The Constitution of the United States

Writing of the US Constitution:

- A product of the American War of Independence, the document was a preventative method against the tyranny that the States had suffered under George III and the British monarchy
- Influenced in its writings by authors such as Locke and Montesquieu
- Marked the World’s First Modern Democracy + Oldest written Constitution known

A Constitution is an authoritative set of rules that seek to establish the role, powers and functions of institutions of Government (Legislature, Executive + Judiciary) regulate the relationships between them and define the relationship between Government and Citizens. Can be written or unwritten and codified or uncodified format

Formal Amendment Process (Article 5):

- Founding Fathers original intent knew that the constitution would need to be changed in years to come, so provided a method for change but made it extremely difficult to achieve
- Only 33 bills have ever passed the proposal stage, with 27 of these eventually becoming amendments it is fair to state that the Constitution is amended rarely
- The process is in two stages each requiring a ‘supermajority’ (majority of well over 50%)
- **Stage 1: Proposal** – A measure must be brought forward by either Congress or the National Constitutional Convention (Never been done with the NCC although 1992, 32 State legislatures petitioned for balanced budget amendment – only 2 states short of 2/3 req)
- **Stage 2: Ratification** – A vote held in both the House and the Senate in which the measure must pass in both with a 2/3 majority
- Examples of proposed change which failed to obtain the required majority:
  - Gay Marriage (2006)
  - Equal Rights Amendment ()
  - School Prayers (1998)
- Examples of Successful constitutional amendments made:
  - Civil Rights Amendments (following Civil War) 13th, 14th + 15th Amendments
  - Direct Election to the Senate (1913) 17th Amendment
  - Voting Rights for Women (1921) 19th Amendment
  - Reduction to a two term presidency (1951) 22nd Amendment
  - Voting Rights extension to 18 year olds (1971) 26th Amendment

Informal Amendment Process:

- Changes can be made via the Supreme Court’s interpretation of the original script of the Constitution
- “We live under the Constitution, but the Constitution is what the Judges say it is”
  
  *Chief Justice Hughes 1909*
- Vice Presidents are also often picked from the Senate; Mondale, Quayle, Al Gore and Biden; 4 of the last 6 VPs were from the Senate; the Democrats selecting a Senator as VP candidate for 14 out of the last 15 POTUS elections since 1944 (the exception was in 1984 with Ferraro)
- Senators enjoy arguably more powerful exclusive powers; such as those to confirm appointments and to ratify treaties. However they both have the same power when it comes to passing legislation; and the same split power with Concurrent Powers
- Both houses are paid the same salary – basic Senator and Representative paid $174,000 with a 2.8% increase in annual salaries as part of the Ethics Reform Act 2009

Leadership within Congress:

- House Speaker
  - He/She is elected by the entire House of Representatives at the start of each Congress (every 2 years essentially)
  - Normally therefore will be a member of the party with a majority in the House
  - Constitutionally the House Speaker does not need to be a serving member in the house only that they must have served in the house before at some stage – Every speaker has been
  - Current House Speaker for 113th Congress is John Boehner (R-Ohio)
  - A number of speakers have stepped down in recent years for a range of reasons;
    + Jim Wright (D) was forced to resign in 1989 after House Ethics Committee announced it would charge him with 69 violations of the House Ethics Rules
    + Tom Foley (D) lost his re-election for the House Representative in the 1994 mid-term elections, the first to do so since 1862 and the winner of that election had no previous experience and was Republican George Nethercutt
    + Newt Gingrich (R) resigned in 1998 after the poor showing of the Republican party in that year’s mid-term elections (Gingrich was a highly partisan figure much like Wright)
    + Other notable speakers have been Democratic speaker of the house from 1999-2006 and Nancy Pelosi (D-CA) who was the first woman to hold the role in 2007-2011 when Boehner took over

- House Speaker is a potentially powerful figure, and has a number of different powers:
  - To act as the presiding officer of the House
  - To interpret and enforce the rules of the House and decide on the points of order
  - To refer bills to Standing Committees
  - Appoint Select Committee and Conference Committee chairs
  - To appoint the majority party members of the House Rules Committee
  - Constitutionally, the Speaker of the House is Second in line to the presidency – therefore in the event that both the President and the Vice President are incapacitated, then the Speaker would assume the command of the nation – however, the passing of the 25th Amendment made this power less significant as in the event that a President is killed, the role of VP must be replaced whereas before the President would continue to govern without a VP
  - The Speaker has the power to exercise the flow of legislation though the House as well as to award committee assignments to majority party members (if they so wish) and select House Standing Committee Chairs
Positive Impact of Pressure Groups on Political Issues:

