

SECTION 3

The Structure of Government

Introduction

The Constitution is divided into seven parts called articles. An **article** is a clause or a portion of a document. The first three articles establish the three branches of government: the legislative, the executive, and the judicial. The Constitution creates a **separation of powers**, which gives each branch its own specific functions and duties. This separation of powers means that no one branch can control the other branches. The Constitution also creates a **balance of powers**, which keeps any branch from becoming too powerful. For example, the president is commander in chief of the armed forces, but Congress must appropriate funds for the military and must vote to declare war. This divided system prevents any branch from having complete power and prevents the president from becoming a dictator.

A SEPARATION OF POWERS

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

Article I: The Legislative Powers

Article I of the Constitution establishes the legislature. The Legislature is the part of government that makes laws.

A Bicameral Legislature

The Constitution created a **bicameral legislature**. A bicameral legislature is composed of two houses. The United States has a **House of Representatives** (also called the **lower house**) and a **Senate** (also called the **upper house**). The number of representatives for each state is proportional to its population. This means that a state with a large population has more representatives than a small one does. For example, California has 53 Representatives. Wyoming has only one. Every state, regardless of its population, has two senators.



◆ The number of members of the House of Representatives, shown above, is fixed by law at 435.

THE SENATE

James Madison distrusted popular sovereignty, having observed the actions of popular majorities in the states. He said, "The use of the Senate is to consist in proceeding with more coolness, with more system, and with more wisdom, than the popular branch."

Electing the Legislature

The Constitution originally provided that the people would elect the lower house, and then the lower house would select the upper house. Eventually, people realized that this system didn't work. House members chose senators on the basis of their connections rather than on the basis of merit. The Seventeenth Amendment, which was ratified in 1913, changed this system. This amendment provided that senators were also to be elected directly by the citizens of each state. Representatives serve for two years, and every House member runs for election every two years. Senators serve for six years, and one-third of the Senate is up for election every two years.

Why does Congress need to be divided into two houses? The most important reason is that this system allows the federal legislature to represent both the people and the states. Each house also has a role in making sure that the other does not pass unreasonable laws.

