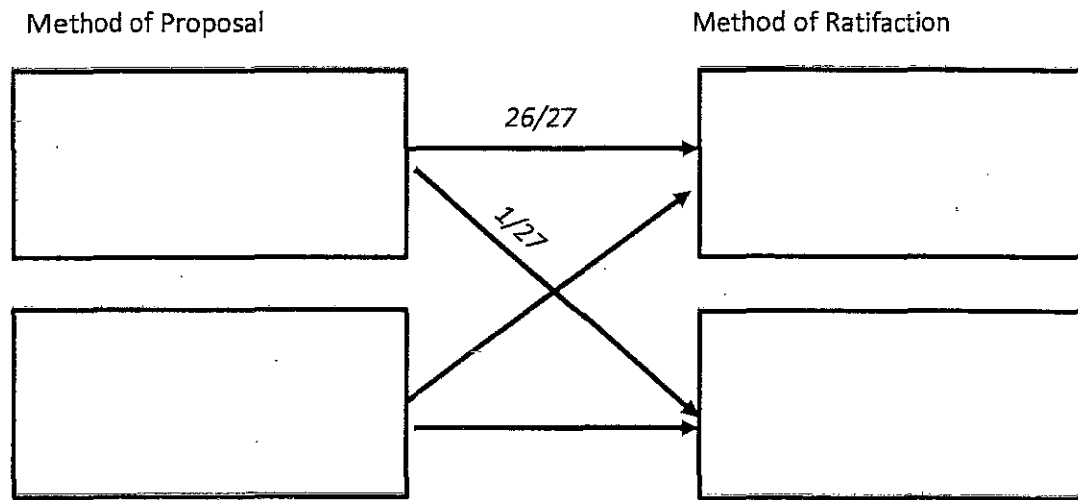


Read pages 153-158 and answer the following questions

1. Diagram in the space below the Formal Amendment Process



2. Explain how the ratification process is an example of the constitutional principle of federalism.
3. Why do you think that the founding fathers decided not to use simple majorities (only 51%) as a method of amending the constitution?
4. Summarize John Adam's fear of abuses by the majority.
5. Provide 2 examples of how our government uses super majorities.
6. According to Milton Friedman why must we accept some form of a majority vote as oppose to relying on unanimous decisions.
7. When are supermajorities most needed? Why

Unwritten Powers

Directions: Read pages 173 to 180 and answer the questions below.

1. What were some methods that the founders used to prevent future government from abusing unwritten powers?
2. What phrases in the Constitution did advocates for a smaller national government fear could be used to increase the size of the national government? Explain how the vocal majority could use these terms to their advantage.
3. What parts of the Constitution are often cited by state right advocates to limit the size of the national government?
4. Explain how it can be argued that the 17th amendment which was passed in 1913, tilted the balance of power in favor of the national government.

Judicial Activism vs. Judicial Originalism

Part 1 <http://www.youtube.com/watch?v=VXeUfVhDVUM>

Part 2 <http://www.youtube.com/watch?v=DRKgOjNPxIM>

Objective- (of a person or their judgment) not influenced by personal feelings or opinions in considering and representing facts.

"historians try to be objective and impartial"

Subjective- based on or influenced by personal feelings, tastes, or opinions.

"his views are highly subjective"

Justice Breyer is considered by many to be an activist justice.

Justice Scalia is considered by many to be an originalist justice.

Part 1

A. Purpose and Consequence

1. Between text, history, tradition, precedent, purpose, and consequence, Justice Breyer believes that purpose and consequence must be emphasized.

Explain why does Justice Breyer feel that this will keep the court more in touch with the people?

2. According to Justice Scalia what is the problem with emphasizing purpose and consequence?

3. According to Justice Scalia to understand purpose what else must you apply?

4. According to Justice Scalia what is the only objective criteria of the law?

B. The constitution as a "living, breathing" document

1. According to Justice Breyer what part of the constitution is permanent?

When activist justices take a "living document" position they are not talking about values but rather how the phrases apply to today's society. Give an example.

