CHAPTER ONE: INTRODUCING GOVERNMENT IN AMERICA

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LEARNING OBJECTIVES

After studying this chapter, students should be able to:

• Distinguish among the fundamental concepts of government, politics, and public policy.
• Understand how government, politics, and public policy are interrelated.
• Ascertaining how people can influence the government’s policy agenda.
• Describe the basic concept of the policymaking system.
• Determine the essential principles of traditional democratic theory.
• Examine the three contemporary theories of American democracy—pluralism, elite and class theory, and hyperpluralism.
• Discuss and analyze the challenges to democracy presented in the text.
• Understand how the components of American political culture—liberty, egalitarianism, individualism, laissez-faire, and populism—contribute to democracy and shape government.
• Begin to assess the two questions that are central to governing and that serve as themes for this textbook: How should we govern? and What should government do?

CHAPTER OVERVIEW

INTRODUCTION

Politics and government matter—that is the single most important message of this book. Despite the fact that government substantially affects each of our lives, youth today are especially apathetic about politics and government. Whether because they feel they can’t make a difference, the political system is corrupt, or they just don’t care, young Americans are clearly apathetic about public affairs. And while political apathy isn’t restricted to young people, a tremendous gap has opened up between the young (defined as under age 25) and the elderly (defined as over 65) on measures of political interest, knowledge, and participation.
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The goal of *Government in America* is to assist students in becoming well-informed citizens by providing information and developing critical analytical skills.

**GOVERNMENT AND POLITICS**

This chapter introduces the fundamental concepts of government, politics, and public policy, and defines the ways in which the three are interrelated. Government consists of those institutions that make authoritative public policies for society as a whole. Regardless of how their leaders assume office, all governments have certain functions in common: they maintain national defense, provide public goods, use police powers to maintain order, furnish public services, socialize the young into the political culture, and collect taxes to pay for the services they provide. Part of what government does is provide public goods—services that can be shared by everyone and cannot be denied to anyone.

Throughout *Government in America*, two fundamental questions about governing serve as themes: *How should we govern?* and *What should government do?* The chapters that follow acquaint students with the history of American democracy and ask important questions about the current state of democracy in the United States. One goal of the authors of *Government in America* is to familiarize students with the different ways to approach and answer these questions.

Politics determines whom we select as our governmental leaders and what policies they pursue. Political scientists still use the classic definition of politics offered by Harold D. Lasswell: “Who gets what, when, and how.” The media usually focus on the who of politics. What refers to the substance of politics and government—benefits, such as medical care for the elderly, and burdens, such as new taxes. How people participate in politics is important, too. People engage in politics for a variety of reasons, and all of their activities in politics are collectively called political participation. Voting is only one form of participation.

**THE POLICYMAKING SYSTEM**

A policymaking system is a set of institutions and activities that link together government, politics, and public policy. In a democratic society, parties, elections, interest groups, and the media are key linkage institutions between the preferences of citizens and the government’s policy agenda. When people confront government officials with problems they expect them to solve, they are trying to influence the government’s policy agenda. A government’s policy agenda changes frequently: if public officials want to get elected, they must pay attention to the problems that concern the voters.

People, of course, do not always agree on what government should do. Indeed, one group’s concerns and interests are often at odds with those of another group. A political issue is the result of people disagreeing about a problem or about the public policy needed to fix it.

Three policymaking institutions—Congress, the presidency, and the courts—stand at the core of the political system. They make policies concerning some of the issues on the policy agenda. Translating people’s desires into public policy is crucial to the workings of democracy. Public policy is a choice that government makes in response to some issue on its agenda. Public policy includes all of the decisions and nondecisions of government:
policymakers can establish a policy by doing something or by doing nothing, as can be seen by the government’s original response of “inaction” to the AIDS crisis.

Policy impacts are the effects that policy has on people and on society’s problems. The analysis of policy impacts carries the policymaking system back to its point of origin (often called feedback). Even when government decides NOT to do anything, this decision has an impact on people.

DEMOCRACY

Resounding demands for democracy have recently been heard in many corners of the world. In his famous Gettysburg Address, Abraham Lincoln referred to democracy as “government of the people, by the people, and for the people.” Although Lincoln’s definition imparts great emotional impact, such a definition is subject to many different interpretations. For example, what do we mean by “people”? No democracy permits government by literally every person in society. Throughout this textbook, the authors define democracy as a means of selecting policymakers and of organizing government so that policy represents and responds to the public’s preferences.

Traditional democratic theory rests upon several principles that specify how a democratic government makes its decisions. Democratic theorist Robert Dahl lists five criteria that are essential for “an ideal democratic process”: equality in voting, effective participation, enlightened understanding, citizen control of the agenda, and inclusion, which means that government must include (and extend rights to) all those subject to its laws.

Democracies must also practice majority rule and preserve minority rights. The relationship between the few leaders and the many followers is one of representation. The closer the correspondence between representatives and their electoral majority, the closer the approximation to democracy.

Theories of American democracy are essentially theories about who has power and influence. This chapter focuses on three contemporary theories of American democracy. Pluralist theory contends that many centers of influence compete for power and control over public policy, with no one group or set of groups dominating. Pluralists view bargaining and compromise as essential ingredients to democracy. In sharp contrast to pluralist theory, elite and class theory contends that society is divided along class lines and that an upper-class elite rules. Wealth is seen as the basis of power, and a few powerful Americans are the policymakers. Some scholars believe elitism is on the rise in the United States, especially due to the administrations of Ronald Reagan and George W. Bush. Hyperpluralism is “pluralism gone sour.” Hyperpluralists contend that the existence of too many influential groups actually makes it impossible for government to act. When politicians try to placate every group, the result is confusing, contradictory, and muddled policy (or no policy at all). Both hyperpluralist theory and elite and class theory suggest that the public interest is rarely translated into public policy.

Regardless of which theory is most convincing, there are a number of continuing challenges to democracy: increased technical expertise, limited participation in government, escalating campaign costs, and diverse political interests. Traditional democratic theory holds that ordinary citizens have the good sense to reach political judgments and that government has
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the capacity to act upon those judgments. However, it has become increasingly difficult to make knowledgeable decisions as human knowledge has expanded. There is evidence that Americans actually know very little about policy decisions or about who their leaders are. Today, the elite are likely to be those who command knowledge—the experts.

Many observers also worry about the close connection between money and politics. Candidates have become increasingly dependent on Political Action Committees (PACs) to fund their campaigns. Critics charge that PACs have undue influence on members of Congress when it comes to the issues that the PACs care about.

The rapid rate of change of politics over the last three decades makes it more difficult for government to respond to demands. Some feel that this can lead to inefficient government that cannot adequately respond to challenges.

The large number and diversity of interest groups coupled with the decentralized nature of government makes it easy to prevent policy formulation and implementation, a condition known as policy gridlock.

Five elements of American political culture support, shape, and define its democracy. These components are quite important to the immigrant nation of the United States—which has fewer unifying nationalistic characteristics and a shorter historical memory that is the case of most other countries.

The first element is liberty—one of Jefferson’s inalienable rights. Americans are supportive of civil liberties and personal freedom. The second is egalitarianism, which is more of an evolutionary process than an absolute. Americans tend to support equality of opportunity, and the struggle for equality continues. American social equality has promoted increasing political equality. The third is individualism, which developed in part from the desires of immigrants to escape government oppression and from the existence of a western frontier with little government. The fourth is laissez-faire economics. The American government taxes and regulates less than most countries at its equivalent level of development. The fifth is populism—the “of the people” in Lincoln’s famous description of democracy. The common, ordinary citizens are idealized in American politics, and both liberals and conservatives claim to be their protectors.

Scholars debate whether there is a “cultural war” afoot in America. Some argue that different interpretations of our core political culture have polarized Americans into opposing camps. Others argue that American citizens are fundamentally centrist and tolerant.

Throughout Government in America students will be asked to evaluate American democracy.

- Are people knowledgeable about matters of public policy?
- Do they apply what knowledge they have to their voting choices?
- Are American elections designed to facilitate public participation?
- Does the interest group system allow for all points of view to be heard, or do significant biases give advantages to particular groups?
- Do political parties provide voters with clear choices, or do they intentionally obscure their stands on issues in order to get as many votes as possible?
- If there are choices, do the media help citizens understand them?
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- Is the Congress representative of American society, and is it capable of reacting to changing times?
- Does the president look after the general welfare of the public, or has the office become too focused on the interests of the elite?

THE SCOPE OF GOVERNMENT IN AMERICA

One goal of Government in America is to familiarize the student with different ways to approach and answer the crucial questions that the authors raise. In particular, the text focuses on one of the most important questions facing modern American democracy: *Is the scope of government too broad, too narrow, or just about right?*

Our governments (national, state, and local) spend about 29 percent of the gross domestic product. Our national government spends more than $2.8 trillion annually, employs nearly two million people, and owns one-third of the land in the United States. National defense takes about one-sixth of the federal budget. Social Security consumes more than one-fifth of the budget. Medicare requires a little over one-tenth of the budget. The federal government helps fund highway and airport construction, police departments, school districts, and other state and local functions. The American government has been more willing to spend than tax, creating a national debt of $8 trillion.