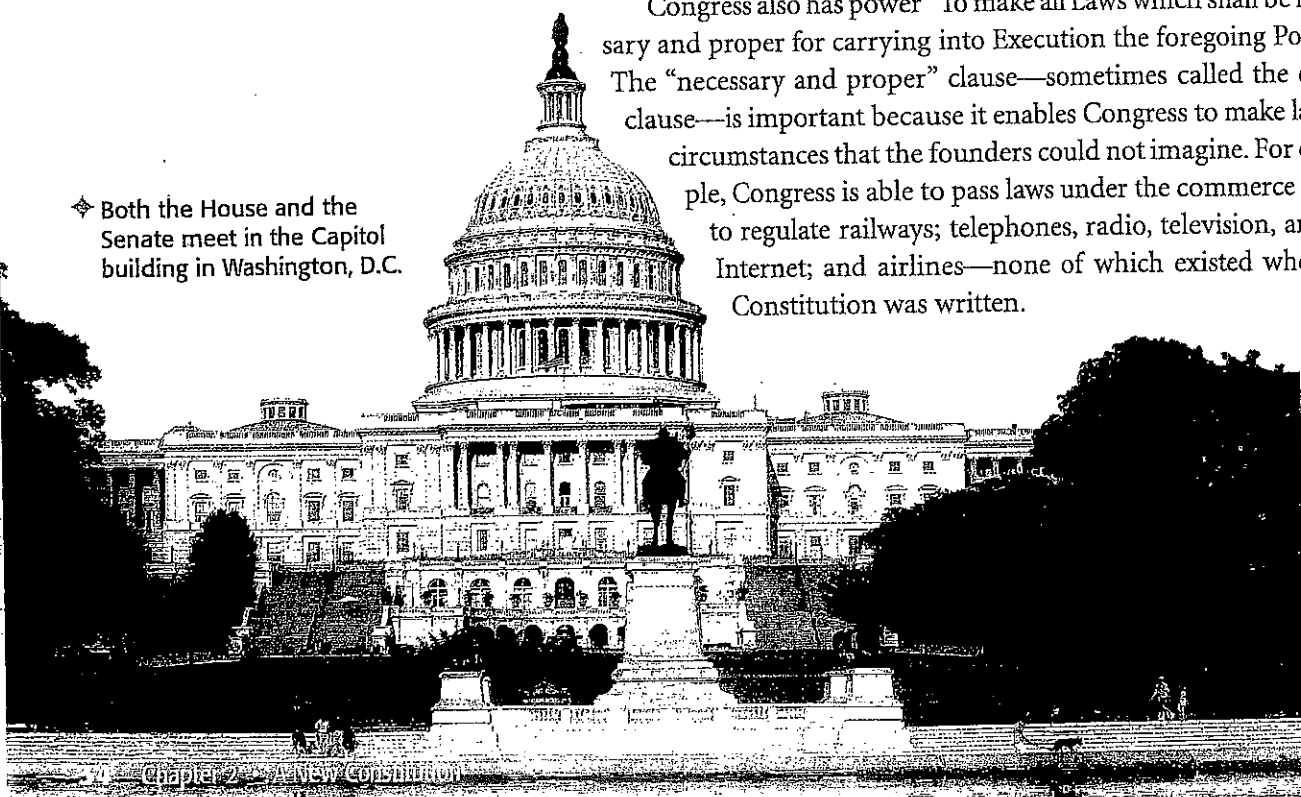
Powers of Congress

Article I, Section 8 is one of the most important sections in the Constitution. It contains a long list of the powers of Congress. It gives Congress many more powers than it had under the Articles of Confederation. Among other things, Congress is given the power to:

- collect taxes
- spend for the general welfare
- borrow money
- regulate commerce among the states and between countries
- regulate immigration
- regulate the mail
- declare war
- raise and support military forces, and
- establish federal courts

Congress also has power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." The "necessary and proper" clause—sometimes called the elastic clause—is important because it enables Congress to make laws in circumstances that the founders could not imagine. For example, Congress is able to pass laws under the commerce clause to regulate railways; telephones, radio, television, and the Internet; and airlines—none of which existed when the Constitution was written.

◆ Both the House and the Senate meet in the Capitol building in Washington, D.C.



Powers of the States

The Constitution does not list the powers of the states. It does not need to. The states retain every power that the federal government is not given. The Tenth Amendment of the Constitution makes this explicit. It says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The national government cannot take away the powers of state governments, but state governments cannot pass laws that are inconsistent with federal laws. It is this division and separation of lawmaking power between the national government and state governments that makes the United States a federal nation.

Limits on Congress

There are two important limits on the power of Congress built into the Constitution.

1. The executive acts as a check on the legislative branch. The president has the ability to block legislation that has been passed by both houses. This is called the **veto** power.
2. The Constitution also creates an independent judicial branch with the power to hear all cases arising under the Constitution. The Court has used this power to declare laws unconstitutional (see discussion on Article III below).

DEATHS AND ASSASSINATIONS

Only four U.S. Presidents have been assassinated while in office: Abraham Lincoln in 1865, James Garfield in 1881, William McKinley in 1901, and John F. Kennedy in 1963. Four other presidents have died in office of natural causes: William Henry Harrison in 1841, Zachary Taylor in 1850, Warren G. Harding in 1923, and Franklin Delano Roosevelt in 1945.

Article II: The Executive Powers

Article II of the Constitution establishes the **executive** branch of government. The executive is the body of government that carries out the laws. The President of the United States of America is the head of the executive branch.

The President

Article 2 sets the qualifications to be president: the president must have been born in the United States, be at least 35 years of age, and have lived in the United States for at least 14 years. The Twenty-second Amendment, ratified in 1951, limits the president to two elected terms. The Twenty-fifth Amendment states that if the president dies or is disabled, he is succeeded by the vice-president.

Article 2 also states that the President must swear an oath or affirmation before taking office. The President takes this oath before the Chief Justice of the Supreme Court at the inauguration ceremony. The President must say, "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."



