



Shaded in the map above.

In order to understand fully the government and politics of the USA, you will need to have some comprehension of how the nation was formed and how the Constitution came to be written in 1787. You will also need to understand the basic principles that underlie the Constitution — **separation of powers, checks and balances**, and **federalism**. Remember that the USA is a vast country. You can fit the entire UK into Oregon. Even the 48 contiguous states — not counting Alaska and Hawaii — encompass over 3,000 miles (4,800 kilometres) and four time zones. It’s as far from New York to Los Angeles as it is from New York to London. When it’s midday in London and 7 a.m. in New York, it’s still only 4 a.m. in California. **Vastness** is one characteristic of America. **Diversity** is another, diversity in terms of race, culture, language, religion, climate and economy. The USA needs a particular kind of governmental and political structure to cope with all this.

The topic is divided into the following five major headings:

- A** Before the Constitution
- B** The Constitution
- C** Separation of powers
- D** Checks and balances
- E** Federalism



You don't need to know the details of American history for this course in government and politics, but it helps to have a working knowledge of what came before the founding of the USA. The order in which things happened is more important than the dates themselves.

Rhode Island delegates were fearful that the hard-won gains of the War of Independence would be lost and refused to attend.

At this time, Virginia was the state with the largest population.

# A Before the Constitution

## 1 1776–83

Here is a very brief survey of what occurred in the years before the writing of the American Constitution:

- **1776:** the 13 colonies on the eastern seaboard of North America declared their independence from Great Britain in the **Declaration of Independence**.
- **1776–83:** there followed the **War of Independence** between the former colonies and Great Britain.
- **1781:** the newly independent colonies decided to establish a **confederacy** — a loose association of states in which almost all political power rests with the individual states — by the **Articles of Confederation**.

Between 1781 and 1787 there was almost no national government. Virtually all power resided with the states. Virginians ruled Virginia. New Yorkers ruled New York, and so on. That was what they had fought to gain from Britain. There was no president. There was no national court. There was a Congress, but it could not pass any laws; it was merely a debating chamber. The states squabbled with each other, principally over trade (taxes charged by each state for goods to pass through) and money (each state had its own currency). Chaos ensued.

To help bring order out of chaos, the **Philadelphia Convention** convened in the summer of 1787.

## 2 The Philadelphia Convention

Again, all you need to know here are the basic facts:

- It was convened in Philadelphia on 25 May 1787.
- Delegates from the 13 states were invited.
- 55 of the invited 74 turned up — Rhode Island was the only state to send no delegates.
- It was presided over by **George Washington**.
- Also present were James Madison, Thomas Jefferson and Alexander Hamilton.
- Although the stated purpose of the Convention was merely to **revise** the Articles of Confederation, they decided to scrap them and write a new Constitution.
- Divisions arose between the small-population and large-population states.
- The Virginia Plan set out the wishes of the large-population states.
- The New Jersey Plan set out those of the small-population states.
- The Connecticut Compromise (often called 'the Great Compromise') provided the basis for agreement.
- The new Constitution was written by these 55 delegates, who became known as the Founding Fathers.

# B The Constitution

## 1

### Introduction

This is where your knowledge and understanding need to become much more detailed.

This is the kind of 'scholarly quotation' you ought to try and get into an essay. Short but insightful.

The Founding Fathers decided to write a new Constitution. This involved making a whole number of **compromises**. Indeed, 'compromise' is a key word to aid full understanding of American government and politics. The Constitution is made up of a whole series of compromises, and to govern — whether you are the president or a member of Congress — involves making compromises. That is what the Founding Fathers wanted. Alistair Cooke has written that the American Constitution was founded upon three great principles: 'compromise, compromise and compromise'.

Here are three of the major compromises embodied in the new Constitution.

## 2

### The three compromises

#### 2.1 The form of government

Under Great Britain, the colonies had been ruled under a **unitary** form of government. All political power rested with Great Britain, none with the colonies themselves. The colonists disliked this. As we have just seen, from 1781 they had been ruled by a **confederal** form of government where virtually all political power rested with the individual states, very little with the national government. This had simply not worked. The compromise was to devise a new form of government — a **federal** form of government. This gives some political power to the national (or federal) government but other, equally important, powers to the state governments.