Rights for African-Americans:
- NAACP provided a strong backing for the Brown v. Board of Education (1954)
  - Also provided follow up legislation for civil rights

Environmental Issues:
- Sierra Club pushing for greater environmental protection (since the time of ‘Westward Exp.’)
  - Wilderness Society and National Wildlife Federation also assist

Rights of Women:
- League of Women Voters + National Organisation for Women pushed for Equal Rights amendment to the Constitution in the 1970s-80s (Unsuccessful)
  - Groups were enraged when Clarence Thomas was elected to the Supreme Court despite claims of harassment
  - Rights groups also have forced removal of high ranking military leaders
  - EMILYS LIST also supports women in the elections they run for

Abortion Rights:
- Roe v. Wade (1973) gave the rights for Women to have an abortion and that the states did not have the right to deny this freedom
  - Bush Jr. passed into law partial birth abortions – upheld by Supreme Court in 2007
  - Abortion issues has led to groups attempting to lobby Senators to appoint or not to appoint for example Roberts (2005) and Altio (2006) and the nominations of Bork (1987) and Clarence Thomas (1991)

Gun Control:
- NRA for the most part controls the nature of guns in the US – founded to teach Americans to use and take care of guns
  - Hold strongly the Second Amendment; were against protesting Obama’s gun control bill (2013)
  - Opposed the Brady Bill (1987)
  - Played a role in the District of Columbia v. Heller Supreme Court Case in 2008 which declared the District’s ban on handguns unconstitutional

Impact of Pressure Groups on the Government:

Impact on Congress:
- Congressmen have regular contact with Pressure Groups (Iron Triangle)
- PGs provide Congressmen with up-to-date information and funds for elections
- Congressman provided influence and a political access point
- Pressure Groups connect with same issue congressional committees
- Contact Committee Staff as they are more accessible than their bosses (Berry and Wilcox)
- Pressure Groups encourage members to lobby, meet or message their congressmen expressing support on the issue (often happens most when a vote is impending)
- Media and Advertising can endorse candidates who emphasis with the groups cause

Impact on the Executive:
- Executive Branch is constantly in contact with Pressure groups for information + education
- Some PGs find themselves invited into the inside of the executive; for example Karl Rove had frequent contacts with the ‘Christian Right’ group under the second Bush Jr. administration (2005) this was an attempt which failed to select Harriet Miers as a Justice
- Following Hurricane Katrina, civil rights groups were contacted by Bush to confirm the governments support to the rebuilding of the city
-Once the hearings have concluded, the committee votes on further action to take – which is recommendatory - but if the vote on the committee goes against the candidate, it normally spells out that if the candidate continues the process they will probably be defeated (Bork in 1987 was defeated in the committee vote 5-9, and despite this he continued onto the Senate vote and was defeated 42-58)
-A vote is then held in the whole Senate regarding to approve or deny the appointment - if passed then the nominee is appointed

<table>
<thead>
<tr>
<th>Nominee</th>
<th>Year</th>
<th>ABA Rating</th>
<th>Senate Judiciary Committee Vote</th>
<th>Senate Vote</th>
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</thead>
<tbody>
<tr>
<td>Robert Bork</td>
<td>1987</td>
<td>Well Qualified</td>
<td>5 For 9 Against</td>
<td>48-58</td>
</tr>
<tr>
<td>David Souter</td>
<td>1990</td>
<td>Well Qualified</td>
<td>13 For 1 Against</td>
<td>90-9</td>
</tr>
<tr>
<td>Clarence Thomas</td>
<td>1991</td>
<td>Qualified</td>
<td>7 For 7 Against</td>
<td>52-48</td>
</tr>
<tr>
<td>Ruth Bader Ginsburg</td>
<td>1993</td>
<td>Well Qualified</td>
<td>18 For 0 Against</td>
<td>96-3</td>
</tr>
<tr>
<td>John Roberts</td>
<td>2005</td>
<td>Well Qualified</td>
<td>13 For 5 Against</td>
<td>78-22</td>
</tr>
<tr>
<td>Samuel Alito</td>
<td>2006</td>
<td>Well Qualified</td>
<td>10 For 8 Against</td>
<td>58-42</td>
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<tr>
<td>Sonia Sotomeyer</td>
<td>2009</td>
<td>Well Qualified</td>
<td>13 For 6 Against</td>
<td>68-31</td>
</tr>
<tr>
<td>Elena Kagan</td>
<td>2010</td>
<td>Well Qualified</td>
<td>13 For 6 Against</td>
<td>63-37</td>
</tr>
</tbody>
</table>

