

The Constitution guarantees Americans accused of a crime due process of law, or a fair trial. Most trials take place before a judge and jury in courtrooms like the one pictured here.



In response, Lopez took the school district to court, claiming his constitutional right to due process of law had been violated. **Due process**, guaranteed by the Fifth and Fourteenth amendments to the Constitution, requires that those accused of a crime be given a fair hearing and the chance to defend themselves. But this right had never been applied in schools.

The Ohio courts decided in favor of Lopez and eight other students who joined in the case. But the school district appealed the decision to the U.S. Supreme Court. This case, now called *Goss v. Lopez*, would help to define the rights of students—and therefore *your* rights—under the Constitution.

4.2 Elements of the Constitution

The Constitution provides the basic framework for American government. It also guarantees the rights and freedoms that we, as Americans, sometimes take for granted. Cases like *Goss v. Lopez* help to clarify those rights. They also underscore the role played by the Constitution in our democratic system.

The Constitution is a three-part document, consisting of the Preamble, the articles, and the amendments. Although it may seem complicated, the Constitution is actually a relatively brief and

straightforward document. It consists of just over 7,000 words, making it shorter than the sports section in most newspapers. Adopted as the “law of the land” in 1788, it is the oldest written constitution still in use anywhere in the world.

For more than two centuries, we have relied on the Constitution as the basis for our political system. It serves as both a practical outline for government and a symbol of our national way of life. Learning about the Constitution not only helps us understand the rights and freedoms we enjoy as Americans, but also gives us tools to defend those freedoms.

The Preamble Sets the Purpose

The opening paragraph, the Preamble, is a single, long sentence that defines the broad purposes of the **republican government** created by the Constitution. It begins with the phrase “We the people,” signifying that power and authority in our system of government come from the people, not the states.

The Preamble goes on to set various goals for the nation under the Constitution. These goals are expressed in a series of key phrases.

Form a more perfect union. The framers of the Constitution wanted to ensure cooperation among the states, and between the states and the national government.

Establish justice. The framers hoped to create a system of government based on fair laws that apply equally to all people.

Ensure domestic tranquility. The framers wanted government to ensure peace and order.

Provide for the common defense. The framers wanted the government to protect the nation against foreign enemies.

Promote the general welfare. The framers hoped the government would ensure the well-being of the citizens.

Secure the blessings of liberty to ourselves and our posterity. The framers hoped to guarantee freedom for Americans, then and in the future.

The Articles Establish Our National Government

The main body of the Constitution consists of seven articles. These seven articles are further divided into sections and clauses. The first three articles establish the three branches of government—legislative, executive, and judicial—and define their powers. These articles lay out the basic structure of the national government.

The four remaining articles of the Constitution cover various subjects, including relations among the states, the supremacy of national law, and the amendment process.

Article I Establishes the Legislative Branch

The first article sets up Congress as the lawmaking body in government. It describes the two chambers of Congress, the Senate and the House of Representatives, as well as the election, terms, and qualifications of their members. It also sets guidelines for rules and procedures in each chamber. This is the longest article in the Constitution, reflecting the founders’ belief in the importance of the legislature in a representative democracy.

Section 8 of Article I lays out some of the main powers granted to Congress. These powers are both enumerated and implied. **Enumerated powers** are those that are specifically listed in the Constitution, such as the power to collect taxes, coin money, and declare war.

Implied powers are those that the legislature can claim as part of its lawmaking responsibility. This claim to implied power stems from Clause 18 of Section 8, which says that Congress can “make all laws which shall be necessary and proper” for carrying out its duties. This **Necessary and Proper Clause** is also known as the **Elastic Clause**, since it can be “stretched” to cover a variety of issues and circumstances.

Section 9 of Article I lists powers denied to Congress. Among these denied powers are the suspension of **habeas corpus** and the granting of titles of nobility.

The Structure of the Constitution

The Constitution has a three-part structure. The Preamble is the introduction to the document. The articles make up the body. The amendments are additions and changes made over time.

