

Ratification of the Constitution: Federalists vs. Anti-Federalists**An Outline of the Ideological Debate**

	Anti-Federalist Argument	Federalist Response
Selfish Interests and Common Welfare	The diversity of people and their wealth in such a large nation make it impossible for the people to decide on their common welfare. Republican forms of government work only in small communities.	Throughout history, small republics have been destroyed by the selfish interests of certain groups. Large republics, which have checks and balances and a division of power between national and state government, can guard against such interests and can protect the common welfare.
Central Authority and Active Participation	Free government depends on the participation of its citizens. The size of the country and the location of the national government prevent active participation.	The principles of checks and balances and separation of powers can prevent the tyranny of the national government and ensure that many voices are heard.
Supremacy Clause and Abuse of Power	The "Supremacy Clause" grants too much power to the central government, thus threatening the existence of state governments.	The increased powers of the national government concern the entire nation in areas such as defense, trade, and currency. The Constitution also provides safeguards against the national government's abuse of power.
Necessary and Proper Clause, and Abuse of Power	"The Necessary and Proper Clause" in Article I, Section 8, Clause 18 grants too much power to the national government. Much clearer limits must be set.	"The Necessary and Proper Clause" is essential to the functioning of the national government under changing situations. Without it, the national government will be limited as it was under the Articles.
Individual Liberties	A "Bill of Rights," which is essential to protect the rights of individuals, is not included. Without it, there can be no limited government.	A "Bill of Rights" is not necessary to the Constitution because the powers of the national government are limited by the text of the Constitution as it is.
Executive Power	The same abuse of power will occur as in England because the executive branch is given too much power. A monarchy is inevitable.	The principle of checks and balances adequately restricts the power of the executive. A strong executive is essential to the enforcement of the laws of the national government.

The Constitution: General Outline

Preamble Introduction, explanation of why the Constitution was written

Articles (7) Main body of the document; each article deals with a general topic and most are divided into sections that provide specifics on the topics.

Article I Legislative Branch

- Section 1: Establishment of the Legislature
- Section 2: The House of Representatives
- Section 3: The Senate
- Section 4: Legislative Elections and Meetings
- Section 5: Legislative Proceedings
- Section 6: Compensation, Privileges & Restrictions
- Section 7: Lawmaking Rules
- Section 8: Expressed Powers of Congress
- Section 9: Powers Denied to Congress
- Section 10: Powers Denied to States

Article II Executive Branch

- Section 1: Establishment of the Presidency and Vice Presidency
- Section 2: Presidential Powers and Duties
- Section 3: Other Presidential Powers and Duties
- Section 4: Impeachment

Article III Judicial Branch

- Section 1: Establishment of the Judiciary
- Section 2: Jurisdiction (Power to Hear Cases)
- Section 3: Trying Cases of Treason

Article IV Relationship among the states and between the states and national government

- Section 1: Full Faith and Credit of All States
- Section 2: Individuals within the States
- Section 3: New States and Territories
- Section 4: U.S. Responsibilities to the States

Article V Amendment Process

Article VI National Debt, Supremacy Clause, Officials' Oaths

Article VII Ratification of Constitution

Note: For full text see appendix.

The Amendments: General Outline

The 27 Amendments Changes or additions to the Constitution

Bill of Rights

First 10 Amendments, Ratified by December 15, 1791

- Amendment 1: Freedom of Religion, Speech, Press, Assembly, Petition
- Amendment 2: Bearing Arms
- Amendment 3: Quartering Troops
- Amendment 4: Searches and Seizures
- Amendment 5: Criminal Proceedings, Due Process, Eminent Domain
- Amendment 6: Criminal Proceedings
- Amendment 7: Civil Trials
- Amendment 8: Punishment for Crimes
- Amendment 9: Unenumerated Rights
- Amendment 10: Powers Reserved for States

Early Post-Bill of Rights Amendments, from 1796 to 1804

- Amendment 11: Suits against States
- Amendment 12: Election of President and Vice President

Amendments Arising from the Civil War

- Amendment 13: Slavery and Involuntary Servitude
- Amendment 14: Civil Rights of Citizens in the States
- Amendment 15: Right to Vote: Race, Color, Servitude

20th Century Amendments

- Amendment 16: Income Tax
- Amendment 17: Popular Election of Senators
- Amendment 18: Prohibition of Liquor
- Amendment 19: Right to Vote: Women
- Amendment 20: Commencement of Terms: Lame Duck Amendment
- Amendment 21: Repeal of Prohibition
- Amendment 22: Presidential Term of Office
- Amendment 23: Presidential Election for the District of Columbia
- Amendment 24: Right to Vote in Federal Elections: Poll Tax
- Amendment 25: Presidential Succession, Vice Presidential Vacancy, Presidential Inability
- Amendment 26: Right to Vote: Age
- Amendment 27: Congressional Pay

Note: For full text see appendix.

The Living Constitution: Major Principles

The U.S. Constitution is often referred to as a “living constitution.” The following quote from Chief Justice John Marshall will shed light on why:

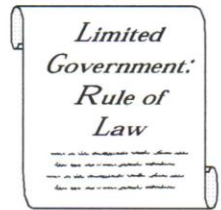
The subject is the execution of those great powers on which the welfare of a nation essentially depends . . . This provision is made in a Constitution intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs.

Major Principles



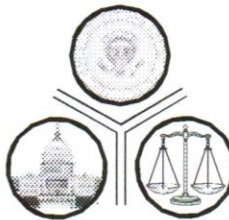
Popular Sovereignty
The power to rule belongs to the people. People of the nation are the sources of government power.

