

Name \_\_\_\_\_

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# Level 2 Reading



REVIEW

CALIFORNIA CONTENT  
STANDARD 8.2.7

## The Principles of the American System of Government

} Title

**Specific Objective:** Describe the principles of federalism, dual sovereignty, separation of powers, checks and balances, the nature and purpose of majority rule, and the ways in which the American idea of constitutionalism preserves individual rights.

Read each principle to answer questions on the next page.

The following principles are embodied in the Constitution in order to protect the two ideals of self-government and individual rights.

1.

### **Federalism**

The power of government is shared between state governments and a strong, representative national (federal) government.

2.

### **Dual Sovereignty**

- Federal and state laws have separate areas of influence and jurisdiction. While citizens are subject to both sets of laws, state laws govern many areas where federal lawmaking does not apply.
- Over time, the concept of dual sovereignty has changed with evolving interpretations of constitutional law.

3.

### **Separation of Powers**

Three branches of government—executive, legislative, and judicial—govern separate areas (leadership command, lawmaking, and criminal justice) in order to prevent one person or group from abusing power.

4.

### **Checks and Balances**

Each of the three branches of government makes sure the others are working properly. Each of the three branches exercises certain control over the others.

5.

### **Majority Rule**

Decisions are made by a majority. The rights of the minority are protected by a Bill of Rights, and by the accountability of elected representatives.

6.

### **Constitutionalism**

Government's power must be limited by a foundation of law with checks and balances.



**CALIFORNIA CONTENT  
STANDARD 8.3.6**

## The Laws of the Land } Title

**Specific Objective:** Describe the basic law-making process. Describe how the Constitution provides numerous opportunities for citizens to participate in the political process and to monitor and influence government (e.g., function of elections, political parties, interest groups).

Read the summary below to help you answer questions on the next page.

**x**

**1. Making Laws** The Constitution created a Congress with two houses to make laws: the House of Representatives and the Senate. The citizens of each state elect members of the House and Senate. Either house can propose a new bill, but both houses have to approve it through a majority vote in order for the bill to become law. If the two houses pass different versions of the same bill, a conference committee consisting of members from both houses of Congress works out a compromise version. The bill is then sent back to both houses for final approval. Once Congress has passed a bill, the president has ten days to veto it or sign it into law. A bill that has been vetoed by the president can still become law if it receives two-thirds of the votes in both houses of Congress.

**2.**

**Participation** One of the important foundations of the Constitution is the idea of government by the consent of the governed. Citizens participate in government by voting. They can vote in local, state, and national elections. By voting, citizens make their wishes known. Citizens can also participate by taking part in community activities, working for a political party, or running for office.

**3.**

**Monitoring or Watching** Citizens are meant to know how their elected representatives make decisions and conduct governmental business. The Constitution includes a requirement (Article 1, Section 5) that the houses of Congress keep public records of their proceedings and their votes. A free press helps citizens monitor their government.

### Opportunities to Influence

**4.**

- **Voting** If an elected official does not act in accord with the will of the people, the citizens are free to elect someone who does. Citizens can also contact their lawmakers and tell them their concerns.
- **Special Interest Groups** Voters who share a concern or interest can work together to bring demands to lawmakers. They lobby, or influence, through petitions, groups of votes, and other means. Labor unions, environmental organizations, and chambers of commerce are examples of interest groups.

## Topics / The Constitution / Three Branches / Three Branches (Overview)

After their experiences with King George III, the Framers of the U.S. Constitution created a system of checks and balances to limit the power of the federal government. The system of checks and balances was designed so that no branch of the federal government—legislative, executive, or judicial—is totally independent from the other two. Each branch has the power to "check" or curb the other branches' powers. This keeps the government in "balance."

### Checks, Balances, and the Separation of Powers

The concept of checks and balances dates back to the Greeks. Aristotle favored a "mixed" government made up of the monarchy, the aristocracy, and the people. The purpose was to ensure that government power would not be used in an abusive manner.

Another way to look at checks and balances is to think of the federal government's powers being separated into three sections. The French philosopher Baron de Montesquieu advocated the separation of powers in the mid-18th century. He believed that distributing government power to many different branches and layers of government helped to prevent tyranny. Montesquieu's *The Spirit of Laws* (1748) served as the blueprint for the three-part system of executive, legislative, and judicial powers adopted by the Framers in 1787.

The Framers of the U.S. Constitution didn't trust government and were determined to limit the power of the new national government. They didn't want to create a government in the United States that could behave like the monarchy they had just broken from. The first way to check the national government's powers was to give powers to states. The Framers then separated the national government into three branches: the legislative branch, responsible for making the law; the executive branch, responsible for carrying out the law; and the judicial branch, comprised of the courts.

