

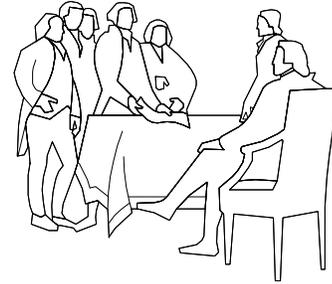
U.S. CONSTITUTION FAQ

(Frequently Asked Questions)

Q. What is meant by the term "constitution"?

A. A constitution sets up the fundamental principles of a government, and creates a framework of institutions that carry out those principles. The U.S. Constitution, agreed to by a vote of the delegates to the Constitutional Convention (1787) and ratified by special conventions in the thirteen original states, gives our national government “sovereign power,” and is amendable by that power only. The U.S. government holds sovereign power in our nation, since the U.S. Constitution grants “national supremacy” to it over state and local governments. All laws, executive actions, and judicial decisions must conform to the U.S. Constitution, since it is the creator of the powers exercised by government in our nation.

Principles of government that were embedded into the seven original articles of the U.S. Constitution by its authors at the Constitutional Convention in 1787 include the following:



- **checks and balances** – this is provided under the **separation of powers** of government that is written into the Constitution, whereby each branch of government limits the power of the other branches
- **federalism** – a political system in which authority is divided between the national government and its political subdivisions (in our case, states and local governments – counties, cities, etc.)
- **limited government** – a system in which government actions are limited to help ensure individual liberties and equality under the law
- **majority rule** – the principle by which people agree to abide by decisions on which more than half of them agree (over the last two centuries, this has evolved to include *protections for the minority* – to ensure that people who hold a minority viewpoint on important issues are protected from people in the majority who disagree with them)
- **national supremacy** – the concept written into the Constitution that requires all state and local laws to conform to the Constitution, treaties made with foreign nations, and federal statutes
- **popular sovereignty** – a system in which the power to govern belongs to the people but is transferred by them to the government under their control
- **representative democracy** – a form of government in which people elect a group of citizens to represent them in making laws and establishing public policies (our nation is called a **republic** because it operates as a representative democracy)
- **rule by law** – a system in which the law applies to government officials as much as to ordinary citizens, and public officials must make decisions based on the law, not on personal opinions or wishes
- **separation of powers** – the division of power among separate branches of government
- **civilian control of government** was included in the Constitution, to keep military leaders from control of the government. The Framers wanted this as a safeguard to ensure that elected government officials would control the military.

The institutions that were created by the authors of the Constitution to make certain that the principles of our government were maintained include the following:

- **Congress** – our bicameral (2-house) legislative body, elected by the citizens of the U.S., responsible for passing laws that affect all persons in our nation
- **Presidency** – indirectly elected by a vote of the people of the U.S., represents them all, and along with the federal executive branch departments, agencies and government officials (what’s known as the *bureaucracy*), the presidency is responsible for enforcing the laws passed by Congress, treaties made with foreign nations, and upholding and defending the Constitution itself
- **Federal Courts** – with the U.S. Supreme Court at the top of the federal judicial system, the federal courts – including courts of appeals and trial courts, and the other institutions and officials within the federal judicial branch -- are charged with interpreting and then applying the Constitution, the statutes passed by Congress, and the rules and regulations that are created and implemented by the departments and agencies of the federal government. A major responsibility of the federal courts system is to arrest and bring to trial those persons accused of breaking federal laws, rules and regulations. The federal judiciary also mediates disputes (by resolving lawsuits) among individuals, states, and other institutions within the federal government.

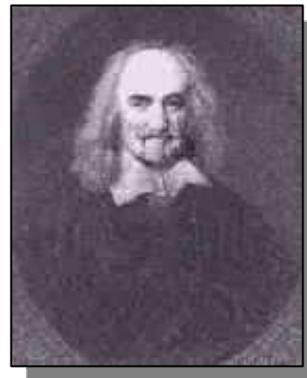
Q. Why might our Constitution be classed as "rigid" instead of “flexible”?

A. The term "rigid" might be used instead of "flexible" because the provisions of the U.S. Constitution are in a written document that cannot be legally changed with the same ease and in the same manner as ordinary laws can be. The U.S. Constitution has been amended (changed) over the years through a lengthy process involving the Congress and the states. (The other method of changing the wording of the Constitution requires a second constitutional convention to be called by the states, just like the gathering in 1787 that created the document – but this is very unlikely to happen, in any case.) Since the ratification of the U.S. Constitution in 1788, members of Congress have proposed thousands of amendments to this document. As of the year 2001, however, only 27 amendments had actually been approved. The creators of the Constitution deliberately meant it to be difficult to amend in future years, and they largely succeeded.

