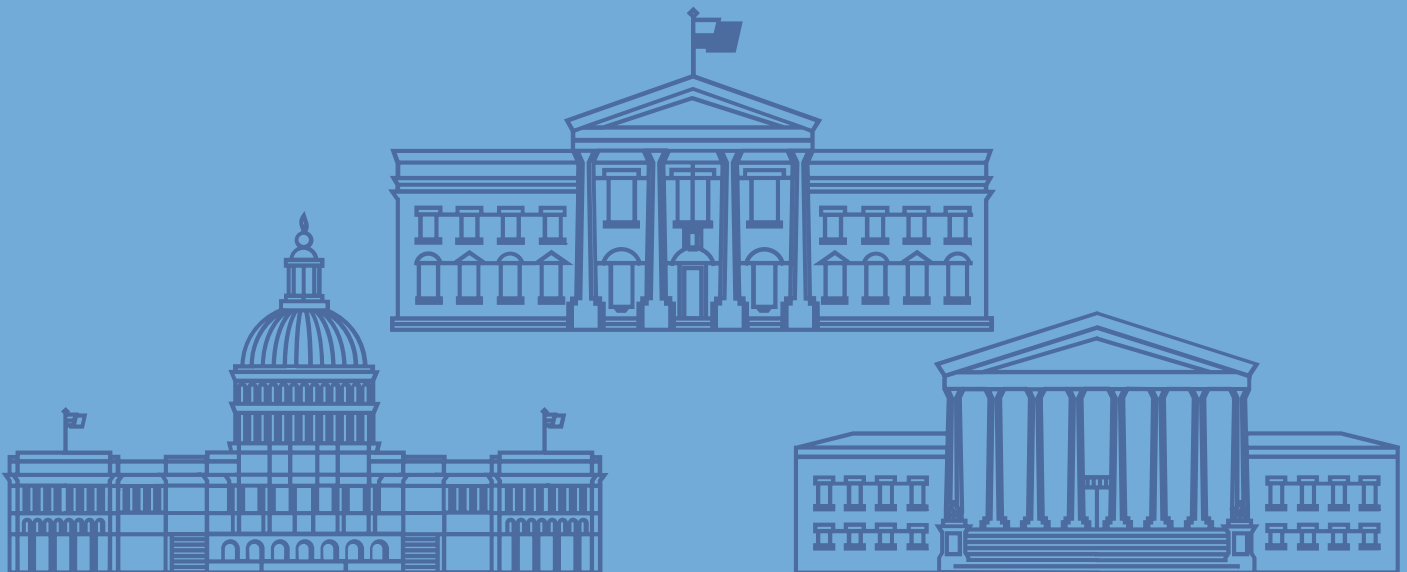


# CONSTITUTION

## MODULE 6

# SEPARATION OF POWERS AND FEDERALISM



## SEPARATION OF POWERS AND FEDERALISM

When crafting the Constitution, one of the central concerns of the Founding generation was how best to control government power. With the new Constitution, the framers looked to strike an important balance—creating a new national government that was more powerful than the one that came before it while still protecting the American people’s most cherished liberties. They settled on a national government with defined but limited powers. Instead of placing authority in the hands of a single person (like a king), a small group of people (like an aristocracy), or even the whole people (like a direct democracy), the framers divided power in two ways. At the national level, the framers divided power between the three branches of government—the legislative branch, the executive branch, and the judicial branch. This process of dividing power between different branches of government is called the separation of powers. From there, the framers further divided power between the national government and the states under a system known as federalism. In this module, students will explore the key functions of the different parts of government and the role that the Constitution plays in controlling government power.

### Learning Objectives

At the conclusion of this module, you should be able to:

1. Define the separation of powers and explain how this system works.
2. Describe federalism, including how it functions within our constitutional system and how it affects our lives.
3. Identify where we see the separation of powers in the Constitution and why the Founding generation valued it as an important feature of their new system of government.
4. Identify where federalism is in the Constitution and why the Founding generation valued it as an important feature of their new system of government.

### 6.1 Activity: Separation of Powers and Federalism: Whose Job (or Check), Is It?

#### Purpose

When crafting a new Constitution, the framers were concerned about the threats posed by a powerful new national government. To guard against potential abuses of power, the Founding generation divided power.

In this activity, you will explore the separation of powers and federalism.

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### Module 6: Separation of Powers and Federalism Lesson Plan

#### Process

Complete the [Activity Guide: Separation of Powers, Checks and Balances, and Federalism Reflection](#) worksheet. Discuss with your group your understanding of the separation of powers, checks and balances, and federalism.

#### Activity 6.1 Notes & Teachers Comments

##### Launch

Open the discussion by asking students what they know about separation of powers, checks and balances, and federalism. Then, ask them whether there's anything they wonder about those key principles.

##### Activity Synthesis

After students complete their group discussions, lead them through the [Activity Guide: Separation of Powers and Federalism: Whose Job \(or Check\), Is It?](#) document. You may distribute the document or use it to lead class discussion.

Now that students have a better understanding of the separation of powers, ask students to identify examples of when a branch has the sole power to work alone and when a branch must work with another branch to take action.

Ask the students these follow-up questions:

- Which jobs are stand-alone jobs of one of the branches of government?
- Which jobs are overlapping?
- Why did the founders separate power between the branches and include connections and overlap between jobs (checks and balances)?

As part of the discussion, connect the principles of the separation of powers, checks and balances, and federalism to the broader theory of our republic: the need to *both* check abuses of power *and* create a government that creates policy that serves the common good (by slowing politics down, blocking bad ideas, curbing abuse, promoting deliberation, valuing principled compromise, etc.).

Students should see not only the value of checking government abuse, but also the constructive parts of our complicated system—how it might promote good policy—and also reflect on whether they think that the founders struck the right balance.

To frame this part of the discussion, ask students to reflect on the following questions:

- How does this system of separating power act as a tool to ensure better outcomes?
- How does the entire system work together to slow down politics, limit abuses, promote deliberation and compromise, and force us to work together to achieve common purposes (but only when the ideas are consistent with the Constitution and attract broad support)?

## CONSTITUTION 101

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### Module 6: Separation of Powers and Federalism Lesson Plan

#### 6.2 Activity: Key Terms

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##### **Purpose**

By continuing to examine the principles of the separation of powers, checks and balances, and federalism, you will engage with key principles that continue to drive our constitutional system today.

##### **Process**

Complete the [Activity Guide: Key Terms - Separation of Powers, Checks and Balances, and Federalism](#) worksheet to continue the discussion on separation of powers, checks and balances, and federalism.

#### ***Activity 6.2 Notes & Teachers Comments***

##### **Launch Information**

Review with all students the key principles and the definitions. Give examples of each of the criteria in the worksheet: Definition (pre-written), Characteristic (define), Example (define), and Non-example (define) before asking students to start their group work. Break students into groups and allow them time to explore, discuss, and begin to complete the worksheet.

##### **Activity Synthesis**

At the end of the activity, remind students that they will be exploring this tool throughout the entire module and will use it as a worksheet for the video lesson. Have students share a few ideas and questions from each group.

##### **Activity Extension (Optional)**

Now that students have a better understanding of these key principles, ask them to find current examples of separation of powers, checks and balances, or federalism in news articles.

#### 6.3 Video Activity: Separation of Powers

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##### **Purpose**

Your guide, Professor Jeffrey Rosen, will explore the separation of powers, checks and balances, and federalism.

##### **Process**

Watch [the video](#) about the separation of powers.

Then, complete the [Video Reflection: Separation of Powers](#) worksheet.

Identify any areas that are unclear to you or where you would like further explanation. Be prepared to discuss your answers in a group and to ask your teacher any remaining questions.

## CONSTITUTION 101

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### Module 6: Separation of Powers and Federalism Lesson Plan

#### **Activity 6.3 Notes & Teachers Comments**

##### **Launch**

Give students time to watch the video and answer the questions.

##### **Activity Synthesis**

Have students share their responses in small groups and then discuss as a class.

##### **Activity Extension (Optional)**

Now that students have a better understanding of the separation of powers, you could provide a Word Cloud to support students' word building skills (virtue, power, checks, reserved).

## **6.4 Activity: Branch Exploration**

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### **Purpose**

Separation of powers refers to the Constitution's system of distributing political power between three branches of government: a legislative branch (Congress), an executive branch (led by a single president), and a judicial branch (headed by a single Supreme Court). In this activity, you will explore each branch in more detail.

