

The Constitution

PREAMBLE

Constitutional Insight Preamble

Why does the Preamble say "We the people of the United States . . . ordain and establish" the new government? The Articles of Confederation was an agreement among the states. But the framers of the Constitution wanted to be sure its legitimacy came from the American people, not from the states, which might decide to withdraw their support at any time. This is a basic principle of the Constitution.

ARTICLE 1

Constitutional Insight Section 1

Why does the first article of the Constitution focus on Congress rather than on the presidency or the courts? The framers were intent on stressing the central role of the legislative branch in the new government because it is the branch that most directly represents the people and is most responsive to them.

A CRITICAL THINKING

Do you think Congress is still the branch of the federal government that is most directly responsible to the people? Why or why not?

Constitutional Insight Section 2.1

Why are members of the House of Representatives elected every two years? The House of Representatives was designed to be a truly representative body, with members who reflect the concerns and sentiments of their constituents as closely as possible. The framers achieved this timely representation by establishing two years as a reasonable term for members of the House to serve.

B CRITICAL THINKING

Do you think electing members of the House of Representatives every two years is a good idea? Why or why not?

PREAMBLE. Purpose of the Constitution

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, 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.

ARTICLE 1. The Legislature

SECTION 1. CONGRESS 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

1. ELECTIONS 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.

2. QUALIFICATIONS 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.

3. NUMBER OF REPRESENTATIVES 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 choose 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.~~

4. VACANCIES When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. OFFICERS AND IMPEACHMENT The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Requirements for Holding Federal Office

POSITION	MINIMUM AGE	RESIDENCY	CITIZENSHIP
Representative	25	state in which elected	7 years
Senator	30	state in which elected	9 years
President	35	14 years in the United States	natural-born
Supreme Court Justice	none	none	none

SECTION 3. THE SENATE

- 1. NUMBERS** 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.
- 2. CLASSIFYING TERMS** 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.~~
- 3. Qualifications** 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.
- 4. ROLE OF VICE-PRESIDENT** The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.
- 5. OFFICERS** The Senate shall choose 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.
- 6. IMPEACHMENT TRIALS** 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.
- 7. PUNISHMENT FOR IMPEACHMENT** 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. CONGRESSIONAL ELECTIONS

- 1. REGULATIONS** 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 choosing Senators.
- 2. SESSIONS** 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.~~

Constitutional Insight Section 3.1

Why are members of the Senate elected every six years? The framers feared the possibility of instability in the government. So they decided that senators should have six-year terms and be elected by the state legislatures rather than directly by the people. The Seventeenth Amendment, as you will see later, changed this. The framers also staggered the terms of the senators so that only one-third of them are replaced at any one time. This stabilizes the Senate still further.

C CRITICAL THINKING

Do you think it is important today for the Senate to have more stability than the House of Representatives? If so, why?

Constitutional Insight Sections 3.6

and 3.7 *Must an impeached president step down from office?* Not necessarily. An impeachment is the equivalent of a formal accusation of criminal behavior or serious misbehavior. By impeaching the president, the U.S. House of Representatives is officially accusing the nation's chief executive of one or more wrongdoings that warrant possible removal from office. It is then the responsibility of the Senate to conduct a trial to determine whether the president is guilty or not guilty of the charges—and thus whether or not the president must step down. Conviction requires a two-thirds vote of the Senate.

D CRITICAL THINKING

Do you think a president should be put on trial for a crime while he or she is still in office? Explain.

Constitutional Insight Section 5.2

What kinds of rules does Congress make for itself? The Constitution gives each house control over most of its rules of procedure and membership. Rules are important, for they help shape the kinds of laws and policies that pass each body. Senate rules allow a filibuster, whereby a senator holds the floor as long as he or she likes in order to block consideration of a bill he or she dislikes. In recent years, a "cloture" rule has been used to end debate if 60 or more members vote to do so.

