



#2

THE UNITED STATES' FOUNDING

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Introduction to THE FOUNDING

BEING A COLONY— THE GOOD AND THE BAD



Prior to independence, almost all the territory in North America was held by European colonial powers (see Figure 2.1). To be a colony meant not only being a political subject of the ruling country—England, Spain, France, or others—it also meant being economically dependent on that country, and having cultural ties to it as well.

The economic relationship between mother country and colonies was called *mercantilism*. In our case, England provided protection and settlement costs to the colonists (the good), and the colonies sent resources and a cut of the profits from their own trade back to the mother country. Meanwhile, the colonists were denied access to the lucrative markets in which England competed (the bad).

THE ULTIMATE POLITICAL ENFORCER

England also had a political culture that understood power to be vested in the king because he was God’s representative on earth—a theory known as the *divine right of kings*. Under that narrative, revolution against the king was also a sin against God. It put a great burden on the colonists to come up with a counternarrative to justify independence that didn’t make them all sinners.

The colonists originally bought into both the economic and world views of the British—most of them were born British subjects after all. But after living more or less on their own for years, they began to develop an idiosyncratic identity and culture, and their economic and political views began to diverge.

As the American colonists began to see themselves more and more as a separate political entity, independence started to look like a desirable and viable option. They wanted out.

WHY THE COLONISTS WANTED INDEPENDENCE

Essentially there were three reasons the colonies wanted to be independent of England:

- Political reasons (“You aren’t the boss of us.”)
- Economic reasons (“We’ll make more money if we can compete with England and England doesn’t take its cut of our profits.”)
- Cultural reasons (“We have a new way of looking at government and power, and you, England, are stuck in yesterday’s narrative.”)

FIGURE IT!

2.1: AMERICA'S BABY PICTURE



THREE THINGS TO NOTICE ABOUT THIS MAP

- **How many countries claimed land on the continent.** A claim to independence by the thirteen British colonies could have repercussions for the French and the Spanish if their colonists decided they wanted independence too.
- **How long the British colonies had been in place.** The colonists had been on their own long enough to start to form their own political culture and identity.
- **How far away from England (and from each other) the colonies were.** In particular, think about how difficult communication must have been without modern technology.

IN A NUTSHELL



Obviously, the continent looks a lot different today. This same area now encompasses just three independent countries: the United States, Canada, and Mexico. The story of how those thirteen colonies along the east coast of the continent became the United States, the most powerful nation the world has known, is a compelling political drama.

WHERE WE GO IN THIS CHAPTER

By the time you finish reading this chapter, you will be able to

- 2.1 → Contrast the different views of political power held by Great Britain and the American founders, and discuss how the idea of the social contract was incorporated into the Declaration of Independence
- 2.2 → Explain the principles behind the first constitution that followed independence—the Articles of Confederation—and why that constitution failed
- 2.3 → Discuss the arguments, debates, and compromises at the Constitutional Convention and how they translated into a new form of government
- 2.4 → Explain what arguments were proposed for and against the adoption of the new constitution and how the ratification process worked
- 2.5 → Define and discuss the main principles of the Constitution—separation of powers and checks and balances—and how they support the American system of government
- 2.6 → Discuss the nature of federalism and how it works
- 2.7 → Explain the historical events and policy debates that have changed the balance of power between nation and states over time

2.1

CLASSICAL LIBERALISM, THE SOCIAL CONTRACT, AND THE DECLARATION OF INDEPENDENCE

WAKING UP TO A WORLD VIEW OF INDIVIDUAL RIGHTS AND SELF-RULE

Over time, the American colonists grew impatient with a political system that allowed them minimal input and an economic system that limited their ability to accrue wealth. But more than anything, while the British were secure in a political culture based on the divine right of kings and mercantilism, the Americans were developing a new way of looking at the world based on the framework of classical liberalism we discussed in Chapter 1.

In that new world view, derived from the European Enlightenment, power was understood to be held by the people, who acted as a check to limit the absolute power of government. Consider the contrast this presented to the

divine right of kings! This new view essentially created *the idea of people as citizens, rather than subjects*, all of whom had extensive natural rights. These citizens gave up some of their rights to a limited government in exchange for security and protection, but they retained a whole lot of other rights, including the right to dissolve the government if it didn't do its job. In other words, government was to be based on the consent of those governed. If government didn't protect the secure use of their remaining rights, the people had the right to withdraw that consent—to rebel and form a new government. This idea was called the **social contract** (see Skim It! 2.1, The Skimmable Political Enlightenment).



**SKIM
IT!**

**2.1: THE SKIMMABLE POLITICAL ENLIGHTENMENT:
HOW DOES THE DIVINE RIGHT OF KINGS COMPARE
WITH THE SOCIAL CONTRACT?**

Two Ideas About How Government Works	The Divine Right of Kings	The Social Contract
<i>Power is held by ...</i>	The monarch	The people
<i>Power is given by ...</i>	God	Nature (natural rights)
<i>Government is formed by ...</i>	Divine right	Consent of the people
<i>How much power is retained by the people?</i>	None	Considerable
<i>What happens if government doesn't protect people's rights?</i>	Doesn't arise; subjects don't have any rights to protect	Citizens can revolt and form (by consent) a new government

The idea of the social contract evolved between the writings of two British philosophers. Thomas Hobbes's (1588–1679) version had a fundamentally different rationale for power than the divine right of kings. He thought free men had the right to subject themselves to a ruler who would protect them. But that did not in the end change the result for most subjects, since Hobbes

ENTER THOMAS JEFFERSON—AND THE DECLARATION OF INDEPENDENCE

Thomas Jefferson, chosen by the other founders to write the *Declaration of Independence*, was immersed in the classical liberal ideas of the Enlightenment and rested his argument in the Declaration on the ideas of John Locke. If you read Locke's *Second Treatise on Government*, you can see the influence clearly. If we read the Declaration as political scientists—that is as objective analysts rather than as loyal patriots—we can make the following observations (see also Skim It! 2.2, The Skimmable Declaration of Independence):

FOUR THINGS TO KNOW ABOUT THE DECLARATION OF INDEPENDENCE

- # The Declaration of Independence is a political document written to justify changing long-held rules about what makes power legitimate and who should hold it.
- # By relying on the social contract, the Declaration of Independence claimed that Americans had *inalienable rights* that they could not give up to government. In making this claim, the Declaration created the modern notion of *citizens*—people who can claim rights against the government—distinguished from British *subjects*—people who retained no rights against the government at all.
- # The Declaration of Independence blamed George III, the British monarch (who was still immersed in a political culture based on the divine right of kings), for breaking a contract he knew nothing about, rather than Parliament, which was actually responsible for many of the “crimes” assigned to King George. The writers of the Declaration were trying to discredit the idea of a monarch but knew they would have a “parliament” of some sort and so tried to preserve its legitimacy.
- # Not everyone in the new country was a citizen. Women, African Americans (most of whom were enslaved), and Native Americans were not endowed with inalienable rights. The efforts of these groups to be recognized as citizens are discussed in Chapter 3.

THE UPSHOT



The ideas contained in the Declaration of Independence sparked a war. The Revolutionary War era lasted from about 1765 to 1783, although the first shots against the British were not fired until 1775.

After the former colonists won, they had the job of creating a new government, just as the social contract had dictated.



