

The Six Basic Principles

1

Section Preview

OBJECTIVES

1. **Outline** the important elements of the Constitution.
2. **List** the six basic principles of the Constitution.

WHY IT MATTERS

The Constitution is a brief, straightforward document that has guided American government for over 200 years. Its authors wrote the Constitution based on the principles that political power resides with the people, and that the National Government should be limited and divided into three branches to limit the power of any one of those three branches.

POLITICAL DICTIONARY

- ★ Preamble
- ★ articles
- ★ constitutionalism
- ★ rule of law
- ★ separation of powers
- ★ checks and balances
- ★ veto
- ★ judicial review
- ★ unconstitutional
- ★ federalism

The Constitution of the United States dates from the latter part of the eighteenth century. It was written in 1787, and took effect in 1789. The fact that the Constitution is more than 200 years old does *not* mean, however, that now, in the twenty-first century, it is only an interesting historical artifact, fit for museums and dusty shelves. On the contrary, it remains a vitally important and vibrant document.

The Constitution is this nation's fundamental law. It is, by its own terms, "the supreme Law of the Land"—the highest form of law in the United States.

An Outline of the Constitution

The Constitution sets out the basic principles upon which government in the United States was built and operates today. The document lays out the basic framework and procedures of our government, and sets out the limits within which that government must conduct itself.

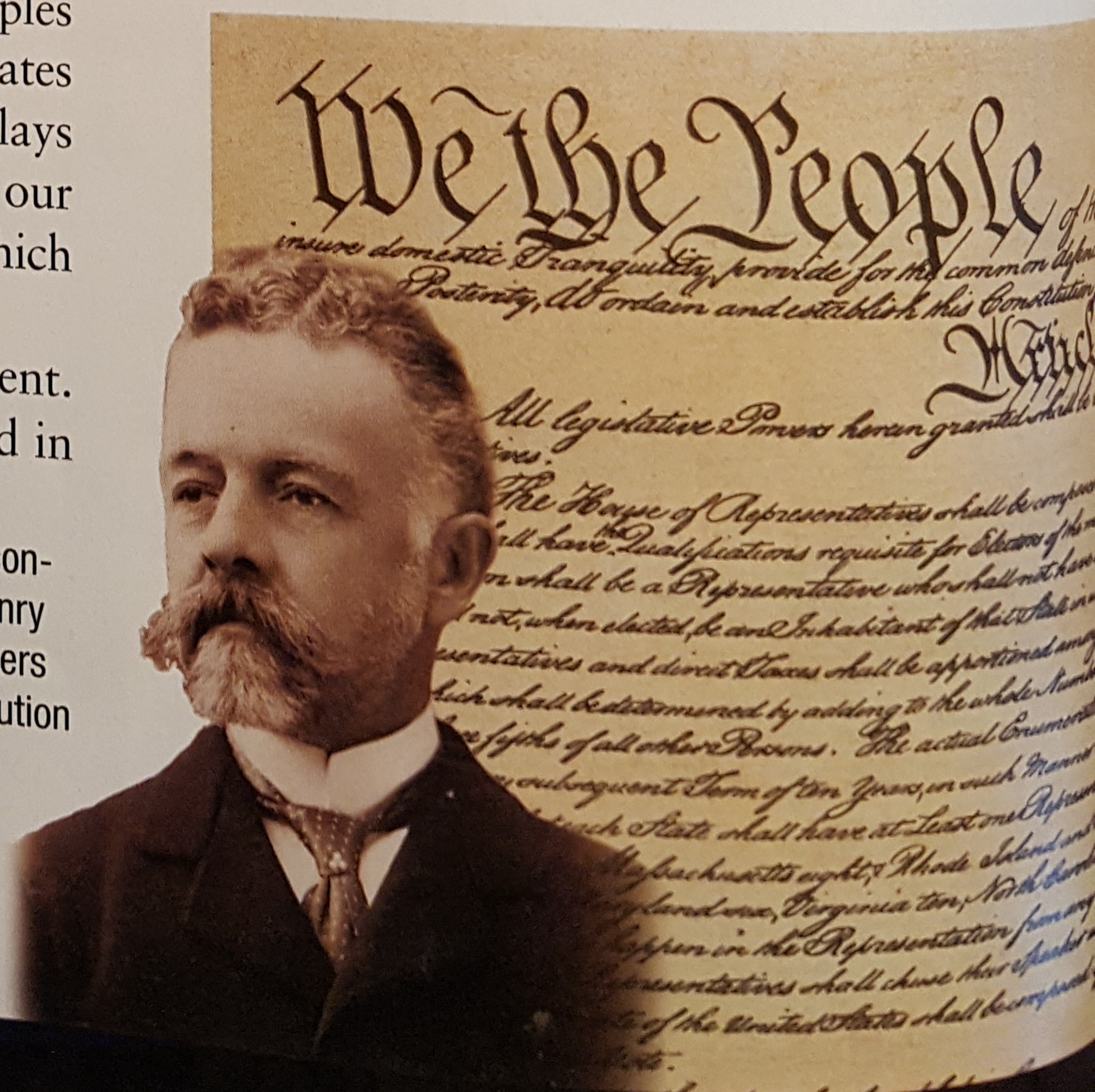
The Constitution is a fairly brief document. Its little more than 7,000 words can be read in