### **Description**

Review the summary document for each article:

- [Info Brief: Article I - Congress](#)
- [Info Brief: Article II - The Presidency](#)
- [Info Brief: Article III - The Judiciary](#)

Complete the [Activity Guide: Branch Exploration](#) worksheet to further explore your branch. Students should also be encouraged to look at the Constitution's text itself when completing the activity sheet.

### **Final Assignment**

Work with your group to [build a dossier](#) on your assigned branch and present your findings to the class.

Examples of what goes into the dossier:

1. **Title:** What is the name of the branch?
2. **Role:** What is the primary role and/or responsibility of the branch in our constitutional system?
3. **Structure:** How is the branch structured? Where do we find the branch's structure set out in the Constitution?

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### Module 6: Separation of Powers and Federalism Lesson Plan

4. **Power:** What part of the Constitution defines the powers of the branch?
5. **Background:** Write a short paragraph on the historical origins of the branch. What did the Founding generation have in mind?
6. **Key moments:** List the major turning points and/or Supreme Court cases about the branch.
7. **Other information:** Share any other vital information about the branch and how it works.

### Activity 6.4 Notes & Teachers Comments

#### Launch

Review each branch of government with the students briefly before splitting them up into three groups.

- The legislative branch—Congress—makes the laws. (We find this branch in [Article I](#)).
- The executive branch—led by a single president—enforces the laws. (We find this branch in [Article II](#)).
- The judicial branch—headed by a single Supreme Court—interprets the laws. (We find this branch in [Article III](#)).

#### Activity Synthesis

Ask students to complete the [Activity Guide: Building a Branch Dossier](#) about their branch and present it to their class. Ask students what branch sounds most interesting to them and why. Ask students to examine whether these answers come from their knowledge about the role as spelled out by the Constitution or how the role plays out every day in our government.

#### Activity Extension (Optional)

Create a spider web map (ecosystem map) of the three branches of government. Students can mark a check on a branch and another color for when branches work together. Refer to the [spider web map example](#).

## 6.5 Activity: Philosophical Thinking on Separation of Powers

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#### Purpose

In this activity, you will use primary sources to identify the philosophical background for separation of powers and checks and balances

#### Process

Choose one of the assigned readings and answer the following questions:

1. What evidence did the author use for the need for separation of powers?
2. What are two main arguments advanced by the author in this piece?

## CONSTITUTION 101

### Module 6: Separation of Powers and Federalism Lesson Plan

3. What is the role of the governed?

When complete, be ready to share what you have learned with the class.

- [Primary Source: Montesquieu, \*The Spirit of the Laws\* \(1748\)](#)
- [Primary Source: John Adams, \*Thoughts on Government\* \(1776\)](#)
- [Primary Source: James Madison, \*Federalist No. 51\* \(1788\)](#)

Complete the [Activity Guide: Philosophical Thinking on Separation of Powers](#) worksheet.

#### **Activity 6.5 Notes & Teachers Comments**

##### **Launch**

Ask students to read and mark up (one or all of) the primary sources. They should then individually answer the questions. Break students into three groups to review their assigned reading(s) and their answers to the questions.

As a class, discuss the connection between Montesquieu's ideas of separation of powers, Adams's views, and Madison's views.

##### **Activity Synthesis**

Have students write an answer to the following questions:

- How do the ideas of separation of powers and checks and balances prevent one group from gaining too much power?
- What are the benefits of these key principles?

(Answer: Prevent tyranny/abuse of power. Slow down politics and promote deliberation/compromise.)

- Are there any drawbacks?

(Answer: The system is slow. Can't respond to problems as quickly. Sometimes the government can't take action. Get them thinking about this now.)

##### **Activity Extension (Optional)**

Now that students have a better understanding of the separation of powers and checks and balances, ask students to write a response to one of the authors either agreeing or disagreeing with their argument.

## CONSTITUTION 101

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### Module 6: Separation of Powers and Federalism Lesson Plan

#### 6.6 Activity: Federalism, It's in There

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##### **Purpose**

Federalism is the word used to describe the Constitution's system of dividing political power between the national government and the states. When we look for federalism in the Constitution, where can we find it? The Constitution itself doesn't say the word "federalism" anywhere. But it's in there. It's everywhere.

In this activity, you will find examples of federalism in the Constitution.

##### **Process**

Read the [Info Brief: Federalism](#) and then build out the [Activity Guide: Federalism in the Constitution](#) chart to explore the concept of federalism as a key principle in the Constitution.

#### **Activity 6.6 Notes & Teachers Comments**

##### **Launch**

Review the concept of federalism. Review the definition and big ideas from activity one and the video.

Give students time to use the chart to identify examples of federalism in the Constitution.

##### **Activity Synthesis**

Ask students to explain why we have a system of federalism.

As a group discussion, ask students again, why did the framers embed these ideas of separation of powers, checks and balances, and federalism into the structure of the Constitution?

##### **Activity Extension (Optional)**

Now that students have a better understanding of federalism, ask them to find current examples of federalism in news articles. Or explore how women won the vote through federalism and the 19th Amendment by exploring [The Awakening](#) interactive map. Students can explore this map to discover how women's suffrage at the state level paved the way for the 19th Amendment.



## CONSTITUTION 101

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Module 6: Separation of Powers and Federalism  
Lesson Plan

### 6.7 Test Your Knowledge

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#### Purpose

Congratulations for completing the activities in this module! Now it's time to apply what you have learned about the basic ideas and concepts covered.

#### Process

Complete the questions in the following quiz to test your knowledge.

- [Test Your Knowledge: Separation of Powers and Federalism](#)

## CONSTITUTION 101

### Module 6: Separation of Powers and Federalism

#### 6.1 Activity Guide

## SEPARATION OF POWERS, CHECKS AND BALANCES, AND FEDERALISM REFLECTION

When crafting a new Constitution, the framers were concerned about the threats posed by a powerful new national government. To guard against potential abuses of power, the Founding generation divided power.

In this activity, you will explore the separation of powers, checks and balances, and federalism.

	What do you <i>know</i> about...?	What do you <i>want to know</i> about...?	What did you <i>learn</i> about...?
Separation of Powers			
Checks and Balances			
Federalism			

## CONSTITUTION 101

### Module 6: Separation of Powers and Federalism

#### 6.1 Activity Guide

## SEPARATION OF POWERS AND FEDERALISM: WHOSE JOB (OR CHECK), IS IT?

When crafting a new Constitution, the framers were concerned about the threats posed by a powerful new national government. To guard against potential abuses of power, the Founding generation divided power.

In this activity, you will continue to explore the separation of powers and checks and balances.

Whose job is it?	
Which part of the government can pass a law lowering taxes?	
Which part of the government can nominate a new Supreme Court justice?	
Which part of the government approves a nominee for Secretary of State?	
Which part of the government can pardon someone for violating a federal law?	
Which part of the government can decide a legal case interpreting a new voting rights law?	
Which part of the government delivers a State of the Union address?	
Which part of the government can pass a law protecting civil rights?	
Which part of the government can issue a regulation enforcing the Clean Air Act?	
Which part of the government can propose a new amendment and send it to the states for ratification?	

Whose check is it?	
Which part of the government can impeach a federal judge?	

