

# The Constitution

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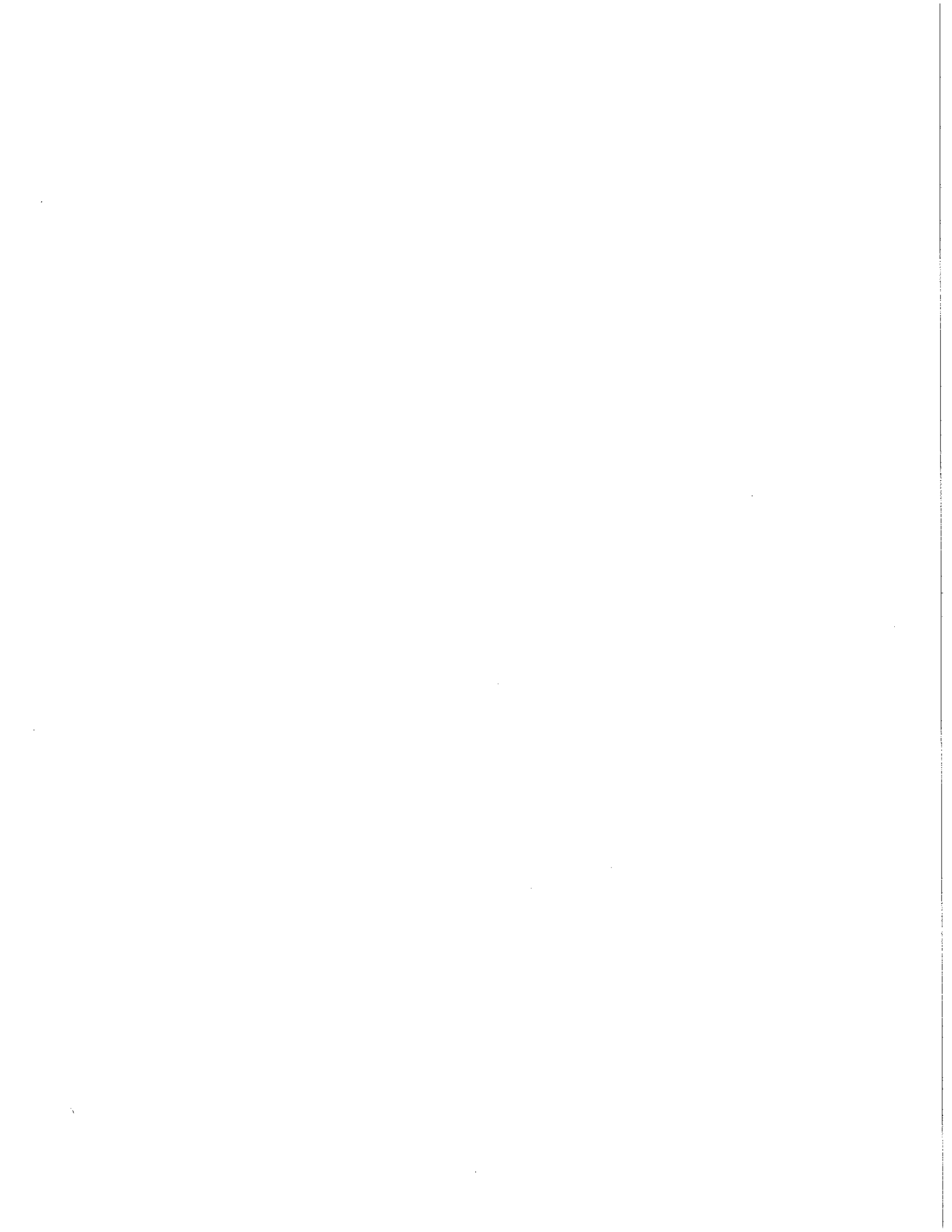
## CONTEMPORARY CONNECTION

After the death of Supreme Court Justice Anton Scalia in 2016, the Senate Majority Leader decided that there would not be any confirmation vote on President Obama's nominee, Federal Appeals Court Justice Merrick Garland. This decision illustrated the conflict between the President and the Senate over the principle of advise and consent. This chapter explores the Constitution, its principles, its power sharing among the three branches of government, and the manner in which it has been interpreted and evolved since its ratification.



After the U.S. Constitution was ratified in 1789, the future success of this young new republic hung in the balance. After struggling with the Articles of Confederation, the United States found in the Constitution a new opportunity to demonstrate that its form of limited government could work. By 1791 an additional 10 amendments, the Bill of Rights, were ratified, fulfilling a promise made to the Anti-Federalists at the state ratifying conventions.

This chapter also explores in great detail the Constitution, the supreme law of the land. It will explain how this document is considered the key instrument of government and how it has evolved in its more than 200-year history. It is a practical document as well as a functional document. Each branch of government can lay claim to certain powers unique to its own function. The interrelationship among the branches is also established in the principle of checks and balances. The powers of the national government are defined. State governments are given legitimacy, and the delicate relationship between the states and federal government, known as federalism, is established. The rights of the citizens are clearly outlined in the Bill of Rights as is the ability of the people to exercise the right to vote. Limits are placed on both the federal government and the state governments.



If you look at the Constitution as a road map and drive through its avenues, you will discover that it is laid out in a manner that is clear, concise, and logical. It provides ample opportunity for the driver to take different routes and explore the heart and soul of the basis of government for the United States.

**The Constitution has been called an enduring and evolving document because it has stood the test of time.**

## LONGEVITY

Looking at the Constitution, you should be able to picture a document that is laid out simply and directly. From the clarity of purpose in the Preamble, to the organization and structure of the three branches of government, to the amending process, the Constitution provides for orderly and effective government.

The Preamble, starting with "We the People," defines the objectives of the Constitution:

- to form a more perfect union
- to establish justice
- to ensure domestic tranquility
- to provide for the common defense
- to promote the general welfare
- to secure the blessings of liberty

The fact that a reference is made to the longevity of the Constitution to future generations (posterity) indicates that the authors were not looking to make major revisions. They certainly hoped that the document would adapt to changing times.

