

Constitutional Glossary



advice and consent: Article II provides that Presidents may nominate judges and high-level executive branch officers and negotiate treaties with the “Advice and Consent of the Senate.” The Constitution is clear about what constitutes “consent” (it requires a majority of the Senate to approve a nominee and two-thirds of the Senate to consent to a treaty) but ambiguous on “advice,” leading to frequent quarrels with Presidents who acted without consulting with the Senate. The House plays no role in the advice and consent process.

Articles of Confederation: Before the Constitution was ratified, the thirteen states joined in a loose confederation from 1781 until 1789. The Articles of Confederation established a single legislative branch, without an executive or legislature. This national government depended on the states for funding and any changes in the Articles required the unanimous approval of the states.

Bill of Rights: The first ten amendments to the Constitution, which were proposed and approved by the First Congress. They offer specific guarantees of liberty to citizens and restrictions on the powers of government. Originally, the Bill of Rights applied only to the federal government. Since the adoption of the Fourteenth Amendment, however, the courts have gradually extended these rights and restrictions to the states as well.

checks and balances: Power is divided among the three branches of the federal government and the states, each of which checks—that is, restrains—and balances the others. By dividing power, the Constitution pitted the ambitions of one branch against the others to keep any one part of the government from becoming all-powerful and tyrannical. The branches share certain powers but also exercise some exclusive powers.

civil liberties: The basic individual rights of all citizens, as expressed in the Bill of Rights and reinforced by the Fourteenth Amendment. These include the right to freedom of speech, press, religion, and assembly; the right to petition; as well as freedom from unreasonable search and seizure.

civil rights: Freedom from discrimination, particularly by race, but also by gender, religion, age, ethnicity, and physical ability. The constitutionality of civil rights is centered in the Thirteenth, Fourteenth, and Fifteenth Amendments.

commerce clause: Article I, section 8, which grants Congress the power to regulate commerce between the states, with Indian tribes, and with foreign nations. Congress and the courts have broadly interpreted this clause to cover almost any endeavor that crosses state lines, from transportation and other economic is-

ssues to equal accommodations and other such civil rights issues.

common law: The accumulated precedents set by court rulings in Britain and the United States, usually involving civil cases. The Seventh Amendment addresses suits rising from the common law.

cruel and unusual punishment: The Eighth Amendment prohibits “cruel and unusual punishment,” in a measure designed to prevent torture and the deliberately painful systems of execution that had existed in the past. Definitions of “cruel and unusual” have been left to statutes and to court decisions. In recent years, some have argued that the death penalty itself constitutes cruel and unusual punishment.

double jeopardy: The Fifth Amendment protects people from being tried again on charges for which they have been acquitted. It does not prevent a second trial if there is a hung jury—one unable to render a verdict—or if a convicted person seeks a retrial based on new evidence.

due process of the law: The Fifth and Fourteenth Amendments guarantee that governments cannot deprive people of their lives, liberty, or property without “due process,” that is, appropriate legal proceedings.

elastic clause: After providing Congress with a long list of specific powers, Article I, section 8 granted Congress authority to make all laws that are “necessary and proper” to implement those powers. Because this broad phrase covers such an extensive sweep of activities, it has been called the “elastic clause.”

Electoral College: When people vote for President of the United States they are actually choosing representatives who will then form the Electoral College that goes on to elect the President. Each party puts forward a slate of electors who are pledged to vote for the party’s candidate—although occasionally an “unfaithful” elector will vote for another candidate as an act of protest against the party’s choice. Each state has the number of electors that equals the total of its senators and representatives, so that no state will have fewer than three electors. The electors vote in their individual states and the ballots are then sent to Congress, which counts the ballots in a joint session and officially declares a victor. On a few occasions, the candidate who has won the greatest number of popular votes has lost the Electoral College and the Presidency.

emoluments: The Constitution gives Congress the power to set salaries, or emoluments, for the other branches of government,

but prohibits it from cutting the salary of Presidents or judges as a form of punishment or intimidation. The Twenty-seventh Amendment also requires that any increase in congressional salary be delayed until after the next election, to give the voters a chance to react.

