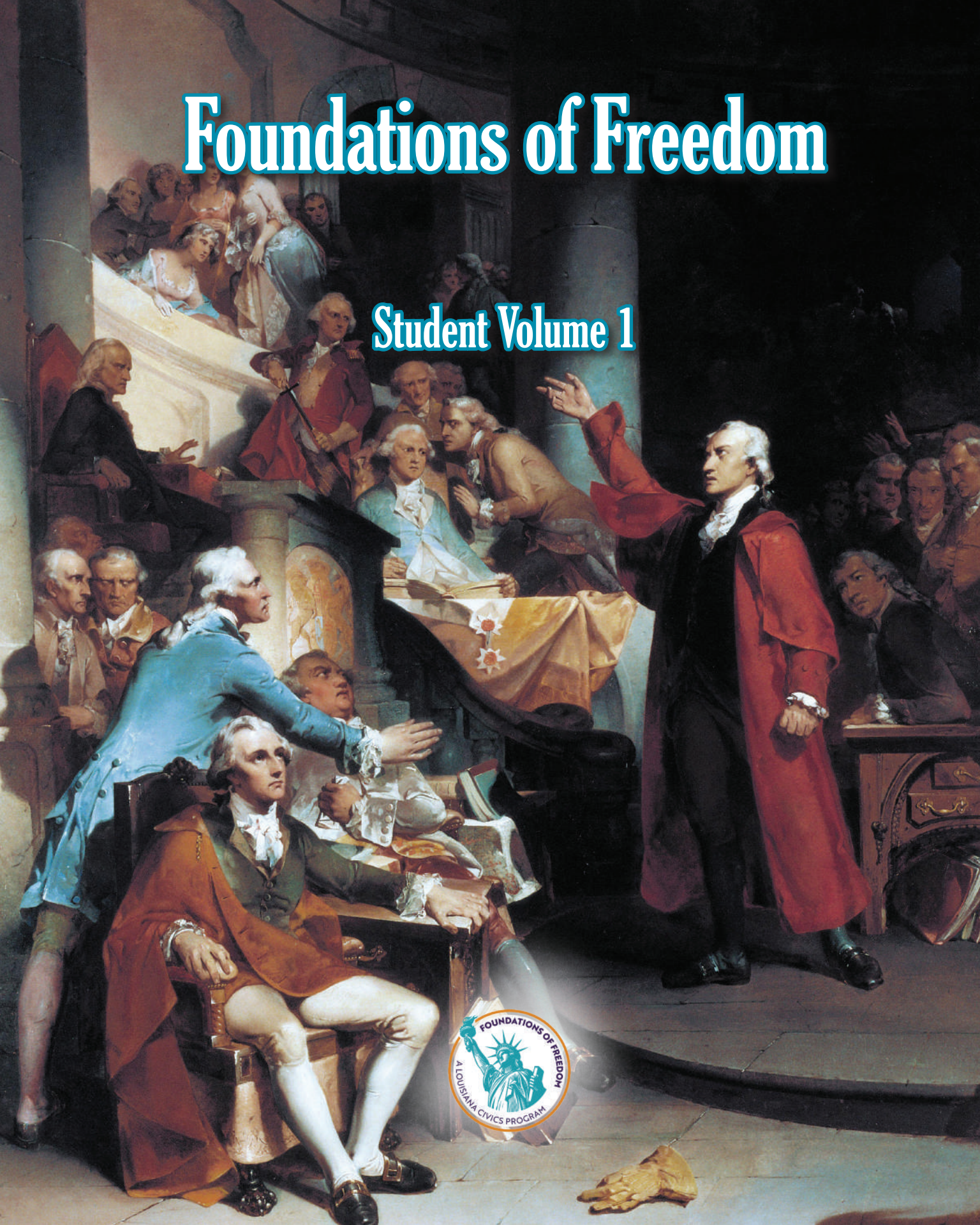
Student Volume 1



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Foundations of Freedom

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Patrick Henry argues passionately against British overreach before the House of Burgesses, the lawmaking body of colonial Virginia.

Individual Liberty and the Common Good

Setting the Scene

The year is 1775, and the American colonies are on the brink of revolution. For nearly a decade, the British government has imposed one unpopular tax after another on the colonists. Lacking representation in the lawmaking process, the colonists have turned to protests, such as what will become known as the Boston Tea Party. Now, at St. John's Church in Richmond, a group of local leaders gather to decide what role the colony of Virginia will play in the unfolding revolt. A lawyer named Patrick Henry stands up to speak. Some people in the room already know him for his earlier work arguing against the British government's attempts to control the salaries of Anglican clergy, a dispute known as the Parson's Cause. Henry argued passionately that the Crown was abusing its authority by trampling legitimate Virginia laws.

In one sense, the cause that Henry now argues is very different from the Parson's Cause. It concerns colonists from all walks of life, and its repercussions extend far

beyond Virginia. In another sense, though, Henry is arguing the same cause again: that the American colonists have the right to determine their own future. He argues, moreover, that those who favor revolution are morally right because they are fighting an oppressive system of government. At the end of a rousing speech, Henry exclaims, "Give me ***liberty****, or give me death!" With those words, he helps convince the convention to arm and train the Virginia militia. Soon enough, Virginian forces are playing their part in the Revolutionary War as part of the brand-new United States of America.*

Patrick Henry's complaint was aimed at a government he saw as unjust. He did not want to abolish government altogether. Indeed, a year after his famous speech, he became the first governor of the state of Virginia. Others who attended that 1775 convention, including future U.S. presidents George Washington and Thomas Jefferson, were hardly anti-government either. They sought the freedom to form a new government that would represent them and look after their interests. They believed that a government needed to serve the common good. In fact, the word commonwealth, *part of the full name of Virginia and the Commonwealths of Massachusetts and Pennsylvania, means a government by the people for the common good.*

The leaders of the American Revolution would become known as the Founders. They would establish a new republic and decide what laws and principles it would follow. As leaders of the new country, they would have to answer some important questions for themselves. What form of government could best balance the common good with the liberties of individuals? How might a national government promote unity without overreaching into local problems? In framing their answers, the Founders would look to other governments, both ancient and recent.

What Is Government?

Patrick Henry and many others at that 1775 meeting in Virginia knew that some problems are best solved by working together. This belief underlies much of government. Given the choice, most people would not wish to live in a world where everyone has to build their own roads and sidewalks or find and protect their own water supply. Instead, people typically combine their resources and divide up responsibilities to accomplish projects that would be impossible for individuals working alone. The leadership and decision-making that go into such projects are called **governance**.

Any organization, from a high school poetry club to the United Nations, has some form of governance. The word **government**, however, means something different. A government is a group or an organization that makes decisions on behalf of the people in a country or in a smaller political unit, such as a state or city. If this definition seems overly broad, that is because it has to be. Government, in one form or another, has existed for thousands of years. Nations have been led by pharaohs, presidents, princes, and popes according to an incredible variety of systems and principles.

Whoever is in charge and whatever the structure might be, a government exercises its power by making, enacting, and enforcing laws. In some cases, including in many governments of the past, this power is passed down from generation to generation within a family, or dynasty, of rulers. In others, including the government of the United States, leaders are elected to represent the people.

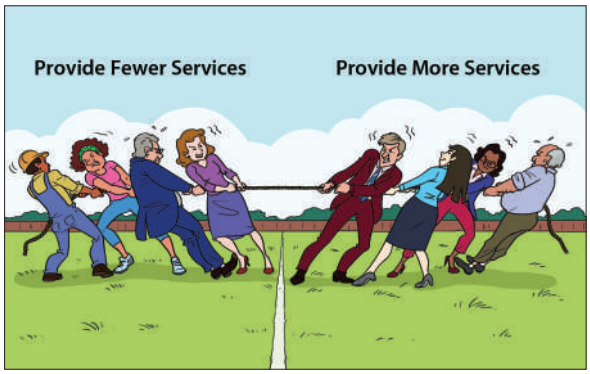
Think Twice

What does a government do?

Why Do We Need Government?

There are many opinions as to the exact purpose of a government. Today, in the United States and around the world, people debate how much power the government should have and what kinds of activities it should be involved with. Some favor a government that provides more services to people but also makes more rules and costs more to maintain. These costs are often paid for with money collected as taxes. Others call for a government that provides fewer services and collects less in taxes. Disagreements also arise about how much a government should intervene in its country's economy, how much it should redistribute wealth, and how deeply a national government should be involved in local issues.

But why is government necessary? To answer this question, it is helpful to consider government's effects in many different



Politics often involves a tug-of-war between providing more government programs—that are funded by taxes—and keeping taxes low for individuals and businesses.

aspects of our daily lives, from local to national. For example:

- A city's public works department maintains roads and sidewalks within the city, while the state department of transportation takes care of the highways between towns and cities.
- A local department of health inspects restaurants to make sure their kitchens are safe and hygienic. Federal, or national, agencies monitor the quality and safety of food that is sold across state lines.
- A city council decides to clear and clean up an old industrial site. The federal government provides funds and expertise to help with the proper removal of any major environmental hazards.

As this list shows, government agencies handle many projects that would be beyond the reach of individuals or even private businesses.

Two Views on the Role of Government

The ancient Greek philosopher Plato (c. 428–347 BCE) was one of the first to write a description of the purpose of government and the challenges involved. In his dialogue *The Republic*, he adopted the perspective of his teacher Socrates and discussed what an ideal government would have to achieve. He envisioned a city whose government—led by a wise ruler—would allow people to "do their own work" without "meddling" in the business of others. For Plato, and for many thinkers since, government existed mainly to keep people out of one another's way.

Much later, the German social scientist Max Weber (1864–1920) voiced a less optimistic view of government's responsibilities. He stated that government, whether loved or resented by its people, was a "monopoly of the legitimate use of physical force." In other words, Weber thought that governments were defined by the ability to enforce laws (for instance, via the police) and protect their borders (via the military). Although this view may be less comforting than Plato's vision of a harmonious city-state, it is undeniable that governments often use force, or the threat of force, to carry out decisions.

One purpose of government is to prevent and resolve conflicts between individuals and groups. In any society, people or groups will inevitably want the same thing, such as a piece of land, or disagree on the desired outcome of an action, such as how that piece of land should be used. Without clear rules and some kind of authority to enforce them, such conflicts can rapidly descend into distrust, hostility, and even violence. An effective government can help prevent these outcomes by creating and enforcing laws that provide order and security. Then people and organizations can cooperate to solve bigger societal problems.

Think Twice

How does government affect daily life?

Learning About Government from the Past

For as long as people have formed societies, they have tried different ways of governing those societies. Some leaders have inherited their position, while others have been voted into office, taken power by force, or even been chosen randomly from among their peers. Modern political thinkers have often looked to the past to understand what worked then and explore whether it might also work now.

Ancient Greece and Rome

Two civilizations of the ancient Mediterranean—Greece and Rome—had an especially great influence on the governments and cultures of Europe and, eventually, the United States. In ancient Greece, there was no "national" government. Instead, each of the cities governed itself and its surrounding territory. Because of their independence, these cities were known as city-states.

Within the Greek city-states, there were many forms of government, though modern historians only know some of the details about many of the city-states. This is not the case for the city-state of Athens, which underwent a period of prosperity—often called its Golden Age—during the fifth century BCE. The Athenian government of this period is described in the works of Greek philosophers, historians, and playwrights. It was a type of **democracy**, a word that comes from the Greek words *demos* (the people) and *kratos* (force or power).

Like political commentators today, ancient Athenian writers both praised and critiqued aspects of their city's political system. The philosophers and historians often praised the city's democratic tradition, though some felt that the common people were too easily controlled by eloquent politicians. Comic playwrights of ancient Athens would often criticize—or simply make fun of—political

figures in ways very similar to modern comedians.

The people of Athens practiced **direct democracy**, meaning that individual citizens voted directly on issues of public interest. In ancient Athens, citizens were people who legally belonged to the city and had certain rights, such as a say in its politics. Today, most countries are much larger than a single city, but the term *citizen* is still used to describe this kind of legal and political relationship.

Any of Athens's citizens, who numbered in the tens of thousands, could take part in the public assemblies that happened every month. There, each citizen could cast an equal vote on the city's decisions. Although not every citizen attended every assembly, thousands regularly turned out. The meeting place of the assembly, a rocky hill in the city's center, could accommodate about six thousand people.

A democratic society is literally one in which the people hold the power. However, in ancient Athens, as in many other societies, not *all* people were included in government. Only free, adult males were considered citizens; women and enslaved persons were not eligible to vote or hold a government office. Nor were *metics*, residents who came

In an assembly, orators argued over political matters before the Athenian citizens.

PRIMARY SOURCE: ADAPTED FROM *THE ATHENIAN CONSTITUTION*, ARISTOTLE, 322 BCE

The Constitution of Athens, *also called the* Athenian Constitution, *is a work by the philosopher Aristotle or one of his students. It is not a formal legal document like the U.S. Constitution. Rather, it describes the prevailing legal practices and customs in ancient Athens.*

The people have made themselves masters of everything and administer everything through decrees of the Assembly and decisions of the law courts, in which they hold the power. . . .

The present constitutional order is as follows: the right of citizenship belongs to those whose parents have been citizens. They are enrolled as citizens at the age of eighteen. When they come up for enrollment, their fellow citizens vote first on whether they appear to have reached the legal age. If they do not appear to be the right age, they return to the rank of boys.

Source: Adapted from Aristotle. *The Constitution of Athens and Related Texts*. Translated by Kurt von Fritz and Ernst Kapp. New York: Hafner Press, 1950, p. 114.

PRIMARY SOURCE: ADAPTED FROM PERICLES'S FUNERAL ORATION FROM THE PELOPONNESIAN WAR, 431 BCE

Pericles's Funeral Oration is a famous speech from Thucydides's History of the Peloponnesian War. *As part of the annual public funeral for the war dead, Pericles, a prominent Athenian politician, delivered the speech at the end of the first year of the Peloponnesian War (431–404 BCE). In it, he praises elements of Athenian democracy.*

Our constitution does not copy the laws of neighboring states; we are rather a pattern to others than imitators ourselves. Its administration favors the many instead of the few; this is why it is called a democracy. If we look to the laws, they afford equal justice to all in their private differences; . . . class considerations not being allowed to interfere with merit [worthiness]; nor again does poverty bar [prohibit] the way, if a man is able to serve the state, he is not hindered by the obscurity [unknownness] of his condition.

Source: Thucydides. *History of the Peloponnesian War*. Translated by Richard Crawley. Book 2, chap. 37. London: J. M. Dent; New York: E. P. Dutton, 1910.

PRIMARY SOURCE: POLYBIUS ON THE ROMAN REPUBLIC

Polybius was a Greek politician and historian who spent much of his life in Rome and with the Roman army. In his multivolume work The Histories, *he explains the rise of Rome as a Mediterranean power. In this excerpt, he describes the government of the Roman Republic.*

Three kinds of government shared in the control of the Roman state. . . . It was impossible even for a native to pronounce with certainty whether the whole system was aristocratic, democratic, or monarchical. . . . If one fixed one's eyes on the power of the consuls, the constitution seemed completely monarchical and royal; if on that of the senate, it seemed again to be aristocratic; and when one looked at the power of the masses, it seemed clearly to be a democracy. . . .

The consuls exercise authority in Rome over all public affairs. . . . It is their duty to take charge of the affairs of state, to summon assemblies, to introduce measures, and to preside over the execution of popular decrees. . . .

The senate controls the treasury. It regulates all revenue and expenditure. . . . The senate also has jurisdiction over crimes committed in Italy that require a public investigation. . . . .

The people have the right to confer honors and inflict punishment. . . . They have the power of approving or rejecting laws, and most importantly, they deliberate on the question of war and peace.

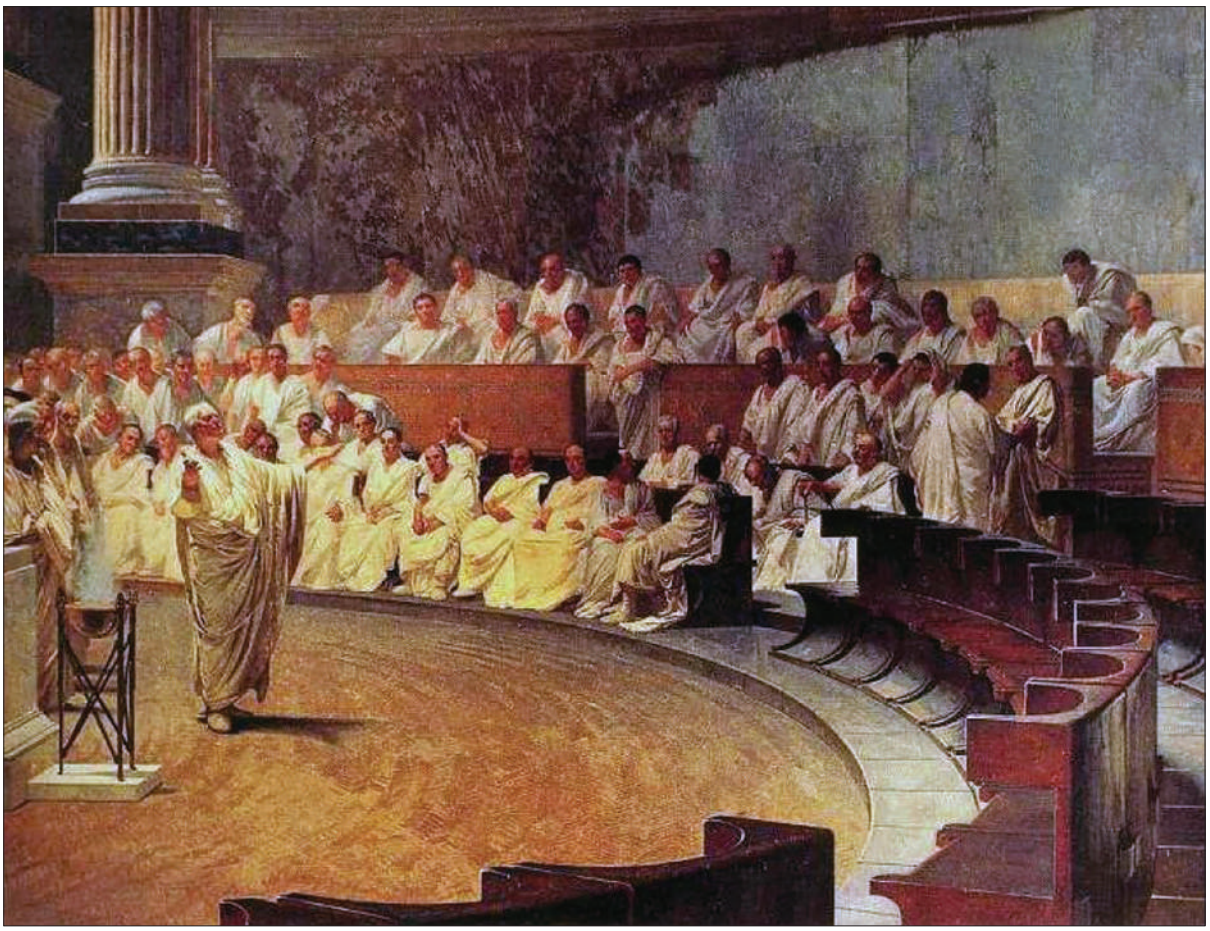
Source: Adapted from Polybius. *The Histories*. Translated by W. R. Paton. Vol. 3. Book 6, 11.11–14.7. Cambridge: Harvard University Press, 1972, pp. 295–303.

from other cities and regions but made their home in Athens.

Even in Athens, not every decision was put to a direct vote among all the citizens. There were numerous government positions, and the people in these jobs were often chosen randomly from among eligible citizens. Like modern **legislatures**, the Athenian assembly also included a special committee that decided what issues would be debated at each meeting. This committee was known as the *boule* (/boo*lay/), and its members were also chosen randomly. Athenian democracy also had another feature later found in the United States and many other republics: a limit on how long officials could serve. An Athenian could be a president of the assembly only once and could only serve two terms on the *boule*.

The laws and institutions of ancient Rome were inspired by those of Greece, especially those of Athens. Roman civilization went through many forms of government during its history. It began as a kingdom and remained one until 509 BCE. Then, in the aftermath of a revolution, Rome became a **republic**: a society governed by representatives of the people. The chief assembly during this period was the Roman Senate.

The citizens of the Roman Republic did not vote directly on issues like their Athenian counterparts. Instead, they chose representatives to head the different government bodies. In this way, republican Rome was more like modern democracies than Athens was. In its early years, the government of the Roman Republic represented only the aristocrats, known as the *patricians*. A series of protests by the common people—the *plebeians*—led to their having a greater say in the government and their own lawmaking body.



Though officially only an advisory body, the Senate often led the Roman government in acting on issues facing the city and empire.

The most prestigious political body in the Roman Republic was the Senate. This was not a lawmaking assembly, as the U.S. Senate is today; Rome had multiple separate legislatures with different responsibilities. Although the Senate formally only gave advice, its recommendations were usually followed, and the laws it proposed were often enacted.

In 27 BCE, the first Roman emperor, Augustus, took charge of the country following a civil war. For the first few centuries of what was now the Roman Empire, emperors shared power with the Senate and continued many of the governmental practices from the Roman Republic. Historians sometimes refer to this early period as the Principate because an emperor was formally the first among an equal group of citizens (*princeps* is Latin for first). During the late Roman Empire, emperors began to claim more authority and place stricter limits on the powers of the Senate. This era is called the Dominate (from the Latin *dominus*, for lord) to reflect the idea that emperors behaved more like lords, or rulers, over their subjects. The history of Rome shows that just as a **monarchy** can transition toward democracy, a society can also become less democratic over time.

Think Twice

How were the governments of ancient Rome and Greece similar and different?

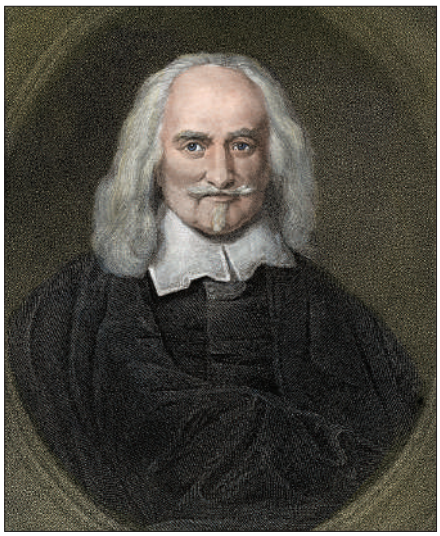
The Social Contract

Over the centuries, many of those who have examined the idea of government have described it as a **social contract** between those who are governed and those who govern. This contract is not an actual document that each citizen signs. It is an agreement that happens when people give up certain rights in exchange for certain protections and benefits. Philosophers who developed this idea include Thomas Hobbes (1588–1679), John Locke (1632–1704), and Jean-Jacques Rousseau (1712–78).

Hobbes, the earliest of these three, considered such an agreement to be essential. In his influential 1651 book *Leviathan*, he explained why a strong central government was necessary. Hobbes claimed that in the "state of nature"—without rules or laws—

Thomas Hobbes's *Leviathan* (1651) takes its name from a gigantic creature mentioned in the Bible. The book's frontispiece depicts a king whose body consists of many of his subjects. This symbolizes the collective will of the people that Hobbes considered to be the basis of government.

PRIMARY SOURCE: HOBBES, LOCKE, AND ROUSSEAU ON THE SOCIAL CONTRACT



Adapted from *Leviathan*, Thomas Hobbes, 1651 CE

Nature has made men equal in the abilities of body and mind. From this equality of ability arises equality of hope in the pursuit of goals. Therefore, if any two men desire the same thing, and they cannot both acquire it, they become enemies and seek to destroy or subdue one another. This pitting of man against man leads to war. . . .

In order to live a contented life and escape the miserable condition of war, men must be subject to a strong, absolute government. The fear of punishment will force them to treat each other fairly and justly, doing to others as we would be done to.

Source: Adapted from Hobbes, Thomas. *Leviathan, Parts I and II*. Indianapolis: Bobbs-Merrill, 1958, pp. 104–105, 139.

Adapted from *Second Treatise of Government*, John Locke, 1689 CE

The law of nature says that all people are equal and independent, and no one should harm another's life, health, liberty, or property.

In order to live together safely, comfortably, and peacefully, men join together to form a community. In this way, they protect their lives and their property. In forming this community, they are making a government,

in which the majority makes the decisions for the group.

Because men enter society to protect their natural rights, when the government tries to take away or destroy the people's life, liberty, or property, the government puts itself in a state of war with the people. When this happens, the people no longer need to obey the government.

Source: Adapted from Locke, John. *Two Treatises of Government*. London: C. Baldwin, 1824, pp. 133, 186, 261.

Adapted from *The Social Contract*, Jean-Jacques Rousseau, 1755 CE

Man is born free, and everywhere he is in chains. . . . This is because Man has given up his freedom in order to preserve his life. . . . This primitive [out-of-date] condition can subsist no longer. . . .

The problem is to find a form of association which will defend and protect the life and property of each member of society while also allowing each member to obey himself alone and remain as free as before. This is the fundamental problem of which the Social Contract provides the solution. . . .

Under the contract, individuals commit themselves completely to the community. Each person puts himself and all his power under the direction of the community, or general will. Joined together, each member is an equally important part of the whole.

Source: Adapted from Rousseau, Jean-Jacques. *The Social Contract and Discourses*. Translated by G. D. H. Cole. New York: Dutton, 1950, pp. 3–5, 13–15.

people are naturally fearful and hostile toward one another. He characterized this situation as a war in which everyone is an enemy to everyone else. In this state, Hobbes said, people tend to live lives that are "solitary, poor, nasty, brutish, and short."

For Hobbes, government existed to diminish fear and hostility. By agreeing to a "contract" with a government that would have authority over them, people could live longer, more comfortably, and more cooperatively. Government could also make life less "brutish"—that is, less focused on basic self-defense and physical survival, the way a wild animal might be. Instead of people constantly struggling to defend themselves, government could set and enforce boundaries between individuals. It would be the job of the government to decide where one person's rights ended and another's began. For Hobbes, like Plato two millennia before, such a government required a king or queen. However, this does not mean that his ideas are irrelevant to modern democracies. In the Europe of Hobbes's day, monarchies, or governments under the authority of a king or queen who ruled for life, were the norm.

John Locke was slightly less negative about life in the "state of nature." He argued that people are not naturally "brutish," as Hobbes said. Instead, Locke wrote, people use reason to think about the consequences of their actions, and they avoid doing things that might provoke others to seek revenge. In Locke's view, a government that abused its power was worse than no government at all and should be rebelled against. In other words, Locke emphasized the possibility that a government, or even an individual ruler, could break the social contract. If this happened, it would release people from having to follow the contract—or free them to form a new one.

The actual term *social contract* comes from Rousseau, who used it as the title of his 1762 book on government and society. Rousseau agreed with Locke: The government would violate the social contract if it failed to serve the people, and the people could then refuse to obey that government. In fact, Rousseau argued, the people would then have a *duty* to rebel against the government.

Rousseau differed from Locke in seeing the social contract as a way that people could achieve well-being for their whole community. For Rousseau, in an ideal society, people would give up all their individual rights for the common good. However, Rosseau recognized that the governments of his day—like those today—did not meet this idealized definition. Although they provided people with some peace and security, they also enforced rights that did not benefit everyone equally. Rousseau pointed to property rights as an example. While fundamental to many societies and governments, property rights tend to help the wealthy more than the less affluent, because

the wealthy have more property to protect. For this and other reasons, Rousseau believed that no existing government perfectly fulfilled the social contract as he imagined it.

Nonetheless, Rousseau helped develop and promote the idea of government as existing in an agreement with the people. As you will read later, when Thomas Jefferson wrote the Declaration of Independence, he expressed this same idea by stating that government derives its power "from the consent of the governed." Like Rousseau and Locke, he also argued that people have the right "to alter or to abolish" governments that no longer serve them.

Think Twice

How did the power of the governed vary according to Hobbes, Locke, and Rousseau?

Modern Governments

Concepts such as the social contract explain a great deal about the origins of the United States government and others around the world. Since before Roman times, the governments of the world have varied in almost every imaginable way. This variety includes everything from how governments are organized and function to which people or groups share power and authority. It also involves how a country's government interacts with its economy.

Types of Governments

Perhaps the oldest form of government is monarchy. Rome was a monarchy both before and after its time as a republic: a kingdom ruled by kings before and an empire ruled by emperors after.

Monarchies still exist today around the world. Most are **constitutional monarchies**, which means that substantial limits to the monarch's power exist. These monarchies are part of a democratic government. The United Kingdom, where the monarch's powers are largely ceremonial—or more symbolic than authoritative—is one widely known example.

However, the world's few absolute monarchies, in which the monarch or the royal family has unchecked political power, are not democratic. They are an example of **autocracy**, or government in which one person has unlimited power and authority. In these **authoritarian** governments, leaders typically do not consider themselves accountable to the people. They allow the governed no role in the lawmaking—or law enforcement—process; any political freedoms that exist are very limited. Authoritarian governments prevent opposition parties from forming, disallow free speech, and reject religious freedom.

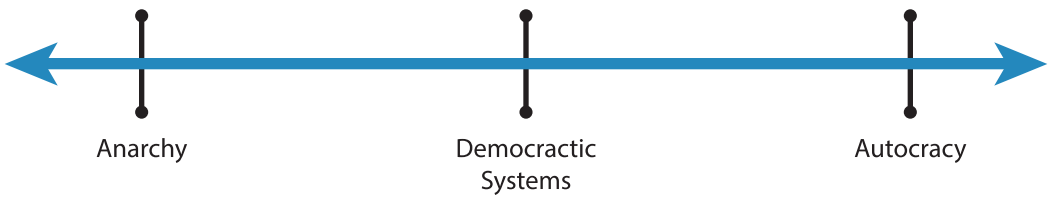
Some regimes place even greater limits on the freedoms of their citizens and are considered **totalitarian**. These centralized governments assert total control over their citizens and

tightly control the national economy, setting them apart from democracies and certain authoritarian countries, which often support freer economies. **Fascism**, a term first coined by Benito Mussolini for his own post–World War I totalitarian government in Italy, is an example of such extreme authoritarianism. Under Mussolini, dissent was severely punished. Extreme devotion to the nation was valued over all else, leading to the complete oppression of individual rights and liberties. Fascism is also characterized by bigotry against minority groups, as seen in Germany in the 1930s and 1940s, when its Nazi government targeted Europe's Jewish population.

Another ancient form of government still in use in some places today is **theocracy**, or rule by a religious leader or group of such leaders. Vatican City, the small country overseen by the Holy See—the government of the Roman Catholic Church, which is led by the pope—is sometimes considered a theocracy. So is Iran, whose highest political authority is a senior Muslim cleric known as the supreme leader. While many other countries also have an official religion, such as Buddhism in Bhutan or Christianity in Zambia, this in itself does not make them theocracies.

Representative democracy, or indirect democracy, is the form of government practiced in the United States and about half of the other countries of the world. This system differs from the direct democracy practiced in ancient Athens. U.S. citizens, for instance, elect representatives and senators to Congress to decide on laws, instead of personally traveling to Capitol Hill each time a decision must be made. In this way, the American system more closely resembles that of republican Rome. In fact, the Founders of the United States used Rome as a model for many of the new country's institutions, as you will soon learn. The result was a **constitutional republic**, or a government in which leaders are elected by the people and carry out their roles as outlined in the country's constitution, or set of principles and laws.

The Political Spectrum



Anarchy, or the absence of government, falls on one end of the political spectrum, while autocracy falls on the other end. Democratic systems, such as the representative democracy of the United States, are in the middle of the spectrum.

There are several reasons that indirect democracy has become a favored form of democracy in modern times. One simple reason is the sheer size (in both land and population) of modern countries. To visualize the problem, imagine New York City as a city-state organized along the Athenian model. New York City, the largest city in the United States, has about eight million adult residents. This is about two hundred times as many people as the citizens who could take part in Athenian assemblies. Convening such a group every time the city made a decision would be extremely impractical.

Think Twice

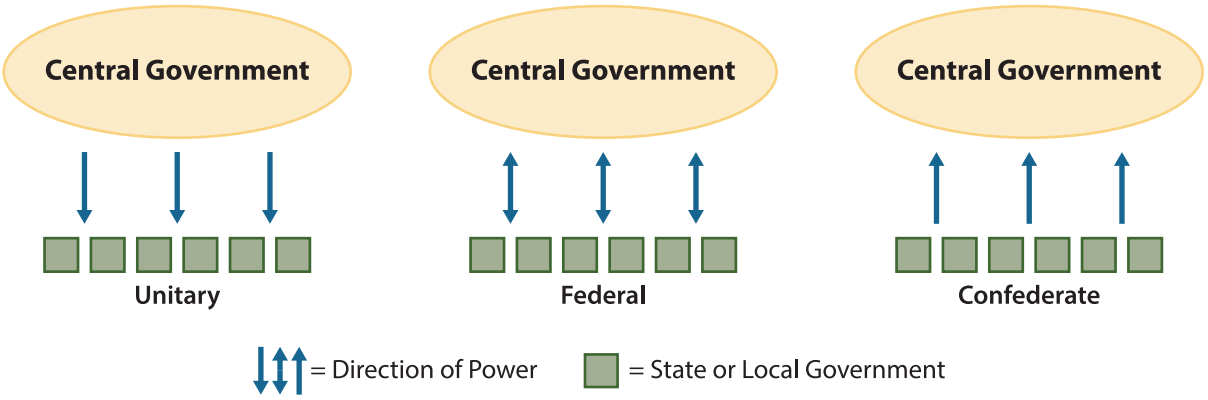
What are key differences between autocratic and democratic governments?

Power Sharing

Governments can also be classified by how and if power is shared. If power is concentrated in the hands of a single person, such as in the case of a **dictator** like Adolf Hitler of Nazi Germany or Josef Stalin of the Soviet Union, **tyranny**—oppressive, harsh power—ensues. This is also true of **oligarchies**, or governments led and controlled by a small group of people. Often, those in such authoritarian governments use the country's military to enforce their rule. In a **unitary** government, decisions are made by a central government; smaller political units within the country (such as states) have relatively little independence. One example of a unitary government is Japan. Although the country is divided into forty-seven prefectures, or districts, the central government has the final say on both funding and administration at the prefecture level. Other countries with unitary governments include Sweden and France.

The United States has a **federal** system of government, in which power is shared between the national and state governments. The U.S. Constitution specifies which powers belong to the federal (national) government and which belong to the states. For instance, individual states do not have the power to declare war, nor do they send diplomats to foreign countries. However, they do operate their own educational systems, collect their own taxes, and have their own laws and courts. Canada has also adopted a federal system, as has India.

Confederate systems give an even greater amount of autonomy to their members and confer less power on the central government. Several Native American societies, including the Haudenosaunee (pronounced /hoo*dee*no*SHOW*nee/; historically, often called the Iroquois), functioned as confederations. The United States itself began as a confederation, as you will read later in this unit. The individual groups were largely independent, but they banded together for purposes of warfare, diplomacy,



Unitary, federal, and confederate systems differ in their degree of centralization.

and other issues that required collective decision-making. Today, very few countries function as confederations. However, some scholars consider international organizations such as the European Union to be a kind of confederation.

Think Twice

What are the different ways power can be shared in a government?

Head of State vs. Head of Government

Governments can also be distinguished by the way they designate two different roles: the head of state and the head of government. The **head of state** represents the country to the rest of the world. This may be a monarch, a president, or a religious or spiritual leader. Heads of state are usually the symbolic leaders of the country. This function can be seen clearly in European countries that have ceremonial monarchies, where the king or queen presides over public ceremonies but does not hold much political power. They may also, depending on the country, hold different executive, diplomatic, and military responsibilities.

A country's head of state is almost always an individual. Historically, some countries, such as the Roman Republic, had multiple heads of state who shared or alternated responsibilities. Today, such arrangements are rare. They sometimes arise in countries that want to ensure representation of diverse communities. For example, Switzerland has four national languages, with communities of speakers in different parts of the country. As a result, the country's head of state is not an individual but a committee called the Federal Council. Its seven members come from and reflect Switzerland's linguistic—and political—diversity. In Bosnia and Herzegovina (/hurts*uh*go*vee*nuh/),

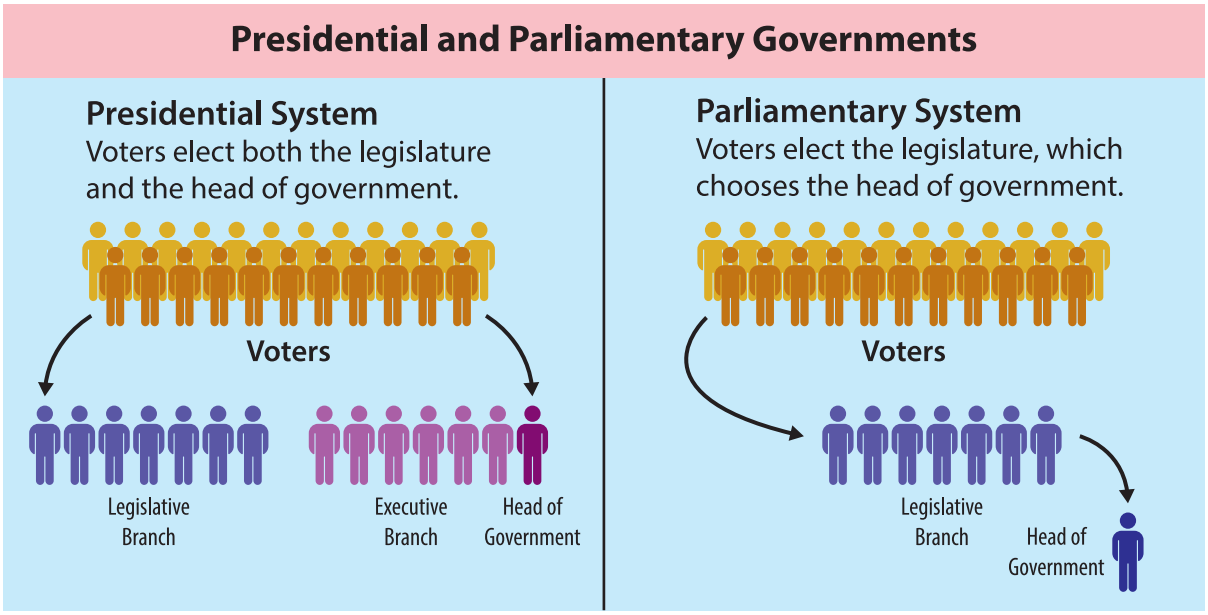
a country with a recent history of interethnic strife, the presidency is shared among three individuals representing the country's major ethnic groups.

The **head of government** is a separate role—and sometimes a separate person—from the head of state. The responsibilities of the head of government normally include leading secretaries or ministers who oversee government policy in many different areas. The different departments typically include such areas as education, trade, health, defense, and transportation, among others.

Depending on how they handle these roles, systems of government can be classified as parliamentary or presidential. In a **parliamentary system**, the people elect the legislature, known as the parliament. The members of the parliament then nominate the head of government, usually called the prime minister. If the parliament later lacks confidence in its leader, it can call a vote to decide whether the prime minister must resign. If such a vote of no confidence succeeds, the prime minister resigns, or an election may even be held for the entire parliament.

Not all countries with parliamentary systems use the title of prime minister; some, such as Germany, call their head of government the chancellor or some other title. Many European countries have a parliamentary system; other examples include Australia, South Africa, and Thailand.

In a **presidential system**, a single person—the president—holds the responsibilities of both the head of government *and* the head of state. The president is elected by



the citizens. Typically, presidential systems also have three branches of government: a legislative branch that makes the laws, an executive branch that puts them into action, and a judicial branch that settles disputes in court. The United States uses the presidential system, as do Argentina, Brazil, Mexico, and the Philippines.

