

**FREQUENTLY ASKED QUESTIONS
OF
AMERICAN GOVERNMENT:
BASICS OF THE CONSTITUTION**

Dean A. Dohrman, Ph.D.

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FAQ: WHAT LED TO THE AMERICANS DECLARING INDEPENDENCE?

ANSWER: After an overwhelming victory by the British in North America, the London Parliament began to exert a new level of authority over the 13 colonies that would become the United States. The colonists of the time resisted to various measures for a decade before the Second Continental Congress declared independence and a new nation on July 4, 1776.

DETAIL: Following years of struggle with the French for supremacy in North America, the British proved victorious in 1763. This left the island empire with war bills to pay. So, after years of defending the colonies, Parliament sought to have the colonists pay some part of the war bill. In 1764 Parliament passed the Sugar Act to raise government revenue, and in 1765 they passed the Stamp Act. The colonies responded with the Stamp Act Congress. The Americans protested so vehemently that Parliament repealed the act the next year. Parliament regrouped in 1767 and passed the Townshend Acts: these acts threatened the Massachusetts legislature with disbandment. A short three years later (1770) Parliament repealed the Townshend Acts after the Boston Massacre. A British captain and eight soldiers were tried: all were acquitted except two soldiers found guilty of murder (their convictions were reduced to manslaughter through a legal loophole). The colonists were not pleased.

Events began to be extremely heated beginning in 1773 when Parliament passed the Tea Act to save the British East India Company from bankruptcy. The Massachusetts colonists responded with the Boston Tea Party, tossing the taxed commodity into the Boston Harbor. In 1774, Parliament passed what they called the Coercive Acts, which the colonists labeled the Intolerable Acts (Massachusetts Government Act, Impartial Administration of Justice Act, Quartering Act, and the Quebec Act): a direct punishment of Massachusetts. In response, the colonial leaders called the First Continental Congress, and tensions rose.

On April 19, 1775, colonists squared off against British regulars at Lexington, Massachusetts. The American militiamen fired "The shot heard 'round the world." Quickly, the Second Continental Congress

convened and established the Continental Army with George Washington in command. Congress sent the Olive Branch Petition to King George III, but he refused to look at the document and declared the Americans in open rebellion. War followed.

In January 1776, the publication of *Common Sense* by Thomas Paine increased the clamor for colonial independence. Paine convinced many Americans that the time for independence from the Crown had arrived. Events began to move rapidly, and in July, Congress adopted the “Declaration of Independence.”

ADDITIONAL RESOURCES

“American Revolution: Prelude to War” on TheHistoryPlace.com,
<http://www.historyplace.com/unitedstates/revolution/rev-prel.htm>

“The American Revolution” on TheAmericanRevolution.org, <http://theamericanrevolution.org/>

“American Revolution” on History.com, <http://www.history.com/topics/american-revolution>

FAQ: WHAT WAS THE FIRST CONSTITUTION OF THE U.S.?

ANSWER: The Second Continental Congress conducted the Revolutionary War, and also wrote a constitution known as the Articles of Confederation. This became the first constitution of the United State from 1781-89.

DETAIL: Beginning with the Mayflower Compact of 1620, Americans held a tendency to write down their rules of government. At the time of the Declaration of Independence, the idea of written rules, written constitutions, was well ingrained in the North Americans as the Revolution approached. As a result, independence from the king led to a flurry of state constitutions. Although these documents carried variations, some common themes also emerged. These included:

- Bills of rights
- Democratic representation, or republicanism
- Separate legislative, executive, and judicial branches with separate powers
- Legislative prevalence among the branches of government
- Constitutional law as foundational and of higher order than statutory law

The new states set forth the blueprints that would become the tenets of the new national government. Primarily, the legislature would be the dominant force, and the constitution would underlie all governmental action. These principles provided the blueprint for our first national constitution, the Articles of Confederation.

The Continental Congress authorized the drafting of a new constitution which Congress completed in November 1777. It contained an outline that established (or more rightly said, retained) Congress as the supreme entity in the new, but weak, national government. The Congress consisted of a unicameral (one house) body with equal representation of each state (that's right, state representation). It gave

Congress the power to declare war and make peace. It could negotiate treaties. However, most American Government textbooks will point out that the Confederation Congress lacked several important powers, such as:

- No direct authority to collect taxes
- Lack of full financial authority and control (states could still coin their own money)
- No ability to regulate commerce
- No strong executive authority (the Confederation Congress appointed one of their own as a president, one year term, to carry out business in their absence [believe it or not, Congress was originally a part-time legislature], therefore, the executive had little influence over the U.S. Government).