▶ Although the members of the Federal Government are continually changing, from leaders of the past like Senator Henry Cabot Lodge (R., Massachusetts) to contemporary lawmakers such as Senator Mary Landrieu (D., Louisiana), the Constitution provides a lasting link between the past and present.

Chapter 3 Section 1

half an hour. You will find the text of the Constitution beginning on page 758. As you read it, remember that this brief document has successfully guided this nation through two centuries of tremendous growth and change. One of the Constitution's greatest strengths is that it deals largely with matters of basic principle. Unlike most other constitutions—those of the 50 States and those of most other nations—the Constitution of the United States is not weighted down with detailed and cumbersome provisions.

As you read the Constitution, you will also see that it is organized in a simple and straightforward way. It begins with a short, noteworthy



introduction, the **Preamble**, and the balance of the original document is divided into seven numbered sections called **articles**. The first three articles deal with the three branches of the National Government: Congress, the presidency, and the federal court system. These articles outline the basic organization and powers of each branch and the methods by which the members of Congress, the President and Vice President, and federal judges are chosen. Article IV deals mostly with the place of the States in the American Union and with their relationship with the National Government and with one another. Article V explains how formal amendments may be added to the document. Article VI declares that the Constitution is the nation's supreme law; Article VII provided for the ratification of the Constitution.

The seven articles of the original document are followed by 27 amendments, printed in the order in which they were adopted.

The Basic Principles

The Constitution is built around six basic principles: popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism.

Popular Sovereignty

In the United States, all political power resides in the people. The people are sovereign. They are the *only* source for any and all governmental power. Government can govern only with the consent of the governed.

The principle of popular sovereignty, so boldly proclaimed by the Declaration of Independence, is

Articles of the Constitution

Section	Subject
Preamble	States the purpose of the Constitution
Article I	Legislative branch
Article II	Executive branch
Article III	Judicial branch
Article IV	Relations among the States
Article V	Amending the Constitution
Article VI	National debts, supremacy of national law, and oaths of office
Article VII	Ratifying the Constitution

Interpreting Tables The Constitution sets up the basic structure of our Federal Government. *How do the first three articles differ from those that follow?*

woven throughout the Constitution. In its very opening words, in the Preamble, the Constitution declares: "We the People of the United States . . . do ordain and establish this Constitution for the United States of America."

In essence, the National Government draws its power from the people of the United States, and the people have given their government the power that it has through the Constitution. Similarly, each one of the State governments draws its authority from the people of that State, through that State's constitution.

Limited Government

The principle of limited government holds that no government is all-powerful, that a government may do *only* those things that the people have given it the power to do.

