

US LAW AND POLITICS



First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



Freedom of Speech / Freedom of the Press

The most basic component of freedom of expression is the right to freedom of speech. Freedom of speech may be exercised in a direct (words) or a symbolic (actions) way. The right to freedom of speech allows individuals to express themselves without government interference or regulation. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. Generally, a person cannot be held liable, either criminally or civilly for anything written or spoken about a person or topic, so long as it is truthful or based on an honest opinion and such statements.

The Supreme Court has long interpreted the Clause to protect against government regulation of certain core areas of “protected” speech (including some forms of expressive conduct) while giving the government greater leeway to regulate other types of speech, including a handful of limited categories that the Court has deemed largely “unprotected.”

Identifying the category of speech at issue (e.g., commercial speech, obscenity) is an important step in determining what First Amendment standards, including what level of judicial scrutiny, a court might apply to the law. Regulations of protected speech generally receive strict or intermediate scrutiny, which are high bars for the government to meet. In contrast, the government typically has more leeway to regulate unprotected speech. Thus, the category of speech is an important factor to consider in evaluating Congress’s ability to legislate on a given subject.

The Supreme Court has recognized that the First Amendment’s protections extend to individual and collective speech “in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Accordingly, speech is generally protected under the First Amendment unless it falls within one of the narrow categories of unprotected speech. Whether the Court applies strict scrutiny or a lower form of scrutiny, however, depends on the character and context of the speech.

The Supreme Court has long considered political and ideological speech to be at the core of the First Amendment, including speech concerning “politics, nationalism, religion, or other matters of opinion.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Political speech can take other forms beyond the written or spoken word, such as money, e.g., *Buckley v. Valeo*, 424

U.S. 1 (1976) (per curiam), or symbolic acts, e.g., *Texas v. Johnson*, 491 U.S. 397 (1989). A government regulation that implicates political or ideological speech generally receives strict scrutiny in the courts, whereby the government must show **that the law is narrowly tailored to achieve a compelling government interest**. Commercial Speech Commercial speech—generally, speech that merely proposes a commercial transaction or relates solely to the speaker’s and the audience’s economic interests—has historically **received less First Amendment protection than political speech**. Today, commercial speech restrictions typically receive at least an intermediate level of scrutiny if they are directed at non-misleading speech concerning a lawful activity. Under a test set out in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), **such laws are constitutional only if they directly advance a substantial government interest and are not broader than necessary to serve that interest**. However, the Roberts Court has appeared receptive to applying a heightened level of scrutiny to certain commercial regulations, such as those that single out commercial speakers for less favorable treatment based on the content of their speech. See, e.g., *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011). In contrast, courts have sometimes applied a less stringent standard than intermediate scrutiny to laws that require the disclosure of factual, uncontroversial information.

A less stringent test is applied for content-neutral legislation. Examples of unprotected speech are: obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography.

https://www.law.cornell.edu/wex/first_amendment

Victoria L. Killion, *The First Amendment: Categories of Speech*

THE USE OF MYTH IN HISTORY

**MANY MYTHS ARE DESIGNED TO EXPLAIN US AS WE WISH TO SEE
OURSELVES**



by Gil Klein

The crowd waited expectantly as Adrian Grantz, portraying Patrick Henry, rose to reenact the culmination of the debate of the Second Virginia Convention of March 1775. A couple hundred people from all over the country packed into Richmond's St. John's Church, the site of the original speech, as they do nearly every Sunday. The words tripped out of Grantz's mouth as the hushed audience waited for the famous concluding lines. "Gentlemen may cry, Peace, Peace—but there is no peace," Grantz said, his voice rising for the finale. "The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery?" Then, in a gesture that has been repeated by generations of schoolchildren, he raised his arms as though breaking the chains. "Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!"

Cheers and applause. People stood in ovation.

Henry's "Liberty or Death" became a slogan useful in situations where action is summoned to defeat perceived tyranny. But the historical fact is that though Henry did speak forcefully on that March day to spur the convention to action, we have no reliable record of what exactly he said.

The speech children have memorized for almost two centuries was committed to paper in 1817 by William Wirt, forty-two years after the event, in his biography of Henry. It was based on a recollection—not notes—of someone who had been there, Williamsburg's St. George Tucker.

Wirt, who became attorney general of the United States, was himself an orator, but his best-known speech he took from Tucker and put in Henry's mouth.

Indeed, around the time Wirt wrote about Henry, amateur historians were crafting tales of the American Revolution as well as of the colonial era that were designed less to capture the facts than to create a founding myth for the young republic.

In the view of professional historians, these myths should be punctured. But historians do so at their peril. The myths are more beloved than the cold facts, and they are hard to kill.

Many of them are designed to explain us as we wish to see ourselves. They establish the national character and set the standard for coming generations.

Writer Joseph Campbell said that all cultures are based on myths: "What these myths have given has been inspiration for aspiration." Columnist Michael Gerson wrote of myth: "When these strings are touched, we feel the vibrations deep down. And we know that myths are not the same as lies."

The Past and history are different things, wrote British historian J. H. Plumb. People have always used The Past to explain the origins and purpose of human life, to sanctify government institutions, to validate class structure, to provide moral example. Only in the past two or three hundred years, he said, has historical study developed "to see things as they really were."

