

# 1787 年美国宪法

来源：百度百科

《1787 宪法》是美国 1787 年制定并于 1789 年批准生效的美利坚合众国联邦宪法，也是世界上第一部比较完整的资产阶级成文宪法。它奠定了美国政治制度的法律基础，制定后多年来附有 27 条修正案，迄今继续生效。1787 年宪法强调加强国家权力，又在权力结构中突出“分权与制衡”的原则，以避免权力过于集中,体现了一定的民主精神。其内容是：立法、司法与行政权三权分立。分权制衡的核心精神在于权力平衡。其学说来自洛克和孟德斯鸠等人，美国人把思想、理论转变为行动、实践。政府结构必须能使各部门之间有适当的控制和平衡。使权力为公众福利和正义目的有效行使其管理职能，同时又保持对权力的优良控制，实现公共权力与公民权利的平衡，管理与控权的动态平衡，是分权和制约的归宿。通过分权、制约最终达到平衡，是宪政的最终目标。

中文名

1787 宪法,也称美国宪法

外文名

Constitution of the United States 或 U.S. Constitution

影响

奠定了[美国政治制度](#)的法律基础

背景

独立战争的胜利

签署地点

美国费城

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## 历史意义

[编辑](#)

1787 年宪法不仅对美国的政治和经济的发展有促进作用，而且对当今世界其他很多国家的民主与法制建设都有借鉴意义。

## 历程

[编辑](#)

## 背景

美国独立战争后，建立起来邦联制的国家，政治上的松散状态无法形成



1787 年宪法第一页

强有力的中央政府来稳定统治秩序，保护国家的利益与主权。

面临既要加强[中央集权](#)，又要确保共和制的新问题。

1786 年的[谢司起义](#)，使联邦制的统治者迫切要求强化资产阶级权利，完善资产阶级统治制度。

## 制定

1777年[大陆会议](#)制定的并于1781年批准施行的《[邦联条例](#)》规定，由当时13个独立州组成邦联制国家。邦联政府的权限很小，不能有效地行使国家职权。鉴此，邦联国会于1787年2月邀请各州代表到[费城](#)召开制宪会议，修改《邦联条例》。

5月召开会议，出席的有12个州（[罗得岛州](#)除外）的55名代表，G.华盛顿任主席。主张废除《邦联条例》、重新制定新宪法的代表占优势，使这次会议成了全国制宪会议。出席会议的大都是资产阶级和种植园奴隶主的代表，由于利益不同，大州与小州之间又存在着矛盾。

经过长时间的秘密讨论，直至1787年9月17日才通过新的宪法草案，交由各州批准。全国围绕新宪法的批准问题展开广泛的激烈讨论。1789年3月4日召开的美国第1届联邦国会宣布《[美利坚合众国宪法](#)》正式生效。

## 修正草案

1787年制定的宪法没有把独立宣言和当时许多州宪法中所列举的民主权利包括在内，没有提及言论、出版、信仰及其他[公民自由](#)。因此遭到广大人民群众的普遍反对。[马萨诸塞州](#)、[弗吉尼亚](#)和纽约等5个州在批准宪法时就曾强调必须修正。以后在广大人民群众和一部分资产阶级民主派的强烈要求和[法国资产阶级革命](#)的影响下，经J.麦迪逊等人的倡导，提出12条修正案。

1789年9月25日国会通过10条修正案，交由各州批准。从1791年12月15日这些修正案得到批准起，开始生效。这10条修正案通称《人权法案》。主要内容是宣布人民有言论、出版、集会和宗教信仰等自由，规定非依法律不得扣押人、捕人、搜查及没收财产以及刑事诉讼案中的被告有权要求迅速公审和律师辩护等等。

(注:在当时的情况下，附有《人权法案》的10条修正案的1787年美国宪法，确认了民主共和、三权分立与人民的权利自由等制度和原则，具有重大的历史意义。它对欧洲、亚洲及拉丁美洲的宪法和[资产阶级民主革命](#)，都有重要的影响。)

## 英文原文

编辑

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

March 4, 1789

Preamble

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. 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. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

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.

