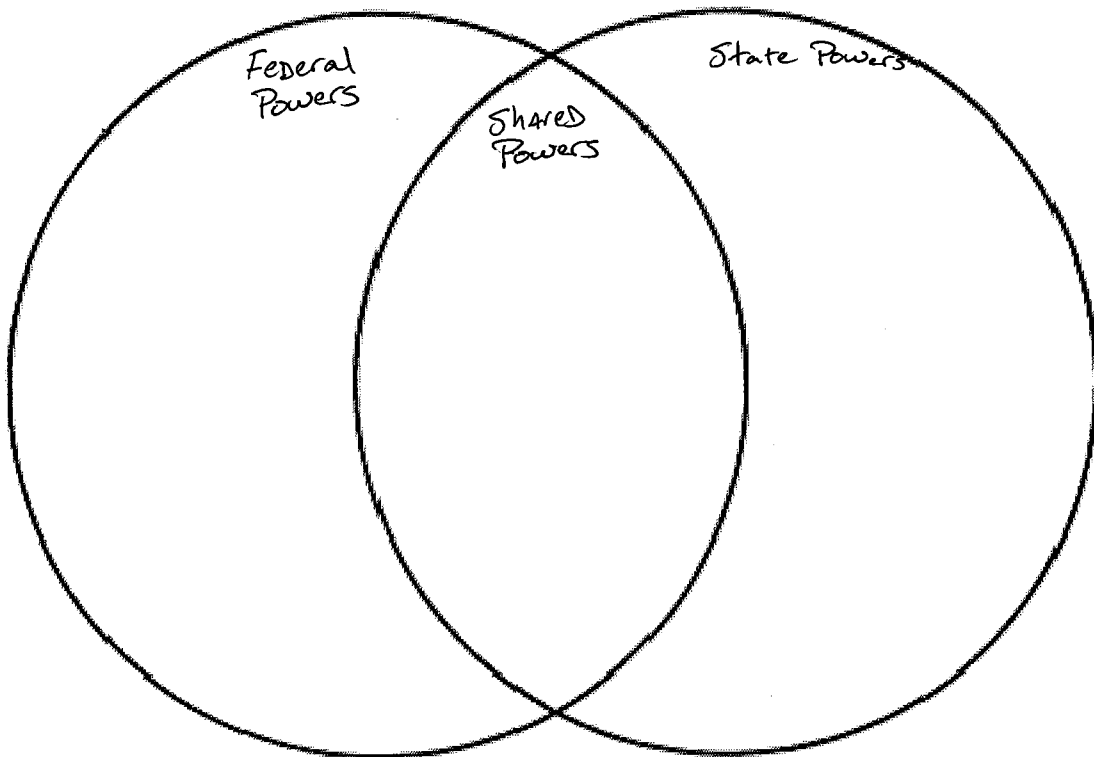


## Principles of the Constitution

Page 83-88

1. Describe popular sovereignty.
2. In what part of the Constitution can you find the principle of popular sovereignty?
3. How do we as exercise our will?
4. Describe limited government.
5. What is constitutionalism?
6. Why is rule of law important?
7. Describe separation of powers.
8. What are the 3 branches of government? What are their jobs? Who is in charge of each branch?
9. Describe checks and balances.
10. Describe one example of checks and balances.
11. Explain judicial review.
12. Explain Federalism.
13. Fill out Venn Diagram from page 88.



The Constitution establishes the Supreme Court and leaves to Congress the creation of the **inferior courts**—the lower federal courts under the Supreme Court. Over the years, Congress has created two distinct types of federal courts: (1) the constitutional courts, and (2) the special courts.

The constitutional courts are those federal courts that Congress has formed under Article III to exercise “the judicial Power of the United States.” Together with the Supreme Court, they now include the courts of appeals, the district courts, and the U.S. Court of International Trade. The constitutional courts are also called the regular courts and, sometimes, Article III courts.

The special courts do not exercise the broad “judicial Power of the United States.” Rather, they have been created by Congress to hear cases arising out of some of the expressed powers given to Congress in Article I, Section 8. The special courts hear a much narrower range of cases than those that may come before the constitutional courts.

These special courts are also called the legislative courts and, sometimes, Article I courts. Today, they include the U.S. Court of Appeals for the Armed Forces, the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Federal Claims, the U.S. Tax Court, the various territorial courts, and the courts of the District of Columbia.

**?** **EXPRESS PROBLEMS CLEARLY** Why did the Framers see a need for the creation of a national judiciary?

## Basic Principles

The Constitution is built around six basic principles. The first three are popular sovereignty, limited government, and separation of powers.

