

La constitution des États-Unis

2. Origine et texte. La Constitution des États

La trop grande souplesse des « Articles de la Confédération et de l'Union Perpétuelle » adoptés à l'issue de la Guerre d'Indépendance (1775-1781), leur manque de précision amenèrent en mai 1787 la réunion d'une convention nationale à Philadelphie au cours de laquelle les « Pères Fondateurs », influencés par les courants philosophiques de l'époque, vont non pas modifier les Articles, mais rédiger une Constitution. Courte (4 559 mots), elle comporte un bref préambule et 7 articles et ne sera modifiée par la suite que par 27 amendements. Outre cette Constitution fédérale, chaque État a la sienne propre.

The War of Independence between the thirteen British Colonies and Great Britain lasted from 1775 to 1781. While just at war, the colonies, which now called themselves The United States of America, drafted the “Articles of Confederation and Perpetual Union”, a compact adopted in 1777 which became binding in 1781 when the 13th State, Maryland, ratified it. The weakness of the central government was dramatized by events like Shays' Rebellion (1786-87) that occurred in Massachusetts to protest against taxes on land, the cost of tribunals and the economic depression after the War of Independence.

The works of Thomas Hobbes (1588-1679) and John Locke (1632-1704), as well as the theory of the separation of powers advocated by Montesquieu in 1748, influenced the framers of the new constitution who had diverging opinions on key issues. For Hobbes, equality for all breeds insecurity, disorder, then misery, as “Man is a Wolf to Man”; protecting one's individual life hampers the development of arts, science or justice. It is thus necessary to entrust one's individual power into the hands of a single man. For Locke, to escape the anarchy of the natural state and to enjoy the natural rights of life, liberty and property, men must form a government based on a “social contract”. The ultimate source of a legitimate government stems from the consent of the people themselves, who retain the right to overthrow it if it breaks that contract. Some like Washington, Hamilton and Adams advocated a strong central government as “the people are turbulent and changing; they seldom judge or determine right”; others like Franklin, suspicious of central authority, defended the cause of a liberal government. Another source of difference divided those advocating that each state should keep its independence within the newly united nation from others, like Madison, who favored a powerful national regime, a compromise between monarchy and democracy. The dissent between large states that wanted representation by population and small ones that wanted representation by state was partially resolved by giving each state equal representation in the Senate but apportioned representation according to population in the House of Representatives. It was necessary to give in to southern demands as regards slavery, which was tolerated until 1808, and slaves were counted as three-fifths of all other persons, Indians excluded, for the purpose of determining representation and apportioning direct taxes.

Fearing the concentration of power in one person's hand, the framers incorporated ways of circumscribing it: each of the 3 branches of government can check and balance¹ each other's power. Presidential power is limited to a four-year term, and the President is liable to impeachment by the House of Representatives and the Senate; he nominates justices, federal judges and top executives, but the Senate must confirm their nomination. He has the right of veto over congressional decisions, but Congress can overrule his veto by a two-thirds vote.

The new 4559-word-long constitution departed from the Articles by establishing a strong central or federal government, with the power to intervene in the relations between the states and sole powers in terms of foreign affairs and defense.

The 52-word-long foreword defines the main goals that the government should pursue, justifies the writing of the Constitution and states its purpose in 6 points: "to form a more perfect union", an obvious issue for the 13 states in 1787, "to establish justice", a phrase which recalls the Declaration of Independence and the "unalienable rights" men have received from their Creator, "to insure domestic stability" and "provide for the common defense", allusions to the presence of British troops in Canada, of French ones in the Louisiana Territory, and of Spain in the South. The last two points are "to promote the general welfare" and "secure the blessings of liberty to ourselves and our posterity".

