

CHAPTER

3

The Constitution

Essential Question How has the resiliency of the United States Constitution contributed to the strength of the government it created?



About the Photo

The National Constitution Center uses a variety of interactive experiences to introduce people to the Constitution. In Signers' Hall are life-sized bronze statues of the Framers of the Constitution. There are 42 statues, representing 39 men who signed the original Constitution, as well as the three who refused. By walking among them, visitors can more easily consider them as human beings who made choices that still influence our lives today. Visitors can participate in that process, either signing the Constitution or stating their reasons for not signing it.



CHAPTER AT A GLANCE

SECTION 1 A Blueprint for Government

- The Constitution establishes six goals for the U.S. government to meet.
- The Constitution outlines six basic principles of U.S. government and a system that safely and fairly distributes and balances power.
- Under the Constitution, the powers of government are limited in order to protect individual rights.
- The Constitution divides the powers of government among three separate branches: legislative, executive, and judicial.
- The Constitution includes checks on and balances of government power to prevent any one branch of government from overpowering the others.

SECTION 2 An Enduring Document

- The Constitution is an enduring document that has the ability to grow and change over time.
- The Constitution includes a formal process for adding amendments to the Constitution.
- The Constitution has been amended 27 times. The first 10 amendments are known as the Bill of Rights.

SECTION 3 Applying the Constitution

- Over time, the three branches of government—legislative, executive, and judicial—have expanded the scope and application of the Constitution.
- Political parties, customs, and traditions have affected how the Constitution is applied and carried out.
- Political scholars have debated what some see as disadvantages of the framework of government established by the Constitution.

CONNECTING TO THE CONSTITUTION



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of how the Constitution organized the new government.

SECTION 1

A Blueprint for Government

BEFORE YOU READ

Main Idea

Drawing lessons from history, the Framers wrote a constitution that divided, limited, and balanced power among three branches of government.

Reading Focus

1. What are the six goals of the Constitution?
2. What are the six principles of government in the Constitution?
3. What is popular sovereignty?
4. What is limited government?
5. How does the Constitution create a separation of the powers of government?
6. How does the system of checks and balances limit the powers of government?
7. Why is the principle of judicial review so powerful?
8. Why is the principle of federalism still a topic of debate?

Key Terms

popular sovereignty
limited government
rule of law
separation of powers
checks and balances
veto
judicial review
unconstitutional
federalism
supremacy clause

hmhsocialstudies.com TAKING NOTES

Use the graphic organizer online to take notes on the principles of government set out in the Constitution.

WHY IT MATTERS

Checks and Balances The Constitution gives each branch of government certain powers. While citizens—the “We the People” in the Constitution’s Preamble—are the ultimate source of all government power, it is the Constitution that divides, limits, and balances these powers among the three branches of government.

For example, the Constitution gives Congress the power to declare war and to raise, support, regulate, and fund the military. Congress has formally declared war only five times—the War of 1812, the Mexican-American War, the Spanish-American War, World War I, and World War II. At the same time, the president also has military powers—the Constitution names the president

commander in chief of the U.S. military. Presidents have used this singular power to send U.S. armed forces to places such as Korea, Vietnam, Grenada, Panama, Saudi Arabia and the Persian Gulf, Afghanistan, and Iraq.

Congress and a president may disagree on one issue or another. When they do, the Constitution’s system of checks and balances keeps either branch from taking control or imposing its will on the other one. Sometimes, the judicial branch, including the Supreme Court, must decide the issue.

Ultimately, however, we the people may settle the issue by exercising our political power by voting. ■

President George W. Bush, left, and Speaker of the House of Representatives Nancy Pelosi, right, at the president’s 2007 State of the Union speech.

The Need to Balance Power



Goals of the Constitution

In the Preamble to the Constitution, the Framers stated the six goals they wanted the national government to accomplish: form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and the generations that followed. Such a government would have to raise an army, pay its bills, and conduct relations with foreign countries to reach these goals. Many of the Framers, though, had strong reservations about—or were completely opposed to—a strong national government.

Governing after a Revolution To the Framers, the idea of government suppressing the liberty of citizens was not a fantasy. They had recently fought the American Revolution to stop the powerful British government from infringing on what they viewed as their natural rights. Many of the Framers were students of political philosophy and history. They knew of the achievements and failures of past governments—from Greek city-states to the Roman Empire to the European monarchies. Some of the Framers were also familiar with the constitution of the Iroquois League. As they gathered in Philadelphia in 1787, the Framers faced difficult choices about governing the new nation. They knew their decisions would have long-lasting consequences, and they were determined not to repeat the mistakes of the past. But how?

Addressing the Problem of Governing

A dilemma of democratic government is how to allow people substantial freedom while controlling the worst aspects of human behavior. In *Federalist Paper* No. 51, the author described the dilemma as follows:

PRIMARY SOURCE

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable government to control the governed; and in the next instance oblige it to control itself.”

—James Madison (probable author), 1788

GOALS OF THE CONSTITUTION

QUICK
FACTS

| GOAL | PURPOSE OF THE GOAL |
|------------------------------------|--|
| 1. Form a more perfect union | Strengthen the relationship among the states as part of a union and between the states and the national government as part of a new federal system |
| 2. Establish justice | Provide laws that are reasonable, fair, and impartial and make sure that the administration of those laws is also reasonable, fair, and impartial |
| 3. Ensure domestic tranquility | Keep peace and maintain order within the country |
| 4. Provide for the common defense | Defend the nation against foreign enemies |
| 5. Promote the general welfare | Allow all states and citizens to benefit militarily and economically from the protection of a strong national government |
| 6. Secure the blessings of liberty | Protect the liberties recently won in the American Revolution and preserve them for the generations to come |

Establishing a system of law was essential. The Framers agreed on this. They drew from the ideas of English philosopher John Locke, who wrote that “where there is no Law, there is no Freedom.” Laws help maintain order in society. At all levels of government, they protect rights, property, and lives. Laws set standards of behavior for all citizens and for the society as a whole. Each citizen can know exactly what is expected of him or her.

But laws must also be enforceable. They can be enforced only if there is an explicit threat of punishment, such as imprisonment or fines. The problem is that when a government has the power to make laws and punish lawbreakers, what is to stop it from turning that power against law-abiding citizens? How, in Madison’s words, could government be obliged “to control itself”?

READING CHECK Identifying the Main Idea

What problem of governing did the Framers face?

Principles of Government in the Constitution

The Framers' solution was to create a governing document, the Constitution, that divided, distributed, and balanced governmental power. In addition, the Constitution made almost all uses of government power subject to the will of the people through their power as voters. Finally, with the inclusion of the Bill of Rights in 1791, the Constitution placed specific restraints on the power of government to take actions that violate the basic rights of citizens.

The Constitution Is the Blueprint The original, unamended U.S. Constitution runs just over 4,500 words. In this brief document, the Framers offered a blueprint for governing that incorporated both ideas that had worked in the past and new, uniquely American principles of governing.

The Constitution we read and apply today consists of three main parts: the Preamble, the articles, and the amendments.

The Preamble, or introduction to the Constitution, states the broad goals for the new government established by the Constitution. The seven articles following the Preamble create, with little detail or elaboration, the structure of the U.S. government. These articles are remarkable in that only 27 changes, or amendments, have been added to the original Constitution during the nation's history.

Basic Principles of Governing In its structure and its language, the Constitution expressed six basic principles of governing. These principles are popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism. The Framers believed that if the federal government reflected and remained true to these principles, the goals of the U.S. Constitution could be accomplished.

READING CHECK Identifying the Main Idea

Describe how the Constitution provides a blueprint for governing the nation.

Popular Sovereignty

The concept that government gets its authority from the people and that ultimate political power remains with the people is known as **popular sovereignty**. The Framers made popular sovereignty the foundation upon which the Constitution rests.

PRIMARY SOURCE

“We the People of the United States . . . do ordain and establish this Constitution for the United States of America.”

—Preamble to the Constitution, 1787

By creating a republic—a national government in which people exercise their sovereignty by electing others to represent them—the Framers firmly established the people's authority. Still, much as the Framers despised the idea of an all-powerful king or central government, they had no intention of putting unlimited power in the hands of citizens, either. They established a republic, not a direct democracy. Moreover, they placed some constitutional limits on popular sovereignty, such as restricting how the Constitution can be amended.

ACADEMIC VOCABULARY

concept an abstract or generic idea generalized from specific instances

PRINCIPLES OF THE CONSTITUTION

QUICK FACTS

POPULAR SOVEREIGNTY

The people establish government and are the source of its power.

LIMITED GOVERNMENT

Government powers are restricted to protect individual rights.

SEPARATION OF POWERS

The power to govern is divided among executive, legislative, and judicial branches to prevent the concentration and abuse of power by any one branch.

CHECKS AND BALANCES

Each branch of government has the authority to check, or restrain, some powers of the other two branches.

JUDICIAL REVIEW

The judiciary has the power to strike down laws and other government actions as invalid under the Constitution.

FEDERALISM

The rights of the states are protected by dividing powers between the national government and the state governments.

A republic, according to James Madison, was also the best way to guard against the danger of factions, which Madison and other Framers saw as a serious outgrowth of unchecked popular sovereignty. Madison defined a faction as a number of citizens—whether a minority or a majority—united by a common interest who might act in a way that hurt the rights of other citizens or the interests of the nation. Madison argued that factions were certain to exist, so the way to deal with them was to limit their effects. A republican form of government in which elected leaders represent a broad and diverse group of citizens with competing interests would tend to create factions with broad, rather than narrowly partisan, interests.

