

# Guide to the Constitution

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## INTRODUCTION

The institutions and functions of the US government are laid out in a document called the Constitution, which provides the legal basis for the operation of the US government. The Constitution sets specific guidelines regarding how the various parts of government should interact, along with granting the government certain powers and prohibiting it from exercising others.

The Constitution is not simply a law that details how government works, it is the fundamental framework that sets out basic principles of government (**popular consent**, for example) and provides a standard set of rules by which the government operates. Unlike regular laws, which are frequently changed by Congress, the Constitution is difficult to **amend**, requiring a high degree of agreement—a situation that has occurred less than fifteen times during the over two-hundred years that the Constitution has existed. Knowledge of the Constitution is critical to understanding the US government not only because the Constitution explains the details of how the government functions, but also because it explains the goals and purposes of the American political system.

## THE CONCEPT OF A CONSTITUTION

English political theorist **John Locke** is often credited with providing the inspiration for the Constitution. Locke envisioned government as a contract between otherwise free individuals; in his view, governments can only rightly exercise powers to which their **citizens** have consented (agreed). The **drafters** of the Constitution were indeed heavily dependent upon ideas like Locke's, and they envisioned the Constitution with these principles in mind.

The Constitution starts with a preamble, or a statement of its purpose. "We the People," it begins, "In order to form a more perfect Union, establish justice, and ensure domestic **tranquility**, provide for the common defense, promote the general welfare, and ensure the blessings of liberty for ourselves and our **posterity** do **ordain and establish** this

**Popular Consent**—*the idea that governments should be chosen by the people and should generally act in a way that citizens support.*

**Amend**—*formally change.*

**John Locke**—*an English political philosopher who lived in the 1600s and was an important influence on both British and American political thought.*

**Citizens**—*people who are ruled by a govern-*

**Drafters**—*the people who wrote the Constitution.*

**Tranquility**—*Stability.*

**Posterity**—*future generations.*

**Ordain and Establish**—*create*



Constitution for the United States of America.” From the first words of the Constitution, the drafters made clear that they were creating a government to serve the people, accomplishing a clear set of goals (establish justice, ensure domestic tranquility, etc). Yet even as that document empowered the US government to take actions on behalf of the people, the Constitution also prohibited it from acting **tyrannically**—it is a document that is interested in ensuring liberty as it is promoting the general welfare.

**Tyrannically**—*the unrestrained and abusive use of power.*

## FEDERALISM

The drafters of the Constitution sought to achieve this balance by dividing powers. The most critical division of power, especially during the first 150 years (1783-approximately 1920), was the distinction between state and federal (national) governments, called Federalism. Unlike many other countries in which most or all power is given to the national government, which then may delegate some authority to local governments, states in the US possess power independent of the federal government. The Constitution explicitly states which powers the national government has, and declares that any powers not explicitly given to the federal government reside with each individual state. In principle, this means that any powers not given to Congress in Article I, Section 8 of the Constitution automatically belong to the states. In reality, however, the interpretation of federalism changes with the political climate. The **judicial branch** often plays a significant role in determining where the boundaries lie between the federal and state governments.

**Judicial Branch**—*the part of government that is comprised of the courts.*

## THREE BRANCHES OF GOVERNMENT

At the federal (national) level, power is also divided between different branches of government, a practice which was borrowed from the English system of government. The Constitution includes seven sections, or articles, the first three of which address the three branches of the American government: Legislative, Executive, and Judicial. Each branch has a specific and individual function, and each has the potential to balance the activities of other branches. This system, called “**checks and balances**,” is the centerpiece of the Constitution’s attempt to guarantee liberty by ensuring that no one branch of government can become too powerful.

**Checks and Balances**—*the idea that each branch of government can affect other branches and thereby ensure that no one branch becomes too powerful.*

The first branch of government is the **legislative branch**. To ‘legislate’ is a technical term that means to make laws, and that is the purpose of the Legislative Branch, which is also called Congress. The

**Legislative Branch**—*the part of government that makes laws; the Congress.*



Constitution further divides Congress into two distinct bodies, the House of Representatives and the Senate. In order for a law to be enacted, both parts of Congress need to agree on it. Frequently, one part of Congress will approve a bill (before a law has been approved by both parts of Congress and signed by the President, it is called a bill), but the other will not, in which case the bill does not become a law.

The Executive branch, headed by the President, is charged by the Constitution with executing, or enforcing, the laws. For example, if Congress were to pass a law making it illegal (against the law) to attend HMCA, it would be the job of the Executive Branch to enforce that law by arresting members and shutting down the conference. The President is the only elected official in the Executive Branch, chosen by a national vote to serve no more than two four-year terms.