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.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.



The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

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; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers;

he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### Article III

Section 1. 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. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; --to all cases affecting ambassadors, other public ministers and consuls; --to all cases of admiralty and maritime jurisdiction; --to controversies to which the United States shall be a party; --to controversies between two or more states; --between a state and citizens of another state; --between citizens of different states; --between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

### Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

#### Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

#### Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

#### Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,

G. Washington-Presidt. and deputy from Virginia

New Hampshire: John Langdon, Nicholas Gilman

Massachusetts: Nathaniel Gorham, Rufus King

Connecticut: Wm: Saml. Johnson, Roger Sherman

New York: Alexander Hamilton

New Jersey: Wil: Livingston, David Brearly, Wm. Paterson, Jona: Dayton

Pennsylvania: B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James Wilson, Gouv Morris

Delaware: Geo: Read, Gunning Bedford jun, John Dickinson, Richard Bassett, Jaco: Broom

Maryland: James McHenry, Dan of St Thos. Jenifer, Danl Carroll

Virginia: John Blair, James Madison Jr.

North Carolina: Wm. Blount, Richd. Dobbs Spaight, Hu Williamson

South Carolina: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

Georgia: William Few, Abr Baldwin

## 主要内容

### 编辑

由序言和七条正文组成，序言部分阐明了联邦宪法的目的和宗旨。

## 序言

我们，美利坚合众国的人民，为了组织一个更完善的联邦、树立正义、保障国内的安宁、建立共同的国防、增进全民福利和确保我们自己及我们后代能安享自由带来的幸福，乃为美利坚合众国制定和确立这一部宪法。

## 第一条

**第一款** 本宪法所规定的立法权，全属合众国的国会，国会由一个参议院和一个众议院组成。

**第二款** 众议院应由各州人民每两年选举一次之议员组成,各州选举人应具有该州州议会中人数最多之一院的选举人所需之资格。凡年龄未满二十五岁,或取得合众国公民资格未满七年,或于某州当选而并非该州居民者,均不得任众议员。众议员人数及直接税税额,应按联邦所辖各州的人口数目比例分配,此项人口数目的计算法,应在全体自由人民一一包括订有契约的短期仆役,但不包括未被课税的印第安人一一数目之外,再加上所有其他人口之五分之三。实际人口调查,应于合众国国会第一次会议后三年内举行,并于其后每十年举行一次,其调查方法另以法律规定之。众议员的数目,不得超过每三万人口有众议员一人,但每州至少应有众议员一人;在举行人口调查以前,各州得按照下列数目选举众议员:新罕布什尔三人、麻萨诸塞八人、罗德岛及普罗维登斯垦殖区一人、康涅狄格五人、纽约州六人、新泽西四人、宾夕法尼亚八人、特拉华一人、马里兰六人、弗吉尼亚十人、北卡罗来纳五人、南卡罗来纳五人、乔治亚三人。任何一州的众议员有缺额时,该州的行政长官应颁选举令,选出众议员以补充缺额。众议院应选举该除议长及其他官员;只有众议院具有提出弹劾案的权力。

**第三款** 合众国的参议院由每州的州议会选举两名参议员组成之,参议员的任期为六年,每名参议员有一票表决权。参议员于第一次选举后举行会议之时,应当立即尽量均等地分成三组。第一组参议员的任期,到第二年年终时届满,第二组到第四年年终时届满,第三组到第六年年终时届满,俾使每两年有三分之一的参议员改选;如果在某州州议会休会期间,有参议员因辞职或其它原因出缺,该州的行政长官得任命临时参议员,等到州议会下次集会时,再予选举补缺。凡年龄未满三十岁,或取得合众国公民资格未满九年,或于某州当选而并非该州居民者,均不得任参议员。合众国副总统应为参议院议长,除非在投票票数相等时,议长无投票权。参议院应选举该院的其他官员,在副总统缺席或执行合众国总统职务时,还应选举临时议长。所有弹劾案,只有参议院有权审理。在开庭审理弹劾案时,参议员们均应宣誓或誓愿。如受审者为合众国总统,则应由最高法院首席大法官担任主席;在未得出席的参议员的三分之二的同意时,任何人不得被判有罪。弹劾案的判决,不得超过免职及取消其担任合众国政府任何有荣誉、有责任或有俸给的职位之资格;但被判处者仍须服从另据法律所作之控诉、审讯、判决及惩罚。

