

# US Government

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Primary Textbook: Democracy in Action by Richard Remy

Teacher: Trainor

# 1 Chapter 1 - People and Government

## 1.1 Principles of Government

1. The state is a political community within a definite territory, with an organized government to make and enforce laws, typically without a higher authority
  - (a) The state in the US was used originally in this way, but was used as the political divisions in the US after the federal government formed as well
  - (b) Nations are a sizable group united by a common bond of race, custom, tradition, or religion, such that a nation-state is a state and nation sharing a boundary, even if not all citizens are within the nation
  - (c) Nations may include several states or vice versa, but are used the same
2. States must have a population with a shared political and social consensus on basic beliefs to be stable, who are often mobile, causing political power shifting
  - (a) They must also have a specific territorial boundary from other states, government, which enforces decisions on the population, and sovereignty, or complete, legitimately accepted authority within
  - (b) Sovereignty theoretically makes all states equal, though economic and military power renders them not fully sovereign
3. Evolutionary theory states that government began as an attempt to organize extended families as they grew larger and larger
  - (a) Force theory states that government formed when people were put under one authority by force, while divine right is based on the belief that rulers were chosen or descended from gods
  - (b) Diamond believed in evolution, saying that overtime, to sustain the need for more resources, force theory interjected, while religion gave unity
  - (c) Social contract theory was developed by Hobbes in England, stating that people gave power to the state to maintain order, in exchange for protection from natural state of violence
  - (d) Locke said that people had natural rights to life, liberty, and property, and could break the contract if the government broke them
4. Governments maintain social order, such as taxes or drafts, and prevent conflict, because people don't know how to do it by themselves, according to Locke
  - (a) Governments must provide services for general welfare, public service projects that people wouldn't do alone, and create health and safety laws
  - (b) Federal government protects citizens from terrorism or wars, and handles foreign and trade relations, and can change states' foreign agreements
  - (c) Government can also make economic decisions to increase growth, reduce inequality and prevent rebellions and issues, in themselves and other nations, and can incentivize particular economic actions

## 1.2 Formation of Governments

1. Unitary systems of government are those where a single central government holds absolute power, while a federal system divides it between central and local
  - (a) Originally, the US was a confederacy, or loose union of independent states, but eventually

- became federal, when found ineffective
2. Constitutions are government rules, creating ideals for the state (preamble), structure and powers of government, and supreme law
    - (a) It may be written, or unwritten (based on laws and decisions, such as in the UK), and is found in all governments
    - (b) Constitutional governments are those where the constitution is able to limit the powers of the government
    - (c) Constitutions are incomplete, and cannot include everything for the nation, and may not actually reflect the government, such as in China
  3. Politics are the effort to influence and control government policies, influencing services and benefits provided to their interests and values, allowing a peaceful clash of opinions in society
    - (a) Some, such as Madison in the Federalist, feared politics would allow special interest groups to do actions against the general welfare
  4. Most nations are unequal, some industrialized with large industry and advanced tech, while some are developing, and economic and political interdependence due to industry and tech growth takes away total sovereignty
    - (a) Many developing countries have also began to depend on foreign aid to cope with environmental or political issues
    - (b) Political motivated nonstate organizations, such as terrorists or national liberation organizations, also play a role in world politics, as well as multinational corporations and international organizations

### 1.3 Types of Governments

1. Autocracies are governments where power is in a single person, including totalitarian dictatorships, glorifying the ideas of a leader, and controlling all social and economic life, where the leader is not limited
  - (a) Monarchies are an inherited autocracy, where absolute monarchs have unlimited power over the people, and constitutional monarchies are limited by some alternate, elected source of power
2. Oligarchies are systems where a group holds power due to economic, social, or military power, often attempting to stimulate a democratic system
3. Democracies are those ruled by the people, either a direct democracy of public meetings to vote on issues, or a representative democracy, voting to give people power to vote for laws
  - (a) Republics are where the voters are fully the source of the government's authority, with representatives held accountable
  - (b) Democracies promote freedom and equal opportunity to the greatest degree possible, and allow majority rule but give rights to minorities
  - (c) *Korematsu v. US* allowed the government to take liberties from Japanese Americans, but *Endo v. US* stated that as a natural born, it was racism
4. Democracies rely on free and open elections, each vote with the same amount of power, minimum requirements to vote, allowed to voice opinions and get help or support from citizens, and have a secret ballot to prevent risk
  - (a) Political parties are groups with common interests, by simplifying choices, and serve as loyal opposition to critique policies of those in power
5. Democracy requires active citizen participation in government, an educated public, an econ-

omy with a large, stable middle class and without extremes and control over their economic decisions, also called free enterprise

- (a) It also requires a social consensus, or acceptance of democratic values and agreement about the goals and limits of government
- (b) It requires a civil society, or groups independent of government, to make views known to the rest of society, and allow people to participate easier

