The Articles of Confederation was the first government of the United States following the Declaration of Independence.

A confederation is a state-centered, decentralized government where the primary powers of government are held at the state level.

A confederation was chosen in response to the British unitary government under which the colonists were subjected to natural rights violations under King George III.

The unitary government, one that centralized the legislative, executive and judicial powers, was unacceptable to the colonists when they sought to create a government after declaring their independence from the British crown.
<table>
<thead>
<tr>
<th>Weakness</th>
<th>Meaning</th>
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<tbody>
<tr>
<td>Congress had no power to tax</td>
<td>Congress could not collect money from the states to raise and support an army and navy</td>
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<td>Congress had no power to regulate trade</td>
<td>Congress could not regulate goods coming into the country; states may have had conflicting trade policies</td>
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<td>Congress had no power to enforce its own laws</td>
<td>The laws that Congress passed had no practical impact or application</td>
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<td>The national government lacked a national court system</td>
<td>There was not a set of federal standards or institutions for applying the laws</td>
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<tr>
<td>The national government lacked central leadership</td>
<td>There was not a chief executive who could oversee the national government</td>
</tr>
<tr>
<td>Amendments to the Articles of Confederation required unanimous consent of the 13 state legislatures</td>
<td>One state legislature could “hold hostage” the other 12 states</td>
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The Weaknesses of the Articles of Confederation as Reflected in the U.S. Constitution

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<td>Congress had no power to tax</td>
<td>Article I, Section 7: “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills.</td>
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<td>Article I, Section 8: “The Congress shall have Power To lay and collect Taxes,…to pay the Debts and provide for the common Defence…”</td>
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<td>Congress had no power to</td>
<td>Article I, Section 8: “The Congress shall have Power to…regulate Commerce with foreign Nations, and among the several States,…”</td>
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<td>The national government lacked a national court system</td>
<td>Article III, Section 1: “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.”</td>
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<td>The national government lacked central leadership</td>
<td>Article II, Section 2: “The President shall be Commander in Chief of the Army and Navy of the United States,…He shall have Power, …to make Treaties…”</td>
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<td>Amendments to the Articles of Confederation required unanimous consent of the 13 state legislatures</td>
<td>Article V: “The Congress…shall propose Amendments to this Constitution,…which,…shall be valid to all Intents and Purposes,…when ratified by the Legislatures of three-fourths of the several States,…”</td>
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</table>
We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.
What is the Purpose of a Preamble?

A preamble does not specify any power of government.

Rather, it provides information as to why a Constitution is being written.

The U.S. Constitution was being written in order to take the goals of the government and create a workable structure reflecting those goals.
Dissecting the Preamble: “We the People”

The people are granting powers to the government.

The creators of the U.S. government were, by definition, an elite group who understood that they were creating a nation where the majority were not elites, but common people. This majority’s approval was necessary for ratification; one way to gain their approval was to confirm that the people were forming the government, and it was not being handed down by a god or a king.
Dissecting the Preamble: “In Order to Form a More Perfect Union”

Improve on the *Articles of Confederation* which was the government in place at the time.

The *Articles of Confederation* had worked well to a point, and was the best that they could come up with when the Articles were created.

The Framers understood that the Constitution would not be “perfect”, but “more perfect”.

Dissecting the Preamble: “Establish Justice”

Ensure that the government would be just (follow the rule of law; law is supreme).

The people wanted a level playing field where courts were established with uniformity.

Fair and equal treatment was also a goal.
Dissecting the Preamble: “Insure Domestic Tranquility”

Protect citizens from internal conflict.

Internal conflict creates instability; avoiding instability, such as Shays’s Rebellion (1786-1787) (see Benchmark 1.5) was needed in order for a new nation to take hold.

One of the key “balance of powers” questions raised when there is a national government and state government is how much power should each have, and what are the goals of that distribution of power?
Dissecting the Preamble: “Provide for the Common Defence”

Protect citizens from external attacks.
No one state was really capable of fending off an attack from land or sea on its own.
The states needed each other to survive attack, especially from Britain or Spain, or by Native Americans.