CHAPTER OUTLINE

I. POLITICS AND GOVERNMENT MATTER
   A. Many Americans—especially young people—are apathetic about politics and government.
      1. A tremendous gap has opened up between the young (defined as under age 25) and the elderly (defined as over 65) on measures of political interest, knowledge, and participation.
   B. It is the authors’ hope that after reading this book, you will be convinced that paying attention to politics and government is important.
      1. Government has a substantial impact on the lives of all of us.
      2. We have the opportunity to have a substantial impact on government.

II. GOVERNMENT
   A. Government.
      1. Government consists of those institutions that *make authoritative public policies* for society as a whole.
      2. Four key institutions make policy at the national level: Congress, president, the courts, and the federal administrative agencies (bureaucracy).
   B. This chapter raises two fundamental questions about governing that will serve as themes for the text.
      1. *How* should we govern?
      2. *What* should government do?
   C. What governments do.
      1. Regardless of how they assumed power, *all governments have certain functions in common*.
         a. Governments maintain national defense.
b. Governments provide **public goods**—things that everyone can share, such as clean air.

c. Governments have police powers to provide order—as when Chinese security forces crushed the student protest in Tiananmen Square in 1989 and when the National Guard was called in to restore order in Los Angeles after the 1992 Rodney King verdict.

d. Governments socialize the young into the political culture—typically through practices such as reciting the Pledge of Allegiance in daily exercises at public schools.

e. Governments collect taxes to pay for the services they provide.

III. **POLITICS**
A. **Politics** determines whom we select as governmental leaders and what policies they pursue.
   1. Harold D. Lasswell defined politics as “**who gets what, when, and how.**”

B. **Political participation** refers to the ways in which people get involved in politics.

C. **Single-issue groups** are interest groups whose members will vote on a single issue, such as pro-life and pro-choice groups that ignore a politician’s stand on everything except abortion.

IV. **THE POLICYMAKING SYSTEM**
A. A **policymaking system** is the process by which policy comes into being and evolves over time.
   1. In a democratic society, parties, elections, interest groups, and the media are key **linkage institutions** between the preferences of citizens and the government’s policy agenda.
   2. When people confront government officials with problems they expect them to solve, they are trying to influence the government’s **policy agenda**.
   3. A **political issue** arises when people disagree about a problem or about a public policy choice.
   4. The end product of government and politics is **public policy**.
   5. Policymakers stand at the core of the political system, working within the three **policymaking institutions** established by the U.S. Constitution: the Congress, the presidency, and the courts.

B. **Policy impacts** are the **effects** policy has on people and on society’s problems.
   1. There are many types of public policies, including congressional statutes, presidential actions, court decisions, budgetary choices and regulation.
   2. Having a policy implies a goal: people who raise a policy issue usually want a policy that **works**.
   3. **Translating people’s desires into public policy is crucial to the workings of democracy.**

C. Policies can be established through inaction as well as action.

V. **DEMOCRACY**
A. Democracy is spreading throughout the world, in areas that were formerly undemocratic. However, people around the world define democracy differently, and few Americans really understand it fully.

B. **Defining democracy.**
   1. The writers of the U.S. Constitution were suspicious of democracy.
2. In his Gettysburg Address, Abraham Lincoln defined democracy as “government of the people, by the people, and for the people.”

3. The basic definition used throughout the Government in America textbook is: democracy is a means of selecting policymakers and of organizing government so that policy represents and responds to the public’s preferences.

C. **Traditional democratic theory** rests upon several principles that specify how a democratic government makes its decisions.

1. Democratic theorist Robert Dahl refers to **five criteria that are essential for “an ideal democratic process”**:
   a. Equality in voting—the principle of “one person, one vote” is basic to democracy.
   b. Effective participation—political participation must be representative.
   c. Enlightened understanding—free press and free speech are essential to civic understanding.
   d. Citizen control of the agenda—citizens should have the collective right to control the government’s policy agenda.
   e. Inclusion—citizenship must be open to all within a nation.

2. In addition, democracies must practice **majority rule** and preserve **minority rights**.
   a. The relationship between the few leaders and the many followers is one of representation: the closer the correspondence between representatives and their electoral majority, the closer the approximation to democracy.
   b. Most Americans also feel that it is vital to protect minority rights, such as freedom of speech.

D. Three **contemporary theories** of American democracy.

1. **Pluralist theory** contends that many centers of influence compete for power and control.
   a. Groups compete with one another for control over public policy, with no one group or set of groups dominating.
   b. There are multiple access points to our government, with power dispersed among the various branches and levels of government.
   c. Bargaining and compromise are essential ingredients of our democracy.
   d. Electoral majorities rarely rule; rather, as Dahl puts it, “all active and legitimate groups in the population can make themselves heard at some crucial stage in the [policymaking] process.”
   e. The recent increase in interest group activity is cited by pluralists as evidence of pluralism.

2. **Elite and class theory** contends that our society (like all societies) is divided along class lines.
   a. An upper-class elite rules, regardless of governmental organization.
   b. Wealth is the basis of class power: a few powerful Americans are the policymakers.
   c. Big business and its power is at the center of most elite and class theories.
   d. Some observers argue that elitism is increasing in recent times.

3. **Hyperpluralism** is pluralism gone sour.
   a. Many groups are so strong that government is unable to act.
   b. There are too many groups with access to the different levels and branches of government: these groups have multiple ways to both prevent policies they disagree with and promote those they support.
c. When politicians try to placate every group, the result is confusing, contradictory, and muddled policy (or no policy at all).

E. Challenges to democracy.
   1. How can average citizens make decisions about complex issues?
   2. What if citizens know little about their leaders and policy decisions?
   3. Is American democracy too dependent on money?
   4. Does American diversity produce governmental gridlock?

F. Political culture is key to understanding American government.
   1. America is unified by ideology and political culture—which is unusual compared to most countries with strong nationalistic characteristics and a longer history.
   2. Five elements of political culture shape American democracy.
      a. Liberty: Liberty is one of Jefferson’s inalienable rights and a cornerstone of the Bill of Rights.
      b. Egalitarianism: Equality of opportunity, especially social equality, has promoted increasing political equality.
      c. Individualism: American individualism developed in part from the western frontier and the immigrants’ flight from government oppression.
      d. Laissez-faire economics: The American government taxes and regulates less than most countries at its equivalent level of development.
      e. Populism: The common, ordinary citizens are idealized in American politics, and both liberals and conservatives claim to be their protectors.
   3. Scholars debate whether there is a “cultural war” afoot in America.

G. Some key questions about democracy.
   1. Are people knowledgeable about matters of public policy?
   2. Do they apply what knowledge they have to their voting choices?
   3. Are American elections designed to facilitate public participation?
   4. Does the interest group system allow for all points of view to be heard, or do significant biases give advantages to particular groups?
   5. Do political parties provide voters with clear choices, or do they intentionally obscure their stands on issues in order to get as many votes as possible?
   6. If there are choices, do the media help citizens understand them?
   7. Is the Congress representative of American society, and is it capable of reacting to changing times?
   8. Does the president look after the general welfare of the public, or has the office become too focused on the interests of the elite?

VI. THE SCOPE OF GOVERNMENT IN AMERICA
   A. President Clinton’s attempt to create national health insurance illustrates the divide among Americans regarding how powerful government should be. Some want an active, responsible government that solves problems. Others believe government intervention is more likely to harm than good.
   B. How active is American government?
      1. National, state, and local governments in America collectively spend 29 percent of our gross domestic product (the value of all goods and services produced annually by the United States).
2. The national government alone spends more than $2.8 trillion annually, employs nearly two million people, and owns one-third of the land in the United States.

C. The American government has been more willing to spend than tax, creating a national debt of $8 trillion.

**KEY TERMS AND CONCEPTS**

**Democracy**: a means of selecting policymakers and of organizing government so that policy represents and responds to the public’s preferences.

**Elite and class theory**: argues that society is divided along class lines and that an upper-class elite rules on the basis of its wealth.

**Government**: institutions that make public policy for a society.

**Gross domestic product**: the total value of all goods and services produced annually by the United States.

**Hyperpluralism**: argues that too many strong influential groups cripple the government’s ability to make coherent policy by dividing government and its authority.

**Linkage institutions**: institutions such as parties, elections, interest groups, and the media, which provide a linkage between the preferences of citizens and the government’s policy agenda.

