US Constitution

Study Guide for US Constitution Test
Declaration of Independence: Influence on US Constitution

- Established natural rights (life, liberty, & pursuit of happiness)
- Established the concept of popular sovereignty (people are the source of political power)
- Need for limited government
- Need for separation of powers
- Need for checks and balances
- Provided justification for revolution against an unjust government

“That government is best which governs least.”
HENRY DAVID THOREAU
Articles of Confederation: Influence on US Constitution

• Influenced concepts of separation of powers & checks and balances
  • Articles of Confederation had no executive branch to enforce laws, nor a judicial branch to interpret the laws
Weaknesses of Articles of Confederation

- Constitution Fixes
  - House of Reps determined by population
  - Establish power to tax
  - Power to regulate trade
  - Creates executive branch w/ one President
  - Creates judicial branch to interpret laws
  - Creates amendment process
  - Simple majority (51%) of Both Houses to pass laws

### Weaknesses of the Articles of Confederation

- One vote for each State, regardless of size.
- Congress powerless to lay and collect taxes or duties.
- Congress powerless to regulate foreign and Interstate commerce.
- No executive to enforce acts of Congress.
- No national court system.
- Amendment only with consent of all States.
- A 9/13 majority required to pass laws.
- Articles only a “firm league of friendship.”
Preamble to the Constitution

• Establishes the purpose of the US Government
  • Form a more perfect union
  • Establish justice
  • Insure domestic tranquility
  • Provide for common defense
  • Promote the general welfare
  • Secure the blessing of liberty

• With words, We the People, the preamble establishes the concept of popular sovereignty (people are the source of political power)
Magna Carta

- English Document which established the following fundamental rights
  - Limited government (basis of US Constitution)
  - Rule of law (government officials are not above the law)
  - Right to trial by jury (found in Bill of Rights)
  - Due process of law (found in Bill of Rights)
  - Protected against arbitrary taking of life, liberty, and property
Significance of Enlightenment
Writers: Thomas Hobbes

- In state of nature, man is born free (people could take anything they want by force), as a result we must agree to give up certain rights in a social contract to ensure peace (SOCIAL CONTRACT THEORY)
  - Such as the right to kill or steal
Significance of Enlightenment

Writers: John Locke

- Men are born free and equal, but as populations grew, laws were needed to keep order, men agreed to delegate this function to a government, a social contract, with limited powers can be modified by the people at any time (SOCIAL CONTRACT THEORY)
Significance of Enlightenment

Writers: Jean Jacques Rousseau

• Mutual contract (social contract) between the peoples and government

• People agree to be ruled only so that their rights, property, and happiness be protected by their rulers

• Once rulers break the contract, the people are free to choose another set of rulers (basis for the Declaration of Independence)
Significance of Enlightenment Writers: Baron de Montesquieu

- Need for Separation of Powers (legislative, executive, and judicial branches of government)
- Importance of a fair and objective judicial branch of government (to avoid despotism resulting from a feeling of lacking equality)
Social Contract Theory

• The state arose out of a voluntary act of free people
• The state exists to serve the will of the people
• People are the sole source of political power (popular sovereignty)
• People are free to give or to withhold the power as they choose
Limited Government

• Basic principle of American system of government
• Government is restricted in what it may do, and each individual is has rights that the government cannot take away
  • First established with the Magna Carta
  • Rule of Law – government officials are to be held accountable for their actions (not above the law)

“That government is best which governs least.”
Henry David Thoreau
Separation of Powers

- Basic principle of American system of government
- Executive, Legislative, and Judicial powers are divided among three independent and co-equal branches of government
- Enhances concept of limited government by dividing up the power, to prevent concentration of power in one individual

Legislative Branch (Congress)
- Passes Laws
  - Can override President’s veto
  - Approves treaties and presidential appointments
  - Can impeach and remove President and other high officials
  - Creates lower federal courts
  - Appropriates money
  - Prints and coins money
  - Raises and supports the armed forces
  - Can declare war
  - Regulates foreign and interstate trade

Executive Branch (President)
- Carries Out Laws
  - Proposes laws
  - Can veto laws
  - Negotiates foreign treaties
  - Serves as commander in chief of the armed forces
  - Appoints federal judges, ambassadors, and other high officials
  - Can grant pardons to federal offenders

Judicial Branch (Supreme Court and Other Federal Courts)
- Interprets Laws
  - Can declare laws unconstitutional
  - Can declare executive actions unconstitutional
Checks and Balances