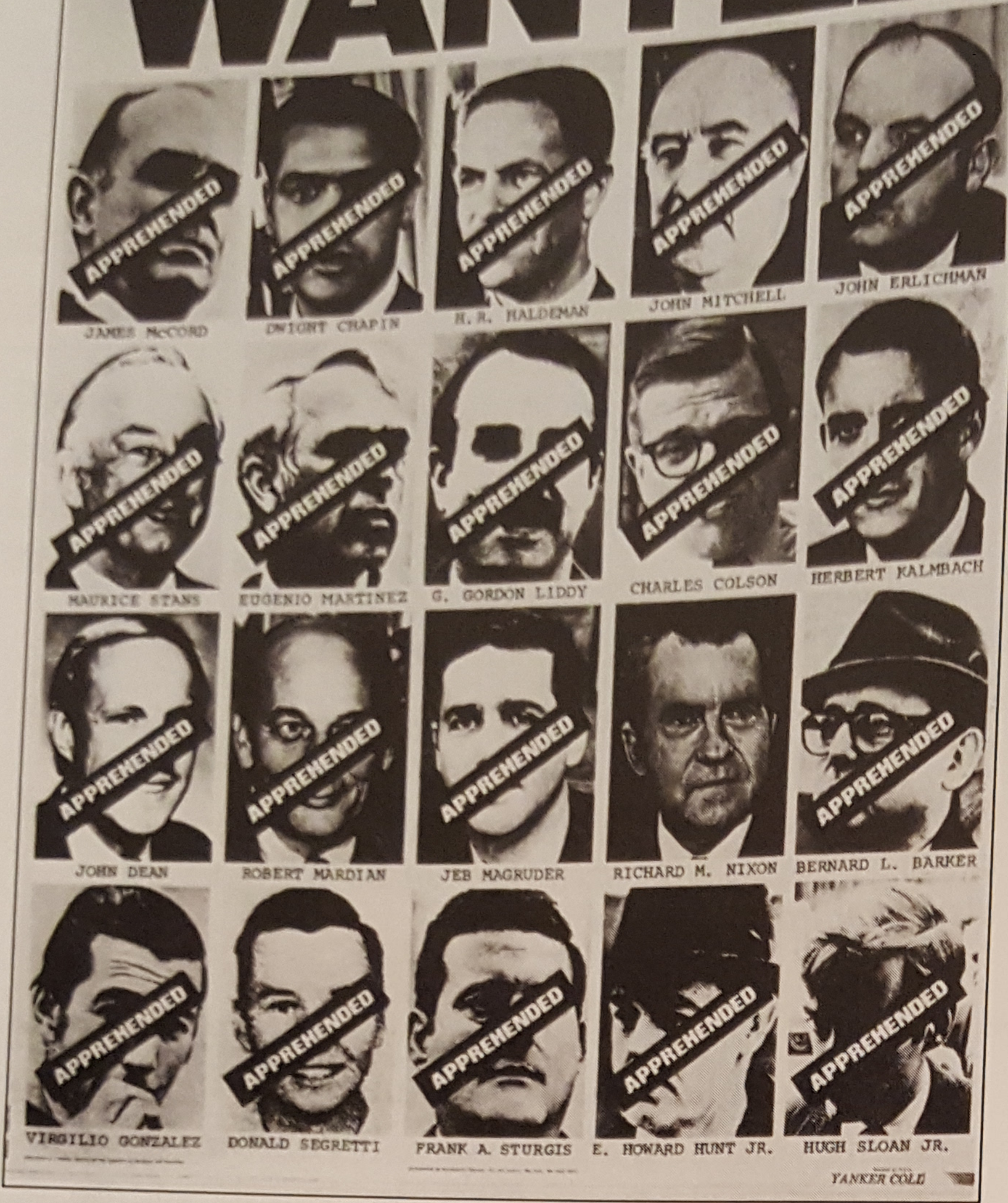
In effect, the principle of limited government is the other side of the coin of popular sovereignty. It is that principle stated the other way around: The people are the only source of any and all of government's authority; and government has only that authority the people have given to it.

The concept of limited government can be expressed another way: Government must obey the law. Stated this way, the principle is often called **constitutionalism**—that is, that government must be conducted according to constitutional

The Constitution



WANTED



▲ **The Rule of Law** During the Watergate scandal prosecutors accused many of President Richard Nixon's closest advisers of breaking the law. This poster implies that Nixon shared their guilt and would soon be exposed.

principles. The concept of limited government is also described as the **rule of law**, which holds that government and its officers are always subject to—never above—the law.

In large part, the Constitution is a statement of limited government. Much of it reads as clear prohibitions of power to government.¹ For example, notice the Constitution's guarantees of freedom of expression. Those great guarantees—of freedom of religion, of speech, of press, of assembly, and of petition—are vital to democratic government. They are set out in the First Amendment, which begins with the words: "Congress shall make no law. . . ."

