



# The Constitution

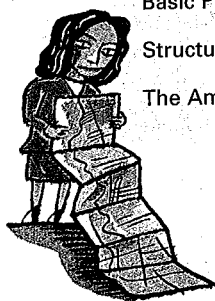
**R**ules . . . do we need them? Even though most people complain about them and sometimes even break them, without rules we would have chaos. Sometimes rules take the form of oral instructions, customs, and traditions, but throughout history, many societies have created a set of written rules.

A constitution is a set of principles and rules for governing a country, but it also represents an unwritten collection of traditions and customs that people want to preserve. The United States Constitution, together with the Bill of Rights, provides a blueprint for government, the rules that must be followed. More importantly, the Constitution and the amendments protect our basic values: democracy, justice, equality, and, of course, the delicate balance between liberty and order.

Consider some amazing facts: The Constitution is the supreme law of the land and consists of only 4,300 words. It is the oldest written document of its kind in the world today. While so much has completely changed during the last two centuries—the size and shape of the country and its economy, family life, and laws—the Constitution has remained much the same, with the exception of only 27 amendments. Why? First, the rules of the Constitution are based solidly in important beliefs, customs, and traditions that citizens have valued through the years. Second, the rules preserve enduring values but allow the necessary flexibility to apply the principles to a changing society.

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# Constitution

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## Basic Principles

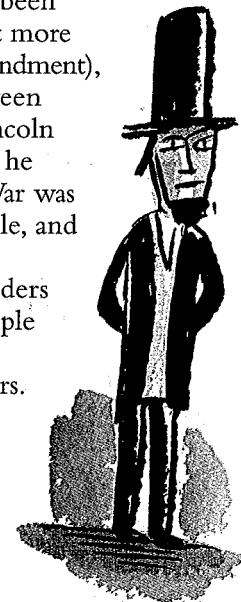
The Constitution reflects the Founders' belief that controls had to be placed on both the governed and the governors. Democracy must be checked by rulers, and rulers must be checked by democracy. By spreading the power among many, the Constitution prevents any one person or group from taking control of the government, ensuring a degree of democracy. At the same time, it gives the government enough power to avoid mob rule and the tyranny of the majority. The Founders carefully crafted the Constitution to rest on basic principles that reflect a near-perfect balance: popular sovereignty, separation of powers, checks and balances, limited government, and federalism.

### 1. POPULAR SOVEREIGNTY

Remember that most of the Founders believed John Locke's argument that government must be based on the consent of the governed. In other words, the people must agree on who their rulers will be. **Popular sovereignty** means that people are the most important source of governmental power. But note that everyone's rights were not equal. The Constitution paid almost no attention to social equality and hardly mentioned slavery.

Over time, the principle of popular sovereignty has been expanded by amendments to the Constitution that grant more groups the right to vote: African Americans (the 15<sup>th</sup> Amendment), women (the 19<sup>th</sup> Amendment), and young people between the ages of 18–21 (the 26<sup>th</sup> Amendment). Abraham Lincoln immortalized the principle of popular sovereignty when he declared in his 1863 Gettysburg Address that the Civil War was fought so that "government of the people, by the people, and for the people should not perish from the earth."

As democratic as we might like to think the Founders were, it is important to notice that they allowed the people to vote directly only for members of the House of Representatives—not for the President, judges, or senators. Clearly, they believed that most of the power should be trusted to government leaders, who must be prevented from becoming tyrants.



### definitions

**popular sovereignty**—the fundamental principle that the power to govern belongs to the people and that government must be based on the consent of the governed.



## Quote

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

*James Madison, The Federalist No. 47, 1788*

## 2. SEPARATION OF POWERS

One way that the Constitution prevents one person or group from controlling the government is to separate the powers among three branches of government—legislative, executive, and judicial—so that power is distinct but shared. **Separation of powers** was not a new idea in 1787, because most of the colonies practiced it for more than 100 years before the Constitution was written. Many people believed that the first national government under the Articles of Confederation failed partly because the legislature had no strong executive to check legislative abuses or question and challenge its power. As a result, the constitutional separation of powers became a basic principle of government. Congress was given the function of making laws; the President was given the power to execute and administer laws; and the courts were given the responsibility of interpreting and applying laws.