- List of most recent candidates who were rejected:
  - Harriet Meirs (2005)
  - Harrold Carswell (1970)
  - Clement Haynesworth (1969)

**Why are Supreme Court nominations so important?**

- Occur infrequently – and so are rare opportunities and should be taken when available
- Appointments are for life tenure (appointments are getting younger – Roberts only 58)
- Importance of 1 of 9 positions – and so Nominees will have a great amount of power
- The Power of Judicial Review (standalone)
- Through Judicial Review, the potential impact on the lives of every US citizen

**Issues with the Appointment and Confirmation Process to the Supreme Court:**

- The process is seen to be more and more Political
  - Supreme Court is meant to be a body without the influence of politicians
  - Although Presidents always deny the accusations of political decisions, nonetheless it is clear that the choice is influenced by political issues; Reagan appointed Bork who had a similar standing point as himself, Obama appointed Sotomayer and Kagan, both who are both liberal in view
  - Justices in recent times now step down during a presidency so that a candidate of a similar nature to them can replace them – Alito has stated that he will step down under the next Republican President
  - The role of the Senate depends on the nominee and the party in control of the Senate; and therefore the Senate has also been accused of making the process political; for example
Constitutional Basis for the Courts Actions:

- Bill of Rights – created to make the people of the USA know that their rights were enshrined and entrenched so that tyranny would never affect them again.
- Amendment 14 was the first to prevent states from acting with the ‘equal protection’ provision – for years the Supreme Courts cases on rights has been based on the Bill of Rights and Amendment 14 (on cases for example like school prayers, school segregation and affirmative action programmes).
- The court also has the other 14th Amendment clause ‘due process’ (although no precise legal definition has ever been made, it is understood to refer to the principle of limited government; of which there are two types referred to by the courts – 1) substantive due to process demands that the substance of the law must not be arbitary, unreasonable or unconstitutional or that the process of the law must be fair)
- The use of ‘due process’ has allowed the court to strike down vast amounts of state legislation such as state abortion laws, state school prayers and state flag burning.

The Supreme Court and the Protection of Rights and Liberty

- Freedom of Religion
  - Amendment 1 – Congress will make no law respecting an establishment of religion or prohibition the free exercise off.
  - Right for no state religion and freedom to worship in anyway was granted.
  - Issue lies in how does the State not establish a state religion and also allow everyone to practise as they wish.
  - Critics of the Court (evangelical Christians) believe the Court pays too much attention to the first half of the Amendment, and not enough on the second.
  - Supreme Court entered the debate on freedom of religion in 1962 Engel v. Vitale – the court declared the NY state law to be unconstitutional (6-1) because it provided for a prayer written by the NY Board of Regents to be used in state schools; thus violating the ‘establishment of religion’ in the Courts eyes and that despite that children could declare themselves out that this was the ‘establishment’ regardless.
  - Wallace v. Jaffree (1985) in schools in Alabama to have a period of ‘silent reflection’ but this was also declared unconstitutional in a 6-3 vote, and the Alabama state law was removed.
  - Lee v. Weisman (1992) the use of prayers at graduation was unconstitutional (5-4)
  - 2005 both Van Orden v. Perry (Commandments in a state ground) and McCreary County v. ACLU cases (commandments in a courthouse) focused on the public showing of the 10 Commandments; both cases were found to be unconstitutional.

