# CQ's Guide to the U.S. Constitution

History, Text, Glossary Index

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To Osa, who waited patiently and listened supportively throughout; to Jill, who is far away, working on a life of her own; to Andrew, who is not yet fully aware of what this is about; to the Founders, who activated the power in the People, and to the People, who must hold onto it,

this is dedicated with love.

### **EDITOR'S NOTE**

In this book, the editors of Congressional Quarterly have joined with Ralph Mitchell to provide a handy and easy to use reference on the Constitution of the United States. Mr. Mitchell, as he explains in his preface, has created an index that allows students and other persons to find their way quickly to the constitutional provision of interest to them. To this, Mr. Mitchell has added a glossary that will help readers understand the terms used. The editors of Congressional Quarterly have supplemented this basic material with a brief history of the writing of the Constitution in 1787. This material, drawn from other CQ publications, constitutes the first half of the book and helps the reader understand the roots of the document that has been the basic law of the United States for two centuries.

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Early one morning a political discussion started among some of my fellow teachers at New Trier West High School, in Northfield, Illinois. At one point, just before the bell rang for classes, a need arose to look up some provision or other in the Constitution. Then the bell ended the discussion. I have forgotten the provision, but the fact that there had been a need to look it up stayed with me. After searching for a reference book on the subject, and finding none, I began to realize that such a need must arise many times, and that it would be a useful tool. The United States Constitution is a magnificent document, remarkably simple and direct when one considers the stature of the system which it, in the hands of the Founders, set in motion. But it would be too much to expect that it could deal with both the complexities of the system and the problem of making all of its provisions and concepts easily located by those who want to know. On the other hand, any detail of a democracy's most fundamental law should be readily accessible to the people. It is better that the Constitution is admired up close than from a distance. So it was my first purpose to compile an index to fill this need.

As work progressed, however, two additional benefits emerged naturally within the index structure. One was that all provisions related to a specific major element of our government system collected themselves under main index headings, such as "States," "Congress," "House of Representatives," and so on. These topics are dealt with in so many articles and sections that there is no other way to focus on them than with the aid of groupings of provisions under main headings.

A second benefit was the opportunity to include important features inherent in our system: checks and balances, the federal relationship between national and state governments, due process of law, and civil rights and liberties. Under such headings are listed the references necessary to see how each feature was created.

## Preface

Finally, it was because of such terms as "bill of attainder," "compulsory process," and "letters of marque and reprisal" that I felt that a glossary of the Constitution's terminology would be of help in understanding it further. I hope that joining the two — index and glossary — will help make the supreme law of our land more familiar ground and less awesome to behold, but no less grand.

Ralph Mitchell

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#### WRITING THE CONSTITUTION

The 55 delegates who gathered in Philadelphia in the summer of 1787 faced a challenge of no mean proportions: How were they to devise a system of government that would bind 13 sovereign and rival states into one firm union without threatening the traditional freedoms for which the American colonists so recently had fought?

Americans, with their predominantly English heritage, were wedded to the principles of representative government and personal freedom, which had developed gradually in England from the signing of the Magna Carta in 1215. They had gone to war against the mother country to preserve their freedoms from the encroachments of centralized power.

But independence from Britain had brought new problems. Americans' allegiance still was directed toward their own states. The former colonists were reluctant to yield state sovereignty to any superior governmental power. The Articles of Confederation, the first basic law of the new nation, reflected this widespread distrust of centralized power. Under the Articles, the United States was little more than a league of sovereign states, bickering and feuding among themselves. The states retained control over most essential governmental functions, and Congress — in which each state had one vote — was the sole organ of central government. So limited were its powers that it could not levy taxes or regulate trade, and it had no sanction to enforce any of its decisions.

The inadequacies of the Articles of Confederation, brought into sharp focus by Shays' Rebellion in 1786, provided new impetus to an already growing movement for change that culminated in the Philadelphia Convention the following year. The delegates there voted to create a new national governing system consisting of supreme legislative, judicial and executive branches.

In the Constitution that emerged from these deliberations, the concept of government by consent of the governed formed the basic principle; accountability was the watchword. The rights of the people were to be protected by diffusing power among rival interests.

