

THE CONSTITUTION

As it became increasingly clear that the government created under the Articles of Confederation was too weak to govern effectively, delegates met at the Second Constitutional Convention in Philadelphia to discuss the creation of a new form of government. While almost all agreed that a new form of government was needed that was about all they could agree on. Some, like Jefferson, still clung to the fear of a strong central government that might eventually abuse its power. Others like Alexander Hamilton favored a democratic but strong central government that would be able to solidify the nation and govern more effectively. There were other issues at stake as well, for example:

- **Representation:** How would representatives be chosen, by population or an equal number per state and how would slaves be counted for the purposes of representation?
- **Slavery:** Would slavery be allowed to continue?
- **The Presidency:** How would he be elected, how long a term would he have to serve?
- **States Rights:** How much power would the states have and how much power would the central government have?

In the end these issues were worked out using the process of compromise. The chart below illustrates the different compromises reached in 1787.

The Constitutional Convention (1787)

Below is a chart detailing various issues that faced the framers of the constitution. The solutions that they created became the Constitution of the United States of America.

<u>Issue</u>	<u>Compromise/Solutions</u>
<p>Representation:</p> <ol style="list-style-type: none"> 1. <i>How would the legislature be chosen?</i> <ul style="list-style-type: none"> ▪ large states wanted proportional representation ▪ small states wanted equal representation 2. <i>How would slaves be counted?</i> <ul style="list-style-type: none"> ▪ North = counted for tax purposes ▪ South = counted as population 	<ol style="list-style-type: none"> 1. The Great Compromise: legislature consisting of two houses (bicameral) was set up: <ul style="list-style-type: none"> ▪ Senate: equal representation, 2 per state ▪ House of Representatives: representation by population (capped at 435) 2. The 3/5 Compromise: 5 slaves = 3 persons
<p>Slavery:</p> <ol style="list-style-type: none"> 1. <i>Would slavery continue?</i> 	<ol style="list-style-type: none"> 1. Yes, but importing of slaves banned after 1808.
<p>The Presidency:</p> <ol style="list-style-type: none"> 1. <i>How would the President be elected?</i> 2. <i>How long would the President's term of office be?</i> 	<ol style="list-style-type: none"> 1. Electoral College votes for the President. <ul style="list-style-type: none"> ▪ states given electors = representatives ▪ popular winner receives all of state's electoral votes (in most states) ▪ not required to follow state's wishes ▪ protects presidency from ignorant citizens 2. 4 years

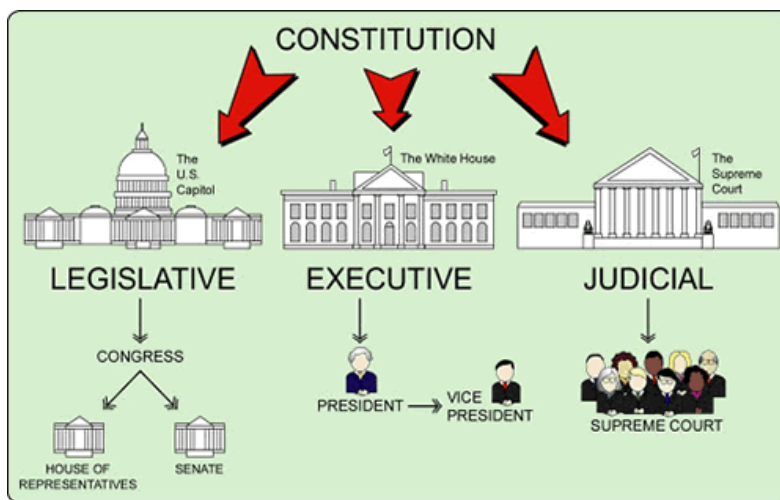
<u>Issue</u>	<u>Compromise/Solutions</u>
<p>Power of the Federal Government:</p> <ol style="list-style-type: none"> 1. <i>How would the powers of the states be protected?</i> <ul style="list-style-type: none"> ▪ many felt more like “Virginians” or “Pennsylvanians” than Americans) 2. <i>How would the central government's power be limited do that it could not take away peoples rights?</i> 	<ol style="list-style-type: none"> 1. <u>Federalism</u> – the Federal system was created <ul style="list-style-type: none"> ▪ also known as Division of Powers ▪ the federal government was given certain powers, the states were given certain powers ▪ certain powers that they shared. 2. <u>Checks and Balances:</u> The government was divided into three branches. <ul style="list-style-type: none"> ▪ each branch (Executive, Legislative and Judicial) was given certain powers that limited the powers of the other branches. ▪ no one branch can gain too much power. ▪ also known as separation of powers ▪ the founding fathers also wrote the Bill of Rights which was meant to deal with the individual rights of citizens under the Constitution

These solutions and compromises formed the basis of the new American government written in a document called the Constitution of the United States.