In contrast, the House of Representatives has rules to limit debate. A rules committee has the primary task of determining how long a bill on the floor of the House may be discussed and whether any amendments can be offered to the bill. In recent years, the power of the Rules Committee has been limited, but being able to shape the rules remains a powerful tool of members of Congress.

E CRITICAL THINKING

Why do you think the chair of the Rules Committee is in a powerful position?

Constitutional Insight Section 7.1

Why must all bills to raise revenue originate in the House? Because its members all stand for election every two years, the House was expected to be more directly responsive to the people. The tradition of restricting the powers of taxation to the people's representatives dates prior to the English Bill of Rights (1689), which granted to Parliament and withheld from the king the right to raise taxes. When colonists protesting the Stamp Act and the Intolerable Acts protested "no taxation without representation," they were appealing to a longstanding right codified in the English Bill of Rights.

Constitutional Insight Section 7.2

How often do presidents use the veto, and how often is that action overridden? The use of the veto, which is the refusal to approve a bill, depends on many factors, especially the political conditions of the time. Until 1865, only nine presidents exercised the veto for 36 pieces of legislation, including Andrew Jackson who used it 12 times. Since 1865, every president has used the veto power, some on relatively few occasions, others as frequently as over a hundred times. Usually, Congress is unable to produce the votes (those of two-thirds of the members present in each house) needed to override presidential vetoes.

F CRITICAL THINKING

Do you think it should be easier for Congress to override a president's veto? Why or why not?

SECTION 5. RULES AND PROCEDURES

- 1. QUORUM** 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.
- 2. RULES AND CONDUCT** Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.
- 3. CONGRESSIONAL RECORDS** 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.
- 4. ADJOURNMENT** 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. PAYMENT AND PRIVILEGES

- 1. SALARY** 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.
- 2. RESTRICTIONS** 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 increased, 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. HOW A BILL BECOMES A LAW

- 1. TAX BILLS** 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.
- 2. LAWMAKING PROCESS** 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 approves 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.

- 3. ROLE OF THE PRESIDENT** 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.

How a Bill in Congress Becomes a Law



- 1** A bill is introduced in the House or the Senate and referred to a standing committee for consideration.



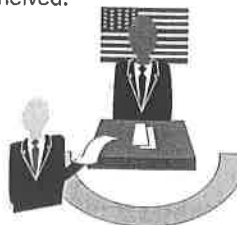
- 2** A bill may be reported out of committee with or without changes—or it may be shelved.



- 3** Either house of Congress debates the bill and may make revisions. If passed, the bill is sent to the other house.



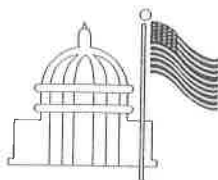
- 4** If the House and the Senate pass different versions of a bill, both versions go to a conference committee to work out the differences.



- 5** The conference committee submits a single version of the bill to the House and the Senate.



- 6** If both houses accept the compromise version, the bill is sent to the president to be signed.



- 7** If the president signs the bill, it becomes law.



- 8** If the president vetoes the bill, the House and the Senate may override the veto by a vote of two thirds of the members present in each house, and then the bill becomes law.

SKILLBUILDER Interpreting Charts

How is the constitutional principle of checks and balances reflected in the process of a bill's becoming a law?

Constitutional Insight Section 8 The powers given to Congress are in Section 8 of Article 1. The first 17 clauses of Section 8 are often called the enumerated powers because they name individually Congress's specific powers. These powers deal with issues ranging from taxation and the national debt to calling out the armed forces of the various states to governing the nation's capital district (Washington, D.C.).

The 18th and final clause is different. It gives Congress the power to do what is "necessary and proper" to carry out the enumerated powers. Thus, the enumerated powers of Congress "to lay and collect taxes," "to borrow money," "to regulate commerce," and "to coin money" imply the power to create a bank in order to execute these powers. Early in the country's history, this elastic clause, as it has been called, was used by Congress to establish the controversial Bank of the United States in 1791 and the Second Bank of the United States in 1816.

