

### separation of powers

A way of dividing the power of government among the legislative, executive, and judicial branches, each staffed separately, with equality and independence of each branch ensured by the Constitution.

### checks and balances

A constitutionally mandated structure that gives each of the three branches of government some degree of oversight and control over the actions of the others.

2.4

putting too much power, including selection of a president, into the hands of the lower classes. At the same time, representatives from the smaller states feared that selection of the chief executive by the legislature would put additional power into the hands of the large states.

Amid these fears, the Committee on Unfinished Portions conducted its sole task: ironing out problems and disagreements concerning the office of chief executive. The committee recommended that the presidential term of office be fixed at four years instead of seven, as had earlier been proposed. The committee also made it possible for a president to serve more than one term.

In addition, the Framers created the Electoral College as a mechanism for selecting the chief executive of the new nation. The Electoral College system gave individual states a key role, because each state would choose electors equal to the number of representatives it had in the House and Senate. This step was a vague compromise that removed election of the president and vice president from both the Congress and the people and placed it in the hands of electors whose method of selection would be left to the states.

In drafting the new Constitution, the Framers also took care to provide for removal of the chief executive. The House of Representatives assumed the sole responsibility of investigating and charging a president or vice president with "Treason, Bribery, or other high Crimes and Misdemeanors." A majority vote then would result in issuing articles of impeachment against the president or vice president. In turn, the Senate took on the sole responsibility of trying the president or vice president on the charges issued by the House. To convict and remove the president or vice president from office required a two-thirds vote of the Senate.

## The U.S. Constitution

2.4

Analyze the underlying principles of the U.S. Constitution.



The U.S. Constitution's opening line, "We the People," ended, at least for the time being, the question of the source of the government's power: it came directly from the people. The Constitution then explained the need for the new outline of government: "in Order to form a more perfect Union" indirectly acknowledged the weaknesses of the Articles of Confederation in governing a growing nation. Next, the optimistic goals of the Framers for the new nation were set out: to "establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity," followed by the formal creation of a new government: "do ordain and establish this Constitution for the United States of America." On September 17, 1787, the delegates approved the Constitution.

### □ The Basic Principles of the Constitution

The structure of the proposed new national government owed much to the writings of the French philosopher Montesquieu (1689–1755), who advocated distinct functions for each branch of government, called **separation of powers**, with a system of **checks and balances** between each branch. The Constitution's concern with the distribution of power between states and the national government also reveals the heavy influence of political philosophers, as well as the colonists' experience under the Articles of Confederation.<sup>13</sup>

**FEDERALISM** The question before and during the convention concerned how much power states would give up to the national government. Given the nation's

# Explore Your World

Written in 1787, the U.S. Constitution is the world's shortest and oldest national constitution still in use. In fact, around the world, the average life span of a constitution written since 1789 is about seventeen years. A lasting, stable constitution may be advantageous for a state, but it may also pose unique challenges; more recent constitutions are able to address modern problems such as civil rights, government bureaucracy, and global trade.

## The Constitution of the Kingdom of Norway

(Adopted May 17, 1814)

Section A. *Form of Government and Religion*

Section B. *The Executive Power, the King, and the Royal Family*

Section C. *Rights of the Citizens and the Legislative Power*

Section D. *The Judicial Power*

Section E. *General Provisions*

The Norwegian Constitution is the world's second oldest. It created a unitary system of government led by a constitutional monarch. This constitution endures in part because it can easily be amended to add and delete provisions. In 2012, for example, the legislature passed an amendment separating church and state, thereby nullifying part of the Norwegian Constitution's first section.

Both constitutions lay out a basic structure of government that includes three branches: executive, legislative, and judicial.

## THE CONSTITUTION OF THE RUSSIAN FEDERATION

(Adopted December 12, 1993)

### SECTION ONE

- Chapter 1. The Fundamentals of the Constitutional System
- Chapter 2. The Rights and Liberties of Man and Citizen
- Chapter 3. The Russian Federation
- Chapter 4. The President of the Russian Federation
- Chapter 5. The Federal Assembly
- Chapter 6. The Government of the Russian Federation
- Chapter 7. The Judiciary
- Chapter 8. Local Self-Government
- Chapter 9. Constitutional Amendments and Revisions

### SECTION TWO

Concluding and Transitional Provisions

The Russian Constitution, written after the fall of the Soviet Union, creates a federal system of government. Accordingly, the document contains a high level of detail about the role and powers of state and local governments. It also clearly reserved rights to the people, as articulated in its first section.