Said historian John Thorn, "Historians have an obligation to embrace myth as the people's history."

Unlike countries whose founding myths developed during the course of centuries, the American mythos was created largely by one generation writing in the early 1800s, said Ray Raphael, author of *Founding Myths: Stories That Hide Our Patriotic Past*.

"About twenty years had to go by before people could forget how ugly the Revolutionary War was," Raphael said. "As pressure built toward the War of 1812, people saw a need to develop in the younger generation a pride in their revolutionary heritage. They knew this experiment in republican government needed people who believe in it and are willing to defend it."

In 1790, Noah Webster wrote that "every child in America, as soon as he opens his lips . . . should rehearse the history of his country; he should lisp the praise of Liberty and of those illustrious heroes and statesmen who have wrought a revolution in his favor."

The creation of these stories coincided with the birth of public education in America. The historical and moral lessons imparted by Parson Weems about George Washington and the cherry tree or Longfellow's "Midnight Ride of Paul Revere" or the Pilgrims landing at Plymouth Rock or John Smith's disputed rescue by Pocahontas became enshrined in textbooks for the masses.

Most of the American myths are based on historical fact. Henry did give a rousing speech to inspire the Virginia Convention to create a militia. The Pilgrims did settle Plymouth. An Indian girl by the name of Pocahontas was a figure in the settling of Jamestown. Paul Revere did ride into the Massachusetts countryside to warn that British soldiers were coming. Washington did try to live a virtuous life, though, cherry tree or not, he probably told a few lies.

The writers of these tales took those kernels of truth and embellished them, made them sound more romantic and uplifting than perhaps they were, and drove home a moral message designed to educate and inspire a new generation.

As every good storyteller knows, focusing on an individual's exploits creates a better tale. Make one person the hero, and readers and listeners will be engaged.

The writers of the nineteenth century, seeking a unifying power, made Washington the embodiment of a nation of contentious states. He, more than the flag, symbolized the United States. And without a doubt, Washington was the unifying force that made the Constitution possible.

But mythmaking? Stand in the Rotunda of the United States Capitol and look straight up. You see Constantino Brumidi's fresco The Apotheosis of Washington, begun six years before the Civil War and completed in 1865. "Apotheosis" means transformation into god.

James Rees, the president of the Mt. Vernon Ladies Association, says that stripped of myth, Washington is still "America's first superhero."

Every good writer of history must first study the myths, author Raphael said. "You just kind of grandfather in these mythological aspects unless you are willing to examine them from scratch."

Making myths is an industry in Hollywood. Amy Henderson, the curator of popular culture at the National Portrait Museum in Washington, says, "One of the chief elements of American character is our ability to invent ourselves." She quotes from director John Ford's *Man Who Shot Liberty Valance*, who said, "When the legend becomes fact, print the legend."

Take the words of Chief Seattle, a nineteenth-century American Indian from Puget Sound, which inspired the modern environmental movement. Books, magazine articles, and environmental advocacy groups have trumpeted his lyrical message of 1854, words that extolled harmony with nature:

"I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and do not understand how the smoking iron horse can be made more important than the buffalo that we kill only to stay alive."

Though Chief Seattle existed, and he may have said something profound in 1854, he certainly did not mention railroads or buffalo or prairies, because he had not seen any of them, and the massacre of buffalo hadn't happened yet.

A Hollywood scriptwriter wrote the words in 1971. "It's very similar to the Patrick Henry speech," Raphael said. "Someone with a point to make takes an historical person who is close to making that same point and writes a speech for him using the current language that would resonate to the people of the times."

Ethan Allen knew how to make his own myth. At Fort Ticonderoga, historic interpreter Gordon Hamilton, dressed in the garb of a New York militiaman in the French and Indian War, leads visitors through the history of the fort, culminating in its capture at the beginning of the Revolution by Ethan Allen and the Green Mountain Boys, heroes of the state of Vermont.

Hamilton dramatically recounts Allen's words when a British officer asked by whose authority he invaded the fort: "In the name of the Great Jehovah and the Continental Congress I am taking this fort."

Then he pauses. At least that's what Allen said he said when he wrote his memoirs. The Second Continental Congress had not yet met and had not authorized taking the fort. In fact, its first reaction was to give the fort back to the British. What Allen did say was more prosaic. According to firsthand accounts, Allen demanded of the fort's second-in-command that he get the commanding officer: "Bring the old rat out, or I'll run him through."

"That reality is kind of tough, especially on the Vermonters who come here," Hamilton said. "Ethan Allen is their folk hero. They were raised to revere him. They know that statement by heart. They feel sure he said it."

Writer Tony Horwitz traveled all over the Americas tracing the stories and travels of the early explorers from Christopher Columbus to the Pilgrim landing for his book *A Voyage Long and Strange*. Everywhere, he said, he found legends and myths—and people who didn't want to know otherwise.

"I came to the conclusion that no amount of fact is ever going to somehow triumph over these myths," Horwitz said. "They are with us. People cherish them and need them. They are comforting stories that we tell about ourselves."

Ex-Confederate generals eager to tell their side of the Civil War created the Lost Cause myth within a couple of years of the end of the conflict. In their minds, the war was not about slavery. Abolitionists caused it, and the North ground down the cultured and gallant South through overwhelming numbers and matériel. Robert E. Lee was the greatest general who ever lived. Ulysses S. Grant was a butcher.