#### 2.2 The representation of the states

In the new Congress, the large-population states wanted representation to be proportional to population. The bigger the population of a state, the more representatives it would have in the new Congress. The small-population states wanted equal representation. The compromise was to have a Congress made up of two houses — the House of Representatives and the Senate. In the House of Representatives, there would be representation proportional to population. In the Senate, there would be equal representation for all states, regardless of population.

#### 2.3 The choosing of the president

There were many different suggestions about how to choose the president. Some thought the president should be **appointed**. Others thought the president should be **directly elected** by the people. The compromise was to have the president **indirectly elected** by an Electoral College (see Topic 2.A.7.2). The people would elect the Electoral College and the 'Electors' within the Electoral College would choose the president.

Notice 'equally important' — not just trivial matters such as keeping the roads clean.

'Bicameral' is the technical phrase — made up of two houses or 'chambers'.

Don't use the phrase 'proportional representation'; it isn't.

'Electors' with a capital 'E' to avoid misunderstanding.

### 3 The Constitution in outline

You should be familiar with the first three Articles of the Constitution:

- Article I: established that **the Congress** was to be made up of two chambers; laid down methods of election, terms of office and powers (see Topic 5).
- Article II: established **a President of the USA**; laid down methods of election, terms of office and powers (see Topic 6).
- Article III: established the **United States Supreme Court**; laid down the judges' terms of office and their jurisdiction (see Topic 8).

Attached to the first seven Articles were ten Amendments known as **the Bill of Rights**. You should be familiar with Amendments I, II, V, VIII and X.

### 4 Amending the Constitution

Amending the Constitution is a two-stage process: **proposal** and **ratification** (see Table 1.1).

- (1) **Proposals to amend** the Constitution can be made either by Congress with a **two-thirds majority** in favour in **both houses**, or by a national Constitutional Convention called at the request of two-thirds of the state legislatures. The latter has never been used.
- (2) **Ratification** can be made either by **three-quarters of the state legislatures** or by three-quarters of the states holding a Constitutional Convention. The latter has been used only once — to ratify the 21st Amendment in 1933.

Amendments proposed by:	Amendments ratified by:
Either <b>Congress:</b> two-thirds majority in both houses required or <b>National Constitutional Convention:</b> called by at least two-thirds of the states (never used)	Either <b>State legislatures:</b> three-quarters of the state legislatures must vote to ratify, often within a stated time limit or <b>State Constitutional Conventions:</b> three-quarters of the states must hold Conventions and vote to ratify

Table 1.1 Procedures for amending the Constitution

Following the ratification of the Bill of Rights in 1791, there have been 17 further amendments in around 220 years. Two of these 17 cancel each other out: the 18th and 21st Amendments imposing and then ending the prohibition of alcohol.

Numerous amendments have been proposed but not ratified. Recent examples include proposals to:

- guarantee equal rights for women
- require the federal government to pass a balanced budget
- impose term limits on members of Congress
- forbid desecration of the American flag

Between 1995 and 2008, Congress voted 23 times on constitutional amendments — 17 times in the House, six times in the Senate. The House passed amendments

Note that this three-quarters figure concerns the proportion of states that must ratify, not the majority by which they must ratify the Amendment.

on seven occasions, six being on the same amendment — to forbid flag desecration. But the Senate rejected every amendment it considered during this time, including the Balanced Budget Amendment in three successive years — 1995, 1996 and 1997 — and flag desecration in 1995, 2000 and 2006.

