



# Unit I : The Constitutional Underpinnings

## FORMING THE U.S. CONSTITUTION

*The colonial and revolutionary period shaped America's attempts at self-government.*

- Colonists favored a controlled central government after overthrowing the British oppression.
- Colonists had experience with a three branch government since they were in wide use within the colonies.

*The Constitution was based on certain fundamental democratic values:*

- Freedom of religion, speech, and assembly.
- Popular sovereignty, the belief that people are the source of power.
- Respect for individuals.
- Equal opportunity to succeed.

*The Constitutional Convention was called to "revise" the Articles. Instead, it created an entirely new government.*

AGREEMENTS	DISAGREEMENTS
<ul style="list-style-type: none"> <li>• Scrap Articles, create a new government.</li> <li>• Create a republic.</li> <li>• Create a constitutional government.</li> <li>• Stronger central government.</li> <li>• Protection of property</li> <li>• Suffrage to only land owners.</li> <li>• Balance the central government.</li> <li>• Absolute secrecy.</li> </ul>	<ul style="list-style-type: none"> <li>• Method of representation.</li> <li>• Taxation and representation of slaves.</li> <li>• Term and election of the president.</li> <li>• Including a Bill of Rights.</li> </ul>

- VIRGINIA PLAN: Proposed three branches of government. The legislature would be divided into two houses, representation would be proportional to population.
- NEW JERSEY PLAN: Essentially preserved the Articles, representation would be equal among states regardless of size.
- THE GREAT COMPROMISE: Adopted a bicameral legislature where the House would be represented by population and the Senate be equal.
- THE BILL OF RIGHTS: The first ten amendments to the Constitution. It was a concession made by the Federalists to the Anti-Federalists in order to convince the states to ratify the Constitution.
- Federal system was established as compromise between the confederation under the Articles and the monarchy under the British.
- Ratification completed after 9 out of 13 states approved of the Constitution.

*Also see "Chapter 3 Vocabulary"*

## THE ARTICLES OF CONFEDERATION

*America's first attempt at self-government failed but provided the experience necessary for the Constitution.*

- The Articles did not establish an executive department, no policies could be enforced.
- The Articles did not provide for a judiciary, all disagreements had to be settled through inefficient committees.
- Central government had no power to tax. Without revenue, it could not raise an army or function efficiently.
- Central government had no power to regulate commerce. States could tax each other and separate treaties were necessary for each state. States also printed their own currency.

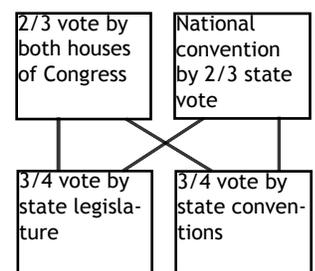
## THE U.S. CONSTITUTION

*Each article of the Constitution outlines a foundation for the U.S. government.*

- Article I: Legislative Power
- Article II: Executive Power
- Article III: Judicial Power
- Article IV: State's Powers and limits
- Article V: Process of amending
- Article VI: Federal Power
- Article VII: Provisions for ratification

## AMENDING PROCESS

### PROPOSAL



### RATIFICATION

## INFORMAL AMENDMENTS

*The meaning of the Constitution can be changed informally, that is, without an actual amendment. Informal amendments are much more common than actual amendments.*

- COURT DECISION: Court decisions establish precedents which are followed by later decisions.
- POLITICAL PRACTICE: Customs, such as nominating conventions, are not specified by the Constitution but are practiced.
- EXECUTIVE ACTIONS: President change the meaning of the Constitution, such as foreign police action without Congress approval.
- ACTS OF CONGRESS: Differing interpretations of the Constitution be used to pass certain laws, such as a national bank.

## GOVERNMENT POWERS

*Government power is derived from different sources.*

- EXPLICIT POWERS: Powers specifically granted by the Constitution, such as power to tax and regulate commerce.
- IMPLICIT POWERS: Powers not specifically stated but implied from the Constitution, such as establishing the treasury.
- INHERENT POWERS: Powers that all governments are entitled to by definition. Includes the power to define citizenship.