## **2 Chapter 2 - Origins of American Government**

### **2.1 The Colonial Period**

1. Most of the original American colonists were from England, using English governmental ideas, also found in many Native cultures
  - (a) Magna Carta gave the idea of limited government, protecting against loss of natural rights, unjust punishment, and popular consent to some taxes
  - (b) It was made in 1215, starting on nobles, but eventually forming the basis of constitutional government
  - (c) The 1628 Petition of Right limited kings power from collecting taxes without Parliament, imprisoning without cause, house troops in homes without permission, and martial law without war
2. The English Bill of Rights in 1688 by William and Mary gave limited power to monarchs, and required Parliament to stop laws, give taxes, and have an army, as well as prevented interference in Parliament elections and debates
  - (a) It also gave right to petition, trial by jury, and prevented cruel and unusual punishments
3. Representative government was found in the Parliament, with the House of Lords and Commons (merchants and property owners, mainly)
4. Locke (in his Two Treatises of Government), Voltaire, and Rousseau believed government must protect natural rights by contract with the people
5. Each colonial government had a governor, legislature, and court system, but had allegiance to the monarch, property qualifications for white males to vote
  - (a) Nine of the original colonies also persecuted religious dissenters
  - (b) They had a written constitution for limitations and liberties, elected legislature representatives, and Montesquieu's separation of powers
  - (c) Written constitutions started with the 1620 Mayflower Compact for self-government, followed by the Puritan Great Fundamental in MA and Fundamental Orders in 1639 CT, giving representative and legal plans
  - (d) Fundamental Orders gave an judicial and executive of members from the legislative house, which can tax, spend, and was able to set their own calendar, all with term limits, the executive having a single 2 year term
  - (e) The VA House of Burgesses in 1619, elected church officials and government in Puritan MA, eventually changing in 1636 to two representatives to the MA General Court legislature
  - (f) Legislatures also had to adapt to unexpected civil, public works situations such as roads and schools as the colonies grew

## 2.2 Unification for Independence

1. The colonies were a raw materials source and market for British goods to aid England, but due to long distance, they self-governed
  - (a) During the French and Indian War from 1754 to 1763, the British took more control in exchange for protection from the French in Canada, fighting for land in Western PA and OH, won by the British
  - (b) The war took away the need for protection, but added war debts, putting the direct tax, Stamp Act of 1765, for all printed documents and dice
  - (c) They put additional taxes on tea, sugar, glass, paper, and other products, and began to control trade to benefit England further
2. England's revenue increased, but protests and boycotts led to the removal of the Stamp Act, replaced by other taxes, leading to the Tea Party in 1773
  - (a) Intolerable Acts then put MA under British rule and closed Boston Harbor
3. In 1754, Franklin proposed the Albany Plan of Union to fight the French, but the colonies were too separate to give up power to a federal government
  - (a) The taxes led to a community, leading to the 1765 Stamp Act Congress to discuss protest, sending a petition that only colonies could do direct taxes
  - (b) The 1773 dozens of Committees of Correspondence communicated between colonies to organize protests
4. After the Intolerable Acts, VA and MA called the First Continental Congress of the colonies except GA in September 1774 in Philadelphia, deciding on a trade embargo with England, and a meeting in 1775 if the King didn't back down
  - (a) In April 19, 1775, the British attacked the minutemen at Lexington and Concord, and in May, they met for a 2nd Congress, organizing a government with Hancock as president, and a military under Washington
5. Thomas Paine wrote Common Sense, saying King George was against liberty and corrupt, and Sam Adams called for independence, which Henry Lee proposed in June 1776, passed July 2nd, edited and approved July 4th
  - (a) The declaration justified the resolution and gave founding principals of the country, based on liberty, natural rights, and consent of governed, written by Jefferson, Adams, Franklin, Sherman, and Livingston, with 1/4 cut
  - (b) After, it lists specific complaints against King George, then finally states that attempts to resolve differences peacefully have failed
6. States began to draft state constitutions as independent states, typically with a bill of rights and the idea of consent of the governed emphasized

## 2.3 The Articles of Confederation

1. In Lee's resolution, he proposed the loose Articles of Confederation, to continue the government of the 2nd Congress, ratified in March 1781 by all states
  - (a) It was a unicameral legislature, with no federal court, a Committee of States of one delegate from each when Congress was not in session
  - (b) Executive positions were chosen from the Congress, which was only able to handle foreign affairs, maintain a military, fix weights and measures, Indian affairs, post offices, and decide state disputes

2. The Articles were weak, due to not allowing taxes, only requesting from state taxes or borrowing money, could not regulate trade internally or externally, and needed 9 states approval for laws, when 3 or 4 were often absent from Congress
  - (a) Congress could not enforce laws, amendments needed to be unanimous, and without an executive, there were uncoordinated committees for management, and had no federal courts for interstate disputes
  - (b) The framers felt a Republic could only work in small, homogeneous communities, based on Montesquieu's teachings that the rich and small interests would control the government
3. The Confederation did make the states cede claims to land West of the Appalachians, passing two land ordinances, 1785 for survey and division, and the Northwest of 1787 deciding they would be made into equal states
  - (a) It also signed the 1783 peace treaty with the UK, and gave all Eastern UK land, as well as setting up the executive Departments and secretaries (splitting military into War and Marine)
  - (b) It also had the full faith and credit clause, preventing discrimination against citizens of others, and respect legal decisions of another state
4. States quickly fought over boundaries, tariffs, and trade with foreign nations, and the government owed \$40M to soldiers, and could not afford the military either
  - (a) Shay's Rebellion due to a depression hurting farmers, led to an armed march on the MA Supreme Court, and then on Springfield federal arsenal
  - (b) The MA militia stopped it, but it showed the need for a strong federal
5. Washington held the Mount Vernon convention for MD and VA to discuss import duties, navigation on the Potomac, and currency differences in 1785
  - (a) In 1786, the Annapolis Convention discussed commerce between the 5 states that came, where Hamilton and Madison called for the Constitutional Convention in 1787 due to Shay's in Philadelphia
  - (b) This was intended to revise the Articles for a stronger government
6. State level began to take private interests and became corrupt, with 1 year terms forcing them to push for reelection, such that laws shifted constantly
  - (a) As a result, they appealed to the majority, such that many believed it had to be further from the people to balance majority and minority interests

## 2.4 The Constitutional Convention

1. The 74 delegates (55 which attended) at the convention, many of which had helped on state constitutions, the Articles, the Declaration, and were leaders
  - (a) Washington gave it trustworthy appearance, while Franklin was a famous scientist and diplomat, as well as Wilson who read Franklin's speeches and did detailed work, and Morris who wrote the final draft
  - (b) Madison also wrote the government plan, and notes on the Convention, called the Father of the Constitution
2. Washington was chosen as leader, each state got 1 vote, a simple majority was needed for meetings and votes, and it was closed to press and public
  - (a) They quickly decided to start over, using a limited representative government, divided among the three branches