"In terms of shaping how Americans have assessed and understood the Civil War, Lost Cause warriors succeeded to a remarkable degree," wrote Gary W. Gallagher in his book *The Myth of the Lost Cause and Civil War History*.

Suffering in all of this were the ex-slaves who saw the rights they gained during Reconstruction disappear for nearly a century as Northern and Southern whites embraced the Lost Cause myth to reunify the nation.

"Many, if not most, Americans still see the Civil War era through the prism of *Gone with the Wind*," said Horwitz, whose latest book, *Midnight Rising*, recounts John Brown's story. "*Gone with the Wind*, both the book and the movie, have had more impact on how Americans think about the Civil War than the hundreds of thousands of scholarly works that have been written."

Though most American myths are created from a kernel of truth, some are just flat-out made up to achieve a historical purpose.

Walk into the Baseball Hall of Fame in Cooperstown, New York, and right at the beginning is a portrait of Abner Doubleday. Next to it is the caption: "Abner Doubleday was a career U.S. military officer and Union general in the Civil War. Prior to entering the military, he attended school in Cooperstown and the Military Academy at West Point, graduating in 1842. Although Doubleday had a distinguished military career, he is best known as the supposed inventor of baseball."

Catch the weasel word? "Supposed." Not only did Doubleday not invent baseball, no evidence exists that he ever played it, said John Thorn, the official historian of Major League Baseball, whose recent book is the latest to try to puncture that myth.

In the early part of twentieth century, Thorn said, Albert G. Spalding, a former player and subsequently a sporting goods magnate and National League official, was desperate to prove that baseball was purely an American invention. He wanted to counter claims from a British-born writer that the game originated in England.

He created a commission to explore the origin of baseball. It latched onto a letter written to it by a "demented mining engineer" from Colorado, who claimed that at the age of five, he was in Cooperstown and played with Doubleday as he invented baseball in 1839, according to Thorn.

But Doubleday was at West Point as a cadet without leave in 1839, Thorn said. In his memoirs, Doubleday never mentioned baseball. He did "invent" one piece of American history. He was at

Fort Sumter and fired the first shot in reply to the Confederate bombardment. In a sense, he invented the Civil War.

On the hall of fame's third floor, a placard says Spalding invented the Doubleday myth in a "patriotic desire to see the sport as purely an American invention." But on the first floor, a placard says the museum owns the baseball used by Doubleday to invent the game.

"Abner Doubleday, despite my best efforts, will continue as the Father of Baseball the same way that Santa Claus will continue as the Father of Christmas," Thorn said. "We use myth and lie interchangeably. But they are not. Myth is more powerful than fact."

THE UNITED STATES CONSTITUTION



The Functions of the Constitution

The United States Constitution is an amazing document. A bold experiment in democracy more than 200 years ago, it has proved both stable and flexible enough to survive and remain effective in a world totally different from the one in which it was written.

The Constitution has three main functions. First it creates a national government consisting of a legislative, an executive, and a judicial branch, with a system of checks and balances among the three branches. Second, it divides power between the federal government and the states. And third, it protects various individual liberties of American citizens.

The Constitution's framework owes much to the history that led to its drafting. The limitations placed on the federal government and each of its branches were a reaction to the tyranny of British rule, and especially the tyranny of the single monarch. Yet the breadth of the national government's powers were a correction to the weak government of the Articles of Confederation (the short lived system before the present constitution), that had proved incapable of forging the thirteen original states into one nation.

1. Separation of Powers

The Government of the United States, the federal government, is divided into three branches: the executive power, invested in the President, the legislative power, given to Congress (the House of Representatives and the Senate), and the judicial power, vested in one Supreme Court and other federal courts created by Congress. The Constitution provides a system of checks and balances designed to avoid the tyranny of any one branch.

Most important actions require the participation of more than once branch of government. For example, Congress passes laws, but the President can veto them. The executive branch prosecutes persons for criminal violations, but they must be tried by the courts. The President appoints federal judges, but their appointment must be confirmed by the Senate.

2. Division of Federal and State Power

Another important function of the Constitution is to divide power between the national government and the state governments. This division of authority is referred to as “federalism.” The federal government is very strong, with much power over the states, but at the same time, it is limited to the powers enumerated in the Constitution. Powers not delegated to the federal government, nor prohibited to the states are reserved to the states or to the people. Although the powers of the federal government are limited to those enumerated in the Constitution, those enumerated powers have been interpreted very broadly. And under the supremacy clause of the Constitution, federal law is supreme over state law. State or local laws that conflict with the Constitution or federal statutory law are preempted.

The Constitution also limits the powers of the states in relation to one another. Because the United States Congress has been given the power to regulate interstate commerce, the states are limited in their ability to regulate or tax such commerce between them. Under the Constitution’s privileges and immunities Clause, states are prohibited from discriminating in many ways against citizens of other states.

3. Protection of Personal Liberty

The third main purpose of the Constitution is to protect the personal liberty of citizens from intrusions by the government. A few of these protections are found in the main body of the Constitution itself. For example, Article I, sections 9 and 10 prohibits both *ex post facto* laws, which punish conduct that was not illegal at the time it was performed, and bills of attainder which single out individuals or groups for punishment.