Preamble	Articles	Amendments
Purpose of government	I: Legislative branch II: Executive branch III: Judicial branch IV: Relations among the states V: Amendment process VI: Payment of debts; Supremacy Clause; oaths of office VII: Ratification	Formal changes to the Constitution

Habeas corpus is the right of accused persons to be brought before a judge to hear the charges against them. The ban on titles of nobility reflects the principle that “all men are created equal,” as expressed in the Declaration of Independence.

Article II Establishes the Executive Branch

The executive branch is led by the president and vice president. As it does for members of Congress, the Constitution describes the election, terms of office, and qualifications of these executive officers. It also defines the powers of the president, which include the power to command the armed forces, to make treaties, and to appoint other executive officials.

Article III Establishes the Judicial Branch

Article III creates the Supreme Court, the highest court in the land, while leaving Congress to create the lower courts. It defines the **jurisdiction** of the federal courts, specifying the types of cases that can be tried. It also guarantees the right to trial by jury in criminal cases and defines the crime of treason.

Article IV Concerns Relations Among the States

Article IV has four sections, which make the following key points:

Full faith and credit. Each state must honor the laws and court decisions of other states.

Treatment of citizens. No state may discriminate against the residents of another state. It must treat them as it treats its own residents. States must return suspected criminals to the states in which they are wanted.

New states and territories. Only Congress can authorize the creation of new states. It also has power over territories and other jurisdictions of the United States.

Protection of states. The national government guarantees each state a republican form of government. It also promises to protect states from outside attack and, if requested, to help states put down internal rebellions.

Article V Describes the Amendment Process

The framers understood that it might be necessary to make changes to the Constitution from time to time. Article V spells out the ways such amendments can be proposed and ratified.

Article VI Makes the Constitution the Supreme Law of the Land

Article VI covers several topics. It states that the national government agrees to repay all of the debts that were incurred under the Articles of Confederation. This was critical to ensure support for the new government.

Powers of the Three Branches of Government

The Constitution establishes a government of three branches, with separate powers for each branch. By dividing power, the framers hoped to ensure that no single branch would become too powerful.



Legislative

- Makes the laws
- Appropriates funds for laws and programs
- Approves treaties and executive appointments
- Establishes federal courts



Executive

- Enforces the laws
- Acts as commander in chief of military
- Negotiates treaties
- Appoints federal judges and other top officials

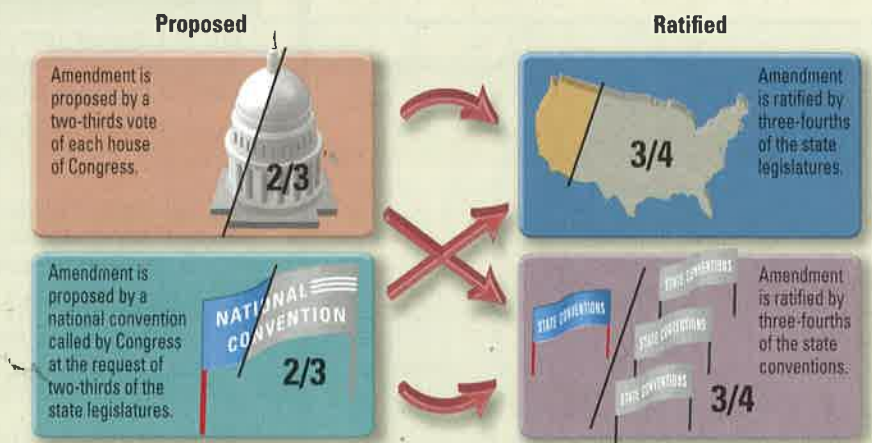


Judicial

- Interprets the laws
- Reviews lower-court decisions
- Judges whether laws and executive actions are constitutional
- Rules on cases between states

Amending the Constitution

The Constitution spells out four methods of approving amendments. All amendments except one have been proposed by Congress and ratified by the state legislatures. The one exception was the Twenty-first Amendment, which repealed the Eighteenth Amendment and ended the national ban on alcohol, known as prohibition.