## 3. CHECKS AND BALANCES

The Framers of the Constitution did not believe that separation of powers was enough to prevent both oppression by rulers and tyranny of the majority. Because they feared that different officials with different powers might pool their authority and act together, they decided to allow each branch some authority over the actions of the others. In a system of **checks and balances**, no one person or group would be likely to take over the whole government. "Ambition must be made to counteract ambition," as Madison wrote in *The Federalist* No. 51.

### defini.tions

**separation of powers**—the division of government's executive, legislative, and judicial powers into three separate branches.

**checks and balances**—a system in which political power is divided among the three branches of government, with each having some control over the others.

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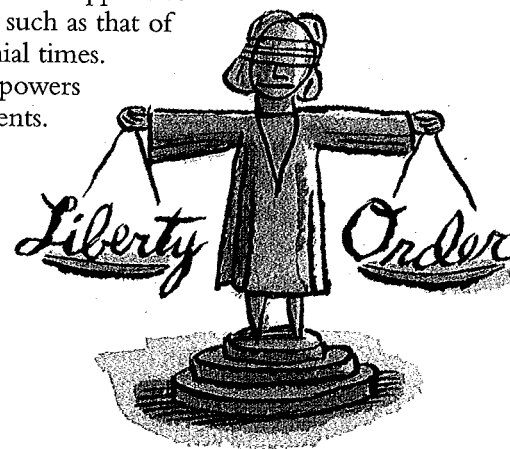
For example, even though Congress is responsible for passing laws, the President may veto those laws. Congress, in turn, may refuse to provide funds that the President requests for implementing his programs. Over the years, the courts have developed the power to interpret laws according to the Constitution, but federal judges must be appointed by the President and approved by the Senate. As a result of checks and balances such as these, no branch functions alone, but each is dependent on the others to fulfill its duties.

#### 4. LIMITED GOVERNMENT

Madison's quote reflects the Founders' concern about oppression by rulers, which was as strong as their fear of tyranny of the majority. The principle of limited government guarantees that government does not hold all the power and that it does only those things that people allow it to do. Government officials are subject to law themselves and held to the principles established in the Constitution. Presidents may be impeached, representatives may be voted out of office, and potential judges may be denied confirmation by the Senate.

#### 5. FEDERALISM

**Federalism** reflects the Founders' desire to balance liberty and order. They believed that the government under the Articles of Confederation lacked a strong central government and allowed states and their citizens too much liberty. Yet they didn't want the oppressive rule of a distant central government, such as that of the British government during colonial times. Federalism spreads—and splits—the powers between national and state governments. For example, only the federal legislature can declare war, only state governments can conduct elections, but both levels of government can levy and collect taxes.

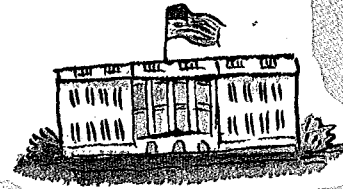


#### definitions

**federalism**—the division of governmental power, as expressed in the United States Constitution, between the national government and the states.

