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Federalism and the U.S. Constitution

Chapter 4

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In this chapter we will learn about

- What institutions the founders created to perform the three main tasks of governing: making the laws, executing the laws, and adjudicating the laws
- The constitutional relationship among those institutions
- How the founders resolved constitutionally the issue of relations between regional units (states, in our case) and national government
- The flexibility the founders built into the Constitution to change with the times

The three branches of government

- All governments must have the power to
 - Legislate, or make laws
 - Administer, or execute laws
 - Adjudicate, or interpret laws
- Because of our separation of powers, we have three branches of government

The legislative branch

- Legislature: the body of government that makes laws
 - Bicameral: legislature with two chambers
- Article I sets out the framework for Congress
- Representation over “pure democracy”
 - Republic: a government in which decisions are made through representatives of the people
- Founders chose bicameral over unicameral legislature, because it provided representation, checks against abuse of power

The executive branch

- Executive: the branch of government responsible for putting laws into effect
- Concerns of the founders
 - Executive could provide stability
 - Fear of tyranny
 - Resolved with single executive: the president
- What does the Constitution say?
 - Chosen by electoral college
 - Article II: length of term, executive powers
- Possible alternative: parliamentary system



The judicial branch

- Judicial power: the power to interpret laws and judge whether a law has been broken
- The “least dangerous” branch: neither purse nor sword
- Judicial review: power of the Supreme Court to rule on the constitutionality of laws

The judicial branch, cont'd.

- Article III: sets up Supreme Court but little else
- Possible alternative: legislative supremacy?
 - British model of no constitution

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Separation of powers and checks and balances

- Separation of powers: the institutional arrangement that assigns judicial, executive, and legislative powers to different persons or groups, thereby limiting the powers of each
- Checks and balances: the principle that allows each branch of government to exercise some form of control over the others

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Separation of powers and checks and balances, cont'd.

- Republican remedies
 - Founders recognized that branches would seek power at the expense of other branches
 - Constitution separates powers and allows each branch to check the other

Separation of powers, cont'd.

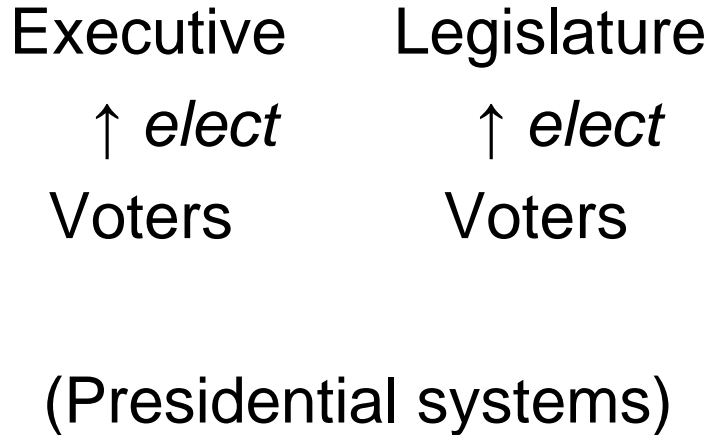
- Article I sets up legislature
- Article II sets up executive
- Article III sets up judiciary

- No branch can act independently of other branches

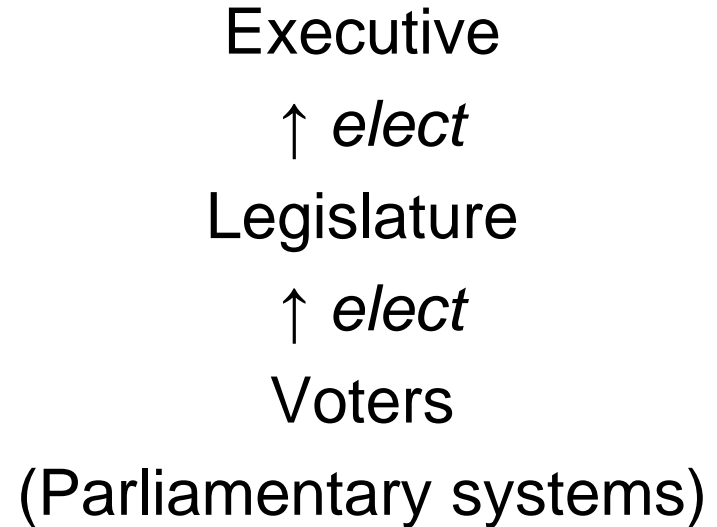
- Fusion of powers: an alternative to separation of powers, combining or blending branches of government

Separation of powers vs. fusion of powers

Separation of powers



Fusion of powers



Federalism

- Enumerated powers of Congress: congressional powers specifically named in the Constitution (Article I, Section 8)
- Necessary and proper clause: constitutional authorization for Congress to make any law required to carry out its powers; also known as the elastic clause

Federalism, cont'd.

- Supremacy clause: constitutional declaration (Article VI) that the Constitution and laws made under its provisions are the supreme law of the land
- Concurrent powers: powers shared by the federal and state governments
- Where powers begin and end is confusing and controversial

Two views of federalism

- Dual federalism: national and state governments responsible for separate policy areas
 - “Layer cake” model of federalism
 - Model prior to the New Deal era (1930s)
- Cooperative federalism: national and state governments share responsibilities for most domestic policy areas
 - “Marble cake” model of federalism
 - Model after 1930s

Possible alternatives to federalism

- Unitary system: government in which all power is centralized
- Confederal system: government in which local units hold all the power

What difference does federalism make?

- Effects on state politics
 - States compete for citizens and business
- Effects on citizens
 - Citizen access to different levels of government
 - Different levels check each other: Civil Rights Act (1964)
- Increased flexibility
 - Experimentation with policy
 - Citizens may face different laws, treatment among states

The changing balance: federalism over time

- Vague definition of powers
- Two trends:
 - Government is growing at federal and state levels
 - Gradual strengthening of federal government at the expense of states

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Reasons for federal government growth

- John Marshall: strengthened the constitutional powers of the federal government
- Civil War: national domination of the states
- The New Deal: national programs stimulated economy
- Civil Rights: federal government acted against states

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The politics of contemporary federalism

- Devolution: the transfer of powers and responsibilities from the federal government to the states
- Congressional strategies for influencing state policy (Congress members prefer to control policy because they benefit politically)

The politics of contemporary federalism, cont'd.

- Congress influences state policy by
 - No national government influence
 - Categorical grants
 - Block grants
 - Unfunded mandates
- Devolution has moved forward, but its fate is unclear because issues favor federal government
 - Terrorism
 - Social issues

Amendability

- The provision for the Constitution to be changed
- Constitution is infrequently changed by amendment but is altered by Supreme Court interpretation

Amendability, cont'd.

- Amending the Constitution requires two-thirds vote in Congress and three-quarters of state legislatures or conventions agreeing
- Possible alternatives: making the Constitution easier or harder to amend (unlikely; Constitution has survived because it is neither too hard nor too easy to change)

The citizens and the Constitution

- Constitution is not a participatory document
- Federal system is remote to many people
- Federalism enhances participation, because
 - Participation can occur at federal and state levels
 - Increased political stability compared with Articles of Confederation