Both parliamentary and presidential systems typically have **political parties**—organized groups of individuals who share ideals and political goals. These parties support candidates for election, including potential lawmakers and, in a presidential system, the president. A country may have one dominant political party (as China does), two major parties (as in the United States), or numerous political parties that form coalitions, or temporary alliances, to govern (as is the case in India). You will learn much more about the impact of political parties on the U.S. government in Unit 5.

Think Twice

What roles do voters play in the selection of the head of government in presidential and parliamentary systems?

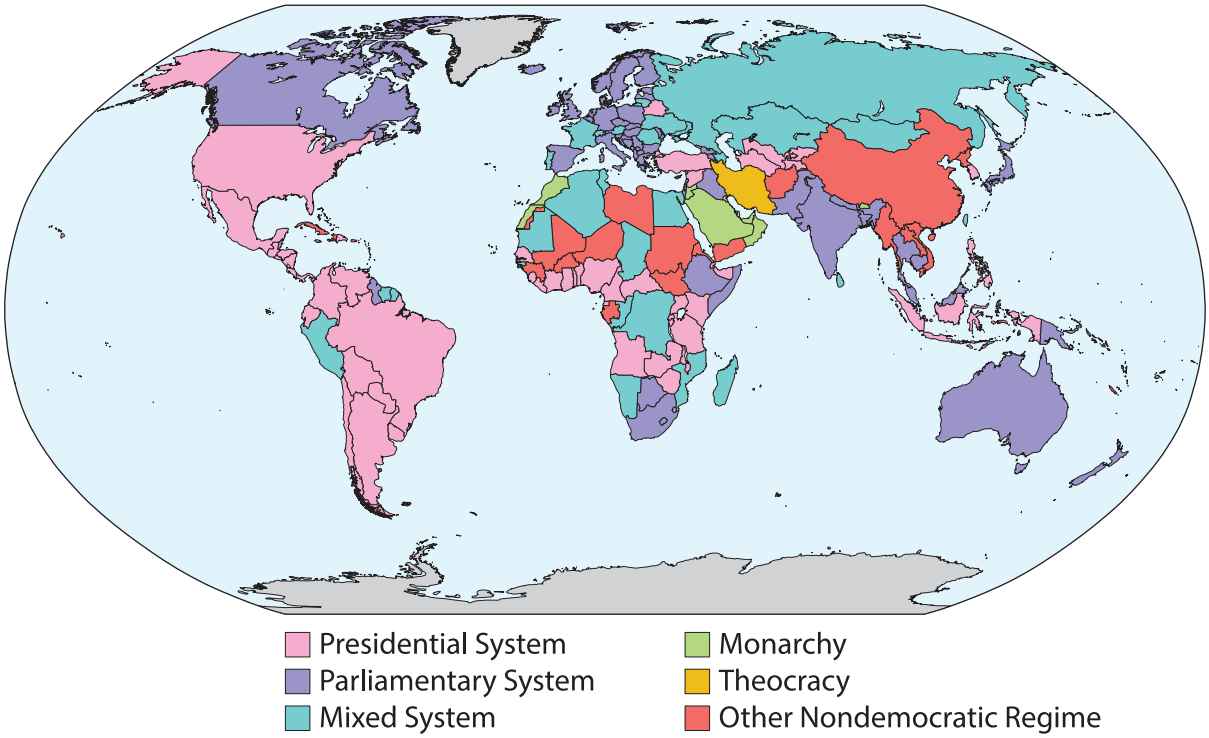
Bicameral vs. Unicameral Legislature

A final distinction among modern governments concerns the legislatures, or lawmaking bodies, of different countries. A legislature can be **bicameral**, meaning it has two distinct "houses" or parts, or **unicameral**, meaning it consists of a single group. The unicameral system is used in New Zealand, in the Scandinavian countries (Denmark, Norway, and Sweden), and in several very small countries such as Malta.

In bicameral legislatures, one part is typically considered the *upper house*. This often consists of a smaller group of more senior politicians who may serve longer terms (in some cases, for life) and represent larger areas of the country. These members may be appointed rather than elected. The *lower house* often has more members who serve shorter terms and represent smaller geographic areas. Members of a lower house are almost always elected to their positions.

Two examples of a bicameral system are the United Kingdom and the United States. In the United Kingdom, the upper house is called the House of Lords, and the lower house is known as the House of Commons. This reflects a historical class division between the aristocracy, or upper class, and the common people. The lords are appointed to their positions for life, while members of parliament (as those in the House of Commons are known) are elected for terms of up to five years. In the United States, the Senate is the upper house, and the House of Representatives is the lower house; members of both houses are popularly elected.

Systems of Government Around the World, 2024



Think Twice

What is the difference between a bicameral legislature and a unicameral one?

Economic Systems

Economic systems are different ways in which governments organize their economies to manage resources, produce goods, and distribute wealth. There are three primary types of economic systems.

Capitalism is an economic system in which individuals and private companies own the means of production and operate them for profit. In this system, businesses compete to offer goods and services, and prices are determined by supply and demand. People have the freedom to choose their jobs, start businesses, and make investments. Capitalism is often called a free enterprise system and contains a free market, in which buyers and sellers are free to make their own decisions.

Socialism, on the other hand, is a system in which the government or the community collectively owns and controls the major industries. The goal of a socialist economic system is to reduce inequality by distributing wealth more evenly across society.

Lastly, **communism** is an economic system in which all property is publicly owned, and the government makes all decisions about

production and distribution. Communism aims to eliminate class distinctions by ensuring that everyone has equal access to resources. Nations run by communist governments have command economies.

Rather than strictly adhering to one type of economic system, many countries have hybrids that involve elements from all three types of economic systems. This includes the United States, as you will soon learn.

Think Twice

Explain the differences in government involvement in capitalism, socialism, and communism.

The United States

The government of the United States was modeled on ancient democracies, including that of Athens. It embodies some of the same ideals that Pericles praised in his funeral speech more than 2,400 years ago. It even has many of the same responsibilities, such as making laws, conducting diplomacy with other governments, and providing for national defense. However, the U.S. government has also developed to address modern problems that were unknown in ancient Athens. For instance, nobody in the age of Pericles had to form a plan to regulate nuclear power, direct air traffic, or provide cybersecurity. Because it has so many areas of responsibility, the American system of government is more complex than those of ancient times.

As you have learned, the United States does not have a direct democracy as Athens did; it has a representative democracy. In that sense, it is closer to (and was also modeled on) the government of republican Rome. Why did the Founders of the United States opt for an indirect democracy? One reason has already been suggested: Even at its creation, the United States was a populous country whose citizens were spread out over a large land

Three Branches of Government

Legislative
(Makes laws)

Executive
(Carries out laws)

Judicial
(Evaluates laws)

PRIMARY SOURCE: FROM *THE SPIRIT OF LAWS*, MONTESQUIEU, 1748

Charles-Louis de Secondat, Baron de Montesquieu, was a French judge, historian, and philosopher. His theory of the separation of powers, which he described in The Spirit of Laws, *has been incorporated into the constitutions of many countries, including the United States.*

In every government there are three kinds of power: legislative, executive, and judicial. The power of the first is to make or change laws. The power of the second is to ensure public security, including making peace or war and defending against invasions. The power of the third is to punish criminals and settle disputes between individuals. Freedom requires that these powers be separated among different people or groups, and not concentrated in the hands of a single person or group.

Source: Adapted from Secondat, Charles-Louis de, Baron de Montesquieu. *The Spirit of Laws*. Vol. 1. Glasgow: D. Niven, 1793, p. 181.

area. Meeting on a hilltop in Washington or Philadelphia was simply not an option.

However, the Founders of the United States had other concerns about direct democracy. They feared that individual rights could easily be trampled by the majority and that disputes between opposing political groups ("factions") could undermine any attempts to find common ground. Some system, they felt, was needed to prevent both the "tyranny of the majority" and the dangers of faction.

As you will read in Unit 2, the government structure the Founders ultimately designed to address many of these concerns is tripartite, meaning it consists of three major branches: the legislative, executive, and judicial branches.

The legislative branch is what many people first think of when they hear *government*: a group of elected officials who gather at the U.S. Capitol Building in Washington, D.C., to make laws. The entire branch is known as Congress and is made up of the Senate and the House of Representatives. The executive branch of the U.S. government is headed by the president. It consists of many agencies whose job is to put the laws into action. The judicial branch of the U.S. government is the federal court system. It interprets the laws made by Congress and decides how to apply them to specific situations.

The Supreme Court, the highest court in the country, has the final responsibility to determine whether a law is in keeping with the Constitution.

Two phrases often used to describe this system are **separation of powers** and **checks and balances**. The incorporation of the separation of powers was the result of additional Enlightenment-era influence on the Founders, who were familiar with the French philosopher Baron de Montesquieu's theory that each of the three branches of government has its own responsibilities, or powers. For example, judges interpret laws but do not make them; legislators create laws but do not enforce them. *Checks and balances* describes the way that each branch keeps the others from making rash decisions or exercising too much power. For example, the president has the ability to veto a bill passed by the legislature, meaning they can stop it from becoming law. The legislature, in turn, can override the veto with a wide enough majority of votes. The president gets to nominate federal judges and thus has some input into the judicial branch—but the legislature must confirm the president's choices. The Supreme Court can check the president or Congress by ruling that laws are unconstitutional, or in violation of the principles of the U.S. Constitution.

In terms of the economy, the United States has what is called a **mixed economy**. This means that while it operates largely on capitalist principles, there is significant government regulation and involvement. For example, the U.S. government creates and enacts laws to ensure fair competition and provide public services like education and health care. It also steps in during economic crises to stabilize the economy. This blend of free enterprise and government oversight attempts to balance the benefits of capitalism with the social goals of regulation, ensuring that the economy serves both individual freedoms and the common good.

Think Twice

What is the basic structure of the U.S. government?

PRIMARY SOURCE: THE FOUNDERS' CONCERNS ABOUT DIRECT DEMOCRACY

The Founders had some seemingly harsh words about democracy, which they did not see as automatically better than the monarchy they were leaving behind. In reading what John Adams and James Madison had to say, it is important to keep in mind that they were speaking of a direct ("pure") democracy, like that of ancient Athens.

James Madison, 1787

It may be concluded that a pure democracy, by which I mean a society, consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized, and assimilated in their possessions, their opinions, and their passions.

John Adams, 1814

Democracy never lasts long. It soon wastes exhausts and murders itself. There never was a Democracy Yet, that did not commit suicide. It is in vain to Say that Democracy is less vain, less proud, less selfish, less ambitious or less avaricious than Aristocracy or Monarchy. It is not true in Fact and no where appears in history. Those Passions are the same in all Men under all forms of Simple Government, and when unchecked, produce the same Effects of Fraud Violence and Cruelty. When clear Prospects are opened before Vanity, Pride, Avarice or Ambition, for their easy gratification, it is hard for the most considerate Phylosophers and the most conscientious Moralists to resist the temptation.

Sources: Adams, John. John Adams to John Taylor, December 17, 1814. Founders Online. National Archives. https://founders.archives.gov/documents/Adams/99-02-02-6371.

Madison, James. *The Federalist*, no. 10. In *The Papers of James Madison*, edited by William T. Hutchinson et al. Vol. 10, *27 May 1787–3 March 1788*, edited by Robert A. Rutland and William M. E. Rachal. Chicago: University of Chicago Press, 1977, pp. 263–270.

Topic 2

Principles and Events That Influenced the Formation of the U.S. Government

Framing Question

What ideas and events influenced the formation of the U.S. government?

In agreeing to the Magna Carta, King John of England accepted an important principle: that the monarch, like those he ruled, had to follow laws.

Setting the Scene

A Great Charter of Rights and Liberties

In a meadow west of London, King John of England rides out to meet with his noblemen. It is 1215 CE, and the king has suffered serious losses in a war with France, leading him to impose steep taxes in an effort to recoup his losses. Already disliked and distrusted, John has further alienated the nobles with these taxes just when he most needs their support. The ***barons****, as the nobles answering directly to the king are called, have been in open rebellion against John. They believe he is trampling on their ancient rights and liberties with both his heavy taxation and his practice of jailing his political enemies without trials.*

*But today the barons have finally agreed to seek peace—*if *King John will accept their demands. The name of their meeting place, Runnymede, comes from medieval English words meaning counsel and meadow, suggesting that this is not the first important gathering to be held here. Still, in 1215 CE, there is nothing that indicates that this frequently flooded patch of land will become an important historic site. Only in later centuries will the full significance of this meeting unfold.*

The barons' demands are presented in a ***charter****. What they ask for, above all, is that there be some recognized limits to the king's power. They want acknowledgment in writing that the monarch cannot deprive people of their rights simply because he wants to. They want disputes to be settled by "the lawful judgment of [their] equals or by the law of the land," not by the whims of one individual ruler. After a great deal of negotiating, the king agrees to the barons' proposal and signs the charter.*

This agreement, now known as the Magna Carta (great charter), does not immediately mend the relationship between the king and the barons. It does not even stop the war for very long; almost immediately, the king and his heirs begin to push back against the idea that there should be any restrictions on their authority. Still, the Magna Carta represents a milestone in the understanding of a ruler's relationship to their people. It states, for the first time in English history, that even the monarch is not above the law.

Historical Influences on the U.S. Constitution and Government

As you have already learned, the Founders of the United States drew on a variety of historical models when deciding how the new country should be governed. The Founders looked all the way back to the Roman Republic. They admired the way that Romans of all social classes had a say in their government and how different parts of Rome's government balanced each other. The Founders realized that the United States—like ancient Rome—was too large and its population too high for everyone to vote personally on every single issue. In setting the rules for their own republic, or system of representative government, they borrowed from Rome's example.

The Founders were also carefully monitoring the second half of the Enlightenment, a period in European history when philosophers championed reason and individual freedom. The Founders knew about, and used, the social contract theory of government when writing the Declaration of Independence. This theory, promoted by Enlightenment philosophers Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, says that all government involves an agreement between the people and those who govern them.

The Founders also embraced Locke's idea that all humans possess **natural rights** of life, liberty, and property. To Thomas Jefferson and those who signed the Declaration of Independence (in which natural rights are described as "life, liberty, and the pursuit of happiness"), it was "self-evident" that if a government violated this agreement, it would lose its right to rule. These ideas would soon make their way into the United States Constitution as well.

However, there are many other influences to consider when examining how the U.S. government took shape. For example, even though American colonists had rebelled against the British crown—something you will read more about soon—the Founders saw many beneficial principles in the law and history of England. The medieval charter called the Magna Carta set limits on the king's power (even though it was the nobles and not the common people who got to enforce those limits). It also established rights, such as the right to a fair trial, that are considered essential today in the United States and other societies. There were other models that originated from the English too, including the Mayflower Compact, created by a group of English settlers in North America, and the English Bill of Rights. This legal document, enacted in 1689, would end up serving as a model for the famous American document of the same name.

A quick look at each of these texts will help set the stage for the early history of the United States government.

Magna Carta

Earlier, you read about how and why the Magna Carta came to be created in 1215 CE. Now it is time to examine the rights that are guaranteed in this important document, as well as how they relate to modern political liberties.

One critical part of the Magna Carta is that the monarch must answer to someone. Specifically, the charter created a council of barons who decided whether the king was respecting their rights and following the rules he agreed to. Although this did not always work well in medieval England, the idea that no one should have unchecked power is a fundamental component of today's democratic societies. For example, as you will learn later, presidents can be impeached, and laws can be vetoed or found unconstitutional.

The Magna Carta also devotes an entire clause, or written portion, to the concept of **due process**. This is the idea that everyone has the right to a fair trial before they are potentially found guilty of or punished for any wrongdoing. The English charter is very detailed on this point: It states that "no free man" shall be punished "except by the lawful judgment of his equals or by the law of the land." (In medieval England, many peasants were not considered "free men"; they were seen as legally bound to the owner of the land that they worked.) Another clause guards against corruption in the legal system, promising not to "sell [or] deny or delay right or justice." The Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution include very similar guarantees, such as the right to a speedy trial by jury and the right to equal treatment before a court of law.

Think Twice

How did legal protections in the Magna Carta influence ideas in the U.S. Constitution?

PRIMARY SOURCE: MAGNA CARTA, 1215 CE

39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

40. To no one will we sell, to no one deny or delay right or justice.

Source: Magna Carta (1215). U.K. National Archives.

The Mayflower Compact

The Mayflower Compact, like the Magna Carta, came about as a short-term attempt to resolve a dispute. Its authors, like those thirteenth-century nobles at Runnymede, may not have had any idea that they were drafting what would become a historically significant legal document. (*Compact* is another word for a formal and usually written agreement between two or more people or groups.) They were a group that had sailed from England on a boat called the *Mayflower* to start a new life in North America. Because they were seeking religious freedom, they are often referred to as **pilgrims**, a word that refers to anyone making a special journey for religious reasons. Those traveling on the *Mayflower* created the compact to solve an immediate problem: Who would be in charge when the ship dropped its anchor in North America in November of 1620?

At first glance, this may seem like something the colonists should have decided before they left England. In fact, they *had* decided. They had obtained a royal patent—a kind of authorization from the king—that said who their leaders would be, where they would settle, and how their colony would be governed. The problem was that they did

This stylized painting shows how the Mayflower Compact represented people from different walks of life, including soldiers, sailors, and farmers.

not land in what is now the southern state of Virginia, as the charter assumed. Instead, rough weather forced them to make an emergency landing on the peninsula known today as Cape Cod, Massachusetts.

If you have ever played a board game with a sibling or friend, what happened next may sound very familiar. Some people aboard the *Mayflower* pointed out that, technically, the charter only stated who would be in charge when the pilgrims made it to Virginia. Because the ship was not headed to that destination anymore, they argued, the charter should not be considered valid. Without it, no one would be in charge, and everyone would be free to do as they liked. As sometimes happens when playing a board game, it was time for a renegotiation of the rules.

This kind of freedom may have seemed appealing, but the colonists had the dangers of cold, hunger, and disease to contend with in an unfamiliar land. Moreover, they had no idea how the local Indigenous populations would react to their arrival. They thus decided

PRIMARY SOURCE: MAYFLOWER COMPACT, 1620

In the Name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, etc. Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. In Witness whereof we have hereunto subscribed our names at Cape-Cod the eleventh of November, in the Reign of our Sovereign Lord King James, of England, France, and Ireland, the eighteenth, and of Scotland, the fifty-fourth, Anno Domini, 1620.

Source: Thorpe, Francis Newton, comp. and ed. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*. Vol. 3. Washington, D.C.: Government Printing Office, 1909, p. 1841.

that if the old charter were invalid, it would be better to set forth some new ground rules for their colony.

Though it was written in the grand style of a formal legal document, the compact made only a few basic promises. It is nowhere near as detailed as the U.S. Constitution or the constitutions of other modern nations. The forty-one men who signed it simply agreed that they would choose their own leaders, enact their own local laws as needed, and then follow those decisions. They would follow the idea of majority rule: Decisions would be made based on what more than one-half of the settlement voted for. They were also careful to state that they were not trying to rebel against or break away from the English king, whom they still regarded as their ruler.

In other words, the *Mayflower* pilgrims agreed to form a self-governing society. This was not a brand-new concept; since the Middle Ages, there had been towns, "free cities," and even trading companies that organized themselves using the ideals of self-government. Still, the Mayflower Compact set a **precedent**—an example for the future of the kind of government that would become the norm in the American colonies and eventually for the new nation of the United States of America.

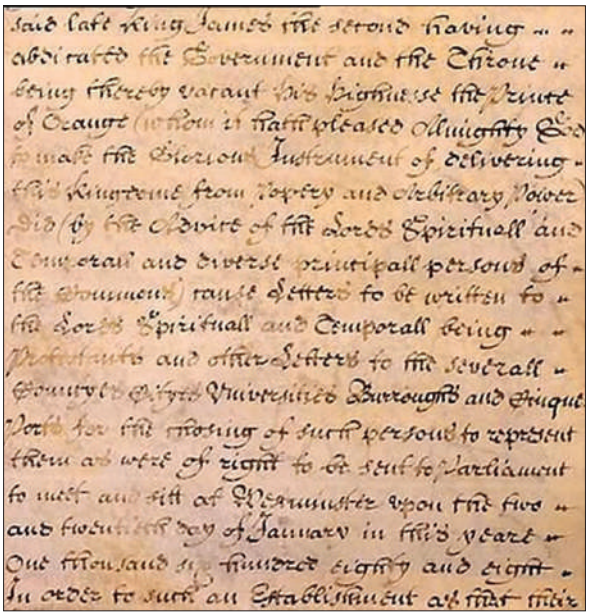
Think Twice

How does the Mayflower Compact reflect what the pilgrims hoped for their life in North America?

English Bill of Rights

In the United States, people may think of the U.S. Constitution when they hear "Bill of Rights." However, there have been many other bills, or lists, of essential rights in the legal history of many different countries. The English Bill of Rights, passed in 1689, served as an important model for the U.S. version a little more than a century later. It was created following a period of turmoil in England. In 1688, King James II had been **deposed**, or forcefully removed, over religious disagreements. James, a Catholic, wanted to restore Roman Catholicism in what was by then a mainly Protestant country. After he was ousted, Parliament invited two new Protestant monarchs to take over the throne in 1689. To do so, the monarchs—soon to be known as William III and Mary II—had to agree to respect certain basic liberties of the people and the Parliament.

The English Bill of Rights spells out these conditions. Many may look familiar when compared to ideas about representation in the Declaration of Independence or to the individual freedoms protected by the U.S. Constitution. The Bill of Rights established freedom of speech for members of Parliament, who disliked having their debates and opinions censored by royal authorities. It also affirmed a right to bear arms, gave Parliament greater control over



The original parchment manuscript of the English Bill of Rights is preserved by Parliament to this day. Like the founding documents of the United States, it is considered an important piece of history to be preserved for future generations.

the army, and restricted the quartering of troops. (*Quartering* means having soldiers live in the homes of private individuals, often at those individuals' expense and discomfort). Finally, the English Bill of Rights established the principle that monarchs cannot tax their subjects without the agreement of their representatives in Parliament.

A close look at the English Bill of Rights also helps explain some of the causes of the American Revolution. Throughout the 1760s and into the 1770s, American colonists saw that even though they were subjects of the king of England, they were not being treated according to the same standard as people living in England. Instead, many of the guarantees in the English Bill of Rights were either ignored or deliberately violated when it came to the American colonies. For example, British soldiers were quartered in private homes in the colonies. In fact, a special law passed by Parliament in 1774—the Quartering Act—deprived colonists of any power to decide when and how this was done. Infamously, colonists also lacked a say in the taxes that were applied to them; the English Parliament passed the laws that controlled taxation, but the colonists did not get to elect representatives to Parliament. This became the basis for the revolutionary rallying cry "No taxation without representation!"

Thus, in some ways, the U.S. Constitution, including the Bill of Rights, was an attempt to secure rights the Founders thought that American colonists should have enjoyed in the first place. Other rights in the Constitution built on or extended those in the English Bill of Rights. For instance, where the English document grants freedom of speech to elected members of Parliament, the U.S. version universally applies this right to the nation.

Think Twice

Identify two ways the English Bill of Rights influenced the founding documents of the United States of America.

PRIMARY SOURCE: ENGLISH BILL OF RIGHTS, 1689

The Bill of Rights 1689 (sometimes known as the Bill of Rights 1688) was an act of the Parliament of England that set out certain basic civil rights and clarified who would be next to inherit the Crown. It remains a crucial statute in English constitutional law.

Whereas the late King James the Second, by the assistance of diverse evil counselors, judges, and ministers employed by him, did endeavor to subvert and extirpate [destroy] the Protestant religion and the laws and liberties of this kingdom. . . .

That the pretended power of suspending of laws or the execution of laws by regal [royal] authority without consent of Parliament is illegal. . . .

That levying money [raising taxes] for or to the use of the Crown by pretense of prerogative without grant of Parliament . . . is illegal. . . .

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law. . . .

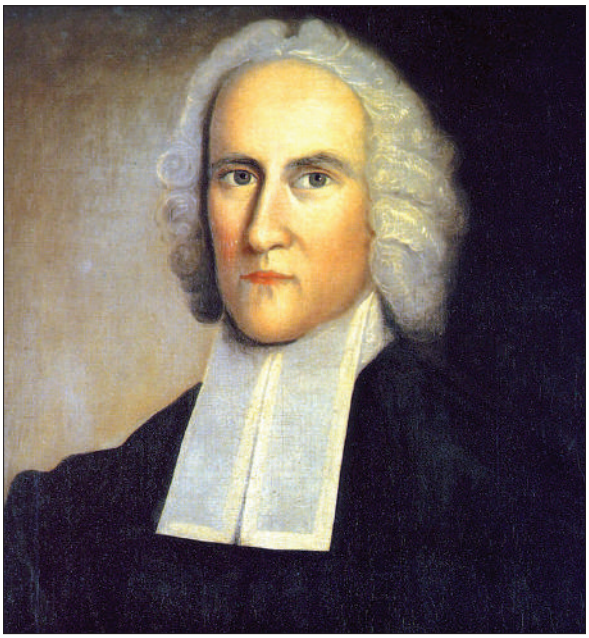
That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. . . .

Source: Adapted from Bill of Rights (1688). U.K. National Archives.

The Great Awakening

Another influence on the Founders' decisions was not a historical, legal, or governmental document but a popular religious movement. The Great Awakening took place in early eighteenth-century North America against a backdrop of wider religious change in England and throughout much of Europe. Its leaders were Protestant preachers who sought to reach their listeners emotionally, not through academics or theology. The sermons preached by these ministers inspired many who encountered them. Some, such as those of Massachusetts colonist Jonathan Edwards (1703–58), were written down and



Known for his fiery sermons, Jonathan Edwards was a leading figure of the Great Awakening.

circulated in print. Leaders of the Great Awakening largely rejected the idea of hierarchy within the church and maintained that all people—or at least all Christian believers—were equal.

The Great Awakening paved the way for the American Revolution in a manner that is harder to pinpoint than the wording in a specific law or agreement. It helped create communities that were open to the ideas of political equality and self-government. More than that, the Great Awakening profoundly changed the culture of the American colonies in ways that extended beyond private religious belief. For instance, one effect of the Great Awakening was to create many new, relatively small religious **denominations** and communities. Because they had different beliefs and practices from established churches, these communities naturally desired and understood the value of religious freedom. Another effect was to help instill an appreciation for democracy—and to unite the distinct colonies and then states. Ministers of the Great Awakening taught that all people were equal under God's sight—an idea that, in a political context, would surely be called democratic. The ministers, thought leaders, and congregations that emerged from the Great Awakening often became staunch supporters of the American Revolution. Indeed, freedom of religion would be among the key liberties established by the early U.S. government.

Think Twice

How did the Great Awakening develop ideas later found in the U.S. government?

U.S. Government Under the Articles of Confederation

The U.S. Constitution went into effect in 1789. Before that, the newly created United States was governed by the Articles of Confederation. Sometimes called the country's "first constitution," these articles formally joined the thirteen former colonies under the name "the United States of America." The articles sketched out the

basic relationship between the thirteen individual states and the United States as a whole. Compared to the Constitution, the Articles of Confederation left the states largely independent of one another except in matters of war and international diplomacy.

Establishing the United States

By the mid-1770s, after years of petitions and protests, leaders in the American colonies no longer believed that they could gain fair treatment from the British Crown via such means. A military conflict seemed unavoidable. The beginning of the American Revolution is often dated to April 19, 1775, when British troops engaged a colonial **militia** in the Massachusetts towns of Lexington and Concord. As fighting continued and war went from a possibility to a certainty, colonial leaders decided that they should formally proclaim their independence from Britain. Often, these leaders are known to history as the Founders or Founding Fathers. This term includes those from throughout the colonies who created and signed the country's founding documents and who shaped and led its early government.

In the Declaration of Independence, the Founders published their reasons for revolting against British rule, including many examples of mistreatment by the king and his officers. This list is often referred

PRIMARY SOURCE: DECLARATION OF INDEPENDENCE, 1776

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. . . . When a long train of abuses and usurpations, pursuing invariably the same Object evinces [makes clear] a design to reduce them under absolute Despotism [unjust rule], it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

Source: The Declaration of Independence (1776). U.S. National Archives.

to as a list of grievances. One example of a grievance, or complaint, is grievance 17: "For imposing taxes on us without our consent." In parts, the language of the Declaration of Independence is reminiscent of the English Bill of Rights. Those rights that the colonists asserted, such as representation, are ones that they saw as being taken for granted in England.

The Declaration of Independence also let the rest of the world know that its signers considered themselves part of a new country, as legitimate as any other nation. The authors said that they made their declaration out of "a decent respect to the opinions of mankind." They acknowledged, in other words, that to win allies in the American Revolution, and later on in peacetime, they would have to convincingly explain *why* they revolted. Drafted in June 1776, the Declaration of Independence was formally adopted on July 4, and copies were sent throughout the colonies the following day.

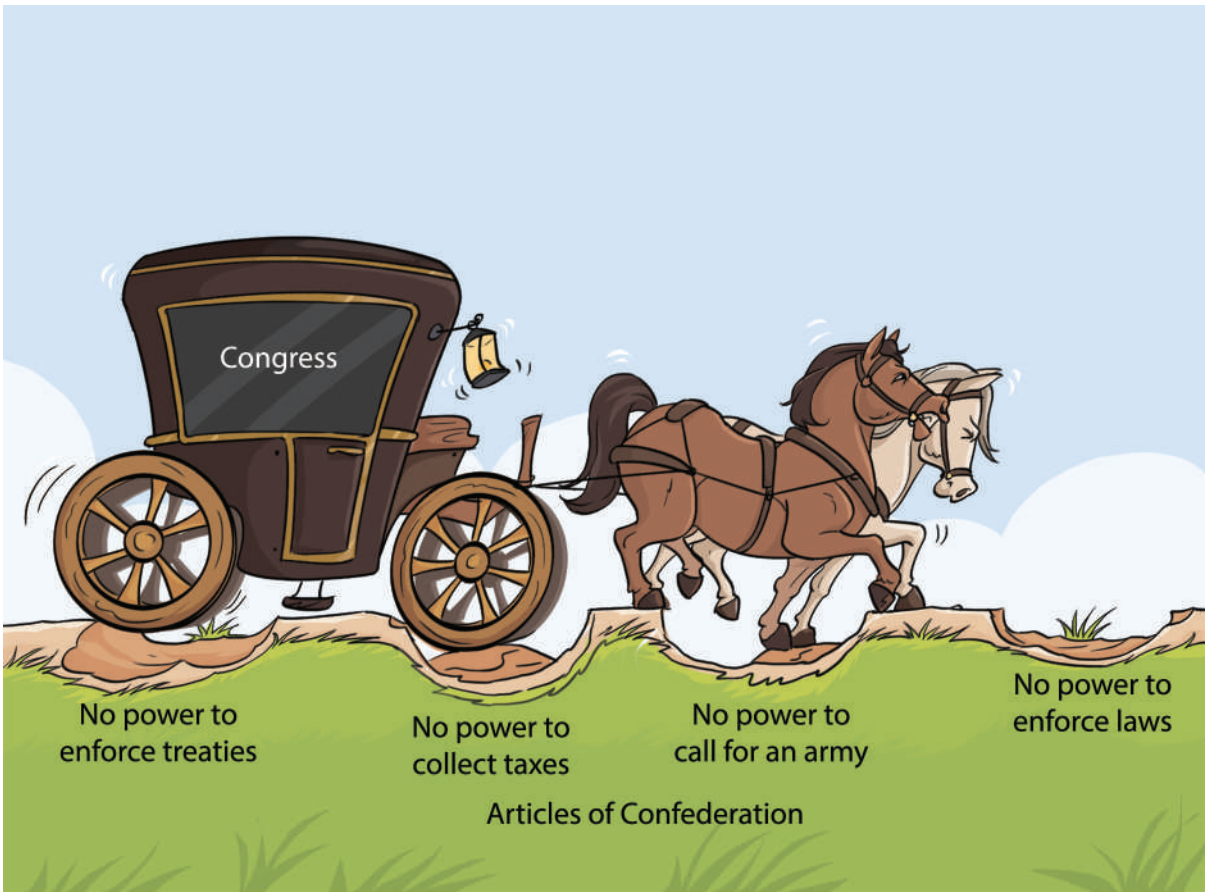
The Declaration of Independence was what its name promises: a declaration. It did not try to answer the question of how the former colonies should govern themselves. For this task, a committee representing all thirteen colonies was appointed, with John Dickinson

Among the signers of the Declaration of Independence were many leaders of the early United States, including Thomas Jefferson, John Adams, Benjamin Franklin, and John Hancock.

of Delaware as its president. Led by Dickinson, this committee worked from the summer of 1776 to the fall of 1777 to create the Articles of Confederation. This provided the fledgling country with a basic blueprint for self-government.

Although the Articles of Confederation took more than a year to draft, it took four years more—and a great deal of debate—before they were finally ratified in 1781. A key issue to be resolved was how the states would relate to one another. In what ways would they remain independent, and in what ways would they function as a single country? How would leaders be chosen, and how would disputes between states be resolved?

There was no single, obvious answer to these questions. In fact, in the previous topic, you learned that the world's governments vary a great deal in how they distribute power. At one end of the spectrum are unitary systems, where the central government has all or nearly all the



Under the Articles of Confederation, the powers of Congress were very limited, resulting in a bumpy, arduous start for the new government.

PRIMARY SOURCE: THE ARTICLES OF CONFEDERATION, 1777

The Articles of Confederation remained in effect from 1781 to 1789, when they were replaced by the U.S. Constitution.

Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article I.

The Stile of this confederacy shall be, "The United States of America."

Article II.

Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III.

The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever. . . .

Article V.

For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November. . . .

In determining questions in the united states, in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendence on congress, except for treason, felony, or breach of the peace. . . .

Source: Articles of Confederation (1777). U.S. National Archives.

power. At the other end are confederations, in which a relatively weak central government has specific, limited powers. The modern United States has a federal system of government, which is somewhere in the middle: States make and implement many decisions for themselves, but the central government has substantial power and significant responsibilities.

True to their name, the Articles of Confederation treated the United States as a confederation, and the individual states retained many of the powers of government. The articles themselves could not be amended unless every state agreed to the change. The central government could not carry out some roles considered important for the federal government today. For instance, it could not raise taxes to support a national military. It could not effectively intervene in economic matters either—including how business was conducted across different states, all of which had their own currency.

Congress under the Articles of Confederation was also very different from its modern form. The legislature was unicameral, with no separate House and Senate. While some states had more representatives than others in the legislature, each state got one vote, regardless of its population. Moreover, members of that early Congress were expected to meet only once a year in November, whereas today, being a legislator is a full-time job.

Think Twice

How did the purposes of the Declaration of Independence and the Articles of Confederation differ?

Mutiny and Rebellion

It was not long before the new American confederation faced some serious tests. The lack of paper money and the scarcity of gold and silver hampered the newly independent economy. Many of those who had fought in the American Revolution were not paid in full for their service. In turn, they struggled to pay their own personal and business debts. In

The State House in Philadelphia, now better known as Independence Hall, was the site of many important events in the early history of the United States. In 1787, it hosted the meeting that became the Constitutional Convention. It was also the home of the Pennsylvania government, whose capital was in Philadelphia until 1799.

June 1783, a group of these Continental Army soldiers formally demanded their back wages but were ignored by Congress. They gathered at the State House in Philadelphia—at that time, the nation's capital—and ultimately forced Congress to flee. As a result of these events, now called the Philadelphia Mutiny, the capital of the United States was moved first to Princeton, New Jersey, then to other areas, including Annapolis, Maryland, and New York City. Although the mutiny lasted less than a week, it showed how vulnerable the central government was and how little control it had over the military.

Many Continental Army veterans were farmers who had to borrow money to pay for the goods necessary to run their farms. When these farmers-turned-soldiers failed to pay their debts, the courts often sided with those who had loaned the farmers money. Soon veterans in places other than Philadelphia began to protest—peaceably at first, then violently. Among them was Daniel Shays, a veteran whose property was threatened with seizure, who first took part in peaceful demonstrations in Massachusetts during the summer of 1786. Shays distinguished himself as a leader in those early protests

From the American Revolution to the Constitution

and soon gathered a following of several hundred people. In the late summer and fall of 1786, "Shaysites" disrupted the courts in Northampton, Springfield, and other Massachusetts towns. That winter, the Shaysites' protest actions became more violent, and by January 1787, there were armed conflicts between rebels and the state militia in which people were killed. A final bloody battle, fought in February at Petersham, spelled the end of this short but intense rebellion.

Together, the Philadelphia Mutiny and Shays's Rebellion exposed significant weaknesses in the government created by the Articles of Confederation. These events showed that the central government did not have the resources it needed to operate effectively. It had no power to raise funds via taxation to pay its soldiers, which contributed to both crises. Moreover, Congress was unable to prevent or **mitigate** economic crises of the kind that had led to Shays's Rebellion. Additionally, under the articles, Congress did not control the military except in wartime, leaving the central government with little to no protection from rebellions and uprisings. When individual states, or citizens of those states, chose not to cooperate with Congress, it had no effective means of enforcing its decisions and the rule of law. For these reasons, leaders in Congress and elsewhere came to believe that the states were too independent from one another to join forces when needed. They decided that a different system of government, with more power at the national level, would be necessary if the United States was to survive. To create one, they set about organizing a meeting that would become known as the Constitutional Convention.

Think Twice

What were the major challenges of the Articles of Confederation?

Framing the U.S. Constitution

In May 1787, delegates from across the United States met at the State House in Philadelphia to discuss revisions to the Articles of Confederation. Eventually, they decided to replace the articles altogether. Their secret deliberations, known as the Constitutional Convention, lasted more than three months, with intense debate on many issues. Although there was general agreement that the articles needed to be improved on, there were serious disagreements on almost every other important issue. The new constitution that emerged from this convention, to be signed in September 1787 and officially ratified in 1788, reflects a great deal of compromise between states with very different populations and political concerns.

The Constitutional Convention

Altogether, fifty-five delegates from twelve states attended the convention. (Rhode Island was the only state that did not send any delegates.) Among the better-known attendees were Benjamin Franklin (representing Pennsylvania), Alexander Hamilton (New York), and George Washington and James Madison (both from Virginia). The states they represented varied in many ways, which would influence the shape of the United States government. Some, such as Virginia and Pennsylvania, were large and populous, while others, including Delaware, were much smaller in terms of both land and population. States also had different concerns about trade and foreign policy. For example, those in the South were more strongly affected by Spain's colonial control of New Orleans and thus were concerned with commercial traffic along the lower Mississippi River. States in the North, where transatlantic, or global, trade was more important, were more open to negotiating with Spain.

One major concern for delegates from all twelve states present at the convention was how to best organize the national legislature. Madison advocated for a bicameral (two house) system with a Senate and a House of Representatives. In his Virginia Plan for the government, representation in both houses of Congress would be proportional to the population of each state. Thus, states with larger populations, such as Virginia, would have more representation in Congress than smaller ones. Opposing this plan was William Paterson of New Jersey, who argued for a unicameral (one house) legislature with equal representation for each state. In this system, states would have equal representation in Congress. As might be expected, the Virginia Plan was favored by states with large populations, which would benefit from proportional representation. Delegates from smaller states feared that proportional representation would diminish their power in Congress, and they generally supported the equal representation of the New Jersey Plan.

A related issue concerned how powerful the national government would be. The Virginia Plan called for a federal government that could override state laws. The New Jersey Plan called for state lawmaking to be independent of federal supervision. In the notes Madison took during the convention, it is revealed that he was eager to create a strong federal government that could overrule the states, meaningfully resolve disputes among them, and—when necessary—force them to cooperate for the common good. Support for this idea fell along the large-state/small-state divide. Because large states expected to have more influence in Congress, their delegates were less opposed to a strong federal government. But small-state delegates recognized that with less representation

PRIMARY SOURCE: JAMES MADISON'S NOTES ON THE CONSTITUTIONAL CONVENTION, MAY 29, 1787

James Madison's notes made during the debates about the adoption of the Constitution in Philadelphia in 1787 are an important source of information about the diversity of opinion on matters concerning the proposed constitution that existed among the colonies at the time.

