

HEAD TO DISCOVER

1. How does the Constitution divide power between the federal and state governments?
2. How does the separation of powers prevent each branch of government from becoming too strong?
3. What are the potential drawbacks of the system of checks and balances?
4. What provisions in the Constitution allow for its flexibility?

DEFINE

delegated powers
reserved powers
concurrent powers
supremacy clause
separation of powers
checks and balances
impeachment
veto
override
elastic clause

WHY IT MATTERS TODAY

Many nations have official constitutions that help govern their countries. Use CNN.com and other current events sources to learn more about other national constitutions. Record your findings in your journal.

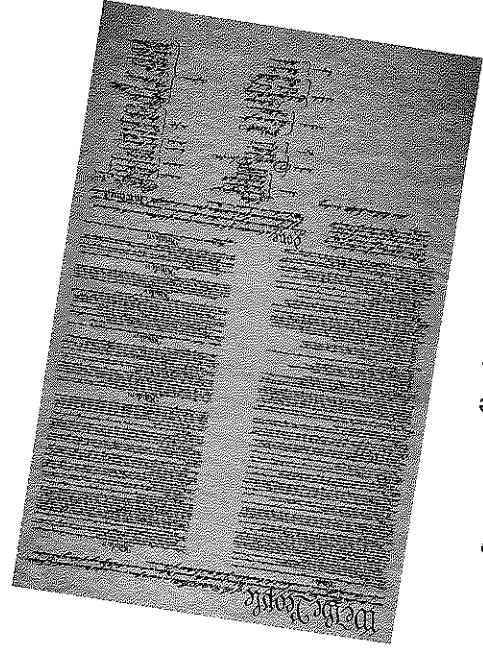


The Constitution: A Living Document



“The Constitution has enough proven flexibility in it so that it can be stretched to accommodate the problems we face.”

—Barbara Jordan, quoted in *Voices in America*, by Bernard Murchland



The Constitution of the United States

In 1987 Barbara Jordan, a former U.S. representative from Texas, reflected on the flexibility of the Constitution. The document was born out of great debate. It is known as a living, flexible document. Even today, the Constitution remains the subject of active debate, just as the signers intended. “I think they intended to draw up a document that would last, that would be adequate for all times and circumstances, one that succeeding generations would adapt and interpret as necessary,” said Jordan. Also writing in 1987, legal scholar Charles Wiggins observed, “The Constitution celebrated today is the product of two hundred years of evolving and enlightened political, moral, and economic standards. That process continues.”

Federalism

The men who met in Philadelphia in 1787 are often referred to as the framers of the Constitution. They framed, or built, a new structure of national government. Drawing on their experiences with British rule and with the American government under the Articles of Confederation, the delegates to the Constitutional Convention struggled to form a stronger federal government. James Madison spoke of the need for the new government.

“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. In framing a government which is to be administered by men over men, the great difficulty is this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.”

—James Madison

The delegates worked to frame a constitution that would provide for a strong central government while protecting states’ rights. To avoid possible abuses of power by the national government, the delegates divided and limited the powers of the federal government. Attempting to prevent conflict between the national government and the state governments, the framers identified powers to be held by each.

Research on the ROM

Free Find: Federal Powers

After reading about the *McCulloch v. Maryland* Supreme Court case on the Holt Researcher CD-ROM, write a short essay that explains what effect this case had on the powers of the federal government.

Delegated, reserved, and concurrent powers. Once the delegates settled on a federal system of government, they had to decide which powers would fall to the federal government and which powers the states would retain. They decided to give the federal government authority in most matters of concern to all the people. These **delegated powers**, which are listed in the Constitution, include the rights to coin money, to regulate trade with foreign nations and among the states, and to raise and support an army and a navy.

All powers not specifically granted to the federal government or denied to the states are kept, or reserved, by the states. These **reserved powers** are guaranteed by the Tenth Amendment, which was adopted in 1791. Examples of the states' reserved powers include establishing local governments and overseeing schools.

