

# A Brief Explanation of the Constitution of the United States

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The Constitution was adopted and signed by 39 of the 55 delegates to the Constitutional Convention in Philadelphia, Pennsylvania on September 17, 1787. It has been hailed as “The most wonderful work ever struck off at a given time by the brain and purpose of man.” (William Gladstone). It is a marvel of brevity and of clarity. It was, however, written in the 18th century, and many of the ideas, concepts, words, phrases, and euphemisms may seem peculiar to us today.

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

The following is a synopsis or summary of the Constitution and its terms, and should not be taken as a substitute for the Constitution, but as a study guide.

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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.”*

**The Preamble** to the Constitution has no force in law, nor is it a grant of power -- instead, it establishes the "Why" of the Constitution. Why did this document come to be? It reflects the desires of the Framers to improve upon their previous government (to be "more perfect" than the Articles of Confederation), to ensure that that government would be just, and would protect its citizens from internal strife and from attack from the outside. It is based on principles of natural law and is intended to secure the blessings of liberty to the people and to all future generations of Americans.

The Constitution was written by several committees over the summer of 1787, however, the committee most responsible for the final form we know today is the "Committee of Style and Arrangement." This Committee was tasked with obtaining the Convention’s approval of the articles and clauses and putting them into a logical order. On September 10, 1787, the Committee of Style set to work, and two days later, it presented the Convention with its final draft. The members were Alexander Hamilton, William Johnson, Rufus King, James Madison, and Gouverneur Morris. The actual text of the Preamble and much of the rest of this final draft is usually attributed to Gouverneur Morris.

The newly minted document began with a grand flourish —the Preamble —the Constitution's *raison d'être* (reason for existence). It sets forth the hopes and dreams of the Convention’s delegates and a justification for what they had done. Its words are familiar to us today, but because of time and context, they do not necessarily hold the exact same meaning we may ascribe today.

## **We the People of the United States...**

“The Framers of our Constitution were trained and experienced in the Common Law. They remembered [the *Magna Carta* forged by] the barons and King John at Runnymede. They were thoroughly indoctrinated in the principle that true sovereignty rests in the people.” (J. Reuben Clark, Jr.). It confirms this truth in the Declaration of Independence that “Governments are instituted among Men, deriving their just powers from the consent of the governed;” and, it was “a new nation, conceived in liberty and dedicated to the proposition that all men are created equal ...a government, of the people, by the people, for the people.” (Abraham Lincoln, *Gettysburg Address*).

### **...in Order to form a more perfect Union**

The Framers were dissatisfied with the United States under the Articles of Confederation, and they were striving for something better. The framers desired that the new Constitution would form a more perfect union of both the states and the people. They knew that unity would prove essential to their future political success. Washington stated, “you should properly estimate the immense value of your national Union to your collective and individual happiness ...accustoming yourselves to think and speak of it as the Palladium [safeguard] of your political safety and prosperity.”

### **...establish Justice**

Injustice, unfairness of criminal and civil laws, especially in trade and taxation, was of great concern to the citizens of 1787. They wanted a nation of equal justice -- where courts would be established with uniformity, the laws administered with fairness and equity, and where trade within and outside the borders of the country would be open and unmolested. They longed for judges who would do their duty as faithful guardians of the Constitution.

### **...insure domestic Tranquility**

One of the events that caused the Constitutional Convention to be held was the revolt of Massachusetts farmers known as Shays' Rebellion. The taking up of arms by war veterans revolting against the state government was a shock to the system. Keeping the peace was on everyone's mind, and tranquility at home was a prime concern. The framers hoped that the new powers granted to the federal government in the Constitution would thwart seditions and such rebellions in the future.

### **...provide for the common defence**

The new nation was fearful of attack from all sides —and no one state was really capable of fending off an attack from land or sea by itself. With a wary eye on Britain and Spain, and ever-watchful for Indian attack, no state in the new United States could survive such attacks alone. The people and the states needed to bond together in order to survive in the harsh world of international intrigue and aggression.

### **...promote the general Welfare**

The whole point of having tranquility, justice, and a common defense was to promote the general welfare — to allow every state and every citizen of those states the benefits that the new republic could provide. The framers looked forward to the expansion of agriculture, manufacturing, trade and investment, and they knew that a strong national government would be the precursor. To promote the general welfare is intended as a guidepost for the federal government to carry out its enumerated powers in fostering and advancing the common good.