**Popular Sovereignty** In the United States, all political power resides in the people, a concept known as **popular sovereignty**. The people are the *only* source for any and all governmental power. Government can govern only with the consent of the governed.

The principle of popular sovereignty is woven throughout the Constitution. In its opening words—the Preamble—that document declares: “We the People of the United States . . . do ordain and establish this Constitution for the United States of America.”

Thus, the people have given the United States Government whatever powers it has, through the Constitution. That government exercises those powers through popularly elected leaders who are chosen



>> Lillian Sing is a judge at the Community Justice Center of the Superior Court of California, San Francisco. This center has both a courtroom and a social-service center to help those in need.



>> The principle of popular sovereignty was set out in the Constitution. **Analyze Political Cartoons** According to the cartoon, what is citizens' role in the government?



>> Another basic principle of the Constitution is that of limited government. **Analyze Political Cartoons** How are limited government and popular sovereignty related?

**Interactive Cartoon**



>> The Constitution also specifies the separation of powers. **Analyze Political Cartoons** How does the separation of powers keep government from becoming too powerful?

by the people to represent them in the exercise of the people's power, which is essentially what James Madison referred to as republicanism.

**Limited Government** The principle of **limited government** holds that no government is all-powerful. That government may do *only* those things that the people have given it the power to do.

In effect, the principle of limited government is the other side of the coin of popular sovereignty. It is that principle stated the other way around: The people are the only source of any and all of government's authority; and government has only that authority the people have given to it.

The concept of limited government can be put another way: Government must obey the law. Stated this way, the principle is often called **constitutionalism**—that is, government must be conducted according to constitutional principles. The concept of limited government is also frequently described as the **rule of law**, which holds that government and its officers, in all that they do, are always subject to—never above—the law.

In large part, the Constitution is a statement of limited government. Much of it reads as prohibitions of power to government. For example, notice the Constitution's guarantees of freedom of expression. Those great guarantees—of freedom of religion, of speech, of the press, of assembly, and of petition—are vital to democratic government. They are enshrined in the 1st Amendment, which begins with the words: "Congress shall make no law. . . ."

**Separation of Powers** Recall that in a parliamentary system, the legislative, executive, and judicial powers of government are all gathered in the hands of a single agency. British government is a leading example of the form. In a presidential system, these basic powers are distributed—separated—among three distinct and independent branches of the government.

This concept is known as **separation of powers**. The idea had been written into each of the State constitutions adopted during the Revolution. A classic expression of the doctrine can be found in the Massachusetts constitution written in 1780:

"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial

powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

—Part the First, Article XXX

The Constitution of the United States distributes the powers of the National Government among the Congress (the legislative branch), the President (the executive branch), and the courts (the judicial branch). This separation of powers is clearly set forth in the opening words of each of the first three Articles of the Constitution.

Article I, Section 1 declares: "All legislative Powers herein granted shall be vested in a Congress of the United States. . . ." Thus, Congress is the lawmaking branch of the National Government.

Article II, Section 1 declares: "The executive Power shall be vested in a President of the United States of America." Thus, the President is given the law-executing, law enforcing, and law-administering powers of the National Government.

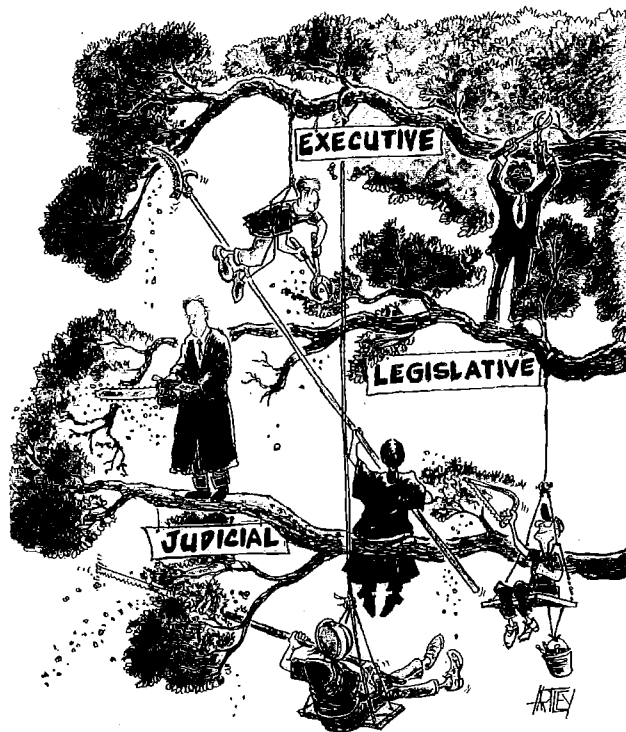
Article III, Section 1 declares: "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Thus, the federal courts, and most importantly the Supreme Court, interpret and apply the laws of the United States in cases brought before them.

