

power to govern and that political conflict would naturally occur if there were not built-in checks. Because the delegates came from the newly emerging middle class as well as the traditional rich property owners, they quickly saw that factions would exist both in the government and in society. The Federalist Papers (No. 10) pointed out that these factions could ultimately paralyze effective government. Self-interest of the delegates resulted in an agreement that the objective of government should be to protect the property owner. Ultimately a series of checks and balances, outlined in Federalist No. 47, and a structure of government that stressed a separation of powers became the fiber of the new constitution.

Constitutional historian Charles Beard, in his *An Economic Interpretation of the Constitution* (1913), argued that the founding fathers were concerned with protecting the wealth of the property class. He painted a picture of the delegates to the convention as men who were wealthy and who cared about the financial interests of that class.

The compromises reached at the convention included voting, representation, slavery, and trade. Because wealth was such an important consideration, the delegates decided to let the individual states determine the criteria for voting qualifications. Property became the major criterion, and each state was able to determine who was eligible to vote in the national elections for Congress and the president.

Compromise Results in a Bicameral Congress

The thorny issue of how to create a new Congress split the convention between the larger, more populous, states and the smaller ones. The smaller states, led by New Jersey, insisted that each state should have equal representation. The Virginia Plan argued that a legislature based on population would be more equitable. The Connecticut Compromise, also known as the Great Compromise, resulted in the formation of a bicameral (two-house) Congress—one house is represented equally by the states (the Senate) and the other house is represented by population (the House of Representatives).

The Issue of Slavery Is Resolved by the Three-Fifths Compromise

Once the structure of the new Congress was agreed upon, the divisive issue of slavery had to be resolved. There was never a doubt that Jefferson's original proposition that "All men are created equal" would never see the light of day in the new Constitution. Nevertheless, the issues of slave trade and slave representation had to be resolved. The southern states agreed to halt the import of slaves in 1808 if the northern states agreed to return fugitive slaves. More difficult was the issue of representation. If each slave counted as one person, the southerners could have easily held the balance of power in the House of Representatives. Thus, the Three-Fifths Compromise was agreed on. Every five slaves would count as three people for representation and tax purposes. There was also a compromise over the importation of slaves, allowing them to be imported after the Constitution had been ratified for 20 years.

The last major compromise dealt with tariffs. The northerners wanted to tax southern exports to Europe and to protect their own manufactured goods. The South did not want to tax European goods so that their own exports would not be taxed. They agreed to tax only imports.

Economic Issues

The delegates also addressed the weaknesses of the Articles of Confederation. Because a primary concern was protection of the property owner, they dealt with economic issues. Congress was given

the power to tax, regulate interstate and foreign commerce, create a viable national currency, and, in what later became known as the elastic clause, make “all laws necessary and proper” to carry out the stated powers of Congress.

States were strictly prohibited from duplicating the federal government’s powers that would have an impact on the nation’s economy (i.e., denied the power to coin money, regulate interstate and foreign commerce, and interfere with the federal government’s ability to collect debts).

The Electoral College

The founding fathers established the Electoral College in the Constitution as a compromise between election of the president by a vote in Congress and election of the president by the popular vote of qualified citizens. Article II also outlined the role of the Electoral College (even though that term is not used) in the election of the president. Simply stated, the electoral college consists of presidential electors in each state. The number of electors is based on the state’s population. The states with the greatest population have the most electoral votes. When the voter casts a vote for president, in reality the vote goes to one of the presidential electors designated by the candidate in that state. The number of electors for each state equals the number of senators and representatives that state has in Congress. Thus, the number can change based on the census. The candidate who receives the most votes receives all the electoral votes in that state. The candidate with a majority of the electoral votes is elected to office. The electors gather in Washington, D.C., in December and cast their ballots based on the results of the November election. If no candidate receives a majority of the electoral votes, the election of president is determined by the House of Representatives.

The Amendment Process

Because there was concern that the Constitution had to be a living document ensuring that self-government would be successful, Article V of the Constitution provides for the amendment process.

If you do not count the Bill of Rights and the prohibition amendments, the Constitution has been amended only 15 times. The revisions have been significant and help to strengthen, expand, and explain provisions found in the original document. The amendments can also be classified in six ways:

- creating additional power for the federal government such as the legalization of a progressive income tax (Sixteenth);
- limiting power to the state governments, such as prohibiting a state from making laws that deny equal protection for its citizens (Fourteenth);
- granting the right to vote to various groups such as black males (Fifteenth), women (Nineteenth), and 18-year-olds (Twenty-sixth);
- taking away and adding to the power of the voter to elect public officials (Seventeenth);
- direct election of senators (Twenty-second; limiting presidential terms); and
- changing the structure of government (Twenty-fifth, presidential succession and disability).