Popular sovereignty still lies at the heart of our government. Each election, whether it is a local school board election that may affect taxes or a presidential campaign in full swing, is a chance for citizens to exercise their sovereignty. Every elected leader, from the president on down, works for you, and when you step into the voting booth, you can vote to “fire” them. That is an important power and an even more important responsibility. It places with citizens an obligation to exercise their sovereignty wisely, choosing leaders after thoughtful deliberation.

READING CHECK Identifying the Main Idea How is popular sovereignty expressed in the Constitution?

Limited Government

No matter what their political beliefs, most Americans oppose the government exercising too much control over their businesses or private activities. Likewise, the Framers believed that limited government would promote their goals and protect individual rights. **Limited government** is the principle that the powers and functions of government are restricted by the U.S. Constitution and other laws. This principle is also known as the **rule of law**, the concept that every member of society, including the ruler or government, must obey the law and is never above it.

The principle of limited government is spread throughout the Constitution. Article I, Section 8, for example, defines the powers of Congress, including the power to declare



Using Your Power

Voting, as this man is doing, is the most powerful and direct expression of popular sovereignty. Your vote is your voice to express your opinion on issues and to choose your representatives in our political system.
How can voting reinforce limited government and the rule of law?

war, raise armies, and impose taxes. The list of powers is extensive, but the very act of listing permitted powers implies that any powers not listed are powers excluded. Moreover, Article I, Section 9, specifically denies Congress certain powers, such as the power to grant titles of nobility or pass laws that make criminal an act that was legal when it was committed. The Bill of Rights prohibits government from violating an individual's rights, such as free speech and to a jury trial. By spelling out the limits on government power, the Framers hoped to protect citizens from future abuses of power.

A vigorous civil society—voluntary civic and social groups that form around shared values, purposes, and interests—also works to constrain government power. Civil society groups often participate in the political process, helping educate and inform the citizenry. Informed citizens make better choices when they vote, and they may be more likely to hold government accountable when it exceeds its powers or fails to respond to and address society's needs.

READING CHECK Drawing Conclusions How might civil society support the principle of limited government?

Separation of Powers



Read Article II of the Constitution. Article II, Section 1, gives the president “executive power” but does not define what that power is. What other provisions of Article II give an indication of what the Framers meant by “executive power”?

Another way to ensure that the powers of government are not concentrated in the hands of a few officials or agencies is to create three distinct branches of government. Under the principle of **separation of powers**, the duties of governing are divided among three branches: legislative, executive, and judicial. The first three articles of the Constitution list the responsibilities and powers of each branch.

Article I creates and empowers Congress, the nation’s lawmaking body, which is made up of the House of Representatives and the Senate. Although the two houses of Congress share responsibility for passing laws, each has its own special powers. For example, laws that fund government must begin in the

House of Representatives. This gives the House, where members face voters every two years, significant “power of the purse.”

Article II establishes the duties of the executive branch, which comprises the president, vice president, and many executive departments. The executive branch implements, or carries out, laws passed by the legislative branch. The president is also commander in chief of the nation’s military.

Article III establishes the judicial branch, including the Supreme Court, to exercise the judicial power of the United States. It is the function of the judicial branch to interpret and apply the law—to say what the law is.

READING CHECK Summarizing How does the structure of the Constitution reflect the separation of powers of government?

hmhsocialstudies.com **INTERACTIVE**

Separation of Powers

The powers of government are divided among the legislative, executive, and judicial branches.



Legislative • Makes laws

Executive • Carries out laws

Judicial • Interprets laws

Executive

Judicial

Legislative

Judicial

Executive

Legislative

Checks and Balances

Each of the three branches of government has ways to check, or limit, the powers of the other branches.

- Can veto acts of Congress
- Can call special sessions of Congress
- Can suggest laws and send messages to Congress

- Can declare acts of Congress unconstitutional through the power of judicial review

- Can impeach and remove the president
- Can override veto
- Controls spending of money
- The Senate approves or rejects certain presidential nominations.
- The Senate must ratify all formal U.S. treaties.

- Can declare executive acts unconstitutional
- Judges are appointed for life and are free from executive control.

- Appoints federal judges
- Can grant reprieves and pardons for federal crimes

- Can impeach and remove federal judges
- Establishes lower federal courts

Skills FOCUS

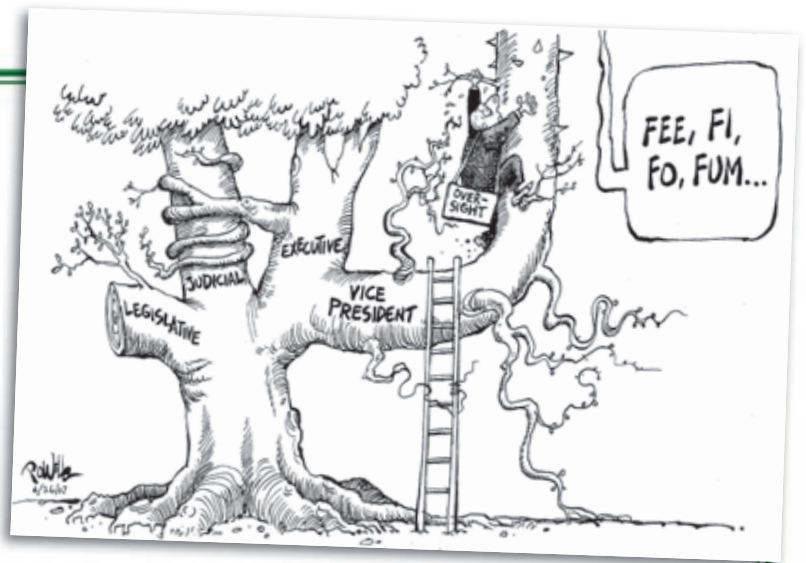
INTERPRETING CHARTS

Analyzing How do checks and balances reinforce the separation of powers?

PRIMARY SOURCES

Checks and Balances

Under the principles of separation of powers and checks and balances, one responsibility of the legislative branch is to oversee the actions of the federal government. Congress's oversight authority is implied in the Constitution as part of its power to raise and spend federal funds. Does this authority extend to the executive branch? If so, does it extend to the president, or does the separation of powers exempt parts of the executive branch from any checks? In this cartoon, the systems of checks and balances seems to have broken down. A frightened Jack-and-the-Beanstalk character representing Congress tries to exercise oversight on an empowered giant.



INTERPRETING PRIMARY SOURCES

Making Inferences How does the artist represent the structure of the U.S. government? What does the cartoon say about the relationship among the branches of government at the time the cartoon was drawn?

See **Skills Handbook**, p. H9.

Checks and Balances

Under the Constitution, each branch of government has its own area of governmental responsibility. The three branches are not completely separate from each other, however. The Framers wanted to be sure that none of the branches, especially the executive, would become so powerful it dominated the other two. They feared that if one branch controlled the government, that branch could interfere with individual political rights and harm the “common good.” The common good are those policies and actions that benefit all of society, such as health, safety, and defense programs.

The Framers constructed a system of checks and balances among the three branches of government. **Checks and balances** refers to the system that gives each branch of government the power to change or cancel acts of another branch. The system prevents any branch from exerting too much power.

For example, Congress can check the executive branch by controlling taxes and spending. First the House of Representatives, then the Senate, must pass all bills that spend money. As a result, Congress can limit or

even cut the spending by the executive branch on hundreds of federal programs. In addition, the Senate can reject presidential nominations to top government jobs and must approve international treaties negotiated by the president by a two-thirds vote in order for the agreements to become law. Finally, Congress is given the power to declare war, which places limits on the president’s power as commander in chief.

The executive branch has a check on the legislative branch by way of the president’s power to **veto**, or reject, legislation. Sometimes the threat of a presidential veto is sufficient to push congressional leaders to revise legislation so that it has a better chance of being signed by the president and thus becoming law. Other times, the president must actually exercise the veto power and challenge the legislature’s action.

The president’s veto power is limited, however, because of a further constitutional check: Congress has the power to override a presidential veto if at least two-thirds of the members in both houses of Congress vote to do so. If Congress can muster the votes to override the president’s veto, the bill passes.

RESPONSIBILITIES OF LEADERSHIP

Leaders know that there may be several ways to reach a goal. Sometimes a compromise will help all parties reach an agreement. Other times, a leader may try to find another legal way to reach the goal.

The judicial branch can check the powers of the legislative and executive branches by declaring their acts unconstitutional. This is the power of judicial review. The Constitution also insulates federal judges from undue political influence by granting them lifetime terms. The Constitution balances the power of judicial review by giving the president the power to nominate, and the Senate the power to approve, all federal judicial nominations.

Congress and presidents have, at times, been frustrated by courts exercising judicial review. Perhaps the most famous example of presidential annoyance at the Supreme Court occurred in the 1930s. President Franklin Delano Roosevelt had convinced Congress to pass several measures to combat the Great Depression, only to have the Court declare some of his recovery measures unconstitutional. Roosevelt responded by introducing legislation to reorganize the federal judiciary. One part of the plan was to increase the size of the Court—which would have been constitutional—by adding up to six new justices. The result would have been a larger Supreme Court with a majority of the justices friendly to his programs.