**Majority rule**: weighing the desires of the majority in choosing among policy alternatives.

**Minority rights**: protecting the rights and freedoms of the minority in choosing among policy alternatives.

**Pluralist theory**: argues that there are many centers of influence in which groups compete with one another for control over public policy through bargaining and compromise.

**Policy agenda**: the list of subjects or problems to which people inside and outside government are paying serious attention at any given time.

**Policy gridlock**: where each interest uses its influence to thwart policies it opposes so that no coalition forms a majority to establish policy.

**Policymaking institutions**: institutions such as Congress, the presidency, and the courts established by the Constitution to make policy.

**Policymaking system**: institutions of government designed to respond to each other and to the priorities of the people by governmental action.

**Political issue**: this arises when people disagree about a problem or about public policy choices made to combat a problem.

**Political participation**: the ways in which people get involved in politics.

**Politics**: determines whom we select as our government leaders and what policies they pursue; in other words, who gets what, when, and how.

**Public goods**: things that everyone can share.

**Public policy**: a choice that government makes in response to some issue on its agenda.

**Representation**: the relationship between the leaders and the followers.

**Single-issue groups**: groups so concerned with one matter that their members cast their votes on the basis of that issue only.
CHAPTER TWO: THE CONSTITUTION

PEDAGOGICAL FEATURES

After studying this chapter, students should be able to:

- Outline the events that led early Americans to declare independence from Britain.
- Review the basic philosophy that underlies the Declaration of Independence.
- Summarize the parallels between Locke’s writings and Jefferson’s language in the Declaration of Independence.
- Explain how the weaknesses of the Articles of Confederation laid the groundwork for the Constitution.
- Describe what Madison meant by “factions” and how he proposed to solve the problems presented by factions.
- Evaluate how the Constitutional Convention dealt with issues of equality.
- Summarize the major compromises of the Constitutional Convention.
- Explain why economic issues were high on the agenda at the Constitutional Convention and how the framers tried to strengthen the economic powers of the new national government.
- Demonstrate what we mean by the “Madisonian model” and how it is incorporated within the Constitution.
• Understand why many critics claim that the Madisonian model actually reduces efficiency in the operations of government.
• Describe the major issues between the Federalists and the Anti-Federalists in the debates over ratification of the Constitution.
• Ascertain how constitutional changes—both formal and informal—continue to shape and alter the Madisonian system.
• Evaluate the Constitution in terms of the theme of democracy that runs throughout this chapter.
• Identify factors that have led to a gradual democratization of the Constitution.
• Understand how the Constitution affects the scope of government in America.

CHAPTER OVERVIEW

INTRODUCTION

A constitution is a nation’s basic law. It creates political institutions, allocates power within government, and often provides guarantees to citizens. Constitutions thus establish who has power in society, and how that power is exercised. This chapter examines the background of the Constitution, and shows that the main principle guiding the writing of the Constitution was a concern for limited government and self-determination.

THE ORIGINS OF THE CONSTITUTION

The British king and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments. However, Britain acquired a vast new territory in North America after the French and Indian War (1763). Parliament passed a series of taxes to raise revenue for colonial administration and defense of the new territory, and imposed the taxes on the colonists without their having direct representation in Parliament. The colonists protested, boycotted the taxed goods, and threw 342 chests of tea into Boston Harbor as a symbolic act of disobedience. Britain reacted by applying economic pressure through a naval blockade of the harbor, and the colonists responded by forming the First Continental Congress in September, 1774.

In May and June of 1776, the Continental Congress began debating resolutions about independence. Richard Henry Lee moved “that these United States are and of right ought to be free and independent states.” On July 2, Lee’s motion was formally approved. The Declaration of Independence—written primarily by Thomas Jefferson—was adopted two days later. The Declaration was a political polemic, announcing and justifying a revolution. Today, it is studied more as a statement of philosophy.

American political leaders were profoundly influenced by the writings of John Locke, especially The Second Treatise of Civil Government (1689). The foundation of Locke’s philosophy was a belief in natural rights: before governments arise, people exist in a state of nature where they are governed only by the laws of nature. Natural law brings natural rights, including life, liberty, and property. According to Locke, the sole purpose of government was to protect natural rights. Government must be built on the consent of the governed, and it should be a limited government. In particular, governments must provide
laws so that people know in advance whether or not their acts will be acceptable; government cannot take any person’s property without his or her consent.

There are some remarkable parallels between Locke’s thoughts and Jefferson’s language in the Declaration of Independence. The sanctity of property was one of the few ideas absent in Jefferson’s draft of the Declaration: he altered Locke’s phrase “life, liberty, and property” to read “life, liberty, and the pursuit of happiness.” Nevertheless, Locke’s views on the importance of property figured prominently at the Constitutional Convention.

The American Revolution itself was essentially a conservative movement that did not drastically alter the colonists’ way of life. Its primary goal was to restore rights that the colonists felt were already theirs as British subjects. They did not feel a need for great social, economic, or political changes. As a result, the Revolution did not create class conflicts that would cause cleavages in society.

THE GOVERNMENT THAT FAILED: 1776-1787

In 1776, the Congress appointed a committee to draw up a plan for a permanent union of the states. That plan was the Articles of Confederation, which became the new nation’s first governing document. The Articles established a government dominated by the states because the new nation’s leaders feared that a strong central government would become as tyrannical as British rule. In general, the weak and ineffective national government could take little independent action. The Continental Congress had few powers outside of maintaining an army and navy, and had no power to tax or even to raise revenue to carry out that function. The weakness of the national government prevented it from dealing with the problems that faced the new nation.

Significant changes were occurring in the states—most significantly, a dramatic increase in democracy and liberty, at least for White males. Expanded political participation brought a new middle class to power. With expanded voting privileges, farmers and craftworkers became a decisive majority, and the old colonial elite saw its power shrink.

A postwar depression had left many small farmers unable to pay their debts and threatened with mortgage foreclosures. With some state legislatures now under the control of people more sympathetic to debtors, a few states adopted policies to help debtors (favoring them over creditors). In western Massachusetts, a small band of farmers led by Captain Daniel Shays undertook a series of armed attacks on courthouses to prevent judges from foreclosing on farms. Shays’ Rebellion spurred the birth of the Constitution and reaffirmed the belief of the Philadelphia delegates that the new federal government needed to be a strong one.

MAKING A CONSTITUTION: THE PHILADELPHIA CONVENTION

The delegates who were sent to Philadelphia were instructed to meet “for the sole and express purpose of revising the Articles of Confederation.” However, amendment of the Articles required unanimous consent of the states; so the delegates ignored their instructions and began writing a new constitution. Although the men held very different views, they agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government. James Madison of Virginia (who is often called “the father of the
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Constitution” was perhaps the most influential member of the convention in translating political philosophy into governmental architecture.

Pennsylvania delegate Gouverneur Morris was responsible for the style and wording of the U. S. Constitution. Written in 1787 and ratified in 1788, the Constitution sets forth the institutional structure of the U.S. government and the tasks these institutions perform. It replaced the Articles of Confederation.

The 55 delegates at the Constitutional Convention were the postcolonial economic elite. They were mostly wealthy planters, successful lawyers and merchants, and men of independent wealth. Many were creditors whose loans were being wiped out by cheap paper money. Many were college graduates. As a result, it is not surprising that they would seek to strengthen the economic powers of the new national government. As property holders, these leaders could not imagine a government that did not make its principal objective the preservation of individual rights to acquire and hold wealth. A few (like Gouverneur Morris) were even intent on shutting out the propertyless altogether.

James Madison claimed that factions arise from the unequal distribution of wealth. One faction is the majority, composed of the many who have little or no property. The other is the minority, composed of the few who hold much wealth. The delegates thought that, if left unchecked, either a majority or minority faction would become tyrannical. The founders believed that the secret of good government is “balanced” government. A limited government would have to contain checks on its own power. As long as no faction could seize the whole of government at once, tyranny could be avoided. In Madison’s words, “ambition must be made to counteract ambition.”

THE AGENDA IN PHILADELPHIA

Although the Constitution is silent on the issue of equality, some of the most important issues on the policy agenda at Philadelphia concerned the issue of equality. Three issues occupied more attention than almost any others: whether or not the states were to be equally represented, what to do about slavery, and whether or not to ensure political equality.

The delegates resolved the conflict over representation for the states with the Connecticut Compromise, under which a bicameral legislature would have equal representation for the states in the Senate and representation based on population in the House of Representatives. Although the Connecticut Compromise was intended to maximize equality among the states, it actually gives more power to states with small populations since it is the Senate that ratifies treaties, confirms presidential nominations, and hears trials of impeachment.

The delegates were bitterly divided over the issue of slavery. In the end, they agreed that Congress could limit future importing of slaves but did not forbid slavery itself in the Constitution. In fact, the Constitution stated that persons legally “held to service or labour” who escaped to free states must be returned to their owners. Northern and southern delegates also divided over the issue of how to count slaves. Under the three-fifths compromise, both representation and taxation were to be based upon the “number of free persons” plus three-fifths of the number of “all other persons.”
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The delegates dodged the issue of political equality. A few delegates favored universal manhood suffrage, while others wanted to place property qualifications on the right to vote. Ultimately, they left the issue to the states.