Aiding the President in enforcing the laws is a vast **bureaucracy**, made up of people who collect taxes, provide services, and punish those who violate laws. The President is by far the most important and powerful figure in the US government. When crafting **domestic policy** (as opposed to **foreign policy**) the President must work closely with Congress because members of Congress write the laws and approve funding for any programs. In contrast, the President does not have to work as closely with Congress in foreign policy. The President has wide authority to command the military or conduct foreign diplomacy as he wishes, though he cannot declare war, as the Constitution gives this authority to the Congress.

The final branch of government is the Judiciary, which consists of three levels of courts: district, appeals, and the Supreme Court. The Judiciary has two distinct purposes. The first is when the Executive branch accuses a citizen of breaking the law. The executive branch presents its evidence to the court, the defendant presents his or her evidence about why he or she did not break the law, and then a judge or **jury** makes a decision about who is right. Appellate courts allow individuals to have their case heard again if it is believed that errors were committed which denied the individual a fair trial. The decisions of appellate courts may also be appealed if they are accepted by the Supreme Court which is the highest court.

The second function of the judiciary is to decide whether the legislative and executive branches of government are acting in accordance with the Constitution. For example, if Congress were to pass a law that contradicted a provision in the Constitution, the Supreme Court would strike it down and the law would no longer be in force. All members of the federal judiciary serve life terms and cannot have their salaries reduced. As a result, they have a great deal of independence because they are not influenced by the threat of being removed from office or having money taken away because of unpopular decisions.

**Bureaucracy**—*the non-elected officials who administer the laws; tax-collectors, policemen, etc.*

**Domestic Policy**—*policy that relates to issues within the U.S.; for example, taxes or education.*

**Foreign Policy**—*policy regarding the American relationship with other countries, the U.N. and other international institutions.*

**Jury**—*when a citizen is accused of a crime, he can choose to have a group of fellow citizens, rather than a government official, determine if he is guilty of the crime.*



## CHECKS AND BALANCES

As mentioned, each of the three branches has ways it can influence the actions of other branches and ensure that no one branch is too powerful. For example, Congress sets the levels for government funding, and if it is unhappy with the way the President acts, it can reduce or eliminate funding. Similarly, the President can veto (or reject) bills that pass Congress. However, if two-thirds of both parts of Congress approve the bill, then it becomes law even if the President still objects. Similarly, even though the Judiciary can declare Presidential actions unconstitutional, the President is charged with appointing judges. The system of checks and balances is an important mechanism through which the Constitution guarantees that no one branch of government can accumulate excessive power and endanger citizens' liberties.

### *Individual Liberty*

In addition to dividing power between the three branches, the Constitution also has explicit guidelines that further guarantee individual liberty. Some of these, like the ban on *ex post facto* laws are written in the main text of the Constitution. Most however, are part of the first ten amendments to the constitution, which are commonly called the Bill of Rights.

During the initial debates over whether to approve the Constitution, many feared that its guarantees of liberty were not sufficient. To counter those claims, supporters of the Constitution promised that among the first actions of the new government would be to set forth additional prohibitions on government actions. The rights contained in the amendments that were passed are among the most basic and treasured. Perhaps the most important, the First Amendment says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances," generally prohibiting the government from regulating political speech, religion, assembly, or the press.

Amendments four through eight create an expansive array of rights for a citizen suspected or accused of breaking a law: the government must get judicial approval to search a suspect, every suspect is guaranteed the right to a trial by jury, and no suspect can be tried twice for the same crime. Finally, amendments nine and ten declare that any power not delegated to the federal (national) government is reserved to the states and to the citizens.

The 14th amendment, though not in the bill of rights, also has important implications for individual rights. Passed in the aftermath of

**Ex Post Facto Laws**—*example: if after we finished HMCA, the government were to pass a law making model congresses illegal and then arrested us for breaking the law, even though the law hadn't been passed before HMCA. This type of law is clearly unfair.*



the **Civil War**, the 14th Amendment guarantees each citizen “equal protection under the law” and “due process of law.” While these phrases sound very simple, the Supreme Court has interpreted them in a way that has protected a broad range of individual rights against government encroachment. In sum, the amendments to the Constitution are critically important in achieving the drafters’ goal of ensuring that the government does not use its power to take away citizens’ liberties.

**Civil War**—war fought when several states attempted to leave the U.S. from 1861-1865.

## THE CONSTITUTION AND HMCA PROGRAMS

### *House of Representatives and the Senate*

Each body of Congress has a very distinct purpose and means of operation. The House of Representatives is a large assembly, currently with 435 members, each elected from a specific city or group of cities (called a ‘Congressional district’) for a period of two years. Because their terms of office are so short, members of the House of Representatives are very attentive to popular opinion in their districts.

