

The Constitution

Why It's Important

Protecting Your Rights How well do you know your rights? What constitutional protections do you enjoy as a United States citizen? Few people know the Constitution very well, yet we all rely on its provisions to ensure a stable government that works within defined limits.



To learn more about how the Constitution is a living document that protects your rights, view the *Democracy in Action* Chapter 3 video lesson:

The Constitution—A Living Document



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GOVERNMENT

Online



Chapter Overview Visit the *United States Government: Democracy in Action* Web site at tx.gov.glencoe.com and click on **Chapter 3-Overview** to preview chapter information.

Structure and Principles

Reader's Guide

Key Terms

article, jurisdiction, supremacy clause, amendment, popular sovereignty, federalism, separation of powers, checks and balances, veto, judicial review

Find Out

- What is the basic structure of the Constitution?
- How did the Founders hope to prevent any one branch of government from gaining too much power?

Understanding Concepts

Constitutional Interpretations What are the major principles of the Constitution that represent a social consensus in the United States?

COVER STORY

Book Banned

PARIS, FRANCE, 1751

A book by a French noble is attracting attention and controversy. In *The Spirit of Laws*, published three years ago, Charles-Louis de Secondat, the baron de Montesquieu, proposed dividing political authority into executive, legislative, and judicial powers. Montesquieu argued that assigning each set of powers to a separate branch of government would promote liberty. Although his book has supporters in England and America, it has been harshly attacked throughout Europe.



The Spirit of Laws book

The Founders created the Constitution more than 200 years ago. Like Montesquieu, they believed in a separation of powers. They divided the federal government into legislative, executive, and judicial branches. The Constitution established a republic, in which power is held by voting citizens through their elected representatives. It provides citizens with information about their rights and about what they may reasonably expect of their government. The success of this system of government depends on an informed, participating citizenry. An understanding of the Constitution is key to understanding the structure and daily function of American government.

Structure

Compared with the constitutions of other countries, the United States Constitution is simple and brief. It establishes the structure and powers of government but does not spell out every aspect of how government will function. The Founders wisely left it to future generations to work out such details as the need arose. The Constitution contains about 7,000 words and is divided into three parts—the Preamble, the articles, and the amendments (for the entire text, see the **Reference Handbook**, pages 774–799).

The Preamble The **Preamble**, or introduction, states why the Constitution was written. In the Preamble, the Founders indicated that they wanted a government that would provide stability and order, protect citizens' liberties, and serve the people:

“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.”

—The Preamble

Seven Articles The Constitution contains seven divisions called **articles**. Each article covers a general topic. For example, Articles I, II, and III create the three branches of the national government—the legislative, executive, and judicial branches. Most of the articles are divided into sections.

Article I establishes the legislative branch. Section 1 of Article I creates the United States Congress. Sections 2 and 3 set forth details about the two houses of Congress—the House of Representatives and the Senate. Other sections of Article I spell out the procedures for making laws, list the types of laws Congress may pass, and specify the powers that Congress does not have.

Article II creates an executive branch to carry out laws passed by Congress. Article II, Section 1, begins: “The executive Power shall be vested in a President of the United States of America.” This section and those that follow detail the powers and duties of the presidency, describe qualifications for the office and procedures for electing the president, and provide for a vice president.

Article III, Section 1, establishes a Supreme Court to head the judicial branch. The section also gives the national government the power to create lower federal courts. Section 2 outlines the **jurisdiction**, or the authority, of the Supreme Court and other federal courts to rule on cases. Section 3 defines treason against the United States.

Article IV explains the relationship of the states to one another and to the national government. This article requires each state to give citizens of other states the same rights as its own citizens, addresses admitting new states, and guarantees that the national government will protect the states against invasion or domestic violence.

Article V spells out the ways that the Constitution can be amended, or changed. Article VI contains the **supremacy clause**, establishing that the Constitution, laws passed by Congress, and treaties of the United States “shall be the supreme Law of the Land.” Finally, Article VII addresses ratification and states that the Constitution would take effect after it was ratified by nine states.



Foundations of Personal Liberties


| Rights and Freedoms | Magna Carta (1215) | English Bill of Rights (1689) | Virginia Declaration of Rights (1776) | Bill of Rights (1791) |
|--------------------------------------|--------------------|-------------------------------|---------------------------------------|-----------------------|
| Trial by jury | ● | ● | ● | ● |
| Due process | ● | ● | ● | ● |
| Private property | ● | | ● | ● |
| No unreasonable searches or seizures | ● | | ● | ● |
| No cruel punishment | | ● | ● | ● |
| No excessive bail or fines | ● | ● | ● | ● |
| Right to bear arms | | ● | | ● |
| Right to petition | | ● | | ● |
| Freedom of speech | | | ● | ● |
| Freedom of the press | | | ● | ● |
| Freedom of religion | | | ● | ● |

Critical Thinking

The above documents granted many liberties at the time they were written; however, these rights were not applied equally to everyone. **Which three categories of rights were extended by all four documents?**

The Amendments The third part of the Constitution consists of **amendments**, or changes. The Constitution has been amended 27 times throughout the nation's history. The amendment process provides a way this document, written more than two centuries ago, can remain responsive to the needs of a changing nation.

Major Principles


 The Constitution rests on six major principles of government: (1) popular sovereignty; (2) federalism; (3) separation of powers; (4) checks and balances; (5) judicial review; and (6) limited government. These principles continue to influence the character of American government.

Popular Sovereignty The Constitution is based on the concept of **popular sovereignty**—rule by the people. United States government is based upon the consent of the governed; the authority for government flows from the people.

Federalism The terms *federalism* and *federal system* describe the basic structure of American government. These terms should not be confused with the term *federal government*, a phrase that simply refers to the national government in Washington, D.C.

The Constitution created a federal system of government. Under **federalism**, power is divided between national and state governments. Both levels have their own agencies and officials, and pass laws that directly affect citizens.

Why did the Founders create such a complex system of government? Why did they choose federalism instead of a unitary form of government in which the central government has all major governing powers? In 1787 there really seemed to be no other choice. The weak union created by the Articles of Confederation¹ had not worked, yet people remained afraid to give all power to a central government. Federalism represented a middle ground—a way to forge a union but limit central power by distributing authority between the states and the national government. Federalism gives the United States a flexible system of government

 See the following footnoted materials in the *Reference Handbook*:
1. *The Articles of Confederation*, pages 808–811.



Major Principles of the Constitution

► Popular Sovereignty

People are the source of government power.

► Federalism

In this governmental system, power is divided between national and state governments.

► Separation of Powers

Each of the three branches of government has its own responsibilities.

► Checks and Balances

Each branch of government holds some control over the other two branches.

► Judicial Review

Courts have power to declare laws and actions of Congress and the president unconstitutional.

► Limited Government

The Constitution limits the powers of government by making explicit grants of authority.

Source: Bibby, *Governing by Consent*, 2d ed. (Washington, D.C.: CQ Press, 1995).

Critical Thinking

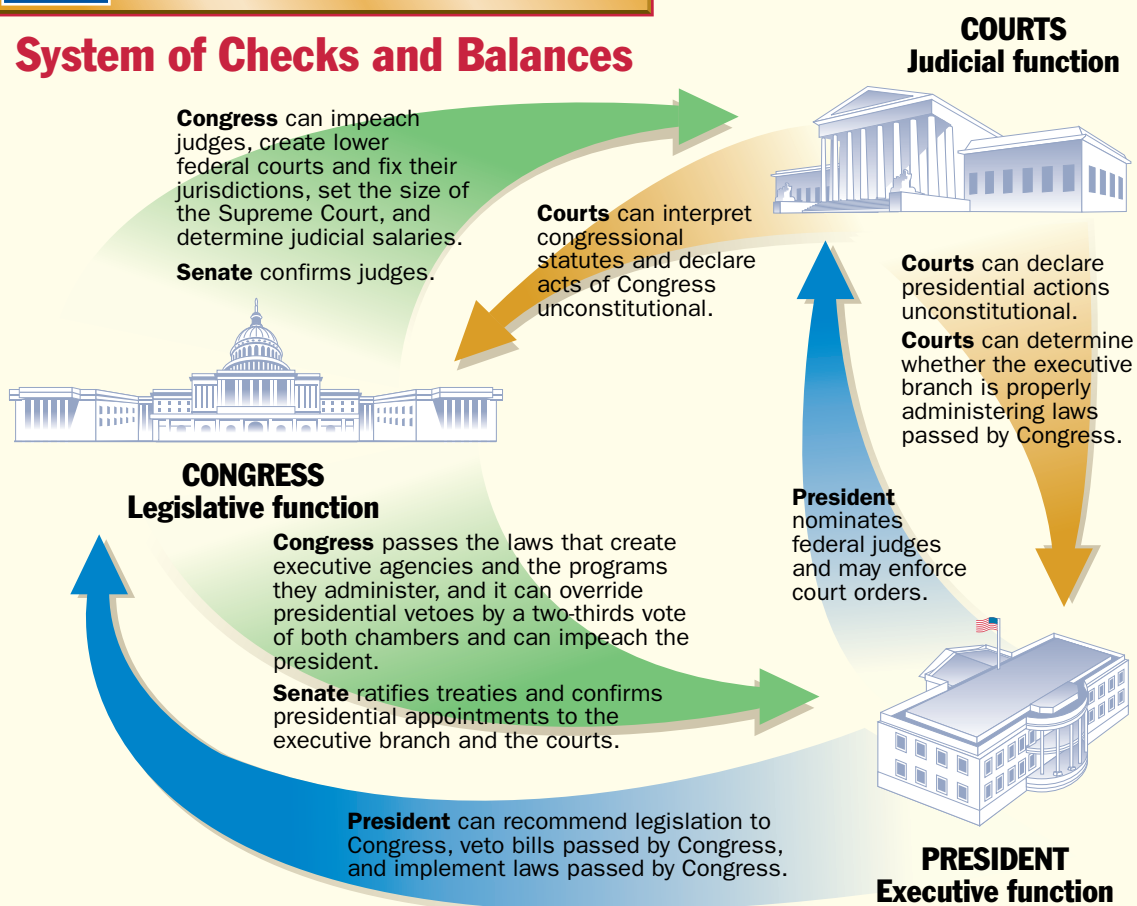
The principles outlined in the Constitution were the Framers' solution to the complex problems of a representative government. **What principle allows the president to veto legislation?**

under which the national government has the power to act for the country as a whole, and states have power over many local matters.

