

UNIT I: REVIEW

PACKET

***Constitutional
Underpinnings**

Name: _____

CONSTITUTIONAL UNDERPINNINGS

The Founders created the Constitution during the late 18th century – an era when European philosophers were strongly criticizing governments dominated by imperialism and monarchy. The design of the Constitution reflected the influence of the European Enlightenment and the newly emerging beliefs in democracy, liberty for more individuals in society, and the importance of checking the self-interest inherent in ordinary human interactions. At the same time, the founders were far from unanimous in their admiration for direct democracy, and the Constitution they created reflects restraints on democracy. While they believed that monarchies were repressive, they knew that complete freedom would lead to disorder. Their main challenge was to fashion a government that struck a balance between liberty and order.

THE INFLUENCE OF THE EUROPEAN ENLIGHTENMENT

The **European Enlightenment** grew out of the Scientific Revolution of the 16th and 17th centuries, a time of amazing discoveries that form the basis of modern science. Scientific success created confidence in the power of reason, which enlightenment thinkers believed could be applied to human nature in the form of natural laws. Every social, political, and economic problem could be solved through the use of reason.

THE SOCIAL CONTRACT

A seventeenth century English thinker of the 1600s - **John Locke** - believed that in the "**state of nature**" people are naturally free and equal, but that freedom led inevitably to inequality, and eventually to chaos. Locke agreed with other philosophers of the day (such as Thomas Hobbes) that the state of nature changes because humans are basically self-centered. However, he believed that they could be rational and even moral. Even though people serve self-interests first, they fear violence, particularly violent death. He argued that people have **natural rights** from the state of nature that include the right to "life, liberty, and property." In his *Second Treatise of Government*, Locke stated that people form governments to protect these natural rights, giving up their freedom to govern themselves through a social contract between government and the governed. The only valid government is one based on the **consent of the governed**. This consent creates a **social contract** – an agreement between rulers and citizens – that both sides are obligated to honor. If for any reason the government breaks the contract through neglect of natural rights, the people have the right to dissolve the government.

LOCKE IN THE DECLARATION OF INDEPENDENCE

The founders generally were educated men who had read Locke and Hobbes, as well as French philosophers, such as Montesquieu, Voltaire, and Rousseau, who were concerned with freedom, equality, and justice. John Locke, in particular, directly influenced the thinking of the founders, as reflected in the Declaration of Independence. Compare the words of Jefferson with those of John Locke:

Context for
inspiration of
US republicanism



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Locke

"When any one, or more, shall take upon them to make laws whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute to themselves a new legislature."

"Whosoever uses force without right...puts himself into a state of war with those against whom he so uses it, and in that state all former ties are canceled, all other rights cease, and every one has a right to defend himself, and to resist the aggressor"

"A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another..."

"[men] have a mind to unite for the mutual preservation of their lives, liberties, and....property."

"To great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property...."

Declaration of Independence

"When in the course of human events, it becomes necessary for one people to dissolve the political bands that have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them..."

"But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government..."

"We hold these truths to be self-evident: That all men are created equal;"

"that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

" that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

THEORETICAL PERSPECTIVES

John Locke and other Enlightenment thinkers, such as Voltaire, Montesquieu, and Jean Jacques Rousseau, created theories of democracy, republican government, pluralism, and elitism that guided the Founders as they shaped the new government of the United States in the late 18th century.

DEMOCRATIC THEORY

At the time of the founding of the United States almost all other political systems in the world were **authoritarian regimes** in which rulers fully controlled the government, and often held sway over economic and social institutions as well. Ironically, the European country with the most controls on the power of its monarchs was England, the very political system that the Americans so protested for its oppressiveness. In fact, democratic theory has very strong roots in British history, although it may be traced back to much earlier civilizations, such as Ancient Greece. **Democracy** is a form of government that places ultimate political authority in the hands of the people.

Democratic theory has two basic models:

- **Direct democracy** – In this form of democracy, citizens debate and vote directly on all laws. In Ancient Athens, the legislature was composed of all of the citizens, although women, slaves, and foreigners were excluded because they were not citizens. Direct democracy requires a high level of participation, and is based on a high degree of confidence in the judgment of ordinary people. Many of the Founders of the United States were skeptical about the ability of the masses to govern themselves, being too prone to the influence of demagogues (charismatic leaders who manipulate popular beliefs) and too likely to overlook the rights of those with minority opinion. The latter leads to **majoritarianism**, or the tendency for government to do what the majority of people want.