Most Constitutional protections for individual rights are contained in the Bill of Rights, which constitute the first ten amendments to the Constitution. These amendments were adopted shortly after the adoption of the Constitution itself, in response to state concerns about the Constitution’s lack of protections for individual rights. The protections of these amendments were originally interpreted to apply only against the federal government, but the Supreme Court has since ruled that most of them were made applicable to the states by passage of the Fourteenth Amendment due process clause after the Civil War. The Fourteenth Amendment also contains the equal

protection clause, which protects citizens from discrimination by the states on the basis of race, sex and other characteristics.

4. Permanent Protections of a Constitution

In a democracy without a written constitution, such as the United Kingdom, the legislature may pass laws granting or taking away any rights, or even changing the structure of the government itself. A Constitution is more difficult to alter, and the framers of the American Constitution made it especially difficult to amend. An amendment must first pass both houses of Congress by a two-thirds majority and must then be ratified by the legislatures of three-fourths of the states. In a sense, this makes the Constitution an anti-majoritarian document. By binding the hands of future generations, it prevents a majority from granting tyrannical powers to the government in a time of crises. It also prevents a majority from easily taking away the rights of minorities. And it prevents those in office from holding on to power by increasing their terms in office. A document that is so difficult to amend can become obsolete over time, if it is too detailed and inflexible. For the most part, however, the Constitution is written in terms general or abstract enough to retain a core set of values yet be amenable to changing interpretations as called for by the times.

THE STRUCTURE OF THE FEDERAL GOVERNMENT

Legislative Branch



Article I of the Constitution vests the legislative power of the United States in a bicameral Congress. The Congress is composed of the House of Representatives, the members of which are elected for two-year terms and represent districts of equal numbers of people, and the Senate which is composed of two senators from each state who serve for six-year terms. Senators were originally chosen by the state legislature, but are now directly elected. The composition of the House and Senate represented a compromise between the larger states, which wanted a legislature based on population and the smaller states, which wanted equal representation for each state. A majority of both houses must pass all bills, and if the President vetoes a bill, a two-thirds majority of both houses is required for the bill to become law.

The powers of Congress are listed in Article I, Section 8, and Congress may not exercise any power listed there. But those powers encompass many areas, including taxing and spending, coining and borrowing money, controlling interstate and foreign commerce, maintaining an army and navy, and declaring war. Several of these powers have been interpreted very broadly, especially the power to regulate interstate commerce and the power to “make all laws which shall be necessary and proper” for carrying out all their other powers. Congress also has broad authority to delegate many of its powers to the President and to administrative agencies.

Executive Branch



The power of the executive branch is vested in the President. The President is elected for a four-year term, not by direct election but by the electoral college. Under this system, each state has a number of members of the electoral college equal to the number of members of the House and Senate. The candidate who receives the largest number of votes in a state gets all the electoral votes of that state. The candidate with a majority of the electoral college becomes the President. If no candidate receives a majority of the electoral votes, the winner is chosen by the House of Representatives. To be eligible to be President one must be thirty-five years old and a natural born citizen of the United States. Under the Twenty-second Amendment, no person may serve as President more than twice.

The powers explicitly granted to the President in Article II are quite important, but limited in number. The President is the Commander in Chief of the Army. He also has the power to grant pardons and reprieves and has the power, with the advice and consent of the Senate, to make treaties, and to appoint federal judges, ambassadors, and other public Officers of the United States. The extent of the President's inherent power over matters not explicitly provided for in the Constitution is subject to debate. The power to conduct foreign affairs has been held to be inherent in the office, but the Supreme Court has been less willing to extend inherent powers in the domestic area.

The President is subject to control by Congress in several ways. Congress has the last word on many disputes with its ability to pass laws, even over the President's veto. The President's most important appointments are subject to confirmation by the Senate. Finally, the President may be removed from office if impeached by the House and convicted by two-thirds of the Senate of "high crimes and misdemeanors."

The Judicial Branch



The Constitution grants the judicial power of the United States to one Supreme Court and other inferior courts that may be created by Congress. Federal judges are appointed for life by the President and must be confirmed by the Senate.

All federal courts are, under the Constitution, courts of limited jurisdiction. They may hear only “cases or controversies,” which means that they cannot perform non-judicial functions or give advice to the President or Congress about the constitutionality of proposed action. They cannot hear all kinds of cases, but only those listed as within the judicial power of the United States, as laid out in Article III. The kinds of cases listed in Article III were chosen to protect various interests of the United States. The federal courts are also subject to the will of Congress in so far as it can distribute and even limit the jurisdiction of the various federal courts.

The federal courts have one power not enjoyed by courts in some other countries. They may declare a statute enacted by Congress to be in violation of the Constitution and therefore invalid. This power of judicial review was established by the Supreme Court in 1803, in the landmark case of *Marbury v. Madison*. If the Supreme Court declares a Congressional Statute unconstitutional, normally the only way to change this result is to use the difficult process of amending the Constitution.