Separation of Powers The Constitution limits the central government by dividing power among the legislative, executive, and judicial branches. Under **separation of powers**, each branch has its responsibilities, a system that the Founders hoped would prevent any branch from gaining too much power.

Checks and Balances To the principle of separation of powers the Founders added a system of **checks and balances**, whereby each branch of government exercises some control over the others. This system works in several ways.

System of Checks and Balances



Source: Bibby, *Governing by Consent*, 2d ed. (Washington, D.C.: CQ Press, 1995).

Critical Thinking

The principle of checks and balances prevents one branch of government from becoming too powerful. **In what ways does Congress check the Supreme Court?**

Congress, for example, passes laws. The president can check Congress by rejecting—**vetoing**—its legislation. This veto power is balanced, however, by the power of Congress to override the veto by a two-thirds vote of each house. The federal courts restrain Congress by ruling on the constitutionality of laws. This power of the judicial branch is balanced by the power of the president to appoint federal judges. This presidential power is balanced, in turn, by the Constitution's requirement that the Senate approve appointments. Checks and balances created a system of shared powers.

Judicial Review The power of the courts to declare laws and actions of local, state, or national governments invalid if they violate the Constitution is called **judicial review**. All federal courts have this power, but the Supreme Court is the final authority on the meaning and the interpretation of the Constitution. Because the Constitution is the supreme law of the land, acts contrary to it must be void.

The Founders did not explicitly give such power to the judicial branch. Article III of the Constitution, however, states that “the judicial

power shall extend to all cases . . . arising under this Constitution.” The Supreme Court in the case of *Marbury v. Madison*¹ in 1803 established the precedent for federal courts to rule on the actions of the government.

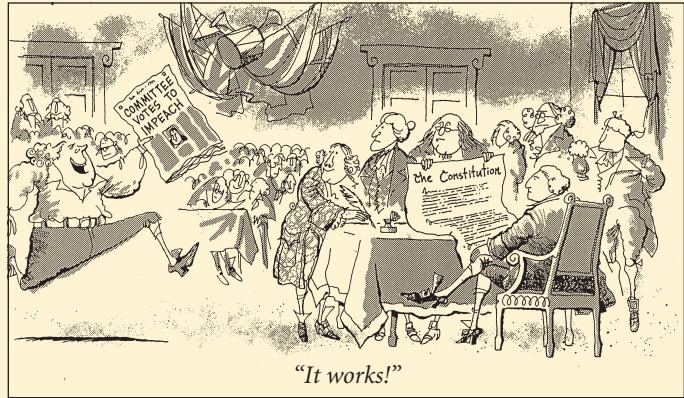
The principle of judicial review is important. A Supreme Court decision on the meaning of the Constitution can be changed only if the Court itself changes its views or if an amendment to the Constitution is passed.

Limited Government The principle of limited government means that the Constitution limits the actions of government by specifically listing powers it does and does not have. The first 10 amendments set specific limits in the areas of freedom of expression, personal security, and fair trials.

The Constitution safeguards the nation against abuse of power. In 1974 when President Richard Nixon resigned in the face of evidence that he had acted illegally, President Gerald Ford said:

“*My fellow Americans, our long national nightmare is over. Our Constitution works. Our great Republic is a government of laws and not of men. Here the people rule.*”
—Gerald Ford, 1974

Constitutional Safeguards



Checks and Balances The public disclosure of President Nixon’s involvement in the Watergate scandal led Congress and the Supreme Court to assert their constitutional powers. **Explain how the constitutional system of checks and balances supports the theory of separation of powers.**

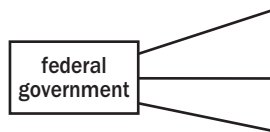
Although the democratic principles that President Ford cited have existed for more than 200 years, the Constitution as it is consistently implemented remains a flexible and dynamic instrument for meeting the changing needs of American government.

See the following footnoted materials in the *Reference Handbook*:
1. *Marbury v. Madison* case summary, page 761.

Section 1 Assessment

Checking for Understanding

- 1. Main Idea** Using a graphic organizer like the one to the right, show how the Constitution divides the powers of the federal government.
- 2. Define** article, jurisdiction, supremacy clause, amendment, popular sovereignty, federalism, separation of powers, checks and balances, veto, judicial review.
- 3. Identify** *Marbury v. Madison*.
- 4.** What are the six underlying principles of the Constitution?



Critical Thinking

- 5. Analyzing Information** What is the relationship between the principles of federalism and the separation of powers as detailed in the Constitution?

Concepts IN ACTION

Constitutional Interpretations One of the major principles of government, as set out in the Constitution, is the principle of checks and balances. Create a diagram showing how a system of checks and balances is provided for in your local government.

Three Branches of Government

Reader's Guide

Key Terms

expressed powers, enumerated powers, elastic clause, federal bureaucracy

Find Out

- Why did the Constitution specifically describe the powers of Congress, but remain vague about the powers of the president?
- Which of the three branches of federal government seems to have the most power today?

Understanding Concepts

Separation of Powers What is the chief function of each of the three branches of the federal government?

COVER STORY

Court Says No to Nixon

WASHINGTON, D.C., JULY 1974

The Supreme Court ruled today that President Richard M. Nixon must surrender tape recordings that have long been sought by the House and Senate judiciary committees investigating the 1972 break-in at Democratic Party headquarters. The justices rejected 8-0 the president's argument that recordings of Oval Office conversations are protected by executive privilege and by the doctrine of separation of powers. The Court ordered Nixon to turn over the tapes to Watergate special prosecutor Leon Jaworski. It is widely believed that the tapes contain evidence of the president's involvement in a cover-up of the break-in.




A plea for the truth

Article I of the Constitution created a legislature of two houses: the Senate and the House of Representatives. The House was to be the voice of the people, chosen by popular vote. The Senate represented the broad interests of entire states, and senators were originally chosen by their state legislatures. Qualifications for senators were more rigorous than those for members of the House. Yet, in many ways, the House and Senate had equal powers.

Article II created the executive branch of government. The presidency was an entirely new concept in 1787, and the need for the office of the president was hotly debated by the Founders. The provisions for a four-year term, appointment powers, control of the armed forces, and foreign policy decisions were the result of compromises. A president with specified, limited powers was further guarded by an impeachment clause.

Article III established the judicial branch. The Constitution established only one court—the Supreme Court. It gave Congress authority to set up additional courts as the need arose. In recognition of the already operating state courts, the Constitution limited federal jurisdiction to cases arising under the Constitution, the laws of the United States, or to controversies that went outside the jurisdiction of state courts.

The Legislative Branch

 The Founders attached great importance to lawmaking and expected Congress to become the most important branch of the national government. At the same time, however, they feared the abuse of power. Their experience with the British Parliament had shown that legislatures with unchecked powers could pass repressive laws and endanger liberty. Consequently, the powers they gave Congress, unlike those enjoyed by the president and the Supreme Court, are **expressed powers**, powers directly stated in the Constitution.

Seats of Governmental Power

Present The U.S. Capitol, located on Capitol Hill, is one of the nation's most familiar landmarks. It contains the current Senate and House chambers.

Past The first seat of Congress contained many symbols, such as an American eagle insignia and 13 arrows and the olive branch united, to mark it as a federal building.

Symbols of Government
What does the U.S. Capitol symbolize to you?




Enumerated Powers Most of the expressed powers of Congress are itemized in Article I, Section 8. These powers are also called **enumerated powers** because they are numbered 1–18. Five enumerated powers deal with economic legislation—the power to levy taxes, to borrow money, to regulate commerce, to coin money, and to punish counterfeiting. Seven enumerated powers provide for defense—the power to punish piracies, to declare war, to raise and support armed forces, to provide a navy, to regulate the armed forces, to call forth the militia, and to organize the militia. In addition to these powers, Section 8 provides for naturalizing citizens, establishing post offices, securing patents and copyrights, establishing courts, and governing the District of Columbia.

The final enumerated power is the so-called **elastic clause**. This clause gives Congress the right to make all laws “necessary and proper” to carry out the powers expressed in the other clauses of Article I. It is called the elastic clause because it lets Congress “stretch” its powers to meet situations the Founders could never have anticipated.

What does the phrase “necessary and proper” in the elastic clause mean? Almost from the beginning, this phrase was a subject of dispute. The issue

was whether a strict or a broad interpretation of the Constitution should be applied. The dispute was first addressed in 1819, in the case of *McCulloch v. Maryland*,¹ when the Supreme Court ruled in favor of a broad interpretation. The Court supported the idea that the elastic clause gave Congress the right to make any laws necessary to carry out its other powers.

Congress Then and Now The first home of Congress was Federal Hall in lower Manhattan, New York. (It moved to Philadelphia near the end of the second year, 1790.) The House met downstairs; the Senate, on the upper floor. Under the direction of Speaker Fredrick A. Muhlenberg, the House named a committee to establish rules and procedures. As soon as the Senate had its twelfth member—a quorum—it informed the House that it was ready for a joint session to count the electoral votes. House members climbed the stairs and helped count the electoral votes that named George Washington and John Adams president and vice president.

