

## American institutions

### The American Constitution

It is made up of **7** articles which were adopted in September **1787** and became effective in **1789** together with **27** amendments which were added from **1791** to **1992**.

- Inspired by John Locke ( English philosopher, 1632-1704) and Montesquieu (French philosopher 1689-1755).The former developed the idea of the social contract between the people and their government to guarantee life, liberty and property. Montesquieu fathered the idea of the separation of powers.
- **Drawn up in the wake of the War of Independence** (1775-1783) in which the colonies **severed their ties with the Crown of England**.
  - attempt to create an **entirely new political system**, in conformity with the **ideals of the Age of Enlightenment** / **rampart** protecting citizens **against arbitrary rule or absolutism** as embodied by the English monarchy

On the whole, the text remains deliberately vague to encourage interpretation.

### What are its basic principles?

- **Separation of powers** into **3 distinct branches**: the legislative branch, embodied by Congress, the executive branch, headed by the President, and the judicial branch, vested in the Supreme Court.
- The **system of checks and balances** allows for a **system-based regulation that allows one branch to limit another / to prevent one branch from becoming supreme / to guard against potential abuses or undue concentration of power in the hands of a few leaders**, and **to induce the branches to cooperate** such as the power of Congress to alter the composition and jurisdiction of the federal courts.
  - **Legislative** (Congress): makes all laws, controls all the money, taxes, borrows, and sets the budget / has sole power to declare war / **oversees, investigates, and makes the rules for the government and its officers / appoints the heads of the executive branch / confirms Supreme Justice appointments / ratifies treaties / originates cases of impeachment**.
  - **Executive**: preserves, protects and defends the Constitution / faithfully executes the laws of the United States / executes the instructions of Congress / **may veto laws but the veto may be overridden by Congress by a 2/3 majority** / executes the spending authorized by Congress / executes the instructions of Congress when it declares war or makes rules for the military / declares states of emergency and publishes regulations and executive orders / **appoints judges with the advice and consent of the Senate** / has the power to grant pardons for crimes against the United States.
  - **Judicial**: determines which jurisdiction any given case falls under / **judges when a law is unconstitutional** / has the responsibility to administer Constitutional law and to apply it to constitutional disputes / determines the disposition of prisoners / may legally compel testimony and the production of evidence as the law provides / oversees and administers members of the judiciary / **is subject to impeachment by Congress**
- The **Federal** government controls **foreign policy, the armed forces, the printing of money, taxation, interstate business activities and the Federal Bureau of Investigation**.  
**The States** are responsible for all that is not specifically listed in the 10th amendment: education, transport, health, rules about the vote, death penalty...  
Each state has a **constitution**, a **governor** (elected for 4 years // president), a **House of Representatives** (elected for 2 years), a **Senate** (elected for 6 years) and **its courts of justice**.
- The **Bill of Rights** consists of the **ten amendments added to the Constitution in 1791**, as supporters of the constitution had promised critics during the debates of 1788. **The English Bill of Rights (1689) was an inspiration for the American Bill of Rights**. For example, both require jury trials, contain a **right to keep and bear arms**, and **prohibit excessive bail** as well as "cruel and unusual punishments." Many liberties protected by state constitutions and the Virginia Declaration of Rights were incorporated into the United States Bill of Rights.
- **Some important amendments**

2<sup>nd</sup> Amendment (1791): defines the right of States in **keeping and maintaining militias** and the **right of individuals to possess firearms**.

13<sup>th</sup> Amendment (1865): **abolishes slavery** and grants Congress power to enforce abolition.

15<sup>th</sup> Amendment (1870): **forbids the federal government and the states from using a citizen's race, color, or previous status as a slave as a qualification for voting**.

19<sup>th</sup> Amendment (1920): **prohibits the federal government and the states from forbidding any citizen to vote due to their sex**.

21<sup>st</sup> Amendment (1933): **repeals Eighteenth Amendment**. Permits states to prohibit the importation of alcoholic beverages.

