

Constitution 101: The Meaning and History of the Constitution

The Theory of the Declaration and the Constitution

The Declaration of Independence opens with a declaration of universal principles.

Article I, Section 8 of the Constitution grants the federal government power to provide for the national defense.

The Declaration of Independence should NOT be understood as a revolutionary document, and the Constitution as a conservative document.

God appears four times in the Declaration of Independence. He appears as legislator, judge, executive, and creator

Aristotle explains that human beings make laws because of their ability to speak.

In Federalist 51, Madison writes, "If men were angels, no government would be necessary."

The Declaration of Independence argues that the King violated the principle of separation of powers, representation, and an independent judiciary, which became a key feature of the Constitution.

The primary purpose of the Constitution is to NOT limit the government.

In Federalist 63, Madison argues that the United States is the first purely representative government in history.

The Declaration of Independence establishes that all legitimate power stems from the people.

Natural Rights and the American Revolution

The nature of the relationship between Britain and the American colonies changed dramatically after the French and Indian War.

A doctrine of natural rights and natural law became widely known and discussed in the American colonies during the 1710s.

The Founders' doctrine of human equality means that no one has the right to rule another without their consent.

The social compact describes an agreement that fellow citizens make with each other to form a government and accept the laws made by that government.

Dr. West summarizes the Founders' conception of law enforcement with two phrases: equal protection and due process.

According to the Founders, a government that is to secure the rights of individuals must secure the borders of the nation and create laws against crimes and equally enforce them.

In early America, the federal government was NOT primarily responsible for domestic policy.

John Jay argued that the American colonies were well suited to form a Union because they shared a common language, the same political principles, and similar manners and customs.

The Founders HAD NOT believed that, because natural rights are universal, the United States ought to protect rights all over the world.

The 14th Amendment was meant to apply the Founders' basic conception of law enforcement to the states.

Majority Tyranny and the Necessity of the Union

In the period between the Revolutionary War and the Constitution, state governments were dominated by a strong legislature.

Paper money laws enacted in the states violated the property rights of creditors

In "Vices of the Political System of the United States," James Madison argued that the laws passed by the state governments of this period are often unjust because they are too numerous and mutable for the people to understand.

Thomas Jefferson's experience as Governor of Virginia helped him recognize the threat of legislative supremacy

The Framers of the Constitution believed that consent is NOT the only requirement for just government, because the people and their representatives are incapable of passing unjust laws.

The Framers of the Constitution believed human nature was a mixture of good and

bad.

The national government under the Articles of Confederation functioned like a diplomatic entity of loosely connected sovereign states

The government under the Articles of Confederation was insufficient because it was incapable of protecting citizens from foreign threats, it failed to provide the conditions necessary for economic prosperity, and it failed to protect citizens from internal threats.

In Federalist 6, Publius argues that commercial republics are NOT unlikely to fight with each other.

According to the Framers, the purpose of government is to secure the natural rights of its citizens.

Consent of the Governed and the Separation of Powers

In Federalist 9, Publius lists separation of powers, representation, and an independent judiciary as an improvement to the science of politics.

In The Federalist Papers, Publius points NOT to the achievements of Greek democracies as a reason to support free government.

When Publius references a faction in Federalist 10, he means citizens driven by a passion adverse to the rights of others.

In Federalist 10, Publius argues that the Constitution addresses the problem of majority faction by controlling its effects.

A government where all the citizens gather to create and administer the laws is a direct democracy.

In Federalist 10, Publius argues that the extended territory of the American republic is an advantage that will help check the emergence of the majority faction.

In Federalist 10, Publius writes that representation will serve to "refine and enlarge the public views."

In Federalist 51, Publius argues that the system of separation of powers and checks and balances assumes that people in government will be ambitious.

Publius argues that the mechanisms of the Constitution function as "auxiliary

precautions" for controlling the government.

NOT according to Madison, the structure of the Constitution eliminated the need for the American people to possess good character.

"To Secure These Rights": Property, Morality, and Religion

The Founders held that all persons have the right to possess and acquire property.

The security of a natural right may often conflict with the security of another.

According to the Founders, clarity of ownership was fundamentally important to securing property rights.

Thomas Jefferson argued that the natural law permits one to steal if one's life is at stake.

The Founders believed that the government must secure the right to buy and sell, protect equal access to transportation and communication, and establish a system of sound currency in order to protect free markets.

The Founders held that foreign commerce should benefit the interests and rights of American citizens.

The Founders HAD NOT believed that all welfare programs should be administered by private organizations.

Marriage and family law during the Founding emphasized protecting and raising children.

