



The Constitution of the United States of America

• about this guide

In 2005, the United States Congress passed legislation requiring that all educational institutions receiving federal funding must hold an "educational program pertaining to the United States Constitution on September 17 of each year" (Federal Register: May 24, 2005). The stated goal of this legislation is to ensure that "all students be aware of the nature and function of the Constitution."

This is indeed a noble proposition, one with which government and history teachers throughout the nation agree. But this mandate is a very broad one, and it leaves the specifics of the "educational program" up to districts, schools, and instructors. How do we convey to students the immense power and scope of the Constitution? How do we help them appreciate just how grand an experiment the government established by our Constitution is?

This guide is designed to offer some suggestions for the classroom teacher charged with planning activities for the September Constitution Day or for any occasion when the Constitution has particular relevance in the classroom. It includes several strategies for use in brief lessons and also moves beyond this to more extended activities. Essay prompts, as well as a list of on-line sources, are also provided.

• note to teachers

In his recent book, *America's Constitution, A Biography*, Akhil Reed Amar reminds us that "America's Constitution beckons—a New World Acropolis open to all" (xi). Amar also notes that "most citizens have declined the invitation" (xi). We do not, he argues, really know our Constitution, a document which he calls "one of the most important texts in world history" (xi). Americans do not always understand the issues with which the Founders were forced to grapple, the structure of government they imposed through their work, or the ways in which lawmakers and judges have used the Constitution to shape contemporary society. Students often do not appreciate the simple beauty of this document and the huge impact it has on each of us. Indeed, the intent of Congress's mandate is to remind educators that "the price of liberty is eternal vigilance" and, at the very least, an annual exercise in passing this reminder to our students each September will help all of us better understand, appreciate, and question who we are as a people. It is hoped that teachers will not stop there but will use the Constitution as a central component of their teaching of history and government.

• key questions

What questions compel us to examine the Constitution for insights into the past and for guidance today? *Here are just a few.*

- What were the goals of the Founders as stated in their Preamble?
- What issues plagued the Founders, and how did they address those issues?
- What are the guiding principles of the Constitution, and how did the Founders embed these principles in it?
- Why were these principles so important in the 18th century, and why are they important today?
- Why was it necessary for a Bill of Rights to be added to the original document?
- In what ways is the Constitution still a living document that guides our daily life?
- What constitutional issues are the most relevant for today's students?



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teaching ideas

1. Let your students hear the words of the authors of the Constitution. No one can speak more powerfully about the Constitution than those who created it. The words ring much truer when we hear them. Have students read selected excerpts from the Constitution. This activity gives the teacher the option of having the class pause at appropriate places and listen more closely to the text. The Preamble is a perfect choice for this exercise.