## **Legislative branch: Congress**

### **Structure and composition**

- The United States Congress is the **bicameral legislature of the federal government of the United States of America, consisting of two houses, the Senate and the House of Representatives**. Both senators and representatives are **chosen through direct election**.
- As provided by the United States Constitution, **each of the 435 members of the House of Representatives represents a district and serves a two-year term** (any President will thus work with two successive Houses). **House seats are apportioned among the states by population**, as determined by the census conducted every ten years. Each state, however, is entitled to at least one Representative and Congress fixed the number of voting House members at 435 in 1911. Each state is divided into districts. Each district sends one Representative to Congress. Article I, Section 2 of the Constitution sets forth **three qualifications for representatives**: each representative **must be at least 25 years old, must have been a citizen of the United States for the past 7 years, and must be (at the time of the election) an inhabitant of the state they represent**. There is no limit to the number of terms.
- The **100 Senators serve staggered six-year terms**. Each state has two senators, regardless of size, population or political weight. **Every two years, approximately one-third of the Senate is elected**. **Popular election to the Senate was standardized nationally in 1913** by the ratification of the **Seventeenth Amendment** to the United States Constitution. **Article I, Section 3 of the Constitution sets three qualifications for senators**: 1) each senator **must be at least 30 years old**, 2) **must have been a citizen of the United States for at least the past 9 years**, and 3) **must be (at the time of the election) an inhabitant of the state they seek to represent**. The age and citizenship qualifications for senators are more stringent than those for representatives.

### **Main powers**

- **Article I of the Constitution vests all legislative power in the Congress**. The **House and Senate are equal partners in the legislative process** (legislation cannot be enacted without the consent of both chambers); however, the **Constitution grants each chamber some unique powers**.
- Congress has **authority over financial and budgetary matters**, through the enumerated **power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States**. (power of the purse)  
The **Sixteenth Amendment extended power of taxation to include income taxes**.  
The Constitution also gives Congress **power over appropriating funds, with all government spending required to be included in congressional appropriations**. This power is an **important way for Congress to keep the executive branch in check**.
- Other powers granted to Congress include the **authority to borrow money on the credit of the United States, regulate commerce with foreign nations and among the states, and coin money**.
- The Constitution also gives Congress an **important role in national defense**, including the **exclusive power to declare war, to raise and maintain the armed forces, and to make rules for the military**.
- Congress also has the **power to establish post offices and post roads, issue patents and copyrights, fix standards of weights and measures, establish courts inferior to the Supreme Court**, and "To make all laws which shall be necessary and proper for carrying into execution the

foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." Congress also has the **power to admit new states to the Union** (Article Four).

- One of the foremost non-legislative functions of the Congress is the **power to investigate and to oversee the executive branch**. This is called **congressional oversight**. This power is usually delegated to United States congressional committees—standing committee, select and special committee, select committees, or joint committee composed of members of both houses.
- The **Constitution concentrates removal powers in the Congress** by **empowering and obligating the House of Representatives to impeach federal officials** (both executive and judicial) for "Treason, Bribery, or other high Crimes and Misdemeanors." A **simple majority** in the House is required to impeach an official.
- + **Revenue-raising bills must originate in the House of Representatives.**
- The **Senate is uniquely empowered to ratify treaties and to approve top presidential appointments**.
  - + The Senate is constitutionally **empowered and obligated to try all impeachments**; however, a **two-thirds majority** in the Senate is **required for conviction**. A convicted official is automatically removed from office; in addition, the Senate may stipulate that the defendant be banned from holding office in the future.
- The **Senate** and its members generally have **greater prestige than the House** because Senators **serve longer terms (six years), are less numerous, and (in all but seven states) represent larger constituencies than Representatives**, serving to represent entire states rather than largely-arbitrary districts. Additionally, the Senate has traditionally been **considered a less partisan chamber**; senators have greater potential to broker compromises and **act more unilaterally** than Representatives, and hence **hold greater national stature**.

### Bills and laws

To be transformed into a law, a bill is **first sent to the appropriate committee**. Each house of Congress has committees which specialize in particular areas of legislation / temporary or permanent committees / specific or joint committees. Legislation **can be initiated by the President himself or a member of his administration, or by a lobby**.

The bill is **discussed during hearings**, after which it can be **sent to the floor of the House of Representatives where a simple majority of vote is required for it to pass**.

**Similar process in the Senate** and finally sent to **the President who can either sign it and send it back to Congress within ten days or veto it**.

**Congress must pass the bill by a two-thirds majority in both houses in order to override the presidential veto.**

### Impeachment

Article II, Section 4 of the Constitution allows the House of Representatives to impeach high federal officials, including the President, for "treason, bribery, or other high crimes and misdemeanors." Article I, Section 3, Clause 6 gives the Senate the power to remove impeached officials from office, given a two-thirds vote to convict. Two Presidents have thus far been impeached by the House, **Andrew Johnson in 1868 and Bill Clinton in 1998**. Neither was **subsequently convicted by the Senate**; however, Johnson was acquitted by just one vote.