### CRITICAL THINKING QUESTIONS

1. What are the key differences you observe between these two documents? Are these differences likely the result of temporal, cultural, or political differences?
2. Which elements of the Norwegian Constitution may have enabled it to survive for almost 200 years? How do these elements reflect the era in which it was written?
3. Which elements of the Russian Constitution are particularly striking? How do these elements enable the state to thrive in a globalized, modern world?

## federal system

System of government in which the national government and state governments share power and derive all authority from the people.

experiences under the Articles of Confederation, the Framers believed that a strong national government was necessary for the new nation's survival. However, they were reluctant to create a powerful government after the model of Great Britain, the country from which they had just won their independence. The colonists did not even consider Great Britain's unitary system. Instead, they fashioned a way (now known as a **federal system**) to divide the power of government between a strong national government and the individual states, with national power being supreme.

**SEPARATION OF POWERS** Separation of powers is simply a way of parceling out power among the three branches of government. Its three key features are:

- Three distinct branches of government: the legislative, the executive, and the judicial.
- Three separately staffed branches of government to exercise these functions.
- Constitutional equality and independence of each branch.

As illustrated in Figure 2.1, the Framers carefully created a system in which law-making, law-enforcing, and law-interpreting functions were assigned to independent



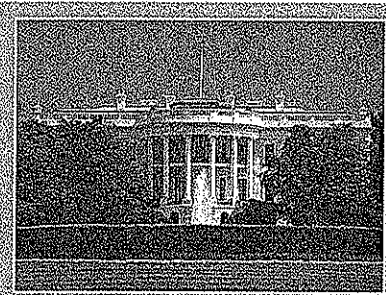
### LEGISLATIVE BRANCH POWERS

Pass all federal laws  
Pass the federal budget  
Declare war  
Establish lower federal courts and the number of judges

**Legislative Checks on the Executive**  
Impeach the president  
Reject legislation or funding the president wants  
Refuse to confirm nominees or approve treaties\*  
Override the president's veto by a two-thirds vote

### Executive Checks on the Legislative

Veto legislation  
Call Congress into special session  
Implement (or fail to implement) laws passed by Congress

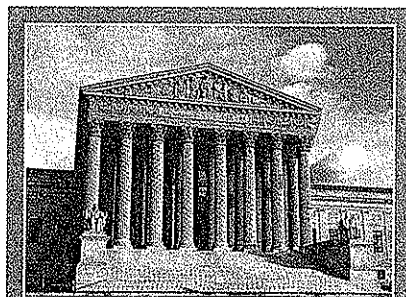


### EXECUTIVE BRANCH POWERS

Enforce federal laws and court orders  
Propose legislation to Congress  
Make foreign treaties  
Nominate officers of the U.S. government and federal judges  
Serve as commander in chief of the armed forces  
Pardon people convicted in federal courts or grant reprieves

### Judicial Checks on the Legislative

Rule federal and state laws unconstitutional



### JUDICIAL BRANCH POWERS

Interpret federal laws and U.S. Constitution  
Review the decisions of lower state and federal courts

### Judicial Checks on the Executive

Declare executive branch actions unconstitutional  
Chief justice presides over impeachment trials

### Legislative Checks on the Judicial

Change the number and jurisdiction of federal courts  
Impeach federal judges  
Propose constitutional amendments to override judicial decisions

### Executive Checks on the Judicial

Appoint federal judges  
Refuse to implement decisions

\*This power belongs to the Senate only.

**FIGURE 2.1** WHAT ARE THE SEPARATION OF POWERS AND HOW DO CHECKS AND BALANCES WORK UNDER THE U.S. CONSTITUTION?

Drawing inspiration from Montesquieu, the Framers crafted a political system of checks and balances and separation of powers. Each of the three branches—executive, legislative, and judicial—has distinct powers, and each branch has powers that intersect with the powers of each of the other branches. This system prevents any one branch from becoming too powerful.

branches of government. Only the legislature has the authority to make laws; the chief executive enforces laws; and the judiciary interprets them. Moreover, initially, members of the House of Representatives, members of the Senate, the president, and members of the federal courts were selected by, and therefore responsible to, different constituencies.

