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## The Constitution of the United States: A Transcription

**Note:** *The following text is a transcription of the Constitution in its **original** form.*

**Items that are hyperlinked have since been amended or superseded.**

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**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.

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### Article. I.

#### Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### Section. 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

#### Section. 3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

#### **Section. 4.**

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December](#), unless they shall by Law appoint a different Day.

#### **Section. 5.**

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

#### **Section. 6.**

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

#### **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.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

#### **Section. 8.**

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

#### **Section. 9.**

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

#### **Section. 10.**

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

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### **Article. II.**

#### **Section. 1.**

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this

Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

## **Section. 2.**

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

## **Section. 3.**

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

## **Section. 4.**

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

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# **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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

## **Section. 2.**

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State,--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and

foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

### **Section. 3.**

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

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## **Article. IV.**

### **Section. 1.**

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

### **Section. 2.**

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

### **Section. 3.**

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

### **Section. 4.**

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.

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## **Article. V.**

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

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**Article. VI.**

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

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; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

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**Article. VII.**

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The Word, "the," being interlined between the seventh and eighth Lines of the first Page, the Word "Thirty" being partly written on an Erasure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Attest William Jackson Secretary

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

G<sup>o</sup>. Washington

*Presidt and deputy from Virginia*

**Delaware**

Geo: Read

Gunning Bedford jun

John Dickinson

Richard Bassett

Jaco: Broom

**Maryland**

James McHenry

Dan of St Thos. Jenifer

Danl. Carroll

**Virginia**

John Blair

James Madison Jr.

**North Carolina**

Wm. Blount

Richd. Dobbs Spaight

Hu Williamson

**South Carolina**

J. Rutledge

Charles Cotesworth Pinckney

Charles Pinckney

Pierce Butler

**Georgia**

William Few

Abr Baldwin

**New Hampshire**

[John Langdon](#)  
[Nicholas Gilman](#)

**Massachusetts**

[Nathaniel Gorham](#)  
[Rufus King](#)

**Connecticut**

[Wm. Saml. Johnson](#)  
[Roger Sherman](#)

**New York**

[Alexander Hamilton](#)

**New Jersey**

[Wil: Livingston](#)  
[David Brearley](#)  
[Wm. Paterson](#)  
[Jona: Dayton](#)

**Pennsylvania**

[B Franklin](#)  
[Thomas Mifflin](#)  
[Robt. Morris](#)  
[Geo. Clymer](#)  
[Thos. FitzSimons](#)  
[Jared Ingersoll](#)  
[James Wilson](#)  
[Gouv Morris](#)

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For biographies of the non-signing delegates to the Constitutional Convention,  
see the [Founding Fathers](#) page.

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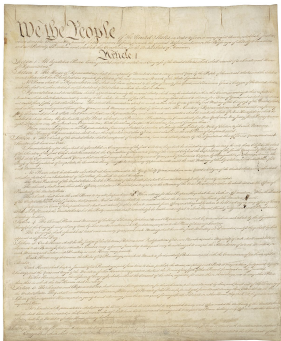
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# United States Constitution

United States Constitution	
	
Page one of the original copy of the Constitution	
Created	September 17, 1787
Ratified	June 21, 1788
Location	National Archives, Washington, D.C.
Author(s)	Philadelphia Convention
Signatories	39 of the 55 delegates
Purpose	To replace the Articles of Confederation (1777)

The **Constitution of the United States** is the supreme law of the United States of America.<sup>[1]</sup> The first three Articles of the Constitution establish the rules and separate powers of the three branches of the federal government: a legislature, the bicameral Congress; an executive branch led by the President; and a federal judiciary headed by the Supreme Court. The last four Articles frame the principle of federalism. The Tenth Amendment confirms its federal characteristics.

The Constitution was adopted on September 17, 1787, by the Constitutional Convention in Philadelphia, Pennsylvania, and ratified by conventions in eleven states. It went into effect on March 4, 1789.<sup>[2]</sup> The first ten constitutional amendments ratified by three-fourths of the states in 1791 are known as the Bill of Rights. The Constitution has been amended seventeen additional times (for a total of 27 amendments) and its principles are applied in courts of law by judicial review.

The Constitution guides American law and political culture. Its writers composed the first constitution of its kind incorporating recent developments in constitutional theory with multiple traditions, and their work influenced later writers of national constitutions. It has been amended over time and it is supplemented and interpreted by a large body of United States constitutional law. Recent impulses for reform center on concerns for extending democracy and balancing the federal budget.

## History

### First government

The Articles of Confederation and Perpetual Union was the first constitution of the United States of America.<sup>[3]</sup> The chief problem with the new government under the Articles of Confederation was, in the words of George Washington, "no money."<sup>[4]</sup>

The Continental Congress could print money, but by 1786 the currency was worthless. (A popular phrase of the times chimed that a useless object or person was .. *not worth a Continental*, referring to the Continental dollar.) Congress could borrow money, but couldn't pay it back.<sup>[4]</sup> No state paid all their U.S. taxes; Georgia paid nothing. Some few paid an amount equal to interest on the national debt owed to their citizens, but no more.<sup>[4]</sup> No interest was paid on debt owed foreign governments. By 1786, the United States would default on outstanding debts as their dates came due.<sup>[4]</sup>

In the world of 1787 the United States could not defend its sovereignty as an independent nation. Most of the troops in the 625-man U.S. Army were deployed facing—but not threatening—British forts being maintained on American soil. Those troops had not been paid; some were deserting and others threatening mutiny.<sup>[5]</sup> Spain closed New Orleans to American commerce; U.S. officials protested to no effect. Barbary Pirates began seizing American ships of commerce; the Treasury had no funds to pay the pirates' extortionate demands. If any extant or new military crisis required action the Congress had no credit or taxing power to finance a response.<sup>[4]</sup>

The new government (of the *united* states) was proving inadequate to the obligations of sovereignty within the confederation of the *individual* states. That is, although the Treaty of Paris (1783) was signed between Great Britain and the United States and each of the states by name, the various individual states proceeded blithely to violate it. New York and South Carolina repeatedly prosecuted Loyalists for wartime activity and redistributed their lands over the protests of both Great Britain and the Confederation Congress.<sup>[4]</sup> Individual state legislatures independently laid embargoes, negotiated directly with foreigners, raised armies and made war, all violating the letter and the spirit of the "Articles of Confederation and Perpetual Union".

During Shays' Rebellion in Massachusetts, Congress could provide no money to support an endangered constituent state. Nor could Massachusetts pay for its own internal defense; General Benjamin Lincoln was obliged to raise funds among Boston merchants to pay for a volunteer army.<sup>[6]</sup> During the next Convention, James Madison angrily questioned whether the Articles of Confederation was a binding compact or even a viable government. Connecticut paid nothing and "positively refused" to pay U.S. assessments for two years.<sup>[7]</sup> A rumor had it that a "seditious party" of New York legislators had opened a conversation with the Viceroy of Canada. To the south, the British were said to be openly funding Creek Indian raids on white settlers in Georgia and adjacent territory. Savannah was fortified and the State of Georgia was under martial law.<sup>[8]</sup>

Congress was paralyzed. It could do nothing significant without nine states, and some legislation required all thirteen. When a state produced only one member in attendance its vote was not counted. If a state's delegation were evenly divided, its vote could not be counted towards the nine-count requirement.<sup>[9]</sup> The Articles Congress had "virtually ceased trying to govern."<sup>[10]</sup> The vision of a "respectable nation" among nations seemed to be fading in the eyes of revolutionaries such as George Washington, Benjamin Franklin and Rufus King. Their dream of a republic, a nation without hereditary rulers, with power derived from the people in frequent elections, was in doubt.<sup>[11]</sup>

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## Constitutional Convention

On February 21, 1787, the Articles Congress called a convention of state delegates at Philadelphia to propose a plan of government. Unlike earlier attempts, the convention was not meant for new laws or piecemeal alterations, but for the “sole and express purpose of revising the Articles of Confederation”. The convention was not limited to commerce; rather, it was intended to “render the federal constitution adequate to the exigencies of government and the preservation of the Union.” The proposal might take effect when approved by Congress and the states.<sup>[12]</sup>

On the appointed day, May 14, 1787, only the Virginia and Pennsylvania delegations were present. A quorum of seven states met on May 25. Eventually twelve states were represented; 74 delegates were named, 55 attended and 39 signed. The delegates arrived with backgrounds in local and state government and Congress. They were judges and merchants, war veterans and revolutionary patriots, native-born and immigrant, establishment easterners and westward-looking adventurers. The participating delegates are honored as the Constitution’s “Framers”.<sup>[13]</sup>

## Drafting the Constitution

The Constitutional Convention began deliberations on May 25, 1787. The delegates were generally convinced that an effective central government with a wide range of enforceable powers must replace the weaker Congress established by the Articles of Confederation. The high quality of the delegates to the convention was remarkable. As Thomas Jefferson in Paris wrote to John Adams in London, “It really is an assembly of demigods.”

Delegates used two streams of intellectual tradition, and any one delegate could be found using both or a mixture depending on the subject under discussion: foreign affairs, the economy, national government, or federal relationships

among the states. The Virginia Plan recommended a consolidated national government, generally favoring the most populated states. It used the philosophy of John Locke to rely on consent of the governed, Montesquieu for divided government, and Edward Coke to emphasize civil liberties. The New Jersey Plan generally favored the less populated states, using the philosophy of English Whigs such as Edmund Burke to rely on received procedure, and William Blackstone to emphasize sovereignty of the legislature.

The Convention devolved into a “Committee of the Whole” to consider the fifteen propositions of the Virginia Plan in their numerical order. These discussions continued until June 13, when the Virginia resolutions in amended form were reported out of committee.

All agreed to a republican form of government grounded in representing the people in the states. For the legislature, two issues were to be decided: how the votes were to be allocated among the states in the Congress, and how the representatives should be elected. The question was settled by the Connecticut Compromise or “Great Compromise”. In the House, state power was to be based on population and the people would vote. In the Senate, state power was to be based on state legislature election, with two Senators generally to be elected by different state legislatures to better reflect the long term interests of the people living in each state.

The Great Compromise ended the stalemate between “patriots” and “nationalists”, leading to numerous other compromises in a spirit of accommodation. There were sectional interests to be balanced by the three-fifths compromise; reconciliation on Presidential term, powers, and method of selection; and jurisdiction of the federal judiciary. Debates on the Virginia resolutions continued. The 15 original resolutions had been expanded into 23.



Signing the Constitution, 'unanimous' by delegation. Eleven states ratify to begin in 1789, unanimously 1790

On July 24, a committee of five (John Rutledge (SC), Edmund Randolph (VA), Nathaniel Gorham (MA), Oliver Ellsworth (CT), and James Wilson (PA)) was elected to draft a detailed constitution. The Convention adjourned from July 26 to August 6 to await the report of this "Committee of Detail". Overall, the report of the committee conformed to the resolutions adopted by the Convention, adding some elements.

From August 6 to September 10, the report of the committee of detail was discussed, section-by-section, and clause-by-clause. Details were attended to, and further compromises were effected. Toward the close of these discussions, on September 8, a "Committee of Style" of five was appointed. Its final version was taken up on Monday, September 17, at the Convention's final session. Several of the delegates were disappointed in the result, a makeshift series of unfortunate compromises. Some delegates left before the ceremony, and three others refused to sign. Of the thirty-nine signers, Benjamin Franklin summed up addressing the Convention, "There are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them." He would accept the Constitution, "because I expect no better and because I am not sure that it is not the best."

