

The Constitution Explained

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The Constitution is often hailed as a marvel of brevity and of clarity. It was, however, written in the 18th century, and many of the ideas, concepts, words, phrases, and euphemisms seem odd to us today, if not downright foreign.

But what of the Constitution itself? What does it mean? What does each article, each section, say?

This page is like a synopsis or summary of the Constitution, article by article, amendment by amendment. This should not be taken as a substitute for the Constitution, but more like a study guide.

The Constitutional Convention

The Constitution was created and adopted by the states through chosen representatives.

Constitutional Topic: Form of Government

What form of government did the drafters create in the Constitution? It is impossible to answer the question with one word. They clearly did not want a **Monarchy** – a form of government with a monarch at its head. A monarch is not elected by the people or representatives, but is a hereditary position usually held for life.

Some terms which have been used to describe our system of government are:

- **Democracy** – A system of government by the whole population or all the eligible members of a state, typically through elected representatives. In a pure democracy the majority rules in all matters. One potential problem of this form of government is that there is **no protection of individual or minority rights**. Having rejected the British Monarchy because of its infringement on self-rule and individual rights, many of the delegates to the Constitutional Convention were zealous to protect individual and minority rights. Therefore, they placed limits on the power of the majority to protect those rights.
- **Republic** – A government in which the supreme power is held by the people and their elected representatives, and which has an elected or nominated president rather than a monarch. The only specific reference to this form of government in the constitution is found in Article 4 Section 4 which requires each state to provide a “Republican Form of Government”. [NOTE: This is not a reference to the Republican political party, which did not exist at that time.]

However, it is clear that the Founding Fathers intended to create a Republic. In response to a question about the form of government created by the Constitution, Benjamin Franklin answered, "A Republic! If you can keep it." Because the Constitution defines the form of government and restricts the powers of the government, we are often identified as a Constitutional Republic.

- **Federation** – A group of states with a limited central government, but independence in internal affairs. After the Revolution the states adopted the **Articles of Confederation** forming a federation of independent states. However, difficulties arose because the central government lacked sufficient powers, and the states were too independent! The Constitution resolved this problem by giving more, but still limited, powers to the Federal Government.
- **Federal System** – A Federal System of government is similar to a confederation, but gives more power to the central government, and places certain restrictions on the powers of the individual states.

One important concept is that in each of these forms of government the source of power is from the people. Our national government has elements of each, and is frequently referred to as a Democracy, although a more descriptive term is a Constitutional Republic with a Federal System of government

Constitutional Topic: States' Rights v. Federalism

One of the key areas of debate during the Constitutional Convention was concerning the powers to be given to the Federal Government, and those to be given to the states or retained by the people. On the one were the Federalists – those who advocated a very strong federal government, and the Anti-Federalists – those who advocated more power to the states. The debate between the Federalists and those who advocated states' rights continued to foment even after the adoption of the Constitution and eventually lead to the Civil War. The debate about limiting the power of the federal government continues in our day.

Constitutional Topic: Separation of Powers

The Separation of Powers devised by the framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared power known as [Checks and Balances](#).

Three branches are created in the Constitution. The Legislative, composed of the House and Senate, is set up in [Article 1](#). The Executive, composed of the President, Vice-President, and the Departments, is set up in [Article 2](#). The Judicial, composed of the federal courts and the Supreme Court, is set up in [Article 3](#).

Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

For example, the President appoints judges and departmental secretaries. But these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution.

All of these checks and balances, however, are inefficient. But that's by design rather than by accident. By forcing the various branches to be accountable to the others, no one branch can usurp enough power to become dominant.

The following are the powers of the Executive: veto power over all bills; appointment of judges and other officials; makes treaties; ensures all laws are carried out; commander in chief of the military; pardon power. The checks can be found on the [Checks and Balances](#) Page.

The following are the powers of the Legislature: Passes all federal laws; establishes all lower federal courts; can override a Presidential veto; can impeach the President. The checks can be found on the [Checks and Balances](#) Page.

The following are the powers of the Judiciary: the power to try federal cases and interpret the laws of the nation in those cases; the power to declare any law or executive act unconstitutional. The checks can be found on the [Checks and Balances](#) Page.