Remember, the Framers intended to create a stronger central government for the United States. Yet they also intended to limit the powers of that government. The doctrine of separation of powers was designed to accomplish just that.

In *The Federalist*, No. 47, James Madison wrote of this arrangement: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many . . . may justly be pronounced the very definition of tyranny."

The earliest of the State constitutions provided for a separation of powers among the legislative, executive, and judicial branches of the new governments they established. This was a reflection of the mistrust and suspicion toward any government common to the people of the new United States in the late 1700s. Thus, the inclusion of the doctrine of separation of powers was both natural and inevitable in the writing of the Constitution.

**EXPRESS IDEAS CLEARLY** Explain the concept of popular sovereignty in your own words.



>> The legislative, executive, and judicial branches are connected by a system of checks and balances. **Analyze Political Cartoons** What is one way the President can check the powers of Congress?

## More Basic Principles

The remaining three basic principles of the Constitution are checks and balances, judicial review, and federalism.

**Check and Balances** The National Government is organized around three separate branches. As you have just seen, the Constitution gives to each branch its own field of governmental authority: legislative, executive, and judicial.

These three branches are not entirely separated nor completely independent of one another. Rather, they are tied together by a complex system of **checks and balances**. This means that each branch is subject to a number of constitutional checks, or restraints, by the other branches. In other words, each branch has certain powers with which it can check the operations of the other two.

Congress has the power to make laws, but the President may **veto** (reject) any act of Congress. In its turn, Congress can override a presidential veto by a two-thirds vote in each house. Congress can refuse to provide funds requested by the President, or the Senate may refuse to approve a treaty or an appointment made by the chief executive. The President is the commander

in chief of the armed forces, but Congress provides that military force; and so on.

The system of checks and balances links the judicial branch to the legislative and the executive branches. The President has the power to name all federal judges. Each appointment, however, must be approved by a majority vote in the Senate. At the same time, the courts have the power to determine the constitutionality of acts of Congress and of presidential actions, and to strike down those they find unconstitutional.

Head-on clashes between the branches of government do not often happen. The check-and-balance system operates all the time, however, and in routine fashion. The very fact that it exists affects much of what happens in Washington, D.C.

For example, when the President picks someone to serve in some important office in the executive branch—as, say, secretary of state or director of the Office of National Intelligence—the President is quite aware that the Senate must confirm that appointment. So, the chief executive is apt to pick someone who very likely will be approved by the Senate. In a similar sense, when Congress makes a law, it does so with a careful eye on both the President's veto power and the power of the courts to review its actions.

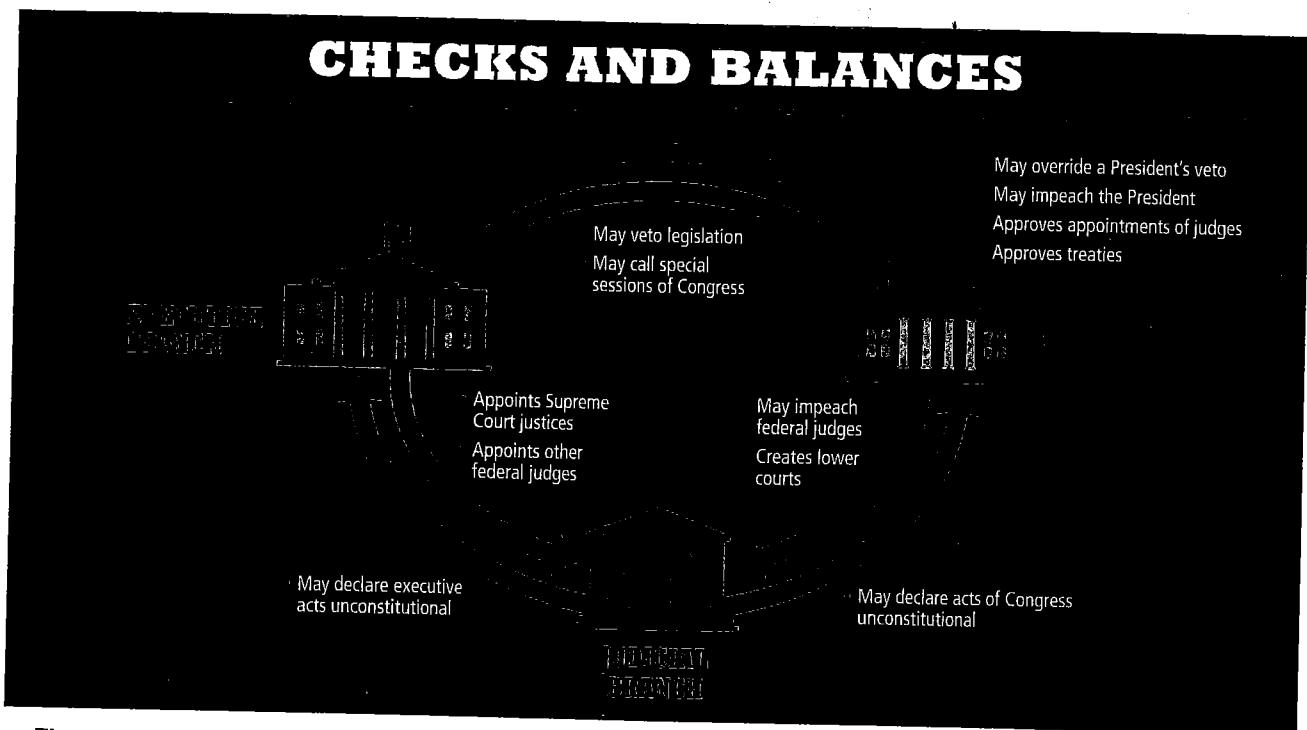
Spectacular clashes—direct applications of the check-and-balance system—do sometimes occur,