**第四款** 各州州议会应规定本州参议员及众议员之选举时间、地点及程序;但国会得随时以法律制定或变更此种规定,惟有选举议员的地点不在此例。国会应至少每年集会一次,开会日期应为十二月的第一个星期一,除非他们通过法律来指定另一个日期。

**第五款** 参众两院应各自审查本院的选举、选举结果报告和本院议员的资格,每院议员过半数即构成可以议事的法定人数;不足法定人数时,可以一天推一天地延期开会,并有权依照各该议院所规定的程序和罚则,强迫缺席的议员出席。参众两院得各自规定本院的议事规则,处罚本院扰乱秩序的议员,并且得以三分之二的同意,开除本院的议员。参众两院应各自保存一份议事记录,并经常公布,惟各该院认为应保守秘密之部分除外;两院议员对于每一问题之赞成或反对,如有五分之一出席议员请求,则应记载于议事记录内。在国会开会期间,任一议院未得别院同意,不得休会三日以上,亦不得迁往非两院开会的其他地点。

**第六款** 参议员与众议员得因其服务而获报酬,报酬的多寡由法律定之,并由合众国国库支付。两院议员除叛国罪、重罪以及扰乱治安罪外,在出席各该院会议及往返各该院途

中,有不受逮捕之特权;两院议员在议院内所发表之演说及辩论,在其它场合不受质询。参议员或众议员不得在其当选任期内担任合众国政府任何新添设的职位,或在其任期内支取因新职位而增添的俸给;在合众国政府供职的人,不得在其任职期间担任国会议员。

**第七款** 有关征税的所有法案应在众议院中提出;但参议院得以处理其它法案的方式,以修正案提出建议或表示同意。经众议院和参议院通过的法案,在正式成为法律之前,须呈送合众国总统;总统如批准,便须签署,如不批准,即应连同他的异议把它退还给原来提出该案的议院,该议院应将异议详细记入议事记录,然后进行复议。倘若在复议之后,该议院议员的三分之二仍然同意通过该法案,该院即应将该法案连同异议书送交另一院,由其同样予以复议,若此另一院亦以三分之二的多数通过,该法案即成为法律。但遇有这样的情形时,两院的表决均应以赞同或反对来定,而赞同和反对该法案的议员的姓名,均应由两院分别记载于各该院的议事记录之内。如总统接到法案后十日之内(星期日除外),不将之退还,该法案即等于曾由总统签署一样,成为法律。准有当国会休会因而无法将该法案退还时,该法案才不得成为法律。任何命令、决议或表决(有关休会问题者除外),凡须由参议院及众议院予以同意者,均应呈送合众国总统;经其此准之后,方始生效,如总统不予批准,则参众两院可依照对于通过法案所规定的各种规则和限制,各以三分之二的多数,再行通过。

