

UNIT I
CONSTITUTIONAL UNDERPINNINGS
AP Chapters 1-2-3

Amending the Constitution*

- There are two ways to *propose* an amendment: (1) Two-thirds of both houses of congress vote to propose an amendment *or* (2) Two-thirds of the state legislatures ask Congress to call a national convention to propose amendments
- There are two ways to *ratify* an amendment: (1) Three-fourths of the state legislatures approve it *or* (2) Ratifying conventions in three-fourths of the states approve it
- Only the first method of proposing an amendment has been used
- The second method of ratification an amendment has been used only once, to ratify the Twenty-first Amendment (repealing Prohibition)
- Congress may limit the time within which a proposed amendment must be ratified. The usual limitation has been seven years
- Thousands of proposals have been made, but only thirty-three have obtained the necessary two-thirds vote in Congress
- Twenty-seven amendments have been ratified
- The first ten amendments, ratified on December 15, 1791, are known as the Bill of Rights

Amendment

- Changes in, or additions to, the U.S. Constitution.
- Amendments are proposed by a two-thirds vote of both houses of Congress or by a convention called by Congress at the request of two-thirds of the state legislatures and ratified by approval of three-fourths of the states.

Anti-federalist party

- Opponents of a strong central government who campaigned against ratification of the Constitution in favor of a confederation of largely independent states.
- Anti-federalists successfully marshaled public support for a federal bill of rights.
- After ratification, they formed a political party to support states' rights.
- See also Federalists.

Articles of Confederation

- Submitted July 1776; ratified 1781
- Framework for an American national government; states had the most power
- Empowered the federal government to make war and peace, coin money, and create new states
- No federal empowerment to levy taxes, raise troops, or regulate commerce
- Government could not pay off war debt without taxes
- States were allowed to impose tariffs that produced bidding wars and interstate disputes.
- Congressional revision of the articles created a weak national government
- Created a government which had a difficult time coping with the problems that the growing nation was facing
- Was, in a sense, an unplanned experiment that tested some of the principles of government set forth earlier in the Declaration of Independence
- Each state had one vote in the unicameral Congress
- 9/13 were required to pass any measure
- There was no executive branch to enforce the laws nor was there a Judiciary Branch to review the measures passed by the Legislature
- For Amendments to the Articles, a unanimous vote was required.
- Confidence in AofC diminished greatly as a result of Shay's Rebellion
- See attached notes from reading/lecture

Authority

- The right to use power
- Ability to control
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Bureaucratic Theory

Bicameral legislature

- A lawmaking body made up of two chambers or parts
- Example #1: U.S. Congress consists of the House of Representatives and the Senate
- Example #2: The California State Legislature consists of a Senate and an Assembly
- The only unicameral legislature is in Nebraska
- Framers created this check and balance to prevent legislative tyranny

Bill of attainder

- A law that declares a person, without a trial, to be guilty of a crime.
- The state legislatures and Congress are forbidden to pass such acts by Article I of the Constitution.

Bill of Rights

- A list of individual rights and liberties often used to describe Amendments 1-10, sometimes also 14.
- Protections Afforded Citizens to Participate in the Political Process:
 - Amendment 1: Freedom of religion, speech, press, and assembly; the right to petition the government
- Protections Against Arbitrary Police and Court Action:
 - Amendment 4: No unreasonable searches or seizures
 - Amendment 5: Grand jury indictment required to prosecute a person for a serious crime.
 - No “double jeopardy” (being tried twice for the same offence)
 - Forcing a person to testify against himself or herself is prohibited
 - No loss of life, liberty, or property without due process
 - Amendment 6: Right to speedy, public, impartial trial with defense counsel and right to cross-examine witnesses
 - Amendment 7: Jury trials in civil suits where value exceeds \$20
 - Amendment 8: No excessive bail or fines, no cruel and unusual punishments
- Protections of States’ Rights and Unnamed Rights of People
 - Amendment 9: Unlisted rights are not necessarily denied
 - Amendment 10: Powers not delegated to the United States or denied to states are reserved to the states
- Other Amendments
 - Amendment 2: Right to bear arms
 - Amendment 3: Troops may not be quartered in homes in peacetime

Block Grants

Bureaucrats

- The appointed officials who operate government agencies from day to day.
- CIA agents and those who work for the FBI are bureaucrats.
- For a good overall picture of what is the “bureaucracy”, see the Quick Study – American Government

