# The Structure of the Constitution

**The Constitution consists of seven (7) articles and 27 amendments.**

## ARTICLE I: THE LEGISLATIVE BRANCH

**Article I Section 1**: the **SEPARATION OF POWERS** Doctrine and the Theory of **CHECKS AND BALANCES** - Establishes three branches of government with powers to legislate, execute, and adjudicate. No person shall serve in more than one branch simultaneously. One branch of government cannot turn its powers over to another. Madison's Federalist Papers point out the doctrine is taken from Montesquieu's tripartite government thesis.

The theory of checks and balances refers to the powers each branch has over the other two. The President has veto power over the legislature, the Senate has confirmation power over Presidential appointees, the Judiciary has judicial review over the other two branches, and Congress can investigate and impeach anybody in the other two branches. The legislature also has a House and Senate (bicameralism) to avoid legislative dominance.

### Article I Section 8: the COMMERCE CLAUSE.

Authorizes Congress to collect taxes, pay debts, and provide for the common defense and general welfare. The theory of taxation is that certain goods, wares, merchandise, and services should be taxed accordingly so as to promote desired economic objectives. Congress must be fair and balanced with navigation and transportation, but liquor and tobacco, for example, might be taxed more heavily. However, the primary motive must be to secure revenue for the continued operation of the government and to pay off debt. The writings of Thomas Jefferson indicate that Congress should not just tax as it pleases; it should tax for the general welfare.

### Article I Section 8: the MARITIME CLAUSE.

Gives Congress the power to define and punish all crimes committed on the high seas and any offenses against the law of nations. Crime on the high seas, or piracy, is the easy part to figure out, but the law of nations is more vague. In the early days of the nation's founding, the U.S. like other countries, paid tribute to various pirates of the Barbary States (Algiers, Morocco, Tripoli, and Tunis) and used letters of passage for its own rebel pirates. This situation was not rectified until 1816 and required the creation of Maritime Law, or American admiralty courts, which most people today can only relate to with our modern (privatized) system of insurance. The law of nations refers to that part of International Law which America participates in to be considered a civilized nation. It means that we should pass laws against wrongs being done in our own dominion that would be considered wrongs in other nations. The reasoning is that by

not doing so, we fail to prevent wrongs being done against other nations, by encouraging piracy and so forth. Granted, this clause is talking about extraterritorial powers, but the basic theory behind sovereignty is that, as a nation, we are participating in International Law via a law of nations. It is therefore the duty of Congress to define and justify the various crimes in this regard.

**Article I Section 8: the WAR POWER CLAUSE.**

Gives Congress the right to declare war, to set the rules of war, and to raise and support armies. The initiation of armed hostilities should be called up by the concurrence of the President and both Houses of Congress. The reason is that most of the founding fathers did not want lives to be shed on the decision of a single individual. Hamilton, however, wanted the President to have sole commander-in-chief powers who merely asked for the advice of the Senate. Others thought this made the President a King. The compromise solution was to allow the President to repel sudden attacks without Congressional action. Presidents must inform Congress of military action in the absence of a declaration of war, and Congress can approve actions short of all-out war, but only Congress can stamp an action as an act of war. The order of the President can initiate hostile action and commit troops abroad in furtherance of national interests, but Congress can set cut-off dates for when those troops must be withdrawn. Congress also controls the drafting of service personnel, the age at which soldiers must be, military compensations, and the system of military justice.

**Article I Section 8: the MILITIA CLAUSE.**

Authorizes Congress to call out the Militia to suppress insurrections, repel invasions, and handle civil wars, employing them in service of the United States, reserving the right to appoint officers to the States, and reserving the right to training to the federal government. The militia means all members of the National Guard and the National Guard reserve, at both state and federal levels.

**Article I Section 8: the ELASTIC CLAUSE.**

Congress shall have all necessary and proper powers to make laws for executing any of the foregoing powers. The key phrase is necessary and proper which means that Congress shall act reasonably and always pursue legitimate ends. This catchall clause is often relied upon in creation of various regulatory agencies by Congress.