In speaking of the defects of the confederation he [Edmund Randolph] professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science, of constitutions, & of confederacies. . . .

He then proceeded to enumerate [list] the defects.

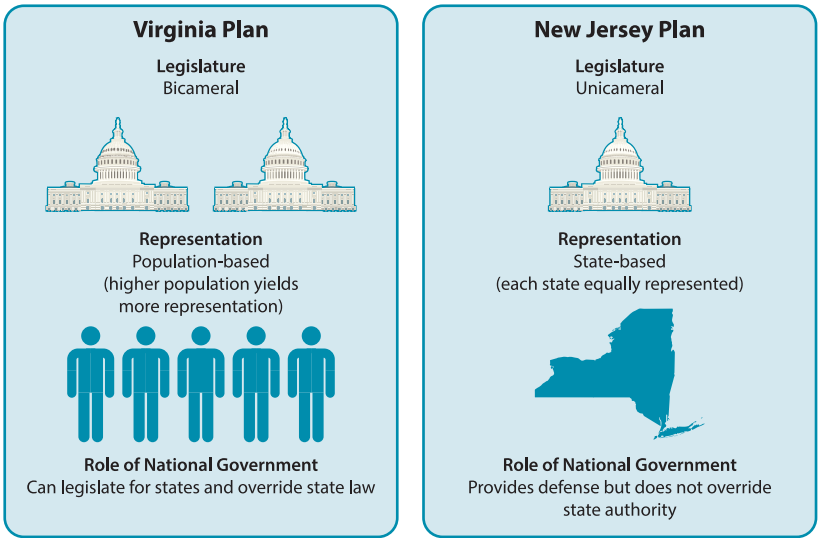
1. that the confederation produced no security against foreign invasion. . . .
2. that the federal government could not check the quarrels between states. . . .
3. that there were many advantages, which the U. S. might acquire, which were not attainable under the confederation—such as a productive impost—counteraction of the commercial regulations of other nations. . . .
4. that the federal government could not defend itself against the encroachments from the states. . . .

Source: Madison, James. *The Journal of the Debates in the Convention Which Framed the Constitution of the United States, May–September 1787.* Edited by Gaillard Hunt. Vol. 1. New York: G. P. Putnam's Sons, 1908, pp. 14–15.

in Congress, they would be vulnerable to federal interference.

The ultimate result of months of debate was the Connecticut Compromise, also known as the Great Compromise. This new design combined ideas from both plans. The legislature under this compromise is the model that the United States Congress still follows today: a House of Representatives where each state is assigned a number of representatives based on population, and a Senate in which each state is represented equally by two senators. The relationship between the federal and state governments also represents a compromise between Madison's and Paterson's ideas, though it is

Two Plans for a New Federal Government



The Virginia Plan and the New Jersey Plan represented different states' desires for how the new federal government would exercise its power.

State Support for the Virginia and New Jersey Plans

The population data shown in the map comes from the country's first census, conducted in 1790.

PRIMARY SOURCE: THE VIRGINIA PLAN FROM JAMES MADISON'S NOTES ON THE CONSTITUTIONAL CONVENTION, MAY 29, 1787

Note that in this draft of the Virginia Plan, many specifics are yet to be decided, such as the minimum age of members of Congress and the length of their terms.

Resolutions proposed by Mr. Randolph in Convention

May 29, 1787

1. Resolved that the Articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty and general welfare." . . .

3. Resd. that the National Legislature ought to consist of two branches.

4. Resd. that the members of the first branch of the national Legislature ought to be elected by the people of the several States every ___ for the term of ___; to be of the age of ___ years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to public service. . . .

5. Resold. that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of ___ years at least; to hold their offices for a term sufficient to ensure their independency. . . .

7. Resd. that a National Executive be instituted; to be chosen by the National Legislature for the term of ___ years . . . ; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation. . . .

9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals [courts], and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour. . . . That the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all Piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested . . .

Source: Madison, James. "The Virginia Plan, 29 May 1787." Founders Online. U.S. National Archives. https://founders.archives.gov/documents/Madison/01-10-02-0005.

PRIMARY SOURCE: THE NEW JERSEY PLAN OR PATERSON RESOLUTIONS, 1787

That, in addition to the legislative powers vested in congress by the articles of confederation, the legislature of the United States be authorised to make laws to regulate the commerce of the United States with foreign nations, and among the several states in the union; to impose duties on foreign goods and commodities imported into the United States, and on papers passing through the post office, for raising a revenue, and to regulate the collection thereof, and apply the same to the payment of the debts due from the United States, and for supporting the government, and other necessary charges of the Union. . . .

That the laws of the United States ought, as far as may be consistent with the common interests of the Union, to be carried into execution by the judiciary and executive officers of the respective states, wherein the execution thereof is required.

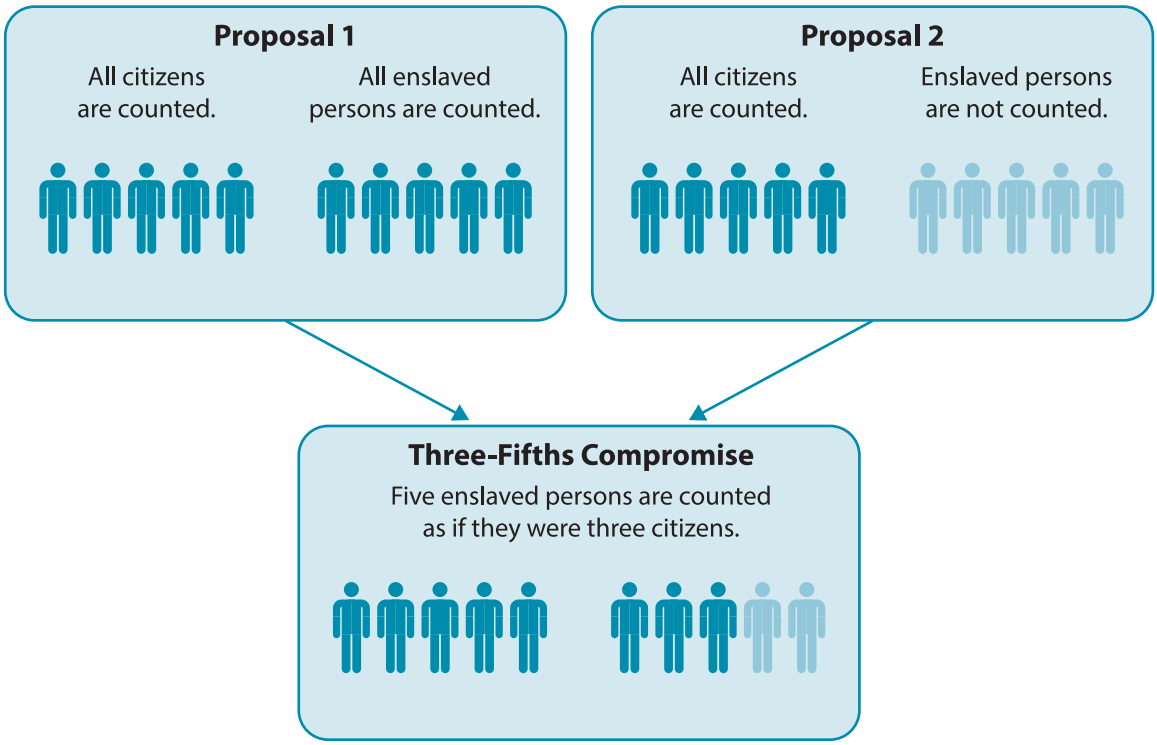
That the legislature of the United States be authorised to institute one supreme tribunal, and such other tribunals as they may judge necessary for the purpose aforesaid, and ascertain their respective powers and jurisdictions.

Source: Farrand, Max, ed. *The Records of the Federal Convention of 1787.* Vol. 3. New Haven, CT: Yale University Press, 1911, pp. 615–616.

arguably closer to the Virginia Plan than to the New Jersey Plan. Under the Supremacy Clause of the U.S. Constitution, which you will study in detail in the next unit, federal laws (including the Constitution itself) can take precedence over state laws (including state constitutions). This clause can be seen in action when, for instance, the Supreme Court of the United States—the highest federal court in the United States—rules that a state law is unconstitutional, or goes against federal law as outlined in the Constitution.

Another area of disagreement concerned the status of enslaved persons in deciding how states would be represented. Although enslaved persons were not treated as citizens and were not allowed to vote, they composed a large proportion of some states' populations. When it came time to count each state's population for the purpose of assigning representatives, delegates from states with larger enslaved populations wanted enslaved persons to be counted just as free persons were. Delegates from states

with fewer enslaved persons, meanwhile, argued that only a state's free population should count for this purpose. Ultimately, the convention adopted a system called the Three-Fifths Compromise, in which each state's population was calculated by adding its free population to a number that represented three-fifths of its enslaved



PRIMARY SOURCE: ARTICLE I, SECTION 2: THE THREE-FIFTHS COMPROMISE

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

Source: The Constitution of the United States. U.S. National Archives.

population. This system was repealed with the 1868 ratification of the Fourteenth Amendment, which granted citizenship to anyone born in the United States—including formerly enslaved persons.

Think Twice

Explain how the Great Compromise helped resolve disagreements over representation in the legislature.

The Electoral College

The Constitutional Convention also had to decide how the president and vice president would be elected. Many attendees felt that Congress should vote for who should fill these offices, while others felt the president and vice president should be elected directly by the people. The delegates' solution was to create a body called the **Electoral College** that would represent the voters of each state. Specifically, each state would have as many "electors" as it had senators and representatives. Thus, the Great Compromise system of representation—not quite proportional, not quite equal—would also apply to presidential elections. The electors would be specially chosen for each election (they were not permanent officeholders) and would vote for a presidential candidate on their state's behalf. At the time, whoever obtained a majority of votes became president, and whoever obtained the second-most votes became vice president. If no candidate obtained a majority, the House of Representatives chose a winner from the leading candidates.

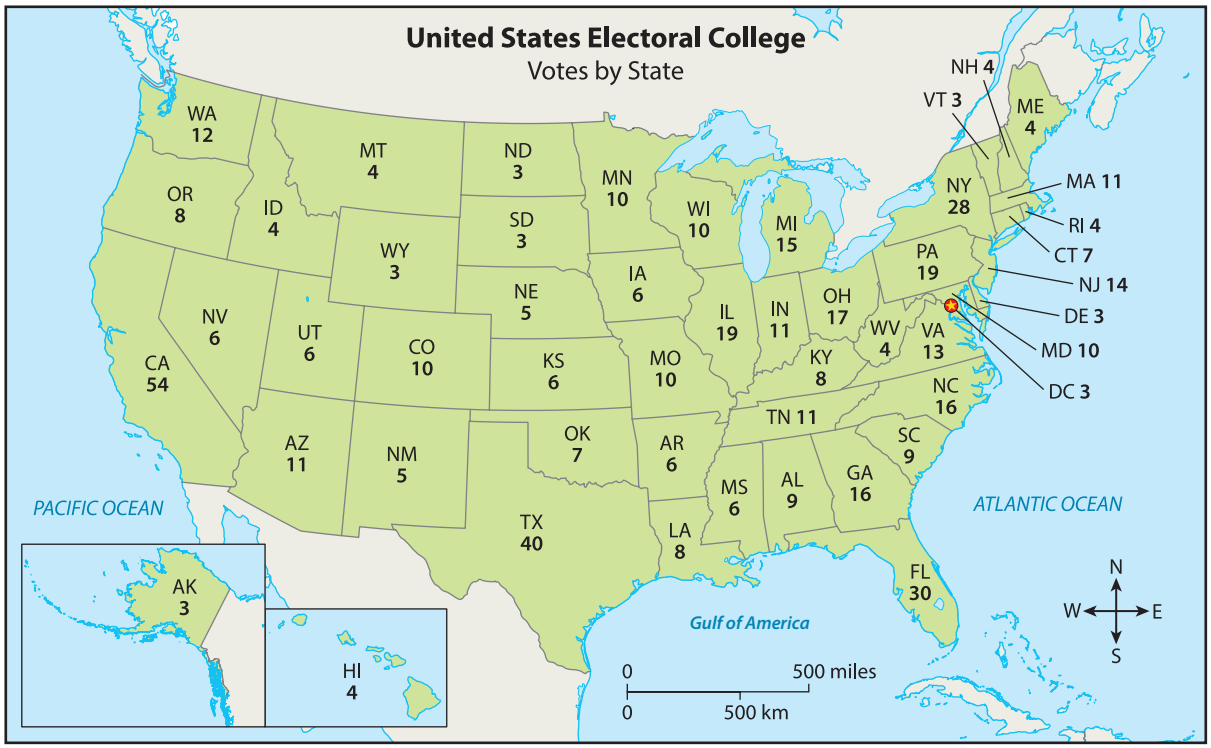
The Electoral College system is still in place today, and for the most part it operates as it did when it was created. However, the proportion of electors per state has changed over the years as new states have entered the union and populations have grown and shifted. Some other aspects of the electoral system have also been adjusted over time. One important early change was the Twelfth Amendment, ratified in 1804, which made it so that the electors voted separately for the president and the vice president, instead of having the vice president be the runner-up in the presidential race. This led to the now-familiar practice of presidential candidates choosing a running mate: a vice presidential candidate with whom they campaign and hope to serve.

Think Twice

What is the relationship between voters and the electors in the Electoral College?

Protecting Rights and Liberties

The delegates' main job in creating the Constitution was to spell out the structure and responsibilities of the federal government, including its relationship to the states and



In forty-eight U.S. states, electors cast their votes for the candidate who won the popular vote in their state. In Nebraska and Maine, two electoral votes are allocated to the winner of the statewide popular vote, and the rest are allocated to the candidate who won the popular vote in each congressional district.

The Twelfth Amendment and Electoral Reform

How did we get from the "winner and runner-up" system to one where candidates run in pairs? In the earliest days of the United States, organized parties had not yet come to dominate American politics. Political leaders expected that a candidate and their opponent, whatever their differences, could cooperate well enough to serve together as president and vice president. Following the election of 1796, John Adams and his rival Thomas Jefferson did just that.

By 1800, however, party politics had taken root in the United States. Thus, when Jefferson and his running mate Aaron Burr received the same number of votes, it was unclear who should be president and who should be vice president. Split between supporters and enemies of Jefferson, the House of Representatives voted thirty-five times before finally declaring him the third U.S. president. This controversial election led directly to the passage of the Twelfth Amendment.

individuals. However, as you will learn in more detail later, the framers of the Constitution also worked to safeguard specific rights and liberties, both for people and for the states. For example, Article I, Section 9, defends **habeas corpus**, the rule that a prisoner can

or should be brought before the court. This is an important protection against people being imprisoned unlawfully or for long periods without trial. This same section prohibits **bills of attainder**, which are legal acts declaring people guilty and punishing them without trial. These had been common in English law, and the Founders considered them to be incompatible with the right to a fair trial. Finally, Article I, Section 9, forbids **ex post facto laws**, which punish people retroactively by criminalizing actions that were legal at the time they were performed. Thus, under the Constitution, an action cannot be made illegal retroactively, or after the fact.

Other important legal rights are defined in Article III. Section 2 of that article stipulates that anyone accused of a crime has a right to a trial. Section 3 defines **treason** and sets special requirements for convicting anyone of that crime. Concern about overly broad treason laws was likely fresh in the minds of those attending the Constitutional Convention, many of whom had been called traitors for protesting against British rule. This section also clarifies that if a person is convicted of treason, their family and descendants are not to be punished.

As you will read shortly, some of the delegates at the Constitutional Convention—and many people who did not attend—were not satisfied with the guarantees of the rights of individuals as stated in the Constitution. They called for a Bill of Rights that would declare, in clear and positive language, what liberties belonged to individuals and states. Many of the freedoms considered central to American life today, such as freedom of speech and religion, equal protection, and due process, originated in the Bill of Rights.

Think Twice

Which rights and liberties were specifically protected in the Constitution as it was originally written?

The Struggle to Ratify the U.S. Constitution

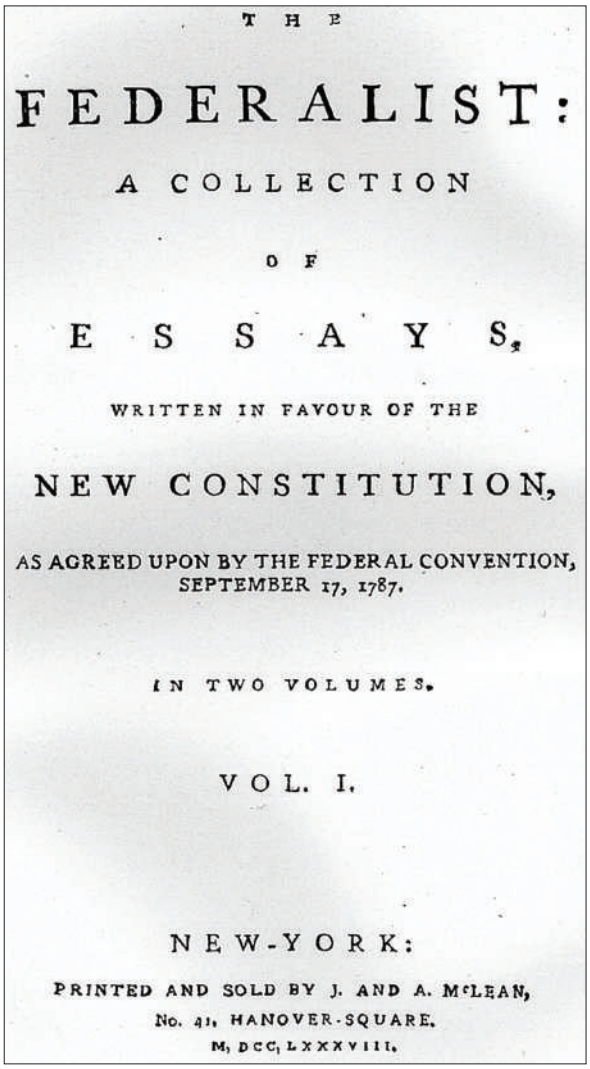
The delegates drafted and signed the Constitution in September 1787, but their work was far from over. They still faced the challenge of getting it **ratified**, or formally agreed to, by at least nine of the thirteen states. Legislators in those states varied greatly in their attitudes toward the Constitution. Like the delegates themselves, they worried about whether it would give their state enough representation in, and autonomy from, the federal government. A few states—Delaware, Pennsylvania, and New Jersey—ratified the Constitution by the end of 1787. Georgia, Connecticut, and Massachusetts followed in the winter of 1788, bringing the total to six of the needed nine states. From there, progress slowed.

Federalists vs. Anti-Federalists

A key issue—and a roadblock to ratification—was whether the new Constitution had gone too far in strengthening the federal government. Although many agreed that the Articles of Confederation had not gone far enough, some now felt that the framers of the Constitution were making the opposite mistake. Politicians who wanted the Constitution ratified had to address these objections, either by winning the public over to their side or by attaining yet another compromise.

The Federalists, those in favor of the Constitution, argued that the Constitution of 1787 should be ratified and that a strong central government was necessary for the survival of the United States. This faction's leaders included Alexander Hamilton, James Madison, and John Jay, who together published a series of articles called *The Federalist Papers* to argue their case. In these articles, widely circulated via newspapers in New York and then in book form, the authors analyzed and defended the proposed Constitution and tried to calm worries about excessive federal power. They argued that the Constitution contained appropriate checks and balances to keep the federal government from getting out of control, too large, or too powerful.

The Anti-Federalists objected and felt that the Constitution made the federal government too strong. They feared that such a government would override the powers of state and local authorities, ultimately diminishing the freedom of the people. To prevent such an outcome, the Anti-Federalists argued that a Bill of Rights was necessary. Rather than relying on interpretations of existing articles in the Constitution, such a document would positively set forth the rights of individuals and states while establishing


THE
FEDERALIST:
A COLLECTION
OF
ESSAYS,
WRITTEN IN FAVOUR OF THE
NEW CONSTITUTION,
AS AGREED UPON BY THE FEDERAL CONVENTION,
SEPTEMBER 17, 1787.
IN TWO VOLUMES.
VOL. I.
NEW-YORK:
PRINTED AND SOLD BY J. AND A. McLEAN,
No. 41, HANOVER-SQUARE.
M, DCC, LXXXVIII.

The Federalists were ultimately successful in securing ratification of the Constitution.

PRIMARY SOURCE: *FEDERALIST* NO. 10, 1787

The authors of The Federalist Papers *wrote under the name Publius, meaning public one.*

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. . . .

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. . . .

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. . . .

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it.

Source: Madison, James. *Federalist* no. 10. Federalist Papers: Primary Documents in American History. Library of Congress.

clear limits on the federal government's powers. One leading Anti-Federalist who contributed several pieces of writing to the debate was Patrick Henry, whom you read about at the beginning of this unit.

Ultimately, the Federalists prevailed. On June 21, 1788, New Hampshire became the ninth state (after Maryland and South Carolina) to ratify the Constitution. Anti-Federalist holdouts Virginia and New York signed soon afterward. (You will read about Rhode Island's decision at the beginning of Unit 2.)

Yet the Anti-Federalist cause was certainly not in vain. By raising concerns about federal overreach, the Anti-Federalists helped bring about the swift adoption of the Bill of Rights. Proposed in 1789 and ratified in 1791, this set of the first ten constitutional

PRIMARY SOURCE: BRUTUS I, 1787

There were also those who wrote against the Constitution. These Anti-Federalists also used pen names, including Brutus and Federal Farmer.

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 [boosting] themselves, and oppressing them. . . . When these are attended with great honor and emolument [payment], 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.

Source: "Brutus, no. 1." *The Founders' Constitution.* Vol. 1, ch. 4, doc. 14. University of Chicago Press.

amendments enshrines freedom of speech, freedom of religion, freedom of the press, and freedom of assembly—all in the First Amendment—along with many other rights now considered fundamental to the government of the United States of America.

In the next unit, you will study the language and ideas of the Constitution in much more detail. As you do, keep in mind the long process of debate and compromise that led to its creation. Like the Magna Carta and the English Bill of Rights before it, the U.S. Constitution is both a statement of ideals and a historical document, created in a specific time and place. Although it is among the world's oldest written constitutions, it continues to evolve through amendments, and its interpretation in the courts is ongoing.

Think Twice

Why were some people opposed to the ratification of the Constitution?

Unit 2: Government Structures, Powers, Functions, and Interactions

Table of Contents

Topic 1

The U.S. Constitution and the Bill of Rights

Framing Question

How does the Constitution protect liberty?

Setting the Scene — "Rogue" Island

When the Constitution was sent to the states for review in 1787, the Rhode Island legislature refused to ratify the document on eleven separate occasions. Names for the state like "the perverse sister" and "the Quintessence of Villainy" were splashed across American newspapers, but Rhode Island remained unmoved, even once the Constitution officially went into effect in June 1788 and the new United States Congress met in 1789.

Rhode Island was no stranger to nicknames or to bad press. In fact, the colony had been known as "Rogue" Island since the mid-1600s, when it was founded by Roger Williams, a pastor exiled from the Massachusetts Bay Colony for his religious beliefs, and settled by other like-minded people. Imagine how concerned Rhode Islanders must have been when they realized the new Constitution lacked explicit protections for religious freedom!

EUNT SATURNIA REGNA.

the Eleventh PILLAR of the great Na

eave most ſincerely to ſelicitate " OUR DEAR COUNTRY "

The FEDERAL EDIFICE.

TARS, in quick ſucceſſion riſe—
OLUMNS ſtrike our wond'ring eyes,
e *whole*, ſhall ſwell the beauteous DOME,
A's boaſt—and FREEDOM's hallow'd home.
l the ARTS in glorious ſplendour ſhine!
CULTURE give her ſtores divine!
CE refin'd, diſpenſe us more than gold,
w world, teach WISDOM to the old—
N here ſhall fix her bleſt abode,
mildneſs, like its parent GOD!
nd LAW, ſhall endleſs PEACE maintain,
ATURNIAN AGE," *return again.*

This political cartoon, published by the *Massachusetts Centinel*, shows the states that ratified the Constitution as "Federal Pillars." On the right side, North Carolina is being tipped into place, while the thirteenth pillar, Rhode Island, is shown crumbling. The caption reads, "The foundation good—it may yet be SAVED."

At the same time, they were also concerned about preserving the rights of states to print their own money. The state's leaders took these concerns about the strength of the central government very seriously. They were not going to ratify until they were certain that the rights of individuals and the states would be explicitly protected.

Tensions between Rhode Island and the other states mounted, as did tensions within the state. What would happen if Rhode Island ultimately failed to ratify the Constitution? Would the United States treat Rhode Island like a foreign nation? A majority of the U.S. Senate certainly thought this was a good idea. They went so far as to pass a bill that would bar trade with the tiny state.

On May 29, 1790, the Rhode Island legislature met for what would be the final vote for ratification; it passed by a razor-thin margin, just 34 to 32. The following year, on December 15, 1791, three-fourths of the states ratified the Bill of Rights—the first ten amendments to the Constitution, which addressed many of Rhode Island's concerns.

The Purposes of the Constitution

The Articles of Confederation, the first attempt by the United States at self-government, was a failure. The Articles reserved most powers for the individual states, thereby creating an ineffective central government that lacked critical powers, such as the ability to collect taxes or establish trade with other nations. As you read in Unit 1, the thirteen states had equal representation in the unicameral Congress; to enact any law, nine of the states had to approve it, making it extremely difficult to pass even simple legislation.

When representatives from the states gathered in Philadelphia during the summer of 1787 to revise the Articles, in what became the Constitutional Convention, they realized they would have to start from scratch on an entirely new government. But what should the purpose of this new government be, and what principles would guide it? Today, we can gain a better understanding of how the delegates answered these questions by examining two documents: the Declaration of Independence and the **preamble** to the U.S. Constitution. While both are highly influential, it is important to note the differences between the two documents. As you read earlier, the Declaration of Independence is not a governing document but a justification for breaking away from British rule. It was written before the American Revolution. The preamble to the U.S. Constitution (only fifty-two words in length), on the other hand, was written after the revolution. It is the Founders' introduction to the framework for the U.S. government and their statement of the proper purposes of government and the values on which they based their

PRIMARY SOURCE: PREAMBLE TO THE U.S. CONSTITUTION

The preamble is the first paragraph of the U.S. Constitution. Written in 1787, it clearly states the document's intentions, including why it was written and what it was intended to do.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

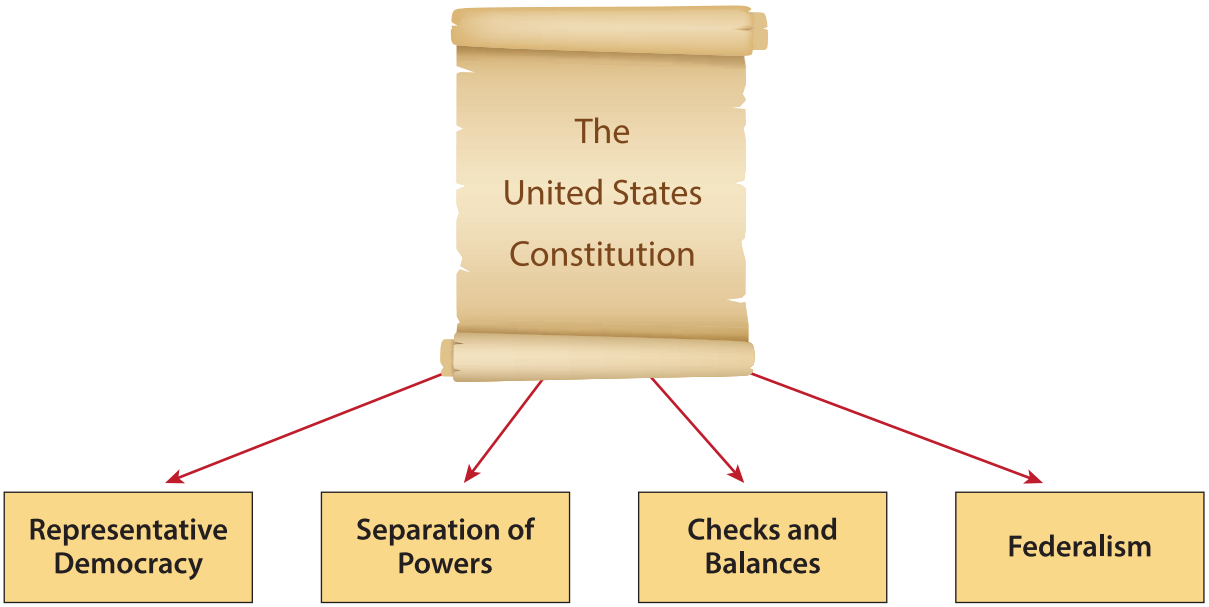
Source: The Constitution of the United States. U.S. National Archives.

Delegates at the Constitutional Convention created a Committee of Style to assemble the final document. This included making minor adjustments, like changing the list of the states in the preamble to "We the People of the United States."

government. The preamble identifies the source of government power: "We the People of the United States." This line speaks to two underlying principles of the U.S. Constitution: **consent of the governed** and **popular sovereignty**, or the right of the people to govern themselves.

Many fundamental ideas expressed in these documents, including the Declaration's "unalienable rights"—natural rights that are inherent to all people—and consent of the governed, were not original. In Unit 1, you learned that the Founders were heavily inspired by the writings of Enlightenment philosophers such as Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Baron de Montesquieu, who emphasized natural rights and the importance of individual freedoms. The Founders concurred that government is an agreement: The people agree to give up some freedom and follow the laws of the government; in exchange, the government agrees to enact laws in the best interest of the people and protect their liberties. The principle of consent of the governed holds that a government's only just and rightful powers are those given to it freely by the citizens.

But what was the best way to guarantee freedoms and ensure the consent of the



governed? First, representative democracy was and remains essential to upholding the ideas of the Constitution. Citizens choose leaders to represent them in the government and to legislate on their behalf, and frequent and established election cycles keep the government accountable to the people. Second, the Founders also followed the principles of separation of powers and checks and balances to design a government that would not enlarge its power at the expense of people's liberty. Through separation of powers, the three branches of government have different responsibilities and powers—executive, legislative, and judicial. Checks and balances are a way for each branch to check, or limit, the powers of the others, to prevent any one branch from becoming too powerful. Finally, federalism creates a system of government in which power is shared between the national government and the states, creating different levels best suited to meet the various needs of the people.

Think Twice

What are the purposes of the U.S. Constitution?

A Plan for Government

While the Founders were very motivated by principles as they authored the Constitution, more than anything, they wanted a government that would work—especially in ways the government under the Articles of Confederation did not. The Constitution is not only an ideological document but a practical

PRIMARY SOURCE: JOHN ADAMS'S LETTER TO JOHN PENN, 1776

John Adams, a prominent Founder who became the second president of the United States, was eager to create a new government for Massachusetts at the start of the American Revolution. Adams expressed his ideas to John Penn, the governor of Pennsylvania, in a letter dated March 27, 1776. Many of these ideas were later reflected in the U.S. Constitution.

In order to determine which is the best Form of Government, it is necessary to determine what is the End of Government? and I suppose that in this enlightened Age, there will be no dispute, in Speculation, that the Happiness of the People, the great End of Man, is the End of Government, and therefore, that Form of Government, which will produce the greatest Quantity of Happiness, is the best. . . .

These great Writers however, will convince any Man who has the Fortitude to read them, that all good Government is Republican: that the only valuable Part of the British Constitution is so; for the true Idea of a Republic, is "An Empire of Laws and not of Men": and therefore as a Republic is the best of Governments so, that particular Combination of Power, which is best contrived for a faithfull Execution of the Laws, is the best of Republics. . . .

In a Community consisting of large Numbers, inhabiting an extensive Country, it is not possible that the whole Should assemble, to make Laws. The most natural Substitute for an Assembly of the whole, is a Delegation of Power, from the Many, to a few of the most wise and virtuous. . . . As the Representative Assembly, should be an exact Portrait, in Miniature, of the People at large, as it should think, feel, reason and act like them great Care should be taken in the Formation of it, to prevent unfair, partial and corrupt Elections. . . . That the Representatives may often mix with their Constituents, and frequently render to them an Account of their Stewardship, Elections ought to be frequent. . . .

The Governor, by and with and not without the Advice and Consent of Council, should appoint all Judges, Justices and all other Officers civil and military. . . .

A Rotation of Offices, in the Legislative and Executive Departments has many Advocates and, if practicable might have many good Effects. A Law may be made that no Man shall be Governor, Lt. Governor, Secretary, Treasurer, Councillor, or Representative more than three Years at a Time, nor be again eligible untill after an Interval of three Years.

Source: Adams, John. Letter to John Penn, March 17, 1776. In *The Adams Papers: Papers of John Adams*, vol. 4, *February–August 1776*, edited by Robert J. Taylor. Cambridge, MA: Harvard University Press, 1979, pp. 78–86.

one as well; it serves as the blueprint for the U.S. government.

Following the preamble, the original Constitution is divided into seven parts called articles, which establish the structure of the government, its functions and powers, and how the Constitution itself can be changed.

Articles I–III

The first three articles of the Constitution establish the three branches of government and define the powers and structures of each. Each article is broken into smaller portions called *sections* that focus on specific aspects of each branch.

Broadly, Article I establishes the legislative branch, the part of the federal government responsible for creating the nation's laws and deciding how to raise and spend money. In Unit 1, you learned that through the Great Compromise, the Founders decided to form a bicameral legislature. Accordingly, Article I, Section 1, explains that Congress is made up of two bodies or houses, the Senate and the House of Representatives. Article I, Section 2, explains who is eligible to hold office in the House of Representatives, how frequently representatives are elected, their **apportionment** (how representatives to states or voting districts are allocated based on population), and their **enumerated powers** (the powers of Congress specifically listed in the Constitution). Section 3 does the same for the Senate. You will read more about these ideas in Topic 2.

Sections 4 through 9 of Article I set out rules about elections, how frequently Congress should meet, the rights of its members, the legislative process, and the powers that Congress does and does not have. Section 10 explains which powers are expressly denied to the states.

Article II, made up of four sections, establishes the executive branch, the part of the federal government responsible for carrying out and enforcing the nation's laws. This branch is led by the president. Section 1 outlines the length of presidential terms, how the president is elected, protocols for when a president is removed or is otherwise unable to perform the duties of the office, and how the president is compensated. Sections 2 and 3 establish the powers and responsibilities of the president, and Section 4 explains when and how the president and other executive branch officers may be removed from office. You will read more about the executive branch in Topic 2.

Article III establishes the judicial branch, the part of the federal government responsible for applying and interpreting the nation's laws to settle disputes. Article III is relatively short. The first two sections establish the Supreme Court as the highest court in the land and outline the branch's powers and **jurisdiction**. Section 3 relates to acts of treason against the

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE I, SECTION 2

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

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

Source: The Constitution of the United States. U.S. National Archives.

Article I	Article II	Article III
• Establishes the legislative branch, called Congress • Specifies combined and distinct powers of the House of Representatives and the Senate	• Establishes the executive branch • Outlines the powers and responsibilities of the president, including signing and enforcing laws passed by Congress	• Establishes the judicial branch • Makes the Supreme Court the highest court in the land

United States. You will read more about the structure and function of the judicial branch in Topic 2.

Think Twice

What is the purpose of Articles I–III of the Constitution?

Articles IV–VII

While Articles I to III establish and define government structures, Articles IV to VII detail other aspects of government, starting with the relationships among the states.

Recall that the Constitution creates a federal system of government in which the national government shares powers with the states. Each state has a relationship with the federal government, but states also have relationships with each other—and not only with those that share their borders. Article IV, Section 1, explains that each state is required to generally respect the laws and judicial rulings of other states. Section 2 expands upon this idea by explaining that state laws must treat all citizens equally, regardless of what state they reside in. For example, Louisiana's government cannot prevent residents of other states from traveling through, residing in, or owning

property in the state. It also cannot pass laws that discriminate against residents of other states, such as by passing a tax that applies only to visitors. Section 3 of Article IV provides some guidelines for how new states may be admitted to the United States, including the role of Congress in approving or denying statehood petitions. The final section says that every state is guaranteed "a Republican Form of Government" and details obligations of the federal government to protect the states, including if the states are invaded by a foreign power.

Article V describes the amendment process, or the mechanism used to change and update the Constitution. This is an essential aspect of a living constitution; amendments are a way to make sure the Constitution and the government it creates continue to meet the needs of the people over time.

Article VI addresses four topics that did not fit elsewhere. It declares that the debts and contracts adopted by the national government under the now-defunct Articles of Confederation are still valid. This meant that the new government would honor the obligations of the old one. Section 2 of Article VI is known as the supremacy clause. It states that the U.S. Constitution is "the supreme Law of the Land" and that all citizens and judges of every state, and all state governments, are bound by federal law. Accordingly, Section 3 requires all elected or appointed state and federal officials to swear an oath to uphold the Constitution. It also makes it illegal to use religious tests to prevent citizens from holding office in the United States.

The final article of the Constitution, Article VII, outlines the ratification process. For the Constitution to take effect, nine out of thirteen states would have to ratify the document. New Hampshire was the ninth state to ratify the Constitution, on June 21, 1788, followed soon after by Virginia and New York. That means that the Constitution was fully in effect for a year and a half before North Carolina voted to ratify and nearly two years before Rhode Island—or "Rogue" Island—ratified.

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE IV, SECTION 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Source: The Constitution of the United States. U.S. National Archives.

Article IV	Article V	Article VI	Article VII
• Defines the relationship between the states, their laws, and equal treatment of citizens • Explains how new states are added to the Union	• Describes the amendment process, or how changes are made to the Constitution	• Discusses debts of the old and new U.S. governments • Makes the Constitution the highest law in the land • Requires officials to swear an oath of office • Bans religious tests	• Explains the process for adopting the Constitution

Think Twice

What principles and processes are explained in Articles IV–VII?

Checks and Balances

Articles I, II, and III establish three distinct and coequal branches government—the legislative branch, the executive branch, and the judicial branch—with their own powers and responsibilities. This division of the powers of the government, known as separation of powers, is a cornerstone of the U.S. Constitution. It is an important mechanism that helps limit the power of the government. Separation of powers is another idea borrowed from Enlightenment thinkers, in particular the Baron de Montesquieu, who argued that it was needed to rein in powerful leaders and to protect individual liberty.

Although they divided powers among three branches of government, the Founders assumed that each branch would try to increase its own powers. Thus, they wanted constraints to ensure that authority remained balanced and that no branch could become too powerful. To help maintain the coequal status of the branches, the Founders created a system of checks and balances. Each branch has powers that limit the powers of the other two branches.

For example, under Article I, Section 1, only Congress has the power to pass legislation, but Article I, Section 7, gives the executive branch a check on Congress's power by giving presidents the power to **veto** legislation they do not want to sign into law. Still, a veto does not necessarily mean the bill won't become law; Congress can override a presidential veto with a two-thirds majority vote in both houses. Meanwhile, Article III gives the Supreme Court the power to overturn legislation passed by Congress and executive orders issued by the president.