Categorical Grants

Checks and Balances

- The power of the legislature, executive, and judicial branches of government to block some acts by the other two branches
- Among other things, the Congress can check President by:
 - Refusing to pass a bill that a president wants
 - Overriding a president’s veto
 - Using the impeachment powers to remove the president from office
 - Refusing to approve a presidential appointment (Senate only)
 - Refusing to ratify a treaty the president has signed (Senate only)
- Congress can check the federal courts by:
 - Using the impeachment powers to remove a judge from office
 - Changing the number and jurisdiction of the lower courts
 - Refusing to approve a person nominated to be a judge (Senate only)
- The President can check the Congress by
 - Vetoing a bill it has passed
 - Going directly to the people to speak out against the moves of Congress
- The President can check the federal courts by
 - Nominating new judges when vacancies on the court arise
- The Federal Courts can check the power of congress by
 - Declaring a law unconstitutional
- The Federal Courts can check the power of the president by
 - Declaring actions by him or his subordinates to be unconstitutional or not authorized by law
- Informal checks and balances (not provided for in the Constitution) exist
 - President can try to withhold information from Congress by means of “executive privilege”
 - Congress can try to get information by mounting an investigation

Confederation (confederate system of government)

- A political system in which states or regional governments retain ultimate authority except for those powers that they expressly delegate to a central government.
- The United States was a confederation from 1776 to 1787 under the Articles of Confederation.

Congress (Express Powers – Article I; Section 8; Subsection 1-17) *

- Congress can set and collect taxes on goods as they are manufactured, sold, used, or imported.
- Congress can borrow money on the credit of the United States.
- Congress can regulate interstate and foreign trade.
- Congress can make laws with respect to bankruptcy.
- Congress can determine how aliens can become U.S. citizens.
- Congress can mint coins and can print and circulate paper money.
- Congress can establish uniform weights and measures.
- Congress can punish counterfeiters of American currency.

- Congress can establish post offices and routes over which mail can be carried.
- Congress can grant copyrights to authors and composers and patents to inventors.
- Congress can set up all federal courts except the Supreme Court.
- Congress can prohibit acts of piracy outside U.S. territory and can punish certain other acts that all nations prohibit.
- Congress can declare war. Until international law banned such action in the mid-nineteenth century, it could also authorize private parties to capture and destroy enemy ships in wartime.
- Congress can raise and maintain an army.
- Congress can create and maintain a navy.
- Congress can set rules for military forces.
- Congress can call into service the militia (the National Guard).
- Congress can organize, arm, and discipline the militia and can govern it when it is in the service of the United States.
- Congress can govern Washington, D.C., and can erect buildings there that seem necessary for the seat of the U.S. government.

Congress (Implied Powers – Article I; Section 8; Subsection 18) *

- Congress' power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.
- This wording is often referred to as the implied powers clause, the necessary and proper clause, and/or the elastic clause.

Constitution

- Drafted at the Constitutional Convention in Philadelphia in 1787
- Included a preamble and seven articles
- Created a stronger federal government
- Bill of Rights are the first ten amendments; they protect individual rights and freedoms
- Written in order to promote general welfare
- Written in order to secure the blessings of liberty
- “Was made not merely for the generation that existed, but for posterity – unlimited, undefined, endless, perpetual prosperity”
- Often called a living, breathing document, created by people with a vision
- Written in order to establish justice
- The first 3/7 of this document are written to establish the structure and the powers of the three branches of government
- Written after the Articles of Confederation and before the Federalist Papers
- Written in large part by James Madison, Alexander Hamilton, and John Jay
- James Madison – “father”
- Written to form a more perfect union
- Begins with a preamble
- Describes the “methods of amendment in Article V
- Written in order to create domestic tranquility and provide for the common defense
- (Signed September 17, 1787; ratified by required nine states June 21, 1788)

Constitution & Slavery

- Nowhere can the word “slave” (or “slavery”) found in the Constitution
- To some, the failure of the Constitution to address the question of slavery was a great betrayal on the promise of the Declaration of Independence that “all men are created equal”; by remaining silent on the subject of slavery, and thereby allowing the odious practice to continue, was to convert (by implication) the wording of the Declaration to “all white men are created equal.”
- Many of the signers of the Declaration and the Constitution were hypocritical in that they knew of slavery, many owned slaves, and still remained silent about the issue.
- Any effort to use the Constitution to end slavery would have meant the end of the Constitution (the southern states would never have signed a document that seriously interfered with slavery)
- Framers of the Constitution compromised with slavery:

- In determining the representation each state was to have in the House, “three-fifths of all other persons” (slaves), are to be added to the “whole number of free persons”
- Constitution guaranteed that if a slave were to escape his or her master and flee to a non-slave state, the slave would be returned to the state to “the party to whom...service or labour may be due”
- Convention agreed not to allow the new government by law or even constitutional amendment to prohibit the importation of slaves until the year 1808
- Allowing slavery to continue led to the worst social and political catastrophe in the nation’s history: the Civil War

Framers chose to sidestep slavery to create a union that, they hoped, would eventually be strong enough to deal with the problem when it could no longer be postponed.