Ultimately, financial chaos led to the demise of the Articles. However, despite this significant problem, there were some important policies developed under the Articles.

Thomas Jefferson's Land Ordinance of 1784, which became the Northwest Ordinance of 1787, provided for the survey (Public Land Survey System) and sale of federal land (townships consisted of 36 square miles with a section of a single square mile set aside for the support of public schools). The Northwest Ordinance provided that new states north of the Ohio River would not have slavery (a measure rejected by the Confederation Congress in the Land Ordinance), they would be equal in status to original thirteen, and also set the process for statehood:

1. At first, a territory functioned with an appointed governor, secretary, and three judges.
2. The territory then elected a legislature.
3. Finally, the territory submitted a constitution to Congress for approval.

These aspects are outlined in most textbooks, but some other important features of the law are often overlooked. The ordinance provided a list of rights for citizens. The U.S. government would receive and

sell land with full rights of ownership, known as fee simple ownership. It also instructed that relations with the native people would be amenable and take their rights into consideration.

Despite these positives, problems persisted and compounded, especially economic problems. Trade with Britain was disrupted: surpluses grew and prices fell. The Confederation Congress defaulted on Continental debt. The infant country found itself in crisis.

ADDITIONAL RESOURCES

The Articles of Confederation:

<https://www.ourdocuments.gov/doc.php?flash=true&doc=3&page=transcript>

FAQ: WHAT ACTION DID THE FOUNDERS TAKE AS THE ARTICLES FAILED?

ANSWER: The Philadelphia Convention during the summer of 1787 became the Constitutional Convention as the delegates decided that a major overhaul of the U.S. government was in order. They spent the summer ironing out details and their differences finally breaking in September with a new proposal for the consideration of the states.

DETAIL: The Founders faced a critical crisis with the failure of the Articles of Confederation. In 1786, the Annapolis Convention, called to discuss deficiencies of the Articles of Confederation, fell short of full attendance from the states. The delegates from five states recommended that Congress call another meeting in 1787 to amend the Articles, and this time delegates from nearly all states, Rhode Island proved to be the exception, attended with external motivation.

Revolutionary War veterans had become irritated with the economic upheaval. Most uprisings were squelched rather quickly, but Daniel Shays and followers in Massachusetts persisted. They wanted tax relief, a moratorium on debt collection, and an end to imprisonment for debt. Beginning in August 1786, the rebellion became serious in January 1787 when Shays' followers moved on Springfield and Boston. The Massachusetts militia defeated the rebels, but they sent a fright through many political leaders: George Washington even returned to public life as a delegate for Virginia.

Immediately, the delegates went to work choosing Washington as the convention's president and proposing two plans:

Virginia Plan: introduced by Edmund Randolph and James Madison this plan provided for a bicameral legislature (both houses based on population), and separate executive, legislative, and judicial branches.

New Jersey Plan: William Paterson introduced a revision of the Articles. It provided for equal representation of the states in a unicameral legislature and expanded the powers of Congress to regulate commerce, levy certain taxes, and name an executive and a supreme court.

The delegates argued for many weeks. Finally, the Connecticut (or Great) Compromise brought a resolution. It proposed a bicameral legislature (one house of equal representation, the other by population), three branches, and expanded Congressional powers to include authority to levy taxes, coin money, regulate commerce, and maintain the national defense.

Other compromises were also made: The Three-fifths Compromise for purposes of representation (slaves would be counted as 3/5s a person for determining the number of representatives a state had in Congress). Also, debate as to whether the president would be elected or chosen by Congress: eventually the Framers developed the Electoral College where states chose electors to select an executive. Originally, the candidate with the most electoral votes won the presidency, and the runner-up won the vice-presidency (this would be changed with the 12th Amendment, today the two run as a team).

This compromise established the three branches of the federal government with a separation of powers and checks and balances of powers as one branch is limited by the powers of others (e.g., Congress passes laws, president signs or vetoes, the veto can be overridden, Senate approves presidential appointments, the Supreme Court determines constitutionality of laws passed by Congress.) This system has proven enduring and has been instrumental in preserving limited government in the U.S.