The advocates of the Constitution were anxious to obtain the unanimous support of all twelve states represented in the Convention. Their accepted formula was "Done in Convention, by the unanimous consent of the States present." George Washington noted in his diary that night, the proposal was agreed to by eleven state delegations and the lone Mr. Hamilton for New York. Transmitted to the Articles Congress then sitting in New York City, the Constitution was forwarded to the states by Congress recommending the ratification process outlined in the Constitution. Each state legislature was to call elections for a "Federal Convention" to ratify the Constitution. They expanded the franchise beyond the Constitutional requirement to more nearly embrace "the people". Eleven ratified initially, and all thirteen unanimously did so a year later. The Articles Congress certified eleven states' beginning the new government, and called the states to hold elections to begin operation. It then dissolved itself on March 4, 1789, the day the first session of the First Congress began. George Washington was inaugurated as President two months later.

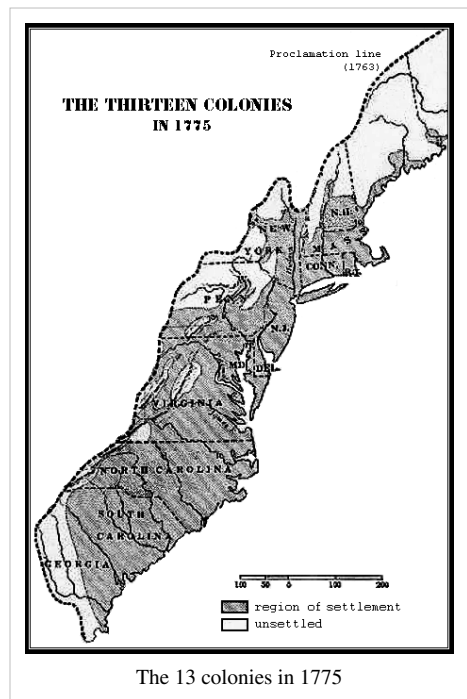
## Ratification

It was within the power of the old congress to expedite or block the ratification of the new Constitution. The document that the Philadelphia Convention presented was technically only a revision of the Articles of Confederation. But the last article of the new instrument provided that when ratified by conventions in nine states (or 2/3 at the time), it should go into effect among the States so acting.

Then followed an arduous process of ratification of the Constitution by specially constituted conventions. The need for only nine states was a controversial decision at the time, since the Articles of Confederation could only be amended by unanimous vote of all the states. However, the new Constitution was ratified by all thirteen states, with Rhode Island signing on last in May 1790.

Three members of the Convention – Madison, Gorham, and King – were also Members of Congress. They proceeded at once to New York, where Congress was in session, to placate the expected opposition. Aware of their vanishing authority, Congress, on September 28, after some debate, unanimously decided to submit the Constitution to the States for action. It made no recommendation for or against adoption.<sup>[14]</sup>

Two parties soon developed, one in opposition, the Antifederalists, and one in support, the Federalists, of the Constitution, and the Constitution was debated, criticized, and expounded clause by clause. Hamilton, Madison, and



Jay, under the name of Publius, wrote a series of commentaries, now known as the Federalist Papers, in support of the new instrument of government; however, the primary aim of the essays was for ratification in the state of New York, at that time a hotbed of anti-federalism. These commentaries on the Constitution, written during the struggle for ratification, have been frequently cited by the Supreme Court as an authoritative contemporary interpretation of the meaning of its provisions. The closeness and bitterness of the struggle over ratification and the conferring of additional powers on the central government can scarcely be exaggerated. In some states, ratification was effected only after a bitter struggle in the state convention itself. In every state, the Federalists proved more united, and only they coordinated action between different states, as the Anti-federalists were localized and did not attempt to reach out to other states.

The Continental Congress – which still functioned at irregular intervals – passed a resolution on September 13, 1788, to put the new Constitution into operation.

## Historical influences

### Fundamental law

Several ideas in the Constitution were new. These were associated with the combination of consolidated government along with federal relationships with constituent states.

Enlightenment and Rule of law



John Locke Two Treatises of Government life, liberty and property

The due process clause of the Constitution was partly based on common law and on Magna Carta (1215) which had become a foundation of English liberty against arbitrary power wielded by a tyrant.

Both the influence of Edward Coke and William Blackstone were evident at the Convention. In his *Institutes of the Laws of England*, Edward Coke interpreted Magna Carta protections and rights to apply not just to nobles, but to all British subjects. In writing the Virginia Charter of 1606, he enabled the King in Parliament to give those to be born in the colonies all rights and liberties as though they were born in England. William Blackstone's *Commentaries on the Laws of England* were the most influential books on law in the new republic.

British political philosopher John Locke following the Glorious Revolution was a major influence expanding on the contract theory of government advanced by Thomas Hobbes. Locke advanced the principle of consent of the governed in his *Two Treatises of Government*. Government's duty under a social contract among the sovereign people was to serve them by protecting their rights. These basic rights were life, liberty and property.

Montesquieu, emphasized the need for balanced forces pushing against each other to prevent tyranny (reflecting the influence of Polybius's 2nd century BC treatise on the checks and balances of the Roman Republic). In his *The Spirit of the Laws*, Montesquieu argues that the separation of state powers should be by its service to the people's liberty: legislative, executive and judicial.

Division of power in a republic was informed by the British experience with mixed government, as well as study of republics ancient and modern. A substantial body of thought had been developed from the literature of republicanism in the United States, including work by John Adams and applied to the creation of state constitutions.

### **Native Americans**

The Iroquois nations' political confederacy and democratic government under the Great Law of Peace have been credited as influences on the Articles of Confederation and the United States Constitution.<sup>[15]</sup> Relations had long been close, as from the beginning the colonial English needed allies against New France. Prominent figures such as Thomas Jefferson in colonial Virginia and Benjamin Franklin in colonial Pennsylvania, two colonies whose territorial claims extended into Iroquois territory, were involved with leaders of the New York-based Iroquois Confederacy.<sup>[16]</sup>

In the 1750s at the Albany Congress, Franklin called for "some kind of union" of English colonies to effectively deal with Amerindian tribes.<sup>[17]</sup> John Rutledge (SC) quoted Iroquoian law to the Constitutional Convention, "We, the people, to form a union, to establish peace, equity, and order..."<sup>[18]</sup>

The Iroquois experience with confederacy was both a model and a cautionary tale. Their "Grand Council" had no coercive control over the constituent members, and decentralization of authority and power had frequently plagued the Six Nations since the coming of the Europeans. The governance adopted by the Iroquois suffered from "too much democracy" and the long term independence of the Iroquois confederation suffered from intrigues within each Iroquois nation.<sup>[19]</sup>

The 1787 United States had similar problems, with individual states making separate agreements with European and Amerindian nations apart from the Continental Congress. Without the Convention's proposed central government, the framers feared that the fate of the confederated Articles' United States would be the same as the Iroquois Confederacy.

### **Other bills of rights**

The United States Bill of Rights consists of the ten amendments added to the Constitution in 1791, as supporters of the Constitution had promised critics during the debates of 1788.<sup>[20]</sup> The English Bill of Rights (1689) was an inspiration for the American Bill of Rights. Both require jury trials, contain a right to keep and bear arms, prohibit excessive bail and forbid "cruel and unusual punishments." Many liberties protected by state constitutions and the Virginia Declaration of Rights were incorporated into the Bill of Rights.

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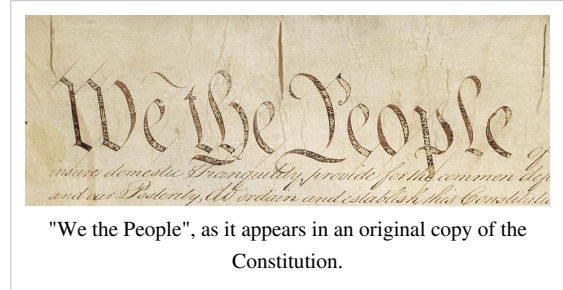
## Original text

The Constitution consists of a preamble, seven original articles, twenty-seven amendments, and a paragraph certifying its enactment by the constitutional convention.

## Authority and purpose

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.

The Preamble sets out the origin, scope and purpose of the Constitution. Its origin and authority is in "We, the people of



the United States". This echoes the Declaration of Independence. "One people" dissolved their connection with another, and assumed among the powers of the earth, a sovereign nation-state. The scope of the Constitution is twofold. First, "to form a more perfect Union" than had previously existed in the "perpetual Union" of the Articles of Confederation. Second, to "secure the blessings of liberty", which were to be enjoyed by not only the first generation, but for all who came after, "our posterity".<sup>[21]</sup>

This is an itemized social contract of democratic philosophy. It details how the more perfect union was to be carried out between the national government and the people. The people are to be provided (a) justice, (b) civil peace, (c) common defense, (d) those things of a general welfare that they could not provide themselves, and (e) freedom. A government of "liberty and union, now and forever", unfolds when "We" begin and establish this Constitution.<sup>[22][23]</sup>

## National government

### Legislature

Article One describes the Congress, the legislative branch of the federal government. Section 1, reads, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The article establishes the manner of election and the qualifications of members of each body. Representatives must be at least 25 years old, be a citizen of the United States for seven years, and live in the state they represent. Senators must be at least 30 years old, be a citizen for nine years, and live in the state they represent.

Article I, Section 8 enumerates the legislative powers, which include:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article I, Section 9 lists eight specific limits on congressional power.

The United States Supreme Court has interpreted the Commerce Clause and the Necessary and Proper Clause in Article One to allow Congress to enact legislation that is neither expressly listed in the enumerated power nor expressly denied in the limitations on Congress. In *McCulloch v. Maryland* (1819), the Supreme Court read the Necessary and Proper Clause to permit the federal government to take action that would "enable [it] to perform the high duties assigned to it [by the Constitution] in the manner most beneficial to the people,"<sup>[24]</sup> even if that action is not itself within the enumerated powers. Chief Justice Marshall clarified: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional."<sup>[24]</sup>



## Executive

Article II, Section 1 creates the presidency. The section vests the executive power in a President. The President and Vice President serve identical four-year terms. This section originally set the method of electing the President and Vice President, but this method has been superseded by the Twelfth Amendment.

### Qualifications

The President must be a natural born citizen of the United States or a citizen at the time of the adoption of the Constitution, at least 35 years old and a resident of the United States for at least 14 years.<sup>[25]</sup> The first president to be born an American citizen was Martin Van Buren.<sup>[26]</sup>

### Succession

Section 1 specifies that the Vice President succeeds to the presidency if the President is removed, unable to discharge the powers and duties of office, dies while in office, or resigns. The later 25th Amendment clarifies this.

### Pay

The President receives Compensation, and this compensation may not be increased or decreased during the president's term in office. The president may not receive other compensation from either the United States or any of the individual states.

### Oath of office

The final clause creates the presidential oath to preserve, protect, and defend the Constitution.

### Section 2 grants substantive powers to the president:

- The president is the Commander in Chief of the United States Armed Forces, and of the state militias when these are called into federal service.
- The president may require opinions of the principal officers of the federal government.
- The president may grant reprieves and pardons, except in cases of impeachment (i.e., the president cannot pardon himself or herself to escape impeachment by Congress).