- (b) They also agreed to strengthen the federal, and limit states ability to coin money or interfere with the rights of creditors
- 3. Madison's Virginia Plan stated that a national legislature, with a lower house elected, who pick the upper house, and a strong executive and judicial appointed by the legislature, setting the strong national tone for the convention
  - (a) The legislature would be able to remove unconstitutional state laws, but small states feared larger ones controlling a strong national government
- 4. Paterson's New Jersey Plan had one legislature with equal, single votes, that could set taxes and regulate interstate trade, a weak executive chosen by it, and a limited judiciary chosen by the executive, amending the articles
- 5. The Hamilton Plan would set up an absolute executive for life, to make the Virginia Plan appear moderate
- 6. Sherman's Connecticut Compromise had a lower House based on population, where spending/taxing begins, and an upper house, chosen by state legislatures
- 7. The 3/5ths Compromise stated that slaves would be counted as 3/5ths of a person for both tax and representation purposes
  - (a) The North also wanted complete federal control over international trade, while the South needed agricultural exports, fearing control over them
  - (b) They agreed to not abolish the slave trade until 1808, and let Congress regulate interstate and foreign commerce, but did not allow export taxes
- 8. The Constitution also did not mention slavery, except allowing slaves to be returned to owners, ignoring slavery to allow it to be written without dispute
  - (a) They agreed to the voted electoral college (instead of people, state legislatures, and Congress), voted for the president, and a 4 year term
- 9. 9 states had to ratify it for it to apply to those, the rest for them, leading to a debate between the Federalists, supported by urban merchants, and the anti-federalists, supported by laborers and farmers
  - (a) Anti-Federalists said it was extralegal, not authorized since the convention was to revise the Articles, and said it took powers from states
  - (b) They also feared, without a written bill of rights, the government would violate rights, led by Henry, gaining the Bill of Rights as amendments (12, 2 rejected), even though most states had in their state constitution
  - (c) The Federalists thought strong government was needed to prevent anarchy, and protect the nation from internal and external problems
- 10. Federalists feared state armies fighting or military leadership of smaller states out of fear, and thought the people would prevent lobbyists and that Senate age and citizen restrictions was enough regulation
  - (a) Anti-federalists felt not knowing representatives personally, not separated by different interests, would lead to tyranny, and that recall was needed to prevent Senate autocracy, as well as fearing drafts taking away rights
  - (b) They also feared a standing army in peace, not loyal to the government, and feared Senate influence, approving executive choices, regulating judicial actions, but lost due to no alternative
  - (c) Yates was a NY judge, and the anti-federalist leader called Brutus, while the Federalists called themselves Publius
- 11. After NH, it took effect, but had to be approved in VA and NY, leading to Hamilton, Madison,



and Jay writing the Federalist essays defending it, after which the government began on March 4, 1889 in NYC

### **3 Chapter 3 - The Constitution**

#### **3.1 Structure and Principles**

1. The US Constitution is unusually simple and short, such that it could be understood vaguely by people in the future
  - (a) The Preamble is the explanation of why it was written, to serve the people, and protect liberties, stability and order
  - (b) There are 7 articles, Article I making the legislative, Section I making Congress, II and III making the House and the Senate, then elaborating on powers, restrictions, and procedures of Congress
  - (c) Article II makes the executive branch, describing qualifications, procedures, elections, and powers of the president and VP
  - (d) Article III makes the judicial, allowing them to make lower federal courts, followed by Section II, giving jurisdiction on specific types of cases, followed by Section III which defines treason
  - (e) Article IV gives citizens of other states, the rights of citizens of that state, discusses federal military protection to states, and admitting new states
  - (f) Article V discusses amendments, VI the supremacy clause of Federal law and treaties being the supreme law, and VII for ratification
2. The Constitution is first based on popular sovereignty, or consent of governed, as well as separation of powers, to prevent any one branch from gaining too much
  - (a) It includes federalism, or the division of power between national and states, moving from the confederation, but not to a unitary due to fear
3. Judicial review is the power to declare national, state, and local government actions unconstitutional, given to all federal courts, established over federal law by Marbury v. Madison in 1803, only to be changed by amendments or the court
  - (a) It is also based on checks and balances on other branches, such as presidential vetoes as well as 2/3 vote of both houses to overrule, as well as the president able to appoint judges, approved by the Senate
  - (b) Limited government was also given, specifically listing its powers in the Bill of Rights and Article IV

#### **3.2 Amending the Constitution**

1. Amendments must be proposed either by a 2/3 vote of both houses of Congress, or by a national convention, requested by 2/3 of states
  - (a) The latter was almost used in 1963, when 33/34 needed states petitioned for an amendment overturning state lawmaker elections
  - (b) By 1991, 32 had petitioned for a required balanced budget amendment, but after the 2000 balanced budget, it lost support

2. Ratification must either be by 3/4 of state legislatures, or a ratifying convention in 3/4 states, able to try again for ratification later
  - (a) During the Equal Rights Amendment anti-gender discrimination debate, 5 tried to revoke it, which it was uncertain whether was legal
  - (b) Conventions have only been used once for the 21st amendment to repeal Prohibition (18th), determined over legislatures by Congress, planned and organized by states
  - (c) Congress can set the time limit for ratification, currently 7 years, though it can be specified in the amendment, influencing the results
3. Informal changes are also used to subtly change the constitution, either through passing laws to clarify or expand the Constitutional provisions, such as tax law, cabinet departments and agencies, and the Judiciary Act of 1789
4. Congress has also used changes through practice, like impeachment, accused in the House, tried in the Senate, to define high crimes and misdemeanors
  - (a) Presidents have also done this through presidential succession (interim or actual) by Tyler in 1841 after Harrison died, until 25th amendment in 1967
  - (b) Executive agreements directly between the president and foreign leaders, are often used in place of Senate approved treaties, and the president has began pushing for Congressional laws, rather than just enforce
5. Federal court decisions by judicial review, either restraint, avoiding initiative unless it is in clear violation, or activism, shaping national policies such as the Warren Court from 1953-69, setting the bar for civil and accused rights
  - (a) In the 1930s, fiscal conservation activism was common, now typically liberal, while Court rulings have often changed as times did
6. Changes can also be done by custom, such as political parties or term limits