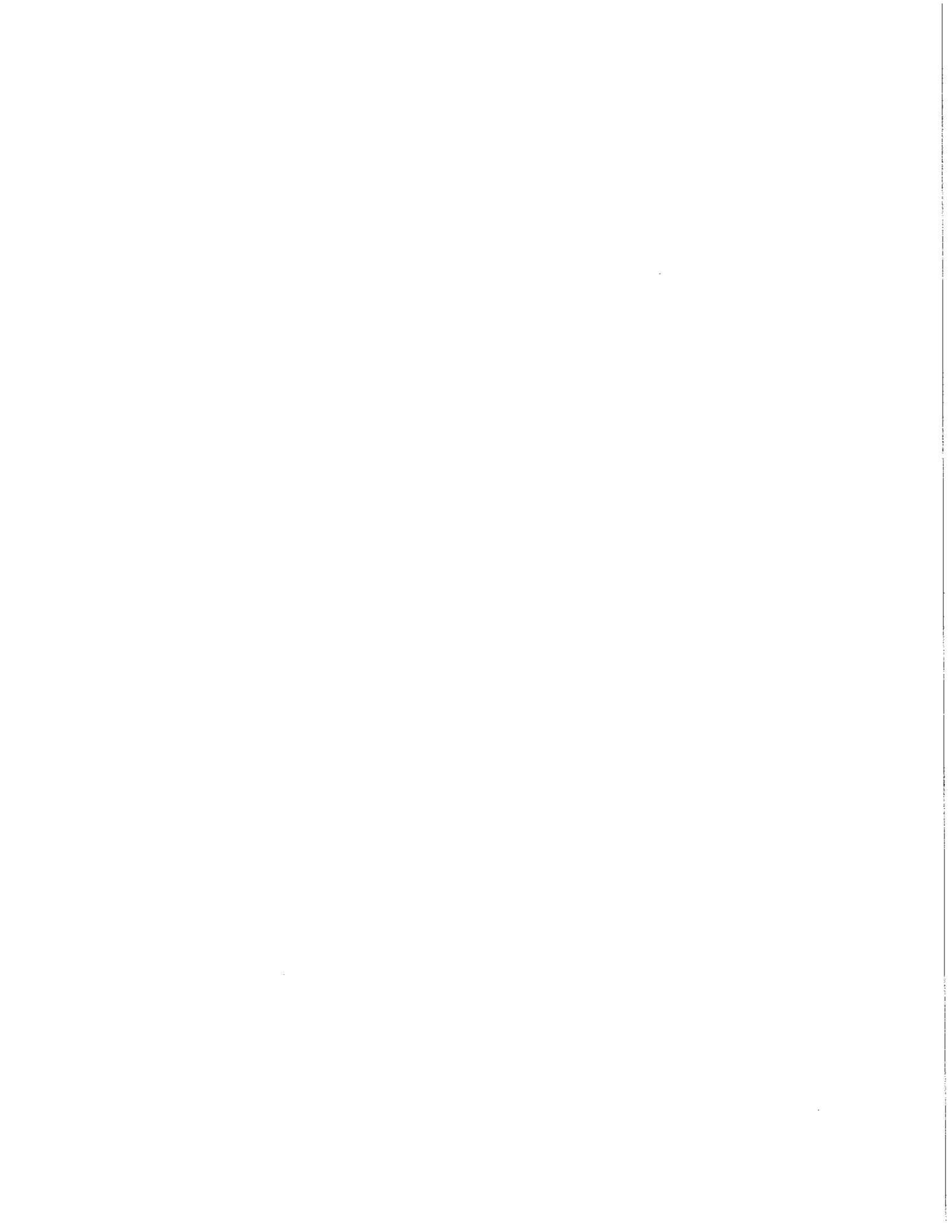
The major factors creating longevity of the Constitution include

- the separation of powers of each branch of government
- checks and balances including a recognition that a simple majority vote may not be enough of a check
- a built-in elastic clause as part of Congress's power
- a reserved power clause giving states power not delegated to the national government
- rights guaranteed to the citizens
- precedents and traditions creating an unwritten constitution
- judicial review growing out of an interpretation of the power of the Supreme Court
- an amending process, which is flexible enough to allow for change even though it involves more than a majority vote
- the inherent powers of the president

## BRANCHES OF GOVERNMENT

**The organization of the Constitution separates the formal institutions of government.**

The first three articles of the Constitution provide the basis of the organization of the government. Article I broadly defines the legislative powers of Congress. It splits the responsibility between a bicameral (two-house) legislature. The House of Representatives is defined first as the body most directly responsible to the people. The Senate, its makeup based on equal representation, joins in a partnership with the House in passing laws. The rules of impeachment of government officials are also outlined in Article I. It is interesting to note that there are subtle differences (which will be discussed later in this chapter) between the two bodies. The public's view of Congress has continued to deteriorate since the 1970s. In a poll conducted in 2015, 73 percent of the people questioned were critical of the Congress. Yet in the 2014 midterm election, a majority of people indicated that they would vote for their incumbent. Another related issue dealing with the organization of Congress is term limitations. In 1995 the Supreme Court in the case of *Thornton v Arkansas* ruled



that state-imposed term limits were unconstitutional, indicating that the only way congressional terms could be altered was through an amendment.

## Powers of the Chief Executive

Article II determines the nature of the chief executive, giving responsibility to a president and vice president. Even though powers are not as specifically defined as in the legislative branch, the president's major responsibility is to administer and execute the public policies of the United States. The inherent power of the president, which includes those powers that the president exercises that grow out of the existence of the national government, expands the power of the presidency. By signing congressional legislation into law, the president assumes the responsibility of enforcing the laws of the land. Reference is also made to the president's authority in the area of foreign policy. This article also outlines the mechanics of the electoral college and determines its procedures in the case where a candidate does not receive a majority of the electoral votes. The article refers to executive departments, though it does not specifically mention the president's cabinet or the federal bureaucracy.

## Judicial Branch

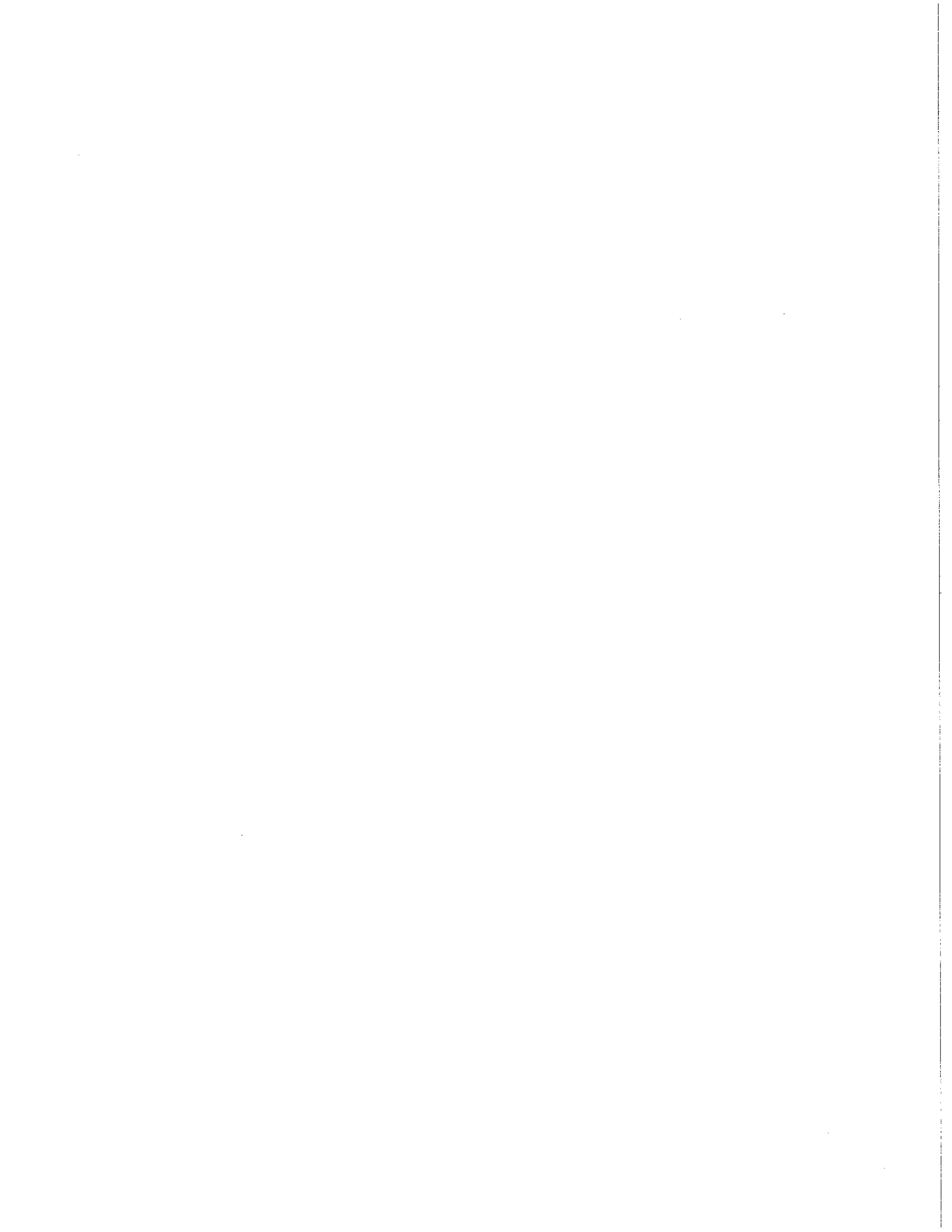
Article III outlines the nature of the judicial branch. It is interesting to note that unlike the first two articles, this article is the most vague regarding the qualifications of its members. It refers to one Supreme Court and the manner in which cases get there. But it does not give the Supreme Court the broad authority it has assumed. This authority of judicial review was given to the Court in the landmark case of *Marbury v Madison* (1803). The scope of the court system is set in Article III, and the jurisdiction of the court system is defined. This article also defines treason, and provides for a range of penalties, including death, if a person is convicted of the crime. The only time that has happened was when Ethel and Julius Rosenberg were convicted of giving the Soviet Union information concerning the development of the atom bomb. They were tried and convicted of treason and executed after the Supreme Court denied their appeal.