### Section 2 grants and limits the president's appointment powers:

- The president may make treaties, with the advice and consent of the Senate, provided two-thirds of the senators who are present agree.
- With the advice and consent of the Senate, the President may appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise described in the Constitution.
- Congress may give the power to appoint lower officers to the President alone, to the courts, or to the heads of departments.
- The president may make any of these appointments during a congressional recess. Such a "recess appointment" expires at the end of the next session of Congress.

### Section 3 opens by describing the president's relations with Congress:

- The president reports on the state of the union.
- The Recommendation Clause<sup>[27]</sup>: The president has the power and duty<sup>[28]</sup> to recommend to Congress's consideration such measures which the president deems as "necessary and expedient".
- The president may convene either house, or both houses, of Congress.
- When the two houses of Congress cannot agree on the time of adjournment, the president may adjourn them to some future date.

### Section 3 adds:

- The president receives ambassadors.
  - The president sees that the laws are faithfully executed.
-



- The president commissions all the offices of the federal government.

Section 4 provides for removal of the president and other federal officers. The president is removed on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## Judiciary

Article Three describes the court system (the judicial branch), including the Supreme Court. There shall be one court called the Supreme Court. The article describes the kinds of cases the court takes as original jurisdiction. Congress can create lower courts and an appeals process. Congress enacts law defining crimes and providing for punishment. Article Three also protects the right to trial by jury in all criminal cases, and defines the crime of treason.

**Judicial power.** Article III, Section 1 is the authority to interpret and apply the law to a particular case. It includes the power to punish, sentence, and direct future action to resolve conflicts. The Constitution outlines the U.S. judicial system. In the Judiciary Act of 1789 Congress began to fill in details. Currently, Title 28 of the U.S. Code<sup>[29]</sup> describes judicial powers and administration.

As of the First Congress, the Supreme Court justices rode circuit to sit as panels to hear appeals from the district courts.<sup>[30]</sup> In 1891 Congress enacted a new system. District courts would have original jurisdiction. Intermediate appellate courts (circuit courts) with exclusive jurisdiction were made up of districts. These circuit courts heard regional appeals before consideration by the Supreme Court. The Supreme Court holds discretionary jurisdiction, meaning that it does not have to hear every case that is brought to it.<sup>[29]</sup>

To enforce judicial decisions, the Constitution grants federal courts both criminal contempt and civil contempt powers. The court's summary punishment for contempt immediately overrides all other punishments applicable to the subject party. Other implied powers include injunctive relief and the habeas corpus remedy. The Court may imprison for contumacy, bad-faith litigation, and failure to obey a writ of mandamus. Judicial power includes that granted by Acts of Congress for rules of law and punishment. Judicial power also extends to areas not covered by statute. Generally, federal courts cannot interrupt state court proceedings.<sup>[29]</sup>

**Arising Clause.** The **Diversity (of Citizenship) Clause.** Article III, Section 2, Clause 1. Citizens of different states are citizens of the United States. Cases arising under the laws of the United States and its treaties come under the jurisdiction of federal courts. Cases under international maritime law and conflicting land grants of different states come under federal courts. Cases between U.S. citizens in different states, and cases between U.S. citizens and foreign states and their citizens, come under federal jurisdiction. The trials will be in the state where the crime was committed.<sup>[29]</sup>

**Judicial review.** Article III, Section 2. U.S. courts have the power to rule legislative enactments or executive acts invalid on constitutional grounds. The Constitution is the supreme law of the land. Any court, state or federal, high or low, has the power to refuse to enforce any statute or executive order it deems repugnant to the U.S. Constitution. Two conflicting federal laws are under "pendent" jurisdiction if one presents a strict constitutional issue. Federal court jurisdiction is rare when a state legislature enacts something as under federal jurisdiction.<sup>[31]</sup> To establish a federal system of national law, considerable effort goes into developing a spirit of comity between federal government and states. By the doctrine of 'Res Judicata', federal courts give "full faith and credit" to State Courts.<sup>[32]</sup> The Supreme Court will decide Constitutional issues of state law only on a case by case basis, and only by strict Constitutional necessity, independent of state legislators motives, their policy outcomes or its national wisdom.<sup>[33]</sup>

**Exceptions Clause.** Article III, Section 2, Clause 2. The Supreme Court has original jurisdiction in cases about Ambassadors and other public ministers and consuls, for all cases respecting foreign nation-states.<sup>[34]</sup>

**Standing.** Article III, Section 2, Clause 2. This is the rule for federal courts to take a case. Justiciability is the standing to sue. A case cannot be hypothetical or concerning a settled issue. In the U.S. system, someone must have direct, real and substantial personal injury. The issue must be concrete and "ripe", that is, of broad enough concern in the Court's jurisdiction that a lower court, either federal or state, does not geographically cover all the existing cases before law. Courts following these guidelines exercise judicial restraint. Those making an exception are said to be

judicial activist.<sup>[35]</sup>

**Treason.** Article III, Section 3. This part of the Constitution strips Congress of the Parliamentary power of changing or modifying the law of treason by simple majority statute. It's not enough merely to think treasonously; there must be an overt act of making war or materially helping those at war with the United States. Accusations must be corroborated by at least two witnesses. Congress is a political body and political disagreements routinely encountered should never be considered as treason. This allows for nonviolent resistance to the government because opposition is not a life or death proposition. However, Congress does provide for other less subversive crimes and punishments such as conspiracy.<sup>[36]</sup>

## Federal relationships

### The States

Article Four outlines the relation between the states and the relation between the federal government. In addition, it provides for such matters as admitting new states as well as border changes between the states. For instance, it requires states to give "full faith and credit" to the public acts, records, and court proceedings of the other states. Congress is permitted to regulate the manner in which proof of such acts, records, or proceedings may be admitted. The "privileges and immunities" clause prohibits state governments from discriminating against citizens of other states in favor of resident citizens (e.g., having tougher penalties for residents of Ohio convicted of crimes within Michigan).

It also establishes extradition between the states, as well as laying down a legal basis for freedom of movement and travel amongst the states. Today, this provision is sometimes taken for granted, especially by citizens who live near state borders; but in the days of the Articles of Confederation, crossing state lines was often a much more arduous and costly process. Article Four also provides for the creation and admission of new states. The Territorial Clause gives Congress the power to make rules for disposing of federal property and governing non-state territories of the United States. Finally, the fourth section of Article Four requires the United States to guarantee to each state a republican form of government, and to protect the states from invasion and violence.

### Amendments

**Amending clause.** Article V, Section 1. Article V provides for amendments. Amendment of state Constitutions at the time of the 1787 Constitutional Convention required only a majority vote in a sitting legislature of a state, as duly elected representatives of its sovereign people. The very next session, meeting by the same authority, could likewise undo the work of any previous sitting assembly. This was not the "fundamental law" the founders such as James Madison had in mind.<sup>[37]</sup>

Nor did they want to perpetuate the paralysis of the Articles by requiring unanimous state approval. The Articles of Confederation had proven unworkable within ten years of its employment.<sup>[38]</sup> Between the two existing options for changing the supreme "law of the land", (a) too easy by the states, and (b) too hard by the Articles, the Constitution offered a federal balance of the national legislature and the states. Two-thirds of both houses of Congress could propose an Amendment, which can become valid "for all intents and purposes" as the Constitution, when three-fourths of the states approve.<sup>[39]</sup> No Amendment can ever take away equal State votes in the U.S. Senate unless a state first agrees to it. No amendment regarding slavery or direct taxes could be permitted until 1808. Slavery was abolished by the Thirteenth Amendment in December 1865, direct tax on income was effected by the Sixteenth Amendment in February 1913.<sup>[40]</sup>

**Incorporated Amendments.** The Fourteenth Amendment is used by federal courts to incorporate Amendments into the state constitutions as provisions to protect United States citizens. By 1968, the Court would hold that provisions of the Bill of Rights were "fundamental to the American scheme of justice" and apply it to the states in their relationship to individual United States citizens in every state.<sup>[41]</sup>

Among the Bill of Rights, Doug Linder counts the First, Second, Fourth, and Sixth Amendment as fully incorporated into State governance. Most of the Fifth Amendment is incorporated, and a single provision of the Eighth. The Third Amendment is incorporated only in the U.S. Second Circuit, the states of New York, Connecticut and Vermont. The Supreme Court has not determined the Constitutional issue is yet "ripe" for national application in every state. The Seventh Amendment is not incorporated.<sup>[42]</sup> Twentieth Century Amendments use the prohibitive phrase, "neither the United States nor any State" to comprehensively incorporate the Amendment into the States at the time of its ratification into the Constitution.

### **Federal government**

Article Six establishes the Constitution, and the laws and treaties of the United States made according to it, to be the supreme law of the land, and that "the judges in every state shall be bound thereby, any thing in the laws or constitutions of any state notwithstanding." It validates national debt created under the Articles of Confederation and requires that all federal and state legislators, officers, and judges take oaths or affirmations to support the Constitution. This means that the states' constitutions and laws should not conflict with the laws of the federal constitution and that in case of a conflict, state judges are legally bound to honor the federal laws and constitution over those of any state.

Article Six also states "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

### **Ratification**

**Ratification clause.** Article VII, Section 1. Article Seven details how to initiate the new government as proposed. The Constitution was transmitted to the Articles Congress, then after debate, forwarded to the states. States were to ratify the Constitution in state conventions specially convened for that purpose. The ratification conventions would arise directly from the people voting, and not by the forms of any existing State constitutions.<sup>[43]</sup>

The new national Constitution would not take effect until at least nine states ratified. It would replace the existing government under the Articles of Confederation only after three-fourths of the existing states agreed to move together by special state elections for one-time conventions. It would apply only to those states that ratified it, and it would be valid for all states joining after.<sup>[29]</sup> The Articles Congress certified eleven ratification conventions had adopted the proposed Constitution for their states on September 13, 1788, and in accordance with its resolution, the new Constitutional government began March 4, 1789.<sup>[44]</sup> (*See above Ratification and beginning.*)

## **The Amendments**

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Changing the "fundamental law" is a two-part process of three steps: amendments are proposed then they must be ratified by the states. An Amendment can be proposed one of two ways. Both ways have two steps. It can be proposed by Congress, and ratified by the states. Or on demand of two-thirds of the state legislatures, Congress could call a constitutional convention to propose an amendment, then to be ratified by the states.

To date, all amendments, whether ratified or not, have been proposed by a two-thirds vote in each house of Congress. Over 10,000 constitutional amendments have been introduced in Congress since 1789; during the last several decades, between 100 and 200 have been offered in a typical congressional year. Most of these ideas never leave Congressional committee, and of those reported to the floor for a vote, far fewer get proposed by Congress to the states for ratification.<sup>[45]</sup>

In the first step, the proposed Amendment must be supported by two-thirds in Congress, both House and Senate. The second step requires a three-fourths majority of the states ratifying the amendment. Congress determines whether the state legislatures or special state conventions ratify the amendment.<sup>[46]</sup>

On attaining Constitutional ratification of the proposal by three-fourths of the states, at that instant, the "fundamental law" is expressed in that Amendment. It is operative without any additional agency. No signature is required from the President. Congress does not have to re-enact. The Supreme Court does not have to deliberate. There is no delay to re-draft and re-balance the entire Constitution incorporating the new wording. The Amendment, with the last required state ratifying, is the "supreme law of the land."