Its 7 articles deal with a specific section of the workings of a democracy:

Article 1 describes the legislative power. Section 1 specifies that "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Section 2 focuses on the House of Representatives, the duration of their mandate (2 years), the conditions of age (25) and nationality (a representative must have been a US citizen for 7 years), their number and apportionment according to the population of each State – hence the establishment of a decennial census still held every year ending in zero –, and gives the House the sole power of bringing charges of misconduct which can lead to impeachment. Today, the House is composed of 435 members, about one for 640,000 persons in the USA. Section 3 states how the Senate will be constituted: each state is entitled to 2 Senators, thus establishing parity among the States, the conditions of age (30) and nationality (a senator must have been a US citizen for 9 years). The senatorial term is 6 years, and every 2 years, one-third of the Senators runs for election: there are therefore always two-thirds of the Senators with legislative experience. The Senate holds the sole right to try impeachments decided by the Representatives. While Sections 4 to 6 deal with the election of Representatives and Senators, the individual rules for their proceedings and their privileges (freedom from arrest, freedom of speech or debate), Section 7 is devoted to the passing of bills and to the powers of Congress. Each House may introduce legislation, except revenue bills, which can only originate in the House of Representatives. Once passed in identical terms in both Houses, the bill is then presented to the President, who can sign or veto it. However, a vote of two-thirds of the members of each House can override his right of veto. Sections 8 and 9 spell out the broad powers and "limitations upon powers of Congress". The framers, aware that slavery was morally wrong, gave in to southern demands; avoiding the word "slave", they stated the "importation of such persons as any of the states now existing shall think proper to admit" would not be prohibited prior to 1808. In article 4, the Constitution obliged free states to return runaway slaves to their

masters. The last section indicates the limitations of the powers of each individual state, which cannot suspend *habeas corpus*², enter into any treaty, alliance or confederation, coin money or lay custom duties on imports and exports.

Article 2 concerns the President, the mode of his election and duration of his mandate, the conditions of age (35 years old minimum), of nationality (“No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President”), and states he must have been “fourteen Years a Resident within the United States”. Section 2 and 3 concern his duties: he is Commander-in-Chief of the armed forces, makes treaties, (provided two-thirds of the Senators present concur), appoints ambassadors, public Ministers and Consuls, and Judges of the Supreme Court. He must also give Congress information on the state of the Union. Section 4 evokes the possible destitution for “treason, bribery, or other crimes or misdemeanors”.

Article 3 concerns the judicial powers vested in one Supreme Court whose members, appointed for life, cannot see their salaries “diminished during their continuance in office”. The court’s role is resolving disputes, trying ambassadors and public Ministers, and settling controversies to which the United States shall be a Party. It also institutes the notion of trial by jury.

Article 4 deals with the balance of power between the federal administration and each state, the relations between the various States, their reciprocal obligations, the admission of new states into the union and the federal guarantee of a republican form of government and protection against any form of invasion. Article 5 is about amendments to the Constitution and how they will be proposed and passed, Article 6 about national supremacy and Article 7 about the ratification of the Constitution.

Apart from possible changes which new interpretations or decisions made by judicial rulings may bring, two amendment procedures exist. A bill can pass both houses by a two-thirds majority in each; then it goes to the States, three-fourths of which must approve. As a rule Congress sets a time limit of 7 years.

The second method – which has never been used – could be for two-thirds of the legislatures of the States to summon a constitutional convention. It would propose one or more amendments which would then be sent back to all the States for approval. The text of an amendment may specify whether the bill must be ratified by state conventions (only used once for the 21st amendment) or by the state legislatures, three-fourths of which must approve.

The State Constitutions

Aside from the Federal Constitution, each individual state has its own Constitution. In accordance with the tenth Amendment to the Federal Constitution, which states that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people,” and with the clause of Article 4, which says that “The United States shall guarantee to every state in this Union a Republican Form of Government”, each of the fifty states has adopted a Constitution which represents the fundamental documents of the law of the state. They

vary in length: the shortest one is the Constitution of Vermont, adopted in 1793 and currently 8,295 words long. The longest is Alabama's sixth and current constitution, ratified in 1901, at 357,157 words long.