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### Module 6: Separation of Powers and Federalism

#### 6.1 Activity Guide

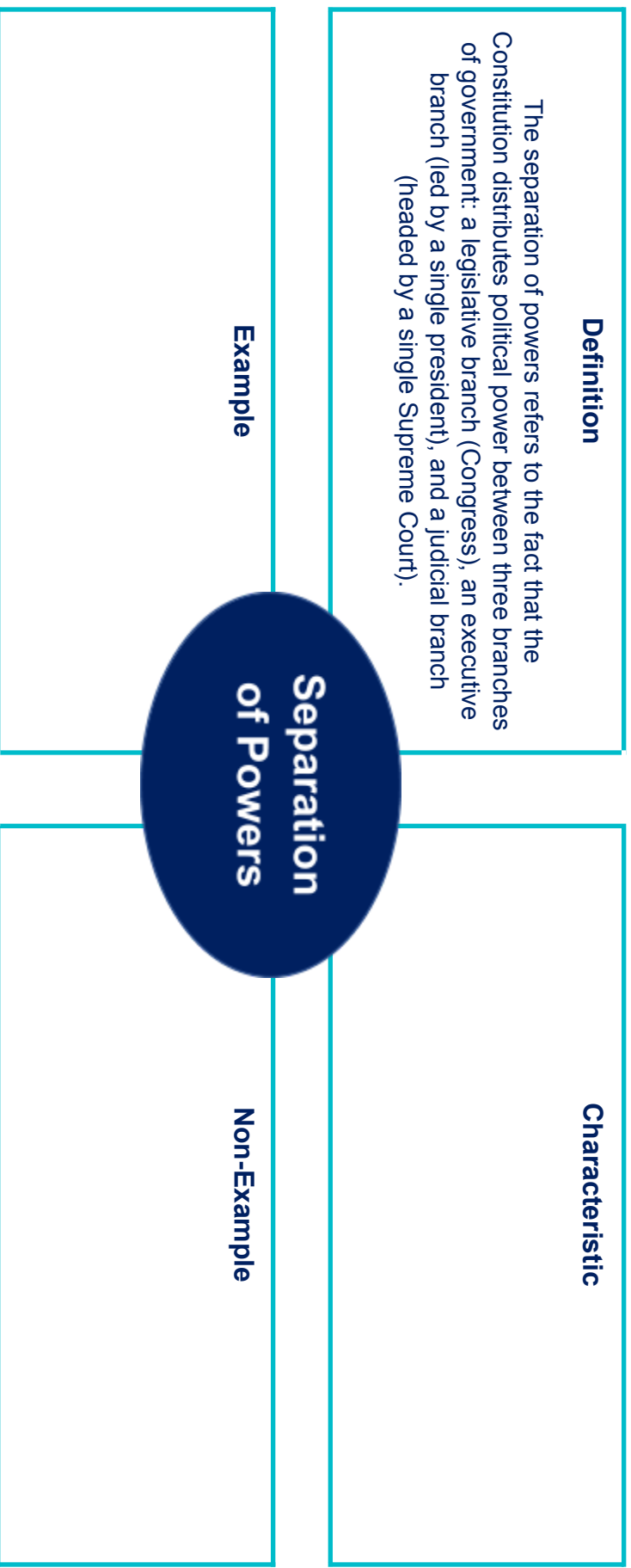
Which part of the government can reject a president's nominee to the Supreme Court?	
Which part of the government can review a law and strike it down in a legal case if it does not meet the requirements of the Constitution?	
Which part of the government can veto a bill?	
Which part of the government can refuse to ratify a treaty?	

## CONSTITUTION 101

Module 6: Separation of Powers and Federalism  
6.2 Key Terms

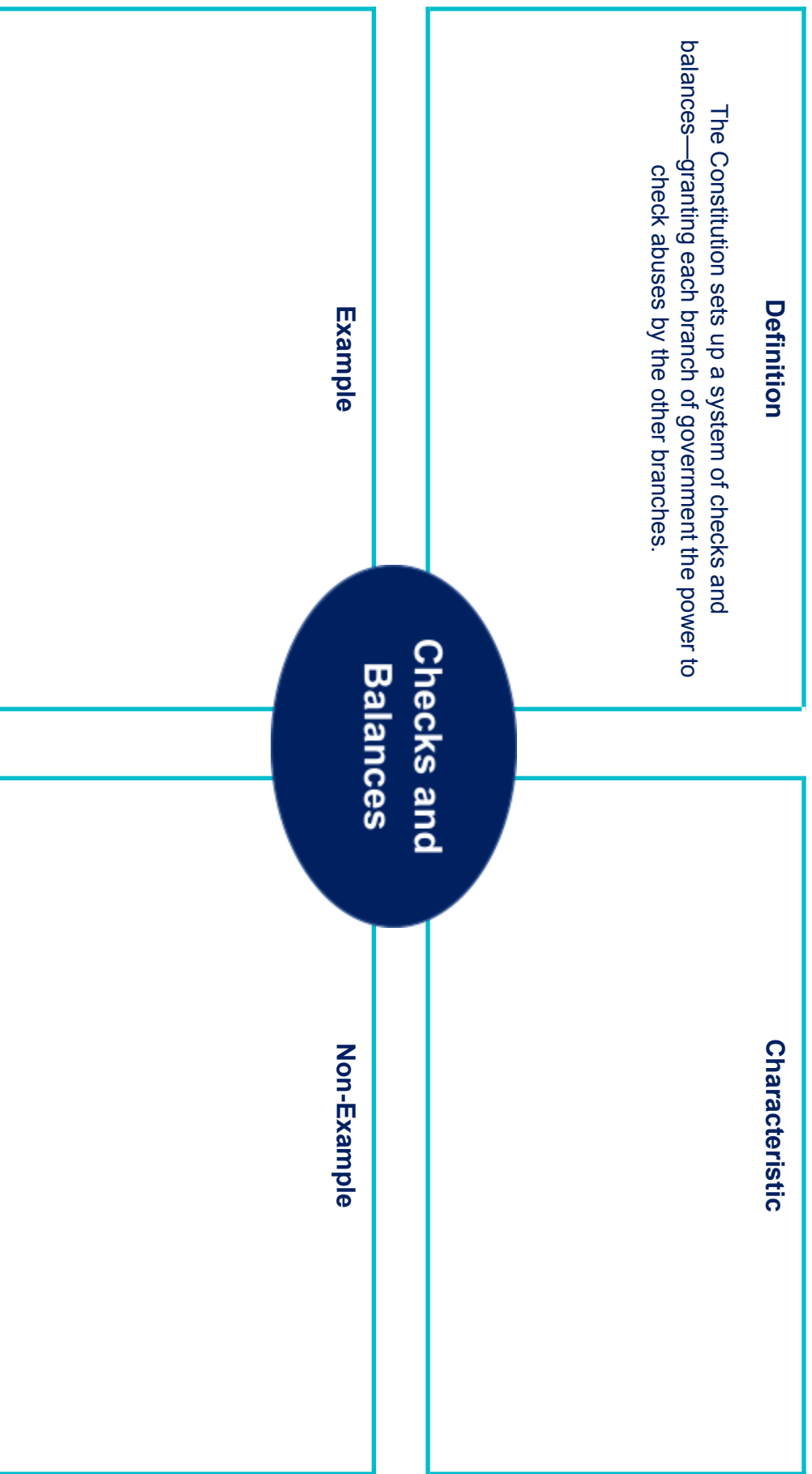
### SEPARATION OF POWERS, CHECKS AND BALANCES, AND FEDERALISM

Complete the chart below to examine the principles of the separation of powers, checks and balances, and federalism, you will engage with key principles that continue to drive our constitutional system today.