Economic issues were high on the policy agenda. The writers of the Constitution charged that the economy was in disarray. Virtually all of them thought a strong national government was needed to bring economic stability to the chaotic union of states that existed under the Articles of Confederation. The delegates made sure that the Constitution clearly spelled out the economic powers of the legislature. Consistent with the general allocation of power in the Constitution, Congress was to be the primary economic policymaker.

The delegates felt that they were constructing a limited government that could not threaten personal freedoms, and most believed that the various states were already doing an adequate job of protecting individual rights. As a result, the Constitution says little about personal freedoms. (It does prohibit suspension of the writ of habeas corpus, prohibits bills of attainder and ex post facto laws, prohibits the imposition of religious qualifications for holding office in the national government, narrowly defines treason and outlines strict rules of evidence for conviction of treason, and upholds the right to trial by jury in criminal cases.) The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

THE MADISONIAN MODEL

The founders believed that human nature was self-interested and that inequalities of wealth were the principal source of political conflict. They also believed that protecting private property was a key purpose of government. Their experience with state governments under the Articles of Confederation reinforced their view that democracy was a threat to property. Thus, the delegates were faced with the dilemma of reconciling economic inequality with political freedom.

Madison and his colleagues feared both majority and minority factions. To thwart tyranny by the majority, Madison believed it was essential to keep most of the government beyond their power. Under Madison’s plan, voters’ electoral influence was limited and mostly indirect. Only the House of Representatives was to be directly elected. Senators were to be elected by state legislatures (modified by the Seventeenth Amendment in 1913), presidents were to be indirectly elected by an electoral college, and judges were to be nominated by the president.

The Madisonian plan also provided for a system of separation of powers, in which each of the three branches of government would be relatively independent so that no single branch could control the others. However, the powers were not completely separate: a system of checks and balances was established that reflected Madison’s goal of setting power against power to constrain government actions.

The framers of the Constitution did not favor a direct democracy. They chose a republic, a system based on the consent of the governed in which power is exercised by representatives of the public.
RATIFYING THE CONSTITUTION

In the battle over ratification, the **Federalists** supported the Constitution and the **Anti-Federalists** opposed it. John Marshall (later chief justice) suggested, “It is scarcely to be doubted that in some of the adopting states, a majority of the people were in opposition.”

The position of the Federalists was strengthened by the **Federalist Papers**, written by James Madison, Alexander Hamilton, and John Jay as an explication and defense of the Constitution. Today, the *Federalist Papers* remains second only to the Constitution itself in symbolizing the ideas of the framers. The Anti-Federalists considered the Constitution to be a class-based document intended to ensure that a particular economic elite controlled the new government, and they believed that the Constitution would weaken the power of the states. They also feared that the new government would erode fundamental liberties. To allay fears that the Constitution would restrict personal freedoms, the Federalists promised to add amendments to the document specifically protecting individual liberties. James Madison did, indeed, introduce 12 constitutional amendments during the First Congress (1789); ten were ratified and have come to be known as the **Bill of Rights**.

The Constitution itself provided for ratification by special state conventions and required that nine states approve the document before it could be implemented. Delaware, the first, approved the Constitution on December 7, 1787. The ninth state (New Hampshire) approved only six months later.

CONSTITUTIONAL CHANGE

The Constitution may be modified either by formal amendment or by a number of informal processes. **Formal amendments** change the language of the Constitution in accordance with the procedures outlined in Article V. The Constitution may be **informally amended** in a variety of ways, such as through judicial interpretation or through custom and political practice. Political scientists often refer to the **unwritten constitution**—an unwritten body of tradition, practice, and procedure that, when altered, may change the **spirit of the Constitution**. For example, political parties and national conventions are not mentioned in the written document, but they are important parts of the unwritten constitution.

The Constitution was not intended to be static and unchanging. The founders created a *flexible system* of government, one that could *adapt to the needs of the times without sacrificing personal freedom*. The *brevity* of the Constitution also contributes to its flexibility: it is a very short document that does not attempt to prescribe the structure and functions of the national government in great detail. This flexibility has enabled the Constitution to survive for more than 200 years. Although the United States is young compared to other Western nations, it has the oldest functioning Constitution.

Unquestionably, formal amendments have made the Constitution more egalitarian and democratic. Some amendments have been proposed but not ratified. The best known of these in recent years is the **Equal Rights Amendment**, or **ERA**.

Due to the recent “War on Terror” power has informally shifted marginally to the executive, as is often the case when the country focuses on national security concerns. This represents
informal constitutional change, and may be eventually reversed by Congress, as is usually the case.

UNDERSTANDING THE CONSTITUTION

The theme of the role of government runs throughout this chapter. This section examines the Constitution in terms of the theme of democracy, and looks at the impact of the Constitution on policymaking. The Constitution created a republic, a representative form of democracy modeled after the Lockean tradition of limited government.

One of the central themes of American history is the gradual democratization of the Constitution. While eighteenth-century upper-class society feared and despised democratic government, today few people would share the founders’ fear of democracy.

The systems of separation of powers and checks and balances established by the Constitution allow almost all groups some place in the political system where their demands for public policy can be heard. Because many institutions share power, a group can usually find at least one sympathetic ear. These systems also promote the politics of bargaining, compromise, and playing one institution against another—to such an extent that some scholars even suggest there is so much “checking” that effective government is almost impossible.

CHAPTER OUTLINE

I. THE ORIGINS OF THE CONSTITUTION
   A. A constitution is a nation’s basic law that:
      1. Creates political institutions.
      2. Assigns or divides powers in government.
      3. Often provides certain guarantees to citizens.
      4. Includes an unwritten accumulation of traditions and precedents.
      5. Sets the broad rules of the game of politics.
   B. The road to Revolution.
      1. The King and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments.
      2. Britain obtained a vast expanse of new territory in North America after the French and Indian War ended in 1763.
      3. The British Parliament passed a series of taxes to pay for the cost of defending the territory, and also began to tighten enforcement of its trade regulations.
      4. Americans resented the taxes, especially since they had no direct representation in Parliament.
      5. The colonists responded by forming the First Continental Congress (September, 1774) and sent delegates from each colony to Philadelphia to discuss the future of relations with Britain.
   C. Declaring independence.
      1. The Continental Congress met in almost continuous session during 1775 and 1776.
      2. In May and June of 1776, the Continental Congress began debating resolutions about independence; after two days of debate on the wording, the Declaration
Chapter 2

The English heritage: the power of ideas.

1. John Locke’s writings, especially *The Second Treatise of Civil Government*, profoundly influenced American political leaders.
2. Locke’s philosophy was based on a belief in **natural rights**, the belief that people exist in a state of nature before governments arise, where they are governed only by the **laws of nature**.
   a. **Natural law** brings natural rights, which include life, liberty, and property.
   b. Because natural law is superior to human law, natural law can justify even a challenge to the rule of a tyrannical king.
   c. Locke argued that government must be built on the **consent of the governed**—the people must agree on who their rulers will be.
   d. Government should also be a **limited government**, with clear restrictions on what rulers can do.
   e. According to Locke, the **sole purpose of government was to protect natural rights**.
   f. In an extreme case, people have a right to revolt against a government that no longer has their consent; but Locke stressed that people should not revolt until injustices become deeply felt.

E. Jefferson’s handiwork: the American creed.

1. There are a number of close parallels between Locke’s thoughts and Jefferson’s language in the Declaration of Independence.
2. The sanctity of property was one of the few ideas absent in Jefferson’s draft of the Declaration of Independence (but the Lockean concept of property figured prominently at the Constitutional Convention).

F. The “conservative” Revolution.

1. The *Revolution* was essentially a conservative movement that did not drastically alter the colonists’ way of life.
2. The primary goal of the Revolution was to restore rights the colonists felt were already theirs as British subjects.

II. THE GOVERNMENT THAT FAILED: 1776-1787

A. The *Articles of Confederation* established a government dominated by the states.

1. The Articles established a national legislature (the *Continental Congress*) with one house.
   a. States could send up to seven delegates, but each state had only one vote.
   b. The Continental Congress had few powers outside of maintaining an army and navy (and little money to do even that); it had no power to tax; and could not regulate commerce (which inhibited foreign trade and the development of a strong national economy).
2. There was no president and no national court.
3. The weakness of the national government prevented it from dealing with the problems that faced the new nation.

B. Changes in the states.

1. Important changes were occurring in the states, including a dramatic increase in democracy and liberty (for White males).
Chapter 2

2. Expanded political participation brought a new middle class to power, which included artisans and farmers who owned small homesteads.