Critics claimed that Roosevelt was trying to change the constitutional balance of power among the branches of government. Roosevelt’s “court-packing” plan was bitterly opposed in Congress. The Senate removed the controversial language and passed a watered-down reorganization plan.

Roosevelt’s controversial plan was never implemented. However, in his second term, President Roosevelt was able to replace five of the Supreme Court justices, which gave him a sympathetic majority. The Court then ruled favorably on a number of the New Deal programs, such as Social Security.

READING CHECK Identifying Supporting Details

Name at least one check or balance that each branch of government has on the others.

Judicial Review

Who decides if a government action or a new law agrees with the Constitution? In the United States, courts exercise **judicial review**, which is power to determine whether the actions of the legislative and executive branches of government are constitutional.

Any law or government action that is found to violate a part of the Constitution is said to be **unconstitutional**. Because the Constitution is the nation’s highest law, an unconstitutional law or act is deemed illegal and cannot be enforced or carried out by the government. The U.S. Supreme Court is most often asked to decide the constitutionality of a federal statute or action, but under certain circumstances the Court may be asked to decide the validity of a state law or action.

Although judicial review plays a pivotal role in American democracy, it is not specifically mentioned in the Constitution. So how did courts get this power? The writers of the *Federalist Papers* made it clear that the courts were to have such power. For example, the author of *The Federalist* No. 51 (probably James Madison) wrote that the power of an independent judiciary would serve as a precaution against one branch of government becoming predominant over the others. In addition, Article III, Section 2, of the Constitution implies the power when it states that “the judicial power shall extend to all cases . . . arising under” the Constitution. But it was not until 1803, in the landmark case *Marbury v. Madison*, that the principle of judicial review became firmly established by the Supreme Court.

READING CHECK Making Inferences How might the power of judicial review affect ordinary citizens?

PROFILES IN GOVERNMENT

John Marshall (1751–1836)



John Marshall was a prominent Federalist. In 1801, President John Adams named Marshall chief justice of the United States. Marshall served on

the Supreme Court as chief justice for more than 34 years. No other justice has had a greater effect on U.S. constitutional law. Marshall wrote more than 500 opinions, including *Marbury v. Madison* (1803), which used the power of judicial review to make the Court an equal branch of government, and *McCulloch v. Maryland* (1819), which firmly established the principles of the implied powers of Congress and the supremacy of the federal government.

Summarize How did Marshall use the judicial power of the Supreme Court to make the Court an equal branch of government?



"LANDMARK SUPREME COURT CASES"

Constitutional Issue: Judicial Review



Marbury v. Madison (1803)

WHY IT MATTERS

Marbury v. Madison established the Supreme Court's power to decide whether laws are constitutional. This power, called judicial review, is a basic principle of American government.

Background

The presidential election of 1800, pitting Democratic-Republican Thomas Jefferson against Federalist John Adams, was bitterly contested. Jefferson won the popular vote, but confusion over the electoral college vote threw the election into the House of Representatives. Eventually, Jefferson prevailed—by one vote—and took office in March 1801.

Before Jefferson's inauguration, outgoing President Adams quickly appointed 58 members of his own party, including William Marbury, to fill government posts created by the Federalist-majority Congress. Adams also nominated John Marshall, his secretary of state, to be chief justice of the Supreme Court.

As secretary of state, Marshall was responsible for delivering the commissions to the newly appointed officials. He signed and sealed the commissions, but did not deliver 17 of them before Adams left office. The appointees could not take office without their commissions in hand. Marshall thought that James Madison, the new secretary of state, would finish the job. However, when Jefferson took office, he instructed Madison not to deliver some of the commissions, including Marbury's. Marbury sued Madison to get his commission.

Arguments for Marbury

Marbury argued that he had a vested property right to receive his commission because once it had been signed and sealed, his appointment was complete. Delivering the commission, Marbury argued, was not part of the appointment process. Under Section 13 of the Judiciary Act of 1789, Marbury went directly to the Supreme Court to ask for a writ of mandamus—an order from a court requiring a government officer to take a particular action—ordering Madison to deliver his commission.

Arguments for Madison

Madison argued that President Jefferson had ordered him not to deliver Marbury's commission. President Jefferson believed that because the commission had not been delivered under President Adams, Marbury's appointment had not been completed and Marbury had no right to his commission. Jefferson also argued that under the Judiciary Act of 1789, the Supreme Court did not have the authority to order him to deliver the commission.

THE IMPACT TODAY

In *Marbury v. Madison*, the Supreme Court ruled that Marbury did have a right to receive his commission. However, the Court ruled that Section 13 of the Judiciary Act extending the Court's jurisdiction to cases involving writs of mandamus was unconstitutional. With that ruling, the Supreme Court asserted its power of judicial review—and established the judiciary as a co-equal branch of the government.

Since the 1980s, presidents have sometimes issued written statements declaring that part of a bill they are about to sign is unconstitutional. Opponents say that signing statements violate the Constitution's separation of powers. The use of signing statements has raised an issue of who has the power—courts or the president—to declare laws unconstitutional. The Supreme Court has never addressed the issue of the constitutionality of presidential signing statements.

CRITICAL THINKING

What Do You Think? Judicial review is not expressly set out in the Constitution, but since 1803 it has been a powerful judicial check and balance on the executive and legislative branches. Should the president have a power similar to judicial review to declare laws unconstitutional? Why or why not?

Federalism

The final principle in the Constitution's blueprint is **federalism**, under which the powers of government are distributed between the national government and state governments. The Framers struggled to find an acceptable distribution of powers. They had to ensure that the national government had sufficient power to be effective without infringing on the rights of states.

Two clauses of the U.S. Constitution have been at the heart of the debate over how to strike the proper balance of state and national power. Article I, Section 8, concludes by giving Congress the power to “make all Laws . . . necessary and proper for carrying into Execution the foregoing Powers.” In addition, Article VI of the Constitution contains the **supremacy clause**, which declares that the Constitution—together with U.S. laws passed under the Constitution and treaties made by the national government—is “the supreme law of the

land.” Advocates for state sovereignty found these clauses troubling. Where was the limit on federal power?

The Tenth Amendment to the Constitution addresses this issue. It states “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.” This language allows the federal government the flexibility it needs to meet national problems at the same time it guarantees that states retain the powers and rights necessary to meet their needs.

Today most Americans accept strong federal authority on matters such as national defense, disaster response, and highway construction. Yet people disagree over which level of government has authority over many contemporary issues, from natural resources to health care to education.

READING CHECK Drawing Conclusions Why do supporters of states' rights refer to the Tenth Amendment to strengthen their arguments?

SECTION 1 ASSESSMENT

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ONLINE QUIZ

Reviewing Ideas and Terms

1. **a. Describe** What are the main goals of the U.S. Constitution?
b. Explain Why might the problems of governing keep the six goals from being achieved?
2. **a. Identify** Name the six basic principles of governing set out in the Constitution.
b. Summarize How is the Constitution a plan for government?
3. **a. Define** What is **popular sovereignty**?
b. Evaluate Is popular sovereignty important to a republic? Why or why not?
4. **a. Recall** What is **limited government**?
b. Elaborate How is the rule of law related to the principle of limited government?
5. **a. Describe** What problem of governing does the **separation of powers** address?
b. Make Inferences Which branch of government do you think received the most power under the Constitution? Explain your answer, including why the Framers may have done it this way.
6. **a. Describe** How do **checks and balances** in the Constitution control the powers of government and lead to the development of democratic government?
b. Explain How are the “common good” and individual political rights secured by checks and balances?

7. **a. Identify** What is the power of a court to declare a law unconstitutional called?
b. Evaluate Do you think the judiciary, which has the power of judicial review, is, as Alexander Hamilton called it, the “least dangerous” branch of government? Explain your answer.
8. **a. Explain** What is the necessary and proper clause?
b. Elaborate How is the necessary and proper clause related to federalism and states' rights? How might the clause lead to disputes between the federal government and individual state governments?

Critical Thinking

9. **Analyze** Copy the chart below and give one example of a check that each branch of government has on the other branches.

| | Legislative | Executive | Judicial |
|-------------|-------------|-----------|----------|
| Legislative | X | | |
| Executive | | X | |
| Judicial | | | X |

FOCUS ON WRITING

10. **Descriptive** As a reporter in 1787, write an article describing the goals and structure of the newly created U.S. Constitution.



The Constitution and Privacy

As a matter of constitutional interpretation, does the right of privacy exist?

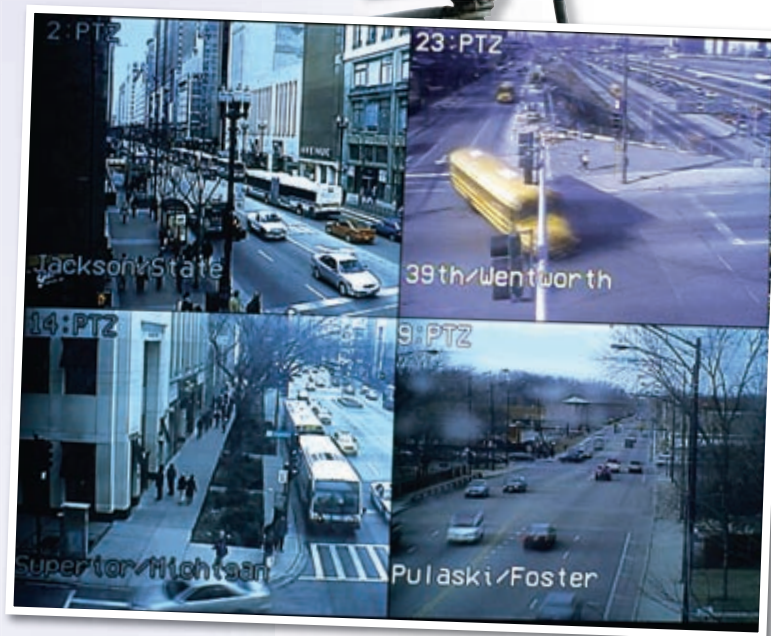
THE ISSUE

Does the Constitution protect your right of privacy? The Constitution does not explicitly mention such a right, but many people argue that the Constitution and Bill of Rights, when read as a whole, protect an implied right of privacy. This approach to constitutional interpretation is sometimes called "loose construction." Other people, calling for "strict construction," argue that the Constitution should be read literally: The words on the page mean exactly—and only—what they say. When the Constitution is read strictly, people argue, it is improper to protect a broad right to privacy.