### 3.3 Amendments

1. The first 10 amendments are the Bill of Rights, ratified in 1791 to limit the powers of government, the first of which gave freedom of religion, speech (written and verbal), press, assembly, and separation of church and state
  - (a) As a result, the press doesn't have prior restraint, or government censorship, though it is unable to slander (false speech to damage a person's reputation) or libel (false writing)
  - (b) People are also required to have responsible speech, and are not allowed to give state secrets or advocate violent revolution
2. The 2nd gives the right to security, allowing an armed militia and citizen gun ownership, but does not prevent arm regulation
3. The 3rd prevents forced quartering, though Congress has certain conditions in war, under which they can
4. The 4th requires specific warrants to search and seizure, needing probable cause, as well as search or arrest warrants
5. The 5th requires evidence before calling a trial, bans double jeopardy (tried for a crime found innocent for), self-incrimination, due process of law (proper trial procedures), and defines eminent domain, saying property can only be seized with fair compensation, for the good of the general public
6. The 6th gives a speedy, public trial by an impartial jury, allowing a request to talk to the judge privately, and a change of venue if the jury cannot be impartial

- (a) It also allows being informed of charges against, calling witnesses, hearing all questions against witnesses, and the right to an attorney
- 7. The 7th gives right to a jury trial for civil disputes >\$20, able to be decided by a judge if both parties agree, while the 9th states all non-specified rights are not declines, and 10th gives all non-specified powers to the states
  - (a) The 8th prohibits excessive bail, fines, and cruel and unusual punishment
- 8. The 11th limits federal court jurisdiction after Chisholm v. Georgia gave it full powers, while 12th creates separate ballots for president and VP
- 9. The 13th outlaws slavery, the 14th protects all citizens from losing rights without due process, and gives equal protection under the law, and gives citizens to all born or naturalized, and the 15th prohibits loss of voting rights by race
- 10. The 16th gives Congress the power to do individual income taxes, after it was ruled unconstitutional in 1895, the 17th gives popular election of senators after buying votes, and the 18th began the prohibition, ended by the 21st (though transport to states that ban alcohol was still illegal)
  - (a) The 19th gives women the right to vote, the 20th gives dates for inauguration and Congress start terms, ending terms earlier in January 3rd (Congress) and 20th, preventing lame ducks
  - (b) The 22nd gave presidential term limits, the 23rd gave presidential voting rights to DC, 24th banned poll taxes, 25th gave a process for VP succession, such that the VP and majority of the cabinet, or the president, can write the president pro tem of the Senate and Speaker of the House
  - (c) 26th lowers voting age to 18, and the 27th makes constitutional pay raises effective only in the term after

## 4 Chapter 4 - Federalism

### 4.1 National and State Powers

- 1. The Constitution gives expressed (collect taxes, coin money, make war, raise a military, and regulate interstate commerce) and implied, or those required to carry out expressed powers by the elastic/necessary and proper clause
  - (a) Implied powers includes drafts, nuclear plants, or the space program
  - (b) Inherent powers are those automatic in a national government, such as diplomatic relations or immigration control
- 2. Reserved powers are those not given to the federal or removed from the states, such as intrastate commerce, local governments, health, welfare, and morals
  - (a) The supreme clause prevents state law from conflicting with national law
- 3. Concurrent powers are those given to both national and state government, like collecting taxes, spending money for the people, borrow money, or make courts
- 4. Denied powers are those given to either states or national, such as export taxes for national, or foreign treaties, coin money, interfere with private contracts legally, or give nobility titles for states
  - (a) Interstate compacts/agreements or export/import taxes also require congressional permission, and neither can take away personal rights

5. The national government guarantees protection from invasion and domestic violence to the states, and the president has authority to send troops when asked
  - (a) This occurred in summer 1967 to stop rioting in Detroit after MI national guard and police failed
  - (b) Federal law, property, or responsibility violations also allow troops to be sent by the president, even without permission such as the 1894 Chicago Railroad strike, interfering with mail and property
  - (c) It was also used for Little Rock and University of Mississippi and Alabama during integration, and has been extended to natural disasters
6. The government can also not take territory from a state without permission, with the exception of WV in 1863, and must have a republican government
  - (a) States without a republican government are not permitted to be seated in Congress, used after the Civil War when blacks were not allowed to be citizens in states that didn't ratify the civil war amendments
  - (b) States are required to pay for and plan all national elections
7. Congress is able to admit new states, though the president can veto, starting with an enabling act to let the territory write a state constitution, approved by popular vote, then sent to Congress, who can pass an admission
  - (a) On the other hand, VT, ME, WV, KY, and TN were made from existing states, and WV and TX were admitted in usual ways
  - (b) Hawaii and Alaska both wrote a constitution without an enabling act, while WV broke away as the rest seceded, held to be the only legal part of the legislature at that time
  - (c) Texas declared independence from Mexico, and after several years, in 1845, the joint resolution of Congress had the US annex it, allowing it to become an immediate state, with the possibility of division into 5 states with Congress and legislature approval
8. Congress is allowed to force certain conditions before accepting a constitution, but the Supreme Court only allows them to enforce it if the conditions don't interfere with the state's authority to manage its affairs, due to state equality
  - (a) In Arizona in 1911, Taft forced them to change recall of judge provisions, but after admission, they put the provisions back
  - (b) OK originally was required to keep Guthrie as the capital until 1913, but the Supreme Court let them move it to OK City
9. The National Governors Association was called in 1908 by Roosevelt to discuss conservation, meeting regularly after, forming an organization in the 1960s in DC
  - (a) In the 70s, it made seminars and publications to help governors build the state power and solve problems
  - (b) In the 80s, it worked to produce national policy in welfare, education, and health-care reforms, and regional NGAs began to form as well
10. The federal courts typically act to balance national and state power, first in *McCulloch v. MD* in 1819, deciding in a national vs state conflict, national wins
  - (a) Until the Depression, it typically ruled in favor of states, shifting in terms of national through the Depression and Civil Rights, until the 90s, then back
  - (b) It reviews state actions, to prevent violation of the Constitution, often the 14th amendment (deprivation of natural rights without due process)