3. With expanded voting privileges, farmers and craftworkers became a decisive majority; members of the old colonial elite saw their power shrink, and they didn’t like it.

C. Economic turmoil.
1. A postwar depression had left many small farmers unable to pay their debts; many were threatened with mortgage foreclosures.

2. State legislatures were now under the control of people more sympathetic to debtors.

3. A few states (notably Rhode Island) adopted policies to help debtors, favoring them over creditors—some printed paper money and passed “force acts,” requiring creditors to accept the almost worthless money.

D. Shays’ Rebellion.
1. In 1786, a small group of farmers in western Massachusetts led by Captain Daniel Shays rebelled at losing their land to creditors.

2. Shays’ Rebellion was a series of armed attacks on courthouses to prevent judges from foreclosing on farms.


E. The Aborted Annapolis Meeting.
1. In September, 1786, a small group of continental leaders assembled at Annapolis, Maryland, to consider the problem of commercial conflicts that had arisen among the states.

2. Only five states sent delegates, and they issued a call for a full-scale meeting of the states in Philadelphia the following May.

III. MAKING A CONSTITUTION: THE PHILADELPHIA CONVENTION

A. Delegates were given specific instructions to meet “for the sole and express purpose of revising the Articles of Confederation.”

1. Amendment was not feasible since amending the Articles required the unanimous consent of the states.

2. Twelve states sent representatives; Rhode Island refused to participate.

3. The 55 delegates ignored their instructions and began writing a new constitution.

B. Gentlemen in Philadelphia.

1. A select group of economic and political notables.

2. Men of wealth; many were college graduates.

3. Most were coastal residents; a significant number were urbanites.

C. Philosophy into action.

1. Although very different philosophical views were represented, the group agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government.

2. The delegates were united in their belief that people were self-interested and that government should play a key role in checking and containing the natural self-interest of the people.

3. James Madison, who is often called “the father of the Constitution,” was perhaps the most influential member of the Convention in translating political philosophy into governmental architecture.

   a. Madison believed that the distribution of wealth (property) is the source of political conflict.
b. He claimed that **factions** arise from the unequal distribution of wealth: one faction is the majority (composed of the many who have little or no property); the other faction is the minority (composed of the few who hold wealth).

4. The delegates believed that *either a majority or a minority faction will be tyrannical* if it goes unchecked and has too much power.
   a. Property must be protected against the tyrannical tendencies of faction.
   b. The secret of good government is “**balanced government**”: as long as no faction could seize complete control of government, tyranny could be avoided.

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**IV. THE AGENDA IN PHILADELPHIA**

A. Although the *Constitution is silent on equality*, some of the most important issues on the policy agenda at Philadelphia concerned equality: representation of the states; what to do about slavery; and whether or not to ensure political equality.

B. Representation of the states.
   1. The **New Jersey Plan**, proposed by William Paterson of New Jersey, called for each state to be equally represented in the new Congress.
   2. The **Virginia Plan**, suggested by Edmund Randolph of Virginia, called for representation in Congress based on the state’s share of the American population.
   3. The **Connecticut Compromise**, devised by Roger Sherman and William Johnson of Connecticut, was the solution adopted by the delegates that created a **bicameral legislature** in which the Senate would have two members from each state and the House of Representatives would have representation based on population.

C. Slavery.
   1. The delegates agreed that Congress could limit future importing of slaves (they prohibited it after 1808), but they **did not forbid slavery** itself.
   2. The Constitution stated that persons legally “held to service or labour” who escaped to free states had to be returned to their owners.
   3. Under the famous **three-fifths compromise**, both representation and taxation were to be based upon the “number of free persons” plus three-fifths of the number of “all other persons.”

D. Political equality.
   1. Some delegates favored suffrage for all free, adult males; some wanted to put property qualifications on the right to vote.
   2. Ultimately, they decided to leave the issue to the states.

E. Economic issues.
   1. Economic issues played an important role at the Convention.
      a. Advocates of the Constitution (Federalists) stressed the economy’s weaknesses.
      b. Opponents of the Constitution (Anti-Federalists, who opposed a strong national government) claimed that charges of economic weakness were exaggerated.
   2. It is not surprising that the framers of the Constitution would seek to strengthen the economic powers of the new national government since delegates to the Constitutional Convention were the nation’s postcolonial economic elite. Historian Charles Beard argued that the delegates primarily wanted these strong...
Chapter 2

The Constitution clearly spelled out the economic powers of Congress.

a. Congress was to be the chief economic policymaker.
b. Congress was granted power to tax and borrow, and to appropriate funds.
c. Congress was also granted powers to protect property rights—powers to punish counterfeiters and pirates, ensure patents and copyrights, to legislate rules for bankruptcy, and to regulate interstate and foreign commerce.

4. The framers also prohibited practices in the states that they viewed as inhibiting economic development.
   a. State monetary systems.
   b. Placing duties on imports from other states.
   c. Interfering with lawfully contracted debts.

5. States were required to respect civil judgments and contracts made in other states, and to return runaway slaves to their owners (overturned by the Thirteenth Amendment).

6. The national government guaranteed the states “a republican form of government” to prevent a recurrence of Shays’ Rebellion, and the new government was obligated to repay all the public debts incurred under the Continental Congress and the Articles of Confederation ($54 million).

F. Individual rights.
   1. The delegates felt that preserving individual rights would be relatively easy.
      a. They were constructing a limited government that, by design, could not threaten personal freedoms.
      b. Powers were dispersed so that each branch or level of government could restrain the others.
      c. Most delegates believed that the various states were already protecting individual rights.

2. Although the Constitution says little about personal freedoms, it does include the following:
   a. The *writ of habeas corpus* may not be suspended except during invasion or rebellion.
   b. Congress and the states are prohibited from passing bills of attainder (which punish people without a judicial trial) and *ex post facto* laws (which punish people or increase the penalties for acts that were not illegal or were not as severely punished when the act was committed).
   c. Religious qualifications may not be imposed for holding office in the national government.
   d. Treason is narrowly defined, and strict rules of evidence for conviction of treason are specified.
   e. The right to trial by jury in criminal cases is guaranteed.

3. The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

V. THE MADISONIAN MODEL
   A. The delegates were faced with the dilemma of reconciling *economic inequality* with *political freedom*.
   B. James Madison and his colleagues feared both majority and minority factions.
C. To prevent **tyranny by the majority**, Madison believed that it was essential to keep most of the government beyond the control of the masses.

1. Under Madison’s plan that was incorporated in the Constitution, voters’ electoral influence was limited and mostly indirect.
2. Only the House of Representatives was directly elected; senators and presidents were indirectly elected, and judges were nominated by the president (modified by the Seventeenth Amendment, which provides for direct popular election of senators).

D. Separation of powers and checks and balances.

1. The Madisonian scheme provided for a system of **separation of powers** in which each of the three branches of government would be relatively independent of the others so that no single branch could control the others.
2. Power was not separated absolutely, but was shared among the three institutions.
3. Since power was not completely separate, each branch required the consent of the others for many of its actions—thereby creating a system of **checks and balances** that reflected Madison’s goal of setting power against power to constrain government actions.
   a. The president checks Congress by holding the veto power.
   b. Congress holds the “purse strings” of government, and the Senate has the power to approve presidential appointments.
   c. **Judicial review** (the power of courts to hold executive and congressional policies unconstitutional) was not explicit in the Constitution, but was asserted by the Supreme Court under John Marshall in *Marbury v. Madison* (1803).
   d. Since the framers thought much government activity would take place in the states, federalism was considered an additional check on the power of the national government.

E. The constitutional republic.

1. The framers of the Constitution established a **republic** (a system based on the consent of the governed in which power is exercised by representatives of the public).
2. This **deliberative democracy** established an elaborate decision-making process.
3. The system of checks and balances and separation of powers has a conservative bias because it favors the **status quo**; that is, people desiring change must usually have a **sizable majority** rather than a simple majority.
4. The Madisonian system encourages moderation and compromise, and retards change.

VI. RATIFYING THE CONSTITUTION

A. Federalists and Anti-Federalists.

1. A fierce battle erupted between the **Federalists** (who supported the Constitution) and the **Anti-Federalists** (who opposed it).
2. Federalists:
   a. James Madison, Alexander Hamilton, and John Jay—writing under the name Publius—wrote a series of 85 articles (known as the **Federalist Papers**) in defense of the Constitution.
   b. The **Federalist Papers** defended the Constitution detail by detail, but also represented an **important statement of political philosophy**.
3. Anti-Federalists.
a. The Anti-Federalists questioned the motives of the writers of the Constitution; they believed that the new government was an enemy of freedom.

b. Anti-Federalists believed that the new Constitution was a class-based document, intended to ensure that a particular economic elite controlled the public policies of the national government.

c. They feared that the new government would erode fundamental liberties and would weaken the power of the states.