PRIMARY SOURCE: *FEDERALIST* NO. 51, 1788

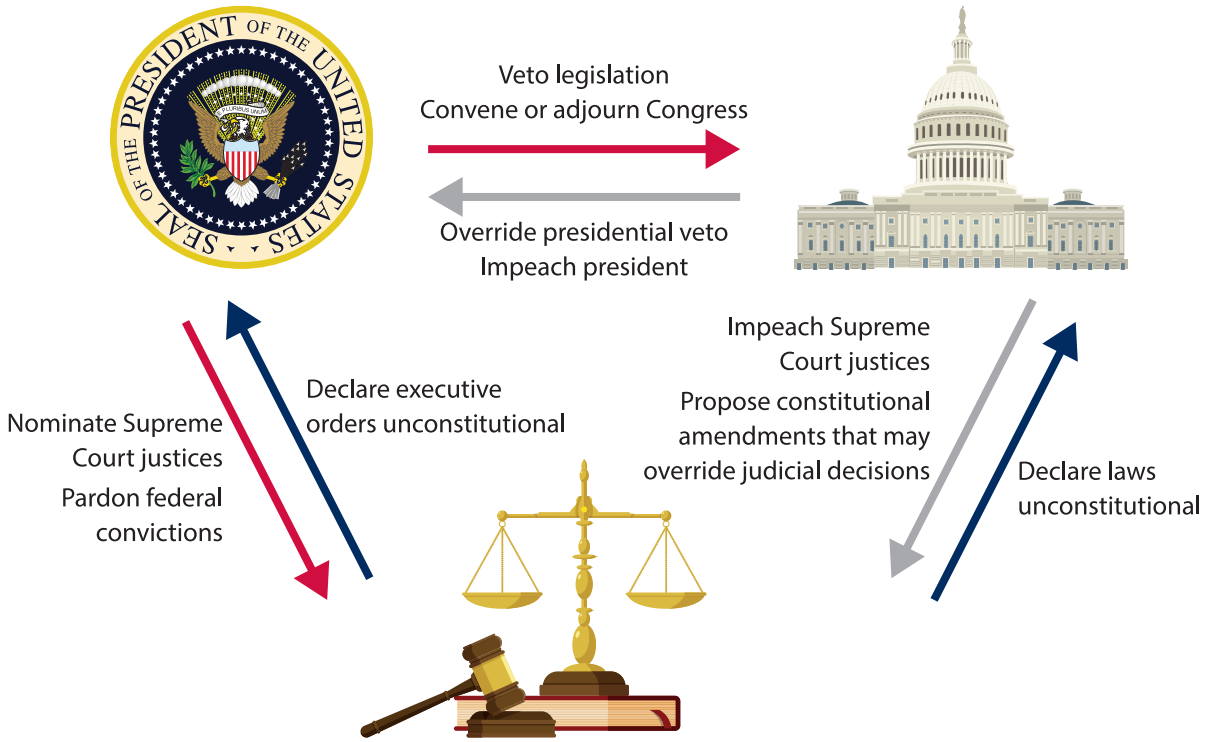
Checks and balances was yet another idea discussed in The Federalist Papers. *In this essay, James Madison highlights safeguards within the Constitution to limit abuses of power by the three branches of the federal government.*

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.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

Source: Madison, James. *Federalist* No. 51. Federalist Papers: Primary Documents in American History. Library of Congress.

There are other checks built into the Constitution, too. Article II, Section 2, makes the president the commander in chief of the military; however, Article I, Section 8, specifies that only Congress has the power to declare war. Also under Article II, Section 2, the president has the power to nominate Supreme Court justices, but the same section notes that only the Senate has the power to confirm the president's appointees. Congress also has the power to impeach Supreme Court justices.



Each of the three branches of the federal government has the power to check the actions of the other two.

Think Twice

Why are separation of powers and checks and balances important?

The Bill of Rights

As you just read, the Founders provided a mechanism to amend the Constitution in Article V. However, they may not have realized just how quickly they would need to use it.

Five days before the Constitutional Convention ended, delegates George

A Precursor to the Bill of Rights

Constitutional Convention delegate George Mason was very familiar with the idea of a bill of rights, having written most of Virginia's Declaration of Rights in June 1776. The then-colonial declaration stated that "all men are by nature equally free and independent and have certain inherent rights" and listed freedom of the press and religion among those rights. The Virginia document inspired parts of the Declaration of Independence and, later, the U.S. Bill of Rights.

The U.S. Bill of Rights	
First Amendment Freedoms of religion, speech, press, assembly, and petition	**Second Amendment** Right to bear arms
Third Amendment Limitations on quartering (housing) troops in homes	**Fourth Amendment** Protection against unreasonable search or seizure of people or property
Fifth Amendment Various rights of due process, including the freedom to refuse to testify against yourself	**Sixth Amendment** Various rights of the accused in criminal cases, including the rights to a fair and speedy trial, to call and question witnesses, and to have an attorney
Seventh Amendment Right to a jury trial for civil cases	**Eighth Amendment** Protection against unreasonably high bail and cruel and unusual punishment
Ninth Amendment Protection of rights not listed in the Constitution	**Tenth Amendment** Assigns powers not granted to the federal government to the states or the people

It took the promise of a bill of rights for many states, including Massachusetts, to ratify the Constitution.

Mason from Virginia and Elbridge Gerry from Massachusetts posed a question to the other Founders: Should the Constitution include a bill of rights? In Unit 1, you read about the arguments in favor of a bill of rights—namely, that it would clearly assert the liberties that belong to individuals and states. But other delegates declined the suggestion, and the final version of the Constitution was adopted by the convention without it.

Debate over a bill of rights did not end when the Constitutional Convention ended; as you read in Unit 1, there followed a period of public debate on whether to ratify the U.S. Constitution. Although the Constitution created a system of self-government in which citizens would rule

PRIMARY SOURCE: THE U.S. BILL OF RIGHTS

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to

have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

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.

Source: The Bill of Rights. U.S. National Archives.

through elected representatives, many Americans thought the new national government would have too much power. Adding to this fear was the lack of a key feature: The Constitution included no explicit protection of individual rights.

States with a strong Federalist presence—including Delaware, Pennsylvania, and New Jersey—ratified the Constitution before the end of 1787, but the process stalled in other states. John Hancock, a Boston merchant and a signer of the Declaration of Independence, made it his mission to get his home state of Massachusetts to ratify. He made a promise: If

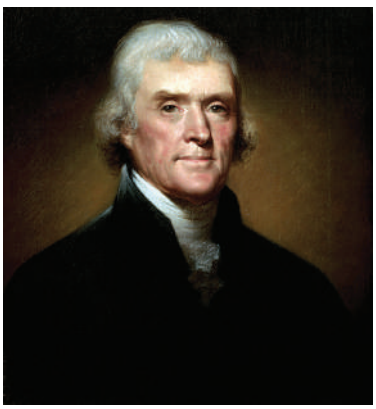
Freedom of Expression

Freedom of expression—the right to share your opinions without fear of being punished by the government—is a cornerstone of American democracy. But "expression" is more than just what we say aloud; it also includes the art we create, the clothes we wear, and the things we write. People, including students, have gone to the courts to defend their freedom of expression, including their rights to protest and to exercise freedom of the press within a school setting.

Massachusetts ratified the Constitution, he would make sure a bill of rights was added. Hancock's promise helped win ratification in Massachusetts and in other states. As you read in Unit 1, James Madison was a Federalist. Yet Madison, now a representative in Congress, had come to appreciate the Anti-Federalists' call for a codified bill of rights. He drafted a set of proposed amendments.

After some back and forth, the House of Representatives and the Senate passed twelve of Madison's proposals. Between November 1789 and December 1791, the states ratified ten of these amendments, which became the Bill of Rights. Not enough states voted to ratify the last two amendments—one relating to apportionment in the House of

PRIMARY SOURCE: THOMAS JEFFERSON'S LETTER TO THE DANBURY BAPTIST ASSOCIATION, 1802



While serving as the country's third president, Thomas Jefferson received a letter from the Danbury Baptist Association sharing their concerns about religious liberty in Connecticut. In his reply, Jefferson attempted to calm their concerns by quoting the First Amendment.

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

Source: Jefferson, Thomas. Letter to the Danbury Baptist Association, January 1, 1802. In *The Papers of Thomas Jefferson*, vol. 36, *1 December 1801 to 3 March 1802*, edited by Barbara B. Oberg. Princeton, NJ: Princeton University Press, 2009, p. 258.

Representatives, and the second to prohibit Congress from voting themselves a pay raise. (A version of the latter amendment was eventually ratified in 1992).

Think Twice

Why were many Americans concerned about the lack of a bill of rights in the U.S. Constitution?

Understanding the Bill of Rights

The Bill of Rights establishes a wide array of protections that cover everything from individual freedoms and rights of the accused to states' rights.

The First Amendment relates specifically to individual rights and freedoms, including freedoms of religion, speech, press, assembly, and petition. This amendment specifically prevents the federal government from establishing an official state religion and prohibiting people from practicing any religion they choose—or practicing no religion at all. Additionally, people can express their opinions without fear of being arrested or punished by the government. In practice, there are some limitations on the right to freedom of expression; for example, some categories of speech that can cause harm to others—such as **slander**, threats, or incitements to violence—are not protected. The First Amendment also protects freedom of the press, which today includes newspapers, television and radio news, and news websites. A free press is critical in a democracy, which depends on the people being informed about the actions of their government. Yet, like freedom of speech, freedom of the press is not absolute. For instance, **libel** is not protected; while a newspaper editorial criticizing a politician's actions is legal, an article falsely accusing that politician of a crime is illegal. Lastly, the First Amendment protects people who wish to organize and meet in groups, including for the purpose of protesting government actions, and it protects the right to complain to the government and ask for change.

The Second Amendment's right to "keep and bear arms" recalls the protection in the English Bill of Rights "that the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law." For most of U.S. history, the Second Amendment was interpreted to guarantee a collective right to bear arms—that is, a right by states to have their own state militias. In 2008, that changed when the Supreme Court ruled that the amendment guarantees the right of *individuals* to keep and bear arms. This new interpretation resulted in the striking down of many laws regulating gun ownership.

The next two amendments also involve individual rights and freedoms. The Third

Amendment, like the Second Amendment, reflects Americans' concerns after years of British rule. It prohibits housing troops in a private residence unless the owner willingly agrees—an addition to the Constitution that clearly reflects the Quartering Act of 1774, about which you read in Unit 1. The Fourth Amendment protects people from unlawful searches and seizures. In other words, law enforcement and other government officials cannot just enter a home or business to search it, seize property, or take individuals into custody; they must have **probable cause** to do so. The government must reasonably suspect that a crime was committed and that there is evidence of that crime in the place they want to search. This principle also applies to the seizure—the arrest or brief detention—of a person. Before officials search a person or property, and therefore before they can seize either, they must demonstrate probable cause to a judge so they can obtain a **warrant**.

The Fifth and Sixth Amendments relate to the rights of the accused; this includes people who are being investigated for criminal activity and people who have been charged with a crime. The Fifth Amendment explains that the accused have certain rights. They are not required to bear witness against, or incriminate, themselves during a trial, and they cannot be tried for the same crime twice—a concept referred to as *double jeopardy*. They have the right to have evidence presented to a grand jury to determine whether there is enough evidence for a trial to happen. The accused have a right to due process, or fairness, under the legal system. People being questioned as witnesses during a criminal investigation also have Fifth Amendment rights. The Sixth Amendment guarantees rights of the defendant in a criminal prosecution. These include the rights to a fair and speedy trial by jury, to be made aware of the charges made against them, to have an attorney, and to have witnesses testify on their behalf. These are rights connected to due process, which you learned about in Unit 1 and will learn more about in Unit 4.

Eminent Domain

The Fifth Amendment also provides protections from **eminent domain**; the government cannot take private property for public use without giving fair payment—or "just compensation"—to the original owner. Historically, the government has used its power of eminent domain for projects related to the general welfare, such as improving necessary transportation infrastructure or providing access to a water supply. When the government claims the private property, it must pay the owner the current market value of the property.

The Seventh Amendment relates to civil suits, or disputes between two or more individuals, groups, or businesses. For example, neighbors might disagree over where the property line between their homes exists. In this instance, neither party has broken a law, but they need the courts to intervene to settle their disagreement. This is in contrast to criminal suits, where a crime was committed. According to the Seventh Amendment, if a party is suing for more than twenty dollars in damages in a civil suit, either party may request and be granted a jury trial.

The Eighth Amendment protects people who have been convicted of a crime from bails or fines that are excessively high, and it protects against cruel and unusual punishment, such as actions that cause unnecessarily prolonged or degrading pain.

The final two amendments in the Bill of Rights are less concrete than the others and do not identify specific rights, powers, or freedoms. Instead, the Ninth Amendment addresses non-enumerated rights, or those not expressly noted in the Constitution or the Bill of Rights. This amendment states simply that the Bill of Rights is not an exhaustive list of individual freedoms and that the people have other rights, too—including a right to privacy. In other words, if a right is not (yet) written in the Constitution, this does not mean it is *not* a right. The Tenth Amendment states that the rights not given to the federal government in the Constitution are reserved for the states or for the people. This final amendment was especially appealing to Anti-Federalists and others who worried that the extensive powers of the newly strengthened central government would infringe on the powers of the states.

Think Twice

How does the Bill of Rights protect the rights of individuals, the accused, and the states?

Legacy of the Bill of Rights

Despite being a relatively short document, the Bill of Rights has had a significant impact on the United States as well as globally. First and foremost, the mere promise of the Bill of Rights helped secure the ratification of the Constitution; it acts as another safeguard that ensures limited government in the United States. The Bill of Rights also demonstrated that the Constitution was in fact a living document that could be changed to meet the will and needs of the people. Many of the rights enumerated in the document have become hallmarks of the United States and have inspired other countries and international organizations to also codify and define individual rights. Additionally,

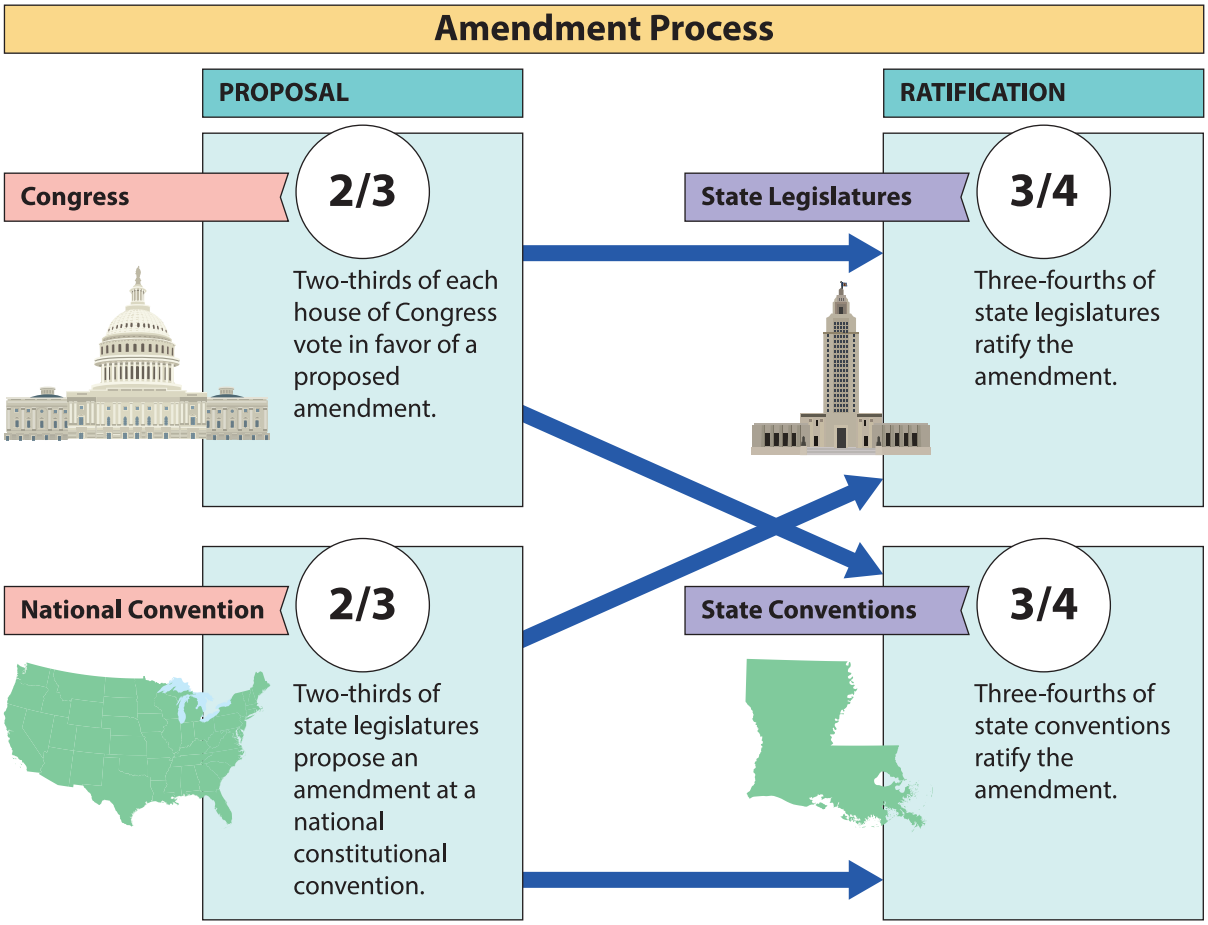
the Bill of Rights has played an important role in further defining and expanding individual rights within the United States. This is especially true since 1925, when the Supreme Court ruled that the states, not just the federal government, must also respect people's right to free speech under the First Amendment.

Think Twice

Why was the adoption of the Bill of Rights significant?

The Amendment Process

Part of the Founders' plan for government was to create a constitution that could adapt to the evolving needs of the growing nation. The Founders recognized that they could not predict the future or think of every eventuality, so they created a way to amend the Constitution. They wanted the amendment process to



There are two ways to propose and ratify a constitutional amendment.

be difficult but not impossible, so they required more than a bare majority vote for any changes. The first step to amending the Constitution is proposing an amendment, which requires either (1) a two-thirds vote in both the House of Representatives and the Senate or (2) a constitutional convention called by two-thirds of the states. As of 2024, only the first method has been used to propose an amendment. After an amendment has been successfully proposed, it is then sent to the states for ratification. A proposed amendment becomes a law when three-fourths of the states vote in favor. As with proposing amendments, ratification can be by state legislatures or state conventions.

Amendments are very rare; as of 2024, only twenty-seven of more than eleven thousand proposed amendments have been ratified, including the ten amendments of the Bill of Rights. The Eleventh and Twelfth Amendments were ratified between 1795 and 1804 and relate to government procedures. The Eleventh Amendment bars citizens of other states or of foreign countries from suing a state in federal court. As you read in Unit 1, in response to the problems that arose in the election of 1800, the Twelfth Amendment requires electors to cast separate ballots for president and vice president and changed the process for resolving ties.

Expanding Voting Rights

Just as the Bill of Rights guarantees certain individual freedoms and rights, other amendments have worked to expand citizens' freedoms.

The Reconstruction Amendments abolished slavery, naturalized formerly enslaved people, and made it illegal to deny people the right to vote on the basis of race or color.

The Nineteenth Amendment, ratified in 1920, made it illegal to deny people the right to vote on the basis of sex.

The Twenty-Sixth Amendment, ratified in 1971, is of special interest to teenagers. Prior to this amendment, states were responsible for establishing the voting age, which in most instances was twenty-one years old. The age to register for the draft for the Vietnam War was eighteen years old; this meant that many young people who were conscripted into the military did not actually have a say in the government they were called upon to serve. The amendment to officially lower the voting age to eighteen was adopted by Congress on March 23, 1971, and it was ratified on July 1—faster than any other amendment in U.S. history. You will read more about these amendments in Unit 4.

The next group of amendments—the Thirteenth, Fourteenth, and Fifteenth, known as the Reconstruction Amendments—were ratified after the Civil War. The next set—Sixteenth, Seventeenth, Eighteenth, and Nineteenth—were ratified during the Progressive Era (1900–1929). Only eight amendments have been ratified since 1920, the most recent being the Twenty-Seventh Amendment, ratified in 1992—one of the two amendments proposed by James Madison in 1789 that the states failed to ratify as part of the Bill of Rights.

Think Twice

What is the process for amending the Constitution?

The Twenty-First Amendment

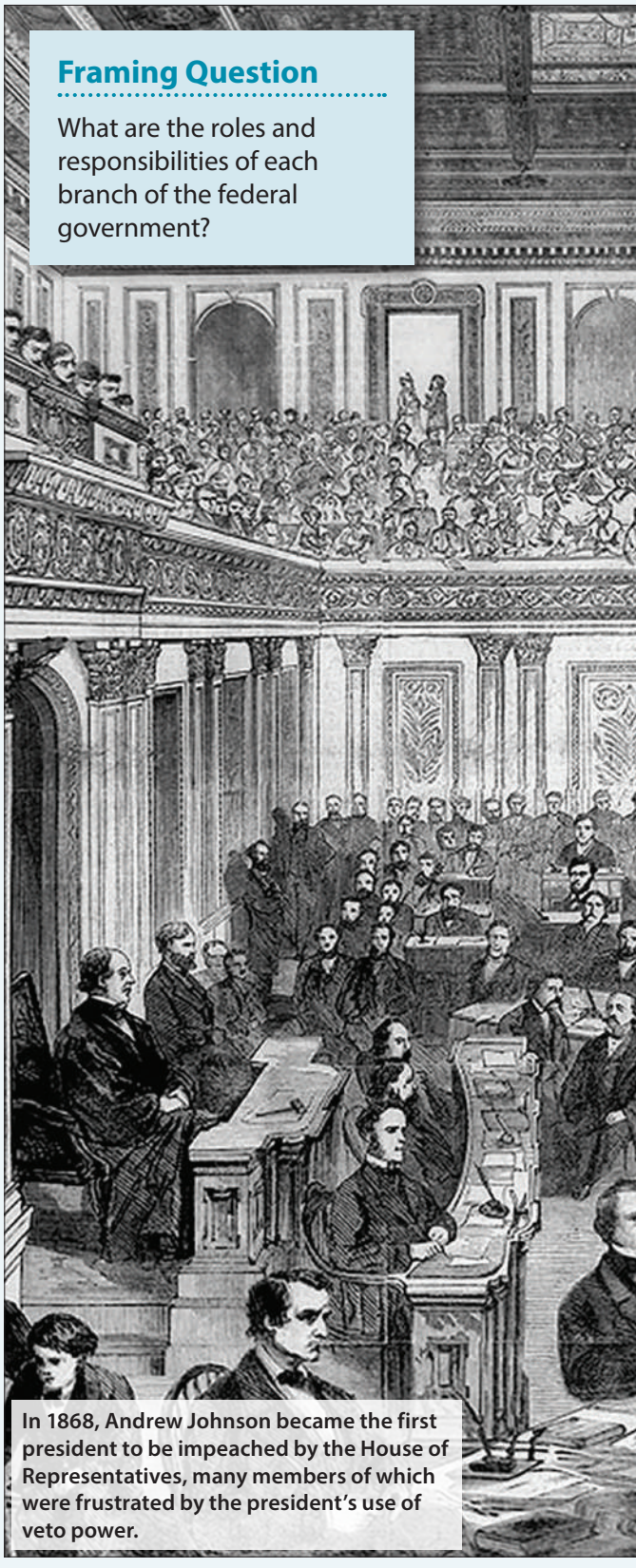
Of the twenty-seven amendments made to the Constitution, the Twenty-First Amendment stands out in two ways. First, it did not effect a new change; instead, it repealed the Eighteenth Amendment, ending a fourteen-year prohibition on the "the manufacture, sale, or transportation of intoxicating liquors." It is also the only amendment in the country's history that was ratified by state conventions instead of state legislatures.

Topic 2

Structures, Powers, and Functions of the U.S. Government

Framing Question

What are the roles and responsibilities of each branch of the federal government?



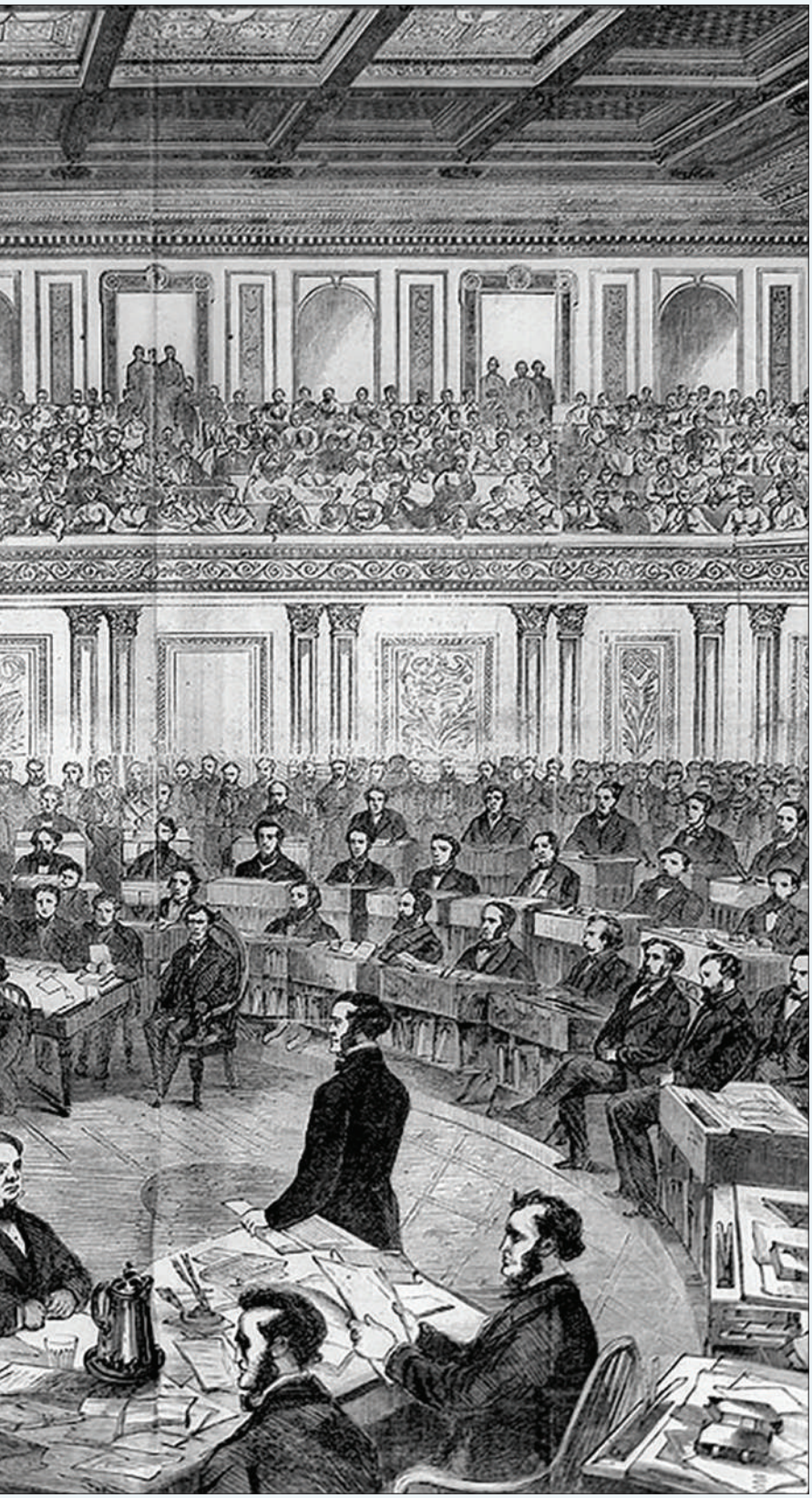
In 1868, Andrew Johnson became the first president to be impeached by the House of Representatives, many members of which were frustrated by the president's use of veto power.

The Impeachment of a President

Setting the Scene

Andrew Johnson became the seventeenth president in April 1865, after the assassination of Abraham Lincoln. His time in office is a history lesson in how the three branches of the federal government can check each other, thanks to the careful planning of those who wrote the Constitution.

Johnson was a Southern politician who had stayed in the U.S. Senate even though his home state of Tennessee had voted to secede from the Union before the start of the Civil War. It was this loyalty to the Union that earned him the spot as Lincoln's running mate in the presidential election of 1864. But loyalty to the Union did not mean that Johnson necessarily held the views of Lincoln's political party. In fact, the Democratic president was very much at odds with Radical Republicans in Congress over how best to reintegrate former Confederate states into the Union. Tensions grew as Johnson vetoed the Reconstruction Acts



of 1867 that protected the rights of formerly enslaved people and limited the rights of ex-Confederates. When Congress overrode Johnson's veto, he interfered with the laws' enforcement.

That same year, Congress passed the Tenure of Office Act, which required the president to get Senate approval before dismissing high-ranking government officials. When Johnson dismissed Secretary of War Edwin Stanton, the House of Representatives voted 126 to 47 to adopt eleven articles of impeachment, or charges of misconduct, against the president. Not only had Johnson disregarded the Tenure of Office Act, but his action was seen as a larger attack on the legislative branch's Reconstruction policies.

The chief justice of the Supreme Court, Salmon P. Chase, oversaw the Senate trial that began on March 5, 1868. In May, the Senate voted on the first three articles of impeachment; the vote was 35 to 19, just one vote short of the two-thirds majority required to convict the president. The Senate then voted not to vote on the remaining eight articles. Though Johnson remained in office, this event was still significant: Johnson was the first U.S. president to be impeached, demonstrating the complex system of checks and balances.

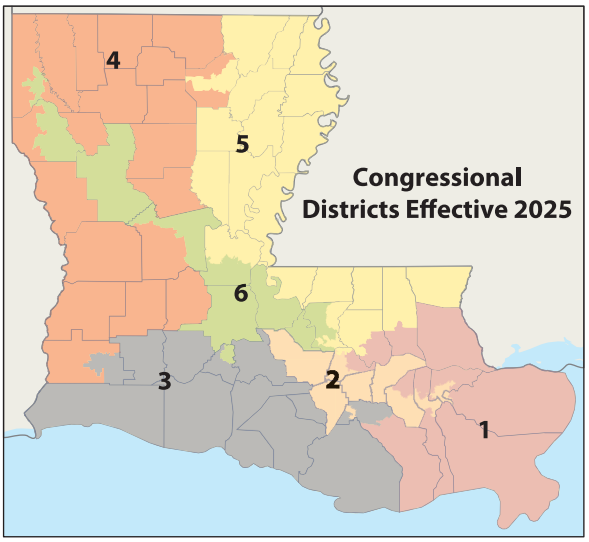
The Legislative Branch

The Founders devoted Article I of the Constitution to the legislative branch, which they believed was more likely to reflect the will of the people than the judicial and executive branches. As you have read, Article I split the legislature—the United States Congress—into two chambers: a lower house called the House of Representatives and an upper house called the Senate. The Constitution expressly enumerates Congress's powers, including the powers to make laws, declare war, regulate commerce, and spend and borrow money.

Members of Congress are elected by their **constituents** to legislate on their behalf. Members of the House, appropriately called representatives, represent the people of the **congressional district** that elected them. Senators are elected to represent the people of their entire state.

Article I, Section 4, requires that Congress meet at least once a year. The entire House of Representatives is elected every two years, and a congressional term contains two legislative sessions, one per year. In 1933, the Twentieth Amendment set the start date of congressional sessions to January 3 to shorten the time between the election and when the new Congress begins. This makes Congress more responsive to voters by limiting the time that outgoing members have to enact or affect new legislation.

Louisiana Congressional Districts



Louisiana has six congressional districts. States determine whether they need to redraw district maps following the U.S. Census every ten years, in a process called reapportionment.

The president may also call Congress into special session to address urgent national issues; these may include executive appointments, natural disasters, or even war. Each Congress is numbered. For example, the first session of the 118th Congress began on January 3, 2023; it ended on the morning of January 3, 2024, when Congress met to accept the new members and convene the second session of the 118th Congress.

Think Twice

What are the functions and duties of the legislative branch of government?

The House of Representatives

Members of the House of Representatives are elected for two-year terms. To be a representative, a person must be at least twenty-five years old and a U.S. citizen, have been a citizen of the United States for a minimum of seven years, and live in the state they represent at the time of the election.

Because a state's representation is based on its population, the more populous states have more representatives than the less populous states. Six states with small populations have only one congressional district; that means that their U.S. representatives represent the entire state, just like their two U.S. senators. In 1929, the number of House members was capped at 435. Each member represents a particular geographical district in their home state. The House also includes six nonvoting delegations from the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. While nonvoting delegations may not vote on the House floor, they perform many of the same duties as U.S. representatives, including sitting and voting on committees, proposing legislation, and participating in debates.

The Constitution gives certain powers to just the House of Representatives. One of them is defined in Article I, Section 7, called the origination clause:

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

This means that only the House of Representatives can start bills that impose taxes. This power is part of the "power of the purse," or the ability to influence behavior by promising or threatening to spend or withhold government funds.

The origination clause represents more than just separation of powers; it also represents both historical precedent and compromise. As you read in Unit 1, the British Parliament is also composed of two chambers: the House of Commons and the House of Lords. During the 1700s, the House of Commons was Britain's "People's House." Its members were elected by voters, while members of the House of Lords were unelected nobility who held office because of their birth and their families' wealth. All bills relating to money first had to be read in the House of Commons, the part of the legislature that most directly reflected the will of the people.

Likewise, when the Constitution was first adopted, members of the House of Representatives were popularly elected, while members of the Senate were chosen by state legislatures (more about this in Topic 3). Members of the House of Representatives are elected for shorter terms than senators, meaning that voters can change the nature of the House of Representatives more often,

whether to better meet the needs of the people or to remove ineffective leaders. For this reason, the House of Representatives, like the House of Commons, is considered the more representative body with the most direct relationship to the needs and wishes of the people. As with the House of Commons, it is often referred to as the "People's House."

The origination clause, with its power to originate revenue bills, was a concession made to the larger states—and their larger number of representatives—as part of the Great Compromise, in compensation for their diluted representation in the Senate. As with other legislation that starts in the House, the Senate still has the power to amend taxation and spending bills.

The House also has the power to **impeach**, or bring charges against, federal officials, including the president and Supreme Court justices. The House can also break an Electoral College tie for president; this has happened only a few times in U.S. history.

Think Twice

Why does the Constitution give the House of Representatives the sole power to originate "Bills for raising Revenue"?

The Senate

The Senate comprises one hundred senators, two from each state. Senators serve six-year terms. Unlike the House, which is totally renewed each term (with either newly elected representatives or reelected members), only one-third of the Senate is elected every two years. This brings some continuity and stability to the Senate. To be a senator, a person must be at least thirty years old, have been a U.S. citizen for a minimum of nine years, and be a resident of the state they represent at the time of the election.

The vice president of the United States, a member of the executive branch, presides at meetings of the Senate. The vice president has no legislative power except to cast a tiebreaking vote. As with the House, the Constitution gives the Senate specific powers; for example, it has the power to confirm or reject presidential appointments and the power to approve or reject treaties that the executive branch negotiates with foreign governments. If the office of the vice president becomes vacant, *both* the House and the Senate must approve the president's nomination of a new vice president. This is also true for congressional approval of treaties involving foreign trade.

When the House impeaches a federal official, that official stands trial in the Senate. The impeached official is removed from office if they are found guilty by two-thirds of the Senate.

Think Twice

Which powers does the Constitution give to the U.S. Senate?

Other Powers and Responsibilities of Congress

Congress is the only part of the government with the power to legislate, meaning it can enact new laws as well as change laws that already exist. Earlier in the unit, you read that the president has the power to veto, or reject, bills passed by Congress; however, Congress can override a presidential veto with a two-thirds vote in both houses. It is also important to note that while the executive branch—including the president and federal agencies—issues regulations, the purpose and effect of these regulations must be to carry out the laws passed by Congress.

The last paragraph of Article I, Section 8, is called the necessary and proper clause or the elastic clause. Recall that the Founders knew in 1787 that they could not anticipate every issue and circumstance the country would face or every action the federal government would need to take to protect and administer the country. This is why they included the amendment process. It is also why they built some flexibility into the government's power. The necessary and proper clause gives Congress the ability to enact legislation that is "necessary and proper" for carrying out its enumerated powers. By allowing this, the clause also gives the legislative branch **implied powers**. However, the clause's vague wording means these powers are open to varied interpretations. For example, Thomas Jefferson, who favored a small federal government, interpreted the clause strictly; he emphasized the "necessary" aspect and believed that Congress should only be allowed additional powers that are truly necessary for it to exercise its enumerated powers. Alexander Hamilton, on the other hand, who favored a stronger federal government, interpreted "necessary and proper" to mean useful. In Hamilton's broad or "loose" interpretation, the clause allowed Congress unspecified powers if they would be helpful or useful in exercising its enumerated powers—especially if they would help it strengthen the young country's economy.

For example, as secretary of the treasury, Hamilton helped engineer the legislation necessary for the incorporation of the First Bank of the United States to better manage the country's finances. Jefferson, in contrast, argued that the Constitution did not give Congress the power to establish a national bank—in his eyes, the bank was neither "necessary" nor "proper." People still debate how the necessary and proper clause should be interpreted today.

Part of Congress's job is to pass a **budget** for the national government each year. The federal budget identifies two main categories: what the government intends to spend money on and the sources of all the revenue it expects to collect. The departments and agencies of the executive branch are responsible for implementing

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE I, SECTION 8

Article I, Section 8, of the Constitution includes eighteen clauses outlining various powers of Congress.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

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

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

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

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

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

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

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

To provide and maintain a Navy;

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

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

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

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

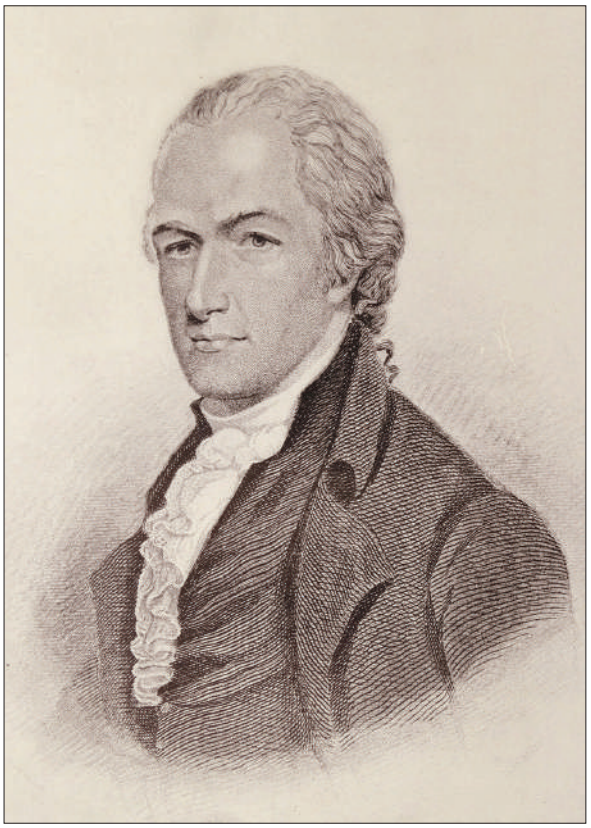
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Source: The Constitution of the United States. U.S. National Archives.

and following the budget set by Congress, which includes **appropriations** laws that give these agencies the funds they need to operate. Expenses include the costs of operating all three branches of the government and the armed forces, funding social programs such as Social Security, and paying debts. To raise money, Congress can **levy** taxes such as personal and corporate income taxes. It can also impose duties on imported goods. Additionally, Congress has the power to print and coin money, and it can authorize the Department of the Treasury to borrow money.

Oversight, and in particular reviewing the policies and actions of the executive branch, is another function of the legislative branch. Congress has investigative power and can require people to testify and give evidence. **Hearings** are a way Congress can hold the other branches of government—and itself—accountable. Hearings fall into four categories:

- Legislative: Members of Congress listen to subject matter experts about different topics related to a bill or resolution.
- Oversight: Members of Congress review and monitor how the executive branch is enforcing legislation.
- Investigative: Members of Congress investigate an alleged wrongdoing in the government, including by calling witnesses to testify.



Alexander Hamilton favored a loose interpretation of the Constitution that allowed Congress to enact legislation—like the chartering of the national bank—to promote and expand the interests of the young republic. As you will soon read, the power of Congress to charter a national bank would come under scrutiny in the 1819 case *McCulloch v. Maryland*.

- Confirmation: Members of the Senate ask questions of presidential nominees before approving or rejecting nominations.

The Government Accountability Office (GAO), originally called the General Accounting Office, was established in 1921 to review budgets proposed to Congress by the president. Over time, the GAO's duties expanded to include reviewing the spending of all federal departments and agencies to

make sure that the taxes people pay are spent responsibly.