- Basic principle of the American system of government
- System of overlapping powers of the legislative, executive, and judicial branches to permit each branch to check the actions of the others

**System of Checks and Balances**

**Executive Branch** (President carries out laws)
- Checks on the Legislative Branch
  - Can propose laws
  - Can veto laws
  - Can call special sessions of Congress
  - Makes appointments
  - Negotiates foreign treaties

**Legislative Branch** (Congress makes laws)
- Checks on the Executive Branch
  - Can override President’s veto
  - Confirms executive appointments
  - Ratifies treaties
  - Can declare war
  - Appropriates money
  - Can impeach and remove President

**Judicial Branch** (Supreme Court interprets laws)
- Check on the Executive Branch
  - Can declare executive actions unconstitutional

**Checks on the Judicial Branch**
- Appoints federal judges
- Can grant pardons to federal offenders

- Checks on the Judicial Branch
  - Creates lower federal courts
  - Can impeach and remove judges
  - Can propose amendments to overrule judicial decisions
  - Approves appointments of federal judges

- Checks on the Legislative Branch
  - Can declare acts of Congress unconstitutional
Rule of Law

- The government and its officers are always subject to the law
  - First established by Magna Carta
    - Said the King is not above the law
Federalism

- System of government in which a written constitution divides the power between a central government and several local governments – divides power between National (Federal), State and Local governments
Principles of American Political Culture - Liberty

- Freedom – each person shall be free to do as he or she chooses as long as it does not interfere with the rights of another
  - Freedom is NOT absolute
    - Can’t say fire in a movie theater (if there is no fire)
    - Can’t say bomb on an airplane (if there is no bomb)
Principles of American Political Culture - Equality

- All people are entitled to equality of opportunity and equality before the law
Although the majority has the right to rule or pass laws, they may not deny the rights of a minority group.
Principles of American Political Culture: Necessity of Compromise

• To find the position that is most acceptable to the largest number of people by blending and adjusting competing views of interest

Interpreting Political Cartoons. If the two chefs represent lawmakers in a democracy, what might the stew represent?
Principles of American Political Culture: Diversity

• Each individual is unique and different and should be valued for their uniqueness
  • May include differences in race, religion, ethnicity, gender, physical abilities, etc.
Bill Of Rights

- 1st Amendment: Freedom of Speech, Religion, Press, Assembly and Petition
Bill Of Rights

- 2\(^{nd}\) Amendment: right to bear arms
Bill of Rights

- 3rd Amendment: No Quarter of Troops during times of peace.
Bill of Rights

• 4th Amendment: The right of the people against unreasonable search and seizures (must have warrant or probable cause).
Bill of Rights

- 5th Amendment: Criminal Proceedings (no self incrimination, no Double Jeopardy (can’t be tried for same crime twice), Due Process and Eminent Domain (gov’t can seize private property for public use – must pay market value)
Bill of Rights

• 6th Amendment: Right to a speedy and public trial by an impartial jury.
Bill of Rights

- 7th Amendment: Right to a jury trial in civil matters in excess of $20.00.
Bill of Rights

• 8\textsuperscript{th} Amendment: No Cruel and unusual punishment, nor excessive fines or bail.
Bill of Rights

- 9th Amendment: Any rights that are not specifically stated in the Constitution are held by the people.
Bill of Rights

- 10th Amendment: Powers not delegated to the U.S. by the Constitution, or are forbidden to the States, belong to the States or the People of the States (Reserved Powers).
Formal Amendment Process

- Formal Amendments can be PROPOSED by:
  - A 2/3 vote of both houses of Congress
  - At a national convention when call by Congress when requested by 2/3 of the states

- Formal Amendments can be RATIFIED (approved) by:
  - The State legislature of ¾ of the states
  - Conventions held in ¾ of the states

- Formal Amendment Process provides for a way to accommodate a changing society
The Supremacy Clause

- If national law and state law conflict, the national law will rule.
- *McCulloch v. Maryland*
  - Supreme Court used Supremacy Clause to explain that the State of Maryland could not tax federal bank notes issued by the 2nd Bank of the United States
Marbury v. Madison