4. In a compromise to assure ratification, the Federalists promised to add amendments to the document, specifically protecting individual liberties.

a. James Madison introduced 12 constitutional amendments during the First Congress in 1789.

b. Ten of the amendments—known as the Bill of Rights—were ratified by the states and took effect in 1791.

B. Ratification.

1. The Federalists specified that the Constitution be ratified by special conventions in each of the states, not by state legislatures (a shrewd move since state legislatures were populated with political leaders who would lose power under the Constitution).

2. The Constitution itself specified that nine states approve the document before it could be implemented.

3. Delaware was the first state to ratify the Constitution (December 7, 1787); New Hampshire became the ninth state six months later.

4. George Washington was the electoral college’s unanimous choice for president and he took office on April 30, 1789.

VII. CONSTITUTIONAL CHANGE

A. Constitutional changes may occur either by formal amendments or by a number of informal processes.

B. Formal amendments change the written language of the Constitution.

1. Article V of the Constitution outlines procedures for formal amendment.

2. There are two stages to the amendment process (proposal and ratification), each with two alternative routes.

a. Proposal - an amendment may be proposed either by a two-thirds vote in each house or chamber of Congress, or by a national convention called by Congress at the request of two-thirds of the state legislatures.

b. Ratification - an amendment may be ratified either by the legislatures of three-fourths of the states, or by special state conventions called in three-fourths of the states.

3. All of the amendments to the Constitution have been proposed by Congress (no constitutional convention has been convened since the original Constitutional Convention); all except one of the successful amendments have been ratified by the state legislatures.

4. The president has no formal role in amending the Constitution.

C. Effects of formal amendment.

1. Formal amendments have made the Constitution more egalitarian and democratic.
2. The emphasis on economic issues in the original document is now balanced by amendments that stress equality and increase the ability of a popular majority to affect government.

3. The most important effect has been to expand liberty and equality in America.

D. Informal amendment - the Constitution changes informally as well as formally.

1. The unwritten constitution refers to an unwritten body of tradition, practice, and procedure that—when altered—may change the spirit of the Constitution.

2. The Constitution may change informally through judicial interpretation, through political practice, through demands on policymakers, or as a result of changes in technology.
   
   a. Judicial interpretation can profoundly affect how the Constitution is understood.
   
   b. Changing political practice can also change the meaning of the Constitution.
      
      (1) The development of political parties dramatically changed the form of American government.
      
      (2) Changing political practice has altered the role of the electoral college, which today is often seen as a “rubber stamp” in selecting the president.
   
   c. The Constitution has also been greatly changed by technology.
      
      (1) The mass media plays a role unimaginable in the eighteenth century.
      
      (2) The bureaucracy has grown in importance with the advent of technological developments such as computers.
      
      (3) Electronic communications and the development of atomic weapons have enhanced the president’s role as commander in chief.
   
   d. The power of the presidency has grown as a result of increased demands for new policies.
      
      (1) The United States’ growth to the status of a superpower in international affairs has located additional power in the hands of the chief executive. National security concerns tend to result in more power to the president, although Congress tends to reassert itself eventually.
      
      (2) Increased demands of domestic policy have placed the president in a more prominent role in preparing the federal budget and proposing a legislative program.

E. The importance of flexibility.

1. The United States has the oldest functioning constitution in existence today.

2. The framers of the Constitution created a flexible system of government that could adapt to the needs of the times without sacrificing personal freedom.

3. Even with 27 amendments, the Constitution is a very short document: it does not prescribe the structure and functioning of the national government in detail.

VIII. UNDERSTANDING THE CONSTITUTION

A. The Constitution and democracy.

1. Democratic government was despised and feared among eighteenth-century upper-class society.
Chapter 2

2. The Constitution created a republic, a representative form of democracy modeled after the Lockean tradition of limited government.

3. One of the central themes of American history is the gradual democratization of the Constitution, away from the elitist model of democracy and toward the pluralist one.

4. Today, few people share the founders’ fear of democracy.

B. The Constitution and the scope of government.

1. Separation of powers and checks and balances allow almost all groups some place in the political system where their demands for public policy can be heard.

2. Separation of powers and checks and balances also promote the politics of bargaining, compromise, playing one institution against another, and an increase of hyperpluralism.
   a. Some scholars suggest that so much “checking” was built into the American political system that effective government is almost impossible due to gridlock.
   b. The outcome may be nondecisions when hard decisions are needed.

KEY TERMS AND CONCEPTS

**Anti-Federalists**: opposed the new Constitution, feared the new Constitution would erode fundamental liberties, and argued that the new Constitution was a class-based document serving the economic elite.

**Articles of Confederation**: the document that outlines the voluntary agreement between states and was adopted as the first plan for a permanent union of the United States.

**Bill of Rights**: the first ten Amendments to the Constitution passed after ratification specifically protecting individual liberties to fulfill promises made by the Federalists to the Anti-Federalists in return for their support.

**Checks and balances**: each branch required the consent of the others for many of its decisions.

**Connecticut Compromise**: the plan adopted at the Constitutional Convention to provide for two chambers in Congress, one representing states equally and the other representing states on the basis of their share of the population.

**Consent of the governed**: people must agree on who their rulers will be.

**Constitution**: a nation’s basic law creating institutions, dividing power, and providing guarantees to citizens.

**Declaration of Independence**: the document used by the signers to announce and justify the Revolutionary War and which was specifically designed to enlist the aid of foreign nations in the revolt.

**Equal Rights Amendment**: was first proposed in 1923, passed by Congress in 1972, but was not ratified by three-fourths of the states; this amendment mandated equality of rights under the law regardless of gender.

**Factions**: groups of people, currently known as political parties or interest groups, who arise as a result of unequal distribution of wealth to seize the reins of government in their own interest.

**Federalist Papers**: articles written to convince others to support the new constitution.
Federalists: argued for ratification of the Constitution by writing the *Federalist Papers*; included Madison, Hamilton, and Jay.

Judicial review: the courts have the power to decide whether the actions of the legislative and executive branches of state and national governments are in accordance with the Constitution.

Limited government: clear restrictions on what rulers could do and which safeguard natural rights.

*Marbury v. Madison*: Judicial review was established in this 1803 Supreme Court case.

Natural rights: these are rights to which people are entitled by natural law, including life, liberty, and property.

New Jersey Plan: a plan by some of the delegates to the Constitutional Convention to provide each state with equal representation in Congress.

Republic: a system based on the consent of the governed where power is exercised by representatives of the public.

Separation of powers: each branch of government would be independent of the other.

Shays’ Rebellion: a series of armed attacks on courthouses to prevent judges from foreclosing on farms.

U.S. Constitution: the document where the foundations of U.S. government are written, providing for national institutions to each have separate but not absolute powers.

Virginia Plan: a plan by some of the delegates to the Constitutional Convention to provide each state with a share of congressional seats based on its share of the population.

Writ of *habeas corpus*: this enables people who are detained by authorities to secure an immediate inquiry and reasons why they have been detained.
CHAPTER THREE: FEDERALISM

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LEARNING OBJECTIVES

Learning objectives after studying this chapter, students should be able to:

• Describe the three basic forms of governmental structures: federalism, unitary, and confederacy.
• Identify the ways in which the Constitution determines the powers of state and national governments.
• Evaluate how contrasting interpretations of the supremacy clause and the Tenth Amendment lead to divergent views of the scope of state and national powers.
• Describe how the Supreme Court set forth the principle of implied powers in the McCulloch v. Maryland case.
• Understand the relationship of implied powers to enumerated powers.
• Describe how the Civil War and the civil rights movement contributed to the development of national supremacy over the states.
• List and analyze the clauses in the Constitution that define the obligations that each state has to every other state.
• Trace the ways in which American federalism has changed over the past two centuries.
• Compare the contrasting forms of dual federalism and cooperative federalism.
• Describe what is meant by fiscal federalism and assess the role that federal money plays in state policies.
• Identify the positive and negative effects American federalism has on democracy.
INTRODUCTION

The relationships among the federal, state, and local governments often confuse people, yet federalism is at the heart of critical battles over the nature and scope of public policy in the United States. Neighborhood schools are run by locally elected school boards but also receive state and national funds, and with those funds come state and national rules and regulations. Understanding the scope and nature of local, state, and national governments is thus critical to learning about the development of public policy in the United States.

DEFINING FEDERALISM

We generally speak of three forms of governmental structures—federalism, unitary, and confederate. Federalism is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people. Chapter 3 explores the complex relationships between different levels of government in the United States. It describes the ways that the federal system has changed over two centuries of American government and why American federalism is at the center of important battles over policy.

Federalism is not the typical way by which nations organize their governments; there are only 11 countries with federal systems. Most governments in the world today are unitary governments, in which all power resides in the central government. Although American government operates under a federal system at the national level, the states are unitary governments with respect to their local governments. In the United States, local governments are legally “creatures of the states”: they are created by the states and can be changed (or even abolished) by the states.