❖ The inauguration of President Washington, shown in this painting, took place at Federal Hall in New York City, on 30 April 1789.

WASHINGTON, D.C.

Washington, D.C., has a larger population than 13 of the states. But because it is not a state, it is not entitled to any representatives or senators. However, the Twenty-third Amendment does entitle residents of Washington to vote in presidential elections. The district is not allowed to have any more electors than the least populous state. At the moment, D.C. has three electors.

The Electoral System

The Constitution sets out a complex system for electing the president. People do not elect the president directly. Each state nominates a number of **electors** equal to the state's total number of senators and representatives. These electors then vote for a presidential candidate.

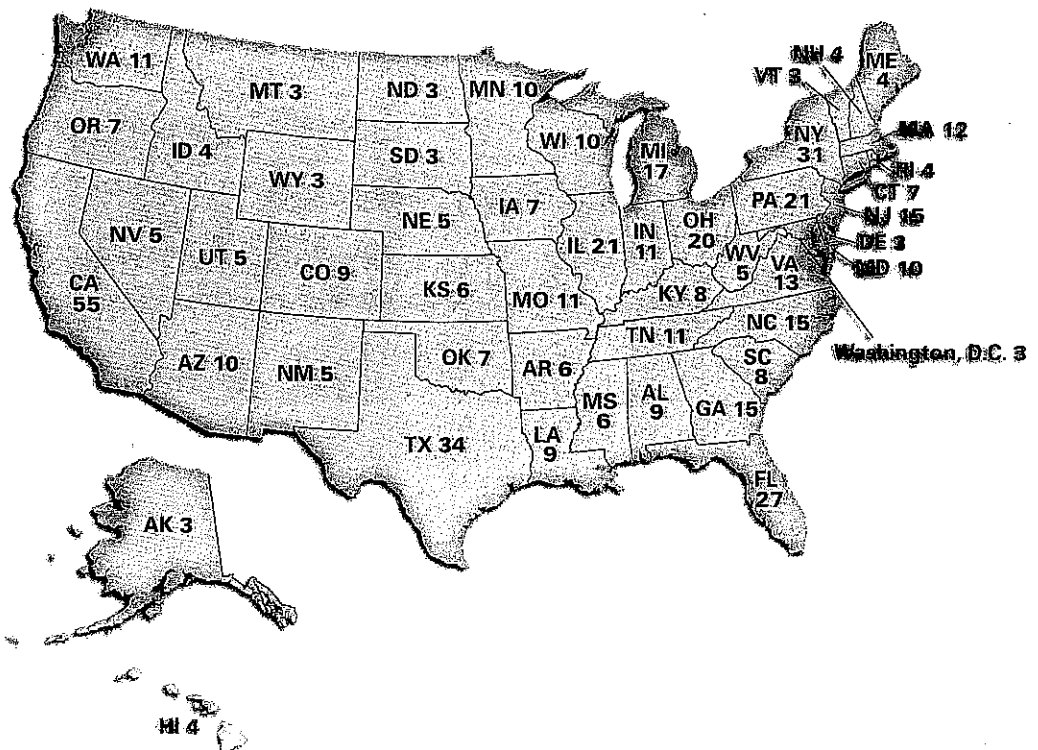
The Constitution originally provided that each elector had to cast two votes for president. At least one vote had to be for a candidate from another state. The person with the most votes became the president, and the person who came in second became the vice-president. In the election of 1800, this system led to a strange result. Thomas Jefferson and Aaron Burr received the same number of votes from electors. The Constitution provided that the House of Representatives would vote to decide the winner. The House had to vote 36 times before Jefferson was finally declared the winner. This fiasco led to the passage of the Twelfth Amendment in 1804. This amendment limited each elector to only one vote for president and a separate vote for vice president.

The Constitution gives states the power to decide how to choose electors. Today, the selection system in most states works like this:

- Each political party creates a list of electors and gives it to the state. The electors on each list are individuals who are loyal to their presidential candidate.
- Voters select their choice for president on the ballot. The names of the electors are not even listed on the ballot.
- The candidate that wins the most votes in the state gets the votes of all of their chosen electors.

