

Questions & Answers Pertaining to the Constitution

by Sol Bloom

Q. How were deputies to the Constitutional Convention chosen?

A. They were appointed by the legislatures of the different States.

Q. Were there any restrictions as to the number of deputies a State might send?

A. No.

Q. Which State did not send deputies to the Constitutional Convention?

A. Rhode Island and Providence Plantations.

Q. Were the other twelve States represented throughout the Constitutional Convention?

A. No. Two of the deputies from New York left on July 10, 1787, and after that Hamilton, the third deputy, when he was in attendance did not attempt to cast the vote of his State. The New Hampshire deputies did not arrive until July 23, 1787; so that there never was a vote of more than eleven States.

Q. Where and when did the deputies to the Constitutional Convention assemble?

A. In Philadelphia, in the State House where the Declaration of Independence was signed. The meeting was called for May 14, 1787, but a quorum was not present until May 25.

Q. About how large was the population of Philadelphia?

A. The census of 1790 gave it 28,000; including its suburbs, about 42,000.

Q. What was the average age of the deputies to the Constitutional Convention?

A. About 44.

Q. Who were the oldest and youngest members of the Constitutional Convention?

A. Benjamin Franklin, of Pennsylvania, then 81; and Jonathan Dayton, of New Jersey, 26.

Q. How many lawyers were members of the Constitutional Convention?

A. There were probably 34, out of 55, who had at least made a study of the law.

Q. From what classes of society were the members of the Constitutional Convention drawn?

A. In addition to the lawyers, there were soldiers, planters, educators, ministers, physicians, financiers, and merchants.

Q. How many members of the Constitutional Convention had been members of the Continental Congress?

A. Forty, and two others were later members.

Q. Were there any members of the Constitutional Convention who never attended any of its meetings?

A. There were nineteen who were never present. Some of these declined, others merely neglected the duty.

Q. Were the members of the Constitutional Convention called "delegates" or "deputies," and is there any distinction between the terms?

A. Some of the States called their representatives "delegates"; some, "deputies"; and some, "commissioners," the terms being often mixed. In the Convention itself they were always referred to as "deputies." Washington, for example, signed

his name as "deputy from Virginia." The point is simply that whatever they called themselves, they were representatives of their States. The general practice of historians is to describe them as "delegates."

Q. Who was called the "Sage of the Constitutional Convention"?

A. Benjamin Franklin, of Pennsylvania.

Q. Who was called the "Father of the Constitution"?

A. James Madison, of Virginia, because in point of erudition and actual contributions to the formation of the Constitution he was preeminent.

Q. Was Thomas Jefferson a member of the Constitutional Convention?

A. No. Jefferson was American Minister to France at the time of the Constitutional Convention.

Q. What did Thomas Jefferson have to do with framing the Constitution?

A. Although absent from the Constitutional Convention and during the period of ratification, Jefferson rendered no inconsiderable service to

the cause of Constitutional Government, for it was partly through his insistence that the Bill of Rights, consisting of the first ten amendments, was adopted.

Q. Who presided over the Constitutional Convention?

A. George Washington, chosen unanimously.

Q. How long did it take to frame the Constitution?

A. It was drafted in fewer than one hundred working days.

Q. How much was paid for the journal kept by Madison during the Constitutional Convention?

A. President Jackson secured from Congress in 1837 an appropriation of \$30,000 with which to buy Madison's journal and other papers left by him.

Q. Was there harmony in the Convention?

A. Serious conflicts arose at the outset, especially between those representing the small and large States.

Q. Who presented the Virginia Plan?

A. Edmund Randolph.

Q. What was the Connecticut Compromise?

A. This was the first great compromise of the Constitutional Convention, whereby it was agreed that in the Senate each State should have two members, and that in the House the number of Representatives was to be based upon population. Thus the rights of the small States were safeguarded, and the majority of the population was to be fairly represented.

Q. Who actually wrote the Constitution?

A. In none of the relatively meager records of the Constitutional Convention is the literary authorship of any part of the Constitution definitely established. The deputies debated proposed plans until, on July 24, 1787, substantial agreement having been reached, a Committee of Detail was appointed, consisting of John Rutledge, of South Carolina; Edmund Randolph, of Virginia; Nathaniel Gorham, of Massachusetts; Oliver Ellsworth, of Connecticut; and James Wilson, of Pennsylvania, who on August 6 reported a draft which included a Preamble and

twenty-three articles, embodying fifty-seven sections. Debate continued until September 8, when a new Committee of Style was named to revise the draft. This committee included William Samuel Johnson, of Connecticut; Alexander Hamilton, of New York; Gouverneur Morris, of Pennsylvania; James Madison, of Virginia; and Rufus King, of Massachusetts, and they reported the draft in approximately its final shape on September 12. The actual literary form is believed to be largely that of Morris, and the chief testimony for this is in the letters and papers of Madison, and Morris's claim. However, the document in reality was built slowly and laboriously, with not a piece of material included until it has been shaped and approved. The preamble was written by the Committee of Style.