Unlike amendments to most constitutions, amendments to the United States Constitution are appended to the body of the text without altering or removing what already exists. Newer text is given precedence.<sup>[47]</sup> Subsequent printed editions of the Constitution may line through the superseded passages with a note referencing the Amendment. Notes often cite applicable Supreme Court rulings incorporating the new fundamental law.

## Successful

The Constitution has twenty-seven amendments. The first ten, collectively known as the Bill of Rights, were ratified simultaneously by 1791. The next seventeen were ratified separately over the next two centuries.

### "Bill of Rights"

The National Archives displays the Bill of Rights as one of the three "Charters of Freedom". The original intent of these first ten Amendments was to restrict Congress from abusing its power. For example, the First Amendment – "Congress shall make no law" establishing a religion – was ratified by the states before all states had, of their own accord, disestablished their official churches.

The Federalist Papers argued that amendments were not necessary to adopt the Constitution. But without the promise in their ratification conventions, Massachusetts, Virginia and New York could not have joined the Union as early as 1789. James Madison, true to his word, managed the proposed amendments through the new House of Representatives in its first session. The amendments that became the Bill of Rights were ten proposals of the twelve that Congress sent out to the states in 1789.<sup>[48]</sup>

Later in American history, applying the Bill of Rights directly to the states developed only with the Fourteenth Amendment.

No State shall make or enforce any law which shall abridge the *privileges ... of citizens ...* nor ... deprive any person of life, liberty, or property, without *due process of law*; nor deny ... the *equal protection of the laws*.

The legal mechanism that courts use today to extend the Bill of Rights against the abuses of state government is called "incorporation". The extent of its application is often at issue in modern jurisprudence.

Generally, the Bill of Rights can be seen as the States addressing three major concerns: individual rights, federal courts and the national government's relationships with the States.

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## Individual rights

The first Amendment defines American political community, based on individual integrity and voluntary association. Congress cannot interfere with an individual's religion or speech. It cannot restrict a citizen's communication with others to form community by worship, publishing, gathering together or petitioning the government.

**The First Amendment** addresses the rights of freedom of religion (prohibiting Congress from establishing a religion and protecting the right to free exercise of religion), freedom of speech, freedom of the press, freedom of assembly, and freedom of petition.

## Trial and sentencing

Given their history of colonial government, most Americans wanted guarantees against the central government using the courts against state citizens. The Constitution already had individual protections such as strictly defined treason, no ex post facto law and guaranteed habeas corpus except during riot or rebellion. Now added protections came in five Amendments.

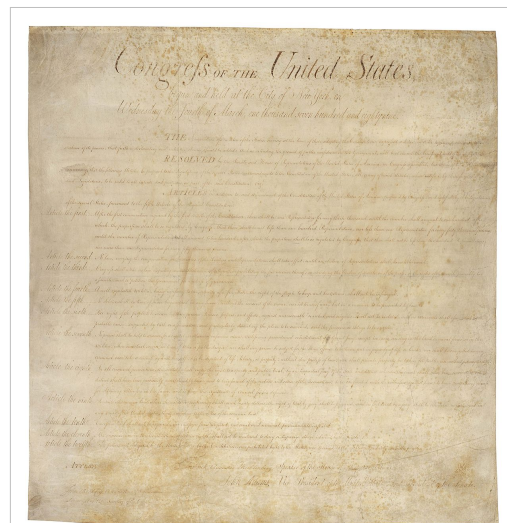
**Protecting the accused.** The Fourth Amendment guards against searches, arrests, and seizures of property without a specific warrant or a "probable cause" to believe a crime has been committed. Some rights to privacy have been found in this amendment and others by the Supreme Court.

The Fifth Amendment forbids trial for a major crime except after indictment by a grand jury; prohibits double jeopardy (repeated trials), except in certain very limited circumstances; forbids punishment without due process of law; and provides that an accused person may not be compelled to testify against himself (this is also known as "Taking the Fifth" or "Pleading the Fifth"). This is regarded as the "rights of the accused" amendment, otherwise known as the Miranda rights after the Supreme Court case. It also prohibits government from taking private property for public use without "just compensation", the basis of eminent domain in the United States.

The Seventh Amendment assures trial by jury in civil cases.

**Restraining the judges.** The Sixth Amendment guarantees a speedy public trial for criminal offenses. It requires trial by a jury, guarantees the right to legal counsel for the accused, and guarantees that the accused may require witnesses to attend the trial and testify in the presence of the accused. It also guarantees the accused a right to know the charges against him. The Sixth Amendment has several court cases associated with it, including *Powell v. Alabama*, *United States v. Wong Kim Ark*, *Gideon v. Wainwright*, and *Crawford v. Washington*. In 1966, the Supreme Court ruled that the fifth amendment prohibition on forced self-incrimination and the sixth amendment clause on right to counsel were to be made known to all persons placed under arrest, and these clauses have become known as the Miranda rights.

The Eighth Amendment forbids excessive bail or fines, and cruel and unusual punishment.



United States Bill of Rights Currently housed in the National Archives and Records Administration National Archives.

### **Congress nor States**

In 1789, future federal-state relations were uncertain. To begin, the states in their militias were not about to be disarmed. And, if Congress wanted a standing army, Congress would have to pay for it, not "quarter" soldiers at state citizen expense. The people always have all their inalienable rights, even if they are not all listed in government documents. If Congress wanted more power, it would have to ask for it from the people in the states. And if the Constitution did not say something was for Congress to do, then the States have the power to do it without asking.

### **Potential military coercion**

The Second Amendment guarantees the right of citizens to keep their own weapons apart from state-run arsenals.<sup>[49]</sup> Once the new Constitution began government, states petitioned Congress to propose amendments including militia protections. New Hampshire's proposal for amendment was, "Congress shall never disarm any citizen unless such as are or have been in actual rebellion." New York proposed, "... a well regulated militia, including the body of the people capable of bearing arms, is the proper, natural and safe defense of a free State."<sup>[50]</sup> Over time, this amendment has been confirmed by the courts to protect individual rights and used to overturn state legislation regulating hand guns.

Applying the Second Amendment only to the federal government, and not to the states, persisted for much of the nation's early history. It was sustained in *United States v. Cruikshank* (1876) to support disarming African-Americans holding arms in self-defense from Klansmen in Louisiana. The Supreme Court held, citizens must "look for their protection against any violation by their fellow-citizens from the state, rather than the national, government." Federal protection of an individual interfering with the state's right to disarm any of its citizens came in *Presser v. Illinois* (1886). The Supreme Court ruled the citizens were members of the federal militia, as were "all citizens capable of bearing arms." A state cannot "disable the people from performing their duty to the General Government". The Court was harking back to the language establishing a federal militia in 1792.<sup>[51]</sup>

In 1939, the Supreme Court returned to a consideration of militia. In *U.S. v. Miller*, the Court addressed the enforceability of the National Firearms Act of 1934 prohibiting a short-barreled shotgun. Held in the days of Bonnie Parker and Clyde Barrow, this ruling referenced units of well equipped, drilled militia, the Founders "trainbands", the modern military Reserves.<sup>[52]</sup> It did not address the tradition of an unorganized militia. Twentieth century instances have been rare but Professor Stanford Levinson has observed consistency requires giving the Second Amendment the same dignity of the First, Fourth, Ninth and Tenth.<sup>[53]</sup>

Once again viewing federal relationships, the Supreme Court in *McDonald v. Chicago* (2010) determined that the right of an individual to "keep and bear arms" is protected by the Second Amendment. It is incorporated by the Due Process Clause of the Fourteenth Amendment, so it applies to the states.

The Third Amendment prohibits the government from using private homes as quarters for soldiers during peacetime without the consent of the owners. The states had suffered during the Revolution following the British Crown confiscating their militia's arms stored in arsenals in places such as Concord, Massachusetts, and Williamsburg, Virginia. Patrick Henry had rhetorically asked, shall we be stronger, "when we are totally disarmed, and when a British Guard shall be stationed in every house?"<sup>[54]</sup> The only existing case law directly regarding this amendment is a lower court decision in the case of *Engblom v. Carey*.<sup>[55]</sup> However, it is also cited in the landmark case, *Griswold v. Connecticut*, in support of the Supreme Court's holding that the constitution protects the right to personal privacy.

### **Constitutional relationships**

The Ninth Amendment declares that the listing of individual rights in the Constitution and Bill of Rights is not meant to be comprehensive; and that the other rights not specifically mentioned are retained by the people. The Tenth Amendment reserves to the states respectively, or to the people, any powers the Constitution did not delegate to the United States, nor prohibit the states from exercising.

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### Subsequent

Amendments to the Constitution after the Bill of Rights cover many subjects. The majority of the seventeen later amendments stem from continued efforts to expand individual civil or political liberties, while a few are concerned with modifying the basic governmental structure drafted in Philadelphia in 1787. Although the United States Constitution has been amended 27 times, only 26 of the amendments are currently in effect because the twenty-first amendment supersedes the eighteenth.

### Citizen rights

Several of the amendments have more than one application, but five amendments have concerned citizen rights. American citizens are free. There will be equal protection under the law for all. Men vote, women vote, DC residents vote,<sup>[56]</sup> and 18-year olds vote.

The Thirteenth Amendment (1865) abolishes slavery and authorizes Congress to enforce abolition. The Fourteenth Amendment (1868) in part, defines a set of guarantees for United States citizenship. Fifteenth Amendment (1870) prohibits the federal government and the states from using a citizen's race, color, or previous status as a slave as a qualification for voting. The Nineteenth Amendment (1920) prohibits the federal government and the states from forbidding any citizen the right to vote due to her sex. The Twenty-sixth Amendment (1971) prohibits the federal government and the states from forbidding any citizen of age 18 or greater the right to vote on account of his or her age.

The Twenty-third Amendment (1961) grants presidential electors to the District of Columbia. DC has three votes in the Electoral College as though it were a state with two senators and one representative in perpetuity. On the other hand, if Puerto Rico were given the same consideration as other state apportionment, it would have seven Electoral College votes.<sup>[57]</sup>

### Three branches

Seven amendments relate to the three branches of the federal government. Congress has three, the Presidency has four, the Judiciary has one.

The Sixteenth Amendment (1913) authorizes unapportioned federal taxes on income. Twentieth Amendment (1933), in part, changes details of congressional terms. The Twenty-seventh Amendment (1992) limits congressional pay raises.

The Twelfth Amendment (1804) changes the method of presidential elections so that members of the Electoral College cast separate ballots for president and vice president. The Twentieth Amendment (1933), in part, changes details of presidential terms and of presidential succession. The Twenty-second Amendment (1951) limits the president to two elected terms unless a vice president succeeds to the office for less than two years prior to election. The Twenty-fifth Amendment (1967) further changes details of presidential succession, provides for temporary removal of president, and provides for replacement of the vice president.

The Eleventh Amendment (1795), in part, clarifies judicial power over foreign nationals.

### States and abuses

**State citizens.** The states have been protected from their citizens by a Constitutional Amendment. Citizens are limited when suing their states in federal Court. The Eleventh Amendment (1795) in part, limits ability of citizens to sue states in federal courts and under federal law.