Religious liberty was NOT an absolute right at the time of the Founding.

Regarding the pacifism of the Quakers, George Washington believed that they could be required to take up arms for their country.

Slavery and the Roots of the Secession Crisis

In Notes on the State of Virginia, Jefferson writes that slavery teaches slave owners how to become tyrants.

The slave trade was legally abolished in the United States in 1807.

The Northwest Ordinance of 1787 prohibited slavery in the Northwest Territory.

The Three-Fifths Clause in the Constitution was a compromise to secure the ratification of the Constitution.

Progress toward emancipation stopped, and then reversed, due to the invention of the cotton gin and more adaptable strains of cotton, the growing attachment to an aristocratic society, and an overt rejection of the principles of the Founding.

John C. Calhoun articulated a new ideology which held that slavery was a positive good.

James Madison and John C. Calhoun both HAD NOT argued that tyranny is better than anarchy.

According to the political theory of John C. Calhoun, liberty is a reward for moral and intellectual development.

John C. Calhoun argued that human beings receive their rights as members of a group, and not as individuals.

Dr. Portteus asserts that the pro-slavery critiques of Northern working conditions resemble the arguments of Marx.

Secession and Civil War

In his "Address at the Cooper Institute," Abraham Lincoln argued that Republicans would have to cease to call slavery wrong in order to satisfy the South.

Abraham Lincoln was the first president elected on an explicitly anti-slavery platform.

Southern secessionists advanced a doctrine of undivided state sovereignty to explain the relationship between the states and the federal government under the Constitution.

The first grievance typically listed in Southern secession documents concerned the fugitive slave clause.

The purpose of personal liberty laws was to provide due process for free black citizens.

In his "First Inaugural Address," Abraham Lincoln HAD NOT pledged to stop enforcing the Fugitive Slave Act.

Abraham Lincoln argued that the Southern secession movement should be understood as a(n) insurrection.

In the "Gettysburg Address," Abraham Lincoln declared that the United States was founded in 1776.

Lincoln argued that the Civil War was a fight to vindicate the republican government against an attempt to impose oligarchy on the nation.

In his "Second Inaugural Address," Abraham Lincoln argued that the Civil War should be understood as a divine judgement on the entire nation for the sin of slavery.

The Progressive Rejection of the Founding

The Progressives argued that the ends of government are historically contingent.

In his 1932 campaign addresses, Franklin Roosevelt HAD NOT argued that the New Deal would serve as a decisive break from the principles and ideas of his Progressive predecessors.

Woodrow Wilson stated that understanding the real Declaration of Independence requires ignoring the preface.

Progressives believed that there had been a constant improvement in history, which made modern government less dangerous to the governed.

Progressive intellectuals were deeply influenced by a German understanding of politics and history.

Progressives HAD NOT agreed with the Founders' doctrine of natural rights, and only disagreed with how the Constitution attempted to achieve those ends.

In *Liberalism and Social Action*, Dewey criticizes the Founders because they "lacked historic sense."

Woodrow Wilson, John Dewey, and other leading Progressive intellectuals were educated at Johns Hopkins University, which was founded in 1876 to bring the German educational model to the United States.

In *The American Conception of Liberty*, Frank Goodnow argues that European nations are better governed because social expediency determines the "sphere of individual freedom of action."

In an essay from 1887, Woodrow Wilson argues that "in fundamental theory socialism and democracy are almost if not quite one and the same."

The New Deal and the Rise of the Administrative State

The Progressives believed that government should be understood as an organic thing that evolved and developed to meet the needs of its environment.

Frank Goodnow argued that there are really only two functions of government: politics and administration.

The New Freedom, the New Nationalism, the New Deal, the Great Society, and the New Frontier are examples of presidents acting as chief legislators.

According to the Progressives, the purpose of Congress is to pass broad legislation authorizing administrative agencies to create regulations.

New Dealers believed that the Great Depression was caused primarily by overproduction.

The three characteristics of the Progressive administrator are expert, independent, progressive

New Dealers believed that the necessary consequence of a planned and regulated economy was the abolition of business.

According to Franklin Roosevelt, the great problem of the 20th century was economic tyranny.

Wickard v. Filburn was a Supreme Court case in which a farmer was fined for having a surplus of wheat.

The two basic tenets for building the administrative state are delegation of legislative power and judicial deference.

The Administrative State Today

According to contemporary defenders of the administrative state, the system of government established by the Constitution is dysfunctional.

The modern administrative state is anti-constitutional because it circumvents the separation of powers, attempts to regulate almost all aspects of people's lives, and is uninterested in performing the basic functions of a legitimate government.