### The Legislative Branch

The legislative branch, composed of the House of Representatives and the Senate, has enormous power over the executive branch. One of Congress's key powers is the power of the purse: Congress oversees all matters related to spending and revenue. Because the federal budget must originate in the House of Representatives and be passed by both the House and the Senate, any programs that the president wishes to enact must be backed by Congress.



In addition, while the president is commander in chief of the U.S. military, it is Congress that must declare war. This is meant to limit the president's power to engage in military actions.

Congress can also refuse to approve an international treaty that the president has worked out with a foreign nation and refuse to approve a president's nomination to the federal courts. Such was the case in 1987, when President Ronald Reagan nominated Robert Bork for the U.S. Supreme Court. Bork's nomination was rejected by the Senate because of his conservative positions on abortion, civil rights.

If the president vetoes a bill, the legislative branch has the power to overrule the veto with a two-thirds vote from both chambers. This legislative power was repeatedly exercised during the administration of Andrew Johnson. Johnson sought a lenient toward the South after the Civil War, so he vetoed 29 bills. Johnson was overruled 15 times by a Congress that favored a more aggressive approach toward the South.

Congress also has power over the judicial branch. The legislative branch establishes the lower courts, and it has the authority to nullify judicial decisions by proposing amendments to the U.S. Constitution. For example, after the Supreme Court overturned a tax on personal and corporate income in *Pollock v. Farmers' Loan & Trust Co.* (1895), Congress approved the Sixteenth Amendment, allowing the federal government to levy unapportioned taxes on income. Congress also has the authority to impeach and remove judges from the bench if they overstep the boundaries of the constitution.

## The Executive Branch



At the top of the executive branch is the president of the United States. The Constitution has given the president power to check the legislative branch. The president can veto a law passed by Congress. He or she can order Congress to meet at a special session, if necessary. Such a session was called by President Franklin D. Roosevelt in order to gain Congress's approval for his New Deal programs to provide relief from the Great Depression.

The president may also take administrative action by issuing executive orders. Executive orders carry the weight of law, but their reach is limited. They are most frequently used to implement treaties, constitutional provisions, and statutes, but they may also be used to set administrative policy within the federal bureaucracy if the president feels Congress is not moving quickly enough on a certain matter. For example, in 2014, President Barack Obama signed an executive order barring federal contractors from discriminating against people based on their sexual orientation or gender identity.

The president checks the power of the judicial branch by appointing judges to the bench. The constitution does not include requirements for federal judicial appointments, but presidents typically consider a candidate's experience, constitutional philosophy, and—controversially—political affiliation and ideology.

## The Judicial Branch

The judicial branch oversees the actions of both the president and Congress. The judicial branch has the authority to declare executive actions or laws that Congress and the president have passed unconstitutional if it determines that the law does not conform to the spirit of the Constitution. The judicial branch has the authority and the responsibility to declare those laws invalid.



The Supreme Court exercised this authority to reject the U.S. government's attempts to try enemy combatants at the detention facility in Guantanamo Bay, Cuba. In *Hamdan v. Rumsfeld* (2006), the Court rejected the military tribunal system established by the George W. Bush administration because it had not been approved by Congress. Subsequently, the Military Commissions Act (2006) proposed by Bush and passed by Congress set up an alternative legal system for detainees and prevented federal courts from hearing habeas writs of enemy combatants. However, in *Boumediene v. Bush* (2008), the act was overturned by the Court because it did not provide adequate means for detainees to petition their right to due process.

Topics / The Constitution / Three Branches / Three Branches (Visual)

# POWERS OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES

<p><b>Executive Branch</b></p> <p>Primary function is to enforce federal law.</p> 	<p>President heads the executive branch.                      Elected to a four-year term.                      Most powerful elected official in the United States.                      Forms public policies.                      Establishes foreign policy.                      Presents laws to Congress.                      Vetoes legislation.                      Passes executive orders.                      Commander in chief of the armed forces.                      Must be 35 years old, native citizen, and a resident for 14 years.                      Powers not clearly defined by the U.S. Constitution.</p>
<p><b>Legislative Branch</b></p> <p>Primary function is to make federal laws.</p> 	<p>Made up of the Senate and the House of Representatives.                      Each state has two senators.                      Senators serve six-year terms.                      Vice president of the United States presides over the Senate.                      There are 435 representatives in the House of Representatives.                      Representation based on state's population.                      Speaker of the House chosen by the majority party in the House.                      Congress can declare war, tax and borrow money, coin money, set standards of weights and measurements, provide post offices, set up minor courts, raise armies, govern the national capital, and impeach the president.</p>
<p><b>Judicial Branch</b></p> <p>Primary function is to review federal law.</p> 	<p>Has power to strike down federal law if unconstitutional.                      Courts hear civil and criminal cases.                      Consists of three different types of courts.                      Cases may be appealed to higher courts.                      U.S. District Courts are the trial courts.                      U.S. Courts of Appeals are the intermediate courts.                      U.S. Supreme Court is the highest court.                      Supreme Court's decisions are final.                      Judges are appointed by the president.                      Appointment is for life.</p>