enumerated powers: The Constitution grants specific powers to the government, particularly to the Congress, which are known as the enumerated powers. They are the opposite of implied powers, which are known as unenumerated.

equal protection of the law: The Fourteenth Amendment guarantees all citizens equal protection of the law. This provision prevents the government from discriminating against any particular group, and ensures citizens' civil rights.

ex post facto law: A law that is passed after an action has occurred to make that action illegal. Congress and the courts are prohibited from passing any such law by Article I, section 9.

federalism: This broad term, not mentioned in the Constitution, describes the constitutional relationship between the states and the national government, in which power is distributed between the central authority and the states.

full faith and credit: Article IV, section 1 provides that all states governments and courts must respect the laws, records, and court rulings of other states, giving them "Full Faith and Credit."

habeas corpus: From the Latin for "let us have the body," habeas corpus is a legal requirement that those arrested for a crime cannot be detained for a long period without judicial proceedings. During wartime or periods of civil insurrection, Presidents can suspend habeas corpus.

impeachment: A form of accusation or indictment by the House of Representatives, requiring a majority vote, used to bring charges against a federal officer. The Senate then holds a trial and if two thirds of the senators vote to convict, the official is removed from office. Sometimes Congress votes to prohibit an official who has been impeached and convicted from holding any further office. Otherwise, conviction carries no penalties than removal, although an impeached official can also be tried in civil and criminal courts.

implied powers: The Constitution suggests, rather than specifies, some powers, particularly in considering what might be "necessary and proper" to implement them. Implied powers are the opposite of enumerated powers.

judicial review: Since 1803, the Supreme Court has interpreted the Constitution as giving it the final authority to review the constitutionality of the acts of the legislative and executive branch. The process by which the courts examine the laws is known as judicial review.

lame duck sessions: Throughout the nineteenth century, the second session of every Congress was held after the most recent election, when members either had been defeated or did not run for reelection. When they returned for the second session, they were called "lame ducks" (a slang term the British had originally used for someone who went bankrupt). Out of concern that lame ducks were not likely to promote the public interest, the Twentieth Amendment moved up the opening date of Congress to eliminate most lame duck sessions.

oath of office: Article II provides an oath of office for Presidential inaugurations. All other federal officers take a different oath, created by statute rather than by the Constitution. Those who take a federal oath of office swear (or affirm, if for religious reasons they cannot swear) that they will uphold the Constitution of the United States.

original intent: The effort to determine precisely what the authors and ratifiers of the Constitution and its amendments had in mind is called the search for "original intent." As the delegates to the Constitutional Convention left little in the way of official minutes, this search has usually involved reading the notes of the individual delegates, *The Federalist*, and the records of Congress. Those who believe in finding "original intent" usually prefer a stricter rather than a flexible interpretation of the Constitution.

other persons: The Constitution deliberately did not mention "slaves," even though enslaved African Americans constituted a large percentage of the young nation's population. For purposes of taxation and counting for congressional apportionment, the Constitution referred euphemistically to "other persons."

pocket veto: Presidents can veto a bill and send it back to Congress with an explanation, but a two-thirds vote in both houses of Congress can override a President's veto. However, if Congress adjourns within ten days of sending a bill to the White House, the President can simply not sign the bill. This is called a "pocket veto" (suggesting that the bill has been slipped into a pocket). In such cases, Congress has no opportunity to attempt to override the veto.

power of the purse: The federal government can neither receive nor spend any money that Congress has not authorized and appropriated. Known as the "power of the purse," the ability to provide or withhold funds is Congress's ultimate weapon against the other branches of the government and the state governments. In both the Senate and House the Appropriations Committees are among the most powerful and prestigious committees.