By separating the three branches of government, it becomes apparent that the drafters of the Constitution were concerned with the delicate balance of power that would exist among the three branches of government. The Constitution neatly lays out the various powers of each branch of government without any reference to which of the branches should be the lead player.

Specific powers and qualifications granted to Congress guarantee the legislative process as well as create distinctive differences between the two houses of Congress that make the House more representative than the Senate.

## LEGISLATIVE POWERS

The two houses of Congress created as a result of the 1787 Connecticut Compromise resulted in the establishment of a House of Representatives and a Senate. The House of Representatives is made up of 435 members based on the census taken every 10 years. According to the 2010 census, there is one House seat for approximately every 710,767 people in each state. It also includes "shadow" representatives from the District of Columbia, Guam, Puerto Rico, The Virgin Islands, and American Samoa. Each state has a minimum of two senators and one representative. As a result of the Supreme Court decision *Baker v Carr*, the principle of "one man, one vote" was established. This decision created guidelines for drawing up congressional districts and guaranteed a more equitable system of representation to the citizens of each state. The Supreme Court has been asked to review some districts in the South drawn up to ensure racial representation. In a highly controversial decision, the Court ruled in 1995 that a racially apportioned district in Georgia set up



to comply with the Voting Rights Act of 1965 was unconstitutional based on the equal protection clause of the Fourteenth Amendment. The 2014 Supreme Court voting rights decision left the door open for these kinds of districts to be created. In other situations, in order to rectify congressional boundaries, some state legislatures based on political affiliation created districts that favored the political party in power. This action became known as gerrymandering.

## House of Representatives

The House of Representatives is considered more representative than the Senate because of its size, term of office, and qualifications for office. The term of office for a representative is two years compared to six years for a senator. A person serving in the House has to be at least 25 years old, an American citizen for seven years, and an inhabitant of the state that the congressman represents. A senator, on the other hand, must be at least 30 years old, nine years a citizen of the United States, and a resident of the state that the senator represents. After states have passed term limitations restricting the number of consecutive terms a representative can serve, in 1995, the Supreme Court ruled that these laws were unconstitutional.

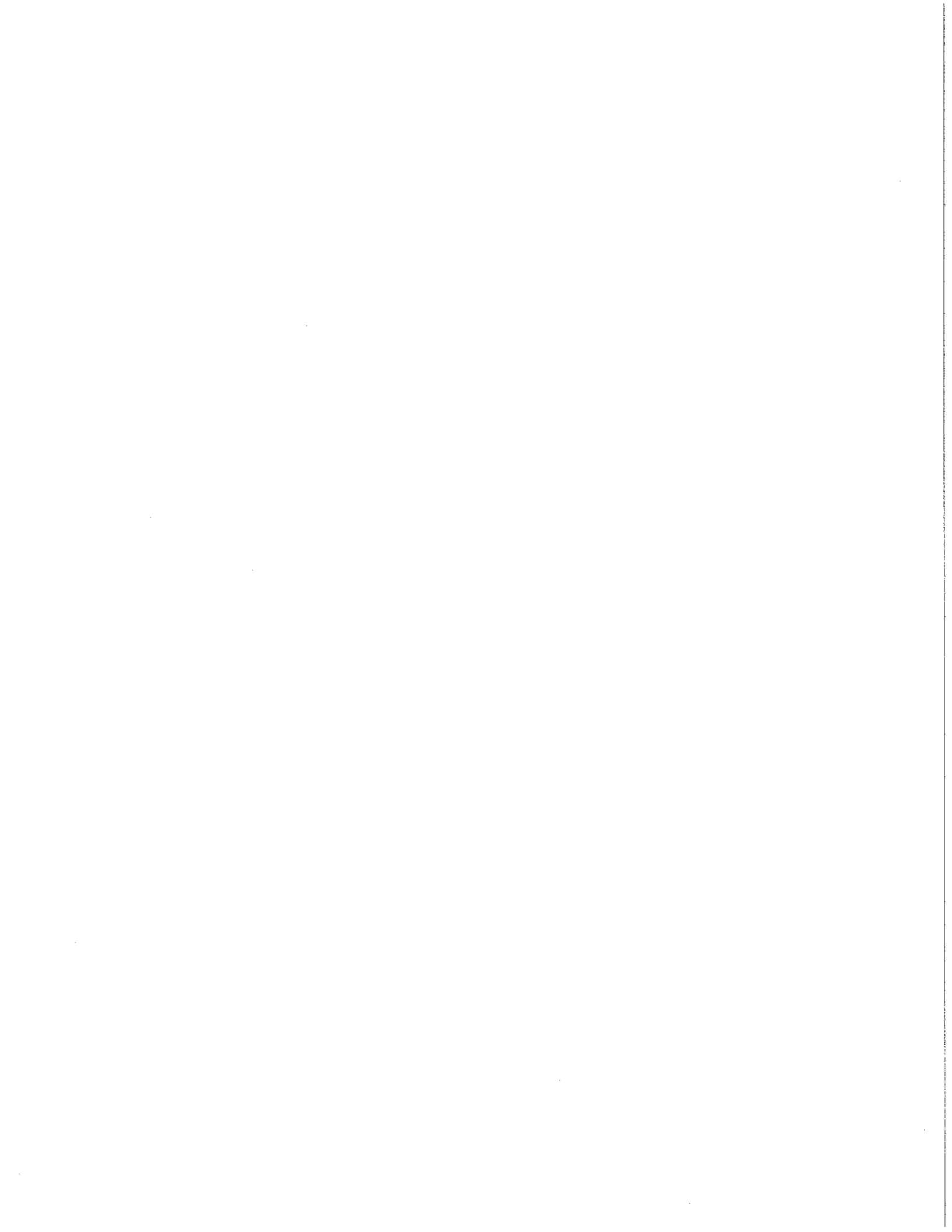
When you look at the specific power of each house, you also can see how the House is "closer to the people." Besides the fact that senators were originally appointed by state legislatures, the House of Representatives is given the responsibility of starting all revenue bills and initiating the process of impeachment. During the impeachment hearings of Richard Nixon and Bill Clinton, the House Judiciary Committee passed impeachment charges. Nixon resigned before the Senate could try him, whereas Clinton was acquitted by the Senate. The Senate must also pass revenue bills and can certainly pass a different version, but it must wait for the House to pass its version of the bill. The Senate tries impeachment cases and, in the only two cases involving a president, after voting on articles of impeachment, failed to convict Andrew Johnson by one vote and acquitted Bill Clinton. The other major difference in the allocation of power between the two bodies is that the Senate has the responsibility of approving presidential appointments and treaties.

