

Politics and Religion: The Constitution



Introduction

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.

➤ **The Constitution**

■ Organization:

- **Preamble** → Life, Liberty, Property
- **Article 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.
- **Article 2**— The executive Power shall be vested in a President of the United States of America.
- **Article 3**— 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.
- **Article 4**—State reciprocity/Admitting new states to the Union
- **Article 5**—Amending the Constitution
- **Article 6**—State's debts assumed
- **Article 7**—Ratifying the Constitution

■ Separation of Powers → **Federalism**

- **Federalist 51** (Madison): [the greatest security against a concentration of power...are the constitutional means and personal motives to resist]...“Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.”
- Structure (Madison): **We the People** (unity—“consent of the governed”) ratify Constitution → **Republicanism**
 - ◆ Federal: 3 branches → **Limited** (Enumerated) Power ~ cf. Foreign Policy (Defense and Commerce)
 - ◆ State: **“Unlimited”** (10th Amendment) ~ cf. Domestic Policy

■ Enumerated Powers

- Federal Government only has the powers *specifically* given to it by **“we the people”** in the Constitution!
- **Article 1, Section 8:** (18 Paragraphs)

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence 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 an 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, dock-Yards, and other needful Buildings;—And

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.

The Principles of Understanding

➤ Originalism

- Definition: Trying to understand the original meaning, understanding, and intent of the Framers.
- Process: How does one go about ascertaining the original meaning of the Constitution? All originalists begin with the text of the Constitution, the words of a particular clause. In the search for the meaning of the text and its legal effect, originalist researchers variously look to the following (Resource: *The Heritage Guide to the Constitution*):
 - The evident meaning of the words.
 - The meaning according to the lexicon of the times.
 - The meaning in context with other sections of the Constitution.
 - The meaning according to the words by the Framers suggesting the language.
 - The elucidation of the meaning by debate within the Constitutional Convention.
 - The historical provenance of the words, particularly their legal history.
 - The words in the context of the contemporaneous social, economic, and political events.
 - The words in the context of the revolutionary struggle.
 - The words in the context of the political philosophy shared by the Founding generation, or by the particular interlocutors at the Convention.
 - Historical, religious, and philosophical authority put forward by the Framers.
 - The commentary in the ratification debates.
 - The commentary by contemporaneous interpreters, such as Publius in *The Federalist*.
 - The subsequent historical practice by the Founding generation to exemplify the understood meaning (e.g., the actions of President Washington, the First Congress, and Chief Justice Marshall).
 - Early judicial interpretations.
 - Evidence of long-standing traditions that demonstrate the people's understanding of the words.

➤ Textualism

- Definition: Textualism means interpreting the text of written law without going beyond the intent of those legislators who made the law. Judges have no authority to pursue "broader purposes." Judges should interpret legal text as written, not as it should've been written...
 - **Quote** (Antonin Scalia): In textual interpretation, "context is everything," and concerning the Constitution "the Constitution tells us not to expect nit-picking detail, and to give words and phrases an expansive rather than narrow interpretation..."
- ** What does this sound like?

Soli Deo Gloria