Constitutional convention

- A meeting of delegates in 1787 held in Philadelphia to revise the Articles of Confederation, which produced a totally new constitution still in use today.
- Not attended by Thomas Jefferson
-

Cooperative federalism

- The theory that the states and the federal government should cooperate in solving problems

Declaration of Independence*

- Document restating political ideas justifying the separation from Britain
- Thomas Jefferson and his committee had the duty of drafting for the Continental Congress
- John Locke’s influences served as a foundation for the document
- The final product lacked provisions condemning the British slave trade and a denunciation of the British people that earlier drafts had contained.

“When, in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government”

- Declaration adopted July 4, 1776
- See attached notes from reading/lecture

Democracy

- A term used to describe a political system in which the people are said to rule, directly or indirectly.
- Democratic centralism: Direct or participatory democracy: Representative democracy

Devolution (Including First and Second Order Devolution

Direct/participatory government

- A political system in which all or most citizens participate directly by either holding office or making policy.
- The town meeting, in which citizens vote on major issues, is an example of participatory democracy.

Dual federalism

- A system of government in which both the federal and state governments maintain diverse but sovereign powers

Elite Theory

- An identifiable group of persons who possess a disproportionate share of some valued resource-such as money or political power.

Ex post facto law

- Ex post facto is a Latin term meaning “after the fact.” A law that makes criminal an act that was legal when it was committed, that increases the penalty for a crime after it has been committed, or that changes the rules of evidence to make conviction easier; a retroactive criminal law.
- The state legislatures and Congress are forbidden to pass such laws by Article I of the Constitution.

Factions

- Groups or cliques within a larger group
- According to James Madison, a group of people who seek to influence public policy in ways contrary to the public good
- See Federalist Paper (No. 10)

Federalism

- Defined as a political system in which ultimate authority is shared between a central government (also known as national and or federal government and state and/or regional governments
- One level of government can serve as a check on the other
- Helps to secure democracy
- Compare to Confederation and Unitary systems
- Confederation-a political system in which states or regional governments retain ultimate authority except for those powers that they expressly delegate to a central government
- Unitary system- a system in which sovereignty is wholly in the hands of the national government so that subnational political unites are dependent on its will
- Therefore;

Federalism	Confederation	Unitary System
F><S	S>F	F>S

Federalist papers

- A series of eighty-five essays written by Alexander Hamilton, James Madison, and John Jay (all using the name “Publius”) that were published in New York newspapers in 1787-1788 to convince New Yorkers to adopt the newly proposed Constitution.
- They are classics of American constitutional on political thought.
- Federalist Paper No.10 discusses the inevitability of factions in a democracy and proposes possible solutions ranging from removing the causes of factions to controlling their effects (Madison)
- Federalist Paper No. 51 assumes that people are factious by nature and states that government is “the greatest of all reflections on human nature.” (Madison)

Four Theories of Who Governs

Grants in Aid

Great Compromise

- Roger Sherman's plan to resolve the large-state / small-state controversy during the Constitutional Convention of 1787.
- He proposed a bicameral legislature in which representation in the lower chamber (the House of Representatives) would be based on population, and each state, regardless of size, would have an equal number of representatives in the upper chamber (the Senate)

Impeachment

Indirect/representative democracy

- A political system in which leaders and representatives acquire political power by means of a competitive struggle for the people's vote.
- This is the form of government used by nations that are called democratic.

Judicial Review

- The power of the courts to declare acts of the legislature and of the executive to be unconstitutional and hence null and void.
-

Judiciary Act of 1801

- Created new judgeships to be filled by the president
- John Adams filled the vacancies with party supporters ("Midnight Judges") before he left office
- Led to bitter resentment by the incoming Jeffersonian Republican Party
- Act would play a role in the case of Marbury v. Madison

Line Item Veto

Mandate*

Marxist Theory

- People who believe that those who control the economic system also control the political one.