**Most states.** All states have been required to conform to the others when those delegations in Congress could accumulate super-majorities in the U.S. House and U.S. Senate, and three-fourths of the states with the same opinion required it of all. (a) The states must not allow alcohol sold for profit. (b) The states may or may not allow alcohol sold for profit. The Eighteenth Amendment (1919) prohibited the manufacturing, importing, and exporting of alcoholic beverages (see Prohibition in the United States). *Repealed by the Twenty-First Amendment.* Twenty-first



Amendment (1933) repeals Eighteenth Amendment. Permits states to prohibit the importation of alcoholic beverages.

**State legislatures.** Occasionally in American history, the people have had to strip state legislatures of some few privileges due to widespread, persisting violations to individual rights. States must administer equal protection under the Constitution and the Bill of Rights. States must guarantee rights to all citizens of the United States as their own. State legislatures will not be trusted to elect U.S. Senators. States must allow all men to vote. States must allow women to vote. States cannot tax a U.S. citizen's right to vote.

Under the Constitution, the U.S. government was restricted from infringing on citizen rights. The Fourteenth Amendment (1868) in part, defines a set of guarantees for United States citizenship; prohibits *states* from abridging citizens' privileges or immunities and rights to due process and the equal protection of the law.

Voting in the states has not always been so universal as it is today, not all men, not women not 18-year olds. In 1870, regardless of practice, most states had no legal racial bar to voting by African-Americans, Asians or Native-Americans. But the Fifteenth Amendment (1870) prohibits the federal government and the states from using a citizen's race, color, or previous status as a slave as a qualification for voting. Then all men could vote by law. In 1920, while most states allowed at least some women's suffrage, the Nineteenth Amendment (1920) prohibits the federal government and the states from forbidding any citizen to vote due to their gender. Then all women could vote by law. In 1971, states allowed voting at ages 21, 20, 19 and 18. The Twenty-sixth Amendment (1971) prohibits the federal government and the states from forbidding any citizen of age 18 or greater to vote on account of their age.

By 1913, several state legislatures allowed their selection of U.S. Senator by direct popular vote. However, the Seventeenth Amendment (1913) converts all state elections for U.S. senators to popular election.

Some state legislatures restricted the right to vote among their citizens more than others. Although most states in 1964 did not restrict voting by the use of poll taxes, the Twenty-fourth Amendment (1964) prohibits the federal government and the states from requiring the payment of a tax as a qualification for voting for federal officials. U.S. citizens cannot be taxed to vote.

## Unratified

Of the thirty-three amendments that have been proposed by Congress, twenty-seven have passed. Six have failed ratification by the required three-quarters of the state legislatures. Two have passed their deadlines. Four are technically in the eyes of a Court, still pending before state lawmakers (see *Coleman v. Miller*). All but one are dead-ends.

### One remaining

The "Titles of Nobility Amendment" (TONA), proposed by the 11th Congress on May 1, 1810, would have ended the citizenship of any American accepting "any Title of Nobility or Honour" from any foreign power. Some maintain that the amendment was ratified by the legislatures of enough states, and that a conspiracy has suppressed it, but this has been thoroughly debunked.<sup>[58]</sup>

The proposed amendment addressed the same "republican" and nationalist concern evident in the original Constitution, Article I, Section 9. No officer of the United States, "without the Consent of the Congress, [shall] accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State." The Constitutional provision is unenforceable because the offense is not subject to a penalty.

Known to have been ratified by lawmakers in twelve states, the last in 1812, this amendment contains no expiration date for ratification and could still be ratified were the state legislatures to take it up.

## **Abandoned**

### **Quit by practice**

- The Congressional Apportionment Amendment, proposed by the 1st Congress on September 25, 1789, defined a formula for how many members there would be in the United States House of Representatives after each decennial census. Ratified by eleven states, the last in June 1792, this amendment contains no expiration date for ratification. In the abstract it may be procedurally ratified.
- The Corwin Amendment, sent to the states on March 2, 1861, would have forbidden any attempt to subsequently amend the Constitution to empower the federal government to "abolish or interfere" with the practice of slavery. The Confederacy ignored it and it was quickly forgotten. Instead, in 1865 the Thirteenth Amendment abolished slavery.

### **Quit by policy**

Starting with the proposal of the 18th Amendment in 1917, each proposed amendment has included a deadline for passage in the text of the amendment. Five without a deadline became Amendments.<sup>[59]</sup> One proposed amendment without a deadline has not been ratified: The Child Labor Amendment of 1924.

- A child labor amendment proposed by the 68th Congress on June 2, 1924. It provides, "The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age." This amendment is highly unlikely to be ratified, since subsequent federal child labor laws have uniformly been upheld as a valid exercise of Congress's powers under the Commerce Clause.

### **Time ran out**

There are two amendments that were approved by Congress but were not ratified by enough states prior to the ratification deadline set by Congress:

- The Equal Rights Amendment (ERA), which reads in part "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Proposed by the 92nd Congress on March 22, 1972, it was ratified by the legislatures of 35 states, and expired on either March 22, 1979 or on June 30, 1982, following a controversial three-year extension of the ratification deadline passed by the 95th Congress in 1978.

Of the 35 states ratifying it, four later rescinded their ratifications before the extended ratification period. A fifth stipulated that its first approval would not extend with federal law. Such reversals are controversial; no court has ruled on the question. During ratification of the 14th Amendment Ohio and New Jersey rescinded their earlier approvals. But their ratifications were counted towards three-fourths of the states when the 14th Amendment was ultimately proclaimed part of the Constitution in 1868.

- The District of Columbia Voting Rights Amendment was proposed by the 95th Congress on August 22, 1978. Had this amendment been ratified, it would have granted to Washington, D.C. two Senators and at least one member of the House of Representatives as though the District of Columbia were a state. Ratified by the legislatures of only 16 states (out of the required 38), the proposed amendment expired on August 22, 1985.

## Judicial review

The way the Constitution is understood is influenced by court decisions, especially those of the Supreme Court. These decisions are referred to as precedents. Judicial review is the power of the Court to examine federal legislation, executive agency rules and state laws, to decide their constitutionality, and to strike them down if found unconstitutional.

Judicial review includes the power of the Court to explain the meaning of the Constitution as it applies to particular cases. Over the years, Court decisions on issues ranging from governmental regulation of radio and television to the rights of the accused in criminal cases have changed the way many constitutional clauses are interpreted, without amendment to the actual text of the Constitution.

Legislation passed to implement the Constitution, or to adapt those implementations to changing conditions, broadens and, in subtle ways, changes the meanings given to the words of the Constitution. Up to a point, the rules and regulations of the many federal executive agencies have a similar effect. If an action of Congress or the agencies is challenged, however, it is the court system that ultimately decides whether these actions are permissible under the Constitution.

The Supreme Court has indicated that once the Constitution has been extended to an area (by Congress or the Courts), its coverage is irrevocable. To hold that the political branches may switch the Constitution on or off at will would lead to a regime in which they, not this Court, say "what the law is." <sup>[60]</sup>

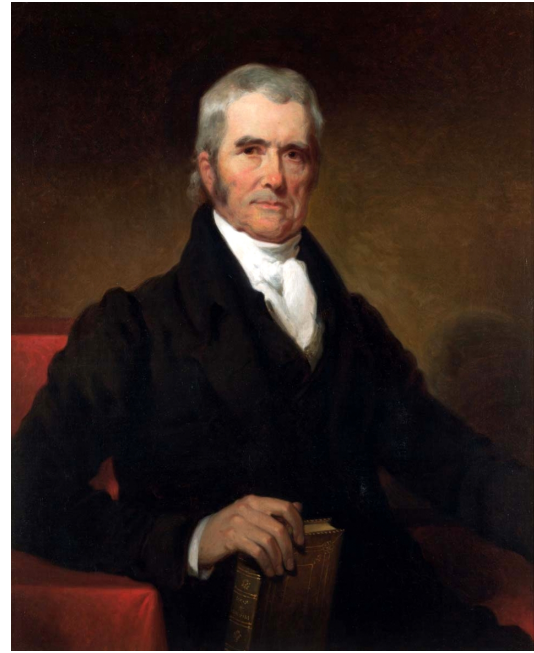
## Scope and theory

Courts established by the Constitution can regulate government under the Constitution, the supreme law of the land. First, they have jurisdiction over actions by an officer of government and state law. Second, federal courts may rule on whether coordinate branches of national government conform to the Constitution. Until the twentieth century, the Supreme Court of the United States may have been the only high tribunal in the world to use a court for constitutional interpretation of fundamental law, others generally depending on their national legislature. <sup>[61]</sup>

Early Court roots in the founding



John Jay, 1789-1795 New York co-author Federalist Papers



John Marshall, 1801-1835 Fauquier County,  
Virginia Fauquier County delegate Virginia Ratification  
Convention

The basic theory of American Judicial review is summarized by constitutional legal scholars and historians as follows: the written Constitution is fundamental law. It can change only by extraordinary legislative process of national proposal, then state ratification. The powers of all departments are limited to enumerated grants found in the Constitution. Courts are expected (a) to enforce provisions of the Constitution as the supreme law of the land, and (b) to refuse to enforce anything in conflict with it.<sup>[62]</sup>

**In Convention.** As to judicial review and the Congress, the first proposals by Madison (Va) and Wilson (Pa) called for a supreme court veto over national legislation. In this it resembled the system in New York, where the Constitution of 1777 called for a "Council of Revision" by the Governor and Justices of the state supreme court. The Council would review and in a way, veto any passed legislation violating the spirit of the Constitution before it went into effect. The nationalist's proposal in Convention was defeated three times, and replaced by a presidential veto with Congressional over-ride. Judicial review relies on the jurisdictional authority in Article III, and the Supremacy Clause.<sup>[63]</sup>

The justification for judicial review is to be explicitly found in the open ratifications held in the states and reported in their newspapers. John Marshall in Virginia, James Wilson in Pennsylvania and Oliver Ellsworth of Connecticut all argued for Supreme Court judicial review of acts of state legislature. In Federalist No. 78, Alexander Hamilton advocated the doctrine of a written document held as a superior enactment of the people. "A limited constitution can be preserved in practice no other way" than through courts which can declare void any legislation contrary to the Constitution. The preservation of the people's authority over legislatures rests "particularly with judges."<sup>[64][65]</sup>

The Supreme Court was initially made up of jurists who had been intimately connected with the framing of the Constitution and the establishment of its government as law. John Jay (NY), a co-author of the Federalist Papers, served as Chief Justice for the first six years. The second Chief Justice for a term of four years, was Oliver Ellsworth (Ct), a delegate in the Constitutional Convention, as was John Rutledge (SC), Washington's recess appointment as Chief Justice who served in 1795. John Marshall (Va), the fourth Chief Justice, had served in the Virginia Ratification Convention in 1788. His service on the Court would extend 34 years over some of the most important rulings to help establish the nation the Constitution had begun. In the first years of the Supreme Court, members of the Constitutional Convention who would serve included James Wilson (Pa) for ten years, John Blair, Jr. (Va) for

five, and John Rutledge (SC) for one year as Justice, then Chief Justice in 1795.