Q. Who was the penman who, after the text of the Constitution had been agreed on, engrossed it prior to the signing?

A. Jacob Shallus who, at the time, was assistant clerk of the Pennsylvania State Assembly, and whose office was in the same building in which the Convention was held.

Q. Does his name appear on the document or in any of the papers pertaining to its preparation?

A. No. In the financial memoranda there is an entry of \$30 for "clerks employed to transcribe & engross."

Q. When and how was the identity of the engrosser determined?

A. In 1937, on the occasion of the 150th anniversary of the Constitution. His identity was determined after a long and careful search of collateral public documents, and is here disclosed for the first time.

Q. Where did Shallus do the engrossing?

A. There is no record of this, but probably in Independence Hall.

Q. Did he realize the importance of the work he had done?

A. Probably not; when he died, in 1796, the Constitution had not yet come to be the firmly established set of governmental principles it since has become.

Q. Did some of the deputies to the Constitutional Convention refuse to sign the Constitution?

A. Only thirty-nine signed. Fourteen deputies had departed for their homes, and three--Randolph and Mason, of Virginia, and Gerry, of Massachusetts--refused to sign. One of the signatures is that of an absent deputy, John Dickinson, of Delaware, added at his request by George Read, who also was from Delaware.

Q. How can it be said that the signing of the Constitution was unanimous, when the deputies of only twelve States signed and some delegates refused to sign?

A. The signatures attest the "Unanimous Consent of the States present." The voting was by States, and the vote of each State that of a majority of its deputies. Hamilton signed this attestation for New York, though as he was the only deputy of the State present he had not been able to cast the vote of his State for the consent, only eleven States voting on the final question. There is an even greater discrepancy about the Signers of the Declaration of Independence. Some seven or eight members present on July 4 never signed;

seven Signers, including Richard Henry Lee, of Virginia, who proposed the resolution of independence, were not present on the day; and eight other Signers were not members of Congress until after July 4.

Q. Did George Washington sign the Declaration of Independence?

A. No. He had been appointed Commander-in-Chief of the Continental Army more than a year before and was at the time with the army in New York City.

Q. What are the exact measurements of the originals of the Declaration of Independence and of the Constitution of the United States?

A. The Declaration of Independence: 29 $\frac{7}{8}$ in. by 24 $\frac{7}{16}$ in.; The Constitution: four sheets, approximately 28 $\frac{3}{4}$ in. by 23 $\frac{5}{8}$ in. each.

Q. How many words are there in the texts in the present volume, and how long does it take to read them?

A. The Constitution has 4,543 words, including the signatures but not the certificate on the interlineations; and takes about half an hour to read. The Declaration of Independence has 1,458

words, with the signatures, but is slower reading, as it takes about ten minutes. The Farewell Address has 7,641 words and requires forty-five minutes to read.

Q. What party names were given to those who favored ratification and to those who opposed it?

A. Those who favored ratification were called Federalists; those who opposed, Antifederalists.

Q. In ratifying the Constitution, did the people vote directly?

A. No. Ratification was by special State conventions (Art. VII).

Q. The vote of how many States was necessary to ratify the Constitution?

A. Nine (Art. VII).

Q. In what order did the States ratify the Constitution?

A. In the following order: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, New Hampshire, Virginia, and New York. After

Washington had been inaugurated, North Carolina and Rhode Island ratified.

Q. After the Constitution was submitted for ratification, where did the greatest contests occur?

A. In Massachusetts, Virginia, and New York.

Q. In each instance what was the vote?

A. New York ratified the Constitution by a majority of three votes 30 to 27; Massachusetts by 187 to 168; and Virginia by 89 to 79.

Q. In the course of ratification, how many amendments were offered by the State conventions?

A. Seventy-eight; exclusive of Rhode Island's twenty-one, and those demanded by the first convention in North Carolina. There were many others offered which were considered necessary as items of a Bill of Rights. Professor Ames gives 124 as the whole number, inclusive of those of Rhode Island and North Carolina and the Bills of Rights. Various of these covered the same topics.

