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### U.S. Government and Politics in Principle and Practice: Democracy, Rights, Freedoms and Empire

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# Chapter 1: The Constitution

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## Introduction

The United States Constitution, also called the Federal Constitution, has been called the “words that we live by.” However, many Americans have never read the U.S. Constitution and others may only have a vague notion of what is included in this document. Many people will assert their rights, saying that they “know their rights.” But sometimes they are unable to accurately identify where within the Constitution the particular right comes from. And some of us—often those most vulnerable to state violence—do not know our rights at all. Too often constitutional liberties are not protected in practice. The Constitution, designed to protect an increasingly more inclusive definition of citizen from their government, has served as the central nervous system of the American Republic since its adoption 1789.

## The History of the U.S. Constitution

### The Articles of Confederation

Before there was a Constitution of the United States of America, there was the Articles of Confederation. The “[Articles of Confederation](#)” (Articles) shaped how the thirteen original colonies were governed. The Articles of Confederation were written in 1777 due to wartime urgency, but gave very little power to the federal government (the National Government) because of a fear of central authority. Remember, the United States was a group of colonies attempting to break away from England and a King that controlled the territory from an ocean away. Too much authority in the hands of a central government made those fighting for independence anxious that the government to emerge out of the American Revolution would be too similar to the one from which they were fighting to be free. Thus, the Articles granted substantial independence to the state governments and limited the power of the federal government.

This decentralization of power to the states proved a huge problem for the government when an uprising in Western Massachusetts, led by Revolutionary War veteran Daniel Shay from 1786-1787, challenged the collection of taxes that benefited wealthy merchants and led to greater desperation for farmers. The inability of the U.S. Congress to finance federal troops to put down [Shays’ Rebellion](#) convinced many in power that Articles of Confederation were not strong enough to secure a united nation.

Moreover, under the Articles of Confederation, the Congress could not enforce laws, could not tax, and could not regulate commerce. Under the Articles there was no “Executive Branch” (lead by the President), and no “Judiciary Branch” (the Federal Courts system). The limitations of Articles of Confederation led to the Constitutional Convention in Philadelphia in 1787 and the creation of new federal laws under the United States Constitution. Yet the tensions between states’ rights and federal power that shaped the Articles of Confederation never went away and continue to fester to this day.

### Creation of a Constitution

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The U.S. Constitution came into existence in 1787 during the “Constitutional Convention” in Philadelphia which lasted from May 25, 1787 to September 17, 1787. James Madison wrote the document that formed the model for the U.S. Constitution.<sup>1</sup> The United States Constitution came into existence 11 years after the “Declaration of Independence” written by Thomas Jefferson in 1776 and four years after America’s victory in the “War of Independence” in 1783.<sup>2</sup>

A series of [Constitutional Compromises](#) including the “Great Compromise” saved the Constitution, which would eventually be ratified by each of the 13 U.S. states. Authored by Roger Sherman, the delegate from Connecticut, the Great Compromise called for proportional representation in the House and one representative (later changed to two) in the Senate (See Chapter 2). There would always be an equal number of senators from every state to serve in the Senate (Article I, Section 3) By contrast, representation in the House would be based on the number of “free” persons residing in each state plus 3/5ths of the enslaved population (Article I, Section 2).

From the foundation of the United States, who is recognized as “a person” was contested. This is not an issue that has gone away. In the 2020 Census the Trump administration attempted to exclude undocumented immigrants from the count of “persons” living in each state so fewer federal resources and representation would be allocated to communities with large immigrant populations.

The Constitution reflected the flawed society that ratified it and so the struggle for recognition of personhood, rights and citizenship continues to this day. The Constitution did not establish the requirements for the right to vote, and left elections to the states. By and large only property-owning White males were able to vote under the original draft of the Constitution. Free Blacks and enslaved Africans were not considered citizens. Black Americans would not become citizens until 1868 and would not be guaranteed the right to vote until 1870. Though enfranchisement was enshrined in principle in the Constitution with the 15<sup>th</sup> Amendment for all adult Black men, in practice most Black Americans could no longer vote by 1900 as the Jim Crow era undid many of the rights secured immediately after the Civil War. Women were not included in the electoral process until 1920 and Native Americans would not be given the right to vote until 1924. Today, U.S. citizens living in other countries can vote in Presidential Elections with absentee ballots, while U.S. Citizens living in U.S. territories like Puerto Rico or Guam cannot.

As we now move into the literal elements of the Constitution it is important for you to understand how the founders imagined justice and freedom, and for whom.

## The Structure of the U.S. Constitution

### The Preamble

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<sup>1</sup> The actual Constitution was “penned” by Jacob Shallus, a Pennsylvania General Assembly clerk for \$30.00 (equivalent to \$830.00 today). After it was edited by the other delegates, the final draft was submitted to the convention on September 17, 1787 (September 17<sup>th</sup> is now known as “Constitution Day”).

<sup>2</sup> At the time the Constitution was signed, the United States’ population totaled 4 million. Philadelphia was the most populated city in the nation, with a population of over 40,000 individuals. Today the U.S. population is over 325 million.

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Article I – The Congress  
Articles II – The Presidency  
Article III – The Supreme Court  
Article IV – Full Faith and Credit, Privileges and Immunities of Citizens, Admission of New States, A Republican form of Government.  
Article V – Amending the Constitution  
Article VI – The Constitution is the Supreme Law of the Land  
Article VII – Ratification and Signatures

## The Preamble to the Constitution

**The Preamble** is the “introduction” to the Constitution. The Preamble is aspirational; it explains why the Constitution was written, and it’s hopes for the future. This introduction begins with the three famous words, “WE THE PEOPLE.” At the time of the writing of the Constitution, in 1787, the word “people” generally included only White males who owned property. The majority of women at that time in the United States were not considered “people.” They would not be represented in government, own property, or even inherit property. Native Americans were not considered “people” under the definition of the Constitution, and Enslaved Africans or even free Africans would not be considered “people” under the Preamble’s definition of “PEOPLE.”