The powers that are held jointly by the federal government and state governments are called **concurrent powers**. Examples of concurrent powers include levying and collecting taxes, borrowing money, providing for the public welfare, and establishing courts to apply and enforce laws.

National supremacy. The delegates to the Constitutional Convention recognized that having two levels of government—state and national—exercising power at the same time would lead to some conflicts. Which laws would have ultimate authority?

Delegated, Reserved, and Concurrent Powers

Powers Delegated to National Government

- Declare war
- Raise and support armed forces
- Regulate interstate and foreign trade
- Admit new states
- Establish post offices
- Set standard weights and measures
- Coin money
- Establish foreign policy
- Create all laws necessary for carrying out delegated powers

Powers Reserved to States

- Establish and maintain schools
- Establish local governments
- Conduct elections
- Create corporate laws
- Regulate business within the state
- Create marriage laws
- Provide for public safety
- Assume other powers not delegated to the national government or prohibited to the states

Powers Shared (Concurrent Powers)

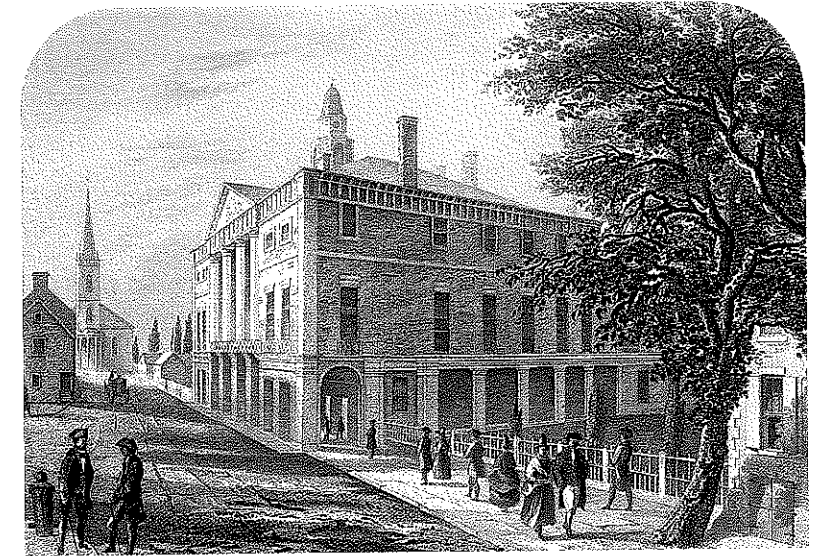
- Maintain law and order
- Levy taxes
- Borrow money
- Charter banks
- Establish courts
- Provide for public welfare

Interpreting Charts The Constitution delegates certain powers to the national government, reserves other powers for the states, and allows some powers to be shared jointly.

Skills Assessment Why did the delegates to the Constitutional Convention support a division of power?

To answer this question, the delegates added a clause to the Constitution: "This Constitution, and the laws . . . and all treaties . . . of the United States, shall be the supreme law of the land." This statement in Article VI of the Constitution is called the **supremacy clause**. It clearly ranks the U.S. Constitution and all federal laws above state constitutions and state laws.

READING CHECK: Categorizing What are the differences between delegated powers, reserved powers, and concurrent powers?



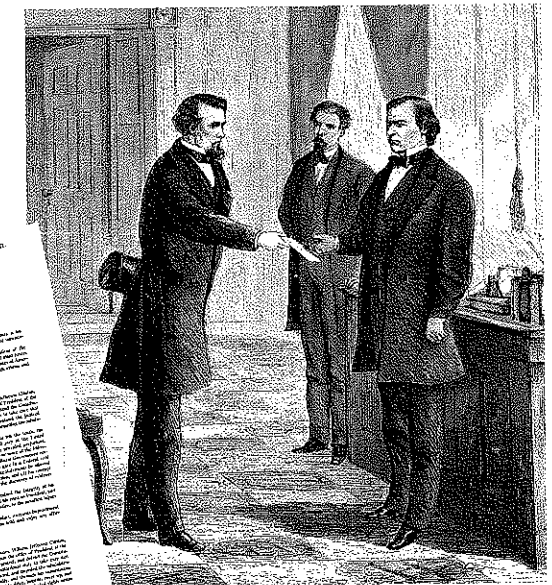
The first Congress under the Constitution met in Federal Hall, which was completed in 1789.