- William Marbury was appointed to be a judge for the District of Columbia by outgoing Federalist President John Adams.
- Incoming President Thomas Jefferson withdrew Marbury's commission to the judgeship.
- Marbury filed suit in the Supreme Court in an attempt to force Jefferson to give him the judgeship, citing the National Judiciary Act of 1789 (allowing him to take his case directly to the Supreme Court).
- Established the Supreme Court’s power of judicial review (declaring an act of the government unconstitutional).
  - Struck down the National Judiciary Act of 1789 as unconstitutional therefore nullifying Marbury’s case.
McCulloch v. Maryland

- State of Maryland taxed the bank notes issued by the 2nd Bank of the United States
- State of Maryland claimed that the Federal Government does not have the authority to create a National Bank
- Supreme Court cited the Necessary and Proper Clause (Implied Powers) to suggest that the Federal Government does have the authority to create a National Bank
- Supreme Court also cited the Supremacy Clause to suggest that a conflict between a State Government and the US Constitution would favor the US Constitution
Miranda v. Arizona

- Ernesto Miranda was convicted of kidnapping and rape.
- Miranda confessed during questioning, but was not read his rights.
- Supreme Court overturned Miranda’s conviction, laying down the MIRANDA RULE, which states that a suspect must be:
  - Told of his or her right to remain silent.
  - Warned that anything he or she says can be used in court.
  - Informed of right to an attorney.
  - If can’t afford one, court will provide one.
  - Can end questioning at any time.
Plessy v. Ferguson

- Herman Plessy challenged a Louisiana law which required separate seating for white and African Americans on railroad cars.
- Plessy cited the 14th Amendment and stated that his Equal Protection of Laws was violated.
- Supreme Court ruled that as long as the facilities were SEPARATE BUT EQUAL (providing basis for legal segregation and upholding Jim Crow Laws).
  - Court ruled that 14th Amendment only gave African Americans political and civil equality, not social equality.

“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”
—United States Constitution
Brown v. Board of Education of Topeka

- Linda Brown, a 10 year old Topeka girl was not permitted to attend her neighborhood school because she was an African American.
- Brown cited the Equal Protection Clause of the 14th Amendment.
- Supreme Court overturned the Plessy v. Ferguson ruling stating that SEPARATE WAS NOT EQUAL (making segregation of the races illegal).
New Jersey v. T.L.O.

• T.L.O., a high school student denied smoking in the bathroom at school after being observed by a staff person
• School Principal searched her purse and found cigarettes, marijuana, and evidence that she was dealing drugs at school
• T.L.O. argued that it was an illegal search violating the 4th Amendment
• Supreme Court ruled that the school had a legitimate need to maintain a proper learning environment for students which requires an easing of the search and seizure requirements that would be necessary outside school grounds (reason suspicion is necessary instead of probable cause)
Suffrage Amendments

• **15th Amendment** (African American Suffrage)
  - Right to vote could not be denied based on race, color, or previous condition of servitude

• **19th Amendment** (Women’s Suffrage)
  - Right to vote could not be denied based on gender
Civil Rights Acts

• Civil Rights Act of 1964
  • No person may be denied access or refused service in public accommodations
  • Prohibits discrimination in any program that receives federal funds
  • Forbids employers and labor unions to discriminate against any person on the grounds of race, color, religion, sex, physical disability, or age in job related matters

• Civil Rights Act of 1968
  • Open Housing Act – forbids anyone from refusing to sell or rent to anyone on the grounds of race, color, religion, national origin, sex, or disability
Voting Rights Act of 1965

• Finally made the 15th Amendment effective by applying it ALL elections (federal, state, and local)
  • Encouraged court challenges of poll taxes
  • Suspended use of literacy tests as a voting requirement
Reserved Powers

- Powers that the Constitution does not grant to the National Government, nor are denied to the state
- Examples include:
  - Regulate trade within the state
  - Pass licensing requirements for professionals (teachers, real estate agents, doctors, etc.)
  - Regulate alcoholic beverages
  - Conduct Elections
  - Establishing public schools
  - Setting graduation requirements
  - Establish local governments
  - Marriage and divorce laws
  - Land use laws
Concurrent Powers

- Powers that are shared by both the National Government and the State Governments
- Examples include:
  - Levy and collect taxes
  - Borrow money
  - Establish courts
  - Define crimes and punishments
  - Claim private property for public use (eminent domain)
Exclusive Powers

- Powers that can be exercised ONLY by the National Government
- Examples include:
  - Coin money
  - Make treaties w/ foreign states
  - Tax imports
  - Regulate interstate commerce
  - Raise and maintain armed forces
  - Declare war
  - Govern US territories
  - Conduct foreign relations
Expressed Powers