Q. What is the source of the philosophy found in the Constitution?

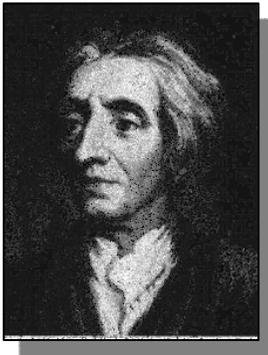
A. There are certain political philosophers whose work contributed to the overall principles of government that show up in the U.S. Constitution. Here are some of the most influential:

- **Thomas Hobbes** (1588-1679) – an English philosopher and teacher, his *Leviathan* is considered by many to be his most important written work. In *Leviathan*, Hobbes developed his political philosophy. He argued that man is by nature a selfishly individualistic animal at constant war with all other men. In a state of nature, Hobbes believed, men are equal in their selfish ways and simply live out their lives – which he calls "nasty, brutish, and short." Hobbes saw the fear of violent death as being the principal motive which causes men to create a state by *contracting to surrender their natural rights and to submit to the absolute authority of a sovereign (king,*



queen, emperor, empress, etc.). Hobbes's legacy to us, for this course, is the concept known as the **social contract** – an agreement among the members of an organized society (between the governed and the government) defining and limiting the rights and duties of each. Hobbes believed that the **social contract** bound the people absolutely to the power of a king or a queen – that, in return for protection by the government, the people gave up all their *natural rights* to that government (Jefferson would refer later to *natural rights* – those rights we are born with as human beings – as “life, liberty, and the pursuit of happiness”). Although he believed the power of the sovereign derived originally from the people – and therefore the **social contract** was a challenge to the doctrine of the *divine right of kings* – Hobbes believed that the sovereign's power is absolute and not subject to the law (this makes the behavior of kings and queens above, or beyond, the law itself). For Hobbes, temporal (worldly) power was also always superior to religious power (a view that got him in trouble during his life, both from the Catholic Church and the Church of England). The general concepts of the **social contract** and the necessity for civil power to be supreme over religious authority made their way into the writing of the U.S. Constitution.

- **John Locke** (1632-1704) – an English philosopher, he played an important role in the spread of the ideas popularized during the Enlightenment. This included the belief in **natural law** – that all persons are born with certain human rights (Jefferson called them “unalienable rights” in the Declaration of Independence) – as well as a belief in



universal order and the confidence in human reason (a rational and scientific approach to religious, social, political, and economic issues that promoted a secular, non-religious view of the world and a general sense of progress and perfectibility). **Locke** was a firm believer in the middle class and its right to freedom of conscience and right to property, he had great faith in human progress through reasoning out the answers to problems, and had confidence in the goodness of humanity (unlike Hobbes, whose view of humanity was far less positive). **Locke's** main contribution

to political philosophy was his concept of the kind of relationship that should exist between rulers and those being ruled – between the government and the people. Therefore, he came up with his own view of the **social contract** – the agreement among the members of an organized society or between the governed and the government that defines and limits the rights and duties of each. In his written work *Two Treatises of Government* he set out with two purposes: first, he refuted the doctrine of the divine and absolute right of the Monarch (the **divine right** of kings and queens to rule as they wished), and then he established his own theory of the **social contract** which would resolve two often opposing ideals: the liberty of the common citizen versus the need for social and political order.

Here, then, is a summary of **Locke's view of the social contract**: In the state of nature all men equally have the right to punish those who disobey the rules, regulations, and laws written to keep social order: civil society is created when, for the better administration of the law, men agree to entrust law-making and law enforcement to certain officers. So, according to Locke, government is instituted by a **social contract**; its powers are limited, and they involve mutual obligations; moreover, the powers of government can be modified or withdrawn by the authority which conferred them (in

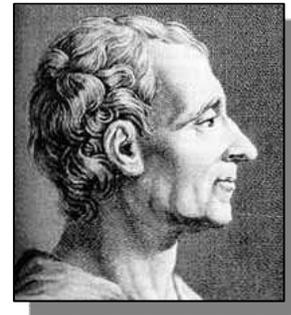
this case, *the people*). **Locke's theory of the social contract includes these basic tenets:**

- ultimate political power rests in the hands of the common people (*popular sovereignty*)
- the people allow the power of governing their society to be handled by those in the government
- government has the obligation to use its power to create better conditions for the people
- the people have the responsibility to support their government (through paying taxes, helping to repel invaders, and through participating in making the decisions that affect society)
- if governmental power is abused by the rulers, the power to govern can be taken away by the people

This was a major evolutionary change away from Hobbes's concept of the *social contract*. **Locke** proposed the idea of *popular sovereignty*, and because he said government deserved to have its power taken away if it was abused it served as a justification for the American Revolution and other popular revolutions that followed (in France and Mexico, for example). Locke's writing alarmed the royal powers all over Europe during his time, since they saw it as a direct threat to their "divine right" to use governmental power as they wished. In fact, some of Locke's writing was virtually plagiarized in 1776 when Jefferson was handed the task of writing the final draft of the Declaration of Independence from the British King – the words "life, liberty and the pursuit of happiness" were taken almost directly from the writings of **John Locke**.

- Charles de Secondat, Baron de la Brède et de **Montesquieu** (1689-1755) – winemaker and philosopher, his major written work was titled *The Spirit of Laws* is a comparative study of three types of government – republic, monarchy, and despotism. This work clearly shows **John Locke's** influence on **Montesquieu**.