**Article I Section 9: HABEAS CORPUS, BILLS OF ATTAINDER and EX POST FACTO LAWS.**

The privilege of habeas corpus shall not be suspended. Habeas corpus means "bring forth the body" and it requires that an order from a court to anyone holding a prisoner must bring that person before the court to determine if the imprisonment is lawful. President Lincoln tried to suspend habeas corpus during the Civil War, and it was also

suspended by some states trying to crackdown on Ku Klux Klan activity.

A Bill of Attainder is a special order for someone's execution without trial, such as in immediate firing squad for acts of treason or espionage. If the act is less than death, it's called a Bill of Pains and Penalties. Both are outlawed.

An Ex Post Facto Law makes criminal an act that was innocent when done. Congress cannot put a crime on the books, like polygamy, if no such crime existed beforehand.

### Article I Section 10: the CONTRACTS CLAUSE

The doctrine of contracts is that the law in force at the time a contract is made or entered into comprises a part of the contract itself, even if the law in force at the time is later rendered unconstitutional or superceded by new law. This recognizes the "living" nature of Constitutional law because at one time, at least, the surrounding law was constitutional. A contract is any agreement of the minds, and a person affronted or short changed in such a contract shall have access to constitutional remedies the same as anyone seeking relief under a new law.

## ARTICLE II: THE EXECUTIVE BRANCH

### Article II Section 1: PRESIDENTIAL OFFICE

Vests executive power in a natural born citizen age 35 or older with at least 14 years of residency who along with a Vice President, holds office for four years. The limit on two terms is a tradition embodied in the 22nd Amendment. Most of the founding father's debates over the method of selection, term, mode of removal, and power boil down to the idea of establishing a chief executive free from legislative and state influence; in other words, a national office, not someone regional nor like the office of state governor. However, the founding fathers left certain ambiguities in the job description. The theory is that the office should be as big as the person holding it can be, that powers depend upon the personal capacities and abilities that the person brings to office.

### Article II Section 1: THE ELECTORAL COLLEGE

Each state's legislature appoints a number of electors equal to the number of Senators and Representatives from that state, and the electors meet and cast two (2) votes for Presidential candidates, one of whom must not be an inhabitant of the same state as themselves. The President of the Senate than counts the votes in front of a joint session of Congress, and the person with the most votes becomes President, all votes and all states counting equally. The Electoral College was a hastily put-together last-minute plan by the founding fathers to prevent regionalism in the popular vote because some states have more people than others. It's the electors, not the people,

who actually elect the President. If you look closely at the popular ballots (although there's a lot of state variation; 20 states don't even mention it), you'll see that people are actually electing electors for the candidates whose names appear on the ballots. The popular vote exists to uphold the Constitutional guarantee of equal protection (access to the ballot box), and there is no Constitutional right to vote for the candidate of your choice, only for the electors of your choice. The theory is that electors should be free agents - nonpartisan men and women who exercise independent judgment - but in practice, the electors always vote along party lines out of loyalty or because a state law (in 13 states) requires it.

**Article II Section 1: SUCCESSION CLAUSE**

If the President dies, resigns, becomes disabled, or is removed from office, this clause and the 25th Amendment delineate the line of succession. If the President dies, resigns, or is removed from office, the Vice President becomes President with all inherent powers of the Presidency. If the President becomes disabled, the Vice President becomes Acting President whose powers may or may not be circumscribed in a letter the President must write with Congress. A disabled President can only return to office if the disability no longer exists and Congress approves. If the office of Vice President becomes vacant, the President nominates a replacement who must be confirmed by Congress. The Vice President only presides over the Senate to cast tie-breaking votes. The Senate President pro tempore is always the most senior member of the majority party. When the VP isn't available to preside regularly, the Senate President pro tempore usually delegates the job to someone else, reserving the right to preside over special sessions.

The line of succession to the U.S. Presidency runs from the VP to the House Speaker to the Senate President Pro Tem, to the Secretary of State, and then to the Cabinet officials in order of when their department was created (Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, HHS, HUD, Transportation, Energy, Education, VA).