of course. The President does veto some acts of Congress. On rare occasions, Congress does override a veto. And, even more rarely, the Senate does reject a presidential appointee. Twice in our history, the House of Representatives has impeached (brought charges against) a President, seeking his removal: **Andrew Johnson** in 1868 and Bill Clinton in 1998. On both occasions the President was acquitted by the Senate.

But, again, these and other direct confrontations are not common. Congress, the President, and even the courts try to avoid them. The check-and-balance system makes compromise necessary—and, remember, compromise is a vital part of democratic government.

Over time, the checks-and-balances system has worked well. It has done what the Framers intended it to do; it has prevented “an unjust combination of a majority.” At the same time, the system of checks and balances has not often forestalled a close working relationship between the executive and legislative branches of the Federal Government.

Note, however, that working relationship runs more smoothly when the President and a majority in both houses of Congress are of the same political party. When the other party controls one or both houses, partisan friction and conflict play a larger-than-usual part in that relationship.



>> The system of checks and balances allows each branch of government to limit the actions of the others. **Analyze Diagrams** How can the executive branch be checked by the other two branches?

 **Interactive Chart**

Through most of our history, the President and a majority of the members of both houses of Congress have been of the same party. Over the past 50 years or so, however, the American people have become quite familiar with divided government—that is, a political environment in which one party occupies the White House and the other controls one or both houses of Congress.

Democratic President **Barack Obama** enjoyed a united government for the first two years of his presidency. That situation changed, however, with the off-year elections of 2010, when the Republicans captured control of the House. The GOP kept that control following the 2012 elections, thus ensuring divided government at least through 2014.

**Judicial Review** One aspect of the principle of checks and balances is of such importance in the American constitutional system that it stands by itself, as one of that system's basic principles. The power of **judicial review** may be defined as the power of a court to determine the constitutionality of a governmental action.

In part, then, judicial review is the power to declare **unconstitutional**—to declare illegal, null and void, of no force and effect—a governmental action found to violate some provision in the Constitution. The power of judicial review is held by all federal courts and by most State courts, as well.

The Constitution does not provide for judicial review in so many words. Yet it seems clear that the Framers intended that the federal courts, and in particular the Supreme Court, should have that power. In *The Federalist* No. 51, James Madison described the judicial power as one of the “auxiliary precautions” against the possible domination of one branch of the government over another.

In *The Federalist* No. 78, Alexander Hamilton wrote:

“The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course,



>> Judicial review is one of the six principles of government established by the Constitution. **Analyze Political Cartoons** According to this cartoon, what is the role of the judicial branch?

to be preferred; or, in other words, the Constitution ought to be preferred to the statute....”

—*The Federalist* No. 78

In practice, the Supreme Court established the power of judicial review in the landmark case of *Marbury v. Madison* in 1803. Since *Marbury*, the Supreme Court and other federal and State courts have used the power in thousands of cases. For the most part, those courts have upheld challenged governmental actions. That is, in most cases in which the power of judicial review is exercised, the actions of government are found to be constitutional.