### Subjects

Balanced budget  
 Congressional term limits  
 Flag desecration  
 Tax limitation  
 School prayers  
 Super-majority to raise taxes  
 Marriage protection

*Table 1.2 Subjects of constitutional amendments introduced in Congress, 1995–2008*

So, why has the constitution been so rarely amended? There are five main reasons:

- (1) The Founding Fathers created a deliberately difficult amendment process.
- (2) The vagueness of the Constitution, which has allowed the document to evolve without the need for constant formal amendment.
- (3) The Supreme Court's power of judicial review, which allows the Court to amend the meaning of the Constitution while the words remain largely unaltered (see Topic 8).
- (4) The reverence with which the Constitution is regarded, which makes many politicians cautious of tampering with it.
- (5) The experience of the 18th Amendment, regarding the prohibition of alcohol, which was repealed (by the 21st Amendment) just 14 years later.

## C

# Separation of powers

## 1

### Definition

The separation of powers is a theory of government by which power is divided between three branches of government — the legislature, the executive and the judiciary — each acting both independently and interdependently.

## 2

### Explanation

The functions of government can be divided into three:

- (1) Legislating: this is done by the **legislature** which **makes the laws**.
- (2) Executing: this is done by the **executive** which **carries out the laws**.
- (3) Enforcing: this is done by the **judiciary**, which **enforces the laws**. The judiciary also **interprets the laws** and, in the USA, where there is a written Constitution, **interprets the Constitution** (the 'supreme law').

Watch for spelling of 'separation'.

'Legislature' is the noun; 'legislative' is the adjective. Don't confuse the two. It is 'the legislature' or 'the legislative branch'.

'Executing' means 'carrying out'.



## Checks and balances

This is a most important paragraph. Make sure you understand it fully.

Another of those 'scholarly quotations' for your essays.

Branch	Function	Body
The legislature	Makes the laws	Congress
The executive	Carries out the laws	The president and the federal bureaucracy
The judiciary	Enforces and interprets the laws	The Supreme Court and the Appeal and Trial Courts

Table 1.3 The three branches of government

But the functions are not completely separated. Indeed, the term 'separation of powers' is rather confusing for it is not the 'powers' that are separate but the institutions. As Richard Neustadt has stated: 'The Constitutional Convention of 1787 is 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**.' So the theory is more accurately described as a theory of '**shared powers**' than 'separated powers'. The institutions — the Congress, the presidency and the courts — are indeed separate. The personnel of these three branches are separate. In 2009, Senator Barack Obama had to resign from the Senate in order to become president. So did Senator Joe Biden in order to become vice-president. So did Senators Hillary Clinton and Ken Salazar in order to become members of President Obama's cabinet. The personnel and the institutions are separate, but their powers are shared. This sharing of powers is what is called '**checks and balances**'.

## D Checks and balances

### 1 Definition

Checks and balances is a theory of government by which each of the three branches of government — the legislature, the executive and the judiciary — exercise checks upon the powers and actions of the others.

### 2 Explanation

Think of the government's three branches of government as a bank note cut into three pieces. Each is useless without the others but together they are useful. On their own, the Congress, the president and the Supreme Court can do little or nothing. To get things done, they must **cooperate**. That is what the Founding Fathers wanted, to avoid too much power being vested in one branch. It would thus avoid what they most feared, which was tyranny. The Founding Fathers were especially worried about the president becoming something of a tyrant, so they subjected the executive branch to the most comprehensive set of checks. Also keep in mind that the checks and balances between the legislature and the executive (the Congress and the president) can become even more complicated when these two branches are controlled by different political parties. In the

Professor S. E. Finer likened the president and Congress to 'two halves of a bank note, each useless without the other'.

period from January 1969 to January 2009, for only 10 ½ of the 40 years did the same party control both branches of government. This can lead to **gridlock**, a term derived from traffic jams in American cities where the intersections of their grid-patterned streets become jammed and as a result nothing can move.

3

Examples

These are laid out in Table 1.4.