- Powers delegated to the National Government (clearly written into the US Constitution)
- Examples include:
  - Power to tax
  - Coin money
  - Regulate foreign and interstate trade
  - Raise and maintain armed forces
  - Fix standards of weights and measures
  - Grant patents and copyrights
Implied Powers

- Powers that are not expressly stated in the US Constitution, but are reasonably suggested or implied by the expressed powers.
- Based on the Necessary and Proper Clause (Elastic Clause) which states that the Congress has the power to do anything that is necessary and proper for carrying out the expressed powers.
- Examples include:
  - Punish tax evaders
  - Acquiring new territories
  - Alcohol and drug laws
  - Setting crime and punishment
  - Building of interstate highway system
  - Prohibiting racial discrimination
  - etc.
Inherent Powers

- Powers that belong to the National Government because it is the government of a sovereign state in the world community

Examples include:
- Regulate immigration
- Deporting illegal immigrants
- Acquire territory
- Grant diplomatic recognition to other states
- Protect nation from rebellion
Qualifications for President

• Must be 35 years old
• Must be a natural born citizen
• Must have lived in the United States for 14 years
Order of Succession to President

- 25th Amendment
  - States Vice President will take over for the President upon the death, removal, or resignation of the President

- Presidential Succession Act of 1947
  - Fixes the order of succession to the President
    - Vice President
    - Speaker of the House
    - President pro Tempore of the Senate
    - Secretary of State

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<tr>
<th>1</th>
<th>Vice President</th>
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"In case of the removal of the President from office or of his death or resignation, the Vice President shall become President."

—25th Amendment, Section 1
22nd Amendment

- No president may be elected to more than 2 terms of office
- No president may serve more than 10 years in office
  - If you serve 2 years or less as President due to the death, resignation, or removal of a President, you would be eligible to serve 2 more terms
  - If you serve more than 2 years as President due to the death, resignation, or removal of a President, you would only be eligible to serve 1 more term
Presidential Appointments and Process

- President has power to appoint ambassadors, Cabinet members, heads of independent agencies, all federal judges, US Marshals, US Attorneys, all officers of the armed forces (with SENATE approval)
- Process
  - President nominates
  - Senate Judiciary Committee Holds Hearings
  - Senate Debates
  - Senate Votes to Confirm or Reject
Powers Granted to President

- **Executive Powers**
  - Enforce (carry out) federal law

- **Ordinance Powers**
  - Issue executive orders (directive, rule, or regulation that has the effect of law – without Congressional approval)

- **Removal Powers**
  - President can remove any appointed official EXCEPT federal judges

⚠️ During World War II, President Franklin D. Roosevelt issued executive orders requiring gasoline and other strategic war supplies to be rationed—sold in limited quantities. **Critical Thinking** Why is it important that the President have such a power, instead of Congress?
Executive Branch: Foreign Policy (Diplomatic Powers)

- President may negotiate Treaties w/ foreign governments – must have 2/3 vote of Senate for approval
- President may negotiate an Executive Agreement with a foreign head of state (NO SENATE APPROVAL NEEDED)
- Commander in Chief of Armed Forces
- How foreign policy powers are shared with Congress
  - Treaties (requires Senate Approval)
  - Foreign aid (Congress controls spending)
  - War powers (Congress declares war and must approve any military action over 60 days – War Powers Resolution of 1973)
  - Appointment of Ambassadors to foreign nations (requires Senate approval)
President’s Judicial Powers

- Appointment of Federal Judges
- Power to Grant Pardons, Reprieves, Commutations, Clemency, Amnesty
  - Pardon – legal forgiveness for a crime
  - Reprieve – delay of justice (ex./delay of death penalty)
  - Commutations – shorten a sentence
  - Clemency – leniency
  - Amnesty – pardon of a large group of law violators
President’s Legislative Powers

• Recommend Legislation
• Sign or Veto Bills
• Propose Federal Budget
• Call Special Sessions of Congress
Basis for Representation in House and Senate

• House of Representatives
  • Apportioned (distributed) to states based on population