Article I, Section 8, includes many other varied powers and responsibilities for Congress. Some are relatively minor, though still important, like establishing post offices and establishing standard weights and measures. Others are quite major, such as the powers to raise and maintain the military and navy and to declare war. The latter is an important check on executive power. The president is the commander in chief of the armed forces; however, they must ask Congress for permission to go to war—something you will read more about in the next topic. The legislative branch also has the power to confirm or reject executive appointments like judges, ambassadors, and the heads of federal agencies.

Think Twice

What is the necessary and proper clause, and why did the Founders include it in the Constitution?

Leadership in Congress

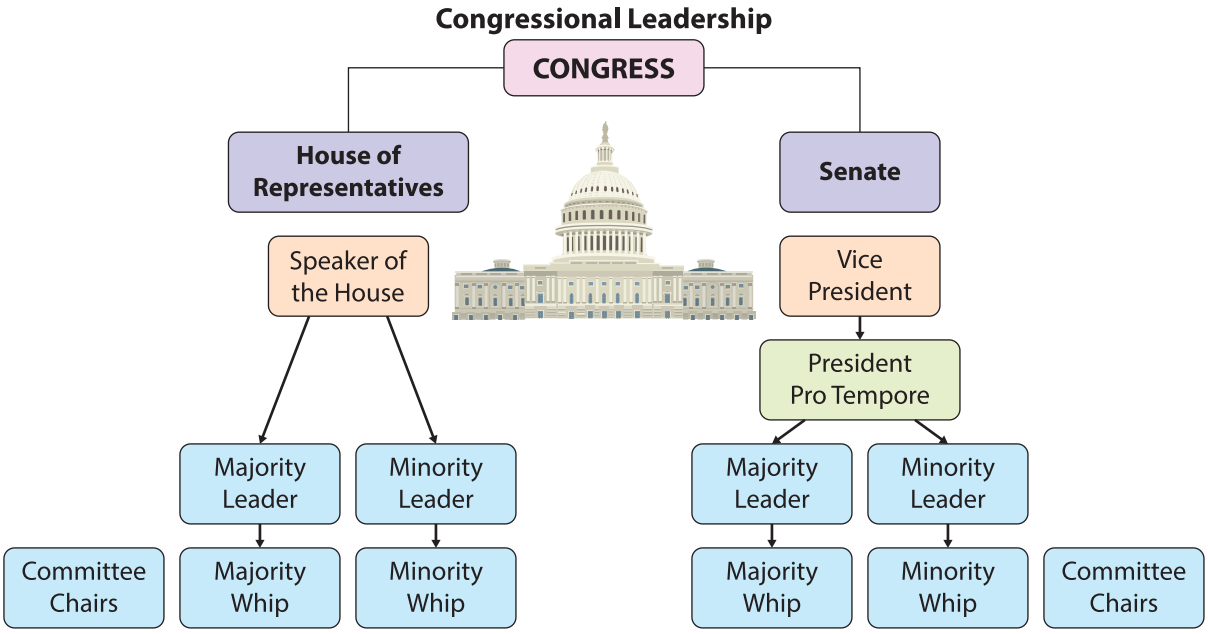
Each chamber of Congress has its own distinct leadership structure. Over time, the House of Representatives developed leadership that is often more vocal and pronounced, largely because of its size and its frequent new membership. House leadership is necessarily more active to corral members and represent a consistent party voice.

The Speaker of the House is the presiding officer of the House of Representatives and the most powerful person in the House. Speaker elections take place at the beginning of each new Congress; they also take place at other times if the sitting Speaker resigns or is removed from the position. Because the majority party in the House has more voting members, the person elected as Speaker is also a member of the majority party. The Speaker of the House has many important responsibilities:

- administering the oath of office to other representatives
- permitting representatives to speak on the House floor
- counting and declaring votes
- assigning representatives to committees
- signing the bills and resolutions that the House passes

The Speaker of the House is also second in the **line of succession** for the presidency, behind the vice president.

In addition to electing a Speaker of the House, members of each party choose their **caucus** leadership at the start of each Congress. The majority leader is chosen to lead the majority party. This individual acts as the Speaker of the House's right hand. They carry out a variety of tasks, including



Leadership in each house of Congress is very similar.

scheduling when new legislation comes to the floor and setting legislative priorities. The minority leader is chosen by members of the party with fewer members in the House; this individual nominates members of their party to committees, looks out for the rights of the minority party, and speaks on behalf of the minority party.

Of course, the Speaker of the House, the majority leader, and the minority leader are still U.S. representatives, which means they are responsible for serving the constituents who live in their home districts. Traditionally, though, these three leaders do not join in debates on the House floor, and they do not serve on committees.

The majority and minority parties also elect party whips. The word *whip* comes from the old fox-hunting term *whipper-in*, a person who keeps the hunting dogs from running away during the hunt. In a political sense, the whip works to keep members of their party in line with the party's agenda. Whips play an important role in helping pass legislation, including making sure bills make it to the floor, encouraging party support for the legislation from other members of their party, and counting votes (including before the legislation makes it to the floor).

You read earlier that the vice president is the leader of the Senate. As such, the vice president has the constitutional power to cast a tiebreaking Senate vote. But typically, the vice president is absent from the Senate, and leadership is exercised by the president pro tempore, who is chosen by senators and acts

in the vice president's place. The president pro tempore is a member of the majority party and takes on several key responsibilities:

- working with the Speaker of the House to appoint the director of the Congressional Budget Office
- making appointments to national advisory boards
- receiving reports from federal agencies
- administering the oath of office to other senators
- signing the bills and resolutions the Senate passes

The president pro tempore does not have a tiebreaking vote like the vice president.

As in the House of Representatives, members of each party choose their caucus leadership in the Senate, called majority and minority leaders or simply floor leaders. These individuals are responsible for voicing their party's views and for helping bring legislation to the Senate floor. It is their job to start and finish Senate proceedings each day, though their primary function is to protect the interests of their party. Like the House floor leaders, and unlike the Speaker of the House and president pro tempore, the Senate floor leaders are not constitutional offices; rather, these positions have authority based only on traditions that have developed over time. Still, they hold significant sway. This is especially true of the majority floor leader, who schedules Senate floor business and who typically gets to speak first when multiple senators simultaneously ask to be called on.

Think Twice

How are the leadership structures in the House of Representatives and the Senate similar and different?

The Legislative Process

Enacting new legislation is a multistep process that involves both the House and the Senate. Proposed laws, referred to as bills, can originate in either chamber, except for bills that would raise revenue. The following explanation describes the typical stages that a bill goes through to become a law. It is important to note that not all bills go through each of these stages, and in some instances, bills go through some of these steps multiple times.

First, a member of Congress introduces a bill to their respective chamber; the proposed law is then sent to a committee for review. Congress legislates on a broad range of topics, with thousands of bills introduced annually, and not every member can be an expert on every topic. Committees are groups of members, staff, and others who focus on a specific area of policy expertise. Subcommittees are smaller, more specialized

parts of committees; for instance, the House Natural Resources Committee has a subcommittee dedicated to energy and mineral resources and another dedicated to water, wildlife, and fisheries.

Bills are first reviewed by a subcommittee; members research, review, and debate the bill. Sometimes a subcommittee rejects a bill; other times, it may approve the bill as it is written or make amendments to the original text before moving it to the full committee for review. At this stage, the full committee reviews, investigates, and debates the bill again before voting to approve or reject it. Bills that are approved by the committee are sent to the House or Senate majority leader, who then determines whether and when to present the bill for consideration by all members of their chamber.

Each chamber of Congress has a different process for debating bills up for consideration. In the House, members have only a few minutes to speak about a bill, and the Rules Committee normally puts restrictions on how many changes can be made to the bill. The Senate, by contrast, has few limits on the debate and amendment process. Senators can speak for as long as they like and on topics unrelated to the bill up for consideration. In a tactic called a **filibuster**, some senators refuse to stop speaking in the hopes of stopping the Senate from voting on a bill. When this happens, sixty senators must vote to stop debate on the bill, a procedure called **cloture**. In both chambers, bills are passed by a simple majority, meaning 50 percent plus one; however, because of the cloture rule, for the most part, sixty votes are required in the Senate to enact legislation.

Recall that enacting new legislation requires both the House and the Senate to pass it. When the same party controls both the Senate and the House of Representatives, legislation is easier to pass. If different parties control the chambers, legislation might pass one house but fail to pass in

Committees vs. Commissions

Both houses of Congress form committees and commissions. While the groups have similar functions, their purposes are actually very different. Committees are internal, meaning that they are made up of members of Congress to advise on different policy areas. Commissions, on the other hand, are external; they are independent and temporary groups made up of experts that Congress assembles. Commissions help Congress identify or solve problems, give advice, and make recommendations, from how to improve public housing to what to consider when planning a new national museum.

Congressional Committees

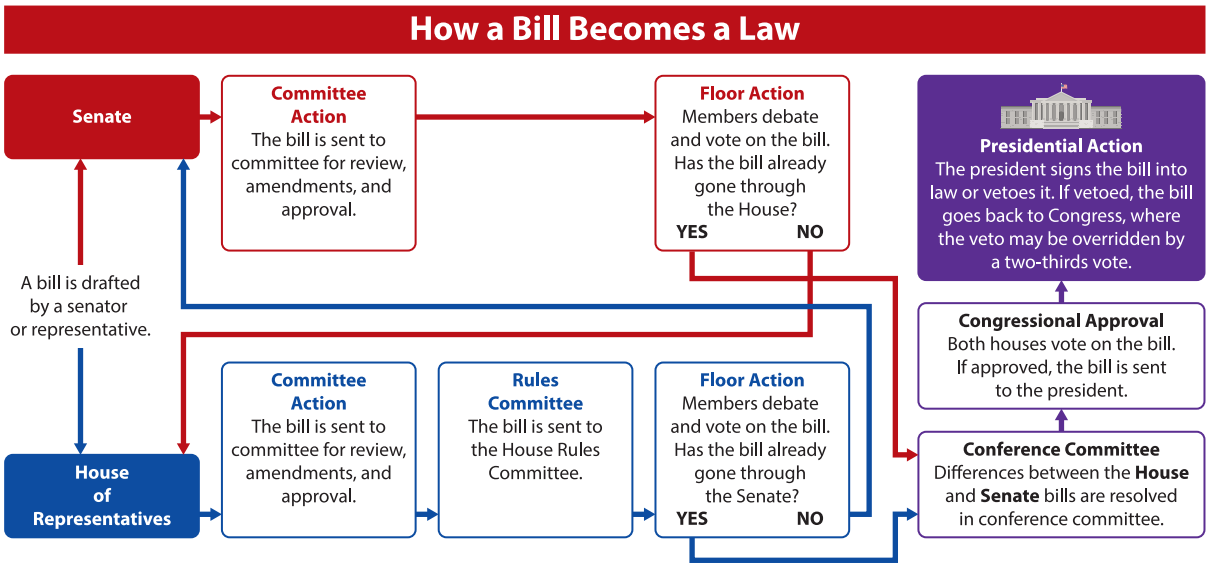
Type	Description	Examples
Standing committee	Permanent committee dedicated to particular policy areas	House: Commitee on Agriculture; Committee on Foreign Affairs; Committee on Science, Space, and Technology Senate: Committee on the Budget; Committee on Energy and Natural Resources; Committee on Health, Education, Labor, and Pensions
Joint committee	Committee made up of members from both the House of Representatives and the Senate	Joint Economic Committee Joint Committee on the Library
Special committee	Committee formed for a specific task	House: Permanent Select Committee on Intelligence Senate: Select Committee on Ethics
Conference committee	Committee of members from both houses that is formed to reconcile different versions of a bill	Vary according to bills currently in process

Congress has four types of committees, including more than fifteen standing committees in each chamber.

the other. Often, once a bill has passed in one chamber, it must then go to the other chamber, where it goes through the committee process all over again before making it to the floor for a vote. At other times, related bills are introduced more or less simultaneously in each house.

As a result, the House and Senate sometimes pass two different versions of the same bill. When this happens, the two versions go through a process called *reconciliation*. A conference committee is formed, containing members of both houses. The committee works to reconcile the language in the bills to produce a single, final version to be sent to both full houses for a final vote.

It is important to note that the party that the president belongs to often influences whether a bill becomes law. When both houses of Congress are controlled by the same party, Congress may pass a law that a



As you can see from the left side of this diagram, a bill can originate in either the Senate or the House. However, it must be approved by both chambers before it can be sent to the president.

president belonging to the other party might decide to veto, which may cause Congress to try to override that veto. However, when the president is a member of the majority party in Congress—and likely shares similar policy goals—a veto is far less likely.

Think Twice

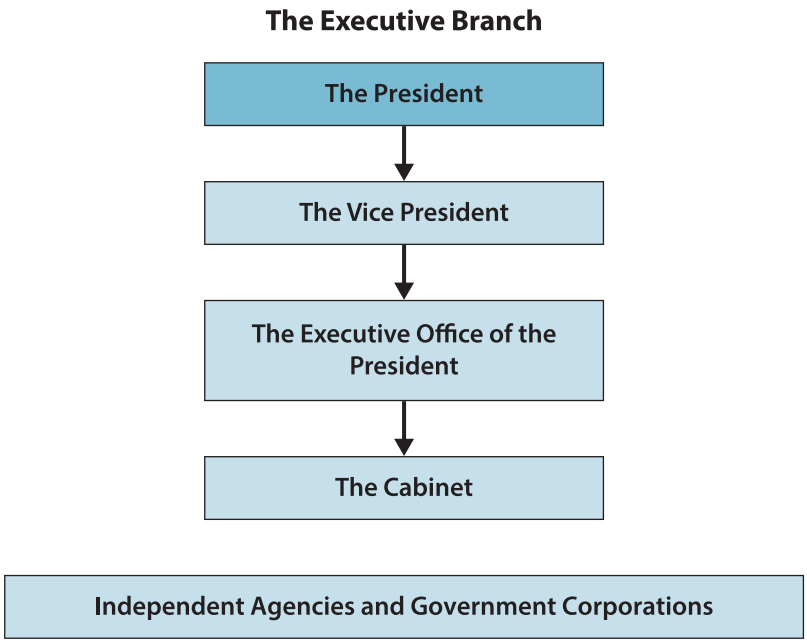
What is the process for creating new laws?

The Executive Branch

Article II of the Constitution outlines the powers of the executive branch and its chief executive, the president of the United States. The executive branch is made up of more than just the president; more than four million people, including military personnel, work for the executive branch. It includes the vice president, an advisory body called the cabinet, and a wide array of federal agencies with their own unique responsibilities and roles. These different components work together to administer and enforce federal laws. As the chief executive, the president oversees all of these people in deciding how the laws passed by Congress are to be enforced and implemented.

The President

In addition to serving as chief executive, the president also acts as head of state, commander in chief of the military, and



The executive branch consists of many departments and offices, including the cabinet and the Executive Office of the President, which you will read about in the next topic. While independent agencies and government corporations, such as the Federal Election Commission and the U.S. Postal Service, are officially part of the executive branch, many are partially or mostly autonomous from executive oversight.

head of government. As head of state, the president represents the United States on the international stage. As commander in chief, the president has authority over the armed forces and can deploy troops—but recall that the president cannot declare war; that power is reserved for Congress. As head of government, the president ensures that laws passed by Congress are carried out by the various departments and agencies that make up the executive branch.

As head of government, the president is a highly visible and influential figure and, as such, has the ability to set and shape the agenda for the United States. This agenda may include things like foreign policy, economic priorities, social change, and legislative reform. This concept is referred to as the **bully pulpit**. Yet remember that presidents do not have the power to enact legislation—although the veto power gives them important say. Presidents do, however, have the power to issue **executive orders** to shape policy. Executive orders are instructions from the head of the executive branch to the agencies and officials that they supervise as to how to understand and carry out laws issued by Congress. A president can overturn a former president's executive order, and the judicial branch

Historic Executive Orders

Executive Order	Issued By	Description
Executive Order 9066 (1942)	President Franklin D. Roosevelt	Forcibly relocated Japanese Americans to internment camps during World War II
Executive Order 9981 (1948)	President Harry S. Truman	Mandated desegregation of the U.S. military
Executive Order 10730 (1957)	President Dwight D. Eisenhower	Deployed military troops to enforce court orders for the desegregation of Arkansas schools
Executive Order 10924 (1961)	President John F. Kennedy	Created the Peace Corps with the U.S. Department of State to encourage volunteer work in developing countries
Executive Order 11246 (1965)	President Lyndon B. Johnson	Prohibited discrimination in government employment and contracting and created antidiscrimination policies and procedures
Executive Order 13228 (2001)	President George W. Bush	Created the Department of Homeland Security to connect and coordinate federal agencies tasked with domestic security

Presidents have used their power to issue executive orders for a variety of purposes. Several of those listed in this chart were issued during war or other times of crisis or controversy.

The term *bully pulpit* was first used by President Theodore Roosevelt to describe the president's ability to influence people and policy.

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE II, SECTION 2

Article II of the Constitution vests executive power in the president and outlines the various powers, duties, and responsibilities of the executive branch.

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

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

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

Source: The Constitution of the United States. U.S. National Archives.

has the power to rule an executive order unconstitutional.

The number of executive orders varies from term to term and from administration to administration. George Washington issued just eight executive orders during his time in office, while the next five presidents issued a combined ten executive orders. Presidents began issuing more executive orders during the twentieth century. President Franklin D. Roosevelt holds the record with 3,721; however, from 1984 to 2024, presidents have averaged about 162 executive orders per term. Executive orders are varied; some authorize extraordinary action in times of war, as was the case in 1945 when Roosevelt issued Executive Order 9536, which gave the secretary of the Department of the Interior

the authority to take over and operate certain coal mines during a labor dispute near the end of World War II. Others are less critical, like Executive Order 13523, issued by President Barack Obama in 2009, which closed executive departments and agencies midday on Christmas Eve.

As the head of state, the president is the country's chief diplomat. The Constitution specifies that the president "shall receive Ambassadors and other public Ministers." They meet with foreign leaders and dignitaries to forge international partnerships and alliances, promote trade, and advance U.S. goals around the world. Article II also gives the president the power to negotiate treaties—but recall that treaties do not become law unless and until they are ratified by the Senate.

Additionally, presidents have the power to appoint ambassadors, cabinet secretaries, judges (including Supreme Court justices), certain military officials, and U.S. attorneys. There are ninety-three U.S. attorneys, each

A president has many responsibilities, including signing legislation (top left), meeting other heads of government or heads of state (bottom left), receiving briefings from the Joint Chiefs of Staff (top right), and delivering the State of the Union address (bottom right).

appointed by the president to enforce federal laws in their assigned district.

You read earlier that making presidential appointments requires the "Advice and Consent" of the Senate, an example of a legislative check on executive power. When the president nominates an individual for a position, the Senate confirms or denies the president's nomination. If the Senate confirms the nomination, then the president may officially appoint their candidate. Typically, the Senate quickly confirms the president's nominations to cabinet and ambassador positions, but debate over some nominees can be vigorous and even hostile when nominees and committee members have strong ideological differences. This sort of conflict has often arisen regarding nominations for the Supreme Court and has intensified over time. Up until the 1950s, the average time between presidential nomination and Senate confirmation of a Supreme Court justice was about thirteen days; since 1950, that interval has grown to an average of about fifty-four days.

The president has other powers and responsibilities, too. One of these powers is the ability to pardon criminals convicted of federal crimes. The president is also constitutionally required to provide updates on the state of the nation. Today, this takes the form of a televised speech called the State of the Union address.

A president's term lasts four years, and the Twenty-Second Amendment (ratified in 1951) says that no president can serve for more than two terms. The president

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE II, SECTION 3

Article II, Section 3, requires presidents to give an update on the state of the nation "from time to time." The Constitution does not state when the State of the Union address should take place, nor that it must be an oral address, but it typically happens in January or February each year.

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

Source: The Constitution of the United States. U.S. National Archives.

From Legislator to Executive

More than half of U.S. presidents—twenty-six to be exact—served as members of Congress before leading the executive branch. Nine presidents were members of just the House of Representatives, seven were members of just the Senate, and ten served in both chambers of Congress. (Two even returned to Congress *after* serving as president.) This experience can be very helpful for the president, especially when it comes to working with Congress to enact new legislation.

President	Senate	House
James Madison		X
James Monroe	X	
John Quincy Adams	X	X
Andrew Jackson	X	X
Martin Van Buren	X	
William Henry Harrison	X	X
John Tyler	X	X
James Polk		X
Franklin Pierce	X	X
Millard Fillmore		X
James Buchanan	X	X
Abraham Lincoln		X
Andrew Johnson	X	X
Rutherford B. Hayes		X
James Garfield		X
Benjamin Harrison	X	
William McKinley		X
Warren G. Harding	X	
Harry S. Truman	X	
John F. Kennedy	X	X
Lyndon B. Johnson	X	X
Richard Nixon	X	X
Gerald Ford		X
George H. W. Bush		X
Barack Obama	X	
Joe Biden	X	

must be a U.S. citizen since birth, be at least thirty-five years old, and have lived in the United States for a minimum of fourteen years. In Unit 1, you read about the Electoral College system; although citizens vote in presidential elections, the president is chosen not by popular vote but through the Electoral College. During a presidential election, people in each state vote for slates of electors who make up the Electoral College. In most states, the candidate who receives the most votes wins all of that state's electors. The number of electors in each state is based on how many representatives a state has in the House and Senate. For example, Texas has far more electoral votes (40) than Connecticut (7). The person who becomes president needs to win more than half of the 538 total electoral votes, or 270. The vote of the Electoral College does not always match the outcome of the popular vote; for example, George W. Bush won the presidency in 2000 despite losing the popular vote to Al Gore.

Think Twice

What are the functions and duties of the executive branch of government?

The Vice President

Earlier in the unit, you read about the vice president's role as the president of the U.S. Senate and their power to cast

The Cabinet

Executive Department	Year Created	Responsibilities
State	1789	Oversee foreign policy and diplomacy
Treasury	1789	Manage government finances and economic policy
Justice	1789	Enforce laws, ensure justice in judicial proceedings
Interior	1849	Manage natural resources and public lands, honor federal responsibilities to Native Americans and other Indigenous peoples
Agriculture	1889	Promote agriculture, food safety, and rural development
Commerce	1903	Promote economic growth and trade opportunities
Labor	1913	Protect workers' rights, promote fair employment
Defense*	1947	Defend the United States, ensure security
Health and Human Services	1953	Ensure public health and access to care
Housing and Urban Development	1965	Ensure fair housing, promote community development
Transportation	1967	Maintain and promote U.S. transportation systems
Energy	1977	Advance energy security and energy technologies
Education	1979	Ensure equitable education and access to funding
Veterans Affairs	1988	Oversee benefit programs for veteran
Homeland Security	2003	Protect people from domestic and foreign threats, manage disaster response

***The Department of Defense was originally created as the War Department in 1789 and was reestablished in its current form in 1947 following World War II. As a result, the secretary of defense is third in the cabinet (fifth overall) in the line of succession for president.**

The cabinet is made up of fifteen departments, each with its own responsibilities.

the tiebreaking vote on legislation and resolutions. But this is not the vice president's primary function. The vice president is a backup in case the president becomes unable to fulfill the duties of office. This could happen because the president dies or resigns, or because they are seriously ill or need anesthesia to undergo a medical procedure.

The Twenty-Fifth Amendment, ratified in 1967, also permits the vice president and the cabinet to determine jointly that the president is unfit for duty.

Think Twice

What are the primary responsibilities of the vice president?

The Cabinet

The president is assisted by the departments and agencies that make up the executive branch. There are fifteen executive departments; their leaders make up a panel of advisors called the cabinet. Members of the cabinet—titled "secretary" except for the attorney general, the head of the Justice Department—serve at the pleasure of the president and can be removed by the president at any time. The heads of the executive departments are in the line of presidential succession following the vice president and the Speaker of the House, in order of the date each department was originally created.

Think Twice

Who makes up the cabinet, and what is its purpose?

The Judicial Branch

Earlier in this unit, you read a letter that John Adams wrote to John Penn just as the American Revolution was unfolding. Adams explained his belief that a republic was "An Empire of Laws and not of Men." The Founders echoed this sentiment during the Constitutional Convention when they focused their attention on establishing the third branch of the federal

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE III, SECTION 1

Article III, Section 1, of the Constitution created the judicial branch as one Supreme Court but allowed for lower courts to be established by Congress.

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

Source: The Constitution of the United States. U.S. National Archives.

government—the judicial branch—to interpret, apply, and determine the constitutionality of laws. The judicial branch only acts on matters that are brought to it by opposing parties, in criminal cases and in civil cases.

Judicial Structure and Process

To understand the federal judicial branch, it is important to understand the structure of the branch and the judicial process.

The **judiciary** is not responsible for shaping and structuring itself; this power lies with Congress. Congress can create or abolish courts, add to or subtract from the number of judges in the federal system, and determine the jurisdiction of the courts.

The president nominates judges at all levels of the federal judiciary. Suggestions for nominees frequently come from members of the president's party. The Senate Judiciary Committee then investigates and evaluates the nominee, a process that normally includes questioning the nominee and witnesses during a public confirmation hearing. Finally, the entire Senate denies or confirms the nomination with a simple majority vote.

The federal judicial branch can be thought of as a pyramid made up of different tiers of courts, each with its own function.
The first tier of the pyramid is made up of ninety-four district courts, which are trial courts. Any case that involves federal law—

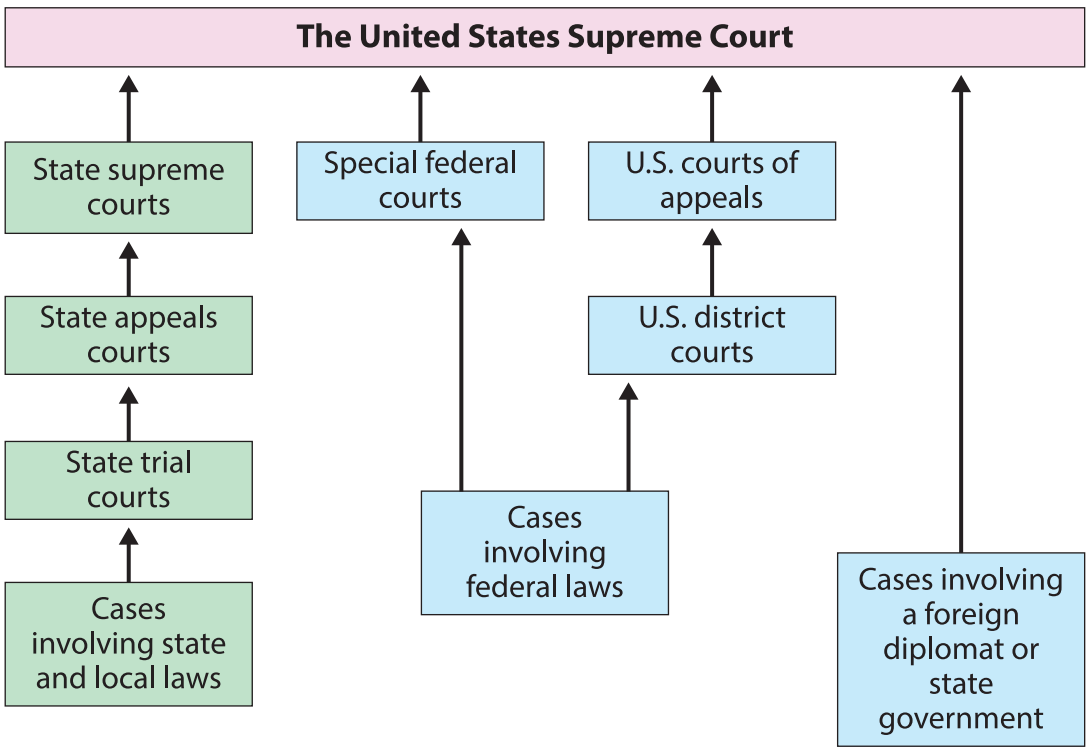
Sandra Day O'Connor during her Senate hearings prior to her confirmation as the first woman on the Supreme Court

both criminal and civil—starts in a district court. Each U.S. district court is presided over by a district judge, and every state has at least one district court.

The second tier of the pyramid is made up of thirteen courts of appeals, or appellate courts; all but one federal appeals court represents a circuit, or a region made up of multiple U.S. district courts. Federal appeals courts decide if the district court applied the law correctly; in other words, the losing party may **appeal** the ruling of the district court that originally heard the case and ask the court of appeals to review the facts and issue a new ruling. Federal appeals are decided by a panel of three judges; there is no jury. The appellant makes their case in a written **brief**, and then the respondent, or party opposing the appeal, submits a reply. If the court of appeals denies the appeal, the district court's decision stands. The appeals court may also overturn the

decision or send the case back to the district court with instructions. Under Article III, Section 1, of the Constitution, U.S. district courts and courts of appeals are considered "inferior Courts." The thirteenth federal appeals court is the Federal Circuit Court of Appeals, which is not tied to a circuit and has nationwide jurisdiction over matters of patents, trademarks, and several other specific areas.

The top tier of the federal judicial pyramid is the Supreme Court. If an appellant loses in a federal appeals court, they can ask the Supreme Court to hear their case by filing a petition for a *writ of certiorari* (/sersh*shee*eh*rare*ee/). It is important to note that people do not have a right to have their cases heard by the Supreme Court; the court decides which cases it wants to hear. Historically, the Supreme Court has chosen to hear cases that involve important and unsettled constitutional issues, though this is not a hard and fast rule. It also tends toward cases that raise issues that have been decided differently in different federal circuits, causing inconsistencies in how a law is applied across the country. The Supreme Court receives about 7,500 requests for appellate review each year, of which fewer than 150—about 2 percent—are granted.



The U.S. judicial system is made up of different levels of courts that hear different cases depending on their jurisdiction; the arrows point upward to indicate that the U.S. Supreme Court is the highest court in the country.

State courts are also a part of the judicial system. Courts at the state level have similar structure and roles to the federal court system. For example, Louisiana has forty-two district courts where civil and criminal trials related to state laws are heard. The outcomes of cases heard in state district courts may be appealed to one of the state's five courts of appeals. The Louisiana Supreme Court sits at the top of the state's judicial pyramid; it oversees the lower courts and issues rulings on appeals from lower state courts. Those cases heard by state supreme courts that relate to the U.S. Constitution may be appealed to the Supreme Court of the United States—also by petitioning for a writ of certiorari.

Think Twice

What are the functions and duties of the judicial branch of government?

The Supreme Court of the United States

As you just read, the Supreme Court is at the top of the federal judicial pyramid; it is, quite simply, the highest court in the United States and has the final say on whether or not a law adheres to the Constitution.

The Supreme Court has two jurisdictions. The first is appellate jurisdiction; you just read that the Supreme Court hears appeals from inferior federal and state supreme courts. Under what is known as the exceptions clause of Article III of the Constitution, Congress has the authority to regulate the Supreme Court's—and lower federal courts'—appellate jurisdiction. Most Supreme Court cases are appellate cases. In specific cases—those that involve conflicts between states or disputes between ambassadors and certain other public officials—the Constitution gives the Supreme Court **original jurisdiction**. This means that the Supreme Court has the power to hear the case and make a final ruling without it going through the appeals process first.

The Supreme Court generally follows a doctrine called *stare decisis*, Latin for "to stand by things decided," when issuing rulings. This means that the court follows precedents set by past legal decisions, sometimes including decisions by lower federal and state courts, when determining

The Supreme Court of the United States

PRIMARY SOURCE: U.S. CONSTITUTION, ARTICLE III, SECTION 2

Article III, Section 2 of the Constitution establishes the jurisdiction of the judicial branch.

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

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

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

Source: The Constitution of the United States. U.S. National Archives.

the outcome of a case. Supreme Court rulings establish precedents not only for its own future rulings but also for inferior federal courts and state courts to follow. Note that the precedent set by a decision is not the ruling on the particular case; instead, it is the newly discovered or newly created legal or judicial principle that makes up the basis for the ruling. For example, in 1954, the Supreme Court ruled unanimously in *Brown v. Board of Education* that segregation in public schools was unconstitutional; this precedent was then applied to other rulings relating to segregation in other parts of public life, such as transportation, restaurants, theaters, and hotels.

The chief justice is the head of the Supreme Court and presides when the court is in session. This individual also determines which justice should write the opinion when a ruling has been made on a case. Supreme Court

How Many Justices?

Congress has control over the number of justices on the Supreme Court, a number that has ranged from as few as five to as many as ten. The number has been constant since the Judiciary Act of 1869 set it at nine. Congress's ability to determine the number of justices has been used to check and expand both judicial and executive power. For example, after the Civil War, Congress tried to curtail President Andrew Johnson's power by reducing the size of the Supreme Court from ten to seven; the sitting justices would serve out their appointments, but Johnson was prevented from making any more appointments. During the Great Depression, President Franklin D. Roosevelt proposed a bill to expand the size of the Court so he could appoint justices with ideologies similar to his own; Congress did not enact this legislation.

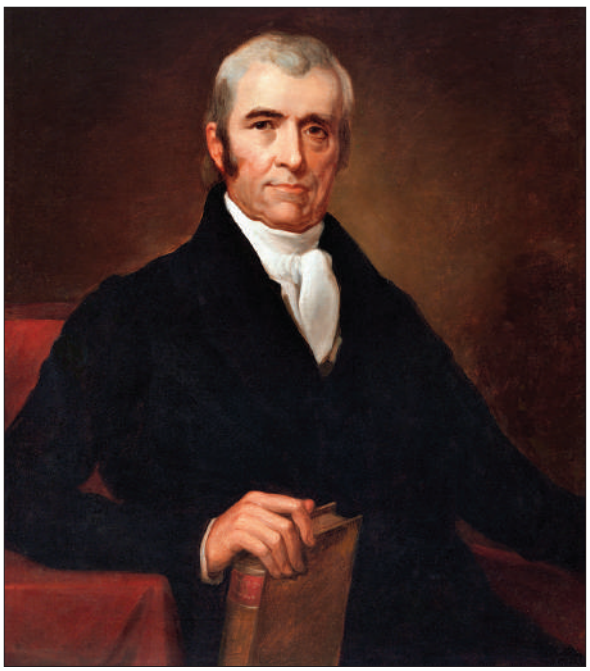
justices and federal judges are appointed for life; for the most part, they serve until they feel unable to continue and resign or until they die. However, the Constitution also provides for the removal of justices and judges for misconduct. Article III, Section 1, includes the phrase "shall hold their Offices during good Behaviour." This means that Supreme Court justices and federal judges can be removed from office if they are impeached by the House of Representatives and convicted by the Senate. The Constitution does not specify what behaviors merit impeachment; historically, the decisions to impeach and to convict or acquit are political.

Think Twice

What is stare decisis, and how does it influence the Supreme Court's decision-making process?

"Their Necessary Independence"

The judicial branch is distinct from the other two branches of the federal government in that its members do not run for their offices and their terms do not expire; a federal



Chief Justice John Marshall served as the chief justice of the Supreme Court from 1801 to 1835. During that time, he greatly shaped the nature and power of the court.

PRIMARY SOURCE: *FEDERALIST* NO. 78, 1788

Authored by Alexander Hamilton in May 1788, Federalist *No. 78 makes the case for an independent judiciary and its power of judicial review. While Hamilton believed the judiciary was the weakest of the three branches of government, his essay explains why he felt that federal judges should be appointed for life.*

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge.

Source: Hamilton, Alexander. *Federalist* No. 78. Federalist Papers: Primary Documents in American History. Library of Congress.

judgeship is an appointment for life. The Founders did this intentionally. Supreme Court justices and federal judges are a step removed from the people. That way, they can decide cases based on their understanding of the Constitution, rather than make decisions with an eye to popularity or reelection. In this way, the Constitution strengthens the independence of the judiciary.

While the Constitution clearly sets out key features promoting judicial independence, its treatment of the Supreme Court's most significant power, **judicial review**, is much less clear. Judicial review is the power to review the actions of the other branches of government to determine whether they follow the Constitution. For example, during the Great Depression, Congress passed the Agricultural Adjustment Act, which created a tax on certain agricultural goods; the money from the tax was then given to farmers in exchange for reducing the amount of land they farmed. (The government wished to reduce crop surpluses, which were affecting agricultural prices.) In *United States v. Butler*, the Supreme Court ruled 6–3 that this law was unconstitutional because it violated the states' reserved rights granted to them through the Tenth Amendment. Specifically, it affected their right to regulate agriculture.

However, judicial review is not mentioned anywhere in the Constitution, although there is evidence that the Founders intended the courts to have this power. Prior to the ratification of the Constitution, state courts had the power to overturn laws that conflicted with state constitutions. Many of the Founders, including Alexander Hamilton and James Madison, looked to this precedent when envisioning the role of the Supreme Court relative to the legislative and executive branches under the U.S. Constitution.

The power of judicial review, however, was not affirmed until fourteen years after the Constitution had gone into effect. In 1803, the Supreme Court ruled unanimously on *Marbury v. Madison*, a case that involved all three branches of government.

After then-president John Adams lost the election of 1800 to Thomas Jefferson, and before Adams's term as president ended, he signed the Judiciary Act of 1801 into law. This act created new courts and judgeships and allowed Adams to appoint fifty-eight new judges and justices of the peace. The purpose was to stymie Thomas Jefferson and his ability to mold the judiciary according to his vision.

Adams's appointments were confirmed by the Senate. However, no appointment would go into effect until the secretary of state delivered commission papers to the appointee. By the time Jefferson took office, some Adams appointees, including William Marbury, named to be a justice of the peace for the District of Columbia, still had not received their commissions. Jefferson ordered his new secretary of state, James Madison,

to withhold the commissions. But Marbury wanted his commission. He petitioned the Supreme Court, asking it to order Madison to deliver the approved commissions.

The Supreme Court, led by Chief Justice John Marshall, decided *Marbury v. Madison* on February 24, 1803. It held that even though Marbury had a valid claim to the judgeship, the court did not have the authority to make Madison give him the commission.

Marshall acknowledged that, according to the Judiciary Act of 1789—a law enacted by Congress during George Washington's presidency—the Supreme Court was required to order Madison to deliver the commission. But he went on to explain that Congress had no power under the Constitution to write such a law in the first place and tell the Supreme Court how it must act. He held, therefore, that the law that gave the Supreme Court this power was in violation of the Constitution. As a result, the Supreme Court declared the Judiciary Act of 1789 invalid.

The decision in *Marbury v. Madison* shows that the people charged with executing the Constitution's plan had to decide what it meant. In his opinion, Marshall explains that the Constitution cannot be modified simply through legislation by Congress:

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

The case also shows that the country's leaders had to decide what each branch needed to be able to function properly. To Marshall, this meant that the Supreme Court had the authority to interpret the law and to invalidate laws passed by Congress as appropriate:

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. . . .
>
> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

The assertion of the power of judicial review in *Marbury v. Madison* altered the balance of power in the federal government. It made the judicial branch more of a coequal branch, with the power to check the actions of the other two branches and limit their powers.

Think Twice

How did the Supreme Court's ruling in *Marbury v. Madison* help define the power of the judicial branch?