### Preamble to the Constitution

*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.*

## The Articles of the Constitution

**Article I** of the Constitution establishes Congress (Article I, Section 1), the structure of the American Congress, the requirements to be in Congress (Article I, Section 2 and Section 3), the powers of the Congress, that is, what the Congress can do (Article I, Section 8), what the Congress cannot do (Article I, Section 9), and also what the states cannot do (Article I, Section 10).

**Article II** of the Constitution outlines the Executive Branch of the government run by the President. The President of the United States is the Chief Executive who holds office for a term of four years.<sup>3</sup> Article II sets up the three eligibility criteria to become President. Article I, Section 2 details the powers of the President.

**Article III** of the United States Constitution established the “One Supreme Court” and allows Congress to create courts that are inferior to the United States Supreme Court

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<sup>3</sup> Since the ratification of the [Twelfth Amendment](#) in 1804 the President has been elected with a Vice President.

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(Article III, Section 1); types of cases (Article III, Section 2); a definition of treason against the United States (Article III, Section 3).

**Article IV** addresses the “Full Faith and Credit” clause (Article IV, Section 1); the “Privileges and Immunities” clause (Article IV, Section 2); the Admission of New States into the Union (Article IV, Section 3), and the requirement that the United States itself will guarantee to every state in the Union a Republican Form of Government...” (Article IV, Section 4).

**Article V** details the process of amending the Constitution.

**Article VI** states that the Constitution is the Supreme Law of the Land. This means that the Federal Government is more powerful than State Governments, if and when their respective laws conflict with one another. This is referred to as the “**Supremacy Clause**”.

**Article VII** elaborates the ratification of the constitution and indicates the signers of the Constitution.

Collectively these articles created the seed from which the modern U.S. government developed over the course of nearly 250 years.

## The Bill of Rights: The First Ten Amendments to the Constitution



### Background to the Bill of Rights

The Bill of Rights details the individual liberties enjoyed by U.S. citizens and were inserted at the instance of Anti-Federalists, who unlike the Federalists, were worried about granting too much power to the central government. After all, Anti-Federalists explained, they had just fought a war so they would not be ruled by a central power that did not understand local issues. Thus, the Bill of Rights, written by James Madison and ratified three years later, laid out the specific

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prohibitions on federal governmental power, protecting groups and individuals from government overreach. The ten original amendments (called the [Bill of Rights](#)) were added to the Constitution in 1791. Seventeen additional amendments have been added to the Constitution at different points in history, totaling 27 Amendments in the United States Constitution.<sup>4</sup>

Each Amendment highlights specific rights protections that citizens of the United States enjoy. These rights are articulated to protect individuals from the abuses of government and thereby prevent government overreach. We must remember that many of these amendments came in direct response to the British policies that these the U.S. revolutionaries were revolting against.

## The Bill of Rights

**Amendment I.** The First Amendment contains five separate freedoms or rights. They include the “[freedom of speech](#)”, “[freedom of the press](#)”, “[freedom of religion](#)”, “the right to peacefully assemble” to protest, and “the right to petition the government for a redress of grievances.”

**Amendment II.** The Second Amendment protects the need for a well-regulated militia and the right to bear arms.

**Amendment III.** The Third Amendment prevents the government from forcing citizens to “house” U.S. soldiers in their homes.

**Amendment IV.** The Fourth Amendment prevents the unreasonable search and seizure of people in their homes and on their property, unless there is a warrant obtained from a neutral judge. This Amendment deals with reasonableness. If the government’s action is “reasonable” there are no problems. However, if the government’s actions are deemed to be “unreasonable” that is, the governments overreached or violated their own laws, then they are prevented from using any evidence obtained in the illegal search. The “[Exclusionary Rule](#)”, which prevents illegally obtained evidence from being used in court proceedings, has developed in American law based on this amendment.

**Amendment V.** The Fifth Amendment contains five specific rights that Americans enjoy. They include:

- 1) The requirement that there must be a “Grand Jury” indictment if someone is being charged with a felony (a crime serious enough that it could involve imprisonment for over a year or many years),
- 2) Protection against “Double Jeopardy” (a person cannot be put on trial by the government again and again and again under the same set of facts until the government secures a guilty verdict)

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<sup>4</sup> Originally, in 1791, 12 Amendments were proposed for inclusion in the Constitution. After deliberation, only Amendments three to twelve were accepted to be included into the Constitution. These 10 Amendments would become the Bill of Rights.

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- 3) The right to remain silent so you are not made to be a witness against yourself by the government so that they can get an easy conviction. Many Americans know this as “pleading the fifth” or “taking the fifth” where they choose not to answer the questions posed to them by the police, the enforcement arm of the government. This clause is also part of the “Miranda Warning” that many TV and movie viewers in the U.S. will recognize.
- 4) “Due Process of Law” prevents the government from taking away someone’s life, or liberty (freedom), or property without receiving some kind of notice to that effect followed by some type of hearing or trial.
- 5) The government cannot take one’s private property for public use without “just compensation.”

**Amendment VI**. The Sixth Amendment contains six distinct rights, all related to criminal cases.

- 1) The right to a speedy and public trial.
- 2) The right to a trial by jury (in the location where the crime was committed)
- 3) The right to be informed of the nature and causes of the accusation (charges)
- 4) The right to confront witnesses
- 5) The right for one to obtain their own witnesses
- 6) The right to the “Assistance of Counsel” (the right to a lawyer which is the other part of the “Miranda Warning”) for one’s defense.

**Amendment VII**. The Seventh Amendment provides for a jury in a civil case (that is a non-criminal case).

**Amendment VIII**. The Eighth Amendment prevents excessive fines, excessive bail and cruel and unusual punishments.

**Amendment IX**. The Ninth Amendment says that the people have rights even if it is not laid out in the Constitution.

**Amendments X**. The Tenth Amendment says that the States have rights even if it is not laid out in the Constitution.

So, these were the Ten Amendments that got encapsulated into the Constitution. As the centuries have passed, a constant battle ensues between the government’s attempt to limit individual rights and movements of brave people standing up for liberty and justice. These rights are only as good as they are exercised by the people.