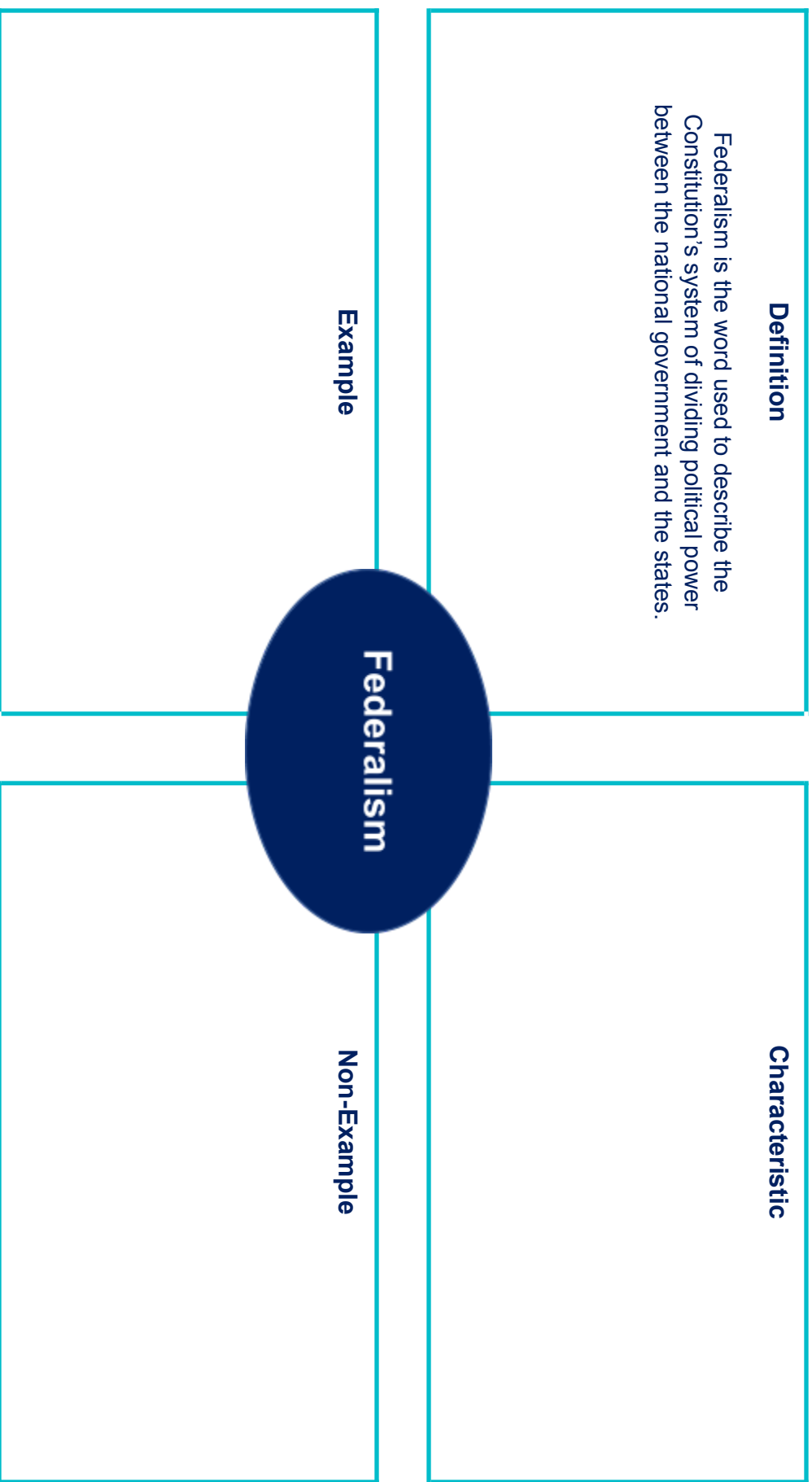
## CONSTITUTION 101

Module 6: Separation of Powers and Federalism  
6.2 Key Terms



## **CONSTITUTION 101**

Module 6: Separation of Powers and Federalism  
6.2 Key Terms



## CONSTITUTION 101

Module 6: Separation of Powers and Federalism  
6.3 Video Reflection

### SEPARATION OF POWERS

Your guide, Professor Jeffrey Rosen, will explore the separation of powers, checks and balances, and federalism.

Watch the [video](#) about the historical foundations for the idea of separating power and answer the following questions.

Why did the Founding generation think that separation of powers was the single most important part of the Constitution?

How does separation of powers work?



## CONSTITUTION 101

### Module 6: Separation of Powers and Federalism 6.3 Video Reflection

How is it connected to checks and balances and federalism?

Fill in the blank for the following sentence.

Separation of powers is the distribution of powers between \_\_\_\_\_ government.

How could separation of powers stop a dictator from forming?

## CONSTITUTION 101

### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

## ARTICLE I — CONGRESS

### INTRODUCTION TO THE CONSTITUTION'S TEXT

Let's begin—as we always do when interpreting the Constitution—with the Constitution's text.

The framers set out the basic structure of the national government—in other words, its three branches—in Articles I through III. [Article II](#) establishes the national government's executive branch—which is responsible for enforcing the laws. [Article III](#) sets up the nation's court system—with the Supreme Court at the top—which interprets the laws.

[Article I](#) establishes the national government's legislative branch—Congress. Within the national government, Congress is responsible for *making the laws*.

Article I is the longest part of the Constitution. That's because the Founding generation thought that Congress would be the most powerful—and most dangerous—branch of government.

The Constitution separates Congress into two houses. We call this “bicameralism”: the House of Representatives (with its representatives elected by the American people directly and with each state receiving a number of seats based on its overall population) and the Senate (with its senators originally selected by the state legislatures and each state —no matter its population—receiving two senators).

Today, there are 435 members of the U.S. House of Representatives. Representatives must be at least 25 years old. They serve for two-year terms. They can run for reelection.

In addition, there are 100 U.S. Senators; two for each state. Senators must be at least 30 years old. They serve for six-year terms—with one-third of the Senate elected every two years. Each Senator can run for reelection.

Finally, senators are now elected directly by the American people—*not* the state legislatures, as originally written into the Constitution in 1787. This is because of the 17th Amendment, which was ratified in 1913.

Article I also sets out the powers of Congress and lists certain limits to those powers.

Various constitutional amendments also granted Congress new powers through their enforcement clauses. For instance, the 15th Amendment granted Congress power to pass laws

## CONSTITUTION 101

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

combating racial discrimination in voting. Congress used this power to enact the Voting Rights Act of 1965.

**Big Idea:** With Congress, the Founding generation set up a national legislature to make the nation's laws. They looked to create a new national legislature with more authority—and ability to act—than the one that came before it, but also one of limited powers.

#### HOW DOES CONGRESS WORK

But how does Congress work? How does a bill become a law? And what role do the other branches of the national government—the president and the courts—play in the legislative process?

These are big questions, and the Constitution lays out a demanding—often slow—process for passing new laws. This is by design.

The Founding generation thought that this slow process would promote deliberation and compromise and guard against abuses by powerful factions. Today, we would say “parties.”

To become a law, a new bill must survive both houses of Congress, the threat of a president's veto, and possible legal challenges inside the courts. That's hard to do!

The Founding generation's theory? Kill the bad ideas, revise the flawed ones, and refine the good ones. Over time, by slowing the process down, national policy would comply with the Constitution and promote the common good.

Here's how the process works today:

- Members in one house of Congress—either the U.S. House of Representatives or the U.S. Senate—introduce a bill. (Spending bills must start in the House of Representatives.)
- From there, both houses of Congress must pass the bill.
- Once the bill passes the House and the Senate, it's then sent to the president. The president then has the option to veto—in other words, reject—the bill.
  - If the president approves of the bill, then it becomes a law.

## CONSTITUTION 101

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

- o If she vetoes it, then Congress has the power to override the president's veto by a two-thirds vote in each house of Congress. This is a really high bar—often requiring the support of members of *both* political parties. If Congress succeeds in overriding the president's veto, then the bill becomes a law.
  - o If Congress fails to override the president's veto, then the bill does *not* become a law—even though *both* houses of Congress originally passed it.
- Finally, even after a bill becomes a law, people can go to court and challenge that law—arguing that it violates the Constitution. From there, the courts have the power to rule on whether a law is constitutional or unconstitutional. This is the power of judicial review.

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

## ARTICLE II — THE PRESIDENCY

### INTRODUCTION TO THE CONSTITUTION'S TEXT

Let's begin—as we always do when interpreting the Constitution—with the Constitution's text.

The Constitution sets up three branches of government. [Article I](#) establishes the national government's legislative branch—Congress—which makes the laws. [Article III](#) sets up the nation's court system—with the Supreme Court at the top—which interprets the laws.

[Article II](#) establishes the national government's executive branch. Within the national government, the executive branch is responsible for *enforcing the laws*.

We commonly think of the presidency as the most powerful elected office in all of the world. Yet, the Constitution actually grants far fewer explicit powers to the president in Article II than it does to Congress in Article I.

### ARTICLE II

Article II “vest[s]” the “executive Power . . . of the United States” in a single president. It sets out the details for how we elect a president (namely, through the Electoral College) and how we might remove one from office (namely, through the impeachment and removal process). It also lists some of the president's core powers and responsibilities, including:

- Her role as “Commander in Chief of the Army and Navy of the United States.”
- Her power to:
  - Appoint judges and executive branch officials with the advice and consent of the Senate.
  - “[M]ake Treaties, provided two thirds of the Senators present concur.”
  - “[G]rant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”
  - Her duty to “take Care that the Laws be faithfully executed.”

### ARTICLES I and III

In Article I, the Constitution also gives the president the power to veto legislation passed by Congress. At the same time, the Constitution's system of checks and balances ensures that the other two branches—Congress and the Supreme Court—can check the president.