#### Writing the Constitution

The Constitution strengthened central authority, but national powers were carefully enumerated; all other powers were reserved to the states and the people. The Constitution provided for a president, to be chosen by electors in each state, a national judiciary and a legislature of two chambers. The House of Representatives was to be popularly elected, while the Senate — which shared certain executive powers with the president — was to be chosen by the individual state legislatures. Under the terms of the so-called "Great Compromise" between the large and small states, representation in the House was to be proportional to a state's population, while in the Senate each state was to have two votes. The national plan finally agreed to by the convention delegates in Philadelphia, along with the Constitution's separation of powers between the three branches of government, created a system of checks and balances.

Writing in *The Federalist*, James Madison explained the delicate relationship between the federal and state governments and the division of power within the system. He stated:

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of-people. The different governments will control each other at the same time that each will be controlled by itself.

The final draft of the Constitution provided a broad framework for the new government. Thus for nearly 200 years the document has proved flexible enough to meet the nation's changing needs without extensive formal revision. Although many modern governmental practices would seem alien to the authors of the Constitution, the basic structure continues to operate in much the way they planned it. Madison realized the importance of "maintaining in practice the necessary partition of power among the several departments." This could best be done, he wrote, "by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."

# Separate Roles of House and Senate

The House, because of its popularity with the people, was expected by Alexander Hamilton to be "a full match if not an overmatch for every other member of the government." The Senate was

#### Madison on the Constitution

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

- James Madison, The Federalist, No. 51

originally designed to serve as a restraining influence on the House. But each chamber was given special power not shared by the other. The Senate's special authority over appointments and treaties was counterbalanced by the right of the House to originate all revenue bills.

At first the House, under the leadership of Madison and later under Henry Clay, was the pre-eminent chamber of Congress, but the Senate soon emerged as a powerful legislative force. In the years preceding the Civil War, it was the chief forum for the discussion of national issues, and in the post-Reconstruction era it became the dominant arm of the government. The House, as its membership increased, was compelled to adopt a variety of procedures that diminished the power of individual representatives but ensured its ability to act when action was desired. The Senate remained a comparatively small body, which found elaborate institutional structures unnecessary for the legislative deliberation that it saw as its paramount function.

In his book, Congressional Government, written in 1885, Woodrow Wilson stated:

It is indispensable that besides the House of Representatives which runs on all fours with popular sentiment, we should have a body like the Senate which may refuse to run with it at all when it seems to be wrong — a body which has time and security enough to keep its head, if only now and then and but for a little while, till other people have had time to think. The Senate is fitted to do

#### Writing the Constitution

deliberately and well the revising which is its properest function, because its position as a representative of state sovereignty is one of eminent dignity, securing for it ready and sincere respect, and because popular demands, ere they reach it with definite and authoritative suggestion, are diluted by passage through the feelings and conclusions of the state legislatures, which are the Senate's only immediate constituents.

Wilson's initial concept of the Senate, written long before he became president, might have been satisfactory to the framers of the Constitution, but in the 20th century it would no longer serve. As the Progressive era advanced, an increasingly restive public demanded more genuinely popular government, and in 1912 the Senate reluctantly agreed to a constitutional amendment providing for the direct election of senators. The House, too, felt the pressures of the times: the power of the Speaker that "Czar" Thomas B. Reed had established in 1890 was dismantled in 1910 under the banner of popular rule.

The Seventeenth Amendment, by taking senatorial elections out of the hands of the state governments, blurred the constitutional distinction between the Senate and House. From the time of the amendment's adoption in 1913, the Senate came more and more to resemble the lower chamber. At times it appeared to be the more representative legislative body. Both chambers, however, repeatedly have been subject to charges that they fail to represent the will of the electorate.

Although most members of Congress run for office today as Republicans or Democrats, the absence of unity within the national parties precludes party responsibility for legislative decisions. Moreover, the institutional characteristics of Congress itself often prevent a legislative majority from working its will. Campaigns in the 1960s and 1970s against the rigid seniority system, the Senate filibuster rule and secrecy in congressional committee sessions and in other activities all represented attempts to make Congress more accountable to the people. The same goal prompted demands for reapportionment of the House of Representatives to make congressional districts more nearly equal in population.

# Congress and Presidential Power

The growth of presidential power in the 20th century, spurred by a major economic depression, two world wars and the Korean and Indochina conflicts, posed a threat to the viability of Congress as a coequal branch of government. As the volume and complexity of government business increased, legislative initiative shifted from Capitol Hill to the White House, and Congress with its antiquated procedures often found that it was no match for the tremendous resources of the executive branch.

