

1.3. An Overview of the American Political System

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This chapter provides an overview of the political system of the United States, focusing on federalism, separation of powers with checks and balances, the three branches of the federal government, and the Bill of Rights.

The American political system is a complex structure. The Framers of the Constitution understood that they needed to give the new federal government sufficient power to resolve the conflicts among the states and keep the union together at a time when it was falling apart (the phrase in the preamble “to form a more perfect union” was not a hollow boast but a worried hope), but given their recent experience as colonies they feared creating a government with enough power to tyrannize the public. Their task was to first give the federal government enough power to function, then to constrain that power so it could not become tyrannical.

The complex structure they devised has three institutions that constrain the power of the federal government. These are *federalism* (the division of power between the states and the federal government), *separation of powers with checks and balances* (the division of federal government power into three branches, each with some ability to constrain each other), and the Bill of Rights (a list of specific limitations on the federal government’s power).

1. THE FRAGMENTATION OF POLITICAL POWER IN THE UNITED STATES 1: FEDERALISM

There are two basic divisions of governing authority in the American political system: *federalism* and *separation of powers with checks and balances*. Federalism divides power between the states and the federal government. Separation of powers splits power between the branches of the federal government. James Madison, who is often called the “Father of the Constitution,” called this structure a “compound Republic” in Federalist 51 and argued that this fragmenting of political power protected the rights of the people by letting the federal government check the state governments, and vice versa, and letting the different parts of each government check each other.

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments [state and federal], and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

The United States is not unique in having either federalism or separation of powers, but the combination of both is rare among the world’s countries.

Federalism in International Perspective

One of the most fundamental characteristics of any country is whether all political authority is exercised by a single central government covering the whole country—called a *unitary state*—or is split between a central government and regional-level governments, called *federalism*. In a unitary state (unitary meaning one) there will generally be lower level governments, particularly in cities, and sometimes regionally, but all of their authority is granted by, and can be revoked by, the central government. In a true federal system, the authority of the regional governments is not dependent on the whims of, and cannot be withdrawn by, the central (federal) government unless there is a constitutional-level change in the political system. In the United States, for example, any state can set penalties on crimes which Congress cannot override (subject only to the limits imposed by the U.S. Constitution on allowable treatment of criminals).

The name of these smaller political units varies among federalist countries. In the United States, Mexico and Australia they are called “states,” in Canada they are “provinces,” in Switzerland “cantons,” and so on. There are only about twenty-five federal countries out of almost 200 countries in the world today (~13%), so they are comparatively rare. However they are found on every continent, include both wealthy countries like Switzerland and poor countries like Sudan, and both very large countries like the U.S. and tiny countries like St. Kitts and Nevis (see figure 1).

Federalist Countries by Population and Wealth		
	Poorer	Wealthier
Small	Boznia & Herzegovina, Comoros, Micronesia, St. Kitts and Nevis	Austria, Belgium, Switzerland, United Arab Emirates
Large	Argentina, Brazil, Ethiopia, India, Malaysia, Mexico, Pakistan, Russia, South Africa, Venezuela	Australia, Canada, Germany, Spain, United States

Notes:
 1. There is no authoritative list of federal states. This list comes from the Forum of Federations (forumfed.org) and some the inclusion of states such as Austrian and Russia are debatable.

2. I have demarcated small and large by the discontinuity in population size between Australia's 23 million people and Belgium's 11 million people, but by any measure Micronesia and St. Kitts and Nevis, with just over 100,000 people and less than 60,000, respectively, are small states.
3. Poorer and wealthier are based on each state's gross domestic product per capita (calculated in U.S. dollars). There is a discontinuity between Spain's \$29,000 per capita gdp and Argentina's \$14,000 so I have used this as the dividing line. Even if one doubts that line, the U.S., Switzerland, Canada, Austria, Germany and Belgium are in the top 25 wealthiest countries, while at the bottom end are four federal states at less than \$2,000 gdp per capita, and two—Comoros and Ethiopia—at less than \$1,000 gdp per capita, among the poorest countries in the world.

Figure 1

Although as a general rule central governments are given responsibility for issues that affect the whole country and states, provinces, etc., have responsibility for more local issues, the precise distribution of responsibility for the innumerable issues for which governments might make policies not only can be distributed in different ways but will tend in each country to change over time. This diversity is captured well by the title of a book comparing federalism in different countries: *Federalism: Infinite Variety in Theory and Practice*.¹

Federalism and (Limited) State Sovereignty in the U.S.

In American federalism, the states have *sovereign* political authority, meaning that the state's political authority is independent, not at the mercy of some higher power. So in the U.S, not only does the federal government have sovereign political authority, but the states themselves have their own sovereign authority that is not dependent on, or subject to the will of, the federal government. Over the past two centuries the authority of the federal government has grown at the expense of the states, but even today the states have some independent areas of authority, policy areas where they can set their own rules without the federal government having the authority to restrict them.

The sovereignty of the states even predates the sovereignty of the federal government, because the states existed *prior* to the federal government. Originally colonies of Great Britain, when they declared independence in 1776, they declared themselves thirteen independent countries, not just one. Technically speaking, the word "state" means a sovereign independent country, and "United States" meant independent countries united for certain purposes. Their first governing document, the Articles of Confederation, explicitly affirmed that "Each state retains its sovereignty, freedom, and independence." A *confederation*, or *confederal system*, is one in which there is a central organizing body that doesn't have the powers of a true government (or very few of them), while the member states' individual governments are the primary agents of political power.

Confederal systems are often unstable because the not-a-true-government at the center can be too weak to help the member states overcome their differences and function as a unit. The American confederation fit that model, with the name "united" states being more aspirational than descriptive. The Articles were soon scrapped in favor of a new governing document, the Constitution, which created a true central government that was better able to

keep the states united (with the notable exception of the southern states secession and the subsequent Civil War).

When they wrote the Constitution, all the powers of the new federal government came from the powers of the states—the sovereign powers that the states were willing to surrender to a higher-level government. This understanding of the political system was stated clearly by the Supreme Court in 1947.