*Assignment: Imagine that people within the government are trying to get rid of either [Amendment I](#), [Amendment IV](#), [Amendment V](#), [Amendment VI](#) or [Amendment VIII](#). Write a paragraph defending the one of these Amendments and explain why it’s still important today. You must watch the hyperlinks for whichever Amendment you chose to defend.*

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## Additional Amendments to the U.S. Constitution

Following the addition of the Bill of Rights, additional Amendments have been added to the Constitution at various points in time. The Constitution elaborately details the procedure for including a new Amendment to the Constitution.

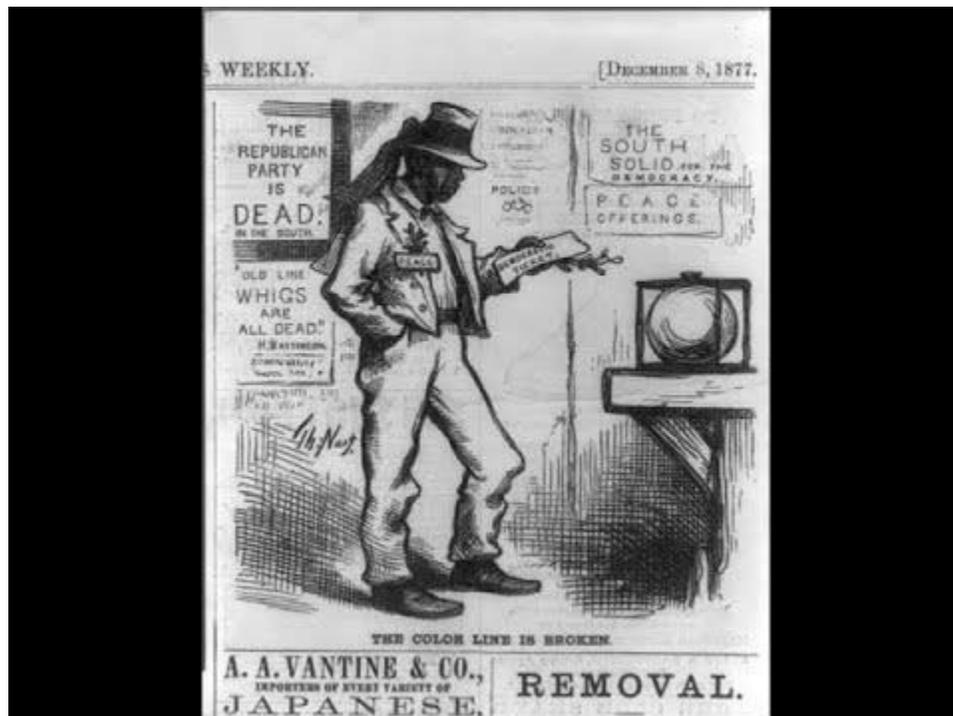
The process of adding new amendments is always an involved process, that can be very revealing about the politics of a particular time.

The other seventeen amendments that were added to the Constitution include:

**Amendment XI.** The [Eleventh Amendment](#) was added in 1795, to address the “sovereign immunity” of the states. This Amendment prevents a citizen of one state from suing another state in federal court without the consent of the defendant state. In this way states are shielded from lawsuits brought by citizens of another state or foreign countries. In [Chisholm v Georgia](#) (1793), the U.S. Supreme Court allowed a citizen from South Carolina to sue the State of Georgia. This Amendment was introduced to prevent this from happening again.

**Amendment XII.** The Twelfth Amendment, added in 1804, links the election of the President to the election of the Vice President.

## [The Reconstruction Amendments](#)



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After the Civil War (1861-1865), the **Reconstruction Amendments** were inserted into the Constitution to liberate and ensure the rights of Black men who had formerly been enslaved.

**Amendment XIII.** The Thirteenth Amendment, added in 1865, was designed to end slavery in the United States. It both did and did not end slavery. Slavery is allowed to happen in the United States as long as it is a punishment if the person has been convicted of a crime. The language in this amendment mentioned the word “slavery.” This is the very first time that the word was used in the Constitution. When the founders drafted the Constitution back in 1787, they made veiled references to the institution of slavery, but never actually using the word “Slavery.” The 13<sup>th</sup> Amendment was also the first of the “Reconstruction Amendments.”

Today the United States, which has about 5% of the world population, houses 25% of the world’s prisoners. A majority of U.S. prisoners are from minority communities with African Americans representing 40% of the U.S. prison population, but only 13% of the total U.S. population. We do not really like to say that the millions of persons in prisons in the United States have been reduced to slavery, but the language of the 13<sup>th</sup> Amendment has allowed prisoners in the U.S. to be stripped of their political, economic and social rights. Further, when these people are released from prison, in many states they are unable to vote. Over Five-Million voting age U.S. citizens were ineligible to vote in the 2020 election due to a felony conviction. (Maxouris)

**Amendment XIV.** The Fourteenth Amendment, added in 1868, addresses U.S. citizenship and who and how one can become a citizen. The rule that anyone born in the United States becomes a U.S. citizen, known as “Birth-Right Citizenship” is rooted in the 14<sup>th</sup> Amendment. While created to give citizenship to African Americans, birthright citizenship, which does not exist in much of the wealthy world, has had a tremendous impact on immigrant communities to the United States.<sup>5</sup>

**Amendment XV.** The Fifteenth Amendment was added in a Presidential election year, 1870 and gave Black males, over 21, the right to vote. This is first Amendments to deal with voting and the last of the “Reconstruction Amendments.”