**第八款** 国会有权规定并征收税金、捐税、关税和其它赋税,用以偿付国债并为合众国的共同防御和全民福利提供经费;但是各种捐税、关税和其它赋税,在合众国内应划一征收;以合众国的信用举债;管理与外国的、州与州间的,以及对印第安部落的贸易;制定在合众国内一致适用的归化条例,和有关破产的一致适用的法律;铸造货币,调议其价值,并厘定外币价值,以及制定度量衡的标准;制定对伪造合众国证券和货币的惩罚条例;设立邮政局及延造驿路;为促进科学和实用技艺的进步,对作家和发明家的著作和发明,在一定期限内给予专利权的保障;设置最高法院以下的各级法院;界定并惩罚海盜罪、在公海所犯的重罪和违背国际公法的罪行;宣战,对民用船革颁发捕押敌船及采取报复行动的特许证,制定在陆地和海面虏获战利品的规则;募集和维持陆军,但每次拨充该项费用的款项,其有效期不得超过两年;配备和保持海军;制定有开管理和控制陆海军队的各种条例;制定召集民兵的条例,以便执行联邦法律,镇压叛乱和击退侵略;规定民兵的组织、装备和训练,以及民兵为合众国服务时的管理办法,但各州保留其军官任命权,和依照国会规定的条例训练其民团的权力;对于由某州让与而由国会承受,用以充当合众国政府所在地的地区(不逾十哩见方),握有对其一切事务的全部立法权;对于经州议会同意,向州政府购得,用以建筑要塞、弹药库、兵工厂、船坞和其它必要建筑物的地方,也握有同样的权力;一一并且为了行使上述各项权力,以及行使本宪法赋予合众国政府或其各部门或其官员的种种权力,制定一切必要的和适当的法律。

**第九款** 对于现有任何一州所认为的应准其移民或入境的人,在一八〇八年以前,国会不得加以禁止,但可以对入境者课税,惟以每人不超过十美元为限。不得中止人身保护令所保障的特权,惟在叛乱或受到侵犯的情况下,出于公共安全的必要时不在此限。不得通过任何褫夺公权的法案或者追溯既往的法律。除非按本宪法所规定的人口调查或统计之比例,不得征收任何人口税或其它直接税。对各州输出之货物,不得课税。任何有关商务或纳税的条例,均不得赋予某一州的港口以优惠待遇;亦不得强迫任何开往或来自某一州的船革,驶入

或驶出另一州,或向另一州纳税。除了依照法律的规定拨款之外,不得自国库中提出任何款项;一切公款收支的报告和帐目,应经常公布。合众国不得颁发任何贵族爵位:凡是在合众国政府担任有俸给或有责任之职务者,未经国会许可,不得接受任何国王、王子或外国的任何礼物、薪酬、职务或爵位。

**第十款** 各州不得缔结任何条约、结盟或组织邦联;不得对民用船革颁发捕押敌船及采取报复行动之特许证;不得铸造货币;不得发行纸币;不得指定金银币以外的物品作为偿还债务的法定货币;不得通过任何褫夺公权的法案、追溯既往的法律和损害契约义务的法律;也不得颁发任何贵族爵位。未经国会同意,各州不得对进口货物或出口货物征收任何税款,但为了执行该州的检查法律而有绝对的必要时,不在此限;任何州对于进出口货物所征的税,其净收益应归合众国国库使用;所有这一类的检查法律,国会对之有修正和监督之权。未经国会同意,各州不得征收船舶吨位税,不得在和平时期保持军队和军舰,不得和另外一州或国缔结任何协定或契约,除非实际遭受入侵,或者遇到刻不容缓的危急情形时,不得从事战争。

## 第二条

**第一款** 行政权力赋予美利坚合众国总统。总统任期四年,总统和具有同样任期的副总统,应照下列手续选举:每州应依照该州州议会所规定之手续,指定选举人若干名,其人数应与该州在国会之参议员及众议员之总数相等;但参议员、众议员及任何在合众国政府担任有责任及有俸给之职务的人,均不得被指定为选举人。各选举人应于其本身所属的州内集会,每人投票选举二人,其中至少应有一人不属本州居民。选举人应开列全体被选人名单,注明每人所得票数;他们还应签名作证明,并将封印后的名单送至合众国政府所在地交与参议院议长。参议院议长应于参众两院全体议员之前,开拆所有来件,然后计算票数。得票最多者,如其所得票数超过全体选举人的半数,即当选为总统;如同时不止一人得票过半数,且又得同等票数,则众议院应立即投票表决,选毕其中一人为总统;如无人得票过半数,则众议院应自得票最多之前五名中用同样方法选举总统。但依此法选举总统时,应以州为单位,每州之代表共有一票;如全国三分之二的州各有一名或多名众议员出席,即构成选举总统的法定人数;当选总统者需获全部州的过半数票。在每次这样的选举中,于总统选出后,其获得选举人所投票数最多者,即为副总统。但如有二人或二人以上得票相等时,则应由参议院投票表决,选学其中一人为副总统。国会得决定各州选出选举人的时期以及他们投票的日子;投票日期全国一律。只有出生时为合众国公民,或在本宪法实施时已为合众国公民者,可被选为总统;凡年龄未满三十五岁,或居住合众国境内未满十四年者,不得被选为总统。如遇总统被免职,或因死亡、辞职或丧失能力而不能执行其权力及职务时,总统职权应由副总统执行之。国会得以法律规定,在总统及副总统均被免职,或死亡、辞职或丧失能力时,由何人代理总统职务,该人应即遵此视事,至总统能力恢复,或新总统被选出时为止。总统得因其服务而在规定的时间内接受俸给,在其任期之内,俸金数额不得增加或减低,他亦不得在此任期内,自合众国政府和任何州政府接受其它报酬。在他就职之前,他应宣誓或誓愿如下:——「我郑重宣誓(或矢言)我必忠诚地执行合众国总统的职务,并尽我最大的能力,维持、保护和捍卫合众国宪法。」