G CRITICAL THINKING

Why do you think the elastic clause is still important today?

NOW & THEN

MODERN MONEY

Because of frequent counterfeiting of U.S. currency, a new design was released for the \$100 bill in 1996 and the \$50 bill in 1997. To make these bills more difficult to counterfeit, the new design included enlarged, off-center portraits of Benjamin Franklin and Ulysses S. Grant, a security thread, fine-line printing patterns, color-shifting ink, and a watermark to the right of each portrait. Since then, a \$20 bill was introduced in 1998, and a \$10 and \$5 bill were introduced in 2000.



SECTION 8. POWERS GRANTED TO CONGRESS

- 1. TAXATION** The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
- 2. CREDIT** To borrow money on the credit of the United States;
- 3. COMMERCE** To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
- 4. NATURALIZATION, BANKRUPTCY** To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
- 5. MONEY** To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
- 6. COUNTERFEITING** To provide for the punishment of counterfeiting the securities and current coin of the United States;
- 7. POST OFFICE** To establish post offices and post roads;
- 8. PATENTS, COPYRIGHTS** 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;
- 9. FEDERAL COURTS** To constitute tribunals inferior to the Supreme Court;
- 10. INTERNATIONAL LAW** To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
- 11. WAR** To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
- 12. ARMY** To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
- 13. NAVY** To provide and maintain a navy;
- 14. REGULATION OF ARMED FORCES** To make rules for the government and regulation of the land and naval forces;
- 15. MILITIA** To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
- 16. REGULATIONS FOR MILITIA** 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;
- 17. DISTRICT OF COLUMBIA** 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, dockyards, and other needful buildings;—and
- 18. ELASTIC CLAUSE** 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. POWERS DENIED CONGRESS

1. **Slave Trade** ~~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.~~
2. **HABEAS CORPUS** 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.
3. **ILLEGAL PUNISHMENT** No bill of attainder or ex post facto law shall be passed.
4. **DIRECT TAXES** ~~No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.~~
5. **EXPORT TAXES** No tax or duty shall be laid on articles exported from any state.
6. **NO FAVORITES** 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.
7. **PUBLIC MONEY** 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.
8. **TITLES OF NOBILITY** 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. POWERS DENIED THE STATES

1. **RESTRICTIONS** No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything 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.
2. **IMPORT AND EXPORT TAXES** 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 its 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 control of the Congress.

Constitutional Insight Section 9

Why didn't the framers include a bill of rights in the original Constitution? Actually, they did. Article 1, Section 9, defines limits on the powers of Congress, just as the first ten amendments (which we call the Bill of Rights) do. While some of the provisions focus on such issues as slavery and taxation, there are three explicit prohibitions dealing with citizens' rights:

- *Writ of habeas corpus.* Section 9, Clause 2 says that, except in time of rebellion or invasion, Congress cannot suspend people's right to a writ of habeas corpus. This means that people cannot be held in prison or jail without being formally charged with a crime.

- *Bill of attainder.* Clause 3 prohibits the passage of any law that convicts or punishes a person directly and without a trial. Any legislative action that would punish someone without recourse to a court of law is called a bill of attainder.

- *Ex post facto law.* The same clause prohibits ex post facto laws. Such a law would punish a person for an act that was legal when it was performed.

The fact that these particular rights were protected by the original document issued by the framers reflects both the framers' experiences during the Revolution and their fear of excessive government power.

H CRITICAL THINKING

Why are American citizens today so intent on having protections against government violations of their rights?

ARTICLE 2

Constitutional Insight Section 1.1

What exactly is "executive power"? We know the president has it, but nowhere is it explicitly defined. It is most often defined as the power to carry out the laws of the land, but of course no one person can handle such a chore alone. A more appropriate definition is found in Section 3 of this article, which empowers the president to "take care that the laws be faithfully executed." In this sense, the president is the chief administrator.