## 4.2 Interstate Relations

1. The full faith and credit clause gives recognition to other states laws and legal decisions, to prevent states acting as foreign nations, or havens
  - (a) It applies to public acts (civil laws, or disputes between groups or the state, but not criminal), records (legal documents), and judicial rulings
2. All citizens of other states gain the same privileges and immunities as citizens of that state, stopping discrimination, but doesn't apply to reasonable discrimination
  - (a) This includes travel, property ownership, court use, contracts, and marriage, but not voting, jury duty, using certain public facilities (state schools or hospitals), or practicing certain professions (medicine or law)
  - (b) In addition, higher fees may be present for public facility use for non-residents, such as state colleges, and fishing or hunting licenses
3. The extradition clause requires states to return fugitives to the state they are fleeing from, changed by the Supreme Court to simply apprehending in extreme cases, though it has recently been made a felony to flee to avoid prosecution
4. Interstate compacts are used to write written agreements between multiple states, as well as the national government or foreign governments in some cases
  - (a) Congress must approve of them to avoid alliances threatening the Union
  - (b) States first used it for border disputes, but after began using it for pollution, transportation, pest control, or natural resource conservation
5. Interstate lawsuits can be used in extreme cases, only able to be done in the Supreme Court, often for water rights in the West, pollution, or boundaries

## 4.3 Federalism Development

1. The states' rights position states the Constitution is between the states, and that the power of the national government is created and limited by the states
  - (a) All debates about the power of the national are in favor of states
  - (b) Those, such as Chief Justice Taney in the mid-1800s, believed state government reflected the people better than national, which was viewed as a threat to liberty, ruling based on the 10th amendment
  - (c) From 1918 to 1936, decisions worked against child labor, industry, and agricultural regulation
2. The nationalist position states that the people created the national and state government, such that the elastic clause allows expansion of government to carry out delegated powers, and that delegated powers should not limit it
  - (a) Those, such as Marshall's Court in the early 1800s, believed national government stands for people, while states are only a part of the people
  - (b) In the late 1930s, as the Great Depression got worse, the court changed their opinions in favor of social welfare and public works
3. Expansion of national government was based on the power to wage war, due to the economy, educational system, and national security being required for war
  - (a) Commerce regulation has expanded as well, to all buying, selling, and transporting of goods, such as the Civil Rights Act of 1964, ruling inn and restaurant discrimination restricted the transport of people and trade

- (b) Taxing and spending ability, especially income tax, has been allowed to incentivize (tax breaks) or tax goods and social programs
- (c) On the other hand, block grants work to allow the states more freedom over their decisions
- 4. Congress has also begun to influence state and local government through federal aid and preemption mandates (assume responsibility of state functions)
  - (a) Federal grants are the main type of aid, through large sums of money for specific purposes, working to aid unequally funded state governments
  - (b) Some governments fear federal grants, due to more national control
  - (c) In the 1960s, Congress began using preemption, such as the Nutritional Labeling and Education Act of 1990, fully power to set food labeling standards from the states, even when stricter than national
  - (d) Restraints are requirements set by Congress to prohibit an action, while mandates are orders to provide a service meeting national standards, such as disability, civil rights, or environmental standards
  - (e) Congress is not required to pay for mandates, forcing it on states
  - (f) The idea of federal aid coercion is the basis of coercive federalism, moving from cooperative, working together on the same issues, and further from the struggles over powers of dual

## 5 Chapter 5 - Congressional Organization

### 5.1 Congressional Membership

1. Congressional terms last for 2 years, starting on January 3rd of odd years, each term divided into 2 sessions with breaks for vacations and holidays
  - (a) They originally started in March until the Lame Duck (20th) amendment
  - (b) Each house requires a vote to adjourn, can be called back by the president for a special session, and may only adjourn 3 days without the other house's approval
2. Each state gets at least 1 member of the House, divided based on population, such that each member must be 25+ years old, citizens for 7+ years, and citizens of the state, and traditionally the district as well
  - (a) Special elections are held for first session vacancies, while procedures for second sessions range based on state
  - (b) The Census Bureau takes a national census every 10 years, such that reapportionment determines the number of representatives
  - (c) Representatives originally was 64 members, growing to 435 as population grew until the Reapportionment Act of 1929 limiting the increasing size
  - (d) DC, Guam, Samoa, Puerto Rico, and the Virgin Islands get 1 non-voting representative, but can attend, speak, vote in committees, and give bills
3. State legislatures then redistrict, or draw, congressional districts, but have corrupted it by either unequal populations per district or gerrymandering
  - (a) Baker v. Carr in 1962 determined federal courts could decide redistricting disputes after an issue in TN, while Reynolds v. Sims in 1964 stated seats in state legislatures must be based on population, after an AL issue