Freedom of Speech:

- Again, part of Amendment 1
- Buckley v. Valeo (1976) declared that limiting political contributions was unconstitutional.
The Complete US Politics Notes

- McConnell v. FEC (2004) the Court upheld the McCain-Feingold Act (2002) as soft money was allowed
- Rankin v. McPherson (1987) when a clerk commented on the attempted assassination of Reagan, she was fired – the court found this sacking illegal as her freedom of speech allowed her to say what she liked
- Watchtower Bible and Tract Society of NY Inc. v. Village of Stratton, Ohio – the right of people to doorknock (as politicians, hawkers, sales people, or as representatives of religious groups) this was upheld by the courts – and the Jehovah’s were happy 😊 (8-1)
- Texas v. Johnson (1989) the Supreme Court declared all state laws banning flag burning – as the right to peaceful protest is enshrined (5-4)
- When Congress passed a law banning flag desecration in the late 1980s, the Supreme Court declared it unconstitutional again in 1990 United States v. Eichman (5-4)
- Reno v. ACLU (1997) the court struck down the 1996 act of Communications Decency - which had made illegal the act of making explicit images available to minors
- New York Times v. United States (1971) the Court upheld the right of the paper to publish the Pentagon Papers – secret documents on the Vietnam War

Freedom of Guns

- 2nd Amendment allows all US citizens to have a gun
- Founding Fathers believed the ultimate check and balance on tyranny was to have an armed citizenry – well able to lead a revolution if required
- However, doubts on this were case after the assassinations of JFK, RFK and Luther King Jr.
- 1995 United States v. Lopez the court declared the Gun Free School Zones Act 1990 unconstitutional
- District of Columbia v Heller (2008) for the first time in history the Court declared a law banning the DC handgun ban and that shotguns and rifles must be kept disassembled and trigger locked

Freedom from Unreasonable Searches:

- 4th Amendment states that the right of the people to be secure in their houses papers and effects against unreasonable searches and seizures shall not be violated
- United States v. Drayton (2002) where 2 men were on a bus that was being searched and they were found to have cocaine on their persons – they claimed their 4th Amendment rights were infringed because they raised no suspicions of having it themselves; 6-3 majority ruled in their favour
- Board of Education v. Earls (2002) which was based on an Oklahoma school subjecting students to random drug tests even though no suspicion of drug use was present – the court upheld the school (5-4) as the policy served the school well and important in deterring schoolchildren from drugs (Thomas) whereas Ginsburg felt it perverse and intrusive

Rights of those Arrested:

- Miranda v. Arizona (1966) allowed Miranda to walk free because he self-incriminated after he was not read his rights (5-4)
declared federal income tax illegal – Congress then passed Amendment 16 which made it legal because Congress had the power in the Constitution to tax (however the Supreme Court if they so wished could still overturn this because of precedent of previous cases + In recent politics, all attempts for Congress to overrule the Supreme Court have all failed, e.g flag burning)

Checks by the President:

- The President nominates the Justice candidates – by choosing Justice candidates of a similar political standing and judicial standing the President can seek to change the balance in the Court – the Court has changed since the 1960s with mostly Democratically nominated Judges by FDR, Truman, Kennedy, Johnson to a court today mostly appointed by Republicans of Reagan, Bush Snr and Bush Jr
- The President can also cast his ‘political weight’ behind a cause – to praise a move by the Supreme Court or condemn it – Eisenhower openly approved Brown v. Board + sent federal troops to Arkanas to enforce this in 1957; equally Bush snr. Opposed the result from Texas v. Johnson (on flag burning) calling the decision ‘wrong. Dead wrong.’

Other Checks:

- Court has no power to begin trials – trials must come to them through the court system (the War Powers Act 1973 has long been seen as unconstitutional, but no one has brought it to the Supreme Court)
- The Court cannot enforce its decisions – e.g Brown v. Board needed Eisenhowers troops
- Public Opinion is crucial to the survival of the Court; if the people doubt the court, its legitimacy would be at risk because they are unelected – in modern politics the Court tries to reflect public opinion (which is why 2013 gay marriage and gun control is so hard because public opinion is split)
- The Court can check itself – by overturning past decisions of the Court (1989 Court ruled that execution of 16-17 year olds was legal, 14 years later in 2003 this was overturned)

Most Current Supreme Court Cases:

- Missouri v. McNeely (2013) Drunk Driving tests
- Florida v. Jardeens (2013) Does a dog sniffing the door constitute as a ‘search’ under 4th Amd
- Proposition 8/ Gay Marriage TBD
- DNA swabs when under arrest TBD
- Gun Control TBD
- Affirmative Action in School Admissions TBD

Key Decisions of 2011-12:

- Arizona v United States (5-3) on Arizona immigration law
- United States v Alaverz (6-3) Freedom of Speech
- NFIB v Sebelius (5-4) Healthcare – expansion of Medicaid and individual mandate