Foundations of Government

The Constitution

Unknown photographer. Public domain.
Constitutional Foundations

- Views of the Constitution
- Checking Power with Power
- Judicial Review and the “Guardians of the Constitution”
- Informal Change: the Unwritten Constitution
- Changing the Letter of the Constitution
Views of the Constitution

- Article I – bicameral Congress
- Article II – presidency
- Article III – Supreme Court
- Article IV – federalism
- Article V – amending process
- Article VI – supremacy clause
- Article VII – ratification
- Bill of Rights
The Articles of the Constitution

Article I: The Legislative Branch

- Bicameral
- Sets out terms, selection, apportionment
- Section 8
  - Enumerated powers
    - 17 clauses
  - Implied powers
    - Final clause: necessary and proper clause
The Articles of the Constitution

Article II: The Executive Branch

- Four year terms
- Qualifications for office
- Removal
- Powers
  - Commander in Chief
  - Treaties
  - Appointments
- Addressing the nation
The Articles of the Constitution

Article III: the Judicial Branch

- The Supreme Court
- Congress and the lower courts
- Jurisdiction
The Articles of the Constitution

Articles IV through VII

- Article IV: relations among the states and the **full faith and credit clause**
- Article V: amending the constitution
- Article VI: **supremacy clause**
- Article VII: ratification
Checking Power with Power

Federalism

• Certain powers to the national government and reserved the rest for the states

• Checks national power with state power
Checking Power with Power

Separation of Powers

- Three branches get power
  - Legislative – makes law
  - Executive – applies law
  - Judicial – interprets law
Checking Power with Power

Checks and Balances

- Ambition to counteract ambition
- Overlapping power
Checking Power with Power

- National Political Parties and Interest Groups
- Expansion of Electorate and the Move Toward More Direct Democracy
- Changes in Technology
- The Growth of Presidential Power
**TABLE 2–1** The Exercise of Checks and Balances, 1789–2010

**Vetoes** Presidents have vetoed more than 2,500 acts of Congress. Congress has overridden presidential vetoes more than 100 times.

**Judicial Review** The Supreme Court has ruled more than 175 congressional acts or parts thereof unconstitutional.

**Impeachment** The House of Representatives has impeached two presidents, one senator, one secretary of war, and 15 federal judges; the Senate has convicted seven of the judges but neither president.

**Confirmation** The Senate has refused to confirm nine cabinet nominations. Many other cabinet and subcabinet appointments were withdrawn because the Senate seemed likely to reject them.

---


For additional resources on the Constitution, go to www.archives.gov/exhibits/charters/constitution.html.

*Does the relative infrequency of veto overrides surprise you? Why or why not? Are there other checks Congress can use against the president?*
Figure 2.2: What are the separation of powers and checks and balances under the U.S. Constitution?

**LEGISLATIVE BRANCH POWERS**
- Pass all federal laws
- Pass the federal budget
- Declare war
- Establish lower federal courts and the number of judges

**EXECUTIVE BRANCH POWERS**
- Enforce federal laws and court orders
- Propose legislation to Congress
- Make foreign treaties
- Nominate officers of the United States government and federal judges
- Serve as commander in chief of the armed forces
- Pardon people convicted in federal courts or grant reprieves

**JUDICIAL BRANCH POWERS**
- Interpret federal laws and U.S. Constitution
- Review the decisions of lower state and federal courts

**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

**Judicial Checks on the Legislative**
- Rule federal and state laws unconstitutional

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

- States held ratifying conventions
  - Initially great resistance from the states
- Federalists and Anti-Federalists
  - *The Federalist Papers*
- Nine states need to ratify
  - New Hampshire becomes the ninth in 1788
- States ultimately ratified on condition of the inclusion of a **Bill of Rights**
The *Federalist Papers*

- Most written by Alexander Hamilton and James Madison between October 1787 and May 1788
- Explanations of the Framers’ intentions
- *Nos. 10, 51, and 78* of particular importance
Table 2.2: What were the differences between the Federalists and the Anti-Federalists?