1 CRITICAL THINKING

Why is it important to have an executive who is the chief administrator?

- 3. PEACETIME AND WAR RESTRAINTS** 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.

ARTICLE 2. *The Executive*

SECTION 1. THE PRESIDENCY

- 1. TERMS OF OFFICE** 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:
- 2. ELECTORAL COLLEGE** 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.
- 3. Former Method of Electing President** ~~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 choose 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 choose the President. But in choosing 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 choose from them by ballot the Vice-President.~~
- 4. ELECTION DAY** The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. QUALIFICATIONS 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.

6. SUCCESSION 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.

7. SALARY 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.

8. OATH OF OFFICE 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. POWERS OF THE PRESIDENT

1. MILITARY POWERS 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 offenses against the United States, except in cases of impeachment.

2. TREATIES, APPOINTMENTS 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.

3. VACANCIES 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.

Constitutional Insight Section 1.6

What happens when the vice-president succeeds a dead or incapacitated president?

Section 1.6 provides that the vice-president shall assume the powers and duties of the presidential office. But until the Twenty-fifth Amendment was added to the Constitution in 1967, there was no explicit statement in the document that the vice-president is to become president. That procedure owes its origin to John Tyler, the tenth president of the United States, who in 1841 succeeded William Henry Harrison—the first president to die in office. Tyler decided to take the oath of office and assume the title of president of the United States. Congress voted to go along with his decision, and the practice was repeated after Lincoln was assassinated. It would take another century for the written provisions of the Constitution to catch up with the practice.

CRITICAL THINKING

Why is it important to know the order of succession if a president dies in office?

Constitutional Insight Section 2.1

Just how much authority does the president have as "commander in chief" of the armed forces? The president has the power to give orders to American military forces. There have been several instances in U.S. history when presidents have used that authority in spite of congressional wishes.

President Harry Truman involved the armed forces of the United States in the Korean War from 1950 to 1953 without a congressional declaration of war.

Reacting to criticism of the Vietnam War, Congress in 1973 enacted the War Powers Resolution, making the president more accountable to Congress for any military actions he or she might take. Every president since Richard Nixon has called the resolution unconstitutional. Nevertheless, every president has reported to Congress within 48 hours of sending troops into an international crisis, as is required by the War Powers Resolution.

CRITICAL THINKING

Why is it important that the commander in chief of the armed forces of the United States be a civilian (the president) rather than a military general?

Constitutional Insight Section 3

Is it necessary for the president to deliver a State of the Union address before a joint session of Congress at the start of each legislative year? The Constitution requires only that the president report to Congress on the state of the Union from time to time, and nowhere does it call for an annual address. In 1913, President Woodrow Wilson wanted to influence Congress to take action without delay on some legislation that he thought was important. Wilson revived the tradition—which had been discontinued by Jefferson—of delivering the State of the Union address in person.

L CRITICAL THINKING

How does the president use the State of the Union address today?

Constitutional Insight Section 4

Have high-level public officials ever been impeached? In all of American history, the House has impeached two presidents, and neither had to leave office. In 1868, the Senate found President Andrew Johnson not guilty by one vote after the House impeached him, charging him with violating a Congressional Act. In 1999, senators acquitted President Bill Clinton after the House impeached him with charges of lying under oath and obstructing justice in the attempted cover-up of a White House scandal.

The only other president to come close to impeachment was Richard Nixon. In 1974, the House Judiciary Committee, in what is the first step of the impeachment process, recommended three articles of impeachment against Nixon for his role in the infamous Watergate scandal. Before the full House could vote for or against the articles of impeachment, however, Nixon resigned from office.

