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American National Government: An Overview

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Summary

Power in American national government is decentralized, divided, dispersed, and limited. This distribution of power derives in part from the Constitution, through limitations imposed on the government, the system of checks and balances among the three branches, and independent bases of support and authority for each branch. This report, which examines these elements, will be updated as developments require.

Introduction

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself.
James Madison, *Federalist No. 51*

In this passage from the *Federalist Papers*, James Madison, sometimes referred to as the “Father of the Constitution,” offers a rationale for the form of national government operating here since 1789. Power in the national government is dispersed, divided, and decentralized; it is also limited, directly and indirectly, by the Constitution. To protect certain individual rights and political liberties, this charter places explicit restrictions on the national government, principally through the Bill of Rights and the 14th Amendment. The 1st Amendment, for instance, mandates that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The Constitution also establishes checks and balances among the three branches of government—the executive, judiciary, and legislature—each of which has its own independent institutional base and its own enumerated and implied powers. The branches, moreover, share responsibility for policy making at the national level. As a consequence of these characteristics, the Constitution issues an “invitation to struggle” over the direction of American public policy, as one of its foremost students, Edward S. Corwin, has observed.

Institutional Characteristics

U.S. Constitution

The Constitution, replacing the Articles of Confederation in 1789, strengthened the national government. Article III declares that “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.” Despite this enhancement, the Constitution limited the power of the national government, recognizing, for instance, the independence and powers of the states. It also established a new governmental regime that divided authorities among three branches, rather than consolidating these powers in a single entity, as had been the case under its short-lived predecessor.

The Constitution is a brief document, compared to many other national and state constitutions. It is *not* an elaborate blueprint, detailing the organization of government. Instead, it is a broad framework—sometimes referred to as a living constitution—that has allowed the national government to adapt its organizational arrangements and structures to the changing characteristics, needs, and demands of the American people over the past two centuries. The Constitution, moreover, is difficult to amend. An amendment requires a favorable two-thirds vote in the House and in the Senate, along with ratification by three-fourths of the individual states. The document can be amended in one other way: the legislatures of two-thirds of the states may call for a convention to propose amendments, which would then require ratification by three-fourths of the states. However, no national convention has been established under this approach; consequently, no constitutional amendment has been approved through this process.

Partly because of this structure, the constitutional system has achieved a high degree of stability. The U.S. Constitution is today the oldest written democratic charter for a national government. Since the Bill of Rights—the first 10 amendments—was ratified in 1791, the Constitution has been amended only 17 times, most recently in 1992. And one of these amendments canceled another (*i.e.*, the 18th Amendment, establishing prohibition of alcohol in 1919, was repealed by the 21st Amendment in 1933).

Separate Institutions

Congress, the President, and the Supreme Court have separate and distinct political bases under the Constitution, to foster each branch’s independence and integrity. The ultimate purpose behind this separation, James Madison argued in the *Federalist Papers*, is to prevent a “faction”—that is, a group “adverse to the rights of other citizens, or to the permanent and aggregate interest of the community”—from gaining control over the entire government.

Restrictions on Serving in Another Branch. The institutional autonomy and integrity of the legislature is supported by a constitutional prohibition: “No Senator or Representative shall, during the time for which he was elected, be appointed to any civil Office ... which shall be created or the Emoluments [salary and fees] whereof shall have been increased during such time” (Article I, Section 6). The Constitution also prohibits any executive or judicial officer from being a Member of Congress. Two narrow caveats

to this ban, however, call upon officials from other branches to participate in congressional proceedings. One allowance is for the Vice President, who, while serving in the executive branch, is also “President of the Senate”; he may also vote there, but only to break a tie. A second is for the Chief Justice of the Supreme Court, who presides over the trial in the Senate of a President who has been impeached by the House.

Independent Electoral Bases. The elected officials—President, Vice President, Senators, and Representatives—have different terms of office, constituencies, and modes of election that reinforce their independence from one another. The full election cycle for the President and all legislators requires three elections to complete, and each of the three involves a different configuration of open offices.

The *President* is now limited to two elected four-year terms in office (or a maximum of 10 years if he fills less than half of an unexpired term of another President). The President is chosen every four years, formally through the electoral college. These votes are now cast on a winner-take-all basis in each state (except in Maine and Nebraska, which use a system compounding statewide and congressional district returns) and the District of Columbia. All electoral college votes for each state, which equal the number of Senators and Representatives for the state, plus three electoral college votes for the District of Columbia, customarily go to the candidate who receives the most popular votes in the state or in the District of Columbia.