Topic 3
The U.S. Government over Time

Framing Question

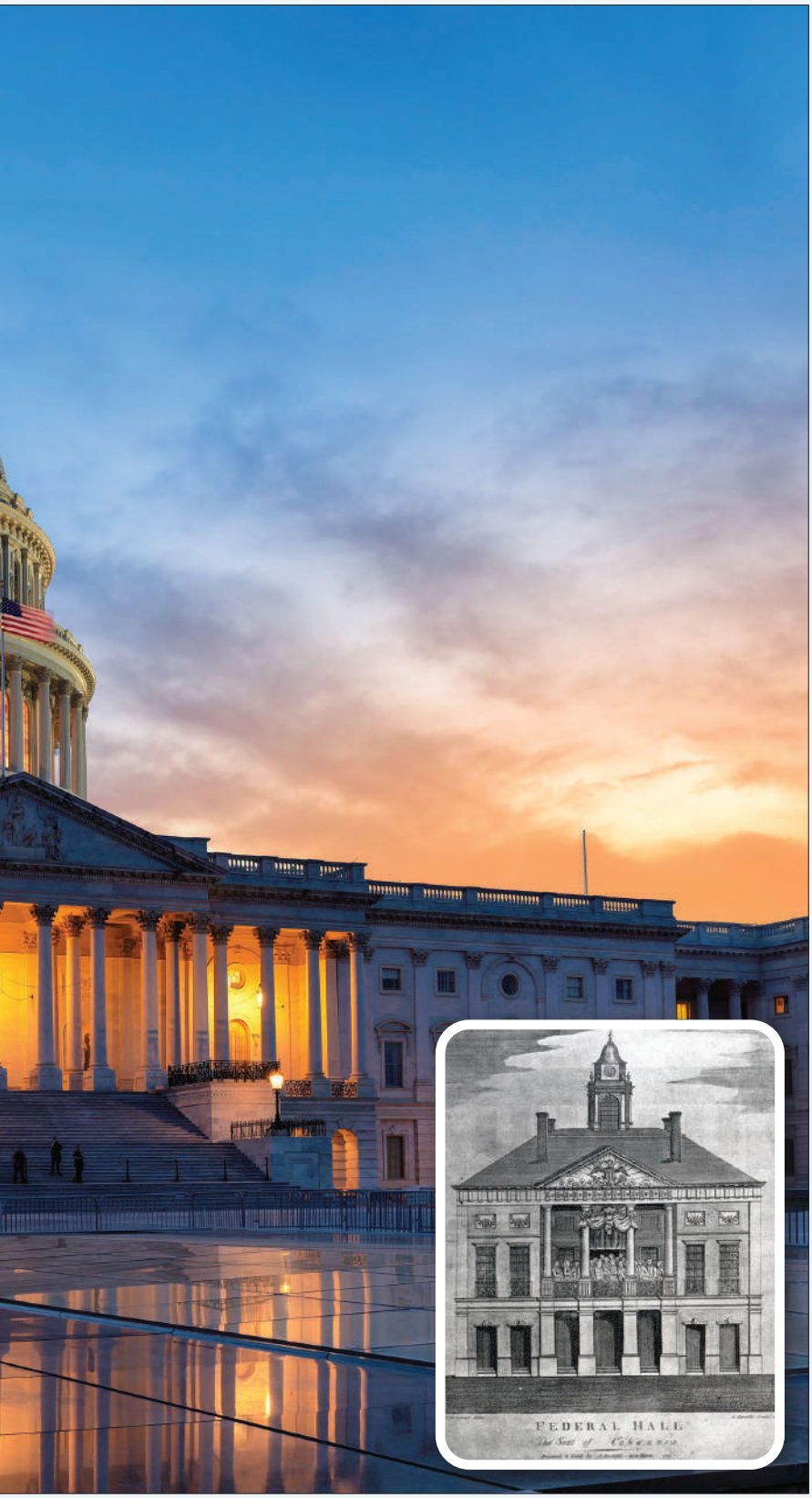
How has the role of the government changed from 1789 to the present?

The original building of the U.S. Capitol was constructed between 1793 and 1826, then expanded in 1868 and again in the 1960s to meet the needs of the growing government. This building is much larger than the original seat of Congress at Federal Hall in New York City.

Changing Times

Setting the Scene

The U.S. Constitution went into effect in 1789, and though the young country was changing quickly, the United States—and what its government had to manage—was still quite small. George Washington's cabinet was made up of just four departments—Justice, State, War, and the Treasury—and there were only seventy-five post offices. Nearly the entire population of 3.9 million lived in the strip of land between the Appalachian Mountains and the Atlantic Ocean, and more than half of the continent was still controlled by Spain. In 1790, the United States was still just thirteen states and a few territories; Vermont, Kentucky, and Tennessee would join the Union in the next six years, but the Northwest Territory, officially established in 1787, was still unorganized.



The only people who could vote were white, landowning men; the institution of slavery was growing, and Native Americans were not considered citizens of the United States.

Fast-forward two hundred years to 1990, and the United States was much different. There were now fifty states, the country spanned from the Atlantic to the Pacific, and the population had grown dramatically to nearly 250 million. The House of Representatives reflected these changes, growing from its original 65 members to 435. The executive branch also looked much different—the president's cabinet had grown to fifteen departments—and the federal government was much larger, employing more than 3 million people. Participation in government had grown and changed, too, through a combination of legislative, executive, and judicial action. All citizens over the age of eighteen, regardless of their sex or race, could vote; in fact, the percentage of voting-age women who were registered to vote was greater than for men. The United States had changed significantly, and to keep up with all of these changes, the federal government had changed, too.

The Legislative Branch over Time

When the Founders wrote the Constitution, they were well aware of the magnitude of the legislative branch's responsibility to make the nation's laws. Accordingly, they made sure that the legislative branch was highly responsive to the will of the people. It is only natural, then, that the legislature would evolve in response to major national changes, including the end of slavery, the extension of voting rights, and the country's rapid population growth.

More People, More States, More Legislators

The Founders anticipated that the country and its population would grow; they provided for this in Article I, Section 2, of the Constitution, where they discuss **enumeration**, or the process of counting the population through the census:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers. . . . The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

But what exactly does this mean? In 1787, the Constitution set the House of Representatives at 65 members and planned to measure the populations of the states, adjust the number of representatives accordingly, and reapportion representatives as needed. The addition of new seats was based on the ratio of one representative for every 30,000 residents. When Congress conducted the first census in 1790, it used this ratio to determine that forty additional seats were needed. Congress used this method to increase the size of the House until 1840. It can be represented as a simple math equation:

> State populations ÷ 30,000 residents = Number of members in the House
>
> Example: 4,500,000 people ÷ 30,000 residents = 150 members in the House

The United States admitted thirteen states to the Union between 1790 and 1840, during which time the population grew to more than seventeen million people. Over

the ten-year period from 1830 to 1840, the U.S. population increased dramatically, by 32.7 percent. To account for these changes, Congress passed a new apportionment act in 1842 that resulted in a House membership of 233 representatives, changed the ratio of representatives to residents to one member for every 70,680 residents, and required states to establish congressional districts. Today, each congressional district still elects its own representative.

It was also around this time that the *method* of apportionment changed. Instead of determining the total number of representatives by setting a fixed ratio of members to residents, Congress set the number of representatives first and then apportioned seats to the states based on their populations.

Congress continued to increase the number of representatives into the early twentieth century. Congress changed the size of the House in 1911, when it was expanded to 435. The Reapportionment Act of 1929 made this number permanent by setting a formula that would be automatically applied after the census that takes place every ten years.

Think Twice

How and why has the size of the House of Representatives changed?

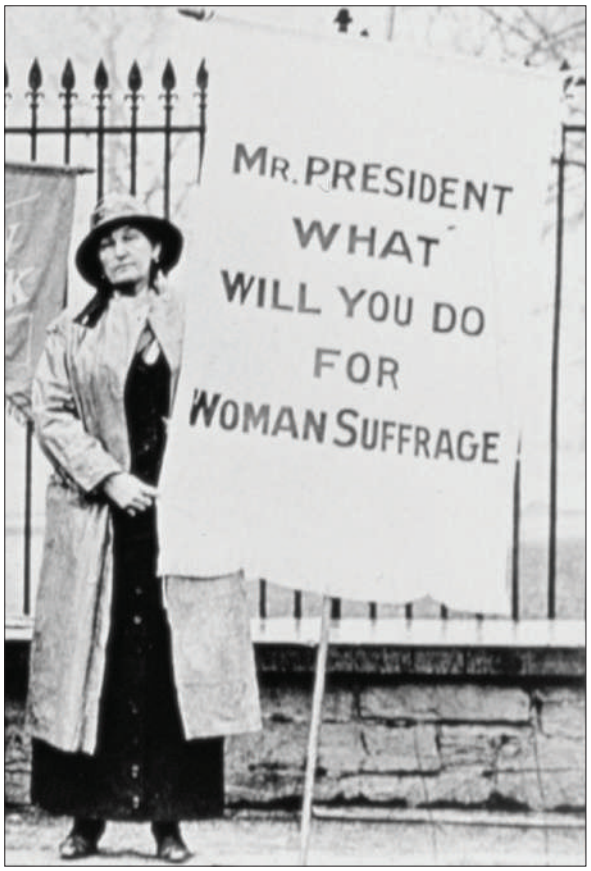
Expanding Representation

In the eyes of the Founders, the legislature was the branch of the people. However, when the Constitution was ratified in 1790, a majority of the population was barred from participating in choosing their government, including women, enslaved people, and Native Americans.

As the country grew, though, the Constitution slowly opened its arms to include more people. Sometimes this occurred after the heat of battle. After the Civil War, for example, the states ratified three key amendments: the Thirteenth Amendment abolished slavery; the Fourteenth Amendment made formerly enslaved persons—approximately four million people—citizens and invalidated the three-fifths clause, affecting apportionment; and the Fifteenth Amendment prohibited states from denying voting rights on account of "race, color, or previous condition of servitude."

The **franchise** was further expanded when the Nineteenth Amendment was ratified in 1920, prohibiting states from denying women the right to vote. Native Americans gained citizenship and voting rights four years later. You also read earlier in the unit how the Twenty-Sixth Amendment lowered the voting age to eighteen. Changes to who could participate in the government had a significant impact on the legislative branch; as it was made more representative, its priorities changed to meet the needs of more citizens.

Despite the enfranchisement of marginalized groups, the rights promised by the



With the ratification of the Nineteenth Amendment, U.S. citizens could no longer be denied the right to vote on the basis of sex.

Constitution were not always applied equally. Women, African Americans, Native Americans, Asian Americans, and Latino Americans were often denied their constitutional rights. Following World War II, the Civil Rights Movement gained momentum in the push to secure these rights. As the African American struggle for rights grew, it inspired the women's rights movement, the Chicano Movement, and the American Indian Movement. As each of these groups gained rights, the expanded electorate forced the legislative branch to become more representative of all people. Expanding voting rights also helped change Congress's priorities, resulting in the passage of legislation that better reflected the needs and wishes of all the people.

The Seventeenth Amendment, ratified in 1913, made Congress more accountable to voters in a different way. Just as the Founders had modeled the House of Representatives after the House of Commons, or "lower house," in British Parliament, they viewed the Senate as the "upper house," much like the British House of Lords. But unlike the British lords, senators were to be elected—just not by the people. The Founders, in Article I, Section 3, of the Constitution, directed that state legislatures would choose their states' senators. This system proved problematic. Deadlocks in state legislatures meant that some Senate seats remained open for months or even years. Additionally, many state legislatures were the object of improper influence—primarily bribery—by **political machines** or by big businesses, leading critics to argue that members of the Senate did not truly serve the interests of regular Americans. The Seventeenth Amendment fixed these problems by providing for the direct, popular election of U.S. senators. Now voters, not state legislatures, choose who represents them in the Senate.

Think Twice

How has the legislative branch become more representative over time?

Changes to Legislative Power

Although the Constitution was designed to create three coequal branches, the way the branches have exercised their power has not always been equal. You read earlier in the unit that Alexander Hamilton considered the judicial branch to be the weakest of the three. Yet the Supreme Court often wielded very strong influence on legislative power during the early years of the republic.

The Supreme Court helped greatly expand the power of Congress, largely through its interpretation of Article I, Section 8, or the commerce clause. The commerce clause gives Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Its inclusion in the Constitution is yet another reflection on the Articles of Confederation. That original governing document had given the states the power to regulate and tax international trade, which interfered with the central government's attempts to negotiate trade treaties. Under the Articles, states had also passed laws to protect their own businesses and industries from competition by other states, resulting in trade wars between states instead of interstate cooperation.

The commerce clause took these powers from the states and gave them to the federal government. What the Constitution does not define, however, is the meaning of *interstate commerce*. Some might argue that interstate commerce is limited to trade, or the transportation and exchange of goods between one state and another. Others may define *commerce* more broadly, arguing that the Constitution implies the power of Congress to regulate not only general economic activities but also the social interactions—including information transmitted online—that occur across state lines.

For the most part, the Supreme Court has reinforced an expansive view of what counts as interstate commerce, starting with the 1824 landmark case *Gibbons v. Ogden*. Aaron Ogden, a steamboat operator, was licensed by the state of New York to ferry passengers between New York City and New Jersey. Meanwhile, Thomas Gibbons, a former partner of Ogden's and now a competitor, held a federal license to navigate in the same area. When Gibbons started operating a ferry along one of Ogden's routes, Ogden brought forth a lawsuit in the state court system to stop him—and succeeded. But Gibbons appealed on the grounds that the federal government's ability to regulate navigation was superior to New York's. His case eventually made its way to the Supreme Court, where Chief Justice John Marshall issued the consequential 6–1 ruling:

> In one case and the other, the acts of New-York must yield to the law of Congress; and the decision sustaining the privilege they confer, against a right given by a law of the Union, must be erroneous.

> This opinion has been frequently expressed in this Court, and is founded, as well on the nature of the government as on the words of the constitution. In argument, however, it has been contended, that if a law passed by a State, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the constitution, they affect the subject, and each other, like equal opposing powers.
>
> But the framers of our constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any act, inconsistent with the constitution, is produced by the declaration, that the constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State Legislatures as do not transcend their powers, but, though enacted in the execution of acknowledged State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution, or some treaty made under the authority of the United States. In every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.

In other words, Congress's power to regulate interstate commerce includes the power to regulate interstate navigation—and because only Congress can regulate interstate commerce, New York's law was invalid. The Supreme Court's decision in *Gibbons v. Ogden* has had far-reaching effects. It is the basis for Congress asserting the power to regulate railroads, highways, and broadcasters, and it gives Congress greater power to regulate *intrastate* commerce that affects or relates to interstate commerce. The ruling in *Gibbons v. Ogden* also reinforced the supremacy clause; federal law superseded the laws of the state of New York.

It is important to note that what the Supreme Court recognizes as interstate commerce for purposes of applying the commerce clause is wide-ranging but not unlimited. One limit was identified when the court overturned the Gun-Free School Zones Act in *United States v. Lopez* (1995). In this ruling, the Supreme Court determined that Congress had exceeded its constitutional authority, stating that knowingly having a firearm in a school zone is not an economic activity, and therefore is not related to commerce.

Over time, the legislative branch has itself expanded in size, but its role in making policy has contracted. As you are about to read, one reason for this change is the expansion of the executive branch, including the assumption of more responsibilities and powers by the president.

Think Twice

In what ways have the legislative branch's powers expanded or narrowed throughout U.S. history?

PRIMARY SOURCE: *UNITED STATES v. LOPEZ,* CHIEF JUSTICE WILLIAM REHNQUIST, 1995

In 1995, Chief Justice William Rehnquist delivered the 5–4 majority opinion of the U.S. Supreme Court in United States v. Lopez.

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. . . ." [. . .]

[. . .] The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

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.

Source: *United States v. Lopez*. 514 U.S. 549 (1995).

The Executive Branch over Time

In Unit 1, you read about the Constitutional Convention and the often difficult choices and compromises the delegates had to make. In shaping the executive branch, as with the other two branches, the Founders had to answer many questions: Should the executive branch be led by a single individual or multiple people? Should there be **term limits**? What should the

executive leader be called? Who should elect that leader? While the answers to these and other questions were uncertain at the start of the convention, many of the Founders agreed on two points: They did not want to create an American monarchy, and the executive leader would not be a king.

The Founders were careful to create an executive branch that was strong but not too strong, and certainly much weaker than the legislative branch. This dynamic shifted as the power and status of the president grew over time. The story of executive growth is strongly associated with individual presidents and the events they experienced while in office, starting with our country's first president.

PRIMARY SOURCE: *FEDERALIST* NO. 69, 1788

Federalist No. 69, *written by Alexander Hamilton in March 1788, reassures readers that the Constitution places effective limits on the president's power by contrasting the executive's power to make war to those of the British king and a state governor.*

First. The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor.

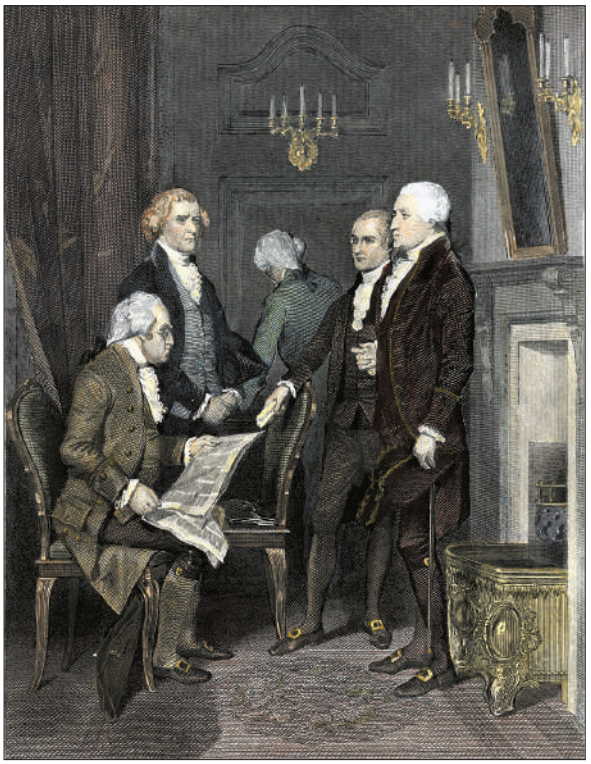
Secondly. The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature.

Source: Hamilton, Alexander. *Federalist* No. 69. Federalist Papers: Primary Documents in American History. Library of Congress.

Setting Precedents

When George Washington took the oath of office on April 30, 1789, he was setting out in uncharted territory. As America's first president under the Constitution, he did not have a role model or example to look to. Washington understood that it was his responsibility to shape and define the role of president, and of the executive branch, for future leaders. This was not a task that Washington took lightly; later presidents would certainly look to the precedents he set. He carefully considered how to use the express and implied powers of the president to effectively and judiciously operate the federal government. Washington was also careful not to act like or be perceived as a monarch. As the Founders debated how to address the executive leader—honorifics including "His Excellency" and "His Highness, the Protector of Our Liberties" were suggested—Washington suggested something much simpler and more American: "Mr. President."

One of the first precedents that Washington set was the creation of the cabinet. Earlier in the unit, you read that the cabinet is an advisory body made up of the heads of different executive departments. Washington's cabinet was small, comprising four individuals: Alexander Hamilton, secretary of the treasury; Thomas Jefferson, secretary of state; Henry Knox, secretary of war; and Edmund Randolph, attorney general. The cabinet became an enduring institution that expanded over time to include fifteen department heads plus ten other officers—including the administrator of the Environmental Protection Agency, the director of national intelligence, and the United States ambassador to the United Nations—to meet the complex and changing needs of the country.



Washington's first cabinet included only four department heads, compared to the modern cabinet that includes fifteen.

Washington also made a point to suggest legislation to Congress; this not only expanded the role of the president but also helped define the relationship between the executive and legislative branches. Recall from Topic 2 that President Franklin D. Roosevelt suggested

the Judicial Procedures Reform Bill of 1937 to restructure the Supreme Court. Meanwhile, President Dwight D. Eisenhower emphasized the need for a national interstate highway system in his 1954 State of the Union address, which resulted in the passage of what is known as the National Interstate and Defense Highways Act and produced the highway system we have today.

While Article II of the Constitution gives the president the power to make treaties and to "receive Ambassadors and other public Ministers," the Constitution does not state explicitly that the president is the country's chief diplomat. Regardless, Washington expanded on this implied power. In 1793, he issued a neutrality proclamation, letting European powers know the United States would not be taking sides in conflicts developing on the continent. As chief diplomat, Washington also made a point to meet directly with various delegates who came to see him, including Native Americans; in this way, he differentiated a president from a monarch.

Article II, Section 1, sets a presidential term of four years, but as adopted in 1789, it did not place a limit on how *many* terms a president could serve. Washington decided to step down after two terms, or eight years in office, a precedent that has been observed by almost all later presidents. Washington did not want to become a despot, or an absolute ruler, and he worried about other developments in the government that might have the same effect.

In his 1796 Farewell Address to the nation, Washington emphasized the importance of national unity and warned against the formation of political parties:

> The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism.

A later president, however, would not only ignore this warning but use political parties to expand the presidency.

Think Twice

What precedents did George Washington set as the first president of the United States?

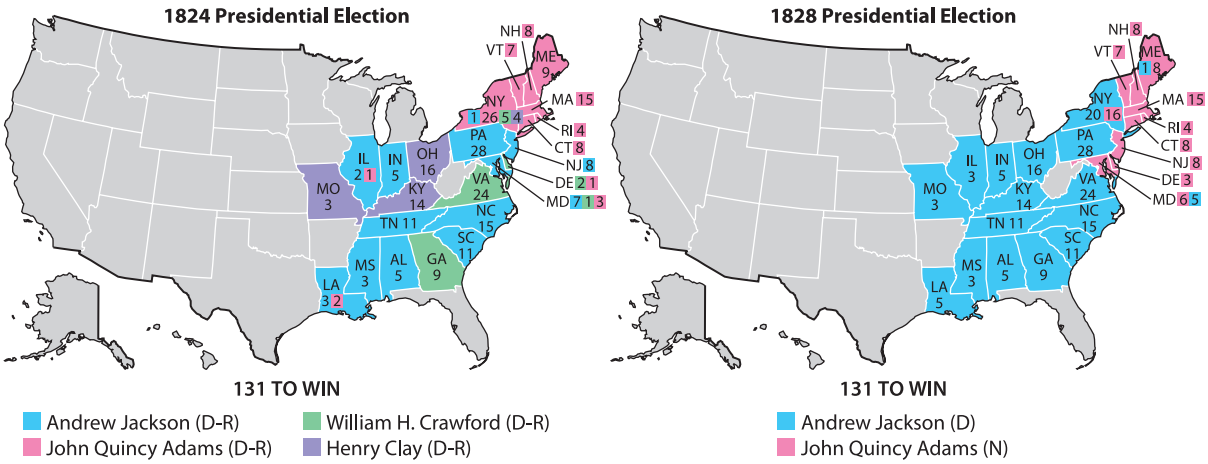
Political Parties and the Veto

In Unit 1, you read about the ratification debate: Federalists, those favoring a strong central government, supported adopting the new Constitution, while Anti-Federalists, those favoring a weaker central government and more power for the states, were opposed. These two groups provided the basis for the country's first political parties, the Federalist Party and the Democratic-Republican Party. But these parties were not parties of the people; they were made for and by political elites, many of whom distrusted the judgment of "the masses."

By 1828, the party landscape had changed. The election of 1828 was a showdown between the Democratic Party candidate, Andrew Jackson, and the National Republican Party candidate, John Quincy Adams. The Democrats promised federal jobs to supporters—just one of many ways that Andrew Jackson would use his executive power. Jackson ultimately won the popular vote and the Electoral College; Democrats also took control of the House of Representatives. The efforts of Andrew Jackson and his successor, Martin Van Buren, fundamentally reshaped American politics, but it was Jackson's use of executive authority—specifically, his efforts to end the national bank—that cemented the two-party system.

In 1791, Congress chartered the First Bank of the United States to help manage the country's debts and strengthen the economy. The charter was for a period of twenty years. Loose constructionists like Alexander Hamilton—individuals who interpret the Constitution broadly—believed that Congress had the power to charter the bank through the elastic clause, while strict constructionists like Thomas Jefferson—individuals who interpret the Constitution narrowly—argued that Congress had no such power because it was not expressly granted by the Constitution. Congress did not renew the charter, and the First Bank came to an end in 1811. Five years later, when Congress chartered the Second Bank of the United States, the action was challenged in court. In *McCulloch v. Maryland* (1819), the Supreme Court unanimously affirmed the power of Congress to create a national bank. But this ruling did not stop the debate; nor did it convince Andrew Jackson, more than ten years later, that a national bank was constitutional. But it wasn't just

Presidential Elections of 1824 and 1828



The Democratic Party established itself as a major force in national politics between 1824 and 1828. Leaders of the Democratic Party worked to rally voters and appealed directly to the people through grassroots campaigns—a practice still used by political parties today. Adams's National Republican Party, however, continued to rely on political elites for support.

the constitutionality of a national bank that concerned Jackson; he believed the bank was too powerful and corrupt, serving the interests of the wealthy and the business class and harming the economic interests of farmers, many of whom had voted for him. Jackson also worried that the national bank infringed on the ability of the states to charter their own banks.

The Bank War started in 1832 when Congress passed a bill, introduced by Henry Clay, to recharter the Second Bank four years before its current charter was set to expire. Jackson chose to veto the bill, an action that clearly communicated his views about executive power: The president had just as much right to determine the constitutionality of Congress's actions as the Supreme Court. After winning reelection in the 1832 presidential election, Jackson increased his attacks on the Second Bank. In 1833, he moved all of the government's funds from the Second Bank to state banks run by his supporters. Without any of the federal government's money, the Second Bank was unable to operate, which created a national financial panic.

Henry Clay accused Jackson of "executive overreach," and the Senate moved to censure the president, but Jackson was undeterred. He argued that the people had elected him to act on their behalf. Furthermore, U.S. senators were not yet directly elected, and members of Congress only represented their home districts,

Opponents of Andrew Jackson criticized him for abusing his power as president. This political cartoon published during the Bank War shows Jackson dressed as a king, standing on the U.S. Constitution and the Second Bank's charter.

whereas he, as the president, represented all Americans. Jackson's efforts to kill the bank had several major consequences: It showed just how powerful and influential the president could be in shaping national economic policy, and it decentralized America's banking system.

One consequence of Jackson's Bank War was that his opponents, including those who objected to his expansion of executive power, formed a new political party. Members of this new party, called the Whig Party, worked to build loyalty among

voters. By 1840, the Whigs were using the same methods to elect candidates that the Democratic Party used in 1828. Political parties became—and remain today—a major force in nominating and electing the president and shaping national policy.

Andrew Jackson set precedents for how future presidents could and would use their executive power. He exercised his veto power twelve times during his two terms, leaving office with more vetoes than all his predecessors combined. Jackson used the veto to shape and block policy and to express his political ideology. He was also the second president in U.S. history to use the **pocket veto**, and he helped popularize this tactic for future presidents. According to Article I, Section 7, of the Constitution, the president has ten days to sign a bill into law or return it to Congress with their objections. If the president fails to do either within that time and Congress is still in session, the bill becomes law. However, if Congress is no longer in session when the ten days have elapsed, the bill dies. A pocket veto cannot be overridden by Congress.

Think Twice

Why were President Andrew Jackson's actions to kill the Second Bank significant?

Unprecedented Crises

Historically, notable expansions of presidential authority have happened during periods of conflict or economic difficulty. Two presidents who expanded presidential powers were Abraham Lincoln and Franklin D. Roosevelt.

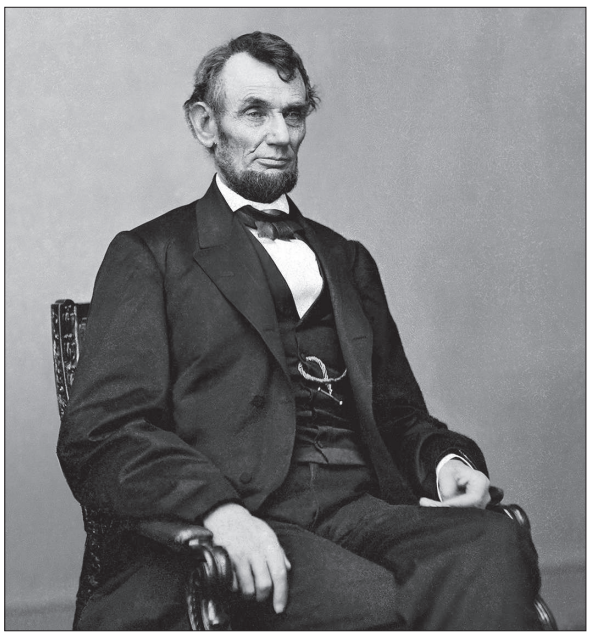
Lincoln became president during a tumultuous period in American history. Northern states and Southern states were divided over the issue of slavery. Lincoln's victory in the election of 1860 led South Carolina to secede from the Union, followed by ten other states—including Louisiana. This made Lincoln a wartime president tasked with defeating the Confederacy (the eleven states that had seceded from the Union) and keeping the country intact—two unprecedented crises that necessitated unprecedented action.

Lincoln began reshaping the role of president and commander in chief shortly after taking office. On April 12, 1861, Confederate forces attacked Fort Sumter in South Carolina, marking the beginning of the Civil War. Lincoln's response was swift, comprehensive, and carried out almost entirely with executive power. He called up the state militias on April 15, a total of seventy-five thousand troops, and instituted a blockade of Confederate ports four days later. Both actions were taken without an official declaration of war from Congress. Lincoln also bypassed Congress's fiscal authority by appropriating $2 million from the U.S. Treasury to spend on necessary supplies for the war.

Lincoln's extraordinary use of executive power was not universally popular. Unrest in border states—states that remained in the Union but shared a border with the Confederacy—and draft riots in the North led Lincoln to

suspend the writ of *habeas corpus*, allowing the government to imprison people outside of the judicial process, and establish **martial law**, which allowed military officials to take temporary control from civilian authorities in certain regions. This empowered the government to ignore due process; people suspected of being Confederate sympathizers were arrested and detained without warrants, and civilians were tried in military courts. In one of his most stunning moves, Lincoln issued the Emancipation Proclamation on January 1, 1863; this proclamation declared that millions of enslaved people living in Confederate states were free.

President Lincoln understood that his actions did not conform to the Constitution, but his purpose was not to expand his own personal power. In an 1864 letter, Lincoln acknowledged that in his oath of office, he had sworn to preserve the Constitution to the best of his ability—but asked if it would be possible to preserve the Constitution if he lost the nation. Ultimately, Lincoln justified his assertive use of executive authority in the same way that Jackson did: The American people had elected him president, and in doing so, they gave him the power to act accordingly.



Abraham Lincoln recognized that many of his actions subverted the Constitution. He justified this on the grounds that the American people had charged him with navigating the country through a national emergency.

Like Abraham Lincoln, Franklin D. Roosevelt became president during an unprecedented time in the country's history. The United States was three years into the Great Depression, the worst economic downturn that it had ever experienced. About 25 percent of workers were unemployed, banks were failing, and many Americans had lost all their savings.

When Roosevelt became the Democratic Party's presidential candidate, he promised "a new deal for the American people." He spent the time between his election and his inauguration working on solutions to the nation's problems so he could begin taking action on his first day in office. Through a combination of executive orders and legislation drafted by himself and his advisors, Roosevelt put his campaign promise into action. His New Deal programs created emergency and work relief programs, reformed the American banking system, and increased federal regulation of the financial

sector. The federal government increased protections for unions, established a minimum wage, and set limits on the number of hours that could be worked in a day. Through the New Deal, Roosevelt also created a new social welfare system through the Social Security Act.

Roosevelt's approach differed from that of his predecessor, President Herbert Hoover. While Hoover did take actions to help alleviate the effects of the worsening depression—including asking Congress for tax cuts, increasing government spending on infrastructure, and making emergency loans to businesses—they were far less sweeping and comprehensive than Roosevelt's New Deal. Roosevelt's actions created numerous executive departments and agencies and dramatically expanded the size and reach of the federal government.

Roosevelt changed the presidency and expanded the role it played in everyday life. There would be other examples of these types of changes in later decades, including President Lyndon B. Johnson's Great Society domestic programs and the expansion of the health care system under President Barack Obama. The government took on so many new agencies and functions under Roosevelt that he created a new unit, the Executive Office of the President (EOP), to be able to manage it all. By 1944, the EOP employed 182,833 people. The size of the EOP has shrunk considerably since then, with more recent administrations employing anywhere from about 1,200 to 5,000 people.

Fireside Chats

Roosevelt developed a new way of dealing with crises: He talked directly to the American people through radio broadcasts he called "fireside chats"—a new way to use the bully pulpit. The fireside chats were a way to reassure people and build trust that the government could solve problems, persuade them to get on board with his plans, and inform them of what actions he was taking and how they could help. In this way, Roosevelt established personal relationships with the people, and he made the presidency an even greater part of Americans' everyday lives.

President Franklin D. Roosevelt delivering one of his thirty fireside chats in Washington, D.C., September 6, 1936

Earlier, you read that George Washington set the precedent that presidents serve only two terms in office. Franklin D. Roosevelt was the first and only president to break

with this precedent. He was elected for a third term in 1940, then for a fourth term in 1944. The Twenty-Second Amendment, ratified in 1951, placed a two-term limit on presidents. Members of Congress believed presidential term limits would be a check on the president's power and help them regain some of the power that they had lost to Roosevelt and the presidency.

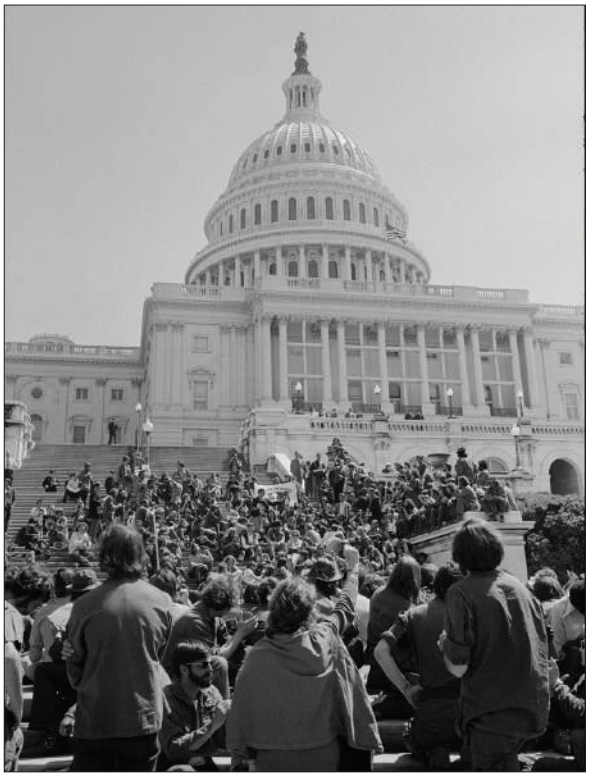
Think Twice

What role did unprecedented crises play in expanding executive power?

Executive Power During the Cold War

In the years following World War II, U.S. foreign policy was framed by the Cold War, a time of tension and conflict between the United States and the Soviet Union. During this tense era, the United States built up its military and intervened around the world to stop the spread of Soviet communism and support capitalism and democracy.

In May 1954, the Geneva Accords tried to settle a civil war in Vietnam, in Southeast Asia, by dividing the country. North Vietnam, backed by the Soviet Union and China, established a single-party communist government, and South Vietnam, backed by the United States, had a democratic capitalist government. Over time, the United States sent more and more military personnel to help South Vietnam repel communist forces. In 1964, U.S. involvement in the country sharply increased after President Lyndon B. Johnson's administration misled Congress about an alleged attack by the North Vietnamese on a U.S. spy ship in the Gulf of Tonkin. Lacking accurate information about what happened and why, Congress passed the Gulf of Tonkin Resolution, which gave President Johnson the power to "take all necessary measures" against North Vietnam. Members of Congress assumed that Johnson would ask them to approve a declaration of war; however, he never did. The resolution effectively gave



Protestors gathered at the U.S. Capitol to protest the Vietnam War in 1971.

the president the ability to wage full-scale war without the consent of Congress, a massive expansion of executive power over legislative authority.

From 1964 to 1973, nearly three million Americans served in Vietnam; more than fifty-eight thousand American lives were lost between 1957 and 1975. Anti-war sentiment

PRIMARY SOURCE: THE WAR POWERS RESOLUTION OF 1973

In 1973, Congress passed the War Powers Resolution, which limited the president's power to wage war without congressional consent.

The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces. . . .

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities. . . .

In the absence of a declaration of war, . . . the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;
(B) the constitutional and legislative authority under which such introduction took place; and
(C) the estimated scope and duration of the hostilities or involvement. . . .

Within sixty calendar days . . . the President shall terminate any use of United States Armed Forces . . . unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. . . .

. . . At any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs.

Source: Joint Resolution Concerning the War Powers of Congress and the President. Pub. L. No. 93–148, 87 Stat. 555 (1973).

grew among the American people, and members of Congress were eager to stop "future Vietnams" from happening. In 1973, Congress passed the War Powers Resolution, ultimately overriding President Richard Nixon's veto to enact the law. The resolution was intended to be a check on executive power; however, presidents since Nixon have ignored or worked around the law, and many presidents consider it to be unconstitutional.

Think Twice

How did the Gulf of Tonkin Resolution change executive power?

The War on Terror

More recent presidents have also played a role in changing and expanding executive power, including President George W. Bush, who was in office from 2001 until 2009. The defining event of Bush's presidency was the terrorist attack on September 11, 2001. Nineteen extremist Islamic terrorists hijacked and crashed four commercial airplanes, including two that collapsed the Twin Towers of the World Trade Center in New York City, resulting in nearly three thousand deaths. U.S. intelligence agencies quickly identified the attackers as members of al-Qaeda, a militant extremist Islamist network led by Osama bin Laden, leading Bush to declare a "war against terrorism." In the following months and years, President Bush, with congressional support, committed the United States to military action in Afghanistan and Iraq.

On the home front, the Bush administration acted to prevent future terrorist attacks on American soil. To that end, Congress passed the USA PATRIOT Act in October 2001, giving new powers of surveillance to the federal government, including "warrantless wiretaps" that gave the government wide-reaching power to collect information about all communications in the United States. Critics of the USA PATRIOT Act say it violates Fourth Amendment protections against search and seizure without probable cause; under the act, law enforcement can investigate without warrants to collect intelligence on criminal activities.

Bush also oversaw a major restructuring of the executive branch with the creation of the Department of Homeland Security (DHS) in 2002. DHS brought about two dozen federal agencies under its control. The purpose was to coordinate the responsibilities and actions of these agencies, giving priority to national security concerns. It was also hoped that this consolidation would lead to better coordination of intelligence gathering and better sharing of information.

Today, as in the past, Americans are often divided over expansions of executive power, especially when those expansions affect their daily lives or their rights. In later units,

you will learn how civic actions like voting can influence or reverse changes to the federal government.

Think Twice

How has the role of the president expanded and changed over time?

The Judicial Branch over Time

Since its formation, the size and structure of the judicial branch have remained largely the same. It has retained the same hierarchy of inferior courts up to the Supreme Court. Supreme Court justices and other federal judges are not elected but appointed for lifetime terms. This provides a measure of independence from political concerns and pressure—that is, independence from the power that presidents and Congresses might try to use against the judicial branch. It also means that the judicial branch is more fixed and slower to change relative to the other two branches.

On average, Supreme Court justices serve for sixteen years, and a new justice is added about every two years. The Supreme Court has had only 17 chief justices and 104 associate justices since it was established in 1790. To put this in perspective, from 1789 to 2024, 46 people have served as president, more than 2,000 people have served in the Senate, and more than 11,000 people have served in the House of Representatives. But that does not mean that the Supreme Court did not and does not change. Like any other human group, it is influenced by circumstances and by the personalities and characteristics of its members.

In adjudicating appeals in federal cases, Supreme Court justices' judgments are heavily influenced by their personal interpretation of the Constitution; presidents and justices may interpret the Constitution loosely or strictly. Presidents nominate justices that reflect their party's ideologies and views of the Constitution.

It is also important to note that the Supreme Court does not exist in a vacuum; justices, like other people, can be subject to the influences of the world around them, including major events and pressures from other officials, the public, and the media. Together, the beliefs of the justices, the makeup of the court, and external influences shape the types of rulings that the Supreme Court has issued over time, including those that contract or expand individual liberties, those that assert checks and balances on the other two branches, and those that shape and shift policy.

Think Twice

Why is the Supreme Court slower to change than the other two branches?