Checks on → Checks by ↓	The legislature	The executive	The judiciary
The legislature		<ul style="list-style-type: none"> <li>• Amend/delay/reject the president's legislation</li> <li>• Override the president's veto</li> <li>• Control of the budget</li> <li>• Senate's power to confirm numerous appointments made by the president</li> <li>• Senate's power to ratify treaties negotiated by the president</li> <li>• Declare war</li> <li>• Investigation</li> <li>• Impeachment, trial, conviction and removal from office of any member of the executive branch, including the president</li> </ul>	<ul style="list-style-type: none"> <li>• Senate's power to confirm appointments made by the president</li> <li>• Initiate constitutional amendments</li> <li>• Impeachment, trial, conviction and removal from office of any member of the judiciary</li> </ul>
The executive	<ul style="list-style-type: none"> <li>• Recommend legislation</li> <li>• Veto legislation</li> <li>• Call Congress into special session</li> </ul>		<ul style="list-style-type: none"> <li>• Appointment of judges</li> <li>• Pardon</li> </ul>
The judiciary	<ul style="list-style-type: none"> <li>• Judicial review: the power to declare Acts of Congress unconstitutional</li> </ul>	<ul style="list-style-type: none"> <li>• Judicial review: the power to declare actions of any member of the executive branch — including the president — unconstitutional</li> </ul>	

Table 1.4 Checks and balances

E

Federalism

1

Definition

Federalism is a theory of government by which power is divided between a national government and state governments, each having their own areas of substantive jurisdiction.

'Substantive jurisdiction' = important powers.

## 2 Explanation

Federalism involves a certain level of **decentralisation**. As already explained, it is a compromise between a highly centralised form of government on the one hand and a loose confederation of independent states on the other. In other words, it is a compromise between the two experiences America had before 1787 — government by Great Britain and government by the Articles of Confederation. It is a very appropriate form of government for a country as large and diverse as the USA. It allows for both national unity as well as regional and local diversity.

## 3 Federalism and the Constitution

Nowhere are the words ‘federal’ or ‘federalism’ to be found in the American Constitution. How, then, is it written into this document?

- By Articles I, II and III, which lay out the powers of the national government.
- By Amendment X, which guarantees that all the remaining powers ‘are reserved to the states and to the people’.

It is important to remember the political atmosphere in which the Constitution was drawn up. The former British colonies had successfully got rid of what they saw as the distant, autocratic and highly centralised government of Great Britain. They had then tried to allow each of the individual states to govern themselves, but this had resulted in chaos. So the new Constitution had somehow to square the circle. It had to ‘form a more perfect Union’ — that is, provide some central authority — and also to protect the interests of the individual states. So the Constitution had to do a number of potentially conflicting things at once:

- It had to give certain **exclusive powers** to the new national (federal) government. Only the national government could coin money, negotiate treaties, tax imports and exports or maintain troops in peacetime.
- It had to offer guarantees of **states’ rights**. So, for example, the states were guaranteed equal representation in the Senate, that their borders would not be changed without their consent and that the Constitution could not be amended without the agreement of three-quarters of them.
- It had to make clear that there were also **states’ responsibilities**. Each state had to recognise the laws of each other state by, for example, returning fugitives.

All this the Constitution did. But what it failed to do — and wisely so — was to lay down any definite line between the **concurrent powers** of the national and state governments. This has meant that the concept of federalism has been able to develop over the subsequent two centuries. Although, for example, in Article I Congress was given specific powers to ‘coin money’, ‘declare war’ and ‘raise and support armies’, it was also given the power ‘to provide for the common defense and general welfare of the United States’. And it was also given the

An extract from the opening sentence of the Preamble to the Constitution: ‘We the people, in order to form...’.

## 4

## The development of federalism

power to ‘make all laws which shall be necessary and proper for carrying into execution the foregoing powers’. This latter clause of Article I is known as the **elastic clause** of the Constitution, as it has allowed the powers of the national government to be stretched a good deal since 1787.

Federalism is not a fixed concept; it is ever changing. As America has changed, so has the concept of federalism.