Consequently, there exists the possibility that the presidential candidate who receives a majority (or plurality) of the popular votes nationwide would not receive a majority of the electoral college votes. This has occurred only four times in U.S. history, most recently in the election of 2000.

In the event that no presidential candidate receives a majority in the electoral college, the newly-elected House of Representatives, voting by state delegations and not by individuals, decides who will become President. In the event that no vice presidential candidate receives a majority in the electoral college, the Senate chooses the Vice President, with each individual Senator in the new Congress having one vote.

Members of Congress—100 Senators, two from each of the 50 states, and 435 Representatives, whose seats are apportioned among the states according to population—have electoral constituencies and schedules that differ from the President's and between House and Senate members. Senators are elected to six-year terms. These are staggered, so that only one-third of the full Senate is up for election every two years and so that no two Senate seats from the same state are up in the same election (except when a special election to fill an unexpired term coincides with the regularly scheduled election). Senators were originally selected by their respective state legislatures, but since the ratification of the 17th Amendment in 1913, they are required to be directly elected. Representatives are elected every two years from individual districts in the states where they reside (or at-large in the seven least populous states with only one Representative).

Split or divided party government—where the President's party lacks control of one or both houses of Congress—can and does result from these different constituencies, terms of office, and modes of election. In fact, this pattern has become common in the contemporary era. Over the 32-year period from 1969 (with the beginning of 91st Congress) to 2001 (with the end of the 106th Congress), party control will have been

divided or split for all but six years. Of the six Presidents during this time, only one (Jimmy Carter, 1977-1981) had his own party as a majority in *both* chambers for his entire presidency; and that comprised but a single term. Only one other President has had a majority in both houses for a portion of his term of office (Bill Clinton for two years, 1993-1995). Three of the six Presidents (Richard Nixon, 1969-1974; Gerald Ford, 1974-1977; and George Bush, 1989-1993) lacked party control of *either* house during their entire incumbency. One other President (Ronald Reagan) encountered opposition party control of the House during his entire two terms (1981-1989) and of the Senate for two years (1987-1989), while Bill Clinton will have faced opposition party control of both houses for six of his eight years in office (1995-2001).

Unified party government has returned in 2001, when George W. Bush became President. The House is under his party's leadership; and an evenly split Senate is controlled by the same party, because of Vice President Cheney's position as President of the Senate.

Judicial Independence. The federal judiciary has its own constitutional base of independence. Supreme Court justices and lower federal court judges—all of whom are appointed by the President by and with the advice and consent of the Senate—serve for life or “during good Behaviour” (U.S. Constitution, Article III). They can be removed from office only by Congress through the arduous process of impeachment by a majority of the House and conviction by two-thirds of the Senate.

Institutional Supports. Each branch has its own institutional supports. Among these are professional staff in each branch, who provide information and advice, conduct research and analysis, investigate perceived problems, organize meetings and briefings, and carry out various other assignments on behalf of the President, Members of Congress, and justices and judges.

Members of Congress hire their own professional staff, as does each committee, subcommittee, chamber office (such as the Speaker of the House and President pro tempore of the Senate), and political party organization of the House and Senate. In addition, the legislature is assisted in its legislative, oversight, representative, and constituent-service responsibilities by three agencies: the Congressional Budget Office, Congressional Research Service, and General Accounting Office. Congress, furthermore, can create commissions and task forces to conduct studies and make recommendations.

The presidency also has its own supporting cast. In addition to various counselors and personal aides to the President, the Executive Office of the President provides a variety of capabilities and services through a number of entities. These include the White House Office, Office of Management and Budget, Office of the Vice President, Council of Economic Advisers, Council on Environmental Quality, National Security Council, Office of National Drug Control Policy, Office of the U.S. Trade Representative, Office of Science and Technology Policy, Office of Policy Development, and Office of Administration. Presidents, moreover, can create task forces and advisory commissions to make studies and recommendations on policy matters. The Chief Executive can also call upon cabinet officers and agency officials to assist in policy formulation, as well as to secure support for administration programs in the public and in Congress. Separate from these formal arrangements, Presidents may consult with political colleagues and trusted friends, who might form an informal group of advisors or “kitchen cabinet.”

