

# Lesson 1

## HOW TO READ THE CONSTITUTION

### Lesson Objectives:

*When you complete Lesson 1, you will be able to:*

- Explain the relationship between the Declaration of Independence and the Constitution.
- Understand that the Constitution has permanent meaning.
- Understand the three themes of the Constitution: consent of the governed, checks and balances, and federalism.
- Explain the difference between the Constitution and constitutional law.
- Describe the events leading to the creation of the Constitution.
- List the three rules of the Constitutional Convention.
- Explain how the Virginia Plan and the New Jersey Plan differed from the Great Compromise.
- Explain the auxiliary precautions of the extended Republic, the separation of powers, and federalism.
- Compare and contrast the originalist and non-originalist perspectives regarding the interpretation of the Constitution.
- List and explain six fundamental reasons why originalism is championed.
- Explain the process that originalists use when interpreting the meaning of the Constitution.

---

### The Meaning of the Constitution

*Essay by Edwin Meese III (pp. 1–6)*

The Constitution of the United States has endured for more than 200 years and has remained an object of admiration throughout the United States and the world. The Constitution was born in crisis—it was initially designed as a response to the inadequacy of the government under the Articles of Confederation. Yet, as Edwin Meese III explains in “The Meaning of the Constitution,” the Constitution has endured because it builds upon the principles set forth in the Declaration of

## Unit 1

Independence, which states that governments should operate through the consent of the governed to secure the people's rights and liberties. The Constitution defines both the structure of the government and the rules for its operation to complement these principles.

The Constitution contains three important themes: consent, checks and balances, and federalism. First, the legitimate authority of the government depends on the *consent* of the people of the United States. According to the Declaration of Independence, because all men are created equal and have certain inalienable rights, no person can be ruled without his or her consent. The American people express their ongoing consent through elections.

Second, the *checks and balances* of the Constitution ensure that no one branch of the government (legislative, executive, or judicial) becomes too powerful, thereby encroaching upon the power of the other branches. This separation of powers limits the power of each branch but fosters cooperation in certain areas among the three branches. Thus, this mechanism protects against the twin dangers of republican government: democratic tyranny, which fails to protect individual rights of the minority, and democratic ineptitude, which fosters ineffective government.

Third, federalism prevents an unhealthy concentration of power in the government. The Framers' experience under the Articles of Confederation highlighted the importance of federalism. The Articles of Confederation created a weak national government and strong state governments. These state governments, unrestrained by the powerless national government, fell victim to factions and failed to protect individual rights. The Founders realized that to prevent such abuses in the future, they would need to create a much stronger national government. But rather than creating a single, all-powerful national government, the Founders devised a federal system that divides sovereignty between two political entities—states and the nation—thereby recognizing a role for each. The Constitution divides power horizontally among three separate branches of the government at the national level and vertically between the national government and the state governments. This division ensures that the national government has enough power to perform its duties but not so much power as to harm the people's liberty.

A former Attorney General of the United States and the chairman of the editorial advisory board of *The Heritage Guide to the Constitution*, Meese explains that the goals of the book are to present the Founders' understanding of the Constitution and its provisions and to examine judicial interpretations of the Constitution and the political circumstances that comprise the history of constitutional law. Constitutional law is distinct from the Constitution: Constitutional law is the way in which the court interprets the Constitution, but the Constitution itself is "the supreme Law of the land." The Constitution is the standard against which all laws, policies, and interpretations should be measured. Ultimately, the success of the American Republic depends on our fidelity to and the faithful interpretation of the Constitution.



## Unit 1

of Happiness.” While the Constitution does not create rights, there are certain rights that the Constitution explicitly protects. What are some rights guaranteed to the citizens of the United States in the Constitution? (Some rights are mentioned in the Articles of the Constitution, such as the right of habeas corpus and the right to be free of bills of attainder and ex post facto laws. The Bill of Rights also contains explicit protections of rights, such as free speech and the right to bear arms.)