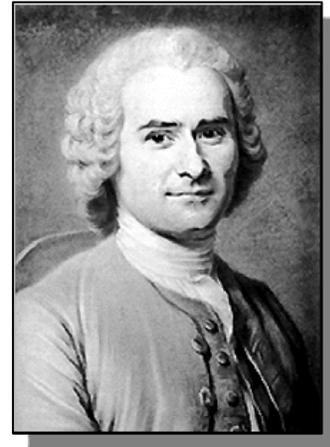
Montesquieu wrote that governments are likely to be tyrannical if they are responsible for administering large territories, for they must develop the organizational capacity characteristic of despotic (cruel, tyrannical) states. It was partly this fear that led the American founding fathers to provide for a *federal system* to divide governmental functions and powers between the government in Washington and the state governments.



Arguably, then, the single most important principle of government that was borrowed from **Montesquieu** by the authors of the U.S. Constitution was *separation of powers* of government. This *separation of the powers* of government, **Montesquieu** believed, would make it less likely to become tyrannical, since the power of governing the people would be shared among competing groups, and not centralized into one location. This *separation of powers* could be accomplished in the following two ways, both of which ended up being written into the U.S. Constitution in 1787:

- *separation of power by the role of government or branch of government*
 - making the laws (Congress, the legislative branch)
 - enforcing the laws (the presidency, or executive branch)

- interpreting the meaning of the laws (the federal courts system, or judicial branch)
 - *separation of power by the location or level of power* – in the United States, that means dividing power between the national government and state governments
- **Jean-Jacques Rousseau** (1712 - 1778) – political philosopher, he was born in Geneva, Switzerland but moved to Paris as an adult, and his writing had a major impact on the authors of the U.S. Constitution. For our purposes, in this course, Rousseau's most important written work is titled "The Social Contract," and in this he describes the relationship of man with society. He claimed that the state of nature is brutish, a condition without law or morality, and that men are good – that is, behave in a civilized manner – only as a result of the limits and controls placed on them by society's presence. In the state of nature, mankind is prone to be in frequent competition with other humans. Because human beings can be more successful facing threats by joining with other people, there is a really strong motivation to do so. **Rousseau** believed that people join together with other humans to form the collective human presence known as "society." "The Social Contract" is the "compact" agreed to among human beings that sets the conditions for membership in society. **Rousseau** questioned the assumption that the will of the majority is always correct. He argued that the goal of government should be to secure freedom, equality, and justice for all within the state, regardless of the will of the majority. Arguably, the principle that was extremely attractive to the more radical, anti-British colonists in the 1770s was also one of the primary principles of Rousseau's political philosophy, that politics and morality should not be separated. He believed, therefore, that when a state fails to act in a moral fashion, it ceases to function in the proper manner and ceases to exert genuine authority over the individual. Since the state was created so that freedom could be preserved, Rousseau believed that any state that fails to preserve freedom has broken that all-important "social contract" and deserves to be overthrown by the people. This was the underlying principle behind the Declaration of Independence against Great Britain in 1776, and is one of the major principles that made its way into the U.S. Constitution, most particularly into the first ten amendments, called the Bill of Rights.



Q. What is the Magna Carta, and why was it important to the framers of our nation's government during the time they spent in the Constitutional Convention?

A. This document is often referred to as the "Great Charter." The most famous document of British constitutional history, it was agreed to by King John at Runnymede under pressure from the powerful land-owning feudal barons and the bishops of the Church in June, 1215. King John had earned general hostility during his reign. His expensive wars abroad were unsuccessful, and to finance them he had charged excessively for royal justice, sold church offices, levied heavy taxes, and abused the commonplace feudal customs of the day in his relationship with members of the English nobility and church leaders. Finally in 1215 the barons rose in rebellion. Faced by superior force, the king entered into negotiations with the barons at Runnymede. On June 19, 1215 John set his royal seal to the draft of demands presented by the barons. The Magna Carta established the following new provisions that furthered the principle of *popular sovereignty* (power

that originates from the people, but in this particular case, it meant the nobility, not common people):

- guarantees from royal interference in church affairs
- guarantees of the customs of the towns, with special privileges being conferred upon the city of London
- protections of the rights of subjects and communities that the king was bound to observe or, if he failed to do so, would be compelled to observe
- (historically, the most important) vaguely worded statements against oppression of all subjects, which later generations interpreted as guarantees of trial by jury and of *habeas corpus*

Q. What important documents should be considered in connecting the Magna Carta, signed by King John in 1215 and the Constitution of the United States, ratified by the states in 1788?

A. The Magna Carta – Great Charter of 1215 – was confirmed several times by later English monarchs, and there were various statutes, or laws, which also helped to develop the germs of popular government (government by the people, themselves). Some of the most important documents, and their main provisions, include the following.