Numerous issues are addressed and outline the structure of the state government. The executive is in the hands of a governor, often assisted by a lieutenant-governor. The state legislature is composed of two houses in all states but one (Nebraska). The judiciary branch includes a state supreme court. Changing the constitution of an individual state is easier than changing the federal one. Each American state has its own rules and procedures that specify how its own constitution can be amended. Amendments may originate from the Houses (in every state except Delaware), or from voters themselves in 18 states. The legislature may put proposed legislation up for popular vote, or changes may proceed from popular initiative, in which any citizen or organization may gather a predetermined number of signatures to qualify a measure for the ballot. A popular referendum is also possible: a predetermined number of signatures (lower than the number required for a popular initiative) qualifies a ballot measure repealing a specific act of the legislature. In 44 states, laws lay out how a constitutional convention can be called, either with a ballot measure asking the people to approve or disapprove of holding a convention, or with a question set by the state legislature to ask the voters whether they wish to call a convention. Both Florida and New Mexico have created a commission that can propose and submit amendments. Judicial courts can also amend state constitutions, for instance when a voter-approved amendment is found to be in conflict with the U.S. Constitution, or in conflict with the rest of the constitution of that state.

In 24 states and the District of Columbia, the ballot initiative gives a certain minimum number of registered voters the right to bring about a public vote on a proposed statute or constitutional amendment. It is also used at the local and city government level. It originated in the 1777 constitution of Georgia and, in 1902, was overwhelmingly adopted by the state's legislators in Oregon. Such a system is sometimes criticized as it can lead to a dangerous mix of enthusiasm for generous but unfinanced projects or opposition to the slightest tax increase. In California, Proposition 19, which would have legalized marijuana was defeated in 1972 and in 2010, at the same time as people voted Yes to end gerrymandering³, i.e. the designing of congressional districts for political advantage. Marijuana use, growth, cultivation, possession, transportation, storage, or sale was legalized under state law in 2016. At present twenty-nine states have passed laws legalizing marijuana usage for medical purposes. Californians also voted to let their state legislature pass budgets with a simple majority, instead of a two-thirds majority, while keeping a two-thirds requirement for any tax increase. Arizona and South Dakota voted No to legalizing even medical marijuana while Arkansas, South Carolina and Tennessee amended their state constitutions with the explicit right to hunt and fish, while Arizonans voted No on the same matter. Voters in Kansas decided to put the right to bear arms into their state constitution. In Washington State, a proposal by Bill Gates' father to introduce a personal income tax for wealthy people was rejected, many fearing that a tax on the rich would quickly become a tax on everyone. In the 2008 elections, voters in Washington State passed by a 58% majority a law allowing terminally ill patients to request and take a lethal mix of drugs. Since then Oregon, Montana, and Vermont have also legalized physician aid in dying (PAD) or assisted suicide. Unlike euthanasia, which is still illegal in all states, PAD requires the patient to self-administer the medication and to deter-

mine whether and when to do this. In January 2014, a New Mexico judge, in a landmark ruling, stated that aid in dying was “a fundamental right” under the state constitution. In Arizona and Oklahoma, voters voted for a measure that prohibits mandatory participation in the new federal health-care law whereas those in Colorado rejected such a measure. Meanwhile, Oklahomans overwhelmingly voted to amend their state constitution to ban international law – specifically sharia law – from being used in their state courts. In February 2014, a group named Local Control Colorado launched a state ballot initiative for a constitutional amendment to place control over fracking directly in the hands of local residents. Despite such measures, the Colorado Supreme Court decided in 2016 that the idea of local legislation overriding state law was unconstitutional.