# SEPARATION OF POWERS AND CHECKS AND BALANCES IN THE CONSTITUTION

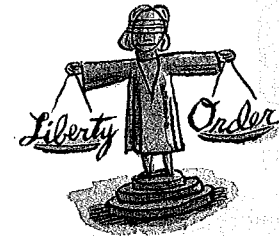
## Executive Branch



- ★ Nominates federal judges
- ★ Grants pardons or reprieves for federal offenses

- ★ Implements laws
- ★ Vetoes laws passed by Congress
- ★ Calls special sessions of Congress
- ★ Suggests legislation
- ★ Sends messages to Congress

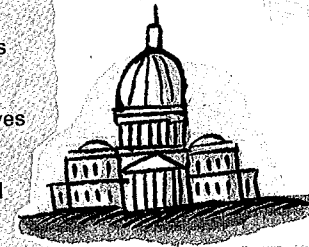
## Judicial Branch



- ★ Declares executive actions unconstitutional

- ★ Interprets laws and treaties
- ★ Declares laws passed by Congress unconstitutional

## Legislative Branch

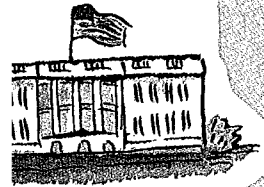


- ★ Passes laws and sends them to the President
- ★ Impeaches and removes the President
- ★ Overrides presidential veto by  $\frac{2}{3}$  vote
- ★ Controls appropriation of money
- ★ Confirms presidential appointments
- ★ Ratifies treaties

- ★ Impeaches and removes federal judges
- ★ Confirms judicial appointments
- ★ Establishes lower federal court

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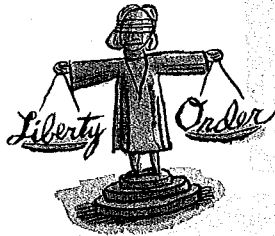
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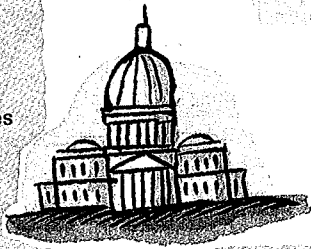
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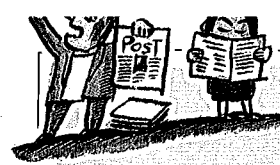
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### Legislative Branch



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 controls appropriation of money  
 confirms presidential appointments  
 ratifies treaties

- ★ Impeaches and removes federal judges
- ★ Confirms judicial appointments
- ★ Establishes lower federal courts



## Headlines

### GENDER, ETHNICITY, AND RACE IN THE CONSTITUTION

Critics of the Framers often say that the Constitution reflects the interests of white, well-to-do males and does not address the concerns of women or minority groups. It is true that no women or minorities attended the Philadelphia convention and that the Constitution did not extend voting rights beyond propertied white males. In addition, each time the Constitution has a pronoun, it is the masculine form—*he* or *him*.

However, as Robert Goldwin discussed in a 1987 article in *Commentary*, the Constitution does not specify men; instead it grants rights to *persons* or *citizens*. In fact, when African Americans were granted the right to vote in 1870 and women in 1920, it was not necessary to change any existing language in the Constitution because the document itself did not deny any groups the right to vote. Thus, the Constitution again proved itself to be a flexible document, based on broad principles, rather than on specific, easily outdated rules.

## Structure of the Constitution

An important secret of the longevity of the Constitution is its brevity. The original document had only some 4,300 words and could be carried around in a coat pocket. Rather than going into specific details, the Constitution provided a general blueprint. Its structure may be divided into three parts: the Preamble, the articles, and the amendments, including the Bill of Rights. The full text of the Constitution, including the amendments, is included in the Almanac on page 497.

### 1. THE PREAMBLE

The Preamble lists six goals for American government: “to form a more perfect union, establish justice, insure domestic tranquillity [peace], provide for the common defense, promote the general welfare, and secure the blessings of liberty.” The Preamble is a good example of the enduring nature of the Framers’ work. Even though these words were written more than 200 years ago, these goals are just as important for government today as they ever were.



## 2. THE ARTICLES

Each of the seven articles of the Constitution covers a general topic and is divided into sections that cover more specific details. For example, Article I, by far the longest, contains ten sections. Each section in turn contains a number of clauses, which are often just one sentence long (although some of the sentences are complex). If the Constitution were a plan for a building, the articles could be thought of as the working blueprints for seven main floors.