## CONSTITUTION 101

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

For instance, the president may be able to veto a law passed by Congress. But Congress has the power to *override* the president's veto—to cancel it—with a two-thirds vote in both houses of Congress. The Constitution also gives the president the power to appoint Supreme Court justices, but those appointments must be approved by the Senate. The same goes for new treaties with other countries.

Finally, the Supreme Court has the power to review the president's actions—for instance, new executive orders—and decide whether those actions were constitutional or unconstitutional.

#### REELECTION AND AGE

Here's the 22nd [Amendment](#)'s language:

“No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once...”

This language effectively limits the president to two terms of office, a precedent first set by George Washington.

The president must be at least 35 years old. In part, this age requirement guarded against the danger of politicians being elected to office based on their famous names—giving candidates from famous families enough time to live their lives, gain valuable experience, and provide the public with a record of their own for judging whether they were fit to be president.

#### ARTICLES II, SECTION 4

Article II, Section 4, sets out the process for impeachment and removal.

It reads as follows: The “President, Vice President and all civil Officers of the United States” shall be removed from office if convicted in an impeachment trial of “Treason, Bribery, or other high Crimes and Misdemeanors.” Two clauses in Article I lay out the role of the House of Representatives and the Senate in this process. The House has the power to impeach—by a majority vote. An impeachment is a formal charge against the president, but does not remove her from office. Once the president is impeached, the Senate then has the power to hold an impeachment trial and may remove a president from office with a two-thirds vote. In practice, impeachments by the House have been rare. Only three presidents have been impeached and no president has been removed by the Senate. (Although President Nixon *did* resign from office, and Andrew Johnson was only a single vote away!)

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

#### 25th AMENDMENT

This 25th Amendment addresses the issue of presidential disability and succession.

Section 1 says that when the president dies, resigns, or is removed from office, the vice president becomes president. (So, when President Nixon resigned, his vice president—Gerald Ford—became president under the 25th Amendment.)

Section 2 sets out the process for filling an open seat for vice president. The president nominates a new vice president, and *both* the House *and* the Senate must approve of the pick by majority vote in each house. (So, when Vice President Spiro Agnew resigned in 1973, President Nixon selected Gerald Ford as vice president, and the House and Senate confirmed the pick.)

Section 3 permits the president to temporarily transfer power by a written statement that he is “unable to discharge the powers and duties of his office.” The president can then resume his responsibility with a second written statement saying that he’s ready for duty. (So, President Reagan transferred his authority to Vice President Bush for a few hours while he had a planned surgery.)

Section 4 addresses the situation where a president refuses to transfer his duties when others might conclude that he is unable to fulfill them. It’s a pretty complicated process.

**Big Idea:** With the new president, the Founding generation set out to establish an executive head stronger than the weak governors in charge of the states at the time, but weaker than a king.

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Module 6: Separation of Powers and Federalism

6.4 Info Brief

# ARTICLE III — THE JUDICIARY

## INTRODUCTION TO THE CONSTITUTION’S TEXT

Let’s begin—as we always do when interpreting the Constitution—with the Constitution’s text.

The Constitution sets up three branches of government. [Article I](#) establishes the national government’s legislative branch—Congress—which makes the laws. [Article II](#) establishes the national government’s executive branch—which is responsible for enforcing the laws.

[Article III](#) of the Constitution establishes the national government’s judicial branch: the federal judiciary, headed by a single Supreme Court. The judicial branch is responsible for *interpreting the laws*.

Interestingly, the text of Article III is very short and doesn’t lay out many details about the Supreme Court and how it works—or even what the federal judiciary as a whole should look like.

But before we explore Article III’s text, let’s begin with a key definition of an important concept: judicial review.

*Judicial Review:* The Supreme Court has the power to review the constitutionality of acts of the national and state governments.

Although there is no explicit provision of the Constitution laying out the power of judicial review, it remains a core power of the federal courts. In early American history, key figures like Alexander Hamilton (in *Federalist* No. 78) and Chief Justice John Marshall (in *Marbury v. Madison*) explained how this power was rooted in the principle of popular sovereignty and consistent with the Constitution’s text, history, and structure.

## ARTICLE III, SECTION 1

Let’s turn to Article III’s text and begin with [Article III, Section 1](#).

“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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

Article III begins with (what scholars refer to as) a vesting clause—vesting the “judicial power of the United States” in *one* Supreme Court and whatever inferior courts Congress decides to establish.

In other words, *Congress* controls many of the details of the national court system.

This means that Congress has considerable authority to shape the following:

- The size of the Supreme Court. The Supreme Court began at six justices. Over time, there’s been a low of five justices and a high of 10 (during the Lincoln presidency). Congress has altered the size of the Supreme Court *six* times. The last time was in 1869. That’s how we got to the current number: *nine* justices.
- The jurisdiction of the federal courts—in other words, what cases federal judges can (or *must*) hear.
- The details of the federal court system as a whole—in other words, how many federal judges, how many courts of appeals, how many district courts, etc.

Article III, Section 1, also tells us that federal judges—including Supreme Court justices—hold their offices for life (“during good behaviour”).

This creates an independent judiciary—federal judges can’t be fired, fined, or otherwise controlled once confirmed to the federal courts.

The big constitutional principle here is *judicial independence*: the idea that the federal courts must be independent from the control of the other branches of government.

This is done by giving judges and justices life tenure and guaranteeing their salaries. The independence of the judiciary is a key element of the American constitutional system.

Judges can only be removed through the impeachment and removal process.

As to the Supreme Court, only one justice has ever been impeached—Justice Samuel Chase by a Jeffersonian Congress during the Jefferson Administration. (But Chase wasn’t removed.)

The founders’ vision of judicial independence grew out of the colonists’ own experience under the British system. Judges were *not* independent within the British system. Instead, colonial judges were seen as officers of the Crown, who carried out the orders of the King and could be removed at his whim.

Not so under the new Constitution.

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

#### ARTICLE III, SECTION 2

What about [Article III, Section 2](#)?

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”

This dense language defines the jurisdiction of the federal courts, the sorts of cases that the federal courts may hear.

Federal courts are courts of limited jurisdiction. This means that there are only certain sorts of cases that can find their way into the federal courts. All others remain with the states.

Generally speaking, the federal courts only can hear cases if those cases involve people from two different states or if the case involves the Constitution or a national law (or regulation).

Article III, Section 2, also defines the original jurisdiction of the Supreme Court:

These cases don't have to go through all of the other courts before getting to the Supreme Court. This is rare. These cases usually involve conflicts between the states. For instance, two different states say that they control part of a river.

Article III, Section 2, also grants the right to a jury trial in criminal cases.

Interestingly, Article III says very little about what a Supreme Court justice actually does or how the Supreme Court should actually work on a day-to-day basis.

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### Module 6: Separation of Powers and Federalism

#### 6.4 Info Brief

As a result, the details of the job have been created over time by both acts of Congress (starting with the Judiciary Act of 1789) and Supreme Court practice.

For the modern Court, perhaps the most important move by Congress was its passage of the Judiciary Act of 1925. Chief Justice (and former President) William Howard Taft was the driving force behind (what we refer to today as) the “Judges Bill.” In many ways, Taft’s “Judges Bill” created the Supreme Court that we have today.

In short, it gave the Court broad control over the cases it hears. Before 1925, the Court had very limited control over the cases that came before it and it had to hear a ton of cases each term.

Now, not so much.

Today, the Supreme Court often takes fewer than 100 cases in a single term—even settling in with a little over 60 in recent years.

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#### 6.4 Activity Guide

## BRANCH EXPLORATION

Separation of powers refers to the Constitution's system of distributing political power between three branches of government: a legislative branch (Congress), an executive branch (led by a single president), and a judicial branch (headed by a single Supreme Court). In this activity, you will explore each branch in more detail.

In this activity, you will explore the legislative, executive, and judicial branches of government.

Work with your group to build a dossier on one of the three branches of government.

Review the background summary of each branch, which includes key texts from Articles I, II, and III and some key information. Consider the powers and limits of your assigned branch and answer the following questions:

What is your assigned branch? Where can you find its roles and responsibilities in the Constitution?

What is the branch's job? What powers does it have?

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How is the branch limited by another branch?

How does it check, or work with, another branch?

Who are some of the leaders of your branch?

What are their roles within your assigned branch?