2.2: THE SKIMMABLE DECLARATION OF INDEPENDENCE

Section of the Declaration	How Jefferson Said It	What It Means
The part everyone remembers	“When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another... 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.”	There is a new paradigm in town, and it is <i>not</i> the divine right of kings.
The statement of the contract	“That to secure these rights, Governments are instituted” ... “That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government....”	Government exists to protect our rights, and if it doesn't, the deal is off.
The public relations paragraph	“Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes....”	We have no alternative, and we hope the world will stick with us since we pose no threat to them.
Proof that George III has broken a contract he likely had never heard of	“The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let the facts be submitted to a candid world.”	Out of a total of 1,337 words, 866 are used to detail the sins of the king. To strengthen their case, the founders threw in some things that were in the king's normal job description along with a few things that were actually done by Parliament.

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Section of the Declaration	How Jefferson Said It	What It Means
Disclaimer: This is not our fault.	“Our repeated Petitions have been answered only by repeated injury.... We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence.”	We tried over and over again to warn Britain, but they wouldn't listen.
The final declaration of independence from Great Britain	“That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved.... And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”	We have no choice, and, besides, God is on our side.

2.2

THE ARTICLES OF CONFEDERATION

FIRST, FORM A NEW GOVERNMENT

▶ Declaring independence and winning a war against an established major world power were no simple tasks, but they were only the beginning of the political challenges the Americans faced. Creating a new government from scratch is a remarkable task, and it took more than one try to get it right.

After the Revolution, America was a mix of thirteen states, big and small, enslaving and not. Having just overthrown a king, the one thing they had in common was a dedication to their own sovereignty and a commitment to the idea that any national power should be limited.

Some of the founders, like James Madison, had a lingering hope that if the powers of a national government were kept to a minimum, people would be

WHAT DOES A CONSTITUTION HAVE TO INCLUDE?

- ▶ activated by what they called *republican virtue* to act in the public interest without coercion by a strong government. That hope was doomed, as even Madison was forced to admit (see highlights of his *Federalist Paper #51* later in this chapter).
- ▶ The founders' main task was to write a constitution, or rule book, that would determine how the new government was to function, who would have power, and how that power would be limited. Although there were colonial and state constitutions, the founders had no immediate example of a national constitution—England had and still has an unwritten constitution, and they didn't want to follow the British model in any case. The founders faced a steep learning curve, but we in turn can learn a lot from the way they pulled it off.

The story of the writing of the Constitution is the story of clashes of interest, power struggles, and *compromise*, a word we will be hearing many times. The document that resulted is a remarkable one. It's not perfect, but neither is it static—it carries within it the means to improvement through its amendment process.

ARTICLES OF CONFEDERATION

- ▶ The first U.S. constitution, approved by the Second Continental Congress in 1777 and ratified by the states in 1781, was called the *Articles of Confederation*. But because the states viewed themselves as sovereign and didn't want to give up their power, they decided to limit their new constitution to a “firm league of friendship” among the states, rather than being a full union.

HOW DID THAT WORK OUT FOR THEM?

- ▶ Not very well, actually. As their name suggests, the Articles established a *confederation*, which is a form of government in which all the power lies with the local units, in this case, the states. The national government had only the power the states decided to allow it and, since they were unwilling to allow any entity to have power over them, that meant not very much.

Economic troubles, drought, and crop failures meant heavy demands for relief were placed on the state governments. The solution—cancellation of debts and contracts—rocked the country's economic stability, and the national government didn't have enough power to steady it.

Here are some other things the national government was not allowed to do under the Articles of Confederation:

- # Draft soldiers (making it difficult to coordinate a response to a threat from a foreign power)
- # Tax citizens (making the government totally dependent on the states for funds)

- # Regulate interstate commerce (leaving the states to create their own markets, economic rules, etc.)
- # Establish a central monetary system (requiring Americans to change their currency if they lived in Virginia but wanted to do business in Maryland)

Historians call the era after the American Revolution “the critical period” because the new government was so close to collapse. Economic chaos and Shays’s Rebellion—a march of angry farmers demanding debt relief in western Massachusetts—drove some of the founders to meet in Annapolis in 1786 to discuss fixing the dysfunctional Articles.

TREASON! Some of the attendees of the gathering in Annapolis decided the Articles were too broken to fix, and they set out to create a whole new U.S. Constitution instead. Under the Articles, this was illegal (just as it would be today if a group of leaders decided to dispense with our current Constitution), and it angered many of the attendees. Some of them declared the undertaking treason (which it technically was), before walking out and later even refusing to sign the new document.

2.3 THE CONSTITUTIONAL CONVENTION

HOW IT ALL STARTED

- > Clearly, if some of the attendees were accusing the others of treason, the *Constitutional Convention* of 1787 was not off to a great start. In fact, while they were fighting the British, the colonists had been united, more or less. In the absence of a common enemy, all kinds of fault lines started to show among the states that were deeply divided, and not for the last time. (This was not because we were special, by the way—it’s a common political tendency to watch for, even in much smaller groups.)

THE FIRST BIG DIVIDE

- > The biggest fracture came between groups who came to be known as the *Federalists* and the *Anti-Federalists*.

FOUR THINGS TO KNOW ABOUT THE FEDERALISTS

- > # The Federalists were those who wanted a stronger national government (though not *too* strong) to be able to handle crises like the one that had erupted under the Articles.
- # They were mostly representatives of large states who felt they could control government power, so they were less threatened by the prospect of a vigorous government.

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FOUR THINGS TO KNOW ABOUT THE ANTI-FEDERALISTS

- # They came to be known as Federalists because they preferred to get rid of the confederal system of the Articles, in which the states ultimately held the power, and move to a federal system, where power would be shared between states and the national government.
- # The plan for the new constitution that they favored was called the *Virginia Plan*, a comparatively robust but limited government whose signature institution would be a *bicameral legislature* (meaning it would have two chambers) where representation in *both* chambers would be based on population and taxes paid. Big states win!
- # The Anti-Federalists were against a robust national government because they believed power was best contained when you could keep an eye on it (that is, at the state level).
- # Their preference would have been to tweak the Articles to make them more effective.
- # Mostly representatives of smaller states, they feared a stronger government would roll over them and the big states would always get their way.
- # The new plan they favored was called the *New Jersey Plan*. It looked like a slightly upgraded Articles of Confederation—a single chamber of the legislature in which every state cast one vote, with a weak executive and a nonexistent court system, but some additional powers for the national government, like the regulation of interstate commerce. Small states hold their own against larger ones.

KEY POINT! The so-called *Great Compromise* was “great” in the sense that it worked to bring the two sides together, but it was greater for the Federalists than the Anti-Federalists because they got more of what they wanted. The compromise they agreed on called for a bicameral legislature that split the difference between the two sides: representation in the House of Representatives is based on a state’s population, but in the Senate every state gets two members. Much of the rest of the compromise looked a lot like the Virginia Plan.

THE SECOND BIG DIVIDE—NORTH VS. SOUTH

- # Once the outlines of the Great Compromise were clear and it was apparent that representation in one house would be based on population, the question arose of who would be counted as part of that population. The southern states, in order to get more legislative representatives, wanted to include enslaved people in their population total, even though they were unwilling to give those people any political power or count them as citizens.

The North, not surprisingly, refused to let the South count enslaved people at all.