### Executive branch

According to **Article 2** of the Constitution, executive power is vested in a **President who is elected to a four-year term together with a vice-President**.

Under the **22<sup>nd</sup> Amendment**, **no one can be elected President more than twice**.

**Article II**, Section 1, Clause 5 of the Constitution sets the principal qualifications to be eligible for election as President. A presidential candidate must:

- **be a natural born citizen of the United States;**
- **be at least 35 years old;**
- **have been a permanent resident in the United States for at least 14 years.**

### Role and powers of the President

The President is the **head of State**, the **Chief Executive** and the **leader of his political party**.

- **Powers of Appointment**

Before taking office, the President-elect must appoint **over 6,000 new federal positions**. The appointments **range from top officials at U.S. government agencies, to the White House Staff, and members of the United States diplomatic corps** (many with the advice and consent of the United States Senate).

The President also has the **power to nominate federal judges, including members of the United States Courts of Appeals and the United States Supreme Court**. However, these nominations do **require Senate confirmation**, and this can provide a major stumbling block for Presidents who wish to shape their federal judiciary in a particular ideological stance.

The President must appoint judges for the United States District Courts, but he will often defer to Senatorial courtesy in making these choices.

As head of the executive branch, the **President must appoint the top officials for all of the federal agencies**. In the case of ten agencies, the President is free to appoint a new agency head at his pleasure. For example, it is not unusual for the Director of the Central Intelligence Agency or the NASA Administrator to be changed by the President. Other agencies that deal with federal regulation such as the Federal Reserve Board or the Securities and Exchange Commission have set terms that will often outlast the time a President sits in office. This is to ensure that these agencies can act independently of political control. The President **also appoints members to the boards of directors for Government-owned corporations** such as Amtrak.

The President must also appoint **his staff of 1,800 aides, advisers, and assistants**. These individuals are political appointments and are **not subject to review by the Senate**. All members of the staff serve, "at the pleasure of the President."

- He **outlines his country's policy** in his **State of the Union Address** delivered each year in January before Congress.

He has **veto power over congressional bills** and **drafts executive orders** which define the political framework for laws to be enforced. → closely associated with the legislative process

- He is the **commander-in-chief of the army and the navy** and **can send troops abroad**.

- **Foreign affairs**

Under the Constitution, the president is the federal official that is **primarily responsible for the relations of the United States with foreign nations**. The president **appoints ambassadors, ministers, and consuls — subject to confirmation by the Senate — and receives foreign ambassadors and other public officials**. With the secretary of state, the president manages all official contacts with foreign governments. On occasion, the president may personally participate in summit conferences where chiefs of state meet for direct consultation.

Through the Department of State and the Department of Defense, the president is **responsible for the protection of Americans abroad and of foreign nationals in the United States**. The president **decides whether to recognize new nations and new governments, and negotiate treaties with other nations, which become binding on the United States when approved by two-thirds of the Senate**. The president may also negotiate "executive agreements" with foreign powers that are not subject to Senate confirmation.

- **Executive clemency**

Article II of the United States Constitution gives the President the power of clemency. The two **most commonly used clemency powers** are those of **pardon and commutation**. A pardon is an official forgiveness for an acknowledged crime. **Once a pardon is issued, all punishment for the crime is waived**. The person accepting the pardon must, however, acknowledge that the crime did take place. The President maintains the Office of the Pardon Attorney in the United States Department of Justice to review all requests for pardons. Most pardons are issued as oversight of the judicial branch, especially in cases where Federal Sentencing Guidelines are considered too severe for the crime committed. Other pardons have been much more controversial because there have been

political motivation for their use. The most famous presidential pardon is that of former President Richard Nixon by President Gerald Ford.

This power **can check the legislative and judicial branches by altering punishment for crimes**. Presidents **can issue blanket amnesty which forgives entire groups of people for a crime**. President Jimmy Carter offered amnesty to Vietnam War draftees who fled to Canada. Presidents **can also issue temporary suspension of prosecution or punishment in the form of respites**. This power is most commonly used to **delay federal sentences of execution**.

A President **can also commute a sentence which, in effect, changes the punishment to time served**. While the guilty party may be released from custody or not have to serve out a prison term, all other punishments still apply.

- **Emergency Powers**

Over the years, Presidents have claimed to have emergency powers **in times of crisis**. These Inherent Powers have been used both at home and overseas. The most common use of emergency powers is to **declare a state of emergency which allows the Federal Emergency Management Agency (FEMA) to bypass normal administrative and jurisdictional rules**. Declarations of emergency **can also provide special federal aid** such as during the Flood of 1993 along the Mississippi River or in New Orleans after Hurricane Katrina.