The Founders placed governmental authority on the “consent of the governed” not full democracy. Many were students of antiquity and very familiar with the problems of direct democracy as described by Aristotle. In their quest for “a more perfect union,” they blended the consent of the governed with limited participation to overcome the indiscretions of direct democracy that could turn into mob rule and violations of basic rights.

The Constitution provides for limited government incorporated through the separation of powers and a checks and balances system. Congress, the president, and the judicial branch all have specific functions

and/or powers that maintain the balance of power and force compromise thereby limiting the scope of government. Just imagine the strength of the president if he had no check from Congress. Likewise, what if Congress had no review of constitutionality from the Supreme Court? Also, often overlooked is the fact that the states are also a part of this system.

The states are guaranteed powers in Article V which allow them to call a convention to propose amendments. The states must approve amendments. The states were originally represented in the federal government with the state legislature appointments of senators. In the original Constitution gave a few specified, enumerated powers, to the federal government, and most powers remained with the states. Many of these states powers have eroded over time, but the notion of three branches and spreading power between them has persisted. A summary of the powers of the three branches, and other stipulations, are contained in seven articles of the Constitution as outlined below (these are summaries of the most important features, not an exhaustive list):

ARTICLE I: THE LEGISLATURE - Establishes qualifications, powers, and limitations

- Representatives to be 25 years old, seven years a citizens, and live in state representing; two year term
- Senators to be 30 years old, nine years a citizen, and live in state; six year term
- Revenue bills must begin in the House of Representatives
- Section 8 (enumerated powers)
 - Lay and collect taxes
 - Borrow money
 - Regulate international and interstate trade, and trade with the Indian tribes
 - Establish rule for naturalization and bankruptcy
 - Coin money, regulate its value
 - Establish weights and measures
 - Provide laws against counterfeiting
 - Provide post office and postal roads

- Provide patents and copyrights
- Establish courts inferior to the Supreme Court (Judiciary Act of 1795)
- Establish maritime law
- Declare war
- Maintain the army (may not appropriate for more than two years at a time)
- Maintain the navy
- Regulate military forces
- Call up and maintain the militia to enforce laws, preserve peace, and repel invasion
- To legislate for the District of Columbia, and operate and maintain other federal property
- “To make all laws which are necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof .”
- Prohibited Powers of Congress (Section 9)
 - No suspension of Habeas Corpus unless in time of rebellion or invasion
 - No bills of attainder (punishment by Congress) or ex post facto laws (after the fact)
 - No direct taxes (changed by 16th Amendment)
 - No taxes on state exports
 - No preference to ports of one state over another, no taxes on ships from other states
 - No money spent that is not appropriated and publicly disclosed
 - No titles of nobility
- Prohibited powers of the states (Section 10)
 - No foreign treaties
 - No declarations war
 - No coinage of money
 - No ex post facto laws (after the fact)
 - No titles of nobility
 - No taxes on interstate commerce other than inspection

- Cannot maintain a standing army or navy

ARTICLE II: THE EXECUTIVE – Establishes qualifications, powers, and duties

- A natural born citizen, at least 35 years old, residing in the U.S. at least 14 years, four year term
- Establishes the Electoral College
- President acts as chief executive and commander-in-chief of the armed forces
- President will enforce the laws of the U.S.
- President may grant pardons
- President may make treaties (with consent of the Senate)
- President may make appointments (with advice and consent of the Senate)
- Presidential oath is included
- Vice President will serve as President of the Senate

ARTICLE III: JUDICIARY

- Establishes the Supreme Court,
- Allows for inferior courts (Judiciary Act of 1795)
- Right to trial by jury guaranteed
- Some argue the language implies judicial review

ARTICLE IV: FULL FAITH AND CREDIT – Citizens of one state have all rights and privileges in other states

ARTICLE V: AMENDMENT PROCESS - Describes the methods of amending the Constitution

Amendments may be:

1. proposed by 2/3s of both Houses, or
2. national convention requested by 2/3s of state legislatures, and
3. amendments must be ratified by 3/4s of states legislatures,
4. or 3/4s of state conventions (conventions have been used only once with the repeal of Prohibition)

ARTICLE VI: SUPREMACY CLAUSE - Laws in conflict with state statutes and treaties of the U.S. are superior to those of the states.