Separation of Powers

Recall the brief discussion of the parliamentary and the presidential forms of government in

¹See, especially, Article I, Sections 9 and 10; the 1st through the 10th amendments; and the 13th, 14th, 15th, 19th, 24th, and 26th amendments.

Section 2 of Chapter 1. In a parliamentary system the legislative, executive, and judicial powers of government are all gathered in the hands of a single agency. British government is a leading example. In a presidential system, the basic powers are distributed—separately—among three distinct and independent branches of the government.

This concept is known as **separation of powers**. The idea had been written into each of the constitutions adopted during the Revolutionary War. A classic expression of the doctrine can be found in the Massachusetts constitution of 1780:

PRIMARY Sources

"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

—Part the First, Article XX

The Constitution of the United States distributes the powers of the National Government among the Congress (the legislative branch), the President (the executive branch), and the courts (the judicial branch). This separation of powers is clearly set forth in the opening words of each of the first three Articles of the Constitution.

Article I, Section 1 declares: "All legislative Powers herein granted shall be vested in the Congress of the United States. . . ." The Congress is the lawmaking branch of the National Government.

Article II, Section 1 declares: "The executive Power shall be vested in a President of the United States of America." Thus, the President is given the law-executing, law-enforcing, law-administering powers of the National Government.

Article III, Section 1 declares: "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Thus, the federal courts, and most importantly the Supreme Court, interpret and apply the laws of the United States in cases brought before them.

Remember, the Framers of the Constitution intended to create a stronger government for the United States. Yet they also intended to limit the powers of that government. The doctrine of separation of powers was designed to that end.

Defending this arrangement, James Madison wrote:

**PRIMARY
Sources**

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many . . . may justly be pronounced the very definition of tyranny.”

—*The Federalist* No. 47

Checks and Balances

The National Government is organized around three separate branches. As you have just seen, the Constitution gives to each branch its own field of governmental authority: legislative, executive, and judicial.

These three branches are not entirely separated nor completely independent of one another. Rather, they are tied together by a complex system of **checks and balances**. This means that each branch is subject to a number of constitutional checks (restraints) by the other branches. In other words, each branch has certain powers with which it can check the operations of the other two.

The chart on the next page describes the major features of the check-and-balance arrangement. As you can see, the Congress has the power to make law, but the President may **veto** (reject) any act of Congress. In its turn, Congress can override a presidential veto by a two-thirds vote in each house. Congress can refuse to provide funds requested by the President, or the Senate may refuse to approve a treaty or an appointment made by the President. The President is the commander in chief of the armed forces, but Congress provides that military force; and so on.

The chart also shows how the system of checks and balances links the judicial branch to the legislative and the executive branches. The President has the power to name all federal judges. Each appointment, however, must be approved by a majority vote in the Senate. At the same time, the courts have the power to determine the constitutionality of acts of Congress

and of presidential actions, and to strike down those they find unconstitutional.

Head-on clashes between the branches do not often happen. The checks-and-balances system operates all the time, however, and in routine fashion. The very fact that it exists—that each branch has its several checks—affects much of what happens in Washington, D.C.

For example, when the President picks someone to serve in some important office in the executive branch—as, say, secretary of state or director of the Central Intelligence Agency (CIA)—the President is quite aware that the Senate must confirm that appointment. So, the President is apt to pick someone who very likely will be approved by the Senate. In a similar sense, when Congress makes law, it does so with a careful eye on both the President’s veto power and the power of the courts to review its actions.