11 Number of Electors

◆ This map shows the total number of electors (members of the House of Representatives and Senate) for each state.



Powers of the Executive

Article II of the Constitution says that the president “shall take Care that the Laws be faithfully executed.” To carry out this responsibility, the president oversees most of the federal government, which includes more than 4 million employees. As part of this role, the president can issue executive orders. These are rules, like laws, that employees of the executive branch must obey.

The President also has some specific powers, listed in section 2. He has the power to:

- nominate judges to the Supreme Court and the lower federal courts, subject to approval by the Senate
- pardon criminals who have broken a federal law, and
- make treaties with other countries, subject to approval by the Senate

The president is also the commander in chief of the armed forces. This means that the president can direct the movements of the armed forces. During times of war, Congress may give the president even broader powers.

Article II also gives the president the right to create a cabinet to give advice and make policies. George Washington’s cabinet consisted of a secretary of state, a secretary of war, a secretary of the treasury, and an attorney general. Today the presidential cabinet consists of 15 people.

The Constitution envisions the president working closely with Congress. It states that the president shall “from time to time give to the Congress Information of the State of the Union.” The president traditionally gives his State of the Union address in January. In practice, the executive branch of government proposes much of the legislation discussed by Congress.

Limits on the Executive

The president can veto legislation that has been passed by both houses. In this way, the executive acts as a check on the legislature. But the legislature can override the president’s veto if it has a two-thirds majority in both houses. Section 4 of Article II of the Constitution gives the legislature another important check on the power of the president. Congress can impeach the president. **Impeachment** is a process authorized by the Constitution to bring charges against the president and certain other officials of the federal government for misconduct while in office. The House of Representatives has the sole power to impeach. After impeachment, the Senate may hold a trial on the accusations. If the Senate convicts the president, it may remove him from office for “Treason, Bribery, or other high Crimes and Misdemeanors.”



◆ Today, the President has a cabinet of 15 members. Each cabinet member is the head of a government agency.

Did You KNOW?

- Only two presidents have been impeached: Andrew Johnson in 1868 and Bill Clinton in 1998. Neither of them was convicted or dismissed from office.
- In 2004, the president earned a salary of \$400,000 a year.
- The Secret Service uses an acronym to refer to the president of the United States: POTUS. The First Lady is referred to as FLOTUS.

Article III: The Judiciary

Article III of the Constitution establishes the judicial branch of government. The Supreme Court is the only court required by the Constitution. Congress creates all the other federal courts.

A LIMITED JUDICIARY

Alexander Hamilton wrote about the limits on the judiciary in Federalist Paper No. 78:

The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of society; and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment.

Powers of the Judiciary

The Constitution gives the Supreme Court the authority to hear cases that arise under the Constitution, federal laws, and treaties. The Supreme Court also hears appeals from all the state courts and the lower federal courts, but only if an issue of federal law needs to be decided. The Court can also hear cases in which there is a dispute among the states.

Chief Justice John Marshall's decision in *Marbury v. Madison* (1803) dramatically shaped the powers of the Supreme Court. Marshall stated that the Court had the power of **judicial review**. This is the power to declare that laws passed by Congress are inconsistent with the Constitution. The Court can declare such laws unconstitutional. If a law is unconstitutional, that law cannot be enforced.

The power of judicial review is not mentioned explicitly in the Constitution. But judicial review is absolutely necessary for our democratic government. Congress is given the power to make laws; Congress should not also decide whether the laws it makes are constitutional. Judicial review means that the judiciary, which has no power to make laws, has the final word on whether a law is consistent with the Constitution.