The Framers could not have foreseen the intermingling of governmental functions that has since evolved. In Article I of the Constitution, the legislative power is vested in Congress. But, the president also has a role in the legislative process; in order for a bill to become law, he must sign the legislation. If he disagrees with the content of a bill, he may also veto the legislation, although a two-thirds vote in Congress can override his veto. Judicial interpretation also helps to clarify the language or implementation of legislation enacted through this process.

**CHECKS AND BALANCES** The separation of powers among the three branches of the national government is not complete. According to Montesquieu and the Framers, the powers of each branch (as well as the powers of the two houses of the national legislature and the powers between the states and the national government) could be used to check those of the other two governmental branches. The power of each branch of government is checked, or limited, and balanced because the legislative, executive, and judicial branches share some authority, and no branch has exclusive domain over any single activity. The creation of this system allowed the Framers to minimize the threat of tyranny from any one branch. Thus, for almost every power granted to one branch, the Framers established an equal control in the other two branches.

## □ The Articles of the Constitution

The document finally signed by the Framers condensed numerous resolutions into a Preamble and seven separate articles remedying many of the deficiencies within the Articles of Confederation (see Table 2.1). The first three articles established the three branches of government, defined their internal operations, and clarified their relationships with one another. The Framers technically considered all branches of government equal, yet some initially appeared more powerful than others. The order of the articles, as well as the detail contained in the first three, reflects the Framers' concern that these branches of government might abuse their powers. The four remaining articles define the relationships between the states, declare national law to be supreme, and set out methods of amending and ratifying the Constitution.

**ARTICLE I: THE LEGISLATIVE BRANCH** Article I vests all legislative powers in the Congress and establishes a bicameral legislature, consisting of the Senate and the House of Representatives. It also sets out the qualifications for holding office in each house, the terms of office, the methods of selection of representatives and senators, and the system of apportionment among the states to determine membership in the House of Representatives.

One of the most important sections of Article I is section 8. It carefully lists those powers the Framers wished the new Congress to possess. These specified, or **enumerated**, powers contain many key provisions that had been denied to the Continental Congress under the Articles of Confederation.

After careful enumeration of seventeen powers of Congress in Article I, section 8, a final, general clause authorizing Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers" completes Article I. Often referred to as the elastic clause, the **necessary and proper clause** has been a source of tremendous congressional activity never anticipated by the Framers, including the passage of laws that regulate the environment, welfare programs, education, and communication. The necessary and proper clause is the basis for the **implied powers** that Congress uses to execute its other powers.

**ARTICLE II: THE EXECUTIVE BRANCH** Article II vests the executive power, that is, the authority to execute the laws of the nation, in a president of the United States.

### enumerated powers

The powers of the national government specifically granted to Congress in Article I, section 8 of the Constitution.

### necessary and proper clause

The final paragraph of Article I, section 8, of the Constitution, which gives Congress the authority to pass all laws "necessary and proper" to carry out the enumerated powers specified in the Constitution; also called the elastic clause.

### implied powers

The powers of the national government derived from the enumerated powers and the necessary and proper clause.

**TABLE 2.1** HOW DO THE ARTICLES OF CONFEDERATION AND THE U.S. CONSTITUTION COMPARE TO ONE ANOTHER?

	<b>Articles of Confederation</b>	<b>Constitution</b>
Formal name of the nation	The United States of America	Not specified, but referred to in the Preamble as "the United States of America"
Legislature	Unicameral, called Congress	Bicameral, called Congress, divided into the House of Representatives and the Senate
Members of Congress	Between two and seven members per state	Two senators per state, representatives apportioned according to population of each state
Voting in Congress	One vote per state	One vote per representative or senator
Appointment of members	All appointed by state legislatures, in the manner each legislature directed	Representatives elected by popular vote; senators appointed by state legislatures
Term of legislative office	One year	Two years for representatives; six for senators
Term limit for legislative office	No more than three of every six years	None
When Congress is not in session	A Committee of States had the full powers of Congress	The president of the United States can call on Congress to assemble
Chair of legislature	President of Congress	Speaker of the House of Representatives; vice president is president of the Senate
Executive	None	President
National judiciary	Maritime judiciary established—other courts left to states	Supreme Court established, as well as other courts Congress deems necessary
Adjudicator of disputes between states	Congress	Supreme Court
New states	Admitted upon agreement of nine states (special exemption provided for Canada)	Admitted upon agreement of majority of Congress
Amendment	When agreed upon by all states	When agreed upon by three-fourths of the states
Navy	Congress authorized to build a navy; states authorized to equip warships to counter piracy	Congress authorized to build a navy; states not allowed to keep ships of war
Army	Congress to decide on size of force and to requisition troops from each state according to population	Congress authorized to raise and support armies
Power to coin money	United States and the states	United States only
Taxes	Apportioned by Congress, collected by the states	Levied and collected by Congress
Ratification	Unanimous consent required	Consent of nine states required

Section 1 sets the president's term of office at four years and explains the Electoral College. It also states the qualifications for office and describes a mechanism to replace the president in case of death, disability, or removal from office. Article II also limits the presidency to natural-born citizens.