## Congressional Powers

The common powers of the Congress are listed in Article I Section 8. These are the enumerated or delegated powers of Congress. They include the power to

- collect taxes, pay debts, and provide for the common defense and general welfare
- borrow money
- regulate commerce among the states (interstate commerce) and with foreign countries
- establish uniform laws dealing with immigration and naturalization and bankruptcies
- coin money
- make laws regarding the punishment for counterfeiting
- establish post offices
- make copyright laws
- establish federal courts in addition to the Supreme Court
- define and punish piracy
- declare war
- raise and support armies and a navy
- create a national guard

In this same section, implied powers are defined in the "necessary and proper" clause, which states that Congress has the power to "make all laws necessary and proper for carrying into execution the foregoing powers. . . ." This clause is also known as the elastic clause and is a major and





significant power of Congress, granting the Congress the ability to interpret its lawmaking ability in a broad manner. Even though strict interpreters of the Constitution reject the extent of its elasticity, Congress has demonstrated an ability to change with the times. From the creation of the National Bank in the 1800s to the passage of the Brady Bill (establishing a waiting period for handgun purchase), congressional legislation, more often than not, reflects the tenor of the times.

Powers denied to Congress are the denial of the writ of habeas corpus, giving appeal protection to the accused; the passage of bill of attainder laws, which proscribe penalties without due process; and the passage of ex post facto laws, which take effect after the act takes place. In addition, Congress cannot pass export taxes or grant titles of nobility to its citizens.

The issue of how much power the Congress exerts in comparison to the other branches and whether it becomes an imperial Congress is the theme of Chapter 7, The Congress.

## **EXECUTIVE POWERS**

Because of the unique qualities of the presidency, the qualifications for office are the strictest among the three branches. The president must be a natural-born citizen (unlike senators and representatives, who can be naturalized citizens), at least 35 years old, and a resident of the United States for at least 14 years. The source of power of the president comes from the language in Article II Section 1, "The executive power shall be vested in a president of the United States of America." The term of office is four years, limited by constitutional amendment to no more than two terms.

The president becomes a central and unique player in government as a result of the manner in which the definition of chief executive is stated. The only specific powers and duties listed in Article II Sections 2 and 3 include

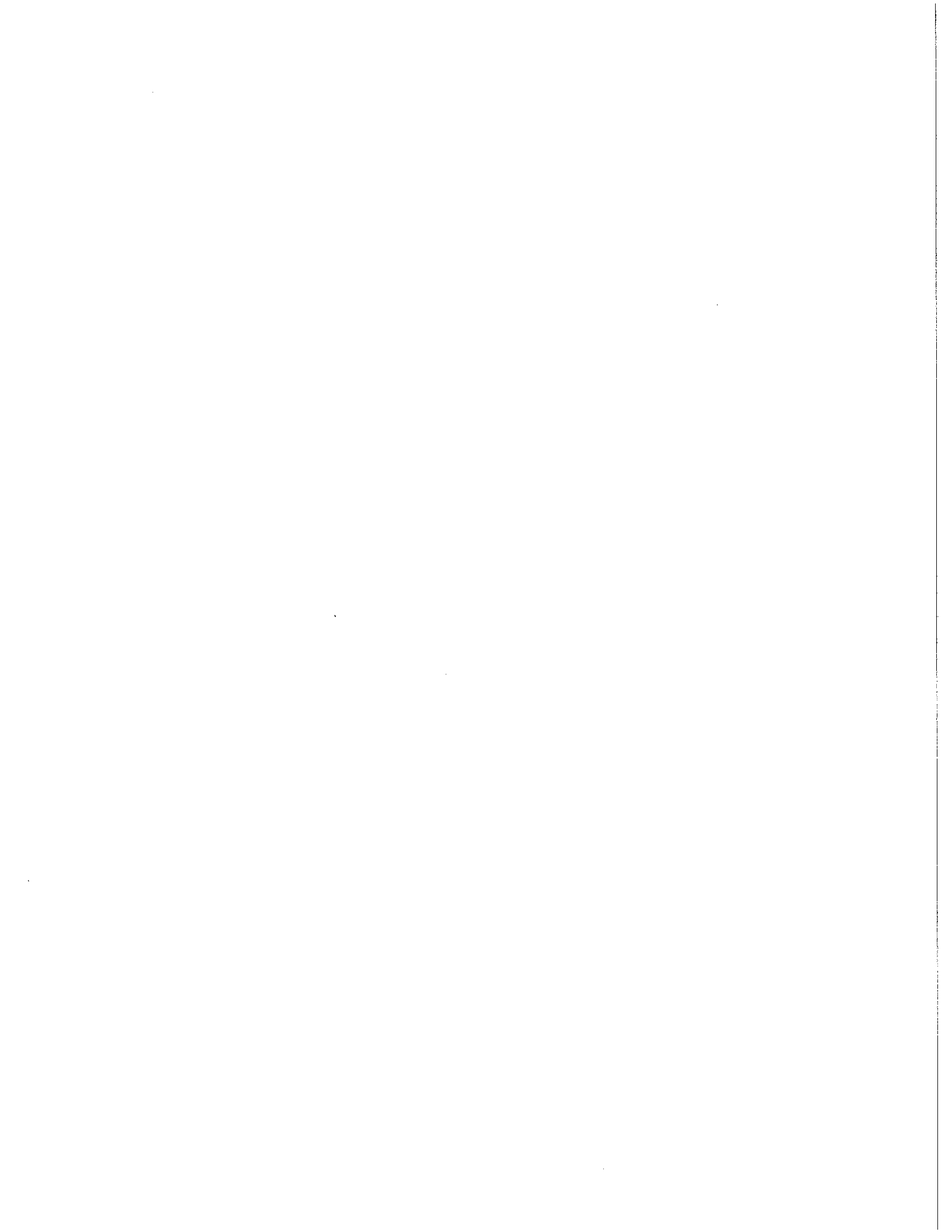
- the power to act as commander in chief of the armed forces
- the ability to obtain information from members of the executive branch
- the power to grant pardons
- the power to make treaties with the consent of the Senate
- the power to appoint ambassadors, justices, and other officials with the advice and consent of the Senate
- the power to sign legislation or veto legislation
- the duty to give Congress a State of the Union report
- the power to call special sessions of the Congress
- the inherent power of the president

Even though there are far fewer powers and responsibilities listed for the president than for the Congress, because the president can interpret the role of the executive in a broad manner, the power of the president in modern times has increased more than the other branches. From the administration of Franklin Roosevelt and the implementation of his New Deal to the new world order of George Bush, the power of the president has been on the rise. As head of state, the visibility of the president in ceremonial areas far exceeds that of a congressman. The president is also considered the titular head of the political party in power and thus wields a great deal of power in relation to party appointments.

### **Executive Actions**

Executive actions by the president are defined as policy directives that are ordered by the president without any congressional authorization. They differ from executive orders, which are policy directives aimed at federal agencies. Executive orders are legally binding and can be reversed by the Congress and the courts. Executive actions change existing federal policies that are under the

**Specific powers and qualifications granted to the executive department guarantee and define the role of the president as a central player in government.**



jurisdiction of the federal government. President Obama issued a number of highly controversial executive actions during his presidency. The most controversial actions related to gun control and immigration.