There are two methods used to amend the Constitution. The one that has been used the most requires a two-thirds vote in both houses of Congress and ratification in three-fourths of the state legislatures. The second method is when Congress must call for a national constitutional convention after a request is made by two-thirds of the state legislatures; then, either three-fourths of the state legislatures must ratify the amendment or three-fourths of ratifying conventions held in the states must approve it. There may also be a time limit placed on the ratification of most amendments passed by Congress. One of the most debated constitutional amendments was the proposed Equal Rights Amendment, which would have guaranteed the equality of rights by the United States

and every state based on sex. This amendment was given seven years for approval, and then an extension to pass in two-thirds of the state legislatures. It died in 1982, falling short of the necessary votes because of political pressure brought by groups opposed to public funding of abortion and others concerned about the effect that affirmative action would have on various labor laws. Other amendments such as the Twenty-seventh, which places restrictions on Congress passing pay raises for its members, took over 200 years to ratify! The vast majority of amendments, including the Bill of Rights, took less than a year to ratify.

If the Constitution is an enduring document, then one must project that other amendments to the Constitution are a real possibility. Such measures as a balanced-budget amendment, a term-limits amendment for Congress, the abolition of the electoral college, and a provision for equal rights for women and homosexuals have advocates. However, as was shown after the Supreme Court ruled in *Texas v Johnson* (1989) that flag burning is a legal form of political protest, Congress failed to pass a constitutional amendment supported by President George H. W. Bush making it illegal to burn or desecrate the flag.

The Bill of Rights Is Debated

After the U.S. Constitution was ratified in 1789, the future success of this young new republic hung in the balance. After struggling with the Articles of Confederation, the United States found in the Constitution a new opportunity to demonstrate that its form of limited government could work. In 1791, fulfilling a commitment made to the Anti-Federalists at ratification conventions, an additional ten amendments, the Bill of Rights, were ratified, keeping a promise made to the Anti-Federalists at the state ratifying conventions. In fact, the entire rationale for including a Bill of Rights in the Constitution was to reinforce this concept of limited government. From the opening words of the First Amendment, "Congress shall make no law respecting," to the due process guarantees of the Fifth and Fourteenth Amendments, the government is told that the rights of its citizens must be protected.

Current Debate over the Role of Government

Issues raised at the Constitutional Convention resulting in the many compromises that stitched the Constitution together have reemerged today. For example, the aftereffect of the September 11, 2001 attacks resulted in the passage of the USA Patriot Act in October and the creation of the Director of Homeland Security, a new cabinet-level official. Public concerns over privacy rights and wiretapping were raised by many citizens and lawmakers. The Patriot Act allows federal officials greater authority in tracking and intercepting communications, both for purposes of law enforcement and foreign intelligence gathering. It gives the Secretary of the Treasury regulatory powers to combat corruption of U.S. financial institutions for foreign money-laundering purposes; it more actively works to close our borders to foreign terrorists and to detain and remove those within our borders; it establishes new crimes, new penalties, and new procedural techniques for use against domestic and international terrorists. The Office of Homeland Security was the latest addition to the cabinet and is responsible for protecting the United States against future terrorist attacks. Each federal agency is directly responsible to the president and makes policy recommendations appropriate to its area. In the summer of 2004, the 9/11 presidential commission held hearings and issued a report that recommended the creation of a new National Counterterrorism Center headed by the Director of National Intelligence. After much political in-fighting in the Republican-controlled House of Representatives, the bill, which was supported by a majority of Democrats, passed both houses in a lame-duck session of Congress. The law, signed by President George W. Bush, created a new coun-

terrorism center with a director appointed by the president and confirmed by the Senate. This director was given broad powers and coordinates intelligence among the many existing agencies. This new director and the agency also have the major responsibility of working with the Department of Homeland Security and becoming a link between federal and state agencies. The law expanded a security system for airlines, expanded security technology to other areas not previously covered such as transportation threats, ports, and illegal immigrants. The law also set up a Privacy and Civil Liberties Board, consisting of private citizens appointed by the president, ensuring that the security policies of the federal government do not breach the civil liberties of Americans.