Although the Supreme Court is in one sense the final arbiter of the meaning of the Constitution, this power is not unlimited. The Court cannot enforce its judgments without the cooperation of the executive branch, and is subject, at least in some measure, to control over its jurisdiction by Congress. The Court itself has relinquished the power to interpret certain areas of the Constitution, saying that is committed by the Constitution to other branches of government. For example, the Court has determined that the power to judge the qualifications of members of Congress has been entrusted by the Constitution solely to Congress itself, and has refused to act in such matters.

https://home.ubalt.edu/shapiro/rights_course/Chapter1text.htm#:~:text=The%20Constitution%20has%20three%20main,federal%20government%20and%20the%20states.

The Bill of Rights



One of the principal points of contention between the Federalists and Anti-Federalists was the lack of an enumeration of basic civil rights in the Constitution. Many Federalists argued, as in Federalist No. 84, that the people surrendered no rights in adopting the Constitution. In several states, however, the ratification debate in some states hinged on the adoption of a bill of rights. The solution was known as the Massachusetts Compromise, in which four states ratified the Constitution but at the same time sent recommendations for amendments to the Congress.

James Madison introduced 12 amendments to the First Congress in 1789. Ten of these would go on to become what we now consider to be the Bill of Rights. One was never passed, while another dealing with Congressional salaries was not ratified until 1992, when it became the 27th

Amendment. Based on the Virginia Declaration of Rights, the English Bill of Rights, the writings of the Enlightenment, and the rights defined in the Magna Carta, the Bill of Rights contains rights that many today consider to be fundamental to America.

The First Amendment provides that Congress make no law respecting an establishment of religion or prohibiting its free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances.

The Second Amendment gives citizens the right to bear arms.

The Third Amendment prohibits the government from quartering troops in private homes, a major grievance during the American Revolution.

The Fourth Amendment protects citizens from unreasonable search and seizure. The government may not conduct any searches without a warrant, and such warrants must be issued by a judge and based on probable cause.

The Fifth Amendment provides that citizens not be subject to criminal prosecution and punishment without due process. Citizens may not be tried on the same set of facts twice, and are protected from self-incrimination (the right to remain silent). The amendment also establishes the power of eminent domain, ensuring that private property is not seized for public use without just compensation.

The Sixth Amendment assures the right to a speedy trial by a jury of one's peers, to be informed of the crimes with which they are charged, and to confront the witnesses brought by the government. The amendment also provides the accused the right to compel testimony from witnesses, and to legal representation.

The Seventh Amendment provides that civil cases also be tried by jury.

The Eighth Amendment prohibits excessive bail, excessive fines, and cruel and unusual punishments.

The Ninth Amendment states that the list of rights enumerated in the Constitution is not exhaustive, and that the people retain all rights not enumerated.

The Tenth Amendment assigns all powers not delegated to the United States, or prohibited to the states, to either the states or to the people.

<https://www.whitehouse.gov/about-the-white-house/the-constitution/>

EXECUTIVE BRANCH



The power of the executive branch is vested in the President. The President is elected for a four-year term, not by direct election but by the electoral college. Under this system, each state has a number of members of the electoral college equal to the number of members of the House and Senate. The candidate who receives the largest number of votes in a state gets all the electoral votes of that state. The candidate with a majority of the electoral college becomes the President. If no candidate receives a majority of the electoral votes, the winner is chosen by the House of Representatives. To be eligible to be President one must be thirty-five years old and a natural born citizen of the United States. Under the Twenty-second Amendment, no person may serve as President more than twice.

The powers explicitly granted to the President in Article II are quite important, but limited in number. The President is the Commander in Chief of the Army. He also has the power to grant

pardons and reprieves and has the power, with the advice and consent of the Senate, to make treaties, and to appoint federal judges, ambassadors, and other public Officers of the United States. The extent of the President's inherent power over matters not explicitly provided for in the Constitution is subject to debate. The power to conduct foreign affairs has been held to be inherent in the office, but the Supreme Court has been less willing to extend inherent powers in the domestic area.

The President is subject to control by Congress in several ways. Congress has the last word on many disputes with its ability to pass laws, even over the President's veto. The President's most important appointments are subject to confirmation by the Senate. Finally, the President may be removed from office if impeached by the House and convicted by two-thirds of the Senate of "high crimes and misdemeanors."

https://home.ubalt.edu/shapiro/rights_course/Chapter1text.htm#:~:text=The%20Constitution%20has%20three%20main,federal%20government%20and%20the%20states.

IMPEACHMENT



What is Impeachment?

Technically, impeachment is the Senate's quasi-criminal proceeding instituted to remove a public officer, not the actual act of removal. Most references to impeachment, however, encompass the entire process, beginning with the House's impeachment inquiry. The term will be used in that broader sense here. By design, impeachment is a complex series of steps and procedures

undertaken by the legislature. The process roughly resembles a grand jury inquest, conducted by the House, followed by a full-blown trial, conducted by the Senate with the Chief Justice presiding. Impeachment is not directed exclusively at Presidents. The Constitutional language, "all civil officers," includes such positions as Federal judgeships. The legislature, however, provides a slightly more streamlined process for lower offices by delegating much of it to committees. Presidential impeachments involve the full, public participation of both branches of Congress.