**Article II Section 2: COMMANDER-IN-CHIEF**

The President is the supreme commander of the Armed Services, the first among generals and admirals, a civilian chief executive who cannot be court-martialed nor made subject to any military discipline. The concept of civilian control of the military is unique in world history, and further implemented in the Defense secretary being a civilian as well as the service secretaries of the Army, Navy, and Air Force. Military leaders serve on the Joint Chiefs of Staff or the National Security Council which are advisory groups. Command means decision, commitment, direction, dispatch, secrecy, and control. These duties are delegated to one person only, the President, who is duty-bound to meet force with force without waiting for legislative authority. The President must determine what degree of force the crisis demands. In wartime or with the approach of war, the President has additional extraordinary powers to protect the

war machine from peril (by rooting out spies and saboteurs), to act on any military necessity (by martial law), to compel service from citizens (selective service or conscription), and to order regulatory agencies to impose sanctions (such as rent control or ration coupons).

### Article II Section 3: LEADERSHIP ROLE OF THE PRESIDENT

The President plays a legislative leadership role when Congress is convened for a special session or for a State of the Union address; the President plays a diplomatic leadership role in recognizing and receiving foreign ambassadors and ministers; and the President plays a law enforcement leadership role in seeing that the laws are faithfully executed. The Constitution does not say the President executes the laws, only sees that they are executed. Therefore, the President is not a chief law enforcement officer, but a civilian budgetary executive who apportions the allocations between various law enforcement agencies.

### Article II Section 4: IMPEACHMENT CLAUSE

The President, Vice President, and all civil officers of the U.S. can be removed from office for Impeachment and Conviction of treason, bribery, or other high crimes and misdemeanors. An Impeachment is not a conviction, and cannot remove a President from office. It is simply a formal charge accusing the President of a crime. A two-thirds vote in the Senate is needed to remove a President from office, and the Chief Justice must preside over the Senate trial. Justices and judges can also be impeached under this clause, and additionally for bad behavior. The phrase high crimes and misdemeanors has been defined as behavior subversive of some fundamental principle of government or highly prejudicial to the public interest. Therefore, the behavior does not have to be a crime in order for Impeachment to occur. Sometimes, the bar is lowered to include any questionable conduct.

## ARTICLE III: THE JUDICIAL BRANCH

### Article III Section 1: JUDICIAL POWER AND JURISDICTION

Judicial power is the authority to exercise judicial functions. All judicial functions involve by definition an unbiased decision about the interpretation and application of law to a particular set of facts contested by litigants in a court of law. Judicial connotes the power to punish, sentence, and resolve conflicts.

Article III of the Constitution only provides the barest outline for the U.S. judicial system; the Judiciary Act of 1789 fills in some of the details; and the current operating authority is Title 28 of the U.S. Code. The Judiciary Act established 6 Supreme Court justices; the number was gradually increased until it reached a total of 10 in 1863; after the Civil War, vacancies reduced the number to 7; and Congress finally fixed the

number at 9.

The founding fathers also envisioned the Supreme Court justices as circuit-riders, participating in the federal circuit (but not district) courts. This proved burdensome on the Justices, so in 1891, a system of intermediate appellate courts were sandwiched between the district courts and the Supreme Court. The district courts would have original jurisdiction, the appellate courts exclusive jurisdiction, and the Supreme Court discretionary jurisdiction.

**Article III Section 2: STANDING**

The founding fathers did not intend the Federal courts to be havens of refuge for all sorts of minor cases, only those involving true controversies. Standing is short for Standing to Sue and means that the party bringing the litigation to the court must be the appropriate party by having a personal stake in the outcome or having sustained some direct personal injury in the controversy. Merely being a taxpayer or concerned citizen is not enough. Interest groups who want to file cases on behalf of the common, ordinary people must find at least one common, ordinary person with a personal stake or injury. The interests at stake must be Real and Substantial, more than general interests common to all citizens and taxpayers. Adversity means that the controversy must not be hypothetical, academic, or moot, but one that is definite, concrete, and ripe touching the legal relations of the parties who have adverse legal interests. The doctrine of Political Questions means that the province of the Court is to decide on the rights of individuals, not to inquire into how executive officials are performing within their discretion.