The compromise that solved this dispute, the *Three-Fifths Compromise*, allowed ratification to go forward but remains a permanent stain on the Constitution, even though centuries of political struggle and even war have made it obsolete. It says that to determine representation, the population count would be made “by adding to the whole Number of Free persons ... three fifths of all other persons.” Skim It! 2.3 summarizes how the Articles of Confederation evolved into the Constitution.

THE UNSETTLING TRUTH ABOUT COMPROMISE! Please note that the Three-Fifths Compromise does NOT mean that enslaved people or Indigenous Americans got three fifths of a vote! They got no vote at all. The southern states just used their enslaved people to increase their own power in the House of Representatives. The Three-Fifths Compromise damaged the northern states politically and constituted a moral offense to many Americans. It’s a hideous agreement that illustrates perfectly the uncomfortable truth that sometimes compromise means you may have to do something that violates your principles in order to advance your other cherished values. Without the Three-Fifths Compromise, there would have been no U.S. Constitution at all. And ultimately it was actions taken under that Constitution that allowed for redress of the injustices that were agreed to in order to bring it into existence.

THE UPSHOT



Both the Great Compromise and the Three-Fifths Compromise reduced the popular control of government by countering it with state control, in particular by empowering smaller, rural states. The Great Compromise meant that even states with tiny populations (like Montana) will always have at least three members of Congress—two senators as well as the one House member the state gets on the basis of population. That is pretty obvious, and it shapes the terrain of American politics to this day.

But the desire of southern states to boost their power in relation to the North had another lasting effect on the balance of power in the United States: We do not elect the president of the United States by direct popular vote. In part this is because the founders were wary of direct popular power and were concerned that information would not travel throughout all the states in time for people to cast informed votes.

Instead, we have the Electoral College, an unusual constitutional arrangement for electing the U.S. president (see Chapter 5). In this arrangement, the states actually choose the president, and the number of electors a state

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2.3: THE SKIMMABLE EVOLUTION FROM THE ARTICLES OF CONFEDERATION TO THE CONSTITUTION

Articles of Confederation Ratified 1781	The New Jersey Plan Drafted June 15, 1787	The Virginia Plan Drafted May 29, 1787	The Constitution Ratified 1789
State sovereignty	State sovereignty	Popular sovereignty	Popular sovereignty
State law is supreme	State law is supreme	National law is supreme	National law is supreme
Unicameral legislature; equal vote for all states	Unicameral legislature; one vote for each state	Bicameral legislature; representation in each house based on population	Bicameral legislature; representation in one house based on population, two votes for each state in the other
Two-thirds vote to pass important laws	Extraordinary majority to pass laws	Majority vote to pass laws	Majority vote to pass laws
No congressional power to tax or regulate commerce	Congressional power to tax and regulate commerce	Congressional power to tax and regulate commerce	Congressional power to tax and regulate commerce
No executive branch	Multiple executive	No restriction on single strong executive	Strong executive
No national judiciary	No national judiciary	National judiciary	Federal court system (including national judiciary)
Unanimous state passage of amendments	Unanimous state passage of amendments	Popular ratification of amendments	Complex amendment process

Note: These plans are arranged to highlight major similarities. They are not chronological, because the Virginia Plan came before the New Jersey Plan.

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gets in the Electoral College (that is, the number of votes that state can cast for president) is determined by the total number of representatives the state has in both houses.

The South fought direct popular presidential election because the presidency would have been determined by actual population totals—a metric by which they as a region would have come up short. Creating the Electoral College gave the southern states more power to choose the president, because it replaced the actual population count with the number of representatives, which was inflated by the inclusion of enslaved people (three fifths of them, anyway) in each state’s population total.

So, through the Three-Fifths Compromise, southern states used the institution of slavery to boost their political power in the House of Representatives, but it also gave them and other small states more power in choosing the president through the Electoral College, a power advantage that continues to determine who wins and who loses in American politics today.

2.4 RATIFICATION

SO THE FOUNDERS FINALLY AGREED ON A CONSTITUTION. ARE WE DONE YET?

➤ No, there is always more work to be done. Once there was a draft, the Constitution’s rules dictated that nine of thirteen states had to agree to it in a process called *ratification*. The Federalists supported the new document, but the Anti-Federalists did not. A vigorous battle of ideas about governance was conducted nationwide.

The clearest picture we have of the battle that raged between the Federalists and the Anti-Federalists is in their writings. Because the Federalists won, it is their work that stands as the best record of the arguments for the Constitution.

THE FEDERALIST PAPERS

➤ The *Federalist Papers* is a collection of eighty-five newspaper editorials published in support of the Constitution by three Federalists—Alexander Hamilton, James Madison, and John Jay—writing under the pseudonym *Publius* (see Skim It! 2.4, The Skimmable *Federalist Papers*).

THE UPSHOT

Americans have a remarkable Constitution today but *only* because it is based on compromise, something we said earlier would prove key. At least four key compromises made this document possible:

- # Great Compromise (between large and small states)
- # Three-Fifths Compromise (between North and South)

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2.4: THE SKIMMABLE FEDERALIST PAPERS: THREE YOU SHOULD KNOW

<p><i>Federalist Paper #10</i></p>	<p>James Madison on the danger of factions</p>	<p>In this essay, Madison refuted the Anti-Federalist concern that the new nation would be too large, with a government too big, to prevent corruption. # Madison argued that, on the contrary, the chief threat to liberty in a republic was not corruption but what he called <i>factions</i>, groups of people driven by an interest of their own, other than the public interest, who would try to manipulate the rules to benefit themselves. # To squash these factions would destroy the fundamental liberties the people retained, so Madison believed the best way to control these groups would be to establish government over a large territory in which (a) they would be unable to find each other and organize and (b) they would cancel each other out. # <i>When we get to interest groups, the modern manifestation of factions, in Chapter 7, we can ask if Madison was right.</i></p>
<p><i>Federalist Paper #51</i></p>	<p>James Madison on separation of powers, and checks and balances</p>	<p>In an elegant argument, Madison said that government should be based on the type of human nature you have to govern. # Having long since decided that people were not virtuous after all, but, in his opinion, self-interested, jealous, and ambitious, Madison argued that the remedy was to find a system of governance that would take advantage of that nature and turn it to good effect. # His answer was his famous system of checks and balances, where each branch was distinct but able to contain the others.</p>
<p><i>Federalist Paper #84</i></p>	<p>Alexander Hamilton on why a bill of rights might end up limiting our rights</p>	<p>This one was written in response to an Anti-Federalist requirement that they would vote to ratify the Constitution only if the government were limited by a bill of rights—in this case, ten amendments to the Constitution that explicitly limit government by protecting individual rights against it. # Hamilton said that the Constitution <i>already</i> created a limited government. # The Federalists thought that, if you attached a list of things government was not allowed to do, one day someone would come along and conclude that it <i>was</i> allowed to do everything not on the list. That would result in a less, not more, limited government. # <i>We can ask, in Chapter 4, if Hamilton was right.</i></p>

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- # Acceptance of Bill of Rights (between Federalists and Anti-Federalists)
- # Federalism (compromise between confederal and unitary systems, which we will read about in a later section)

THE IMPORTANCE OF COMPROMISE. Please note that the Three-Fifths Compromise does NOT mean that enslaved people or Indigenous Americans got three fifths of a vote! They got no vote at all. The southern states just used their enslaved people to increase their own power in the House of Representatives. The Three-Fifths Compromise damaged the northern states politically and constituted a moral offense to many Americans. It's a hideous agreement that illustrates perfectly the uncomfortable truth that sometimes compromise means you may have to do something that violates your principles in order to advance your other cherished values. Without the Three-Fifths Compromise, there would have been no U.S. Constitution at all. And ultimately it was actions taken under that Constitution that allowed for redress of the injustices that were agreed to in order to bring it into existence.