- **Executive Privilege**

Executive privilege gives the President the **ability to withhold information from the public, Congress, and the courts in matters of national security**.

- **Constraints on Presidential power**

Because of the vast array of presidential roles and responsibilities, coupled with a conspicuous presence on the national and international scene, political analysts have tended to place great emphasis on the president's powers. Some have even spoken of "the **imperial presidency**," referring to the **expanded role of the office that Franklin D. Roosevelt maintained during his term**. A president's power and influence may be limited, but politically the president is certainly the most important power in Washington and, furthermore, is one of the most famous and influential of all Americans.

Though **constrained by various other laws passed by Congress, the President's executive branch conducts most foreign policy, and his power to order and direct troops as commander-in-chief is quite significant**.

### Role of the vice-president

The president's **running-mate** during the presidential campaign, he/she **must fulfil the same conditions** to be eligible.

- **attends Cabinet meetings**
- is the **presiding officer of the Senate**
- **becomes the head of state in case of the removal of the President from office, his death or his resignation**

The current vice-president is **Mike Pence**.

### Judicial branch: The US Supreme Court

- The Supreme Court of the United States is the **highest judicial body in the United States** (only one created by the Constitution), and **leads the federal judiciary / tops all federal and state jurisdiction**.
- It **consists of the Chief Justice of the United States** (currently John G. Roberts, 63, appointed by G.W. Bush) and **eight Associate Justices, who are nominated by the President (Article II of the Constitution) and confirmed with the "advice and consent" (majority vote) of the Senate** (Clarence Thomas (70), Ruth Bader Ginsburg (85) nominated by President Clinton in 1993, Stephen G Breyer (80) nominated by Bill Clinton in 1994, Samuel Anthony Alito Jr (68) nominated in 2006 by G.W. Bush, Sonia Sotomayor (64) nominated by President Obama in 2009, Elena Kagan (58) nominated by President Obama in 2010, Neil Gorsuch (51) nominated by president Trump in 2017).

The nomination of Brett Kavanaugh to be an Associate Justice of the Supreme Court of the United States, succeeding retired Justice Anthony Kennedy, is currently pending before the Senate Judiciary Committee.

Most Presidents nominate individuals who broadly share their ideological views. In many cases, however, a Justice's decisions may be contrary to what the nominating President anticipated. Because the Constitution does not set forth any qualifications for service as a Justice, the President may nominate anyone to serve. Once appointed, Justices effectively have **life tenure**, serving "during good behaviour," which **terminates only upon death, resignation, retirement, or conviction on impeachment**.

- The Court meets in Washington, D.C. in the United States Supreme Court building. The Supreme Court is **primarily an appellate court**, but has **original jurisdiction over a small range of cases**.
- The Constitution specifies that the Supreme Court **may exercise original jurisdiction in cases affecting ambassadors and other diplomats, and in cases in which a state is a party. In all other cases, however, the Supreme Court has only appellate jurisdiction**. The Supreme Court considers cases based on its original jurisdiction very rarely; almost all cases are brought to the Supreme Court on appeal. In practice, the only original jurisdiction cases heard by the Court are disputes between two or more states.
- The **outcome of a case is determined by a majority vote** of the nine justices. **If no majority is reached, the decision of the lower court is left standing**. Its **decisions are final and legally binding on all lower courts**, whether state or federal.
- The Supreme Court also **determines whether the laws of Congress (or state or local laws) or actions of the President violate the Constitution**, and **can nullify them** in accordance with the system of checks and balances.
  - **judicial review**, one of the most significant features of the American institutional system **acts as the final interpreter of the Constitution**

#### Landmark decisions in the Supreme Court's history

**Plessy v. Ferguson (1896):** upheld the "separate but equal" doctrine, whereby states might impose measures separating white and colored citizens in public places, provided equal facilities are made available to both. → **Segregation became officialized**.

**Brown v. Board of Education of Topeka (1954):** outlawed the segregation of Negro students in public schools. Separate schools are "inherently unequal" and breach the equal protection clause of the 14<sup>th</sup> Amendment. → **overturned Plessy v. Ferguson**

**Roe v. Wade (1973):** state laws making abortion a criminal offense were deemed unconstitutional, thus recognizing the right of women to terminate their pregnancy.

**Regents of the University of California v. Bakke (1978):** while the Court **outlawed racial quotas**, it **upheld the principle of Affirmative Action**, according to which preferential treatment may be accorded to minorities to remedy disadvantages caused by past discrimination.