Structure of the Constitution

<u>Section of the Constitution</u>	<u>Summary of Section</u>
<i>Preamble</i>	<ul style="list-style-type: none"> ▪ Explains the general intent of the Constitution
<i>Article I</i>	<ul style="list-style-type: none"> ▪ Sets up the legislative branch, both the House of Representative and Senate (Congress) ▪ Establishes qualifications for serving in both houses, elections, pay, and an extensive list of the powers of Congress ▪ Explains the process of how a bill becomes a law ▪ Establishes limits of what the Congress can do and prohibits what the states can do
<i>Article II</i>	<ul style="list-style-type: none"> ▪ Sets up the executive branch (the presidency) ▪ Establishes the Electoral College as the means for electing the president as well as qualifications for serving as president ▪ Explains the duties and powers of the president as well as impeachment and removal from office
<i>Article III</i>	<ul style="list-style-type: none"> ▪ Sets up the judicial branch (the US Supreme Court) ▪ Establishes the make up of the Court, pay, and removal from office ▪ Explains the types of cases heard by the federal judiciary ▪ Defines treason
<i>Article IV</i>	<ul style="list-style-type: none"> ▪ Concerns the states ▪ Establishes that all states must honor the laws of other states (a marriage in FL would be recognized in CT) ▪ Guarantees that citizens be treated fairly and equally from one state to another ▪ Establishes a process of admitting new states into the United States ▪ Ensures that each state set up a republican (democratic) form of government

Article V	<ul style="list-style-type: none"> Establishes a process for amending the Constitution
Article VI	<ul style="list-style-type: none"> Guarantees that all debts and contracts made under the Articles of Confederation would be upheld Establishes that all laws and treaties of the United States are supreme law Establishes that all elected officials must swear an allegiance to uphold the Constitution when taking office
Article VII	<ul style="list-style-type: none"> Details the method for ratification or acceptance, of the Constitution
Amendments	<ul style="list-style-type: none"> First Ten Amendments (Bill of Rights): added as a block to protect the individual rights of citizens Other Amendments include issues like updating the election of Senators, abolishing slavery, allowing women to vote, clarifying presidential succession, and lowering the voting age to 18.



**Flexibility of the Constitution
(how it can be considered a “living document”)**

When our founding fathers created the Constitution they realized that any document meant to frame a government needed flexibility. They wanted the Constitution to be able to stand for generation after generation. In recognizing this they incorporated two important features:

Elastic Clause (Article 1, Section 8, Clause 18)

In this clause our founding fathers state that congress may pass all laws necessary and proper. This then allows for a loose interpretation of the constitution and allows constitutional flexibility. Thomas Jefferson was very much opposed to this clause and as you can well imagine Alexander Hamilton was its author. Here is the original text:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Some examples of the elastic clause in action include:

- Hamilton's creation of the National Bank
- Jefferson's purchase of the Louisiana Territory from Napoleon. The fact that Jefferson actually used the elastic clause is an irony not lost on either Hamilton or Jefferson.
- Setting up the FAA (federal aviation administration – do you think the founding fathers could imagine such a thing??)

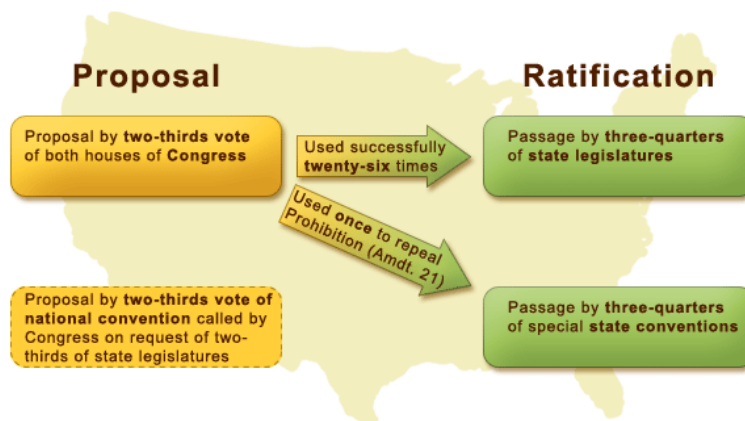
The Amendment Process (Article V)

There are several ways to amend, change, the constitution.

	Proposal	Ratification
	Must pass 2/3 the House of Representatives and the Senate	3/4 of the state legislatures must vote yes
	Must pass 2/3 of states at a National Constitutional Convention if one is called	3/4 of state held conventions

Here is the text from the Constitution:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its consent, shall be deprived of it's equal suffrage in the Senate.



Judicial Review and Interpretation:

The court, through the power of judicial review, lends a certain flexibility to the Constitution. When justices make a decision, take for example *Roe v Wade*, they are interpreting what the Constitution meant and said. In *Roe*, Justice Blackmun claimed that women had had a "right to privacy" and that as a result the state could not pass laws restricting women from having abortions. There is nowhere, however, in the Constitution where you will find this "right to privacy." Blackmun and others on the bench determined via interpretation that it was understood. They felt that the umbrella of Constitutional protections in the Bill of Rights created an unstated right to privacy. Other Supreme Courts have agreed. There are many other examples of interpretation as well. For example, in *Gideon v Wainright*, the Court ruled that a lawyer had to be provided if the accused could not afford one. The Constitution merely states that citizens RIGHT to lawyer cannot be infringed. The Court interpreted this to mean that the state had to provide one if you can not afford one. There is nothing to say that later courts can not disagree and change the official interpretation of the Constitution but this too provides flexibility to meet the needs of a changing nation. It should be noted that this is not even in the Constitution, it is custom or precedent. This speaks to the evolving and flexible nature of the document.