Another example of an issue that was central at the 1789 Constitutional Convention, the conflict between the federal government and states, was the debate over how much control the federal government should have in education. Between the operations of the federal government and local governments, our lives are deeply affected by a federal form of government. The sheer number of governments that exist nationwide illustrate the complexity of the federal system. If you are concerned with the education of your child, you must be aware of the local requirements set up by your town's school board, and you have to support the school district through some kind of tax system. The state government may set up minimum graduation requirements and laws affecting the certification of teachers. When George W. Bush was elected president in 2000, he initially had to work with a divided Congress. After the 2002 midterm election, the Republicans controlled both houses of Congress, and Bush was able to push his legislative agenda through, passing the No Child Left Behind legislation that helped reform the nation's schools. According to the Department of Education, "The NCLB Act incorporates increased accountability for states, school districts, and schools; greater choice for parents and students, particularly those attending low-performing schools; more flexibility for states and local educational agencies in the use of federal education dollars; and a stronger emphasis on reading, especially for our youngest children." Specifically, the provisions of the No Child Left Behind legislation direct the U.S. Department of Education to "hold schools accountable for academic achievement by setting academic standards in each content area for what students should know and be able to do; gather specific, objective data through tests aligned with those standards; use test data to identify strengths and weaknesses in the system; report school conditions and progress to parents and communities; empower parents to take action based on school information; celebrate schools that make real progress; and direct changes in schools that need help." In 2009, the Department of Education implemented as part of the American Recovery Act the "race to the top" program that encouraged states through grants to satisfy certain educational policies such as performance-based standards for teachers and principals, complying with nationwide standards, promoting charter schools and privatization of education, and computerization. Part of the standards included a "Common Core" curriculum. By 2015, states began to opt out of the grant program because of the Common Core demands. After Donald Trump was elected president in 2016 on a platform to eliminate Common Core, his new Education Secretary turned away from it and began implementing the Every Student Succeeds Act, which Congress passed in 2015. That act gave the states more flexibility and decision making in developing educational policy.

KEY CONCEPT 1.C: THE CONSTITUTION

Among the outcomes the Constitution brought were various methods of making policy that guaranteed the people's views would be represented and that their liberty and freedom would be guaranteed.

The **Big Idea, Competing Policy-Making Interests**, is reflected by this concept.

The Preamble Sets Forth the Goals of the Constitution

- The establishment of justice
- The assurance of domestic tranquility
- The promotion of the general welfare
- The security of individual liberty

Once you consider these principles, you will see how people can differ on the meaning, interpretation, and implementation of these functions of the national government. When you look at specific examples of these functions and how they affect us, you will see the scope of government. Such policy areas as health care, the nature and size of our armed forces, the welfare system, Social Security and Medicare, and the extent to which government should regulate our lives illustrate the expanding role of government and the impact it has on our lives.

THE IMPORTANCE OF GOALS AND PUBLIC POLICY

In evaluating the success or failure of government, always analyze whether the national government is achieving the Preamble's goals, which translate into public policy. Another way of putting it is whether officials are meeting the needs of the public they serve. To make a final judgment, you should ask the following questions about government and politics as you continue reading this text:

- What is the public interest?
- Who determines the parameters of what the public wants?
- How much influence should government have on the lives of its citizens?
- How big should government be?
- How much money should government spend?
- What is the best way to raise money for government spending?
- How should government and its elected officials deal with serious ethical issues such as abortion, euthanasia, and birth control?
- How should government and politicians restore the public's confidence in their elected officials and government?

THE ROLE OF GOVERNMENT HAS DIFFERENT PERSPECTIVES

Government itself must become responsive. It must respect minority rights even though its elected officials were chosen by majority rule. Individual freedom must be respected and is guaranteed through the Bill of Rights. Court decisions such as *Tinker v Des Moines* have reinforced the concept that the First Amendment is applicable even to high school students. Finally, government itself must operate on the basis of consensus and compromise. Otherwise public policy, the measure of whether government succeeds or fails, will not be implemented. During the Obama administration, the cry of "gridlock" was heard because a Democratic president had difficulty achieving his legislative agenda in the face of a divided Congress and then a Republican Congress.

After the Republicans assumed control of Congress in 1994, a divided government again dominated American politics. In 1995, the Republicans tested a weakened president Bill Clinton by forcing a government shutdown caused by a budget stalemate. This backfired when public opinion turned against the GOP. A complete turnaround occurred at the conclusion of the 104th Congress prior to the 1996 election when both the president and Congress reached compromises regarding healthcare portability, the minimum wage, and welfare reform. At the start of the 105th Congress a bipartisan agreement on a balanced budget was reached.

After the contested 2000 election, newly elected President George W. Bush had to face a divided Congress in 2001 when one of his fellow Republicans became an independent and voted with the Democrats, giving the Democrats a single-vote majority in the Senate. This lasted until the 2002 midterm election, when the Republicans again regained control of Congress. In 2006, the Democrats won back Congress as a result of voter discontent with the Iraq War. The Democrats expanded their majorities in both houses in the 2008 election, thus ending divided government.