Under the modern administrative state, there is NOT only one way to make policy.

According to progressive theorists like Hebert Croly, the goal of the modern administrative state is to secure social justice.

The modern administrative state typically DOES NOT adjudicate cases against citizens through the ordinary process of adversarial courtroom conduct, which includes a prosecutor, defense lawyer, and impartial judge.

An example of the alternative legislative processes available under the modern administrative state is congressional oversight, the budget process, and executive orders.

Not only is the modern administrative state anti-constitutional, but it is also pre-constitutional.

The suspension of the Affordable Care Act's employer mandate by the Obama administration is an example of royal prerogative power

Constitution 201: The Progressive Rejection of the Founding and the Rise of Bureaucratic Despotism

The Founders' Constitution and the Challenge of Progressivism

Dr. Arnn identifies three phases in American history: the American Founding, the crisis of slavery and the Civil War, and the Progressive Era.

The Declaration of Independence refers to the "Laws of Nature and of Nature's God."

According to the Declaration of Independence, the primary purpose of government is to secure natural rights.

The three fundamental natural rights listed by the Declaration of Independence are life, liberty, and the pursuit of happiness.

During the Civil War, the self-evident truth of equality was at stake.

Dr. Arnn identifies three key structures of the Constitution that are included as grievances against the King in the Declaration of Independence: limited government, representation, and separation of powers.

The Progressives rejected the idea of a government limited in purpose to the security of individual rights.

Woodrow Wilson also served as a university president.

Many of the critiques of the King listed in the Declaration of Independence have become features of the modern bureaucratic state.

Administrative government contradicts the Declaration of Independence and the Constitution because it takes sovereignty away from the people, it rejects the idea of limited government, and it ignores the doctrine of separation of powers.

Progressivism has some roots in the pro-slavery arguments of the pre-Civil War South, insofar as both believe that modern science renders the principles of the American Founding invalid.

Woodrow Wilson rejected the Constitution's separation of powers because it did not take into account the Darwinian growth of society.

Progressives believe that the scientific guidance of government can improve—and even perfect—human nature.

According to Dr. Arnn, the president most successful in institutionalizing a Progressive administrative state was Franklin D. Roosevelt.

Progressives understand the word "equality" to mean that all human beings have the right to possess economic and material equality.

The American Founders and the Progressives would NOT agree that their definitions of equality are mutually compatible.

Woodrow Wilson and the Rejection of the Founders' Principles

Dr. Pestritto defines Progressivism as a philosophical movement intent on "progressing" or moving beyond the principles and practices of the Enlightenment.

The Progressives looked to the industrialization, immigration, and economic conditions of the late nineteenth century to argue that the principles of the American Founding were no longer operative or valid.

Prior to being elected president, Woodrow Wilson was governor of New Jersey.

Johns Hopkins University was the first American university founded on the German university model explicitly to promote Progressive principles.

Before his political career, Woodrow Wilson was an academic, serving as president of Princeton.

Progressives HAD NOT believe that natural rights exist.

Theodore Roosevelt led the Progressive Party during the Election of 1912.

The core Progressive doctrine of "historical contingency" means that there are no permanent or immutable principles; rather, truth is dependent upon the particular circumstances of history.

Progressive philosophy is predicated on the belief that human nature is changeable.

In "What is Progress?" Woodrow Wilson states that the Founders' conception of government and society is mechanistic and "Newtonian," whereas the Progressive vision is evolutionary and "Darwinian."

Woodrow Wilson HAD NOT believed that while the Constitution is insufficient, the principles of the Declaration of Independence remain valid.

In "What is Progress?" Woodrow Wilson states, "Some citizens of this country have never got beyond the Declaration of Independence."

Woodrow Wilson believed that checks and balances were irrelevant in the modern world because faction, as Publius called it in Federalist 10, was no longer a problem.

Woodrow Wilson praised the British Constitution because of its lack of separation of powers.

Woodrow Wilson states that each generation should define terms such as liberty, rights, and equality for itself, rather than referring to the Declaration of Independence or the Constitution.

Woodrow Wilson and the Rejection of the Founders' Constitution

Woodrow Wilson believed that NOT the separation of powers was a necessary

feature of good government.

Woodrow Wilson wrote of the separation of powers that "no living thing can have its organs offset against each other and live."

Woodrow Wilson referred to the Founders' Constitution as "Newtonian" and the Progressive Constitution as living, Darwinian, and evolutionary

The Progressives shared NOT the Founders' fear of direct democracy.

Referendum, Ballot initiative, NOR Recall was not a Progressive proposal aimed at increasing direct democracy.