The powers granted by the Constitution to the Federal Government are subtracted from the totality of sovereignty originally in the states and the people.²

But the states were not willing to surrender all their sovereign authority, only some of it, which is why the U.S. is a *federal* state rather than a *unitary* state. Today we have well-developed theories supporting the concept of federalism, but the men who wrote the U.S. Constitution did not choose federalism on the basis of political theory. To successfully write the Constitution and get it adopted by the states they had to keep delegates to their constitutional convention on board and then persuade at least nine of the thirteen states to ratify it. Asking the states to surrender all their power to a new central government would have meant defeat.

The Constitutional Outlines of American Federalism

These powers of the federal government are called *delegated powers* because the states delegated them to the new government. They are also called *enumerated powers* because there is a specific list of them—found in Article 1, section 8 of the Constitution, rather than a general grant of authority. In theory, if not always in practice, the federal government is a government of limited powers, limited only to those the states were willing to surrender. But as we'll see in a later chapter, certain of those enumerated powers are vague enough that Americans can argue over what the federal government is and is not allowed to do.

While the details of what level of government has what authority are sometimes arguable, in other cases they are very clear, and the general outline is simple. Broadly speaking, the federal government was delegated authority to deal with other countries, diplomatically, economically, and in war, as well as commercial activities that crossed state lines, while states retained their authority to manage and regulate their own internal affairs. The constitutional structure of political authority in American federalism is shown in figure 2. In a later chapter we will discuss in detail how American federalism has changed over time, with the federal government gaining authority at the expense of the states.

Constitutional Outlines of American Federalism		
	<i>Managing relations with other countries</i>	<i>Managing economic and political relations between states</i>
Article 1, §8: Congress shall have power to:	Regulate international commerce, naturalization, declare war, create, fund and manage the military, grant letters of marque.	Taxes and duties, borrow money, regulate interstate commerce, bankruptcy law, coin and regulate the value of money, establish post offices, patents and copyright law.
Article 1, §9: Congress shall not:		Tax exports, give preference to the ports of one state over another.
Article 2, §2: The President shall have power to:	Make treaties with other countries (with consent of the Senate), appoint and receive ambassadors.	
Article 1, §10: States shall not:	Make treaties or alliances, grant letters of marque, keep troops or warships in peacetime, initiate war, enter into compacts with other countries.	Make its own money, set duties on exports or imports, enter into compacts with other states without congressional approval.
Amendment 10:	Any power that the Constitution does not explicitly take from the states or give to the federal government are reserved to the states or the people.	

Figure 2

2. SEPARATION OF POWERS WITH CHECKS AND BALANCES, OR, REALLY, SEPARATED INSTITUTIONS SHARING POWERS

Separation of Powers in International Perspective

A traditional understanding of government sees it as having three general roles, which can all be combined into one office or can be given to separate offices to fulfill. These three roles are the making of law (the *legislative* power), the fulfillment of the law (the *executive* power) of the law, and judging compliance with the law (the *judicial* power). The combination of multiple roles into one office—whether that office is held by one person or by a group of people—is called *fusion of powers*, while distributing responsibility for the different roles among different offices is called *separation of powers*. Countries can also be mixed, with executive and legislative fused but judicial separate, or potentially any such combination.

Most countries in the world fuse powers, at least to some extent, with the U.S. being among a small number that have a fairly strong separation of powers. Authoritarian countries have fused powers because authoritarian governments like to consolidate, and eliminate any constraints on, their power. But most democracies fuse powers, too. In a list of twenty-three countries that have been both independent and continuously democratic since 1950, only three have had separation of powers that whole time (the U.S., Switzerland, and Costa Rica), with a fourth joining that small club in 2004 (Indonesia). Fifteen of those twenty-three democracies have almost wholly fused powers (such as Israel, and Japan). These are parliamentary democracies that combine the executive and legislative powers by having a prime minister—a member of parliament, the legislature—fulfills the role of chief executive. And while the judiciary in those countries generally operates independent; it has limited or

no power of *judicial review* (that is, no power to strike down laws passed by the parliament). Others parliamentary democracies have a fully independent judiciary, and still others have a president, who is independent of the parliament, but who most often has less executive power than the prime minister, and in some countries serves almost a purely ceremonial role. And yet again other parliamentary democracies still have a monarch who fulfills that ceremonial executive role, such as the United Kingdom. In brief, not only can the three powers be fused or separated in various configurations, but the degrees of the various powers given to each can differ as well, making for a bewildering variety of systems.

Why Separate Powers?

While the Framers of the U.S. Constitution chose federalism because of the pragmatic reality that the states were unwilling to surrender all their powers to a new central government, the choice to separate powers had a foundation in political theory and recent history—the fear of oppressive government. They were trying to strike a careful balance in designing a central government. To keep the union together, they believed they had to create a central government that had real power, but they’d just fought a revolution against a powerful government over which they had no control and they didn’t want to recreate that problem.

Remember that authoritarian governments like fused powers so their capacity to exercise power is not constrained. The very purpose of separation of powers is to fragment political authority in order to constrain political power and prevent a despotic government. The classic statement of this principle—one familiar to the men who drafted the U.S. Constitution—was written in 1748 by French political theorist Charles Louis de Secondat, Baron de Montesquieu.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.³

James Madison’s original proposal for the Constitution did not fully separate powers, as he suggested having the legislature select the president, similarly to a parliamentary system. But opponents of the idea argued that the president would then be dependent on the legislature, unable to act as a check on it, and “usurpation & tyranny on the part of the Legislature will be the consequence.”⁴ Madison was persuaded by their arguments, and later, arguing for ratification of the Constitution, he paraphrased Montesquieu, writing that

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.⁵

Checks and Balances

But the 3 branches of the U.S. government are not entirely separate from each other, as each has some check on the other. For example the President has veto power over legislation passed by Congress, Congress (through the Senate) has veto power over presidential appointments and any treaties the president negotiates with other countries, federal courts can nullify laws passed by Congress and signed by the president, and the judges on the federal courts only take their seats by being appointed by the president and approved by the Senate.

The idea behind these checks is to ensure that each branch has the ability to resist any efforts by the other branches to expand their powers. In other selections from the Federalist Papers, Madison explains the idea behind these encroachments on the separation of powers. First he defines the problem:

It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it... [the] most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.⁶

And then he explains the solution devised by the Framers of the constitution:

[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.⁷

These “necessary constitutional means” are the checks and balances each branch has on each other. The “personal motives” are, simply, jealousy of each other’s power. The whole system of separating the branches and then giving each one the ability to act as a check on each of the others is based on the assumption that people in government will have a thirst for power. This power lust is not only the reason the check are needed, but is also what motivates one branch to act as a check against others’ similar lust for power. In Madison’s words, “Ambition must be made to counteract ambition.”⁸ He then continues with one of the most famous phrases from the Federalist Papers.