Divide students into five groups. Assign each group one of the five actions the Constitution Founders specified as necessary to form a new more perfect government. Ask each group to write a description of what they think is meant by "establish Justice," or "insure domestic Tranquility." Have them find a specific reference in the Constitution that does each of these things. Then tell students to take a close look at their history text. They should find a specific example in American history where the government took action to achieve the goal of a more perfect union.
2. 2006 marks the 300th anniversary of the birth of Benjamin Franklin. Organize a Ben Franklin Day in your class or at your school. Begin by distributing a list of Franklin's wonderful aphorisms for discussion. Older students might be assigned sections of one of the recent biographies of Franklin. Let Franklin himself speak by using passages from his *Autobiography* or from *Poor Richard's Almanac*, or find out how others saw him using books such as Dray's *Stealing God's Thunder* or Brands' *The First American*. Assign students topics: Franklin's background; his contributions to science; his role at the Constitutional Convention; his accomplishments as a diplomat. Make paper "Ben Day" t-shirts. Have a party! Bake and decorate a cake!
3. We can often learn much about ourselves by listening to a visitor's observations of us. This is especially true for Alexis de Tocqueville's classic work *Democracy in America*. In this early 19th century essay collection, de Tocqueville observes dozens of American characteristics, institutions and quirks. There are many chapters that deal with precisely those values that the Founders wrote into the Constitution. Choose a relatively short example from Tocqueville's insightful commentary on American life and liberty. Read aloud with your students. Have them list and comment on those characteristics that are uniquely "American" and which link us to our Constitution. Assign students to find another relevant excerpt from *Democracy in America* that they can share with the class and analyze in a thoughtful essay. For further study, have students compare Tocqueville's vision of America with Bernard Henri-Lévy's *American Vertigo*.
4. To what degree is the Constitution a conservative document which attempts to limit the power of the people? This question is often asked and it is an important one. Have students closely examine the Constitution. Give students a list of phrases from the Constitution which either seem to shield the government from the "power of the people," or, on the other hand, grant freedoms to the people (for older students, or if you have more time, have students comb the Constitution and generate their own list). On the other hand, the Constitution, largely in the Amendments, ensures a number of personal liberties and confirms that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people" (Amendment IX).
5. Turn with your students to Article I Section 8. Generate a list of the powers delegated to Congress. Give students a number of recent newsmagazines. For United States History students, assign students to find one or two historical examples of how Congress carried out each of these functions. Ask them to locate several examples of how today's Congress addresses enumerated functions. Have students make a list of the ways in which the powers given to Congress have affected their lives in the past week. Consider organizing a poster competition in your school on the ways Congress affects the lives of all of us.
6. Article I Section 9 states that "the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it." Explain the purpose of a writ of habeas corpus to the students—or, as a homework assignment, require them to find out about habeas corpus. Consider asking an attorney to participate in this discussion with you and your students. Ask students to examine Abraham Lincoln's suspension of habeas corpus and his justification for it. Bring in newspaper articles about the current concerns some Americans have about the detainment of Iraqi and Afghan prisoners. Examine editorials on this issue. Have students write letters to the editor expressing their views. Expand to the larger question of the limitation of any constitutional right in times of national crisis.
7. The Constitution provides a mechanism for its own alteration: the amendment process. Divide the Constitution into several sections. Require your students to read through the Constitution and locate several places where the original wording of the Constitution has been changed. (For example, there have been significant changes in the text of Article I with reference to the "Three-Fifths Compromise" and the selection of senators by state legislatures.) After students have found these references, ask them to provide the new wording and determine just why the Constitution was altered. What historical (and historic) events provided the catalysts for change?
8. Amendment I reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

Encourage students to discuss what they think this means.

Ask them to find three examples of debate over this amendment. Direct them to *Engel v. Vitale*, *Abington v. Schempp*, and *Everson v. the Board of Education*. If time permits, divide students into six groups. Assign each one of these cases to two groups. Each group is to research: a. the historical context of each decision; b. the arguments made by both sides; c. the Supreme Court's decision and the rationale for this; d. the dissenting opinion. Conduct debates between the two groups assigned to each decision, one taking the affirmative and one the dissenting position of the Court.

Encourage students to examine their school district's policies that address religious issues. Invite the superintendent and school board members to share their views about school policies on religion.

Have your students read passages of *What's God Got to Do with It?*, a collection of essays by Robert Ingersoll—an outspoken champion of the separation of church and state during the

teaching ideas (continued)

19th century. Compare the ideas expressed in these essays to the current debate over the place of religion in government, public schools, etc.

9. Amendment IV states that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause..."

Ask students if there are any circumstances under which searches can take place without warrants. Distribute statements made by the president and his administration about the need for warrants in times of national crisis. Give students copies of arguments to the contrary. Have each student make two lists: arguments for why warrants are necessary and arguments for why they might not be.

Review with students their school district's policies on use of school email and internet as well as on issues such as the right of school officials to search student lockers and student automobiles. Examine what restrictions are placed on student use of these technologies. Have students address this prompt: The Fourth Amendment should apply to student use of computer technologies and to student property.

10. Many people believe that one of the most important, if not the most important amendment, is the Fourteenth. This amendment guarantees that "No State shall make or enforce any law which shall abridge the immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Americans have debated for many years whether or not the Constitution gives us a "right to privacy." Frequently, issues of privacy have been argued in the context of the Fourteenth Amendment. Carolyn Kennedy and Ellen Alderman in their book, *The Right to Privacy*, argue that "privacy is under siege." (New York: Alfred A. Knopf, 1995, xiii) Others assert, as did Robert Bork in his ill-fated quest for a Supreme Court post, that there is no right to privacy in the Constitution.

Distribute to students excerpts from recent Congressional hearings for Supreme Court nominees. Examine testimony offered regarding this right to privacy. Why was this brought up so frequently by members of the Senate Judiciary Committee? What responses did the nominees, John Roberts and Samuel Alito, give?