The Progressives wanted government to respond quickly and efficiently to the peoples' demands.

Dr. Pestritto argues that the Progressives believed the old Constitution to be both "irresponsible" and "inefficient."

The Progressives argued NOT that the unelected administrative state should be modified and/or otherwise affected by elections and politics.

Woodrow Wilson wrote that public opinion should be "efficient" in establishing the administrative state, but must not be "meddlesome."

Woodrow Wilson praised the British system of government for its lack of separation of powers and responsiveness to the people's needs.

The American president who caused Woodrow Wilson to turn his attention from Congress to the executive branch as the best means of achieving Progressive policy goals is Theodore Roosevelt.

Woodrow Wilson argued that the president should be able to mold, shape, and transform his office and his power however he saw fit, without any meaningful constitutional limitations.

The Progressives saw the president as not just the leader of the party, but also as the leader of the nation.

The concept of a presidential "mandate" arose from the Progressive understanding of the presidency.

Overview: Founders vs. Progressives

The Founders defined "equality" as every human being's possession of equivalent natural rights.

The Founders argued that government exists to protect man's natural equality and natural rights. The Progressives countered that government exists to achieve equality for individuals, particularly economically.

Progressives, including Woodrow Wilson and John Dewey, believe that ideas, rights, and truth are relative to a particular time and place.

John Dewey writes that liberty is a "function of the social conditions existing at any time."

The Virginia Declaration of Rights states, "That no free Government, or the blessing of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue."

Progressives viewed private property with suspicion because they feared that it would always be mismanaged or used to harm the poor.

The Founders argued that national defense is the federal government's most important duty.

Early Progressive foreign policy was highly imperialist, leading to the acquisition of Cuba, Puerto Rico, and the Philippines as American colonies.

Early Progressives believed that it was the United States' duty to "civilize" other nations and other peoples, especially those with "inferior" races.

The Founders believed in a limited government of limited powers but still believed that the government should be strong in its ability to use those powers.

Contrary to the Progressive argument, the Declaration of Independence states that "governments are instituted among men, deriving their just powers from the consent of the governed."

Woodrow Wilson, in his essay "Socialism and Democracy," writes that there is no significant difference between socialism and democracy.

In the 1960s, Progressivism began to lose many of its core beliefs as it underwent a transformation into modern liberalism.

Post-sixties Progressives believe in ideas that the early Progressives would have

rejected such as multiculturalism, sexual expressionism, and environmentalism.

FDR's New Bill of Rights

Beginning in 1944, FDR changed the title of his Annual Message to Congress to

"The State of the Union Address."

FDR asked Congress for "broad power" to wage war against the Great Depression but promised that essential democracy would remain intact.

The Bill of Rights is the first ten amendments to the Constitution.

The "second Bill of Rights" was NOT ratified by the American people to amend the original Bill of Rights.

In his Annual Message, FDR said to Congress, "We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all."

The purpose of the original Bill of Rights is to set limits on the powers of the federal government by providing additional constitutional protection for the natural rights to life, liberty, and the pursuit of happiness.

FDR identified the right to a useful and remunerative job, the right of every family to a decent home, and the right to adequate health care in his "second Bill of Rights."

FDR declared to Congress, "People who are hungry and out of a job are the stuff of which dictatorships are made."

As a candidate for vice-president in the national election of 1920, FDR identified which great problem(s) that could confront the next administration?

American relations with the world and the pressing need for organized progress at home

Similar to Woodrow Wilson, FDR believed that to be truly enlightened and just, government must progress towards social justice.

FDR argued that the Constitution must be adapted to the demands of historical progress, as American progressivism has no legitimate limit in law or in the Constitution itself.

According to FDR, property rights, described by the Founders as fundamental natural rights, must yield to the demands of social justice.

Total Regulation: LBJ's Great Society

LBJ's Great Society programs are NOT a radical departure from earlier Progressive programs such as the New Deal.

LBJ quoted Aristotle in his Great Society speech at the University of Michigan.

LBJ understood civil rights to be the most important foundation of the Great Society.

John Dewey wrote that America's Founders understood formal liberty as the legal ability or right to do something.

Affirmative action seeks to achieve equal results, in addition to equal opportunities.

In his acceptance speech for the 1964 Democratic Party nomination for president, LBJ declared a "war against poverty."

In contrast to the American Founders' view of the human condition, LBJ suggests that the demands of necessity could be alleviated by government programs.

FDR's New Deal treated the symptoms of poverty created by the Great Depression; LBJ's Great Society was intended to strike at the sources of poverty in order to eradicate it.