Separation of Powers

To prevent the federal government from abusing its powers, the framers of the Constitution separated the government into three branches: executive, legislative, and judicial. Each branch enjoys specific powers the other branches cannot claim. The legislative branch makes laws, the executive branch sees that they are carried out, and the judicial branch interprets and applies the laws. This **separation of powers** prevents any one branch from becoming too powerful.

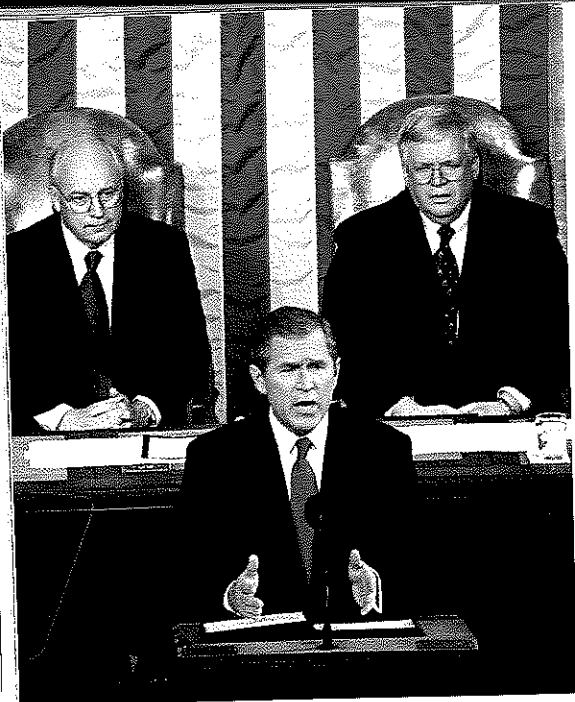
The executive and legislative branches. The separation of powers is upheld by a system of **checks and balances** that gives each branch the means to restrain the powers of the other two. Congress, for example, has a responsibility to check presidential power. The Constitution's many checks on executive power reflect the framers' bitter experience with British royal governors. The president has the power to make treaties, but a two-thirds vote of the Senate is necessary to ratify them. Similarly, the president can appoint ambassadors, federal judges, and other important officials, but only with the "advice and consent" of the Senate. Congress can also check the president indirectly through "the power of the purse." Because it has the authority to appropriate government monies and approve the federal budget, Congress can slow or stop a presidential action that requires funding.

The most powerful restriction on presidential authority is the legal process of **impeachment**. The House of Representatives may impeach, or charge, a president who is thought to be guilty of "treason, bribery, or other high crimes and misdemeanors." An impeached president is then tried by the Senate and, if found guilty, removed from office. The legislative branch has rarely used this process. In 1868, members of Congress attempted to remove President Andrew Johnson for violating a law concerning the removal of cabinet members. The House of Representatives voted for impeachment, but the Senate fell one vote



INTERPRETING THE VISUAL RECORD

Impeachment. In this 1868 wood engraving, President Andrew Johnson receives a summons to appear at his impeachment trial. **How does Johnson's expression reflect his feelings about the trial?**



President George W. Bush addressed Congress and urged its members to support his tax plan.

short of the two-thirds majority necessary for removal from office. In December 1998 the House voted to impeach President Bill Clinton for perjury and obstruction of justice stemming from a statement he had given to a grand jury. The Senate vote fell far short of conviction.