- **The Petition of Right** (1628) was a statement of *civil liberties* (fundamental individual rights, such as freedom of speech and religion, protected by law against unjustifiable governmental or other interference) sent by the English Parliament to Charles I. Refusal by Parliament to finance the king's unpopular foreign policy had caused his government to collect forced loans and to quarter troops in subjects' houses as an economy measure. Arbitrary arrest and imprisonment for opposing these policies had produced in Parliament a violent hostility to Charles. The **Petition of Right** was based upon earlier statutes and charters and *asserted four principles*:
 - no taxes may be levied (imposed on citizens) without consent of Parliament
 - no subject may be imprisoned without cause shown (this was a re-affirmation of the right of *habeas corpus*)
 - citizens may not be forced to give soldiers housing
 - martial law may not be used in time of peace.In return for his acceptance (June, 1628), Charles was granted additional funds from the treasury by the Parliament. Although the petition was of importance as a safeguard of civil liberties, its spirit was soon violated by Charles, who continued to collect taxes and tariffs without Parliament's authorization and to prosecute citizens in an arbitrary (impulsive and/or unreasonable) manner. Eventually, the unpopular King Charles was overthrown and beheaded.
- **The Habeas Corpus Act** (1679) was an act passed by the British Parliament to guarantee the legal rights of citizens when they are imprisoned. Under this principle of British law, a writ of *habeas corpus* (Latin, for “you should have the body”) is a written order that requires a government official to bring a person who has been imprisoned for a hearing before a judge or a panel of justices. The writ's sole function is to release an individual from unlawful imprisonment; through this use, it has come to be regarded as the great writ of liberty. The writ tests only whether a prisoner has been accorded due process (the administration of justice according to established rules and principles), not whether she or he is guilty. In essence, since everyone is guaranteed “due process of law,” a writ of habeas corpus

makes it possible for a prisoner to petition the courts for a hearing to determine if he or she received “justice” under the procedures of the legal system.

- **The English Bill of Rights** (1689) helped to more firmly establish the principles that were set out in the Petition of Right, especially the principle and practice of government by the people – popular sovereignty. It gave political supremacy to Parliament, the legislative (law-making) body that represented the members of the nobility (through the House of Lords) and common citizens (through the House of Commons).
- **Colonial charters** in British North America became the foundation of the Americans' claim to the "rights of Englishmen." Colonies had some form of charter that granted both land and limited self-government. Just how much control the colonists had over their own lives depended on what was set out in the legal terms of the charter of their own colony. However, there were some common characteristics shared by colonists from New England in the north to Georgia in the south. All colonies had some form of legislature that responded to colonists' need for political and economic order. Each colony had some form of legal system, including courts that handed out punishments to miscreants and scofflaws, and a police force of some kind to enforce the laws made by legislatures. And there was in each case a colonial governor, someone (appointed or elected) whose job was to manage the overall political and economic affairs of the colony. The typical colonist in British North America was involved in the daily affairs of his or her community and, from the founding of Jamestown, Virginia in 1607 until the 1770s colonists came to believe in popular sovereignty and the establishment and maintenance of democratic institutions.
- Plans for colonial union that were proposed from time to time, the most important of them being the **Albany Plan of Union** of 1754, of which Benjamin Franklin was the author. The **Albany Plan of Union** called for a colonial confederation to levy taxes, regulate Indian affairs, and establish an army and a navy. The delegates to the meeting did vote in favor of it. However, the colonial assemblies (their lawmakers) rejected it, largely because they feared any kind of centralized government that would have power over all of the colonies, and each of the colonial governments was jealous of its own independent power. Officials in London, on the other hand, opposed it as well, but for a far different reason – they feared it gave colonists way too much independent political power. At any rate, this was one of the early attempts at unifying the British North American colonies under one government.
- The **Declaration of Independence** of 1776 established the principles which the Constitution later made practical. This document is actually written in three parts. The first section is an explanation of the reasons why the American colonists were declaring their political independence, addressed to the rest of the nations of the world. Also included is a list of the principles of American democracy (based on the principle that all humans have “natural rights”) that the colonial leaders felt needed to be displayed to the world – not surprisingly, if one reads closely, it is easy to find the ideas of **Locke and Rousseau** embedded into the Declaration. The second section of the Declaration of Independence is a rather lengthy list of grievances against the King and the English Parliament that the colonists wanted to

display, in order to further explain why the colonists were morally justified in moving towards political independence. Furthermore, the Declaration includes a small section that states how patient the colonists had been in spite of the unresponsive nature of the tyrannical British government under which they were suffering. Finally, the last paragraph declares “these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain is, and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do.”