2.5

TRANSLATING BASIC CONSTITUTIONAL PRINCIPLES INTO A NEW GOVERNMENT

CREATING A GOVERNMENT THAT SOLVED PROBLEMS OF HUMAN BEHAVIOR

> By the time the American founders had compromised on their differences at the Constitutional Convention, they had created a document that was pathbreaking in its innovative approach to human governance (see Skim It! 2.5, The Skimmable Constitution). Others have copied the U.S. Constitution, but at the time it was created, there was no model for the American founders to follow. They had to piece together the ideas of philosophers with their own political experience to arrive at the document we have today.

WHOSE BIG IDEA WAS THIS, ANYWAY?

> There are many Americans who deserve some credit for their successful efforts at constitutional design. The one who is most often credited is **James Madison** (perhaps not unrelated to the fact that he is also the only one who took comprehensive notes during the process). Madison is literally the only narrator of the Constitutional Convention. (This should, incidentally, show you the value of working on good note-taking skills!)



2.5: THE SKIMMABLE CONSTITUTION

Preamble	“ <i>We the People</i> 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.”
Article I 10 sections	# Establishes the bicameral legislative branch of the government, qualifications, terms, duties, and behaviors of members of Congress. # By far the longest article. Article I, Section 8, lists the specific powers of Congress, called the enumerated powers, concluding with a clause that says Congress can do anything necessary and proper to carry out its duties, which takes some of the limitations out of the enumerated powers.
Article II 4 sections	# Establishes the executive branch, # lays out qualifications for office, # details how the Electoral College works, # describes powers of the president, and # addresses grounds for impeachment by Congress.
Article III 3 sections	# Establishes the judiciary, # the general scope and jurisdiction of the court system that Congress may alter, and # lifetime tenure of federal judges.
Article IV 4 sections	# Establishes states' relations. # Each state gives the full faith and credit of the law to the laws and proceedings of the other states. # Citizens of each state are entitled to the privileges and immunities of the others. # Details the process for admission of new states.
Article V 1 section	# Covers amendment processes.
Article VI 1 section	# The Constitution is the supreme law of the land (supremacy clause), # officials are bound by their oath of office to support it, and # no religious tests for office are permitted.
Article VII 1 section	# Covers the process for ratification.

Once a proponent of the idea that citizens would be filled with republican virtue (acting in the public interest rather than their own), Madison was hard hit by the unruly behavior of his fellow Americans under the Articles of Confederation. As we saw in *Federalist Paper #51*, Madison's insight based on that behavior was that the founders should design a system that takes human nature *as it is* (self-interested, greedy, and ambitious), not as they want it to be. In other words, they should create internal mechanisms based on that human nature to produce good laws and policy because of it, not in spite of it.

Borrowing from Enlightenment philosophers, Madison's idea was to divide the government vertically into branches: legislative, executive, and judicial. This is called **separation of powers**. Give each layer and branch independent status with some of its own constitutional power. But also give each of them just enough power over the others that their jealousy will guard against the overreach of the others. This is called **checks and balances**. The other truly innovative design piece here is the idea that the government should be horizontally divided into layers: national (also called federal) and state. This system is called **federalism**.

Separation of powers, checks and balances, and federalism were all ways to limit government power, protect it from corruption, and stop it from infringing on citizens' rights by dividing the government into its component parts and setting it up to be its own watchdog against itself.

SEPARATION OF POWERS AND CHECKS AND BALANCES

➤ The different functions of government, often referred to in the American system as “branches,” are lawmaking, or the **legislative branch**, law-enforcing, or the **executive branch**, and law-interpreting, or the **judicial branch**. The Constitution locates each branch in its own, separate institution within the government (the Congress, the presidency, and the courts), but then, for safety, it also allows each branch to have a little power over the others.

IS THIS HOW EVERYONE DOES IT?

➤ Nope. No other country had a system like ours at the time of the founding, and even today, there are lots of different ways of allocating power among government functions. In some countries they are not separated at all—the three government functions might even be combined in the same institution. An example is England, which does not separate but rather *fuses* its powers. The legislature, executive, and judiciary are all part of Parliament. There is no separation of powers in a **parliamentary system** like England's, so there cannot be the same kind of effective checks on power either. Such systems need to rely on unwritten norms to contain power.

FOUNDERS: A PRESIDENTIAL SYSTEM IS A BETTER PROTECTION AGAINST ABUSES OF POWER

- Other parliamentary systems include Germany, Ireland, Italy, Denmark, Sweden, and in fact much of Europe, as well as Japan and some countries that were, at one time, part of the British Empire, like India. But the notion of such a system alarmed the founders, so they went in another direction.
- ▶ Unlike England's parliamentary system, in the United States we have a **presidential system**, in which the executive as well as the other two branches are constitutionally distinct and are given their own powers according to the Constitution.

THE ONE BAD APPLE PRINCIPLE. With separation of powers, the theory is that if one branch is corrupted, the other two can preserve their integrity. The whole government doesn't need to fall because one part of it goes bad.

The three key elements laid out in Articles I, II, and III are the legislative, executive, and judicial branches. To ensure that none of these separate branches would get too powerful, the Constitution also *shares* powers by

- # Giving Congress some executive and judicial powers
- # Giving the executive some legislative and judicial powers
- # Giving the judiciary some legislative and executive powers

You can see the complex but ingenious way the three branches relate to each other in Figure 2.2.

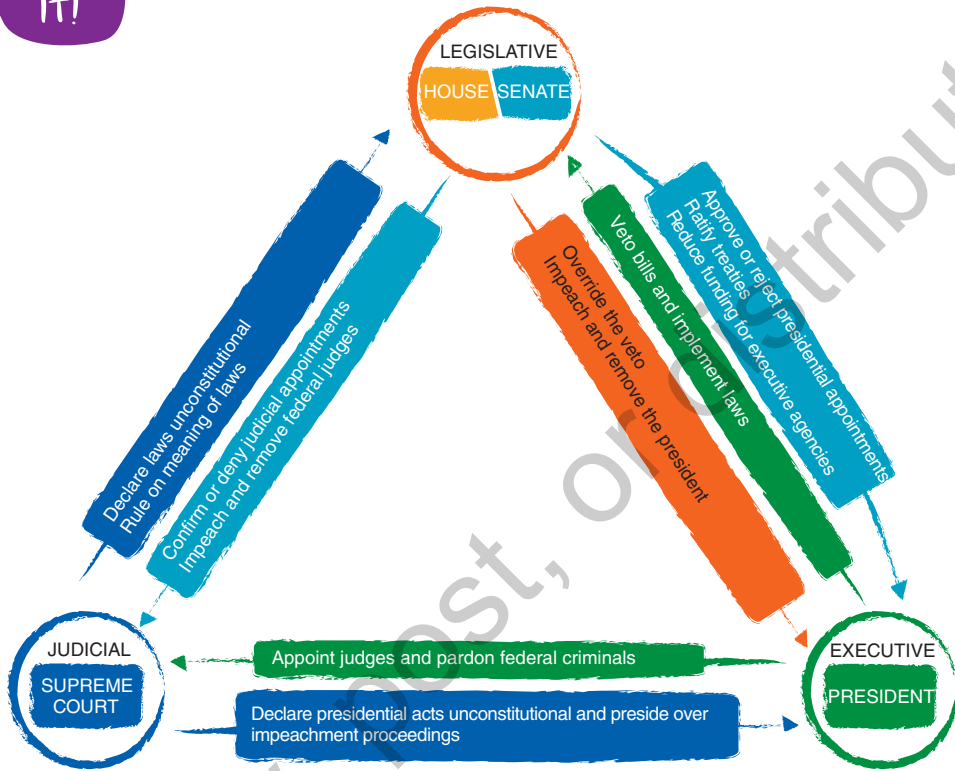
WHY DO CHECKS AND BALANCES WORK?