The president, in turn, can check the powers of Congress. The president can **veto**, or reject, bills passed by Congress. Although Congress possesses the power to **override**, or overrule, a presidential veto, the two-thirds majority necessary to do so is often difficult to obtain.

The president can also curb congressional power through influence and pressure. The Constitution grants the president the authority to call Congress into special session to deal with a national crisis. For example, President Abraham Lincoln called Congress into a special session at the outset of the Civil War. The president can also adjourn Congress if its members cannot agree when to end a session. In addition, the president can exert pressure on Congress by recommending measures judged to be “necessary and expedient [advantageous]” to maintaining effective government or by lobbying for specific legislation. The president can also

influence Congress through annual State of the Union messages and through press conferences and public speeches.

The judicial branch. The judicial branch can check legislative power. The Supreme Court has the power to judge laws unconstitutional. This power helps ensure the Constitution’s continued effectiveness. The framers did not include this power in the Constitution. Many legal scholars, however, believe that the framers intended the Supreme Court to exercise such a power. James Madison often argued that the Supreme Court could declare any law void if the justices found that the law violated the Constitution. Madison noted, however, that the Court would still be expected to uphold all laws, “however unjust.”

While arguing for an independent judiciary, Alexander Hamilton warned in *Federalist Paper* “No. 78” that problems may arise from a judiciary capable of reviewing legislation.



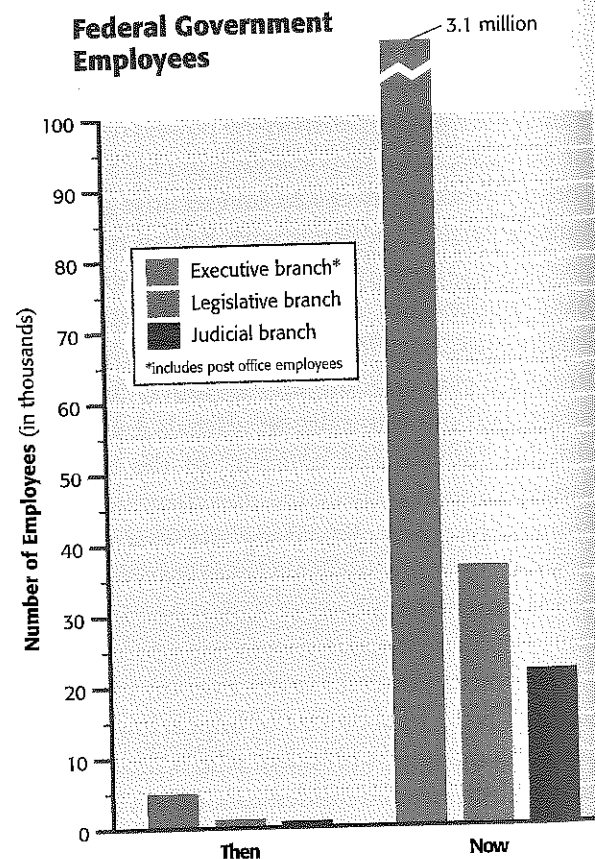
The first two sessions of the Supreme Court were held in the Water Street Exchange, a building in New York City. Judges used gavels like the one above when court was in session.