*Assignment: After watching the video [Reconstruction Amendments](#) and reading the section titled “The Reconstruction Amendments,” write a paragraph about why the Reconstruction Amendments were so vital to including formerly enslaved people into the U.S. political system, and why they did not completely end racism in the United States.*

## Twentieth Century Amendments

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<sup>5</sup> The 14<sup>th</sup> Amendment also provided for “[Due Process of Law](#)” as applicable to the States and the concept of “[Equal Protection of Law](#).” These civil rights were rights that were applicable to the states under a concept called “[selective incorporation](#).” The 14<sup>th</sup> Amendment also talks about representation in the Congress and about debts incurred by the United States.

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**Amendment XVI.** The Sixteenth Amendment, added in 1913, allowed the Congress to tax.

**Amendment XVII.** The Seventeenth Amendment, also added in 1913, required Senators to be elected from their particular states by the people of those states, instead of being chosen by the state legislature. This amendment strengthened the power of voters in choosing their officials and weakened the power of political insiders. During the Progressive Era, the 17<sup>th</sup> Amendment was an attempt to lessen the corruption that many viewed as a powerful threat to U.S. democracy and the U.S. economy.

**Amendment XVIII.** The [Eighteenth Amendment](#), added in 1919 ended “the manufacture, sale, or transportation of intoxicating liquors” within the United States. The amendment was advanced by a combination of religious and women’s groups who believed that criminalizing the manufacturing, sale and transport of alcohol would diminish rates of domestic violence.

Alcohol, however, remained very much a part of the U.S. society. The 21<sup>st</sup> Amendment repealed this Amendment in 1933.<sup>6</sup> Yet during the 14 years that alcohol was illegal, the U.S. mafia rose in power and profits, selling illicit beer, wine and liquor without being taxed by the U.S. government.

**Amendment XIX.** The Nineteenth Amendment, added in 1920, granted women the right to vote in national elections. While women in some states were already able to vote, this was not a right protected by the federal government until the passage of the 19<sup>th</sup> amendment. The election of 1916 was crucial in laying the groundwork for the passage of this amendment. President Woodrow Wilson ran on a pro-peace platform; campaigning that he had kept the United States out of World War I. Ultimately the U.S. would enter the war shortly after the start of his second term. Many attributed Wilson’s victory to women who were pivotal in convincing men to vote for the pro-peace Democratic candidate. With Wilson’s support, the right of women—in practice white women—to vote was enshrined in the Constitution.

**Amendment XX.** The Twentieth Amendment, added in 1933, altered the time that a Presidential term would end and another would begin: 12:00 Noon on the “20th day of January.” This Amendment also specifies that a Congressperson and Senator’s term of office would begin, “at noon on the 3<sup>rd</sup> day of January...”

**Amendment XXI.** The Twenty-First Amendment, also added in 1933, ended the prohibition of alcohol that was enacted with the 18<sup>th</sup> Amendment.

**Amendment XXII.** The [Twenty-Second Amendment](#), added in 1951, establishes that a person can only be elected to the Presidency for a total of two terms (8 years). This was in response to President Franklin Roosevelt’s four term administration, lasting from 1933 until his death in 1945.

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<sup>6</sup> This is the only amendment that has been repealed by the passage of another amendment.

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**Amendment XXIII.** The Twenty-Third Amendment, added in 1961, established the right to vote in a Presidential election for residents of Washington, D.C. Since Washington, the capital of the United States, is a district and not a state, persons residing there, until the passage of this amendment, could not vote for President. Today U.S. citizens who reside in any of the U.S. territories are unable to vote in presidential elections. U.S. citizens living in other countries can vote for President, based on their last state of residence, even astronauts in space can vote in a Presidential election, but not persons residing in the territories including Puerto Rico, American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands.

**Amendment XXIV.** The [Twenty-Fourth Amendment](#), added in 1964, prevents U.S. citizens from having to pay a poll tax in order to vote in a presidential, or any other election. This amendment was designed to correct a gross injustice endured by Black people who were being disenfranchised in the U.S. South.



The issue has reappeared as a vote to reframe formerly incarcerated people in Florida was curbed by the state government of Florida. Florida's government is forcing these people to pay off their court fees before voting.

**Amendment XXV.** The Twenty-Fifth Amendment, added in 1967, allows for the Cabinet to declare a president physically or mentally unfit for the office.

**Amendment XXVI.** The Twenty-Sixth Amendment, added in 1971, granted U.S. citizens 18 and older the right to vote. Previously the voting age was 21. This amendment

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was added as a direct result of the protests that occurred because of the “Vietnam War” and the fact that many young men under 21 were fighting and dying in that conflict but could not vote in many states for state elections.

**Amendment XXVII.** The Twenty-Seventh Amendment was added in 1992 and deals with the salaries of those individuals serving in the Congress. Their salaries cannot be affected until there is a new Congress, which means every two years.

*Assignment: Look over the twentieth-century Amendments and in a paragraph identify the moments when the Amendment process was used to expand participation in the democratic process.*

## Summary

The foundational document to the U.S. Government, the U.S. Constitution was not born out of thin air. It could only emerge in the wake of a war to end British Rule, in a time of deep-seated economic unrest, to govern a set of newly formed states plagued by the racial injustices of genocide against Native Americans and the enslavement of Africans.

What emerged from these crises was the U.S. Constitution. Foundationally, the Constitution reflected the injustices of the society it was crafted to regulate. The institution of slavery, if not the word “slave” itself, was enshrined into the document through the 3/5<sup>th</sup> Compromise. Who was eligible for citizenship was not explicitly defined, and most states became representative of the will of exclusively white wealthy men.

Still, the Constitution offered remedies, on paper, to long-standing injustices. Freedoms garnered by U.S. Citizens, to protect them from the excesses of government, are enshrined in the Constitution. This document was crafted in response to the U.S. experience under British rule where rights could be curbed without recourse by British authorities. Amendments that were ratified in later centuries expanded the rights and protections initially only enjoyed by propertied white males; but race, gender, and socio-economic inequity remain evident even in moments of legal advancements. Again, historical context is instrumental to realizing the tensions between the aspirations of the Constitution and governance in practice; the long history of racial, class and gendered inequities deeply rooted in the nation’s founding documents, and the tensions between federal and state governments, collective and individual rights.