VIEWPOINTS

Loose Construction The Fourth Amendment to the U.S. Constitution states that the right of the people to be "secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated . . . but upon probable cause." Justice Louis Brandeis wrote in his dissent in *Olmstead v. United States* (1928), a case considering the government's right to use evidence obtained by illegal wiretaps, that "the right to be let alone [is] the most comprehensive of rights and the right most valued by men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Brandeis argued that by looking at the Constitution and the Bill of Rights as a whole, an individual's privacy is protected. His position was affirmed in *Griswold v. Connecticut* (1965), in which the Court ruled that the various guarantees within the Constitution together create a general right to privacy.

Strict Construction Strict constructionists, beginning with Thomas Jefferson, argue that Congress should be able to exercise only the powers expressly given to it and only those implied powers that are absolutely necessary to carry out the expressed powers. Allowing the Court to interpret the Constitution broadly takes away the power of Congress to make laws. Since the word *privacy* does not appear in the Constitution or Bill of Rights, is it reasonable to infer that people have such a right? Justice Hugo Black, who believed that strict construction was necessary in order to rein in judicial power, argued in his dissent in *Griswold* that because an explicit right of privacy is not found in the Constitution, such an inference is improper. In his dissent, Black stated that he found nothing in the Constitution that gives the Court the power to set aside laws when it believes that the laws are "unreasonable, unwise, arbitrary, capricious or irrational." Black voted to uphold the Connecticut statute and found no protected general right of privacy.



Many cities now use surveillance cameras to help deter crime, monitor public places, and catch drivers running red lights.

What Is Your Opinion?



1. Do you agree with Justice Brandeis's statement from his *Olmstead* dissent, above? Why or why not?
2. Should the Constitution be interpreted more literally or more broadly? Write a short paragraph to support your opinion.



SECTION 2

An Enduring Document

BEFORE YOU READ

Main Idea

The Constitution is both a product of its time and a document for all time. It can be changed as society's needs change.

Reading Focus

1. How did Jefferson and Madison differ in their views on amending the Constitution?
2. Why might the Constitution be called a document for all time?
3. By what processes can the Constitution be amended?
4. What types of amendments have been added to the Constitution over the last 220 years?

Key Terms

supermajority
repeal



Use the graphic organizer online to take notes on the amendment process.

A Blueprint that Would Last

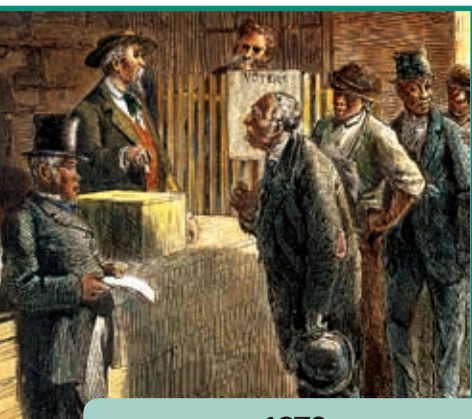
WHY IT MATTERS

A Constitution for All Generations

When the Constitution was written, there was a question whether the plan for the new government it laid out would succeed. And if so, for how long? For a generation or two? Longer? What if future generations discovered flaws in it? What if the central government that it created turned out to be too strong or too weak? What if states decided that they wanted more powers? Thomas Jefferson argued that it was inevitable that any imperfections in the new

constitution would become apparent. After all, the document contained several compromises and was bound to have some weaknesses. Therefore, Jefferson argued, it was "imperative" to provide a means for amending, or changing, the Constitution.

Jefferson's instincts were correct, at least to a certain extent: A few imperfections in the Constitution have been discovered. Since 1789, Americans have changed the Constitution—but only 27 times. However, some of those changes do protect our most precious freedoms, as the examples below show. ■



1870 15th Amendment

The right of citizens to vote shall not be denied on account of race, color, or previous condition of servitude.



1920 19th Amendment

The right of citizens to vote shall not be denied on account of gender.



1971 26th Amendment

The right to vote of citizens who are 18 years of age or older shall not be denied on account of age.

Jefferson and Madison on Amending the Constitution

In letters to friends, Thomas Jefferson expressed his belief that the Constitution should not be changed on a whim, but it should be able to be changed as society and circumstances changed. In fact, Jefferson saw change as inevitable and positive. He believed that each generation of Americans should be regarded as “a distinct nation,” with the right to govern itself but not to bind succeeding generations. “The Earth belongs to the living, not to the dead,” he declared. Therefore, Jefferson argued, the Constitution should be revised every generation or so.

PRIMARY SOURCE

“Each generation is as independent as the one preceding . . . It has then, like them, a right to choose for itself the form of government it believes most promotive of its own happiness.”

— Thomas Jefferson, letter to Samuel Kercheval, 1816

Jefferson made many of his arguments in an exchange of letters with fellow Virginian James Madison. For his part, Madison had concerns about Jefferson’s point of view and wrote to his friend to express his concerns.

PRIMARY SOURCE

“Would not a Government so often revised become too mutable [changeable] to retain those prejudices in its favor which antiquity inspires . . . ? Would not such a periodical revision engender [cause] pernicious [harmful] factions [groups of people] that might not otherwise come into existence?”

—James Madison, letter to Jefferson, 1790

Madison is making two points: First, laws and constitutions grow in authority and acceptance the longer they go unchanged. Second, changing the Constitution too often could split the country into bitter factions. Some Framers feared that factions might reinforce sectional rivalries and leave the nation prey to foreign powers and influence. Madison also feared that if the government had to be rebuilt every so often, periods of chaos might occur between revisions.

READING CHECK Summarizing Why was Madison opposed to frequent changes to the Constitution?

A Document for All Time

The original Constitution was a product of its time. It reflects both the wisdom and the biases of the Framers. The relatively few changes the document has undergone over more than 220 years testify to its enduring wisdom. The Constitution has survived the Civil War, presidential assassinations, and economic crises to become the world’s oldest written constitution.

Yet, as Jefferson suggested, the document that was ratified in 1789 was not perfect. By our standards, it perpetuated injustices. For example, the Framers forged compromises, which you read about in Chapter 2, permitting slavery and the slave trade. States were given the power to set the qualifications for voting, which meant that women, nonwhites, and poor people were denied the right to vote. These decisions reflected the attitudes of many in society at the time. Most people today, however, would find both the attitudes and the decisions unacceptable.

It would be up to future generations to amend the Constitution to address these problems. Many of the amendments, in fact, deal with voting rights and personal liberties. It is the Constitution’s ability to incorporate changing ideas of freedom and liberty that has helped make the document relevant to each new generation since 1789.

READING CHECK Drawing Conclusions What makes the U.S. Constitution an enduring document?

The Amendment Process

The amendment process gives Americans the power to change the Constitution. But the Framers intentionally made the process difficult. If the process were too easy, they reasoned, the momentary passions and prejudices of the majority—or even an active minority—of the citizens might produce violations of the rights of the rest of the citizens and even threaten the democratic structure of government.

The process for amending the Constitution is described in Article V. Amendments must be proposed and then ratified, or approved. Article V provides two ways of proposing an amendment and two ways of ratifying it.



Read Article V of the Constitution. What are the advantages and disadvantages of each amendment process described in Article V?

ACADEMIC VOCABULARY

frivolous of little weight or importance; lacking in seriousness

That means there are four different methods of amending the Constitution, which the Quick Facts chart below illustrates. The different paths to amendments reflected several desires on the Framers' part. By creating a two-step process that required ratification by the states, they restricted the power of Congress to change the Constitution and ensured that any change would reflect the national will. This was in line with the principle of popular sovereignty.

The Framers also required that each step in the process—proposal and ratification—required a supermajority. A **supermajority** is a majority—such as three-fifths, two-thirds,

or three-fourths—that is larger than a simple majority. Congress, by contrast, passes ordinary laws by a simple majority vote. The Framers wanted to ensure that the difficult process of changing the Constitution would weed out frivolous amendments.