All of these portions of the constitution provide for flexibility and enable the constitution to truly be a "living" document.

MAIN CONCEPTS OF THE CONSTITUTION:
FEDERALISM, SEPARATION OF POWERS, AND CHECKS AND BALANCES

Federalism:

After the failure of the Articles of Confederation, delegates met at the Constitutional Convention to revise the articles. Instead they rewrote the entire government. One of the things they needed to do was strengthen the national government. This was not without debate. While almost all recognized the need to strengthen the national government, the question was how and how much? Many feared that a strong central government would abuse its powers as the King in England did. Others felt the government needed to be strong in order to run the nation efficiently. In the end they developed a balanced system called **Federalism**.

1. Federalism

1. A system of government that creates a central government and local state governments.
2. The powers of the national and state governments are divided and balanced.

2. Differing Opinions

1. **Anti-federalists** - Patrick Henry and Sam Adams, Thomas Jefferson.
 - feared strong central govt.
 - supported states rights
 - lack of Bill of Rights = abuse of government power over individual rights
2. **Federalists** - James Madison, Alexander Hamilton, John Jay.
 - favored ratification of constitution,
 - wanted strong but balanced federal govt.
 - published the *Federalist Papers*, a series of articles supporting ratification of the new Constitution
 - Federalists won but had to promise a Bill of Rights would be their first order of business.

3. How the Powers are Divided

Delegates Powers (Federal)	Concurrent Powers (Shared)	Reserved Powers (States)
<ul style="list-style-type: none"> ▪ make war ▪ establish peace ▪ set weights and measures ▪ negotiate treaties ▪ immigration & naturalization ▪ establish post offices ▪ regulate interstate commerce 	<ul style="list-style-type: none"> ▪ health & safety ▪ punish lawbreakers ▪ raise money (tax) ▪ establish courts 	<ul style="list-style-type: none"> ▪ schooling & education ▪ license professional workers ▪ charter businesses ▪ marriage divorce laws ▪ regulate intrastate trade

Separation of Powers and Checks and Balances:

As we have already seen our Constitution is very much a reaction to the events that came before it. Our founding fathers had several goals, foremost among those goals was to avoid tyranny. In order to do this several different systems were set up to prevent the abuse of power. Federalism was one of these systems. Federalism was designed to balance the power of the national and State governments and thus limit the powers of the national government. Jefferson and others were convinced that state government was closer to the people and thus more democratic.

Despite the system of federalism created by the framers, there were still those that feared the power of the national (now called federal) government. Remembering the lessons taught by the Baron de Montesquieu, they utilized a system of separation of powers to break up the power of the federal government. Within the system is what is called checks and balances. Each branch of the government has the power to check and balance another. This ensures that no one branch ever gains too much power.

Separation of Powers - The separation of the power of government into different parts.

Executive Branch	Legislative Branch	Judicial Branch
<ul style="list-style-type: none"> ▪ carries out the law ▪ signs bills into law ▪ negotiates and signs treaties ▪ military action ▪ makes appointments ▪ the presidency, executive agencies and departments 	<ul style="list-style-type: none"> ▪ makes the law ▪ ratifies treaties and presidential appointments ▪ declares war ▪ House of Representatives and the Senate 	<ul style="list-style-type: none"> ▪ judge the law ▪ declare a law unconstitutional ▪ clarify a vague law ▪ federal court system and US Supreme Court

Another system that was developed was the system of checks and balances. Checks and balances, or the separation of powers, is based upon the philosophy of Baron de Montesquieu. In this system the government was to be divided into three branches of government, each branch having particular powers.

Not only does each branch of the government have particular powers each branch has certain powers over the other branches. This is done to keep them balanced and to prevent one branch from ever gaining too much power. For example:

- Congress may pass laws.....but the President can veto them.
- The President can veto laws.....but Congress can override the veto with a 2/3 vote.
- The President and Congress may agree on a law.....but the Supreme Court can declare a law unconstitutional.
- The President can appoint Judges and other government officials.....but Senate must approve them.
- Supreme Court judges have life terms.....but they can be impeached.

As you can see there are many ways (there are many more than listed) that the Constitution balances power. Real life conflicts that test the system have occurred throughout history. These checks and balances are used on a regular basis.

- After the Civil War President Andrew Johnson vetoed over 20 bills.
- After the Civil War Congress overrode over 20 Presidential vetoes!
- In 1987 President Ronald Reagan appointed Judge Robert Bork to the Supreme Court, his nomination was defeated.
- In 1935 and 1936 the Supreme Court declared the NIRA and then the AAA (two New Deal programs passed during the Roosevelt administration) unconstitutional.
- In 1918 Congress refused to ratify the Treaty of Versailles, a peace treaty ending World War I that President Wilson had worked very hard on.

There are thousands of examples of checks and balances at work. As we continue this year we will examine these and many more.