- **Representative Democracy** - The Founders chose to establish a **republic**, or an indirect democracy in which people elect representatives to govern them and to make laws and set policies. This form is also referred to as an **indirect democracy**. In the United States, the people came to hold the ultimate power through the election process, but all policy decisions were to be made by elected officials or those that they appoint. A representative democracy, then, is a compromise between a direct democracy and an authoritarian rule, and has become the most accepted form of democracy in the world today.

Know why we have this ←

- synonym for indirect

vs. theocracy
vs. autocracy

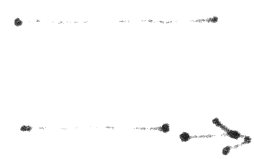
ELITE THEORY → pure oligarchy

How can a republic claim to be a democracy if only a few people actually make political decisions, even if they are elected by the people? **Elite theory** holds that a "representative democracy" is not really based on the will of the people, but that there is a relatively small, cohesive elite class that makes almost all the important decisions for

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the nation. Another version of elite theory argues that voters choose from among competing elites. New members of the elite are recruited through a merit-based education system, so that the best and brightest young people join the ranks of the elite.

Elite theorists argue that the founders believed that a privileged majority should rule in the name of the people with a controlled amount of input from citizens.

PLURALIST THEORY

Another theoretical perspective is pluralism, the argument that representative democracies are based on group interests that protect the individual's interests by representing him or her to the government. The theory is grounded in the notion that in a diverse society such as the United States, too many interests exist to allow any one coherent group of elites to rule. Government decisions are made in an arena of competing interests, all vying for influence and struggling to speak for the people that they represent. Some pluralists have argued that the founding fathers represented different interests (such as rural vs. urban, or north vs. south), and that many points of view were actually represented. The model still works today, as pluralists argue, creating strong links between government officials and their popular base.

link this to most influential interest groups

THE CONSTITUTION

pay attention to me!!!

the solution to one faction becoming too strong.

The Constitution reflects the founders' attempt to balance order with freedom. They generally did not believe that people were fully capable of ruling themselves, but they also wanted to check any tendency toward monarchy. The Constitution is based on five great principles designed to achieve this balance:

= indirect dem. and electoral college

- * **Popular Sovereignty** – the basic principle that the power to govern belongs to the people and that government must be based on the consent of the governed.
- * **Separation of Powers** – the division of government's powers into three separate branches: executive, legislative, and judicial
- * **Checks and Balances** – a political system in which branches of government have some authority over the actions of the others.
- * **Limited Government** – the basic principle that government is not all-powerful, and that it does only those things that citizens allow it to do.
- * **Federalism** – the division of governmental powers between a central government and the states.

→ why do you still not know this?!

BACKGROUND TO THE CONVENTION

During the Revolutionary War, the Continental Congress wrote the Articles of Confederation to provide unity for the separate states that loosely formed the new country. The Articles allowed state governments to retain their powers, and the newly formed central government had severe limitations:

→ Know why this sucked!



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initially from
a perspective.



the solution is
one for a person
for a person.

to me it
is a very
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- The central government consisted only of a Congress in which each state was represented equally.
- No executive or judiciary branches were created.
- The central government could not levy taxes. It could only request money from the states.
- The central government could not regulate commerce between states. The states taxed each other's goods and negotiated trade agreements with other countries.
- No law enforcing powers were granted to Congress.
- No process for amending the Articles was provided.
- States retained all powers not specifically granted to Congress.

→ how did the Constitution address these?
Agreements and Compromises

- **The Great Compromise** (also called the Connecticut Compromise) called for one house in which each state would have an equal vote (The Senate) and a second house (The House of Representatives) in which representation would be based on population. Unlike the Virginia Plan, the Senate would not be chosen by the House of Representatives, but would be chosen by the state legislatures. The House of Representatives would be directly elected by all voters, whose eligibility to vote would be determined by the states. The Compromise was accepted by a very slim margin, and the Convention was able to successfully agree on other controversial issues.