## Establishment

When John Marshall followed Oliver Ellsworth as Chief Justice of the Supreme Court in 1801, the federal judiciary had been established by the Judiciary Act, but there were few cases, and less prestige. "The fate of judicial review was in the hands of the Supreme Court itself." Review of state legislation and appeals from state supreme courts was understood. But the Court's life, jurisdiction over state legislation was limited. The Marshall Court's landmark *Barron v. Baltimore* held that the Bill of Rights restricted only the federal government, and not the states.<sup>[64]</sup>

In the landmark *Marbury v. Madison* case, the Supreme Court asserted its authority of judicial review over Acts of Congress. It finds were that Marbury and the others had a right to their commissions as judges in the District of Columbia. The law afforded Marbury a remedy at court. Then Marshall, writing the opinion for the majority, announced his discovered conflict between Section 13 of the Judiciary Act of 1789 and Article III.<sup>[66][67][68]</sup> The United States government, as created by the Constitution is a limited government, and a statute contrary to it is not law. In this case, both the Constitution and the statutory law applied to the particulars at the same time. "The very essence of judicial duty" according to Marshall was to determine which of the two conflicting rules should govern. The Constitution enumerates powers of the judiciary to extend to cases arising "under the Constitution." Courts were required to choose the Constitution over Congressional law. Further, justices take a Constitutional oath to uphold it as "Supreme law of the land".<sup>[69]</sup>

"This argument has been ratified by time and by practice ..."<sup>[70][71]</sup> "Marshall The Supreme Court did not declare another Act of Congress unconstitutional until the disastrous Dred Scott decision in 1857, held after the voided Missouri Compromise statute, had already been repealed. In the eighty years following the Civil War to World War II, the Court voided Congressional statutes in 77 cases, on average almost one a year."<sup>[72]</sup>

Something of a crisis arose when, in 1935 and 1936, the Supreme Court handed down twelve decisions voiding Acts of Congress relating to the New Deal. President Franklin D. Roosevelt then responded with his abortive "court packing plan". Other proposals have suggested a Court super-majority to overturn Congressional legislation, or a Constitutional Amendment to require that the Justices retire at a specified age by law. To date, the Supreme Court's power of judicial review has persisted.<sup>[73]</sup>

## Self-restraint

The power of judicial review could not have been preserved long in a democracy unless it had been "wielded with a reasonable measure of judicial restraint, and with some attention, as Mr. Dooley said, to the election returns." Indeed, the Supreme Court has developed a system of doctrine and practice that self-limits its power of judicial review.<sup>[74]</sup>

The Court controls almost all of its business by choosing what cases to consider, writs of certiorari. In this way it can avoid expressing an opinion if it sees an issue is currently embarrassing or difficult. The Supreme Court limits itself by defining for itself what is a "justiciable question." First, the Court is fairly consistent in refusing to make any "advisory opinions" in advance of actual cases.<sup>[75]</sup> Second, "friendly suits" between those of the same legal interest are not considered. Third, the Court requires a "personal interest", not one generally held, and a legally protected right must be immediately threatened by government action. Cases are not taken up if the litigant has no standing to sue. Having the money to sue or being injured by government action alone are not enough.<sup>[74]</sup>

These three procedural ways of dismissing cases have led critics to charge that the Supreme Court delays decisions by unduly insisting on technicalities in their "standards of litigability". Under the Court's practice, there are cases left unconsidered which are in the public interest, with genuine controversy, and resulting from good faith action. "The Supreme Court is not only a court of law but a court of justice."<sup>[76]</sup>

## Separation of powers

The Supreme Court balances several pressures to maintain its roles in national government. It seeks to be a co-equal branch of government, but its decrees must be enforceable. The Court seeks to minimize situations where it asserts itself superior to either President or Congress, but federal officers must be held accountable. The Supreme Court assumes power to declare acts of Congress as unconstitutional but it self-limits its passing on constitutional questions.<sup>[77]</sup> But the Court's guidance on basic problems of life and governance in a democracy is most effective when American political life reinforce its rulings.<sup>[78]</sup>

Justice Brandeis summarized four general guidelines that the Supreme Court uses to avoid constitutional decisions relating to Congress:<sup>[79]</sup> The Court will not anticipate a question of constitutional law nor decide open questions unless a case decision requires it. If it does, a rule of constitutional law is formulated only as the precise facts in the case require. The Court will choose statutes or general law for the basis of its decision if it can without constitutional grounds. If it does, the Court will choose a constitutional construction of an Act of Congress, even if its constitutionality is seriously in doubt.<sup>[77]</sup>

Likewise with the Executive Department, Edwin Corwin observed that the Court does sometimes rebuff presidential pretensions, but it more often tries to rationalize them. Against Congress, an Act is merely "disallowed." In the executive case, exercising judicial review produces "some change in the external world" beyond the ordinary judicial sphere.<sup>[80]</sup> The "political question" doctrine especially applies to questions which present a difficult enforcement issue. Chief Justice Charles Evans Hughes addressed the Court's limitation when political process allowed future policy change, but a judicial ruling would "attribute finality". Political questions lack "satisfactory criteria for a judicial determination."<sup>[81]</sup>

John Marshall recognized how the president holds "important political powers" which as Executive privilege allows great discretion. This doctrine was applied in Court rulings on President (Grant)'s duty to enforce the law during Reconstruction. It extends to the sphere of foreign affairs. Justice Robert Jackson explained, Foreign affairs are inherently political, "wholly confided by our Constitution to the political departments of the government ... [and] not subject to judicial intrusion or inquiry."<sup>[82]</sup>

Critics of the Court object in two principle ways to self-restraint in judicial review, deferring as it does as a matter of doctrine to Acts of Congress and Presidential actions.

1. Its inaction is said to allow "a flood of legislative appropriations" which permanently create an imbalance between the states and federal government.
2. Supreme Court deference to Congress and the executive compromises American protection of civil rights, political minority groups and aliens.<sup>[83]</sup>

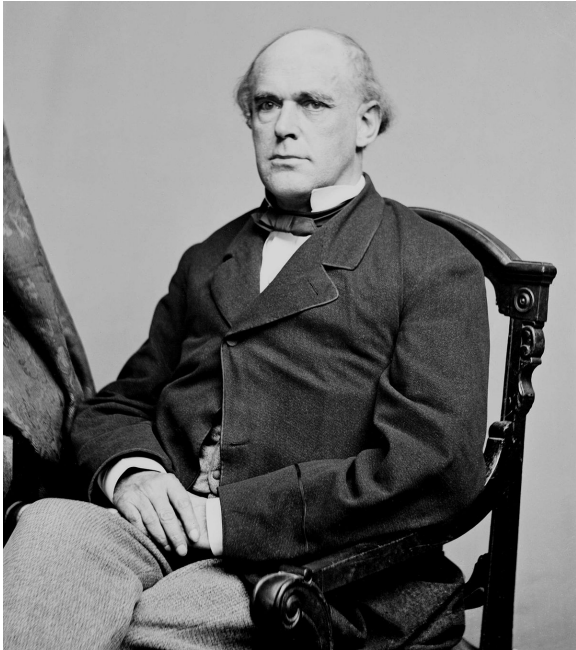
## Subsequent Courts

Supreme Courts under the leadership of subsequent Chief Justices have also used judicial review to interpret the Constitution among individuals, states and federal branches. Notable contributions were made by the Chase Court, the Taft Court, the Warren Court, and the Rehnquist Court.

Salmon P. Chase was a Lincoln appointee, serving as Chief Justice from 1864 to 1873. His career encompassed service as a U.S. Senator and Governor of Ohio. He has coined the slogan, "Free soil, free Labor, free men." One of Lincoln's "team of rivals", he was appointed Secretary of Treasury during the Civil War, issuing "greenbacks". To appease radical Republicans, Lincoln appointed him to replace Chief Justice Roger B. Taney of Dred Scott case fame.

In one of his first official acts, Chase admitted John Rock, the first African-American to practice before the Supreme Court. The "Chase Court" is famous for *Texas v. White* which asserted a permanent Union of indestructible states. *Veazie Banks v. Fenno* upheld the Civil War tax on state banknotes. *Hepburn v. Griswold* found parts of the Legal Tender Acts unconstitutional, though it was reversed under a late Supreme Court majority.

## Scope of judicial review expanded

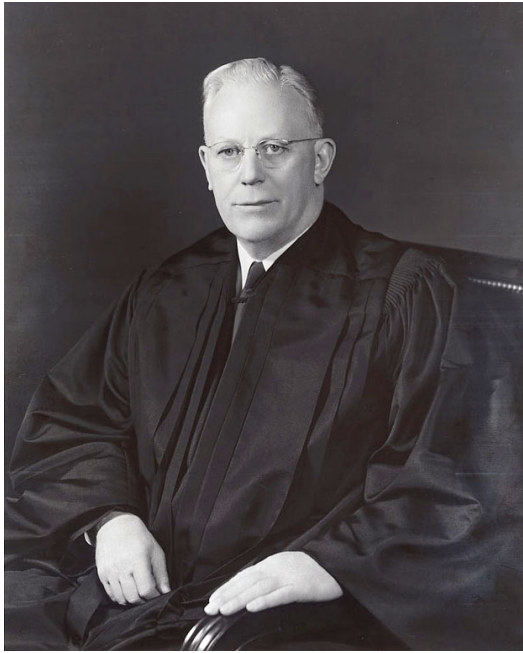


Salmon P. Chase The Chase Court, 1864–1873, in 1865 were the Hon. Salmon P. Chase, Chief Justice, U.S.; Hon. Nathan Clifford, Maine; Stephen J. Field, Justice Supreme Court, U.S.; Hon. Samuel F. Miller, U.S. Supreme Court; Hon. Noah H. Swayne, Justice Supreme Court, U.S.; Judge Morrison R. Waite Union, Reconstruction

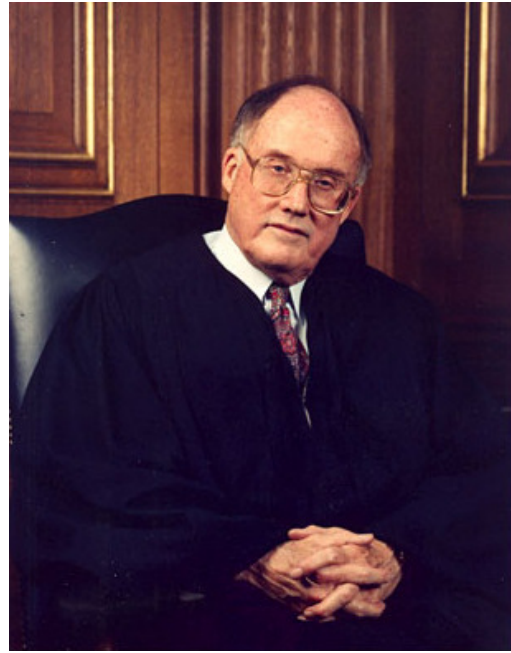


William H. Taft The William Howard Taft#Chief Justice, 1921–1930 Taft Court, 1921–1930, in 1925 were – James Clark McReynolds, Oliver Wendell Holmes, Jr., William Howard Taft (Chief Justice), Willis Van Devanter, Louis Brandeis. – Edward Sanford, George Sutherland, Pierce Butler, Harlan Fiske Stone commerce, Incorporation of the Bill of Rights incorporation





Earl Warren The Warren Court, 1953-1969, in 1963 were Felix Frankfurter; Hugo Black; Earl Warren (Chief Justice); Stanley Reed; William O. Douglas. - Tom Clark; Robert H. Jackson; Harold Burton; Sherman Minton due process, civil rights



William Rehnquist The Rehnquist Court, 1986-2005. federalism, privacy

William Howard Taft was a Harding appointment to Chief Justice from 1921 to 1930. A Progressive Republican from Ohio, he was a one-term President.