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## Assignments

1. *Imagine that people within the government are trying to get rid of either [Amendment I](#), [Amendment IV](#), [Amendment V](#), [Amendment VI](#) or [Amendment VIII](#). Write a paragraph defending the one of these Amendments and explain why it's still important today. You must watch the hyperlinks for whichever Amendment you chose to defend.*
2. *After watching the video [Reconstruction Amendments](#) and reading the section titled "The Reconstruction Amendments," write a paragraph about why the Reconstruction Amendments were so vital to including formerly enslaved people into the U.S. political system, and why they did not completely end racism in the United States.*
3. *Look over the twentieth-century Amendments and in a paragraph identify the moments when the Amendment process was used to expand participation in the democratic process.*

## Key Terms

- *Articles of Confederation*
- *Shays' Rebellion*
- *Constitutional Compromise*
- *The Preamble to the Constitution*
- *Supremacy Clause*
- *The Bill of Rights*
- *The Reconstruction Amendments*
- *Twentieth Century Amendments*
- *Amendment I*
- *Amendment II*
- *Amendment IV*
- *Amendment V*
- *Amendment VI*
- *Amendment VIII*
- *Amendment IV*
- *Amendment X*
- *Amendment XIII*
- *Amendment XIV*
- *Amendment XV*
- *Amendment XVIII*
- *Amendment XIX*
- *Amendment XX*
- *Amendment XXIV*
- *Amendment XXXVI*

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# Chapter 2: The Congress of the United States of America

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## Introduction

What are the powers of the United States Congress? Are there limits on the powers of Congress? What can the Congress actually do and not do?

The United States Congress is the legislative branch of the United States government. As the legislative branch, Congress makes the laws that affect all parts of the United States. This is mandated by Article I, Section I of the U.S. Constitution. It is also the first article of the constitution, indicating that the authors of the U.S. Constitution thought that Congress would be the most important branch of the U.S. Government.

## The Structure of the Congress

The U.S. Constitution divides Congress into two chambers: **The House of Representatives** (the House) and **the Senate**. The United States Congress is a bi-cameral legislature, meaning two chambers. The Senate is referred to as the “Upper Chamber” and the House is known as the “Lower Chamber.”

The two-part structure of Congress was the product of the “**Great Compromise**” at the [Constitutional Convention of 1787](#). Small states wanted equal representation for all states, while states with more substantial populations like New York wanted proportional representation, meaning that states with larger populations enjoy greater representation in Congress. The large and small “states” reached an agreement determining that the House of Representatives would be proportional, while each state would have the same number of Senators. In recent years this has allowed the Republicans to maintain control of the Senate, while consistently receiving millions of fewer votes because the senators from the Republican Party tend to come from states with smaller populations.



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Each Congressional chamber has its individual powers and responsibilities as outlined by the Federal Constitution.<sup>7</sup> A bill (proposed legislation) must pass both the House and the Senate and then be signed by the President to become a law.

The total voting membership within the Congress is 535 members (100 of this membership is made up of senators with two deriving from each of the 50 states). The remaining 435 members are representatives serving in the House elected from the states. There are also six non-voting members of the House of Representatives representing Washington DC, and each of the other U.S. territories or colonies, including: Puerto Rico, American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands.

## The House of Representatives

In Article I, Section 2 of the Constitution we learn the process for electing members to the House of Representatives (the Lower Chamber).

- You must be 25 years of age to serve in the House of Representatives and have been a citizen for at least seven years.
- One can only be elected to the House for a period of two years, which means that every two years representatives need to run for re-election. Every two years there is a new Congress based on this two-year term. The present Congress is the 116<sup>th</sup> Congress serving from 2019 to 2021. The 115<sup>th</sup> Congress lasted from 2017 to 2019 and the 114<sup>th</sup> Congress from 2015 to 2017.

Each state is given a number of congresspersons (representatives in the House) based on its respective population. The most populous states like California (with 53 representatives), Texas (with 34 representatives) and New York (with 27 representatives) have a large number of house members, while the states with the smallest populations, Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming all only have one congressperson.

The House has a Speaker and other offices that it can choose and has the “Sole Power of Impeachment” meaning that the House can charge the President, as well as other federal officials, with impeachable offenses. **Impeachment** is akin to someone being charged with a crime. After the impeachment hearing (trial) where the senate acts as a jury, if the person is found “guilty” the result of being impeached is that the “impeached individual is removed from his or her position. The Speaker of the House is elected from the majority party in the House. Since Democrats took control of the House of Representatives in January 2019, Nancy Pelosi, a Democrat, has served as the Speaker of the House and is a democrat from California.

<https://www.youtube.com/watch?v=A-4dIImaodQ>

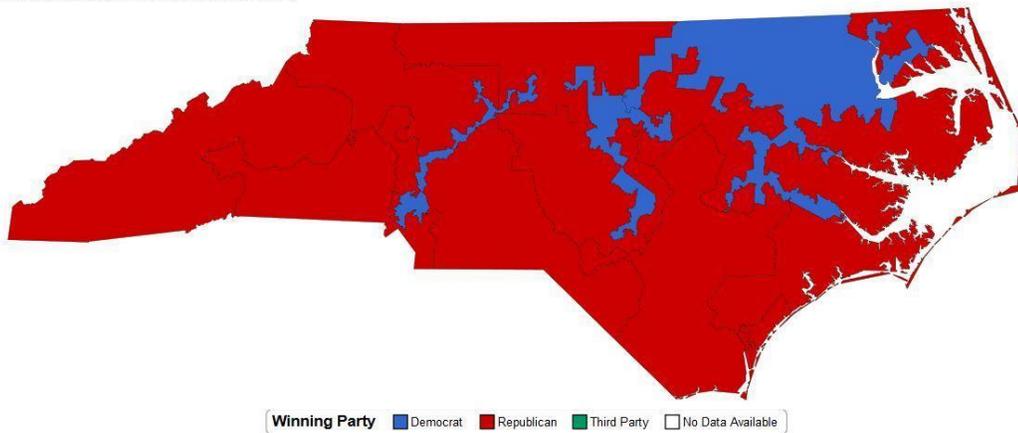
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<sup>7</sup> The House is referred to as the “Lower Chamber.” The Senate is considered the “Upper Chamber.”