— until
 17th
 amendment

Other Compromises

→ bigger picture: compromise was necessary for ratification b/c of PLURALISM!

- Another disagreement at the Convention was based on North/South differences, particularly regarding the counting of slaves for purposes of apportioning seats in the House. The South wanted to count slaves in order to increase its number of representatives, and the North resisted. The delegates finally agreed on the **Three-fifths Compromise**, which allowed southern states to count a slave as three-fifths of a person, allowing a balance of power between North and South.
- Another debate concerned the selection of the president. The initial decision was for the president to be selected by Congress, but the delegates were concerned about too much concentration of power in the legislature. On the other hand, they feared direct election by the people, especially since the House of Representatives were to be popularly elected.

The Compromise was to leave the selection of the president to an electoral college — people selected by each state legislature to formally cast their ballots for the presidency.

— just US —
 no one else
 uses this to
 elect president

AMENDING THE CONSTITUTION

The Founders designed the amendment process to be difficult enough that Congress could not add so many amendments that the original document would end up with little

1

How are the chromosomes arranged at the end?



1000 - 1000
1000



Terminal

Number of chromosomes in the cell
The number of chromosomes in the cell



1000 - 1000
1000
1000



meaning. The process requires action by BOTH the national government and the states before an amendment may be passed.

Formal Amendments

The Constitution may be formally amended in four ways:

- Amendments may be proposed by a 2/3 vote of each house of Congress and ratified by at least 3/4 of the state legislatures. All but one of the amendments have been added through this process. *you have to know the fractions*
** this one*
- Amendments may be proposed by a 2/3 vote of each house of Congress and ratified by specially called conventions in at least 3/4 of the states. This method was used once – for the 21st Amendment that repealed Prohibition – because Congress believed that many state legislatures would not vote for it.
- Amendments may be proposed by a national constitutional convention requested by at least 2/3 of state legislatures and ratified by at least 3/4 of the state legislatures.
- Amendments may be proposed by a national constitutional convention and ratified by specially called conventions in at least 3/4 of the states.

The last two methods have never been used to amend the Constitution.

Informal Amendments

The Constitution is written broadly enough that change can occur within our political system through interpreting the words to fit changing needs and events. All three branches have contributed to informal amendment of the Constitution.

* **Legislature** – Congress has passed laws that reinterpret and expand Constitutional provisions. For example, the Commerce Clause allows Congress to regulate and promote interstate and international commerce. Over time, Congress has passed many laws that define the Commerce Clause, including regulations on forms of commerce that didn't exist in 1789, such as railroad lines, air routes, and internet traffic.

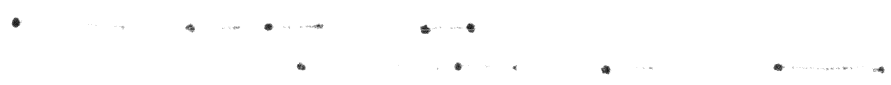
* **Executive Branch** – Presidents may negotiate executive agreements with other countries, an authority not mentioned in the Constitution. The Constitution requires that foreign treaties be ratified by the Senate, but executive agreements do not. These agreements are used to circumvent the formal process, especially for routine matters that might simply slow the work of the Senate down.

* **Judicial Branch** – Of all the branches, the judiciary has been the most influential in interpreting the Constitution. Article III defines the power of the judiciary very broadly, but does not specifically mention judicial review – the power

John Marshall = BAMF



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of the courts to declare statutes unconstitutional and interpret the Constitution when disputes arise. That power was first established in *Madison v. Marbury* in 1803, when Chief Justice John Marshall claimed judicial review as a prerogative of the court in his famous majority opinion issued in the case.

FEDERALISTS VERSUS ANTIFEDERALISTS

The delegates agreed that the Constitution would go into effect as soon as popularly elected conventions in nine states approved it. The debate over ratification – the formal approval of the Constitution by the states – raged throughout the country, with supporters of the new government calling themselves Federalists, and their opponents, the Anti-Federalists. Federalists supported the greatly increased powers of the central government and believed that the Constitution adequately protected individual liberties. The Anti-Federalists believed that the proposed government would be oppressive and that more individual freedoms and rights should be explicitly guaranteed. Pamphlets, newspapers, and speeches supported one view or the other.