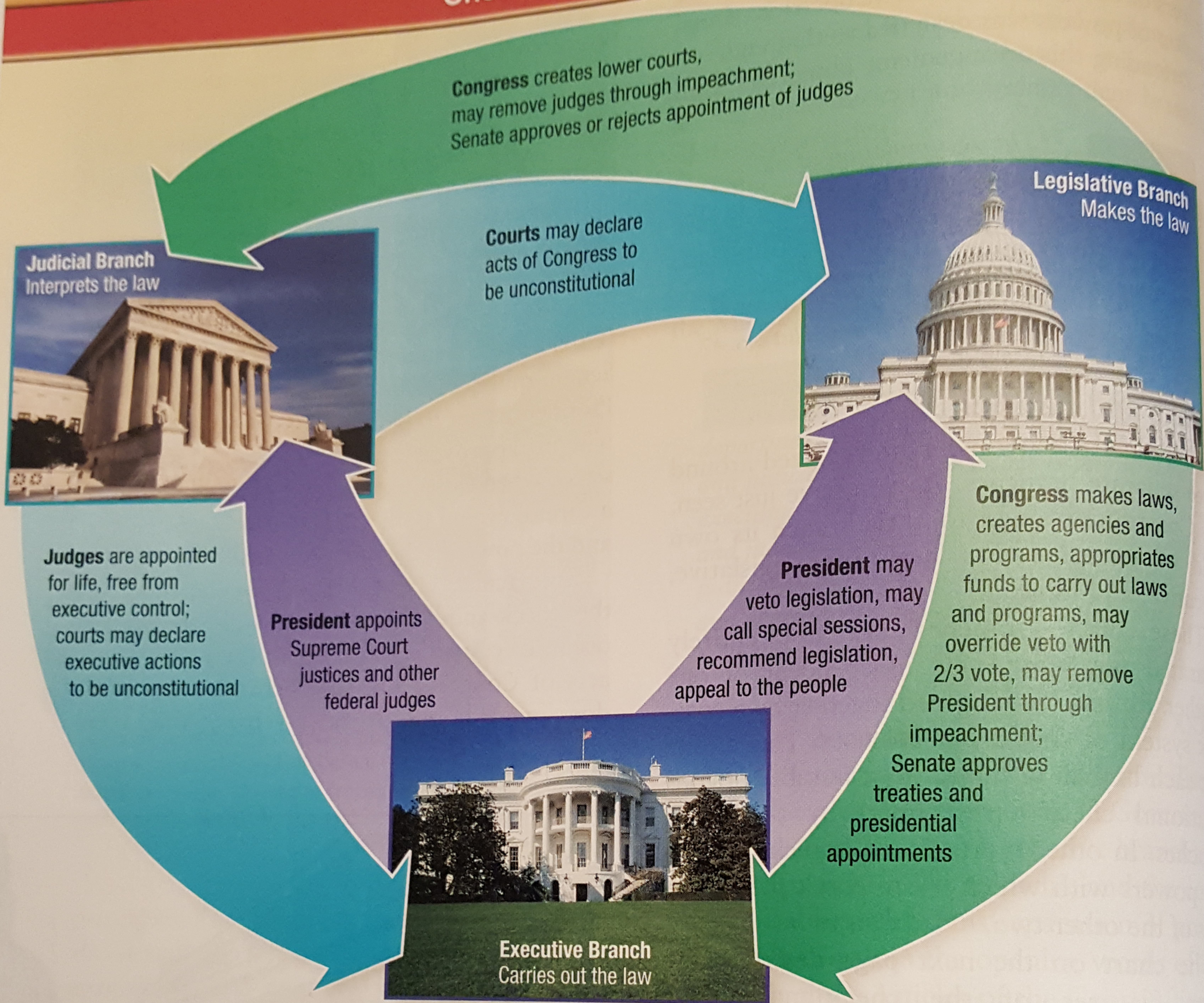
Spectacular clashes—direct applications of the check-and-balance system—do sometimes occur, of course. The President does veto some acts of Congress. On rare occasion, Congress does override one of those vetoes. And, even



Interpreting Political Cartoons Is the Constitution “carved in stone”? Why or why not?

The Constitution

Checks and Balances



Interpreting Diagrams Under the system of checks and balances, each branch of government can check the actions of the others. **In what way can the power of the judiciary be checked by the other branches?**

more rarely, the Senate does reject one of the President's appointees. And twice in our history, the House of Representatives has impeached (brought charges against) a President—Andrew Johnson in 1868 and Bill Clinton in 1998, although on both occasions the President was acquitted by the Senate.

But, again, these and other direct confrontations are not common. Congress, the President, and even the courts try to avoid them. The check-and-balance system makes compromise necessary—and, remember, compromise is a vital part of democratic government.

Over time, the check-and-balance system has worked quite well. It has done what the Framers

intended it to do. It has prevented “an unjust combination of the majority.” At the same time, the system of checks and balances has not often forestalled a close working relationship between the executive and legislative branches of the Federal Government.