It also states that the Constitution is the “supreme Law of the Land.” This section, known as the **Supremacy Clause**, means that federal law supersedes all state and local laws. When the laws conflict, federal law reigns supreme.

In addition, it stipulates that all federal and state officials must take an oath swearing their allegiance to the Constitution. Also, no religious standard can be imposed on any official as a qualification for holding office.

Article VII Explains the Ratification Process

Article VII stipulates that the Constitution would not take effect until ratified by at least nine states. Although the Constitution was signed by the framers on September 17, 1787, ratification did not occur until the following year.

4.3 Amending the Constitution

The framers never meant for the Constitution to provide a complete and detailed blueprint for government. As Alexander Hamilton noted in 1788, “Constitutions should consist only of general provisions: The reason is, that they must necessarily be permanent, and that they cannot calculate for the possible changes of things.”

In general, the framers made broad statements and left it to political leaders to work out many of the specific details of governing. They also built in an

amendment process, in Article V, that would allow for formal changes to the Constitution. They hoped that this flexibility would allow the Constitution and the government to endure.

The Amendment Process Is Not Easy

Although the framers understood that amendments might be necessary, they did not want such changes to be taken lightly. For that reason, they made the amendment process difficult. More than 11,000 amendments have been introduced in Congress over the years, but only 33 have been sent on to the states for ratification, and of these, only 27 have been ratified.

Article V lays out a two-step amendment process. Amendments can be proposed and ratified in four ways, as shown in this diagram. However, one method has been used almost exclusively over the years.

In this typical method, an amendment is first proposed by a two-thirds vote in both houses of Congress. The proposed amendment is then sent to the states, where it must be ratified by the legislatures of at least three-fourths of the states.

Only one amendment, the Twenty-first, which ended prohibition, was ratified in a different way. It was approved not by state legislatures, but by special conventions in three-fourths of the states.

The president has no formal role in the amendment process. The chief executive can support or oppose a proposed amendment, but has no power to approve or block its passage. That power lies exclusively with Congress and the states.



"The way I see it, the Constitution cuts both ways. The First Amendment gives you the right to say what you want, but the Second Amendment gives me the right to shoot you for it."

In this cartoon, a man broadly interprets the freedoms guaranteed by the First and Second amendments. However, in reality, these freedoms are limited. Americans disagree on what each amendment in the Bill of Rights was meant to protect.

Only one provision of the Constitution—the equal representation of states in the Senate—is not open to amendment. This point is made explicit in Article V: "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." This prohibition was meant to ensure that all states—even the smallest and least populated—would always have two seats in the Senate. This was a key compromise worked out during the writing of the Constitution.

Some critics contend that the equal-representation provision is undemocratic. They point out that today over half the U.S. population lives in just nine states: California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, Michigan, and Georgia. Yet just 18 out of 100 senators represent this half of the population.

The First Ten Amendments: The Bill of Rights

The first ten amendments to the Constitution—also known as the Bill of Rights—were proposed by Congress in 1789 and ratified by the states in 1791. The rights listed in the Bill of Rights outline the freedoms guaranteed to the people and the states.

First Amendment: Basic freedoms. Guarantees five basic freedoms: religion, speech, press, assembly, and petition.

Second Amendment: Right to bear arms. Protects the right to bear arms and form state militias. The national and state governments, however, claim the right to regulate firearms.

Third Amendment: Quartering of soldiers. Bans quartering of troops in private homes during peacetime. This was a key concern in the 1700s but has little relevance today.

Fourth Amendment: Search and seizure. Prevents unreasonable search and seizure. Police and other authorities have no right to search or seize property or people without just cause.

Fifth Amendment: Rights of the accused. Outlines the right to due process of law and other legal protections. This amendment covers various rights of people accused of crimes. It also covers **eminent domain**, which prevents the government from taking over private property without just or fair compensation.

Sixth Amendment: Right to a fair trial. Guarantees the right to public and speedy trial by a jury in criminal cases. The accused also has other rights such as to call witnesses and to be represented by an attorney.