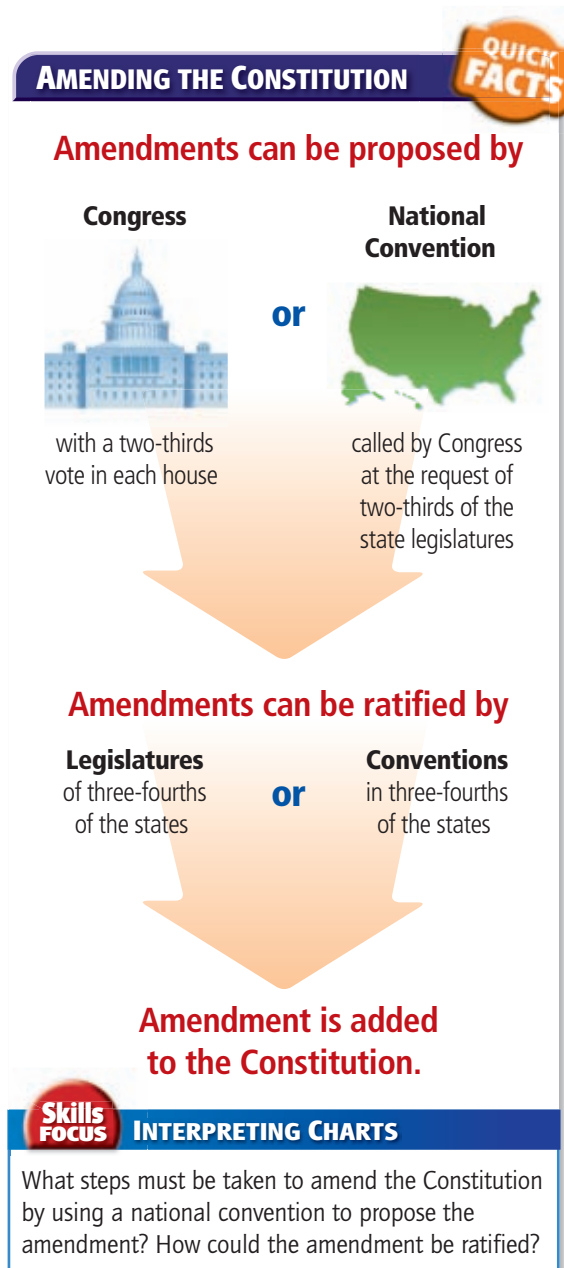
Proposing an Amendment Constitutional amendments may be proposed in two ways:

1. by Congress, with the approval of at least two-thirds of the House and two-thirds of the Senate
2. by delegates at a national convention that is called by Congress at the request of at least two-thirds of the state legislatures

So far, however, all the amendments to the Constitution have been proposed the first way, by Congress. The required number of states for a national convention has been nearly reached twice, but convention supporters have never managed to persuade the last few needed states. Why not?

Many people point to the wording of Article V itself. Article V does not specify whether a convention can be limited to proposing only the amendment it was called to consider. So, for example, if a convention were called to consider an amendment on immigrants' rights, what would prevent the convention from opening the rest of the Constitution for reconsideration and change? Could the convention propose an amendment to repeal the First or Fourteenth amendments, two amendments that provide the foundation for many of the rights we enjoy today? Or what if the convention proposed an amendment that required every citizen to donate one year after high school to government service? Whatever the reason—whether because it is complicated or because of the uncertainty surrounding it—this method in Article V has remained unused.

Ratifying an Amendment Once an amendment has been formally proposed by either method, Congress sends the proposed amendment to the 50 states for ratification. States can ratify an amendment in one of two ways—but it is Congress that determines which method of ratification is to be used for any particular amendment.



The two methods for ratifying an amendment are as follows:

1. The proposed amendment is voted on by state legislatures. Legislatures in at least three-fourths of the states must approve an amendment before it is added to the Constitution. In 1978 the Supreme Court ruled that a state legislature may call for an advisory vote by citizens before it votes on the amendment.
2. Citizens elect delegates to conventions called in each state specifically to consider the amendment. Passage by this method requires approval by conventions in at least three-fourths of the states.

The rise and fall of prohibition—a ban on the production, transportation, and sale of alcoholic beverages—illustrates the different ways amendments may be ratified. In the late 1800s and early 1900s, groups of reformers, such as the Woman’s Christian Temperance Union (WCTU) and the Prohibition Party, campaigned to outlaw alcoholic beverages. These reformers argued that drinking alcohol led to idleness, violence against women and children, and an increase in crime.

By 1917, more than half the states had passed laws restricting alcohol use. Those laws, plus the need for grain (from which alcohol is made) during World War I strengthened calls for a national ban on alcohol. Responding to this public demand, Congress proposed a prohibition amendment in 1917. By 1919 enough state legislatures had ratified the proposal to make it the Eighteenth Amendment to the Constitution.

Despite the law, however, a widespread illegal trade in alcohol sprang up. After all, the law made it illegal to make, transport, and sell alcohol, but *drinking* alcohol was not banned. The lucrative trade in illegal alcohol spurred the growth of organized crime, political corruption, and violence. Prohibition became very unpopular. Once again, groups of citizens led the movement for reform. In fact, opponents of prohibition used many of the same arguments earlier reformers had used in support of it.

In 1933 Congress responded by proposing the Twenty-first Amendment to repeal prohibition and to give states the power to



18th and 21st Amendments

Before 1919, prohibition supporters used posters, such as the one on the left above, to argue that prohibition would protect families and children from violence. In 1933, groups supporting repeal of national prohibition used similar posters, such as the one at right, to make the same argument.

regulate the transportation and distribution of alcoholic beverages. To **repeal** a law is to cancel or revoke it by a legislative act—in this case, the Twenty-first Amendment.

Every amendment before and since the Twenty-first Amendment has been approved by state legislatures, but not the Twenty-first Amendment. Supporters of the amendment in Congress thought it had a better chance of being ratified by state conventions of delegates elected specifically to vote on the issue. The strategy worked. Conventions in 36 states ratified the Twenty-first Amendment within the year. The Eighteenth Amendment was repealed.

The Fate of Amendments Undoing prohibition may seem to have been relatively easy, but in general, changing the Constitution is difficult—as the Framers intended it to be. In fact, more than 10,000 attempts to change the Constitution have been suggested or proposed in Congress. Imagine how long and confusing the Constitution would be today if those changes had succeeded.

ACADEMIC VOCABULARY

lucrative profit-able; producing wealth

AMENDMENTS TO THE CONSTITUTION

**QUICK
FACTS**

In fact, only 33 amendments have been passed by Congress and sent to the states for ratification. Of those, 27 amendments have been adopted, while 6 others have been rejected.

READING CHECK Summarizing What are the four ways of amending the Constitution?

More than 200 Years of Amendments

The process of adding to the Constitution began almost immediately with the passage of the first 10 amendments, known as the Bill of Rights. Another 17 amendments have been added since then. Together, the amendments identify, support, and protect some of the most important rights that reflect the fundamental goals and principles in our democratic society.

The Bill of Rights In Chapter 2, you read that many Americans had concerns about the original Constitution because it lacked a bill of rights to protect specific individual freedoms. Following ratification of the Constitution, various states offered up a total of 210 suggestions for amendments. James Madison, who had opposed a bill of rights, drafted 12 amendments. Congress passed them and sent them to the states. Ten of the 12 amendments were ratified. The Bill of Rights was adopted in 1791.

The First Amendment set the tone for the other amendments in the Bill of Rights. It begins by forcefully declaring what the federal government may not do:

PRIMARY SOURCES

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

—First Amendment to the U.S. Constitution, 1791

The First Amendment is intended to be a restriction on the power of the national government to interfere with an individual's exercise of certain basic freedoms, such as a person's right to practice religion freely.

| AMENDMENT | SUBJECT | YEAR RATIFIED |
|-----------------|---|---------------|
| 1st–10th | Protected certain rights from government infringement; Bill of Rights | 1791 |
| 11th | Made states immune from certain lawsuits | 1795 |
| 12th | Changed electoral college | 1804 |
| 13th | Abolished slavery | 1865 |
| 14th | Defined citizenship, expanded due process, established equal protection | 1868 |
| 15th | Prohibited denying right to vote because of race, color, or previous servitude | 1870 |
| 16th | Permitted passage of income tax | 1913 |
| 17th | Provided for direct election of U.S. senators | 1913 |
| 18th | Prohibited production, transportation, and sale of alcohol | 1919 |
| 19th | Gave women the right to vote | 1920 |
| 20th | Changed dates for start of presidential and congressional terms | 1933 |
| 21st | Repealed national Prohibition | 1933 |
| 22nd | Created presidential term limits | 1951 |
| 23rd | Gave District of Columbia vote in presidential elections | 1961 |
| 24th | Banned poll tax (tax paid as voter qualification) | 1964 |
| 25th | Established rules for presidential succession, filling presidential vacancy, vice presidential succession | 1967 |
| 26th | Lowered voting age to 18 | 1971 |
| 27th | Provided rules for congressional pay | 1992 |

The First Amendment also protects freedom of expression and the right to ask the government to correct injustices. You will read more about the protections of the First Amendment in Chapter 13.

The Bill of Rights contains other specific guarantees. For example, the Second Amendment gives citizens a right to bear arms. The Third Amendment prohibits government from forcing citizens to quarter, or shelter, military troops in their homes. The Fourth Amendment protects individuals against unreasonable searches and seizures of private property. The Fifth and Sixth Amendments guarantee that individuals cannot lose their life, liberty, and property without due process of law; are protected against self-incrimination; and have the right to a speedy trial and, in some cases, the right to an attorney. The Bill of Rights concludes with amendments prohibiting the national government from usurping rights or powers that belong to the states and to the people.

