

The Constitution

Key Words:

popular sovereignty; limited government; separation of powers; checks and balances; judicial review; federalism; constitutionalism; rule of law; unconstitutional

A. Overview

The Constitution was founded on six basic principles. You will examine these six principles, and how they are embodied in the Constitution, and understand their bearing on the workings of the United States government. **The six basic principles are: popular sovereignty; limited government; separation of powers; checks and balances; judicial review; and federalism**

B. Popular Sovereignty

1. Recall that in the United States, all political power belongs to the people, who are sovereign.
Popular Sovereignty: Basic principle of the American system of government; that the people are the only source of any and all governmental power, that government must be conducted with the consent of the governed.
2. Government can govern only with the consent of the governed.
3. Sovereign people created the Constitution and the government, both federal and state.
4. The Preamble:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

C. Limited Government

1. Limited Government is the principle that holds that government may do only those things that the people have given it the power to do.
Limited Government: Basic principle of the American system of government; that government is limited in what it may do, and each individual has certain rights that government cannot take away. 2. The government and its officers are always subject to the law.

Constitutionalism: Basic principle of American system of government that government is conducted according to constitutional principles, i.e., that those who govern are bound by the fundamental law.

Rule of Law: Concept that government and its officers are always subject to -- never above -- the law.

2. Constitution is a statement of limited government. Reading it, displays explicit prohibitions of power to government. *See Article I, 9 and 10 (pp. 730-31); the 1st through the 10th Amendments (pp. 736-38); and the 13th, 14th, 15th (pp. 738-39), 19th (p. 740), 24th (pp. 741-42), and 26th Amendments (pp. 742).*

D. Separation of Powers

Separation of Powers: Basic principle of the American System of government, that the executive, legislative, and judicial powers are divided among three independent and coequal branches of government.

1. Recall previous discussions regarding differences between parliamentary system (power in one central agency) and presidential system (three branches).
2. The Constitution distributes the powers of the National Government among Congress (legislative branch), the President (executive branch), and the courts (judicial branch).
3. The Framers of the Constitution created a separation of powers in order to limit the powers of the government and to prevent tyranny -- too much power in the hands of one person or a few people.
4. James Madison wrote, "The accumulation of all powers...in the same hands...may be pronounced as the very definition of tyranny," he was arguing on behalf of the principle of separation of powers.

E. Checks and Balances

1. Each branch of government is subject to a number of constitutional restraints by the other branches. This is the concept of "checks and balances."
Checks and Balances: System of overlapping the powers of the legislative, executive, and judicial branches, to permit each branch to check the actions of the others.
2. Although there have been instances of spectacular clashes between branches, usually the branches of government restrain themselves as they attempt to achieve their goals.
3. For example, it is this constitutional principle that when the Senate confirms or rejects the President's appointee to be the director of the Central Intelligence Agency (CIA), to be secretary of defense, or a federal judge.

F. Judicial Review

1. Through the landmark case of *Marbury v. Madison* (1803), the judicial branch possesses the power to determine the constitutionality of an action of the government.

Marbury v. Madison: (Article III, judicial powers) Chief Justice Marshall established "judicial review" as a power of the Supreme Court. After defeat in the 1800 elections, President Adams appointed many Federalists to the federal courts, but the commissions were not delivered. New Secretary of State James Madison refused to deliver them. Marbury sued in the Supreme Court. The Court declared a portion of the Judiciary Act of 1789 unconstitutional, thereby declaring the Court's power to find acts of Congress unconstitutional.

Judicial Review: Power of the courts to determine the constitutionality of the actions of the legislative and executive branches of government.

2. In most cases the judiciary has supported the constitutionality of government act; but in more than 130 cases, the courts have found congressional acts to be unconstitutional, and they have voided thousands of acts of State and local governments.

Unconstitutional: Contrary to constitutional provisions and so illegal, null and void, and of no force and effect.

G. Federalism

Federalism: The division of political power among a central government and several regional governments. **Horizontal and vertical federalism**

1. United States federalism originated in American rebellion against the edicts of a distant central government in England.

2. Federalism is a compromise between a strict central government and a loose confederation, such as that provided for in the Articles of Confederation.

3. This constitutional principles was devised as a compromise between a powerful central government and a loose confederation of States.

OUTLINE OF THE CONSTITUTION OF THE UNITED STATES

Article I	Legislative Department
Article II	Executive Department
Article III	Judicial Department
Article IV	Relations Among the States
Article V	Provisions for Amendment
Article VI	Public Debts; Supremacy of National Law; Oath
Article VII	Ratification of Constitution
1st Amendment	Freedom of Religion; Speech; Press, Assembly, and Petition
2nd Amendment	Right to Keep, Bear Arms
3rd Amendment	Lodging Troops in Private Homes
4th Amendment	Search, Seizures, Proper Warrants
5th Amendment	Criminal Proceedings; Due Process; Eminent Domain
6th Amendment	Criminal Proceedings
7th Amendment	Jury Trials in Civil Cases
8th Amendment	Bail, Cruel, Unusual Punishment
9th Amendment	Unenumerated Rights
10th Amendment	Powers Reserved to the States
11th Amendment	Suits Against States
12th Amendment	Election of President and Vice President
13th Amendment	Slavery and Involuntary Servitude
14th Amendment	Rights of Citizens
15th Amendment	Right to Vote -- Race, Color, Servitude
16th Amendment	Income Tax
17th Amendment	Popular Election of Senators
18th Amendment	Prohibition of Intoxicating Liquors
19th Amendment	Equal Suffrage -- Sex
20th Amendment	Commencement of Terms; Sessions of Congress, Death or Disqualification of President-Elect
21st Amendment	Repeal of 18th Amendment
22nd Amendment	Presidential Tenure
23rd Amendment	Inclusion of District of Columbia in Presidential Election System
24th Amendment:	Right to Vote in Federal Elections -- Tax Payment
25th Amendment	Presidential Succession; Vice Presidential Vacancy; Presidential Inability
26th Amendment	Right to Vote -- 18 years of age
27th Amendment	Congressional Pay