THE FEDERALIST PAPERS

- Ratification of the Constitution was defended by the Federalist Papers, written by Alexander Hamilton, James Madison, and John Jay. These documents contain some of the most basic and brilliantly argued philosophical underpinnings of American government. Two famous papers are Federalist #10 and Federalist #51.
- The Federalist #10 argued that separation of powers and federalism check the growth of tyranny: If "factious leaders...kindle a flame within their particular states..." leaders can check the spread of the "conflagration through the other states." Likewise, each branch of the government keeps the other two from gaining a concentration of power. Federalist #10 also argues that Constitutional principles guard against the dangers of a direct democracy, or the "common passion or interest...felt by a majority of the whole...such [direct] democracies have ever been spectacles of turbulence and contention." Madison argues that a long-lived democracy must manage its interest groups, even though these "factions" can never be eliminated.
- The Federalist #51 explained why strong government is necessary: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."

THE BILL OF RIGHTS

- A compromise between Federalists and Anti-Federalists was reached with the agreement to add ten amendments that guaranteed individual freedoms and rights. With this agreement, the Constitution was finally ratified by all the

not originally part of Constitution
why did they have to add it

nat'l government good

nat'l government bad

we need to control them NOT get rid of them

anti-state argument

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states in 1789, and the **Bill of Rights** was added in 1791. Without these crucial additions, the Constitution would not have been ratified in several key states.

- The Constitution has only been amended 17 times since 1791. After 1865 the language of the amendments changed from "Congress shall make no law..." to "Congress shall have the power to ..."

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Articles

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Formal Amendment Process

One major weakness of the Articles of Confederation was the amendment process, which required unanimous approval for amendments to become effective. The framers of the Constitution anticipated the need to change the Constitution and provided a process to amend the Constitution (Article V) that required both state and national action. Amending the Constitution requires proposal, a national function, and ratification, a state function. Amendments may be proposed in Congress by two methods and ratified by two methods, creating four possible methods for formally amending the Constitution.

- ♦ proposed by two-thirds vote of each house of Congress and ratified by three-quarters of the state legislatures (used 26 times)
- ♦ proposed by two-thirds vote of each house of Congress and ratified by special conventions in at least three-quarters of the states (used once, to ratify the Twenty-first Amendment)
- ♦ proposed by a national convention called by Congress at the request of two-thirds of the state legislatures and ratified by three-quarters of the state legislatures (never used)
- ♦ proposed by a national convention called by Congress at the request of two-thirds of the state legislatures and ratified by special conventions in at least three-quarters of the states (never used)

Formal Amendments

Formal amendments are written changes to the Constitution. They add to, change the wording of, or delete language from the Constitution. Only 27 formal amendments have been added to the Constitution since its adoption. The first ten amendments, the Bill of Rights, were added in 1791.

Informal Amendment Process

Although the United States Constitution has been formally changed only 27 times, there have been many changes in the way in which the American government operates. Most of those changes have come about through the informal amendment process and do not involve actually changing the wording of the Constitution. Informal changes in the Constitution may occur in the following ways:

- ♦ **legislative actions:** Congress has passed various acts that have altered or made clear the meaning of the Constitution. For example, under Article III Congress is given the authority to create lower courts, which they did through the Judiciary Act of 1789.
- ♦ **executive actions:** The manner in which presidents use their powers can create informal amendments and expand presidential authority. The use of executive agreements rather than treaties allows the president to bypass the Senate.
- ♦ **judicial interpretation/judicial review:** The people who serve as judges and the times in which they serve affect how courts interpret laws. The concept of judicial review resulted from *Marbury v. Madison* (1803); it is not mentioned in the Constitution.
- ♦ **custom and usage:** Traditions that have been incorporated into the political system and which have lasted over time have changed the meaning of the Constitution. Senatorial courtesy in the Senate and the "no-third-term" tradition in the Presidency (until the Twenty-second Amendment made it part of the Constitution) are examples.

The Constitutional Basis of Federalism

Although the term federalism is not found in the United States Constitution, it is clearly defined in the delegated, concurrent, and reserved power of the national and state governments.