This notion is reflected in Article IV of the U.S. Constitution as:

- “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”
Dissecting the Preamble: “Promote the General Welfare”

The government focuses on the “public interest”.

Allow every state and citizen to benefit from what the government could provide.

The point of having tranquility, justice, and defense was to promote the general welfare.

Reinforces “we the people” concept.
Dissecting the Preamble: “Secure the Blessings of Liberty for Ourselves and our Posterity”

The “public interest” is intended to work to the people’s benefit and not to their detriment for now and forever.

The U.S. and the states would resemble something of a paradise for liberty.
Dissecting the Preamble:  
“Do Ordain and Establish this Constitution for the United States of America”

It finishes the “we the people” approach, gives the document a name, names the nation/state, and summarizes the preamble.

Higher power involved here—the people themselves are the higher power.

Replaces the *Articles of Confederation* (“establish”) and creates one national government.
The U.S. Constitution is organized around three systems that limit government power.

Limited (constitutional) government is a government limited by a constitution:

Separation of powers-the organization is set up of as three branches with their own distinct powers and responsibilities.

Checks and balances-each branch of government limits the power of the other branches.
Limited Government

How does the U.S. Constitution limit the power of government?

In separating powers, the government limits what each branch can do. The Constitution is designed so that the legislative branch holds only legislative power, the executive holds only executive power, and the judiciary holds only judiciary power. Separation of powers does not entirely limit government as individual branches can still abuse their powers in a limited government system.
Limited Government

How does the U.S. Constitution limit the power of government?

The checks and balances system allows the separate branches to impact the other branches in ways that limit their powers. Checks and balances does not entirely limit government as the checks and balances system requires, in many instances, that enough public officials come together to agree to check another branch’s power.
It is a common misconception that the Framers of the U.S. Constitution were united in their efforts and desires to move past the Articles of Confederation and form a federal system that would:

- Protect the nation from foreign and internal aggressors.
- Unite the nation in their efforts to experience representative democracy.
- Create a government based on separation of powers, checks and balances and federalism.
Perspectives among Attendees at the 1787 Constitutional Convention

Three Dimensions:

A. Retain the Articles of Confederation with some modification to address the concerns that weakened the Articles of Confederation.

B. Support a restructuring of government that would shift power from the states to a shared power system between the national and state governments.

C. Support returning to status as British subjects.
The dominant conflict at the convention was between the Federalists (those supporting a new federal system) and the Anti-Federalists (those who wanted to retain the structure of the Articles of Confederation).

One of the key dimensions of conflict was whether the new federal constitution should include a listing of rights that protected individuals from government abuse of power. The resolution of this conflict was achieved with the Bill of Rights.
The group that opposed the new federal Constitution was called the Anti-Federalists, who believed:

The Constitution gave too much power to the national government at the expense of the state governments.

The Constitution lacked a specific enumeration of rights which was needed in order to protect the people from the national government.

The “necessary and proper” clause (also called the “elastic clause”) gave too much power to Congress.
The Addition of a Bill of Rights as Compromise

The most effective argument presented by the Anti-Federalists was the lack of a specific enumeration of rights. Americans feared that the newly formed and empowered national government might withhold those rights.

The lack of a bill of rights became the centerpiece of the Anti-Federalists’ arguments against the new federal Constitution.
The principle of the rule of law dominates the formation of government institutions in democracies. There are several ways that the people rule through their government including, but not limited to:

1. Electing their legislators and chief executives
2. Using their protected freedoms such as speech, peaceable assembly and petitioning the government
3. Exercising their responsibilities as citizens

In a democracy, the government is responsible for protecting all citizens from arbitrary and abusive uses of government power through the rule of law.

Not all aspects of the rule of law are applied equally, such as to non-citizens, minors and the mentally disabled.
Federalism in the U.S. Constitution

The framing of the U.S. Constitution was organized around the power of the national and state governments.

The first national government formed by the colonists following independence in 1776 was the Articles of Confederation, which focused power at the state level giving little power to the national government.