Q. When did the United States government go into operation under the Constitution?

A. The Constitution became binding upon nine States by the ratification of the ninth State, New Hampshire, June 21, 1788. Notice of this ratification was received by Congress on July 2, 1788. On September 13, 1788, Congress adopted a resolution declaring that electors should be appointed in the ratifying States on the first Wednesday in January, 1789; that the electors vote for President on the first Wednesday in February, 1789; and that "the first Wednesday in March next [March 4, 1789] be the time and the present seat of Congress the place for commencing proceedings under the said constitution." The Convention had also suggested "that after such Publication the Electors should be appointed, and the Senators and Representatives elected." The Constitution left with the States the control over the election of congressmen, and Congress said nothing about this in its resolution; but the States proceeded to provide for it as well as for the appointment of electors. On March 3, 1789, the old Confederation went out of existence and on March 4 the new government of the United States began legally to function, according to a decision of the Supreme Court of the United States (*wings v. Speed*, 5 Wheat. 420); however,

it had no practical existence until April 6, when first the presence of quorums in both Houses permitted organization of Congress. On April 30, 1789, George Washington was inaugurated as President of the United States, so on that date the executive branch of the government under the Constitution became operative. But it was not until February 2, 1790, that the Supreme Court, as head of the third branch of the government, organized and, held its first session; so that is the date when our government under the Constitution became fully operative.

Q. Did Washington receive the unanimous vote of the electors in his first election as President?

A. Yes, of all who voted. Four, two in Virginia and two in Maryland, did not vote; and the eight votes to which New York was entitled were not cast because the legislature could come to no agreement upon how the electors should be appointed. There should have been 81 votes; he received 69.

Q. How did the first inauguration proceed?

A. The Senate Journal narrates it as follows: "The House of Representatives, preceded by their

Speaker, came into the Senate Chamber, and took the seats assigned them; and the joint Committee, preceded by their Chairman, agreeably to order, introduced the President of the United States to the Senate Chamber, where he was received by the Vice President, who conducted him to the Chair; when the Vice President informed him, that 'The Senate and House of Representatives were ready to attend him to take the oath required by the Constitution, and that it would be administered by the Chancellor of the State of New-York'--To which the President replied, he was ready to proceed:--and being attended to the gallery in front of the Senate Chamber, by the Vice President and Senators, the Speaker and Representatives, and the other public characters present, the oath was administered.--After which the Chancellor proclaimed, 'Long live George Washington, President of the United States.' The President having returned to his seat, after a short pause, arose and addressed the Senate and House of Representatives . . . The President, the Vice President, the Senate and House of Representatives, &c. then proceeded to St. Paul's Chapel, where divine service was performed by the Chaplain of Congress, after which the

President was conducted to his house, by the Committee appointed for that purpose."

Q. Was Adams sworn in as Vice President before Washington took the oath of office as President?

A. No. Neither the Vice President nor any Senators took the oath of office until June 3. The first act of Congress, June 1, provided for the oath. In the House the Speaker and members present on April 8 had taken an oath provided for by a resolve on April 6 of that House, and the act of June 1 recognized that oath as sufficient for those who had taken it.

Q. What cities have been capitals of the United States government?

A. The Continental Congress sat at Philadelphia, 1774-76, 1777, 1778-83; Baltimore, 1776-77; Lancaster, 1777; York, 1777-78; Princeton, 1783; Annapolis, 1783-84; Trenton, 1784; and New York, 1785-89. The first capital under the Constitution of the United States was in New York, but in 1790 it was moved to Philadelphia. Here it was continued until 1800, when the

permanent capital, Washington, in the new District of Columbia, was occupied.

Q. How was the manner of address of the President of the United States decided?

A. Both Houses of Congress appointed committees to consider the proper title to give the President, but they could not agree. The Senate wished it to be "His Highness the President of the United States of America and Protector of their Liberties." The House considered this as too monarchical, and on May 5 addressed its reply to the inaugural speech merely to "The President of the United States." The Senate on May 14 agreed to this simple form.

Q. What is meant by the term "constitution"?

A. A constitution embodies the fundamental principles of a government. Our constitution, adopted by the sovereign power, is amendable by that power only. To the constitution all laws, executive actions, and, judicial decisions must conform, as it is the creator of the powers exercised by the departments of government.

Q. Why has our Constitution been classed as "rigid"?

A. The term "rigid" is used in opposition to "flexible" because the provisions are in a written document which cannot be legally changed with the same ease and in the same manner as ordinary laws. The British Constitution, which is unwritten, can, on the other hand, be changed overnight by act of Parliament.