As Chief Justice, he advocated the Judiciary Act of 1925 that brought the Federal District Courts under the administrative jurisdiction of the Supreme Court and the newly united branch of government initiated its own separate building in use today. Taft successfully sought the expansion of Court jurisdiction over non-states such as District of Columbia and Territories of Arizona, New Mexico, Alaska and Hawaii. Later extensions added the Spanish-American War acquisitions of the Commonwealth of the Philippines and Puerto Rico.

In 1925, the Taft Court issued a ruling overturning a Marshall Court ruling on the Bill of Rights. In *Gitlow v. New York*, the Court established the doctrine of "incorporation which applied the Bill of Rights to the states. Important cases included the *Board of Trade v. Olsen* that upheld Congressional regulation of commerce. *Olmstead v. U.S.* allowed exclusion of evidence obtained without a warrant based on application of the 14th Amendment proscription against unreasonable searches. *Wisconsin v. Illinois* ruled the equitable power of the United States can impose positive action on a state to prevent its inaction from damaging another state.

Earl Warren was an Eisenhower nominee, Chief Justice from 1953 to 1969. Warren's Republican career in the law reached from County Prosecutor, California state attorney general, and three consecutive terms as Governor. His programs stressed progressive efficiency, expanding state education, re-integrating returning veterans, infrastructure and highway construction.

In 1954, the Warren Court overturned a landmark Fuller Court ruling on the Fourteenth Amendment interpreting racial segregation as permissible in government and commerce providing "separate but equal" services. Warren built a coalition of Justices after 1962 that developed the idea of natural rights as guaranteed in the Constitution. *Brown v. Board of Education* banned segregation in public schools. *Baker v. Carr* and *Reynolds v. Sims* established Court ordered "one-man-one-vote." Bill of Rights Amendments were incorporated into the states. Due process was expanded in *Gideon v. Wainwright* and *Miranda v. Arizona*. First Amendment rights were addressed in *Griswold v. Connecticut concerning privacy*, and *Engel v. Vitale relative to free speech*.



William Rehnquist was a Reagan appointment to Chief Justice, serving from 1986 to 2005. While he would concur with overthrowing a state supreme court's decision, as in *Bush v. Gore*, he built a coalition of Justices after 1994 that developed the idea of federalism as provided for in the Tenth Amendment. In the hands of the Supreme Court, the Constitution and its Amendments were to restrain Congress, as in *City of Boerne v. Flores*.

Nevertheless, the Rehnquist Court was noted in the contemporary "culture wars" for overturning state laws relating to privacy prohibiting late-term abortions in *Stenberg v. Carhart*, prohibiting sodomy in *Lawrence v. Texas*, or ruling so as to protect free speech in *Texas v. Johnson* or affirmative action in *Grutter v. Bollinger*.

## Civic religion

There is a viewpoint that some Americans have come to see the documents of the Constitution, along with the Declaration of Independence and the Bill of Rights as being a cornerstone of a type of civil religion. This is suggested by the prominent display of the Constitution, along with the Declaration of Independence and the Bill of Rights, in massive, bronze-framed, bulletproof, moisture-controlled glass containers vacuum-sealed in a rotunda by day and in multi-ton bomb-proof vaults by night at the National Archives Building.<sup>[88]</sup>

The idea of displaying the documents strikes some academic critics looking from point of view of the 1776 or 1789 America as "idolatrous, and also curiously at odds with the values of the Revolution."<sup>[89]</sup> By 1816 Jefferson wrote that "[s]ome men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched." But he saw imperfections and imagined that potentially, there could be others, believing as he did that "institutions must advance also".<sup>[90]</sup>

Some commentators depict the multi-ethnic, multi-sectarian United States as held together by a political orthodoxy, in contrast with a nation state of people having more "natural" ties.<sup>[91] [92]</sup>

## Worldwide



José Rizal



Sun Yat-sen

The United States Constitution has had a considerable influence worldwide on later constitutions. International leaders have followed it as a model within their own traditions. These leaders include Benito Juárez of Mexico, José Rizal of the Philippines and Sun Yat-sen of China.

## Criticisms

The United States Constitution has faced various criticisms since its inception in 1787.

## Notes

- [1] Maier, Pauline. "Ratification: the people debate the constitution, 1787-1788". 2010. ISBN 978-0-684-86854-7, p. 35.
- [2] Paul Rodgers (2011). *United States Constitutional Law: An Introduction* (<http://books.google.com/books?id=xZ-61GFZE1kC&pg=PA109>). McFarland. p. 109. .
- [3] Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* (Cambridge University Press, 2008) at p. 131 ISBN 978-0-521-88188-3 ([http://books.google.com/books?id=ZpKCvUacmSwC&pg=RA1-PA168&lpg=RA1-PA168&dq=christian+g+fritz+\"american+sovereigns\"&source=web&ots=UjY\\_WKHNjv&sig=Y2\\_7OZMg6ksk\\_866oiD44FArH-w&hl=en#PRA1-PA1,M1](http://books.google.com/books?id=ZpKCvUacmSwC&pg=RA1-PA168&lpg=RA1-PA168&dq=christian+g+fritz+\)) (noting that "Madison, along with other Americans clearly understood" the Articles of Confederation "to be the first federal Constitution.")
- [4] Maier 2010, pp. 11-13
- [5] Maier 2010, pp. 12-13, 19
- [6] Maier 2010, pp. 15-16
- [7] Bowen 2010, pp. 129-130
- [8] Bowen 2010, p. 31
- [9] Maier 2010, p. 13
- [10] Wood 1998, pp. 356-367, 359
- [11] Maier 2010, pp. 14, 30, 66
- [12] Maier, Pauline (2010). *Ratification : the people debate the Constitution, 1787–1788*. New York: Simon & Schuster. ISBN 978-0-684-86854-7 p.21.
- [13] Bowen, Catherine (2010) [First published 1966]. *Miracle at Philadelphia : the story of the Constitutional Convention, May to September, 1787*. New York: Little, Brown. ISBN 978-0-316-10261-2. p.11.
- [14] Morris (1987) pp 298–99.
- [15] Armstrong, Virginia Irving (1971). *I Have Spoken: American History Through the Voices of the Indians*. Pocket Books. p. 14. ISBN 671-78555-9. See also, House Concurrent Resolution 331, October 21, 1988 (<http://www.senate.gov/reference/resources/pdf/hconres331.pdf>). United States Senate. Retrieved 2008-11-23.. In October 1988, the U.S. Congress passed Concurrent Resolution 331 to recognize the influence of the Iroquois Constitution upon the U.S. Constitution and Bill of Rights.
- [16] Greymont, Barbara. *The Iroquois in the American Revolution* ([http://www.ratical.org/many\\_worlds/6Nations/index.html](http://www.ratical.org/many_worlds/6Nations/index.html)) 1972. ISBN 0-8156-0083-6, p.vii.
- [17] Morgan, Edmund S., Benjamin Franklin ([http://books.google.com/books?id=WjgTv0-XdLYC&pg=PA82&lpg=PA82&dq=benjamin+franklin+and+indian+affairs&source=bl&ots=dnQn\\_pbFHX&sig=hMPZGy3uu-v2I4mdV\\_sbEM-XgOk&hl=en&ei=s1YzTqTHAoPk0QH\\_h-3aCw&sa=X&oi=book\\_result&ct=result&resnum=9&ved=0CFIQ6AEwCA#v=onepage&q=iroquois&f=false](http://books.google.com/books?id=WjgTv0-XdLYC&pg=PA82&lpg=PA82&dq=benjamin+franklin+and+indian+affairs&source=bl&ots=dnQn_pbFHX&sig=hMPZGy3uu-v2I4mdV_sbEM-XgOk&hl=en&ei=s1YzTqTHAoPk0QH_h-3aCw&sa=X&oi=book_result&ct=result&resnum=9&ved=0CFIQ6AEwCA#v=onepage&q=iroquois&f=false)) 2002. ISBN 0-300-10162-7 (pbk) p.80-81 Viewed December 29, 2011.
- [18] Mee, Charles L., Jr. *The Genius of the People*. New York: Harper & Row, 1987. p. 237
- [19] Greymont, Barbara. Op.cit. p.66 These intrigues were mounted by (a) the French and British empires, (b) the colonies, then states of New York, Pennsylvania and Virginia, and (c) the United States as the Continental Congress, the Articles Congress and subsequently.
- [20] NARA. "National Archives Article on the Bill of Rights" (<http://www.archives.gov/exhibits/charters/charters.html>). . Retrieved 2007-12-16.
- [21] Adler 1975, p. 26, 80, 136
- [22] The discussion in Adler cites Lincoln's explication of the preamble that "common welfare" meant those things the people could not provide themselves. In 1830, Senator Haynes of South Carolina had made a speech for "Liberty first, and Union afterwards". Daniel Webster of Massachusetts made a "Reply to Haynes" speech for "Union and Liberty, now and forever, one and inseparable". Adler 1975, p. 87
- [23] James Madison was said to believe that the speech alone would "crush" nullification forever. ( This country of ours (<http://digital.library.upenn.edu/women/marshall/country/country-VII-73.html>), H.E. Marshall Part VII, Chapter 73.)
- [24] 17. U.S. at 421
- [25] "The Presidency: Hamilton" (<http://www.time.com/time/magazine/article/0,9171,715505,00.html>). *Time*. May 28, 1923. .
- [26] NARA.gov (<http://www.hoover.nara.gov/exhibits/cottages/middleclass/vanburen.html>), Martin Van Buren
- [27] Sidak, Gregory (August 1989). "The Recommendation Clause" ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=296114](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=296114)). *Georgetown Law Journal* 77 (6): 2079–2135. . Retrieved 29 June 2012.
- [28] Sidak, J. Gregory (August 1989). Science Research Network "The Recommendation Clause In: Georgetown Law Journal, Vol. 77, No. 6" (<http://ssrn.com/abstract=29Social>). pp. 2079–2135. Science Research Network. Retrieved 28 June 2012.
- [29] O'Connor 2010
- [30] The Judiciary Act of 1789 established six Supreme Court justices. The number was periodically increased until 10 in 1863, allowing Lincoln additional appointments. After the Civil War, vacancies reduced the number to 7. Congress finally fixed the number at 9.