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? 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 the government to control the governed; and in the next place oblige it to control itself.⁹

The Framers' concern was not simply theoretical. American history contains numerous examples of the branches attempting to expand their authority into the areas constitutionally reserved for others. And the balance among the branches today is not what it was two centuries ago. The struggle for political dominance among the branches is an on-going battle, with continuing shifts in relative amounts of control.

Separated Institutions Sharing Powers

“I am part of the legislative process.”
(President Eisenhower, talking about his veto power.)¹⁰

Separated institutions sharing powers¹¹ is a more concise and more accurate way of describing separation of powers with checks and balances. These checks are largely instances where the branches share in each of the others' powers, ideally just enough to constrain the other branch without co-opting its primary authority in the use of that power. The idea descends from James Madison, who argued that the separation of powers theory “does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other,” but should be “so far connected and blended as to give to each a constitutional control over the others.”¹² It is unfortunate that this term has not caught on with the general public, although it is common enough among political scientists.

2A. THE LEGISLATIVE BRANCH

Those separated institutions that share the power of the federal government are Congress (the primary legislative power), the President (the primary executive power), and the federal courts (the primary judicial power).

The United States Congress is the legislative branch of the American government, responsible for drafting the laws of the country and allocating public money to support the many programs and policies it has developed.

Symmetric Bicameralism

The Congress is divided into two houses of roughly equal authority (*symmetric bicameralism*), an unusual structure. Most countries either have a single house (a *unicameral* legislature), or have two houses but with one house having much more authority than the other (*asymmetric bicameralism*). Figure 3 shows the distribution of these types of legislatures in 23 countries that have been continuously independent and democratic since 1950. Nine of those countries have a unicameral legislature, eleven have an asymmetrically bicameral legislature, and only four, including the U.S., have a symmetrically bicameral legislature. The alert reader will recall that only a minority of democracies are federalist and only a minority have strong separation of powers. Little wonder, then, that political scientists write books with titles like *America the Unusual*¹³ and *The American Anomaly*¹⁴.

The lower house in the United States is the House of Representatives, sometimes called “the people’s house,” because in the original constitutional design Representatives were the only federal government officials elected directly by the people, and with a short two-year term of office they are frequently going back to the people for re-election. The upper house is the Senate, which originally was designed to represent state interests via appointment by state legislatures, but which since the 17th Amendment was passed in 1913 have been elected directly by the people of the states. The U.S. Congress is symmetrically bicameral because both the House and Senate have authority to initiate legislation and to block each other’s proposals. In asymmetrically bicameral countries the upper house has less power, and often no real power at all. In Canada, for example, Senators are appointed, rather than elected, and can neither initiate nor block legislation. Their job—if they do it, which many Canadians seem to doubt—is to provide representation for groups that might otherwise not have a voice and to study issues and make proposals that they can bring to the attention of the lower house (the House of Commons).

Legislatures in 23 Established Democracies	
Unicameral (one house)	Costa Rica, Denmark, Finland, Iceland, Israel, Luxembourg, New Zealand, Norway, Sweden
Asymmetrically Bicameral (two houses of unequal power)	Austria, Belgium, Canada, France, Germany, Great Britain, India, Ireland, Japan, Netherlands
Symmetrically Bicameral (two houses of equal power)	U.S., Australia, Italy, Switzerland

Figure 3

The two houses of the U.S. Congress are not perfectly equal in power. Constitutionally, only the House can initiate bills that raise revenue, but this is respected more as a matter of form than substance. As a matter of actual practice the Senate initiates revenue increases also, with constitutional compliance ensured by having the Senate give a final vote on

passage after the House has approved such a bill. Also certain powers are given only to the Senate, but these relate primarily to the president, including the power to approve or disapprove presidential appointments and treaties. But the most important equality in power is that neither can pass legislation without the consent of the other—to become a law, all bills

must be approved by both houses of Congress, and then either approved by the President or passed by both houses over the president's veto.

The reason for dividing the legislature into two houses was, again, about fragmenting the power of government to keep it under control. Madison explains this in Federalist 51, where he argues that the potential predominance of the legislative branch over the other branches requires an extra constraint on their power:

In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.

To recap the fragmentation of political power in the U.S., it is first divided between the states and the federal government (federalism), with the federal government having only a limited scope of political authority; the power of the federal government is then divided between three separate branches (separation of powers); and then finally the legislative power is divided between two houses, each of which must get the agreement of the other to pass laws.

Another reason for having two chambers of Congress is the Constitutional Convention's ferocious battle over representation in Congress. The large states' delegates thought representation should be by population, which would give their states more representatives, while the small states thought each state should have equal representation, so their people's voices would not be drowned out by a multitude of representatives from the biggest states. This was the biggest conflict in the convention, and we'll consider it in more detail in a subsequent chapter.

Figure 4 provides a comparison of the two chambers, which are described in more detail in the next two sections.

Comparison of House and Senate		
	House	Senate
Number of members	435	100
Length of members' term	2 years	6 years
Number of members up for election every two years	All	33 or 34
Representational base	District within their state	Entire state
Organizational structure	Hierarchical	Informal

Figure 4

The House of Representatives

The House of Representatives is the larger of the two houses, with 435 members. The number is not fixed in the Constitution, but is determined by Congress. The last time it was increased, to its present size, was 1911. It is noteworthy that the U.S. population has more than tripled since then. The House's membership is based on proportional representation, with more populous states having more representatives. The purpose behind this is to provide *the people* of each state with an equal amount of representation as those of each other states. The Constitution requires that a census be conducted every ten years to determine the number of people in each state, after which the 435 seats in the House are re-apportioned among the states to adjust for population changes.

The House's Representatives are drawn from districts within each state. By contrast many parliamentary systems do not use district-based representation (or do not use it for both houses), but use a *list proportional* system, where each party is allocated a number of seats in the legislative house according to its share of the national vote and then chooses that many representatives from its list of potential members. The district-based system in the U.S. is not required by the Constitution, but it is a long-standing practice that is deeply embedded in our political traditions, and was written into law by the U.S. Congress in 1967.