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## AMERICAN FEDERALISM

*Throughout the history of the United States, the balance of power between the national government and the states is constantly shifting.*

- Increased national government power in times of national emergency, such as September 11th or the Great Depression. The high point of national government involvement was the Great Society under Lyndon B. Johnson.
- Decreased national government under Nixon's administration where "New Federalism" was instituted. The process was continued under Reagan.

*The federal system holds advantages and disadvantages:*

- It is positioned between the extremes of the confederate and unitary systems.
- Places the government closer to the people while allowing the national government to focus on national issues.
- However, federal government is the final judge of its powers, leaves room for tyranny.

## EXPANDING NATIONAL GOVERNMENT

- **ELASTIC CLAUSE:** The basis of "implied powers", the elastic clause allows the government to perform any function that is "necessary and proper" to enforce the enumerated powers. Opponents to the central government often invoke the 10th Amendment, which gives unspecified powers to the states, against the elastic clause.
- **COMMERCE CLAUSE:** Gives the national government the authority to regulate all interstate commerce; it can be widely interpreted to expand central government power.

## CENTRALISTS AND DECENTRALISTS

CENTRALIST	DECENTRALIST
<ul style="list-style-type: none"> <li>• Nationalists</li> <li>• Loose interpretation of the Constitution</li> <li>• Believe that the people hold the power, since the Preamble begins "We the people..."</li> <li>• Advocate a strong central government.</li> <li>• Include: Hamilton, Marshall, Webster, T. Roosevelt, F. Roosevelt, Kennedy, Johnson, Clinton.</li> </ul>	<ul style="list-style-type: none"> <li>• State's rights</li> <li>• Strict interpretation of the Constitution</li> <li>• Believe that states hold the power since the Constitution was signed by the state legislatures</li> <li>• Advocate a weaker central government.</li> <li>• Include: Calhoun, Goldwater (presidential candidate), Reagan, South and West Conservatives, H.W. Bush, Fundamentalists groups.</li> </ul>

Centralists triumphed in the Supreme Court Case *McCulloch v. Maryland* 1819 which established the use of implied powers.

## NATIONAL GOVERNMENT AND STATES

*The national government often exercises otherwise not Constitutional authority over states through grants, in essence bribery.*

- **GRANT-IN-AID:** Money proved by one level of the government to another, often under the condition that they follow certain policies.  
*See "Chapter 4 Vocabulary" for different types of grants*

*States and the National Government have duties they are obliged to fulfill by the Constitution.*

- The national government must:
  - 1) Protect the states from foreign nations.
  - 2) Guarantee a republican form of government.
  - 3) Protect the states from domestic violence.
  - 4) Ensure equal power between the states.
- The states, in turn, must:
  - 1) Honor the laws of other states.
  - 2) Grant the same rights as other states.
  - 3) Return all suspects to the state of the crime.
  - 4) Enter agreements only with Congress approval.

*The National Government has special authority over the states.*

- **PRE-EMPTION:** The government takes control of a responsibility for a state function. It is increasingly used, such as with food labeling laws.  
*Pre-emption can happen through:*
- **MANDATES:** National government orders a state to follow a certain policy. It is expected to provide funding to perform the task (Unfunded Mandate Act 1995), though it is not always the case.
- **RESTRAINT:** The national government prohibits the state from performing a certain function.

*Also see "Chapter 3 Vocabulary"*

## INFLUENCES ON THE CONSTITUTION

*Philosophers and past documents influenced the principles of the U.S. Constitution.*

- **HOBBS:** Proposed that there was no "divine right" and that power came from the people.
- **LOCKE:** Believed that the government was a servant of the people, with the duty to protect "life, liberty, and property".
- **ROUSSEAU:** Advocated the use of checks and balances in order to control the government.
- **MONTESQUIEU:** Proposed the government be divided into three branches, executive, legislative, and judicial.