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The districts that federal house members represent are generally drawn by State Legislatures. Since the 18<sup>th</sup> century legislators have often drawn congressional districts in a way that favors one political party over another in a process called **Gerrymandering**. In recent years this process of elected officials in essence choosing their voters has become more precise with improved technological tools. This process often leads to geographically awkward districts connected at times by a single road. In Maryland, Democrats have concentrated a Republican majority in a single district which allowed the other seven federal house seats to be easily won by Democrats. In a state where 1/3 of the population voted for a Republican Presidential candidate, just 1 in 8 house members will be a Republican. The 2014 North Carolina congressional map, drawn up by Republicans in the state legislature, made it so the state sent only three Democrats compared to ten Republicans to congress in a state that has nearly an equal number of voters in each party. You can see in the map below that the districts were drawn to group Democratic, and generally African American communities within the same few districts to limit their political influence over many congressional races. The remaining districts would thus be dominated by whiter and more Republican voters who could claim more seats.

House Elections, North Carolina, 2014



**Assignment:** Write a paragraph to an elected official attempting to convince them to support a Constitutional amendment that would end the practice of Gerrymandering. Use evidence from the chapter and the video [Gerrymandering: Last Week Tonight with John Oliver](#) to support your request.

## The Senate

The other part of the Congress is the **Senate**. The requirements to serve in the Senate (the Upper Chamber) are laid out in Article I, Section 3 of the U.S. Constitution.

- The age requirement to serve in the Senate is 30 years old, with service lasting for six years.
- To be a Senator one must have also been a citizen of the United States for at least nine years.
- Senators are elected every six years.

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The Constitution states that there will be two senators from each state. Today there are 100 Senators, each elected to six-year terms. The population of a state does not matter in terms of representation in the Senate as with the House. This gives significantly more political influence to smaller and more rural states like South Dakota and Wyoming over larger more diverse states like New York and California. The 19,500,000 New Yorkers have the same number of senators as the 580,000 Wyomingites. As is the case in the House of Representatives, U.S. citizens living in U.S. territories are not represented by voting members in the Senate.

*Assignment: In a paragraph answer the following prompt: Is the system of giving two senators to each state a good one, or should there be equal apportionment based on population? Why or why not?*

The Senate Majority Leader is chosen from the senators in the majority party. With the Senate currently controlled by Republicans, the Majority Leader is Mitch McConnell from Kentucky. The Senate Minority Leader is chosen from the minority party in the Senate, at present the Democrats. The Democratic Senators chose Charles (Chuck) Schumer of New York as their leader. The Senate also chooses its own “Officers” and will elect from its ranks a “President Pro Tempore.” The President pro tempore is the fourth person in the order of succession to the Presidency.

## The Powers of Congress

While the House can vote to impeach, the Senate has “the sole power to try all Impeachments.” This is akin to a trial where witnesses are called, evidence is introduced and the Chief Justice of the United States Supreme Court acts as the judge. After the trial, senators vote on whether the person should be impeached or not. Following an affirmative vote, the impeached person is removed from office. “Judgement in Case of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any Office of honor, Trust or Profit..” The House has voted three times to impeach a sitting president; but at the senate trial, the Senators voted not to “impeach” (remove from office) the then president. As a result, Presidents Andrew Johnson (1865-1869), Bill Clinton (1993-2001) and Donald Trump (2017-2021) all remained in office. President Richard Nixon (1969-1973) was being tried and would likely have been impeached by the U.S. Senate, but he resigned before that could happen.

The Senate has the power to confirm Presidential appointees. This gives this body significant influence over the selection of federal judges and other executive officials including the Secretary of State and the CIA Director. Republicans were able to block Democratic President Barack Obama’s nominee Merrick Garland to the Supreme Court because they controlled the Senate during the final year of Obama’s administration.

In principle, Congress is empowered to declare war. However, as you will see in later chapters on U.S. Foreign Policy, the power to declare war has largely been abdicated to the executive branch. Despite participating in conflicts across the globe, the United States Congress has not officially declared war since World War II after the attack on Pearl Harbor.

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*Assignment: Write a paragraph explaining your position to the following prompt: Is it better for Congress to have the power to declare war as is written in the U.S. constitution, or for the President to make the decision to deploy U.S. forces abroad as has been the practice of the United States since World War II?*

For anything to pass the U.S. Senate, historically Senators needed to muster a “Filibuster-proof” 60 of 100 votes in favor of a bill or an appointee. However, in the past decade both Republican and Democratic Senators have chipped away at that requirement. For the time being, 41 senators can still “Filibuster”, or stop most legislation, however that requirement has recently been replaced in favor of a simple majority for all Executive and Judicial appointees of the President.

## The Powers of the Congress

### What Congress Can Do

Article I, Section 8 of the U.S. Constitution lists 18 enumerated powers of the Congress. This section in essence describes the “powers of the Congress,” more simply, what Congress can do.