Each district has one Representative, so that a state that has, for example, 5 representatives, will draw 5 equal-population districts. Although it seems natural to Americans that each district be a single-member district multiple-member districts are used in some countries, and even some states make use of multi-member districts in their state legislatures. For good or ill, depending on one's perspective, single-member districts tend to reinforce a two-party system, preventing the effective development of third parties.

Because Representatives serve two year terms, in every even-numbered year all 435 members are up for re-election. This allows for big swings in party control, if the public is angry and decides to "vote the bums out." However district-based representation dampens the potential for big swings in party control when state legislatures draw district boundaries with an eye on voters' party registrations, allowing them to draw numerous "safe" districts where one party has an overwhelming numerical advantage, a practice, called *gerrymandering*. In some of these safe districts one party regularly over 70% of the vote. Some are dominated by supporters of one party that the other major party does not bother to field a challenger. Statistician Nate Silver calculates that 347 of the 435 House districts are safe,¹⁵ so while it is theoretically possible for an election to cause sweeping changes in the membership of the House of Representatives, it happens only rarely, and has become more unlikely as the number of safe districts has increased, almost doubling in the last twenty years.

Because coordination problems increase in difficulty as an organization increase in size, the House's larger size—compared to the Senate—makes good organization and leadership more crucial to effective functioning. Therefore the House has developed stronger leadership control over the legislative process than has the Senate. But even so, party leaders in the House still have very limited control over their own members because Representatives are more accountable to the people of their district than to their party. In the list proportional

system described above, legislators are chosen by their party leaders rather than by constituents. Well-behaved members who don't buck the party leaders can move up the list, ensuring they'll still get a seat in parliament even if their party loses some seats in the next election, while troublemakers can be moved down the list, putting their jobs at jeopardy. This gives party leaders a lot of control over the rank and file legislators of their party. In the United States, though, Representatives are predominantly self-selected and only need to keep their constituents happy to win re-election, not their party leaders. This makes it hard for party leaders to control and discipline their own members, although as we'll see in a later chapter, they do have some methods to punish and reward legislators.

Most of the work in the House of Representatives, as in the Senate, is done in committees. Nearly all legislation must be approved by one or more committees before coming to a final vote on the floor of the House. Every Representative is assigned to two or three committees. Each committee has defined subject matter jurisdiction, such as agriculture, energy and commerce, foreign affairs, judiciary, etc. Representatives usually look for committees in which they have expertise or interest (a veteran might serve on the Armed Services Committee, for example), that will allow them to look out for the interests of their constituents (a rural representative might serve on the Agriculture Committee), or one that enhances their influence in other important ways, such as the Rules Committee (which sets rules of debate for each bill) or the Budget Committee, which shapes who gets government funding and who does not. Committee appointments are one of the tools the party leadership uses to try to control its members. Loyal supporters can be rewarded with good committee assignments and disloyal ones given assignments that are of no interest and no political value to them.

The House has few special responsibilities that are not shared by the Senate, however it is the chamber that has authority to impeach a president or a member of the federal judiciary (while the Senate conducts the actual trial). Additionally, any bills for raising revenue must be approved by the House before the Senate gives them final approval.

The Senate

The Constitution requires that each state have two senators, so at present, because the U.S. currently has 50 states the Senate has 100 members. Unlike Representatives, who most often represent only a district within their state, every Senator represents his or her whole state. Having two senators each representing the whole state may make states look like multi-member districts, but while the districts cover the same territory they are different temporally. That is, they overlap in time, and each of a state's Senators is serving for a different time period. Each Senator serves a 6 year term, but with congressional elections occurring every 2 years, one of a state's Senators will be elected in one election year while the other will be elected 2 or 4 years later.

Also because Senators serve 6 year terms and congressional elections occur every two years, only about 1/3 of the Senators are up for re-election at one time. Numerically this makes big changes in membership, and therefore changes in party control, harder in the Senate than the House, because not as many of the “bums” can be thrown out at once. But because Senators cannot have a district drawn to favor their political party and have to represent a more politically diverse constituency they are more likely to be defeated for re-election than Representatives, so politically this makes it easier to shift party control of the Senate. In practice the Senate does tend to change party control more often than the House.

Having longer terms, and usually larger and more diverse constituencies, Senators tend to have a less personal relationship with their constituents, and are somewhat more free to act on their own rather than referring back to the wishes of their constituents. The Senate’s organization is also more individualistic than the House, and even though the Senate also has a party leadership structure, it has even less control over its members than the House party leadership has over its members. For example, 2007-2015 Senate Majority Leader Harry Reid, a Democrat, was often accused by pundits of being a poor leader, but it’s likely that his fellow Democrats selected him precisely because they didn’t want a strong leader who might limit their individual political autonomy.

The Senate has several special responsibilities. In addition to being the trial court for impeachments, it has the power of “advice and consent,” meaning it has the authority to 1) approve or reject treaties negotiated by the president, and 2) approve or reject presidential appointments to the executive and judicial branches. The Senate also holds trials in cases of impeachment of the President or members of the judiciary.

The Senate also differs from the House in that its rules allow for the filibuster. Whereas the House sets time limits for debate on bills before the final vote on them, which create strict limits on how long any Representative can hold the floor to comment on a bill, the Senate has unlimited debate without set time limits, and any Senator can filibuster—speak on an issue as long as he or she wants in an effort to stave off a final vote. Debate ends only when 60% of the Senators vote to impose *cloture* (an end to debate) but unless and until there are 60 votes in favor of ending debate, Senators can continue to speak as long as they choose. The filibuster is both a long-standing tradition and a controversial topic, as rule changes in the past several decades have made it easier to use a filibuster to stall legislation and because it is a tactic used by the minority to block bills favored by a majority.

Like the House, the Senate does most of its work in committees, and Senators seek particular committee assignments for the same reason Representatives do. The primary difference is that because there are fewer Senators but they have to cover all the same legislative areas Representatives do, there are slightly fewer committees and Senators generally serve on more committees than Representatives do.

Other Congressional Functions

In addition to legislating and the Senate's approval power over treaties and presidential appointments, Congress has three other important functions: budgeting, agency oversight, and constituent service.