By passing reorganization acts in 1946 and 1970 and a comprehensive budget law in 1974, Congress sought to restore its equality in the three-branch federal system provided by the Constitution. And repeated clashes between Congress and the executive branch over spending and the federal budget and the war and treaty powers reflected congressional resistance to what lawmakers saw as executive encroachment upon the powers delegated to Congress by the Constitution. One turning point was Congress' overriding of President Nixon's veto of the War Powers Act of 1973, the first legislation ever enacted that defined the president's constitutional role in making war.

Another power struggle, and ultimately a constitutional confrontation, between the two branches occurred over the Watergate scandal that drove Nixon from office. In June 1972 five men (two of whom were employees of the Committee for the Re-election of the President) broke in and attempted to burglarize the Democratic National Committee headquarters at the Watergate office-hotel complex in Washington, D.C. Although Nixon denied any knowledge of the break-in, he became implicated in the cover-up of the affair. Before its resolution after two years of sensational disclosures and mounting national agony, the scandal had tested the powers of the presidency, Congress and the Supreme Court. The Court played a crucial role by ruling unanimously that the president had no power to withhold evidence in a criminal trial. Nixon obeyed the court and surrendered the evidence certain White House tape recordings — which led to House Judiciary Committee approval of three articles of impeachment against him and, 16 days after the court decision, to his resignation on August 9, 1974.

#### CONSTITUTIONAL BEGINNINGS

The state of the union under the Articles of Confederation had become a source of growing concern to leading Americans well before Shays' Rebellion shook the confidence of a wider public. In voluminous correspondence beginning as early as 1780, George Washington, John Jay, Thomas Jefferson, James Madison, James Monroe and many

# Shays' Rebellion

The defects of the Articles of Confederation that were intended to bind together the newly independent colonies were massive. One of the most serious shortcomings was the inability of Congress under the Articles to help resolve a conflict between debtors and creditors that was aggravated by an economic depression and a shortage of currency after the Revolutionary War. Most of the states stopped issuing paper money and attempted to pay their war debts by raising taxes. At the same time, merchants and other creditors began to press for the collection of private debts. Squeezed on all sides, debtors (who were mostly farmers) clamored for relief through state laws to put off the collection of debts and to provide cheap money.

In response to this pressure, seven of the states resorted to paper money issues in 1786, during the worst of the depression. In Rhode Island debtors fared relatively well; many creditors, compelled by law to accept repayment in highly depreciated paper money, fled the state. But in Massachusetts, where the commercial class was in power, the state government refused to issue paper money and pressed forward with a deflationary program of high taxes; cattle and land were seized for debts, debtors crowded the jails and all petitions for relief were ignored.

Out of this turmoil came Shays' Rebellion of 1786, an uprising of distressed farmers in central Massachusetts led by Daniel Shays. Although the rebellion was put down by state militia in fairly short order, sympathy for the rebels was widespread. Their leaders were treated leniently, and a newly elected legislature acted to meet some of their demands. But the rebellion aroused the fears of many Americans for the future, and it pointed up another weakness of the Confederation — Congress had been unable to give Massachusetts any help. The rebellion also gave a strong push to the growing movement for governmental reform.

others expressed their fears that the union could not survive the strains of internal dissension and external weakness without some strengthening of central authority.

It was clear to Washington, writing in 1783, "that the honor, power and true interest of this country must be measured by a Continental scale, and that every departure therefrom weakens the Union, and may ultimately break the band which holds us together." He urged all patriots "to avert these evils, to form a Constitution that

will give consistency, stability, and dignity to the Union and sufficient powers to the great Council of the Nation for general purposes."

How to form such a constitution was not yet clear. Opinions varied widely as to what would be "sufficient powers . . . for general purposes." Alexander Hamilton, in 1780, thought Congress should be given "complete sovereignty" over all but a few matters. But Congress had ignored proposals of its committees in 1781 that it seek authority to use troops "to compel any delinquent State to fulfill its Federal engagement" and to seize "the property of a State delinquent in its assigned proportion of men and money." While there was general agreement on congressional authority to levy a federal import duty, the effort to amend the Articles foundered on the rule of unanimity.

At Hamilton's urging, the New York Assembly asked Congress in 1782 to call a general convention of the states to revise the Articles. The Massachusetts Legislature seconded the request in 1785. Congress studied the proposal but was unable to reach any agreement. Then, Virginia and Maryland in 1785 worked out a plan to resolve conflicts between the two states over navigation and commercial regulations. This gave Madison the idea of calling a general meeting on commercial problems. In January 1786 the Virginia Assembly issued the call for a meeting in Annapolis in September.