- **State constitutions**, which owed their origin to the American Revolution. These were written, originally, during the War for Independence by the political leadership of the British North American colonists, and established republican governments (representative democracies). Principles of government included in state constitutions included *a separation of powers* between the branches of government with *checks and balances* built into their competitive relationship, **majority rule**, *limited government*, *popular sovereignty*, *rule by law*, and more.
- During the American Revolution, the united efforts to establish independence gave birth to the **Articles of Confederation**, which though inadequate, were a real step toward the "more perfect Union" that is prominently presented later in the Preamble to the U.S. Constitution. The **Articles of Confederation** is comprised of a preamble and thirteen articles, and as the first national constitution of the United States of America it was in force from 1781 to 1788. The articles created a loose confederation of independent states that gave limited powers to a central government. The national government consisted of a single house of Congress, where each state had one vote. Congress had the power to set up a postal department, to estimate the costs of the government and request donations from the states, to raise armed forces, and to control the development of the western territories. With the consent of nine of the thirteen states, Congress could also coin, borrow, or appropriate money as well as declare war and enter into treaties and alliances with foreign nations. There was no independent executive (no real presidency) and no possible veto of legislation that was passed by the Congress. Judicial proceedings in each state were to be honored by all other states. The federal government had no judicial branch (and so, no federal courts for dealing with criminal or civil cases), and the only judicial authority Congress had was the power to arbitrate disputes between states. Congress was denied the power to levy taxes; the new federal government was financed by donations from the states based on the value of each state's lands. Any amendment to the articles required the unanimous approval of all 13 states.

Q. In what respect had the government under the Articles of Confederation failed?

A. It had three great weaknesses. It had no means of revenue independent of that received through its requests to the States, which the States could and did disregard; and it had no control over foreign or interstate commerce. The national government under the **Articles of Confederation** was unable to compel the states to honor the national obligations, such as paying off our debts to other nations. It could make treaties but had no means to force the states to obey them. It had responsibility but no power as a national government.

General George Washington is said to have complained that the government under the confederation was "little more than a shadow without substance." But its greatest weakness was that the states had all the power and the national government was, well, a lot like an old hound dog – all bark and no bite. As a result, a convention was called for by some of the nation's leading political figures, so that the Articles of Confederation could be amended, in order to solve the social and economic problems created by the lack of a truly sovereign national government.

Q. What did the delegates to the Constitutional Convention in 1787 accomplish?

A. In a period of about four months, they decided to create a new document instead of simply revising the Articles of Confederation, because no matter how they tried to change their confederate form of government, the national government was pretty much powerless. They engaged in spirited debates about the power of government, how much power any President should possess, how power should be granted to the people and from the people to their rulers (the nature of the **social contract**, itself), how power should be divided between the states and the national government, what kinds of checks and balances should be built into the government to ensure that one branch would not become too powerful, and much more.

The first three articles of the Constitution establish the internal operation and powers of the separate branches of government. The remaining four define the relationships among the states, explain the process of amendment, declare the supremacy of national law, and explain the procedures for ratifying the Constitution.

The new Constitution lacked a bill of rights. Because many members of the political leadership did not trust the powerful government that would be created under the new Constitution, this proved to be an obstacle to the Constitution's ratification. Ratification proceeded only on the condition that a bill of rights would be added by amendment. By 1791, ten amendments embodying these rights and liberties were adopted by the states, and this document is now referred to as the U.S. Bill of Rights.

Finally, the Constitution is a simple structural framework for a government. The Founding Fathers created a government that balanced freedom and order but paid virtually no attention to social equality. Contemporary (modern) American government has evolved over two centuries into a different model – a *pluralist* model – of democracy in which *numerous distinct ethnic, religious, or cultural groups are present and tolerated within a society*. This may or may not have been what the delegates to the Constitutional Convention had in mind when they fashioned their new government.

Q. The United States government is frequently described as one of limited powers. Is this true?

A. Yes. Remember that the principle of limited government was one of the most important to the authors of the Constitution, and they purposely restricted the powers of the national and state governments. The United States government possesses only such powers as are specifically granted to it by the Constitution. (Amendments 9 and 10 are examples of the limitations placed on the federal government by the U.S. Constitution.)

Q. How does it happen that the government constantly exercises powers not mentioned by the Constitution?

A. Those powers simply flow from general provisions. To take a simple example, the

Constitution gives to the United States the right to coin money. It would certainly follow, therefore, that the government had the right to make the design for the coinage. This is what the Supreme Court calls "reasonable construction" of the Constitution.

Q. What constitutes the supreme law of the land?

A. Article VI, clause. 2 of the Constitution says: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Q. When referring to various States in the Union, is the term "sovereign States" correct?

A. No. A sovereign is that person or State which recognizes no superior. The States of the Union have a superior – the Constitution of the United States, which is "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Q. Does the Constitution give us our rights and liberties?

A. No, it does not, it only guarantees them. The people had all their rights and liberties before they made the Constitution (remember Locke's and Jefferson's principle, that all people were endowed by their Creator with "life, liberty, and the pursuit of happiness"?). The Constitution was formed, among other purposes, to make the people's liberties *secure* - secure not only as against foreign attack but against oppression by their own government. The Constitution and amendments added later set specific limits upon the national government and upon the states, and reserved to the people all powers that they did not grant. The Ninth Amendment declares: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Q. What is the importance of the Preamble to the Constitution?