ARTICLE VII: RATIFICATION - Nine states required to ratify the Constitution and for it to become functional. (For dates of ratification, see p. 17.)

Finally, the institution of slavery was mostly avoided as the Southern states would not have signed on if the Northerners had banned slavery. In 1807, Congress made a slight move designating 1808 as the year to end slave trading in the District of Columbia. However, at this point in time, the South had a self-sustaining slave population caught in perpetual servitude from generation to generation. In the end, the conflict was left for another day, and as we know, that day of resolution proved to be the bloody Civil War.

ADDITIONAL RESOURCES

To search the Constitution, visit the Legal Information Institute of Cornell University website at:

<http://www.law.cornell.edu/constitution/constitution.overview.html>

For another search, try: https://www.usconstitution.net/xconst_A1Sec2.html

FAQ: HOW WAS THE CONSTITUTION ADOPTED?

ANSWER: The proposal of a new constitution moved quickly through the states for ratification and the new government came into being in 1789.

DETAIL: Article VII of the Constitution called for state conventions to adopt the form of government. It also specified that the affirmation of nine states would signify the adoption of the Constitution.

George Mason and Edmund Randolph left Philadelphia without signing the constitutional proposal. Randolph cited a lack of a bill of rights and protection for the individual. Patrick Henry would raise concerns about the phrase “We the people,” and continued to favor “We the states,” as originally penned, but later changed by Governor Morris.

The opposition coalesced into the Anti-Federalists while the proponents became the Federalists (yes, labeling was important even in 1787-8). Being suspicious of increased centralized authority, the Anti-federalists quickly penned their concerns. The Pennsylvania Packet and Letters from the Federal Farmers (both groups tried to grab the title federalist, but the constitutional proponents won the day) warned that a small, powerful elite would control a central mechanism and threaten the freedom so recently won from British rule. Writing as *Brutus*, George Mason and Richard Henry Lee warned that liberty could easily slip away.

On June 21, 1788, New Hampshire became the ninth state to ratify the Constitution, but the reality of the nation without Virginia and New York seemed bleak to put it mildly. The debate also caused the constitutional supporters to pen their thoughts. The *Federalist Papers* published under the name *Publius* (Alexander Hamilton, James Madison, and John Jay), laid out the positive argument for the Constitution. Virginia and New York soon followed suit with the other nine states (see ratification list below) with a call similar to that of Massachusetts to add a bill of rights. As a guiding light into the Founders thoughts and intentions, these writings are still considered by many to be the most significant American political writings ever published. These 85 editorials, later compiled into a book and became the “Bible” to defend the new constitution. In many American Government textbooks and courses, two

are almost always emphasized. *Federalist No. 10* and *Federalist No. 51*, both by Madison, are included here for a quick summary. However, there is no substitute for reading the full essays!

Madison wrote *Federalist No. 10* to argue the advantages of a large republic. Madison asserted factions ruined the Articles of Confederation, but the new constitutional arrangement would solve this problem. The unity of a large geographic area, Madison argued, allowed people to make decisions, to agree and disagree, but yet no one “faction” could take full control of government. People could have their debates and disagreements, but no one faction could grab full control of all the ruling mechanisms. Unlike the Frenchman Montesquieu, Madison believed that a large republic should be preferable to a small republic because a large republic with several states would thwart efforts of a small group to gain power.

Federalist No. 51, also written by Madison, gave the rationale for developing the system of checks and balances as well as the separation of powers to retain self-government. Here he penned his famous lines asserting that if men were angels we would have no need for government. Similarly, if angels ruled men, we would not need government, but neither is the situation of the world. We must allow governance, because men are not angels, and we need to have checks on government, because angels do not rule.

Arguing that ambition can frustrate ambition, Madison asserted that the multiple divisions of power in the U.S. act to preserve the liberty of the people. In the large republic of the U.S., the people are first protected by having power divided between two governments: the federal and their states. Then the multiple branches of the legislature (which is divided), executive, and judiciary at the two levels divide power and again frustrate would be ruling factions. The legislative branch is the most powerful, and as a result should be divided itself with separate procedures to ensure that abuse is frustrated. The two governmental entities, as well as the separation of powers within the branches, will preserve liberty.