Nine states named delegates to the Annapolis convention, but the dozen persons who assembled represented only five states — New York, New Jersey, Pennsylvania, Delaware and Virginia. Rather than seek a commercial agreement from so small a group, Madison and Hamilton persuaded the delegates on September 14 to adopt a report that described the state of the Union as "delicate and critical." The report recommended that the states appoint commissioners to meet the next May in Philadelphia "to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."

The proposal was deliberately vague. Madison and Hamilton knew there was strong opposition to giving the central government much more power. Some officials even preferred the alternative of dividing the union into two or more confederations of states with closer economic and political ties. Southerners were convinced that this was the ultimate objective of John Jay's offer to Spain to give up free navigation of the Mississippi in return for trading concessions of interest to New England. James Monroe, a Virginia delegate to Congress, saw it as part of a scheme "for dismembering the Confeder-

# Twelve of the 13 Original Colonies...

All of the states except Rhode Island (whose upper house balked) were represented at the Constitutional Convention of 1787, which met at the State House in Philadelphia from May 25 to September 15. The states appointed a total of 74 delegates, but only 55 attended, and their comings and goings held the average attendance to little more than 30.

#### Delegates

The 55 delegates who took part included many of the most distinguished men in America. Eight had signed the Declaration of Independence, seven had been governors of their respective states and 39 had served in the Congress of the Confederation. More than half were college graduates, and at least 33 were attorneys at law. Most of them had held prominent positions in the Revolutionary War, and all were well-respected men of substance in their states. A majority were under the age of 50 (five were under 30) and only four were 60 or over.

George Washington, then 55, and Benjamin Franklin, the oldest delegate at 81, were the most influential Americans of the time. General Washington, who had not wanted to participate at the convention as a delegate but had yielded for fear that his absence might be construed as indifference to the outcome, was the unanimous choice to preside at the convention. He took a limited but effective part in the deliberations. Those credited with the greatest influence were Gouverneur Morris and James Wilson of Pennsylvania, James Madison of Virginia and Roger Sherman of Connecticut, each of whom spoke well over 100 times.

#### Rules

The convention adopted its rules of procedure on May 28 and 29. There was some talk of the larger states getting more votes than the smaller, but the convention followed the custom under the Articles of Confederation in giving each state one vote. The rule provided that seven states would constitute a quorum. This rule was amended to permit reconsideration of any vote — a step taken many times during the convention. Reconsideration was made easier by a rule of secrecy providing that "nothing spoken in the House [was to] be printed or otherwise published or communicated without leave." Secrecy was essential, Madison wrote Jefferson, "to secure unbiased discussion within doors and to prevent misconceptions and misconstructions without." \* The official journal,

#### ... Attended the Constitutional Convention

limited to a report of formal motions and votes, was closed until 1819. Madison's shorthand notes, withheld until 1840, provided the fullest account.

#### Procedure

The convention began by moving into Committee of the Whole to debate the Virginia resolutions, which called for a national government with a bicameral legislature, an executive and a judiciary. The smaller states then rallied behind the New Jersey Plan, which proposed only modest revisions in the Articles of Confederation. After that plan was defeated June 19, the members reverted to convention, and a threatened deadlock was broken by the "Great Compromise" of July 16 giving each state an equal vote in the Senate. On July 24 a Committee of Detail (Nathaniel Gorham, Oliver Ellsworth, Edmund Randolph, John Rutledge and Wilson) was appointed to draft a constitution based on agreements already reached. The convention then took a ten-day recess during which Washington went fishing near Valley Forge. On September 8 a Committee of Style was named to polish the wording and arrange the articles. The final document was put before the convention on September 17.

# The Signing

At this point, Franklin said he hoped "every member of the Convention who may still have objections to it [the Constitution], would, with me, on this occasion doubt a little of his own infallibility, and ... put his name to this instrument." \*\* He moved that the Constitution be signed by the unanimous consent of the states present. The motion was approved as was one change increasing representation in the House from one member for every 40,000 inhabitants to one for every 30,000 — a change supported by Washington in his only speech at the convention. The Constitution was signed by all but three of the 42 delegates still in attendance: George Mason, Edmund Randolph and Elbridge Gerry. After agreeing that the Constitution should be submitted to special conventions of the states for ratification, the convention adjourned.

<sup>\*</sup>Charles Warren, *The Making of the Constitution* (Boston: Little, Brown & Co., 1928), p. 135.

<sup>\*\*</sup> Ibid., p. 709.