A. A preamble is defined as "A preliminary statement, especially the introduction to a formal document that serves to explain its purpose." The Preamble to the Constitution, then, was a single introductory paragraph written to explain the purpose of the rest of the document. The U.S. Supreme Court has interpreted the Preamble as bearing witness to the fact that the Constitution derived from the people and was not the act of sovereign and independent states. Additionally, it states the main purposes of American government under the Constitution, as they are underlined below:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Q. What are the three main sections of the Constitution, and what is the purpose of each one?

- The three main sections are the Preamble, the Articles, and the Amendments.
- The purpose of the Preamble is explained above.
- The Articles actually "frame" the national government (in much the same way as a house is framed when it is built, before the siding and roof are attached), and establish the relationship between the people, their states, and the national

government (there's that social contract again!) by further explanation of the rights and powers of each.

- The Amendments are changes to the basic document, itself, such as the first ten Amendments – the Bill of Rights – and later amendments that accomplished such things as changing the manner in which Presidents are elected, prohibiting slavery, guaranteeing civil rights protections under the law, guaranteeing women and young people (at least 18 years of age) the right to vote, and more. By the way, some of the Amendments are designed to change the provisions of our national *social contract*, by the fact that they change or modify the relationship between the people and the persons who they elect to be their rulers.

Q. If the Articles of the Constitution actually “frame” the structure of our national government, then what is the makeup of that structure?

A. The first three Articles do the most to create the government, itself. Articles Four through Seven deal with the details of the relationship between the people, the states, and the national government. What follows here is a summary of each of the Articles of the Constitution.



Article One creates the Congress, our *bicameral* (two-house) national legislature.

- **The House of Representatives**, or “lower house,” is designed to represent the will of the people. There are 435 voting members of the House, and each member is directly elected by the citizens living within a congressional district for a two-year term of office. Additional non-voting members of the House are elected from the District of Columbia and U.S. territories and possessions overseas. Article One sets the requirements for election to membership in the House of Representatives, sets the number of representatives from each state in the Union by the population of each state, and guarantees each state is represented by at least one member of the House. The average population of a congressional district in the year 2000 was approximately six hundred thousand residents. Most of the Representatives’ time is spent in committees, working on creating laws that will respond to the needs of their constituents – the residents of their district back in their home state. Because members of the House of Representatives are elected every two years, they tend to be influenced greatly by the mass of citizens’ passions and emotions about issues of the day. The authors of the Constitution were very concerned about what might be termed “democracy by the mob” – and so the House of Representatives was originally the only group in the federal government that was directly elected by the citizens of the nation.
- **The Senate**, or “upper house,” was originally given the job of representing the state governments, but this changed with passage of the 17th Amendment in 1913, when the method of electing U.S. Senators was changed to *popular election*. (Before the 17th Amendment, all members of the Senate were chosen by the members of the separate state legislatures in each state capitol.) Article One sets the number of Senators at two per state, and sets the requirements for membership in the Senate. In order to ensure that there would be a great deal of continuity in the Senate, Article One requires that only one-third of the Senate goes up for election every two years. Additionally, terms for the Senators from each state are staggered, so that residents will not be voting for candidates for both Senate seats. Each of a state’s two U.S. Senators represents all of

the residents of his or her state. Since there are fifty states, the membership of the Senate totals one hundred men and women at this time. Because the members are elected for a six-year term of office, the Senate tends to be more slow and deliberative in its law making procedures, and often is less influenced by the passions of the times or the emotional sentiments of the moment among the mass of citizens in our society than the members of the House of Representatives.

Article One lists, or *enumerates*, the various powers of the Congress, such as its power to

- make laws (public policies) that have an impact on the entire nation
- declare war on another nation
- establish rules of immigration and naturalization
- regulate commerce with foreign nations and among the various states
- borrow money on the credit of the U.S.
- vote to spend money on a wide variety of projects and programs
- advise and consent to presidential appointments of judges, ambassadors, and important members of his staff
- raise an army and navy
- impeach federal officials in the executive and judicial branches of the national government
- and Congress has the power “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...” – which is called the “necessary and proper clause” or the “elastic clause” of the Constitution. This amounts to a kind of legal loophole that allows for the so-called “implied powers” -- powers of the national government that are not specifically stated (*enumerated*, or *expressed*) in the Constitution but that derive instead from this elastic clause – such as the printing of paper money or the creation of an air force, neither of which are mentioned in the original document of the Constitution, but are accepted anyway as “necessary and proper” things for the national government to decide to do.

Article Two creates the presidency and the executive branch of our national government.