2. According to Justice Scalia what is the "living document" fight really about?

3. What branch does Justice Scalia feel is better suited at creating policy that best reflects the need of today?

Part 2

A. Empty bottles

When justice Scalia used the phrase empty bottles he was referring to phrases in the constitution that are empty of meaning and are waiting for society to define their meaning as it applies to today.

1. Who does Justice Scalia feel is better suited to "fill the bottles"

Why?

Closure

1. Do you see value in both positions?

If so explain 1 point made by each justice that you agree with.

If not explain what you perceived as flaws in one of the arguments.

2. Who do you agree with more? Explain your reasoning

3. Who do you think Thomas Jefferson side with? Explain

4. Do you feel that there should be a check in the Supreme Court and if so what do you suggest.

If not why do you feel that they should have the final say.

Jefferson and Hamilton Quotes

Cut each quote and make enough quotes for every group.

"I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition." -Jefferson

"The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution." -Jefferson

"To "regulate commerce with foreign nations, and among the States, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts." -Jefferson

"It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please." -Jefferson

"The second general phrase is, "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary, and consequently not authorized by this phrase." -Jefferson

"It is not denied that there are implied well as express powers, and that the former are as effectually delegated as the latter." -Hamilton

"...that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an instrument or mean of carrying into execution any of the specified powers," -Hamilton

"The proposed bank is to consist of an association of persons, for the purpose of creating a joint capital, to be employed, chiefly and essentially, in loans. So far, the object is not only lawful, but it is the mere exercise of a right which the law allows to every individual." -Hamilton

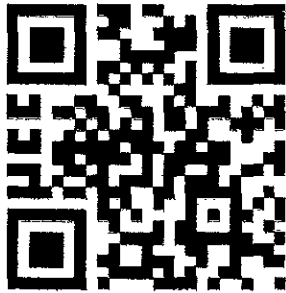
"Accordingly, it is affirmed, that it [the bank] has a relation, more or less direct, to the power of collecting taxes; to that of borrowing money; to that of regulating trade between the States..." -Hamilton

"And in the last place, it will be argued, that it is clearly within the provision which authorizes the making of all *needful rules and regulations* concerning the property of the United States, as the same has been practised upon by the Government." -Hamilton

"For the simplest and most precise idea of a bank is, a deposit of coin or other property, as a fund for *circulating a credit* upon it, which is to answer the purpose of money." -Hamilton

"To deny the power of the Government to add this ingredient to the plan, would be to refine away all government." -Hamilton

The Debate over a National Bank 1791



Use Iphone to click on
QR to link movie clip.

<http://www.youtube.com/watch?v=Oy7IFSS-F0I>

Background: On one level, the Constitution settled the conflict over whether the central government should be strong or weak. The federal system allows for an effective and strong central government while protecting the rights of the states and the people. Disagreements over the proper role of national government did not end with the ratification of the Constitution, however.

One of the first points of conflict was over the government's role in the economy. Alexander Hamilton (Secretary of the Treasury) wanted to use the federal government to promote economic development. Creating a national bank was one part of his economic program. Northern businessmen supported a national bank (and other parts of his plan), but southern planters did not. For example, a uniform national currency was one benefit of a national bank; uniform currency helped northern merchants, but it was unnecessary in the southern economy. In 1791 the bill to incorporate a national bank passed Congress, despite the opposition of many southerners. Since the Constitution makes no mention of a national bank, some argued that it was unconstitutional. President Washington had to decide whether to sign the bill or veto it, and he asked his cabinet for advice on his decision. Hamilton and Thomas Jefferson (Secretary of State) took opposing sides of the issue.

Directions: Take a look at the quotes provided. Each quote is from opinions that Jeffersons and Hamilton wrote explaining to President Washington their position on the formation of a national bank. Based on what each person wrote, take notes in the cooresponding box (on the back of this page) to figure out why each man had the position that they did.

Hamilton	Jefferson

Questions

Why did Hamilton want a national bank and why did he believe it was legal to create one, and why did Jefferson believe the creation of a bank violated the Constitution?

How would you advise Washington? Why?