2. According to Meese, why has the Constitution remained strong for more than 200 years? (It complements the Declaration of Independence; it outlines both the structure of the government and rules for its operation that would secure the rights and liberties of citizens.)

## The Formation of the Constitution

*Essay by Matthew Spalding (pp. 7–12)*

In “The Formation of the Constitution,” Matthew Spalding tells the story of the Constitutional Convention. In June 1776, Richard Henry Lee introduced a resolution in the Second Continental Congress to dissolve political connections with Great Britain, pursue foreign alliances, and draft a plan of confederation. The result was the Declaration of Independence (1776), the Franco–American Alliance (1778), and the Articles of Confederation (ratified in 1781).

The Articles of Confederation was the first attempt to organize a national government. The resulting government was rife with problems: States undermined the national government; Congress was unable to impose taxes to gain funds to pay for national expenses; there was no independent executive; foreign relations were weak. Apart from the institutional problems of the Articles of Confederation, majority tyranny remained a grave threat. In many states, majority factions had taken over state legislatures to deprive the minority of rights.

After several *ad hoc* meetings to discuss particular conflicts, the Constitutional Convention was convened in Philadelphia in 1787 to revise the Articles of Confederation and form a more perfect union. Each state but Rhode Island sent delegates to the Convention. This was an impressive group of delegates including George Washington, Benjamin Franklin, James Madison, and Alexander Hamilton. Thomas Jefferson (who did not attend) described the Convention as “an assembly of demigods.” The delegates unanimously chose George Washington as president of the Convention and agreed to abide by three basic rules: (1) voting was by state, and each state had one vote; (2) proper decorum was to be maintained at all times; and (3) the proceedings were to be kept secret.

As soon as delegates agreed to the rules, Edmund Randolph presented the Virginia Plan, which proposed to set aside the Articles of Confederation and create a new structure of government consisting of legislative, executive, and judicial branches. Under the Virginia Plan, population would determine a state's representation in both the House and the Senate. This put less-populated states at a disadvantage, however. The New Jersey Plan to amend the Articles of Confederation featured a one-house Congress in which each state received equal representation. Roger Sherman proposed the Great Compromise in which population would determine representation in the House, but each state would have equal representation in the Senate.

A Committee of Detail reworked the various resolutions of the Virginia Plan and produced a draft of the Constitution in July 1787. From August to September, members of the Convention reworked this draft until they were satisfied with it. They then gave the draft to a Committee of Style to polish the language.

In addition to the provisions of the document, there are three unstated mechanisms in the Constitution: the extended Republic, the separation of powers, and federalism. Extending the Republic, meaning expanding the size of the nation, would increase the number of opinions, making it difficult for a majority to form on narrow interests against the common good. The separation of powers among three branches ensured that no branch of the government can usurp another branch's power. The balance of power between the national government and the states further protected the people from the dangers of a centralized government. The national government would exercise a few delegated powers; the states would exercise all other powers.

On the morning of September 17, 1787, the Constitutional Convention gathered for a momentous occasion: The Constitution was read aloud one last time, and the delegates came forward one at a time to sign it. On September 28, Congress sent the Constitution to the states for ratification. Delaware was the first to ratify; New Hampshire was the ninth; Rhode Island, the last.



### Active Reading

To ensure understanding, ask: One of the problems of the Articles of Confederation was that it required nine of 13 states to approve important legislation. Why was this problematic? (If the other four states banded together, they could quickly stop any important legislation.) Ask: As president of the Constitutional Convention, what role did Washington play? (He oversaw daily meetings of the Virginia delegation and considered strategy and reform proposals that became the plan for the Constitution. He contributed to formal debate only once but was involved throughout the proceedings.)

Unit 1



### Active Reading

Ask: Why did less-populous states object to the Virginia Plan? (Under the Virginia Plan, representation in both the House and the Senate would be determined by population. The less-populous states would have less power than more-populous states in the legislature.) How would representation be determined under the New Jersey Plan? (Under the New Jersey Plan, each state would have an equal vote in a one-house Congress.)