**第二款** 总统为合众国陆海军的总司令,并在各州民团奉召为合众国执行任务的担任统帅;他可以要求每个行政部门的主管官员提出有关他们职务的任何事件的书面意见,除了弹劾案之外,他有权对于违犯合众国法律者颁赐缓刑和特赦。总统有权缔订条约,但须争取参议院的意见和同意,并须出席的参议员中三分之二的人赞成;他有权提名,并于取得参议院的意见和同意后,任命大使、公使及领事、最高法院的法官,以及一切其他在本宪法中未经明定、但以后将依法律的规定而设置之合众国官员;国会可以制定法律,酌情把这些较低级官员的任命权,授予总统本人,授予法院,或授予各行政部门的首长。在参议院休会期间,如遇有职位出缺,总统有权任命官员补充缺额,任期于参议院下届会议结束时终结。

**第三款** 总统应经常向国会报告联邦的情况,并向国会提出他认为必要和适当的措施,供其考虑;在特殊情况下,他得召集两院或其中一院开会,并得于两院对于休会时间意见不一致时,命令两院休会到他认为适当的时期为止;他应接见大使和公使;他应注意使法律切实执行,并任命所有合众国的军官。

**第四款** 合众国总统、副总统及其他所有文官,因叛国、贿赂或其它重罪和轻罪,被弹劾而判罪者,均应免职。

### 第三条

**第一款** 合众国的司法权属于一个最高法院以及由国会随时下令设立的低级法院。最高法院和低级法院的法官,如果尽忠职守,应继续任职,并按期接受俸给作为其服务之报酬,在其继续任职期间,该项俸给不得削减。

**第二款** 司法权适用的范围,应包括在本宪法、合众国法律、和合众国已订的及将订的条约之下发生的一切涉及普通法及衡平法的案件;一切有关大使、公使及领事的案件;一切有关海上裁判权及海事裁判权的案件;合众国为当事一方的诉讼;州与州之间的诉讼,州与另一州的公民之间的诉讼,一州公民与另一州公民之间的诉讼,同州公民之间为不同之州所让与之土地而争执的诉讼,以及一州或其公民与外国政府、公民或其属民之间的诉讼。在一切有关大使、公使、领事以及州为当事一方的案件中,最高法院有最初审理权。在上述所有其它案件中,最高法院有关于法律和事实的受理上诉权,但由国会规定为例外及另有处理条例者,不在此限。对一切罪行的审判,除了弹劾案以外,均应由陪审团裁定,并且该审判应在罪案发生的州内举行;但如罪案发生地点并不在任何一州之内,该项审判应在国会按法律指定之地点或几个地点举行。

**第三款** 只有对合众国发动战争,或投向它的敌人,予敌人以协助及方便者,方构成叛国罪。无论何人,如非经由两个证人证明他的公然的叛国行为,或经由本人在公开法庭认罪者,均不得被判叛国罪。国会有权宣布对于叛国罪的惩处,但因叛国罪而被褫夺公权者,其后人之继承权不受影响,叛国者之财产亦只能在其本人生存期间被没收。