In a confederation, the national government is weak and most or all of the power is in the hands of its components (such as states). The United States was organized as a confederacy after the American Revolution, with the Articles of Confederation as the governing document. Confederations are rare today except in international organizations.

The concept of intergovernmental relations refers to the entire set of interactions among national, state, and local governments in a federal system. The American federal system decentralizes our politics. For example, senators are elected as representatives of individual states and not of the nation. Moreover, with more layers of government, more opportunities exist for political participation; there are more points of access in government and more opportunities for interests to be heard and to have their demands for public policies satisfied.

The federal system not only decentralizes our politics; it also decentralizes our policies. The history of the federal system demonstrates the tensions that exist between the states and the national government about who controls policy and what it should be. Because of the overlapping powers of the two levels of government, most of our public policy debates are also debates about federalism.
The American states have always been policy innovators. Most policies that the national government has adopted had their beginnings in the states. In many ways, the states constitute a “national laboratory” to develop and test public policies.

THE CONSTITUTIONAL BASIS OF FEDERALISM

The Constitution does not refer directly to federalism, and little was said about it at the Constitutional Convention. However, the framers carefully defined the powers of state and national governments. The framers also dealt with a question that still evokes debate: Which level of government should prevail in a dispute between the states and the national government? Advocates of strong national powers generally emphasize the supremacy clause. In Article VI (the “supremacy clause”), three items are listed as the supreme law of the land: the Constitution; laws of the national government (when consistent with the Constitution); and treaties. However, the national government can only operate within its appropriate sphere and cannot usurp powers of the states. By contrast, advocates of states’ rights believe that the Tenth Amendment means that the national government has only those powers specifically assigned by the Constitution.

In United States v. Darby (1941), the Supreme Court called the Tenth Amendment a “constitutional truism” (an assertion only that the states have independent powers of their own and not a statement that their powers are supreme over those of the national government). In 1976, the Court appeared to backtrack on this ruling in favor of national government supremacy (National League of Cities v. Usery), and then still later overturned the 1976 decision (Garcia v. San Antonio Metro, 1985).

Federal courts can order states to obey the Constitution or federal laws and treaties. However, in deference to the states, the Eleventh Amendment prohibits individual damage suits against state officials (such as a suit against a police officer for violating one’s rights) and protects state governments from being sued against their consent by private parties in federal courts or in state courts or before federal administrative agencies.

Four key events have played a major role leading to the growth of federal powers relative to the states: the elaboration of the doctrine of implied powers, the definition of the commerce clause, the Civil War, and the long struggle for racial equality. In McCulloch v. Maryland (1819), the Supreme Court ruled that Congress has certain implied powers and that national policies take precedence over state policies. These two principles have been used to expand the national government’s sphere of influence. Chief Justice John Marshall wrote that “...the government of the United States, though limited in its power, is supreme within its sphere of action.” The “necessary and proper” clause (sometimes called the elastic clause) was interpreted to give Congress certain implied powers that go beyond its enumerated powers.

National powers expanded after the Supreme Court defined commerce very broadly, encompassing virtually every form of commercial activity (Gibbons v. Ogden, 1824). The Supreme Court prohibited much federal regulation of business and the economy in the late nineteenth and early twentieth centuries, but had swung back to allowing broader federal powers by 1937.

The Civil War was a struggle over slavery, but it was also (and perhaps more importantly) a struggle between states and the national government. A century later, conflict erupted once
again over states’ rights and national power. In *Brown v. Board of Education* (1954), the Supreme Court held that school segregation was unconstitutional. Southern politicians responded with “massive resistance” to the decision. Throughout the 1960s the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs.

Federalism also involves relationships among the states. The Constitution outlines certain obligations that each state has to every other state. The Constitution requires states to give full faith and credit to the public acts, records, and civil judicial proceedings of every other state; states are required to return a person charged with a crime in another state for trial or imprisonment (extradition); and citizens of each state are entitled to all the privileges and immunities of any state in which they are located. The goal of the privileges and immunities clause is to prohibit states from discriminating against citizens of other states, but numerous exceptions have been made to this clause (such as higher tuition for out-of-state residents at state universities).

**INTERGOVERNMENTAL RELATIONS TODAY**

This section focuses on three important features: first, the gradual change from dual federalism to cooperative federalism; second, federal grants-in-aid as the cornerstone of the relationship between the national government and state governments; and third, the relative growth of the national government and state governments.

One way to understand the changes in American federalism is to contrast dual federalism with cooperative federalism. Before the national government began to assume a position of dominance, the American system leaned toward dual federalism, a system under which states and the national government each remain supreme within their own spheres. The analogy of layer cake federalism is often used to describe dual federalism because the powers and policy assignments of the layers of government are distinct (as in a layer cake), and proponents of dual federalism believe that the powers of the national government should be interpreted narrowly.

The national government took a direct interest in economic affairs from the very founding of the republic (see Chapter 2). As the United States changed from an agricultural to an industrial nation, new problems arose and with them new demands for governmental action. The United States moved from a system of dual federalism to one of cooperative federalism, in which the national and state governments share responsibility for public policies. Using the analogy of marble cake federalism, American federalism is portrayed as a system with mingled responsibilities and blurred distinctions between the levels of government. Cooperative federalism—which may be seen as a partnership between the national and state governments—began in earnest with the transformation of public attitudes toward the role of the national government during the Great Depression of the 1930s. For hundreds of programs, cooperative federalism involves shared costs, federal guidelines, and shared administration.

**Fiscal federalism** involves the pattern of spending, taxing, and providing grants in the federal system. **Grants-in-aid** are the main instrument the national government uses to both aid and influence states and localities. State and local aid from the national government amounts to more than $240 billion per year. **Categorical grants** can be used only for specific purposes
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(or categories) of state and local spending. State and local agencies can obtain categorical grants only by meeting certain qualifications and by applying for the grants. Much federal regulation is accomplished by “strings” that are attached to categorical grants, such as nondiscrimination provisions. The most common type of categorical grant is a project grant, awarded on the basis of competitive applications. Formula grants are distributed according to a formula based on factors such as population, per capita income, and percentage of rural population.

Complaints about the cumbersome paperwork and numerous federal requirements attached to categorical grants led to the adoption of block grants. Congress implemented block grants to support broad programs in areas such as community development and social services. Block grants provide more flexibility since states and communities have discretion in deciding how to spend the money. The percentage of federal aid to state and local governments in the form of block grants began increasing in 1995 as the new Republican majority in Congress passed more federal aid in the form of block grants, including grants for welfare programs.

In recent years states have been burdened by underfunded mandates and unfunded mandates. These require states to spend money to comply with a law of Congress (or, in some cases, a federal court order).

UNDERSTANDING FEDERALISM

Federalism was instituted largely to enhance democracy in America, and it strengthens democratic government in many ways. Different levels of government provide more opportunities for participation in politics and increase access to government. Since different citizens and interest groups will have access to the different levels, federalism also increases the opportunities for government to be responsive to demands for policies. Moreover, it is possible for the diversity of opinion within the country to be reflected in different public policies among the states. Different economic interests are concentrated in different states, and the federal system ensures that each state can establish a power base to promote its interests. By handling most disputes over policy at the state and local level, federalism also reduces decision making and conflict at the national level.

Conversely, diverse state policies and the large number of local governments also create some impediments to democracy. Since the states differ in the resources they devote to services like public education, the quality of such services varies greatly from one state to another. Diversity in policy can also discourage states from providing services that would otherwise be available—states are deterred from providing generous benefits to those in need when benefits attract poor people from states with lower benefits. Federalism may have a negative effect on democracy when local interests are able to thwart national majority support of certain policies, and having so many governments makes it difficult for many Americans to know which government is responsible for certain functions.

While the national government has grown in scope relative to state governments, it has not done so at the expense of state governments. The latter continue to carry out all the functions they have typically done. The national government has instead grown as it has taken on new responsibilities viewed as important by the public.
CHAPTER OUTLINE

I. DEFINING FEDERALISM
   A. A system of organizing governments.
      1. **Federalism** is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people.
      2. Only 11 (out of approximately 190 nations of the world) have federal systems.
      3. Most governments in the world today have **unitary governments**, in which all power resides in the central government.
      4. In a **confederation**, the national government is weak and most or all of the power is in the hands of its components.
      5. The workings of the American system are sometimes called **intergovernmental relations**, which refers to interactions among national, state, and local governments.
   B. Why federalism is important.
      1. The federal system decentralizes our politics.
      2. Federalism decentralizes our policies.

