

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

