

# FEDERALISM AND SEPARATION OF POWERS

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# INTRODUCTION

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## Federalism

- Limits government
- Divides government into two levels
- National and state

## Separation of powers

- Limits government
- Divides government against itself
- Share powers across branches

# FEDERALISM

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**Federalism** system of government that divides power between a central government and regional governments

**Sovereignty** supreme and independent political authority

**Expressed powers** given directly in Constitution

**Implied powers** necessary and proper clause

**Supremacy clause** national laws trump state laws

**Reserved powers** tenth amendment reserves powers not specified in the Constitution to the states

**Police power** power to regulate health, safety, welfare, and morals of citizens

**Concurrent powers** power possessed by both the state and national government (e.g. taxation)

# OBLIGATIONS OF STATES TO EACH OTHER

- Full faith and credit clause
  - States must honor other states' laws
- Privileges and immunities
  - No special treatment of residents
- Extradition



## EVOLUTION OF FEDERALISM IN THE US

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- Up through the 1930s
- Fundamental government powers shared by national and state governments
- State governments more important

- Necessary and proper clause interpreted widely in *McCulloch v. Maryland*
- Interstate commerce clause in *Gibbons v. Ogden*
- Both granted much power to national government
- Little growth of the national government up through 1930s
- Judiciary dominated by states rights interpretations post Marshall

- FDR elected in 1932
- New Deal: greatly expanded scope and power of national government
- FDIC, TVA, SEC, FHA, NLRB, social security, etc

- Post 1930s through 1960s
- Federal government uses subsidies to encourage states to pursue federal goals
- Subsidies called grants-in-aid

- Layer cake - marble cake
- Federal aid to states makes up roughly 30-35% of states budgets

- 1960s to present
- More active federal government
- Threaten to withhold funding if states don't conform to national standards
  - E.g. American with disabilities act
- Unfunded mandates
- Conditional grants, block grants

# SEPARATION OF POWERS

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*There can be no liberty where the legislative and executive powers are united in the same person... [or] if the power of judging be not separated from the legislative and executive powers*

- Baron de Montesquieu

- Separate functions of government to preserve liberty
- Legislative
- Executive
- Judicial



*Ambition must be made to counteract ambition*

- Violates separation of powers
- Each branch may "check" the two others
- National policy represents views of all three branches
- "Separated institutions sharing power"

# LEGISLATIVE CHECKS

- Executive

- Override veto
- Impeach and remove president
- Senate can reject nominees/treaties
- Conduct investigations
- Refuse to pass laws/funding president requests

- Judicial

- Change size of court & # of justices
- Constitutional amendments
- Reject nominees
- Impeach and remove justices
- Amend court jurisdictions
- Appropriations

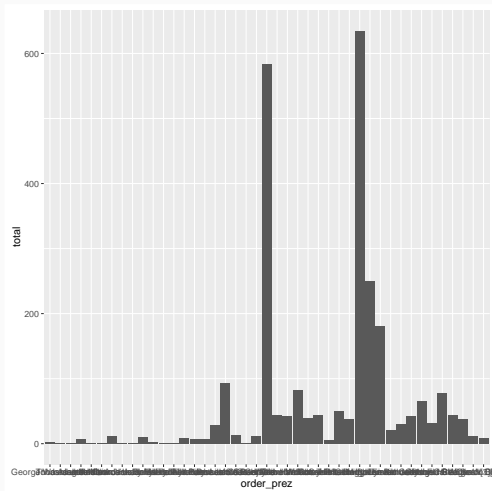
- Legislative
- Veto
- Special sessions
- Carries out laws
- Vice president casts tiebreaking vote in Senate
- Judicial
- Nominates justices
- Pardons
- Executes decisions

- Legislative
  - Declares laws unconstitutional
  - Chief justice presides over Senate hearings to impeach president
- Executive
  - Declare executive actions unconstitutional
  - Issue warrants

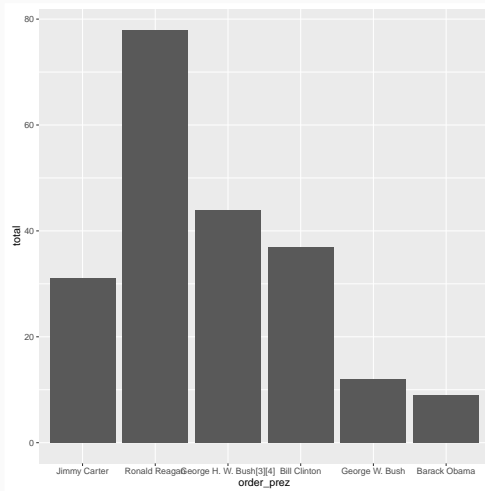




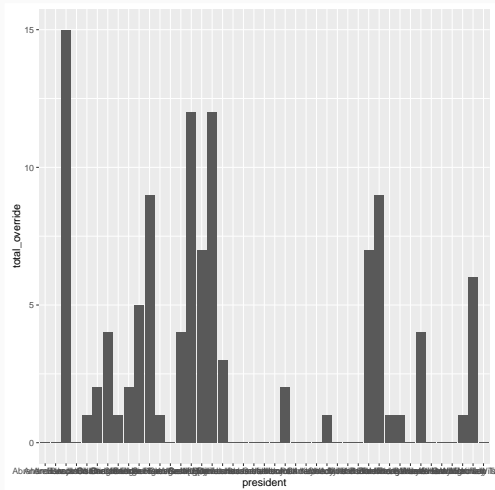
# VETOS OVER TIME



# RECENT VETOS



## VETO OVERRIDES - TOTAL NUMBER



## VETO OVERRIDES - PERCENTAGE