- **Budgeting:** Congress is responsible for passing a budget to authorize funds for the programs it has legislated into being and for procuring the revenues to cover the authorized spending amounts. Budgeting is arguably Congress's most important task, because no matter how good a public policy may appear, it generally will have no effect if it is not funded. Since 1921 the President has been required by law to propose a budget to Congress, but Congress retains authority to make as many changes as they choose, or to disregard the president's budget entirely. As with other legislation, to become effective law the budget must either be signed by the president, or passed over his veto by a 2/3 majority in each chamber. This often creates a fierce battle between the President and the majority party in one or both houses of Congress. For any organization, its real priorities can be discerned by looking at where the money goes, so when Congressional majorities and presidents disagree over political priorities they will conflict over how much is spent in which budget areas.
- **Agency Oversight:** An important task of Congress is to act as a watchdog on the executive branch. Oversight is an important check and balance on the Executive Branch. It is generally done by committees that cover the same areas of policy as a particular agency. For example the House Agricultural Committee and Senate Agricultural Committee have primary oversight authority over the Department of Agriculture, but do not have oversight authority over the Department of Defense. Oversight occurs in two ways: 1) in the legislative and budgeting process, as Congress considers changes to the statutes that govern agency actions or changes to their budgets; 2) in special committee hearings in response to political controversies (such as hearings about the failure of the intelligence agencies to prevent the 9/11 terrorist attacks).
- **Constituency Service:** An easily overlooked function, but one that is vitally important to Congressmembers and their constituents, is to provide political services to constituents. Here are some examples of constituency service:
 - To attend one of the U.S. military academies a person normally needs a nomination from a Congressman, and Congressmembers are often happy to do this, to please the nominee's friends and family;
 - Citizens often have trouble negotiating the federal bureaucracy, and Congressmembers—their staff, actually—can help with this. For example a farmer who is trying to get a loan from the Farm Service Agency, or a veteran

who is having trouble securing disability benefits from the Veterans' Administration;

- Adopting a child abroad requires working within a complex structure of U.S. and international law designed to prevent child-selling. A Congressman's office can help their constituents avoid legal problems and successfully bring an adopted child into the U.S.

There are many other examples, and it is so important a task for members of Congress to perform-because it keeps potential voters happy-that a comprehensive constituent services manual to help them (especially new, inexperienced Representatives and Senators) has been developed, and made public by the Congressional Management Foundation. <http://www.congressfoundation.org/storage/documents/KL/2005-constituent-services-manual.pdf>

2B. THE EXECUTIVE BRANCH

The executive branch of the United States consists of the President and the federal bureaucratic agencies, of which the President is officially the head. The President's primary functions are to ensure that the laws and policies of the country are carried out and enforced, and to represent the U.S. in international affairs. Of course no person can do all this by him or herself, so the purpose of the federal bureaucracy is to do the actual enforcement and international representation while the President oversees the operation of this machinery of government and tries to set policy, with as much freedom from congressional direction as he or she can manage.

The president serves a 4 year term. Since ratification of the 22nd Amendment in 1951, presidents have been limited to 2 terms of office. However if a President has served no more than half his or her predecessor's term (if the former President died, resigned, or was impeached and convicted), he or she may serve an additional 2 terms. This allows a President to serve up to a maximum of 10 years in office, although in practice this has never happened.

Presidential Responsibilities and Powers

The Constitution gives the President a number of responsibilities, Congress has added to that list, and some others presidents have successfully claimed over the years.

Constitutional Responsibilities and Powers

- *Commander-in-Chief of the Armed Forces*: This is an important principle in American politics, ensuring that the military is always under civilian control. This power is checked—at least in theory, if not in practice—by Congress’s control of the military budget and its authority to declare war.
- *Appointments*: Presidents appoint ambassadors to other countries, members of the federal judiciary, and high-ranking officials of the federal bureaucracy, with the “advice and consent” of the Senate. In practice presidents rarely ask for advice from the Senate, although in cases of federal district court judges they do generally assure that the pick is satisfactory to the Senators from that state, to ensure they won’t try to block the appointment. Consent to a president’s appointees is given far more often than not, but Senate rejections of presidential appointments are frequent enough that it is a regular and effective check on presidents.
- *Pardons*: The President is the last line in the federal criminal justice system, able to pardon people who have been convicted of crimes against the U.S. (not for state crimes). The purpose of this power is to prevent miscarriages of justice, but at times it has appeared to be used to protect presidential allies from facing the just consequences of their alleged crimes. There is no check on this power.
- *Treaties*: As the representative of the U.S. to the world, the president has sole authority to negotiate treaties with other countries. Neither Congress nor the Courts can require the President to negotiate a treaty or forbid him from doing so. However there is a check on this power, in that before a treaty can take effect it must be approved by a 2/3 vote of the Senate.
- *Receiving Ambassadors*: Along with appointing ambassadors to other countries, presidents can receive other countries’ ambassadors. Together, these two powers have vast significance, as they allow a president to extend diplomatic recognition to groups that have declared independence, helping them to move beyond a mere claim of statehood to being recognized by the international community as an independent country (such as recognizing Panama’s independence from Colombia in 1903, in exchange for the right to dig a canal across the new country, and recognizing Israel as an independent state a mere 15 minutes after its declaration of independence in 1945). This power also enables presidents to choose between two rival factions claiming to be the legitimate government of a country, such as our recognition of the anti-communist Kuomintang as the internationally recognized government of China in the late 1940s (even though they had lost a civil war with the communists and been forced off the mainland, controlling only the small island of Formosa), and our subsequent shift to recognition of the communist government on the mainland in 1978.
- *Convening and Adjourning Congress*: The president has authority to adjourn Congress if the two chambers cannot agree on a time of adjournment, and may also convene

one or both houses for special purposes if they are not currently meeting. When the Constitution was drafted, Congress was expected to meet only a few months each year, but now that Congress meets almost year-round, the exercise of either of these powers is exceedingly rare.

Powers delegated to the President by Congress

- *Rule-making/Implementation:* Most laws passed by Congress give the executive a good deal of leeway in figuring out how to implement them. Congress finds it difficult to specify precisely how laws should apply, so often they focus on the general outcomes they hope to achieve and authorize the executive branch agencies under the direction of the President to write the specific regulations that make the laws effective. Although these regulations are not technically law they have the force of law.
- *Budgeting Authority:* As we saw above, Congress has the constitutional authority and duty to pass a federal budget. In the late 19th and early 20th centuries, Congress found it increasingly difficult to manage this task on their own, so with the Budget and Accounting Act of 1921 they required the President to submit a budget proposal for Congress to consider. This shifted considerable *agenda-setting power* to the President, as they get the first shot at defining the issues and where public spending should be directed.