Limits on the Judiciary

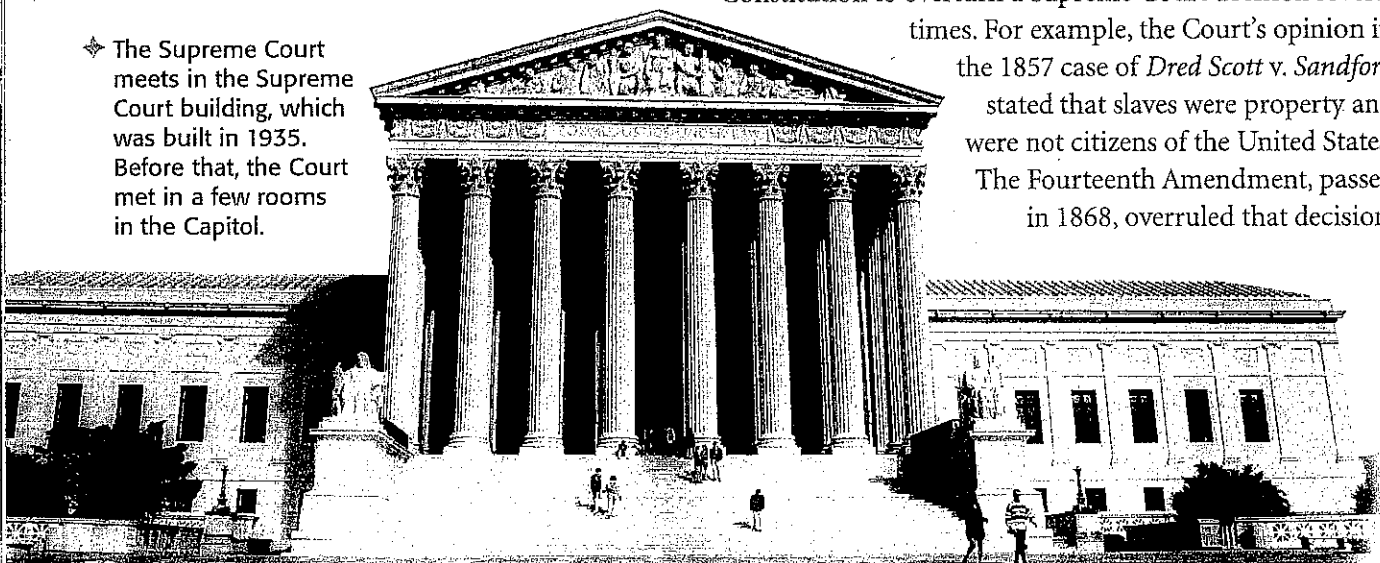
Obviously, the ability to strike down laws as being contrary to the Constitution gives the Court enormous power. But several things keep the judicial branch in check. For one thing, courts can only decide the cases that come before them. Judges have no power to act on their own.

Also, the Constitution states that judges "shall hold their Offices during good Behaviour." This means that, in effect, judges are appointed for life. But if a judge behaves badly, the Senate can impeach him or her and remove the judge from office. Only 13 federal judges have been impeached since 1789.

Another check on the judiciary is Congress's power to amend the Constitution. (See discussion of Article V.) Congress has amended the

Constitution to overturn a Supreme Court decision several times. For example, the Court's opinion in the 1857 case of *Dred Scott v. Sandford* stated that slaves were property and were not citizens of the United States. The Fourteenth Amendment, passed in 1868, overruled that decision.

◆ The Supreme Court meets in the Supreme Court building, which was built in 1935. Before that, the Court met in a few rooms in the Capitol.



Article IV: The States

Article IV describes

- the relationship between the federal government and the states
- the relationship among the states

Section 1 contains the “full faith and credit” clause. This is the clause that requires that every state recognize the laws and court decisions of every other state. For example, New York courts must recognize the decisions of courts in Texas or Iowa.

Section 2 contains the “privileges and immunities” clause. This clause means that a state may not discriminate against citizens of other states in favor of its own citizens. For example, imagine that two people commit a crime in Utah. One person is from Utah, and the other person is from California. The privileges and immunities clause means that the law and courts in Utah must treat the two people equally. Utah cannot treat the person from California more harshly than its own citizen just because that person is not from Utah.

Section 3 says that Congress can admit new states to the Union. Today this power may seem unimportant. But it was this clause that allowed the United States to grow from the 13 original states to today’s 50 states.