That is not always the case, however. To date, the Supreme Court has decided some 150 cases in which it has found an act or some part of an act of Congress to be unconstitutional. It has struck down several presidential and other executive branch actions as well. The Court has also voided hundreds of actions of the States and their local governments, including some 1,200 State laws and local ordinances.

**Federalism** As you know, the American governmental system is federal in form. The powers held by

government are distributed on a territorial basis. The National Government holds some of those powers, which it uses to fulfill responsibilities for domestic policy, such as healthcare, education, and business, and foreign policy, which includes international trade and alliances with other countries. Other powers belong to the 50 States.

The principle of **federalism**—the division of power among a central government and several regional governments—came to the Constitution out of both experience and necessity. At Philadelphia, the Framers faced a number of difficult problems, not the least of them: How to build a new, stronger, more effective National Government while preserving the existing States and the concept of local self-government.

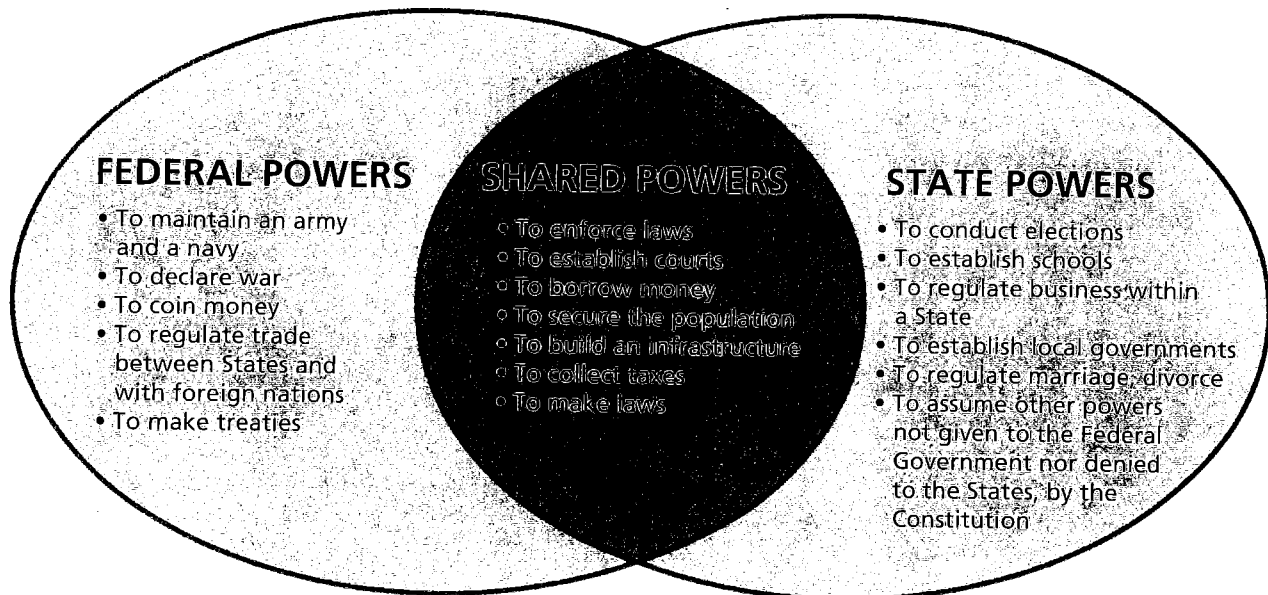
The colonists had rebelled against the harsh rule of a powerful and distant central government. They had fought for the right to manage their own local affairs without the meddling and dictation of the king and his ministers in far-off London. Surely, the colonists would not now agree to another such government.

The Framers found their solution in federalism. In short, they constructed the federal arrangement, with its division of powers, as a compromise. It was an alternative to both the system of nearly independent States, loosely tied to one another in the weak Articles of Confederation, and to a much feared, too powerful central government.

Keep in mind that federalism is an important part of the Constitution's web of protections of individual freedom. Remember, the Framers were dedicated to the concept of limited government. They were convinced (1) that governmental power poses a threat to individual liberty, (2) that, therefore, the exercise of governmental power must be restrained, and (3) that to divide governmental power, as federalism does, is to curb it and so prevent its abuse. James Madison addressed this point in this passage from *The Federalist Papers*:

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each is subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each

## Who has the Power?



>> The Constitution divides power among the State and Federal governments  
**Analyze Diagrams** Which government has the power to provide aid to victims of a California earthquake?