M CRITICAL THINKING

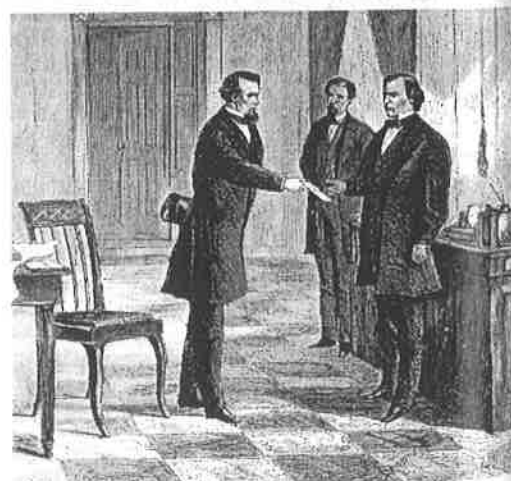
Why do you think the framers of the Constitution created such an elaborate and seemingly difficult procedure for removing a sitting president?

SECTION 3. PRESIDENTIAL DUTIES 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. IMPEACHMENT 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.



(above) Rep. Henry Hyde, chairman of the House Judiciary Committee, swears in Independent Counsel Kenneth Starr during the Committee's hearings on impeachment charges against President Bill Clinton in 1998; (right) President Andrew Johnson is handed the articles of impeachment before his trial in 1868.



ARTICLE 3. The Judiciary

SECTION 1. FEDERAL COURTS AND JUDGES 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 behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. THE COURTS' AUTHORITY

- 1. GENERAL AUTHORITY** 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.~~
- 2. SUPREME COURT** 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.
- 3. TRIAL BY JURY** 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

- 1. DEFINITION** 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.
- 2. PUNISHMENT** 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.

ARTICLE 3

Constitutional Insight Section 2.1

What is judicial review? Is it the same as judicial power? Actually, they are not the same. Judicial power is the authority to hear cases involving disputes over the law or the behavior of people. Judicial review, in contrast, is a court's passing judgment on the constitutionality of a law or government action that is being disputed. Interestingly, nowhere does the Constitution mention judicial review. There are places where it is implied (for example, in Section 2 of Article 6), but the only explicit description of the responsibility of the courts is the reference to judicial power in Section 1 of Article 3. The Supreme Court's power to review laws passed by Congress was explicitly affirmed by the Court itself in *Marbury v. Madison*. (See page 118.)

CRITICAL THINKING

Why is judicial review, although not mentioned in the Constitution, an important activity of the Supreme Court?

The Supreme Court of the United States as of 2001. In the front row (left to right) are Associate Justices Antonin Scalia and John Paul Stevens, Chief Justice William H. Rehnquist, and Associate Justices Sandra Day O'Connor and Anthony Kennedy. In the back row are Associate Justices Ruth Bader Ginsburg, David Souter, Clarence Thomas, and Stephen Breyer. ▼



ARTICLE 4

Constitutional Insight Section 2.1

Why do college students attending public universities outside their state of residence have to pay higher tuition fees?

The Supreme Court has interpreted the "privileges and immunities" clause to allow higher tuition fees (and fees for hunting permits, etc.) for nonresidents when a state can give a "substantial reason" for the difference. Since state colleges and universities receive some financial support from the states' taxpayers, the difference is regarded as justified in most states. If a student establishes residency in the state, he or she can pay in-state tuition after one year.

CRITICAL THINKING

Do you think it is fair that a nonresident must pay higher tuition fees at a state college than a resident of the state must pay? Explain.

Constitutional Insight Section 3.1

Should there be a West Virginia? The Constitution states that "no new state shall be formed or erected within the jurisdiction of any other state" without the permission of the legislature of the state involved and of the Congress. Vermont, Kentucky, Tennessee, and Maine were created from territory taken from existing states, with the approval of the sitting legislatures.

West Virginia, however, is a different story.