Q. What was W. E. Gladstone's famous remark about the Constitution?

A. It was as follows: "As the British Constitution is the most subtle organism which has proceeded from the womb and long gestation of progressive history, so the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man."

Q. What is the source of the philosophy found in the Constitution?

A. The book which had the greatest influence upon the members of the Constitutional Convention was Montesquieu's Spirit of Laws, which first appeared in 1748. The great French philosopher had, however, in turn borrowed much of his doctrine from the Englishman John Locke,

with whose writings various members of the Convention were also familiar.

Q. Are there original ideas of government in the Constitution?

A. Yes; but its main origins lie in centuries of experience in government, the lessons of which were brought over from England and further developed through the practices of over a century and a half in the colonies and early State governments, and in the struggles of the Continental Congress. Its roots are deep in the past; and its endurance and the obedience and respect it has won are mainly the result of the slow growth of its principles from before the days of Magna Carta.

Q. In what language was Magna Carta written, and to whom was it addressed?

A. It was written in Latin and was addressed "To the archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, reeves, ministers, and to all bailiffs, and faithful subjects."

Q. What part of the world was first called America?

A. The name "America" was first applied to

Central Brazil, in honor of Amerigo Vespucci, who claimed its discovery. It was first applied to the whole known western world by Mercator, the geographer, in 1538.

Q. When did the phrase, "The United States of America," originate?

A. The first known use of the formal term "United States of America" was in the Declaration of Independence. Thomas Paine, in February, 1776, had written of "Free and independent States of America." The terms "United Colonies," "United Colonies of America," "United Colonies of North America," and also "States," were used in 1775 and 1776.

Q. What state papers should be considered in connecting the Constitution of the United States with Magna Carta?

A. The Great Charter was confirmed several times by later medieval monarchs, and there were various statutes, such as those of Westminster, which also helped to develop the germs of popular government. The Petition of Right, 1628, against the abuse of the royal prerogative, the Habeas Corpus Act, 1679, and the Bill of Rights,

1689, to establish the claims of the Petition, are the great English documents of more modern times on popular freedom. Meanwhile, the colonial charters became the foundation of the Americans' claim to the "rights of Englishmen," and were the predecessors of the State Constitutions, which owed their origin to the American Revolution. The Declaration of Independence established the principles which the Constitution made practical. Plans for colonial union were proposed from time to time, the most important of them being the Albany Plan of 1754, of which Benjamin Franklin was the author. The united efforts to establish independence gave birth to the Articles of Confederation, which though inadequate, were a real step toward the "more perfect Union" of the Constitution.

Q. In what respect had the Confederation failed?

A. It had three great weaknesses. It had no means of revenue independent of that received through its requisitions on the States, which were nothing more than requests, which the States could and did disregard; and it had no control over foreign or interstate commerce. Behind these lacks was

its inability to compel the States to honor the national obligations. It could make treaties but had no means to compel obedience to them; or to provide for the payment of the foreign debt. It had responsibility but no power as a national government; no means of coercing the States to obedience even to the very inadequate grant given to the "League of Friendship" by the Articles of Confederation. But its greatest weakness was that it had no direct origin in, or action on, the people themselves; but, unlike both the Declaration of Independence and the later Constitution, knew only the States and was known only to them, calling them sovereign.

Q. How extensively has the Constitution been copied?

A. All later Constitutions show its influence; it has been copied extensively throughout the world.

Q. The United States government is frequently described as one of limited powers. Is this true?

A. Yes. The United States government possesses

only such powers as are specifically granted to it by the Constitution.

Q. Then how does it happen that the government constantly exercises powers not mentioned by the Constitution?

A. Those powers simply flow from general provisions. To take a simple example, the Constitution gives to the United States the right to coin money. It would certainly follow, therefore, that the government had the right to make the design for the coinage. This is what the Supreme Court calls "reasonable construction" of the Constitution ([Art. I, sec. 8](#), cl. 18).

Q. Where, in the Constitution, is there mention of education?

A. There is none; education is a matter reserved for the States.

Q. Who was called the "Expounder of the Constitution"?

A. Daniel Webster, of Massachusetts, because of his forceful and eloquent orations interpreting the document.

Q. Must a member of the House of Representatives be a resident of the district which he represents?

A. The Constitution provides only that no person shall be a representative "who shall not, when elected, be an Inhabitant of that State in which he shall be chosen"; but makes no requirement as to residence within the district ([Art. I, sec. 2](#), cl. 2).

Q. Is it possible to impeach a justice of the Supreme Court?

A. It is possible to impeach a Justice of the Supreme Court or any other official. The Constitution makes provision for impeachment by the House and trial of the accused by the Senate sitting as a court of "all civil Officers," which includes the Justices ([Art. I, sec. 2](#), cl. 5; [sec. 3](#), cl. 6, 7; [Art. II, sec. 4](#)).