In 2010, the Republicans regained control of the House of Representatives by winning more than sixty seats. The Republicans also gained six seats in the Senate but failed to win a majority. In 2014, the Republicans took complete control of Congress. Thus, a new era of divided government began with the 114th Congress.

The year 2016 marked an historic end to divided government. Republicans maintained control of Congress and there was a new Republican president. The party promised to overturn many of the initiatives signed into law by President Obama, including the Affordable Care Act.

Required Document

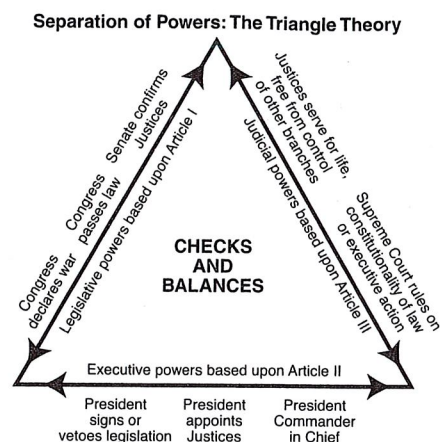
The Constitution Is the Blueprint of How the Government Operates

When studying the Constitution, you should be able to picture a document that is laid out simply and directly. From the clarity of purpose in the Preamble, to the organization and structure of the three branches of government, to the amending process, the Constitution provides for orderly and effective government.

The major characteristics of the Constitution include the following:

- the separation of powers of each branch of government;
- checks and balances including a recognition that a simple majority vote may not be enough of a check;
- a built-in elastic clause as part of Congress's power;
- a reserved power clause giving states power not delegated to the national government;
- rights guaranteed to the citizens;
- an impeachment clause to guarantee the president does not break the oath of office;
- precedents and traditions in creating an unwritten constitution;
- judicial review growing out of interpretation of the power of the Supreme Court;
- an amending process, which is flexible enough to allow for change even though it involves more than a majority vote; and
- the inherent powers of the president.

SEPARATION OF POWERS AND CHECKS AND BALANCES



The first three articles of the Constitution provide the basis of the organization of the government. Article I broadly defines the legislative powers of Congress. It divides the Congress's governing responsibilities between a bicameral (two-house) legislature. The House of Representatives is defined as the body most directly responsible to the people. The Senate, with its makeup based on equal representation, joins in a partnership with the House in passing laws. The rules for impeachment of government officials are also outlined in Article I. It is interesting to note that there are subtle differences (to be discussed later in this unit) between the two bodies. The House of Representatives is considered more representative than the Senate because of its size, shorter terms, and qualifications for office. The term of office for a representative is two years compared to six years for a senator. A person serving in the House has to be at least 25 years old, an American citizen for seven years, and an inhabitant of the state the congressperson represents. A senator, on the other hand, must be at least 30 years old, nine years a citizen of the United States, and a resident of the state the senator represents.

The two houses of Congress created as a result of the 1787 Connecticut Compromise resulted in the establishment of a House of Representatives and a Senate. The House of Representatives is made up of 435 members based on the census taken every 10 years. According to the 2010 census, there is one House seat for every 710,767 people in each state. It also includes "shadow" representatives from the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and American Samoa. Each state has a minimum of two senators and one representative. As a result of the Supreme Court decision, *Baker v Carr* (1962), the principle of "one man, one vote" was established. This decision created guidelines for drawing up congressional districts and guaranteed a more equitable system of representation to the citizens of each state. The Supreme Court has been asked to review some districts in the South to ensure fair racial representation. In another highly controversial decision, the court ruled in 1995 that a racially apportioned district in Georgia set up to comply with the Voting Rights Act of 1965 was unconstitutional based on the equal protection clause of the Fourteenth Amendment. The 2014 Supreme Court voting rights decision left the door open for these kinds of districts to be created. In other situations, some state legislatures created districts that favored the political party in power. This became known as gerrymandering.

When you look at the specific power of each house, you can also see how the House is "closer to the people." Besides the fact that senators were originally appointed by state legislatures, the House of Representatives is given the responsibility of starting all revenue bills. The Senate must also approve revenue bills and can vote for a different version, but it must wait for the House to pass the first version of the bill. The House has the authority for initiating the process of impeachment. The House Judiciary Committee passed articles of impeachment against Richard Nixon and Bill

Clinton. Nixon resigned before the Senate could try him, whereas Clinton was tried and acquitted by the Senate. The Senate tries impeachment cases and, in the only two trials involving a president, failed by one vote to convict Andrew Johnson and acquitted Bill Clinton. The other major difference between the two bodies in the allocation of power is that the Senate has the responsibility of approving presidential appointments and treaties.