II. THE CONSTITUTIONAL BASIS OF FEDERALISM
   A. The word federalism is not mentioned in the Constitution.
   B. Eighteenth-century Americans had little experience in thinking of themselves as Americans first and state citizens second.
   C. The division of power.
      1. The writers of the Constitution carefully defined the powers of state and national governments [see Table 3.2].
      2. Although favoring a stronger national government, states were retained as vital components of government.
      3. The **supremacy clause** deals with the question of which government should prevail in disputes between the states and the national government; Article VI states that three items are the **supreme law of the land**:
         a. The Constitution
         b. Laws of the national government (when consistent with the Constitution)
         c. Treaties (which can only be made by the national government)
      4. Judges in every state were specifically bound by the Constitution.
      5. Questions remain concerning the boundaries of the national government’s powers.
         a. The national government can only operate within its appropriate sphere and cannot usurp the states’ powers.
         b. The **Tenth Amendment** states that “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.”
         c. There have been variations in the Court’s interpretation of the Tenth Amendment.
   D. Establishing national supremacy.
      1. Four key events have largely settled the issue of how national and state powers are related: the **McCulloch v. Maryland** case, the Supreme Court’s interpretation of the Commerce Clause, the Civil War, and the civil rights movement.
      2. **McCulloch v. Maryland** (1819) - the case that first brought the issue of state versus national power before the Supreme Court.
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a. In this case, the Supreme Court ruled that *national policies take precedence* over state policies: Chief Justice John Marshall wrote that “the government of the United States, though limited in its power, is supreme within its sphere of action.”

b. The Court also ruled that the Constitution gives Congress certain *implied powers* (based on the provision granting Congress the power to “make all laws necessary and proper for carrying into execution the foregoing powers”) that go beyond the *enumerated powers* that are specifically listed in Article I, Section 8.

3. The **Civil War** (1861–65) - settled militarily the issue that *McCulloch* had enunciated constitutionally.

4. The **civil rights movement** - a century after the Civil War, the policy issue was *equality*.
   a. In 1954, the Supreme Court held that school segregation was unconstitutional (*Brown v. Board of Education*).
   b. The conflict between states and the national government over equality issues was *decided in favor of the national government*: throughout the 1960s, the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs.

5. Federalism involves more than the relationships between the national government and state and local governments: Article IV of the Constitution outlines certain *obligations that each state has to every other state*.
   a. **Full faith and credit** - States are required to give full faith and credit to the public acts, records, and civil judicial proceedings of every other state.
   b. **Extradition** - States are required to return a person charged with a crime in another state to that state for trial or imprisonment.
   c. **Privileges and immunities of citizens** - Citizens of each state receive all the privileges and immunities of any other state in which they happen to be.

**III. INTERGOVERNMENTAL RELATIONS TODAY**

A. From dual to cooperative federalism.
   1. **Dual federalism** (“*layer cake federalism*”) - a form of federalism in which states and the national government each remain supreme within their own spheres.
   2. **Cooperative federalism** (“*marble cake federalism*”) - a form of federalism with mingled responsibilities and blurred distinctions between the levels of government.
   3. The American federal system leaned toward dual federalism before the national government began to assert its dominance.

B. **Fiscal federalism** - the pattern of spending, taxing, and providing grants in the federal system.
   1. Fiscal federalism is the cornerstone of the national government’s relations with state and local governments.
   2. **Grants-in-aid** are the main instrument the national government uses for both aiding and influencing states and localities.

C. There are two major types of federal aid for states and localities: categorical grants and block grants.
   1. **Categorical grants** (the main source of federal aid) - grants that can be used only for *specific purposes, or categories.*
a. State and local agencies can obtain categorical grants only by applying for them and by meeting certain qualifications.

b. Categorical grants come with numerous “strings” (rules and requirements) attached, such as nondiscrimination provisions and punitive cross-over sanctions and cross-cutting requirements that reduce or deny federal funds if certain local or state laws are not passed or if federal guidelines are not met.

c. There are two types of categorical grants:
   (1) **Project grants** - the most common type of categorical grant; awarded on the basis of competitive applications (such as grants to university professors from the National Science Foundation).
   (2) **Formula grants** - distributed according to a formula; states and local governments automatically receive funds based on a formula developed from factors such as population, per capita income, or percentage of rural population (such as Medicare, Aid for Families with Dependent Children, and public housing).

2. **Block grants** - used to support broad programs in areas like community development and social services.
   a. In response to complaints about the cumbersome paperwork and restrictive federal requirements attached to categorical grants, Congress established block grants to support broad programs.
   b. States have discretion in deciding how to spend the money.

D. On the whole, federal grant distribution follows the principle of universalism—that is, something for everybody, even though some money goes where it is not really needed.

E. There are some occasions when states would prefer not to receive some federal aid—such as when Congress extends a program that is administered by the states and only partly funded by the national government—an underfunded mandate. This means that the states have to budget more funds for the project in order to receive federal grant money.

F. Of even greater concern to states are unfunded mandates. These require state and local governments to spend money to comply with laws such as the Clean Air Act of 1970 and the Americans with Disabilities Act of 1990 with no financial help from the federal government that enacted the laws. In addition, federal courts create unfunded mandates for states regarding school desegregation, prison construction, and other policies. In 1995, Congress passed a law that will make it more difficult for Congress to impose new unfunded mandates.

**IV. UNDERSTANDING FEDERALISM**

A. By decentralizing the political system, federalism was designed to contribute to the limited form of democracy supported by the founders.

B. Advantages for democracy.
   1. Different levels of government provide more opportunities for participation in politics.
   2. Additional levels of government contribute to democracy by increasing access to government.
   3. Two levels of government increase the opportunities for government to be responsive to the demands for policies.
   4. A party that loses strength at the national level can rebuild and groom leaders at the state and local levels.
   5. It is possible for the diversity of opinion within the country to be reflected in different public policies among the different states.
6. By handling most disputes over policy at the state and local level, federalism reduces decision making and conflict at the national level.

C. Disadvantages for democracy.
   1. The quality of services like education is heavily dependent on the state in which the service is provided; states differ greatly in the resources they can devote to public services.
   2. Diversity in policy can discourage states from providing services that would otherwise be available because poor people may be attracted from states with lower benefits.
   3. Federalism may have a negative effect on democracy when local interests are able to impede national majority support of certain policies.
   4. The vast number of local governments makes it difficult for many Americans to know which government is responsible for certain functions.

D. Federalism and the growth of the national government.
   1. The national government took a direct interest in economic affairs from the very founding of the republic (see Chapter 2).
   2. As the United States changed from an agricultural to an industrial nation, new problems arose and with them new demands for governmental action.
   3. The United States moved from a system of dual federalism to one of cooperative federalism, in which the national and state governments share responsibility for public policies (as seen above).

E. Federalism and the scope of the national government.
   1. The national government’s share of expenditures has grown rapidly since 1929; today it spends about 20 percent of the GDP, while state and local governments spend about 11 percent today.
   2. The growth of the national government has not supplanted the states.

KEY TERMS AND CONCEPTS

**Block grants**: broad program grants given more or less automatically to states and communities, which exercise discretion in how the money is spent.

**Categorical grants**: grants that can be used only for specific purposes or categories of state and local spending.

**Cooperative federalism**: where state and the national government responsibilities are mingled and blurred like a marble cake; powers and policies are shared.

**Dual federalism**: where states and the national government each remain supreme within their own spheres of power, much like a layer cake.

**Elastic clause**: the statement in the Constitution which says that Congress has the power to make all laws necessary and proper for carrying out its duties.

**Enumerated powers**: powers of Congress found in Article I, Section 8 of the Constitution.

**Extradition**: the Constitution requires each state to return a person charged with a crime in another state to that state for trial or imprisonment.

**Federalism**: a system of shared power between two or more levels of government.

**Fiscal federalism**: the pattern of spending, taxing, and providing grants in the federal system.

**Formula grants**: a type of categorical grant where states and local governments do not apply for a grant but are given funds on the basis of a formula.
Full faith and credit: Article IV of the Constitution requires states to provide reciprocity toward other states’ public acts, records, and civil judicial proceedings.

Gibbons v. Ogden: the 1824 Supreme Court case which further expanded Congress’ power to regulate interstate and international commerce by defining commerce very broadly to incorporate every form of commercial activity.

Implied powers: powers beyond Congress’ enumerated powers which ensure that it can carry out its duties.

Intergovernmental relations: the term used to describe the entire set of interactions among national, state, and local governments.

McCulloch v. Maryland: the 1819 Supreme Court case, which established the supremacy of the national government over the states, included both enumerated and implied powers of Congress.

Privileges and immunities: the Constitution prohibits states from discriminating against citizens of other states.

Project grant: categorical grants awarded on the basis of competitive applications.

Supremacy clause: Article VI of the Constitution states that the supreme law of the land is the Constitution, the laws of the national government, and treaties.

Tenth Amendment: specifies that powers not delegated to the national government are reserved for the state government or the people.

Unitary government: a system where all power resides in the central government.