The Other Amendments Many of the amendments ratified since the Bill of Rights were proposed during periods of crisis or of social and political progress. For example, in the aftermath of the Civil War, Congress passed the Thirteenth, Fourteenth, and Fifteenth amendments, which banned slavery,

recognized all African Americans as U.S. citizens, and gave African American men various rights, including the right to vote. In the South, however, these three amendments were not often enforced from 1877 to 1965. Most southern states passed Jim Crow laws—state laws that separated people on the basis of race—that minimized the effect of the post-Civil War amendments.

The amendments passed in the first two decades of the 1900s marked a time of vigorous social reform. The Eighteenth and Twenty-first amendments were passed during these years. In the same era, the Seventeenth and Nineteenth amendments extended democracy by providing for the popular election of senators—originally state legislatures chose senators—and by granting women the right to vote.

The Framers, however, could never have imagined the changes in the United States in the last 220 years, from the diversity of our population to our rail and highway systems, our ability to manipulate human genes, and our airport X-ray screening devices. Yet throughout the growth from young nation to global superpower, the Constitution has provided a stable, flexible government.

READING CHECK Summarizing What are five issues that constitutional amendments have addressed?



The Framers made some hard choices when they wrote the Constitution. Most of what they wrote has survived without changes. One exception is which citizens have the right to vote. Since the Bill of Rights was ratified in 1791, three amendments that expand the right to vote have been ratified. As society changes, citizens may be called upon to make new hard choices about privacy, security, and other issues.

SECTION

2

ASSESSMENT



Reviewing Ideas and Terms

- a. Describe** Why did Thomas Jefferson believe that the Constitution should be amended every generation or so?
 b. Compare How did James Madison's opinion about amending the Constitution differ from Jefferson's opinion?
- a. Recall** What is a constitutional amendment?
 b. Evaluate Do you think it should be easier to amend the Constitution today? Explain your answer.
- a. Identify** How can an amendment be repealed?
 b. Draw Conclusions How does the amendment process reflect the principle of popular sovereignty?
 c. Evaluate Do you think the Prohibition experience indicates that the Constitution is too flexible? Explain your answer.
- a. Explain** What is the purpose of the Bill of Rights?
 b. Make Inferences How do the 27 amendments reflect Americans' changing values and ideals? Give examples to support your answer.

- c. Evaluate** Why does the First Amendment declare what the U.S. Congress is not allowed to do?

Critical Thinking

- 5. Rank** Copy the chart below and list the four amendments you think are most important. Explain your choice.

| Amendment | Importance |
|-----------|------------|
| | |
| | |
| | |
| | |

FOCUS ON WRITING

- 6. Expository** Do you think the methods the Framers created for amending the Constitution are still effective to provide for change today? Write two paragraphs stating your opinion.



SECTION 3

Applying the Constitution

BEFORE YOU READ

Main Idea

The scope and impact of the Constitution have expanded as it has been put into practice, interpreted, and applied to new or changing social and political challenges.

Reading Focus

1. How have the three branches of government applied the Constitution?
2. How have political parties, customs, and traditions changed how the Constitution is applied?
3. What criticisms have some people made of the Constitution?

Key Terms

executive agreements
political party
cabinet
gridlock
electoral college



Take notes on how the reach of the Constitution has expanded.

4,540 words



The original Constitution has changed very little since 1789, but its reach has been expanded to give us the government we have today.

WHY IT MATTERS

A Few Words, a Long Reach Including signatures, the original U.S. Constitution—the foundation and blueprint for the world’s most powerful government—runs only about 4,540 words, or about the length of a 20-page term paper. In that short space, there is no mention of whether a teacher can, or cannot, search your backpack. Nor does the Constitution say anything about school prayer, sharing music over the Internet, or prohibiting the purchase of inexpensive medicines from Canada.

In fact, the Constitution is silent about most of the specific issues that you deal with in your life every day. However, in addition to protecting your basic rights, the Constitution also underlies the tens of thousands of laws and the hundreds of government agencies that can, and do, affect your life. How has so much government been derived from so few words? What processes have worked to shape or extend the meaning of the Constitution and change its application over time? How did we arrive at the government and laws we have today? ■

The Federal Government Applies the Constitution

The Framers did not set out to define the nation's government in exhaustive detail, nor did they intend to regulate people's everyday activities. The Framers created a framework to be followed and filled in by citizens then and in later generations. Over time, the United States has grown in size, population, and complexity, and as it has grown, so has its government. In the process, the legislative, executive, and judicial branches have put the Constitution into action, extending its reach and meaning.

Legislative Action The Framers gave Congress the job of putting meat on the bones of the Constitution. For example, Section 1 of Article III, which created the Supreme Court, also authorized Congress to create “such inferior courts as the Congress may from time to time ordain and establish.” This authority is quite general. So Congress passed the Judiciary Act of 1789, which created the system of lower-level federal courts. Article I, Section 8, gives Congress power to “constitute tribunals inferior to the Supreme Court.” Over the years, Congress has used both Articles I and III to expand the judicial branch as needed.

Without congressional legislation, none of the departments and agencies that make up today's executive branch would exist. Yet Article II—which creates and defines the executive branch, describes the offices and powers of president and vice president as well as their election, impeachment, and compensation—makes only two passing references to executive departments.

When passing laws to meet new situations, Congress inevitably pushes into areas on which the Constitution is silent. Powerful new technologies, such as today's personal computers and cell phones, and threatening international circumstances, such as possible attacks by terrorists, are two factors that sometimes push Congress onto uncertain constitutional ground. If the Supreme Court strikes down a new law, the reach of the Constitution remains unchanged. If, however, the Court upholds the law, the application of the Constitution has been changed slightly.

THE ENDURING CONSTITUTION

QUICK FACTS

The application of the Constitution has been expanded as the three branches of government have interpreted the document through:

Legislative action

Congress passes minimum wage laws under its power to regulate commerce and immigration laws under its power to regulate naturalization.

Executive action

Presidents negotiate agreements with foreign leaders and foreign governments that create or change U.S. relationships with those governments.

Judicial review

Courts have upheld laws, such as laws that outlaw types of discrimination, as being constitutional.

Executive Implementation Presidents may sometimes exercise their authority in ways that the Constitution does not expressly state. For example, presidents often make **executive agreements**—arrangements or **compacts** with foreign leaders or foreign governments—even though this power is found nowhere in the Constitution's text. Presidents derive the power to fashion these executive agreements from the acknowledged constitutional powers: their inherent executive power; their power as commander in chief; their power to receive ambassadors and officials from other nations; and their duty to faithfully execute the laws.

Executive agreements are important in conducting foreign policy. In recent years, presidents have increasingly used their executive agreement power, especially when they are seeking to bypass the long, formal—and often contentious—treaty process. For example, in 1990 an executive agreement was used to create the international coalition that defeated the Iraqi invasion of Kuwait.

An executive agreement has the force of a treaty but does not require ratification by the Senate, as treaties do. In practice, however, Congress has authorized a majority of executive agreements in advance or has approved them after they have been signed.

ACADEMIC VOCABULARY

compact an agreement between two or more parties

Most executive agreements require subsequent congressional action—legislation giving an agency the necessary power or money—to be implemented.

Actions of the executive department and agencies also change the way the Constitution is applied or interpreted. Congress passes laws to create these bodies and sets broad goals for them to achieve. It is up to the agencies themselves, however, to define their operations and carry out the programs Congress has assigned to them. In doing so, they are applying the Constitution.

Executive branch agencies also usually have rule-making power, which they use to implement Congress's laws. These rules have the force of law. They affect everything from the medicine we take to the water that comes from our faucets. The Code of Federal Regulations, a collection of all the rules made by executive agencies, is about 135,000 pages long and fills more than 200 volumes. It is another extension of the Constitution.

Judicial Interpretation Can you imagine what it would be like to be a Supreme Court justice trying to apply the Constitution—a brief set of rules for the structure and operation of a new government written

before the Industrial Revolution—to a mind-boggling range of modern-day cases? It is an extraordinary responsibility.

As noted in Section 1, the 1803 Supreme Court case of *Marbury v. Madison* established the principle of judicial review, the Court's power to determine if a law or other government action is constitutional. Court rulings, therefore, may affect the meaning of the Constitution—what the rights of citizens are and what the government is allowed to do or is prevented from doing.

For example, the Fourth Amendment prohibits “unreasonable searches and seizures.” What does this phrase mean in an era of airport screening devices, cell phones, and wireless Internet access? The Framers could not have imagined how technology might change the concepts of “unreasonable,” “searching,” and “seizing.” It is up to courts to interpret the Fourth Amendment in light of changing conditions, and judges are beginning to apply the Constitution's prohibitions to new technologies. Courts try to set legal standards that law-enforcement officers must follow when intercepting private conversations, monitoring e-mail, and using other “searching” methods.

The debate today is not about whether to interpret the words of the Constitution but how to interpret them. You may have heard discussions of “strict” versus “loose” construction of the Constitution. In general, a strict construction, or interpretation, of the Constitution means giving the words in the document only their literal meaning. A loose construction of the Constitution means following the words plus any reasonable inferences that can be drawn from them. For example, the Constitution gives Congress the power to lay and collect taxes. One way for the central government to lay and collect taxes is to establish a national bank.

A strict constructionist would argue, as Thomas Jefferson did, that because there is no provision for a national bank in the Constitution, the government has no power to create such a bank. The government would have to find another way to exercise its power to collect taxes and pay its bills.