Congressional Powers

The common powers of the Congress are listed in Article I Section 8. These are the enumerated or delegated powers of Congress. They include the power to

- collect taxes, pay debts, and provide for the common defense and general welfare;
- borrow money;
- regulate commerce among the states (interstate commerce) and with foreign countries;
- establish uniform laws dealing with immigration and naturalization and bankruptcies;
- coin money;
- make laws regarding the punishment for counterfeiting;
- establish post offices;
- make copyright laws;
- establish federal courts in addition to the Supreme Court;
- define and punish piracy;
- declare war;
- raise and support armies and a navy; and
- create a national guard.

In this same section, implied powers are defined in the “necessary and proper” clause, which states that Congress has the power to “make all laws necessary and proper for carrying into execution the foregoing powers.” This “elastic clause” is a major and significant power of Congress, granting the legislature the ability to interpret its lawmaking ability in a broad manner. Even though strict interpreters of the Constitution reject the extent of its elasticity, Congress has demonstrated an ability to change with the times. From the creation of the National Bank in 1791 to the passage of the Brady Bill (establishing a waiting period for handgun purchase), congressional legislation more often than not reflects the tenor of the times.

Powers denied to Congress are the denial of the writ of habeas corpus, giving appeal protection to the accused; the passage of bill of attainder laws, which proscribe penalties without due process; and the passage of ex post facto laws, which take effect after the act has taken place. In addition, Congress cannot pass export taxes or grant titles of nobility to citizens.

In 1995, after states passed term limitations restricting the number of consecutive terms a representative can serve, the Supreme Court ruled that these laws were unconstitutional.

Another related issue dealing with the organization of Congress is term limitations. In 1995 the Supreme Court, in the case of *Thornton v Arkansas*, ruled that state-imposed term limits were unconstitutional, indicating that the only way the terms of members of Congress could be altered was through an amendment.

Powers of the Chief Executive

Article II determines the role of the chief executive, giving responsibility to a president and vice president. Even though the executive’s powers are not as specifically defined as in the legislative branch, the president’s major responsibility is to administer and execute the public policies of the United States. The inherent power of the president, which includes those powers the president

exercises that grow out of the existence of the national government, expands the power of the presidency. By signing congressional legislation into law, the president assumes the responsibility of enforcing the laws of the land. Reference is also made to the president's authority in the area of foreign policy. This article also outlines the mechanics of the Electoral College and determines its procedures in the case where a candidate does not receive a majority of the electoral votes. The article refers to executive departments, though it does not specifically mention the president's cabinet or the federal bureaucracy.

Executive Powers

Because of the unique qualities of the presidency, the qualifications for office are the strictest among the three branches. The president must be a natural-born citizen (unlike senators and representatives, who can be naturalized citizens), at least 35 years old, and a resident of the United States for at least 14 years. The source of power of the president comes from the language in Article II Section 1, "The executive power shall be vested in a president of the United States of America." The term of office is four years, limited by constitutional amendment to no more than two terms.

The president becomes a central and unique player in government as a result of the manner in which the definition of chief executive is stated. The only specific powers and duties listed in Article II Sections 2 and 3 include:

- the power to act as commander in chief of the armed forces;
- the ability to obtain information from members of the executive branch;
- the power to grant pardons;
- the power to make treaties with the consent of the Senate;
- the power to appoint ambassadors, justices, and other officials with the advice and consent of the Senate;
- the power to sign legislation or veto legislation;
- the duty to give Congress a State of the Union report;
- the power to call special sessions of the Congress; and
- the inherent power of the president.

Even though there are far fewer powers and responsibilities listed for the president than for the Congress, because the president can interpret the role of the executive in a broad manner, the power of the president in modern times has increased more than the other branches. From the administration of Franklin Roosevelt and the implementation of his New Deal to the new world order of George H. W. Bush, the power of the president has been on the rise. As head of state, the visibility of the president in ceremonial areas far exceeds that of a Congressman. The president is also considered the titular head of the political party in power and thus wields a great deal of power in relation to party appointments.

The Vice President

The vice president's responsibility is also listed in Article II. The only stated responsibility of the vice president is to preside over the Senate and be the deciding vote if there is a tie vote. This occurred in President Clinton's first administration when Vice President Al Gore cast the decisive vote to pass the president's budget proposal. It was a key piece of legislation for the new president and set the course of his economic program. The vice president is also next in line to succeed the president in case of death and, as a result of the Twenty-fifth Amendment, can take over the presidency if the president is disabled.