

The American Constitution: Its Origins & Development

June 30, 2020

by Eric T. Kasper

Professor of Political Science & Director of the Center for Constitutional Studies
University of Wisconsin-Eau Claire



I. The Road to the U.S. Constitution

A. The Continental Congress (1774-1781)

B. Articles of Confederation (1781-1788)

1. Structure of the Articles
2. Problems with the Articles
3. Shays's Rebellion

C. Planning a Convention

D. 1787 Constitutional Convention – A Bundle of Compromises

1. The Virginia Plan v. the New Jersey Plan
2. The Great Compromise
3. Slavery & the 3/5ths Compromise

E. Ratification (1787-88)



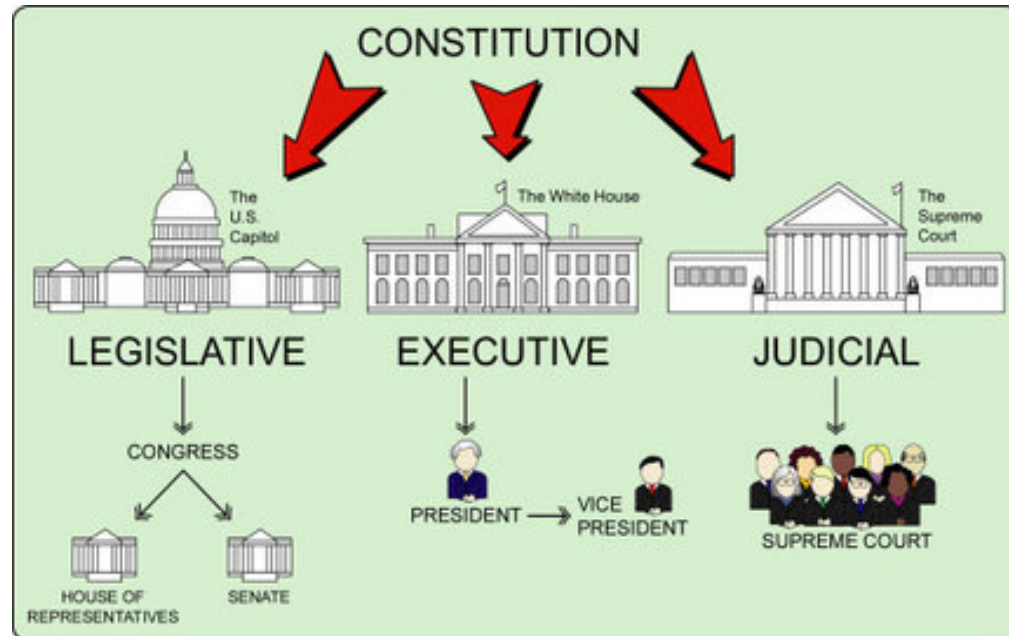
II. Principles & Influences of the Constitution

A. Underlying Principles

1. Empowering Government
2. Separation of Powers; Checks & Balances
3. Federalism
4. Protecting Individual Liberties & Rights

B. Influential Political Philosophers

1. Thomas Hobbes
2. John Locke
3. Montesquieu



III. The Structure of the Constitution

A. Specific Changes from Articles of Confederation

1. Increased the Power of the National Gov't
 - a. Regulation of Commerce & Finance
 - b. National Judicial Supremacy
 - c. Strong Executive Branch
2. Sought to Curb “Excessive” Democracy
 - a. Checks & Balances
 - b. Bicameralism
 - c. Electoral College
3. Limited Potential Gov't Abuse
 - a. Separation of Powers
 - b. Federalism
 - c. Bill of Rights (1791)



III. The Structure of the Constitution

B. Preamble – General Principles

C. Article I – The Legislative Branch (Congress)

1. House – Directly elected by the people for 2-year terms
2. Senate – 6-year terms
 - a. Originally – Appointed by state legislatures
 - b. Beginning in 1913 – Directly elected
3. Congressional Powers – Expressed Powers & Implied Powers

D. Article II – The Executive Branch (President)

1. An Independent Presidency
2. President Indirectly Elected by Electoral College to 4-Year Terms
3. Presidential Powers



III. The Structure of the Constitution

E. Article III – The Judicial Branch

1. Creates Supreme Court (SCOTUS)
2. Gives Congress the power to create other federal judgeships
3. Selection – Nominated by President & Confirmed by Senate
4. Lifetime Tenure
5. SCOTUS & Judicial Review