Thomas Jefferson to James Madison

December 20th, 1787

A Few Comments on the Constitution

I would like to add a few words on the Constitution proposed by our Convention. I like much the general idea of framing a government which should go on of itself peaceably, without needing continual recurrence to the state legislatures. I like the organization of the government into Legislative, Judiciary & Executive. I like the power given the Legislature to levy taxes, and for that reason solely approve of the greater house being chosen by the people directly. For tho' I think a house chosen by them will be very illy qualified to legislate for the Union, for foreign nations &c. yet this evil does not weigh against the good of preserving inviolate the fundamental principle that the people are not to be taxed but by representatives chosen immediately by themselves.

I am captivated by the compromise of the opposite claims of the great & little states, of the latter to equal, and the former to proportional influence. I am much pleased too with the substitution of the method of voting by persons, instead of that of voting by states: and I like the negative given to the Executive with a third of either house, though I should have liked it better had the Judiciary been associated for that purpose, or invested with a similar and separate power. There are other good things of less moment.

I will now add what I do not like. First the omission of a bill of rights providing clearly & without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal & unremitting force of the habeas corpus laws, ~~and~~ trials by jury in all matters of fact triable by the laws of the land & not by the law of nations. . . Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse, or rest on inferences.

The second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the Constitution permits it. He is then an officer for life. This once observed, it becomes of so much consequence to certain nations to have a friend or a foe at the head of our affairs that they will interfere with money & with arms. A Frenchman or an Englishman will be supported by the nation he befriends. If once elected, and at a second or third election out voted by one or two votes, he will pretend false votes, foul play, hold possession of the reins of government, be supported by the States voting for him, especially if they are the central ones lying in a compact body themselves & separating their opponents: and they will be aided by one nation of Europe, while the majority are aided by another. The election of a President of America some years

hence will be much more interesting to certain nations of Europe than ever the election of a king of Poland was. . .

. . . Legislative Executive & Judiciary by oath to maintain that constitution. I do not pretend to decide what would be the best method of procuring the establishment of the manifold good things in this constitution, and of getting rid of the bad. . . constitution for you omitting what you have condemned, & establishing the powers you approve. Even these will be a great addition to the energy of your government.'

At all events I hope you will not be discouraged from other trials, if the present one should fail of its full effect. I have thus told you freely what I like & dislike: merely as a matter of curiosity, for I know your own judgment has been formed on all these points after having heard everything which could be urged on them.

I own (admit that) I am not a friend to a very energetic government. It is always oppressive. The late rebellion in Massachusetts has given more alarm than I think it should have done. Calculate that one rebellion in 13 states in the course of 11 years, is but one for each state in a century & a half. No country should be so long without one. Nor will any degree of power in the hands of government prevent insurrections. France, with all it's despotism, and two or three hundred thousand men always in arms has had three insurrections in the three years I have been here in every one of which greater numbers were engaged than in Massachusetts & a great deal more blood was spilt. . .