The executive branch of the national government includes the President, Vice President, the presidential advisors inside the White House, the heads of the Cabinet-level Departments, and the agencies of the bureaucracy. These officials are all responsible for carrying out the laws passed by Congress and the various interpretations by the federal courts of the Constitution, treaties with other nations, and federal laws. Article Two creates the process by which a President and Vice President are elected by the citizens, indirectly through the Electoral College (this was changed by the addition of the 12th Amendment, ratified in 1804). This Article sets out the requirements a person must meet to be President, his or her term of office, and lists, or *enumerates*, the powers of the presidency, including:

- acting as commander in chief of the armed forces of the nation and the state militias
- granting reprieves and pardons
- making treaties with other nations (with consent of the Senate)

- appointing such federal officials as heads of departments and agencies of the national government, federal judges, members of courts of appeals and the U.S. Supreme Court, and ambassadors to foreign nations (with consent of the Senate)
- calling Congress into special sessions to consider a law, treaty or other matter (including a declaration of war)
- officially recognize the existence of governments in foreign nations and receive their ambassadors
- commissioning all officers of the military forces of the United States
- taking care that all laws are “faithfully executed”

Article Two also holds the Chief Executive Officer of the national government accountable for his or her actions through this statement: “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 Three creates the judicial branch of our national government.

The judicial branch (often referred to as the *federal judiciary*) is responsible for interpreting the Constitution, laws passed by Congress, our national obligations under treaties with foreign nations, and administrative rules and regulations that come from and are enforced by federal departments and agencies. In addition, this branch of our national government is responsible for *adjudicating* cases brought before the courts— that is, to hear criminal and civil cases and then to settle the dispute or conflict. In practice, that means the federal judicial system must often apply the law through making certain that persons accused of breaking federal laws are brought to justice – usually through arrest, detention in a federal facility, and a trial. This also means that the judicial system must hold trials to deal with disputes among individuals, groups, states, and the national government, itself. There are three levels of courts within the federal judiciary, with different kinds of responsibilities:

- **District courts** – actually hear federal cases in a trial before a judge and/or a jury
- **Circuit courts** – courts of appeals that listen to attorneys’ arguments and read legal briefs in order to decide if a trial in a district court followed the requirements of the Constitution and was a “fair trial” under the law
- **U.S. Supreme Court** – the “court of last resort,” whereby nine justices decide to hear arguments and read legal briefs for the most important cases involving the Constitution and/or federal laws, rules and regulations (usually, no more than 200 cases each year are “heard” by the Supreme Court and ruled upon by the justices)

Article Three also describes which cases the Supreme Court will hear under “original jurisdiction,” and which kinds of cases will be heard under their “appellate jurisdiction.” Additionally, treason against the United States is defined in this Article as levying war against the United States or giving aid and comfort to the enemies of our nation. The Article requires that no person can be convicted of treason unless there is testimony from at least two witnesses, or through a confession by the accused.

Having created the basic framework of the three main institutions of our national government (the legislature, the presidency, and the courts system) in the first three Articles, the authors of the Constitution dealt with other important issues in four more Articles. Each of these includes several main points, or provisions.

4

Article Four deals with the relationship between the states and details how *full faith and credit* must be granted among the states in order to protect the *privileges and immunities* of citizens.

Each state is obligated to respect the public acts, records, and judicial proceedings of every other state, including accepting other states' driver's licenses, marriage licenses, and other documents of a legal nature, as well as the decisions and/or rulings of state courts in criminal and civil matters (child custody rulings, divorces, etc.). Additionally, under this Article new states may be entered into the Union and each of those is required to have a *republican* form of government (that is, a *representative democracy*).

5

Article Five guarantees that the Constitution can be amended, and describes the basic procedures that must be used in passing amendments.

Amendments can become part of the Constitution through the calling of a national constitutional convention, but that hasn't happened since the first constitutional convention created the original document. Since that time, amendments have been proposed and/or ratified through the second method, by passage of both houses of Congress and ratification (formal acceptance) of special ratifying conventions in at least three-fourths of the states. Over the years, over six thousand amendments have been proposed by members of Congress, but only 17 have made it through the whole process, including ratification in the states, since the passage of the Bill of Rights. (The most recent amendment, the 27th, was actually written by James Madison as one of the amendments originally proposed to be included in what became the Bill of Rights. Unlike almost all other proposed amendments, it had no time limit placed on its final ratification by the states – usually, seven years – and it was finally ratified by three-fourths of the states in 1992. It requires that salaries of members of the legislative branch cannot be increased until and after an election has taken place for members of the House of Representatives.)

6

Article Six guarantees the legal status of the Constitution as the “supreme law of the land.”

The Constitution, laws passed by the Congress, and treaties with foreign nations are established as the supreme law of the land. This means that all other laws, including those passed by states, counties, cities and even your local school board are subordinate to those of the national government. Additionally, all officers of the United States government must take an oath to support and defend the Constitution against all enemies, whether at home or abroad. Finally, no one who aspires to be a U.S. government official can be required to pass any kind of religious requirement or test.

7

Article Seven states that ratification by nine of the thirteen original states will be sufficient to establish the Constitution as the official governing document over the United States of America.