✦ This painting shows Betsy Ross sewing the first US flag. The original flag had only 13 stars, representing the 13 states. The modern flag has 50 stars to represent the 50 states.

Article V: Amendments

One of the problems that emerged with the Articles of Confederation was the fact that all 13 states needed to agree to an amendment. This system made it very difficult to amend the Articles. The Constitution’s method makes amending it a little easier. Amendments must be proposed by two-thirds of both houses. If an amendment is successfully proposed, then it must be approved by the legislatures of three-quarters of the states or by conventions in three-quarters of the states. Article V also states that the Constitution can be amended if a Convention is called by two-thirds of the state legislatures, and proposed amendments are later ratified by three-fourths of the state legislatures. This method of amendment has never been used.

Thousands of amendments have been suggested. Congress has only proposed 33 amendments. Only 27 amendments have been ratified by the states.

Article VI: Supremacy

Article VI provides that the Constitution, and the laws and treaties made under it, is the "supreme Law of the Land." This means that if there is a conflict between a federal law and a state law, only the federal law is valid. Even state constitutions are subordinate to federal law.

Article VII: Ratification

After months of debate and compromise at the Constitutional Convention, 38 of the delegates signed the new Constitution of the United States. But the Constitution was not in force until it was **ratified**. This means that the states had to agree to accept the Constitution. Article VII required that 9 states out of the existing 13 states had to ratify the Constitution before it could be adopted.

A convention was held in each state, at which delegates debated the Constitution and voted on ratification. Some people welcomed the new Constitution. They were known as **Federalists**. But many people were opposed to the Constitution because it gave such strong powers to the national government. They also feared that the proposed Constitution did not adequately safeguard their rights. People opposed to the Constitution were called **Antifederalists**.

The Antifederalist Papers

In New York, several essays were published attacking the new Constitution. These antifederalist essays were written by a number of different people. Often the authors wrote under false names, or **pseudonyms**. One author used the name Cato, another took the name Brutus, and another called himself the Federalist Farmer. Some of these essays were re-published in newspapers across the country.

The essays criticized the broad powers of the proposed government and the removal of power from the states. They criticized the lack of a Bill of Rights guaranteeing individual freedoms. The authors of these essays hoped to sway public opinion, and the opinion of the delegates to the state conventions, against the Constitution.

✦ A portrait of Alexander Hamilton, one of the strongest supporters of the new Constitution. Hamilton wrote about two-thirds of the essays in the *Federalist Papers*.



The Federalist Papers

John Jay, James Madison, and Alexander Hamilton decided to mount a counterattack. They used the pseudonym Publius. This pseudonym referred to Publius Valerius Publicola, a great defender of the ancient Roman Republic. In late 1787, Hamilton wrote the first of a series of essays defending the Constitution in New York newspapers. The authors made sure the essays were distributed in every state. Hamilton wrote the majority of the 85 Federalist essays over the next crucial months. These essays became known as the *Federalist Papers*. The essays pointed out the weaknesses of the Articles of Confederation, and made a case for a strong national government. Thomas Jefferson later called the *Federalist Papers* the "best commentary on the principles of government ever written." In the two centuries since they were published, the *Federalist Papers* have become valuable tools for judges in interpreting the Constitution.

Ratification

Delaware was the first state to ratify the new Constitution in December 1787. Pennsylvania and New Jersey also ratified the Constitution that month. Connecticut and Georgia ratified it in early 1788. But some powerful states, including Massachusetts, New York, and Virginia, withheld their support.

To win ratification in these states, the Federalists had to compromise. The Constitution did not contain any guarantees of individual rights, like the right to worship freely or the right to freedom of speech. The Federalists thought that such explicit protections were unnecessary.

But many citizens worried that their rights would not be protected unless the protections were in writing. The *Antifederalist Papers* played up their concerns. Eventually, some conventions ratified the Constitution on the condition that it be amended as soon as possible by a Bill of Rights. The Federalists agreed.

Massachusetts ratified the Constitution in a close vote in February 1788, Maryland ratified in April, and South Carolina ratified in May. On June 21, 1788, New Hampshire became the ninth state to ratify the document, and the Constitution was finally in force.