Q. Are Senators, Representatives, and justices of the Supreme Court civil officials of the United States?

A. Justices are, but the others are probably not. The Constitution in several places seems to make a clear distinction between legislators and officials, though this has been contested.

Members of Congress are not subject to impeachment, but are liable to expulsion by the vote of the House of which they are members (Art. I, sec. 5, cl. 2).

Q. What would be the proceeding in case of the impeachment of a Cabinet officer?

A. An impeachment proceeding may be set in motion in the House of Representatives by charges made on the floor on the responsibility of a member or territorial delegate; by charges preferred by a memorial, which is usually referred to a committee for examination; by charges transmitted by the legislature of a State or from a grand jury; or the facts developed and reported by an investigating committee of the House. After the impeachment has been voted by the House, the case is heard by the Senate sitting as a court. When the President of the United States is impeached and tried, the proceedings are the same except that the Senate is then presided over by the Chief Justice of the United States (Art. I, sec. 2, cl. 5; sec. 3, cl. 6, 7; Art. II, sec. 4).

Q. What is meant when it is said that Senators are paired?

A. Sometimes a Senator belonging to one party agrees with a Senator belonging to the other party that neither will vote if the other is absent, the theory being that they would always vote on opposite sides of the question. This is called a pair. Sometimes pairs are secured on a particular vote only. For example, if a Senator is in favor of a certain piece of legislation and is ill or unavoidably detained, his friends arrange for some one on the opposite side not to vote. This insures for each a record as to his views. While many are opposed to general pairs, as the first is called, all are glad to arrange a pair for a specific measure if a Senator is unavoidably prevented from being present ([Art. I, sec. 5](#), cl. 2).

Q. What is the mace of the House of Representatives and what purpose does it serve?

A. The mace consists of thirteen ebony rods, about three feet long, representing the thirteen original States. It is bound together with silver in imitation of the thongs which bound the fasces of ancient Rome. The shaft is surmounted by a globe of solid silver about five inches in diameter upon which rests a massive silver eagle. The mace is

the symbol of the paramount authority of the House within its own sphere. In times of riot or disorder upon the floor the Speaker may direct the Sergeant-at-Arms, the executive officer of the House, to bear the mace up and down the aisles as a reminder that the dignity and decorum of the House must not be overthrown. Defiance to such warning is the ultimate disrespect to the House and may lead to expulsion. When the House is sitting as a body the mace rests upright on a pedestal at the right of the Speaker's dais; when the House is sitting in committee of the whole, the mace stands upon the floor at the foot of its pedestal. Thus, when the House wishes to "rise" from committee of the whole and resume business as a legislative body, lifting the mace to its pedestal automatically effects the transition. The origin of the idea of the mace is based upon a similar emblem in the British House of Commons ([Art. I, sec. 5](#), cl. 2).

Q. Who administers the oath of office to the Speaker of the House of Representatives?

A. It is usually administered by the oldest member in point of service ([Art. I, sec. 5](#), cl. 2).

Q. What is meant by the "Father" of the House of Representatives?

A. It is a colloquial title informally bestowed upon the oldest member in point of service ([Art. I, sec. 5](#), cl. 2). It was borrowed originally from the House of Commons.

Q. Why is a member of the House of Representatives referred to on the floor as "the gentleman from New York," for example, instead of by name?

A. It is a custom in all large deliberative bodies to avoid the use of the personal name in debate or procedure. The original purpose of this was to avoid any possible breach of decorum and to separate the political from the personal character of each member ([Art. I, sec. 6](#), cl. 1).

Q. Do members of Congress get extra compensation for their work on committees?

A. No. ([Art. I, sec. 6](#), cl. 1).

Q. Could members of the President's Cabinet be permitted to sit in Congress without amending the Constitution?

A. No. A national officeholder cannot at the same

time be a member of either House of Congress ([Art. 1, sec. 6](#), cl. 2).

Q. Must all revenue and appropriation bills originate in the House of Representatives?

A. The Constitution provides that all bills for raising revenue shall originate in the House of Representatives. It is customary for appropriation bills to originate there also ([Art. I, sec. 7](#), cl. 1).

Q. What is meant by the word *veto*, in the President's powers?

A. The word is from the Latin and means "I forbid." The President is authorized by the Constitution to refuse his assent to a bill presented by Congress if for any reason he disapproves of it. Congress may, however, pass the act over his veto but it must be by a two-thirds majority in both houses. If Congress adjourns before the end of the 10 days, the President can prevent the enactment of the bill by merely not signing it. This is called a pocket veto. ([Art. I, sec. 7](#), cl. 2).