Seventh Amendment: Civil trials. Guarantees the right to jury trial in civil cases. A **civil case**, such as a lawsuit, is one that does not involve criminal conduct.

Eighth Amendment: Bail and punishment. Bans excessive bail and punishment. The courts may not impose unreasonable bail, fines, or cruel and unusual punishment.

Ninth Amendment: Rights retained by the people. Guarantees other rights not listed in the Constitution or Bill of Rights.

Tenth Amendment: States' rights. Reserves powers for the states and the people that are not specifically given to the national government.

Two Early Amendments Strengthened the New Federal Government

The remaining amendments came about because of a widely recognized problem, or as the result of a reform movement, or both. The first of these, the Eleventh Amendment, adopted in 1795, protected states from lawsuits by citizens of other states or

Amendments to the Constitution After the Bill of Rights, 1798–1992

Amendments Defining the Powers of Government

Eleventh Amendment (1795)
Limited federal court jurisdiction over lawsuits involving states

Fourteenth Amendment (1868)
Defined citizenship and prohibited states from denying due process, equal protection, and other basic rights to citizens

Sixteenth Amendment (1913)
Gave Congress the power to levy and collect taxes on incomes



Twenty-seventh Amendment (1992)
Limited the power of Congress to raise members' pay

Amendments Affecting the Election or Tenure of Officeholders

Twelfth Amendment (1804)
Required separate electoral college ballots for president and vice president

Seventeenth Amendment (1913)
Called for the direct election of senators by voters

Twentieth Amendment (1933)
Changed the date when the president, vice president, and members of Congress take office

Twenty-second Amendment (1951)
Limited the president to two full terms or no more than ten years in office

Twenty-fifth Amendment (1967)
Provided for succession in case of the president's death or disability

Amendments Reflecting Changing Social Values

Thirteenth Amendment (1865)
Banned slavery and involuntary servitude



Eighteenth Amendment (1919)
Empowered the federal government to prohibit the sale of alcohol

Twenty-first Amendment (1933)
Repealed the highly unpopular 18th Amendment (prohibition)



Amendments Expanding Voting Rights

Fifteenth Amendment (1870)
Extended voting rights to male citizens of all races

Nineteenth Amendment (1920)
Extended the right to vote to women



Twenty-third Amendment (1961)
Granted voting rights in presidential elections to the residents of the District of Columbia

Twenty-fourth Amendment (1964)
Banned poll taxes, or fees imposed on voters

Twenty-sixth Amendment (1971)
Lowered the voting age from 21 to 18

foreign countries. It was adopted after Georgia lost a Supreme Court case involving a suit brought by a South Carolina resident.

The Twelfth Amendment, ratified in 1804, changed voting procedures in the Electoral College to separate the vote for president and vice president. This became necessary after the 1800 election resulted in an Electoral College tie.

Three Civil War-Era Amendments Extended Rights to African Americans

The Thirteenth Amendment made President Lincoln's emancipation of slaves the law of the land. The

Fourteenth Amendment overturned the Supreme Court's Dred Scott decision—which had denied citizenship to African Americans—by making all people born in the United States citizens with equal rights and protections. The Fifteenth Amendment was passed to protect the voting rights of freedmen during Reconstruction.

Four Progressive-Era Amendments Dealt with Social and Political Reforms

The Progressive period of the early 1900s saw the ratification of four amendments, all designed to promote social and political reform. The Sixteenth

Amendment allowed Congress to establish an income tax. Today the income tax is the main source of revenue for the federal government.

The Seventeenth Amendment provided for the direct election of senators. Previously, senators were elected by state legislatures. The Nineteenth Amendment extended voting rights to women.

The Eighteenth Amendment instituted prohibition, banning the sale of alcohol. The Twenty-first Amendment later repealed prohibition.

Four Twentieth-Century Amendments Addressed Governance

The Twentieth Amendment changed the start date of presidential and congressional terms. Known as the “lame duck” amendment, it shortened the period in which officeholders who had not been reelected remained in office.