The most significant changes that have occurred in the USA since 1787 and have led to the development and evolution of federalism are:

- westward expansion
- the growth in population
- industrialisation
- improvements in communication — by road, rail and air, as well as by post, telephone, radio, television, fax and e-mail
- America’s foreign policy role and world-power status

During the latter part of the nineteenth century and the first two-thirds of the twentieth century, all these five factors led to an increased role for the federal government and a decline in the power of state governments. But during the final third of the twentieth century, there was a distinct move in the opposite direction as Americans wanted to see more power and more decisions devolved to the states wherever this was possible. It is therefore possible to discern three distinct phases of federalism in America:

- (1) **Dual federalism** (1780s–1920s) — an era in which the state governments had significant power.
- (2) **Cooperative federalism** (1930s–60s) — an era in which the federal government became more and more powerful, sometimes at the expense of the states. This is associated with the Democratic Presidents Franklin Roosevelt (‘The New Deal’), Truman (‘The Fair Deal’), Kennedy (‘The New Frontier’) and Johnson (‘The Great Society’), as well as the USA becoming a world power. The federal government administered **categorical grants**, schemes by which Washington was able to stipulate how federal tax dollars were used by the states.
- (3) **New federalism** (1970s–present) — an era in which, wherever possible, power was devolved to the states. This is associated with the Republican Presidents Nixon, Ford, Reagan and George Bush, but was also partly adopted by Clinton in the 1990s. The federal government gradually moved towards **block grants** and **revenue-sharing**, by which Washington allowed the states greater independence in how federal tax dollars were spent.

As a result of policies pursued by administrations of both parties — though especially Republicans — over the last 30 years, the states have seen quite a significant increase in their autonomy and power. Decentralisation and states’ rights are once again the buzz words in American politics. This has come about through a number of important developments:

- The reduction of federal government economic aid to the states.
- A perception that the federal government programmes such as FDR’s New

Dates are deliberately vague. Avoid being too precise. These were gradual changes.

President Clinton famously remarked (1996): ‘The era of big government is over.’

Deal and Johnson's Great Society had not been as successful as at first thought.

- A belief that the federal government had simply failed to tackle some pressing social problems such as those associated with gun crime, drugs, abortion, welfare and poverty.
- This led to a widespread distrust and scepticism of the federal government and 'Washington politicians'.
- Decisions by the mainly Republican-appointed Supreme Court, which began to limit the scope of the federal government in such cases as *United States v. Lopez* (1995) and *Printz v. United States* (1997) while upholding states' rights in such cases as *Webster v. Reproductive Health Services* (1989) and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) (see Topic 8.C for details).
- The Republican domination of the White House during the 1970s and 1980s, and again during the first 8 years of this century, and control of Congress between 1995 and 2006, which allowed conservative politicians to push their states' rights agenda.
- The election of a significant number of Republican state governors during the 1990s, which led to state-based innovations in such states as New Jersey (under Governor Christine Todd Whitman) and Wisconsin (under Governor Tommy Thompson).

## 5 Federalism under George W. Bush

You would expect a Republican president to be keen on decentralisation and giving more power to the state governments. You would certainly expect that of a Republican president who had been a state governor such as George W. Bush, who was governor of Texas for 6 years before entering the White House. But that wasn't what happened. During the presidency of George W. Bush (2001–09), federal government spending grew at a rate not seen since the days of President Johnson in the 1960s — and he was a Democrat. Whereas former Republican presidents had arrived in Washington determined to cut federal government bureaucracy, George W. Bush expanded it.

There are five particular reasons for this expansion of the federal government under George W. Bush:

- (1) the war in Iraq
- (2) homeland security issues following the attacks on the US on 9/11 (2001)
- (3) the expansion of the Medicare programme
- (4) the No Child Left Behind Act passed by Congress in 2001
- (5) the Wall Street and banking collapse of 2008

Not all Republicans agreed with Bush's huge expansion of federal government spending. Even some of his own party derided such programmes as '**big-government conservatism**'. Bush was widely criticised by many conservative Republicans for not vetoing expensive federal government programmes. Bush failed to use a single veto during his entire first term (2001–05), the first president to do so since Martin van Buren between 1837 and 1841.

Bush was also criticised for what many saw as the federal government's somewhat feeble initial response to the devastation caused by Hurricane Katrina in 2005.