- ▶ Checks and balances are effective partly because of the ingenuity of Madison's insight, based on the writings of Enlightenment thinkers at the time, which was that pitting public officials' self-interest and hunger for power against each other's would keep everyone in check. But, as in parliamentary systems, it also works because most officials traditionally follow unwritten **political norms**, like respect for the rule of law and a dedication to national security.

Although various members of each branch have at times in our history thought their turf should be supreme, and some have challenged the norms dramatically, the checks designed so carefully by Madison and the other founders have held. But let's qualify that with the ominous words "so far." Our commitment to norms has allowed the Constitution to do its work. But in the rampageous politics of the day, there are signs aplenty that our commitment is beginning to fray.



2.2: SEPARATION OF POWERS AND CHECKS AND BALANCES



MUST ALL GOOD THINGS COME TO AN END? The U.S. Constitution is strong, but a consistent disregard for the norms that support it can weaken it considerably. The system of checks and balances is stable but also more fragile than we like to think since it depends on human wisdom. Madison had specifically wanted to insulate the republic against failures of human wisdom. So far, the Constitution has lasted longer than any other written constitution in human history, but no political system has ultimately been invincible.

THE FOUNDERS' GOLDILOCKS PROBLEM: GETTING THE FLEXIBILITY IN THE CONSTITUTION "JUST RIGHT"

- An incredibly important part of constitution making is providing for a way to make changes when necessary without making changes too easy. By endorsing a role for the Supreme Court in interpreting the Constitution, the founders ensured that they built a little bit of flexibility into the system, much as a skyscraper has to sway a little in a hurricane so that the storm doesn't destroy it. The winds of change haven't destroyed the Constitution in more

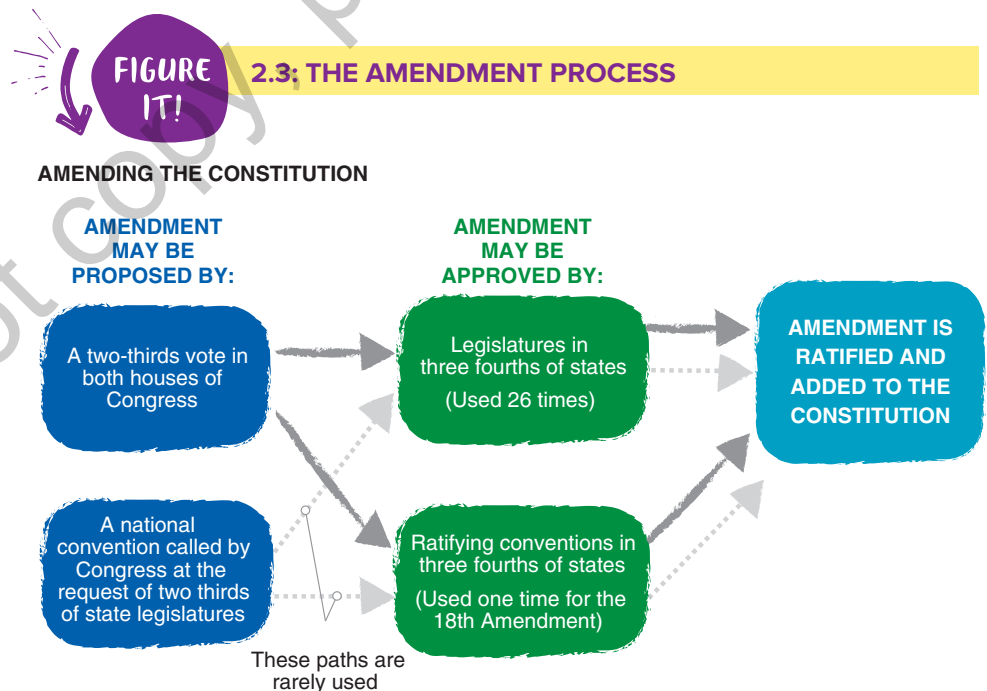
than 230 years because judicial interpretation allows it to give a little in the face of those winds. How far the Court should go in relying on interpretation instead of the actual words in the Constitution is, as we will see, a matter of some debate.

At the same time, the founders made it extremely challenging to change the Constitution. The **amendment process**, as it is called, is complex and involves both Congress and the states. Getting everyone on the same page about constitutional change has happened so rarely that we have only twenty-seven amendments in total. Ten of those were added right away, and one exists to repeal another. That is not a lot of amendment activity to show for the more than 230 years of the Constitution's existence.

HOW DOES THE AMENDMENT PROCESS WORK?

➤ The Constitution provides for several ways in which it can be amended, as you can see in Figure 2.3. According to Article V, an amendment may be proposed by a two-thirds vote in both houses of Congress. Or, Congress can call a national convention at the request of two thirds of the state legislatures. This latter method has never been used, although states have frequently tried to initiate constitutional convention movements.

Thirty-three amendments have been sent to the states for ratification, and twenty-seven of those have passed. All of these began with a two-thirds



THE UPSHOT



majority vote in both houses of Congress. From there, at least three quarters of the states had to ratify the amendments. This has been done once through separate ratifying conventions in each state (that was for the Twenty-First Amendment, repealing the Eighteenth Amendment, which banned the manufacture or sale of alcohol in the United States—otherwise known as Prohibition). All the other amendments were ratified by state legislatures.

Madison’s quest to find “republican remedies for the diseases most incident to republican government”—that is, ways to fix the ills that arise from giving people the freedom to control their own government—is a fascinating reflection on human nature and the way government works.

The fact that this system of government has operated successfully for so long may be a testament to the wisdom of its creators. Checked and balanced, the power in the American system has for most of our history contained conflict and avoided political crisis (the Civil War is clearly one case where consensus on constitutional norms fell apart).

It’s easy to overlook the amendment power in our list of reasons to be grateful to the founders. Were the Constitution easier to amend, many laws might have taken on constitutional status, only to be changed as times changed (witness the fate of Prohibition). A constitution that is too easy to amend can end up looking like a phone book, and the stature and legitimacy of the Constitution can easily be diminished. At the same time, providing for a Supreme Court and letting it be known (via *Federalist Paper #78*) that they were not opposed to judicial review, the founders provided for a method that would allow the Constitution to change more subtly over time and possibly even to change back as conditions and circumstances evolved.