Constitutional Topic: Checks and Balances

The American constitutional system includes a notion known as the [Separation of Powers](#). In this system, several branches of government are created and power is shared between them. At the same time, the powers of one branch can be challenged by another branch. This is what the system of checks and balances is all about.

There are three branches in the United States government as established by the Constitution. First, the Legislative branch makes the law. Second, the Executive branch executes the law. Last, the Judicial branch interprets the law. Each branch has an effect on the other.

Legislative Branch

- Checks on the Executive
 - Impeachment power (House)
 - Trial of impeachments (Senate)
 - Selection of the President (House) and Vice President (Senate) in the case of no majority of electoral votes
 - May override Presidential vetoes with a 2/3 vote of both houses

- Senate approves departmental appointments
- Senate approves treaties and ambassadors
- Approval of replacement Vice President
- Power to declare war
- Power to enact taxes and allocate funds
- President must, from time-to-time, deliver a State of the Union address
- Checks on the Judiciary
 - Senate approves federal judges
 - Impeachment power (House)
 - Trial of impeachments (Senate)
 - Power to initiate constitutional amendments
 - Power to set courts inferior to the Supreme Court
 - Power to set jurisdiction of courts
 - Power to alter the size of the Supreme Court

- Checks on the Legislature - because it is bicameral, the Legislative branch has a degree of self-checking.
 - Bills must be passed by both houses of Congress
 - House must originate revenue bills
 - Neither house may adjourn for more than three days without the consent of the other house
 - All journals are to be published

Executive Branch

- Checks on the Legislature
 - [Veto power](#)
 - Vice President is President of the Senate
 - Commander in chief of the military
 - Recess appointments
 - Emergency calling into session of one or both houses of Congress
 - May force adjournment when both houses cannot agree on adjournment
 - Compensation cannot be diminished
- Checks on the Judiciary
 - Power to appoint judges
 - Pardon power
- Checks on the Executive
 - Vice President and Cabinet can vote that the President is unable to discharge his duties

Judicial Branch

- Checks on the Legislature
 - Judicial review of constitutionality of legislation

- Seats are held on good behavior
 - Compensation cannot be diminished
 - Checks on the Executive
 - Judicial review
 - Chief Justice sits as President of the Senate during presidential impeachment
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The Preamble

The [Preamble](#) to the Constitution has no force in law; instead, it establishes the "Why" of the Constitution. Why is this document in existence? It reflects the desires of [the Framers](#) to improve on the government they currently had (to be "more perfect" than the [Articles of Confederation](#)), to ensure that that government would be just, and would protect its citizens from internal strife and from attack from the outside. It would be of benefit to the people, rather than to its detriment. And, perhaps as importantly, it intended to do the same for the future generations of Americans. A more extensive exploration of the Preamble is [also available](#).

Article 1 – The Legislature

Article 1 establishes the first of the three branches of the government, the Legislature. [Section 1](#) establishes the name of the Legislature to be The Congress, a bicameral, or two-part, body.

[Section 2](#) defines the House of Representatives, known as the lower house of Congress. It establishes a few minimum requirements, like a 25-year-old age limit, and establishes that the people themselves will elect the members for two years each. The members of the House are divided among the states proportionally, or according to size, giving more populous states more representatives in the House. The leader of the House is the Speaker of the House, chosen by the members.

[Section 3](#) defines the upper house of Congress, the Senate. Again, it establishes some minimum requirements, such as a 30-year-old age limit. Senators were originally appointed by the legislatures of the individual states, though this later changed. They serve for six years each. Each state has equal suffrage in the Senate, meaning that each state has the exact same number of Senators, two each, regardless of the population. This Section introduces the Vice-President, who is the leader of the Senate (called the President of the Senate); the Vice-President does not vote unless there is a tie.

[Section 4](#) says that each state may establish its own methods for electing members of the Congress, and mandates, or requires, that Congress must meet at least once per year.

[Section 5](#) says that Congress must have a minimum number of members present in order to meet, and that it may set fines for members who do not show up. It says that members may

be expelled, that each house must keep a journal to record proceedings and votes, and that neither house can adjourn without the permission of the other.