### **...and secure the Blessings of Liberty to ourselves and our Posterity**

The framers sought for the blessings of both civil and religious liberty — something they had all fought hard for in the Revolutionary War just a decade before. They desired to create a virtuous nation that would secure the unalienable rights of “life, liberty, and the pursuit of happiness” to all citizens, and remain free from tyranny. And more than for themselves, they wanted to be sure that their children and future generations of Americans would enjoy the same.

**...do ordain and establish this Constitution for the United States of America.**

In the final clause of the Preamble the people invest their authority in the new government, pronounce the official name for this great charter of liberty, and restate the name of the new nation for whom they are adopting the Constitution.

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**Separation of Powers.** James Madison stated: "The preservation of liberty requires, that the three great departments of power [executive, legislative and judicial] should be separate and distinct." J. Reuben Clark, Jr., said of the Constitution, "It is this union of independence and dependence of these branches -- legislative, executive and judicial -- and of the governmental functions possessed by each of them, that constitutes the marvelous genius of this unrivalled document."

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## **ARTICLE I – The Legislative Branch**

Section 1 establishes the name of the Legislature to be The Congress, a bicameral, or two-part, body.

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

Section 3 defines the upper house of Congress, the Senate. Again, it establishes some minimum requirements, such as a 30-year-old age limit. Senators were originally appointed by the legislatures of the individual states (changed to a popular vote by the 17<sup>th</sup> Amendment). They serve for six years each. Each state has equal suffrage in the Senate, meaning that each state has the exact same number of Senators, two each, regardless of the population. This Section introduces the Vice-President, who is the leader of the Senate (called the President of the Senate); the Vice-President does not vote unless there is a tie.

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

Section 5 says that Congress must have a minimum number of members present in order to meet, and that it may set fines for members who do not show up. It says that members may be expelled, that each house must keep a journal to record proceedings and votes, and that neither house can adjourn without the permission of the other.

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

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

houses pass it by a two-thirds majority, the bill becomes law over the President's veto. This is known as overriding a veto.

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

Section 8 lists specific powers of Congress, including the power to establish and maintain an army and navy, to establish post offices, to create courts, to regulate commerce between the states, to declare war, and to raise money (tax). It also includes a clause known as the “Elastic Clause” which allows it to pass any law necessary for the carrying out of the previously listed powers. The “Commerce Clause” is probably the most frequently used (and abused) of Congressional powers. Its original purpose was primarily to eliminate trade barriers among the states, but it was expanded by the Supreme Court in the early 1940’s to include any activity having an impact on commerce.

Section 9 places certain limits on Congress. Certain legal items, such as suspension of habeas corpus, bills of attainder (a law that singles out an individual or group for punishment without a trial), and ex post facto (or retroactive) laws are prohibited. No law can give preference to one state over another; no money can be taken from the treasury except by duly passed law, and no title of nobility, such as Prince or Marquis (Duke or Earl), will ever be established by the government.

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

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## **Article II – The Executive Branch**

Section 1 establishes the office of the President and the Vice-President, and sets their terms at four years. Presidents are elected by the Electoral College, whereby each state has one vote for each member of Congress. Originally, the President was the person with the most votes and the Vice-President was the person with the second most, though this was later changed. Certain minimum requirements are established again, such as a 35-year minimum age. Presidents must also be a natural-born citizen of the United States. The President is to be paid a salary, which cannot change, up or down, as long as he is in office. The Presidential oath of office is set forth.

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

Section 3 establishes the duties of the President: to give an annual state of the union address, to make suggestions to Congress, to act as head of state by receiving ambassadors and other heads of state, and to be sure the laws of the United States are carried out faithfully.

Section 4 briefly discusses the removal of the President, called impeachment, for “Treason, Bribery, or other high Crimes and Misdemeanors.” “High Crimes” means punishable offenses by public officials, who because of their high status, are under special obligations above ordinary citizens. Examples include election fraud, abuse of authority, perjury, or obstruction of justice.

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## Article III – The Judicial Branch

Section 1 establishes the Supreme Court, the highest court in the United States. It also sets the terms of judges, of both the Supreme Court and lower courts: that they serve as long as they are on "good behavior," which usually means for life (no Supreme Court Justice and only a few federal judges have ever been impeached). It also requires that judges shall be paid.

Section 2 sets the kinds of cases that may be heard by the federal judiciary, which cases the Supreme Court may hear first (called original jurisdiction), and that all other cases heard by the Supreme Court are by appeal. It also guarantees trial by jury in criminal court.

Section 3 clearly defines what the crime of treason is, which is make war against the United States, or to give aid and comfort to our enemies.