### 第四条

**第一款** 各州对其它各州的公共法案、记录、和司法程序,应给予完全的信赖和尊重。国会得制定一般法律,用以规定这种法案、记录、和司法程序如何证明以及具有何等效力。

**第二款** 每州公民应享受各州公民所有之一切特权及豁免。凡在任何一州被控犯有叛国罪、重罪或其它罪行者,逃出法外而在另一州被缉获时,该州应即依照该罪犯所逃出之州



的行政当局之请求,将该罪犯交出,以便移交至该犯罪案件有管辖权之州。凡根据一州之法律应在该州服役或服劳役者,逃往另一州时,不得因另一州之任何法律或条例,解除其服役或劳役,而应依照有权要求该项服役或劳役之当事一方的要求,把人交出。

**第三款** 国会得准许新州加入联邦；如无有关各州之州议会及国会之同意,不得于任何州之管辖区域内建立新州；亦不得合并两州或数州、或数州之一部分而成立新州。国会得有权处置合众国之属地及其它产业,并制定有关这些属地及产业的一切必要的法规和章程；本宪法中任何条文,不得作有损于合众国或任何一州之权利的解释。

**第四款** 合众国保证联邦中的每一州皆为共和政体,保障它们不受外来的侵略；并且根据各州州议会或行政部门(当州议会不能召集时)的请求,平定其内部的暴乱。

## 第五条

举凡两院议员各以三分之二的多数认为必要时,国会应提出对本宪法的修正案；或者,当现有诸州三分之二的州议会提出请求时,国会应召集修宪大会,以上两种修正案,如经诸州四分之三的州议会或四分之三的州修宪大会批准时,即成为本宪法之一部分而发生全部效力,至于采用那一种批准方式,则由国会议决；但一八〇八年以前可能制定之修正案,在任何情形下,不得影响本宪法第一条第九款之第一、第四两项；任何一州,没有它的同意,不得被剥夺它在参议院中的平等投票权。

## 第六条

合众国政府于本宪法被批准之前所积欠之债务及所签订之条约,于本宪法通过后,具有和在邦联政府时同等的效力。本宪法及依本宪法所制定之合众国法律；以及合众国已经缔结及将要缔结的一切条约,皆为全国之最高法律；每个州的法官都应受其约束,任何一州宪法或法律中的任何内容与之抵触时,均不得有违这一规定。前述之参议员及众议员,各州州议会议员,合众国政府及各州政府之一切行政及司法官员,均应宣誓或誓愿拥护本宪法；但合众国政府之任何职位或公职,皆不得以任何宗教标准作为任职的必要条件。

## 第七条

本宪法经过九个州的制宪大会批准后,即在批准本宪法的各州之间开始生效。

本宪法于公元 1787 年,即美利坚合众国独立后第 12 年的 9 月 17 日,经出席制宪会议的各州在会上一致同意后制定。我们谨在此签名作证。

## 宪法修正案

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自 1787 年宪法制定以来,美国共有修正案 29 条(第 29 条为修正案提案),至 1995 年为止,前 27 条修正案已经各州批准而生效。

1-10 条修正案,是关于公民权利的规定。1789 年第一届国会召开,提出了关于公民基本权利的前 10 条修正案,又称《人权法案》。主要内容为:国会不得制定限制公民言论、出版自由,或剥夺公民和平集会和请愿的权利的法案;公民的人身、住宅、文件和财产不受无理搜查和扣押的权利不得侵犯;无论何人不得因同一犯罪行为而两次遭受生命或

身体的处罚，不得在任何刑事案件中被迫自证其罪；不经正当法律程序，不得被剥夺生命、自由和财产。

第 11-27 条主要涉及蓄奴制度的废除，选举制度的改革，正当法律程序和法律的平等保护以及种族平等、男女平权等问题。

宪法修正案是美国宪法的重要组成部分，代表了美国宪法制度的基本发展方向。

## 宪法解释

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美国的宪法实践表明，联邦最高法院的司法解释是修改和完善宪法的重要途径。