The Impeachment Process in a Nutshell

1. The House Judiciary Committee deliberates over whether to initiate an impeachment inquiry.
2. The Judiciary Committee adopts a resolution seeking authority from the entire House of Representatives to conduct an inquiry. Before voting, the House debates and considers the resolution. Approval requires a majority vote.
3. The Judiciary Committee conducts an impeachment inquiry, possibly through public hearings. At the conclusion of the inquiry, articles of impeachment are prepared. They must be approved by a majority of the Committee.
4. The House of Representatives considers and debates the articles of impeachment. A majority vote of the entire House is required to pass each article. Once an article is approved, the President is, technically speaking, "impeached" -- that is subject to trial in the Senate.
5. The Senate holds trial on the articles of impeachment approved by the House. The Senate sits as a jury while the Chief Justice of the Supreme Court presides over the trial.
6. At the conclusion of the trial, the Senate votes on whether to remove the President from office. A two-thirds vote by the Members present in the Senate is required for removal.
7. If the President is removed, the Vice-President assumes the Presidency under the chain of succession established by Amendment XXV.



Constitutional Authority

At the time of the drafting of the Constitution, impeachment was an established process in English law and government. The Founding Fathers incorporated the process, with modifications, into the fabric of United States government. The Constitution, however, only provides the framework-the basic who's, why's, and how's. The remaining procedural intricacies reside in the internal rules of the House and Senate.

Who?

Article 2, Section 4--"The President, Vice-President, and all civil officers of the United States. . ."

As noted above, this includes Federal judges. It does not, however, include House Representatives or Senators.

Why?

Article 2, Section 4--". . .on impeachment for, and on conviction of, treason, bribery, or other high crimes or misdemeanors."

This implies that the impeachment process is not tightly linked to the criminal law. The test is not satisfied by all crimes. With only two named offenses to provide context for the inclusive phrase "high crimes and misdemeanors," the standard remains undefined. The language suggests, however, that criminal action may be required. It is worth noting that the term "misdemeanor" does not correspond to the modern definition of a less serious (sub-felony) statutory or common law criminal offense.

In the case of Andrew Johnson, the House accused the President, among other things, of speaking disrespectfully of Congress "in a loud voice."

How?

Article 1, Section 2, Clause 5--"The House of Representatives . . . shall have the sole power of impeachment."

The power of impeachment translates into the power to indict. The House, through the Judiciary Committee, conducts investigation and gathers evidence. At the proper time, the House assembles the evidence into individual indictments or charges known as Articles of Impeachment. Each article requires a majority vote of the House to pass to the Senate. Once impeached, the officer is on trial.

Article 1, Section 3, Clause 6--"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the

United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present."

The trial of the impeached officer is held in the Senate. In *Nixon v. US*, regarding the impeachment trial of a Federal judge, the Supreme Court ruled that the application of the phrase "sole power to try all impeachments" to a particular case was not justiciable. In other words it held that the proper application of this constitutional language to a specific impeachment proceeding was not a question for the courts. Therefore, the process and procedure for impeachment lie solely within the purview of the legislature. The officer subject to an impeachment proceeding has no appeal to a federal court.

Article 1, Section 3, Clause 7--"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

An impeachment and removal does not activate the double jeopardy clause of the Fifth Amendment. The ex-officer may face criminal indictments and trials for the same conduct that led to their impeachment and removal from office.

<https://www.law.cornell.edu/wex/impeachment>

LEGISLATIVE BRANCH



Article I of the Constitution vests the legislative power of the United States in a bicameral Congress. The Congress is composed of the House of Representatives, the members of which are elected for two-year terms and represent districts of equal numbers of people, and the Senate which is composed of two senators from each state who serve for six-year terms. Senators were originally chosen by the state legislature, but are now directly elected. The composition of the House and Senate represented a compromise between the larger states, which wanted a legislature based on population and the smaller states, which wanted equal representation for each state. A majority of both houses must pass all bills, and if the President vetoes a bill, a two-thirds majority of both houses is required for the bill to become law.

The powers of Congress are listed in Article I, Section 8, and Congress may not exercise any power listed there. But those powers encompass many areas, including taxing and spending, coining and borrowing money, controlling interstate and foreign commerce, maintaining an army and navy, and declaring war. Several of these powers have been interpreted very broadly, especially the power to regulate interstate commerce and the power to “make all laws which shall be necessary and proper” for carrying out all their other powers. Congress also has broad authority to delegate many of its powers to the President and to administrative agencies.

https://home.ubalt.edu/shapiro/rights_course/Chapter1text.htm#:~:text=The%20Constitution%20shas%20three%20main,federal%20government%20and%20the%20states.

COMMERCE CLAUSE

Overview

The Commerce Clause refers to Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Congress has often used the Commerce Clause to justify exercising legislative power over the activities of states and their citizens, leading to significant and ongoing controversy regarding the balance of power between the federal government and the states. The Commerce Clause has historically been viewed as both a grant of congressional authority and as a restriction on the regulatory authority of the States.

"Dormant" Commerce Clause

The "Dormant Commerce Clause" refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce. Of particular importance here, is the prevention of protectionist state policies that favor state citizens or businesses at the expense of non-citizens conducting business within that state. In *West Lynn Creamery Inc. v. Healy*, 512 U.S. 186 (1994), the Supreme Court struck down a Massachusetts state tax on milk products, as the tax impeded interstate commercial activity by discriminating against non-Massachusetts

The Meaning of "Commerce"

Origin

The meaning of the word "commerce" is a source of controversy, as the Constitution does not explicitly define the word. Some argue that it refers simply to trade or exchange, while others claim that the Framers of the Constitution intended to describe more broadly commercial and social intercourse between citizens of different states. Thus, the interpretation of "commerce" affects the appropriate dividing line between federal and state power. Moreover, what constitutes "interstate" commercial activity has also been subject to consistent debate.

