

# Y13 Government Term 1 — US Constitution

## The Constitution is based on 3 key principles

- Separation of Powers – the 3 branches of government
- Checks and balances – the means for each branch to partially control the power exercised by the other branches
- Federalism – Political power is divided between a national government and a state government, each having their own areas of jurisdiction



## The Founding Fathers wanted a separation of powers because of their fear of tyranny

- "When the legislative and executive powers are united in the same person ... there can be no liberty" French Writer Montesquieu (1748)
- Each of these independent yet co-equal branches should check the powers of the others
- No person could be in more than one branch at the same time (Obama & Joe Biden had to resign from the Senate when they became POTUS & VP in 2008)



## The term 'Separation of Powers' is misleading...

- "The Constitution Convention of 1787 was supposed to have created a government of separated powers. It did nothing of the sort. Rather, it created a government of separated institutions sharing powers." Neustadt 1960
- Professor S.E. Finer (1970) described two of the branches as 'like two halves of the same bank note – each useless without the other.'



## Federalism is the division of powers between a central government and regional governments

- The United States has a federal system of government where the states and national government exercise separate powers within their own spheres of authority
- Under the U.S. Constitution, both the national and state governments are granted certain exclusive powers and share other powers
- The framers of the constitution wanted a limited government whereby government would only do what was essential



## The powers of the National Government are:

- ⇒ Print money (bills and coins)
- ⇒ Declare war
- ⇒ Establish an army and navy
- ⇒ Enter into treaties with foreign governments
- ⇒ Regulate commerce between states and international trade
- ⇒ Establish post offices and issue postage
- ⇒ Make laws necessary to enforce the Constitution



## The powers of the State Governments are:

- ⇒ Establish local governments
- ⇒ Issue licenses (driver, hunting, marriage, etc.)
- ⇒ Regulate intrastate (within the state) commerce
- ⇒ Conduct elections
- ⇒ Ratify amendments to the U.S. Constitution
- ⇒ Provide for public health and safety
- ⇒ Exercise powers neither delegated to the national government nor prohibited from the states Constitution (For example, setting legal drinking and smoking ages.)



## The powers shared by the National and State Government are:

- ⇒ Setting up courts
- ⇒ Creating and collecting taxes
- ⇒ Building highways
- ⇒ Borrowing money
- ⇒ Making and enforcing laws
- ⇒ Chartering banks and corporations
- ⇒ Spending money for the betterment of the general welfare
- ⇒ Taking (condemning) private property with just compensation



## Federalism is not specified in the Constitution but it was written into the enumerated powers of the 3 branches of the federal government

- It was included in the implied powers of the federal government
- Federal government & the states were given concurrent powers
- The 10th Amendment reserved all remaining powers to the 'states & to the people'
- Finally the Supreme Court was to be the umpire of all disagreements between the state and federal governments



## There are 4 types of Federalism

1. Dual federalism - clear enumerated powers between national & state, & equal sovereignty
2. Cooperative federalism - national & state governments sharing functions & collaborating
3. Creative federalism - overloaded cooperation & crosscutting regulations (1960-1980)
3. New federalism - devolution of power from national to state, de-regulation & difficulty of states to fulfil their new mandates



## The 14th & 16th Amendments have given federal government more power

- The Supreme Court used the 14th Amendment to invalidate state segregation in schools, state restrictions on abortion & Florida's attempt in 2000 to order a recount in the Presidential election
- The 16th Amendment gave Presidents Roosevelt, Truman, Kennedy & Johnson the means to launch grand government



## Barack Obama's administration saw a change in federal to state relations

- Bush's second term focused on war and terrorism
- Obama's presidential campaign & subsequent term of office focused on delivering his 'change' agenda
- War and security against terrorism is generally a federal domain whereas domestic policy is usually the domain of states
- This means that during Obama's first term there were a number of changes to the federal state relationship



## Federalism has consequences throughout US government & politics

- Legal – variety in state laws on age of marriage, driving a car, attending school, drug use & death penalty
- Policy – states can trial government policy such as immigration reform in Arizona
- Elections – all elections are state based & states choose procedures for elections including presidential
- Political parties – these are mostly state based parties & states vary in their conservativeness
- Economic – Huge federal grants go to states, tax is levied by both state and federal governments
- Regional – The South, Midwest, Northeast & West have distinct cultures & accents & the Deep South is very conservative compared to the liberal Northeast



## The US Constitution emerged almost full grown & shaped by the American Revolution

- Federal system of government & strict separation of powers
- Constitutional Amendments reflect changes to USA
- Codified Constitution, single document of 7,000 words
- Uncodified in terms of no mention of primary elections, the President's cabinet or powers of Supreme Court etc.
- 2 term in office rule (22nd Amendment)
- Provision for legislation, civil rights & liberties entrenched
- 10th Amendment - power resides with the people
- Americans have a greater role in electoral processes
- Can only serve in one branch at a time
- One branch cannot interfere in the workings of another
- Checks & balances protect the rights & freedoms of Americans & limit power of government
- Certain powers granted solely to national government
- Specific & substantive powers to state governments



## The UK Constitution evolved slowly over the years & was affected by the English Civil Wars

- Constitutional monarchy & uncodified
- Hereditary peers in H of Lords & the Inclusion of 2 Archbishops & 24 bishops in H of Lords
- Legislation, civil rights & liberties not entrenched
- No fixed term in office for PM
- British people are 'subjects of the Crown'
- Only 1 of the 2 houses is elected & no say in PM
- Some referendums recently
- Fused power between 3 branches
- Devolved governments - not as powerful as state govts
- Supreme Court is less powerful than US Supreme Court
- Ministers operate in both legislative & executive branches
- Parliament can have a vote of 'no confidence' in govt
- PM writes legislation & if a majority then often passed
- Usually a one party government
- National govt can reclaim devolved powers