F. Articles IV & VI – National Unity & Power; Federalism

1. Article IV
 - a. Full Faith & Credit Clause
 - b. Guarantee Clause

2. Article VI – Supremacy Clause

G. Article V – Amending the Constitution

1. National Proposal
2. State Ratification

H. Article VII – Ratifying the Constitution (9 of 13 states)



IV. Amendments

A. Bill of Rights (1791) – Limits Federal Gov't Powers

1. Protects Individual Liberties/Rights – 1A, 2A, 3A, 7A, 9A
2. Protects the Rights of the Accused – 4A, 5A, 6A, 8A
3. Protects State Powers – 10A

B. Post-Civil War Amendments (1865-1870)

1. 13A – Abolishes slavery
2. 14A – Defines citizenship; protects due process & equality
3. 15A – Protects the right to vote based on race

C. Expansion of the Electorate – 15A, 19A, 23A, 24A, 26A

1. 19A (1920) – Extends right to vote to women
2. 23A (1961) – Extends voting rights for presidency to DC residents
3. 24A (1964) – Abolishes poll taxes
4. 26A (1971) – Lowers voting age to 18



IV. Amendments

D. Changes to Elections & Offices – 12A, 17A, 20A, 22A, 25A

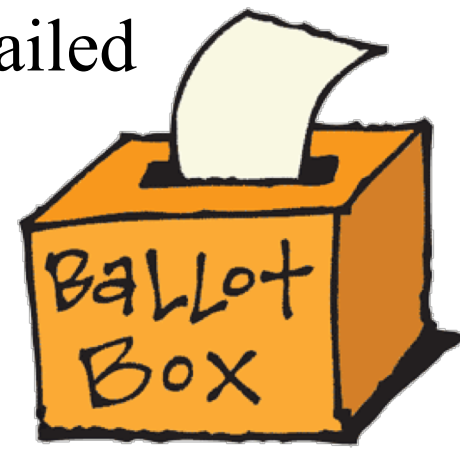
1. 12A (1804) – Separate ballot for President & Vice President
2. 17A (1913) – Direct election of senators
3. 20A (1933) – Shortens “lame duck” periods for Congress/President
4. 22A (1951) – Limits terms of President (2 terms max generally)
5. 25A (1967) – Presidential succession & removal

E. Expanding/Limiting Gov't Power – 11A, 13A, 14A, 16A, 27A

1. 11A (1795) – Limits federal court jurisdiction
2. 16A (1913) – Gives Congress power to tax incomes
3. 27A (1992) – Limits Congress's power to raise members' salaries

F. Prohibition & Its Repeal – 18A (1919) & 21A (1933)

G. Over 11,000 Proposed Amendments Have Failed



V. Constitutional Change By SCOTUS Decision

A. Judicial Review – *Marbury v. Madison* (1803)

B. Liberty of Contract

1. *Allgeyer v. Louisiana* (1897) – Establishes liberty of contract

2. *Lochner v. NY* (1905) – Strikes down maximum hours law

C. Great Depression & Econ. Regulation (liberty of contract ends)

1. *NLRB v. Jones & Laughlin* (1937) – Congress can regulate labor

2. *West Coast Hotel v. Parrish* (1937) – States can set min. wage

D. Racial Equality

1. *Brown v. Board of Education* (1954) – Racial segregation in public schools is unconstitutional

2. *Heart of Atlanta Motel v. U.S.* (1964) – Congress may ban racial segregation in public accommodations (business)

3. *Grutter v. Bollinger* (2003) – Public universities may use race-based affirmative action in admissions



V. Constitutional Change By SCOTUS Decision

E. Expanding Equality

1. *Reed v. Reed* (1971) – 14A bans sex discrimination
2. *Obergefell v. Hodges* (2015) – 14A protects same-sex marriage

F. The Right to Privacy

1. *Griswold v. Connecticut* (1965) – Right to privacy established
2. *Roe v. Wade* (1973) – Privacy includes right to abortion
3. *Lawrence v. Texas* (2003) – Adult consensual intimacy at home

G. Expanding the Rights of the Criminally Accused

1. *Mapp v. Ohio* (1961) – Exclusionary rule incorporated
2. *Gideon v. Wainwright* (1963) – Right to a criminal attorney
3. *Miranda v. Arizona* (1966) – Warnings of rights to silence/atty



V. Constitutional Change By SCOTUS Decision

H. First Amendment Rights (freedoms of religion, speech, press)

1. *Engel v. Vitale* (1962) – 1A bans gov't prayer in public schools
2. *Brandenburg v. Ohio* (1969) – Advocacy of violence protected unless the speech incites imminent lawless action
3. *NY Times v. U.S.* (1971) – Prior restraints typically unconstitutional
4. *Texas v. Johnson* (1989) – Flag burning protected
5. *Employment Division v. Smith* (1990) – Burdens on religion typically upheld if regs are neutral & generally applicable
6. *Citizens United v. FEC* (2010) – Corporate campaign spending



Questions?

Email me at kasperet@uwec.edu

