

The Constitution

Part A: Background

The U.S. Constitution establishes the fundamental principles, processes, and structures of the American political system. Among them are representative government, republicanism, popular sovereignty, and individual rights; the process of checks and balances; and the structures of separation of power and federalism. The Constitution grants power to government institutions, to officeholders, and to citizens, and constrains all of them in their exercise of power. Under the Constitution, sovereignty is divided among the people, the state governments, and the national government, preventing a concentration of power that could endanger the liberties of citizens.

That the Constitution has endured for more than two centuries is a function of four extraordinary innovations in the theory and the practice of republican government. First, American constitutions were written. This innovation was employed in creating state constitutions and later in the Articles of Confederation and the Constitution of 1787. Written constitutions were a significant departure from the British model, a vague body of law and precedent, some written and some not. During the colonial and revolutionary periods, Americans had found that an informal constitution was a weak and unreliable guarantor of citizens' liberties. So they insisted that their constitutions be written.

Second, the American constitutions were separate from and superior to the government they sought to restrain. This too was a departure from the British model. In England, citizens customarily looked to Parliament to protect their liberties from the abuse of power by the king. But Americans learned from their experience with state governments between 1776 and 1787 that duly elected legislatures and even citizens themselves might abuse power and had to be restrained by a higher authority. Their written constitutions would be that separate and paramount authority.

The third innovation was a process for creating and then amending the documents. A constitution separate from and superior to the government could not be created or altered by the government it was meant to control. So Americans located the power to create and later amend the Constitution of 1787 in special conventions of citizens that were separate from the national and state governments in existence at the time.

Article V of the Constitution of 1787 divides the amendment power between the national and state governments, on the one hand, and popular conventions of citizens on the other. Popular conventions have been employed only once since the adoption of the Constitution, when the Twenty-First Amendment, which repealed Prohibition, was ratified by popularly elected conventions in the states in 1933. But their inclusion in the Constitution illustrates the Americans' conviction that fundamental law must be separate from the institutions of government.

The fourth innovation was judicial review, the power of the judges to say what a constitution means and to strike down government actions that conflict with the authority of the Constitution. Judicial review was rooted in the belief that the nation's fundamental law is both separate from and superior to the government. Clearly, government officials cannot evaluate their own performance against the standards set forth in the Constitution. The Framers, or authors, of the Constitution could have made the people the instrument for assessing the government's compliance with the Constitution. But they, like many Americans at the time, held a dim view of democracy and feared the consequences of locating power in the citizenry.

Actually, judicial review is nowhere mentioned in the Constitution of 1787. But the concept of a fundamental law that binds the government pointed to the need for interpretation by some impartial body. Judges at the state government level were the first to exercise judicial review. In 1803, the U.S. Supreme Court asserted the power for the first time, striking down a law passed by Congress. In *Marbury v. Madison*, Chief Justice John Marshall claimed for the Supreme Court the power to interpret the Constitution: "A law repugnant to the Constitution is void." The exercise of judicial review confirmed that Americans had elevated the fundamental law above their government and had found a practical way to maintain that separation.

The framers intended the Constitution to be the foundation for "A New Order of the Ages," yet it is a surprisingly brief and often ambiguous document. Both its brevity and ambiguity suggest the wisdom of its

authors: They did not want the document to be so detailed that it would constrain policymakers in future generations, tying them to the interests and issues of the founding period. The framers knew that a free people facing ongoing political change would cast off any document that could not be adapted to new circumstances. The sparseness of the Constitution has helped it endure as the fundamental law in the United States for over two hundred years.

Some of the matters on which the Constitution is ambiguous are important. The interests of those at the Constitutional Convention were often too diverse to reconcile through bargaining and compromise. Ambiguous language allowed the parties to agree on issues that if dealt with specifically would have deadlocked the convention. Since 1787, ambiguities in the Constitution have been sorted out in the practice of American political life and through interpretation by the federal courts. Still the meaning of certain phrases – “necessary and proper” (Article I, Section 8) and “equal protection” (Fourteenth Amendment), for example – are likely always to be contested.

Part B: Basic Provisions of the Constitution: Consult the Constitution in the Appendix of your textbook to answer the following questions in order to familiarize yourself with the organization and content of the Constitution.

Article I, Sections 1-3

1. What are the three qualifications to become a member of the House?
2. What is the term of office for a member of the House?
3. What is the title of the main officer in the House of Representatives?
4. How many senators are there from each state?
5. What is their term of office?
6. What are the three qualifications to become a member of the Senate?
7. How were the senators originally chosen?
8. Who has the sole power of impeachment?
9. Who is the President of the Senate?
10. Who has the sole power to try an impeachment?
11. What margin is required to convict and remove a president?

Article I, Sections 4-7

12. Where must all bills for raising revenue begin?
13. What bodies have the power to override a presidential veto?
14. What margin is required to override a presidential veto?

Article I, Section 8

15. What is the purpose of Article I, Section 8?

16. What is the purpose of Article I, Section 8, Clause 18?

Article I, Sections 9-10

17. What is the purpose of Article I, Section 9?

18. What is the purpose of Article I, Section 10?

Article II, Sections 1-4

19. What is the term of office for the executive

20. What is the purpose of the electors?

21. What are the qualifications for President?

22. What does the President swear to defend and protect in the oath of office?

23. What body has the power to ratify treaties?

24. What margin is required to ratify treaties?

25. What body has the power to accept or reject a president's nomination to the Supreme Court

26. For what crimes may the President be removed from office?

Article III, Sections 1-3

27. What is the only court created in the Constitution?

28. Who may establish inferior courts?

Article IV

29. What is the purpose of Article IV?

30. Who admits new states into the Union?

31. What type of government is guaranteed to every state?

Article V

32. Who proposes amendments?

33. Who ratifies amendments?

Article VI

34. What is the supreme law of the land?

Article VII

35. How many states were required to ratify the Constitution?