The Federalists had the early momentum, and ratification came rather quickly until Massachusetts. There the Anti-Federalist opposition gained enough ground that the ratifying convention approved the governmental changes, but also requested a bill of rights. This would prove to be the primary

contribution of the Anti-Federalists, and the first ten amendments, proposed by the First Congress, provided the protection of personal liberty Mason sought.

CONSTITUTION RATIFICATION CHRONOLOGY

Delaware 12/1/1787

Pennsylvania 12/12/1787

New Jersey 12/18/1787

Georgia 1/2/1788

Connecticut 12/9/1788

Massachusetts 2/6/1788

Maryland 4/28/1788

S. Carolina 5/23/1788

New Hampshire 6/21/1788

Virginia 6/25/1788

New York 7/26/1788

N. Carolina 7/11/21/1789

Rhode Island 5/29/1790

ADDITIONAL RESOURCES

Comparison of the Articles of Confederation to the Constitution:

<https://www.usconstitution.net/constconart.html>

Federalist Papers at: http://avalon.law.yale.edu/subject_menus/fed.asp

FAQ: HOW WAS THE BILL OF RIGHTS ADOPTED?

ANSWER: The First Congress sent 12 articles to the states in 1789 for consideration to bolster the guarantee of individual liberties and further define the limited scope of the federal government. The states ratified ten of the articles by the end of 1791.

DETAIL: In the First Congress, Madison proposed nine amendments to the Constitution in answer to the Anti-federalist call for a bill of rights. These were changed in committee, and Congress quickly settled on 12 proposals sent these to the states on September 25, 1789:

- 1st Article-the number of representatives for the House to be divided proportionately and limited in number
- 2nd Article-any raise passed by Congress for itself will not be effective until the next Congress
- 3rd Article-freedom of speech, religion, and press; right to assembly and petition guaranteed
- 4th Article-right to bear arms
- 5th Article-no forced quartering of troops in time of peace
- 6th Article-security against unreasonable search and seizure, probable cause must be demonstrated for warrant to be issued
- 7th Article-criminal trial rights explained, right to avoid testifying against self, due process
- 8th Article-right to speedy trial in criminal cases, trial by jury, face accuser
- 9th Article-right to trial by jury in civil case and appeal of decision
- 10th Article-freedom from excessive bails, fines, and punishment
- 11th Article-if not listed does not deny rights to people

12th Article-those rights not listed reserved to states or people.

Obviously, Articles 3-12 became the first ten amendments, the Bill of Rights. After receiving the 12 articles in 1789, the states wasted little time. In slightly over two years, December 15, 1791, (rocket speed in political terms), the Bill of Rights had been ratified by 3/4s of the states (see ratification list below). The finalized Bill of Rights guaranteeing certain rights that we know today is as follows:

1st Amendment-freedom of speech, religion, and press; right to assembly and petition guaranteed

2nd Amendment-right to bear arms

3rd Amendment-no forced quartering of troops in time of peace

4th Amendment-security against unreasonable search and seizure, probable cause must be demonstrated for warrant to be issued

5th Amendment-criminal trial rights explained, right to avoid testifying against self, due process

6th Amendment-right to speedy trial in criminal cases, trial by jury, face accuser

7th Amendment-right to trial by jury in civil case and appeal of decision

8th Amendment-freedom from excessive bails, fines, and punishment

9th Amendment-if not listed does not deny rights to people

10th Amendment-those rights not listed reserved to states or people.

The first proposed article has not been adopted as an amendment but has been implemented in various bills that have passed Congress (the House of Representatives is currently holding at 435 divided proportionately on each census every 10 years). In an interesting quirk, 2nd Article became the 27th Amendment.

Only two more amendments were ratified before the first civil rights movement immediately following the Civil War, 11th federal suits cannot be brought from citizens of one state against another state or from foreign citizens, and 12th President and Vice-President run on the same ticket. These were the only amendments until the end of the Civil War that brought a flurry of activity.