联邦最高法院对宪法的解释权是通过 1803 年的“马伯里诉麦迪逊案”确立的。根据其确立的联邦最高法院的司法审查权，最高法院在案件审理过程中就所涉及的州宪法和法律以及联邦法律是否合宪问题进行审查，对宪法条文的含义进行解释，这种解释往往使宪法条文的含义得到修正、扩充或改变。<sup>[1]</sup>

## 特点

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1787 年宪法体现了三大原则，联邦制原则、分权与制衡原则、民主原则。

1. 分权原则：宪法规定立法权、行政权、司法权分属于国会、总统和法院。国会是国家立法机关，由选举产生，有一定任期。总统享有发布行政命令的权力；联邦法院法官实行终身制，法院审理案件时，不受总统和国会的干涉。分权原则不仅表现在联邦政府立法行政司法三机关的权力分立上，而且表现在联邦政府与州政府的权力分配上。
2. 制衡原则：根据宪法规定，国会通过法律，必须得到参众两院的同意。两院通过的法律，如果总统不同意，可以行使否决权，总统对国会通过的法案还有搁置否决权。总统及其政府的活动经费必须由国会通过预算法案，国会可以三分之二的多数票推翻总统的否决权。联邦法院法官由总统取得参议院同意后才能任命，国会可弹劾法官，可通过法律来决定法院的编制，联邦最高法院对国会通过的法律和总统发布的命令有权进行司法审查并宣布违宪而使之无效。
3. 限权政府原则。政府职权和组织活动都由法律规定，政府必须在法律范围内进行活动的法治原则。限权政府原则还具体表现在关于个人权利和自由的规定上，政府在行使权力的时候，必须保证个人权利和自由。<sup>[1]</sup>

## 评价

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### 进步性

1787 年宪法规定美国是一个[联邦制](#)国家,联邦权力高于各州权力，采用行政、立法、司法三权分立,相互制衡的原则,肯定了资产阶级民主[共和](#)政体。这部宪法由序言和 7 条正文组成。第 1 条包括 10 节，规定美国国会的组成及其职权。第 2 条包括 4 节,规定总统的

职权和产生办法。第 3 条包括 3 节，规定[美国联邦法院](#)的组成及其职权。第 4 条包括 4 节，主要内容是规定各州的权利。第 5 条主要是规定宪法修正案提出和通过的程序。第 6 条主要是规定[联邦宪法](#)和根据宪法制定的法律为全国最高法律，各州法官均必须遵守。第 7 条规定宪法经 9 个州批准后生效。根据这部宪法，美国成为一个拥有统一的中央政权的联邦，以代替过去松散的邦联。虽然各州仍保有相当广泛的自主权，但新宪法使联邦政府的权力大为加强。在当时的历史条件下,这有利于巩固[北美独立战争](#)的成果，促进资本主义的发展。

是近代第一部成文宪法。一方面，它是美国经济和政治生活的最高准则。另一方面，所设计的制度对世界上很多国家产生了影响。比如分权制衡制度、正当法律程序条款、违宪审查制度、总统制共和政体和联邦制模式。

## 两面性

**1787 年美国宪法主要包含一个简短的序言和 7 条本文，概括起来，有两方面的基本内容：**

1. 美国宪法确认了某些资产阶级的民主原则。包括：

(1) 分权与制衡原则。立法、行政、司法三权分别由国会、总统和联邦法院行使，这三权之间分立的状态十分明显，同时又保持着一种互相牵制互相平衡的关系；

(2) 有限政府原则。它与法治原则相联系，即联邦政府的权利要受法律限制，不能超越法律规定的限度；

(3) 代议政府原则，它与[人民主权原则](#)相联系。联邦宪法序言中显示出美国人民是宪法的制定者，但必须通过选派代表管理国家。

2. 美国宪法显现的某些反民主内容。包括：

(1) 公开承认奴隶制，如宪法第 1 条第 2 款、第 9 款，分别以法律形式确认了奴隶制度的合法性，同时明确说明奴隶买卖可延续到 1808 年；

(2) 轻率对待公民权利。宪法从特定意义上可以说是公民权利的保障书，可是获得独立后的美国却没有在宪法中规定关于公民的基本权利，制宪代表解释说这种权利在各州法中已有规定。而实质上联邦宪法并未确认各州法规定的关于[公民基本权利](#)的效力，即便是默认，但因各州规定不同，公民享受的权利有所差异。