Broad Interpretation

In *Gibbons v. Ogden*, 22 U.S. 1 (1824), the Supreme Court held that intrastate activity could be regulated under the Commerce Clause, provided that the activity is part of a larger interstate commercial scheme. In *Swift and Company v. United States*, 196 U.S. 375 (1905), the Supreme Court held that Congress had the authority to regulate local commerce, as long as that activity could become part of a continuous "current" of commerce that involved the interstate movement of goods and services.

From about 1905 until about 1937, the Supreme Court used a narrow version of the Commerce Clause. However, beginning with *NLRB v. Jones & Laughlin Steel Corp*, 301 U.S. 1 (1937), the Court recognized broader grounds upon which the Commerce Clause could be used to regulate state activity. Most importantly, the Supreme Court held that activity was commerce if it had a "substantial economic effect" on interstate commerce or if the "cumulative effect" of one act could

have an effect on such commerce. Decisions such as *NLRB v. Jones*, *United States v. Darby*, 312 U.S. 100 (1941) and *Wickard v. Filburn*, 317 U.S. 111 (1942) demonstrated the Court's willingness to give an unequivocally broad interpretation of the Commerce Clause. Recognizing the development of a dynamic and integrated national economy, the Court employed a broad interpretation of the Commerce Clause, reasoning the even local activity will likely affect the larger interstate commercial economic scheme.

Shift to a Stricter Interpretation

From the NLRB decision in 1937 until 1995, the Supreme Court did not invalidate a single law on the basis of the Commerce Clause. In 1995, the Supreme Court attempted to curtail Congress's broad legislative mandate under the Commerce Clause by returning to a more conservative interpretation of the clause in *United States v. Lopez*, 514 U.S. 549 (1995). In *Lopez*, the defendant in this case was charged with carrying a handgun to school in violation of the federal Gun Free School Zones Act of 1990. The defendant argued that the federal government had no authority to regulate firearms in local schools, while the government claimed that this fell under the Commerce Clause, arguing that possession of a firearm in a school zone would lead to violent crime, thereby affecting general economic conditions. The Supreme Court rejected the government's argument, holding that Congress only has the power to regulate the channels of commerce, the instrumentalities of commerce, and action that substantially affects interstate commerce. The Court declined to further expand the Commerce Clause, writing that “[t]o do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, and that there never will be a distinction between what is truly national and what is truly local. This we are unwilling to do.”

In *Gonzales v. Raich*, 545 U.S. 1 (2005), however, the Court did return to its more liberal construction of the Commerce Clause in relation to intrastate production. In *Gonzales*, the Court upheld federal regulation of intrastate marijuana production.



https://www.law.cornell.edu/wex/commerce_clause



THE SUPREME COURT

Article III of the Constitution establishes the federal judiciary. Article III, Section I states that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Although the Constitution establishes the Supreme Court, it permits Congress to decide how to organize it. Congress first exercised this power in the Judiciary Act of 1789. This Act created a Supreme Court with six justices. It also established the lower federal court system.

The Justices

Over the years, various Acts of Congress have altered the number of seats on the Supreme Court, from a low of five to a high of 10. Shortly after the Civil War, the number of seats on the Court was fixed at nine. Today, there is one Chief Justice and eight Associate Justices of the United States Supreme Court. Like all federal judges, justices are appointed by the President and are confirmed by the Senate. They, typically, hold office for life. The salaries of the justices cannot be

decreased during their term of office. These restrictions are meant to protect the independence of the judiciary from the political branches of government.

The Court's Jurisdiction

Article III, Section II of the Constitution establishes the jurisdiction (legal ability to hear a case) of the Supreme Court. The Court has **original jurisdiction** (a case is tried before the Court) over certain cases, e.g., lawsuits between two or more states and/or cases involving ambassadors and other public ministers, **and in cases to which a state is a party**. The Court has **appellate jurisdiction** (the Court can hear the case on appeal) on almost any other case that involves a point of constitutional and/or federal law. Some examples include cases to which the United States is a party, cases involving Treaties, and cases involving ships on the high seas and navigable waterways (admiralty cases).

Cases

When exercising its appellate jurisdiction, the Court, with a few exceptions, does not have to hear a case. The Certiorari Act of 1925 gives the Court the discretion to decide whether or not to do so. In a petition for a writ of certiorari, a party asks the Court to review its case. The Supreme Court agrees to hear about 100-150 of the more than 7,000 cases that it is asked to review each year.

Judicial Review

The best-known power of the Supreme Court is judicial review, or the ability of the Court to declare a Legislative or Executive act in violation of the Constitution, is not found within the text of the Constitution itself. The Court established this doctrine in the case of *Marbury v. Madison* (1803). In this case, the Court had to decide whether an Act of Congress or the Constitution was the supreme law of the land. The Judiciary Act of 1789 gave the Supreme Court original jurisdiction to issue writs of mandamus (legal orders compelling government officials to act in accordance with the law). A suit was brought under this Act, but the Supreme Court noted that the Constitution did not permit the Court to have original jurisdiction in this matter. Since Article VI of the Constitution establishes the Constitution as the Supreme Law of the Land, the Court held that an Act of Congress that is contrary to the Constitution could not stand. In

subsequent cases, the Court also established its authority to strike down state laws found to be in violation of the Constitution.