BILL OF RIGHTS RATIFICATION CHRONOLOGY

New Jersey 11/20/1789

Maryland 12/19/1789

North Carolina 12/22/1789

South Carolina 1/19/1790

New Hampshire 1/25/1790

Delaware 1/28/1790

New York 2/24/1790

Pennsylvania 3/10/1790

Rhode Island 6/7/1790 (1, 3-12)

Vermont 11/3/1791

Virginia 12/15/1791

ADDITIONAL RESOURCES

You may view the Bill of Rights at: <https://www.archives.gov/founding-docs/bill-of-rights-transcript>

Bill of Rights Institute: <https://www.billofrightsinstitute.org/founding-documents/bill-of-rights/>

27th Amendment history: <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3017&context=flr>

FAQ: BEYOND THE BILL OF RIGHTS, WHAT OTHER AMENDMENTS HAVE BEEN ADDED TO THE CONSTITUTION?

ANSWER: In total, there are 27 Amendments that have been added at various times, for various purposes. Of these, 26 were proposed by Congress and sent to state legislatures for ratification. Only one, the 21st (Prohibition), was proposed by Congress and ratified by state conventions. The other two methods, a convention of states to propose amendments and ratified by state legislatures, or a convention of states to propose amendments ratified by state conventions, have never been used (p. 10 above).

DETAIL: Although there have been 17 more amendments adopted after the initial 10 of the Bill of Rights, only two more were ratified before the First Civil Rights Era immediately following the Civil War. These were:

- 11th Federal suits cannot be brought from citizens of one state against another state or from foreign citizens (ratified 1795).
- 12th President and Vice-President run on the same ticket.

The end of the Civil War brought a flurry of activity. The three amendments from the First Civil Rights Era are:

- 13th Slavery is prohibited (ratified 1865).
- 14th Anyone born in U.S. is a citizen; due process and equal protection applies to the states.
- 15th Right to vote is for all male citizens.

The amendment process would not be picked up again until the Progressive era of the early twentieth century (1900-1918). The amendments provided by Progressives were:

- 16th Income tax.
- 17th Direct election of senators.
- 18th Prohibition.
- 19th Women have the right to vote.

Again, the amendment process had a lull until the presidency of Franklin Roosevelt.

- 20th Presidential inauguration will be on January 20; Congress convenes on January 3.
- 21st Prohibition is repealed.
- 22nd A president is limited to two terms, or 10 years total if fulfilling another's term .

After these three, we have had five amendments to address specific issues.

- 23rd Washington, D.C. has three electoral votes.
- 24th Poll taxes are prohibited.
- 25th Clarifies what constitutes presidential disability and how that can be determined by the cabinet, and also clarifies succession to the presidency in case of vacancy.
- 26th Voting age will be 18.
- 27th A setting Congress cannot vote itself a raise, it will apply to next the Congress.

I am certain that you are familiar with at least some of these amendments. Obviously, the definitions here are short and incomplete, but this is a quick reference. Please see below for resources to find fuller, more in-depth explanations of each amendment.

ADDITIONAL RESOURCES

Cornell Law School lists amendments at, <https://www.law.cornell.edu/constitution/overview>

FAQ: WHAT IS FEDERALISM?

ANSWER: Federalism has become a term used to identify two sovereign governments exercising authority over the same geographic area. In America, this refers to the United States government (sometimes referred to as the federal government), and the various states.

DETAIL: Often the terms of national and federal are used interchangeably, but this is incorrect. Federalism is a political system in which there are concurrent units of government; governments that have specific authority, and the existence of each entity is protected.

The concept of federalism has changed significantly over the years being impacted by events, Supreme Court decisions, Congressional action, and funding policies. As a result, almost every American government textbook will outline three broadly defined eras of federalism: dual (or divided sovereignty) federalism, cooperative (or marble cake) federalism, and new federalism. With these changes, it has become difficult for us today to distinguish between the governmental entities that exercise authority over our lives.

As Americans, we do not have a national government as it operates in Britain or other European countries, or many other regions of the world. To avoid a repetition of tyranny, the Founders purposely designed a federal system to preserve power to the states and keep their new found authority closer to the citizens.

James Madison, the primary author of the Constitution, outlined a federal form of government that placed a system of checks and balances within a separation of powers. This we are taught in every introductory American government class that has ever existed. However, we are often not taught that this system goes beyond the three branches of legislative, executive, and judicial. It also includes the states.