Notes

1. A system of checks and balances: système de contrôle mutuel, garanti par la Constitution; un des principes fondamentaux du gouvernement américain. Il a été élaboré afin que les pouvoirs législatif, exécutif et judiciaire n'accumulent pas trop d'influence les uns par rapport aux autres.
2. Habeas corpus: loi votée en Angleterre en 1679 sous Charles II et garantissant les libertés individuelles. Elle oblige à présenter toute personne arrêtée à un magistrat qui juge de la légalité de son emprisonnement et à justifier des motifs de l'arrestation. Complétée par plusieurs lois postérieures (1816 et 1960), la procédure est encore applicable en Grande-Bretagne et dans tous les pays soumis à la “Common Law” (sauf l'Écosse). Elle fut également intégrée à la Constitution américaine.
3. To gerrymander: redécouper une circonscription électorale en vue de donner un avantage certain à un parti politique. Dans les années 1800, au Massachusetts, le gouverneur Elbridge Gerry, chef du parti des Démocrates jeffersoniens aurait redécoupé une circonscription qui eut alors la forme d'une salamandre, d'où le nom.

Vocabulary

Vocabulaire du texte

<i>to draft</i>	rédiger
<i>a compact</i>	une convention, un contrat
<i>binding</i>	obligatoire
<i>a shortcoming</i>	un défaut
<i>to yield</i>	céder à
<i>a dispute</i>	une querelle
<i>a boundary</i>	une limite, frontière
<i>the executive</i>	l'exécutif
<i>to enforce the law</i>	faire respecter la loi
<i>to hamper</i>	gêner, entraver
<i>to levy taxes</i>	lever des impôts
<i>a bond</i>	un lien
<i>to complete</i>	achever
<i>a framer</i>	un artisan de la constitution
<i>an issue</i>	une question, un problème
<i>to entrust</i>	confier
<i>to stem from</i>	découler de
<i>to advocate</i>	préconiser
<i>dissent</i>	désaccord
<i>to apportion</i>	répartir (des sièges)
<i>to depart from</i>	s'écarter de
<i>a foreword</i>	une préface
<i>to pursue</i>	rechercher
<i>a phrase</i>	une expression

<i>welfare</i>	le bien-être
<i>herein</i>	ici, en ceci
<i>to vest sth in sb</i>	investir, accorder
<i>apportionment</i>	la répartition
<i>decennial</i>	tous les dix ans, décennal
<i>a census</i>	un recensement
<i>impeachment</i>	l'accusation
<i>sole</i>	unique
<i>a bill</i>	un projet de loi
<i>to override</i>	annuler
<i>to spell out</i>	expliciter
<i>the custom duties</i>	les droits de douane
<i>to concur</i>	être d'accord
<i>a misdemeanor</i>	un délit, une infraction
<i>continuance</i>	la durée
<i>in office</i>	en fonction
<i>to settle</i>	régler
<i>the balance of power</i>	l'équilibre des pouvoirs
<i>a judicial ruling</i>	une décision de justice
<i>to repeal</i>	abroger, annuler
<i>ballot initiative</i>	un référendum (d'initiative populaire)
<i>mandatory</i>	obligatoire
<i>fracking</i>	la fracturation hydraulique

Vocabulaire complémentaire

<i>to abdicate</i>	abdiquer
<i>absentee voting</i>	un vote par correspondance
<i>an act</i>	une loi (promulguée)
<i>a ballot box</i>	une urne
<i>a blank vote</i>	un bulletin blanc
<i>a bond</i>	un lien
<i>a boundary</i>	une limite, une frontière
<i>to broach a subject</i>	aborder une question
<i>a by-election</i>	une élection partielle
<i>the capitol</i>	le capitol (siège du congrès)
<i>to cast one's ballot</i>	voter
<i>to complete</i>	achever
<i>a congressional district</i>	une circonscription élisant un représentant