### Make an Inference

Ask: On page 10, Spalding says that Edmund Randolph refused to sign the Constitution in part because he was wary of having a single executive. Who was this executive? (the President) Why do you think having a single executive worried Randolph? (He may have thought this person would have too much power.)



### Work in Pairs

Have younger students work in pairs to paraphrase Franklin’s quotation on page 12. Remind students that when you paraphrase, you put something into your own words. (Sample answer: George Washington had the sun painted on the back of his chair, and Franklin had looked at it many times, unsure whether it was a sunrise or a sunset. Once the Constitution was completed, Franklin was sure that it was a sunrise, meaning a new beginning.)



### Discussion Questions

1. What were some problems with the Articles of Confederation? (Each state governed itself through elected representatives who in turn elected a weak national government. There was no independent executive, and Congress lacked the authority to impose the taxes it needed to pay national expenses. All 13 colonies had to ratify amendments. One state’s refusal prevented structural reform, nine out of 13 states had to approve important legislation, and all treaties had to be ratified by the states.)
2. One of the rules of the Constitutional Convention was that its proceedings were to be kept secret. Why do you think this was important? (Sample answer: Sharing the discussions at the Convention with the public would likely hinder the activity of the Convention. People might disagree, distract the delegates, and try to influence their opinions.)

3. In the section “Auxiliary Precautions,” Spalding says that three unstated mechanisms were at work in the Constitution. What were these auxiliary precautions, and why does he describe them as unstated? (The three unstated auxiliary precautions were the extended Republic, the separation of powers, and federalism. While these ideas were not explicitly stated in the Constitution, they are present throughout the document.)

## The Originalist Perspective

*Essay by David F. Forte (pp. 13–17)*

In “The Originalist Perspective,” David F. Forte presents two contrasting interpretations of the Constitution. On one side are those who view the Constitution as a “living document” with no fixed meaning. According to this view, the meaning of the Constitution changes with the times. On the other side are the originalists, who argue that the Constitution has permanent meaning and should be interpreted as it was originally intended. Forte cautions that there is some overlap between the two camps.

Originalism is the dominant theory of interpretation. It has succeeded and even profited from the criticism of non-originalists. Originalism is championed for several reasons. First, originalism supports the nature of a Constitution, which limits any one generation from ruling according to passion. Second, it supports legitimate, popular government that protects human liberty. Third, originalism supports limited government, for it understands that government has no authority beyond the Constitution. Fourth, originalism limits the judiciary and prevents Supreme Court justices from asserting their will over the other branches’ ability to craft policy. Fifth, Originalism supports the intentions of the Constitution’s drafters. Sixth, Originalism is not result-oriented.

Determining the original meaning of the Constitution is not an easy task. It requires us to analyze the clauses, to examine the meaning of the words by taking into consideration their meaning at the time when they were written, and to compare them to the other sections of the Constitution. The originalist perspective does not remove controversy when interpreting the Constitution, but it does limit controversy within a constitutional tradition of the rule of law.

The *Heritage Guide to the Constitution* contains brief essays on each clause in the Constitution. These essays explain the meaning of each clause as far as it can be determined and note any credible and differing original interpretations.

Unit 1



### Before You Read

Ask: Think about the meaning of the word “original.” What do you think it means to have an originalist perspective when interpreting the Constitution? (to view the Constitution in terms of its original, or first, meaning)



### Active Reading

Point out that Forte uses the word “comport” on page 14 and again on page 15. Read aloud the sentences containing the word. Ask: What do you think the word “comport” means? (fits in with, goes along with)



### Make a Real-Life Connection

Point out that on page 15, Forte states that “originalism, properly pursued, is not result-oriented, whereas much non-originalist writing is patently so.” Ask: What does he mean? (The task of originalism is not to implement a particular policy agenda regardless of the process. By contrast, non-originalists are concerned about the result—the particular policy produced—rather than the process used to achieve the result.) Ask: How should we analyze issues and policies using the original meaning of the Constitution? (The Constitution is based on particular permanent principles and creates a limited government. It does not settle specific policy disputes; it sets forth the process for creating policy through a careful, deliberative process. For instance, the Constitution does not determine how high taxes should be; it describes the process for imposing taxes and places limits on who can impose them.)