Presidentially Claimed Inherent Powers

Inherent are powers that are not listed in the Constitution, nor granted to presidents by Congress, but that are claimed to be inherent to the nature of executive authority. Because these are not constitutionally nor statutorily specified, and because presidents have an incentive to try to expand their power, these claims are often controversial. But unless checked by Congress or the judiciary, they gain legitimacy through use and custom.

- *Executive Orders:* Presidents are the head of the executive branch of the government, but often they have little direct control over what federal agencies do. Presidents sometimes try to exert control by issuing executive orders to the agencies. These orders may be about reorganizing certain agencies, or about how they will implement rules. For example President Reagan issued an executive order requiring that all agencies had to get approval for new federal regulations from the Office of Management and Budget (OMB) before the rules could take effect—previously the agencies did not need approval from a higher authority than their own director, and because the OMB is closely controlled by the President, this gave the President more control over which regulations were approved. The key point about executive orders is that they apply *only* to the executive branch—they are not laws and do not have the

effect of laws. They also do not bind future presidents, who can ignore or revoke them simply by drafting a new executive order.

- *Executive Agreements*: Executive agreements are agreements made by the President with other countries that, unlike treaties, do not normally need Senate approval. They are often used as an end-run around the difficulty of getting Senate approval. Because they are not official, as treaties are, executive agreements do not always have the force of law, and are more easily ignored or revoked.
- *Executive Privilege*: Executive privilege is the claim that presidents do not have to reveal to Congress personal communications with advisers. This can prevent Congress from having access to executive branch documents or from subpoenaing executive branch officials without the President's consent. This claim is generally accepted, within limits, on the basis that to get good advice the president needs advisers who don't fear their words being made public.

Growth of Presidential Power

The presidency has grown tremendously in power in the past century, transforming its role in the American political system. The Framers of the Constitution separated the executive from the legislative because they were worried about congressional dominance and wanted a check on it, and in the late 1800s Congress still dominated the president enough for future president Woodrow Wilson to write his PhD dissertation as a critique of Congressionally dominated governance. But since then the presidency has become the centerpiece of the American political system, transforming from an office that primarily followed the lead of Congress to one that has become the country's primary policy leader. This is due to changes in the nature of American politics and America's post World War II role as global leader.

This change worries many presidential scholars. Since the 1960s they have spoken of "the Imperial Presidency,"¹⁶ and argued that presidential power has become "unchecked and unbalanced."¹⁷ In this era presidents who expect, and are expected by the public, to achieve significant accomplishments but find themselves checked by Congress—as the Framers intended!—increasingly resort to unilateral action, from exerting more control over the bureaucracy's rule-making so as to shape the effects of laws to their own liking to using executive agreements rather than treaties, to effectively appropriating the war-making power from Congress, to rewriting law via signing statements, to declaring that they have the authority to determine if the Courts may hear a case that involves what the executive unilaterally determines are state secrets. At present there appears to be no end to or effective means of countering this unbalancing of the American government.

2C. THE JUDICIARY

The judicial branch of the U.S. consists of the Supreme Court and two tiers of lower courts. The Constitution requires only a Supreme Court, but the Framers recognized there would be future needs, so they authorized Congress to establish “inferior” (lower) courts. All members of the federal judiciary are appointed by the President, with the approval of the Senate, and serve for life, or until they choose to resign or retire.

The Structure of the Judicial Branch

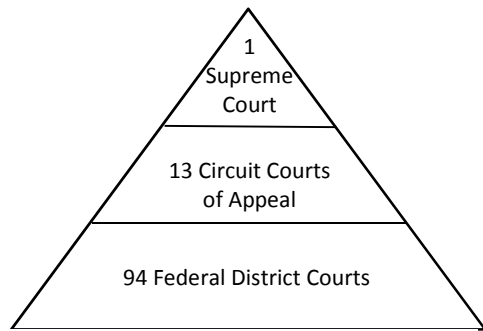


Figure 5

The bottom level of the federal judiciary consists of 94 Federal District Courts. Each state has at least one, with larger states having two. There is also a District Court just for Washington, D.C., and one for Puerto Rico. The territories of the U.S. Virgin Island, Guam, and the Northern Marianas Islands have federal courts that function as, but technically are not, District Courts, with judges who serve ten-year terms instead of life. And the territory of American Samoa has no federal court.

Also at this level are the specialized courts, the U.S. Court of International Trade, The U.S. Court of Federal Claims, and the U.S. Tax Court. The District Courts are the entry level of the federal judicial system. Citizens involved in federal lawsuits—whether suing the federal government, being sued by it, or suing a citizen of another state or country—or charged with a federal crime, will have their cases heard in a federal district court. Congress determines how many federal courts there shall be and from time to time adds new ones as needed.

At the next level are 13 Circuit Courts of Appeal. Those who lose their cases in the District Court can appeal the decision if they believe the law was applied wrongly in the lower court. Each of the Circuit Courts incorporate several states and their Federal District Courts, except the Court for the Federal Circuit, which incorporates the D.C. District Court and the specialized courts. Congress also determines how many Circuit Courts there shall be, and can add to that number. For many years there has been an effort to split the 9th Circuit, consisting of nine states in the West and Pacific Ocean into two circuits. Congress has not yet done so, but has the authority to do it any time.

At the top is the U.S. Supreme Court. The Court consists of nine members, a number determined not by the Constitution but by Congress. The number has varied in the past, but has not changed since 1868, creating a strong tradition. The last serious effort to change the number was in 1937 when President Roosevelt proposed to temporarily increase the number, in an effort to get a majority that would uphold his legislative proposals. Although his party had a strong majority in Congress, his effort was seen as political manipulation of the Court and was rejected.

Judicial Federalism

Federalism is present in the American legal system, as the U. S. has a side-by-side structure of state courts and federal courts. The federal judiciary handles legal cases that deal with the Constitution, federal laws, and treaties; with lawsuits between citizens of different states; and between citizens and foreign countries or their citizens. All other cases, such as most criminal law cases, divorces, and most lawsuits alleging that one party has harmed another, are handled by state courts, where around 90% of all cases are heard. State cases can also hear cases alleging that the state, or an agent of the state, has violated the constitutional rights of one of the state's citizens (for example, a claim of cruel punishment in a state prison, or racial discrimination by a state agency).