Assign topics that deal with the right to privacy. Include:

- The *Griswold v. Connecticut* case which struck down a Connecticut law that made it illegal to use contraceptives
- The 1967 Supreme Court decision striking down antimiscegenation laws, laws which forbid interracial marriage
- The 1973 *Roe v. Wade* decision striking down a Texas law that criminalized most abortions
- Debates over whether a state can order that a minor's parents must be notified before she has an abortion

11. A number of Amendments to the Constitution, specifically Amendments V through VIII, address the rights of the accused. During the 1960's the debate over the rights of the accused came to a head with the decisions in *Gideon v. Wainwright*

(1963), *Escobedo v. Illinois* (1964), and *Miranda v. Arizona* (1966). In his book *Gideon's Trumpet*, Anthony Lewis calls Gideon's victory in getting the Court to affirm the right of the poor accused of a crime to legal representation, a "triumph" that showed that "the poorest and least powerful of men... can take his cause to the highest court in the land and bring about a fundamental change in the law" (New York: Random House, 1964, 218). Chief Justice Earl Warren noted in the *Miranda* decision that, "The privilege against self-discrimination (is) the mainstay of our adversary system." Every student who has watched a police show on television is familiar with the process of reading rights to an accused.

Distribute transcripts of portions of the decisions and dissents from these cases. Students should investigate and find the context of each of these cases, the key arguments on each side, and popular reactions to these decisions.

Divide the class into groups of six students. Assign to each member of the group one side of each of the cases. After exploring the assigned case, each student is to share what he has found.

Encourage debate over whether or not our government goes "too far" in protecting the rights of the accused.

Invite a law enforcement official to join in your discussion.

12. Distribute a copy of James Madison's *Federalist 10*. In this widely read essay, Madison confronts the problem of faction. He urges ratification of the Constitution and the establishment of the new republican government as the best remedy for the evils of faction.

Ask students to read the entire essay or selected portions from it. Place students in groups and give each group a sheet of butcher paper. On this paper, students are to develop a flow chart tracing the assertions and arguments Madison makes in *Federalist 10*. For instance, he outlines two options we have when dealing with factions—to eliminate them or to control them. However, as Madison argues, "Faction is to liberty as air is to fire," so to eliminate factions is to eliminate liberty and therefore impossible in a nation founded on liberty. Then Madison proceeds to examine how to better control the negative effects of faction.

13. The U.S. Constitution, written in 1787, was the first of its kind. Of course, many efforts around the world have been made since then to establish constitutional governments, often using the United States Constitution as a guide. Some have succeeded; some have not. The most notable current example is the recent Iraqi constitution. Go online and download a copy of the new Iraqi constitution for use in the following activities.

With your students—the introduction to the Iraqi constitution. This is somewhat akin to the Preamble to the United States Constitution, albeit a good deal longer. What goals did the Iraqis who wrote this document hope to achieve? Why does the introduction to their Constitution make so much mention of religion, while the Preamble to the U.S. Constitution does not? What indication of American influence do you see in this introduction? What issues seem to be of concern to the Iraqis?

teaching ideas (continued)

Ask students to work in groups in order to rewrite the Preamble of the U.S. Constitution to more closely resemble the introduction to the Iraqi constitution. For instance, include a discussion of the context in which our constitution was written. Include mention of the specific issues facing the nation in the late 18th century. Address the various groups which needed to come together to form the new American nation. Have them share the resulting document. Have the class vote and select one version to be the class's choice for a new Preamble. Present this discussion topic: "Would the American people ratify this new constitution based on what they see in the revised Preamble? What parts would they accept or reject? Why?"

14. Many girls and women may look at the Constitution and wonder, "What about me?" The Constitution and the government it established and maintains is charged with governing all of us. However, it is inescapable that the folks who made the rules, that is, those who authored the Constitution, were of one race and one gender. How can teachers charged with helping children celebrate the Constitution make this celebration more meaningful and more inclusive?

One way is to examine the lives of women at the time the Constitution was written. Instead of focusing solely on the male founders ask students to research some of the women who wrote and who spoke out for liberty and the new republic. Introduce students to Mercy Otis Warren and Abigail Adams and Phyllis Wheatley. Examine the notion of "republican motherhood" as a way to prescribe a role for women in the infancy of the republic. Challenge students to compare the roles assigned to women throughout American history—republican motherhood, the cult of domesticity, Rosie the Riveter, and the "soccer mom."

Introduce students to the Equal Rights Amendment and help them analyze primary sources and video clips tracing the battle over the ERA. Discuss the fears that opponents of the ERA used to garner support for its defeat: unisex bathrooms, the military draft, taking away women's protected status. Ask the questions: "Do we need an equal rights amendment today? Do you think it would be ratified?"

essay prompts

Although class discussion is invaluable in helping students sort out ideas and examine both the conflict and the consensus that has surrounded the Constitution, it is essential that students use writing to communicate their knowledge and their understanding of the Constitution and its relation to their lives. Here are some suggestions for writing assignments.