Foreign Assistance began as one of LBJ's Great Society programs.

Going beyond mere material needs, LBJ understood the Great Society as fulfilling man's desire for beauty.

The three pillars of LBJ's Great Society did not include churches.

LBJ believed that higher education was a necessity for Americans.

The Transformation of America's Political Institutions

In a 2012 New York Times article, University of Texas law professor Sanford Levinson criticizes article 5 of the U.S. Constitution.

Progressives such as Woodrow Wilson and Frank Goodnow used the term politics to mean everything involved in expressing the will of the people.

Progressives used the term administration to mean the execution of the will of the people.

Referencing the purpose of the separation of powers, James Madison wrote in Federalist 49 that the reason of the people must rule over their passions.

Progressives believe that NOT Congress, and only Congress, can make and pass laws and federal regulations.

Progressives viewed the judicial branch as a model for the administrative state.

Congress exercises budgetary power over administrative agencies.

In practice, constituent services have become a primary function of the modern legislative branch.

According to the Constitution, the primary role of the executive is NOT to formulate a legislative agenda and to secure its passage into law.

William Brennan wrote, "The genius of the Constitution rests not in any static meaning it might have had...but in the adaptation of its great principles to cope with current problems and current needs."

The 19th-century political theorist Karl Marx surprisingly argued that administrative bureaucracies would not, in fact, be free of their own self-interests.

Abraham Lincoln Cooper v. Aaron (1958) informs modern constitutional theory with the idea that the final interpretation of the Constitution rests with the Supreme Court.

Post-1965 Progressivism

NO Post-1965 progressivism (or liberalism) bears absolutely no resemblance to the Progressive movement of the early 20th century.

The 2003 Supreme Court case Lawrence v. Texas overturned state laws criminalizing homosexual acts.

America's Founders and pre-1965 Progressives held similar views on the family.

Title IX is a federal provision that forbids discrimination on the basis of gender in higher education.

America's Founders thought our foreign policy should be principally concerned with securing the natural rights of Americans.

Biocentric environmentalism privileges nonhuman nature as opposed to human life and prosperity.

The 1965 Immigration Act privileges non-western immigration.

The Founders thought the most important consideration in formulating immigration policy was not race, but rather character.

Dr. Grant defines the ruling class as "the complex of government, the mainstream media, most of the academy, much of our senior military class and industrial and public sector unions that are tied to government power."

Irony is the term used by postmodern thinkers such as Richard Rorty to mean that there are no enduring truths.

Case Study: Religious Liberty in the Administrative State

People in the majority of countries, including in most of colonial America, HAD NOT enjoyed less religious liberty after 1776 than they had prior to that time.

The Founders HAD NOT believed that a just government could place absolutely no limits on practices dictated by one's religion.

George Washington wrote a letter regarding religious liberty and the duties of citizenship to Quakers that refused to fight in times of war.

The fundamental and primary purpose of government according to America's Founders is securing the natural rights of citizens.

The Founders believed that to secure the rights of its citizens, government has a responsibility to promote the minimal moral conditions necessary for the preservation of a free society.

During the Founding Era, Massachusetts supported specific ministers or denominations with taxpayer funding.

The Declaration of Independence refers to God as the Author of the "Laws of

Nature," as the Creator, as the Supreme Judge of the world, and as the Protector of the United States through His divine providence.

Post-1960s Progressives DOES NOT share the same understanding of religious liberty as the early Progressives, particularly in regards to the promotion of Christian religious principles.

The First Amendment to the Constitution forbids Congress from abridging the free exercise of religion.

The Supreme Court case *Abington v. Schemp* ruled prayer in public schools unconstitutional.

Restoring Constitutional Government

Calvin Coolidge's nickname was Silent Cal.

The 150th anniversary of the Declaration of Independence occurred during Coolidge's presidency.

In his speech, "Inspiration of the Declaration," Calvin Coolidge responds directly to the claims of Woodrow Wilson.

In "Inspiration of the Declaration," Coolidge says, "About the Declaration, there is a finality that is exceedingly restful."

In "On Property," James Madison calls freedom of speech and freedom of religion higher forms of material possessions.

In his *Politics*, Aristotle compares a nation or political regime to a chorus.

Rather than napping, as his critics often accused him of doing, Calvin Coolidge often took an afternoon break from presidential duties to read and translate Dante.

Ronald Reagan was the first president ever to hold the inauguration on the west side of the Capitol.

Reagan discusses President Washington, Jefferson, and Lincoln during his first inaugural address.

Martin Treptow, the American soldier whose story Reagan tells during his first inaugural address, fought and died in the First World War."