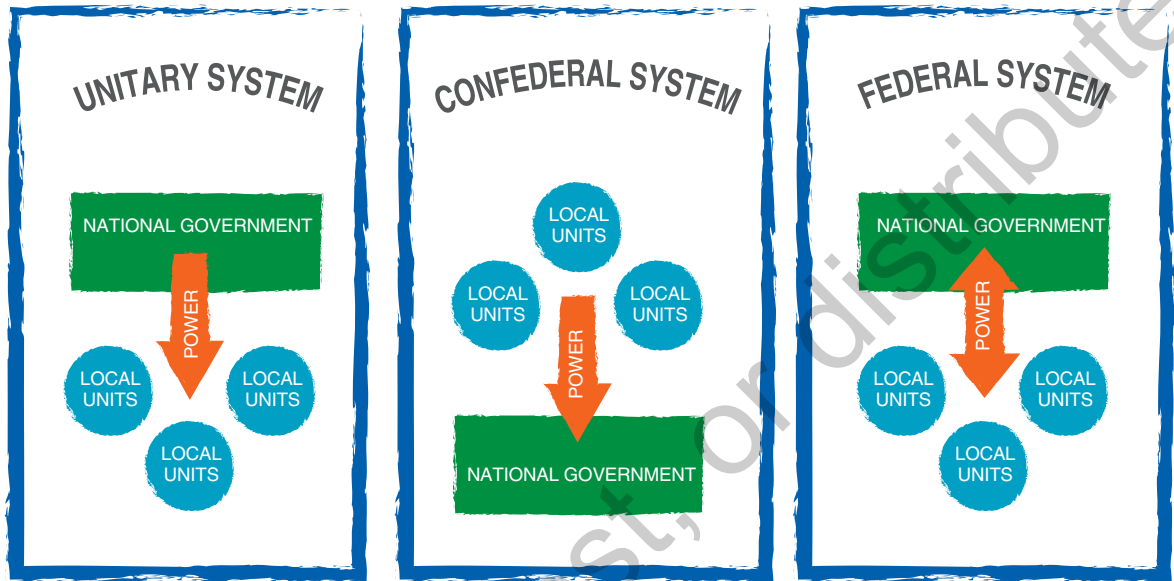
2.6 FEDERALISM

WHAT IS FEDERALISM?

- Federalism was an experiment, another *compromise* born out of the struggle over states’ rights between Federalists and Anti-Federalists at the Constitutional Convention. Prior to the creation of this power-sharing arrangement, political systems had been unitary systems like in England, or confederal systems like the Articles of Confederation or today’s European Union. Power had always been exercised in a *one-way direction*, from central government to regional units, or the other way around (see Figure 2.4).

FIGURE IT!

2.4: UNITARY, CONFEDERAL, AND FEDERAL SYSTEMS



Source: "The Generation Gap in American Politics," Pew Research Center, Washington, DC (March 1, 2018), <http://www.people-press.org/2018/03/01/2-views-of-scope-of-government-trust-in-government-economic-inequality/>.

CONSTITUTIONAL PROVISIONS CREATING FEDERALISM

➤ Federalism breaks with that pattern, giving separate and independent powers to both national (federal) and state governments and allowing them to share some powers (called **concurrent powers**). A handful of specific constitutional provisions make up the building blocks of federalism in the United States, as we discuss below.

- # **Enumerated powers.** As you saw in Skim It! 2.5, Article I, Section 8, of the Constitution lists the enumerated powers. It spells out exactly what Congress (and hence the national government) is allowed to do, including things like coining money and managing interstate commerce.
- # **Necessary and proper clause.** The clause coming at the very end of the enumerated powers says Congress can do anything "necessary and proper" to carry out its duties. The Supreme Court has ruled that the necessary and proper clause is elastic (think *stretchy*). That means it can accommodate a lot of extra powers if needed.

WHO GETS THE ADVANTAGE? Article I, Section 8, limits congressional power to a specific list and then lifts that limitation by saying that Congress can also do those things that are necessary to carry out the duties on the list. Generally, this strengthens the national government at the expense of state power. Limits on it depend on judicial interpretation.

Tenth Amendment. The last of the ten amendments in the Bill of Rights (which the Anti-Federalists insisted on adding to limit the national government's power) says that any powers not explicitly given to the national government are reserved to the states.

This sounds like it keeps a lot of powers safe for the states, but given the judicial opinion that the necessary and proper clause is elastic—are there significant powers left over to be reserved to the states? It all depends on what the Court says, and the Court changes its mind over time.

WHO GETS THE ADVANTAGE? It's pretty much a tie; the balance of national-state power again depends on judicial interpretation.

Supremacy clause. This clause in Article VI of the Constitution says that the Constitution itself and national laws made under it are the law of the land.

WHO GETS THE ADVANTAGE? This doesn't leave too much room for interpretation—if national law clashes with state law, national law almost always wins—if the federal government chooses to impose its will.

SIBLING RIVALRY

➤ The founders were well aware that national stability was threatened not only by the tension between the states and the federal government but also by the tensions between the states themselves. The Virginia and New Jersey Plans were evidence of that, as was the Civil War and many aspects of politics today. To try to smooth the edges off the potential clashes, they included the *full faith and credit clause* in the Constitution (Article IV, Section 1), which says that the states have to respect the legal proceedings and public acts of the other states, but also the *privileges and immunities clause* (Article IV, Section 2), which says that a state cannot deny a citizen of another state the rights its own citizens enjoy.

BACK IN THE COURTS' COURT! American federalism gives some power to the national government and some to the states, with some to be shared. Where the line is drawn between what belongs to the national government and what belongs to the states is partly spelled out in the Constitution and partly left up in the air, which means the courts have stepped in to decide what belongs to whom.

WHEN POLITICS FAILS—THE CASE OF THE CIVIL WAR

> The one battle between national government and the states that the political institutions could not solve was the issue of slavery. In the Civil War, the South tried to promote a “states’ rights” narrative as the cause for the war, but the right the southern states were fighting for was the right to preserve slavery. The Civil War was a national struggle about the moral issue of enslavement.

HOW IS FEDERALISM A CHECK ON GOVERNMENTAL POWER?

> The history of federalism shows that the national government and the state governments have periodically checked each other. For instance, just in the area of civil rights, the national government not only fought the Civil War to end slavery but then, through the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, also attempted to bring rights to formerly enslaved people. National legislation in the 1960s and 1970s attempted to redress racial inequalities (see Chapter 3). That is an example of the national government checking the states. Conversely, in the late 1800s and early 1900s, many states gradually allowed women to vote, with the effect that eventually women could vote in sufficient force to aid the passage of the Nineteenth Amendment in 1920, making women’s suffrage a constitutional right.

2.7 THE EVOLUTION OF FEDERALISM

THE CHANGING BALANCE OF POWER BETWEEN STATE AND NATIONAL GOVERNMENTS OVER TIME

> Because the founders left the balance of power between state and national governments open to interpretation, they gave the Supreme Court a lot of power to decide what that interpretation was going to be. Of course, the composition of the Court changes over time, so its interpretation of the Constitution changes as well. Throw in the impact of outside actions and events on the government and there are lots of reasons for power to see-saw back and forth between the states and the central government.

Looking at federal-state power relations over time we can see two trends:

- # Changes like industrialization, urbanization, and advances in science and technology have made life more complex and have led citizens to look to government at all levels for assistance, protection, and security in the face of the growing uncertainties and hazards of everyday existence.
- # Even though all levels of government have grown, and despite the fact that the balance of power has swung both ways, there has been an undeniable shift of power over time from the states to the national government.