1. Select one of the five goals of the Founders as stated in the Preamble to the Constitution. To what extent has the government achieved this goal? Answer using at least three examples from the period 2000-2006.
2. Select the amendment to the Constitution which you feel most affects your daily life. Analyze the impact of this amendment on you.
3. Select one of the Founders whose life illustrates a commitment to the ideals set forth in the Constitution. Analyze the ways in which this person's life reflects those ideals.

15. Urge students to consider the role the Supreme Court has had in both maintaining the status quo and effecting change for racial and ethnic minorities.

Introduce students to the three amendments to the Constitution that were ratified between 1865 and 1870, the Thirteenth, Fourteenth, and Fifteenth Amendments. Be sure that students understand the context and the intent of each of these amendments. Provide them with primary sources that highlight reactions to these amendments: the Black Codes, the Slaughterhouse Cases, the Civil Rights Act of 1875, the formation of the Ku Klux Klan, the implementation of Jim Crow Laws.

Divide the class into groups. Assign each group a Supreme Court Case that addresses the rights of racial and ethnic minorities. Provide documents—transcripts of the Court's decisions, responses to those decisions, etc. Try to include examples where a earlier decision was changed by a later one. For example, use *Plessy v. Ferguson*, *Brown v. the Board of Education*, *Korematsu v. the United States* and *Ex parte Endo*.

16. In his recent book *Active Liberty: Interpreting our Democratic Constitution*, Justice Stephen Breyer focuses on what he sees as the idea most at the heart of the Constitution—"active liberty." Breyer defines this as "the right of individuals to participate in democratic self-government" (Breyer 21).

Prior to discussing this concept, ask students to write their definition of "active liberty." This forces students to carefully consider their ideas before simply voicing them. It also ensures that each student has an answer at hand. Put up pairs of sheets of butcher paper on the wall. Have students write their definitions of "active liberty" on the first sheet. Discuss the students' definitions. Then have students move around the room and on the second sheet write examples of what they and the adults in their lives can do to practice "active liberty." Ask students what limits are or should be placed on the practice of "active liberty."

4. For over two hundred years, Americans have debated the question of whether the Constitution should be interpreted loosely, as suggested by the Federalist Party of Alexander Hamilton or strictly, as advocated by the Jeffersonian Republicans. Select two issues, one from the period from 1790 to 1900 and one from the period from 1900 to the present, where this question was central to the discussion and resolution of the issue. Describe the issue and its context, the debate over the interpretation of the Constitution, and the solutions proposed or implemented. What is your position on these issues?
5. In times of national crisis, what limits should be placed on the individual's freedom of expression and the federal government's ability to gather information about American citizens and to deny constitutional protections to those accused of terrorism?

• essay prompts (continued)

6. Over the past several decades, there have been additional amendments to the Constitution proposed but never passed by Congress. Choose two of these proposals. Examine the reasons why they were proposed and the arguments in support of and in opposition to them. Include a discussion of the degree to which you support each proposal.
 - An amendment banning flag-burning
 - An amendment banning same-sex marriage
 - An amendment declaring that life begins at conception
7. What do you view as the three most important responsibilities of citizenship? Construct a plan to better ensure that Americans fulfill these responsibilities.
8. Americans, both private citizens and government officials, continue to debate whether there is a constitutional right to privacy and what the parameters of that right are. Select two issues that illustrate the debate over privacy. Compare and contrast the arguments over these two issues.
9. Examine the most recent presidential State of the Union address. Select two proposals or ideas presented by the president that relate to constitutional issues. Analyze how the Constitution addresses each issue and how the president's position reflects his view of the way in which the Constitution should be interpreted.
10. Select one example of a conflict between two branches of the federal government. Explain the context and the details of this conflict. Analyze how the Constitution addresses this conflict and assess the way our public officials resolved it. Do you agree with their decision?
11. Select and examine one issue that illustrates conflict between the authority of the federal government and that of the states or conflict between two branches of government. Examples are the use of medical marijuana, the "right-to-die" law in Oregon, or the debate over the use of government wiretaps.
12. Select one issue that affects American youth today and which has constitutional dimensions. Examine the context and the details of this debate, analyzing both sides of the debate. What resolution do you feel is best for you personally and for the nation?