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## Article IV – States Powers

Section 1 mandates that all states will honor the laws of all other states. The Supreme Court has held that the clause means that a state may not discriminate against citizens of other states in favor of its own citizens.

Section 2 guarantees that citizens of one state be treated equally and fairly just as all citizens of another state. In 1823, the Federal Circuit Court in Pennsylvania stated that Article 4, Section 2 is intended to protect “the enjoyment of life and liberty ... the right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefits of the writ of habeas corpus (a legal action through which a prisoner can be released from unlawful detention), to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State.” It also says that if a person accused of a crime in one state flees to another, they will be returned to the state they fled from. This section also has a clause dealing with fugitive slaves that no longer applies.

Section 3 concerns the admittance of new states and the control of federal lands.

Section 4 ensures a republican form of government. Federalist Paper No. 39 defines a republic to be “a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior.” There is a separation of powers at the state level (the same as the federal) and each state also receives its power from the people, not from the federal government. This article also guarantees that the federal government will protect the states against invasion and insurrection.

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## Article V -- Amendments

**Article 5** details the method of amending, or changing, the Constitution. There are two ways set forth in the Constitution for how to propose an amendment. One has never been used.

The first method is for a bill to pass both houses of the legislature, by a two-thirds majority in each. Once the bill has passed both houses, it goes on to the states. This is the route taken by all current amendments. Because of some long outstanding amendments, such as the 27<sup>th</sup> (regarding Congressional pay increases), Congress will normally put a time limit (typically seven years) for the bill to be approved as an amendment.

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

Regardless of which of the two proposal routes is taken, the amendment must be ratified, or approved, by three-fourths of states. There are two ways to do this, too. The text of the amendment may specify whether the bill must be passed by the state legislatures or by a state convention. Amendments are sent to the legislatures of the states by default. Only one amendment, the 21<sup>st</sup> (repeal of prohibition), specified a convention. In any case, passage by the legislature or convention is by simple majority.

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

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

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## Article VI – The Supremacy Clause

**Article 6** concerns the United States itself. First, it guarantees that the United States under the Constitution would assume all debts and contracts entered into by the United States under the Articles of Confederation. It sets the Constitution and all laws and treaties of the United States to be the supreme law of the land. Finally, it requires all officers of the United States and of the states to swear an oath of allegiance to the United States and the Constitution when taking office. Since 1884, the oath taken by members of Congress states that each “*will support and defend the Constitution of the United States against all enemies, foreign and domestic....*”

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## Article VII -- Ratification

**Article 7** details the method for ratification, or acceptance, of the Constitution: of the original 13 states in the United States, nine had to accept the Constitution before it would officially go into effect. The first state to ratify was Delaware, on December 7, 1787, and the last was Rhode Island on May 29, 1790.

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## The Bill of Rights

The first ten amendments to the Constitution were all adopted at the same time by Congress and ratified by 3/4 of the states on December 15, 1791 (date approved by Virginia), and are collectively known as the “Bill of Rights.” They limit the power of the federal government. These limitations serve to protect our individual, natural rights of liberty and property including freedoms of religion, speech, a free press, free assembly, and free association, as well as the right to keep and bear arms.

The 1st Amendment states that Congress shall make no law to establish an official religion (or church), or that prohibits the people's right to practice religion, to speak freely, to assemble (meet privately or in groups), to publish, and to petition the government. Thomas Jefferson stated that, “The constitutional freedom of religion [is] the most inalienable and sacred of all human rights.”

The 2nd Amendment protects the right of citizens to possess firearms.

The 3rd Amendment guarantees that the army cannot force homeowners to give them room and board without permission.

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

The 5th Amendment protects people from being held for committing a crime unless they are properly indicted, that they may not be tried twice for the same crime, that you cannot be forced to testify against yourself, and from your property being taken without just compensation. It also contains due process guarantees. Due process generally means legal procedures must be fair.

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

The 7th Amendment guarantees a jury trial in federal civil court cases.

The 8th Amendment guarantees that punishments will be fair, and not cruel, and that extraordinarily large fines will not be set.

The 9th Amendment is simply a statement that other rights aside from those listed may exist, and just because they are not listed doesn't mean they can be violated. James Madison's suggested wording was, “The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people; or as to enlarge the powers delegated by the constitution....”

The 10th Amendment states that the powers not specifically granted to the federal government belong to the states or to the people. This amendment is much debated. James Madison stated, “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

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The Constitution, Bill of Rights and all Amendments may be found online at: <http://www.wjmi.org/DOCS/constitu.htm>