Because the House of Representatives was designed to closely mirror public opinion, the drafters designed the Senate to check any rash decisions made in the House. Senators serve terms of six years, and because they have so much time between elections, they are less attentive to swings in public opinion and therefore more able to concentrate on passing good legislation instead of simply focusing on reelection. When the Constitution was being drafted, representatives of the small states feared that they would be outvoted by the large states. Thus, every state has two senators, in contrast with the House, which allots seats based on **proportional representation**.

**Proportional Representation**— when each legislator or congressman represents the same number of citizens. In contrast, in the Senate, the senator from California represents millions of citizens, whereas the senator from Wyoming represents only a few hundred thousand.

### *Presidential Cabinet*

“[The President] 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.” –Article 3, Section 2

This short sentence is the Constitution’s only reference to the executive officials who advise and serve the President. This is not to say that the drafters of the Constitution did not envision a bureaucracy; the reference to “executive Departments” clearly indicates that the founders understood that the President would supervise a bureaucracy. Nevertheless, they realized that the Executive branch would be most effective if each president were able to shape it according to his wishes. Because of this, the Cabinet looks to the President, as well as the congressional legislation which funds its departments, when seeking guidance about how it should operate. Cabinet members are involved in the legislative process in that they advise the President on whether to **veto** bills.

**Veto**—if the President disapproves of a bill, the Constitution empowers him or her to veto, or reject, the bill. If 2/3s of both bodies of Congress vote to override the veto, then the bill becomes law even though the President objects.



### *Governors and States (The NGA)*

“The Congress...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.” –Article 5.

“The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” –Article 7.

As the above quotes make clear, the US political system is founded upon the states—hence the name United States. While the NGA isn’t a lawmaking body invested with any legal power, the governors, as representatives of the states, play an important part in the political system.

### *The Judicial Branch*

“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.” –Article 3, Section 1.

The Constitution is practically silent about the functions of the Judicial Branch. Its functions and operations are generally derived from the English **common law** tradition. Most court cases involve trying a case to determine whether an accused citizen in fact violated a law. A select few cases, however, involve delicate issues of Constitutional interpretation, in which the Court rules on what the Constitution means. The Constitution does not explicitly grant the courts this provision; the first president, George Washington, used the Presidential Veto to reject bills he thought were unconstitutional.

In 1803, however, in the case *Marbury v. Madison*, the Supreme Court ruled that it did, in fact, have the power to determine whether laws passed by Congress violated Constitutional principles. Since then, and particularly in the past 50 years, the Supreme Court has increasingly asserted itself as an important influence in how we understand and apply the Constitution. Of particular difficulty to the justices of the Supreme Court is trying to balance the “intent” of the drafters of the Constitution with the modern demands of a world very different from that of the 18th

**Common Law**—*a system of law that originated in England and is used in the United States and other countries with ties to England (India, South Africa, Hong Kong, etc.)*



century.

It is also important to note that the drafters of the Constitution were particularly interested in maintaining a Judiciary independent of the whims of politics that drive the other two branches of government. To attain this, the Constitution mandates that Judges cannot be removed from office except in special and clearly-defined circumstances, and that their salary cannot be reduced—in other words, that the legislature and executive should not have means to influence the decisions of the Judiciary.

### *Press Corps and Lobbyists*

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press.” –Amendment 1.

Even though the Constitution devotes only a mere portion of an amendment to the role of the press or of lobbyists, each is recognized as critically important to the functioning of a democratic government. Because the American system is predicated on the idea that citizens should choose others to represent them, and reject representatives when they fail to address citizens’ concerns, an accurate flow of information between government and citizens is critical. Perhaps in part as a result of their own experiences with English **ensorship**, the drafters of the Constitution acknowledged that a free press was critical to a free society by putting press freedoms into the first amendment. Similarly, lobbying groups, by representing the speech and petition rights of groups of citizens, perform an important role in the democratic process.

**Censorship**—when the government restricts or controls what the press can publish.

**Petition**—to make a formal request of the government.

## FINAL THOUGHTS

If you were to sit down today and design a government, you might try to create a government that is as unified and as efficient as possible. The drafters of the US Constitution deliberately chose the opposite. In the aftermath of a war for independence that was sparked by concerns over governmental encroachment upon individual and civil liberties, the writers of the Constitution decided that a government based on competing interests would be the best way to preserve that liberty. Yet, while the Constitution is highly revered and respected by Americans, it is only a document. It is up to members of the government, both elected and appointed, to ensure that the ideals enshrined in the constitution are protected, and that goals set out in the preamble are achieved to the benefit of citizens today.