 See the following footnoted materials in the *Reference Handbook*:
1. *McCulloch v. Maryland* case summary, page 761.



Modern Entanglements

George Washington warned future presidents to avoid foreign entanglements. In 1990, though, President George Bush persuaded other nations to join Operation Desert Shield to free Kuwait from invading Iraqi forces. *In today's world, do you think that it is possible for American presidents to avoid foreign entanglements? Why or why not?*




1992 Bush campaign button

Once the structure of the House and Senate was in place, each body began to work on legislation. By 1795, four permanent committees were in existence. In the first Congress, the Senate introduced only 5 bills, and the House introduced 26. By comparison, today a total of about 10,000 bills are introduced yearly.

Attendance in legislative sessions was only a part-time job for many years. Members had other jobs or were wealthy enough not to work. Congress did not sit in continuous session until the mid-twentieth century. Today members of Congress live and work nearly year-round in Washington, D.C.


The Executive Branch

 The office of the presidency was initiated in response to the weakness of the Articles of Confederation. It was significant that the office was described in the second, not the first, article of the Constitution. Like those of Congress, presidential responsibilities and powers have grown enormously since George Washington took office in 1789.

Vague Constitutional Powers The president is head of the executive branch. The Founders recognized the need for a strong executive to carry

out the acts of Congress. They also distrusted direct participation by the people in decision making, fearing that mass democratic movements might try to redistribute personal property. The executive branch, they believed, could protect liberty, private property, and business. The executive branch could also hold the actions of the legislative branch in check.

The Constitution grants the president broad, but vaguely described powers. The exact meaning of the president's power in specific situations is open to interpretation. Article II¹ begins simply by stating: "The executive Power shall be vested in a President of the United States of America." Some scholars call this sentence the "wild card" in the deck of presidential powers. What they mean is that this sentence may be "played," or interpreted, in different ways, like a wild card in a card game. For example, under the executive power, the president can fire officials in the executive branch, make agreements with foreign nations, or take emergency actions to save the nation, even though none of these powers is specifically mentioned in the Constitution.

 See the following footnoted materials in the Reference Handbook:
1. The Constitution, pages 774–799.

Specific Powers Sections 2 and 3 of Article II do define some presidential powers. The president (1) is commander in chief of the armed forces and the state militias (National Guard) when they are called into service; (2) appoints—with the Senate’s consent—heads of executive departments (such as the Department of Labor); (3) may pardon people convicted of federal crimes, except in cases of impeachment, or reduce a person’s jail sentence or fine; (4) makes treaties with the advice and consent of the Senate; (5) appoints ambassadors, federal court judges, and other top officials, with Senate consent; (6) delivers an annual State of the Union message to Congress and sends Congress other messages from time to time; (7) calls Congress into special session when necessary; (8) meets with heads of state, ambassadors, and other foreign officials; (9) commissions all military officers of the United States; and (10) ensures that the laws Congress passes are “faithfully executed.”

The Presidency Then and Now Presidential government was a novel idea in 1789. Much would depend on the character of the person holding the office. Everyone knew, and even discussed openly at the Constitutional Convention, that George Washington was the likely choice. Washington did not seek the office. He wrote his friend, the Marquis de Lafayette:

“All that may be necessary to add, my dear Marquis, in order to show my decided predilection [preference], is that (at my time of life and under my circumstances) the [i]ncreasing infirmities of nature and the growing love of retirement do not permit me to entertain a wish beyond that of living and dying an honest man on my own farm.”

—George Washington

When pressed into service, Washington was very careful about the discharge of his duties, knowing that every

act would set a precedent. Inundated with requests for jobs in the executive branch, he refused to show any partiality to friends and relatives. After two terms he retired to private life, stating that two terms were sufficient for anyone.

Early presidents would not recognize the office today. President Washington had so little to do on some days that he advertised in the newspaper the times when he would entertain visitors. He held tea parties for anyone “properly attired” on Friday evenings. Washington had only a handful of advisers and staff. By 1800, when President Adams moved to Washington, D.C., the second president’s papers were packed in only seven boxes.


In contrast, modern presidents’ schedules are timed minute by minute. Presidents preside over a White House staff numbering in the hundreds, a military force of millions, and a vast **federal bureaucracy** made up of all executive branch employees. The Chief Executive meets with officials on a tight schedule, often working into the night. A fleet of airplanes and helicopters stands ready to carry the president and close advisers to any part of the nation or the world.

A Changing Office



Presidential Leadership George Washington set many precedents as president. Washington, although a brilliant leader, was cautious. During the Civil War, President Lincoln boldly used measures to quiet opposition, even though such measures violated constitutional guarantees of free speech, press, and assembly. **What outside forces shaped Washington and Lincoln’s view of the presidency?**

The Judicial Branch

 If judged by the length of Article III, the judicial branch appears to be the weakest of the branches of government. After naming the Supreme Court, the Constitution allows Congress to establish all “inferior” courts. The Framers were not concerned about the power of the justices, allowing them to hold office for life.

Jurisdiction of Federal Courts The judiciary of the United States has two different systems of courts. One system consists of the federal courts, whose powers derive from the Constitution and federal laws. The other includes the courts of each of the 50 states, whose powers derive from state constitutions and laws. Some have described the two-court systems existing side by side as a dual court system.

Every court has the authority to hear only certain kinds of cases. This authority is known as the jurisdiction of the court. Two factors determine the jurisdiction of federal courts—the subject matter of the case and the parties involved in it. Federal courts try cases that involve United States laws, treaties with foreign nations, or interpretations of the Constitution. Cases involving admiralty or maritime law—the law of the sea, including ships, their crews, and disputes over actions and rights at sea—also come under federal court jurisdiction. Federal courts also try cases involving bankruptcy.

Federal Courts Then and Now When the federal government moved to Washington, D.C., in 1800, the capital architects forgot to design a building for the Supreme Court! Two weeks before the start of its term, the Court was assigned a small

We the People

Making a Difference

Sam and Geeta Dardick



Access for those with disabilities



Sam Dardick had polio as a child, resulting in permanent physical disability. Every day he faces obstacles that go unnoticed by most people without disabilities. Climbing stairs, boarding buses, and maneuvering in small public restrooms are a challenge for someone in a wheelchair.

In the 1960s Sam married. His wife, Geeta, who does not have a disability, started to see firsthand some of the challenges her husband faced. At the time there were no national laws requiring businesses to provide access to people with disabilities. “Sam’s wheelchair was a problem for both of us. We’d try to rent an apartment and find that 100 percent of them had stairs. We’d go to the movies: stairs again. We’d plan to take the bus . . . more stairs,” she said.

When the Dardicks moved to California in the

1970s, they found that the state had wheelchair accessibility laws but needed help to enforce them. Geeta and Sam worked thousands of hours to raise community awareness and to police the construction sites of new buildings to make sure people with disabilities were taken into consideration. “We marched for access to public transportation in San Francisco, testified for accessible apartments in Sacramento, busted inaccessible city council meetings in Nevada City, and started an Independent Living Center in Grass Valley,” Geeta said.

The Dardicks helped to bring about the passage of the Americans with Disabilities Act (ADA) in 1990. This was the first national civil rights bill for people with disabilities. The law requires all public places to be wheelchair accessible. It also prohibits job discrimination against persons with physical or mental disabilities.

chamber on the main floor of the Capitol. In the beginning, justices of the Supreme Court were assigned to “ride circuit,” meaning that when the Supreme Court was not in session, they had to hear appeals in faraway district courts. John Jay, the first chief justice, who resigned in 1795, later declined President Adams’s nomination to serve again because of the strain of such duty.

Congress created the modern federal court system in 1891, but the Supreme Court did not have its own building until 1935. Despite this humble history, the Supreme Court today heads a powerful branch of government. It has carved out power in a number of landmark cases beginning with *Marbury v. Madison* in 1803. In that case Chief Justice John Marshall announced that the Judiciary Act of 1789 gave the Court more power than the Constitution allowed. Thus, the act was unconstitutional. The power to declare laws unconstitutional, known as judicial review, elevated the Supreme Court to a status balancing the powers of the other branches.

When it rules on constitutional issues, the Supreme Court cannot be overturned except by a constitutional amendment. But Congress can effectively overturn a Supreme Court decision interpreting a federal statute by enacting a new law.

Shared Power and Conflict



The Constitution created three separate branches of government. It spelled out some specific areas in which those branches would cooperate, such as in passing legislation, conducting war, and spending money. Many of the working relationships among the three branches, however, are not specifically mentioned in the Constitution. These relationships developed over time during the normal ebb and flow of government operation and policy creation.

The Early Presidency



Constitutional Interpretations Shown here in *The Republican Court* by Daniel Huntington, the president held this reception in New York City in 1789 to honor his wife, Martha. In his spare time, Washington often entertained guests. **Why have the president’s duties increased over the past 200 years?**

The President as Legislator The executive and legislative branches must work together closely in order for legislation to become effective policy. Without cooperation among the branches the government can do little, if anything, to address the nation’s problems or serve its needs.

In practice, the executive branch provides plans for much of the legislation that Congress considers. The presidential initiative in legislation is mentioned in Article II, Section 3, of the Constitution:

“He shall, from time to time, give the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient”

—Article II, Section 3

The president proposes much of the legislative agenda and spells out the details of programs that are enacted into law. In order for programs to be

In the Vault The engrossed (handwritten) original copies of the Declaration of Independence, the Constitution, and the Bill of Rights rest securely on a movable platform at the National Archives in Washington, D.C. Every night after the last visitor has left, these “Charters of Freedom” are lowered 20 feet into a 55-ton vault designed to withstand a nuclear blast.



effective, the executive branch must have the power to carry out legislative enactments. This often involves creation of a bureaucracy to carry out the details of policy.