- (b) Wesberry v. Sanders in 1964 ruled that districts must be equal in population, leading to the modern 650k per district
- (c) Gerrymandering is redistricting by parties to gain an advantage, started by Gerry to give win against Federalists, creating a salamander district
- (d) Packing is the inclusion to include maximum opponents, while crowding is to divide opponents into other districts, the former used in 1992 in NC to add minority representatives but individually struck down for packing
- (e) The Supreme Court stated districts must be compact and physically touching (contiguous), but is still an issue
- 4. Senators must be 30+ years old, citizens for 9 years, and residents of the state, elected at-large, or statewide, with 6 year terms, typically winning reelection
  - (a) Vacancies are filled by the governor, who can also call a special election
- 5. Those in Congress originally got low salaries, voting for pay increases to stop pay as a deterrent, in 1991 raising by \$23k to stop honoraria (paid speeches)
  - (a) In 1992, the 27th amendment was passed, and used in 1993 to try and ban cost of living allowances, but which was ruled constitutional
  - (b) They also get franking privilege (stationery and postage for official purposes), a clinic, a gym, allowances for staff and travel, income tax deduction to allow 2 residences, and \$150k+ pensions
  - (c) Members may not be arrested for non-treason, felonies, or breaches of peace to and from Congress, or get sued for things said at Congress
  - (d) In Hutchinson v. Proxmire in 1979 stated they could be sued for libel outside Congress, and a majority vote may refuse to seat a member through exclusion by Powell v. McCormack
  - (e) They may also punish members and censure (formally disapproved) by a majority for minor offenses, or expelled by a 2/3 vote, due to serious felonies or treason
- 6. Congressmen are reelected 90% for the time, often unchallenged, due to easier access to funds, gerrymandering, higher name recognition, and bias toward supporting those voted for
  - (a) Most use the internet to gain supporters, but only 10% candidates use town hall meetings on their websites to determine important issues

## 5.2 The House

- 1. Lawmaking houses must have uniformity of proceedings to ensure fairness and order, based on past precedents, published every 2 years
- 2. The House uses rules to speed through debates, due to more powerful leadership roles, using committees to organize and allow smaller debates
  - (a) They also allow specialization on important issues to constituents
  - (b) The House is organized by parties, sitting separately, where the majority appoints committee chairs and controls the flow
  - (c) In 1995, Republicans pushed reforms, centralizing power in the speaker, with fewer staff, committees, term limits for committee chairs and the Speaker, ending absentee voting, to make it more accountable
- 3. House leadership works to unify and regulate party members, schedule work, get members to the floor for votes, transfer information, and contact the president
  - (a) A majority party caucus chooses the speaker, voted by the entire House, recognizing

- who gets to speak, appointing chairs, making schedules, giving bills to each committee, and gives favors for support
- (b) The majority leader plans the party's legislative program, and rushes important bills through, elected by caucus only, as a party position
- (c) The majority and deputy whips persuade people to follow party lines, and get members on the floor for voting, chosen by the party
- (d) The minority party also gets similar positions, without scheduling power
- 4. The House opens at noon, ringing buzzers throughout, not working much on Friday so they can visit home districts, and Monday is for routine work
  - (a) The House floor is also busy and distracted until the vote
- 5. Laws begin as bills until passed by both houses, signed by the president, such that it starts by being introduced, dropped in the hopper box near the front
  - (a) It is sent by the Speaker to committee, 15% surviving to the calendar for a vote, either the Union (monetary), Private (individual people or places), or the House Calendar (for other bills)
  - (b) Consent Calendar is used for bills unanimously voted to be read out of order, while Discharge is petitions to discharge a bill from a committee
- 6. The Rules Committee directs flow of legislation from committees, determining when they move forward, leading to political battles
  - (a) In 1911, the House removed the Speaker, until replaced by the Democrats in 1975, letting him appoint all majority members by caucus
  - (b) Committee chairs are able to request the Rules Committee moves bills from the Calendars to the top of the calendar, due to the surplus of bills, and can limit debate time or amendments to the bill on the floor
  - (c) They can also settle disputes between committees, and protects people from unpopular positions by making the bill not reach the floor
- 7. Quorums, or a majority (218) of House members, are necessary for a session, though a Committee of the Whole (100) can debate and amend, but not pass, reporting the changes to the bill to speed the process

### 5.3 The Senate

1. The Senate is more informal, to allow freedom for expression of ideals, allowing unlimited debate, with very few procedural rules, such that far fewer are present
2. Party leadership is run the same in the Senate, with the VP preceding, but only voting in cases of a tie, though leadership has less power due to less structure
  - (a) The VP cannot take part in debates, but may recognize speakers, call votes, or influences votes outside of the Senate
  - (b) The president pro tempore is elected by the Senate, typically the most senior member of the majority party, acting in the VPs absence
  - (c) The majority leader plans the work schedule, agenda, and unifies the party to get bills passed, making party members go to votes
  - (d) Whips and assistants also work to aid party leadership, with at least one party leadership member remaining at all times in the Senate
  - (e) Seating is organized by parties, such that each party sits on its own side
3. Any member may propose a bill, where flow is scheduled by the Calendar of General Orders



for all bills, and the Executive for treaties and nominations

- (a) Senate leaders control the flow of bills through informal negotiations, though a unanimous vote can take a bill immediately from the calendar
- 4. The filibuster is to prevent a bill from getting a vote by stalling through talking, delaying issues, or procedure, though other matters can take place currently
  - (a) Filibusters can be stopped by a 3/5th majority of the Senate for cloture, allowing a maximum of 1 hour of debate, though a 3/5th majority is rare