The states would have the most authority under the Constitution and they had mechanisms to overcome unwieldy federal power. This feature would keep nationalists, such as Hamilton, in check. Hamilton should not be perceived of as a negative force, in fact, some nationalism was certainly needed

to pull the states together, but too much nationalism caused great fear among the Founders for fear that the British experience would be relived and liberty would be lost again. Instead, states would retain significant power and keep government close to the people who would serve as a check on their elected officials in the far away national capitol. In fact, Congress committed this to writing and the states ratified reserved powers to the states in the 10th Amendment.

It is somewhat difficult for us so far removed that historic period of our founding to comprehend how important the states were to the system. Think back to the Civil War: Robert E. Lee, an American, became the military leader of the Confederate forces. Again, hard for us to imagine, an American fighting other Americans! We cannot truly comprehend Lee's mindset because we think differently than the historic general. He fought to defend Virginia, his home. Today, we certainly identify with our state, but mostly we identify ourselves as Americans: America first, so to speak. For Lee, it was Virginia first: he lived out his historic understanding of the Constitution as a collection of states.

In the colonial period, there was no United States. There was New York, Pennsylvania, New Jersey, Massachusetts, etc., but no United States. The colonies had little contact with each other: their loyalties were with the king, and as a result, politics, trade, and other vital elements all ran back to London. It was not until Parliament "leaned" on the colonies for money that they began to find common ground for uniting. Benjamin Franklin's Albany Plan for unity among the colonies failed in the 1750's, but the Stamp Act Congress quickly solidified their actions a decade later. Motivation (albeit negative motivation) stimulated the colonies to unified action.

The debate over the Constitution brought forward the old colonial divisions. Political leaders did not trust giving authority to another entity: Virginians should rule Virginians! This perspective persisted throughout the first half of the 19th Century, and after the Civil War, the South continued to resist Northern influence by flexing their state authority.

The 10th Amendment reserves power to the states, this remained the "right way" of government for many Americans throughout the 19th Century. In fact, the states exerted the most influence over daily life. If you had been born on a Missouri farm in 1869, you would have little contact with the federal

government. You had no reason to take a very difficult trip to Washington, D.C. You probably could not have gotten away from the farm work to take the long journey if you had a reason to travel east. Other than the post office, the federal government had very few agency offices in the countryside, so the federal government existed as some distant entity that meant little to your daily life. You probably had two American flags you saw on a frequent basis, one at the school and the other at the post office.

The state, on the other hand, had a physical presence in every county. The county seat could not be more than a day's ride from any part of the county, so the state government was real to the daily lives of citizens. They paid property tax to the county, recorded deeds at the county courthouse, and the state capitol could be reached without traveling across country. So, even after the Civil War, the state predominated in domestic politics.

The railroad began to change all that, however. The federal government began to regulate the rails in the latter part of the nineteenth century based on Congress' authority to regulate interstate commerce solidified by the John Marshall Court in *Gibbons v. Ogden* (1824). Life began to move a little faster as we approached the twentieth century. Income tax came with the 16th Amendment: the federal government was in your pocket! (Not at first as it started with just the very wealthy, but it soon became everybody's bill.) With the advent of the automobile, the federal government started building highways. The "feds" crept into every aspect of life.

The 20th century really expanded the presence of the federal government. During the Progressive Era (1890-1920) the federal government expanded to do such things as inspect our meat and other food as well as drugs under its enumerated (listed in the Constitution) power for Congress to regulate interstate commerce. The Feds began to enforce its laws, so two governments, federal and state, placed two constraints on your activity. The regular police powers of the state (health, safety, and welfare) and an assorted bag of federal rules, regulations, and programs all influenced daily life. Then Congress established a central bank known as the Federal Reserve (1911) and began to collect money directly from citizens (16th Amendment, ratified 1913). However, this proved to be just a warm-up as the Great Depression exploded the presence and activity of the federal government.

In the 1930s, the Franklin Roosevelt's New Deal placed money in the pockets of ordinary citizens: the Civilian Conservation Corps hired young men to plant trees, the original Agricultural Adjustment Act paid farmers money not to farm (until the Supreme Court forced a change and they began receiving payments for conservation methods), and the Works Progress Administration provided money for public projects. The federal government was everywhere.