- ♦ **delegated powers:** expressed, or enumerated powers, those specifically given to the national gov't (Articles I-V)
- ♦ **implied powers:** although not expressed, powers that may be reasonably inferred from the Constitution (Article I, Section 8, Clause 18 - the Necessary and Proper or Elastic Clause)
- ♦ **inherent powers:** powers that exist for the national government because the government is sovereign - sketch...
- ♦ **concurrent powers:** powers that belong to both the national and state governments
- ♦ **reserved powers:** powers belonging specifically to the state because they were neither delegated to the national government nor denied to the states (Article IV; Amendment 10) - NOT GIVEN TO STATES - watch the wording

National Powers (Expressed, Implied, Inherent)	National and State Powers (Concurrent)	State Powers (Reserved)
<ul style="list-style-type: none"> ♦ Regulate interstate commerce ♦ Coin and print money ♦ Declare war ♦ Establish federal courts below the Supreme Court ♦ Conduct foreign relations ♦ Make all laws "necessary and proper" ♦ Acquire and govern U.S. territories and admit new states ♦ Regulate immigration and naturalization 	<ul style="list-style-type: none"> ♦ Levy taxes ♦ Borrow money ♦ Spend for general welfare ♦ Establish courts ♦ Enact and enforce laws ♦ Charter banks 	<ul style="list-style-type: none"> ♦ Regulate intrastate commerce ♦ Establish local governments ♦ Establish public school systems ♦ Administer elections ♦ Protect the public's health, welfare and morals ♦ Regulate corporations ♦ Establish licensing requirements for certain regulated professions

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CITY

Prohibited powers - powers that are denied to the national government, state governments, or both (Article I, Sections 9 and 10; Amendments); For example, neither the national government nor state governments may pass an ex post facto law or a bill of attainder.

Writ of habeas corpus

Interstate Relations

Article IV of the Constitution addresses the issue of relationships between the states. It offers several provisions:

- ♦ **full faith and credit clause:** States are required to recognize the laws and legal documents of other states, such as birth certificates, marriage licenses, drivers' licenses, wills.
- ♦ **privileges and immunities clause:** States are prohibited from unreasonably discriminating against residents of other states. Nonresidents may travel through other states; buy, sell, and hold property; and enter into contracts (does not extend to political rights such as the right to vote or run for political office, or to the right to practice certain regulated professions such as teaching).
- ♦ **extradition:** States may return fugitives to a state from which they have fled to avoid criminal prosecution at the request of the governor of the state.
- ♦ **interstate compacts:** States may make agreements, sometimes requiring congressional approval, to work together to solve regional problems. Some examples are "hot-pursuit agreements," parole and probation agreements, the Port Authority of New York and New Jersey, and regulating the common use of shared natural resources.

Guarantees to the States

Article IV of the Constitution provides national guarantees to the states:

- ♦ republican form of government
- ♦ protections against foreign invasion
- ♦ protections against domestic violence
- ♦ respect for the geographic integrity of states

Advantages of Federalism

- ♦ Ideally suited to large geographic area because it encourages diversity in local government
- ♦ Avoids concentration of political power
- ♦ Accommodated already existing state governments
- ♦ States serve as training grounds for national leaders
- ♦ Keeps government close to the people

Disadvantages of Federalism

- ♦ Inflexibility inherent in a written constitution
- ♦ Complex, with many governments to deal with
- ♦ Duplication of offices and functions
- ♦ Conflicts of authority may arise

KNOW THESE CASES!

Establishing National Supremacy

Article VI of the United States Constitution contains the Supremacy Clause, which helps to resolve conflicts between national and state laws. Because two levels of government are operating within the same territory and over the same people, conflicts are bound to arise. The Supremacy Clause states that the Constitution, its laws and treaties shall be the "supreme law of the land." The Supreme Court upheld this supremacy in *McCulloch v. Maryland* (1819). The Supreme Court continued to expand the powers of Congress over interstate commerce in *Gibbons v. Ogden* (1824).

* *McCulloch v. Maryland* (1819)

The Supreme Court dealt with the issues of the necessary and proper clause and the supremacy clause when Maryland imposed a tax on the Baltimore branch of the Second National Bank of the United States. Chief cashier James McCulloch refused to pay the tax, Maryland state courts ruled in the state's favor, and the United States government appealed to the Supreme Court. The Marshall court ruled that although no provision of the Constitution grants the national government the expressed power to create a national bank, the authority to do so can be implied by the necessary and proper clause (Article I, Section 8, Clause 18). This ruling established the implied powers of the national government and national supremacy, the basis used to strengthen the power of the national government.