- [31] Judicial Review is explained in Hamilton's Federalist No. 78. It also has roots in Natural Law expressions in the Declaration of Independence. The Supreme Court first ruled an act of Congress unconstitutional in *Marbury v. Madison*, the second was *Dred Scott*. O'Connor 2010
- [32] For instance, 'collateral estoppel' directs that when a litigant wins in a state court, they cannot sue in federal court to get a more favorable outcome.
- [33] Recently numerous habeas corpus reforms have tried to preserve a working "relationship of comity" and simultaneously streamline the process for state and lower courts to apply Supreme Court interpretations. O'Connor 2010
- [34] FindLaw for legal professionals (<http://www.findlaw.com/cascode/constitution/>), with links to US Government Printing office official website, Cornell Law School, Emory Law School, and U.S. Supreme Court decisions since 1893, (1998, 2000 Supplement). Viewed November 28, 2011.
- [35] The four concepts which determine "justiciability", the formula for a federal court taking and deciding a case, are the doctrines of (a) standing, (b) real and substantial interests, (c) adversity, and (d) avoidance of political questions. O'Connor 2010
- [36] Contrary to this source when viewed, the Constitution provides that punishments, including forfeiture of income and property, must apply to the person convicted. "No attainder of treason shall work corruption of blood or forfeiture" on the convicted traitor's children or heirs. This avoids the perpetuation of civil war into the generations by Parliamentary majorities as in the War of the Roses. O'Connor 2010
- [37] Wood 1998, pp. 306-308
- [38] Wood 1998, pp. 356-367
- [39] An alternative method of proposing an Amendment consists of application to Congress by the super-majority of two-thirds of the state legislatures call for another constitutional convention. That convention's proposal then requires ratification by the same super-majority as the first method, three-fourths of the states. While this has never been done, in the 1980s, 32 of the necessary 34 states called for a convention to propose a "balanced budget amendment."
- [40] FindLaw for legal professionals (<http://www.findlaw.com/cascode/constitution/>), with links to US Government Printing office official website, Cornell Law School, Emory Law School, and U.S. Supreme Court decisions since 1893, (1998, 2000 Supplement).
- [41] Linder, Doug. Exploring Constitutional Conflicts: The Incorporation Debate (<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/incorp.htm>), University of Missouri, Kansas City. viewed November 14, 2011.
- [42] Linder, Doug. Op.Cit., viewed November 14, 2011.
- [43] National Archives and Records Administration. "National Archives Article on the Constitution" ([http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)). . Retrieved 2008-09-01.
- [44] Maier 2010, p. 429
- [45] As no convention has been called, it is unclear how one would work in practice.
- [46] Lutz, Donald (1994). *Toward a Theory of Constitutional Amendment*. The 21st Amendment is the only successful Amendment that employed state conventions for ratification.
- [47] The new "supreme law of the land" takes the place of the old. For instance, the Thirteenth Amendment nullifies any permissive language relating to slavery in the original text of the Constitution. The Twenty-first Amendment repealed the Eighteenth Amendment. Constitutionally, nothing prevents a future amendment from actually changing the older text.
- [48] The second of the twelve proposed amendments, regarding the compensation of members of Congress, remained unratified until 1992, when the legislatures of enough states finally approved it; as a result, after pending for two centuries, it became the Twenty-seventh Amendment. The first of the twelve, which is still technically pending before the state legislatures for ratification, pertains to the apportionment of the United States House of Representatives after each decennial census. The most recent state whose lawmakers are known to have ratified this proposal is Kentucky in 1792, during that Commonwealth's first month of statehood.
- [49] Dispersing armaments in the face of superior force was a hard learned lesson. At the outbreak of hostilities in the American Revolution, Royal Governors captured arsenals of the colonial legislatures in Concord, Massachusetts, and Williamsburg, Virginia, for example.
- [50] Three states adopted the Constitution in ratification conventions addressing the need for an amendment guaranteeing state militia and citizen right to bear arms. Four states petitioned for protection of militia and the right to bear arms: New York, Rhode Island, Virginia and North Carolina. Pennsylvania and Massachusetts proposals included it as minority reports. Moncure 1990
- [51] In *Presser v. Illinois*, An armed mob of 400 in the city of Chicago paraded through the streets without a permit to intimidate an immigrant neighborhood. Illinois argued the armed individuals violated the state military code. Moncure 1990
- [52] Without a demonstrated relationship between "a barrel of less than eighteen inches in length" and "a well regulated militia", the Court could not say the Second Amendment guaranteed carrying it in public. The Court did not see it as "any part of the ordinary military equipment or that its use could contribute to the common defense [of the United States]." Moncure does not address any parallels between the 1930s of Al Capone and modern day drug cartels, nor any use of gun regulation by local law enforcement, state National Guard, or the armed forces for policing borders and homeland security. Moncure 1990
- [53] Governor William Tuck of Virginia used the unorganized militia to break a 1946 strike by employees of the Virginia Electric and Power Company. Moncure 1990
- [54] Moncure 1990
- [55] "U.S. Constitution: Third Amendment" (<http://caselaw.lp.findlaw.com/data/constitution/amendment03/>). *FindLaw.com*. Thomson Reuters. . Retrieved 4 May 2009.
- [56] DC residents constitutionally vote for President by the Amendment. The vote for a non-voting delegate in Congress, and local offices as Congress allows by law.
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- [57] Since the 1964 presidential election, the Electoral College has equaled 538, the sum of 100 Senators, 435 Representatives, and 3 for DC. Were DC to have been made a state, its allotted representation in Congress would have been one. Since the 1960s, both major political parties nominating presidential candidates make provision for proportionate representation in their national conventions for DC and the U.S. Territories as though they were states. Except for DC, no Constitutional provision has been made for them in the Electoral College. For example, the U.S. citizens of Puerto Rico would have 7 Electoral College votes, that is, two count for senators, five for its proportion in the House over the last three censuses. As it is, they have one non-voting delegate in the House who can cast a vote in committees of direct concern to Puerto Rico.
- [58] "The Missing Thirteenth Amendment" (<http://www.thirdamendment.com/missing.html>). Thirdamendment.com. . Retrieved 2009-05-04.
- [59] Amendments after the 18th Amendment which did not have deadlines and became Constitutional were (a) the 19th Amendment (women's voting), (b) the 23rd Amendment (DC electoral votes), (c) the 24th Amendment (poll taxes), (d) the 25th Amendment (Presidential succession), and (e) the 26th Amendment (voting age).
- [60] *Downes v. Bidwell*, 182 U.S. 244, 261 (1901), commenting on an earlier Supreme Court decision, *Loughborough v. Blake*, 18 U.S. (5 Wheat.) 317 (1820); *Rasmussen v. United States*, 197 U.S. 516, 529-530, 536 (1905)(concurring opinions of Justices Harlan and Brown), that once the Constitution has been extended to an area, its coverage is irrevocable; *Boumediene v. Bush* - That where the Constitution has been once formally extended by Congress to territories, neither Congress nor the territorial legislature can enact laws inconsistent therewith. The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply.
- [61] Pritchett 1959, p. 134
- [62] Pritchett 1959, p. 136
- [63] Pritchett 1959, pp. 137-138
- [64] Pritchett 1959, p. 138
- [65] The Supreme Court found 658 cases of invalid state statutes from 1790-1941 before the advent of Civil Rights cases in the last half of the Twentieth Century Pritchett 1959, p. 142
- [66] In this, John Marshall leaned on the argument of Hamilton in *Federalist No. 78*.
- [67] Pritchett 1959, p. 140
- [68] Although it may be that the true meaning of the Constitution to the people of the United States in 1788 can only be divined by a study of the state ratification conventions, the Supreme Court has used the *Federalist Papers* as a supplemental guide to the Constitution since their co-author, John Jay, was the first Chief Justice.
- [69] Pritchett 1959, pp. 140-141
- [70] The entire quote reads, "This argument has been ratified by time and by practice, and there is little point in quibbling with it. Of course, the President also takes an oath to support the Constitution." Pritchett 1959, p. 141
- [71] The presidential reference is to Andrew Jackson's disagreement with Marshall's Court over *Worcester v. Georgia*, finding Georgia could not impose its laws in Cherokee Territory. Jackson replied, "John Marshall has made his decision; now let him enforce it!", and the Trail of Tears proceeded. Jackson would not politically interpose the U.S. Army between Georgia and the Cherokee people as Eisenhower would do between Arkansas and the integrating students.
- [72] Pritchett 1959, pp. 141-142
- [73] Pritchett 1959, p. 142
- [74] Pritchett 1959, p. 145
- [75] "Advisory opinions" are not the same as "declaratory judgments." (a) These address rights and legal relationships in cases of "actual controversy", and (b) the holding has the force and effect of a final judgment. (c) There is no coercive order, as the parties are assumed to follow the judgment, but a "declaratory judgment" is the basis of any subsequent ruling in case law.
- [76] Pritchett 1959, pp. 148-149
- [77] Pritchett 1959, p. 149
- [78] Pritchett 1959, p. 154
- [79] Louis Brandeis concurring opinion, "Ashwander v. Tennessee Valley Authority", 1936.
- [80] Pritchett 1959, p. 150
- [81] Pritchett 1959, p. 151
- [82] Pritchett 1959, pp. 150-151
- [83] Pritchett 1959, p. 153
- [84] The Chase Court, 1864–1873, in 1865 were the Hon. Salmon P. Chase, Chief Justice, U.S.; Hon. Nathan Clifford, Maine; Stephen J. Field, Justice Supreme Court, U.S.; Hon. Samuel F. Miller, U.S. Supreme Court; Hon. Noah H. Swayne, Justice Supreme Court, U.S.; Judge Morrison R. Waite
- [85] The Taft Court, 1921–1930, in 1925 were – James Clark McReynolds, Oliver Wendell Holmes, Jr., William Howard Taft (Chief Justice), Willis Van Devanter, Louis Brandeis. – Edward Sanford, George Sutherland, Pierce Butler, Harlan Fiske Stone
- [86] The Warren Court, 1953-1969, in 1963 were Felix Frankfurter; Hugo Black; Earl Warren (Chief Justice); Stanley Reed; William O. Douglas. - Tom Clark; Robert H. Jackson; Harold Burton; Sherman Minton
- [87] The Rehnquist Court, , 1986–2005.
- [88] Wood, Gordon S., *Dusting off the Declaration* (<http://www.nybooks.com/articles/archives/1997/aug/14/dusting-off-the-declaration/>), *The New York Review of Books*, Aug 14, 1997

- [89] Wood, Gordon S., Dusting off the Declaration (<http://www.nybooks.com/articles/archives/1997/aug/14/dusting-off-the-declaration/>), The New York Review of Books, Aug 14, 1997. Viewed December 29, 2011.
- [90] Levinson 1987, p. 115
- [91] Levinson 1987, p. 118
- [92] Levinson 1987, p. 119

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## Further reading

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## External links

### National Archives

- National Constitution Center (<http://www.constitutioncenter.org/>)
- The National Archives Experience – High Resolution Downloads of the Charters of Freedom (<http://www.archives.gov/exhibits/charters/charters.html>)

### Official U.S. government sources

- Constitution and related resources (<http://www.loc.gov/rr/program/bib/ourdocs/Constitution.html>): Library of Congress
- Analysis and Interpretation of the Constitution of the United States (<http://www.gpoaccess.gov/constitution/index.html>): Annotated constitution, with descriptions of important cases (official publication of U.S. Senate)

### Non-governmental web sites

- U.S. Constitution Online (<http://www.usconstitution.net/const.html>)
  - Mobile friendly (<http://uscon.mobi/>) version of the Constitution
  - Audio reading (<http://www.law.uchicago.edu/constitution>) of the Constitution in MP3 format provided by the University of Chicago Law School
  - Annotated Constitution (<http://www.law.cornell.edu/anncon/>) by the Congressional Research Service of the U.S. Library of Congress (hyperlinked version published by Cornell University)
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