Presidential succession: If a President dies, resigns, or becomes incapacitated, the Constitution provides that the Vice President will step into the Presidency. By statute, Congress determines who will follow next after the Vice President. The current order of Presidential succession is the Speaker of the House, the presi-

dent pro tempore of the Senate, and the members of the cabinet, in the order in which their departments were created. The Twenty-fifth Amendment also permits Presidents to appoint a Vice President, if that post becomes vacant. Both the Senate and House must confirm such a Vice Presidential appointment.

privacy: The Constitution does not specifically include a right to privacy, but the Supreme Court has found that it is implied in the Bill of Rights, particularly in the Fourth Amendment's protection against unreasonable searches of a person's property. The Ninth Amendment also specifies that rights are not void because they are not enumerated.

qualifications of office: Presidents must be at least thirty-five and natural-born citizens—born in the United States or of American parents elsewhere—and are limited to two terms in office. Senators must be at least thirty and representatives must be at least twenty five and reside in the state they represent. States cannot add qualifications, other than those specified in the Constitution.

ratification: The Constitution established that it would be confirmed when ratified, or approved, by nine of the thirteen states, and that all amendments must be ratified by two-thirds of the Senate and House and three-quarters of the states. Amendments can be ratified by the state legislatures or by elected state conventions.

reapportionment: Every ten years, after each census is taken, the House of Representatives is reapportioned to make congressional districts contain as mathematically equal a number of residents as possible. Originally, the House expanded in size to reflect population growth, but once the number of seats was fixed at 435, each reapportionment has required some states to gain seats and some to lose them. Each state must have at least one representative.

recess appointments: An appointment for a federal office made by a President when the Senate is not meeting. Recess appointments can serve until the end of the next session of the Senate. The President may nominate them again, but if they are not confirmed they must give up the post. In the nineteenth century, this process enabled Presidents to keep the government functioning during the many months that Congress stood adjourned. In modern times, congressional recesses are much shorter and Presidents have used recess appointments mostly for controversial nominees whose confirmations have been stalled.

search and seizure: The Fourth Amendment prohibits authorities from conducting a "search and seizure" of anyone's house, papers, or other property without a warrant issued by the courts on just cause—reasonable suspicion that evidence of a crime will be located there.

self-incrimination: Witnesses in criminal trials, or those whose

testimony before Congress might result in a criminal indictment, are not required to give testimony against themselves. As this protection against self-incrimination is specified in the Fifth Amendment, declining to testify is sometimes called "taking the Fifth."

separation of powers: The Constitution assigns specific powers to each branch of the federal government. Some powers belong exclusively to a single branch, others are shared among the branches. No one can serve in more than one branch simultaneously. This system differs from a parliamentary government, where officials with executive powers, such as the prime minister and members of the cabinet, are members of the parliament or legislature.

states' rights: The Tenth Amendment reserved for the states all rights not granted to the federal government. This has led to numerous political and judicial disagreements between the states and the federal government over where the line should be drawn.

supremacy clause: The clause of Article VI that makes the Constitution "the supreme law of the land," elevating federal laws and federal court decisions over those of the states.

treason: This extreme crime against the state involves "levying war" against the United States or giving "aid and comfort" to its enemies. A person can be convicted of treason only if he or she confesses, or if there are two witnesses to the act of treason.

treaty-making power: The President negotiates treaties with foreign nations, but the treaty cannot go into effect until it is approved by a two-thirds vote of the Senate. Senators can amend a treaty (change its wording) or enact reservations (change its interpretation) by a simple majority, which enables them to build a consensus to achieve a two-thirds vote.

veto: After Congress passes a bill, the President may veto, or reject it, sending the reasons for the objection back to Congress, which may amend the bill to meet the President's objections or override the veto by a two-thirds vote of each house. If a President does not sign a bill within ten days, and the Congress adjourns during that period, it is known as a "pocket veto," which Congress cannot override.

war powers: Among the more ambiguous provisions of the Constitution are the war powers. Only Congress can declare a war and appropriate the funds necessary to fight it, but the President as commander in chief of the military has considerable latitude in sending American troops into combat. Congress has not formally declared war since World War II, although the United States has fought many wars since then.