<table>
<thead>
<tr>
<th></th>
<th>Federalists</th>
<th>Anti-Federalists</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who were they?</strong></td>
<td>Property owners, landed rich, merchants of Northeast and Middle Atlantic states</td>
<td>Small farmers, shopkeepers, laborers</td>
</tr>
<tr>
<td><strong>Political philosophy</strong></td>
<td>Elitist; saw themselves and those of their class as most fit to govern (others were to be governed)</td>
<td>Believed in the decency of “the common man” and in participatory democracy; viewed elites as corrupt; sought greater protection of individual rights</td>
</tr>
<tr>
<td><strong>Type of government favored</strong></td>
<td>Powerful central government; two-house legislature; upper house (six-year term) further removed from the people, whom they distrusted</td>
<td>Wanted stronger state governments (closer to the people) at the expense of the powers of the national government; sought smaller electoral districts, frequent elections, referendum and recall, and a large unicameral legislature to provide for greater class and occupational representation</td>
</tr>
<tr>
<td><strong>Alliances</strong></td>
<td>Pro-British, anti-French</td>
<td>Anti-British, pro-French</td>
</tr>
</tbody>
</table>
The Bill of Rights

- First ten amendments to the U.S. Constitution
- Largely guarantee specific rights and liberties including freedom of expression, speech, press, religion, and assembly
- Ratified in 1791
Toward Reform: Methods of Amending the U.S. Constitution

- Framers made formal amendment process slow to prevent impulsive amendments
- Two methods for amending: formal and informal
Changing the Letter of the Constitution

Changing the Letter

• Approaches
  – Originalist
  – Adaptive

• Proposing Amendments
  – By Congress or state legislatures (state legislatures have never proposed)

• Ratifying Amendments
  – By state legislatures or conventions (convention used only for Twenty-First Amendment

• Ratification Politics
FIGURE 2–2 Four Methods of Amending the Constitution.

Why do you think Congress has been reluctant to call for a national constitutional convention?
Figure 2.3: How can the U.S. Constitution be amended?

**Methods of Proposal**
- By two-thirds vote in both houses of Congress
- Or
  - By national constitutional convention called by Congress at the request of two-thirds of the state legislatures. (This method never has been used to propose an amendment.)

**Methods of Ratification**
- Usual method
  - By legislatures in three-fourths of the states
- Used once (21st Amendment)
  - Or
  - By conventions in three-fourths of the states
TABLE 2–2 The Amending Power and How It Has Been Used

Leaving aside the first ten amendments (the Bill of Rights), the power of constitutional amendment has served a number of purposes:

To Increase or Decrease the Power of the National Government
The Eleventh took some jurisdiction away from the national courts.
The Thirteenth abolished slavery and authorized Congress to legislate against it.
The Sixteenth enabled Congress to levy an income tax.
The Eighteenth authorized Congress to prohibit the manufacture, sale, or transportation of liquor.
The Twenty-First repealed the Eighteenth and gave states the authority to regulate liquor sales.
The Twenty-Seventh limited the power of Congress to set members’ salaries.

To Expand the Electorate and Its Power
The Fifteenth extended suffrage to all male African Americans over the age of 21.
The Seventeenth took the right to elect U.S. senators away from state legislatures and gave it to the voters in each state.
The Nineteenth extended suffrage to women over the age of 21.
The Twenty-Third gave voters of the District of Columbia the right to vote for president and vice president.
The Twenty-Fourth outlawed the poll tax, thereby prohibiting states from taxing the right to vote.
The Twenty-Sixth extended suffrage to otherwise qualified persons age 18 or older.

To Reduce the Electorate’s Power
The Twenty-Second took away from the electorate the right to elect a person to the office of president for more than two full terms.

To Limit State Government Power
The Thirteenth abolished slavery.
The Fourteenth granted national citizenship and prohibited states from abridging privileges of national citizenship; from denying persons life, liberty, and property without due process; and from denying persons equal protection of the laws. This amendment has come to be interpreted as imposing restraints on state powers in every area of public life.

To Make Structural Changes in Government
The Twelfth corrected deficiencies in the operation of the electoral college that the development of a two-party national system had revealed.
The Twentieth altered the calendar for congressional sessions and shortened the time between the election of presidents and their assumption of office.
The Twenty-Fifth provided procedures for filling vacancies in the vice presidency and for determining whether presidents are unable to perform their duties.

Overall, have constitutional amendments resulted in a stronger or weaker federal government than was established in the Constitution?
FIGURE 2-3  The Time for Ratification of the 27 Amendments to the Constitution.

What is an appropriate time for ratification of a proposed amendment? In thinking about your answer, should the length of elected legislators' terms play a role in your decision?
Judicial Review and the “Guardians of the Constitution”

Judicial Review

• Origins of Judicial Review
  • Federalists supported judicial review
• *Marbury v. Madison* (1803)
• Judiciary becomes the guardian
Informal Change: The Unwritten Constitution

- Congressional Elaboration
- Presidential Practices
  - Executive orders
  - Executive privilege
  - Right to Confidentiality
  - Impoundment
- Judicial Interpretation
Table 2.1: How do the Articles of Confederation and the U.S. Constitution compare to one another?

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