## **The Vice President**

The vice president's responsibility is also listed in Article II. The only stated responsibility of the vice president is to preside over the Senate and be the deciding vote if there is a tie vote. This occurred in President Clinton's first administration when Vice President Al Gore cast the decisive vote to pass the president's budget proposal. It was a key piece of legislation for the new president and set the course of his economic program. The vice president is also next in line to succeed the president in case of death and, as a result of the Twenty-Fifth Amendment, can take over the presidency if the president is disabled.

## **The Electoral College**

Article II also outlines the role of the electoral college, even though it does not use that term, in the election of the president. Simply stated, the electoral college consists of presidential electors in each state. The number of electors is based on the state's population. The states with the greatest population have the most electoral votes. When the voter casts a vote for president, in reality the vote goes to one of the presidential electors designated by the candidate in that state. The number of electors for each state equals the number of senators and representatives that state has in Congress. Thus the number can change based on the census. The candidate who receives the most votes receives all the electoral votes in that state. The candidate with a majority of the electoral votes is elected to office. The electors gather in Washington, D.C., in December and cast their ballots based on the results of the November election. If no candidate receives a majority of the electoral votes, the election of president is determined by the House of Representatives. Specific cases of how the electoral college affected presidential elections will be discussed in Chapter 12, Nominations, Campaigns, and Elections.

More and more attention is paid to the president by the media and the public. Frequent opinion polls track the job approval of the president. The president's personal and public life has been placed under scrutiny. Presidential candidates like Gary Hart and sitting presidents like Richard Nixon, Ronald Reagan, and Bill Clinton have been criticized for personal as well as presidential acts. This microscopic view of the presidency, according to some political scientists, has weakened the institution.

## **JUDICIAL POWERS**

Unlike the legislative and executive departments, the judiciary has no specific qualifications for office. The Constitution in Article III states that judges shall "hold their offices during good behavior." The Supreme Court is the only court established by the Constitution. Lower federal courts are established by the Congress. Even the size of the Supreme Court is not defined. It has remained at nine sitting justices in modern times, although the number has been as low as five. Franklin Roosevelt attempted to pack the Court in 1937 after the Court ruled a number of his New Deal acts unconstitutional. Congress rejected the attempt. Terms of office for Supreme Court justices, by extension of the description of service, is life after appointment. Typically, Supreme Court justices come from other federal judgeships. The appointment process has become more and more difficult as a result of close questioning by the Senate Judiciary Committee. Appointments by Richard Nixon were turned down. One of the most publicized confirmation hearings took place when

**Specific powers and responsibilities granted to the judicial department guarantee and define the role of the courts.**



George Bush sent Clarence Thomas's name to the Senate and he was accused by Oklahoma law professor Anita Hill of sexual harassment. In addition, nominees are also questioned on their attitudes regarding potential issues the Court may have to rule on, such as abortion. Nominees must tread a very thin line during this process and must not be too specific. They must avoid creating a conflict that would arise if they rule on a case they have already spoken about.

The major power given to the judicial branch is defined as "the judicial power (which) shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made. . . ." The real power, that of judicial review, has grown in importance throughout the history of the Court. Specific cases and the role of the Court in American life will be discussed in Chapter 9, The Judiciary. The Constitution describes cases through original jurisdiction that the Court can hear directly. The vast majority of cases heard in the Supreme Court are brought on appeal from state and federal courts. This is called appellate jurisdiction. Congressional law as well as presidential actions have also been taken up by the Supreme Court.

It is interesting to note that of the three branches of government, the Supreme Court has no direct responsibility or accountability to the voters. Sitting justices, once confirmed, decide on cases based on their own interpretation of the Constitution. The impact of the Supreme Court on policymaking has increased in modern times. Many Court experts point to the landmark decision of *Brown v Board of Education* (1954) as a turning point in the history of the Court.

## BALANCE OF POWER

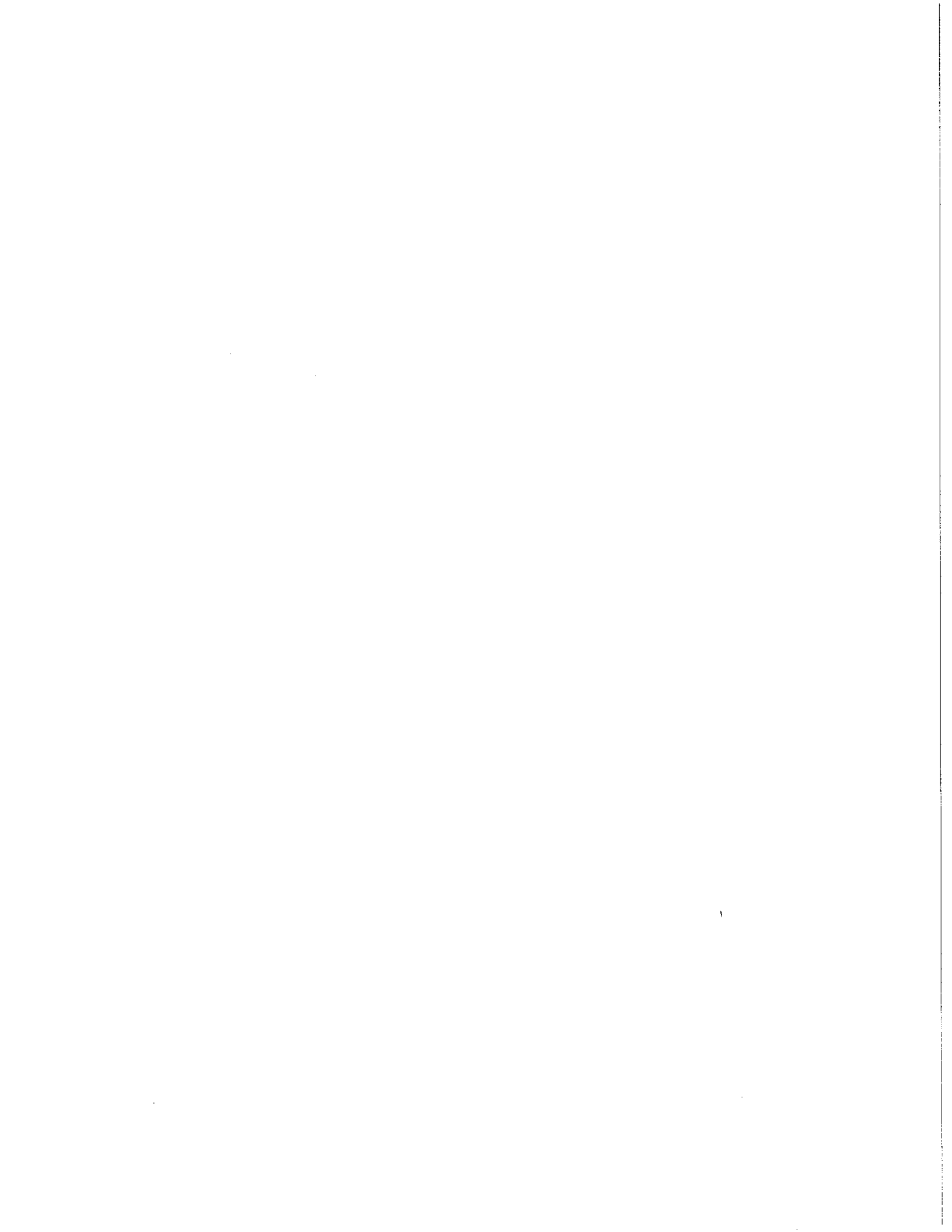
Based upon the writings of Montesquieu in *The Spirit of Natural Laws* and James Madison in Federalist No. 47, the concept of checks and balances became a central feature in our government. As Madison stated, "It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers."

Some specific examples of how each branch of government has used its power to check another branch may be useful to illustrate the importance of this feature.