* *Gibbons v. Ogden* (1824)

At issue was the definition of commerce and whether the national government had exclusive power to regulate interstate commerce. The New York legislature gave Robert Livingston and Robert Fulton exclusive rights to operate steamboats in New York waters and Aaron Ogden the right to operate a ferry between New York and New Jersey. Thomas Gibbons had received a national government license to operate boats in interstate waters. Ogden sued Gibbons and won in the New York courts; Gibbons appealed to the Supreme Court. The Marshall court defined commerce as including all business dealings,

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and the power to regulate interstate commerce belongs exclusively to the national government. Today, the national government uses the commerce clause to justify the regulation of numerous areas of economic activity.

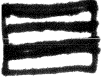
Federalism Today

Since the founding of the United States, society has changed, and federalism has evolved to meet the changes and challenges.

CAKE!

*Dual Federalism

The earliest (1789-1932) interpretation of federalism is the concept of dual federalism, which views the national and state governments each remaining supreme within their own sphere of influence. This form of federalism is often referred to as "layer cake federalism," because each level of government is seen as separate from the other, with the national government having authority over national matters and state governments having authority over state matters. The early beliefs that states had the sole responsibility for educating their citizens and the national government had the sole responsibility for foreign policy issues are examples of dual federalism.



*Cooperative Federalism

In the 1930s the interpretation of federalism shifted to that of the national and state governments sharing policymaking and cooperating in solving problems. Cooperative federalism or "marble cake federalism" as it came to be known, grew from the policies of the New Deal era and the need for the national government to increase government spending and public assistance programs during the Great Depression. The cooperation of the national and state governments to build the national interstate highway system is an example of cooperative federalism. The expansion of cooperative federalism during (President Lyndon B. Johnson's) Great Society required even greater cooperation from the states in return for federal grants.



New Federalism

During the administrations of Richard Nixon, Ronald Reagan, and George H. W. Bush the national government attempted to implement a reversal of cooperative federalism and place more responsibility on the states about how grant money would be spent. The term devolution-a transfer of power to political subunits-has been used to describe the goals of new federalism. An example of new federalism is welfare reform legislation, which has returned more authority over welfare programs to the states.



not the same as COFO b/c US not unitary

Fiscal Federalism

The national government's patterns of spending, taxation, and providing grants to influence state and local governments is known today as fiscal federalism. The national government uses fiscal policy to influence the states through granting or withholding money to pay for programs.

- ♦ **grants-in-aid programs** - money and resources provided by the federal government to the state and local governments to be used for specific projects or programs. The earliest grants often covered public works projects such as building canals, roads, and railroads, and land grants for state colleges.
- * **categorical grants** - grants that have a specific purpose defined by law, such as sewage treatment facilities or school lunch programs; may even require "matching funds" from the state or local governments; categorical grants may be in the form of project grants (awarded on the basis of a competitive application, such as university research grants) or formula grants (awarded on the basis of an established formula, such as Medicaid).
- * **block grants** - general grants that can be used for a variety of purposes within a broad category, such as education, health care, or public services; fewer strings attached so state and local governments have greater freedom in how the money is spent; preferred by states over categorical grants. Gov. likey.
- ♦ **revenue sharing** - proposed under the Johnson administration and popular under the Nixon administration, a "no strings attached" form of aid to state and local governments; could be used for virtually any project but never exceeded more than two percent of revenues; eliminated during the Reagan administration.
- ♦ **mandates** - requirements that are imposed by the national government on the state and local governments; for example, the Americans with Disabilities Act (1990) mandates that all public buildings be accessible to persons with disabilities. Mandates often require state or local governments to meet the requirement at their own expense (unfunded mandates). After the mid-term elections of 1994, the Republican-controlled Congress passed the Unfunded Mandate Reform Act, which imposed limitations on Congress's ability to pass unfunded mandate legislation.

CAKRE!

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THE MEASURE OF THE DAY IS NOT QUANTITY

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THE MEASURE