If a case works its way up to the state's supreme court and involves a constitutional question, the loser can appeal to the U.S. Supreme Court. For example, in 1961 a Florida man named Clarence Gideon was arrested and convicted of robbery. He believed he was denied a fair trial because he couldn't afford a lawyer and the trial court didn't appoint one for him, so he appealed his conviction to the Florida Supreme Court, which denied his claim. In fact he was wrong, because at that time states did not have to provide a lawyer for all poor defendants. But convinced that he was right, he appealed to the U.S. Supreme Court, which took his case and ruled that the Constitutional right to have an attorney meant that states did have to provide lawyers for all poor defendants.

Roles of the Judiciary

The judiciary serves three critical roles in the political system: judging the execution of the law, judging the constitutional legitimacy of laws, and mediating disputes between the legislative and executive branches and between state and federal government.

Judging the Execution of the Law

The executive branch enforces federal law, but there is no guarantee that they will do so in a way that is compliant with the law, or that applies the law correctly. It is the judiciary's duty to interpret federal laws and regulations and evaluate whether the executive branch has interpreted and applied them correctly. This can happen at any level of the judiciary, but is most commonly applied when an adverse judgement is appealed to the Circuit Courts or Supreme Court. For example, in 2016 the Supreme Court ruled that a "joint enterprise" law used to convict accomplices of crimes committed by another person had been wrongly applied for the past 30 years. As another example, the Supreme Court struck down an Environmental Protection Agency rule on mercury regulations because the decision-making process used

when writing the rule did not comply with federal law—the agency had not considered the rule’s costs to industry, even though that was a required consideration.

Judicial Review

Judicial Review is the authority to rule a law unconstitutional, and therefore null and void. The theory behind it is simple—the Constitution limits government, so government, even if the people desire it to do so, cannot go beyond its constitutional boundaries, and somebody has to enforce that rule, so the job falls to the judicial branch. The Constitution does not explicitly authorize the judiciary to exercise this power, but there are hints of it in the record of debates at the Constitutional Convention and in the Federalist Papers. The Court first exercised the power in 1803, in the case of *Marbury v. Madison*, then did not exercise it again until the infamous *Dred Scott* case in 1857. But in the late 19th and throughout the 20th century the exercise of judicial review became a normal practice. It is still questioned at times, mostly by those who like the law that was struck down, but for legal scholars the only real argument is about how deferential the Courts should be to Congress’s interpretation of a law’s constitutionality—being more deferential would mean fewer laws ruled unconstitutional because they accept Congress’s interpretation more often, and being less deferential would mean more laws struck down because they would ignore Congress’s effort to justify a law’s constitutionality and rely wholly on their own judgment.

For example, in 1996 the internet was new but already being used to disseminate pornography. Congress passed the Communications Decency Act to try to restrict internet pornography, and the law was immediately challenged by free speech advocates, including a coalition of pornographic film companies. In 1997 the Supreme Court struck down the parts of the law that prohibited “indecent” communication on the grounds that it was unconstitutionally vague and banned constitutionally protected communications between adults. In 2010 the Court struck down part of the Bipartisan Campaign Reform Act (commonly known as McCain-Feingold, after its congressional sponsors) in the famous *Citizens United* case. Citizens United is a non-profit political advocacy organization that wanted to broadcast a documentary critical of Hillary Clinton, but was prohibited from doing so because the law banned corporations from sponsoring independent “electioneering communications” that mentioned candidates by names in the 60 days before an election. The organization argued that this was a violation of their right to free speech, and in a case that is still hotly debated the Supreme Court agreed.

The judiciary can also strike down actions of the executive branch as unconstitutional. Those cases generally look very similar to the cases where they strike down a law, so all the details explained above apply in those cases as well.

Mediating Disputes Between the Legislative and Executive Branches.

Because the Constitution creates a system of separated institutions sharing powers, as Richard Neustadt argued, there is sometimes conflict between Congress and the President over who rightly exercises particular powers, and when one branch has overstepped its bounds. It is natural that each branch should try to expand its power and its control over public policy, so these cases arise occasionally. They are often complex, and are generally not as exciting as cases dealing with judicial review and civil rights or liberties, but are crucial to maintaining the constitutional checks and balances of power. In one notable case, during the Korean War President Truman nationalized the steel industry to prevent a steelworkers' strike that could have hindered the war effort. There was a law that he could have used to work toward this end, although perhaps less effectively. The question the Court faced was whether this was within the scope of the President's *inherent powers* or whether he was encroaching on legislative power, and they ruled that the President did not have this power. Another important case involved a technique developed by Congress called the *legislative veto*. In the particular case, the Immigration and Nationality Act authorized the Attorney General of the United States to suspend the deportation of a person who was in the U.S. illegally. But the Attorney General then had to submit the list to Congress, where either house could veto the act. The Court ruled that Congress had authorized the Attorney General to act, and if it wanted to overrule an authorized action by the executive branch it had to pass legislation saying so in the proper manner.

Mediating Disputes Between the Legislative and Executive Branches.

Just as separation of powers pits competing branches of government against each other in their attempts to exert power, so federalism sets the federal government against the states, and the boundaries of federalism are regularly challenged. For example, in 1997 the Supreme Court struck down part of a federal gun control law that required state officials to conduct background checks on gun purchasers. The Court ruled that the federal government did not have authority to force the states to spend their own resources to implement a federal law. Going the other direction, concerning a state encroachment on federal turf, in 1995 the Court struck down an Arkansas law that attempted to set term limits on U.S. Representatives and Senators from the state. The Court ruled that the Constitution set the standards of eligibility to serve in Congress, and states did not have authority to add to those standards.

In each of these areas a large number of cases could be discussed at great length, and argued endlessly because frequently there are reasonable arguments on each side. If you take some constitutional law courses you will have that opportunity, but here just a few are given to demonstrate the concepts.