The government can govern only with the consent of the governed. Preamble: “We the People of the United States . . . do ordain and establish the Constitution for the United States of America.”



Limited Government
Government is not all powerful, it can do only those things that the people have given it the power to do. Government must obey the law. This is referred to as “rule of law” or “constitutionalism.”

The government and government officials are subject to the law, never “above the law.” Article VI, Section 2: “The Constitution and the laws of the United States . . . shall be the supreme law of the land . . .”



Separation of Powers
The Constitution distributes the powers of the central government among the three branches—legislative, executive, judicial. Each branch has its own responsibilities. Each branch addresses different tasks of the whole

society . . . separation of powers is meant to increase the efficiency of government. Article I, Sec. 1: “All legislative powers herein granted shall be vested in a Congress of the United States . . .” Article II, Sec. 1: “The Executive power shall be vested in a President of the United States.” Article III, Sec. 1: “The Judicial power of the United States shall be vested in one Supreme Court . . .”



Checks and Balances

Each branch of the government would have some control over the other branches. The principle of checks and balances would prevent any one branch from ignoring or overriding the decisions of the other branches. Article I, Sec. 7,

Cl.3: “every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary shall be presented to the President of the United States: and before the same shall take effect, shall be approved by him . . .”



Judicial Review

This is the power of the Supreme Court to declare an act of Congress to be “unconstitutional.” Nowhere in the Constitution is this power stated. However, the interpretation of the Supremacy Clause by Chief Justice Marshall in

the case of *Marbury v. Madison* (1803) set a precedent for the Court to act as the guardian of the Constitution. Article VI, Sec. 2: “The Constitution, and the laws of the United States . . . shall be the supreme law of the land.”



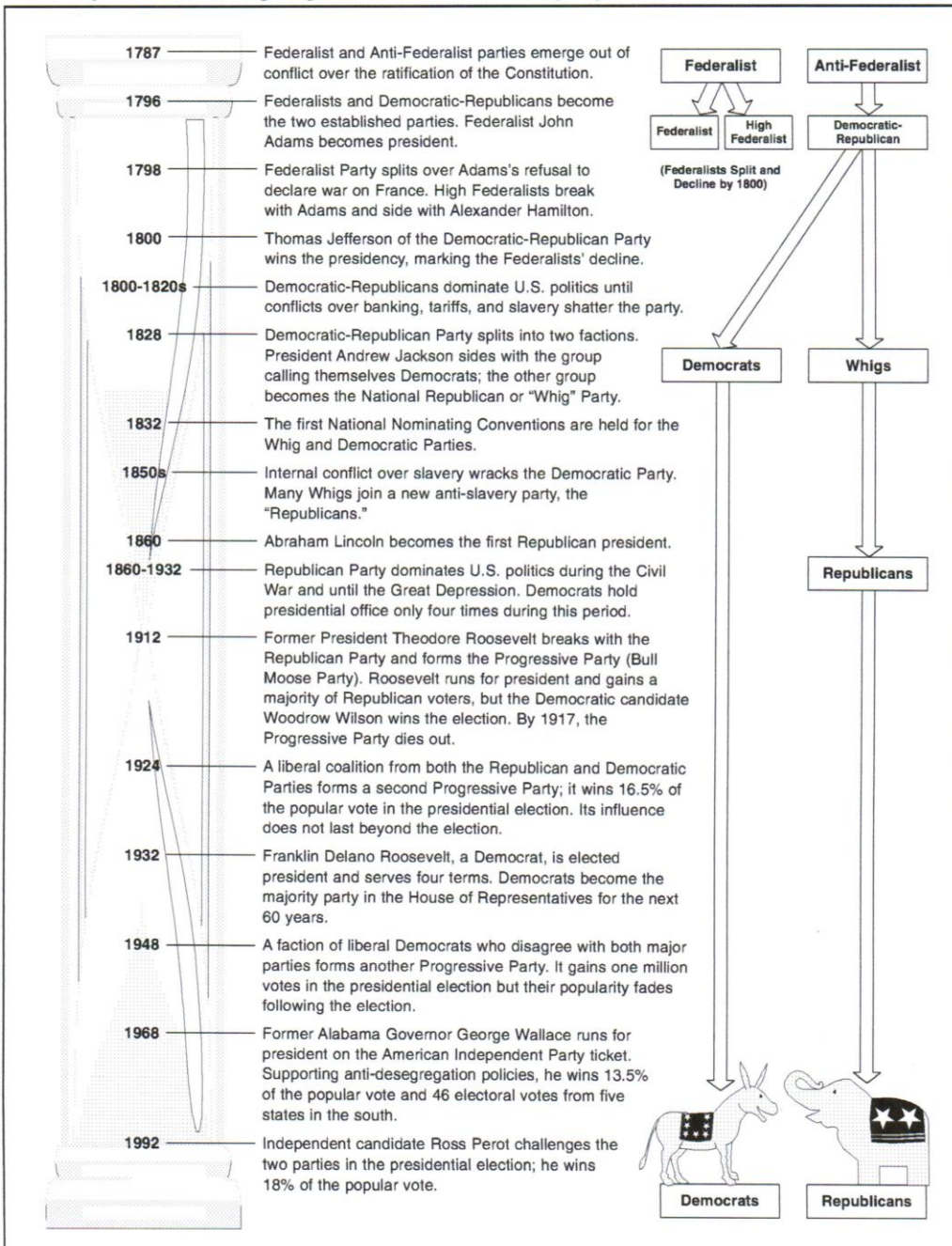
Federalism

The Constitution divided the powers of government between the central or national government and the state or regional governments. Neither

kind of government was given all the powers. They are independent of each other in terms of certain powers; however, they must cooperate on certain shared or concurrent powers. Amendment 10: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

CITIZENSHIP, CIVIL LIBERTIES, AND CIVIC RESPONSIBILITIES

Development and Highlights of the Two-Party System



Strengths & Weaknesses of the Articles of Confederation

Strengths & Accomplishments

Government signed a treaty of alliance with France in 1778.