Q. If, after a bill has passed both houses of Congress and gone to the President, Congress desires to recall it, can this be done?

A. A bill which has reached the President may be recalled only by concurrent resolution. The form used is as follows: Resolved, by the House of Representatives (the Senate concurring), That the President be requested to return to the House of Representatives the bill . . . (title). After the concurrent resolution passes both houses it is formally transmitted to the President. The latter might, however, have already signed it, in which case it would have become a law and would have to be repealed in regular fashion ([Art. I, sec. 7](#), cl. 2).

Q. What is the difference between a joint and a concurrent resolution of Congress?

A. A joint resolution has the same force as an act, and must be signed by the President or passed over his veto. A concurrent resolution is not a law, but only a measure on which the two Houses unite for a purpose concerned with their organization and procedure, or expressions of facts, principles, opinions, and purposes, "matters peculiarly within the province of Congress alone," and not embracing "legislative provisions proper" ([Art. 1, sec. 7](#), cl. 3).

Q. Which is the longest term of office in the government, aside from judges?

A. The Comptroller General of the United States and the Assistant Comptroller General have the longest tenure. They hold office for fifteen years ([Art. I, sec. 8](#)), cl. 18; [sec. 9](#), cl. 7; [Art. II, sec. 2](#), cl. 2).

Q. What is the term of office of Treasurer of the United States?

A. The Treasurer is appointed by the President of the United States, and no length of term of office is specified ([Art. I, sec. 8](#), cl. 18; [sec. 9](#), cl. 7; [Art. II, sec. 2](#), cl. 2).

Q. Does the Constitution provide for the formation of a Cabinet?

A. No. The Constitution vests the executive power in the President. Executive departments were created by successive acts of Congress under authority conferred by the Constitution in [Art. I, sec. 8](#), cl. 18. The Departments of State, Treasury, and War were created by the first session of the First Congress. The Secretaries of these, together with the Attorney General, formed the first President's Cabinet. The Cabinet, it

should be distinctly understood, is merely an advisory body whose members hold office only during the pleasure of the President. It has no constitutional function as a Cabinet, and the word does not appear in an act of Congress until February 26, 1907 ([Art. I, sec. 8](#), cl. 18; [Art. II, sec. 1](#), cl. 1, [sec. 2](#), cl. 1).

Q. How many methods of electing the President of the United States were considered by the Constitutional Convention?

A. Five. These were by the Congress; by the people; by State legislatures; by State executives; and by electors. Various methods of appointing the electors were proposed: by popular vote, by lottery from members of Congress, by State legislatures, and by State executives; and the matter was finally compromised by leaving the method to each State legislature. The meeting of the electors in one body was also proposed; and at first the final choice, in case election by electors failed, was given to the Senate, but later, after choice by Congress had been defeated, it was transferred to the House, voting by States.

Q. Who appoints the Chief Justice of the United States and for how long a term?

A. The Chief Justice of the United States and the Associate Justices are appointed for life (during good behavior) by the President of the United States, "by and with the Advice and Consent of the Senate," ([Art. II, sec. 2](#), cl. 2; [Art. III, sec. 1](#)).

Q. By what authority may the President of the United States call an extra session of Congress?

A. The Constitution provides for this. [Art. II, sec. 3](#), says: ". . . he may, on extraordinary Occasions, convene both Houses, or either of them, . . ."

Q. Can the Secretary of State take action with respect to recognizing a government without the consent of Congress?

A. The Secretary of State, on behalf of the President, may accord recognition without recourse to Congress ([Art. II, sec. 3](#)).

Q. Under the new government how was the national judiciary organized?

A. The First Congress passed many notable acts which endured many years as laws. One of the most worthy of these was that organizing the

national judiciary, September 24, 1789. The bill was drawn up with extraordinary ability by Senator Oliver Ellsworth, of Connecticut, who had been a deputy to the Constitutional Convention, and who was to become Chief Justice of the United States. The Constitution prescribes a Supreme Court, but left its make-up and provision for other courts to Congress. The Supreme Court was organized with a Chief Justice and five Associates; a district court was provided for each State; and the Supreme Court Justices sat with the district judges in circuit courts. The jurisdiction of the three grades of the judiciary was fixed, and officers--clerks, marshals, and district attorneys--authorized. The Attorney General, also provided for in the act, was for many years little more than the President's legal adviser. Under this law President Washington appointed John Jay, of New York, Chief Justice, and the judiciary was organized on February 2, 1790.