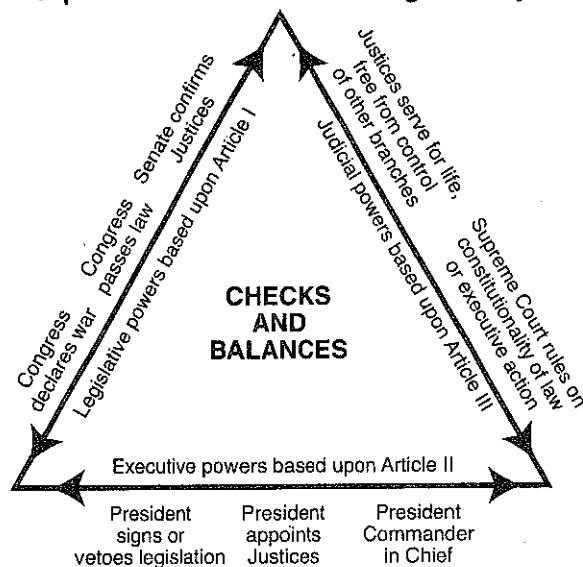
- President Barack Obama has said he would use his veto power if the Republican Congress voted to repeal the Affordable Care Act.
- The Senate changed its rules to increase the number of presidential appointments that required Senate confirmation.
- In 2015, the Supreme Court ruled that Gay Marriage was constitutional opening the door for marriage equality.
- The Congress did not approve a federal budget resulting in a government shutdown in 2013.

As of 2017, there have been more than 2,500 presidential vetoes of congressional bills. Congress overrode more than 100 of them. The Supreme Court has found more than 100 acts of Congress unconstitutional. The Senate has refused to confirm 27 nominees to the Supreme Court and nine cabinet members. Other appointees have withdrawn as a result of sure Senate opposition. There have been several cases of congressional impeachment of federal judges. One way the president can get around Senate opposition to an appointment is through a recess appointment, a temporary appointment of the president's choice made during a congressional recess. This temporary appointment can serve for only one year, at the end of which time the president must resubmit the nominee for Senate confirmation. The Supreme Court ruled that many of the appointments were unconstitutional.

**As a result of the separate powers of the institutions of government, a delicate balance of power exists among the three branches.**



## Separation of Powers: The Triangle Theory



The critics of checks and balances point to the potential of a constitutional crisis developing if one branch attempts to challenge the authority of another. For instance, if the president as commander in chief deploys troops in a country for an extended period of time and ignores the provisions of the War Powers Act, an act of Congress that limits presidential authority to send armed forces to another country, there is a good possibility that an unresolvable conflict between the executive and legislative branches could occur. Typically, the Supreme Court does not get involved in adjudicating those kinds of conflicts. In fact, Congress has challenged the president's authority in such foreign policy conflicts in Somalia and Bosnia but has stopped short of placing restrictions on his authority.

Probably the most significant feature of checks and balances is that it consistently proves that our government is limited. Even though many political scientists point to the power of the presidency, even our most dominant presidents had to deal with the interests and concerns of the legislature and judiciary. Other features of our government and political system that have an impact on the size and function of the presidency include

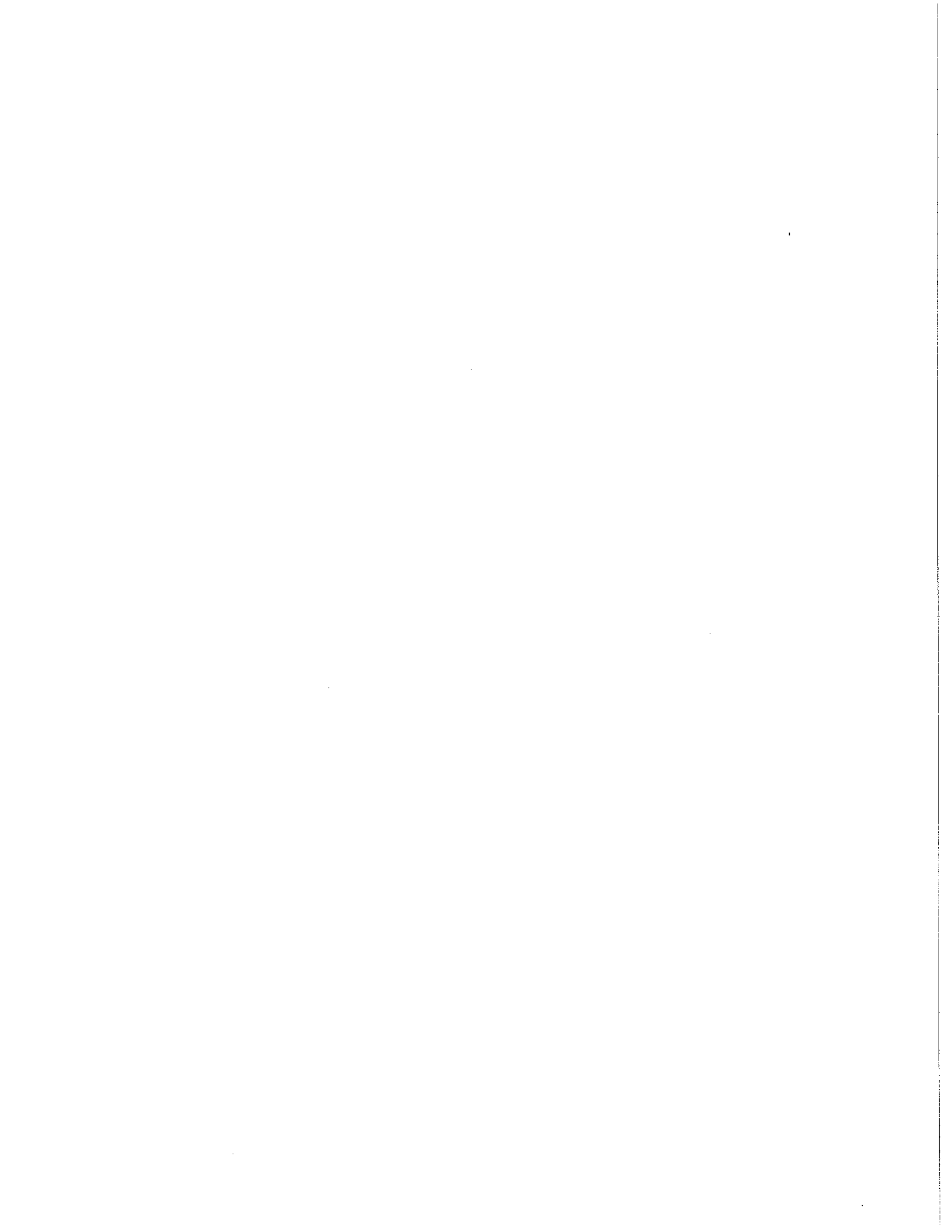
- the role of political parties
- the growth of the federal bureaucracy
- the development and expansion of the information superhighway and the role of media, which puts a great deal of pressure on elected officials
- the emergence of the United States as the last superpower from the cold war, which places a tremendous responsibility on our country's leaders, forcing them to work together to solve major foreign policy problems

## FEDERALISM

**The organization of the Constitution defines the relationship between the states and the federal government.**

Besides establishing a balance of power among the three branches of government, the Constitution also maps out the relationship between the federal government and the states in two articles and one amendment.