Congress can:

1. Collect Taxes
2. Borrow Money
3. Regulate Commerce (Business and Trade)
4. Establish Rules of Naturalization (Make Immigration Policy)
5. Coin Money (Make Money)
6. Punish Counterfeiters
7. Establish Post Offices
8. Promote the Arts and Sciences
9. Create Tribunals Inferior to the Supreme Court
10. Declare War
11. Raise and Fund Armies
12. Provide and Maintain a Navy
13. Make Rules for the Governing of a Navy
14. Suppress Insurrections (Rebellions)
15. Make Rules for The Land and Naval Forces
16. Discipline the Militia
17. Govern Washington D.C.
18. Make All Laws Which Shall be Necessary and Proper

### What the Congress Cannot Do

With a broad range of power in the hands of Congress, it is important to know that there are designated actions that the Congress cannot undertake. These are enumerated in Article I, Section 9 of the U.S. Constitution. For instance, until 1808, Congress could not stop the

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importation of Enslaved Africans. This is just one of several sections where the U.S. Constitution discusses slavery, without directly talking about the ethics, economics or violence of the slave trade. Written in 1787 and adopted in 1789 the Federal Constitution sanctioned the importation of enslaved persons until the beginning of the 19<sup>th</sup> Century, challenging the idea that the United States was founded to preserve Freedom and Liberty for all. As revolutionary a statement as this may be, the U.S. Constitution allowed “human trafficking”, slavery by another name.

Congress is also prevented from suspending the “Writ of Habeas Corpus.” Congress cannot pass “Bills of Attainder” or created “Ex Post facto Laws.” The Congress is also prohibited from granting “Title(s) of Nobility.” The primary function of **Habeas Corpus** is to release someone from unlawful imprisonment.<sup>8</sup> If someone is in custody of law enforcement unjustly, a lawyer may appear before a federal judge to secure an order (writ) that would challenge the unjust confinement. A **Bill of Attainder** is any legislation (law) that punishes a group without a hearing or trial. An **Ex Post Facto law** is a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was not a crime. Thus, if a person committed a particular act that was not a crime at the time, but that act later became criminalized by the creation of a “new” law, the person who committed that act previous to the new law cannot be punished.

*Assignment: In a paragraph write why you think the authors of the Constitution thought it was important to limit the power of a congress to suspend Habeas Corpus, pass a Bill of Attainder or create Ex Post Facto Laws.*

### Congressional Committees

Congressional work is organized through committees: “Standing Committees” which continue over time, “Special Committees” and “Select Committees” that emerge in response to emergent concerns. Standing Committees prevail over time, extending from one Congress to the next Congress with fixed jurisdictions and stable memberships. Currently there are 20 standing committees in the House and 16 in the Senate including: the Judiciary Committee, the Armed Services Committee and the Budget Committee.

Special Committees and Select Committees are appointed specifically to deal with an emergent problem.

Special and Select Committees often reflect the politics and priorities of a particular party. When Republicans controlled the House in 2014 they formed a “Select Committee” to investigate the actions of the Democratic Obama Administration during the uprising in Benghazi, Libya where the U.S. consulate was attacked and the U.S. ambassador was killed. A “Special Committee” was established by Democrats on Energy Independence and Global Warming in 2007, and

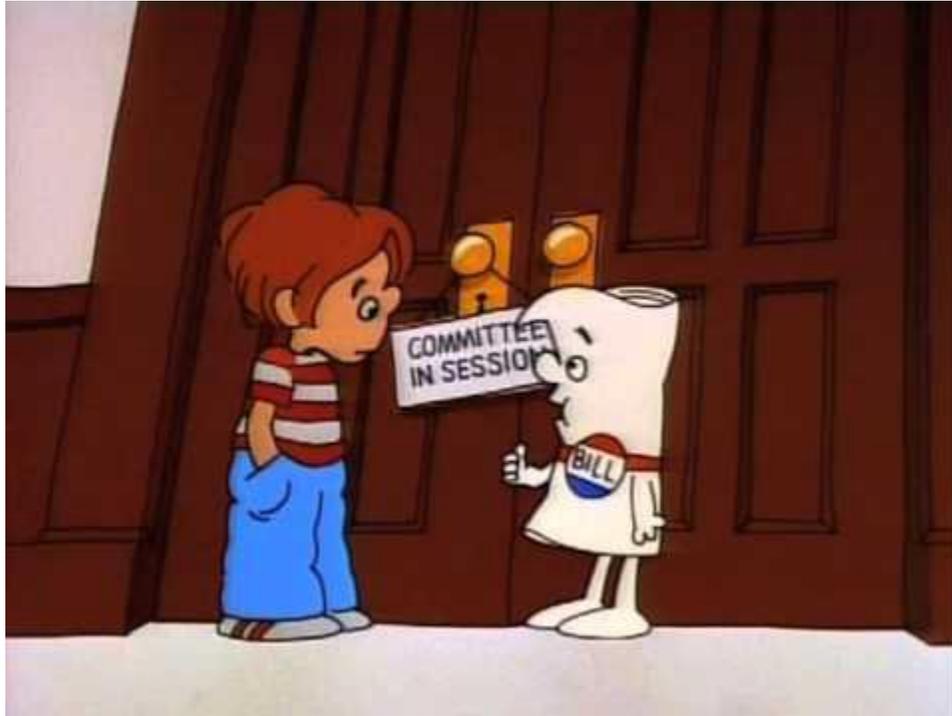
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<sup>8</sup> Habeas Corpus is Latin for “you have the body”. An independent [court] proceeding is instituted to determine whether a defendant is being unlawfully deprived of their liberty. Initially the writ only permitted a prisoner to challenge a state conviction on constitutional grounds that related to the jurisdiction of the state court. The writ (order) now extends to all constitutional challenges.

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thendisbanded when Republicans took control in 2011. In 2019, when Democrats regained control of the House, they established a new Select Committee on the Climate Crisis.