The problems experienced under the Articles of Confederation became evident soon afterward: no unified foreign policy, state governments working against one another when facing common concerns, and a lack of coordination among states and between the states and the central government (see Benchmark 1.5).

Federalism is a system of government in which power is divided and shared between the national, state, and local governments. This division of powers extends exclusive powers to the national government only (enumerated, also known as delegated), the state governments only (reserved), or to both (concurrent). Federalism is found throughout the U.S. Constitution.
## Concurrent and Reserved Powers in the U.S. Constitution

<table>
<thead>
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<th>Type of Power</th>
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<tr>
<td>States organize elections although the federal government may set national standards</td>
<td>The national government sets the date for presidential and congressional elections; the states may determine the date for scheduling other aspects of elections, such as primaries and filing deadlines (see Benchmark 2.9/2.7)</td>
<td>Concurrent</td>
</tr>
<tr>
<td>State legislatures determine the standards for K-12 education, such as what will be taught to students, and in which grades those subjects will be taught.</td>
<td>The Sandra Day O’Connor Civics Education Act (2010) requires that all Florida public school students learn civics, including a full civics course in 7th grade and an End of Course Assessment in 7th Grade.</td>
<td>Reserved</td>
</tr>
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Delegated (Enumerated) Powers and the Supremacy Clause in the U.S. Constitution

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<td>Congress, as the national legislature, enjoys specific powers. These powers are held only by the U.S. Congress.</td>
<td>Core powers of Congress (as found in Article I, Section 8—see Benchmark 3.3) include: Providing for the common defense Regulating commerce Establishing a uniform rule of naturalization Coining money Declaring war Raising and supporting armies and navies Creating the appellate court system.</td>
<td>Enumerated or delegated</td>
</tr>
<tr>
<td>State law may not conflict with federal law</td>
<td>Federal law mandates that no person may be given a literacy or good citizenship test as a condition of voter registration (see Benchmark 3.7).</td>
<td>Supremacy Clause</td>
</tr>
</tbody>
</table>
The Tenth Amendment was added to the U.S. Constitution as part of the Bill of Rights, which is comprised of the first ten amendments (see Benchmark 2.4).

The Tenth Amendment reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

It is in the Tenth Amendment where one finds the “reserved powers” that extend to the states powers that are not granted to the national government.

The framers were concerned about giving too much power to the national government so they gave specific powers (see Benchmark 3.3) to Congress. Critics, including the Anti-Federalists, argued that the last phrase in Article I, Section 8, called the “elastic” or “necessary and proper” clause (see Benchmark 1.8) extended so much power to Congress that it violated the concept of enumerating congressional powers. By comparison, the Tenth Amendment does not identify any powers. Instead, the Tenth Amendment extends to the states and by extension, the people, powers that are not specifically granted to Congress or denied to the states.
The Constitutional Amendment Process

Article V of the U.S. Constitution outlines two methods for introducing amendments to the U.S. Constitution. These methods are:

a) Two-thirds of each house of Congress vote to amend the U.S. Constitution followed by three-fourths of the state legislatures (or conventions of the state legislatures) approving the amendment.

b) A national convention where two-thirds of all states are represented votes to introduce an amendment followed by three-fourths of the state legislatures (or conventions of the state legislatures) approving the amendment.

Both circumstances require that three-fourths of the state legislatures (or their conventions) approve an amendment before it becomes part of the U.S. Constitution. The amendment procedure in many ways reflects a states’ rights approach, where the state legislatures or their conventions are responsible for ratifying all amendments.
Amending the Constitution

PROPOSAL
A Constitutional Amendment can be proposed in one of two ways:

1. By 2/3 of the members of both the House & Senate
2. At a Convention called by 2/3 of the States

RATIFICATION
After an Amendment is proposed, it must be ratified. This can be done in one of two ways:

1. By 3/4 of the State Legislatures
2. By 3/4 of ratifying conventions in the States

The Constitutional Amendment Process
The Framers included an amendment process so that the Constitution would be a “living document”.

The amendment process requires “supermajorities” from the Congress and state governments. The requirement that 2/3 of each house of Congress approve any amendment exceeds the minimum 50%+1 required for votes on all bills. That three-fourths of the state legislatures must approve of any amendment plus the requirements in Congress speaks to bringing together regional, political, ideological and demographic differences for the sake of common goals.

