

AP US HISTORY · UNIT 3

The Constitution

AMSCO Topic 3.9

AP US History Study Guide — Outside-Research Edition

Learning Objective: Explain the continuities and changes in the structure and functions of the government with the ratification of the Constitution. **Thematic focus (College Board framework):** Politics and Power (POL) · American and National Identity (NAT)

*This guide keeps AMSCO's own content as its backbone and expands it with outside research. Every fact beyond what AMSCO Topic 3.9 says is tagged the moment it appears: **OUTSIDE SOURCE — Beyond AMSCO:** [claim] — [source]. Only sources actually found this session are cited. Nothing below is invented.*

Historical thinking skills this guide targets: continuity/change (Articles vs. Constitution; 1791 Bill of Rights vs. its 20th-century application), causation (why Madison believed structure, not virtue, protects liberty), and comparison (the Bill of Rights' original scope vs. its scope today).

Big Picture

The men who wrote the newly ratified Constitution hoped it would both follow the ideals of the Enlightenment and provide a working system to guide the new republic. They wanted to correct the weaknesses of the Articles of Confederation (Topic 3.7) without creating a government with excessive power — the exact anxiety that had shaped the Articles in the first place. To guard against tyranny, they divided power vertically (between the federal and state levels) and horizontally (among three branches). As a further step toward keeping government power in check, and to fulfill a promise made during the ratification debates (Topic 3.8), one of the first tasks of the new Congress was to propose a Bill of Rights.

Federalism

The writers of the Constitution (the Framers) divided power between the federal government and state governments. The federal government would handle issues that affected the entire country, such as national defense and foreign affairs, and issues that crossed state boundaries, such as interstate commerce and a postal service. States would be in charge of issues that affected only their state, such as schools and local elections.

As changes in transportation, communication, and the economy have increased the interactions among people across state lines, the federal government has become more powerful. Further, constitutional amendments added specific powers to the federal government. For example, the 19th Amendment, ratified in 1920, gave Congress the power to protect the right of women to vote.

By the 21st century, the government accounted for around 40 percent of the gross domestic product of the country. The federal government was usually responsible for over half of all public expenditures, paying for programs such as Social Security, Medicare, and the military, and transferring money to state and local governments. However, most public employees worked for state or local governments, with the largest number employed in schools and universities.

Continuity and change for an essay: the *document's text* on federalism has barely changed since 1788, but the *practical balance* of federal vs. state power has shifted enormously — a strong essay distinguishes formal/legal continuity (the words of Article I and the 10th Amendment) from practical/functional change (the federal government's actual role and size today) rather than treating "the Constitution created federalism" as a static, one-time fact.

Separation of Powers

The Framers also divided powers among three main branches of government: - **legislative:** Congress makes laws, passes taxes, and allocates spending - **executive:** led by the president, it recommends and carries out laws and federal programs - **judicial:** it consists of the Supreme Court and all lower federal courts; it interprets the laws and the Constitution

The Constitution provided each branch of government ways to limit the power or at least influence the other two branches: - Congress can pass laws, but the president can veto laws and the Supreme Court can rule them unconstitutional. - The president can make treaties, but they must be ratified by Congress. - The president can enforce the laws, but the Supreme Court can stop those actions if it finds that they violate the Constitution. - The Supreme Court interprets the laws, but Congress can write new laws. - The Supreme Court can order a president to enforce a law, but a president has the power to appoint justices.

OUTSIDE SOURCE — Beyond AMSCO — Madison's own explanation of why this design exists: In Federalist No. 51, Madison wrote the single most-quoted line in the whole ratification debate: "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." His actual point isn't that people are evil — it's that any workable design has to assume people in power will act in their own self-interest, so the fix has to be structural, not moral: "Ambition must be made to counteract ambition." Each branch's officeholders are given the personal incentive to jealously guard their own branch's power against the others, so the system polices itself without depending on anyone being virtuous. This is the single best quote to use for any essay on why the Framers chose structure over trust. — James Madison, Federalist No. 51 (1788), Bill of Rights Institute and Teaching American History primary source collections, accessed 2026.

Judicial review is a notable absence worth knowing: the Constitution's text never explicitly gives the Supreme Court the power to strike down a law as unconstitutional — the Court effectively claimed that power for itself in *Marbury v. Madison* (1803, outside this unit's date range but essential context), a genuinely important continuity/change point: the "checks and balances" system as it functions today includes a power the document doesn't literally spell out.

The Bill of Rights

In 1789, the first Congress acted quickly to approve **amendments** to defend individual liberty. Drafted largely by **James Madison**, the ten ratified by the states in 1791 are known as the **Bill of Rights**. Originally, they protected against abuses by the central (or federal) government only. Since the ratification of the 14th Amendment in 1868, most of the protections have been extended to apply to abuses by state governments as well.