The concept of federalism underwent even more dramatic change with the election of Lyndon Johnson in 1964. With a majority in both chambers of Congress as well as the presidency, the LBJ administration launched on a path of reform to remake American governmental relations, and they succeeded. This phase of federalism began to utilize categorical grants resulting in the federal government by-passing the states and going directly to local entities. These categorical grants used to alter the nature of federalism were mostly formula grants: a type of grant given to states or municipalities based on meeting certain criteria, such as reaching a certain level of unemployment and then receiving funds for retraining workers. These categorical grants were also used in other areas such as housing and health care. Where Medicaid required all over 65 years of age to join, Medicaid became a cooperative program between the federal government and the states. The level of poverty determines the participation level for Medicaid, and the under the basic statute, the Feds and the states would split the cost of the program 50/50. There are several other arrangements under today's Medicaid agreements. So, from worker retraining to housing, to health care, and other areas as well, the federal government expanded greatly in LBJ's effort to eliminate poverty in the U.S., the Great Society. However, his expansion of federal authority began a reaction that brought about the third broad era of federalism, New Federalism.

In the 1970s, New Federalism, sometimes called competitive federalism began to develop under Richard Nixon and would be expanded significantly by Ronald Reagan. Nixon began revenue sharing and returned some tax money to states and municipalities. The Nixon administration favored block grants over categorical grants (block grants are distributed for general purposes: the recipient has a greater amount of discretion in use: mental health, mass transit, etc.; e.g., a county may use funds to purchase buses rather than build a light-rail system; the accomplishment of a broad goal is more important than

the means of achieving the end). Reagan returned certain programs to states (such as welfare programs) and cut federal aid. This increase in unfunded mandates put states on the hunt to find new revenues resulting in legalized gambling becoming popular within state statutes. The Brady Bill that required local sheriff departments to run background checks with handgun purchases is a good case study of this tension *Printz v. U.S.* (1997). The Republican Contract with America (1994) intensified the devolution of federalism by giving more policy discretion to the states; welfare reform would be an example of this process. However, the tension inherent in the Constitution took another turn the following decade.

The election of Barack Obama in 2008 brought another expansion of federal authority with health care reform. Perhaps no policy more illustrates the Washington-dominant mindset than the Patient Protection and Affordable Care Act of 2009, otherwise known as Obamacare. Again, with supermajorities in both chambers of Congress and the presidency, the longtime dream of liberals came to fruition from a coup d'état of sorts, arm twisting, and a divided electorate. The Court preserved a role for the states in Obamacare by shielding them from coercive measures, but preserved the program with a 5-4 decision in *National Federation of Independent Business v. Sebelius* (2012) when the Chief Justice John Roberts flipped on a technicality considering the penalty for not having insurance to be a tax rather than a penalty (Congress has the power to tax, but not to penalize for failure to purchase insurance, but the Obama administration argued it both ways resulting in the chief justice having his choice of arguments), so the overwhelming majority of the policy became law (the Roberts decision did prevent Congress from requiring states to adopt their version of Medicaid expansion).

Time has proven the tension of federalism, and time has favored the federal government with federal judges finding in favor of federal authority, the federal government offering money to states and municipalities, and the use of defense and elastic clause to the general favor of Congressional authority. The federal government can slightly out raise all the state combined in its revenue production, and as a result, federal expansion has been tangible. However, the money or resources tend to arrive with strings, and it provides the Feds with continually expansive influence. Congress could not force states set a 55 MPH speed limit or require a drinking age of 21, but it could withhold federal funds for road

construction if the states did not adhere to these standards, a system known as conditions of aid. Although the Court has curtailed this practice to some degree, Congress proved to be creative.

In 2005 the federal legislature adopted the Real ID Act placing in practice a uniform identity card through requirements that all state drivers' licenses contain common features. Missouri went so far as adopting a statute forbidding the adoption of Real ID. Finally, the Feds said fine, but Missouri licenses could not be used to enter federal facilities nor could they be used to board interstate commercial flights (Congress has the power to regulate interstate commerce). Alternatives, such as a federal passport, proved to be expensive and cumbersome alternatives, so what did the Missouri legislature do? It adopted a Real ID option for state-issued drivers' licenses.

ADDITIONAL RESOURCES

PBS has an interesting site: <http://www.pbs.org/tpt/constitution-usa-peter-sagal/federalism/#.WbcaqsaQzIU>