<i>a constituency</i>	une circonscription électorale
<i>a constituent</i>	un électeur
<i>a dispute</i>	une querelle
<i>an electoral role</i>	une liste électorale
<i>to enforce the law</i>	faire respecter la loi
<i>the executive</i>	l'exécutif
<i>to filibuster</i>	faire de l'obstruction au parlement
<i>gerrymandering</i>	le charcutage des circonscriptions
<i>a gubernatorial election</i>	une élection du gouverneur
<i>to hamper</i>	gêner, entraver
<i>the incumbent president</i>	le président sortant/en exercice
<i>to levy taxes</i>	lever des impôts

Vocabulary

Vocabulaire complémentaire

<i>a polling booth</i>	un isoloir
<i>proportional representation</i>	la représentation proportionnelle
<i>recess</i>	les vacances du parlement
<i>state officials</i>	les élus (d'un État)
<i>the Oval Office</i>	le bureau ovale (la présidence des États-Unis)
<i>to register</i>	s'inscrire (sur les listes électorales)
<i>to resign</i>	démissionner
<i>to run for Congress</i>	être candidat au congrès (US)

<i>a shortcoming</i>	un défaut
<i>to stand for parliament</i>	être candidat à un siège de député (GB)
<i>the turn out</i>	la participation électorale
<i>to uphold a decision</i>	soutenir une décision
<i>the winner-take-all system</i>	le système du tout au vainqueur
<i>to yield</i>	céder à

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3. Les Amendements

Depuis sa création en 1776 et sa ratification en 1788, la Constitution américaine a été amendée 27 fois conformément à l'article V. Les deux tiers des deux Chambres ou des États peuvent proposer un amendement qui ne deviendra applicable que s'il est ratifié par les trois quarts des États, souvent dans un délai de 7 ans. Dès 1791, dix amendements furent ajoutés et forment la Déclaration des Droits (« Bill of Rights ») qui garantit certaines libertés imprescriptibles: liberté de religion et d'expression, droit de porter une arme, d'être protégé contre les abus de la force publique ou de la justice, d'être jugé par ses pairs sans craindre de sanctions cruelles. Par la suite, d'autres amendements ont modifié le processus électoral pour les élections du Président et du Vice-président (Amendements 12, 20, 22, 25, 27) et des Sénateurs et des Représentants (14, 17), les droits électoraux des citoyens (15, 19, 23, 24, 26), interdit l'esclavage (13), instauré la prohibition (18) puis mis un terme à celle-ci (21). Quoique voté en 1927 puis 1970, l'amendement sur l'égalité des droits entre hommes et femmes ne fût pas accepté par les trois quarts des États dans les délais impartis.

Since 1788, 27 amendments have been drawn up in accordance with the Constitution (Art. V). Two-thirds of both Houses or of the States must deem an amendment necessary, but it becomes part of the Constitution only after ratification by three-fourths of the States. If no ratification deadline – usually 7 years – has been set, an amendment remains pending and the States may continue to consider it regardless of its age.

Ten of the 14 amendments that James Madison (1751-1836) proposed were ratified in 1791. They form the Bill of Rights as they provide basic legal protection for individual rights. Already in 1776 seven of the 13 states had included in their individual constitutions provisions named Bills of Rights to recall their English counterpart. As the Constitution lacked such a bill, popular discontent led 6 of the States to propose amendments to limit and qualify power, guard against legislative and executive abuses, and protect people.

Amendment 1 guarantees that Congress shall make no law regarding the establishment of religion or prohibiting its free exercise and protects freedom of speech, of the press, and the right to assemble. Civil libertarians call upon it whenever the administration is felt to encroach on freedom. Amendment 2 guarantees “the right of the people to keep and bear arms” as a “well-regulated militia” (a body of citizens) is necessary for the defense of the state. It is at the root of the difficulty of limiting access to guns. The 3rd forbids quartering soldiers in private homes without the owner's consent, proof of the colonists' hostility towards standing armies.

The next 4 amendments deal with justice. Amendment 4 protects people against unreasonable searches and seizures; it requires warrants to be issued only “upon probable cause, and particularly describing the place to be searched, and the persons or things to be seized”, making the maxim “every man's home is his castle” part of the Constitution. The