

# **Constitutional History of the United States**

**By**

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Institutional Aspects of Constitutional Law.

The concept of a written constitution is one of the unique contributions the United States has made to the arts of government. The American Constitution, which has been in effect since 1789, is the oldest written constitution now in use. Now for some time, some people believed that our constitution had survived so many drastic changes in our socio-economic life because the framers were looked upon as being an assembly of demigods who had exceptional powers, and the idea was that these demigods had created an original instrument of government. And so the Englishman Gladstone called the American Constitution the most wonderful work struck off at a given time by the mind and purpose of man.

Another Englishman James Bryce, who wrote *American Commonwealth* (a classical study of American Government), arrived at a more realistic conclusion when he noted that the American Constitution is no exception to the rule that everything which has the power to win the obedience and respect of man must have its roots deep in the past and the more slowly an institution has dragged the more enduring it is more likely to prove.

There is little in our constitution that is absolutely new. Some of it is as old as the Magna Carta ("the Great Charter of the Liberties"). It is now generally agreed that the American Constitution has its roots deep in the past and the laborers and experiences of a new generation of men molded that constitution in Philadelphia, Pennsylvania in 1787.

It has been stated that it is essential to know what was done, thought and what was said on that eventful occasion. Such behavior stemmed from the stream of things that had gone before. They were a high professional group of men, men of

necessity. They were men that had relied on many previous practices of government and principles. The framers were quite familiar with the Magna Carta of 1215, the petition of Rights of 1628, and the English Bill of Rights of 1689. They represented important milestones in the development of English institutions. The farmers were well versed in the writings of the times.

The framers of the constitution were profoundly influenced by John Locke, especially his Second Treatise of Civil Government. They were familiar with the work of the Frenchman Montesquieu (The Spirit of the Laws). Montesquieu presented the concept of the Separation of Powers. The farmers were also familiar with William Blackstone's book entitled, Commentary on the Laws of England. In addition these men had the records and experiences of the Colonial Government, The Continental Congress. They had been under the Articles of Confederation and the experiences of the early state governments operating under their respectful form of government.

If the Constitution of the United States is not as original and a great sacred document, then have has it been able to survive? The answer is simple. The reason is that our constitution is a very flexible document. It is a dynamic document. It has been greatly changed and extended through time by four principle methods:

1. Judicial interpretation.
2. Legislative enactment.
3. Custom and Usage.
4. By the amending process as outlined in the Constitution

All of that has been possible because important provisions of our constitution are so unclear, so damnably vague that there is room left for growth and change in its framework.

Example – The Constitution of the United States stipulates that Congress shall have the power to regulate inter-state commerce, commerce with foreign nations and among the several states and with the Indian Tribes. But nowhere in that document is commerce ever defined, nor does it state what actually constitutes commerce with foreign nations or among the several states. Each generation interprets those phrases in its own way.

Example – The due process of law which has quite a different meaning today than what it had 10 years ago. The late Charles A. Beard, a well-known historian and politician, referred to the constitution as a living organism because it contained so

many vague words, vague phrases which needed to be interpreted by human beings and Professor Beard listed the following phrases to be particularly vague.

1. General Welfare.
2. Necessary and Proper. John Marshall insisted that these were varying degrees of necessity. Thomas Jefferson said it meant absolutely indispensable. John C. Calhoun said yes.
3. Full faith and credit.
4. A Republican form of government.
5. Unreasonable searches and seizures.
6. Impartial Law.
7. Cruel and Unusual Punishment. The Supreme Court defined it as anything which shocks the sensitivity of reasonable people.
8. All power not delegated to the United States by this Constitution is reserved to the states or to the people.
9. Privileges and Immunities.

Each of these phrases do cover some core of reality, justice on which a general consensus can be reached, but around that core there is a huge shadow filled with misty vapors in which interpretations can wonder and never coming to a conclusion.

These vague words and phrases must be interpreted by men and women who can use them both by members of government and citizens. Some men must undertake to give these phrases meaning. The generalities of our constitution very from age to age. These ambiguous terms have made possible change to the demands of the times. The Supreme Court has played a very important part in interpreting these institutional provisions. Many judges and scholars have stated that these ambiguous words and phrases are empty vessels into which the Supreme Court Justice may pour into it anything he wishes.

Felix Frankfurter, "The Constitution of the United States is exactly what the judges say it is, no more or no less. He insisted that in actuality the Supreme Court is the constitution. The Supreme Court operates as a permanent constitutional convention as to what may or may not be done.

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The Constitution and Constitutional Law and what the Constitution means to you

The majority of well-known students of American Government agree that the constitution cannot be precisely defined, but for practical purposes the Constitution of the United States may be referred to as that document that went into effect in 1789 as it has been amended and interpreted to present times. It is generally agreed that the American Constitution has three major adjectives.

1. That it establishes the framework or structure of government.
2. It delegates or assigns powers to the government.
3. It restrains the exercise of those powers by governmental officials in order that certain individual rights may be reserved.

The constitution serves a dual function. It grants and limits powers. The framers of our constitution saw a need for establishing what was recognized in 1789 as a strong federal government. They established a strong central government but early previous knowledge convinced them that they could not put unqualified men in government positions. It is generally agreed among political scientist that constitutional law cannot be defined. In its broadest sense it designates that branch of jurisprudence which deals with the constitution and the interpretation of the constitution.

What the Constitution means to you.

Basic Constitutional Guarantees.

1. It establishes for you a stable and responsible government.
2. It makes you a citizen of the United Sates if natural born.
3. It gives you citizenship if foreign born on complying on what seems to be liberal nationalization laws.
4. It allows you a voice in the government through the officials whom you help to elect.
5. It guarantees your life, liberty, and Pursuit of Happiness (“Unalienable Rights”).
6. It defends your right even against the government itself.
7. It makes you equal with all men before the law.
8. It confirms your religious freedom and liberty of consciousness.

9. It accords you free lawful speech.
10. It guarantees you to gather with all people the right of a peaceful assembly.
11. It permits you to petition the government to right your wrongs.
12. It guarantees your property rights.
13. It prohibits the government from taking your property without due process of law. Without due process of law the government can use Eminent Domain.
14. It lets you hold any office with the gift of the nation in which you all are qualified.
15. It enables you to become a citizen of any state.
16. It prevents you from being held to answer to any complaint unless you have been involved in criminal acts.
17. It insures your right to trial by jury of your fellow man.
18. It grants you rights of "Habeas Corpus"). Habeas Corpus meant to bring forth the body. It is the right to know why you are being held a prisoner.
19. It insures you to the right of a speedy trial in so far that it is possible.
20. It permits your having Counsel for Defense.
21. It prevents you being tried again once you have been acquitted.
22. It permits you to have a trial in the state and in the district to which you may be charged with an offence against public law.
23. It uses your power of government to compel witnesses to appear in your behalf.
24. It relieves you from compulsion to testify against yourself.
25. It forbids excessive finds or cruel and unusual punishment.
26. It protects you from slavery in any form.
27. It keeps any state from depriving you of your Constitutional Rights.
28. It sanctions your bearing arms for the protection of your life and home.
29. It insures your home from search except for lawful warrants.
30. It guarantees you that legal obligations of contracts shall not be harmed.
31. It permits you to participate in the amendment of the Constitution from time to time.