[Section 6](#) establishes that members of Congress will be paid, that they cannot be detained while traveling to and from Congress, that they cannot hold any other office in the government while in the Congress.

[Section 7](#) details how bills become law. First, any bill for raising money (such as by taxes or fees) must start out in the House. All bills must pass both houses of Congress in the exact same form. Bills that pass both houses are sent to the President. He can either sign the bill, in which case it becomes law, or he can veto it. In the case of a veto, the bill is sent back to Congress, and if both houses pass it by a two-thirds majority, the bill becomes law over the President's veto. This is known as overriding a veto.

There are a couple more options for the President. First, if he neither vetoes a bill nor signs it, it becomes a law without his signature after 10 days. The second option is called a pocket veto. It occurs if Congress sends the bill to the President and they then adjourn. If the President does not sign the bill within 10 days, it does not become law.

[Section 8](#) lists specific powers of Congress, including the power to establish and maintain an army and navy, to establish post offices, to create courts, to regulate commerce between the states, to declare war, and to raise money. It also includes a clause known as the Elastic Clause which allows it to pass any law necessary for the carrying out of the previously listed powers.

[Section 9](#) places certain limits on Congress. Certain legal items, such as suspension of habeas corpus, bills of attainder, and ex post facto laws are prohibited. No law can give preference to one state over another; no money can be taken from the treasury except by duly passed law, and no title of nobility, such as Prince or Marquis, will ever be established by the government.

[Section 10](#), finally, prohibits the states from several things. They cannot make their own money, or declare war, or do most of the other things prohibited Congress in Section 9. They cannot tax goods from other states, nor can they have navies.

Article 2 – The Executive

Article 2 establishes the second of the three branches of government, the Executive. [Section 1](#) establishes the office of the President and the Vice-President, and sets their terms to be four years. Presidents are elected by the [Electoral College](#), whereby each state has one vote for each member of Congress. Originally, the President was the person with the most votes and the Vice-President was the person with the second most, though this is later changed. Certain minimum requirements are established again, such as a 35-year minimum age.

Presidents must also be a [natural-born citizen](#) of the United States. The President is to be paid a salary, which cannot change, up or down, as long as he is in office.

[Section 2](#) gives the President some important powers. He is commander-in-chief of the armed forces and of the militia (National Guard) of all the states; he has a [Cabinet](#) to aid him, and can [pardon](#) criminals. He makes treaties with other nations, and picks many of the judges and other members of the government (all with the approval of the Senate).

[Section 3](#) establishes the duties of the President: to give a state of the union address, to make suggestions to Congress, to act as head of state by receiving ambassadors and other heads of state, and to be sure the laws of the United States are carried out.

[Section 4](#) briefly discusses the removal of the President, called impeachment.

Article 4 – The States

Article 4 concerns the states. [Section 1](#) mandates that all states will honor the laws of all other states; this ensures, for example, that a couple married in Florida is also considered married by Arizona, or that someone convicted of a crime in Virginia is considered guilty by Wyoming.

[Section 2](#) guarantees that citizens of one state be treated equally and fairly like all citizens of another. It also says that if a person accused of a crime in one state flees to another, they will be returned to the state they fled from. This section also has a clause dealing with fugitive slaves that no longer applies.

[Section 3](#) concerns the admittance of new states and the control of federal lands.

[Section 4](#) ensures a republican form of government (which, in this case, is synonymous with "representative democracy," and both of which are opposed to a monarchical or aristocratic scheme - the state derives its power from the people, not from a king or gentry) and guarantees that the federal government will protect the states against invasion and insurrection.

Article 5 – Amending the Constitution

[Article 5](#) details the method of amending, or changing, the Constitution. Please see [The Amendments Page](#) for more information.

The Amendment Process

There are essentially two ways [spelled out](#) in the Constitution for how to propose an amendment. One has never been used.

The first method is for a bill to pass both houses of the legislature, by a two-thirds majority in each. Once the bill has passed both houses, it goes on to the states. This is the route taken by all current amendments. Because of some long outstanding amendments, such as [the 27th](#), Congress will normally put a time limit (typically seven years) for the bill to be approved as an amendment (for example, see the [21st](#) and [22nd](#)).