Note, however, that that working relationship runs more smoothly when the President and a majority in both houses of Congress have been of the same political party. When the other party controls one or both houses, partisan friction and conflict play a larger than usual part in that relationship.

Through most of our history, the President and a majority of the members of both houses of

Congress have been of the same party. Over the past 50 years or so, however, the American people have become quite familiar with divided government—that is, with split control, with a political environment in which one party occupies the White House and the other controls one or both houses of Congress.

Divided government is once again the order of the day in Washington, and it will be until at least 2009. The Republican Party does occupy the White House, but the Democrats made significant gains in both houses of Congress in the off-year elections of 2006 and broke the Republican lock on power.

Judicial Review

One aspect of the principle of checks and balances is of such overriding importance in the American constitutional system that it stands, by itself, as one of that system's basic principles: judicial review.

The power of **judicial review** is the power of courts to determine whether what government does is in accord with what the Constitution provides. More precisely, judicial review may be defined this way: It is the power of a court to determine the constitutionality of a governmental action.

In part, then, judicial review is the power to declare **unconstitutional**—to declare illegal, null

and void, of no force and effect—a governmental action found to violate some provision in the Constitution. The power of judicial review is held by all federal courts and by most State courts, as well.²

The Constitution does not provide for judicial review in so many words. Yet it seems clear that the Framers intended that the federal courts, and in particular the Supreme Court, should have that power. In *The Federalist* No. 78 Alexander Hamilton wrote that “independent judges” would prove to be “an essential safeguard against the effects of occasional ill humors in society.” In *The Federalist* No. 51 James Madison called the judicial power one of the “auxiliary precautions” against the possible dominance of one branch of government over another.

In practice, the Supreme Court established the power of judicial review in the landmark case of *Marbury v. Madison* in 1803. (We shall take a close look at that case and the doctrine of judicial review in Chapter 18.) Since *Marbury*, the Supreme Court and other federal and State courts have used the power in thousands of cases. For the most part, the courts have

²Generally, the power is held by all courts of record. These are courts that keep a record of their proceedings and have the power to punish for contempt. Usually, only the lowest courts in a State—justice of the peace courts, for example—are not courts of record.



▲ The Supreme Court has struck down federal laws that regulated child labor and outlawed the burning of the United States flag. **Critical Thinking** What characteristic of a law can lead the Supreme Court to overturn it?