Government successfully waged a war for independence against the British.

Government negotiated an end to the American Revolution in the Treaty of Paris, signed in 1783.

Government granted the free inhabitants of each state "all the privileges and immunities of free citizens in the several states."

Government provided for the eventual admission of Canada into the Confederation.

Government passed the Northwest Ordinance of 1787, which allowed the Northwest Territories to organize their own governments. It allowed the eventual admission to the Union of no more than five states, and no fewer than three, "on an equal footing with the original states." The Ordinance also banned slavery from the region.

Government established the Departments of Foreign Affairs, War, Marine, and Treasury.

Weaknesses

Congress had no power to coin money, therefore each state developed its own currency.

Congress was unable to regulate interstate and foreign commerce; some states refused to pay for goods they purchased from abroad.

Congress was unable to impose taxes; it could only borrow money on credit.

No national court system was established to protect the rights of U.S. citizens.



No executive branch was established to enforce laws.

Amendments could be added only with the approval of all 13 states.

Approval of 9 of 13 states was required to pass a law in Congress.

One vote was allotted for each state, despite the size of its population.

It was just a "firm league of friendship."

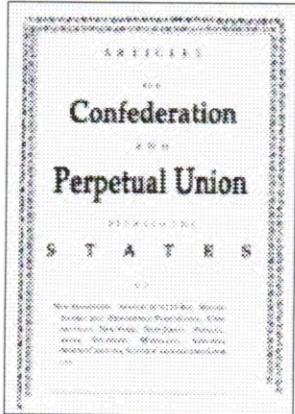
So long as any individual state has power to defeat the measures of the other twelve, our pretended union is but a name, and our confederation a cobweb.

Noah Webster, ca. 1780

The establishment of the Northwest Territories was a significant accomplishment of the U.S. government under the Articles of Confederation, given the weakness of its central decision-making power. This map shows the original territories in relation to present-day state boundaries.

Structure of Government Under the Articles of Confederation

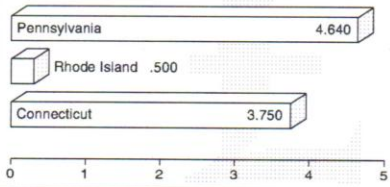
	Articles of Confederation	United States Constitution
Adopted	1777	1787
Ratified	1781	1791
Legislative	unicameral Congress Delegation from each state has one vote.	bicameral Congress Senate: 2 representatives from each state House: representatives determined by population
Powers of Congress	determine value of coins fix standards of weights and measures establish and regulate post office appoint all U.S. military officers supervise Indian affairs make decisions on all cases arising among states 9 of 13 states' approval needed to enact legislation unanimous vote for amendments to Articles	determine value of coins fix standards of weights and measures establish and regulate post office appoint all U.S. military officers supervise Indian affairs make decisions on all cases arising among states simple majority of both Houses with presidential approval needed to enact legislation If 3 of 4 states ratify an amendment, it is added to the Constitution. declare war impose and collect taxes regulate trade between states and with foreign nations coin money raise and support armies establish courts inferior to the Supreme Court make all laws which shall be necessary.
Executive	not provided for	President
Judicial	not provided for	Supreme Court



Steps Leading to a New Constitution

- 1781** — **End of the American Revolution; Ratification of Articles of Confederation**
- 1783** — Treaty of Paris signed between Great Britain and United States.
- 1783** — Ten states, excluding Connecticut, New Jersey, and Delaware, pass measures against British shipping or imports to protect their fragile economies.

Debt Held by Selected States
in millions of pounds



Pennsylvania was in debt 4,640,000 pounds
 Rhode Island was in debt 500,000 pounds
 Connecticut was in debt 3,750,000 pounds

- 1785** — Maryland and Virginia meet at Alexandria, Virginia, for a conference on trade disputes.
- 1786** — **Annapolis Convention**

Five of 13 states attend to discuss conflicts between states over trade and boundary issues. James Madison of New York and Alexander Hamilton of Virginia convince the other delegates to call for another meeting to be held:



at Philadelphia on the second Monday of May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union.

- 1786** — **Shays's Rebellion**

Under the leadership of Daniel Shays, over 2,000 angry farmers armed with pitchforks attempt to take over the state arsenal in Springfield, Massachusetts. They are protesting against state taxes, which force them into debt. Many property owners are frightened, even though the state militia puts down the rebellion. The national government has no army to help quell the rebellion. In response, Henry Knox, the Secretary of War, writes to George Washington:



This dreadful situation has alarmed every man of principle and property in New England. [People wake] as from a dream and ask what has been the cause of our delusion. What [will] give us security against the violence of lawless men? Our government must be [strengthened], changed, or altered to secure our lives and property.

- 1787** — **Federal Convention**

Fifty-five delegates from 12 of the 13 states meet in Philadelphia to revise the Articles of Confederation, hoping to strengthen the national government. Rhode Island does not attend. By this time, the national government is in debt 40 million dollars to foreign governments and to soldiers who had fought during the Revolutionary War.

Debt Notice to U.S. Government
 December 31, 1787
Amount: 40 million dollars
 Owed to: Governments of foreign countries and Soldiers of the American Revolution

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Executive Power	The same abuse of power will occur as in England because the executive branch is given too much power. A monarchy is inevitable.	The principle of checks and balances adequately restricts the power of the executive. A strong executive is essential to the enforcement of the laws of the national government.