The President vs. Congress While cooperation between the executive and legislative branches is necessary, several sources of conflict between these two branches have developed. The expansion of presidential power has changed the structure of the national government without formal changes in the Constitution. The growing power of the executive has, at times, troubled Congress. At other times, presidents have charged Congress with attempts to encroach upon executive power.

Another source of conflict between the branches stems from the responsibility of Congress to monitor the way the executive branch enforces the laws. Sometimes the two branches quarrel over the way the president interprets the will of Congress in bills it has passed. When this happens, the federal courts may be called upon to interpret the intent of Congress on a case-by-case basis.

Occasionally, however, Congress has been accused of yielding too much power to the Chief Executive. For example, in

1935 the Supreme Court nullified the law creating the National Recovery Administration (NRA). In the majority opinion Chief Justice Hughes said:

“Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry.”

—Charles Evans Hughes, 1935

Finally, the development of political parties has created a source of conflict. If the executive office is controlled by one party and the legislature by another party, cooperation is unlikely. Each party has a different agenda, different constituents to please, and even a different philosophy of government. At best, different parties in the executive and legislative branches develop carefully studied compromise policies. At worst, they develop gridlock in which nothing productive can be accomplished.

Congress vs. the Courts The Constitution gave Congress power both to create the lower federal courts and to limit the jurisdiction of the Supreme Court. Congress, however, has been

The President and Congress



Legislative Proposals President Clinton outlines his legislative proposals to Congress. *What is the purpose of the president's annual State of the Union Address?*

NRA quilt

A Time of Crisis

Separation of Powers

President Roosevelt's New Deal policies challenged many of the traditional views on the separation of powers.

How can a time of crisis affect the public's opinion on the role of the national government?



reluctant to use this authority. When the Supreme Court in 1964 ruled that both houses of state legislatures must be reapportioned on a population basis, the United States House of Representatives passed a bill to strip the Supreme Court and all federal courts of jurisdiction over state legislative redistricting. The Senate, however, killed the bill.

The Supreme Court vs. the President

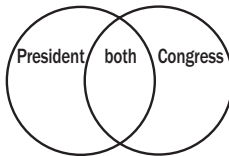
Some Supreme Court decisions require compliance by the president in order that the decisions may be carried out. Occasionally, a president who

disagrees with the Court may refuse to enforce its decision. In the 1830s, the Court upheld the rights of the Cherokee against the state of Georgia. It denied the state of Georgia the power to pass laws affecting Native Americans living there. President Andrew Jackson, however, refused to provide military force to carry out the Court order. In another instance, President Franklin Roosevelt indicated he would not obey adverse decisions in two separate pending cases. In both instances the Court avoided conflict by ruling in favor of the president.

Section 2 Assessment

Checking for Understanding

- 1. Main Idea** Using a Venn diagram, show the different functions of the president and Congress in passing legislation and the functions they share.
- 2. Define** expressed powers, enumerated powers, elastic clause, federal bureaucracy.
- 3. Identify** *McCulloch v. Maryland*.
- 4.** Identify five powers of the president.
- 5.** What two systems of courts make up the judiciary of the United States?
- 6.** How can Supreme Court decisions be overturned?



Critical Thinking

- 7. Making Comparisons** What information would you need to determine which branch of the federal government has the greatest power? Formulate questions to obtain needed information.

Concepts IN ACTION

Separation of Powers One of the cases heard by the Supreme Court involved the ruling that televising court proceedings does not necessarily deny defendants the right to a fair trial. Conduct an opinion poll to find out whether people favor or oppose televised trials. Chart the responses and summarize the poll results.

Amending the Constitution

Reader's Guide

Key Terms

ratify, petition, balanced budget, impeach, treaty, executive agreement, judicial restraint, judicial activism

Find Out

- How does the amendment process illustrate federalism?
- What are the primary ways that informal changes are made in the Constitution?

Understanding Concepts

Political Processes Why did the Framers make the Constitution difficult to amend?

COVER STORY

Madison's Amendment

WASHINGTON, D.C., MAY 1992

The Twenty-seventh Amendment to the Constitution was ratified by Michigan, the necessary thirty-eighth state today, 203 years after it was proposed. The measure that prevents Congress from voting itself a pay raise stunned government leaders. James Madison offered the amendment in 1789, but it was never adopted. Ten years ago, Gregory Watson, then a 20-year-old student at the University of Texas, discovered the forgotten amendment while doing research for a school paper. Now an aide to a Texas state legislator, Watson made the amendment's passage his crusade. In 1991 the Senate's unpopular pay hike rallied support for his cause.



James Madison

The nation that the Founders wanted to perfect in 1787 consisted of fewer than 4 million people living in 13 agricultural states along the Atlantic coast of North America. More than two centuries later, that same Constitution provides the foundation for governing an industrial and highly technological nation of more than 285 million people in 50 states spread across the continent and beyond. The priceless heritage of the Constitution has been its ability to adapt to new conditions while preserving the basic form of American government. The words of Chief Justice John Marshall in 1819 remain true today:

“We must never forget that it is . . . a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.”

—John Marshall, 1819

The Amendment Process

The Founders created a Constitution that could be adapted to a future they could not foresee. One way they provided for change was to describe how Congress and the states could amend the Constitution. As outlined in Article V, amendments may deal with any topic except that no state can lose equal representation in the Senate without the state's consent.

Amendments may be proposed and **ratified**, or approved, in two ways. Regardless of the proposal and ratification methods used, however, the amendment process illustrates the federal system of American government. Amendments are proposed at a national level, but they are ratified on a state-by-state basis.

Proposing Amendments One method of proposing an amendment is by a two-thirds vote of each house of Congress. This is the only method that has been used to date. Dozens of

resolutions asking for constitutional amendments are introduced in Congress each year. In recent years, suggestions have been made to put limits on income taxes, to limit the tenure of Supreme Court justices to 12 years, and to give states complete control of oil deposits within their borders. None have won the necessary two-thirds vote.

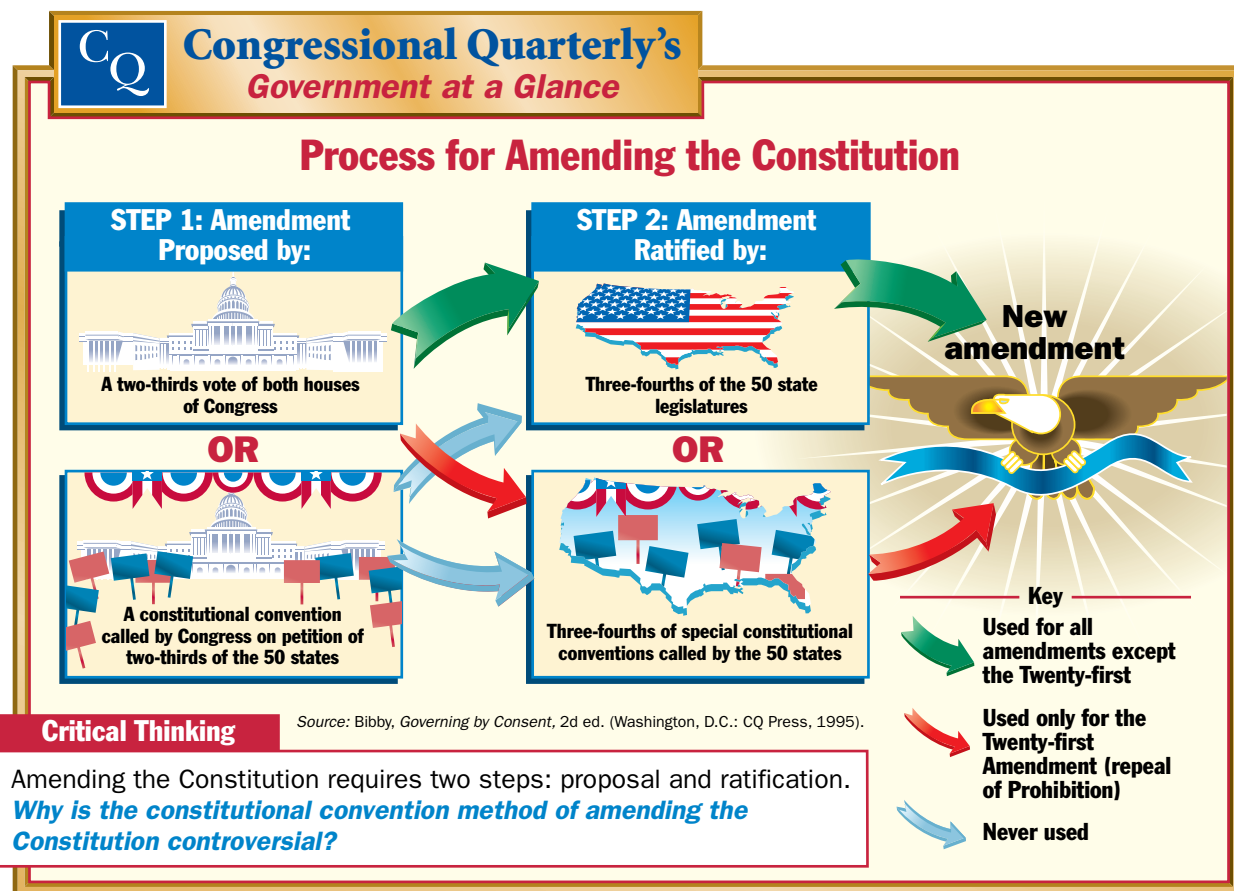
The other method for proposing amendments is by a national convention called by Congress at the request of two-thirds of the states. This method has never been used, but in recent history it has almost occurred twice. In 1963 states began to **petition**, or appeal to, Congress for a convention to propose an amendment to overturn Supreme Court decisions affecting the election of state lawmakers. By 1967, 33 state legislatures, only 1 short of the required two-thirds, had voted for such a convention. The campaign failed, however, when no other states voted for the convention.