A loose constructionist would respond, as Alexander Hamilton did, that because Congress has the important power to lay and

PROFILES IN GOVERNMENT

John Roberts (1955–)



John Roberts did not plan to be a lawyer. However, after he graduated with a degree in history from Harvard University, Roberts decided to

pursue a career in law and attended Harvard Law School. As a lawyer, he argued cases before the U.S. Supreme Court, where he earned the reputation of having an outstanding legal mind. In July 2005, President George W. Bush nominated Roberts to replace retiring justice Sandra Day O'Connor.

In September 2005, Bush named Roberts to fill the position of chief justice following the death of former chief justice William H. Rehnquist. On September 29, 2005, John Roberts was sworn in as the seventeenth chief justice of the United States. Roberts is described by most experts as a conservative justice who will be a “strict constructionist” in terms of Constitutional interpretation.

Make Inferences Why might a president appoint a strict constructionist like John Roberts to the Supreme Court?

collect taxes, it is therefore reasonable to think that the Framers intended Congress also to have the implied power to carry out these responsibilities. As a result, creating a national bank is both necessary and proper.

Two other methods of interpreting the Constitution—judicial activism versus judicial restraint and original intent versus evolutionary meaning—are frequently debated. They are similar to strict versus loose construction. Read more about interpreting the Constitution in Chapter 13.

READING CHECK Identifying the Main Idea How has each branch of government put the Constitution into action? Give one example for each branch.

Political Parties, Customs, and Traditions

You have read about how the Constitution has been expanded through amendments and how its language has been interpreted and applied by the actions of the three branches of government. Other factors—informal, yet quite important ones—also affect how the Constitution is interpreted, applied, and carried out. These factors include political parties and entrenched customs and traditions.

Political Parties Political parties have an impact on how the Constitution is interpreted and applied for one primary reason: They help determine the choice of candidates, policies, and programs presented to the voters. A **political party** is an organized group that seeks to win elections in order to influence the activities of government. Parties also help shape the judicial branch, whose job is to decide what the law is by supporting or opposing nominees to federal judicial positions, such as U.S. Supreme Court justices. Although they are not mentioned in the Constitution, political parties deeply affect how government operates.

Political parties have also at times led the drive to change the Constitution through the amendment process. The post-Civil War amendments mentioned in last section were largely the work of the Republican Party. The legacy of two political movements popular in the late 1800s and early 1900s



Nineteenth Amendment

In 1912, the Progressive Party under Theodore Roosevelt became the first national political party to adopt a women's suffrage plank. Pressure from the Progressives led to adoption of the Nineteenth Amendment in 1920. *What, in your opinion, is the message of the poster on the right?*

but around no longer, the Populists and Progressives, rests in the Constitutional amendments they helped get passed.

The Populists were a coalition of farmers, labor leaders, and reformers. Populists supported bank regulation; government ownership, or at least government regulation, of railroads; and the unlimited coinage of silver. They also called for the direct election of senators. Populism faded after the presidential elections of 1892 and 1896.

Progressives took up many of the same causes as Populists but also wanted to improve living conditions for the urban poor. As a result of Progressive influence in the early 1900s, Congress passed laws giving the federal government powers to regulate banks, food and drug safety, railroads, and business monopolies—powers upheld by the Supreme Court. Progressives were also instrumental in the passage of the Sixteenth, Seventeenth, and Nineteenth amendments to the Constitution (allowing the income tax, providing for popular election of senators, and giving women the right to vote).

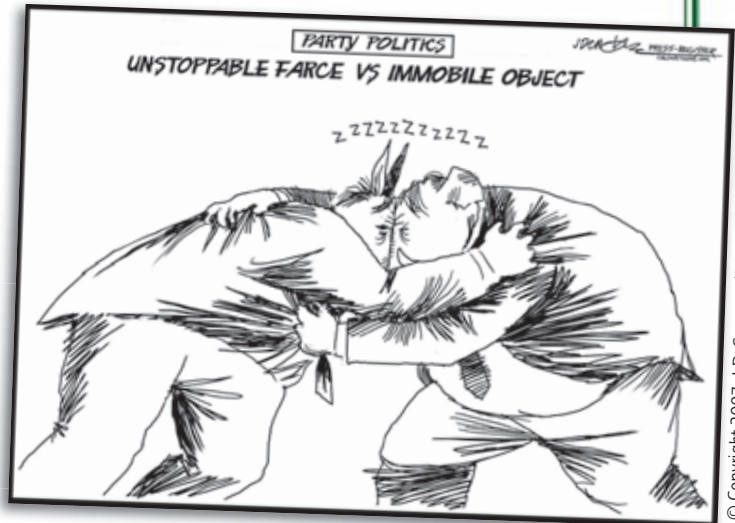
Recently, groups and people—sometimes allied with political parties and sometimes not—also not mentioned in the Constitution have affected government policies. These groups and individuals range from interest group political action committees (PACs) to online political commentators and bloggers.

PRIMARY SOURCES

Gridlock in Government

Most presidents have a legislative agenda, a list of laws and programs they would like to see enacted. However, Congress—not the president—makes laws. The president, therefore, must work with Congress to get his or her agenda enacted. If, for any reason, Congress and the president cannot agree on legislation, the government may grind to a halt. When one political party controls Congress and the other party controls the presidency, the chances of a standoff are that much greater. This cartoon illustrates how party politics sometimes affect the Constitution's systems of separation of powers and checks and balances.

21ST CENTURY



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Skills Focus

INTERPRETING PRIMARY SOURCES

Making Inferences According to this cartoon, who is responsible for government gridlock? Explain why you agree or disagree.

See **Skills Handbook**, p. H9.

Customs and Traditions The Framers might have expected that customs and traditions would help guide the practices of the government. After all, Great Britain had no written constitution—and still does not—but its government was anchored in practices handed down for nearly 1,000 years.

Customs and traditions are not mentioned in the Constitution, but they strongly influence how American government behaves. For example, the Constitution authorizes the president to “require the opinion, in writing, of the principal officer in each of the executive departments.” President George Washington relied on this language in Article II to create a **cabinet**, a group of advisers consisting of the heads of the executive departments. Subsequent presidents followed Washington’s custom, and the tradition of cabinet and cabinet meetings was born. Today, the cabinet is a firmly entrenched part of our government.

Some traditions have become law. For example, for more than 150 years, starting with Washington himself, no president served more than two terms in office. Franklin Roosevelt broke with tradition to run for and win third and fourth terms as president in the 1940s. The example of Roosevelt worried many Americans, who felt that such

lengthy stays in office could lead to an unsafe concentration of power in the hands of one party. As a result, Congress passed the Twenty-second Amendment. It limits presidents to two terms, thus formalizing the custom that began with Washington.

READING CHECK Identifying the Main Idea How do political parties and traditions affect the functioning of government?

Criticisms of the Constitution

The U.S. Constitution commands respect around the world for its brevity, insight, and flexibility. Yet with the passage of time, some people have come to agree with Jefferson’s prediction that “the imperfections of a written Constitution will become apparent.” What are some criticisms that have been raised about the Constitution?

A System That Creates Gridlock In our system of checks and balances, power and decision making are distributed among the branches of government. Critics say that this diffusion of power makes it too easy for the president and congressional leaders to avoid responsibility for their actions.

Frequently, Congress and the president blame one another when they are unable to get things done. This inability to govern effectively due to separation of powers is called **gridlock**. Occasionally, gridlock has been so severe that it has brought government to a standstill. For example, in 1995 a budget dispute between the Republican-controlled Congress and Democratic president Bill Clinton shut down the entire federal government for 27 days.

Questions about Representation Some political observers argue that the Constitution falls short of truly representative democracy when judged by contemporary democratic standards. They are especially critical of the Senate, in which residents of states with small populations have far more relative influence than residents of states with large populations. Wyoming, a state with just over half a million people, elects the same number of senators as California, a state with about 37 million people. Thus, the influence of each voter in Wyoming is far greater than the influence of each voter in California.

The Electoral College You may already know that the president of the United States is not elected directly by voters. Instead, the president and vice president are elected by members of the **electoral college**, the body of 538 people elected from the 50 states and the District of Columbia. Critics of the

electoral college point to the fact that the winner of the popular vote may not win the presidency, as happened most recently in the election of 2000. Supporters of the electoral college argue that this system requires candidates to generate support from a variety of states, large and small.

Winner-take-all Elections In elections for U.S. Congress, the candidate who receives the most votes is elected to the House or Senate. A candidate who comes in second or third goes home—even if he or she receives a large number of votes. This type of election is known as the winner-take-all system.

By contrast, many European parliaments use proportional representation. Voters choose from party lists of candidates. Seats are given to each party according to the percentage of the total votes they win. More-popular parties will have a larger number of seats, but less-popular parties will not be entirely shut out of the parliament.

Supporters of proportional representation say it allows a larger variety of viewpoints to gain representation in the legislature. Defenders of the U.S. system respond that proportional representation leads to fractured legislatures with many small parties, while the American process allows the party with the most support to govern.

READING CHECK Contrasting How does the winner-take-all election system differ from a system of proportional representation?

SECTION



ASSESSMENT

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ONLINE QUIZ

Reviewing Ideas and Terms

1. **a. Recall** What is the difference between an executive agreement and a treaty?
b. Explain How have the three branches of the federal government defined the scope of the Constitution?
c. Evaluate Do you think the Framers intended for the government to expand as it has? Explain.
2. **a. Identify** What is the main goal of a political party?
b. Make Inferences How can political parties affect judicial interpretation of the Constitution?
3. **a. Describe** What are three criticisms of the Constitution?
b. Evaluate Which criticisms of the Constitution do you agree with, and which do you disagree with?