It would only take three-fourths of the states to ratify the new Constitution to make it the “supreme law of the land.” While that sounds simple enough, the political leaders who supported the ratification of the new Constitution knew that, if the nation was to remain a nation of thirteen states under one national government, all thirteen of the states would need to ratify it, unanimously. These leaders, called “Federalists” because they supported this new federal system of government, would have a difficult time trying to convince all of the states’ political leaders (many of whom were very jealous of their own power, under the existing Articles of Confederation) to agree to go along with this new form of government. This was especially true among those leaders who had recent memories of a bloody and costly War of Independence that overthrew a powerfully oppressive government, men and women who were suspicious of the potential power of the new national government under a federal system. This group of leaders who argued against ratification of the new Constitution were referred to as “Anti-Federalists.” By the time that the Constitution was finally ratified and a federal election was held for President and members of Congress, these two groups had evolved into our nation’s first political parties.

Q. Why was the new Constitution so difficult for some Americans to accept, so difficult to get ratified by the states?

A. The **Federalists**, many of whom represented business and commercial interests from the Middle Atlantic and New England states, would benefit the most from a new national government that could settle, once and for all, the trade disputes that were wrecking the economy of that area; they also favored national tariffs on imported products that would protect the growing industries in the northern states. The **Anti-Federalists** tended to be residents of the southern and western areas of the U.S. at that time, small farmers and plantation owners, mostly. They had benefited from the loose confederation of states under government during the Articles of Confederation, since there was no powerful national government to place tariffs on imported products they needed to purchase, nor was there a national government strong enough to interfere with their exports of agricultural products (especially tobacco and cotton). Additionally, a confederacy allowed the southern states to freely maintain their economy through the use of slaves, something that the southerners understood was repugnant to the sensibilities of the northerners (who did not need slavery to keep their factories running).

During the debates that continued throughout society in the period from 1787 to 1788, a series of articles that argued in favor of ratification of the new Constitution were written and published under the pen name “Publius” by three **Federalist** authors – James Madison, Alexander Hamilton, and John Jay. As odd as it might seem in our modern times, newspapers of that era were often used as sounding boards for different opinions on the big issues of the day, and their editors and owners accepted lengthy essays for publication, sometimes placing them on the front page of the newspaper. That was the case with this series of 85 articles, which came to be known as “**The Federalist**” or “**The Federalist Papers**.” The purpose of the authors was to drum up support for the ratification of the Constitution, especially among the residents and political leadership of New York state, but whether or not their efforts did so remains open to argument by historians and political scientists. However, the Federalist Papers have been utilized in modern times to more or less “look into the minds of the authors of the Constitution.” They are still considered a classic work of political theory. The authors expounded at length upon the fundamental problems of republican government, and argued that federalism offered a means of both preserving state sovereignty and safeguarding the individual’s freedom from tyrannical

rule. At any rate, after a period of contentious debate, the Constitution was ratified and the United States had a framework for a new government.

One of the larger problems that the **Anti-Federalists** had with the Constitution was its lack of a bill of rights, protecting the people from the powers of government. As part of a compromise to try to get the support of some **Anti-Federalist** leaders (most notably, Virginian George Mason), the **Federalists** promised to write up and pass a bill of rights as the first order of business for the newly-elected Congress. James Madison and others were presented with several dozen proposed amendments. These were combined and trimmed down into a short list of ten, which became the **Bill of Rights** as we know it today.

Q. Do the first ten amendments – the Bill of Rights – constrain (restrict the powers of) the states in any way?

A. No. They restrict the powers of the national government. They do not bind the states; but a variety of restrictions have been applied to the states by the Fourteenth Amendment. This amendment includes this statement, which the U.S. Supreme Court has ruled requires civil rights and civil liberties to be guaranteed to all citizens by government at the national and state levels:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

That means at all levels – national, state, and even local, including government bodies such as counties, cities, and school districts, etc. – are required to abide by the Constitution.

Q. How does the Bill of Rights protect people in our country?

A. Very briefly, here are the major provisions of the Bill of Rights.

AMENDMENT	MAIN PROVISIONS
1 st	The First Amendment guarantees the freedom of worship, of speech, of the press, of assembly, and of petition to the government for redress of grievances.
2 nd	The right to bear arms openly – adopted with reference to state militias – is guaranteed by the Second Amendment.
3 rd	Freedom from quartering soldiers in a house without the owner's consent is guaranteed by the Third Amendment.
4 th	The Fourth Amendment protects people against unreasonable search and seizure.
5 th	The Fifth Amendment provides that no person shall be held for a capital or otherwise infamous crime without indictment, be twice put in jeopardy of life or limb for the same offense, be compelled to testify against himself, or be deprived of life, liberty, or property without <i>due process</i> of law.
6 th	The Sixth Amendment guarantees the right of speedy and public trial by an impartial jury in all criminal proceedings.
7 th	The Seventh Amendment guarantees the right of trial by jury in almost all common-law (civil) suits.
8 th	Excessive bail and fines, and cruel and unusual punishment are prohibited.
9 th	The Ninth Amendment states that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. In plain English, this means that just because a right is listed in the Constitution does not mean that it can be used to deny other rights to the people of the United States, or "Just because it doesn't spell it out in the Constitution doesn't mean it's not a civil right." Got that?
10 th	All duties and rights not given to the U.S. government by the Constitution are reserved to the people and the States.