The second method prescribed is for a Constitutional Convention to be called by two-thirds of the legislatures of the States, and for that Convention to propose one or more amendments. These amendments are then sent to the states to be approved by three-fourths of the legislatures or conventions. This route has never been taken, and there is discussion in political science circles about just how such a convention would be convened, and what kind of changes it would bring about.

Regardless of which of the two proposal routes is taken, the amendment must be ratified, or approved, by three-fourths of states. There are two ways to do this, too. The text of the amendment may specify whether the bill must be passed by the state legislatures or by a state convention. See the [Ratification Convention Page](#) for a discussion of the make up of a convention. Amendments are sent to the legislatures of the states by default. Only one amendment, the [21st](#), specified a convention. In any case, passage by the legislature or convention is by simple majority.

The Constitution, then, spells out four paths for an amendment:

- Proposal by convention of states, ratification by state conventions (never used)
- Proposal by convention of states, ratification by state legislatures (never used)
- Proposal by Congress, ratification by state conventions (used once)
- Proposal by Congress, ratification by state legislatures (used all other times)

It is interesting to note that at no point does the President have a role in the formal amendment process (though he would be free to make his opinion known). He cannot veto an amendment proposal, nor a ratification. This point is clear in Article 5, and was reaffirmed by the Supreme Court in *Hollingsworth v Virginia* (3 US 378 [1798]):

The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution.

Another way the Constitution's meaning is changed is often referred to as "informal amendment." This phrase is a misnomer, because there is no way to informally amend the Constitution, only the formal way. However, the *meaning* of the Constitution, or the interpretation, can change over time.

There are two main ways that the interpretation of the Constitution changes, and hence its meaning. The first is simply that circumstances can change. One prime example is the extension of the vote. In the times of the Constitutional Convention, the vote was often granted only to monied land holders. Over time, this changed and the vote was extended to more and more groups. Finally, the vote was extended to all males, then all persons 21 and older, and then to all persons 18 and older. The informal status quo became law, a part of the Constitution, because that was the direction the culture was headed. Another example is the political process that has evolved in the United States: political parties, and their trappings (such as primaries and conventions) are not mentioned or contemplated in the Constitution, but they are fundamental to our political system.

The second major way the meaning of the Constitution changes is through the judiciary. As the ultimate arbiter of how the Constitution is interpreted, the judiciary wields more actual power than the Constitution alludes to. For example, before the Privacy Cases, it was perfectly constitutional for a state to forbid married couples from using contraception; for a state to forbid blacks and whites to marry; to abolish abortion. Because of judicial changes in the interpretation of the Constitution, the nation's outlook on these issues changed.

In neither of these cases was the Constitution changed. Rather, the way we looked at the Constitution changed, and these changes had a far-reaching effect. These changes in meaning are significant because they can happen by a simple judge's ruling and they are not a part of the Constitution and so they can be changed later.

Popular Amendment

One other way of amendment is also not mentioned in the Constitution, and, because it has never been used, is lost on many students of the Constitution. Framers James Wilson, however, endorsed popular amendment, and the topic is examined at some length in Akhil Reed Amar's book, [The Constitution: A Biography](#).

The notion of popular amendment comes from the conceptual framework of the Constitution. Its power derives from the people; it was adopted by the people; it functions at the behest of and for the benefit of the people. Given all this, if the people, as a whole, somehow demanded a change to the Constitution, should not the people be allowed to make such a change? As Wilson noted in 1787, "... the people may change the constitutions whenever and however they please. This is a right of which no positive institution can ever deprive them."

It makes sense - if the people demand a change, it should be made. The change may not be the will of the Congress, nor of the states, so the two enumerated methods of amendment might not be practical, for they rely on these institutions. The real issue is not in the conceptual. It is a reality that if the people do not support the Constitution in its present form, it cannot survive. The real issue is in the practical. Since there is no process specified, what would the process be? There are no national elections today - even elections for the presidency are local. There is no precedent for a national referendum. It is easy to say that

the Constitution can be changed by the people in any way the people wish. Actually making the change is another story altogether.

Suffice it to say, for now, that the notion of popular amendment makes perfect sense in the constitutional framework, even though the details of effecting popular amendment could be impossible to resolve.