The articles clearly reflect the basic principles of government. For example, Articles I, II, and III create the three branches of the national government and reflect separation of powers and checks and balances. Article I establishes the legislative branch, Article II addresses the executive branch, and Article III defines the nature of the judiciary. The remaining four articles clarify the relationship between the states and the federal government (Article IV), explain the process for amending the Constitution (Article V), establish the supremacy of national law (Article VI), and outline the ratification process (Article VII).

## 3. THE BILL OF RIGHTS AND ADDITIONAL AMENDMENTS

Only 27 **amendments**, or changes, have been made to the Constitution. The first ten, called collectively the **Bill of Rights**, were added in 1791 to convince the state legislatures to ratify the Constitution. Originally 12 amendments were proposed, but only ten were adopted; one, about congressional pay, was eventually adopted as the 27<sup>th</sup> Amendment. The Bill of Rights keeps the national government from limiting personal freedoms.

Amendments 11 through 27 were added between 1798 and 1992. None of them change the basic principles of the Constitution, but they do reflect significant changes in its interpretation through the years. For example, the 13<sup>th</sup> Amendment abolished slavery, and the 15<sup>th</sup> extended the right to vote to African Americans. The 17<sup>th</sup> Amendment established the direct election of senators, thus broadening popular sovereignty. The principle of limited government was affirmed by the 22<sup>th</sup> Amendment, which limited a President to two terms in office. The 19<sup>th</sup> and 26<sup>th</sup> Amendments further extended popular sovereignty by giving the vote to women and to 18-year-olds respectively. Other amendments created a federal income tax, shortened the time **lame ducks** are in office, and provided for a succession to the presidency. All in all, the additions are remarkably few.

### defi-ni-tions

**amendment**—a formal statement of change to a law or constitution.

**Bill of Rights**—the first ten amendments to the Constitution of the United States.

**lame duck**—an elected official during the period between failure to win re-election and the inauguration of a successor.

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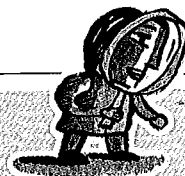
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### THE 27<sup>TH</sup> AMENDMENT: 202 YEARS, 7 MONTHS, AND 23 DAYS IN THE MAKING

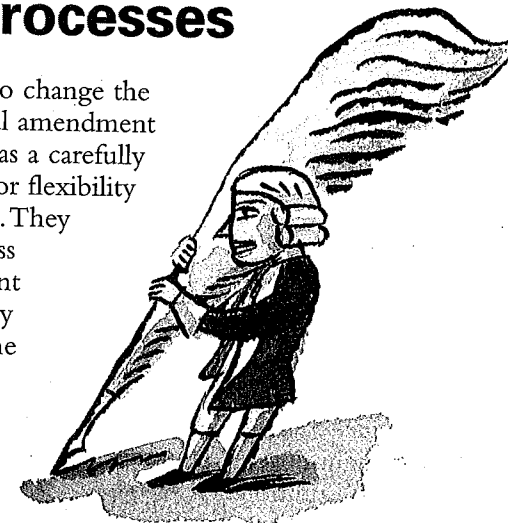
Salaries for government officials are set by Congress. Representatives and senators determine their own pay. This privilege sounds wonderful, but if Congress abuses it, voters will certainly let them know. The 27th Amendment addresses this awkward power. Ratified in 1992, it says that no increase in the pay of members of Congress can take effect until after the next congressional elections, giving citizens the opportunity to react to the increase through their votes.

Oddly, the 27th had first been proposed as a part of the Bill of Rights by James Madison in 1789, when both representatives and senators made \$6 a day. Because it was a part of the Bill of Rights, no deadline was set for its ratification. The Supreme Court had made it clear that amendments must be ratified within a "reasonable time," but the congressional pay amendment never entirely died.