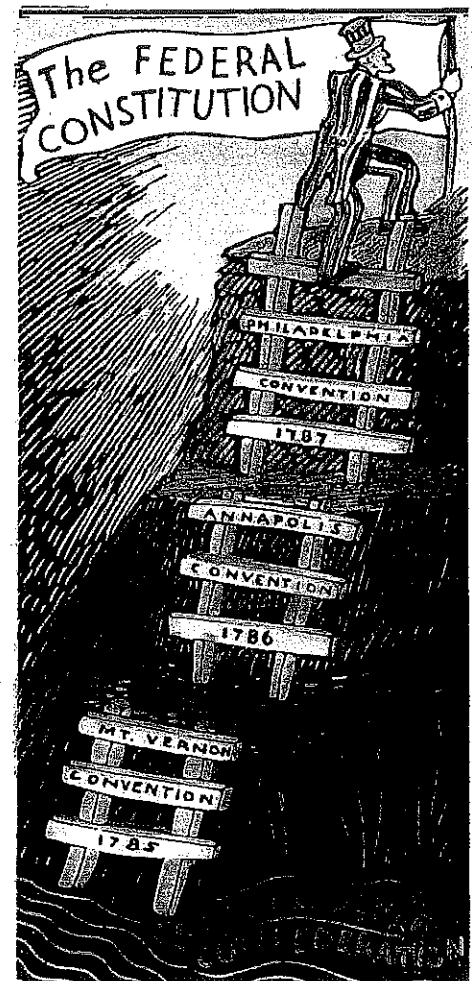
The two largest states, Virginia and New York, ratified the Constitution by close margins in June and July. North Carolina, which had initially voted against ratification, ratified the Constitution in November 1789. Rhode Island was the hold out state: it finally ratified the Constitution almost three years after it had been signed, in May of 1790.

Did You KNOW?

In 1804, Aaron Burr, the vice president of the United States, shot Alexander Hamilton in a duel. Hamilton died of his wounds the next day. He was 49.

✦ This cartoon, from the mid-20th century, shows Uncle Sam climbing a ladder that leads from the Articles of Confederation to the U.S. Constitution.

STEPS IN THE ESTABLISHMENT OF A MORE STABLE GOVERNMENT



IMPORTANT TERMS *Write out - Term: definition*

1 Match the terms in the right column with the definition in the left column.

- | | |
|--|--------------------------|
| A. The body of government that makes laws | Judiciary |
| B. The body of government that carries out the laws | House of Representatives |
| C. The body of government that interprets the laws to resolve disputes | Antifederalists |
| D. Another name for the lower house | Legislature |
| E. Another name for the upper house | Executive |
| F. The name given to people in favor of the Constitution | Federalists |
| G. The name given to people who were not in favor of the Constitution | Senate |

REVIEWING FACTS

Use complete sentences to answer the following questions.

- 2 List three powers of Congress and three checks on the power of Congress.
- 3 List three powers of the executive and two checks on the power of the executive.
- 4 Explain the role of the federal judiciary, and list three checks on the power of the judiciary.

REVIEWING MAIN IDEAS

Use complete sentences to answer the following questions.

- 5 What compromise did the Federalists make in order to ensure that the Constitution was ratified in all the states? What made them take this step?
- 6 Do you think there are disadvantages to the electoral system? Explain your answer.

UNDERSTANDING CONCEPTS

- 7 The Constitution was created by the founding fathers. They were white men, and most of them were landowners who were active in politics. These citizens had a good idea of what their position under the Constitution would be.

The twentieth century philosopher John Rawls imagined a clever way to design a fair society. He suggested that people should design a society before they know what their position in it will be. The designers would work under a "veil of ignorance." That way, the designers would try to make the system fair for everyone.

Now, try a thought experiment. Imagine the founding fathers wrote the Constitution under a "veil of ignorance"—not knowing what their own position would be in the new system. In the new system, they could be rich or poor, black or white, male or female. In what ways, if any, do you think the Constitution might have been different?