Advancing Civil Rights

The judicial branch has played an important role in advancing—or failing to advance—certain civil rights, especially when interpreting the Fourteenth Amendment. In its 1857 decision in *Dred Scott v. Sandford*, the Supreme Court ruled that African Americans, free or enslaved, could not be U.S. citizens. This decision would be overwritten by the Fourteenth Amendment, a part of the Constitution that the court has interpreted over the centuries in a variety of ways. You will read more about Dred Scott later in Unit 4.

Earlier in this topic, you read briefly about how the Thirteenth, Fourteenth, and Fifteenth Amendments were ratified after the Civil War. These amendments were meant to protect African Americans from unfair treatment and enable them to participate as equals in a democratic society. The Fourteenth Amendment, ratified in 1868, made all people born in the United States citizens, though it was not applied to Native Americans. Its primary purpose was to grant citizenship—and by extension, civil and legal rights under the Constitution—to formerly enslaved people. The Fourteenth Amendment also included what are known as the due process clause and the equal protection clause:

> . . . 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.

It is important to note that the due process clause and the equal protection clause give rights to all *persons*, not only to citizens. In addition, the Bill of Rights only limits the *federal* government. The First Amendment states that "Congress shall make no law" while the Fourteenth Amendment gives Americans due process rights against state governments.

The idea of equal protection within the Fourteenth Amendment is just as important. **Equal protection** means that the law must be applied to one person the same as it is to any other person in similar circumstances. If Person A is charged with a crime and Person B is charged with the same crime, the law must be applied to them in the same way, regardless of their race, gender, religion, and so on. While the Fourteenth Amendment was intended to apply protections within the Bill of Rights to states in the same way they applied to the federal government, the Supreme Court refused to enforce the law in this way, at least at first.

In 1875, Congress passed a civil rights act that made it illegal for individuals to deny anyone access to public schools, transportation, accommodations, or theaters based on their race. The Supreme Court overturned that act in 1883, ruling that the Fourteenth Amendment did not give Congress the power to regulate the behavior of individuals.

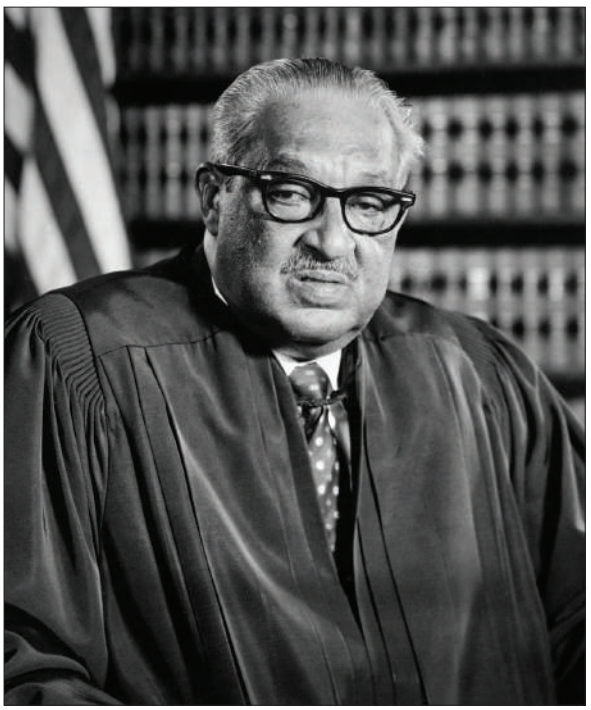
Congress did, however, have the power to regulate how the *states* acted. At the time, many states were passing discriminatory laws, including laws that segregated public

facilities and established separate schools for white children and African American children. People who experienced such state-enforced racial discrimination could take their cases to federal court and argue that the state was in violation of the Fourteenth Amendment's equal protection clause. However, for many decades, the Supreme Court also failed to protect against state-enforced segregation.

In 1890, Louisiana passed a law requiring racially segregated railcars. A group called the Committee of Citizens—supported by the railroad, which also disapproved of the law—organized a challenge to the Separate Car Law, aiming to have it declared unconstitutional. In 1892, they arranged for Homer Plessy, a man who was considered Black under Louisiana law, to sit in a "whites only" railcar. As expected, a conductor told Plessy he must move to a different car; Plessy refused and was arrested for violating the Separate Car Act. At Plessy's trial, his lawyers argued that the Louisiana law violated his Thirteenth and Fourteenth Amendment rights. Plessy was convicted, and his lawyers then appealed the case, which eventually reached the U.S. Supreme Court.

In 1896, in a 7–1 decision, the Supreme Court upheld Louisiana's law, stating that segregated facilities did not treat African Americans as "inferior" as long as the facilities were of equivalent quality. This became known as the "separate but equal" doctrine. Justice Henry Billings Brown wrote the majority opinion for the court:

> The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.



Thurgood Marshall, the lead attorney on the *Brown* case, later became the first African American justice on the Supreme Court in 1967.

The Supreme Court's ruling in *Plessy v. Ferguson* marked a major setback for the civil and political rights of African Americans, and the doctrine of "separate but equal" remained in effect until the court reversed its position during the Civil Rights Movement in 1954. That year, the Supreme Court combined cases from five different states under the single case *Brown v. Board of Education of Topeka*. The plaintiff was Linda Brown, a third-grade student in Topeka, Kansas, who was forced to attend a school across town that was designated for African American students instead of attending the public school near her home, which was designated for white students. The lead attorney for Linda Brown, Thurgood Marshall, argued that segregation in Kansas public schools violated equal protection as guaranteed under the Fourteenth Amendment. In a unanimous decision, the Supreme Court ruled in favor of Brown, overruling the precedent set in *Plessy v. Ferguson*, concluding "that in the field of public education the doctrine of 'separate but equal' has no place."

One year later, the Supreme Court issued *Brown II*, which specified that desegregating public schools should be done "with all deliberate speed." Twelve years after that, in *Loving v. Virginia*, the court also invoked the equal protection clause of the Fourteenth Amendment when it invalidated a Virginia law that banned interracial marriages.

It is important to note that some states and the federal government were often at odds during the Civil Rights Movement. For example, in September 1957, President Dwight D. Eisenhower sent U.S. Army troops to Little Rock, Arkansas, to support desegregation and overcome Governor Orval Faubus's attempt to defy *Brown*. The executive branch and the legislative branch were also divided internally over the advancement of civil rights. The rulings in *Brown*, *Brown II*, and *Loving v. Virginia* are just a few examples of how the Supreme Court interpreted the Constitution during this period to advance individual rights.

Think Twice

How has the Supreme Court advanced civil rights over time?

Checking and Balancing

The Supreme Court's most powerful check on legislative and executive authority is judicial review, which you learned about earlier. At certain times, the court's use of this power has been crucial in protecting individual rights and holding the legislative and executive branches to account.

Earlier, you read about the context surrounding the passage of the War Powers Resolution in 1973. But the president's uninhibited ability to wage war was not the only controversy of the Vietnam War era. U.S. conduct in the Vietnam War also led to a controversy concerning the First Amendment.

Daniel Ellsberg was indicted under the Espionage Act. The charges against him were ultimately dropped as information about the federal government's actions related to Vietnam came to light.

In an effort to better understand the challenges of the Vietnam War, the Department of Defense commissioned a classified study about its history. Known as the Pentagon Papers, the study showed that U.S military leaders had long thought that victory in Vietnam was unlikely. The Pentagon Papers were proof that some of these leaders and the Johnson administration had intentionally misled the American people about U.S. involvement in the conflict. Daniel Ellsberg, an analyst working on the project, was disillusioned by the study's findings and leaked the 7,000-page study to the press.

The *New York Times* started publishing articles about the Pentagon Papers on June 13, 1971. Within a matter of days, the Department of Justice obtained a temporary restraining order, arguing that continuing to publish the Pentagon Papers would threaten national security. This action constituted **prior restraint**; the government prohibited the newspaper's free speech before the free speech took place.

The *New York Times* was not the only newspaper in possession of the Pentagon Papers; the documents had also been sent to the *Washington Post*. Together, the two newspapers fought the restraining order all the way to the Supreme Court, in *New York Times Co. v. United States*. The court ruled 6–3 in favor of the newspapers. It said the Nixon administration's prior restraint of publication would violate the newspapers' First Amendment rights to publish. The court's ruling was significant because it checked the power of the executive while simultaneously protecting the freedom of the press.

The Nixon administration was at the center of another pivotal Supreme Court ruling just three years later. In 1972, five men broke into the Democratic Party national headquarters at the Watergate Hotel in Washington, D.C. An investigation found that the burglary was not a random event; it was done on behalf of the White House and the Committee to Re-elect the President. One question stood out: What was the president's involvement in this crime? A special prosecutor was assigned to investigate Nixon's staff and the president himself.

A year before the burglary, Nixon had had the Secret Service install audio recorders throughout the White House so he could tape conversations, including in the Oval Office

and on White House telephone lines. In 1974, seven of Nixon's aides were indicted for their involvement in the Watergate break-in. The special prosecutor obtained a subpoena requiring the president to give him access to the tapes; these recordings would prove definitively the aides' roles and what the White House knew about the event.

Nixon refused to comply on the grounds of **executive privilege**. He claimed that as president, he had the right to keep internal executive department deliberations secret from the judicial branch and the legislative branch. He also claimed that he alone was authorized to determine whether releasing such information was in the best interest of the country. The Supreme Court unanimously disagreed and, in *United States v. Nixon*, ruled that Nixon was not above the law:

> We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.

This judgment, in addition to checking the power of the executive, had other sweeping implications. The House of Representatives was drafting articles of impeachment against Nixon—including charges of obstruction of justice, abuse of power, and contempt of Congress—and the Watergate tapes provided valuable evidence against the president. Facing the probability of impeachment, Nixon opted to resign from the presidency shortly after the court's ruling. The Supreme Court's ruling in *United States v. Nixon*, certainly important to the Watergate scandal, also had another important legacy: it limited the power of the president by determining that there were limits to presidential claims of executive privilege.

Think Twice

How did the Supreme Court's rulings in *New York Times Co. v. United States* and *United States v. Nixon* affect the power of the government?

The Supreme Court and Elections

You just read how Supreme Court decisions can change the course of American history. Two fairly recent Supreme Court decisions have also shaped and shifted U.S. policy around elections.

Republican candidate George W. Bush ran against Democratic candidate Al Gore in the 2000 presidential election. It was quickly obvious that the election was very close; Gore had received a half million more popular votes than Bush, but he was trailing in the Electoral

College. It became clear that whoever won Florida's twenty-five electoral votes would win the election. The initial ballot count in Florida showed that Bush led Gore by about six hundred votes out of six million votes cast. This miniscule margin of victory triggered a Florida election law that required a machine recount of the ballots. The recount further narrowed the margin between Bush and Gore, at which point counties began to recount the votes by hand, which resulted in confusion over how to judge voters' intentions based on imperfectly marked ballots.

Battles in lower courts eventually made their way to the Supreme Court, which first decided 7–2 to that the recount in Florida was unconstitutional because it varied from one county to another, thereby violating the equal protection clause of the Fourteenth Amendment. Shortly after, in a closer decision, the court ruled 5–4 that a constitutionally appropriate recount could not be conducted in the time remaining before the constitutionally mandated deadline for Electoral College voting. The outcome of *Bush v. Gore* meant that George W. Bush secured Florida's electoral votes and won the election. Though the Supreme Court intended for this ruling to apply strictly to the 2000 presidential election—meaning it is not true precedent—it has still been cited in federal cases in years since. This means that the Supreme Court's ruling could have significant consequences for the outcomes of future elections, representing an expansion of judicial influence in government.

The recount in Florida in the 2000 presidential election led to many questions, including how voters intended to vote versus what their ballot reflected.

In 2010, the Supreme Court made another consequential ruling in *Citizens United v. Federal Election Commission*. In a 5–4 decision, the court overturned parts of two federal elections laws and two earlier Supreme Court rulings, making it legal for corporations and unions to spend unlimited funds on political ads. The ruling proved controversial; some praised it for its protection of First Amendment rights, while others viewed it as judicial overreach. Regardless, it represents a way that the judicial branch has expanded its power and influence.

Think Twice

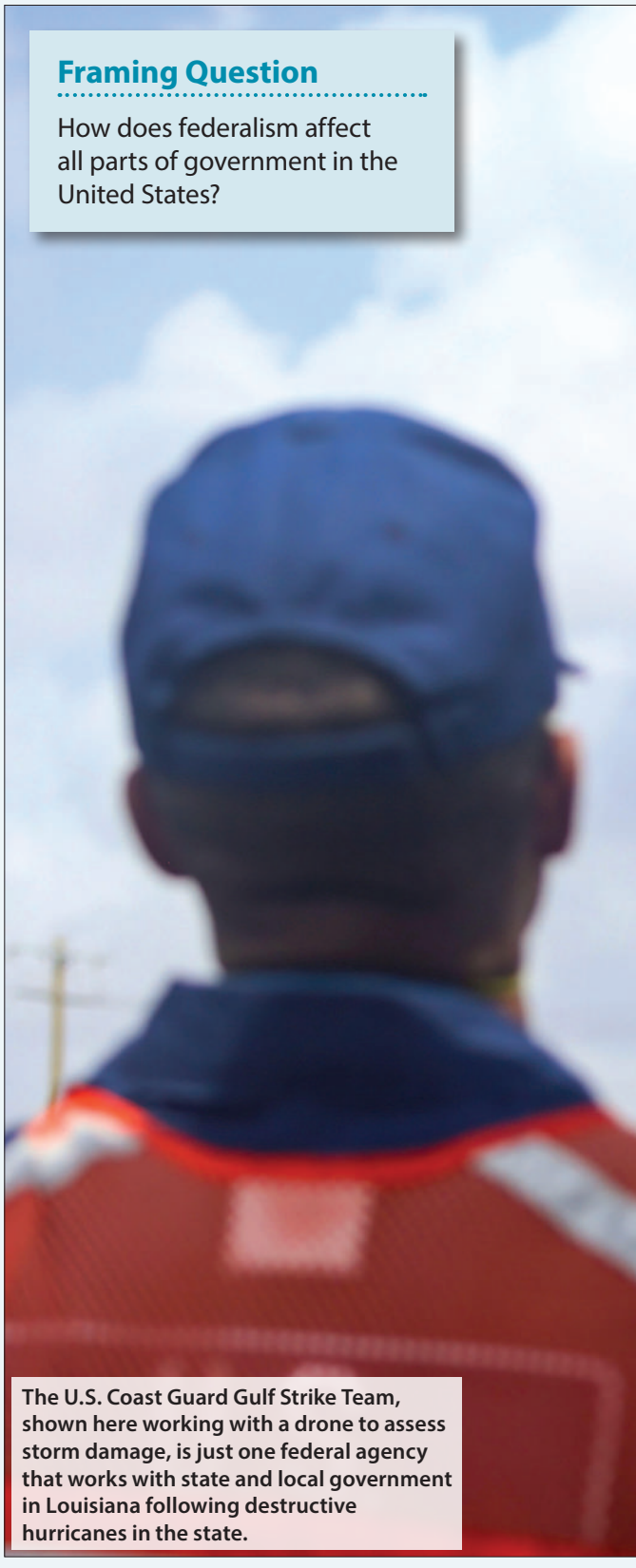
In what ways has the judicial branch's role changed over time?

Topic 4

Governments in the United States (Federal, State, Local, Tribal)

Framing Question

How does federalism affect all parts of government in the United States?



The U.S. Coast Guard Gulf Strike Team, shown here working with a drone to assess storm damage, is just one federal agency that works with state and local government in Louisiana following destructive hurricanes in the state.

Hurricanes Gustav and Ike

Setting the Scene

In late August 2008, meteorologists, government leaders, and Louisiana residents anxiously monitored reports of a hurricane heading west across Haiti, Jamaica, and Cuba. On September 1, Hurricane Gustav made landfall in southeast Louisiana and slowly made its way north through the state. Heavy winds uprooted trees and battered buildings and homes, and large swaths of land were flooded. The Category 2 hurricane caused millions of people to lose power, damaged infrastructure, and led to several deaths.

Only two weeks later, Hurricane Ike made landfall in Louisiana's southern parishes along the Gulf Coast. Ike's enormous storm surge caused even more evacuations, and some of the areas that were flooded by Gustav were once again inundated with water. All told, the two storms cost billions of dollars in damage to property and displaced thousands of families from their homes.

But the Louisianans affected by these natural disasters were not alone in the aftermath. Local and state government agencies were first at the scene; then the governor requested declarations that Louisiana had suffered two major disasters, triggering assistance from the federal government, which included emergency housing, money grants and low-interest loans for individuals and businesses, and assistance rebuilding ***infrastructure****. These three levels of government continued to work together to assist residents in rebuilding the affected regions.*

Since then, state and local governments have also worked together to reduce the impact of future storms, such as through Louisiana's Resilient Communities Infrastructure Program. Through this program, state and community leaders identify important areas that need to be rebuilt or can be improved and strengthened through new innovations.

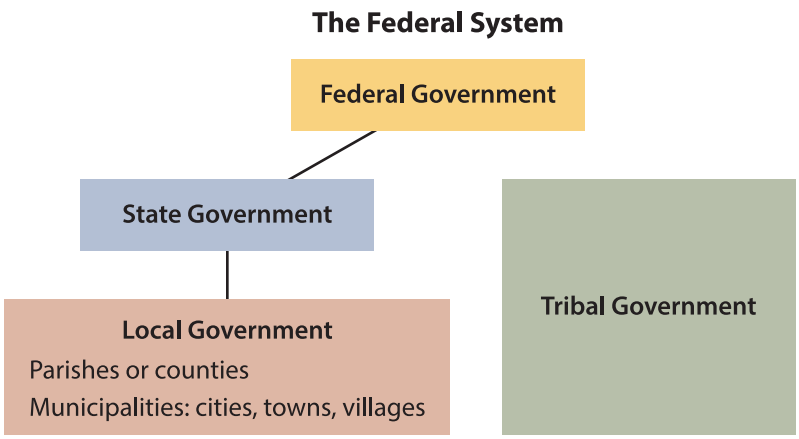
Federalism in the United States

In earlier topics, you read about the basics of a federal system of government. The word *federalism* comes from *foedus*, the Latin word for league or pact. In the earliest years of the United States, that was what federalism meant—a group of self-governing states bound together by a treaty. But the U.S. Constitution gave federalism a new meaning: It could be a system of government in which power is shared and divided among various levels of government, including federal, state, local, and tribal governments.

Federalism is not explicitly mentioned in the Constitution, but the concept of the federal government sharing power with the states can be found throughout the document. The idea for the federal system stemmed from the Articles of Confederation. The Articles gave the states so much power and the national government so little that they virtually made each state an independent nation. As the Founders crafted the Constitution, they tried to remedy this by striking a balance of power between the national government and the states.

Enumerated, Reserved, and Concurrent Powers

Recall that the Founders were fearful of a strong national government, so they made sure to deny it certain powers; in fact, the Tenth Amendment says that the federal government has only those powers specifically included in the Constitution, called enumerated powers. Other powers, called **reserved powers**, are denied to the national government and left to the states: "The powers not delegated . . . by the Constitution, nor prohibited by it to the States, are reserved to the States respectively,



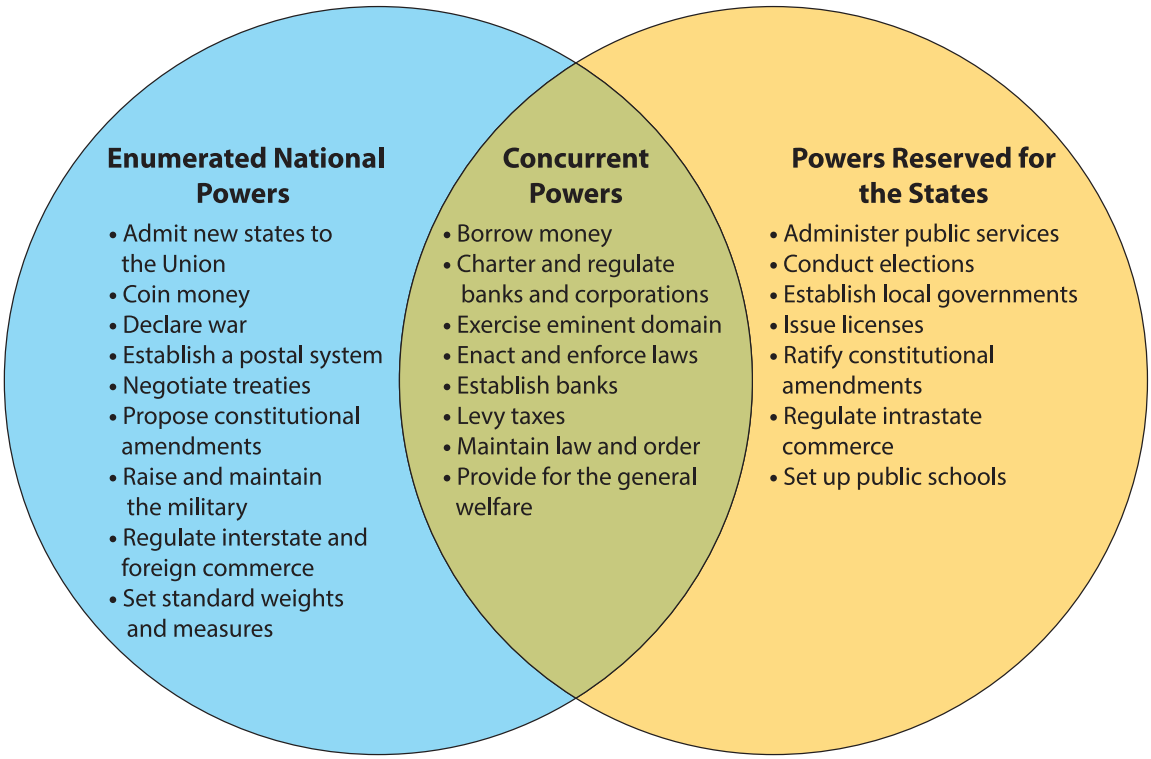
In the U.S. system of federalism, power is divided and shared among the federal government, state governments, and local governments. Tribal governments, while autonomous from the United States, also interact with all levels of U.S. government.

or to the people." Finally, there are some powers, called **concurrent powers**, that are held by both the national government and the states, including the powers to borrow money and levy taxes.

Both the federal government and the states have the power to enact laws. Congress is responsible for passing laws for the entire country, while state legislatures have the power to enact legislation for their state. When federal and state laws conflict with each other, the supremacy clause (Article VI) states that federal law takes precedence over state law every time. This gives the federal government the power to act as an umpire when two states disagree. For example, in recent years, there has been conflict over how to share the shrinking water supply from the Colorado River, a river system important to seven states. The federal government is helping facilitate negotiations with these states and Native American tribes to cut back on water use and to make sure access to the water is as equitable as possible.

The Constitution also denies certain powers to the federal government and the states. The federal government is prohibited from taxing state exports, changing state boundaries, and violating the Bill of Rights. As for what the states cannot do, Article I, Section 10, of the Constitution says the following:

> No State shall enter into any Treaty, Alliance, or Confederation; . . . coin Money; emit Bills



Under the federal system, certain powers are given solely to the federal government, some are shared between the federal government and the states, and others are reserved just for the states.

of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any . . . Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports. . . .

No State shall, without the Consent of Congress, . . . keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded. . . .

States are also prohibited from denying individuals their Fourteenth Amendment rights to due process and equal protection.

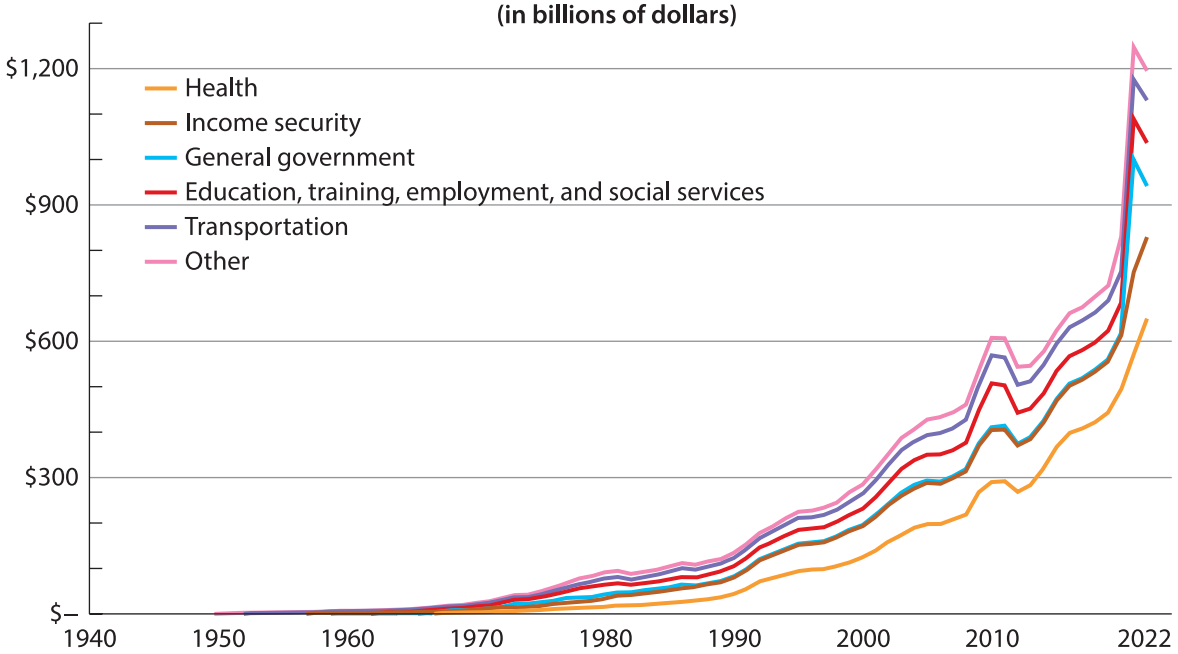
Think Twice

What is federalism, and how does it work in the United States?

Cooperation Within the Federal System

The Founders understood that people living in different parts of the country had different needs—what is important or relevant to Louisianans may vary from the needs of people living in New York, North Dakota, or California. Furthermore, within Louisiana, the circumstances of people in New Orleans may be different from those of people living in Shreveport, Baton Rouge, or Alexandria. Federalism creates a system in which the

Federal Funds to State and Local Governments, 1940–2022
(in billions of dollars)



Federal funding to the states has increased over time; some of the money is to help state governments operate, while other funding is designated specifically for areas like health care, education, or transportation.

different layers of government work together to address people's needs:

- The federal government is primarily responsible for matters that broadly apply to all or most Americans.
- The states focus on issues relevant to all or most of the people living within their borders.
- Local and tribal governments serve the needs of the people within a county or parish, **reservation**, city, or other community.

One way that levels of government work together is through the use of revenue generated by federal taxes, some of which the federal government passes on to the states. Each year, the federal government allocates at least 10 percent of its budget for grants to state and local governments. These federal grants can total more than $1 trillion. This funding makes up, on average, about one-third of states' annual revenue, including a large share of the money that pays for public schools. Receiving federal funds is contingent upon abiding by certain federal **mandates**; for example, in 2001, Congress passed the No Child Left Behind Act, which required states to develop and administer standardized tests for students in exchange for increased funding for elementary and secondary education.

Levels of government interact and cooperate in other ways, too. Consider the Department of Homeland Security (DHS). This executive department is responsible for protecting the United States from domestic and foreign threats. The federal agencies under DHS often work collaboratively with state and local law enforcement to gather and share information, including intelligence about possible security issues. Cooperation is key between the other levels of government, too. Louisiana Economic Development, a state agency, works with Film New Orleans, a local government initiative, to bring productions—including movies, television shows, and commercials—to the city. Meanwhile, tribal partnerships with the Louisiana Office of Culture, Recreation, and Tourism provide valuable funding for art and culture initiatives, such as a grant awarded to the Natchitoches Tribe of Louisiana to improve its heritage center.

Federalism also creates a unique opportunity for policy experimentation. In 1932, Supreme Court justice Louis D. Brandeis wrote that "a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." In other words, states have the power to enact new laws and policies for their residents; the success of these laws and policies may inspire other states, or even the federal government, to take similar action. This is just one of the unique abilities of the states, which you'll read about next.

Think Twice

How do different levels of government work together to achieve goals and enact policies?

Louisiana State Government

In 1803, the United States purchased the Louisiana Territory from France, effectively doubling the size of the young country. To govern this vast expanse, the United States divided the area into the District of Louisiana and the Territory of Orleans.

In 1811, the Territory of Orleans had enough people to become a state and asked Congress to pass the legislation necessary for it to petition for statehood.

To be admitted to the Union, the Territory of Orleans—soon to be Louisiana—had to draft a state constitution. It created a bicameral legislature and gave voting rights to only white, landowning men who paid taxes. With its new constitution drafted, Louisiana was admitted to the Union in 1812.

Think Twice

What did the Louisiana Constitution of 1812 do?

PRIMARY SOURCE: EXCERPT FROM THE PREAMBLE TO THE CONSTITUTION OF LOUISIANA (1812)

The Louisiana Constitution of 1812 was like other state constitutions created at the time: It was brief and outlined the organizing principles of the state. Though the Louisiana Constitution would eventually change in some ways, the 1812 document laid the groundwork for many of Louisiana's present-day institutions.

We, the Representatives of the People of [Louisiana] . . . in Convention Assembled by virtue of an act of Congress, entitled "an act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of said State into the Union on an equal footing with the original States, and for other purposes;" In order to secure to all the citizens thereof the enjoyment of the right of life, liberty and property, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana.

Source: *Constitution or Form of Government of the State of Louisiana.* New Orleans: Jo. Bar. Baird, 1812, pp. 3–6.

Structure of Louisiana's State Government

Like the U.S. Constitution, the Louisiana Constitution establishes three branches of government. The Louisiana state legislature is bicameral and is made up of its own House of Representatives and Senate. The qualifications for legislators in Louisiana are different from those for members of Congress; candidates for both the Louisiana House of Representatives and the Louisiana Senate must be eighteen years old and have lived in the state for two years and in the district they represent for one year. There are 105 members in the House and 39 in the Senate. Unlike members of the U.S. Congress, all of Louisiana's legislators are elected for four-year terms; they may serve a maximum of three consecutive terms.

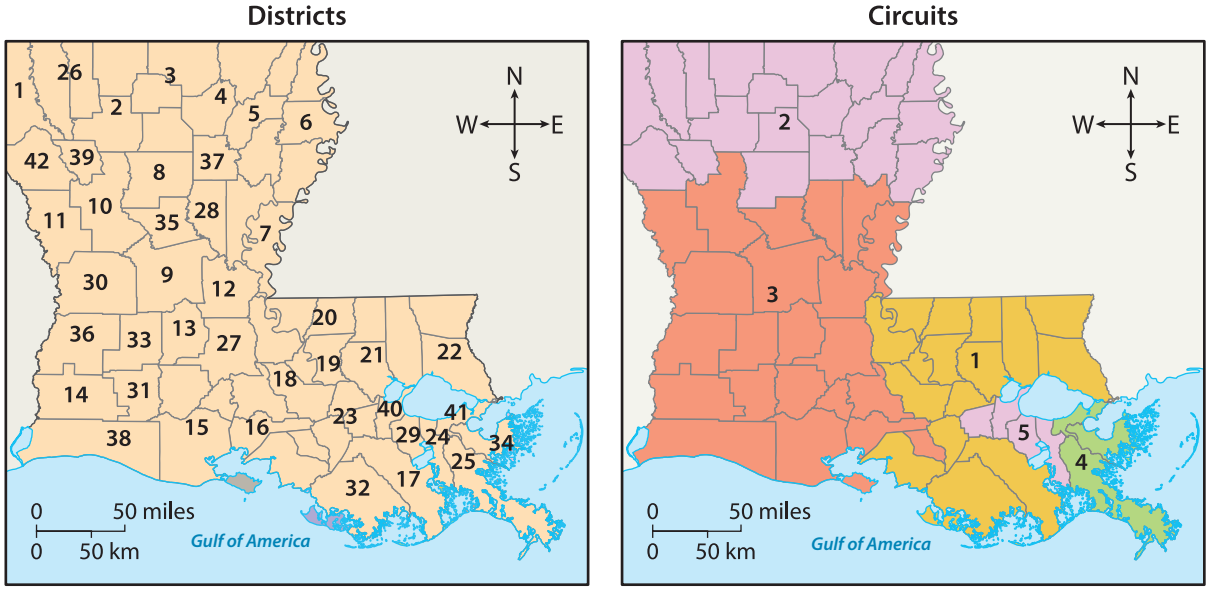
The Louisiana state legislature is responsible for enacting legislation for the state. Any legislator can introduce a bill; to become a law, the bill must pass both houses and be signed by the governor, the head of the state's executive branch. The state legislature allocates revenue to run the state government and its many programs. The Louisiana Constitution, like the U.S. Constitution, includes checks and balances; for example, the state legislature checks the power of the executive branch by overseeing how the executive agencies run programs for the state.

Louisiana's Primary and General Elections

In Louisiana, statewide and local elections take place on Saturdays, and the ballot includes all candidates of all parties. Any registered voter, regardless of party affiliation, can cast a ballot. The candidate for each office who receives a majority of votes (defined as one more than 50 percent of total votes cast) wins. If no candidate receives a majority, the two candidates who received the most votes then move on to a runoff, or general, election.

In Louisiana, the executive branch is led by a governor, a lieutenant governor (a role similar to a vice president), and the heads of the various executive departments. The governor and lieutenant governor are directly elected by voters, as are five other executive officials: secretary of state, attorney general, treasurer, commissioner of the Department of Insurance, and commissioner of the Department of Agriculture and Forestry. The powers of the governor mimic the powers of the U.S. president in many ways. Like the president, the governor can veto laws passed by the legislature and appoint people—with legislative approval—to government agencies. Louisiana's executive branch enforces and carries out the laws passed by the legislative branch and implements policy through executive orders and the signing of bills. Due to such responsibilities as overseeing medical

Louisiana's Courts



Louisiana's forty-two district courts are divided across five larger regions overseen by circuit courts. In recent years, there have been efforts to redraw the lines of circuit court jurisdictions so that cases are more evenly distributed and Louisianans are better represented by the judicial system.

services, supervising local governments, and bolstering Louisiana's economy by attracting new businesses, the executive branch has the closest working relationship with the state's residents. Governors also work with the state legislature to set policy.

Louisiana's judicial branch has some similarities to the federal judiciary. As in the federal courts, Louisiana's trial courts are called district courts, and its appellate courts are called circuit courts. Louisiana has forty-two judicial districts, each with its own trial court and an elected chief judge. These forty-two districts are grouped into five regions, each with a circuit court; the circuit courts are located in Baton Rouge, Shreveport, Lake Charles, New Orleans, and Gretna. District judges are elected by voters for six-year terms, while court of appeals judges are elected to ten-year terms.

Some decisions of the circuit courts can be appealed to the Louisiana Supreme Court, which has the final say on interpreting state law. However, a ruling by the Louisiana Supreme Court may be appealed to the U.S. Supreme Court, which can overturn it if it finds that the relevant state law or action violates the U.S. Constitution. The seven justices of the Louisiana Supreme Court are also elected by different districts for ten-year terms. This differs from federal judges and justices, who are appointed for lifetime terms and do not represent any particular geographic area.

State government is responsible for a variety of programs, including establishing accessible health clinics; maintaining state parks, libraries, and bridges; providing support during natural disasters like oil spills; and licensing various economic activities, including commercial fishing.

Think Twice

How is the Louisiana government similar to and different from the U.S. government?

State Programs and Policies

You just read that state governments typically have a more direct impact on people's daily lives than the federal government does. For example, Louisiana has its own police force, and state workers fix bridges, build schools, and fill in potholes. The state issues marriage licenses, death certificates, and driver's licenses; it can also create villages, cities, parishes, parks, and scenic roadways. If there is a natural disaster, the governor of Louisiana will often call upon the National Guard to help.

State officials also implement many policies and programs that support Louisiana residents, such as distributing aid to the economically disadvantaged or providing medical coverage for the uninsured. To fund state programs, the Louisiana State Legislature can raise revenue through income and sales taxes. Louisiana also gets money from other sources, such as fees collected for using toll roads and bridges and sales of fishing and hunting licenses. Recall that states, including Louisiana, get considerable funds from the federal government, too.

Think Twice

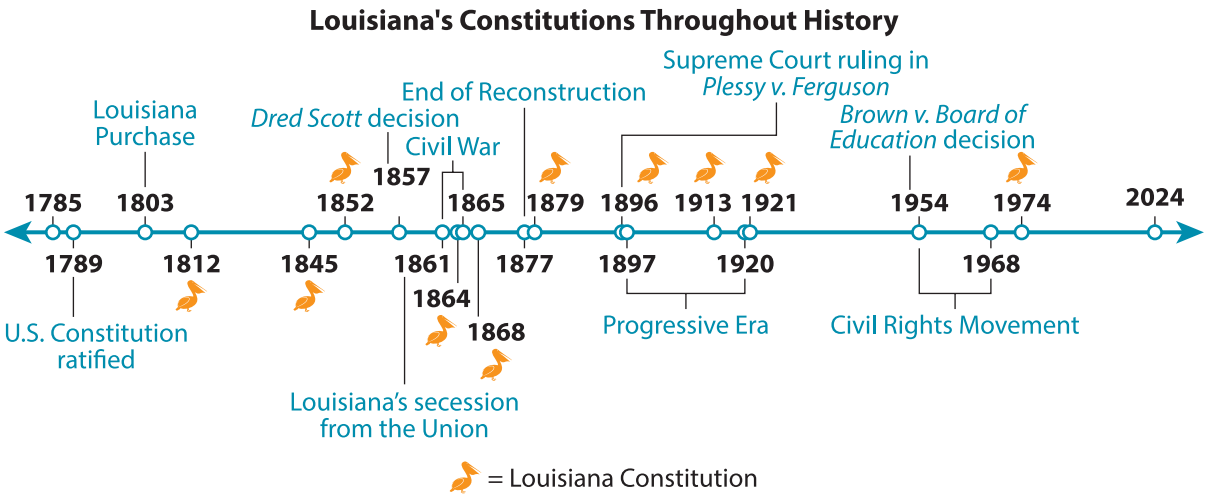
What kinds of programs is the Louisiana state government responsible for?

Louisiana's Constitutions

The U.S. Constitution has proven itself to be an enduring document. It has been in effect since 1789, and it has been amended only twenty-seven times—and ten of those amendments were ratified as the Bill of Rights in 1791. By contrast, Louisiana has had ten constitutions in its history, each representing continuity *and* change within the state.

You just read that Louisiana's 1812 constitution had much in common with other state constitutions created before it. Like the U.S. Constitution, this document created three branches of government and a bicameral legislature. And like other state constitutions of the time, it limited voting rights to white, landowning men.

This first constitution did not last long. Among other issues, concerns about limitations placed on the voting rights of white men, the influence of New Orleans, and an overly powerful legislature led Louisianans to call a constitutional convention in 1844. Instead of amending the existing document, however, the delegates decided to draft a new and much longer constitution—153 articles, to be exact. The Constitution of 1845 extended voting rights to all white men who had lived in the state for at least a year and in their home parish for at least six months. It placed new limitations on the legislature and set term limits for Louisiana Supreme Court justices. It also severely restricted banking



Louisiana adopted several constitutions throughout the second half of the nineteenth century, often in response to national events.

and business in the state to limit the political influence of New Orleans, which had harsh economic consequences for Louisiana.

The Louisiana Constitution and Slavery

A variety of factors and events influenced Louisianans' decision to draft and adopt new constitutions after the Constitution of 1845, starting with the issue of slavery. Through the early and mid-1800s, tensions over the practice of slavery increased throughout the country, eventually erupting into the Civil War in 1861. Almost a decade earlier, in 1852, delegates to Louisiana's constitutional convention had drafted a new constitution that placed significant emphasis on defending the institution of slavery and the rights of slaveholders at the state level. New rules for apportionment gave slaveholders more political power. In 1861, when Louisiana seceded from the Union, state leaders amended the constitution to remove all mentions of the United States.