**KEY MOMENTS IN
FEDERAL HISTORY**

➤ We can identify at least four major moments in our history that have seen these power shifts from state to national government:

- # **John Marshall's tenure as chief justice of the Supreme Court (1801–1835).** The third chief justice of the Supreme Court, *John Marshall* believed in the Federalist vision of a strong national government. Several of his opinions (see Skim It! 2.6, The Skimmable Court Watcher) accounted for major power grabs by the national government in general and, in one case, for the Court in particular.
- # **The Civil War (1861–1865).** Lincoln's Emancipation Proclamation, a final effort to prevent the dissolution of the Union, declared that the enslaved people of any state leaving the Union would be freed. The eleven states of the Confederacy rejected the idea that the national government could tell them what to do, and in fact they asserted their own sovereignty by claiming the right to void national laws they didn't like. *Nullification* was never the law of the land, but the issue of states' rights to be sovereign and to enslave people was the most compelling force behind a war that had many causes. With the South's defeat in the war, the idea of state sovereignty was forced to the fringes of American politics, where it remains even today.
- # **The New Deal (1933–1942).** After the devastation of the Great Depression that followed the stock market crash of 1929, many people were without jobs, pensions, or other means of support. They turned to the national government, and Franklin Roosevelt came into office promising Americans a "New Deal." Part of that new deal involved taking a firmer hand in regulating the ups and downs of the economy and using government spending on infrastructure building and other projects that private business was not strong enough to handle to stimulate the economy.
- # **Broad interpretation of the Fourteenth Amendment and civil rights.** The Fourteenth Amendment was added to the Constitution after the Civil War (in 1868) to ensure that southern states did not deny those free from enslavement their rights as citizens (although interestingly, as we will see, it also had the effect of incorporating the rights of the Bill of Rights into state constitutions). It took more than 100 years to make good on the promise of that amendment, and that century is the story of a gradual imposition of federal protections of citizens from state governments. We will cover this in more detail in Chapter 3, on civil liberties and civil rights. For now it is enough to know that increasingly the Court has interpreted broadly the amendment's promise that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state



SKIM
IT!

2.6: THE SKIMMABLE COURT WATCHER: JOHN MARSHALL'S IMPACT ON THE GROWTH OF NATIONAL POWER AT THE EXPENSE OF THE STATES

	<i>Marbury v. Madison</i> (1803)	<i>McCulloch v. Maryland</i> (1819)	<i>Gibbons v. Ogden</i> (1824)
Ruling	<i>Marbury v. Madison</i> determined the Supreme Court has the power of judicial review and can determine if congressional laws, state laws, or executive actions are constitutional. If the Court decides they are not, it has the power to strike them down.	<i>McCulloch v. Maryland</i> determined the necessary and proper clause of the Constitution could be interpreted broadly to include many powers that are not among the enumerated powers of Congress.	<i>Gibbons v. Ogden</i> opened the door to federal regulation of commerce, broadly understood to mean most forms of business. It removed many limitations on the federal regulation of interstate commerce.
Impact on Federalism	In significant ways, this case made the Court the most powerful of the three branches, if it chooses to get involved. What is amazing is that the Court gave itself this ultimate power over the government and the states. A remarkable power grab by the Court.	This interpretation severely limited the clout of states as given to them by the Tenth Amendment. Another seizure of national power by the Court.	Again, a Court ruling took power from the states and gave it to the national government—exactly why the Anti-Federalists had balked at having a national court and why the Federalists were so vague in Article III about the Court's reach.

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

THE UPSHOT



The compromise of federalism was key to the creation of a Constitution that could win approval of both Federalists and Anti-Federalists. But it signaled a serious division between those who believed in state sovereignty and those committed to national sovereignty. Although the supremacy clause ultimately tilts the balance of power toward the national government,

THE STATUS OF THE FEDERALISM COMPROMISE TODAY

the struggle continues. In many ways the compromise of federalism is renegotiated continually through the course of American politics.

- In terms of constitutional law, the national government is clearly supreme and has extended its reach to the states in some powerful ways. The debate is not over, however. Advocates of national power tend to be Democrats whose ideology leads them to believe, like the Federalists, that national power, checked, balanced, and monitored, is not necessarily a threat to individual liberties. They also believe that government is capable of being an effective problem solver, so they are not afraid to test its limits. Republicans tend to be more like the Anti-Federalists in their distrust of national power and their preference for keeping important decisions at the state level. They have long advocated *devolution*, or the returning of power to the states, although their enthusiasm for that position falls somewhat when they are in control of the federal government.

When Republicans control Congress and the executive, many of them are less wary of the reach of the national government because it is doing their bidding. George W. Bush's 2002 No Child Left Behind program, which expanded the federal government's role in making schools accountable for student outcomes is a good example. Similarly, when Democrats are out of power, they look to the states to enact their agendas. After Donald Trump was elected president, many states took steps to preserve President Barack Obama's climate action plan and to preserve sanctuary cities as havens for undocumented immigrants.

Today the battle over federalism seems to have less to do with its old framework of limited government versus big government and more to do with the battle for power between two highly polarized parties.

For example, Republicans have fought for state power to regulate the electorate, making it more difficult for voters who are likely to be Democrats to get to the polls. The Supreme Court has given Republicans several wins on that front. In 2013, in *Shelby County v. Holder*, the Court canceled out parts of the 1965 Voting Rights Act that required states with a history of discrimination to have changes in their electoral systems reviewed and precleared by the Department of Justice. That decision has resulted in a number of the former preclearance states enacting new restrictive voting regulations.

Although multiple investigations have shown that there was no significant voter fraud in the 2020 elections, Republican-led states have used claims that there was election fraud as cover for the rapid passage of even more stringent voter regulations in 2021 and 2022. Their actions are especially targeted at residents of urban areas, which tend to be Democratic Party strongholds and younger, more transient populations who move a lot,

including college students, whose turnout has seen an uptick in recent years. Meanwhile, many more liberal states used the courts to try to stop the imposition of Trump administration policies with which they disagreed—for instance, the banning of sanctuary cities, zero tolerance for immigration violations, the separation of children from their asylum-seeking families, the permission to release plans for 3-D-printed assault weapons, and the loosening of emissions standards on automobiles.

In this climate, states like Mississippi and Texas passed antiabortion laws so strict that they were almost guaranteed to be challenged in the courts for violating the principle, established by *Roe v. Wade*, that a woman had the right to make her own reproductive choices without government interference, up through the first trimester of her pregnancy. This state-level strategy was successful. Tasked with upholding the Mississippi law or upholding *Roe*, the Court chose Mississippi, overturning fifty years of reproductive rights for women. In the aftermath of the Mississippi decision, Republican politicians were encouraged to try to achieve their policy objectives at the state level. One Indiana senator went so far as to argue, in 2022, that it would be appropriate to undo Court decisions that struck down state laws making it illegal for people to purchase birth control or to enter into interracial marriage, arguing that those matters were not the business of the federal government and should be left to the states. Of course, one of the reasons the courts acted on those issues, including the issue of voting rights, in the first place was because state political cultures vary dramatically in their commitment to the classical liberal framework of limited government and individual rights on which the U.S. Constitution was based.