In 1982, Gregory Watson, a student at the University of Texas writing a paper on the Equal Rights Amendment, discovered the languishing amendment and started a ratification movement. In 1992—only 202 years after Madison proposed it—the amendment became a part of the Constitution.

## The Amendment Processes

The Founders anticipated the need to change the Constitution, so they set out a formal amendment process in Article V. Their decision was a carefully designed balance between the need for flexibility and the danger of frivolous additions. They believed that the amendment process should be difficult enough to prevent Congress or the states from endlessly slapping on amendments, making the original document meaningless.







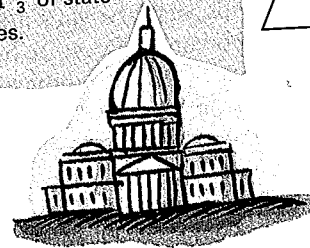
## THE FORMAL AMENDMENT PROCESS

According to Article V, amendments may be proposed in two ways, and they may be approved by the states in two ways, creating four possible paths that a proposed amendment may take. Congress selects the methods of ratification and sets time limits (now seven years) for ratification. The chart below illustrates these paths.

### TWO WAYS TO PROPOSE AMENDMENTS

Proposed by  $\frac{2}{3}$  vote of each house of Congress

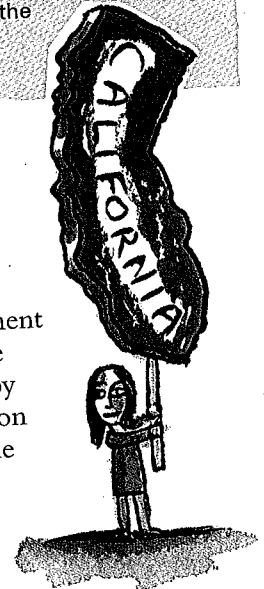
Proposed by a national constitutional convention requested by at least  $\frac{2}{3}$  of state legislatures.



### TWO WAYS TO RATIFY AMENDMENTS

Ratified by at least  $\frac{3}{4}$  of the state legislatures

Ratified by specially called conventions in at least  $\frac{3}{4}$  of the states



The flexibility the Founders built in to the amendment process has not been fully tested so far because 26 of the 27 amendments have followed the same path: proposal by two-thirds vote of each house of Congress and ratification by at least three-fourths of the state legislatures. Only the 21<sup>st</sup> Amendment was adopted by a different method. There has not been a constitutional convention held since 1787, perhaps because of the fear that delegates might possibly vote to throw out the whole Constitution.

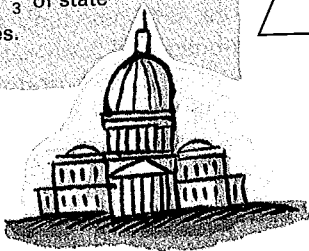
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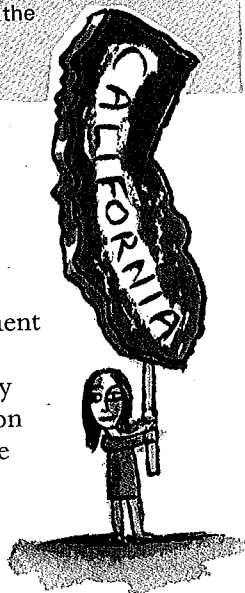
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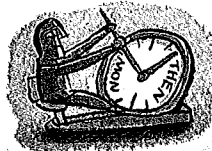
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## Then and Now



### REPEALING THE "NOBLE EXPERIMENT"

With support from reformers concerned about drinking excesses, Congress, and President Woodrow Wilson, the 18<sup>th</sup> Amendment was passed in 1919, putting Prohibition into effect. Although the worthiness of the reformers' goals is seldom questioned, the effects were disastrous. The country was split in its opinions of Prohibition, this so-called "noble experiment," with people in rural areas more likely to support it than those in cities.

