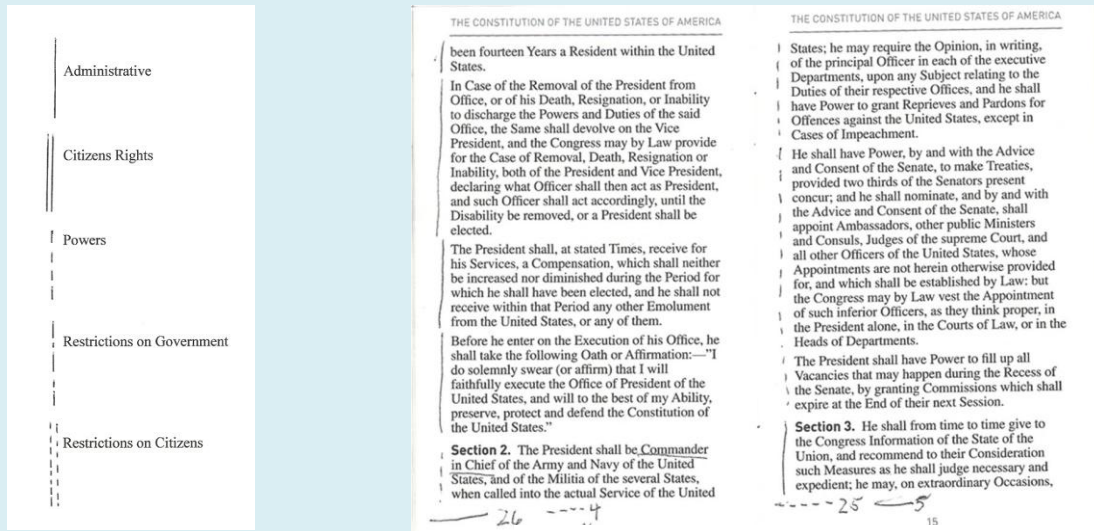


Notes on The United States Constitution

I did a short analysis of the US Constitution to estimate how much of it was administrative, specifying powers, defining citizens rights, placing restrictions on government and restrictions on citizens. On page 3 there is a list of things that are surprisingly not in the Constitution.

I marked up a copy as follows and counted lines:



Sample of a marked up page

The following are some interesting statistical estimates on the US Constitution, including all the Amendments:

- **64%:** Can be considered administrative on how the Government is organized. This deals with such things as qualifications for President and Congress, how they are elected or removed, how a bill becomes a law, setting up of courts, etc. (see comment #1 below).
- **20%:** Defines rights of citizens or puts restrictions on government. The 9th Amendment is significant in that it says that rights of citizens that are not listed in the Constitution cannot be implied to be denied. (see comment #2)
- **16%:** Defines the powers of government. Most of these are the powers of Congress listed in Article I, Section 8. The majority of these powers are straight forward such as setting up an Army and Navy, establishing post offices and protecting inventions. However, there are two that are always being debated: Clause 1 and Clause 3 (see comments #3 and #4).
- **0%:** Takes away or limits the rights of citizens. Nothing in the Constitution, as it stands today, puts restrictions on citizens. This has only been the case since the 1930s (see comment #5).
- **0%:** Nothing in the Constitution gives the Supreme Court the power to determine if laws or actions by government are unconstitutional. This power was determined by the

Notes on The United States Constitution

Supreme Court under Chief Justice John Marshal in the case of Marbury vs. Madison. There has never been any serious opposition to this decision (see comment #6).

Comment #1: This includes the Amendments. There are a number of Amendments that deal with how the Vice President is elected or appointed. Other Amendments are administrative or provide additional rights to citizens.

Comment #2: The limits to rights, particularly the 1st and 2nd Amendments, continues to be greatly debated.

Comment #3: Clause 1 states, in part, that Congress has the power "..to provide for the defense and general welfare .." A strict interpretation of this clause would be that it applies to protection of the US from enemies only. A liberal interpretation has been used to justify social programs such as Social Security, Medicare, food stamps, child health programs, environmental protection and a lot more that could be considered "general welfare".

Comment #4: Clause 3 states, in part, that Congress has the power "To regulate commerce..." A strict interpretation of this clause would be that it applies only to tariffs among states and movement of illegal substances. A liberal interpretation has been used to justify regulation of broadcasts, financial institutions, and corporations. And just about any dealings among the states.

A key Supreme Court decision in 1942 was **Wickard v Filburn**, which set the standard for the liberal interpretation of the Commerce Clause. It has never been overturned:

Farmer Rosco Filburn was growing wheat, in the 1930s, greater than the Federal Government's allowed limit. He was fined by the Federal Govt. His case argued that he only used what he grew over the limit to feed his own cattle. So he was not engaged in Interstate Commerce. The Supreme Court ruled that by not buying wheat from other farmers, it drove the price down and impacted interstate commerce.

Comment #5: Article IV, Section 2, Clause 2 stated that people in "Service or Labour" (i.e. slaves) needed to be returned to their rightful owners if they escaped to another state. The 18th Amendment made the manufacture, distribution and consumption of "intoxicating liquours" illegal. These were later repealed by Amendments.

Comment #6: The Supreme Court will certainly consider the intention of the founding fathers in determining the constitutionality of a law or act. But it's mainly the political, legal, moral and ethical way of thinking of the times that determine constitutionality. Modern Supreme Courts would never state that people of African ancestry could not claim citizenship as the Dred Scott Case did in 1857. Any Supreme Court in the 1800s would certainly not have ruled on Roe vs. Wade as the 1973 Court did.

George Will asked fellow panelists--on a Sunday talk show a few years ago--if it would be Constitutional for the Government to pass laws to reduce obesity in the US such as requiring people to go on diets and take weight reduction training. The panelists "danced" around the

Notes on The United States Constitution

issue. However a direct answer could be: "Yes it is Constitutional to pass such laws **until** the Supreme Court rules they are unconstitutional." Which today's Court would certainly do.

Things not in the Constitution

These are common phrases that are used to describe our Federal Government and its powers, but are not mentioned anywhere in the US Constitution. (Note a Search/Find was done of the Constitution):

- Separation of Powers
- Separation of Church and State
- Checks and Balances
- President power to make executive orders

The Constitution says that "*The House of Representatives shall chuse (choose) their speaker and other officers.*" But it does not state that they must be elected members of the House. Some Constitutional scholars have said that the House could choose anyone for these roles. Similar to how a city council chooses a city manager to run a city. However, this issue has never come up in the history of Speaker selection.

So the debate on the meaning of the United States Constitution goes on and in general is healthy for our democracy.