Q. What are the correct style and titles of the Supreme Court of the United States and its members?

A. The correct title for the Supreme Court is "The

Supreme Court of the United States"; for the members, one speaks of a Justice, or Associate Justice, of the Supreme Court of the United States, but always of the head of the court as "The Chief Justice of the United States" (Art. III, sec. I).

Q. What has been the number of Justices of the Supreme Court of the United States?

A. The Chief Justice is mentioned in the Constitution but the number of Justices is not specified. The act of September 24, 1789, provided for a Chief Justice and five Associates; that of February 24, 1807, made the Associates six; that of March 3, 1837, eight; and that of March 3, 1863, nine. But on July 23, 1866, a law directed that no appointments be made of Associate Justices until the number of them should be only six. This was to prevent President Johnson from making appointments; but the act of April 10, 1869, restored the number to eight. There were only six at the time that President Grant made the first restorative appointments.

Q. It is frequently asserted that the Supreme Court nullifies an act of Congress. Is this

correct?

A. No. The Court has repeatedly declared that it claims no such power. All it does--all it can do--is to examine a law when a suit is brought before it. If the law in question is in accordance with the Constitution, in the opinion of the Supreme Court, the law stands. If the law goes beyond powers granted by the Constitution, then it is no law, and the Supreme Court merely states that fact ([Art. III, sec. 2](#), cl. 1; [Art. VI](#), cl. 2).

Q. In which decision did the Supreme Court first formally assert its authority contrary to an act of Congress?

A. In the famous case of *Marbury v. Madison* (1803). This was not the first case in which the authority of an act of Congress was questioned in a case before the court. In *Hylton v. United States*, 1796, the court upheld the constitutionality of a national tax on carriages as an excise that did not have to be apportioned. Also Justices in the circuit court had, as early as 1792, refused to act as commissioners under an act of Congress, considering the law unconstitutional.

Q. What is treason against the United States?

A. Treason against the United States consists in levying war against them, or in adhering to their enemies, giving the latter aid and comfort. No person can be convicted of treason except upon the testimony of two witnesses to the same overt act or on confession in open court (Art. III, sec. 3, cl. 1).

Q. What right has a Territorial Delegate in Congress?

A. A Territorial Delegate sits in the House of Representatives from each organized territory. Delegates may be appointed to committees and have the right to speak on any subject, but not to vote (Art. IV, sec. 3, cl. 2).

Q. Is a constitutional amendment submitted to the President?

A. No. A resolution proposing an amendment to the Constitution, after having passed both houses of Congress by a two-thirds vote, does not go to the President for his signature. It is sent to the States to be ratified either by their legislatures or by conventions, as Congress shall determine (Art. V). The Supreme Court as early as 1798 declared

the approval was not requisite (*Hollingsworth v. Virginia*, 3 Dallas 378).

Q. What constitutes the supreme law of the land?

A. Art. VI, cl. 2 of the Constitution says: "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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Q. When referring to various States in the Union, is the term "sovereign States" correct?

A. No. A sovereign is that person or State which recognizes no superior. The States of the Union have a superior--the Constitution of the United States, which is "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" ([Art. VI](#), cl. 2).

Q. Is there a clause in the Constitution prohibiting members of certain religious

denominations from becoming President of the United States?

A. No. Art. VI, cl. 3 of the Constitution provides that "no religious Test shall ever be required as a Qualification to any Office of public Trust under the United States."

Q. Should the amendments be called articles?

A. The amendments proposed by the first Congress were sent out as "Articles in addition to, and Amendment of the Constitution of the United States of America," and the term "article" is used in self-application in all the amendments since the Twelfth, except the Seventeenth, which uses the term "amendment." This would seem to give official sanction to calling the amendments "articles," but as it causes some confusion, they are better placed by the use of "amendment" only, with the proper number.

Q. In the first session of the First Congress how many proposed amendments were considered?

A. All of the amendments proposed by the State conventions were considered, but only approximately 90 separate amendments were

formally introduced. Professor Ames lists 312 through the First Congress, which includes the 124 proposed by the States and all reports and amendments to those proposed, in Congress.

Q. Who proposed the creation of the first executive departments and the first amendments to the Constitution?

A. James Madison, of Virginia, proposed the resolutions for the formation of the first executive departments and the series of twelve amendments to the Constitution of which ten were finally ratified by the States.

Q. What constitutes the Bill of Rights?

A. The first ten amendments to the Constitution.

Q. It is said that when the first amendments to the Constitution were submitted, there were twelve, of which ten were adopted. What were the other two about?