Five Major Principles of American Government Found in the U.S. Constitution

- I. **Representative Form of Government** - an indirect democracy or republican form of government.
1. Not really representative when created at Philadelphia but not unrepresentative either. More representative of the people than the governments of nearly any other nation at that time.
 2. Only allowed the people directly to choose members of the U.S. House of Representatives.
 3. System has been made more representative or democratic through the use of the formal amendment process and through political change and custom.

The other four major principles have in common the desire of the framers to prevent any one government, any one part of government, any one group, or any one person from having too much power. The Framers' solution: divide up the power, and this they did in four different ways.

II. **Federal System of Government**

1. A geographical or vertical division of power.
2. Power is divided between a national government with control over all the nation's territory and a series of local governments (states), each of which controls part of the nation's territory. Neither created the other, and neither can destroy the other.
3. Contrast with a unitary system of government which is what Great Britain and most nations have. All power is in the hands of the national (central) government. There may be a series of local (state) governments, but they are created by, get their power from, and can be destroyed by the national government.
4. Contrast also with a confederation system of government previously defined which the U.S. had under the Articles of Confederation.

III. Separation of Powers

1. A functional or horizontal division of power within the national government.
2. Three branches -- *legislative, executive, and judicial* -- separate from and independent of each other are created, each with certain powers, different terms of office, different methods of selection, and different constituencies.
3. Idea borrowed from the French philosopher, Baron de Montesquieu and his The Spirit of the Laws (1748); not borrowed from the British who did not have separation of powers. Britain has a parliamentary system where the executive and the highest court are drawn from the Parliament.
4. The U.S. Constitution does not specifically say there will be "separation of powers," but the way it is written clearly indicates such a principle:

Article I -- "... all legislative power . . ."
Article II -- "... all executive power . . ."
Article III -- "... all judicial power . . ."
5. Because of the fourth principle cited next, a more accurate description of this third principle is separate institutions sharing power.

IV. Checks and Balances

1. Allow each branch to intrude in the business of the other two branches.
2. Each branch has certain checks over the other two branches. Examples follow:

Executive Branch Over One or Both of the Other Branches

- (a) veto power over Congress.
- (b) enforcement power over Congress and the judiciary.
- (c) executive over the judiciary: the President appoints all U.S. judges with the approval by a majority vote of the U.S. Senate.

Congress Over One or Both of the Other Branches

- (a) Congress' appropriations power (control of the purse or treasury) over both the executive and judicial branches.
- (b) the U.S. Senate must approve most appointments made the executive by a majority vote.
- (c) the U.S. Senate must ratify treaties negotiated by the executive by a 2/3 vote.

- (d) Congress can impeach, convict, and remove from office executive and judicial officers.
 - (1) the House of Representatives brings charges by a majority vote.
 - (2) the Senate tries, convicts, and removes from office by a 2/3 vote.
- (e) Congress creates and thus can alter or destroy all U.S. courts below the Supreme Court.
- (f) Congress sets the number of members of the U.S. Supreme Court.
- (g) Congress can regulate the U.S. Supreme Court's appellate jurisdiction.
- (h) Congress by a 2/3 vote of both houses can propose amendments to the U.S. Constitution to overrule a Supreme Court decision (the required number of states must then, of course, ratify the proposed amendment, but this usually follows). The 11th, 14, 16, 26, and 27th Amendments are examples.

Judicial Branch Over Both Congress and the Executive

- (a) Judicial review: power to declare acts of Congress or the executive unconstitutional.
- (b) Power not specifically mentioned in the Constitution but established by the Chief Justice Marshall and the Court in *Marbury v. Madison* (1803).

V. Limited Government

1. Division of power between government and the people.
2. Original Constitution contained some limits (mainly economic or property ones).
 - (a) no ex post facto laws (national and state)
 - (b) no bill of attainder (national and state)
 - (c) no titles of nobility (national and state)
 - (d) no impairment of contracts (state only)
 - (e) no religious test for national office (national only)
 - (f) trial by jury (national only)
 - (g) no suspension of right of writ of habeas corpus except in cases of rebellion or invasion (national only).
 - (h) other limits on states mainly economic or foreign affairs cited in previous class lecture (no coining money, etc.).
3. Greatest number of, and most fundamental, limits on government found in the Bill of Rights, the first nine amendments added to the U.S. Constitution in 1791.
 - (a) *Barron v. Baltimore* (1833) -- John Marshall and Supreme Court ruled that the Bill of Rights only limited the power of the national government, not the power of the state governments.
 - (b) 1920's - present: the Supreme Court, using the due process of law clause of the 14th Amendment, has nationalized most of the Bill of Rights, thus largely overruling *Barron v. Baltimore*.

- (c) Today, most of the Bill of Rights limit the power of both the national and state governments.