Before the passage of the Fourteenth Amendment (1869), the provisions of the Bill of Rights were only applicable to the federal government. After the Amendment's passage, the Supreme Court began ruling that most of its provisions were applicable to the states as well. Therefore, the Court has the final say over when a right is protected by the Constitution or when a Constitutional right is violated.

Role

The Supreme Court plays a very important role in our constitutional system of government. First, as the highest court in the land, it is the court of last resort for those looking for justice. Second, due to its power of judicial review, it plays an essential role in ensuring that each branch of government recognizes the limits of its own power. Third, it protects civil rights and liberties by striking down laws that violate the Constitution. Finally, it sets appropriate limits on democratic government by ensuring that popular majorities cannot pass laws that harm and/or take undue advantage of unpopular minorities. In essence, it serves to ensure that the changing views of a majority do not undermine the fundamental values common to all Americans, i.e., freedom of speech, freedom of religion, and due process of law.

Impact

The decisions of the Supreme Court have an important impact on society at large, not just on lawyers and judges. The decisions of the Court have a profound impact on high school students. In fact, several landmark cases decided by the Court have involved students, e.g., *Tinker v. Des Moines Independent School District* (1969) held that students could not be punished for wearing black armbands to school to protest the Vietnam War. In the *Tinker* case, the Court held that "students do not shed their rights at the schoolhouse gate."

<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about>

FOREIGN POLICY



George Washington's Farewell Address in 1789 contained one major piece of advice to the country regarding relations with other nations: "avoid entangling alliances." Those words shaped United States foreign policy for more than a century.

Today some Americans think that Washington's words are still wise ones, and that the United States should withdraw from world affairs whenever possible. In truth, however, the United States has been embroiled in world politics throughout the 20th century, and as a result, foreign policy takes up a great deal of government's time, energy, and money.

If isolationism has become outdated, what kind of foreign policy does the United States follow? In the years after World War II, the United States was guided generally by containment — the policy of keeping communism from spreading beyond the countries already under its influence. The policy applied to a world divided by the Cold War, a struggle between the United States and the Soviet Union.

With the collapse of the Soviet Union in 1991, containment no longer made sense, so in the past ten years, the United States has been redefining its foreign policy. What are its responsibilities, if

any, to the rest of the world, now that it has no incentive of luring them to the American "side" in the Cold War? Do the United States still need allies? What action should be taken, if any, when a "hot spot" erupts, causing misery to the people who live in the nations involved? The answers are not easy.

Foreign Policy Goals

To investigate the nature of current United States foreign policy, the logical source is the State Department, whose job it is to define and direct it. Foreign policy goals include the following:

- Preserving the national security of the United States.
- Promoting world peace and a secure global environment.
- Maintaining a balance of power among nations.
- Working with allies to solve international problems.
- Promoting democratic values and human rights.
- Furthering cooperative foreign trade and global involvement in international trade organizations.

Examining these goals closely reveals that they are based on cooperation with other nations, although "preserving the national security of the United States" implies possible competition and conflict.

Who Makes Foreign Policy?

As with all policy making, many people and organizations have a hand in setting United States foreign policy. The main objective of foreign policy is to use diplomacy — or talking, meeting, and making agreements — to solve international problems. They try to keep problems from developing into conflicts that require military settlements.

The President almost always has the primary responsibility for shaping foreign policy. Presidents, or their representatives, meet with leaders of other nations to try to resolve international problems peacefully. According to the Constitution, Presidents sign treaties with other nations with the "advice and consent" of the Senate. So the Senate, and to a lesser extent, the House of Representatives, also participate in shaping foreign policy.

The Secretary of State and many other officials of the State Department play major roles in setting foreign policy. The Secretary of State is usually the President's principal foreign policy adviser, and he or she is the chief coordinator of all governmental actions that affect relations with other countries.

The Foreign Service consists of ambassadors and other official representatives to more than 160 countries. Ambassadors and their staffs set up embassies in the countries recognized by the United States and serve as an American presence abroad. The embassies are part of the State Department, and they protect Americans overseas and are responsible for harmonious relationships with other countries.

The National Security Council, as part of the Executive Office of the President, helps the President deal with foreign, military, and economic policies that affect national security. It consists of the President, the Vice President, the Secretary of State, the Secretary of Defense, and others that the President designates. The National Security Adviser — who coordinates the Council — sometimes has as much influence as the Secretary of State, depending on his or her relationship with the President.

The Central Intelligence Agency (CIA), one of the best-known agencies that sets foreign policy, gathers, analyzes, and transmits information from other countries that might be important to the security of the nation. Although the CIA is notorious for its participation in "spy" work and "top secret" investigations, much of its work is public and routine. The CIA Director is appointed by the President and confirmed by the Senate.

United States foreign policy has changed dramatically from George Washington's day. Although Americans always pay attention to the advice of their revered founder, the world is of course not the same. The many people that shape American foreign policy today accept the fact that the United States is a member of a world community that cannot afford to ignore the importance of getting along.

<https://www.ushistory.org/gov/11a.asp>