Between 1975 and 1991, 32 state legislatures petitioned Congress for a convention to propose an amendment requiring a **balanced budget**—one

in which the federal government’s spending never exceeds its income. By 2000 federal revenues exceeded expenses and most Americans lost interest in a balanced budget amendment.

The convention method of proposing amendments is controversial, because such a convention is not required to limit itself to a specific amendment. President Jimmy Carter in the 1970s cautioned that a convention for a federal budget amendment might be “completely uncontrollable.” Legal scholars warned that such a convention could propose amendments on any subject.

Ratifying Amendments When an amendment is proposed, Congress chooses one of two methods for states to approve it. One way is for legislatures in three-fourths of the states to ratify the amendment. The other is for each state to call a special ratifying convention. The amendment becomes part of the Constitution when three-fourths of these conventions approve it.





Political Processes Congress approved the ERA in 1972, but it ran into opposition when it was sent to the states for ratification. *Do you think the Framers of the Constitution made it too difficult to amend the Constitution? Explain.*

ERA button



If a state rejects an amendment in the state legislature method, lawmakers may later reverse their decision and ratify the amendment. Suppose, however, a state legislature approves an amendment and then revokes the ratification. Is this legal? This question arose over the proposed **Equal Rights Amendment (ERA)** that would prohibit discrimination on the basis of gender. When 5 of the 35 state legislatures that approved the ERA later revoked their ratification, questions arose. Many constitutional scholars contended that the states' revocations were unconstitutional. The courts, however, have never resolved the issue.


The other ratification method—by state ratifying conventions—has been used only once. Conventions ratified the Twenty-first Amendment, which repealed the Eighteenth Amendment (1919) that banned the sale of alcoholic beverages. Congress let each state legislature determine how the ratifying conventions would be organized and the delegates elected. Delegates in each state ran for election statewide either on a pledge to support the amendment or on a pledge to reject it. Then, at

each state ratifying convention, the elected delegates voted as they had pledged to do in their election campaigns. In effect, this method gave the people a direct voice in the amending process.

Congress Sets the Rules In addition to deciding which ratification method will be used, Congress decides how much time the states will have to ratify an amendment. In modern times, Congress has set the limit at seven years.

Congress can put the time limit either in the text of the amendment or in legislation that accompanies the amendment. Placing a time limit can alter the fate of an amendment.

Informal Changes

 Although formal amendments have played an important role in making it a “living” document, the Constitution has kept pace with the times and has grown as an instrument of government through informal change as well. This process does not involve changes in the wording of

the Constitution itself. Rather, informal changes occur as government leaders and citizens fill in the details of government on a day-to-day, year-to-year basis to suit the needs of the times.

Changes Through Law Congress has passed laws that have enlarged or clarified many of the Constitution’s provisions. The Founders expected Congress to do this, and they gave it authority to spell out many details of the national government.

Article I, for example, gives Congress the power to “lay and collect taxes.” But what does this provision mean? Congress has applied the taxing authority of the Constitution and expanded its meaning by passing complex tax laws that fill many volumes.

The same is true of the executive branch that Article II of the Constitution established. Congress has greatly expanded the executive branch by creating the cabinet departments, agencies, boards, and commissions.

In Article III, the Founders created “one Supreme Court” and other courts “as the Congress may . . . establish.” Congress completed the judicial branch by passing the Judiciary Act of 1789.

Over the years, Congress has changed the judicial branch many times in response to new conditions. As the nation expanded and the number of

court cases increased, Congress created additional federal courts, established new rules of federal court procedure, and provided for court workers such as bailiffs and clerks.

Changes Through Practices Congress has also shaped the Constitution by the way it has used its other powers. Under the Constitution, the House may **impeach**, or accuse, federal officials—including the president—while it is up to the Senate to determine the accused person’s guilt or innocence. Article II states that:

“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.”

—Article II, Section 4

The meanings of *treason* and *bribery* are clear, but what about “high crimes and misdemeanors”? This is up to Congress to decide. Congress has investigated more than 60 people on impeachment charges, including three presidents—Andrew Johnson, Richard Nixon, and Bill Clinton.

Participating IN GOVERNMENT

Proposing an Amendment

More than 10,000 proposals for amendments to the Constitution have been introduced in Congress since 1789.

Anyone can initiate an amendment simply by writing a proposal for amending the Constitution to a member of Congress.

Activity

Select an issue you believe the Constitution

The Constitution

needs to address and propose an amendment. Use existing amendments as guides for form and language to write your own amendment. Follow these guidelines when writing your proposal:

- Explain what your proposed amendment will do.
- Explain why you believe it is needed and how the nation will benefit if it is ratified.
- Indicate what opposition you expect there to be to your amendment and why.
- Suggest arguments that could be used to reply to criticism of your amendment.

Submit your proposed amendment in a letter to a member of Congress.




Veto Power



Presidential Influence Clinton warns Congress that if they do not “send me legislation that guarantees every American private health insurance . . . you will force me to take this pen [and] veto the legislation.” *How does the influence modern presidents have on legislation differ from what the Founders intended?*

Informal Presidential Changes

 Presidential actions have also added to the Constitution. Many of these additions affect the workings of the modern presidency.

Presidential Succession In 1841 William Henry Harrison became the first president to die in office. As provided in the Constitution, Vice President John Tyler assumed the powers of president. But did Tyler actually become president, or would he merely act as president until the next election?


Tyler took the presidential oath of office. Many officials opposed Tyler’s interpretation of the Constitution, but no one successfully challenged him. Not until 1967, when the Twenty-fifth Amendment clarified presidential succession, was Tyler’s precedent formally endorsed in the Constitution.

Foreign Affairs Modern presidents usually conduct foreign affairs by executive agreement, instead of using the treaty process specified in the Constitution. While a **treaty** is an agreement between nations, an **executive agreement** is made directly between the president and the head of state of another country; it does not require Senate approval.

Domestic Affairs The Founders thought the executive branch would be concerned mostly with carrying out laws initiated by Congress. Yet in this century, presidents have been aggressive in requesting legislation from Congress.

These practices have become important precedents for building the power of the president. Today the president plays a far greater role in American government and politics than most of the Founders ever imagined.

Court Decisions

 As federal courts settle cases involving constitutional questions, they interpret the mean-

ing of the Constitution’s sometimes vague words and phrases. The Supreme Court, the nation’s highest court, plays a key role in this process.

Judicial Review The most important device the Court uses to interpret the Constitution is judicial review. Although the principle of judicial review is well established, people continue to disagree over how the Court should use this power. Some advocate judicial restraint; others argue for judicial activism.

The philosophy of **judicial restraint** holds that the Court should avoid taking the initiative on social and political questions. The Court should uphold acts of Congress unless the acts clearly violate a specific provision of the Constitution. In other words, advocates of judicial restraint want the Court to leave the policy making to others.

The philosophy of **judicial activism**, on the other hand, holds that the Court should play a role in shaping national policies. The Court should apply the Constitution to social and political questions. The Supreme Court under **Chief Justice Earl Warren**—from 1953 to 1969—accepted cases involving many controversial issues, particularly civil rights and the rights of the accused.


Because the Warren Court is considered an activist Court, people today associate judicial activism with civil rights or social issues. History suggests, however, that the justices' activism may justify their individual choices in any area of policy. Thus, judicial activism may mark either a conservative or liberal court. For example, in the 1930s conservative justices frequently took activist positions against government regulation of the economy.

Since the 1940s, however, most activist policies have been in support of civil liberties. Political liberals have tended to support activism, while conservatives have argued for judicial restraint.

Changing Court Rulings Social and political conditions of the times often affect Court interpretations of the Constitution. The Supreme Court has sometimes ruled that the Constitution means one thing and then, years later, reversed itself. In 1896, for example, the Court ruled that separate public facilities for African Americans were constitutional as long as those facilities were equal. More than a half century later, in 1954, the Court

reversed its position when it decided to outlaw racial segregation in public schools.

Changes Through Custom and Usage

 The Constitution has been informally enlarged through customs that have developed over time. Political parties are a good example. The Constitution does not mention political parties, but they began soon after the government was organized and have been an important part of American government since then. Today parties help organize government and conduct elections.

The amendments added to the Constitution and the changes achieved through precedent and practice have created a government that can respond to the conditions and needs of the times. Thus, this short, simple document has continued for more than two centuries to serve as the supreme law of the land.

CLICK HERE

GOVERNMENT
Online



Student Web Activity Visit the *United States Government: Democracy in Action* Web site at tx.gov.glencoe.com and click on **Chapter 3–Student Web Activities** for an activity about amending the Constitution.

Section 3 Assessment

Checking for Understanding

- Main Idea** Using a graphic organizer like the one below, describe at least one way Congress and the Supreme Court each have changed the Constitution.

| Changes in the Constitution | |
|-----------------------------|--|
| By Congress | |
| By Supreme Court | |

- Define** ratify, petition, balanced budget, impeach, treaty, executive agreement, judicial restraint, judicial activism.
- Identify** Equal Rights Amendment (ERA), Chief Justice Earl Warren.
- Identify the two methods of ratifying amendments.

Critical Thinking

- Analyzing Information** How have the four informal methods of amending the Constitution affected the role of the executive branch in the federal government?