Only amendments which have not been nationalized and thus do not limit the states:

- (1) 2nd Amendment
- (2) 3rd Amendment
- (3) grand jury clause of the 5th Amendment
- (4) 7th Amendment
- (5) no excessive fines or bail clause of the 8th Amendment

THE CONSTITUTION

Dividing Power Between the Federal Government and the State Governments

Federal Powers Only

1. Regulate foreign commerce
2. Regulate interstate commerce
3. Coin money
4. Establish post offices
5. Control naturalization and immigration
6. Grant patents and copyrights
7. Declare war and peace
8. Admit new states
9. Fix standard weights and measures
10. Raise and maintain an army and navy
11. Govern the District of Columbia
12. Conduct foreign relations
13. Set uniform laws for bankruptcy

Federal and State Powers

1. To tax, to borrow, and to spend money
2. To control the militia
3. Both governments could now act directly on individuals

Limitations on the Federal Government

1. Bill of Rights guarantees for individuals
2. No ex post facto laws
3. No bill of attainder
4. Appropriation for the military limited to two years
5. May not suspend habeas corpus except in a crisis

6. May not favor one port over another
7. No taxes on exports
8. May not grant titles

State Powers Only

1. Conduct elections
2. Establish qualifications for voters
3. Provide local governments
4. Ratify amendments to the Constitution
5. Regulate contracts, wills
6. Regulate intrastate commerce
7. Provide education
8. Levy direct taxes (before the Sixteenth Amendment permitted the federal government to levy direct taxes)
9. Exercise police power over the public's health, safety, and morals
10. Maintain integrity of state borders—no change without approval of states involved

Limitations on State Governments

1. No ex post facto laws
2. No bill of attainder
3. May not enter into a treaty, alliance, or confederation
4. May not grant letters of marque and reprisal
5. May not impair contracts
6. May not print money or emit bills of credit
7. May not levy export or import taxes
8. May not wage war (unless invaded)

Federalism

Federalism is composed of two independent levels of government, the federal and the state. The powers granted to the federal government are called delegated or enumerated powers. All powers not granted to the federal government and not specifically prohibited to the states are reserved powers belonging to the states.

The elastic clause, Article I, section 8, clause 18, is the source of the debate over loose and strict construction of the Constitution. The Founding Fathers inserted the elastic clause into the Constitution because they realized that they could not think of everything. The Constitution clearly grants the power to print money. Does that include the power to purchase ink and paper? The elastic clause solved that problem. But what of questions in more ambiguous areas? The federal government may collect taxes. Can it create a national bank to deposit its tax revenues? Or build a warehouse to house merchandise before customs duties are collected? Defining the edges of federal and state intrusions upon one another is a never-ending process. In some new areas the federal and state governments have expanded the scope of their shared powers through grants such as federal aid for building highways.

It's interesting to learn what the Founding Fathers did not argue about. The areas of agreement

are rarely mentioned, and yet, probably nowhere else in the world would a group of government makers have accepted the following without at least serious argument:

1. The principle of representative government
2. A single executive (Plural executives are common in history. Within a short time the French Revolution produced a multiple executive, the Directory.)
3. A bicameral legislature (Many national legislatures are unicameral, and almost all products of revolutions are unicameral. Franklin wanted a unicameral legislature, since Pennsylvania had one.)
4. A means to amend the Constitution in the future (This was a confession that their work was imperfect.)
5. A fixed time for elections, limiting terms of office
6. Two governments, a federal and a state, with overlapping powers and each having a legislature, an executive, and a judiciary
7. The supremacy of the national government over state governments (Perhaps the Articles of Confederation could have been strengthened.)

Sections of the Constitution

Preamble

It gives the purposes of the Constitution although it is not technically part of the Constitution. Read it.

Article I: Legislature

TERMS—KNOW THE FOLLOWING:

logrolling
riders
quorum
seniority
committee system
majority leader
majority whip
minority leader

minority whip
gerrymander

YOU SHOULD KNOW:

how a bill becomes a law
that each House judges the qualifications of its members
that members of Congress may not hold another federal office
that members of Congress are free from arrest for anything said on the floor of Congress

HOUSE OF REPRESENTATIVES

2-year terms, 25 years old at least, 435 members, based on population

Speaker of the House presides.

limited debate because of size, except that they may reorganize themselves into the Committee of the Whole (technically a committee) for long debate

brings impeachment charges

All money bills must originate in the House.

SENATE

6-year terms, 30 years old at least, two per state

Vice-president is presiding officer, and may vote in a tie.

President pro tempore normally presides.

unlimited debate, filibuster, closure (cloture)

originally elected by state legislatures

serves as a court and jury for impeachment

approves or rejects presidential nominations

approves or rejects treaties

Article II: Executive

4-year term, no limit on reelection, 35 years old at least, citizen for at least 14 years

Twenty-second Amendment limited the president to two terms.

The president and the vice-president were elected by the electoral college, which was designed to insulate the selection process from the people. Electors were selected by state legislatures, and each state had the same number of electors as it had total senators and representatives. The winner was the man (or woman) with the most votes named on over one half of the electoral ballots. The vice-president was the one with the second highest number of votes, provided that he (or she) was also named on over one half of the ballots. If no one received a majority the House of Representatives, voting by states, selected the president; the Senate selected the vice-president. Note that in either case the states are equal in power. The Founding Fathers expected four out of every five presidential elections to end in the House of Representatives. If each elector independently selected his choice for the two best men for president, the chances of a majority of electors naming one of the same choices would be very slim. Thus most elections would go to the House of Representatives. The rise

of political parties altered the operation of the electoral college. Electors began to pledge that they would vote for a certain candidate if selected as an elector. Party loyalty negated the original intention of the electoral college mechanism.

The electoral college system has come under criticism from many sides. It has many advantages, though, and should not be hastily abandoned. It produces a clear winner. If we depended on a national popular vote the recounting might drag through courts for years. The electoral college also reminds us that this is a federal system. States do count for something other than serving as administrative units for the federal government's programs.

The president's powers, as described by Clinton Rossiter in *The American Presidency*, are as follows:

CONSTITUTIONAL RESPONSIBILITIES

Chief of state—the ceremonial head of the government

Chief executive—responsible for carrying out laws

Commander in chief—commander of the armed forces

Chief diplomat—As Truman said in 1948, "I make American foreign policy."