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## LEVEL 4 READING

# Topics / The Constitution / Checks and Balances / Checks and Balances (Overview)

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The Supreme Court's application of judicial review—the authority to declare a law or action unconstitutional—is not found in the U.S. Constitution. The Judiciary Act (1789) provides for judicial review, but the Supreme Court did not assert this power until its ruling in *Marbury v. Madison* (1803). Judicial review is not only applied to the executive and legislative branches, but also to the rulings of lower courts and its own previous decisions. This ensures that no government body is above the Constitution.

### Further Reading

Gershman, Gary P. *The Legislative Branch of Federal Government*. Santa Barbara, CA: ABC-CLIO, 2008; Starks, Glenn L., and F. Erik Brooks. *How Your Government Really Works: A Topical Encyclopedia of the Federal Government*. Santa Barbara, CA: Greenwood, 2008; Vile, John R. *A Companion to the United States Constitution and Its Amendments*, 6th ed. Santa Barbara: Praeger, 2015; Vile, John R. *The Constitutional Convention of 1787: A Comprehensive Encyclopedia of America's Founding*. Santa Barbara, CA: ABC-CLIO, 2005.

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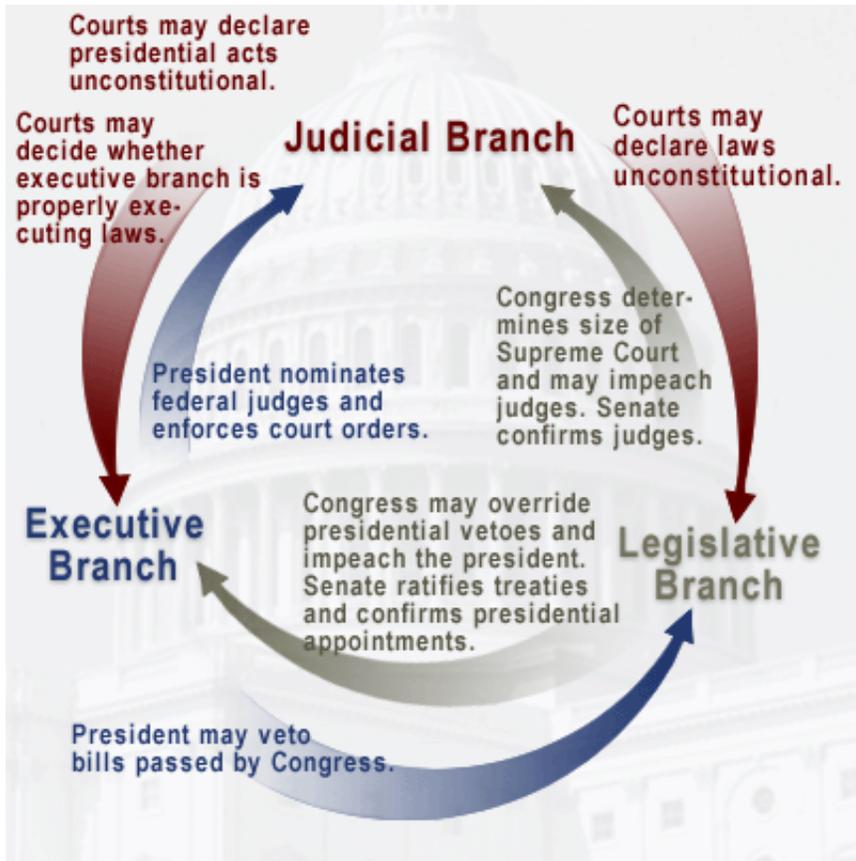
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# LEVEL 3 READING

## Topics / The Constitution / Checks and Balances / Checks and Balances (Visual)



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## LEVEL 4 READING

# Topics / Congressional Powers / Powers of Congress / Powers of Congress (Overview)

The U.S. Congress has a number of powers that allow it to carry out its legislative functions and responsibilities. A number of these powers are specifically enumerated, or listed, in the U.S. Constitution, while others are implied. The Senate and House of Representatives share many of Congress's powers, but there are also powers that have been assigned exclusively to one chamber or the other.