### Active Reading

To ensure understanding, ask: When explaining the approach that originalists take when interpreting the Constitution, Forte says they look to “the elucidation of meaning by debate within the Constitutional Convention.” What does elucidation mean? (clarification) What does the entire phrase mean? (Originalists research what these words meant to the delegates of the Constitutional Convention when they were debating issues.)



### Discussion Questions

1. Explain the difference between an originalist and a non-originalist interpretation of the Constitution. (Sample answer: An originalist perspective seeks to determine the original meaning of the Constitution, whereas a non-originalist perspective views the Constitution as a living document that changes with the times.)



Unit 1

6. The plan of government that favored the small states was
  - a. **the New Jersey Plan.**
  - b. the Virginia Plan.
  - c. the Northwest Ordinance.
  - d. the Treaty of Paris.
  
7. The decision to have two houses of Congress, with one house's representation based on population and the other's based on equal representation for each state, was called
  - a. the Paterson Plan.
  - b. the New Jersey Plan.
  - c. the Virginia Plan.
  - d. **the Great Compromise.**
  
8. The system of government in which power is divided between the central and state governments is called
  - a. republican.
  - b. **federalism.**
  - c. monarchy.
  - d. democratic.
  
9. The idea that the powers of government should be divided between and given to different branches is called
  - a. checks and balances.
  - b. **separation of powers.**
  - c. federalism.
  - d. implied powers.
  
10. When the power of one branch of government is blocked by the power of another branch of government, this is the concept of
  - a. **checks and balances.**
  - b. separation of powers.
  - c. federalism.
  - d. implied powers.
  
11. The dominant theory of Constitutional interpretation is that of
  - a. **originalists.**
  - b. the Supreme Court.
  - c. non-originalists.
  - d. contemporary court decisions.

**Fill in the blank: Write the correct word or words in each blank.**

1. The delegates signed the Constitution on \_\_\_\_\_. (**September 17, 1787**)
  
2. Using the original intention of the Framers as a guide for interpreting the Constitution is called an \_\_\_\_\_ perspective. (**originalist**)

3. Originalism is in opposition to the concept that the Constitution is a \_\_\_\_\_ document that lacks any fixed meaning. **(living)**
4. When determining the original meaning of the Constitution, originalists begin by examining \_\_\_\_\_. **(the text of the clause)**
5. The Constitution is strong in part because it complements the \_\_\_\_\_. **(Declaration of Independence)**

**Short Answer: Write out your answer to each question.**

1. What are the six reasons that David Forte gives to explain why originalism is championed?
  - **It supports the nature of a Constitution.**
  - **It supports legitimate, popular government that protects human liberty.**
  - **It promotes limited government and the idea that government has no authority beyond the Constitution.**
  - **It limits the judiciary and prevents Supreme Court justices from asserting their will over the other branches' ability to craft policy.**
  - **It comports with the intentions of the Constitution's drafters.**
  - **It is not results-oriented.**
2. What are the three auxiliary precautions that Matthew Spalding mentions are contained within the Constitution?
  - **The extended republic**
  - **Separation of powers**
  - **Federalism**
3. The United States government is divided into how many branches? **(three branches)**

**True / False: Indicate whether each statement is true or false.**

1. The Constitution means whatever the Supreme Court says it means. **(False)**
2. When originalists read the Constitution, they consider the historical context of when the text was created. **(True)**
3. The Constitution was written in 1787. **(True)**
4. The Articles of Confederation were problematic because the national government was too strong. **(False. The national government was too weak.)**
5. The Constitution was written at a convention held in Philadelphia. **(True)**

*Unit 1*