Chief legislator—presents a legislative program to Congress and exerts leadership, signs legislation

UNOFFICIAL RESPONSIBILITIES

Chief of party—leads his party as a politician

Voice of the people—the mold and voice of public opinion

Protector of the peace—responds to emergencies with aid and comfort

Manager of prosperity—the Employment Act of 1946 gives the president the responsibility for the state of the economy. (Even if this law didn't, the voters would.)

World leader—the leader of the coalition of free nations:

Article III: Judiciary

The Constitution established the Supreme Court and described its powers, but left all the details to Congress. The Judiciary Act of 1789 created the federal

court system with district courts and circuit courts. Section 2 of Article III describes the original jurisdiction cases for federal courts. These suits begin in the federal courts. Another jurisdiction the courts possess is over appellate cases, which are appealed from lower court decisions. This article specifically defines treason as an overt act witnessed by two other persons. The Founding Fathers were well aware of the ease with which the charge of treason had been used to smear in the past. Treason is such an odious crime that the accused is popularly convicted by just the accusation. The Founding Fathers wanted a clear act, not a thought or a profane expression, with two witnesses. You may, in this country, discuss many ideas with impunity as long as you don't actually do something. Discussing the ease and desirability of overthrowing the government might get you some strange glances from your neighbors. Discussing the same ideas while loading your shotgun will get you in deep trouble.

TERMS—KNOW THE FOLLOWING:

- common law
- statute law
- civil law
- equity law
- admiralty and maritime law
- martial law
- international law
- canon law
- majority opinion
- minority opinion or dissenting opinion
- concurring opinion

Article IV: Interstate Relations

Section 1 is the "full faith and credit" clause. This clause means that court decisions and legal actions in one state are valid in others. Once married, you do not have to remarry if you move to another state. A corporation chartered in one state is a corporation in the other 49 states. This article provided for the extradition of criminals and runaway slaves and the reciprocal exchange of the benefits of citizenship. New states may be added to the original 13. This sounds so logical to us today that we do not appreciate how revolutionary it was. The Northwest

Ordinance of 1787 and the Constitution admitted new states on equal footing with the older states and guaranteed that the power and influence of the original states would be diluted. Virginia had one-thirteenth of the vote in the first Senate and 10 of the 65 members of the first House of Representatives. Virginia's power in the present Congress is much less. This article also guarantees a republican form of government for each state and federal protection against invasion and domestic violence.

Article V: The Amendment Process

Amendments can be *proposed* by a two-thirds vote of each house of Congress or by a special convention called by Congress upon the request of two-thirds of the state legislatures. Amendments can be *ratified* by three-fourths of the state legislatures or by conventions in three-fourths of the states. Only the Twenty-first Amendment (repeal of prohibition) was ratified by the latter method. The Seventeenth Amendment passed Congress only after it became clear that the states would actually use the convention method to propose an amendment. Since the Articles of Confederation demanded unanimous consent for amendments, the Founding Fathers wanted to make amending the Constitution easier but still prevent emotional issues from easily changing the supreme law of the land.

Article VI: Supremacy Clause

All federal and state judges and officials must take an oath to support the Constitution. According to the Constitution, it is the supreme law of the land, followed by treaties, federal laws (and now federal regulatory agency directives), state constitutions, state laws, and local laws. For example, if a treaty and a state law conflict, the treaty takes precedence.

Article VII: Ratification

The Constitution went into effect when it was ratified by special conventions in nine states. Rhode Island and North Carolina disapproved of the Constitution. You should take a long look at the order of ratification and the closeness of the vote in many states. As the ninth state to ratify approached, the crux of the ratification vote lay in Virginia and New York. If they did not join, the whole endeavor was in jeopardy.

State	Vote	Date	State	Vote	Date
1. Delaware	unanimous	Dec. 7, 1787	8. South Carolina	149 to 73	May 23, 1788
2. Pennsylvania	46 to 23	Dec. 12, 1787	9. New Hampshire	57 to 47	June 21, 1788
3. New Jersey	unanimous	Dec. 18, 1787	10. Virginia	89 to 79	June 26, 1788
4. Georgia	unanimous	Jan. 2, 1788	11. New York	30 to 27	July 26, 1788
5. Connecticut	128 to 40	Jan. 9, 1788	12. North Carolina	194 to 77	Nov. 21, 1789
6. Massachusetts	187 to 168	Feb. 7, 1788	13. Rhode Island	34 to 32	May 29, 1790
7. Maryland	63 to 11	Apr. 28, 1788			

Amendments to the Constitution

* THE BILL OF RIGHTS—FIRST-TENTH AMENDMENTS, all passed in 1791 1st-10th

- * **FIRST AMENDMENT:** freedom of religion, speech, press, assembly, and freedom to petition the government
- * **SECOND AMENDMENT:** right to bear arms (in order for states to maintain a militia. This was not meant to guarantee an individual's right to bear arms.)
- * **THIRD AMENDMENT:** no quartering of troops in private homes
- FOURTH AMENDMENT:** specific search warrants required
- * **FIFTH AMENDMENT:** rights of the accused, indictments required, double jeopardy, self-incrimination, due process, just compensation
- * **SIXTH AMENDMENT:** speedy and public trial, to be confronted by witnesses, ability to call your own witnesses
- * **SEVENTH AMENDMENT:** trial by jury
- EIGHTH AMENDMENT:** excessive bail, cruel and unusual punishment
- * **NINTH AMENDMENT:** All rights not enumerated are retained by the people.
- * **TENTH AMENDMENT:** All powers not delegated are retained by the states.
- ELEVENTH AMENDMENT, 1798:** Individuals may not sue states.
- TWELFTH AMENDMENT, 1804:** Electors cast separate ballots for president and vice-president. If there is no winner the House selects the president and the Senate the vice-president. (This amendment prevented the recurrence of the results of the election of 1800.)