When the Second Continental Congress proposed the Articles of Confederation, it created a relatively weak Congress with fairly limited powers; for example, Congress had no control over interstate commerce. Because the Articles emphasized state sovereignty, Congress could not act directly on the people but had to go through the states. Many matters required the consent of nine or more states, while constitutional amendments required unanimity.

### Enumerated Powers

Delegates who met at the Constitutional Convention of 1787 recognized that congressional powers needed to be expanded if the national government were to succeed. At the same time, the U.S. Founders believed that the powers of government should be limited. They sought to limit such powers by enumerating, or specifically listing, the powers of each branch of government (these enumerated powers are also known as expressed powers). In addition, they placed specific limits on government power.



Article I, Section 8 of the Constitution presents a long list of enumerated congressional powers. Significantly, the initial powers include those traditionally associated with the "power of the purse." These include the power to tax, to spend, and to borrow. These powers are followed by the power to regulate interstate and foreign commerce, among numerous other powers.

### Implied Powers

The last clause of Article I, Section 8 gives Congress the power to

make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

This clause, known as the necessary and proper clause, allows Congress to exercise certain implied powers. For example, in *McCulloch v. Maryland* (1819), Chief Justice John Marshall and his Court ruled that in pursuit of its power of the purse, Congress could establish a national bank, even though such a power was not specifically enumerated within Article I, Section 8. Marshall reasoned that a bank was not an end in and of itself but a means to other constitutional ends that were enumerated and not prohibited by the Constitution. Similarly, U.S. courts have recognized the right of Congress to conduct investigations according to its need to gather information to adopt

legislation.

The Tenth Amendment reserves any powers for the states that are not delegated to the federal government or prohibited to the states. However, the existence of implied powers makes it difficult to determine with any degree of precision what these rights are. This tension is evident in recent controversies over whether Congress can or cannot mandate that states require individuals to join a national health care plan.



Congress sometimes uses the carrot of appropriations to accomplish that which it might not have a stick to enforce. Since adoption of the Sixteenth Amendment in 1913, Congress has been able to levy an income tax, which brings in considerably more money than states can often raise on their own. Courts have generally allowed federal appropriations to come with "strings" mandating how such funds will be used. Similarly, Congress can often adopt far-ranging legislation on the basis of its power over commerce. Thus, Congress justified the Civil Rights Act of 1964, which limited discrimination in places of public accommodation, on the basis that such discrimination

interfered with commerce among the states.

### Shared and Exclusive Powers

Most of Congress's powers are shared by the Senate and House of Representatives. These include the power to tax and spend, to borrow money, and to regulate state commerce. Any legislation passed by Congress must be agreed on by both the Senate and the House. Both houses of Congress must also agree when making a declaration of war.

There are also a number of powers that can be exercised by the House or Senate alone. Among the powers exclusive to the House are the power to initiate revenue bills, the power to elect the president (in the case that the Electoral College should fail to do so), and the power to impeach executive officials.



The Senate, on the other hand, has been granted the exclusive powers to choose the vice president in disputed elections, approve treaties (upon a two-thirds vote), confirm judicial and executive branch nominations (including justices and cabinet members), and conduct impeachment trials.

### Further Reading

Barber, Sotorious. *The Constitution and the Delegation of Congressional Power*. Chicago: The University of Chicago Press, 1975; Diamond, Robert A. *The Powers of Congress* Washington, D.C.: Congressional Quarterly, Inc., 1976; Fisher, Louis. *The Politics of Shared Powers: Congress and the Executive*, 2nd ed. Washington, D.C.: Congressional Quarterly Press, 1987; Vile, John R. *A Companion to the United States Constitution and Its Amendments*, 6th ed. Santa Barbara: Praeger, 2015.

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## Topics / Congressional Powers / Powers of Congress / Powers of Congress (Visual)

### LIMITS OF POWER

Congress Can:	Congress Can't:
Impose taxes	Tax one state more than another
Override a presidential veto	Override a Supreme Court decision on constitutionality
Refuse to approve presidential appointments	Appoint federal judges and ambassadors
Regulate patents and copyrights	Abolish copyright and patent protection

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Topics / Congress in Action / How a Bill Becomes a Law / How a Bill Becomes a Law (Visual)