The powers and duties of the president are set out in section 3. Among the most important of these are the president's role as commander in chief of the armed forces, the authority to make treaties with the consent of the Senate, and the authority to "appoint Ambassadors, other public Ministers and Consuls, the Judges of the supreme Court, and all other Officers of the United States." Other sections of Article II instruct the president to report directly to Congress "from time to time," in what has come to be known as the State of the Union Address, and to "take Care that the Laws be faithfully executed." Section 4 provides the mechanism for removal of the president, vice president, and other officers of the United States.

**ARTICLE III: THE JUDICIAL BRANCH** Article III establishes a Supreme Court and defines its jurisdiction. During the Philadelphia meeting, the small and large states differed significantly regarding both the desirability of an independent judiciary and the role of state courts in the national court system. The smaller states feared

that a strong unelected judiciary would trample on their liberties. In compromise, the Framers permitted Congress to establish lower national courts but did not require it. Thus, state courts and the national court system would exist side by side with distinct areas of authority. Federal courts had authority to decide cases arising under federal law and the U.S. Constitution. The U.S. Supreme Court also assumed the power to settle disputes between states, or between a state and the national government.

Although some delegates to the convention urged that the president have authority to remove federal judges, ultimately judges received appointments for life, presuming “good behavior.” And, like the president’s, their salaries cannot be lowered while they hold office, thereby ensuring that the legislature not attempt to punish the Supreme Court or any other judges for unpopular decisions.

**ARTICLES IV THROUGH VII** The remainder of the articles in the Constitution attempted to anticipate problems that might occur in the operation of the new national government as well as its relations to the states. Article IV begins with what is called the **full faith and credit clause**, which mandates that states honor the laws and judicial proceedings of other states. Article IV also includes the mechanisms for admitting new states to the union.

Article V (discussed in greater detail on MyPoliSciLab) specifies how amendments can be added to the Constitution. The Bill of Rights, which added ten amendments to the Constitution in 1791, was one of the first items of business when the First Congress met in 1789.

Article VI contains the supremacy clause, which asserts the basic primacy of the Constitution and national law over state laws and constitutions. The **supremacy clause** provides that the “Constitution, and the laws of the United States” as well as all treaties are to be the supreme law of the land. All national and state officers and judges are bound by national law and take oaths to support the federal Constitution above any state law or constitution. Because of the supremacy clause, any legitimate exercise of national power supersedes any state laws or action, in a process called preemption.

Article VI also specifies that no religious test shall be required for holding any office. This mandate is strengthened by the separation of church and state guarantee that became part of the Constitution when the First Amendment was ratified. The seventh and final article of the Constitution concerns the procedures for ratifying the new Constitution: nine of the thirteen states would have to agree to, or ratify, its new provisions before it would become the supreme law of the land.

## The Drive for Ratification of the U.S. Constitution

2.5

Explain the conflicts that characterized the drive for ratification of the U.S. Constitution.



The Congress of the Confederation immediately accepted the work of the convention and forwarded the proposed Constitution to the states for their vote. It was by no means certain, however, that the states would adopt the new Constitution. From the fall of 1787 to the summer of 1788, debate over the proposed Constitution raged around the nation.

### □ Federalists Versus Anti-Federalists

During the debate over whether to ratify the Constitution, those who favored the new strong national government chose to call themselves **Federalists**. They were well aware

### full faith and credit clause

Section of Article IV of the Constitution that ensures judicial decrees and contracts made in one state will be binding and enforceable in any other state.

### supremacy clause

Portion of Article VI of the Constitution mandating that national law is supreme to (that is, supersedes) all other laws passed by the states or by any other subdivision of government.

### Federalists

Those who favored a stronger national government and supported the proposed U.S. Constitution; later became the first U.S. political party.

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