CIVIL WAR AMENDMENTS—THIRTEENTH, FOURTEENTH, FIFTEENTH

THIRTEENTH AMENDMENT, 1865: abolishes slavery

FOURTEENTH AMENDMENT, 1868: Blacks became citizens. Confederate leaders were not eligible for public office; Confederate debt was void; and (Southern) states would have their representation in Congress reduced proportionately if they denied (blacks) voting rights. This amendment confers dual citizenship—you are a citizen of the United States and of your state. Section 1 has been interpreted as applying all the rights in the Bill of Rights, which applied only to the federal government, to the state governments. The "due process" clause and the "equal protection of the laws" clause have been part of many significant court suits.

FIFTEENTH AMENDMENT, 1870: Black suffrage guaranteed.

PROGRESSIVE AMENDMENTS—SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH

SIXTEENTH AMENDMENT, 1913: legalizes the income tax

SEVENTEENTH AMENDMENT, 1913: direct election of senators, instead of by state legislatures

EIGHTEENTH AMENDMENT, 1919: Prohibition

NINETEENTH AMENDMENT, 1920: women's suffrage

TWENTIETH AMENDMENT, 1933: Lame duck sessions of Congress were abolished, and inauguration date was changed from March 4 to January 20. Under the older timetable newly elected congressmen did not meet until thirteen months after their election in November. This

amendment eliminated the session of Congress that met from December to March, after the November elections had possibly replaced some congressmen.

TWENTY-FIRST AMENDMENT, 1933: repealed prohibition

TWENTY-SECOND AMENDMENT, 1951: two-term limit for the president

TWENTY-THIRD AMENDMENT, 1961: presidential electoral votes for the District of Columbia

TWENTY-FOURTH AMENDMENT, 1964: poll taxes prohibited

TWENTY-FIFTH AMENDMENT, 1967: presidential disability and succession

TWENTY-SIXTH AMENDMENT, 1971: suffrage for eighteen-year-olds

Separation of Powers

The separation of powers and the checks and balances system prevent any person or group from gaining control of all three branches of government. They diffuse power. In addition, the federal nature of our government puts us under two executives, the president and a governor; two legislatures, Congress and a state assembly; and two judiciaries, the federal and state courts. As an ambassador once said, "Anyone who thinks he knows exactly how and where a decision is made in America is crazy." The levels of government and the diffusion of power and responsibility do exactly what they were intended to do—prevent centralization and dilute authority. The three

most important powers of government are lodged mainly in three separate branches: legislative power—power to make laws; executive power—power to enforce laws; and judicial power—power to interpret laws.

One of the most difficult concepts for students to understand is that the Founding Fathers intended to create a slow, deliberate government. They valued debate and rational decisions more than haste. The popular will is often frustrated by the slow machinery, but the Constitution is the oldest continuous form of government in the world. The government doesn't work quickly, but it seems to work well.

Checks and Balances

President versus Congress

- | | |
|---|---|
| 1. May veto legislation | 1. May override a veto by a two-thirds vote |
| 2. Suggests legislation | 2. Investigates executive branch |
| 3. Party leader | 3. Has control over appropriations |
| 4. Molds public opinion | 4. Declares war |
| 5. May call a special session | 5. House only may impeach President. |
| 6. Commander in chief | 6. Senate only is court and jury for impeachment. |
| 7. Chief diplomat | 7. Senate only ratifies appointments. |
| 8. Salary may not be raised or lowered. | 8. Senate only ratifies treaties. |

Congress versus Judiciary

- | | |
|---|--|
| 1. Creates inferior courts and their jurisdiction | 1. Interprets laws and treaties |
| 2. Determines the number of Supreme Court judges | 2. Judicial review of laws (when the issue comes up in a court case) |

- | | |
|--|--------------------|
| 3. May specifically restrict court review of a piece of legislation* | 3. Lifetime tenure |
| 4. May propose a constitutional amendment to negate a court decision | |
| 5. House only may impeach judges. | |
| 6. Senate only is court and jury for impeachment. | |
| 7. Senate only ratifies presidential appointments of judges. | |

Judiciary versus President

- | | |
|--|---|
| 1. Interprets laws and treaties | 1. May pardon |
| 2. Judicial review of presidential actions (when the issue comes up in a court suit) | 2. Appoints judges (with Senate approval) |
| 3. Lifetime tenure | 3. May refuse to enforce a court order |
-

Congress and Voting

Study the following list. Students often confuse the majorities needed for legislative actions.

ACTIONS REQUIRING ONLY A MAJORITY VOTE

- raising taxes
- appropriations
- declaring war
- adding to the national debt
- instituting a draft
- House only—impeachment charges

expelling a member of Congress (a two-thirds vote in only that one house of Congress)

- Senate only—ratifying treaties
- Senate only—acting as a jury for impeachment
- Senate only—ratifying presidential appointments to executive branch positions, the judiciary, and federal agencies

ACTIONS REQUIRING A TWO-THIRDS MAJORITY

- overriding a presidential veto
- proposing amendments to the Constitution

ACTIONS REQUIRING A THREE-FOURTHS MAJORITY

- three-fourths of the states must approve a proposed constitutional amendment

*Several colleagues inquired about the basis for number three. The reference is to "the exceptions clause of the Constitution," Article III, Section 2, Clause 2, "... the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." In the debate over the repeal of the Judiciary Act of 1801, following Jefferson's victory over John Adams, the Federalists in Congress never denied the right to use this clause to modify the Supreme Court's appellate jurisdiction. The best example of a decision under this clause occurred on March 27, 1868, when the Radical Republicans in Congress repealed an 1867 law which conferred upon the Supreme Court the right to hear certain appeals involving habeas corpus. In *Ex Parte McCordle* (also spelled *McArdle*), 1869, the Supreme Court acknowledged Congress' right to define and to limit its appellate jurisdiction by unanimously declaring that no appeal from a federal Circuit Court under the repealed act of 1867 was reviewable.