A. The two amendments of the twelve submitted as the Bill of Rights which were rejected were the one which related to the apportionment of Representatives in Congress and the one fixing the compensation of members of Congress.

(Note: The rejected second amendment was ratified on May 7, 1992 as the 27th amendment.)

Q. Do the first ten amendments bind the States?

A. No. They restrict the powers of the national government. They do not bind the States; but various of their restrictions have been applied to the States by the Fourteenth Amendment.

Q. Does not the Constitution give us our rights and liberties?

A. No, it does not, it only guarantees them. The people had all their rights and liberties before they made the Constitution. The Constitution was formed, among other purposes, to make the people's liberties *secure*-- secure not only as against foreign attack but against oppression by their own government. They set specific limits upon their national government and upon the States, and reserved to themselves all powers that they did not grant. The Ninth Amendment declares: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Q. What protection is given to a person accused of crime under the jurisdiction of the United States?

A. The Fifth Amendment declares that no person, except one serving in the land or naval forces or the militia in time of war or public danger, can be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury. No person can be twice put in jeopardy of life or limb for the same offense. No one in a criminal case can be compelled to be a witness against himself, or be deprived of life, liberty, or property without due process of law. Private property cannot be taken for public use without just compensation. By the Eighth Amendment excessive bail and fines and cruel and unusual punishments are prohibited. The original Constitution forbids ex post facto laws and bills of attainder, limits the punishment for treason, protects the right to a writ of habeas corpus, and secures trial by jury.

Q. Is the right to speedy trial guaranteed?

A. Yes. The Sixth Amendment expressly states that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an

impartial jury within the district of the crime, and to be informed of the nature and cause of the accusation. He is entitled to be confronted with the witnesses against him, to be allowed to compel the attendance of witnesses in his favor, and to have the assistance of counsel for his defense.

Q. Is the right of trial by jury in civil cases also assured?

A. Yes. Amendment Seven preserves the right of trial by jury in suits of common law involving the value of more than twenty dollars.

Q. What has been the longest period during which no amendment has been added to the Constitution?

A. Sixty-one years, from 1804 to 1865. This period elapsed between the Twelfth and Thirteenth Amendments.

Q. How long did it take the States to ratify the income tax amendment?

A. The Sixteenth Amendment was proposed to the States on July 12, 1909, deposited with the Secretary of State on July 21, ratified by the

thirty-sixth state on February 3, 1913, and, declared ratified on February 25, 1913.

Q. It has been stated that the Prohibition Amendment was the first instance of incorporating a statute in the Constitution. Is this so?

A. No. Those portions of the Constitution which specifically dealt with slavery and the slave trade ([Art. I, sec. 9](#), cl. 1; [Art. IV, sec. 2](#), cl. 3) were both of this character. They were made obsolete by time limit in one case and the Civil War in the other.

Q. How many amendments to the Constitution have been repealed?

A. Only one -- the [Eighteenth](#) (Prohibition).

Q. How is an amendment repealed?

A. By adding another amendment.

Q. If the Eighteenth Amendment is repealed, why is it necessary to call the new one repealing it the Twenty-first?

A. The [Eighteenth Amendment](#) will indeed remain in the Constitution, but a notation will be

added to the effect that it is repealed by the Twenty-first.

Q. What is the Twentieth Amendment and when was it adopted?

A. This is the so-called "Lame Duck" Amendment, which changes the time for the beginning of the terms of the President, Vice President, and the members of Congress. The term of the President and Vice President begins on January 20, and that of members of Congress on January 3. It was adopted upon the ratification by the thirty-sixth State, January 23, 1933, and certified in effect on February 6.

Q. Why was a constitutional amendment necessary to change the date of the beginning of the terms of President, Vice President, and members of Congress?

A. The Constitution fixes the terms of President and, Vice President at four years, of Senators at six years, and of Representatives at two years. Any change of date would affect the terms of the incumbents. It was therefore necessary to amend the Constitution to make the change.

Q. If the President-elect dies, who becomes President at the beginning of the term for which he was elected?

A. The Twentieth Amendment provides that in this case the Vice President-elect shall become President.

Q. Does the Twentieth Amendment do away with the Electoral College?

A. It does not.

Q. It takes how many States to block an amendment?

A. Thirteen, without respect to population or importance; but while approval is considered final, rejection is not while within the time limit, if one is prescribed by the amendment.

Note: The preceding was excerpted from *The Story of the Constitution* by Sol Bloom, Washington, DC : National Archives and Record Administration, 1986, c1937.