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### Module 6: Separation of Powers and Federalism 6.4 Activity Guide

## BUILDING A BRANCH DOSSIER

Separation of powers refers to the Constitution's system of distributing political power between three branches of government: a legislative branch (Congress), an executive branch (led by a single president), and a judicial branch (headed by a single Supreme Court). In this activity, you will explore each branch in more detail.

Work with your group to build a dossier on your assigned branch and present your findings to the class.

Examples of what goes into the dossier:

1. **Title:** What is the name of the branch?
2. **Role:** What is the primary role and/or responsibility of the branch in our constitutional system?
3. **Structure:** How is the branch structured? Where do we find the branch's structure set out in the Constitution?
4. **Power:** What part of the Constitution defines the powers of the branch?
5. **Background:** Write a short paragraph on the historical origins of the branch. What did the Founding generation have in mind?
6. **Key moments:** List the major turning points and/or Supreme Court cases about the branch.
7. **Other information:** Share any other vital information about the branch and how it works.

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### MONTESQUIEU, THE SPIRIT OF THE LAWS (1748)

View the document on the National Constitution Center's Website [here](#).

Charles-Louis de Secondat, baron de la Brède et de Montesquieu (1689–1755), was the author of the *Persian Letters* (1721), *Considerations on the Causes of the Greatness of the Romans and of their Decline* (1733), and *The Spirit of the Laws* (1748). Described in *The Federalist* as "the celebrated Montesquieu," he was more often consulted and cited in the period stretching from 1760 to 1800 than any other secular author—especially with regard to the institutions most likely to sustain political liberty and to the evils of slavery. In particular, Montesquieu's discussion of separation of powers and checks and balances profoundly influenced the American founders and the design of the U.S. Constitution. It was not unusual for 18th-century Americans to speak of Montesquieu as an "oracle" of political wisdom whose work is "always consulted."

#### **Excerpt:**

**Kings and princes can rely on force and the law; a republic requires virtue.** There is no great share of probity necessary to support a monarchical or despotic government: the force of laws, in one, and the prince's arm, in the other, are sufficient to direct and maintain the whole: but, in a popular state, one spring more is necessary, namely, *virtue*.

...

When virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. . . . The members of the commonwealth riot on the public spoils, and its strength is only the power of a few, and the license of many.

**4:5—Virtue means self restraint and valuing the public interest over one's own private self-interest.** [V]irtue is a self-renunciation, which is very arduous and painful.

This virtue may be defined as the love of the laws and of our country. As such love requires a constant preference of public to private interest, it is the source of all private virtues.

**8:16—Only small republics are likely to survive.** It is natural for a republic to have a small territory; otherwise it cannot subsist. In an extensive republic there are men of large fortunes, and consequently of less moderation; there are trusts too considerable to be placed on any single subject; he has interests of his own; he soon begins to think that he may be happy and glorious, by oppressing his fellow-citizens; and that he may raise himself to grandeur on the ruins of his country.

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In an extensive republic, the public good is sacrificed to a thousand private views: it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen.

**9:1—Republics can't be too small or too large, a tricky balance.** If a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection.

...

The evil is in the very thing itself, and no form can redress it.

It is, therefore, very probable that mankind would have been, at length, obliged to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a confederate republic.

**11:4—Successful governments figure out ways of limiting abuses of power.** Democratic and aristocratic states are not in their own nature free. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say that virtue itself has need of limits?

**Power must be used to check power.** To prevent this abuse, it is necessary from the very nature of things that power should be a check to power. A government may be so constituted as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.

...

**11.6.—Montesquieu divides power in three ways: the power to make laws, the power to engage with foreign nations, and the power to enforce (and interpret) the nation's laws.** In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

**Montesquieu further divides the third power (over the application of a nation's laws) between the executive power (to enforce them) and the judiciary power (to interpret the laws when deciding cases between people).** By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or



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determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

**Checks on abuses of power creates a moderate government that protects political liberty.**

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

**Combining legislative and executive power is the road to tyranny.** 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.

**Combining the judiciary power with the legislative and executive powers is also the road to tyranny.** 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.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

## JOHN ADAMS, THOUGHTS ON GOVERNMENT (1776)

View the document on the National Constitution Center's [Website](#).

Early in 1776, John Adams dove into constitutional deliberations in the Massachusetts General Court. He authored the proclamation adopted in January 1776 and summoned citizens and civil officers to constitutional deliberations intended to realize the happiness of the people as the sole end of government. Not long thereafter, he penned his “Thoughts on Government” as a full elaboration of the principles set forth in the proclamation of the General Court. Those principles were that “happiness is the end of government,” “consent the means,” and “sovereignty of the people” were the foundation.

**Excerpt:**

**The goal of politics is to promote happiness, and this depends on the structure of government.**[T]he divine science of politicks is the science of social happiness, and the blessings of society depend entirely on the constitutions of government, which are generally institutions that last for many generations, there can be no employment more agreeable to a benevolent mind, than a research after the best.

Pope flattered tyrants too much when he said:

For forms of government let fools contest,

That which is best administered is best.

**Some forms of government are better than others.** Nothing can be more fallacious than this: But poets read history to collect flowers not fruits — they attend to fanciful images, not the effects of social institutions. Nothing is more certain from the history of nations, and the nature of man, than that some forms of government are better fitted for being well administered than others.

**Again, happiness is the central goal of government.** We ought to consider what is the end of government, before we determine which is the best form. — Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all Divines and moral Philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow, that the form of government, which communicates ease, comfort, security, or in one word happiness to the greatest number of persons, and in the greatest degree, is the best.

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...

**Virtue is a key ingredient.** If there is a form of government then, whose principle and foundation is virtue, will not every sober man acknowledge it better calculated to promote the general happiness than any other form?

Honour is truly sacred, but holds a lower rank in the scale of moral excellence than virtue. —Indeed the former is but a part of the latter, and consequently has not equal pretensions to support a frame of government productive of human happiness.

**Government is based on a core principle important to the people.** The foundation of every government is some principle or passion in the minds of the people. — The noblest principles and most generous affections in our nature then, have the fairest chance to support the noblest and most generous models of government. . . .

**A republic is the best form of government, a government of laws, not arbitrary rule.** [T]here is no good government but what is Republican. [T]he very definition of a Republic, is “an Empire of Laws, and not of Men.” That, as a Republic is the best of governments, so that particular arrangement of the powers of society, or in other words that form of government, which is best contrived to secure an impartial and exact execution of the laws, is the best of Republics.

...

**Representative government is a core feature of a republic.** As good government, is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country, it is impossible that the whole should assemble, to make laws: The first necessary step then, is, to depute power from the many, to a few of the most wise and good. — But by what rules shall you choose your Representatives? Agree upon the number and qualification of persons, who shall have the benefit of choosing, or annex this privilege to the inhabitants of a certain extent of ground.

**The lower house of the legislature should be closest to the people, representing their views.** The principal difficulty lies, and the greatest care should be employed in constituting this Representative Assembly. It should be in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this Assembly to do strict justice at all times, it should be an equal representation, or in other words equal interest among the people should have equal interest in it. — Great care should be taken to effect this, and to prevent unfair, partial, and corrupt elections.

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**But a successful republic must further divide political power.** A REPRESENTATION of the people in one Assembly obtained, a question arises whether all the powers of government, legislative, executive, and judicial, shall be left in this body? I think a people cannot be long free, nor ever happy, whose government is one Assembly. My reasons for this opinion are as follow.

...

**The lower house of the legislature has its own flaws.** A SINGLE Assembly is liable to all the vices, follies and frailties of an individual. — Subject to fits of humour, starts of passion, flights of enthusiasm, partialities of prejudice, and consequently productive of hasty results and absurd judgments.

...

**Not only must we divide power between different branches of government, but we should also divide the legislative power itself.** Most of the foregoing reasons apply equally to prove that the legislative power ought to be more complex — to which we may add, that if the legislative power is wholly in one Assembly, and the executive in another, or in a single person, these two powers will oppose and enervate upon each other, until the contest shall end in war, and the whole power, legislative and executive, be usurped by the strongest.

...

**The legislative branch should have a second (upper) house that mediates disputes between the executive branch and the lower house of the legislature.** To avoid these dangers let a distant Assembly be constituted, as a mediator between the two extreme branches of the legislature, that which represents the people and that which is vested with the executive power.

