

Ch 2: The US Constitution

Day 2

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Course: American National Government (GOVT 2305)

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Today's class

- Structure of the Constitution
- Powers of each branch of government

Class activity: Overall Structure

1. Go to <https://constitution.congress.gov/constitution/>
2. Answer the following:
 - 2.1 What are the three main parts you see?
 - 2.2 Is there a Bill of Rights visible? How (not) so?
 - 2.3 Is there a Declaration of Independence visible? Why (not)?
 - 2.4 What is the rate of amendments (per year) of this constitution?
 - 2.5 What is your opinion on the rate of amendments? Is it sufficient to update an old constitution to new norms?
 - 2.6 How does the constitution adapt to new norms? (Hint: Click on *Browse Explanations*)

Class activity: Articles 1-3

1. Go to <https://constitution.congress.gov/constitution/>
2. Answer the following:
 - 2.1 What concept/idea do the first three articles represent?
 - 2.2 What branch is the first article about?
 - 2.3 What branch is the second article about?
 - 2.4 What branch is the third article about?
 - 2.5 Which of the articles is the shortest and longest?
 - 2.6 Which branch is the most powerful?

Class activity: Articles 4-6

1. Go to <https://constitution.congress.gov/constitution/>
2. Answer the following:
 - 2.1 Which idea does Article 4 represent?
 - 2.2 Which idea does Article 5 represent?
 - 2.3 Which idea does Article 6 represent?

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Note: Article 7 is just about ratification. See glossary of textbook for a definition of ratification.

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 - Next chapter...

Overview

1. Go to Canvas (<https://elearning.utdallas.edu>)
2. Open the Page 'Who made the doc?' under the course module of Chapter 2.
3. Answer these questions:
 - Which branch was responsible for document 1?
 - Which branch was responsible for document 2?
 - Which branch was responsible for document 3?
 - Which website is the source of document 1?
 - Which website is the source of document 2?
 - Which website is the source of document 3?

Legislature – 1

- The legislature is given several powers that are primarily listed in section 8 of Article I of the Constitution
- Most important and central congressional power is the power to tax and spend
- The only requirement is that spending be for the general welfare
- Any taxes imposed by the federal government must apply the same way in all states and localities
- The Sixteenth Amendment was required to establish an income tax

Legislature – 2

- Major Undeclared Wars Since 1945
- Another important power given to Congress is the power to declare war
- Several major military engagements in the last 60 years were never declared wars by Congress
- Congress has only formally declared war five times in U.S. history, the last being World War II
- Congress attempted to rein in the ability of the president to commit U.S. armed forces abroad without authorization from Congress under the War Powers Resolution

Legislature – 3

- The Commerce Clause gives the federal government the power to regulate commerce occurring between states
- It serves as the basis for many modern federal regulations, including, for instance, many criminal drug laws
- Growth in the use of the Commerce Clause to justify expansion of federal power accelerated in the wake of the Great Depression, when many believed that only the federal government had the resources to aid in economic recovery

Executive Powers – 1

- The Vesting Clause vests or gives all executive power to the president
- The Take Care Clause says that the president will take care that laws are faithfully executed
- The Commander-in-Chief Clause places the president as the ultimate authority on the use of military force

Executive Powers – 2

- Presidential power has grown tremendously in the last century. Reasons for the growth of presidential power include:
 - Growing complexity of American society
 - Two world wars
 - Multiple significant military deployments in the twentieth century
 - Increasing need for quick responses to external threats in foreign affairs
 - Importance of the political party system, Congress has tended to cede power to the president when the president's party controls Congress

Executive Powers – 3

- A key power possessed by the president is the power to appoint and remove members of the executive branch
- Article II details the appointment power but says nothing about the power to remove officials. There is a potentially important limitation on the power of the president to appoint
- Language in Article II suggests that major officers must be appointed by the president with advice and consent
- Inferior officers may be appointed at the discretion of Congress by heads of departments or by the courts

Courts – 1

- The courts are given the power to interpret the law and to declare laws unconstitutional — a power frequently referred to as the power of judicial review
- *Marbury v. Madison* (1803): the court overturned part of a congressional law—the Judiciary Act of 1789—that, according to the court, altered the jurisdiction of the court in a way that was unconstitutional
- In *Marbury*, the court read the Judiciary Act of 1789 as attempting to alter the original jurisdiction of the court. This type of jurisdiction is described specifically in the Constitution, and the court held that it could only be altered by amending the Constitution and not by simply passing a law in Congress
- Both Congress and the president accepted this claim of the court to be able to overturn congressional legislation on the basis of its constitutionality

Courts – 2

- Overturning state laws using the power of judicial review is less controversial than is using that power to overturn a congressional law
- The reason that overturning a state law is not as controversial stems from both the structure and language of the Constitution
 - The federal structure presupposes that the states operate with less sovereignty than the federal government
 - The relationship between the state and federal governments is made explicit in the Supremacy Clause, described above
- Early in U.S. history the court used the power of judicial review sparingly, but its use has accelerated over time, particularly with respect to state laws

Courts – 3

- A court of unelected judges overturning laws passed by democratically elected legislatures can be seen as inherently undemocratic
- Counter-majoritarian difficulty—the notion that when a court overturns a law it is acting against the wishes of the people as expressed by their representatives.
- There is less reason to worry about the counter-majoritarian difficulty than one might think:
 - Supreme Court justices are historically replaced at the rate of one every two years
 - Justices are appointed by an elected representative of the people (the president) and confirmed by elected representatives of the people (the Senate). The policy leanings of the justices are never far out of step with the national mood as expressed by representatives

Courts – 4

- Courts are relatively weak compared to the other branches of government and must rely on the executive to enforce their decisions
- *Brown v. Board of Education* (1954): the court ordered the desegregation of southern schools, progress was slow. A decade after the decision, fewer than 1 percent of Black schoolchildren attended school with white children
- This was at least partially due to the reluctance of President Eisenhower to enforce desegregation
- The Supreme Court justices are aware of this reliance on the executive branch, and there is some evidence to suggest that they make decisions to avoid confrontations—political scientists refer to this as strategic behavior

Summary

- Structure of the Constitution
- Powers of each branch of government

I just gave you a taste of it all. We have separate chapters on each branch when we can dive deeper into how each branch *behaves* in relation to what is written down!

References I

Appendix slides