Checks and Balances and Shared Responsibilities

Under the Constitution, the three branches have both enumerated and implied powers that reinforce their institutional independence and political power. Accompanying this, however, is shared responsibility for public policy and a system of checks and balances. These “auxiliary precautions,” as Madison called them in the *Federalist Papers*, are designed so that the “several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places ... [and] may be a check on the other.”

Lawmaking. The key function of lawmaking is shared, with the President able to veto legislation passed by both chambers of Congress; to override his veto requires a two-thirds vote in each house. Further, the Supreme Court, through its implied power of judicial review, can declare a statute or a part of it unconstitutional, as it did initially, nearly two centuries ago, in *Marbury v. Madison* (5 U.S. (1 Cr.) 137 (1803)).

National Security Policy. Control of national security policy is also divided. While the President is commander in chief of the armed forces, Congress has authority to declare war, raise and support armies, and make rules governing the land, air, and naval forces. While the President holds the sword, as commander in chief, Congress holds the purse strings, through the appropriations process. The Supreme Court can also affect the military capacity of the United States, as the Court did when it overturned the President’s seizure of the steel mills during the Korean War (*Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Treaties are also a shared responsibility. Negotiated by the President, they must be ratified by two-thirds of the Senate. Their implementation, moreover, often requires new legislation and appropriations, both of which bring the House of Representatives into the mix. Separately, public law may be used instead of a treaty to accomplish the same ends, as with the North American Free Trade Agreement.

Executive and Judicial Appointments. Civil officers, Supreme Court justices, and federal judges are nominated by the President but must be confirmed by the Senate. Under the 25th Amendment, moreover, both houses of Congress must confirm the President’s nominee for Vice President, when that post is vacant, as occurred when Gerald Ford in 1973 and Nelson Rockefeller the next year were confirmed.

Investigations. The executive can investigate suspected criminal conduct by legislators, who may be prosecuted in federal court, while Congress can investigate the activities and conduct of personnel and officials in the other branches. These congressional efforts, in turn, can result in information and evidence that could be used in subsequent judicial proceedings. Congress, through the impeachment process, can also remove the President, Vice President, and U.S. officers for treason, bribery, and other high crimes and misdemeanors, or justices and judges for violating the “good Behaviour” standard in the Constitution. Although the President is responsible for seeing that the laws are faithfully executed, Congress oversees their implementation and the President’s stewardship. The courts, moreover, can check the legislature’s or executive’s investigative powers to ensure that they are not used to violate the other’s constitutional prerogatives.

Dispersed and Decentralized Organization

Although “executive power is vested in a President” by the Constitution (Article II, Section 1), he shares official responsibility for enforcing, implementing, and administering public law and policy with other officers and offices. Individual agencies and subordinate officers in the executive branch and elsewhere have been delegated duties and authority directly by statute. One of the first acts of the First Congress—the 1789 act creating the Treasury Department—for instance, ordered the comptroller (and not the President or the head of the department) to direct prosecutions for all delinquencies of revenue officers and for debts due to the United States.

The Constitution does not establish specific departments or agencies; these are created and sustained by legislation. As a result, a wide range and variety of organizations administer public policy. These include not only the cabinet departments, which now number 14, but also other executive branch agencies, such as the Environmental Protection Agency and the Central Intelligence Agency. Implementation of policy also extends to independent regulatory commissions, including the Nuclear Regulatory Commission and the Federal Trade Commission; public and quasi-public corporations, such as the U.S. Postal Service; and various foundations, boards, institutes, and government-sponsored enterprises. The Supreme Court, moreover, has upheld the constitutionality—and independence—of these entities that carry out public policy. The most important of these decisions—*Humphrey’s Executor v. United States*, 295 U.S. 602 (1935)—applied to independent regulatory commissions, which were seen as possessing legislative (rule-making), executive (implementation), and judicial (adjudication) powers. Along these same lines, a 1988 ruling (*Morrison v. Olson*, 487 U.S. 654 (1988)) recognized the constitutionality of independent counsels; these positions, authorized under a statute that lapsed in 1999, were created to investigate and prosecute alleged wrongdoing by high-ranking officials.

Conclusion

The constitutional system—through its founding premise of limited government and an intricate system of separated institutions, checks and balances, and shared responsibilities—strives to meet two core values of democracy. One is to *ensure majority rule*, through, for instance, the popular election of officials who make public policy; the other is to *protect individual rights and civil liberties*, through specific constitutional safeguards and indirectly through restraints on and competition among the three branches.

Selected References

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