

Constitutional Principles

Background: The authors of the Constitution believed that the national government needed to be stronger than it had been under the Articles of Confederation. At the same time, however, they were deeply mistrustful of human nature and of the tendency for people in power to violate the rights of others. As a result, they sought to create a government powerful enough to govern, but not so powerful as to threaten individual liberty. The idea of a constitutional government -- of a government with a written set of rules which it cannot violate -- is, itself, one way to create a limited government. The Founding Fathers also sought to divide power in a number of ways in order to prevent its abuse. Three of the key ideas embedded in the Constitution are federalism, separation of powers, and checks and balances.

Federalism

In a federal system, power is divided between a national government and state or local governments. In the American Constitution, the sovereignty of the national government is established by the Supremacy Clause but states retain the right to rule in certain areas. Key elements of the federal system include:

- National government and states retain sole power to govern in certain areas (see chart below)
- Certain powers are denied to the national government
- National and state governments share certain powers
- The Supremacy Clause of the Constitution (Article VI) establishes that the Constitution and federal laws take precedence over state laws
- The "equal protection" clause of the 14th Amendment established that state laws must also conform to the guarantees in the Bill of Rights

The Federal System

National Powers (Delegated Powers)	Powers Denied the National Government	Shared Powers (Concurrent Powers)	State Powers (Reserved Powers)
• Regulate interstate and foreign	• Pass Bills of Attainder • Pass <i>Ex</i>	• Borrow Money • Levy and collect	• Regulate intrastate commerce • Establish and

commerce • Create and maintain armed forces • Print money • Declare war • Regulate immigration and naturalization • Establish foreign policy • Establish a post office	<i>Post Facto</i> laws • Suspend the <i>Writ of Habeas Corpus</i> • Grant titles of Nobility • Tax Exports • Favor one state over another	taxes • Make and enforce laws • Charter Bank	maintain schools • Establish and regulate laws for professional licenses and marriage • Create corporation laws • Establish local governments
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Separation of Powers

The Constution separates the powers granted to the national government into three separate banches: the legislative, the executive, and the judicial. This separation of powers was based on the ideas of the French philosopher Montesquieu. By dividing the power to govern amonmg three branches, the authors of the Constitution hoped to provide a check against tyrannical rule.

Separation of Powers

Branch	Primary Responsibility	Powers
Legislative Branch (Congress)	To Make the Laws	• Regulate interstate and foreign commerce • Create and maintain armed forces • Print money • Declare war • Regulate immigration and naturalization • Establish a post office

		Establish and maintain the federal court system
Executive Branch (Presidency)	To Enforce the Laws	- Execute federal laws and programs - Conduct foreign policy - Command the Armed Forces - Negotiate treaties - Nominate federal judges and ambassadors
Judicial Branch (Federal Courts)	To Interpret the Laws	- Rule on cases involving the violation of federal law, the Constitution, treaties, and/or maritime law - Rule on cases involving federal officials, states suing other states, or representatives of foreign governments - Rule on the Constitutionality of laws and Executive Orders

Checks and Balances

The separation of powers provided for in the Constitution is not absolute. Instead, the powers of the individual branches were designed to overlap in several

key areas. This allows each branch of government to "check," or limit the power of, the other branches. The authors of the Constitution hoped that this system of checks and balances would prevent any one branch of government from becoming too powerful.

Checks and Balances

Branches	Check
Congress Checks President by:	- Impeaching and Removing President (Impeachment requires a majority vote of the House; Removal requires a 2/3 majority of the Senate) - Overriding a Presidential Veto

	(requires a 2/3 majority of both Houses) • Rejecting Presidential nominations (The Senate) • Rejecting Treaties (The Senate)
Congress Checks Courts by:	• Proposing Constitutional Amendments • Creating lower courts • Impeaching and removing judges (Impeachment requires a majority vote of the House; Removal requires a 2/3 majority of the Senate) • Rejecting Presidential nominations to the Courts (The Senate)
President Checks Congress by:	• Vetoing legislation • Calling special sessions • Proposing legislation
President Checks Courts by:	• Nominating federal judges • Granting pardons
Courts Check Congress by:	• Declaring laws unconstitutional
Courts Check President by:	• Declaring executive orders unconstitutional