• Senate
  • Each state receives 2 Senators
Process of How a Bill Becomes a Law

- Bill is introduced in either house of Congress
- Referred to standing committee
- Referred to sub-committee hearings
- Debated on Floor
- Voted on
- If bill passes one chamber, it is sent to the other chamber where process starts over
- If bill passes both chambers, it is sent to conference committee to work out differences in bills, creating a new bill, which must be voted on again by both chambers of Congress (needs a simple majority to pass)
- Bill sent to President who can sign it into law, veto it and send it back (can be over-ridden with a 2/3 vote), not sign it within 10 days making it a law, or pocket veto (not sign and if Congress adjourns within 10 days the bill dies)
Role of Committees in Law Making Process

- Divide up workload
  - Most of work done in Standing Committees (Budget Committee, Armed Services Committee, etc.)
- Inform voters
- Investigative Powers
  - Ex./ Steroids in Professional Sports
US House of Representatives
Leadership Positions

- Speaker of the House
  - Presides over House of Representatives
  - Decides which bills will be introduced and debated

- House Majority Leader
  - Leader of the Majority Party (Party which holds most seats in House)

- House Minority Leader
  - Leader of the Minority Party (Party which holds minority status in the House)

- House Majority Whip
  - Responsible for counting votes for the Majority Party

- House Minority Whip
  - Responsible for counting votes for the Minority Party
US Senate Leadership Positions

- President of the Senate
  - Vice President of the United States
  - Votes to break a tie (cannot debate or vote otherwise)
- President pro Tempore of the Senate
  - Presides in absence of the President of the Senate
- Senate Majority Leader
  - Leader of the Party which has the most Senators
- Senate Minority Leader
  - Leader of the Party which has minority status in the Senate
- Senate Majority Whip
  - Responsible for counting the vote for the majority Party
- Senate Minority Whip
  - Responsible for counting the votes for the minority Party
# System of Checks and Balances

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Powers Granted ONLY to US Senate

- Approval or Rejection of Presidential Appointments (federal judges, cabinet members, ambassadors, etc.)
- Approval or Rejection of Treaties
Jurisdiction

- Jurisdiction - authority to hear a case
  - Original Jurisdiction – authority to hear a case first
    - US District Court & US Supreme Court
  - Appellate Jurisdiction
    - US Court of Appeals & US Supreme Court
Due Process of Law

- The government cannot arbitrarily deny your right to life, liberty, or property
  - Government must follow established rules and treat all people fairly
  - Found in 5th and 14th Amendments
  - Applies in Eminent Domain Cases (Government taking private property for public use)

"No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."
—United States Constitution
Judicial Selection Process

• President appoints nominees
• Senate Judiciary Committee holds Hearings
• Senate Debates nominees
• Senate Votes to confirm or reject nominee
Sources of US Government Revenue

- Individual Income Tax (Largest Source of US Government Revenue)
- Corporate Income Tax
- Sale of Government Lands

Federal Government Revenue by Source

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Data Source: U.S. Office of Management and Budget
Electoral System of Electing the President

- Presidential Election is decided by the vote of the Electoral College
  - Each state's number of electors is determined by their number of Representatives + Senators
  - Must have a majority of electoral votes (270 votes)
Flaws in the Electoral System of Electing the President

- Winner of popular vote can lose the election
- Electors are not required to vote in accord with the popular vote
- The House of Representatives would select the President in the case of a tie
War Powers of the President

- President is Commander in Chief of Armed Forces
- War Powers Resolution of 1973
  - President must notify Congress within 48 Hours of committing troops abroad
  - President can send troops for 60 days (unless Congress authorizes an extended use of forces) – has 30 more days to bring troops home safely
  - Congress can end the use forces at any time by passing a concurrent resolution
- President DOES NOT have the power to declare war (this power is held by Congress)
Role of Congress in US Fiscal Policy

- Congress approves the United States Government Budget
- Congress authorizes appropriation of money (government funding)
How May Individual Rights Conflict with the Common Good?

• Majority Rules / Minority Rights
  • Although the majority has enough power to pass laws, they must do so while respecting the rights of the minority group
    • Ex./ Although the majority of Americans are white, they cannot pass laws that discriminate against minority groups (African Americans, Hispanics, Native Americans, etc.)

• Limitations to your 1st Amendment Rights
  • You cannot exercise your rights in a way that infringes upon the rights of others
    • Ex./ Your freedom of religion would not protect a religious belief of human sacrifice

― Schenck v. United States, 1919
Eminent Domain

- Government may seize private property for public use (must pay market value for property)
  - 5th Amendment