Natural Rights Philosophy*

Necessary and Proper Clause*

New deal*

- A program ushered in by Roosevelt administration in 1933 designed to help the United States out of the Great Depression.
- It included many government spending and public assistance programs, in addition to thousands of regulations of economic activity.

New federalism

- A plan to limit the federal government's role in regulating state governments, in order to give the states increased power to decide how they should spend all government revenues

New Jersey Plan

- A plan proposed by William Paterson of New Jersey during the Constitutional Convention
- It called for equal representation by all states (thereby favoring the smaller states)

Pluralist Theory

- A theory that competition among all affect interests shares public policy.

Power

- The ability of one person to require another person to act in accordance with the first person's intentions.

Preamble*

- An introductory statement to an official document that usually explains the document's goals and purposes
- Normally the term is used in reference to the preamble of the US Constitution
- "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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."

Republic

- A form of democracy in which power is vested in representatives selected by means of popular competitive elections.
- The name given to a nation in which the supreme power rests in those who are entitled to vote and is exercised by elected representatives who are responsible to voters and who govern according to law.
- See also Representative democracy

Rights Found in Constitution

- Writ of habeas corpus may not be suspended (except during invasion or rebellion)
- No bill of attainder may be passed by Congress or the states
- No ex post facto law may be passed by Congress or the states
- Right of trial by jury in criminal cases is guaranteed
- The citizens of each state are entitled to the privileges and immunities of the citizens of every other state
- No religious test or qualification for holding federal office is imposed
- No law impairing the obligation of contracts may be passed by the states

Shay's rebellion

- A rebellion in 1787 led by Daniel Shays and other ex-Revolutionary War soldiers and officers to prevent foreclosures of farms as a result of high interest rates and taxes.
- The revolt highlighted the weaknesses of the Confederation and bolstered support for a stronger national government.

Supremacy clause

- Article VI, Section 2 of the Constitution, which establishes the Constitution and federal laws as superior to all state and local legislation
- "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."

Three-Fifths Compromise

- A compromise reached during the Constitutional Convention in which it was agreed that three-fifths of all slaves were to be counted both for tax purposes and for representation in the House of Representatives

Totalitarian

- A ruler who rules without the consent of the governed

Unalienable

- Based on nature and providence rather than on the preferences of people. In other words, a term that means, "God-given."
- As in "unalienable rights" – a term that's made reference to in the Declaration of Independence.
- "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain *unalienable rights*; that among these are life, liberty, and the pursuit of happiness"
- See notes on Unitary Forms of Government

Unitary System of Government*

Virginia Plan

- A fifteen-resolution plan proposed by Governor Edmund Randolph of Virginia during the Constitutional Convention
- It recommended an entirely new national government favoring the large states
- It included a bicameral legislature, a national executive branch, and a national court system

Women and the Constitution

- Women were specifically mentioned nowhere in the Constitution
- Article I granted the vote to those people who were allowed to vote for members of the lower house of the legislature in which they resided, but women could not participate in these elections
- Every pronoun used is masculine – *he* or *him*
- However, whenever the Constitution or Bill of Rights grants a right, it either grants that right to "persons," "people," or "citizens," not to "men," or it makes no mention of gender

Writ of Habeas Corpus

- A Latin term meaning, "you shall have the body."
- A court order directing a police officer, sheriff, or warden who has a person in custody to bring the prisoner before a judge and show sufficient cause for his or her detention.
- The writ of habeas corpus was designed to prevent illegal arrests and imprisonment.
- "Order to have Body"

1st Amendment

- Six (6) rights
- Speech (expression); religion (free exercise and establishment clause); press; petition; and assembly
- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- See attached notes from reading/lecture

2nd Amendment

- Right to keep and bear arms
 - “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”
- See attached notes from reading/lecture

14th Amendment Due Process Clause

- “...nor shall any State deprive any person of life, liberty, or property, without due process of law”

25th Amendment

- Ratified in 1964
- Contains 4 sections all having to do with Presidential Succession, Vice-Presidential Vacancy, and Presidential Inability.

26th Amendment

Marbury vs. Madison (1803)

- William Marbury had been commissioned justice of the peace in D.C. by President John Adams.
- His commission was part of Adams’ “midnight appointments” during his last days in office.
- Marbury’s commission was not delivered, so he sued President Jefferson’s Secretary of State, James Madison.
- Chief Justice John Marshall held that while Marbury was entitled to the commission the status, which allowed Marbury’s remedy, was unconstitutional as it granted the Supreme Court powers beyond what the Constitution permitted.
- This decision paved the way for judicial review, which gave courts the power to declare statutes unconstitutional.