STATE POLICIES HIT US WHERE WE LIVE

The larger debates aside, most of the policies that affect our lives are created or at least administered by the states. The Affordable Care Act (ACA), for instance, passed during the Obama administration, is a national law that directs private insurance companies to provide certain guarantees of coverage and that directs all individuals to sign up for some level of coverage. The health insurance marketplaces—where people buy health insurance policies under the ACA—are operated at the state level, however. States have the ability to decide whether or not to accept Medicaid funding to extend financial support to people who cannot afford the fees they must pay to buy insurance. The Supreme Court held that the national government cannot force states to accept those federal funds.

State policies matter to us on a day-to-day level, and the national government has a stake in controlling those policies as much as possible. The tools the national government (Congress) has to do that, however, are limited by the powers retained by the states. The chief way Congress can influence what states do is by giving or withholding federal funds.

FOUR OPTIONS FOR THE NATIONAL GOVERNMENT TO EXERCISE INFLUENCE OVER THE STATES

There are essentially four ways the national government can approach the task of getting states to do what it wants them to do:

- # **Do nothing.** When the federal government chooses this option, states can do as they wish.
- # **Block grants.** When Congress wants to impose a policy goal on the states but wants the states to maintain maximum control, it can provide block grants. Block grants are funds that come with flexibility for the states to spend the money as they wish within broad parameters.
- # **Categorical grants.** These grants give far less autonomy to the states; they are grants of money with specific instructions on how the money is to be spent.
- # **Unfunded mandates.** Sometimes Congress tells the states to do something but provides no funds to offset the costs of administering the policy.

GEN GAP!

GENERATIONAL ATTITUDES TOWARD THE FEDERAL GOVERNMENT

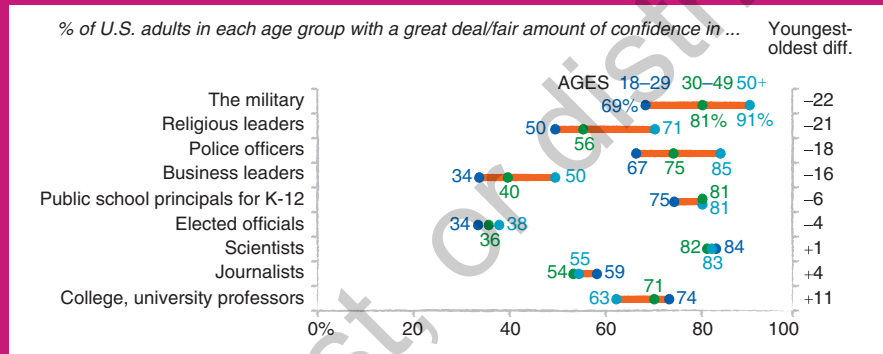
A big division between the Federalists and the Anti-Federalists was the degree to which they trusted government and wanted to restrict its size and function. Generational data on that topic are interesting.

When it comes to age, there isn't much difference in how much people trust their government. Trust in some institutions, such as the military, show a great deal of variation by age, whereas others, like scientists and journalists, show very little (see Figure 2.5).

Whether they trust it or not, however, younger Americans are far more likely than older ones to say they would prefer to have a larger government that provided more in the way of services (see Figure 2.6). There could be a couple of reasons for that finding. First, most of the services government supplies (e.g., Social Security and Medicare) are

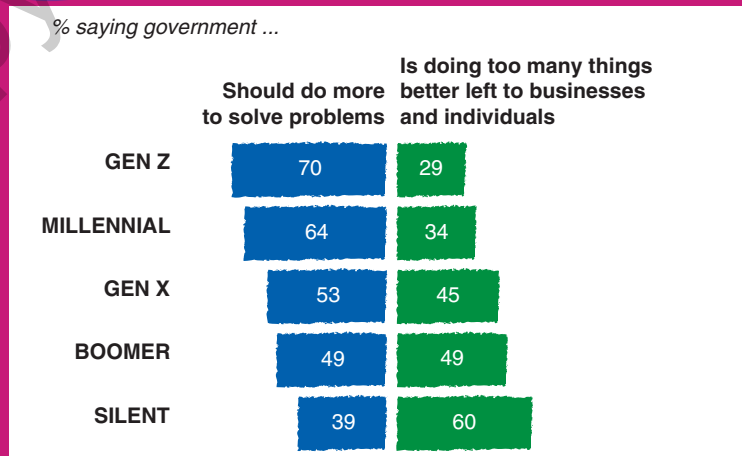
already benefitting older Americans. It is younger Americans who, as we saw in the Chapter 1 *Gen Gap!* feature, are not doing as well as older Americans were doing at their age and might need additional assistance with health care, student loan relief, and the like. Second,

FIGURE IT! 2.5: TRUST IN SOCIETY'S LEADERS VARIES BY AGE



Source: Pew Research Center, "Young Americans Are Less Trusting of Other People—and Key Institutions—Than Their Elders," August 6, 2019, <https://www.pewresearch.org/fact-tank/2019/08/06/young-americans-are-less-trusting-of-other-people-and-key-institutions-than-their-elders/>.

FIGURE IT! 2.6: CONTINUED GENERATIONAL DIVIDE IN PREFERRED SCOPE OF GOVERNMENT



Source: Pew Research Center, "Generation Z Looks a Lot Like Millennials on Key Social and Political Issues," January 17, 2019, <https://www.pewsocialtrends.org/2019/01/17/generation-z-looks-a-lot-like-millennials-on-key-social-and-political-issues/>.

(Continued)

(Continued)

social services are not the only kind of services that government provides. Younger people are far more likely to want government to clean up the environment or support social justice. So the generations in Figure 2.6 may not even be talking about the same basic services.

TAKEAWAYS

- **Few Americans of any age trust their elected officials.** What are the implications of that for government legitimacy?
- **As those preferring smaller government die off and those preferring more services grow as a percentage of Americans, politicians who promise those services are likely to thrive.** What does that mean for the balance of power in the United States?

THE UPSHOT



For obvious reasons, states prefer these options in the order listed. They would like to be left to their own devices, but if they have to do the bidding of Congress, they want to do so with maximum flexibility. Their least preferred option is the unfunded mandate, which takes all their autonomy and offsets none of the cost.

Members of Congress prefer the options in the opposite order. Doing nothing means they don't exercise control and they don't get their way. Members of Congress get no bragging rights when it comes to telling constituents what they have accomplished. Block grants can be a convenient way of shifting responsibility onto the states for hard, possibly unpopular decisions that they don't want to make, but they also have minimal control and bragging rights. Categorical grants are better on both counts, but then members of Congress have to deal with irate states that dislike them. Unfunded mandates are the least cost and trouble to them, and they allow members of Congress to tout their accomplishments in exercising their will, but the states hate them and the Supreme Court has become increasingly unfriendly to them as well.

Big Think

- 2.1 → How did the founders develop views of authority that were so different from those held by the British?
- 2.2 → What lessons do you think the founders learned during the first American government under the Articles of Confederation?
- 2.3 → Do you think you would have been a Federalist or an Anti-Federalist? Why?
- 2.4 → Do you think anything essential is missing from the basic Constitution? What amendment about how government functions would you add to it?
- 2.5 → How strong are the checks and balances the founders put in place? Should they also have written down the norms needed to support them?
- 2.6 → Have Supreme Court rulings strengthened or weakened federal-state relations?
- 2.7 → Can you think of any debates going on today that revolve around federal versus state interests? Is the question of limited versus big government relevant to these debates?

Key Terms

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