The Post–Civil War Era

After the Civil War, the United States entered a period called Reconstruction; you read about this era earlier in Unit 2, and you will read more about it in Unit 4. During Reconstruction, the federal government was tasked with determining how to readmit former Confederate states to the Union. This included creating a list of criteria that Southern states had to meet, including drafting new constitutions.

The Louisiana Constitution of 1864—ratified before the Civil War ended the following year—abolished slavery but failed to make Black Louisianans equal under the law due to its inclusion of **Black Codes**. It allowed the

state legislature to give voting rights to African American men, but only those who knew how to read, owned property, or had fought for the Union during the Civil War; however, the legislature that met following the ratification of the 1864 constitution chose not to grant these rights. While the document provided for public education for white and African American students, public schools were to be segregated. Despite opposition from Black Louisianans and many in the U.S. Congress, President Andrew Johnson accepted the document and pardoned former Confederates, functionally restoring the state to the same leadership under the Democratic Party it had before and during the Civil War. Louisiana was not the only state that did this; all former Confederate states adopted new constitutions that restricted the rights of formerly enslaved people.

Black Louisianans and Republicans in Congress opposed the Constitution of 1864 and pressured the governor to call a constitutional convention in 1866; however, attendees at the convention were attacked by a white mob, and no changes were made to the state's governing document. The violence in Louisiana led Republicans in the U.S. Congress to pass the Reconstruction Acts of 1867, which did three key things:

- denied voting rights to white men who had supported the Confederacy
- registered African American men to vote
- required Southern states to draft new constitutions with the input of African American delegates

Half of the delegates to Louisiana's 1868 constitutional convention were African American, and the other half were white men who supported the rights of formerly enslaved people. The Constitution of 1868, like the U.S. Constitution, included a bill of rights, got rid of the Black Codes that unfairly restricted Black Louisianans (including segregation laws), gave property rights to women, and integrated public education.

When Reconstruction ended, former Confederates in the Democratic Party regained control over Southern legislatures, including in Louisiana. When a debt crisis led Louisiana to call yet another constitution convention in 1879, the delegates took the opportunity to draft a new document that restricted the civil rights of Black Louisianans, including ending integrated public schooling and instituting new measures that made it more difficult for African American men and poor white men to vote. Earlier in the unit, you read about the Supreme Court's decision in *Plessy v. Ferguson*. Following this decision, white Democrats adopted the Constitution of 1898, which went further in making African Americans second-class citizens. The document included a variety of measures designed to deny voting rights to most African American men, causing the number

Louisiana's 1868 constitution established unprecedented civil rights for Black Louisianans.

of African American men registered to vote to drop from 130,000 to 13,000.

The Progressive Era

From the late 1800s into the early 1900s, the United States experienced a period of extraordinary change called the Progressive Era. Technological innovations changed everyday life, and millions of immigrants came to the United States in search of new opportunities. Reformers—including many in Louisiana—worked at the federal, state, and local levels to improve American society and government; reforms were wide-ranging, from increased government oversight to ensure food safety to improved living and working conditions for the urban poor.

In 1913, state leaders called a constitutional convention to address a state debt issue as well as a sewage issue in New Orleans. But instead of amending the Constitution of 1898, the delegates overstepped their mandate and drafted a new constitution with a variety of social reforms, including addressing juvenile justice, breaking up trusts, and attempting to modernize the government. This new constitution, widely considered to be confusing, did not address the rights of Black Louisianans. The Supreme Court of Louisiana overturned parts of the 1913 constitution two years later, leading to the eventual creation of the Constitution of 1921—a document drafted by 146 delegates, including two women but no African Americans. The state's ninth constitution is its longest, and despite shortcomings, it remained in effect for over fifty years.

The Civil Rights Era

During the 1950s and 1960s, the Civil Rights Movement gained momentum in the United States. The goal of the movement was to end racial inequality in the United States, and one of its victories was the passage of the Civil Rights Act of 1964 by the U.S. Congress. The act extended unprecedented protections to historically marginalized groups, including African Americans and women. To reflect these changes, Louisiana

Louisiana's Amendment Process

The Constitution of 1974 has been amended more than three hundred times since its adoption—over ten times more than the U.S. Constitution. Amendments to Louisiana's constitution may originate in either house of the state legislature. If two-thirds of both houses approve the amendment, it is sent to citizens to decide on a statewide ballot. The amendment goes into effect if approved with a simple majority by a popular vote. Amendments may also be proposed by specially called constitutional conventions.

adopted its current constitution in 1974. The constitutional convention included African American delegates for the first time since 1879 and Republican delegates for the first time since 1898; there were also more female delegates than in the past. This tenth constitution was much more streamlined than past versions and introduced many government reforms, including reducing the state's 250 agencies to twenty-five departments and placing term limits on the governor. The constitution also expanded civil rights, making it illegal to discriminate based on race or sex.

Think Twice

How have Louisiana's constitutions reflected changes in both the state and the nation?

A Distinctive Legal Tradition

Louisiana's legal tradition is distinct from other states in the Union due to the state's unique colonial and territorial history. French claims to the massive Louisiana Territory date back to the early 1680s; French trappers, explorers, and missionaries established forts and settlements throughout the region, including at the present-day city of New Orleans, and brought French legal traditions with them. In 1762, Spain gained control of Louisiana through the Treaty of Fontainebleau before returning the territory to France through the Treaty of San Ildefonso in 1800. Under both Spanish and French rule, the territory followed a **civil law** system patterned on the French legal system, which was based primarily on written codes that explain the duties, rights, and relationships between citizens. Civil law dates to the ancient Romans, who brought this system with them as they conquered areas around the Mediterranean and across continental Europe. Over time, civil law was adapted to reflect the needs of different communities. Different civil law systems, including the French legal system, were then carried around the world through colonization.

The civil law system contrasts with the English common law tradition, which was operative in the original thirteen colonies and then in the United States. Under common law, judges interpret the law guided by precedents set by

Napoleon Bonaparte came to power in France in 1799. Four years later, in 1803, he sold the Louisiana Territory to the United States.

previous cases and by other judges' written opinions detailing their reasoning.

After the French Revolution established France's first republic in the 1790s, Napoleon Bonaparte gained control of the French government. He appointed four legal experts to write a new civil code for France to replace the varied collections of customary laws that changed from one part of the country to the next. The result was a collection of more than two thousand articles focused on the rights of people, property rights, and legal transactions that became known as the Napoleonic Code. France adopted the code in 1804, one year after the United States made the Louisiana Purchase.

However, the Napoleonic Code still influenced the development of the Louisiana Civil Code that was adopted in 1825. In the years between the U.S. government's purchase of the Louisiana Territory and Louisiana's statehood, the federal government gradually imposed common law and U.S. law on most of the territory. However, people living in the Territory of Orleans resisted this shift to common law. In 1808, the territorial legislature adopted the Digest of 1808 as the laws for the Territory of Orleans; this document included laws from Louisiana's time as a Spanish and French colony and elements from the Napoleonic Code. While the territorial governor, William C. C. Claiborne, worried that this code of laws was too different from those in the current U.S. states, he ultimately approved the document. He believed it would be easier for people already familiar with civil law to follow.

The Digest of 1808 influenced the creation of the Louisiana Civil Code of 1825, a system that combines both civil and common law, making it unique compared to all other states and territories. For example, under Louisiana civil law, people have the right to redhibition; this means that if someone knowingly sells you a defective product, you have the right

to request a repair—and if that fails, to file a lawsuit against the seller. Additionally, courts in Louisiana do not rely primarily on stare decisis to interpret the law the way that federal courts and courts in other states do. Today, Louisiana remains the only U.S. state that uses civil law.

Think Twice

Which factors have influenced Louisiana's system of laws?

Local Governments in Louisiana

As you have read, governments in the United States come in different shapes and sizes. In addition to the federal government and state governments, federalism also includes local governments, which derive their authority from the state. The state constitution and state laws determine what types of local governments can be created and how, as well as what laws those local governments can and cannot make.

In all states besides Louisiana, the largest unit of local government is the **county**. Louisiana uses an equivalent unit called a **parish**. The parish system, like the Louisiana Civil Code, reflects Louisiana's colonial past. France and Spain were Roman Catholic countries; Louisiana was divided into religious and political units, each representing a religious congregation, or parish, served by a priest. When the United States purchased the Louisiana territory, it loosely adopted the boundaries of these existing parishes. By that time, Louisiana's parishes no longer had anything to do with religion, but the word *parish* continued to be used instead of *county* because people understood what it meant.

Today, Louisiana has sixty-four parishes. Thirty-eight of these are governed by the **police jury** system, which dates to 1807—another carryover from Louisiana's colonial past that makes it unique among the other states in the Union. Police juries are made up of three to fifteen elected officials who act as a county board of supervisors or commissioners. Unlike the federal and state governments, police juries perform both executive and legislative functions, including passing and enforcing local **ordinances**, levying taxes, and maintaining things like infrastructure and hospitals.

Twenty-six of Louisiana's parishes operate under a different government structure called a **home rule charter**. Under the Louisiana Constitution, parishes can vote to replace the police jury system with a local constitution that defines the government structure. The primary benefit of home rule charters is that they give the parish more independence from the state. Under the state's constitution, a parish with a home rule charter can exercise any power that is not denied to it by the law.

Under a home rule charter, parishes can choose from a few different structures of government:

- **President-council government:** An elected council passes legislation for the parish, and the elected parish president carries out the legislation. Twenty-one parishes use a president-council structure.
- **Commission-administrator government:** A commission made up of twelve elected officials makes laws and appoints the parish's chief executive, called a parish administrator, to carry out the laws. Caddo Parish is the only parish with a commission-administrator government.
- **Consolidated city-parish government:** A single government merges parish government and city government and performs the functions of both. Four parishes, including New Orleans and Baton Rouge, have a consolidated city-parish government.

Under the president-council system, ordinances are enacted by a majority vote, while the council president has the power to approve or veto the ordinance. There is no veto process under the police jury system, but ordinances are still enacted by a majority vote.

Louisiana's constitution creates a second level of local government within parishes, called municipalities. The state designates three types of municipalities: Villages have 1,000 or fewer residents, towns have between 1,001 and 4,999 residents, and cities have 5,000 or more residents. Recall that under the federal system, each level of government is designed to meet the different needs of the people who live within its jurisdiction; dividing parishes into smaller municipalities is an important way of doing that. For example, the needs of people living in Pilottown in the southern part of Plaquemines Parish may differ from those of people living in Saint Bernard.

Like parishes, municipal governments may also operate under home rule charters. Many of Louisiana's municipalities have a mayor–board of aldermen structure of government, led by an elected executive called a mayor and an elected board of three to nine aldermen who make up the town or city council. In some cities, including Baton Rouge, the chief executive is the mayor-president, an official who manages the city's everyday operations but does not make policy. The term limit for local officials is usually four years. Some municipal officers are elected, like the chief of police, while others are appointed by the municipal government, such as the tax collector.

Local governments, like the federal and state governments, require revenue to function and to provide services. Local governments in Louisiana receive some of their revenue from local taxes; these include school board taxes, municipal taxes, and law enforcement taxes. Local governments also receive revenue from

Louisiana Parishes

Louisiana has sixty-four parishes, compared to the twelve parishes it had when it was the Territory of Orleans.

building permit fees, grants from the state, and license fees.

Of all levels of government, local government has the greatest effect on most people's daily lives. Local governments fund police, fire, and emergency services (sometimes with state and federal help). They build schools and parks, pave roads, and regulate where homes are built and where businesses may operate. Local officials inspect restaurants for cleanliness and new homes for safe construction. Local governments are responsible for wastewater and drinking water systems, too. Additionally, local governments can pass ordinances to regulate

a variety of activities; for example, one town may require all dogs to be leashed in public parks, while another may approve keeping livestock on private property.

Like other levels of government, local governments provide avenues for citizen involvement. People often serve on local boards for no pay, making decisions on **zoning** regulations or the building of new parks. For example, New Orleans has more than one hundred boards and commissions monitoring issues related to neighborhood-specific improvement projects, industrial development, aviation, pest control, parking, and the arts. Shreveport has boards dedicated to people with disabilities, historical preservation, and port development and operation.

Think Twice

What makes local governments in Louisiana distinct from local governments in other states?

Tribal Governments in Louisiana

Unlike local governments, tribal governments in Louisiana—as in other states—do not derive their power from the state or the federal government; instead, they represent **sovereign** nations that have the inherent right to govern themselves. It is important to note that tribal government is limited by the U.S. government, including through treaties, court decisions, and acts of Congress. While the U.S. Constitution recognizes Native American sovereignty, throughout the country's history, Congress has approached interaction with tribal sovereignty in different ways. For example, during the 1800s, the U.S. government forced Native Americans from their ancestral lands to make room for white settlement as the country expanded west. When Native Americans resisted this forced relocation via the U.S. judicial system, they were often met with disappointment, such as in *Cherokee Nation v. Georgia* (1831), in which the Supreme Court ruled that while Native groups were indeed sovereign nations, they were *dependent* sovereign nations. This excluded them from being considered "foreign nations" and therefore from the court's jurisdiction. Additionally, as you read earlier in the unit, Native Americans were not considered U.S. citizens until 1924.

Ten years later, Congress passed the Indian Reorganization Act of 1934. This law allowed Native American tribes and nations to formally incorporate their governments, essentially allowing them to turn their tribal governments into business entities. Incorporating as businesses meant they could borrow money, modernize their economies, and better protect assets owned by the tribe. Today, tribal governments blend traditional and modern government systems; many have their own written constitutions, and some

incorporate the separation of powers across three branches like the U.S. federal government and the states.

Under the federal system, tribal governments have a lot in common with states: They provide for the general well-being of their people, and they work directly with the federal government and the states to achieve policy goals. Tribal governments enact and enforce laws, establish courts, manage land, and oversee law enforcement and first responders. They also manage social programs like education and health care.

Federally Recognized Tribes in Louisiana

Like state governments, tribal governments receive funding from the federal government. Federal resources are a way to promote tribal sovereignty and economic independence, and they are also used to promote tribal safety, health, and general well-being. Tribal governments also generate revenue from tribal-owned businesses and from taxes.

The physical jurisdictions of tribal governments (reservations) overlap with the jurisdictions of state governments, and the people they govern are also citizens of the state where they live. In some cases, tribal governments represent people living in multiple states. As a result, states and tribal governments must have strong working relationships to develop policies and to provide services to people living on and near reservations. In Louisiana, the Office of Indian Affairs—an executive agency—works with tribal governments to address seven different areas:

- disaster response and recovery
- economic development
- education
- health care
- infrastructure
- Internet access
- workforce development

Law enforcement is another area where federal, state, and tribal governments must work together; they must also respect each other's jurisdiction. Tribal governments can

arrest, charge, and try community members who have broken a tribal law; however, non–community members who break a law on tribal land are generally tried in a state court. Federal crimes committed on tribal lands are tried in federal district courts.

As of 2015, there were more than 550 federally recognized tribal governments in the United States, four of which have reservations in Louisiana: the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, and a merger of two tribes, the Tunica-Biloxi Tribe of Louisiana. The structure of tribal government varies from tribe to tribe. For example, some tribal governments have chairs as the heads of tribal councils, and some include elder councils. The role of tribal administrators also varies from tribe to tribe.

Unlike the other federally recognized tribes in Louisiana, the Chitimacha are the only people to still live on their ancestral lands; the Chitimacha reservation is located in southeastern Louisiana. The Chitimacha were not only the first Louisiana tribe to gain recognition from the U.S. federal government but also the first to adopt a constitution. Their tribal government is made up of a five-person tribal council led by a chairman. The government provides a variety of services to its members, including police and fire departments, housing, a health clinic, a scholarship program, the Chitimacha Tribal School, and the Child Development Center. The Chitimacha Tribe is a major employer in St. Mary's Parish, largely due to its successful Cypress Bayou Casino Hotel and other businesses. There are about 1,300 members of the Chitimacha Tribe of Louisiana today.

The Coushatta Tribe of Louisiana originally lived in a region that spanned from present-day Tennessee to Alabama. The arrival of European explorers and white settlers forced the Coushatta to relocate to southwest Louisiana, where the tribe now owns six thousand acres (24 sq km) of land used for farming, housing, businesses, and various tribal government buildings. Coushatta tribal government, like the Chitimacha, is made up of a five-person tribal council led by a chairman; each councilperson is elected to a four-year term, with elections happening every two years. The Coushatta have a matrilineal clan system, which means that kinship is traced through the mother's line. There are seven Coushatta clans that share governance today and about one thousand members of the Coushatta Tribe of Louisiana.

The Choctaw people originated in present-day Mississippi. They began settling in the eastern part of Louisiana, in the Catahoula and LaSalle Parishes, starting in the 1770s. While many Choctaw were removed from their lands by the U.S. government in the 1800s, the Louisiana Choctaw, including the ancestors of the Jena Band, managed to remain. The Jena Band held their first election for tribal chief in 1974. Today, the Jena Band

has a five-person council with a council chief, like the Chitimacha and Coushatta tribes. Membership of the Jena Band of Choctaw Indians is smaller than those of the other three federally recognized tribes in Louisiana, with a little more than four hundred members in 2024.

The Tunica-Biloxi Tribe of Louisiana has about 1,500 members who primarily live in Louisiana, Texas, and Illinois. It is actually two distinct tribes that joined together during the 1920s; their goal was to pool their resources to improve the likelihood that they would gain recognition from the U.S. government. Formal recognition was especially important to recover lost lands and gain funding for areas like education. The tribe was formally recognized in 1981. Like other tribes and nations, the Tunica-Biloxi lost most of their ancestral lands to European explorers and white settlement; today, their 1,717-acre (7 sq km) reservation is in east-central Louisiana. The Tunica-Bilioxi tribal government is made up of an elected seven-person council, with each councilmember serving a four-year term. The council includes a chairman (the executive leader), a vice chairman, a secretary-treasurer, and four at-large council members who represent the interests of the entire tribe. The tribal government also includes various departments dedicated to improving the economic and social well-being of the tribe, including housing, education, cultural resources, and legal affairs.

Tribal governments and their relationships with U.S. federal, state, and local governments add an important dimension to the idea of how multiple and varied governments cooperate to meet the needs of people throughout Louisiana. Louisiana's tribes share and work together to distribute federal funding to provide safe drinking water to reservations. They also coordinate with neighboring tribes—and with local, state, and federal governments—to prepare for, recover from, and prevent disasters and emergencies.

Tribal governments are important members of the larger communities around them, especially economically and culturally. For example, the Chitimacha Tribe owns a wide variety of businesses—among them a hotel, a casino, and a grocery store chain—that generate revenue for the tribe and employ members of the larger community. They also own Colorado Professional Resources, which provides technology and engineering services to the federal government. Meanwhile, the Coushatta Casino Resort, owned by the Coushatta Tribe, is a major employer in southwest Louisiana.

Think Twice

Compare the relationship between tribal governments and the state government of Louisiana to that between tribal governments and the federal government.

PRIMARY SOURCE: FROM THE CONSTITUTION AND BYLAWS OF THE CHITIMACHA TRIBE OF LOUISIANA

Many tribal governments share elements with the federal and state governments, including specific legal and economic powers. The Chitimacha Tribe of Louisiana adopted a constitution and bylaws on September 14, 1970. With these documents, the tribe's traditional system of government—which had long operated at the individual village level—was replaced with a tribal government, whose powers are described here.

ARTICLE VII – POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council of the Chitimacha Tribe shall have the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States:

(a) To negotiate with the Federal, State, and local governments.

(b) To employ legal counsel.

(c) To manage, acquire or dispose of, lease, encumber or use tribal lands, interests in lands, tribal funds or other tribal assets, subject to federal law.

(d) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in land, tribal funds, or other tribal assets.

(e) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Chitimacha Indians prior to the submission of such estimates, to the Office of Management and Budget and to Congress.

(f) To appropriate any available tribal funds for the benefit of the tribe.

(g) To supervise and manage tribal economic affairs and enterprises in accordance with this constitution and a corporate charter which may be issued by the Secretary of the Interior.

(h) To pass and enforce ordinances and rules and regulations providing for the management of tribal lands or other tribal assets, including the making and revoking of assignments, disposition of timber, oil and mineral resources, except that this article shall not conflict or interfere in any way with the provisions of Article IV. . . .

ARTICLE IX – BILL OF RIGHTS

The protections guaranteed to individual tribal members by Title II of the Civil Rights Act of 1968 (82 Stat. 77) against actions of a tribe in exercising its powers of self-government, shall apply where appropriate to members of the Chitimacha Tribe of Louisiana.

Source: "Constitution and Bylaws of the Chitimacha Tribe of Louisiana." Chitimacha Tribe of Louisiana. Updated June 8, 2019.

Glossary

A

appeal, v. to bring a legal case in front of a higher court to review the decision of the lower court **(100)**

apportionment, n. the act of allocating representatives to states or voting districts based on their population **(62)**

appropriation, n. money set aside for specific use **(85)**

authoritarian, adj. characterized by the concentration of governmental authority in a leader not constitutionally accountable to the people **(15)**

autocracy, n. a form of government in which one person has unlimited power and authority **(15)**

B

baron, n. in medieval England, a broad term for a nobleman who answered to the king; now refers to a specific, usually lower, rank of nobility in the United Kingdom and elsewhere **(26)**

bicameral, adj. in a legislature, having two separate houses or chambers **(20)**

bill of attainder, n. a law declaring people guilty and prescribing their punishment without granting them a trial **(51)**

Black Code, n. any of the laws enacted in 1865 and 1866 in former Confederate states that sought to preserve white supremacy through legal means **(145)**

brief, n. a written argument that lays out main points, legal precedents, and evidence **(100)**

budget, n. an amount of money available for spending based on a plan for how it will be spent **(83)**

bully pulpit, n. an informal power of the president to influence the national agenda by virtue of their visibility and popular respect **(92)**

C

capitalism, n. an economic system in which individuals and private companies own the means of production and operate for profit **(21)**

caucus, n. a group of people who belong to the same political party **(86)**

charter, n. a written document setting forth rights and privileges for a specific group or organization **(27)**

checks and balances, n. ways in which different branches of government limit (or check) each other's powers **(24)**

civil law, n. a system of law in which codes and statutes carry greater weight than prior court decisions **(148)**

cloture, n. the process of closing debate on a bill or other legislative action currently being delayed **(89)**

communism, n. an economic system in which all property is publicly owned and the government makes all decisions about production and distribution **(21)**

concurrent power, n. a power in the U.S. federal system of government that is shared by the state and federal governments **(137)**

confederate, adj. formed out of smaller, highly independent members such as tribes or states **(17)**

congressional district, n. a division of a state that is represented by and elects a member of the House of Representatives **(80)**

consent of the governed, n. the idea that a government's authority is lawful only when citizens agree to it **(59)**

constituent, n. a person who lives and votes in an area **(80)**

constitutional monarchy, n. a monarchy in which laws or customs significantly limit the monarch's power **(15)**

constitutional republic, n. a government in which leaders are elected by the people and carry out their roles as outlined in the country's constitution, or set of principles and laws **(16)**

county, n. the largest civil division of local government in a state, comparable to a parish in Louisiana **(150)**

D

democracy, n. a government in which the people hold power **(6)**

denomination, n. a group within a religion that shares a common name, traditions, and beliefs **(35)**

depose, v. to remove from a position suddenly and by force **(32)**

dictator, n. a head of government who has unlimited power and authority **(17)**

direct democracy, n. a government in which citizens vote directly on the issues that affect them **(7)**

due process, n. the principle that everyone is entitled to fair (due) consideration under the law, and specifically to a fair trial if accused of any wrongdoing **(29)**

E

Electoral College, n. in the United States, a body of electors that represents the voters of each state and elects the president and the vice president **(49)**

eminent domain, n. the government's right to take private property for government use **(73)**

enumerated power, n. a power of the U.S. government that is specifically listed in the Constitution **(62)**

enumeration, n. the act of listing or counting something, as in the population of a country **(110)**

equal protection, n. the Fourteenth Amendment guarantee that states apply the same treatment to individuals or groups of individuals when they face the same circumstances **(128)**

ex post facto law, n. a law that makes something illegal retroactively or increases the punishment for a past action **(51)**

executive order, n. a directive by an executive head of government, such as a president, that has the force of law **(92)**

executive privilege, n. the power of the president and other members of the executive branch to withhold certain confidential information from the other two branches of government **(132)**

F

fascism, n. a form of totalitarian government characterized by dictatorship, political oppression, extreme nationalism, and bigotry against minority groups **(16)**

federal, adj. characterized by sharing power between a central government and various smaller governments **(17)**

filibuster, n. an action, such as a lengthy speech, undertaken to delay a vote on a bill or other legislative action **(89)**

franchise, n. the constitutional right to vote **(111)**

G

governance, n. the act of overseeing and directing the resources, actions, and responsibilities of a group or place **(4)**

government, n. the group or organization that makes decisions on behalf of the people in a political unit, such as a country, state, or city **(4)**

grassroots campaign, n. a movement beginning with and coming from ordinary people **(119)**

H

habeas corpus, n. from Latin, meaning "you have the body": a legal mechanism that protects against unlawful or undue imprisonment **(50)**

head of government, n. the political leader of a country who oversees government policies at the highest level **(19)**

head of state, n. the symbolic and ceremonial leader of a country who may also exercise political power **(18)**

hearing, n. a meeting in which testimony is heard from witnesses **(85)**

home rule charter, n. a constitution adopted by citizens that establishes the government structures of a municipality **(150)**

I

impeach, v. to charge an officeholder with misconduct **(82)**

implied power, n. a power granted to the federal government that is not directly written in the Constitution **(83)**

infrastructure, n. public works systems, including roads, bridges, water, public transportation, etc. **(135)**

J

judicial review, n. the authority of the Supreme Court to decide whether laws or actions by the government are constitutional **(106)**

judiciary, n. the judicial branch of government **(100)**

jurisdiction, n. the power or authority of a court or legal system over certain geographic areas, groups, or types of action **(62)**

L

legislature, n. the lawmaking body in a government **(9)**

levy, v. to impose **(85)**

libel, n. a written or printed statement that unfairly harms a person's reputation **(72)**

liberty, n. the state or quality of being free **(3)**

"line of succession" (phrase) the sequence of individuals who are eligible to take a title, position, or property if something happens to the person currently holding it **(86)**

M

mandate, n. a command; a responsibility given by an authority **(139)**

martial law, n. temporary rule by military officials in place of civilian authorities in a designated area **(122)**

militia, n. a group of citizens organized to perform military service who are not necessarily professional soldiers **(36)**

mitigate, v. to make less severe or harsh **(42)**

mixed economy, n. an economy that includes capitalistic elements of a free market as well as some government intervention in the interest of both economic stability and the public good **(24)**

monarchy, n. a form of government with a head of state who inherits the position and rules for life **(11)**

N

natural right, n. a right that is considered to be endowed by natural law, such as the rights of life, liberty, and property **(28)**

O

oligarchy, n. a government led and controlled by a small group of people **(17)**

ordinance, n. a law or government rule **(150)**

original jurisdiction, n. the power to review a legal case and apply the law without the case going through an appeals process first **(102)**

oversight, n. the action of watching over something **(85)**

P

parish, n. a civil division in Louisiana, comparable to a county in other states **(150)**

parliamentary system, n. a system of representative democracy in which the people elect the legislature, whose members then choose a leader to head the government **(19)**

pilgrim, n. a person who travels to foreign lands, often for religious reasons **(30)**

pocket veto, n. the act of rejecting a bill by choosing not to sign it into law while Congress is no longer in session **(121)**

police jury, n. the governing body of a parish, made up of five to fifteen elected members **(150)**

"political machine" (phrase) a political party organization run by a single leader or small group of leaders that works to control a city, county, or state, often by providing goods, services, and favors to voters **(112)**

political party, n. an organized group whose members support candidates for political office based on shared ideals and goals **(20)**

popular sovereignty, n. the principle that people create the government and the government is subject to the people's will **(59)**

preamble, n. an introduction or preface **(58)**

precedent, n. an action or decision that serves as an example for the future **(32)**

presidential system, n. a system of representative democracy in which the people elect both the legislature and the head of government **(19)**

prior restraint, n. a government ban on expression before it happens **(131)**

probable cause, n. a legal standard that gives officials a reason to obtain a warrant to search a private property and to seize property and individuals **(73)**

R

ratify, v. to officially validate a treaty or other agreement **(51)**

representative democracy, n. a form of democracy in which people elect representatives instead of voting directly on laws **(16)**

republic, n. a society governed by representatives of the people **(10)**

reservation, n. an area of land set aside by the federal government for Native Americans **(139)**

reserved power, n. a power in the U.S. federal system of government that belongs to the states rather than the federal government **(136)**

revenue, n. income **(81)**

S

separation of powers, n. division of government into different branches with distinct responsibilities **(24)**

slander, n. an oral statement that unfairly harms a person's reputation **(72)**

social contract, n. the idea that a government is an agreement between those who are governed and those who govern **(11)**

socialism, n. an economic system in which the government or community collectively owns and controls major industries **(21)**

sovereign, adj. having supreme power and authority over a nation and its people **(153)**

T

term limit, n. the maximum amount of time an elected official is allowed to serve in that position **(115)**

theocracy, n. a form of government in which a religious leader, or leaders, holds power **(16)**

totalitarian, adj. characterized by a centralized government that asserts total control over citizens and the national economy **(15)**

treason, n. the crime of betraying one's country by trying to overthrow its government or supporting its enemies **(51)**

tyranny, n. oppressive, harsh power **(17)**

U

unicameral, adj. in a legislature, having a single house or chamber **(20)**

unitary, adj. characterized by having a strong central government that exercises most of the political power **(17)**

V

veto, v. to reject **(65)**

W

warrant, n. a legal document authorizing officials to conduct a search, collect evidence, or make an arrest **(73)**

Z

zoning, n. the act of organizing a place into different areas with specific purposes **(153)**

Appendix: U.S. Supreme Court Cases

***Brown v. Board of Education* (1954)**

Brown v. Board of Education was a consolidation of five separate cases from Delaware, Kansas, South Carolina, Virginia, and Washington, D.C. In each case, African American students had been denied admittance to schools that had been segregated by race, which was allowed by the "separate but equal" precedent set by the *Plessy v. Ferguson* decision. Lawyer Thurgood Marshall, representing the plaintiffs, argued that racial segregation in public education violated the equal protection clause of the Fourteenth Amendment.

The Supreme Court needed to determine whether state-sponsored segregation in public school did violate the Fourteenth Amendment. In a unanimous decision, the court determined that "separate but equal" facilities in public education were inherently unequal and that the racial segregation of public schools would have a hugely detrimental effect on African American students. Chief Justice Earl Warren wrote, "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." The ruling overturned the precedent set by *Plessy v. Ferguson*.

***Bush v. Gore* (2000)**

The presidential election in 2000 between George W. Bush and Al Gore was very close, and by the end of Election Day, it was clear the winner of Florida's electoral votes would win the presidency. The initial count had Bush leading Gore by about six hundred votes out of six million cast. An automatic machine recount narrowed the margin, and a hand recount commenced. Legal battles over how the ballots were recounted reached the Florida Supreme Court and then the U.S. Supreme Court.

The U.S. Supreme Court needed to determine whether the Florida Supreme Court had violated the Constitution by making new election law when it ordered recounts and whether the manual recounts violated the equal protection and due process clauses of the Constitution. In a 7–2 ruling, the court determined that because the recounts had not been standardized across the state of Florida, they were unfair. Then, in a 5–4 decision, the court ruled that the recount could not be completed in the amount of time remaining before a constitutionally

mandated deadline for Electoral College voting. With that ruling, Bush won Florida's electoral votes—and the election.

Cherokee Nation v. Georgia **(1831)**

In 1828, the state of Georgia passed several laws that would seize Cherokee land and force the tribe off their land. The Cherokee Nation challenged the laws in court, seeking an injunction to prevent their enforcement. The Cherokee argued that the laws violated treaties they had negotiated with the United States.

The Supreme Court needed to establish whether the case was within its jurisdiction. The Cherokee Nation argued that, according to treaties it had made with the United States, it should be treated as a foreign, sovereign nation and should not be subject to the laws of the state of Georgia. The court disagreed and determined the Cherokee Nation was not a "foreign nation" and was, instead, a "domestic dependent" nation. With this as its justification, the Supreme Court, led by Chief Justice John Marshall, dismissed the case, claiming it was outside of the court's jurisdiction.

In a dissenting opinion, Justice Smith Thompson expressed concern that the Indigenous people had no way to pursue justice, writing, "If they, as a nation, are competent to make a treaty or contract, it would seem to me to be a strange inconsistency to deny to them the right and the power to enforce such a contract."

Citizens United v. Federal Election Commission **(2010)**

In 2008, a nonprofit group called Citizens United attempted to promote and release a film titled *Hillary: The Movie*, which criticized presidential candidate Hilary Clinton. The Federal Election Commission prevented Citizens United from promoting or airing the film on the grounds that it would break campaign finance rules because it was political communication near an election. Citizens United argued that this ban was unconstitutional, and after a preliminary injunction was denied by the district court, the case progressed to the Supreme Court.

The Supreme Court needed to determine whether the ban violated the First Amendment. In a 5–4 ruling for Citizens United, the court determined that independent political spending from corporations and other groups should not be limited because it is a form of speech and that corporations had the same free speech protections as individuals. In dissent, Justice John Steven, joined by Justices Sonia

Sotomayor and Ruth Ginsburg, wrote that the decision had the power "to undermine the integrity of elected institutions across the Nation."

***Loving v. Virginia* (1967)**

In 1958, Richard Loving, a white man, and Mildred Jeter, an African American woman, got married in Washington, D.C. Shortly after returning to their home state of Virginia, they were arrested for violating the state's law against interracial marriage. The couple pleaded guilty and were sentenced to a year in prison. The judge agreed to suspend the sentence if the couple would leave the state for twenty-five years. The Lovings moved to Washington, D.C., and appealed their conviction to the Supreme Court.

The Supreme Court needed to determine whether Virginia's anti-miscegenation law, which made interracial marriage illegal, violated the equal protection clause of the Fourteenth Amendment. The court ruled unanimously that it did, striking down laws against interracial marriage in Virginia and fifteen other states. Chief Justice Earl Warren wrote, "Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."

***Marbury v. Madison* (1803)**

In 1803, near the end of John Adams's presidency, he appointed a slew of judges from his political party, one of whom was William Marbury. When Thomas Jefferson became president, he told his new secretary of state, James Madison, to prevent Marbury from taking his seat. Marbury sued to get his appointed job and brought the case to the Supreme Court. He petitioned for a court order to compel Madison to issue the commission that would allow him to begin his judgeship.

In a unanimous decision, the court ruled that Madison's actions were illegal but that the Supreme Court did not have the right to force Madison to hand over Marbury's commission. The court determined that the Judiciary Act of 1789, which gave Marbury the legal justification to bring his claim to the Supreme Court, violated Article III, Section 2, of the Constitution. This established the principle of judicial review, giving the Supreme Court the power to declare a law unconstitutional. As Chief Justice John Marshall wrote in the court's decision, "A law repugnant to the constitution is void."

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

In 1816, due to the accumulation of debt during the War of 1812 and the need

to control the flow of cash from state banks, Congress established the Second National Bank. Many states, however, questioned the bank's constitutionality, and Maryland decided to resist the federal government by imposing taxes on the Baltimore branch of the bank. When James W. McCulloch, a federal cashier in Baltimore, refused to pay these taxes, Maryland filed a court case against the National Bank.

The Supreme Court needed to consider the following: first, whether the Constitution gave the national government the authority to establish a bank, and second, whether Maryland's taxation law interfered with congressional power. The unanimous decision held that the Congress did have the power to create a national bank. The court held that establishing a bank was an "implied" power of Congress, citing the "necessary and proper" clause found in Article I of the Constitution. Chief Justice John Marshall wrote, "Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation,' we find the great powers to lay and collect taxes; to borrow money; to regulate commerce." The ruling also determined that states did not have the power to tax the federal government.

***New York Times Company v. United States* (1971)**

In 1971, *The New York Times* and *The Washington Post* received large portions of a classified Defense Department study about the history of U.S. involvement in Vietnam, called the Pentagon Papers. Daniel Ellsburg, an employee of a defense contractor, photographed thousands of pages and passed them on to reporters with the *Times* and the *Post*. After *The New York Times* began publishing them, the Nixon administration, citing national security concerns, obtained a restraining order to stop further publication of the Pentagon Papers. *The New York Times* and *The Washington Post* appealed the order to the Supreme Court.

The Supreme Court needed to decide whether the Nixon administration had the authority to prevent the publication of "classified" information. In a 6–3 decision for the newspapers, the court concluded that the Nixon administration could not prevent the publication of the Pentagon Papers. The ruling, quoting two earlier decisions, stated that "any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity," so the government "carries a heavy burden of showing justification for the imposition of such a restraint."

In dissent, Chief Justice Warren Burger stated, "Only those who view the First Amendment as an absolute in all circumstances—a view I respect, but reject—can find such cases as these to be simple or easy."

***Plessy v. Ferguson* (1896)**

In 1890, Louisiana enacted the Separate Car Act, requiring African Americans and white people to sit in separate railway cars. Homer Plessy, who was mixed race, agreed to help a New Orleans group called Comite des Citoyens (Committee of Citizens) challenge the act. He sat in the "whites only" car, and after refusing to move to a car for African Americans, he was arrested. Plessy challenged the arrest in court.

The Supreme Court had to determine if the Separate Car Act violated the equal protection clause of the Fourteenth Amendment. In a 7–1 decision, the court ruled that segregated facilities did not treat African Americans as inferior as long as the facilities were of equivalent quality. Plessy was convicted, and the case established the principle of "separate but equal." For the majority, Justice Henry Billings Brown wrote, "Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other."

In his dissenting opinion, Justice John Marshall Harlan argued that the Separate Car Act was "hostile to both the spirit and letter of the Constitution" and that upholding such laws empowered states "to interfere with the full enjoyment of the blessings of freedom . . . upon the basis of race."

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

In 1992, a Texan high school student, Alfonso Lopez, brought a concealed handgun to school. An anonymous tip prompted school officials to confront Lopez, who admitted to having a gun, and he was later charged with violating the federal Gun-Free School Zones Act of 1990. Lopez pleaded not guilty, and his attorneys argued that Congress had exceeded its power when it passed the Gun-Free School Zones Act.

The Supreme Court needed to determine whether the Gun-Free School Zones Act fell within Congress's power under the commerce clause of the Constitution. In a 5–4 ruling, the court determined that possessing a gun in a school zone was not an economic activity that would affect interstate commerce. In dissent, Justice John Paul Stevens argued that

"guns are both articles of commerce and articles that can be used to restrain commerce. Their possession is the consequence, either directly or indirectly, of commercial activity."

***United States v. Nixon* (1974)**

In 1972, supporters of President Richard Nixon broke into the offices of the Democratic National Committee in Washington, D.C., to find information that might help Nixon win reelection. The burglars were caught, leading to an investigation that revealed a series of crimes that were linked to Nixon. A special prosecutor subpoenaed Nixon to turn over audio tapes that he had recorded with his aides in the Oval Office. Nixon claimed that, due to his executive privilege, he had the right to withhold information.

The Supreme Court needed to determine if executive privilege did make a president entirely immune from judicial review. In a unanimous decision, the court in 1974 rejected Nixon's argument. Chief Justice Warren Burger wrote, "Neither the doctrine of separation of powers nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."

Subject Matter Experts

Dr. Belinda Cambre, Louisiana State University Laboratory School

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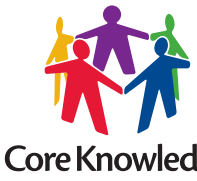

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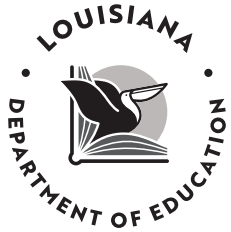

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