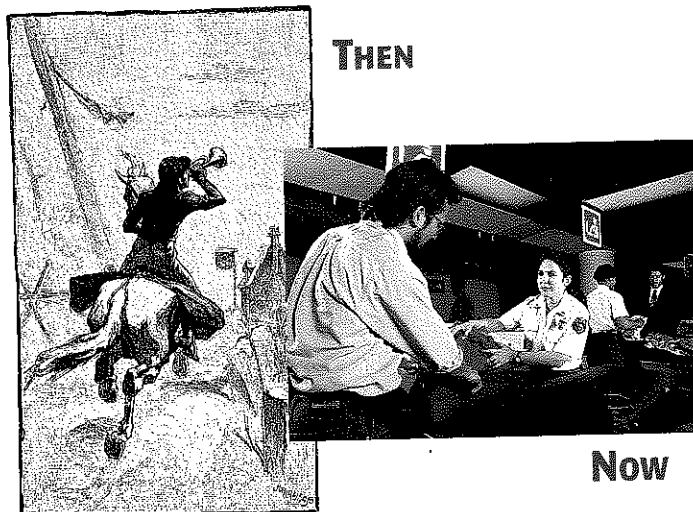
Changing Ways The Federal Government

Understanding Change As a new U.S. government was being established in the late 1700s, hundreds of Americans were employed by the federal government. They delivered mail, surveyed land, and provided essential services that allowed the new government to operate efficiently. Today there are millions of workers fulfilling a wide variety of services for the federal government—including law enforcement, industry and labor regulation, and mail delivery. *Which branch of the federal government has experienced the most growth in employees? What differences do you see between the image of the federal employee from the early 1800s and the image from the 1990s?*

Federal Government Employees



Sources: *Historical Statistics of the United States; Statistical Abstract of the United States: 2000*. Data represents 1816 and 1999.



Primary Source “The interpretation of the laws is the proper and peculiar province of the courts. . . . It therefore belongs to them to ascertain . . . the meaning of any particular act. . . . It can be of no weight to say that the courts . . . may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or . . . in every [judicial decision] upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be . . . the substitution of their pleasure to that of the legislative body.”

—*Federalist Paper* “No. 78”

The executive and legislative branches can both check judicial powers as well. The judicial selection process provides the most basic check. Although the president appoints all federal judges, the Senate must approve them. Just as Congress has the power to impeach the president, it also has the power to impeach judges for “high crimes and misdemeanors.” In addition, Congress can propose constitutional amendments to overturn earlier Court rulings. For example, the Supreme Court ruled unconstitutional a provision in the Voting Rights Act of 1970 that would have lowered the voting age. Congress reacted by passing the Twenty-sixth Amendment in March 1971, which lowered the voting age from 21 to 18. The amendment was ratified by the states less than four months later.

As a further curb on judicial power, the president can pardon or delay the punishment of persons convicted of federal crimes. However, neither the president nor Congress can remove judges from their position simply because they or their decisions may be unpopular. Unless impeached and found guilty of serious crimes, federal judges may hold their offices for life.

READING CHECK: Drawing Inferences How does the separation of powers among the government’s three branches limit the power of each?

The Balance of Powers

In a 1936 speech to the American public, President Franklin D. Roosevelt declared, "The American form of Government [is] a three horse team. . . . The three horses, are, of course, the three branches of government." Over the years, the balance of powers between the three branches of government has shifted—sometimes causing great controversy among the nation's leaders and the public.



President Bill Clinton signs the line-item veto bill into law.

Recently, Americans debated the constitutionality of the line-item veto. The Line-Item Veto Act, which gave the president the authority to veto specific items in a spending bill without vetoing the entire bill, became law in 1996. Supporters of the line-item veto argued that it would help curb government spending, but legal challenges were immediately brought against it. Opponents believed it disrupted the balance of power between the legislative and executive branches. In 1998 the Supreme Court agreed with the opponents and declared the line-item veto unconstitutional because it altered the balance of power between the legislative and executive branches of government.

Critics of the system. The framers built the system of separation of powers and checks and balances into the structure of government to prevent any government branch from exercising too much power. The system, however, has always had its critics.

Some argue that the system permits political disputes to hold up the workings of government. For example, a president who belongs to one political party and a Congress dominated by another party may not agree on necessary legislation. One branch may continually block the actions of the other. In 1995 the Republican-led Congress and President Bill Clinton, a Democrat, were unable to agree on the national budget, resulting in a partial government shutdown. Nevertheless, the system of checks and balances has prevented what the framers of the Constitution feared most: unrestricted governmental power.