**The upper house of the legislature should be selected by members of the lower house.** Let the Representative Assembly then elect by ballot, from among themselves or their constituents, or both, a distinct Assembly, which...we will call a Council. It...should have a free and independent exercise of its judgment, and consequently a negative voice in the legislature.

**The houses of the legislature should then select the head of the executive branch, the Governor.** These two bodies thus constituted and made integral parts of the legislature, let them unite, and by joint ballot choose a Governor...

...

**We should hold elections for these offices every year.** These and all other elections, especially of Representatives and Councillors, should be annual, there not being in the whole

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circle of the sciences, a maxim more infallible than this, “Where annual elections end, there slavery begins.”

...

**Thinkers divide over whether we should have term limits.** A ROTATION of all offices, as well as of Representatives and Councillors, has many advocates, and is contested for with many plausible arguments.

...

**Power should also be lodged in an independent judiciary with life tenure, which might check the other two branches.** The dignity and stability of government in all its branches, the morals of the people and every blessing of society, depends so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The Judges therefore should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness and attention...To the ends they should hold estates for life in their offices, or in other words their commissions should be during good behaviour.

...

**A good government can also inspire the people themselves to be better.** A CONSTITUTION, founded on these principles, introduces knowledge among the People, and inspires them with a conscious dignity, becoming Freemen. A general emulation takes place, which causes good humour, sociability, good manners, and good morals to be general. That elevation of sentiment, inspired by such a government, makes the common people brave and enterprising. That ambition which is inspired by it makes him sober, industrious and frugal.

...

**This is an amazing moment of constitutional experimentation and creation!** You and I, my dear Friend, have been sent into life at a time when the greatest lawgivers of antiquity would have wished to have lived. – How few of the human race have ever enjoyed an opportunity of making an election of government more than of air, soil, or climate, for themselves or their children. — When! Before the present epocha, had three millions of people full of power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive?...

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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### JAMES MADISON, FEDERALIST NO. 51 (1788)

View the document on the National Constitution Center's Website [here](#).

On February 8, 1788, James Madison published *Federalist* No. 51—titled “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” In this famous *Federalist Paper* essay, Madison explained how the Constitution’s structure checked the powers of the elected branches and protected against possible abuses by the national government. With the separation of powers, the framers divided the powers of the national government into three separate branches: a legislative branch (called Congress), an executive branch (led by a single president), and a judicial branch (headed by a Supreme Court). By dividing political power between the branches, the framers sought to prevent any single branch of government from becoming too powerful. At the same time, each branch of government was also given the power to check the other two branches. This is the principle of checks and balances. Madison and his fellow framers assumed that human nature was imperfect and that all political elites would seek to secure greater political power. As a result, the framers concluded that the best way to control the national government was to harness the political ambitions of each branch and use them to check the ambitions of the other branches.

#### **Excerpt:**

**Separation of powers is a core feature of the Constitution, requiring the division of power between a legislative branch, an executive branch, and a judicial branch.** In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.

...

**Each branch of government should have the power to check the other branches of government.** It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the 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. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack.

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**Human beings are imperfect and ambitious, so we need a government structure that guards against abuses of power.** Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. 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.

**Representative government, elected by the people, is an important check on government abuses, but further checks are necessary.** A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense.

**The legislative branch is the most dangerous, so we must divide its power into two separate houses.** 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. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

...

**Power is first divided between the national government and the states (federalism) and then between the three branches of government (separation of powers).** 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 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.

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**Government must also protect minority rights.** It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

**Minority rights are best protected in America by the size of the republic and the diversity of interests, making it difficult for a durable majority to form and oppress the minority.**

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.

...

**The goal of government is justice.** Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**



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6.5 Activity Guide

### PHILOSOPHICAL THINKING ON SEPARATION OF POWERS

In this activity, you will use primary sources to identify the philosophical background for separation of powers and checks and balances.

Read and take notes on the excerpts from the primary source readings:

- [Montesquieu, \*The Spirit of the Laws\* \(1748\)](#)
- [John Adams, \*Thoughts on Government\* \(1776\)](#)
- [James Madison, \*Federalist No. 51\* \(1788\)](#)

After you have completed the readings, answer the following questions:

What are two main arguments the authors make?

What is the role of the governed?

Do you see these ideas in our government today?

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6.6 Info Brief

# FEDERALISM

## KEY TERMS

**Federalism** is the word used to describe the Constitution’s system of dividing political power between the national government and the states.

## FEDERALISM IN THE CONSTITUTION

When we look for federalism in the Constitution, where can we find it?

The Constitution itself doesn’t say “federalism” anywhere. But it’s in there. It’s everywhere.

Examples Include:

- [Article I, Section 1](#) and [3](#) (the original Senate)
- [Article I, Section 4](#) (Elections)
- [Article I, Section 8](#) (the powers of Congress)
- [Article I, Section 9](#) (limitations on the powers of Congress)
- [Article I, Section 10](#) (limitations on the powers of the states)
- [Article III, Section 2](#) (Courts and the States)
- [Article IV](#) (Fugitive Slave/Rendition Clause)
- [Article V](#) (Amendment Process)
- [Article VI](#) (Supremacy Clause)
- [10th Amendment](#)
- [Enforcement Clauses of various amendments](#) (including the Reconstruction Amendments)

## FEDERALISM AND THE FOUNDING GENERATION

Why did the Founding generation value federalism?

For the Founding generation, federalism was an important way of bringing government closer to the American people themselves—to the level of government closest to them.

By dividing the powers of the government between the national government and the states, our system gives a ton of power to the state governments.

This made perfect sense within the Founding generation’s worldview.

Many key founders—Federalist and Anti-Federalist alike—believed that state governments were the governments closest to the people.

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#### 6.6 Info Brief

Furthermore, by empowering states to shape policy in important ways, federalism permits states to shape a range of policies in ways that serve our diverse nation.

This lets the people in the state that they live in—and their elected officials—write laws that fit their community best.

In many areas, this simply permits a diversity of approaches to key policy areas—based on the needs of the state and the policy preferences of its voters.

#### LABORATORIES OF DEMOCRACY

However, over time, these diverse approaches to different issues—from education to health to safety to the environment to whether people are treated equally to how much people are paid—sometimes benefit the nation as a whole.

In 1932, Justice Louis Brandeis offered his famous vision of the states as “laboratories of democracy.”

On this view, state governments often lead the way in trying out new laws and policies. And when those ideas work out well, they can spread to other states and even bubble up to the national level—changing the way that things work all across the nation.

So, ideas that are tested out as state laws sometimes lead to larger changes in how our country works as a whole.

- One famous example is women’s suffrage. Women began voting in Western states long before the 19th Amendment was ratified in 1920. And this experiment worked out so well that other states extended voting rights to women, as well—including (eventually) large states like New York and Michigan. Finally, this experiment culminated in the 19th Amendment—banning sex discrimination in voting.

But not all national laws bubble up from the states. The same thing can happen in the opposite direction, too. By giving the national government the power to override the states in certain areas, the Constitution permits the national government to stop the states from doing certain things. The national government can set laws that apply to the entire nation—to everyone.

- One key example is the national government’s response to Jim Crow segregation. Beginning in the late 1800s, many Southern states set up systems of laws that discriminated against African Americans. In response, the national government eventually passed new laws—like the Civil Rights Act of 1964 and the Voting Rights Act of 1965—that applied to the entire country and helped dismantle the Jim Crow system of segregation in certain states.

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### Module 6: Separation of Powers and Federalism

#### 6.6 Info Brief

#### BIG IDEA

What should we remember about the Founding generation's approach to federalism?

Even though the founders established a new national government, they preserved a key role for the states in our constitutional system. To that end, they set up a system of federalism—dividing power between the national government and the states. While future amendments granted the national government new powers, the states retained substantial powers to promote the health, safety, and welfare of their residents.

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6.6 Activity Guide

### FEDERALISM in the Constitution

#### FEDERALISM: WHERE IS IT IN THE CONSTITUTION?

*Scholars often speak of types of powers identified in the U.S. Constitution:*

- Powers delegated to Congress—Article I, Section 8
- Powers denied to Congress or the states—Article I, Sections 9 and 10
- Reserved powers (reserved to the states)—the 10th Amendment
- Provision addressing the relationship between the national government and the states, the duties that states owe one another, and the nation and new states—Article IV
- Supremacy of national law—Article VI's Supremacy Clause

*“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”*

- Check on the general government—Article III and Article V

Section of the Constitution	Topic	Summary
Article I, Section 1 and Section 3	The original senate	Limiting Congress's power to “[a]ll legislative Powers herein granted.” We could even add that one to provisions limiting the powers of Congress—as some scholars would say that this provision reinforces the idea that Congress is a body with limited powers.