During the Civil War, the residents of the westernmost counties of Virginia were angry with their state's decision to secede from the Union. They petitioned Congress to have their counties declared a distinct state. Congress agreed, and so the state of West Virginia was created. After the Civil War, the legislature of Virginia gave its formal approval, perhaps because it was in no position to dispute the matter.

CRITICAL THINKING

Suppose a section of Texas should decide to become a new state today. Could it do this? Why or why not?

ARTICLE 4. Relations Among States

SECTION 1. STATE ACTS AND RECORDS 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. RIGHTS OF CITIZENS

- 1. CITIZENSHIP** The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
- 2. EXTRADITION** 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.
- 3. FUGITIVE SLAVES** ~~No person held to service or labor 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 labor, but shall be delivered up on claim of the party to whom such service or labor may be due.~~

SECTION 3. NEW STATES

- 1. ADMISSION** 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.
- 2. CONGRESSIONAL AUTHORITY** 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. GUARANTEES TO THE STATES 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.

ARTICLE 5. Amending the Constitution

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.

ARTICLE 6. *Supremacy of the National Government*

SECTION 1. VALID DEBTS 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.

SECTION 2. SUPREME LAW 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, anything in the constitution or laws of any state to the contrary notwithstanding.

SECTION 3. LOYALTY TO CONSTITUTION 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.

ARTICLE 7. *Ratification*

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same. 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 independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

George Washington—President and deputy from Virginia

Delaware: George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom

Maryland: James McHenry, Dan of St. Thomas Jenifer, Daniel Carroll

Virginia: John Blair, James Madison, Jr.

North Carolina: William Blount, Richard Dobbs Spaight, Hugh Williamson

South Carolina: John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

Georgia: William Few, Abraham Baldwin

New Hampshire: John Langdon, Nicholas Gilman

Massachusetts: Nathaniel Gorham, Rufus King

Connecticut: William Samuel Johnson, Roger Sherman

New York: Alexander Hamilton

New Jersey: William Livingston, David Brearley, William Paterson, Jonathan Dayton

Pennsylvania: Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas FitzSimons, Jared Ingersoll, James Wilson, Gouverneur Morris

ARTICLE 6

Constitutional Insight Section 2 Just how “supreme” is the “law of the land”? The Constitution and all federal laws and treaties are the highest law of the land. (To be supreme, Federal laws must be constitutional.) All state constitutions and laws and all local laws rank below national law and cannot be enforced if they contradict national law. For example, if the United States enters into a treaty protecting migratory Canadian birds, the states must change their laws to fit the provisions of that agreement. That was the decision of the Supreme Court in the case of *Missouri v. Holland* (1920). The state of Missouri argued that the national government could not interfere with its power to regulate hunting within its borders, but the Supreme Court concluded that the treaty was a valid exercise of national power and therefore took priority over state and local laws. The states had to adjust their rules and regulations accordingly.

Q CRITICAL THINKING

What would happen if the national law were not supreme?

ARTICLE 7

Constitutional Insight Why was ratification by only 9 states sufficient to put the Constitution into effect? In taking such a momentous step as replacing one constitution (the Articles of Confederation) with another, the framers might have been expected to require the agreement of all 13 states. But the framers were political realists. They knew that they would have a difficult time winning approval from all 13 states. But they also knew that they had a good chance of getting 9 or 10 of the states “on board” and that once that happened, the rest would follow. Their strategy worked, but just barely. Although they had the approval of 9 states by the end of June 1788, 2 of the most important states—Virginia and New York—had not yet decided to ratify. Without the approval of these influential states, the new government would have had a difficult time surviving. Finally, by the end of July, both had given their blessing to the new constitution, but not without intense debate.

And then there was the last holdout—Rhode Island. Not only had Rhode Island refused to send delegates to the Constitutional Convention in 1787, but it turned down ratification several times before finally giving its approval in 1790 under a cloud of economic and even military threats from neighboring states.

R CRITICAL THINKING

Do you think all 50 states would ratify the Constitution today? Why or why not?