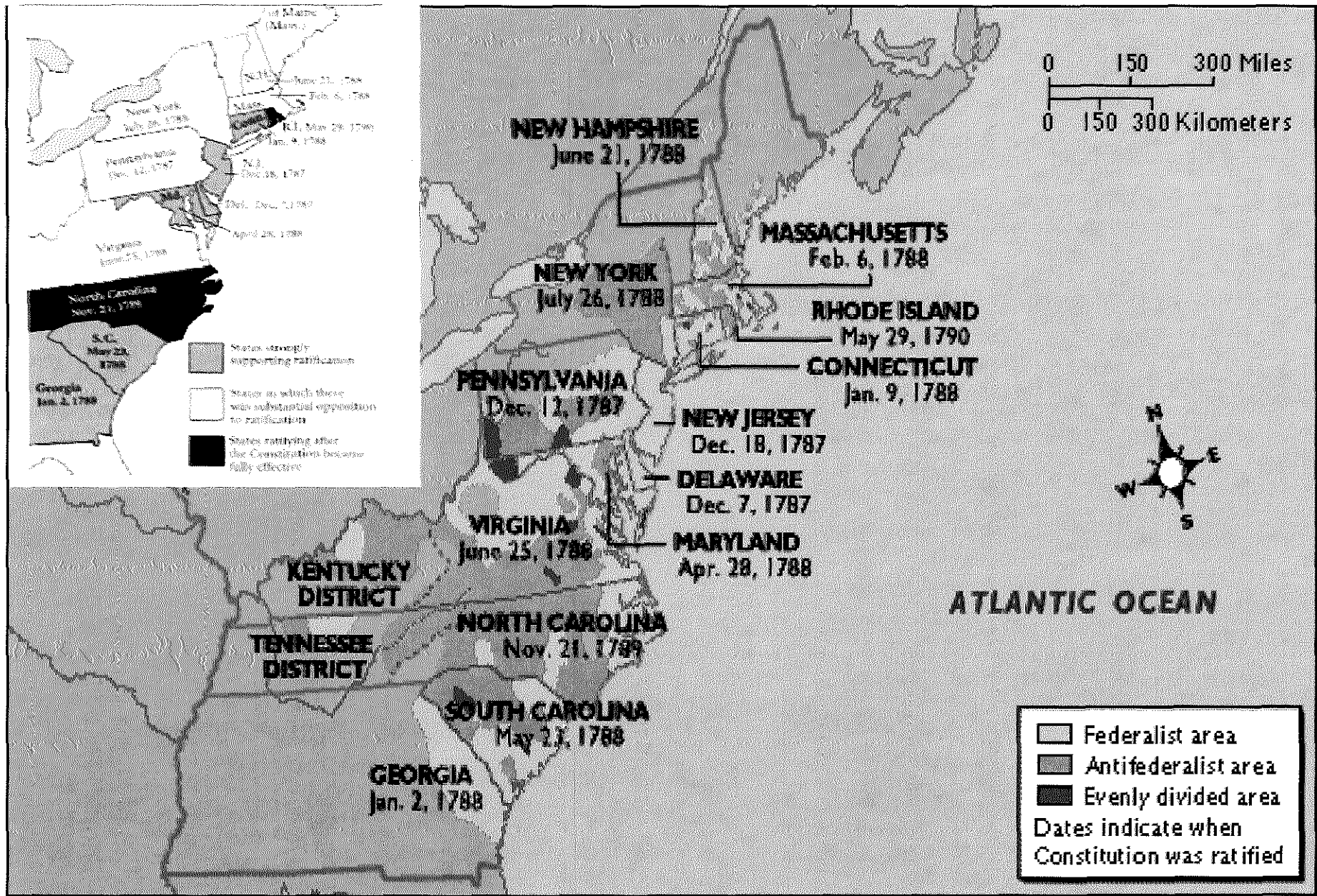
[In regards to ratifying the Constitution] it is my principle that the will of the majority should always prevail. If they approve the proposed Convention in all it's parts, I shall concur in it cheerfully, in hopes that they will amend it whenever they shall find it work wrong. I think our governments will remain virtuous for many centuries; as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America. When they get piled upon one another in large cities, as in Europe, they will become corrupt as in Europe.

Above all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty. I have tired you by this time with my disquisitions & will therefore only add assurances of the sincerity of those sentiments of esteem & attachment with which I am Dear Sir your affectionate friend & servant

P. S. The instability of our laws is really an immense evil. I think it would be well to provide in our constitutions that there shall always be a twelve-month between the ingross-ing a bill & passing it: that it should then be offered to it's passage without changing a word: and that if circum-stances should be thought to require a speedier passage, it should take two thirds of both houses instead of a bare majority.

1. What were Thomas Jefferson's views on . . .
 - a. How the Convention separated the powers of the Federal Government?
 - b. Congress's ability to tax and how it is linked to the people directly voting for their representatives?
 - c. The Connecticut Compromise?
2. Make a list of items that Jefferson found concerning.
3. What were Thomas Jefferson's views on an energetic government?
4. What were his views on the importance of an educated electorate?
5. What were his views on stability of our laws and mutual volunteerism?