Article 6 – Obligations of the United States

[Article 6](#) concerns the United States itself. First, it guarantees that the United States under the Constitution would assume all debts and contracts entered into by the United States under the [Articles of Confederation](#). It sets the Constitution and all laws and treaties of the United States to be the supreme law of the country. Finally, it requires all officers of the United States and of the states to swear an oath of allegiance to the United States and the Constitution when taking office.

Article 7 – Ratification

[Article 7](#) details the method for ratification, or acceptance, of the Constitution: of the original 13 states in the United States, nine had to accept the Constitution before it would officially go into effect.

The Amendments

The Amendments

The first ten amendments to the Constitution were all adopted at the same time and are collectively known as the [Bill of Rights](#).

The [1st Amendment](#) protects the people's right to practice [religion](#), to speak freely, to assemble (meet), to address (petition) the government, and of the press to publish.

The [2nd Amendment](#) protects the right to own guns. There is [debate](#) whether this is a right that protects the state, or a right that protects individuals.

The [3rd Amendment](#) guarantees that the army cannot force homeowners to give them room and board.

The [4th Amendment](#) protects the people from the government improperly taking property, papers, or people, without a valid warrant based on probable cause (good reason).

The [5th Amendment](#) protects people from being held for committing a crime unless they are properly indicted, that they may not be tried twice for the same crime, that you need not be forced to testify against yourself, and from property being taken without just compensation. It also contains [due process](#) guarantees.

The [6th Amendment](#) guarantees a speedy trial, an impartial jury, that the accused can confront witnesses against them, and that the accused must be allowed to have a lawyer.

The [7th Amendment](#) guarantees a jury trial in federal civil court cases. This type of case is normally no longer heard in federal court.

The [8th Amendment](#) guarantees that punishments will be fair, and not cruel, and that extraordinarily large fines will not be set.

The [9th Amendment](#) is simply a statement that other rights aside from those listed may exist, and just because they are not listed doesn't mean they can be violated.

The [10th Amendment](#) is the subject of some debate, but essentially it states that any power not granted to the federal government belongs to the states or to the people. See the [Federalism Topic Page](#) for more information.

The [11th Amendment](#) more clearly defines the original jurisdiction of the Supreme Court concerning a suit brought against a state by a citizen of another state.

The [12th Amendment](#) redefines how the President and Vice-President are chosen by the Electoral College, making the two positions cooperative, rather than first and second highest vote-getters. It also ensures that anyone who becomes Vice-President must be eligible to become President.

The [13th Amendment](#) abolished [slavery](#) in the entire United States.

The [14th Amendment](#) ensured that all citizens of all states enjoyed not only rights on the federal level, but on the state level, too. It removed the three-fifths counting of slaves in the census. It ensured that the United States would not pay the debts of rebellious states. It also had several measures designed to ensure the loyalty of legislators who participated on the Confederate side of the Civil War.

The [15th Amendment](#) ensures that race cannot be used as a criteria for voting.

The [16th Amendment](#) authorizes the United States to collect income tax without regard to the population of the states.

The [17th Amendment](#) shifted the choosing of Senators from the state legislatures to the people of the states.

The [18th Amendment](#) abolished the sale or manufacture of alcohol in the United States. This amendment was later repealed (erased).

The [19th Amendment](#) ensures that gender cannot be used as a criteria for voting.

The [20th Amendment](#) set new start dates for the terms of the Congress and the President, and clarifies how the deaths of Presidents before swearing-in would be handled.

The [21st Amendment](#) repealed the 18th Amendment.

The [22nd Amendment](#) set a limit on the number of times a President could be elected - two four-year terms. It has one exception for a Vice-President who assumes the Presidency after the death or removal of the President, establishing the maximum term of any President to 10 years.

The [23rd Amendment](#) grants the District of Columbia (Washington D.C.) the right to three electors in Presidential elections.

The [24th Amendment](#) ensured that no tax could be charged to vote for any federal office.

The [25th Amendment](#) clarifies even further the [line of succession](#) to the Presidency, and establishes rules for a President who becomes unable to perform his duties while in office.

The [26th Amendment](#) ensures that any person 18 or over may vote.

The [27th Amendment](#) requires that any law that increased the pay of legislators may not take effect until after an election.