✓ **READING CHECK: Evaluating** What are the weaknesses of the system of checks and balances?

Flexibility and Change

The Constitution has remained effective for more than 210 years because it is a living document that can adapt to changes in our society. The Constitution works as well today for an industrialized nation of 50 states and a population of more than 280 million as it did in 1790 for an agricultural nation of 13 states and fewer than 4 million inhabitants.

The continued effectiveness of the Constitution owes much to its flexibility. James Madison urged his colleagues to consider "the changes which ages will produce." To allow for needed amendments, the framers specified a procedure by which the Constitution may be changed—through passing amendments. For example, in 1919, Congress passed by more than a two-thirds

majority the Nineteenth Amendment guaranteeing women's right to vote. The necessary three fourths of the states ratified it in 1920. The framers deliberately made the amendment process difficult, intending it to be used only when a change is critical. Only 27 amendments have been added to the Constitution since 1789, although many amendments have been proposed.

The Constitution's "necessary and proper" clause, also known as the **elastic clause**, has increased the document's flexibility. To the specific powers granted to Congress, this clause adds the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." The elastic clause allows Congress to exert its powers in ways not specifically outlined in the Constitution. For example, the framers of the Constitution could not have anticipated the development of computers and the Internet. Congress, however, has the power to pass laws relating to commerce that may affect items such as new technology that are not covered in the Constitution. In this way, the government can stretch the Constitution to fit changing times.

✓ **READING CHECK: Summarizing** How has the Constitution been able to adapt to change?

Great Debates

The Constitution

For more than 210 years, historians have debated the revolutionary implications of the Constitution. Writing in the 1800s, historian George Bancroft celebrated the U.S. Constitution as a flawless revolutionary document that created a system of government based on democracy and equality.

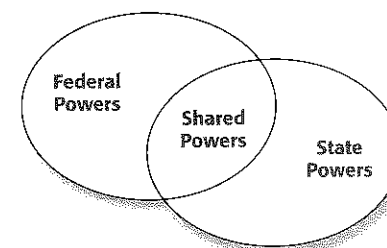
"The Constitution establishes nothing that interferes with equality and individuality," Bancroft noted. "It knows nothing of differences by descent [ancestry], or opinions, of favored classes, or legalized religion, or the political power of property."

This view of the Constitution has been challenged by many historians. Writing in the early 1900s, Charles Beard argued that the framers of the Constitution were acting in their own economic interest. "The dominant classes," he observed, "must . . . obtain from government such rules as are consonant [in agreement] with . . . their economic processes."

Other scholars noted that many Americans such as women, slaves, and men without property were initially left out of the Constitution. Recent scholars have tried to acknowledge both the revolutionary aspects and the limitations of the document. They note that one of the great achievements of the framers was in providing a flexible constitution whose democratic nature could be expanded.

SECTION 3 REVIEW

- 1. Define and explain:** delegated powers reserved powers concurrent powers supremacy clause separation of powers checks and balances impeachment veto override elastic clause
- 2. Categorizing** Copy the graphic organizer below. Use it to list the powers held by the federal government, state governments, and the powers shared by both.



- 3. Finding the Main Idea**
 - a. How did the checks and balances and the separation of powers reflect the concerns of U.S. citizens in the late 1700s?
 - b. How might the system of checks and balances increase public confidence in the government but decrease its efficiency?
 - c. Why can the Constitution be considered a flexible, living document?

- 4. Writing and Critical Thinking**

Supporting a Point of View Imagine that you have been chosen to speak at an anniversary party for the Constitution. Write a speech in which you discuss the provision of the document you think is most significant.

Consider:

- the provisions of the Constitution
- the uniqueness of the provisions
- the effects of the provisions

INTERPRETING THE VISUAL RECORD

The Nineteenth Amendment. Suffragists parade down a Washington, D.C., street in 1913. *How did the suffragists, pictured here, use patriotic symbols to advance their cause?*



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