In Article IV, the term "full faith and credit" is used to describe the mutual respect and legality of laws, public records, and judicial decisions made by states. In effect, if Nevada has laws establishing rules for marriage and divorce, New York must recognize those laws as valid. Congress





passed the Defense of Marriage Act (DOMA), and President Clinton signed it into law in 1996. This law gave states the authority not to recognize gay marriages performed in other states, and it also denied gays who were legally married all the federal benefits given to other married couples. This law was challenged and The Supreme Court ruled in the case of *Windsor v United States* that the section of the Defense of Marriage Act that denied federal benefits to legally married gay couples was unconstitutional, thus enabling legally married gay couples to receive over 1,000 federal benefits. However, states that did not recognize gay marriages were still able to do so though if a legally married gay couple moved to that state the couple would still receive federal benefits. In the case that state laws do conflict with each other, the law within each state is recognized as legal for that state. By extension, Section 2 recognizes that "the citizens of each state shall be entitled to all the privileges and immunities" of citizens in all the states. This provision is significant because it guarantees that the rights of a citizen in one state will be respected by other states. The phrase "privileges and immunities" becomes a significant phrase in the Fourteenth Amendment where states are told they cannot abridge the privileges and immunities of its citizens. States also recognize the legitimate claim to its fugitives through extradition. Finally, in Article IV Section 4, the United States guarantees every state a "republican form of government." The use of the word *republican* is important. It suggests that every state must establish a limited representative government. It also guarantees that the United States will protect every state from outside attacks or internal strife.

## State Government

Perhaps the most significant statement that defines the relationship of the federal government to the states is found in Article VI. The supremacy clause states that "the Constitution, and the laws of the United States . . . shall be the supreme law of the land." In effect this clause tells the states that they cannot pass laws or pursue actions that come into conflict with federal actions. It also refers to all state officials pledging their allegiance to the Constitution. The court case *McCulloch v Maryland* in 1819 established this precedent when Maryland was told it could not tax the National Bank.

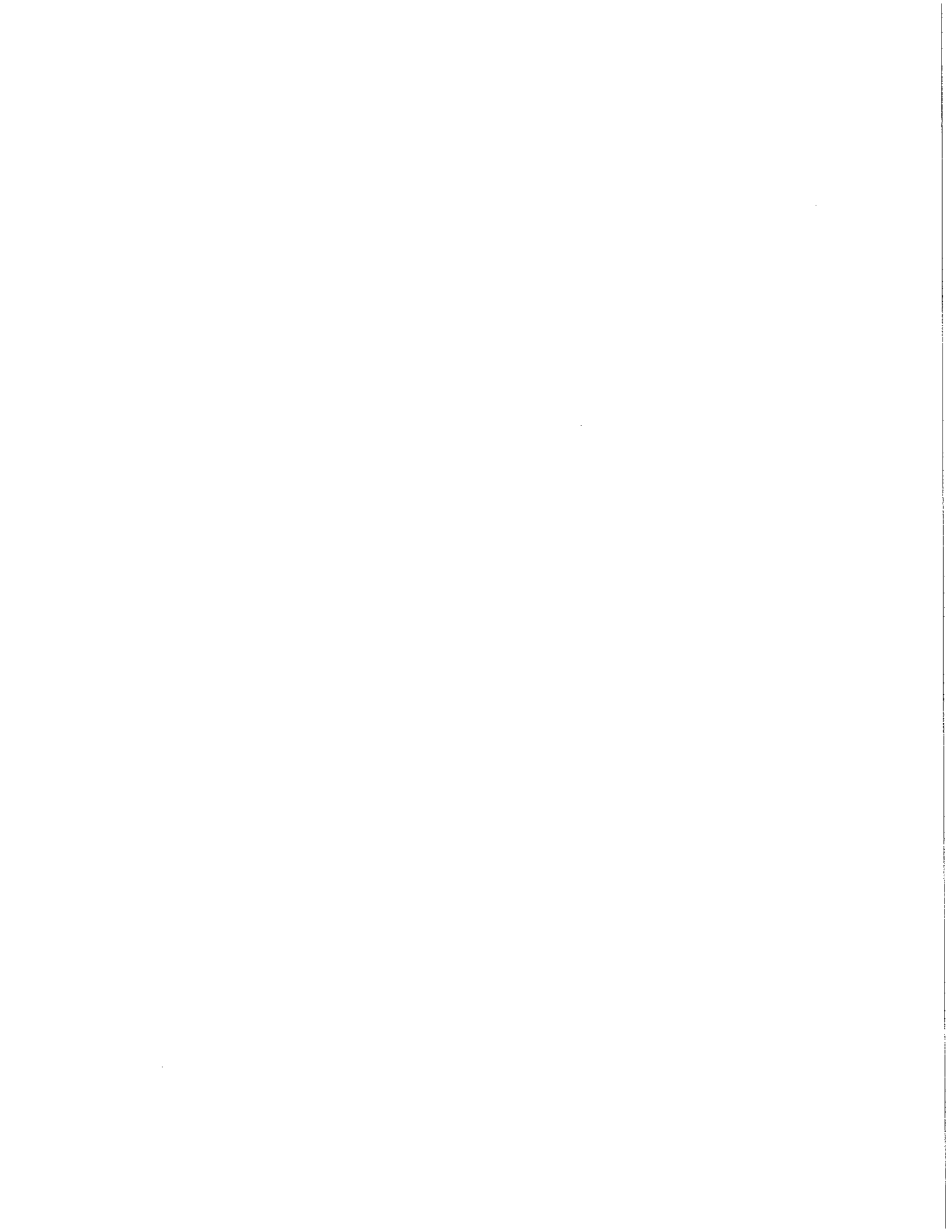
The concept of federalism, the overall relationship between the federal government and state governments, is defined in the Tenth Amendment of the Constitution. It specifically tells the states that they have reserved powers. Powers not delegated to the government by the Constitution are given to the respective states. The application and interpretation of this relationship will be fully explored in Chapter 4, Federalism.

By including language that gives legitimacy to state governments and establishes a defined relationship among the states and between the federal government and states, a federal system of government is formed.

## Limited Government

Throughout the entire document and in the amendments, both the federal government and state governments are told they do not have unlimited power. The three branches are limited through the system of checks and balances. The Congress is told that it cannot deny the writ of habeas corpus, the right of appeal, or pass bills of attainder, predetermined jail sentences imposed before a trial. There are, however, exceptions to some of these limitations. In times of national emergency, the Supreme Court has determined that the federal government can place major restrictions on the civil liberties of its citizens. During the Civil War, Lincoln suspended the writ of habeas corpus in the border states. During World War II, Roosevelt ordered Japanese-American citizens living on the West Coast to internment camps.

**The principle of limited government is woven into the Constitution.**



**An enduring document, the Constitution provides for a process in which it can be amended to meet the needs of a changing society.**

In fact the entire rationale for including a Bill of Rights in the Constitution was to reinforce this concept of limited government. From the opening words of the First Amendment, "Congress shall make no law respecting . . .," to the due process guarantees of the Fifth and Fourteenth Amendments, the government is told that rights of its citizens must be protected. A further examination of this issue will be taken up in Chapter 5, The Bill of Rights and Civil Liberties.

This principle of limited government is the end extension of the philosophy of the Enlightenment thinkers—that government is created by the consent of the governed. If people have natural rights, it must also be assumed that government cannot take these rights away.