The Twenty-second Amendment limited presidents to two terms. This amendment was prompted by the election of Franklin D. Roosevelt to four terms. The Twenty-fifth Amendment provided for succession to the presidency in case of a president’s death or disability and the filling of a vacancy in the office of vice president.

The Twenty-seventh Amendment—the last to be ratified, in 1992—was first proposed 203 years earlier, along with the Bill of Rights. It states that any pay raise Congress votes for itself cannot go into effect until after the next congressional election.

Three Civil Rights-Era Amendments Extended Voting Rights

Between 1961 and 1971, three amendments expanded suffrage for different groups. The Twenty-third Amendment allowed residents of the District of Columbia to vote in presidential elections. As a result, district voters now elect three members of the Electoral College.

The Twenty-fourth Amendment banned poll taxes, which had been used to keep African Americans from voting in some states.

The Twenty-sixth Amendment lowered the voting age from 21 to 18. Ratified during the Vietnam War, it was prompted by arguments that anyone who is old enough to go to war—that is, an 18-year-old—is old enough to vote.

Of all the amendments proposed by Congress but never ratified by the states, perhaps the most famous

is the equal rights amendment. The ERA, first introduced in 1923, was intended to guarantee equal rights for women. It was proposed by Congress again in 1972, but did not win ratification in the necessary three-fourths of the states.

4.4 Guiding Principles of the Constitution

Over the years, the Constitution has acquired an almost sacred status for Americans. Part of the reason for that is its durability: the Constitution has survived, with relatively few changes, for more than two centuries. It ensures stability and continuity in American political life. Furthermore, it has come to represent who we are as a people and a nation. It symbolizes our collective values in a way that most Americans—no matter what their political views—are able to embrace.

Establishing a Limited Government

The framers’ main goal in crafting the Constitution was to create a system of limited government. They knew that absolute power often leads to the abuse of rights. On the other hand, they also knew that a lack of governmental power could result in chaos and instability.

The framers tried to make sure that the Constitution gave the government enough power to ensure peace and order, but not so much that its power went unchecked. As James Madison wrote in *The Federalist* No. 51, “You must first enable the government to control the governed; and in the next place to oblige it to control itself.”

The limited government envisioned in the Constitution is based on six guiding principles: (1) popular sovereignty, (2) the rule of law, (3) separation of powers and checks and balances, (4) federalism, (5) an independent judiciary, and (6) individual rights.

Popular Sovereignty

This principle means that power resides in the will of the people. The framers understood that making people the source of power is the best assurance that government will act in the people’s interest.

In *The Federalist* No. 39, Madison defined a republic as “a government which derives all its powers directly or indirectly from the great body of



Lampposts in front of the Supreme Court Building in Washington, D.C., are decorated with this carving of a female figure popularly known as Lady Justice or Blind Justice. Portraying Justice as a female figure dates back to ancient times. Today Justice is usually shown with a set of scales, representing the impartiality of the law. She carries a sword symbolizing the power of those who make decisions based on the law. She wears a blindfold to indicate that justice is blind to considerations such as wealth and social status.

the people.” The Constitution supports popular sovereignty through **republicanism**, or the idea that people elect leaders to a governing body of citizens. One section that upholds this idea is the following:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.

—Article I, Section 2, Clause 1

In other words, the people elect members of the House, the more representative body of Congress. Another section ensures republicanism in the states:

The United States shall guarantee to every State in this Union a Republican Form of Government.

—Article IV, Section 4

By guaranteeing republican government in the states, the Constitution extends the principle of popular sovereignty to the states.

The Rule of Law

This principle requires that the American people and their government abide by a system of laws. This is another way to ensure that power is limited and not used in an arbitrary manner. Examples in the Constitution include these:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

—Article IV, Section 2, Clause 1

In other words, no state may discriminate against the residents of another state. The law must be applied in the same way to all. Another section says,

The Constitution . . . shall be the supreme Law of the Land.

—Article VI, Section 2

This section asserts the authority of the Constitution and federal law over state and local law. When there is a conflict, the Constitution prevails.