### 局限性

(1) 宪法允许奴隶制度的存在，这是它反民主的表现,而且在分配众议院各州代表名额时，黑人人口按 3/5 的人口折算，这就更加降低了奴隶的地位。

(2) 宪法明文规定了保留种族歧视的条款，不承认黑人、印第安人、妇女具有和白人男子平等的权利。

这部宪法以后陆续附有其他 17 条修正案。其中较重要的有：**1865 年生效的关于废除奴隶制的第 13 条修正案；1920 年生效的关于美国妇女享有选举权的第 19 条修正案；1964 年生效的关于选举时取消人头税限制的第 24 条修正案；1971 年生效的关于降低公民选举年龄为 18 岁的第 26 条修正案，迄今这 26 条修正案均已成为 1787 年宪法的一部分正式生效。1972 年国会通过的关于男女权利平等的第 27 条宪法修正案,在得到 3/4 的多数州议会批准后,也成为美国宪法的一部分。**

# 意义

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## 积极

(1) 1787年宪法是世界上第一部比较完整的资产阶级成文宪法，奠定了[美国政治制度](#)法律基础。首创违宪审查制度，这一制度真正赋予了宪法以根本法的地位，它将一切法律都置于宪法精神的统治之下，一切法律权利最终都起源并归结于宪法权利。这一制度的实施，不仅对维护法制的统一、调整统治阶级内部关系具有积极意义，而且创造了发展宪法、实现宪法监督和保障的独特模式。<sup>[1]</sup>

(2) 西欧的启蒙思想政治学说与美国实际的结合，在整个政治制度史中堪称典范，对以后资本主义国家制度的建立起到示范作用。

(3) 联邦制赋予政府强有力的权力，有利于国家的巩固；联邦政府实行[权力制衡](#)，[三权分立](#)原则，有利于防止专制独裁，保障了资产阶级民主制度。

(4) [地方分权](#)与中央集权相结合，形成较为和谐统一的关系，在维护国家主权的同时，有利于地方的积极性的调动和创造性的发挥。

(5) 这部宪法体现和维护了[独立战争](#)的重大成果，使政府建立在[民主原则](#)的基础上，保证美国的长期稳定。

(6) 促进了资本主义经济的发展

(7) 建立了联邦制总统共和制，开创了近代政体新形式，既确保了共和，又加强了主权。

## 消极

(1) 承认了黑人奴隶制

(2) 保留了种族歧视的烙印

## 实用主义精神

美国是一个实用主义的国家，很大程度上这种实用主义的精神就体现在美国宪法之中。美国宪法的起草和内容无不体现着实用主义。起草时，美国作为一个国家，只是一个松散的邦联，十三个州各自为政，参加费城制宪会议的代表们立场、观点、知识素养和利益诉求都有很大不同。所以在起草中，两个程序特别体现实用精神。一是部分表决，即达成一项共识便记录下来，作为整体的一部分。而不是草拟完全部法案再强行表决。每一个条款其实都是经常反复争论而达成的一致意见。二是不全面规定。也就是对于争议很大的内容，尽管确有规定的必要，也暂时不规定，留待后面再对宪法补充。富兰克林意味深长的说，从没有一部完美到每个人都能接受的最好宪法。正因为这两大程序性的规定，以及后来美国宪法修正案和违宪审查制的建立，使得美国宪法的生命如此之长。到今天，自由美国民主美国都需要到这部 1787 宪法之中找寻力量。

## 参考资料

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