**Article III Section 2: JUDICIAL REVIEW**

Judicial review is the power of U.S. courts to rule legislative enactments or executive acts invalid on constitutional grounds. Any court, state or federal, high or low, has the power to refuse to enforce any statute or executive order it deems repugnant to the Constitution or the law of the land. Therefore, even state courts have the power to declare acts of Congress and orders of the President unconstitutional, although they rarely do. Hamilton's **Federalist #78** best explains the doctrine of judicial review, but it also has roots in Natural Law expressions in the Declaration of Independence. The 1803 case of **Marbury v. Madison** was the first time the Court ruled an act of Congress unconstitutional.

**Article III Section 3: LAW OF TREASON**

The Constitution says that treason consists of levying war against the United States, adhering to its enemies, or giving aid and comfort to its enemies. No person shall be convicted of treason unless on the testimony of two witnesses or a confession in open court. This part of the Constitution prohibits Congress from ever changing or modifying the law of treason, making it easier to establish. The theory is that ordinary political

disagreements should never be considered as treason, and the Constitutional requirements for proof are intended to guarantee nonviolent resistance. The clause does not, however, prohibit Congress from enacting other crimes and punishments for acts of a less subversive nature, as long as Congress is not trying to evade the Constitutional requirements for treason. Conspiracy, for example, is not treason, and therefore upheld as an appropriate lesser category. Every act, movement, deed, and word of a person accused of treason must be corroborated by at least two witnesses. Parents are responsible for the treasonous activities of their children. It's not enough to merely think treasonously; there must be an overt act such as renouncing citizenship, travel to a foreign country, changing passport registration, and the like. Dual nationality is not automatic grounds for suspicion.

## ARTICLE IV: INTERSTATE RELATIONS

### Article IV Section 1: FULL FAITH AND CREDIT

Each state shall be given autonomy in its law-making, record-keeping, and judicial proceedings, but Congress may prescribe the manner in which laws and pre-judgment decrees are enforced from state to state as well as attempt to ensure uniformity where it would be useful and valuable. Overall, this clause is concerned with preserving comity between the states and with civil law, particularly family law (marriage, divorce, adoption, alimony, and child support). No state is allowed to become a monarchy and must maintain a Republican form of government.

### Article IV Section 2: Privileges and Immunities

A number of theories have been offered regarding the purpose of this clause. Some contended that the clause requires Congress to equally treat all citizens. Others suggested that citizens of states carry forward the rights accorded by their home states when traveling in other states. Neither of these theories has been endorsed by the Supreme Court, which has instead held that the clause means that states may not discriminate against citizens of other states in favor of its own citizens.

### Article IV Section 3: EQUAL FOOTING

New states shall be admitted into the Union on the same terms as the original states. When a state cedes part of its territory, as with West Virginia out of Virginia or Alabama out of Georgia, the new state being formed enters on an equal footing, regardless of the debt it owes to its state of origin for having paid its independence. When new territories are acquired, as with the Northwest Ordinance, any area with a population of 60,000 free inhabitants is eligible to apply as a new state. Congress may not exact tribute as a condition for admission, and can only regulate, care, and dispose of any Indian tribes, land, or rules within the state.

## ARTICLE V: MODE OF AMENDMENT

### Article V Section 1: MODE OF AMENDMENT

Four modes:

1. 2/3 of both Houses of Congress propose and 3/4 of state legislatures ratify.
2. 2/3 of both Houses of Congress propose and 3/4 of state ratification conventions ratify.
3. 2/3 of the States request Congress to call a convention which submits proposals and 3/4 of State legislatures ratify.
4. 2/3 of the States request Congress to call a convention which submits proposals and 3/4 of State ratification conventions ratify.

## ARTICLE VI: NATIONAL SUPREMACY

### Article VI Section 2: SUPREMACY CLAUSE

The Constitution is the supreme law of the land. The federal government is to prevail over states in all conflicts of constitutional law and jurisdiction.

## ARTICLE VII: RATIFICATION

### Article VII Section 1: the RATIFICATION CLAUSE

The ratification of only nine states is needed to make this Constitution valid.