## 5.4 Congressional Committees

1. Committees allow determination of which bills are worth further consideration, work out compromises, and hold public hearings to educate the public to issues
  - (a) Members by party are typically proportional to that of the chamber itself, though the majority has supermajority in the important committees
2. Standing committees are permanent from session to session, such that the majority party is able to change committee rules
3. Subcommittees specialize in facets of standing committees, typically continuing from session to session, with a maximum of 5 per, except Appropriations (13), Government reform and oversight (7), and Transportation and infrastructure (6)
4. Select committees are temporary, to study a specific issue, then report findings, either major public issues, overlooked problems, or interest group issues
  - (a) They typically exist for 1 term, but can be renewed, sometimes reclassified as standing, such as the Select Intelligence Committee
  - (b) Select committees typically cannot submit bills directly to the chamber
5. Joint committees are from both chambers, either select or standing, theoretically coordinating chamber efforts, realistically used for routine affairs, like printing
  - (a) They cannot directly propose bills to the chambers, or work with them
  - (b) Several have been made for volatile matters as well, such as nuclear energy, defense, or taxation
6. Conference committees are for when different versions of the same bill are passed, made up of conferees to negotiate a final version to send to Congress
  - (a) When a majority of the committee agree, it is sent, voted on without possibility of amending in Congress, then sent to the president
7. Membership can increase likelihood of reelection, especially those which directly impact their state, can allow influencing national policy and other legislators
  - (a) The best in the House are Rules, Ways and Means, and Appropriations, while in the Senate, Foreign Relations, Finance, and Appropriations
8. Members are limited to a max number of committees, chosen by party leaders, while the seniority system determines who the chair is, modified in the 1970s
  - (a) The reforms had secret ballots of high ranking party members to determine chair
9. The chairperson is able to control meeting schedules and bill discussions, as well as hearings, witnesses, budget, committee staff members, and run debate
  - (a) The Legislative Reorganization Act of 1970 allowed a majority of members to call a meeting without chair approval, and the minority must be allowed to present views and have reasonable notice for meetings
  - (b) 1995 reforms prevented absent member votes from being cast by the chair, and required

## 5.5 Staff and Support

1. Congressional staff help to manage the work of Congress, cut 15% in the Senate, 50% in the House in 1995, when the budget and GAO was also cut
  - (a) They communicate with voters, help run floor sessions and committee hearings, draft bills and reports, and attend committee meetings
  - (b) They also monitor publicity, issues, and popularity in the home district, write speeches, raise funds, and help them get reelected
2. Until the early 1900s, Congressmen didn't have aids, but privately paid assistants and until the Legislative Reorganization Act of 1946, had  $\leq 400$ , shifting to 3000+
  - (a) The staff was used to get expert opinions on topics of which the legislator could not be knowledgeable in, as well as to communicate with home, and solve individual problems with their constituents (caseworkers)
3. Personal staff work directly for legislators, with the number depending on budget, for Senators based on distance from the state's capital city and population, the House getting a constant number, including caseworkers in a home office
  - (a) The administrative assistant runs the office, schedule, and gives political advice, as well as makes deals to aid reelection
  - (b) Legislative assistants research, draft, and studies bills, and writes speeches and articles, represents and assists them at committee meetings, and tracks the movement of bills
  - (c) Often legislative assistants write up speeches or questions for the end of committee, and the legislature comes in, and relies on their judgement, without knowing what the committee topic is
  - (d) They also tell the legislature how to vote during each vote during the day
4. Committee staff are based on the size of the committee, controlled by the senior minority and the chairperson, working to draft bills, memos, and reports, collect and study information, and plan hearings
5. Support organizations serve to make the legislative branch less reliant on the executive branch for information since the modern era
6. The Library of Congress was made in 1800 to get books needed for Congress, currently containing 100M+ items, getting free copies of copyrighted works due to administering copyright law, with the Congressional Research Service
  - (a) 100s of employees answer requests for information either to give to voters, or to use when writing bills
7. The Congressional Budget Office was made in 1974 to study presidential budget proposals, and make cost projections, countering the executive Office of Management and Budget Making, watching Congress's spending and the deficit
  - (a) They made a yearly report for how the deficit effects the economy, and studies trends
8. The General Accounting Office was made in 1921, run by the Comptroller General, to settle and watch government finances, debts, and provide information on government programs funding to Congress
9. The Government Printing Office prints all documents, including the daily Congressional Record (which can include revised or unmade speeches by legislators), or the Statistical Abstract of the US (of Bureau of Census data)

## 6 Chapter 6 - Congressional Powers

### 6.1 Constitutional Powers

1. The 2nd Bank of the US in 1816 created a debate about the power to charter a bank, and the power of Maryland to put a tax on federal bank notes
  - (a) *McCulloch v. Maryland* was based on a teller who issued notes without tax, leading to the Supreme Court ruling that it was illegal to tax
2. The Bill of Rights denies certain legal powers, such as suspending writ of habeas corpus (court order to release the accused, to see if they were legally detained)
  - (a) Bills of attainder (laws establishing guilt without trial) are banned
  - (b) It also bans ex post facto (crimes of acts which were legal when done)
3. Tax and spending powers include all revenue bills (for raising money) starting in the House in Article 1, Section 7, giving large states more power on taxation
  - (a) Appropriations bills (for spending) are requested by the executive, given by Article 1, Section 9, which requires laws to take from the Treasury
  - (b) Congress has used tax and spending for fiscal policy, gives grants to influence state and local policy, and incentivizes public choices
4. Congress is also allowed to borrow money, through government security bonds or notes, gaining repayment to the public with interest after some length of time
  - (a) Since 1917, there has been a debt ceiling, constantly raised when reached to allow Congress to pay bills
  - (b) Congress is also allowed to coin money, punish counterfeiters, regulate value of currency, establish weights and measures
  - (c) It is also able to make bankruptcy law, to deal with assets of a business which cannot pay its debts, though it did not until 1898
5. Article I, Section 8, Clause 3 is the commerce clause, first expanded in *Gibbons v. Ogden* when it ruled *Gibbons* could sail a ferry due to the service crossing state lines, rather than simply concerning products
  - (a) This has been expanded to include minimum wage, workers rights, broadcasting, banking, finance, and air and water pollution
  - (b) In *Heart of Atlanta Motel v US* in 1964, it was ruled that stores whose customers and food were from other states could not discriminate
6. Congress also has the ability to approve treaties, declare war, and create, legislate, and maintain an army and navy, though the president has used force without a declaration of war  $\geq 200$  times, including Korea and Vietnam
  - (a) The War Powers Act of 1973 overrode Nixon's veto, banning forces being sent more than 60 days without congressional notification within 2 days
7. Section 8 gives the power to issue copyrights (lifetime + 50 years) on artistic work and patents (17 years + renewal) on inventions
  - (a) It also gives the power to make federal courts and post offices, the latter of which has been used to punish criminal mail usage
8. Article I allows naturalization laws, IV.3 for admitting states and governing territories, and both for federal property regulation
9. Congress also calls a joint session to count electoral college votes, the House chooses the president from the top three candidates if none have a majority with each state getting one