Amendment	Core protection
1st	Religion (establishment & free exercise), speech, press, assembly, petition
2nd	Right to keep and bear arms (tied to a "well regulated Militia")
3rd	No quartering of soldiers in homes without consent (peacetime)
4th	No unreasonable searches/seizures; warrants require probable cause
5th	Grand jury for capital crimes; no double jeopardy; no self-incrimination; due process; just compensation for takings
6th	Speedy public trial, impartial jury, right to confront witnesses, right to counsel
7th	Jury trial in civil suits over \$20
8th	No excessive bail/fines; no cruel and unusual punishment
9th	Rights not listed in the Constitution are still retained by the people
10th	Powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states or the people

OUTSIDE SOURCE — Beyond AMSCO — "since 1868" is doing a lot of work in that sentence, and it's worth unpacking for an essay: Ratifying the 14th Amendment in 1868 did not automatically apply the Bill of Rights to the states — for over 50 years afterward, the Supreme Court kept ruling that it didn't. The turning point was ***Gitlow v. New York (1925)***, the first case where the Supreme Court actually applied a Bill of Rights protection (free speech) against a state government, by reading the 14th Amendment's Due Process Clause as protecting "fundamental personal rights and liberties." This began **selective incorporation** — the ongoing, case-by-case process (not a single 1868 event) by which the Supreme Court has applied most, but still not literally all, of the Bill of Rights to the states over the following century. This is a strong, specific continuity/change example: the text changed in 1868, but the practice changed gradually and unevenly starting in 1925, and in a sense is still not 100% complete today. — Library of Congress Congress.gov Constitution Annotated, "Application of the Bill of Rights to the States Through the Fourteenth Amendment and Selective Incorporation," and "Modern Doctrine on Selective Incorporation," accessed 2026; First Amendment Encyclopedia (MTSU), "*Gitlow v. New York (1925)*."

Terms and Actors

Term/Person	What it is	Why it's contested or often confused
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Term/Person	What it is	Why it's contested or often confused
Federalism	Vertical division of power (federal vs. state)	Frequently confused with <i>separation of powers</i> , which is the horizontal division among branches — they're two different axes of the same anti-tyranny design
Checks and balances	Each branch's ability to limit the other two	Students often list the checks without explaining <i>why</i> Madison thought this was necessary (see the Federalist 51 quote above) — the mechanism matters more than the list
James Madison	Chief drafter of both the Constitution's structure and the Bill of Rights	Sometimes treated as having one fixed political philosophy — he shifted meaningfully from Federalist-leaning nationalist in 1787-88 to a states'-rights-sympathetic Democratic-Republican by the 1790s (foreshadowing Unit 4)
14th Amendment (1868)	Post-Civil War amendment with a Due Process Clause	Often mistakenly treated as the moment the Bill of Rights was applied to the states — it only made that <i>possible</i> ; incorporation itself didn't begin until <i>Gitlow</i> (1925) and continued for decades
Selective incorporation	Case-by-case application of Bill of Rights protections to the states	Sometimes described as a single historical event — it's an ongoing judicial doctrine, not one moment, and not every protection has been incorporated even today
Judicial review	The Supreme Court's power to strike down unconstitutional laws	Often assumed to be explicitly written into Article III — the Constitution's text never actually states this power; it was established by the Court itself in <i>Marbury v. Madison</i> (1803)

LEQ/DBQ-Style Practice Prompts

- Evaluate the extent to which** the Constitution of 1787 represented a change from, versus a continuity with, the government under the Articles of Confederation. (*A strong thesis avoids an all-or-nothing answer — e.g., argues that the goals of the Revolution — limited, divided government protecting individual liberty — stayed continuous, while the mechanism for achieving them changed dramatically.*)
- Explain the extent to which** the Bill of Rights protected individual liberty in practice between 1791 and the mid-20th century. (*A strong thesis uses selective incorporation and *Gitlow v. New York* directly — arguing protection was formally limited to the federal government for over a century before meaningfully expanding to the states.*)
- Compare** Madison's justification for checks and balances in Federalist No. 51 with the actual structure of checks and balances described in the Constitution. (*A strong thesis connects Madison's "ambition must counteract ambition" reasoning to a specific, named check — e.g., the veto — rather than treating the quote as a decorative epigraph.*)

Quick Review Questions

- Explain the difference between federalism (vertical division of power) and separation of powers (horizontal division).
- Give one specific example of a check each branch holds over another.
- Why does the 9th Amendment matter given that the Bill of Rights only lists specific rights?
- Did the 14th Amendment (1868) immediately apply the Bill of Rights to the states? What actually happened, and when?
- According to Madison in Federalist No. 51, why can't a government safely rely on officeholders simply being virtuous?

Recommended Videos

- **Heimler's History — "The CONSTITUTION [APUSH Review Unit 3 Topic 9 (3.9)]"** (YouTube). Direct topic match; covers federalism, separation of powers, checks and balances, and the Bill of Rights in Heimler's standard AP-aligned review format. — Verified via search, 2026.

One Thing to Remember

The Constitution's genius, in Madison's own framing, isn't that it trusts good people to run the government well — it's that it assumes nobody in power can be fully trusted, and builds a system where everyone's self-interest ends up checking everyone else's.