The Framers made the amendment process difficult because once an amendment is added to the Constitution it is part of it; no federal or state law may conflict with it.

Once a proposed amendment is ratified, no part of it may be found unconstitutional because that amendment is now part of the Constitution. And, the U.S. Supreme Court sets precedents in its decision making such that, should a challenged state or federal law be found unconstitutional, that decision will have a long term impact (see Benchmark 3.12 and Benchmark 2.4).

Finally, reversing an amendment requires another amendment which means that the same difficult process for amending the Constitution is needed in order to repeal an amendment.
Constitutional Amendments Over Time

The Constitution has been amended 27 times; the first 10 amendments, the “Bill of Rights”, were ratified in 1791 (see Benchmark 2.4). The Constitution was last amended in 1992.

Many constitutional amendments exhibit a theme or timeframe in which they were ratified such as the Bill of Rights which reflects the Anti-Federalists’ fears that the federal government would infringe on basic personal and political rights (see Benchmark 1.8).

The 13th, 14th and 15th Amendments (1865-1870) (see Benchmark 3.7) eliminated slavery, defined citizenship, and prevented the states from denying male citizens the right to vote.

Three amendments deny states the right to limit voting rights to certain populations including the 15th Amendment (1870) protecting racial minorities, the 19th Amendment (1920) protecting women and the 26th Amendment (1971) which extended voting rights to 18 to 21 year olds (see Benchmark 3.7). Before the 15th and 19th Amendments were ratified, states could deny citizens voting rights based on race and sex. Before 1971, some states allowed only those 21 and older the right to vote.
Sample Item 5 SS.7.C.1.5 Content Focus Articles of Confederation
How did the U.S. Constitution solve a problem created by the Articles of Confederation?
A. It avoided the issue of states’ rights.
B. It allowed the states to elect representatives.
C. It prevented the amendment of federal laws.
D. It enabled the federal government to collect taxes.*
In the Preamble to the U.S. Constitution, what is the meaning of the phrase “We the People”?

A. The people express their will through political parties.
B. The people express their will by directly creating laws.
C. Government receives taxes from the people and exists to support them.
D. Government receives its power from the people and exists to serve them.*
The passage below is from *Federalist No. 47*, written by James Madison in 1788.

...Montesquieu was guided...in saying “There can be no liberty where the legislative and executive powers are united in the same person, or body”...he did not mean that these departments ought to have...no CONTROL over, the acts of each other.

Source: Public Domain / Project Gutenberg

Based on this passage, which constitutional principle does Madison describe?

A. separation of powers  
★ B. checks and balances  
C. popular sovereignty  
D. judicial review
Sample Item 8 SS.7.C.1.8 Content Focus Anti-Federalist Views
Which statement supports the Anti-Federalists in the struggle over ratification of the U.S. Constitution?
A. The Constitution should limit state government.
B. The Constitution should protect fundamental rights.*
C. The Constitution should create a strong national government.
D. The Constitution should prevent the election of amateur politicians.
Sample Item 9 SS.7.C.1.9 Content Focus  Rule of Law
Which characteristic serves as a long-term protection against tyranny and is a foundation of liberty in the United States?
A. the commerce clause
B. the elastic clause
C. the right to trial
D. the rule of law*
Sample Item 23 SS.7.C.3.4 Content Focus Power to Tax
Which statement describes a similarity between the state and the federal governments under the U.S. Constitution?
A. Both levels of government allow for the election of judges.
B. Both levels of government have the power to ratify treaties.
C. Both levels of government allow for the collection of taxes.*
D. Both levels of government have the power to appoint ambassadors
Sample Item 24 SS.7.C.3.5 Content Focus Amendment Process
Which is the last step in amending the U.S. Constitution?
A. The voters approve the amendment in a national election.
B. The president signs the amendment in a public ceremony.
C. Three-fourths of the state legislatures ratify the amendment.*
D. Two-thirds of both houses of Congress ratify the amendment.