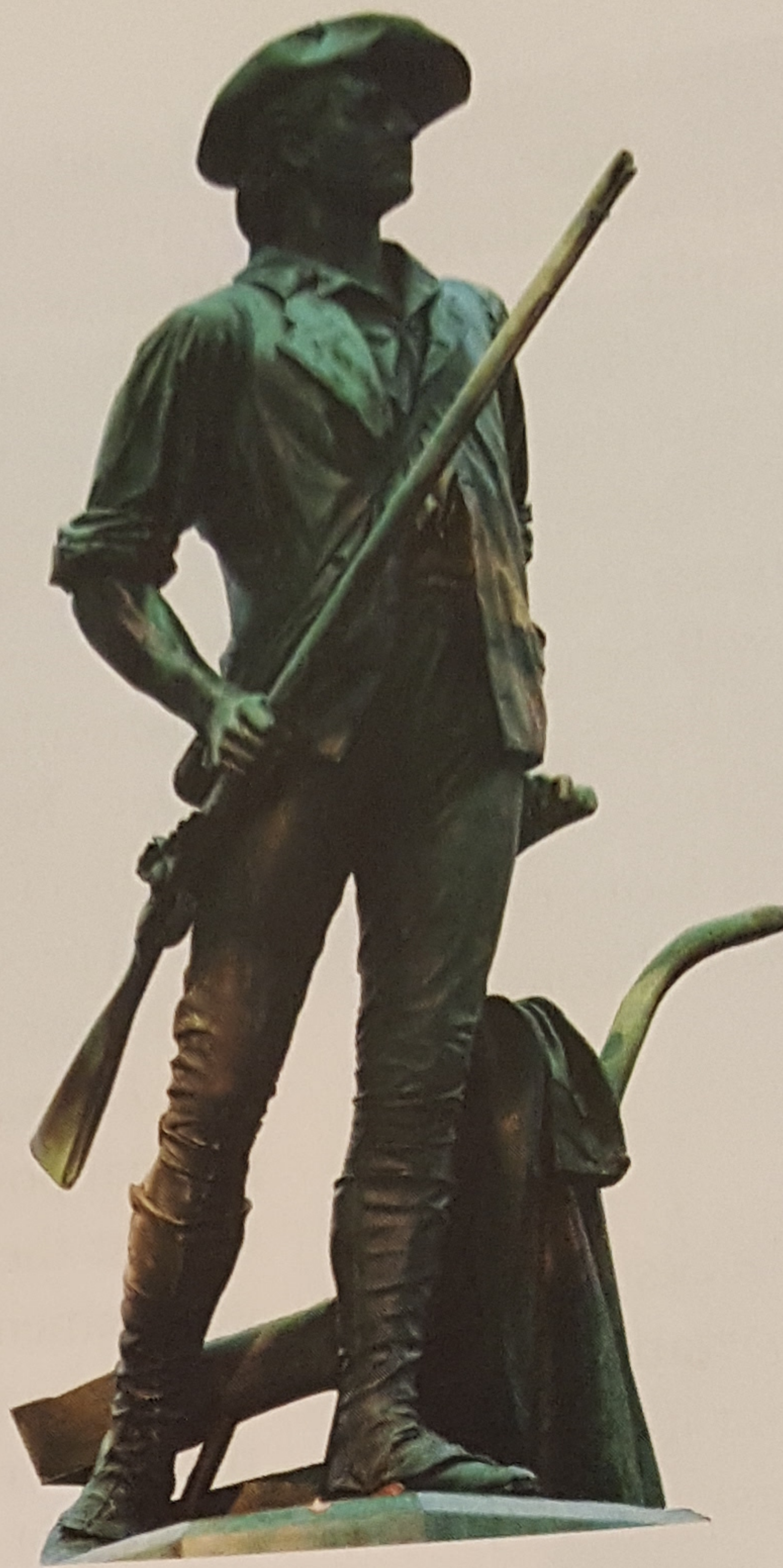
upheld challenged governmental actions. That is, in most cases in which the power of judicial review is exercised, the actions of government are found to be constitutional.

That is not always the case. To date, the Supreme Court has decided some 150 cases in which it has found an act or some part of an act of Congress to be unconstitutional. It has struck down several presidential and other executive branch actions as well. The Court has also voided hundreds of actions of the States and their local governments, including more than 1,100 State laws.

Federalism

As you know, the American governmental system is federal in form. The powers held by government are distributed on a territorial basis. The National Government holds some of those powers, and others belong to the 50 States.

The principle of **federalism**—the division of power among a central government and several regional governments—came to the Constitution out of both experience and



▲ This statue in Concord, Massachusetts, pays tribute to the Minutemen who fought British troops to protect self-government.

necessity. In Philadelphia, the Framers faced a number of difficult problems, not the least of them: How to build a new, stronger, more effective National Government while preserving the existing States and the concept of local self-government.

The colonists had rebelled against the harsh rule of a powerful and distant central government. They had fought for the right to manage their local affairs without the meddling and dictation of the king and his ministers in far-off London. Surely, they would not now agree to another such government.

The Framers found their solution in federalism. In short, they constructed the federal arrangement, with its division of powers, as a compromise.

It was an alternative to the system of nearly independent States, loosely tied to one another in the weak Articles of Confederation, and a much feared, too powerful central government. We shall explore the federal system at length in the next chapter.

Section 1 Assessment

Key Terms and Main Ideas

1. What is the purpose of the **Preamble** to the Constitution?
2. List two examples of how **checks and balances** work in the Federal Government.
3. What is the immediate effect if a law is declared **unconstitutional**?
4. Explain **federalism** in your own words.

Critical Thinking

5. **Making Comparisons** What are the different roles of the executive branch, legislative branch, and judicial branch?
6. **Understanding Point of View** Why were the Framers of the Constitution careful to limit the powers of the Federal Government?

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7. **Drawing Conclusions** Some people consider the judicial branch the least democratic of the three branches of the government because federal judges are not elected and cannot be easily removed. How can voters and their elected representatives check the power of the judicial branch?

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