3. The Bill of Rights

The Bill of Rights is the first ten amendments to the U.S. Constitution. The original body of the Constitution also contains a few specific protections of citizen's rights, and other amendments added later list even more, so our actual set of constitutional rights is greater than just what is contained in the Bill of Rights. Nevertheless, the Bill of Rights contains some of our most valuable protections against government power. The Bill of Rights exists because people in the founding era expected the government to overstep its bounds and abuse the people's rights. History has proven them right. The Bill of Rights does not always directly constrain government action, but gives citizens a legal avenue to end an abuse of government power that has already occurred.

The Bill of Rights come in the form of amendments to the Constitution because the Framers made a strategic blunder in not including a Bill of Rights, which led many states to resist ratifying the Constitution until there was a promise to include one. When the new government began meeting, one of the first actions was to create a list of amendments protecting the rights of the people. Twelve were submitted to the states, ten of which were ratified (an eleventh was ratified 202 years later, in 1992).

Application of the Bill of Rights—Selective Incorporation Against the States

The Bill of Rights was intended as a constraint on the power of the federal government. The states created the Constitution, and they weren't interested in imposing more constraints on their own power—they just wanted to make sure this new powerful federal government didn't try to trample on their citizens. So originally none of the rights were applicable against the state governments. The Supreme Court authoritatively ruled on this in 1833, in a case where a citizen of Baltimore claimed the city violated his 5th Amendment rights by taking his property without compensation. The Court ruled that the 5th Amendment, and by implication the Bill of Rights generally, applied only to the federal government. What states did in their own territory was purely a state issue.

This changed after the adoption of the 14th Amendment, which in part forbids states from violating any person's right to due process of law. Beginning in the late 19th century the Court began using that due process clause to "incorporate" parts of the Bill of Rights to apply to the states, arguing that there is no legitimate process for violating fundamental rights so such violations are always a violation of due process. But the Court has never said the whole Bill of Rights applies to the states. Instead they have applied it piecemeal, in a process called *selective incorporation*, as particular parts have been challenged. Fittingly, the first case incorporating a constitutional right against the states concerned state taking of private property, in the 1897 case of *Chicago, Burlington and Quincy Railroad v. Chicago*. Rights to

freedom of speech and freedom of religion were not applied to the states until 1927 and 1940, and due process rights were selectively incorporated from the 1940s through 1960s. The most recent incorporation case was the 2010 case of *McDonald v. Chicago*, in which the Court ruled for the first time that the 2nd Amendment right to keep and bear arms applied to the states.

Only a few parts of the Bill of Rights remain unincorporated (not applied to the states). These include the 3rd Amendment right against the government quartering soldiers in one's home, the right to a jury selected from the state where a crime occurred, the right to a jury trial in civil cases (lawsuits, as opposed to criminal cases), protection against excessive fines, and the right to be indicted by a grand jury (as opposed to indictment by a district attorney). But the process of incorporation has been going on for over a century, bit by bit, and these may one day also be incorporated.

Contents of the Bill of Rights

In later chapters we'll address some elements of the Bill of Rights in more detail, but here we will give just a brief overview.

- The First Amendment contains crucial political rights and what are often called rights of conscience. This includes the right to free speech, freedom of the press, and freedom of assembly, which are crucial to the proper working of a democracy. If people cannot communicate political ideas with each other and report on the actions of government, government can operate with less fear of reprisal by the citizens. This amendment also includes religious freedom rights, including free exercise of religion—the right to follow any religion one chooses, or no religion at all—and a prohibition on the establishment of religion; i.e., the right to be free from government imposed religious requirements.
- The Fourth Amendment contains due process rights against unreasonable searches and seizures. When enforced, this is an important constraint on the police power of the state.
- The Fifth Amendment contains further due process rights, including the rights to not be tried multiple times for the same crime, to not be forced to testify against oneself in court, to be deprived of life, liberty or property without due property of law, or to have the government take one's property without compensation.
- The Sixth Amendment contains even more due process rights, including the right to a speedy and public trial (rather than secret tribunals or being held indefinitely without ever being tried), to have the government require witnesses to testify in the defendant's favor, and the right to have an attorney to help with one's defense.

- The 8th Amendment prohibits the use of excessive bail or fines, and bans the use of cruel and unusual punishments.

Civil Liberties v. 14th Amendment Civil Rights

The Bill of Rights contains most of the rights we call the *civil liberties* of Americans. In addition to the Bill of Rights, the 14th Amendment is one of the most crucial protections of citizens' rights against government, particularly state government. In addition to the *due process clause* used for selective incorporation the amendment contains the *equal protection clause*, which states that no state may “deny to any person within its jurisdiction the equal protection of the laws. This right to equal treatment under law are generally called our *civil rights*. This is the right fought for by the various civil rights movements, including the Civil Rights movement of African-Americans, battles for gender equality, the efforts of handicapped people to gain equal access to public facilities, and the rights of LGBTQ individuals for legal protections and marriage rights.

Both civil liberties and civil rights are critically important. It is easy to get the terms confused, but there is an important distinction. A government can violate everyone's civil liberties, by restricting speech rights, for example, but can only deny equal protection to a particular group, treating them as second-class citizens. If they treated everyone equally badly, it would most likely violate our rights but by definition it couldn't be a denial of equal rights. In later chapters we will examine both civil liberties and civil rights in more detail, and it will become clear that governments—federal, state, and municipal—do frequently violate citizens' rights.

Summary

The Framers of the Constitution created a complex political system that divided political power between the states and the federal government, separated and balanced the power of the federal government, and then added specific limits to that federal government power in an effort to create a system that would be powerful enough to hold the union of states together but not powerful enough to violate the rights of the people. The extent to which they successfully achieved both of these goals, is, like so much else in politics, an issue about which reasonable and intelligent people can disagree. In subsequent chapters we will examine many of these issues in more depth, with the goal of enabling the reader to be an informed, thoughtful, and critical observer of American politics.

Questions to Think About

1. Why did the Framers of the Constitution fragment political power so much? Wouldn't it be easier to get things done if power wasn't so fragmented?
2. If we were drafting a new constitution today do you think we would still keep a federalist system, or do you think we would shift more power to the federal government? Which do you think we should do if we rewrote the Constitution?
3. Most democratic countries became democratic after the U.S. Did. Why do you think so few followed our model of federalism, separation of powers, and a symmetrically bicameral legislature?
4. Should the judiciary have the authority to nullify laws that have been democratically passed by the representatives of the people? Why or why not?

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