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<a href="#">Article I, Section 4</a>	Elections and the states	The state's ability to decide on "time, manner, place" for elections, key part of federalism, and voting rights —"Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."
<a href="#">Article I, Section 8</a>	Powers of Congress, including the Commerce Clause and the Necessary and Proper Clause	
<a href="#">Article I, Section 9</a>	Limits on the federal government, such as habeas corpus suspension clause, ex post facto/bill of attainders, slave trade could not be banned until 1808	
<a href="#">Article I, Section 10</a>	Limits on the powers of the states	
<a href="#">Article III, Section 2</a>	The Courts to intervene in disputes between states, citizens, and the general government	



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<a href="#">Article IV</a>	<p>Sections I, II, III, IV</p> <p>I: Full Faith and Credit (<i>Saenz v. Roe</i>)</p> <p>II: Privilege and Immunities and Fugitive Slave Clause (<i>Prigg Case</i>)</p> <p>III: New States-Can the Fed. Gov buy them? (Jefferson)</p> <p>IV: It's a Republic, and you must be, too. The "we-got your-back" clause.</p>	<p><b>Article IV</b> establishes that the states will give "full faith and credit" to the laws of other states. For example, if a citizen gets legally married in one state, he is still married if he moves to another state. Likewise, if a citizen commits a crime in one state, she cannot escape to another state and evade justice. States also can't discriminate against citizens of other states if they move; any U.S. citizen who moves to a state is entitled to the same "privileges and immunities" of citizenship in that state as someone born there.</p> <p>Article IV also promises states the protection of the federal government. It does this by promising to defend states against invasion, guaranteeing them a republican form of government, and barring the federal government from splitting up a state without the consent of its legislature and Congress. It also establishes Congress's power to admit new states and its power over federal territories.</p>
<a href="#">Article V</a>	Amendment process	<p><b>Article V</b> describes the process of amending the Constitution, which requires the ratification of three-quarters of the states. This provision of the Constitution demonstrates the importance of the states in approving the workings of the U.S. government. It does establish a role for the states in the amendment process. But at least some scholars (and founders) would say that the amendment process is rooted in popular sovereignty, not federalism.</p>



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<a href="#">Article VI</a>	Supremacy Clause	This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
<a href="#">Bill of Rights</a>	Limiting the powers of the federal government	
<a href="#">10th Amendment</a>	Powers reserved to the state or people	
<a href="#">13th Amendment</a> , <a href="#">14th Amendment</a> , <a href="#">15th Amendment</a>	Enforcement Clauses (expansion of congressional powers over the states)	





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<p><u><a href="#">Amendments 11, 16, 17, 19, 24, and 26</a></u></p>		<p>These amendments alter the original federalism structure of the Constitution. (Popular election of senators removes state legislature control over appointment of senators, direct income taxation power increases control of federal government over economy and citizens against traditional state taxing power)</p>
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## CONSTITUTION 101

### Module 6: Separation of Powers and Federalism

#### 6.7 Test Your Knowledge

## SEPARATION OF POWERS AND FEDERALISM

Complete the questions in the following quiz to test your knowledge of basic ideas and concepts covered in this module.

1. With the new Constitution, the framers sought to create a balance between \_\_\_\_\_.
  - a. The national government and state governments
  - b. The three branches of the national government
  - c. A stronger national government and the liberties of the people
  - d. All of the above
  
2. In the founders' view, the best way to protect the unalienable rights promised by the Declaration of Independence was \_\_\_\_\_.
  - a. A Constitution founded on the separation of powers
  - b. A virtuous president like George Washington
  - c. A very weak central government
  - d. To establish a true democracy
  
3. Separation of powers refers to the fact that \_\_\_\_\_.
  - a. The Constitution distributes power among the three branches of government
  - b. The American colonies had recently separated from the British government
  - c. The smaller states wanted separate power from large states
  - d. The new national government could take away certain powers
  
4. What are the three different branches of government outlined in the Constitution?
  - a. Electoral, Administrative, Judicial
  - b. Legislative, Executive, Judicial
  - c. Legislative, Presidential, Administrative
  - d. Legislative, Executive, Parliamentary
  
5. The Constitution established a system of checks and balances, which grants \_\_\_\_\_.
  - a. Only Congress the power to check other branches
  - b. Only the president the power to check other branches
  - c. Only the Supreme Court the ability to check the other branches
  - d. Each branch the power to check abuses by the other branches

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### Module 6: Separation of Powers and Federalism

#### 6.7 Test Your Knowledge

6. Federalism is the word used to describe the Constitution's system of granting political power \_\_\_\_\_.
  - a. By giving all political power to the federal government
  - b. By giving all political power to the states
  - c. By dividing political power between the national government and the states
  - d. To the other branches, in theory, but retaining all real power under the president
  
7. *The Spirit of the Laws*, which articulated the importance of the separation of powers, was written by \_\_\_\_\_.
  - a. James Madison
  - b. Montesquieu
  - c. John Adams
  - d. John Locke
  
8. According to Montesquieu, what happens when the legislative and executive powers are united in the same person, or in the same body of magistrates?
  - a. This is an ideal form of government.
  - b. The executive will have great power to help the people.
  - c. There can be no liberty.
  - d. People will know they can trust the legislature if the president is involved, too.
  
9. According to John Adams's *Thoughts on Government*, what was the very definition of a republic?
  - a. The definition he outlined in the Declaration of Independence.
  - b. Rule directly by the people.
  - c. An empire of men.
  - d. An empire of laws and not of men.
  
10. James Madison outlined his explanation and defense of the Constitution's separation of powers in which document?
  - a. The Declaration of Independence
  - b. The Virginia Declaration of Rights
  - c. *Federalist* No. 51
  - d. *The Spirit of the Laws*
  
11. According to Madison, in a good government, "\_\_\_\_\_ must be made to counteract ambition"?
  - a. A powerful police force
  - b. Ambition
  - c. Difficult election processes
  - d. Delays

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### Module 6: Separation of Powers and Federalism

#### 6.7 Test Your Knowledge

12. What was true about the delegates to the Constitutional Convention?
  - a. They crafted a stronger central government than the one that came before it.
  - b. It created a much weaker central government.
  - c. They were concerned about the central government being too powerful.
  - d. Both A and C
  
13. What is the primary job of the legislative branch? (Article I)
  - a. To make laws
  - b. To enforce laws
  - c. To interpret laws
  - d. All of the above
  
14. What is the primary job of the executive branch? (Article II)
  - a. To make laws
  - b. To enforce laws
  - c. To interpret laws
  - d. All of the above
  
15. What is the primary job of the judicial branch? (Article III)
  - a. To make laws
  - b. To enforce laws
  - c. To interpret laws
  - d. All of the above
  
16. This series of essays defended the Constitution and the notion of separation of powers:
  - a. The Silence Dogood Letters
  - b. The Federalist Papers
  - c. The Adams-Jefferson Correspondence
  - d. The letters from Brutus
  
17. Which of these is a famous quote by James Madison?
  - a. Greed is good.
  - b. If men were angels, no government would be necessary.
  - c. If you ain't first, you're last.
  - d. Men are angels, so no government is necessary.
  
18. Which of these jobs exercises executive power?
  - a. The mayor of your town
  - b. The governor of your state
  - c. The president
  - d. All of the above

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### Module 6: Separation of Powers and Federalism

#### 6.7 Test Your Knowledge

19. Which of these functions of government is an example of checks and balances?
- Vetoing a law
  - Rejecting a judicial nominee
  - Impeachment
  - All of the above
20. Which part of the federal government has the power to hear legal cases and strike down laws which are unconstitutional?
- The judicial branch
  - The House of Representatives
  - The Senate
  - The executive branch

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### Module 6: Separation of Powers and Federalism

#### 6.7 Test Your Knowledge

##### Answer Key

1. D
2. A
3. A
4. B
5. D
6. C
7. B
8. C
9. D
10. C
11. B
12. D
13. A
14. B
15. C
16. B
17. B
18. D
19. D
20. A