McCulloch v Maryland (1819)

- Facts: The state of Maryland brought an action against James William McCulloch, a cashier in the Maryland branch of the Bank of the United States, for not paying a tax the state had imposed on the United States Bank.
- Issue: Whether the state of Maryland had the right to tax a federal agency which was properly set up by the United States Congress.

- Opinion: In a unanimous decision, the Supreme Court of the United States ruled that the “power to tax involves the power to destroy,” and that the federal government’s national bank was immune to state taxation. The Court reasoned that Congress could set up a United States Bank and write laws “necessary and proper” to carry out its constitutional power to coin and regulate money.

Gibbons v. Ogden (1824)

- Facts: Robert Livingston secured from the New York State Legislature an exclusive twenty-year grant to navigate the rivers and other waters of the State. The grant further provided that no one should be allowed to navigate New York waters by steam without a license from Livingston and his partner, Robert Fulton, and any unlicensed vessel should be forfeited to them. Ogden had secured a license for steam navigation from Fulton and Livingston. Gibbons originally had been partners with Ogden, but was now his rival. Gibbons was operating steamboats between New York and New Jersey under the authority of a license obtained from the United States. Ogden petitioned the New York court and obtained an injunction ordering Gibbons to stop operating his boats in New York waters.
- Issue: Whether the New York statute that prohibited vessels licensed by the United States from navigating the waters of New York was unconstitutional and, therefore, void.
- Opinion: Writing for the Supreme Court of the United States, Justice Marshall said that the injunction against Gibbons was invalid because the monopoly granted by the New York statute conflicted with a valid federal law. The Court used this case to put forth the position that Congress can legislate and regulate all matters of interstate commerce as long as there is some commercial connection with another state. While interstate commerce is regulated by Congress, power to regulate “completely internal” commerce (trade carried on in a state that does not affect other states) is reserved to the states.

Dred Scott v. Sanford (1857)

- Facts: Dred Scott, a slave, was taken by his owner, Sanford, into northern federal territory. Scott felt that he was free because of the Missouri Compromise of 1820, which excluded slavery from specified portions of United States territories. When he came back to Missouri, Scott sued his owner for his freedom.
- Issue: Whether Dred Scott, a slave, was a citizen of the United States and legally entitled to use the courts to sue.
- Opinion: The Supreme Court of the United States ruled that slaves were property, not citizens. Therefore, Dred Scott was not entitled to use the courts. The Court focused on the rights of the owner, not the slave, saying that black people had no rights that white people were bound to respect. Justice Taney said that freeing Scott would be a clear violation of the Fifth Amendment because it would amount to depriving Sanford of his property without due process of law. He also said that Congress had no power to prohibit slavery in the territory and that the Missouri Compromise was unconstitutional.

Roe vs. Wade (1973)

- Supreme Court decision that rule first trimester abortions were to be allowed.
- All state laws prohibiting such abortions were made unconstitutional.
- Decision was based on a woman’ right to privacy. (14th Amendment Due Process Clause)
- Led to criticism from Roman Catholics and right-to-life groups
- Argument In Favor of Petitioner (Roe):
- The due-process clause of the Fourteenth Amendment implies a “right to privacy” that protects a woman’s freedom to choose, during the first three months of pregnancy whether to have an abortion.
- Argument IN Favor of Respondent (Wade) Life begins at the moment of conception, and so the human fetus is a “person” entitled to the equal protection of the laws guaranteed by the Fourteenth Amendment.

Texas v. Johnson (1989)

- Facts: In 1984, Gregory Lee Johnson burned an American flag in front of the Dallas City Hall. He burned the flag as a means of protest against the policies of President Ronald Reagan’s Administration. Under Texas law desecration of the American flag is a criminal offense. Mr. Johnson was convicted and sentenced to one year in jail and a \$2,000 fine.

- Issue: Does a law against desecration of the American flag violate an individual's right to freedom of speech as found in the First Amendment?
- Opinion: In a 5-4 decision the Supreme Court of the United States found that desecrating the flag as an act of protest is an act of expression, an act protected by the First Amendment. The Court found that burning the American flag was political speech which Justice Brennan wrote "...is the bedrock principle underlying the First Amendment. Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."