- vote, and the Senate picking the VP from the top two
- (a) This allowed Jefferson in 1800 and Adams in 1824 to be from parties other than the president's party in these cases
10. The 20th and 25th amendments give the president the power to pick a new VP, but require joint approval by Congress, but also gives powers for vacancies
    - (a) The House can call for an impeachment, followed by a Senate trial requiring a 2/3 vote, presided by the Chief Justice if for the President, only able to in cases of high crimes/misdemeanors, treason, or bribery under Article II, Section 4
    - (b) The Senate also must approve presidential appointments, including Supreme Court justices, who are rejected 20% (most often)
  11. Article II, Section 2 gives the Senate the power to ratify treaties with a 2/3 vote, though executive agreements have been used to bypass it
    - (a) The Strategic Arms Limitation Talks II Treaty was rejected in 1980, preventing a vote, though typically, most are ratified
  12. Congress can also draft amendments, passed by state legislatures except the 21st which was passed by conventions since legislatures were generally against

## 6.2 Investigations and Oversight

1. While not given or denied the power, from 1792 when they investigated the Army after a defeat by Natives, they can use committees for investigation, including having staff find witnesses to testify under oath and evidence
  - (a) The 1998 Senate Finance Committee investigation into the IRS led to a unanimous vote to reform the IRS, and 90s ethics panels rid corruption
2. They are able to issue subpoenas, or a legal order to appear or produce documents, and can require oaths, facing perjury if found to be lying
  - (a) They can also hold those who refuse to aid in contempt, or willful obstruction, which can lead to jailing
  - (b) Until *Watkins v. US* in 1957, witnesses had no rights until it ruled that Congress must respect constitutional rights, similar to courts
  - (c) Self-incrimination rights are prevented by the ability to offer immunity, forcing them to answer, such that in 1987 to investigate Reagan for arms dealing to Iran and Nicaragua, Colonel North was freed due to information he gave with immunity leading to finding evidence against him
3. The legislative oversight power of Congress is the ability to review how the executive branch carries out laws passed, as checks and balances
  - (a) The Legislative Reorganization Act of 1946 called for Congress to continuously watch executive agencies, while the Act of 1970 had each standing committee review that execution of laws under its jurisdiction
  - (b) This is used to assure that the executive is interpreting and following the laws as intended, a greater problem in recent years
4. In actuality, supervision is infrequent, and typically only when the president is not from the majority party, mainly due to limited resources, vague laws, committee- agency friendship, and lack of voter support except in major scandals
  - (a) They require submission of reports to Congress often, such as the 1946 Employment Act requiring an annual economic report from the president

- (b) The GAO is also able to monitor federal agency finances, and the appropriations bill requires an agency budget review
- (c) The legislative veto, or provisions in laws to review or cancel executive agency actions to enforce those laws, was often used until 1983, when *Immigration and Naturalization Service v. Chadha* ruled it unconstitutional
- 5. The 1978 Ethics in Government Act assured fair investigation for officials, letting Congress call independent counsel as special prosecutor, but in 1999, full power was given to the Attorney General after due to expensive, political investigations

### 6.3 Legislative-Executive Relationship

- 1. Presidents who have a less active role in legislation, like Eisenhower, typically have the best relationship with Congress, due to the checks and balances
  - (a) Since legislators are chosen by a smaller group, they may have different interests than national policy interests of the president
  - (b) Party politics has led to gridlock when they were oppositely controlled
  - (c) The difference is time in office, maximum of two terms, rather than unlimited, results in presidents rushing to get policy through. while House members have to avoid controversy, and Senators have more time
  - (d) Rules of procedure, such as the filibuster or committees, can also be used to block legislation proposed by the president
- 2. The system of checks and balances has led to a conflict, with strong presidents questioning Congress's monopoly on policy-making, such as Jackson, those in the Civil War, Depression, and the Cold War
- 3. Until the 1970s, Congress had only reacted to the president's national budget proposals, until the 1974 Congressional Budget and Impoundment Control Act, creating the CBO and a budget committee for each house, to take a greater role
  - (a) It also limited the president's ability to impound, or refuse to spend money allocated for a specific program, unless both houses agreed
- 4. Until declared unconstitutional in 1983, the legislative veto, or nullification of an executive action, was used by Congress extensively as a check on the executive
- 5. In war, presidents have expanded their power, closing banks, controlling the economy, rationing goods during WWII, continuing the state of emergency until the 1976 National Emergency Act, ending it, forcing notification to Congress
  - (a) State of emergencies also last 1 year maximum, must be renewed otherwise, and Congress can pass laws ending it at any time