By 1933 the members of Congress clearly wanted to repeal the 18th Amendment but were afraid that legislators from states with large rural populations would oppose it. They anticipated that a 21<sup>st</sup> Amendment, to repeal Prohibition, would have a much better chance of passing if special delegates to state conventions made the decision, since those delegates would not have the legislators' worries about getting re-elected. They were right. The 21<sup>st</sup> Amendment is the only one to be proposed by two-thirds of the members of both houses of Congress and ratified by conventions held in three-fourths of the states, and it is the only one that has ever repealed a previous amendment.

### THE INFORMAL AMENDMENT PROCESS

The actual words of the Constitution have changed only by the formal amendment process, but the American system of government is dramatically different today from what it was in 1789. The United States Constitution is written broadly enough so that change may occur within the political system without going through the formal amendment process and altering the document's language. Informal changes in the Constitution occur in at least four ways, including legislative and executive actions, judicial interpretation, and the development of political custom.

#### 1 Legislative Actions

Congress has passed many laws that spell out and add to the Constitution's provisions. For example, although Congress is granted the power to "lay and collect taxes" in Article I, Section 8 of the Constitution, the clause does not specify what may be taxed nor how much tax may be collected. Congress has made and changed those decisions through the years. Similarly, in Article III, Section 1, the Constitution creates "one Supreme Court, and . . . such inferior courts as the Congress may from time to time ordain and establish." Through legislative actions—such as setting up other federal courts—Congress has interpreted the Constitution's meaning.



## 2. Executive Actions

Just as laws have defined the meaning of the Constitution, the manner in which the President carries out his duties has shaped our interpretation of the great document's words. For example, according to Article I, Section 8, only Congress can declare war, and yet Article II, Section 2 states that the President is the commander in chief of the army. Presidents have acted under this authority to make war without a congressional declaration, although they often consult with congressional leaders. Prominent examples include the Korean conflict of the early 1950s and the Vietnam War in the 1960s and '70s. In the 1990s, President Bush sent American troops to the Gulf War, and President Clinton sent soldiers to Bosnia because they interpreted their roles as commanders in chief to allow them to commit American troops to the conflicts.

## 3. Judicial Interpretations

The courts, even more than the legislative and executive branches, generally have been most influential in interpreting the Constitution when disputes arise. The power of the courts was greatly enhanced in the 1803 case of *Marbury v. Madison*, in which the Supreme Court claimed for itself the power of judicial review. Implied but never explicitly stated in the Constitution, this power allows courts to decide whether executive and legislative actions of state and national governments are in accord with the Constitution. Their decisions, always made within a historical and social context, are an important source of informal amendments to the Constitution.



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**4. Changing Customs**

In the two-centuries since the government was founded, many unwritten customs have become accepted as constitutional, even though they are not mentioned in the Constitution. For example, nowhere is the President's cabinet mentioned, but the customary, established cabinet positions—such as secretary of state and secretary of the treasury—were first created by George Washington, and they have remained as fixtures in the executive branch ever since. Article II, Section 2 does say that the President may consult “the principal officer in each of the executive departments,” so the idea of cabinet positions is loosely based in the Constitution.

The original Constitution did not place any limit on the number of terms that a President may serve. Yet the two-term custom was set in place by George Washington when, in his Farewell Address, he recommended that no one should hold the office for a longer time. The custom was not broken for almost 150 years, until Franklin Roosevelt sought and won a third term in 1940 and a fourth in 1944. As popular as Roosevelt was, the unwritten custom was still judged to be best, and in 1951 it became a formal amendment that limited a President to two elected terms or a maximum of ten years in office.



The two-term controversy reflects the importance of beliefs, customs, and traditions in shaping the broad principles of the Constitution. The rules and guidelines that the seven articles put in place are important because they not only preserve enduring values, but allow the necessary flexibility to apply the principles to a changing society. Throughout this book, we will see how the major principles of separation of powers, checks and balances, limited government, popular sovereignty, and federalism continue to shape the American system as it enters the twenty-first century.