Federalist/Antifederalist



Use both maps to help you answer the questions

1. Between rural and urban areas which type of area seemed to be more supportive of the Federalist? Provide a logical explanation.
2. Classify each state below as a federalist or anti-federalist state. Why do you feel each state leaned toward either the federalist or anti-federalist? Provide a logical explanation.

State	Federalist or Anti-Federalist	Reason
PA		
NY		
VA		
NJ		
GA		
RI		
MA		

Key Themes from the Wealth of Nations

1776

Governments Should Have Limited Powers

Prosperity grows in an open, competitive marketplace, where exchange is free of government interference. The role of government is to defend citizens and property, to ensure justice, and to establish the rule of law. These are the activities to which government should ultimately limit itself.

Economic Regulations are Counter-Productive

Governmental regulations of commerce are generally counterproductive and sometimes dangerous. The internal, organic wisdom of the market is the most effective regulator. This idea lines up with Smith's ontological views. Smith sees nature as being fundamentally ordered, and human society has a similar order, so long as it is free from interference.

Beware of Special Interests (protect competition)

When a certain group within society is allowed to exert undue pressure on government, convincing it to be swayed by its interests, the entire society suffers. Vested interests are always harmful, and government should therefore not involve itself in regulation at the behest of a certain social or economic group.

The Benefit of Free Exchange

When the market is left to itself and exchanges are free, both sides benefit. Indeed, no one would enter into an exchange that comes at a loss to them. In foreign commerce, this means that imports and exports can both be very valuable to a society. One society's wealth does not have to come at the expense of another society. A society has more to gain if its trading partners are wealthy.

The Invisible Hand

Freedom in the market and self-interest on the part of individuals do not lead to chaos and disorder. On the contrary, they produce order and concord. This is what Adam Smith referred to as the "invisible hand" that guides society toward stability and harmony, while each individual pursues his or her own best interests.

Gross National Product

The wealth of nations does not consist in the amount of gold and silver in its vaults, as mercantilists believed, but rather in the sum total of its annual production and its commerce. In making this observation, Smith articulates the concept of gross national product. This observation also allows him to make the argument that wealth is increased not by exports alone, but by commerce in general.

The Division of Labor and Specialization

The main focus of Adam Smith's *The Wealth of Nations* lies in the concept of economic growth. Growth, according to Smith, is rooted in the increasing *division of labor*. This idea relates primarily to the specialization of the labor force, essentially the breaking down of large jobs into many tiny components. Under this regime each worker becomes an expert in one isolated area of production, thus increasing his efficiency. Workers can then trade their labor.

Economies of Scale

When more units of a good or a service can be produced on a larger scale, yet with (on average) less input costs, economies of scale (ES) are said to be achieved. Alternatively, this means that as a company grows and production units increase, a company will have a better chance to decrease its costs. According to theory, economic growth may be achieved when economies of scale are realized. Adam Smith believed that the best way to promote economies of scale was by division of labor and specialization.

Relating the Principles of the Constitution to the themes of Adam Smith's Wealth of Nations

Work with your group to answer the following questions:

1. Connect the constitutional principle of Popular Sovereignty to the Adam Smith's views on the benefits of free exchange. Think about mutual benefits and voting. Provide examples.
2. Explain how the competitive checks of the different branches prevent one branch from gaining a "monopoly" of power. Remember the fear of concentrated power.
3. How does the constitutional principle of federalism prevent both the national and state governments from gaining a monopoly of power?
4. Detail at least two examples of how the constitution utilizes the concepts of division of labor and specialization.
5. Constitutions are created to both give and limit government power. Explain why Adam Smith would approve of this idea.
6. In terms of Gross National Product and/or free exchange who Adam Smith be in favor of tariffs? Explain your logic.
7. Relate Adam Smith's views on self-interest and the invisible hand to constitutional decision of unlimited re-election of members of the House of Representatives and the Senate. Would Smith approve or disapprove of unlimited re-election? Explain your logic.
8. Is the utilization of super majorities in the republic consistent with Smith's views on voluntary exchange? Explain your logic.