Critical Thinking

4. **Analyze** Copy the chart below. From most to least important in your opinion, list the formal and informal ways in which the U.S. Constitution has been expanded. Explain your reasoning.

| Formal | Informal |
|--------|----------|
| 1. | 1. |

FOCUS ON WRITING

5. **Expository** In your opinion, is government gridlock ever good for the country? Why or why not? Express your opinion in a brief letter, with examples, to your congressperson.



We the People

THE CITIZEN & THE CONSTITUTION

A New Constitution and a New Government

The Constitution was a plan for the new national government that described the new government, its powers, and the limits on it. The Framers wrote the Constitution as a general framework and left out details they knew would be added in the future.

What are Congress's constitutional powers? John Locke claimed that the legislature is the most powerful branch of government because it makes laws. Mistrusting any concentration of political power, the Framers carefully limited Congress's power:

- Article I, Section 8: The Constitution limits Congress's law-making powers to those "herein granted . . ." In addition to 17 specific powers, Congress has a generalized eighteenth power: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."
- Article I, Section 9: The Constitution identifies several matters on which Congress "shall not" legislate. For example, it cannot tax articles "exported from any state." It cannot grant titles of nobility. It cannot draw any money from the Treasury "but in Consequence of Appropriations made by Law."

Bill of Rights Added to the Constitution in 1791, the Bill of Rights lists rights upon which Congress "shall not" infringe. For example, the First Amendment states that "Congress shall make no law" establishing a national religion or abridging free speech or press. The Eighth Amendment prohibits Congress from levying "excessive fines" and imposing "cruel and unusual punishments" on convicted criminals.

Even with these limitations, Congress today has far-reaching powers, which include enumerated and implied powers.

Enumerated powers Enumerated, or express, powers are those listed in the Constitution. Article I, Section 8, for example, gives Congress power to "regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes." Other parts of the Constitution also give Congress power:

- Article II: The Senate must advise and consent when the president makes treaties and appoints ambassadors, other public ministers, judges of the Supreme Court, and many other public officials.
- Article III: Congress has complete control over the appellate jurisdiction of the Supreme Court and authority to create lower federal courts.
- Article IV: Congress can admit new states and adopt all rules and regulations respecting U.S. territories and properties.
- Article V: Congress, like the states, can propose constitutional amendments. Congress has proposed all 27 amendments to the Constitution and many that have not been ratified.

Implied powers Some express grants of authority to Congress imply, or suggest, other powers. The "necessary and proper" clause in Article I gives Congress power to legislate on at least some subjects not expressly described in the Constitution.



What are the president's constitutional responsibilities? Article II of the Constitution places “the executive Power,” the powers of the executive branch of government, in the president of the United States. Unlike Article I, which gives Congress those powers “herein granted,” Article II does not define executive power. The Constitution lists some of the president’s powers, but those listed have never been thought to be the president’s only powers. The listed powers include the following:

- commanding the army and navy (as commander in chief)
- heading the executive department (cabinet and executive departments)
- granting reprieves, or postponement of punishment, and pardons
- making treaties (subject to the advice and consent of the Senate)
- nominating ambassadors, public ministers, consuls, and judges of the Supreme Court and other federal courts
- recommending legislation to Congress
- reviewing legislation passed by Congress and returning bills to which the president objects
- receiving ambassadors and other public ministers (chief diplomat)

Presidents have asserted many reasons to justify a broad definition of executive powers, particularly in times of national emergency, such as the Great Depression, and war. The Constitution has proven flexible enough to adapt to changing understandings of presidential power.

What are the constitutional powers of the Supreme Court? Article III of the Constitution created the Supreme Court and gives Congress power to create other courts that are inferior to, or below, the Supreme Court. It gives courts created under the authority of Article III (called federal courts) jurisdiction, or power, to decide only certain cases. These are cases arising under national laws and involving citizens from more than one state. Finally, the article guarantees trial by jury in all criminal cases except impeachment. The Supreme Court also exercises the power of judicial review, deciding whether acts of Congress, the executive, state laws, and even state constitutions violate the U.S. Constitution.

The Constitution gives the Supreme Court jurisdiction to decide two categories of cases:

Original jurisdiction This term refers to the power of a court to pass judgment on both the facts of a case and the law. The Supreme Court has original jurisdiction in “cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party.” When the Supreme Court hears a case in its original jurisdiction, it is the only court to hear the case.

Appellate jurisdiction This term refers to the power of a superior, or higher, court to review and revise the decision of an inferior, or lower, court. The Supreme Court has appellate jurisdiction in all cases not in its original jurisdiction “with such Exceptions and under such Regulations as the Congress shall make.”

Reviewing Ideas

- 1. Explain** In your own words, explain what the Article I, Section 8, phrase “necessary and proper” means to Congress.
- 2. Make Generalizations** Why do you think that Article II, Section 1, gives the president the “executive power” of the United States but does not specifically define what that power is?

Critical Thinking

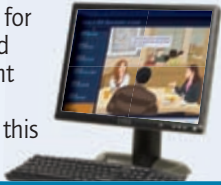
- 3. Elaborate** How does the power of judicial review make the judicial branch a co-equal branch of government?

Chapter Review

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Comprehension and Critical Thinking

SECTION 1 (pp. 68–76)

1. a. Review Key Terms For each term, write a sentence that explains its significance or meaning: popular sovereignty, rule of law, separation of powers, checks and balances, judicial review, federalism.

b. Summarize Why is it important to maintain a balance between state and national authority in a federal system? Be prepared to defend your analysis.

c. Evaluate Are the goals and objectives of the Constitution, such as the rule of law, relevant today? Support your answer with examples.

SECTION 2 (pp. 78–83)

2. a. Review Key Terms For each term, write a sentence that explains its significance or meaning: supermajority, repeal.

b. Analyze How have both Madison's and Jefferson's views of amending the Constitution proven true in some ways over the course of U.S. history?

c. Elaborate Give examples of how the Constitution has both endured and changed since it was ratified.

SECTION 3 (pp. 84–89)

3. a. Review Key Terms For each term, write a sentence that explains its significance or meaning: executive agreements, political party.

b. Explain How does each of the three branches of government apply the Constitution to its job responsibilities?

c. Develop Describe the impacts that political parties, customs, and traditions have had on the U.S. system of government.

Critical Reading

Read the passage in Section 1 that begins with the heading "Checks and Balances." Then answer the questions that follow.

4. In which of the following bodies must government-funding laws originate?

- A** the Supreme Court
- B** the Senate
- C** the president's cabinet
- D** the House of Representatives

5. Which of the following does the Senate have the sole authority to approve or reject?

- A** overseas trade negotiations
- B** government projects
- C** security legislation
- D** treaties with foreign countries

Read the passage in Section 3 that begins with the heading “The Federal Government Applies the Constitution.” Then answer the question that follows.

6. Executive agreements are usually used by a president to support which of the president’s executive powers?
A conducting overseas trade negotiations
B financing domestic government projects
C ensuring the passage of legislation
D appointing ambassadors and judges

RESPONSIBILITIES OF LEADERSHIP



7. The Line Item Veto Act of 1996 allowed the president to cancel individual items in appropriations bills passed by Congress. Research the Supreme Court case of *Clinton v. City of New York* (1998). Analyze and summarize all the opinions in the case. Then, in terms of **separation of powers**, evaluate the final decision reached by the Court.
8. The role of the U.S. Supreme Court is to say what the law is. The Court, however, is composed of nine individual justices. Select one justice and research his or her judicial philosophy. Evidence of the justice’s philosophy may be found in his or her opinions in cases involving freedom of speech or religion; the commerce clause and states’ rights; Fourth Amendment issues; and the death penalty. Create a spreadsheet to collect and sort your evidence. From these opinions, classify the justice as a **strict or loose constructionist** of the Constitution. Write a short biography of the justice. Using examples from the justice’s opinions, describe his or her judicial philosophy, including whether the justice is considered conservative, liberal, or in the center of the Court’s philosophical spectrum. Share your results with the class.

CONNECTING TO THE CONSTITUTION

9. Read Article I, Section 8, of the Constitution in the Reference Section at the end of your textbook. List any powers of Congress that are not included that you think should be. Also list which powers, if any, that are included but that you think should not be. Provide one or two sentences of support for each addition or deletion that you make.

ANALYZING PRIMARY SOURCES



Political Cartoon *The Constitution contains a system of checks and balances that is supposed to prevent any one branch of government from becoming all-powerful. The system works only if each branch follows the rule of law and the other principles of government in the Constitution.*



10. **Analyze** What is happening in this cartoon?
11. **Draw Conclusions** How does the imagery in the cartoon illustrate the cartoonist’s opinion of the constitutional system of checks and balances?

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FOCUS ON WRITING



Persuasive Writing *Persuasive writing takes a position for or against an issue, using facts and examples as supporting evidence. To practice persuasive writing, complete the assignment below.*

Writing Topic: Constitutional Democracy

12. **Assignment** Two basic principles of government in the Constitution are that all government power comes from the people and that the individuals we elect to be our representatives are to speak for us in government. Write an editorial in which you convince people that these two principles apply—or do not apply—to issues the nation faces today. Give examples to support your editorial position.