## How a Bill Becomes a Law



### The Senate

A “bill” is drafted (written) by a senator and introduced into the Senate. When the bill is introduced into the Senate it is referred to a committee. The senate committee convenes hearings on the bill and the bill is “marked up.” Eventually the bill is introduced to the senate floor where it is debated and voted upon. The bill is then referred to the “Conference Committee” to be reconciled with prior relevant legislations that may have been introduced in the House. If there is agreement between the House and the Senate on this bill, it is then presented to the President for the Presidential signature. (Karnell, 2020)

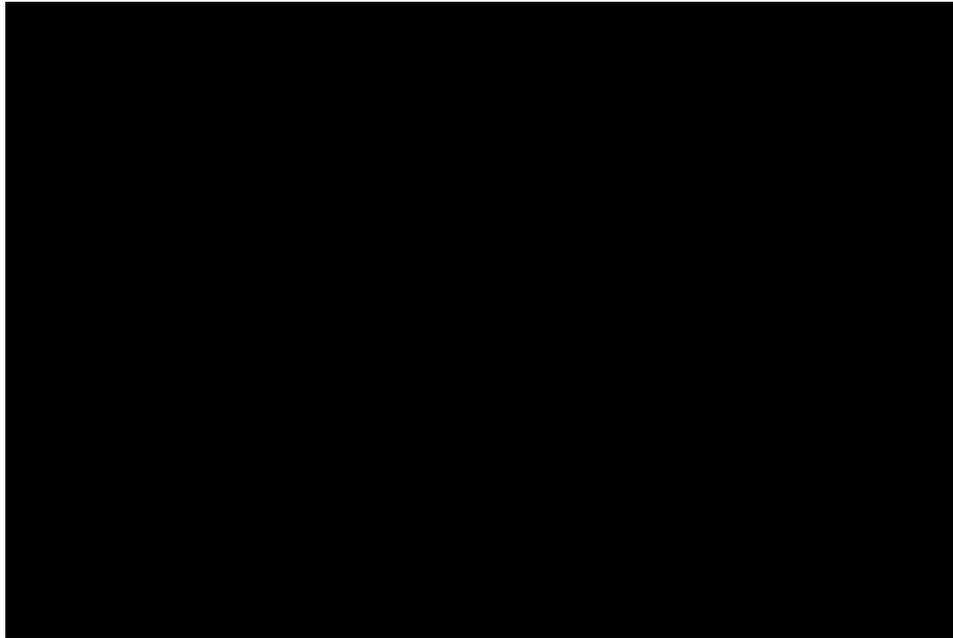
### The House

A bill is introduced into the House by a specific congressman or congresswoman (Congressperson) and referred to a committee or committees for hearing, or markups, and reported out. The “rules committee” determines specific rules regarding how the bill will be debated. The bill then moves to the House floor for debate. (Karnell, 2020)

### Shaping Legislation

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After being debated, the bill moves to the “Conference Committee” to be reconciled with a submitted Senate bill. After a bill is ironed out in conference, it is returned for a vote in both the Senate and the House. Passage will then lead to the bill being presented to the President for signature. As with any bill presented to the President, the President can veto the bill and send it back to Congress where a vote by two-thirds of each house of Congress will be required to override the President’s veto. Because it’s so difficult to override a Presidential Veto, congress will often negotiate with the President when crafting legislation. In December of 2020 the congress moved to override President Trump’s veto of the defense bill. The Congress also overrode President Obama’s veto.



In many instances various interest groups and lobbyists—people paid to influence legislation—may ask specific members of congress to introduce bills, or amendments to bills. By financially supporting legislators’ reelection campaigns, lobbyists and their financial backers can often influence legislation to be more favorable to their interests. Because members of congress have to run for reelection every two (House) or six (Senate) years, and because elections are extremely expensive, most members of congress have become dependent on wealthy campaign contributors and special interests. With weakened campaign finance laws since the Supreme Court ruling *Citizens United v. Federal Election Commission* (2010), the economic elite have gained increased sway over the laws passed, or not passed, by Congress and signed by the President. For instance, while a public survey showed that in October 2020 69% of voters supported free public health care, the heads of both major political parties do not. The powerful private health care industry has ensured that the leadership within the

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Democratic and Republican parties are against Medicare for All. ([“Poll: 69 Percent of Voters Support Medicare for All”](#))

Assignment: *After watching “[The Truth About Citizen United](#)” and reading “[Shaping Legislation](#),” write a paragraph explaining why unlimited money in politics can be problematic. Please focus on a specific issue where money can influence laws passed.*

## Summary

Article One of the U.S. Constitution established what was supposed to be the most important branch of government, the Legislative Branch. Congress is organized into the House and Senate. In both congressional chambers, legislators legislate. They are empowered to impeach the President and other government officials, control the budget and declare War, although not recently.

The bicameral system’s foundations and functions have resulted in unequal representation in Congress, where citizens in less populated states have more political power than citizens in more populated states. Voters in large and small states are significantly more politically influential than U.S. citizens and U.S. nationals residing in U.S. territories or Washington D.C. Further, the process of electing members of Congress is often structured in ways that prevent the majority from exerting its will. This has profound implications for the policies pursued by the U.S. government as some states and demographics are better represented than others. Finally, legislators have become increasingly beholden to special interests and wealthy campaign contributors to fund their reelection campaigns, significantly influencing the laws passed and not passed by congress.

## Assignments

1. Write a paragraph to an elected official attempting to convince them to support a Constitutional amendment that would end the practice of Gerrymandering. Use evidence from the chapter and the video [Gerrymandering: Last Week Tonight with John Oliver](#) to support your request.
2. In a paragraph answer the following prompt: Is the system of giving two senators to each state a good one, or should there be equal apportionment based on population? Why or why not?
3. Write a paragraph explaining your position on the following prompt: Is it better for Congress to have the power to declare war as is written in the U.S. constitution, or for the President to make the decision to deploy U.S. forces abroad as has been the practice of the United States since World War II?
4. In a paragraph write why you think the authors of the Constitution thought it was important to limit the power of a congress to suspend Habeas Corpus, pass a Bill of Attainder or create Ex Post Facto Laws.

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5. After watching “[The Truth About Citizen United](#)” and reading “Shaping Legislation,” write a paragraph explaining why unlimited money in politics can be problematic. Please focus on a specific issue where money can influence laws passed.

## Key Terms

*House of Representatives*

*Senate*

*Bi-Cameral Legislature*

*Constitutional Conversion of 1787*

*The Great Compromise*

*Impeachment*

*Gerrymandering*

*Habeas Corpus*

*Ex Post Facto Laws*

*Bill of Attainder*

*Congressional Committees*

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