Choose from the following:

- the school's right to monitor your email and internet use
- the school's right to dictate and implement a dress code
- your right to refuse to stand and recite the Pledge of Allegiance
- your right to practice your religion as a public school student —through prayer, school clubs, class presentations, etc.
- your right to seek advice and obtain contraceptives from a medical professional without your parents' consent
- a military recruiter's right to have access to you and your school records

• websites

www.archives.gov	The National Archives
www.billofrightsintstitute.org	The Bill of Rights Institute
www.civiced.org	The Center for Civic Education
www.constitutionday.us	The National Constitution Center
www.supremecourtus.gov	The U.S. Supreme Court

• about the author

Nancy Schick has been a classroom teacher since 1969. She currently teaches Advanced Placement United States History and Advanced Placement European History at Los Alamos High School in Los Alamos, New Mexico, where she has taught for nineteen years. She served four years on the Advanced Placement United States Test Development Committee and is an exam reader for the annual reading of the AP U.S. History exams. She serves as a consultant for the College Board and presents workshops for Advanced Placement teachers throughout the western United States. She is the co-author of the soon-to-be-published Teacher's Guide for Advanced Placement United States History.

Schick has received three grants from National Endowment for the Humanities, served as the master teacher for a fourth NEH program, Worlds of the Renaissance, was a Fulbright-Hays fellow for summer study and travel in Thailand and Laos, studied in Cambridge, England through a grant from the Gilder Lehrman Institute of American History, and participated in a United States Institute of Peace summer program. She has been recognized four times by the White House as a Presidential Scholar Distinguished Teacher, named by her students who were Presidential Scholars as their most influential teacher. She was selected by the Gilder Lehrman Institute as the New Mexico United States History Teacher of the Year and was the 2005 New Mexico Teacher of the Year.

—• fact sheet: a quick glance at the constitution

Background to the Constitution:

- April 1775 First shots of the American Revolution fired at Lexington and Concord
- July 1776 Declaration of Independence issued
- November 1777 Articles of Confederation adopted
- September 1783 Treaty of Paris signed, ending the American Revolution

Over time, the Articles proved inadequate to meet the needs of the new nation. American suspicion of strong central government was ingrained into the Articles; the new national government was fettered in its ability to raise funds, to conduct trade, to arbitrate disputes between states, and even to amend the Articles themselves.

- September 1786 Delegates from five states met in Annapolis, Maryland to discuss trade issues and called for a later meeting in Philadelphia. In 1787, shortly after the Annapolis meeting, a revolt by disgruntled farmers in Massachusetts, Shays's Rebellion, served as a warning that the national government was becoming increasingly ineffective. Thomas Jefferson did not share the concerns others, including George Washington, had over this, and commented, "A little rebellion now and then is a good thing."

- May 1787 The Constitutional Convention convened in Philadelphia, and the daunting task of creating a new government began.

There was considerable disagreement over the structure of the new government. The delegates struck several compromises, without which they might never have voted to approve the document they had written. These compromises included agreements over the representation of both houses of Congress, the decision to give districts allowing slavery credit for three voters for every five slaves, and agreement not to allow Congress to interfere with the slave trade until 1808.

- September 1787 The Constitution Convention was signed and began its arduous journey through the ratification process. The ratification process in New York was aided by the publication of *The Federalist*, a series of essays written by Alexander Hamilton, John Jay, and James Madison. By 1788, all states had ratified the Constitution except North Carolina and Rhode Island (both of which would ratify by May 1790).

- 1791 The Bill of Rights was adopted.

—• key principles embodied in the constitution

- Republicanism—representatives elected by, and accountable to, the citizens make the laws
- Federalism—the powers of government are divided between the central government and the state governments
- Separation of Powers—the powers of government are divided among three equal branches of government: executive, legislative, and judicial
- Checks and Balances—powers are granted to each of the three branches to check and restrain the other two
- Sovereignty of the People—authority ultimately rests with the people
- Elasticity—Congress can make the laws that are "necessary and proper" for the execution of its delegated powers, and when necessary, the Constitution itself can be amended
- Protection of Individual Liberties—individuals are guaranteed rights including those related to personal expression, arrest and trial, and privacy

—• sections of the constitution

- Preamble
- Article I Delineates the duties and authority of the legislative branch
- Article II Delineates the duties and authority of the executive branch
- Article III Delineates the duties and authority of the judicial branch
- Article IV Outlines the relationship between the federal government and the states
- Article V Outlines the process for amending the Constitution
- Article VI Establishes the Constitution as the supreme law of the land
- Article VII Describes the ratification process
- Amendments (I-XXVII)