



The Constitution of the United States of America

Lecture 4—Articles III-VII and Amendments

“The Declaration of Independence and the Constitution were based on the premise that government was the great threat to freedom, and the purpose of a constitution was to limit the power of government.”

Alfred S. Regnery

“Our Constitution—like the Declaration of Independence before it—was predicated on a simple truth: One’s liberty, not to mention one’s dignity, — was something to be shielded from—not provided by—the State.”

Clarence Thomas

“A society in which men and women are morally adrift, ignorant of norms, and intent chiefly upon gratification of appetites, will be a bad society—no matter how many people vote and no matter how liberal its formal constitution may be.”

Russel Kirk



Review

- Purpose of republican government
 - To represent the people while also protecting people's natural rights (protection from the tyranny of the majority)
- Constitution was a compromise and it was a miracle
- The Legislative Branch
 - The House and Senate as they were intended vs. how they are today
- The Executive Branch
 - The electoral college—more valuable today than ever!
 - The Administrative State

Article 3: The Judicial Branch

- The Supreme Court
 - See outline
 - Originally 5 justices, now 9.
- The Judiciary today
 - **Courts of Appeals**—13 appellate courts called U.S. Court of Appeals.
 - Main task is to determine if the law was applied correctly at the trial court level.
 - Consist of 3 judges and no jury.
 - The SCOTUS hears about 100-150 appeals of more than 7,000 cases it is asked to review every year. This means the court of appeals is the final court for the vast majority of cases.
 - **District Courts**—94 district courts all called U.S. District Courts. They resolve disputes by determining facts and applying legal principles to decide who is right. One judge and a jury. There is at least 1 in every state.
 - **State Courts Systems**

Articles 4-7

See outline



The Amendments

- The Bill of Rights
- The Reconstruction Amendments
- The Progressive Amendments

Change from Progressivism to Critical Theory–The New Left

- Progressivism–
 - government exists to be the solution for society's ills.
 - Government is a change agent meant to be used for good.
 - Thus, the Administrative State (experts who write, execute and judge their own laws) is necessary.
 - Rule by the elite

Change from Progressivism to Critical Theory–The New Left

- 1965–New Left–rooted in Critical Theory
 - Critical Theory definition: A social theory that aims to critique and change society as a whole. Attempts to find underlying assumptions in social life that keep people from fully participating in “true democracy.” It focuses on challenging the **power structures** in society as the source of social problems and the root obstacle to human liberation.
 - “The goal of critical theory is the transformation of society as a whole so that a just society with peace, wealth, freedom, and self-fulfillment for all can be achieved. A precondition for such a society is the **abolition of classes, exploitation, and all forms of domination.**” Christian Fuchs.

- Primary areas/examples
- Western/Christian structures are inherently racist, bigoted and discriminatory and need to be uprooted and deconstructed.

-Biblical morality

-Nuclear Family (Sexual Revolution)

-Church

-Representative government

-Capitalism/Free Market
(inherently unfair)

-Nationalism

-Authority

-Conservatism

-Exceptionalism



- People need to be liberated from oppressive conformity to traditional American life.
- Intersectionality is the key. Minority groups need to be represented.
- Equity is a virtue. Redistribution is a result of this. Think: “wealth gap.” If some are wealthy, have they stolen it from the poor or built their wealth on the backs of their exploited labor?
- Social Justice (Miranda, OJ Simpson, Trans rights)

- Inequality is OK as long as it favors the disadvantaged. No such thing as black racism due to power structures.
 - Any criticism of Hamas or Hezbollah is accompanied by warnings of “Islamophobia”.
- Elevation of nature above humans. Get rid of fossil fuels regardless of the feasibility or cost.
- Discrimination in favor of non-European immigrants
- America should promote democracy abroad over U.S. interests (money for Lebanon and Ukraine but not for U.S. Hurricane victims.)

The New Left—Critical of the Administrative State
because different groups are underrepresented.
Government exists to promote the rights of the less
advantaged (Self Esteem—feelings) even over the
majority.



The Activist Court

- Separation of Church and State (deliberate tearing down of traditional Christianity because of its majority status).
 - *Everson v. Board of Education* (1947)—brought “Separation of Church and State” into SCOTUS purview.
 - *Engel v. Vitale* (1962)—banned prayer in public schools. “Almighty God, we acknowledge our dependence on Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country. Amen.”

The Activist Court

- *Lemon v. Kurtzman* (1971)—established a test to determine whether government action comports with the Establishment Clause: 1. Must have a non-religious purpose, 2. Primary purpose of law must neither advance nor inhibit religion, 3. It must not result in excessive entanglement of government with religion.
- Since then...
 - Pledge of allegiance unconstitutional in California appeals court (later struck down by SCOTUS)
 - Creationism is banned in public schools due to its religious nature
 - Public displays of Ten Commandments and Crosses have been banned in courthouses, public buildings, etc.
 - Continuous battles over Christian groups on public schools (churches using facilities, coaches praying with teams, etc.

The Activist Court

- Rights of the Accused—Warren Court
 - *Gideon v. Wainwright* (1963)--ordered states to provide lawyers for defendants who could not afford them
 - *Miranda v. Arizona* (1966)--required police to inform arrested individuals of their 5th amendment right to no self-incrimination

Other effects of The New Left



Where does this leave us?

● Negative

- We have a Legislative and Executive branch who make little to no effort to administer sound financial policy. Rules have been created to bypass the Constitutional process for lawmaking (omnibus legislation, executive orders, etc.)
- We have a bloated administrative state who have vast control over our lives but little to no accountability.
- We are closer to a democracy than the founders wanted
 - Direct election of Senators removed a major check in the legislature
 - Referendums and Initiatives can lead to tyranny of the majority
- We have an activist court system
- The 2-party system has serious limitations

Where does this leave us?

● Positive

- Our Constitution is still largely in tact after 237 years. It has only had to be amended 27 times
- Our Constitution is still a wonder to the world
- We have history on our side (*Federalist Papers*). We can know what they meant and fight to hold it.
- Centralized bureaucratic government is unpopular everywhere in the world that it is used.
- Our Constitution is still a bulwark, at least to some degree, from a total transformation to a democracy



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