Concepts IN ACTION

Political Processes Do you think the Founders were correct in allowing the Constitution to be amended? Write a letter to the editor of a local newspaper explaining your position on this issue.

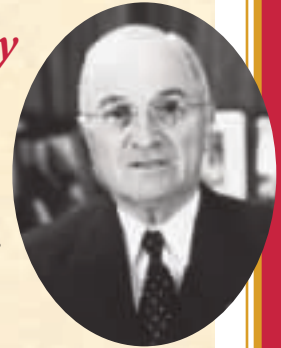


Supreme Court CASES TO DEBATE

Youngstown Sheet and Tube Company v. Sawyer, 1952

The Constitution provides for a separation of powers. In

1952 President Harry Truman tested the meaning of this principle. During the Korean War he seized control of the nation's steel mills to prevent a strike by workers even though no law authorized him to do so. The Supreme Court settled the issue in the case of Youngstown Sheet and Tube Company v. Sawyer.



Harry S Truman

Background of the Case

During the Korean War the nation's steelworkers announced they were going to strike. President Truman's advisers warned him that a halt in steel production could endanger the lives of American soldiers. Truman issued Executive Order #10340 directing Secretary of Commerce Charles Sawyer to take control of the country's steel mills. The steel companies attacked the executive order as unconstitutional and went to court. Truman could have dealt with the strike by using the Taft-Hartley Act, but he chose not to do so. This law, passed by Congress over Truman's veto in 1947, authorized the president to get a court order delaying a strike for 80 days. During this "cooling off" period, the companies and workers could try to reach agreement. The president thought the law was antilabor, and he refused to use it.

The Constitutional Issue

Government lawyers argued that the president's authority as chief executive gave him the right to keep steel production going in times of war and national emergency. Further, they argued that under Article II his power as commander in chief of the armed forces allowed the president to take whatever actions were necessary to protect the lives of American troops.

The steel companies claimed the president's order clearly violated the Constitution. In issuing the order, Truman was actually making a law—a power given only to Congress by the Constitution. The Taft-Hartley Act set forth procedures for handling a strike. Nothing in the Constitution or existing laws gave the president power to seize private property. According to the steel companies, the president had clearly exceeded his authority under the Constitution.

Debating the Case

Questions to Consider

1. Do you think the president was, in effect, making law when he issued the executive order?
2. During a grave national crisis such as the Korean War, should a president be allowed to exercise unusual powers?
3. Does the principle of separation of powers limit the powers a president can derive from the Constitution even in times of national emergency?

You Be the Judge

In your opinion, was President Truman's order constitutional? The separation of powers is not absolute. Each branch of government shares in the work and power of the others. There have been numerous examples of presidential lawmaking. Jefferson bought Louisiana and Lincoln freed enslaved persons without waiting for Congress to pass laws. Was Truman's executive order within the powers of the president?

The Amendments

Reader's Guide

Key Terms

prior restraint, probable cause, search warrant, arrest warrant, due process of law, eminent domain, lame duck, poll tax

Find Out

- Why is it important in a democratic society that the government follow due process of law when trying suspected criminals?
- How do the amendments to the Constitution show the development of democracy in the United States?

Understanding Concepts

Growth of Democracy How do the amendments reflect changes in society's perception of rights under the Constitution?

COVER STORY

What Bill of Rights?

WASHINGTON, D.C., DECEMBER 1991


Only one in three Americans knows what the Bill of Rights is, according to a poll commissioned by the American Bar Association. The survey offered a series of multiple choice questions to 507 participants. Thirty-three percent correctly identified the Bill of Rights as the first 10 amendments to the Constitution; but 28 percent said it was the Constitution's Preamble. Another 7 percent confused it with the Declaration of Independence, and 10 percent simply didn't know. Fewer than 1 in 10 knew why the Bill of Rights was adopted.



Polling Americans

Despite the difficulty of the amendment process, Americans put it to work almost before the ink was dry on the new Constitution. Because critics attacked the proposed Constitution for not protecting the rights of the people, the Founders promised to add a list of such rights. The first Congress quickly proposed 12 amendments and sent them to the states for ratification. In 1791 the states ratified 10 of the amendments, which became known as the **Bill of Rights**. The first proposed amendment, dealing with representation in the House, was never ratified. The second, dealing with congressional salaries, was not ratified until 1992.

The Bill of Rights

 The Bill of Rights limits the powers of government. Its purpose is to protect the rights of individual liberty, such as freedom of speech, and rights of persons accused of crimes, such as the right to trial by jury.

When the Constitution was adopted, some state constitutions had bills of rights. Thus it seemed necessary and reasonable to add similar limits to the new national government. Although the Bill of Rights originally applied only to the national government, almost all its provisions have been applied to the states through a series of Supreme Court decisions.

The First Amendment One of the most important amendments in the Bill of Rights, the First Amendment states:

“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.”

—First Amendment, 1791

The First Amendment protects the right of Americans to worship as they please, or to have no religion if they prefer. Thus, unlike many nations, the United States does not have an official religion, nor does the government favor one religion over another. These principles are known as freedom of religion and separation of church and state.

In addition, the First Amendment protects freedom of speech and freedom of the press. The government cannot prevent individuals from freely expressing their opinions. Citizens thus have the right to criticize government officials and decisions, and they are allowed to spread unpopular ideas.

The First Amendment protects not only individual speech, but also extends to the circulation of ideas in newspapers, books, magazines, radio, television, and, to some extent, movies. Unlike the press in some other countries, the American press is not subject to **prior restraint**—that is, government censorship of information before it is published or broadcast.

Freedom Within Limits The freedoms of speech and the press are not unlimited, however. For example, laws prohibit slander and libel. **Slander** is false speech intended to damage a person’s

reputation. **Libel** is similar to slander, except that it applies to written or published statements. Endangering the nation’s safety by giving away military secrets or calling for the violent overthrow of the government also are not protected. In addition, the courts have held that speech should be responsible. For example, no one has the right to cry “Fire!” in a crowded theater just to see what happens.

Another freedom the First Amendment protects is the right to assemble in groups and hold demonstrations. People may pass out pamphlets, hold meetings, and do other things that peaceably call attention to their beliefs. Courts have ruled, however, that the government can require a group to obtain a permit before holding meetings or demonstrations.

Finally, the First Amendment protects the right to criticize government officials and their actions. The rights to sign petitions in support of an idea, to present those petitions to government officials, and to send letters to those officials are all protected.

The Second Amendment This amendment ensures citizens and the nation the right to security. It states:

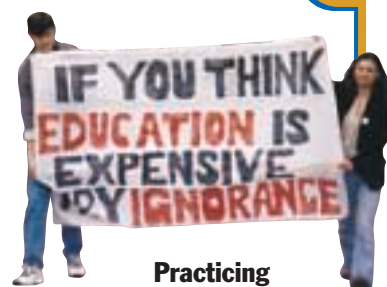
THE LAW and You

Limits to Free Speech

The First Amendment guarantees Americans the right to express their thoughts and opinions. However, this is not an absolute freedom. Some types of speech are not protected by the First Amendment, and engaging in such speech may result in civil or criminal penalties.

For example, you may not make any public statement on private property without the owner’s permission, nor can you ever urge listeners to commit a crime. Also, you cannot, either publicly or in private conversations, make damaging statements about a person that you know to be untrue. Obviously, threats of violence and statements that constitute sexual harassment are not protected forms of expression, nor is obscene language in many situations.

Be aware that “speech” involves more than spoken words. Signs, posters, pamphlets, printed T-shirts, and other “writings” are among many modes of expression that the courts consider to be speech.



**Practicing
free speech**

Participating IN GOVERNMENT ACTIVITY

Ask First Would passing out flyers in a store’s parking lot to advertise a school event be a First Amendment right? Call a few businesses to find out their policy regarding flyers.

“A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.”

—Second Amendment, 1791

Originally, the Second Amendment was intended to prevent the national government from repeating actions that the British had taken. Before the Revolution, the British tried to take weapons away from colonial **militia**, or armed forces of citizens.

This amendment seems to support the right for citizens to own firearms, but it does not prevent Congress from regulating the interstate sale of weapons, nor has the Supreme Court applied the Second Amendment to the states. States are free to regulate the use and sale of firearms.

The Third Amendment This amendment prohibits the government from forcing people to quarter—to provide shelter for—soldiers in their homes, another British practice before the Revolution. In times of war, however, Congress may require a homeowner to house soldiers but only under conditions clearly spelled out by law.

The Fourth Amendment The Fourth Amendment reflects the early Americans’ desire to protect their privacy. Britain had used writs of assistance—general search warrants—to seek out smuggled goods. To guard against such searches and seizures, the Fourth Amendment protects the right to privacy. It requires authorities to have a specific reason to search a premises or to seize evidence or people. Police cannot simply conduct a general search or seizure hoping to find damaging evidence, or arrest someone on the chance that he or she might have committed a crime.

To be lawful, a search or an arrest must be based on **probable cause**, meaning that police

A Living Constitution



Constitutional Amendments Few constitutional amendments survive the ratification process to become part of the Constitution. **Why do you think the Framers wanted all amendments approved by representatives of the people?**

must have a reasonable basis to believe the person or premises is linked to a crime. A search or an arrest also usually requires a **search warrant** or an **arrest warrant**. These are orders signed by a judge describing a specific place to be searched for specific items or naming the individual to be arrested for a specific crime.

The Fifth Amendment This amendment contains four important protections for people accused of crimes. First, no one can be tried for a serious crime unless a grand jury has decided there is enough evidence to justify a trial.

Second, a person who is found innocent of a crime may not be tried again for the same offense. This clause is designed to prevent continued harassment of individuals in order to convict them of a crime for which they have already been found innocent.