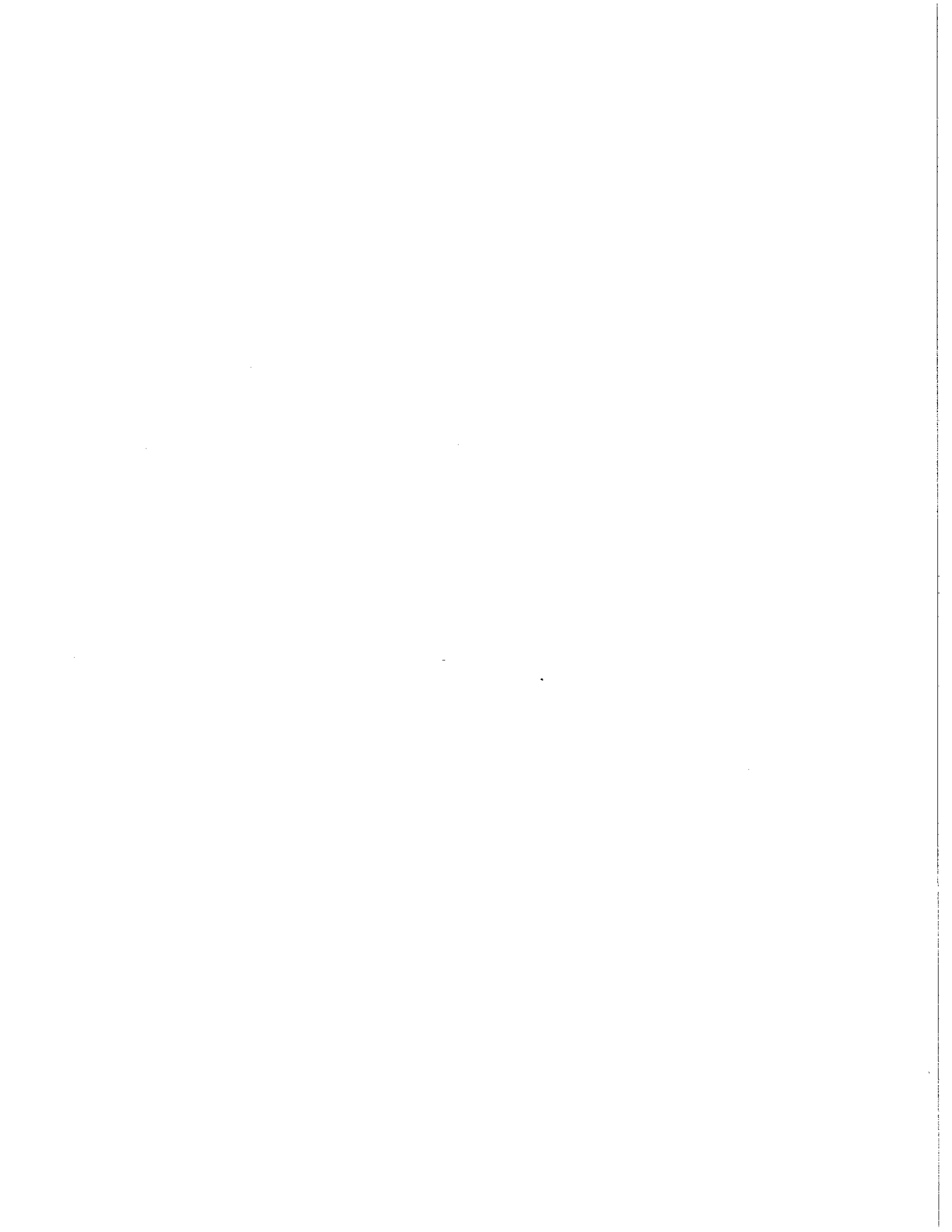
## **PROVISION FOR CHANGES**

If you don't count the Bill of Rights and the prohibition amendments, the Constitution has been amended only 15 times. The revisions have been significant and help to strengthen, expand, and explain provisions found in the original document. The amendments can also be classified in five ways:

- creating additional power for the federal government such as the legalization of a progressive income tax (sixteenth)
- limiting power to the state governments such as prohibiting states from making laws that deny equal protection for its citizens (fourteenth)
- adding the right of popular sovereignty to various groups such as former slaves (thirteenth), women (nineteenth), and 18-year-olds (twenty-sixth)
- taking away and adding to the power of the voter to elect public officials (seventeenth, direct election of senators; twenty-second, limiting presidential terms)
- changing the structure of government (twenty-fifth, presidential succession and disability)

There are two methods used to amend the Constitution. The one that has been used the most requires a two-thirds vote in both houses of Congress and ratification in three-fourths of the state legislatures. The second method is when Congress must call for a national constitutional convention after a request is made by two-thirds of the state legislatures; then either three-fourths of the state legislatures must ratify the amendment or three-fourths of ratifying conventions held in the states must approve it. There may also be a time limit placed on the ratification of most amendments passed by Congress. One of the most debated constitutional amendments was the proposed Equal Rights Amendment, which would have guaranteed the equality of rights by the United States and every state based on sex. This amendment was given seven years and then an extension to pass in two-thirds of the state legislatures. It died in 1982, falling short of the necessary votes because of political pressure brought on by groups opposed to public funding of abortion and groups concerned about the effect that affirmative action would have on various labor laws. Other amendments such as the Twenty-Seventh Amendment, which places restrictions on Congress passing pay raises for themselves, took over 200 years to ratify! The vast majority of amendments including the Bill of Rights took less than a year to ratify.

If the Constitution is an enduring document, then one must project that other amendments to the Constitution are a real possibility. Such measures as a balanced budget amendment, a term limits amendment for Congress, the abolition of the electoral college, and a provision for equal rights for women and homosexuals have advocates. However, as was shown after the Supreme Court ruled in *Texas v Johnson* (1989) that flag burning is a legal form of political protest, Congress failed to pass a constitutional amendment supported by President George Bush making it illegal to burn or desecrate the flag.



## THE UNWRITTEN CONSTITUTION

The unwritten constitution, as well as the Constitution's elasticity, adds to its viability. Political parties, the president's cabinet, special interest groups, political action committees, and the federal bureaucracy are important examples of traditions, precedent, and practice incorporated into our form of government.

The elastic clause and powers given to the Congress in the Constitution are perhaps the greatest instruments of change that Congress has at its disposal. From the passage of the Judiciary Act of 1789 to the creation of the many executive branch departments, Congress has used its power to expand the size of government. Congress has used the elastic clause to pass civil rights legislation, it has broadly interpreted the meaning of interstate commerce, and has passed a war powers act under its power to declare war.

Neither the Constitution nor any law provides for the establishment of political parties, nominating conventions, primaries, and most of the political system we are used to. Even though the Federalist Papers warned of the danger of political factions and George Washington echoed that point of view, the influence of political parties has become a dominant feature of government. When the Republican Party can unite and not provide a single vote for the president's budget proposal, one can see the importance of party politics. When a party decides to start a filibuster (continuous debate) in the Senate to block the passage of legislation, this becomes an additional check.

The Supreme Court has also gone beyond the constitutional parameters in establishing precedent. From the *Marbury v Madison* (1803) decision establishing judicial review to *Roe v Wade* (1973), which found a way to constitutionally protect the right of a woman to have an abortion, the Court forges new ground based on its interpretation of the Constitution.

Custom and tradition are an integral part of government. After executive departments were established by Congress, Washington announced the formation of cabinet positions. Congress then codified this concept as they approved additional cabinet positions. A two-term president was the accepted tradition until Franklin Roosevelt broke it. After he died, an amendment limiting presidential terms was passed, making the tradition a written component of the Constitution. After John Kennedy was assassinated, the presidential succession amendment was ratified. Little did the country realize that it would be used not as a result of an assassination, but rather because the country's vice president, Spiro Agnew, and, not much later, the president, Richard Nixon, would resign.

This chapter focused on the document that sets the course for American government and politics. An understanding of the Constitution makes your job easier as you look more closely at the specific workings of our government and political system.

**The Constitution's flexibility and adaptability enable the creation of new instruments of government.**