Finally, when in 2008 the Bush White House authorised the secretary of the treasury, Henry Paulson, to take control of the two troubled, privately-owned but government-sponsored mortgage companies — known colloquially as Fannie Mae and Freddie Mac — there was more criticism heaped on President Bush, by conservative Republicans in particular. This was followed by a Bush White House-sponsored \$700 billion so-called ‘bail out’ package for Wall Street to alleviate the effects of the credit crunch. The legislation passed through Congress but with mainly Democrat votes.

In 1996 Bill Clinton had commented that the era of big government was over. By the end of the George W. Bush administration, it was clear that it was back.

6

*The consequences of federalism*

You should be aware of the way in which federalism affects so many aspects of US government and politics. Here are a few important ways:

- Tremendous variation in state laws concerning such matters as the age at which one can marry, drive a car and must attend school.
- Variation in penalties for law-breaking from state to state.
- Complexity of the American legal system, having both national and state courts.
- Each state not only has its own laws and courts but its own Constitution.
- Complexity of the tax system: income tax (federal and state); state property taxes; local sales taxes.
- All elections in the USA are state-based, run largely under state law.
- The frequency and number of elections.
- Political parties are decentralised and largely state-based.
- Regional diversity (the South, the Midwest, the Northeast etc.) and regional considerations when making appointments to, for example, the cabinet, or when ‘balancing the ticket’ in the presidential election.

See Topic 2.

See Topic 3.

See Topic 6.

Article	Content	Ratified
I	The powers etc. of the legislature	1787
II	The powers etc. of the executive	1787
III	The powers etc. of the judiciary	1787
IV	Federal–state and state–state relationships	1787
V	Amendment procedures	1787
VI	Miscellaneous	1787
VII	Ratification procedure for the Constitution	1787
Amendment	Content	Ratified
I	Freedom of religion, press, speech, assembly	1791
II	Right to bear arms	1791
III	Privacy of property owners	1791
IV	Freedom from unreasonable searches and seizures	1791



V	Rights of accused persons; due process clause	1791
VI	Rights when on trial	1791
VII	Common-law suits	1791
VIII	Prohibition of excessive bail and 'cruel and unusual' punishments	1791
IX	Reserved rights to the people	1791
X	Reserved rights to the states	1791
XI	Limits of judicial power	1795
XII	Revision of Electoral College procedure	1804
XIII	Prohibition of slavery	1865
XIV	Guarantee of 'equal protection' for all; 'due process' clause applied to the states	1868
XV	Blacks given voting rights	1870
XVI	Congress given power to tax incomes	1913
XVII	Direct election of Senators	1913
[XVIII]	[Prohibition of alcohol]	1919
XIX	Women given voting rights	1920
XX	Presidential and congressional terms to begin in January	1933
XXI	Repealed 18th Amendment	1933
XXII	Two-term limit for the president	1951
XXIII	Washington DC given voting rights in presidential elections	1961
XXIV	Poll tax prohibited as requirement for voting	1964
XXV	Presidential disability and succession	1967
XXVI	Voting age lowered to 18	1971
XXVII	Limits on timing of congressional pay rises	1992

*Table 1.5 The Constitution in brief*

## Questions

- 1 Define the following systems of government: **(a)** unitary; **(b)** confederal; **(c)** federal.
- 2 What do Articles I, II and III of the federal Constitution deal with?
- 3 What majority in both houses of Congress is required to make a constitutional amendment?
- 4 What proportion of the states is then required to ratify a constitutional amendment?
- 5 Define the separation of powers.
- 6 Explain in a short phrase the function of each of the three branches of government.
- 7 Complete the following quotation by Richard Neustadt: 'the Constitutional Convention of 1787 created a government of... ' (4 words).
- 8 Define checks and balances.
- 9 In relation to federalism, define the following terms: **(a)** exclusive powers; **(b)** concurrent powers.
- 10 Complete the following quotation by Bill Clinton, which he made in 1996: 'the era of big government... ' (2 words).
- 11 Give five reasons why the federal government expanded during George W. Bush's presidency.