Third, no one may be forced to testify against himself or herself. As a result, people questioned by

The Bill of Rights

- 1 Guarantees freedom of religion, speech, assembly, and press, and the right of people to petition the government
- 2 Protects the right of states to maintain a militia and of citizens to bear arms
- 3 Restricts quartering of troops in private homes
- 4 Protects against “unreasonable searches and seizures”
- 5 Assures the right not to be deprived of “life, liberty, or property, without due process of law,” including protections against double jeopardy, self-incrimination, and government seizure of property without just compensation
- 6 Guarantees the right to a speedy and public trial by an impartial jury
- 7 Assures the right to a jury trial in cases involving the common law (the law established by previous court decisions)
- 8 Protects against excessive bail, or cruel and unusual punishment
- 9 Provides that people’s rights are not restricted to those specified in Amendments 1–8
- 10 Restates the Constitution’s principle of federalism by providing that powers not granted to the national government nor prohibited to the states are reserved to the states and to the people

Source: Mitchell, *CQ’s Guide to the U.S. Constitution*, 2d ed. (Washington, D.C.: CQ Inc., 1994).

Critical Thinking

The Bill of Rights was not part of the original Constitution. **Which amendment do you think is the most important? Why?**

the police, on trial, or testifying before a congressional hearing may refuse to answer questions if their answers would connect them with a criminal act. The government must establish a person’s guilt by finding independent evidence of the person’s involvement with the crime. Individuals cannot be required to convict themselves.

Finally, the Fifth Amendment states that government may not deprive any person of life, liberty, or property without **due process of law**. This means that the government must follow proper

constitutional procedures in trials and in other actions it takes against individuals.

The Fifth Amendment also defines government’s right of **eminent domain**—the power of government to take private property for public use such as to build a highway, a dam, or a park. The government must pay a fair price for the property taken and must use it in a way that benefits the public.

The Sixth Amendment This amendment protects the rights of individuals charged with federal crimes to defend themselves in a court trial. The Supreme Court, however, has ruled that these rights also apply to people charged with crimes subject to state courts. The Sixth Amendment gives an accused person several important rights.

A basic protection is the right to a speedy, public trial by an impartial jury. Thus, the authorities cannot purposely hold a person for an unnecessarily long time awaiting trial. This protection prevents government from silencing its critics by holding them for years without trials, as often happens under dictatorships. The requirement that trials be conducted in public assures that justice is carried out in full view of the people.

Although the amendment provides for trial by jury, an accused person may ask to be tried by a judge alone. The accused also may ask to have his or her trial moved to another community. A **change of venue**, or new trial location, is sometimes requested when unfavorable publicity indicates that the defendant cannot receive an impartial trial in the original location.

The Sixth Amendment gives accused persons the right to know the charges against them, so that they may prepare a defense. Accused persons also have the right to hear and question all witnesses against them and the right to compel witnesses to appear at the trial and testify in their behalf. These protections allow defendants to respond to the testimony of witnesses. In addition, accused persons have the right to be defended by a lawyer.

The Seventh Amendment The Seventh Amendment provides for the right to a jury trial in federal courts to settle all disputes about property worth more than \$20. When both parties in a conflict agree, however, a judge rather than a jury may hear evidence and settle the case.

The Eighth Amendment This amendment prohibits excessive bail—money or property that the accused deposits with the court to gain release from jail until the trial. The judge sets bail in an amount that ensures the accused will appear for trial. When the trial ends, bail is returned. If the accused does not appear, bail is forfeited.

The Eighth Amendment also prevents judges from ordering someone convicted of a crime to pay an excessive fine. Fines for serious crimes may be higher than those for less serious ones. If someone is too poor, he or she cannot be imprisoned for longer than the maximum sentence to “work off” the fine.

Finally, the Eighth Amendment bans “cruel and unusual punishment” for crimes. These are punishments that are out of proportion to the crime committed. For example, 20 years in prison for stealing a candy bar would be cruel and unusual punishment. The Eighth Amendment also has been used to limit the use of the death penalty in some circumstances.

The Ninth Amendment The Ninth Amendment states that all other rights not spelled out in the Constitution are “retained by the people.” This amendment prevents government from claiming that the only rights people have are those listed in the Bill of Rights. The amendment protects all basic or natural rights not specifically noted in the Constitution.

The Tenth Amendment The final amendment of the Bill of Rights clarifies the nature of federalism and the relationship of government to the people. It establishes that powers not given to the national government—or denied to the states—by the Constitution belong to the states or to the people.

Other Amendments



The 27 amendments fall into 3 major groups. The first group, which includes the Bill of Rights, was added between 1791 and 1804 to put finishing touches on the original Constitution. The Eleventh and Twelfth Amendments also belong to this group.

Article III, Section 1, of the Constitution gave the federal courts jurisdiction in cases arising

between states, between citizens of different states, or between a state and citizens of another state. In 1795 the **Eleventh Amendment** was added to the Constitution to prohibit a state from being sued in federal court by citizens of another state or of another nation.

In 1793 two citizens of South Carolina had sued Georgia in the Supreme Court over property confiscated during the Revolution. The Georgia legislature maintained that a sovereign state could not be summoned into federal court and ordered to defend itself. When Georgia officials refused to appear for the trial, the Supreme Court decided against the state. Although Georgia lost the court case, it won its power struggle with the federal

The Power of the Ballot


Civil Rights As this painting *His First Vote* by Thomas Waterman Wood shows, African American men won the right to vote when the Fifteenth Amendment became law in February 1870. **How did the Civil War amendments expand civil rights in the nation?**

judiciary. The day after the Supreme Court announced its decision in *Chisholm v. Georgia*¹ Congress introduced an amendment to limit the jurisdiction of the federal courts.

The **Twelfth Amendment**, added in 1804, corrects a problem that had arisen in the method of electing the president and vice president. This amendment provides for the Electoral College to use separate ballots in voting for president and vice president.

Civil War Amendments The second group of amendments—Thirteen, Fourteen, and Fifteen—often are called the Civil War amendments because they grew out of that great conflict.

The **Thirteenth Amendment** (1865) outlaws slavery, and the **Fourteenth Amendment** (1868) originally was intended to protect the legal rights of

 See the following footnoted materials in the *Reference Handbook*:
1. *Chisholm v. Georgia* case summary, page 756.






Congressional Quarterly's
Government at a Glance

Other Constitutional Amendments

| Amendments | Date | Purpose |
|------------|------|---|
| 11 | 1795 | Removed cases in which a state was sued without its consent from the jurisdiction of the federal courts |
| 12 | 1804 | Required presidential electors to vote separately for president and vice president |
| 13 | 1865 | Abolished slavery and authorized Congress to pass legislation implementing its abolition |
| 14 | 1868 | Granted citizenship to all persons born or naturalized in the United States; banned states from denying any person life, liberty, or property without due process of law; and banned states from denying any person equal protection under the laws |
| 15 | 1870 | Extended voting rights to African Americans by outlawing denial of the right to vote on the basis of race, color, or previous condition of servitude |
| 16 | 1913 | Empowered Congress to levy an income tax |
| 17 | 1913 | Provided for the election of U.S. senators by direct popular vote instead of by the state legislatures |
| 18 | 1919 | Authorized Congress to prohibit the manufacture, sale, and transportation of liquor |
| 19 | 1920 | Extended the right to vote to women |
| 20 | 1933 | Shortened the time between a presidential election and inauguration by designating January 20 as Inauguration Day; set January 3 as the date for the opening of a new Congress |
| 21 | 1933 | Repealed the Eighteenth Amendment and empowered Congress to regulate the liquor industry |
| 22 | 1951 | Limited presidents to two full terms in office |
| 23 | 1961 | Granted voters in the District of Columbia the right to vote for president and vice president |
| 24 | 1964 | Forbade requiring the payment of a poll tax to vote in a federal election |
| 25 | 1967 | Provided for succession to the office of president in the event of death or incapacity and for filling vacancies in the office of the vice president |
| 26 | 1971 | Extended the right to vote to 18-year-olds |
| 27 | 1992 | Banned Congress from increasing its members' salaries until after the next election |

Key

-  Amendments changing the powers of the national and state governments
-  Amendments changing government structure or function
-  Amendments extending the suffrage and power of voters

Critical Thinking

The United States Constitution is the oldest active written constitution in the world, yet it has been amended only 27 times. **Which amendments are known as the Civil War amendments?**

Source: Mitchell, *CQ's Guide to the U.S. Constitution*, 2d ed. (Washington, D.C.: CQ Inc., 1994).



Amendments in Practice

Present The Fourth Amendment protects citizens from unlawful searches and arrest by government authorities. ▶

Past The Eighteenth Amendment proved difficult to enforce and led to an illegal trade in alcohol. In *Prohibition Raid*, Thomas Hart Benton depicts police forcing the destruction of illegal alcohol. ▼

Enforcing Laws Explain why the Eighteenth Amendment may have been more difficult to enforce than the Fourth Amendment.



the freed slaves and their descendants. Today it protects the rights of citizenship in general by prohibiting a state from depriving any person of life, liberty, or property without “due process of law.” In addition, it states that all citizens have the right to equal protection of the law in all states. The **Fifteenth Amendment** (1870) prohibits the government from denying a person’s right to vote on the basis of race.

The Later Amendments The third group of amendments have all been added in the twentieth century. They deal with a range of topics that reflect the changes in modern American society.

The **Sixteenth Amendment** (1913) gives Congress the power to levy individual income taxes. Although the federal government had collected income taxes earlier, in 1895 the Supreme Court reversed a previous decision and held that the basic features of the federal income tax were unconstitutional. This decision prevented passage of another income tax law until after the constitutional amendment. The **Seventeenth Amendment** (1913) states that the people, instead of state legislatures,

elect United States senators. Congress had introduced amendments for a direct popular election of senators several times before. However, in 1912 charges of vote buying

in state legislatures aided in the passage of this amendment.