Scholars still argue over the meaning of "the exceptions clause" within the context of the whole Article III and the subsequent evolution of constitutional law and practice. See *Racoul Berger, Congress v. The Supreme Court*, 1969, and section four of Sarah Baumgartner Thurow, editor, *E Pluribus Unum: Constitutional Principles and the Institutions of Government*, 1988.

An Overview of the Content of the U.S. Constitution

- Article 1. Establishment of the legislative Branch (the U.S. Congress) description of the House of Representatives and Senate-members' qualifications, terms of office, how chosen, officers (Speaker, Vice President, President, Pro Tempore); impeachment power; meetings and procedure, bills for raising revenue must begin in the House; President's veto power; Section 8-- long list of congressional powers including paragraph 18's necessary and proper clause; Section 9-- restrictions on Congress' power; Section 10-- restrictions on the states.
- Article 2. Establishment of the executive branch; term of President and Vice President; qualifications to be president; Vice President's succession to the presidency; powers or duties of the President.
- Article 3. Establishment of the judicial branch; creation of the Supreme Court and Congress' power to create lower courts; jurisdiction of the Supreme Court and other federal courts; original versus appellate jurisdiction; right to trial by jury; definition of treason.
- Article 4. Obligations of each state to every other state; admission of new states by Congress; obligations of the national government to the states.
- Article 5. Proposing and ratifying amendments to the Constitution.
- Article 6. Guarantee of debts contracted before the adoption of the Constitution; supremacy clause-the supreme law of the land shall be (a) the U.S. Constitution, (b) laws made in pursuance thereof, (c) treaties; oath of all officials to support the Constitution; no religious test for national office.
- Article 7. Ratification of the Constitution
- Amendment I: (1791) No law respecting the establishment of religion or prohibiting free exercise of religion or abridging freedom of speech, press, assembly, or right to petition government for redress of grievances.
- Amendment II: (1791) Well regulated militia being necessary, right of the people to keep and bear arms shall not be infringed.
- Amendment III: (1791) No quartering of soldiers in private homes in time of peace without the consent of the owner.

- Amendment IV: (1791) Right of the people to be secure in their persons, houses, papers, and the effects against unreasonable searches and seizures; issuance of and description of warrants.
- Amendment V: (1791) Right to indictment by Grand Jury in capital or otherwise infamous crimes; No double jeopardy; no self-incrimination; no denial of life, liberty, or property without due process of law; no taking of private property for public use without just compensation.
- Amendment VI: (1791) In criminal cases, right to speedy and public trial by an impartial jury; right to be informed of nature of charge; to be confronted by witnesses against him; to compulsory process for obtaining favorable witnesses; assistance of counsel.
- Amendment VII: (1791) Right to a trial by jury in civil cases.
- Amendment VIII: (1791) No excessive bail or fines and no cruel and unusual punishment.
- Amendment IX: (1791) Enumeration in the Constitution of certain rights not to be interpreted to deny other rights retained by the people.
- Amendment X: (1791) Powers not delegated to the U.S. by the Constitution and not denied by it to the states are reserved to the states or to the people.
- Amendment XI: (1791) U.S. courts have no jurisdiction over cases brought against a state by citizens of another state or by citizens of another nation.
- Amendment XII: (1804) Amending Article II's description of election of the President and Vice President; separate voting by electors for President and Vice President.
- Amendment XIII: (1865) Abolition of slavery and Congress' power to enforce this amendment by appropriate legislation.
- Amendment XIV: (1868) Definition of U.S. and state citizenship; limitations on states; no abridging privileges and immunities of U.S. citizens; no denial of life, liberty or property without due process of law; no denial of equal protection of the law. Congress' power to enforce this amendment by appropriate legislation.

- Amendment XV: (1870) No denial of right to vote by U.S. or states because of race, color, or previous condition of servitude; Congress' power to enforce this amendment by appropriate legislation.
- Amendment XVI: (1913) Congress' power to levy and collect an income tax.
- Amendment XVII: (1913) Direct, popular election of U.S. Senators.
- Amendment XVIII: (1919) Manufacture, sale, or transportation of intoxicating liquor prohibited.
- Amendment XIX: (1920) Right of citizens to vote can not be denied by U.S. or states because of sex.
- Amendment XX: (1933) Terms of President and Vice President begin on January 20 and terms of Senators and Representatives begin on January 3 (instead of March as previously provided).
- Amendment XXI: (1933) Repeal of the 18th Amendment and thus of prohibition.
- Amendment XXII: (1951) Limiting a person to two terms or a maximum of 10 years as President of the U.S.
- Amendment XXIII: (1961) Right to vote for President and Vice President for citizens of the District of Columbia (3 electoral votes).
- Amendment XIV: (1964) No denial of citizens' right to vote in national elections because of a failure to pay a poll tax or other tax.
- Amendment XXV: (1967) In case of a vacancy in the office of Vice President, the President shall choose a new Vice President with approval of a majority vote of both houses of Congress; presidential disability -- how and when the Vice president may become acting President.
- Amendment XXVI: (1971) Right of citizens of U.S. who are 18 years of age or older to vote shall not be denied because of age.
- Amendment XXVII: (1992) No law, varying the compensation for the services of Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.