The **Eighteenth Amendment** (1919) prohibits the manufacture, sale, or transportation of alcoholic beverages, concluding a crusade to abolish the use of liquor that began in the 1830s. The following year, the **Nineteenth Amendment** (1920) guaranteed women the right to vote. By then women had already won the right to vote in many state elections, but the amendment put their right to vote in all state and national elections on a constitutional basis.

The **Twentieth Amendment** (1933) sets new dates for Congress to begin its term and for the inauguration of the president and vice president. Under the original Constitution, elected officials who retired or who had been defeated remained in office for several months. For the outgoing president, this period ran from November until March.

Such outgoing officials had little influence and accomplished little, and they were called **lame ducks** because they were so inactive. The amendment addressed and in most cases solved this problem by ending the terms of senators and representatives on January 3, and the term of the president on January 20 in the year following their November elections.

The **Twenty-first Amendment** (1933) repeals the unsuccessful Eighteenth Amendment. The Twenty-first Amendment, however, continued to ban the transport of alcohol into any state where its possession violated state law.

The **Twenty-second Amendment** (1951) limits presidents to a maximum of two elected terms. It was passed largely as a reaction to Franklin D. Roosevelt's election to four terms between 1933 and 1945.

The **Twenty-third Amendment** (1961) allows citizens living in Washington, D.C., to vote for president and vice president, a right previously denied residents of the nation's capital. The District of Columbia now has three presidential electors, the number to which it would be entitled if it were a state.

The **Twenty-fourth Amendment** (1964) prohibits **poll taxes** in federal elections—taxes paid in order to vote. Prior to the passage of this amendment, some states had used such taxes to keep low-income African Americans from voting.

The **Twenty-fifth Amendment** (1967) establishes a process for the vice president to take over leadership of the nation when a president is disabled. It also sets procedures for filling a vacancy in the office of the vice president. This amendment addresses a delicate issue—when should a president be considered unable to perform the duties of the office? A few times in the nation's history illness prevented a president from performing his official duties. Should the vice president be considered president during this time? The amendment says that when a president—or vice president with the support of the majority of the cabinet—writes to the president pro tem of the Senate and the Speaker of the House expressing the inability of the president to perform the duties of the office, the vice president immediately becomes the acting president. In a conflict between the president and the vice president over this issue, Congress must decide who will perform the duties of the office.

The **Twenty-sixth Amendment** (1971) lowers the voting age in both federal and state elections to 18.

The **Twenty-seventh Amendment** (1992) makes congressional pay raises effective during the term following their passage. Originally proposed by James Madison in 1789, this amendment lingered in obscurity for more than 200 years until it was discovered by a university student.

Section 4 Assessment

Checking for Understanding

- 1. Main Idea** In a table, categorize the 27 amendments into the three major groups described in this section.

| Constitutional Amendments | | |
|---------------------------|--|--|
| | | |

- 2. Define** prior restraint, probable cause, search warrant, arrest warrant, due process of law, eminent domain, lame duck, poll tax.
- 3. Identify** Bill of Rights, *Chisholm v. Georgia*.
- 4.** What rights are listed in the First Amendment?
- 5.** Identify the twentieth-century amendments that deal with voting rights.

Critical Thinking

- 6. Analyzing Information** How do the amendments to the Constitution show that the United States government is more democratic today than it was in 1790?

Concepts IN ACTION

Growth of Democracy Amendments often reflect a change in society or a need for change in the structure and power of government. Write a report that identifies the reasons and events that led to the adoption of one of the 27 amendments. Present your findings to the class.

Taking Notes

Effective note taking involves breaking up the information into meaningful parts so that it can be understood and remembered.

Learning the Skill

When taking notes, you must group facts into a logical order. This order can be chronological—that is, placing facts in order of what happened first, next, and last. Or you may take notes based on relationships between events—for example, causes and effects or problems and solutions.

Before you take notes, skim the material. What are the main points? You can take notes by using any of the organizers listed below.

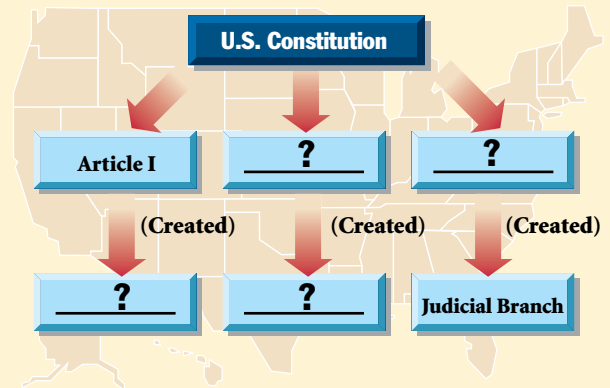
- Time Line—Notes on sequenced events
- Cause-and-Effect Chart—Identifies connections between events
- Semantic Web—Shows different aspects of a general topic or theme
- Category Chart—Arranges data into specific categories
- Outline—Identifies main ideas with sub-heads under each main idea

Select an appropriate method; paraphrase your notes in short phrases.

Practicing the Skill

Read Section 2, pages 68–75, then answer the following questions.

1. Complete the web that follows; then state what information it gives you in two or three complete sentences.
2. Complete the outline. What would be a good title for it?
3. What new information does the outline provide that the web did not?



- I. _____
- A. **Legislative branch**
 1. **Senate**
 2. _____
 - B. _____
 1. **President**
 2. **Vast federal bureaucracy**
 - C. **Judicial branch**
 1. _____
 2. _____

Application Activity

Scan a local newspaper for a short editorial or article about a branch of the national or local government. Take notes by creating an outline or graphic organizer. Summarize the article using only your notes.



The **Glencoe Skillbuilder Interactive Workbook, Level 2** provides instruction and practice in key social studies skills.

Chapter 3

Assessment and Activities

CLICK HERE

GOVERNMENT

Online



Self-Check Quiz Visit the *United States Government: Democracy in Action* Web site at tx.gov.glencoe.com and click on **Chapter 3–Self-Check Quizzes** to prepare for the chapter test.

Reviewing Key Terms

Choose the italicized word or phrase that best completes each of the following sentences.

1. The national government is divided into three branches according to the principle of *judicial restraint/separation of powers*.
2. All powers of Congress specifically listed in the Constitution are *expressed powers/reserved powers*.
3. The idea that the Supreme Court should play an active role in shaping politics reflects the philosophy of *judicial restraint/judicial activism*.
4. According to the principle of *judicial review/eminant domain*, the government can

force someone to sell his or her home to make way for a highway.

Recalling Facts

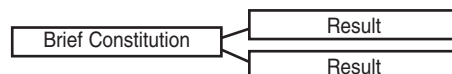
1. What are the six goals of American government as identified in the Preamble to the Constitution?
2. Identify the six major principles of government on which the Constitution is based.
3. What is the constitutional principle illustrated by the division of the national government into three branches?
4. In the Constitution, what right does the final enumerated power give Congress?
5. List five presidential powers as specified in the Constitution.
6. Describe how an amendment to the Constitution is proposed and ratified.
7. In what ways may the Constitution be changed informally?
8. Describe a way in which custom has enlarged the Constitution.

Understanding Concepts

1. **Constitutional Interpretations** How has the system of checks and balances caused the separation of powers among the three branches of government to become less distinct?
2. **Separation of Powers** How did John Marshall help to elevate the Supreme Court to be equal to the other two branches of government?
3. **Growth of Democracy** How do the amendments reflect society's changing perception of who should participate in the political process?

Critical Thinking

1. **Understanding Cause and Effect** Use the graphic organizer below to show two results of having a brief Constitution that is a basic framework, rather than a specific plan, of government.



Current Events

JOURNAL

Political Rights Research the status of political freedom in the world. Find articles regarding the fight for freedom in the *Readers' Guide to Periodical Literature* or in the electronic index to periodicals. Compare and contrast political rights in a foreign country you choose with those guaranteed by the U.S. Bill of Rights. Write a press release of your findings.

CONTENTS

Chapter 3

2. Predicting Consequences How would the federal system of government be affected if the Supreme Court did not have the power of judicial review?

Cooperative Learning Activity

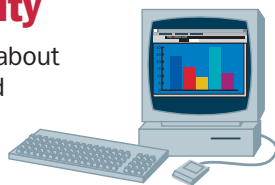
Creating an Ad Organize the class into four groups. Group 1 should write a one-minute radio spot supporting the Constitution. Group 2 should write a one-minute spot opposing the Constitution. Group 3 should write a one-minute spot supporting the government under the Articles of Confederation. Group 4 should write a one-minute spot opposing the form of government under the Articles. Each group may time the reading of its ad and record it on an audiocassette. Practice reading several times before recording.

Skill Practice Activity

Taking Notes Review the guidelines for taking notes on page 91. Then reread Section 4 about the amendments to the Constitution. Create a time line showing the dates of the amendments discussed in the section.

Technology Activity

Using the Internet Find out about proposed amendments and other legislation that Congress is considering by using the Internet. The home page for the Library of Congress provides information about all legislation facing the House and the Senate.



Interpreting Political Cartoons Activity



1. Which branch of government does the cartoonist imply is the most important?
2. Do you think the writers of the Constitution believed one branch of government was more important? Explain your answer.

Participating in Local Government

The First Amendment guarantees freedom of assembly. Contact your local government to find out its rules about holding assemblies, such as political rallies, meetings, or parades. Find out what restrictions the community places on where and when the assemblies take place. Are there certain permits that must be obtained? For what reason might a community not allow an assembly to occur? Present your findings to the class in a short report.

