

# **HANDBOOK of AMERICAN CONSTITUTIONAL LAW**

by Henry Campbell Black, LL. D. Fourth Edition;  
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## **Constitution Defined - § 3 . . .**

A constitution differs from a statute or ordinary act of legislation in three important particulars:

1. It is enacted by the people as a whole (that is, by vote of the qualified electorate) who are to be governed by it, instead of by their representatives in a congress or legislature.

2. A constitution can be abrogated, repealed, or modified only by the power which created it, namely, the people in the sense stated above, whereas a statute may be repealed or changed by the legislature. The people, however, can modify or repeal their constitution only through the medium of a constitutional convention or constituent assembly, or by affirmative vote on amendments or on a new constitution duly submitted by the legislature. In those states where the initiative and referendum are in use, the provisions of the constitution are as binding on the people in the exercise of their legislative prerogative as upon the legislature, that is, these devices cannot be used to alter the constitution in any other mode than as the constitution itself provides. [State v. Dixon, 59 Mont. 58, 195 P. 841; State v. Stewart, 53 Mont. 18, 161 P. 309; City of Ft. Collins v. Public utilities Commission, 69 Colo. 554, 195 P. 1099]

3. The provisions of a constitution refer to the fundamental principles of government and the establishment and guaranty of liberties, instead of being designed merely to regulate the conduct of individuals among themselves. [Constitutions announce principles, while statutes apply them. Sproules v. State, 97 Tex Cr. R. 561, 262 S.W. 757.] But the tendency towards amplification in modern constitutions derogates from the precision of this last distinction.

At present there are at least 51 Constitutions operative in the United States of America. There are the Constitutions of the 50 states of the Union, and the Constitution of the United States. I say "at least" 51 because many of the states of the Union have more than one Constitution. As an example, California has two and Oklahoma had at least six different versions that have been found as of the date of this writing.

As noted above by the famous John Bouvier, a Constitution's essential element is that it is, "...containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers..." You will note that in Bouvier's definition, nothing appears about regulating Citizens. That is because, at least in a free nation, it is The People, in agreement with each other, who create the Constitution for the sole purpose of establishing, defining, and limiting the scope of government.

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government."

-- Patrick Henry

Every state of the Union has a distinct and unique Constitution of its own. Of course if you are a state Citizen, as opposed to a "citizen of the United States" [federal citizen], then you should attempt to locate your state's original Constitution because that's the one that establishes the true and original structure, powers, and limitations of your state government...at least when the state addresses you.

All state laws must be made pursuant to the Constitution of the state and all federal laws must be pursuant to the Constitution of the United States. Laws that are manifestly incompatible with the language or intent of the Constitutions are null, void, and unenforceable. While it is commonly understood that a Supreme court of a state, or the United States, will declare a law unconstitutional, most people fail to recognize that the first step in that process is for a Citizen to decide, for himself, that a law is incompatible with the Constitution and refuse to obey the law. In other words, if we never take a stand, all laws will be presumed to be Constitutional. It is only through the belligerent actions of a nation's Citizens that laws are brought under review and then can be judicially declared unconstitutional.

Constitutions must be read and interpreted in plain English. One should take into account the way certain words or phrases may have been used or defined at the time the Constitution was drafted, and how they may differ from the use or definitions now in effect. The use and definitions of words or phrases as they existed at the time the document was written must control the interpretation of the provision(s) under review. Because most pre-Civil War Constitutions are intentionally succinct, significant weight must be given to the intended meaning of each section. If the intended meaning is not immediately clear from the language of the document, the "original intent" can be ascertained by review of the historical context of the issue being addressed and goals that must have been in the minds of the framers of the Constitution as they wrote the words. Usually the authors and signers of a Constitution will have written privately and/or publicly about the document or the various issues addressed within. Such writings have been routinely used to establish the exact meaning of various parts of Constitutions. Additionally, as we enter the 21<sup>st</sup> century, many of the questions we may ask have already been answered by various Supreme courts.

Constitutions are not "living documents" as is contended by some ignorant and verbose commentators. Because a Constitution defines the structure, powers, and limitations of the government, such elements are fixed, except as such may be altered by the amendment process. When a Constitution includes language that protects personal liberties (sometimes called "natural rights" or "God-given rights"), these provisions must remain in effect, and remain fixed as they are for all time. They are not subject to modification by amendment because no one, not even our fellow Citizens, has the authority to deprive us of our liberty. If the Constitution in question is a Constitution that is operative in America, there is the added aspect that such Constitutions are controlled by the principles espoused in our Declaration of Independence. In the Declaration of Independence it states,

"...all men are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, - That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government."

In other words, if a Constitution was altered in such a way as to diminish personal liberties or remove their protections, then the government constituted by that Constitution would cease to be a valid government and the Citizens would be greatly justified in using whatever means necessary to bring that government to an end.

As our society grows in size, evolves socially, and advances technologically, various issues that have never before been tested upon the Constitution will need to be so tested. It has been this way since the first state Constitution was created and it is still that way today. Fortunately, since the nature of man hasn't changed in thousands of years, the principles contained within these constitutions remains valid and enduring. When all is said and done, the underlying purpose of a Constitution is to keep the ways of men in check.

"Let no more be said about the confidence of men, but bind them down from mischief with the chains of the Constitution."  
-- Thomas Jefferson

At this point it is probably prudent to explore why many states have more than one Constitution. Prior to the Civil War, each state of the Union had but one Constitution in existence. There was no apparent need for more than one because that single document could be amended by a vote of the People of the state. However, with the advent of the 14th Amendment to Constitution of the United States, the landscape was radically altered.

Citizenship under the 14th Amendment, is not a result of one's birthright [unalienable right], as is the citizenship status of a state Citizen. The status of "citizen of the United States" (aka - federal citizen) is one that is bestowed by the Constitution. In other words, the status of "citizen of the United States" is a statutory privilege granted by the government.

The original Constitutions of the states were created by The People of the states and were designed to serve the de jure [legitimate] state Citizens. As such, these Constitutions limited the operation of government in the manner required for addressing state Citizens. However, the state governments were not bound by the same limitations when governing "federal citizens" because these federal citizens did not have the same protections from government interference as do state Citizens. [See case law on the lack of rights of "citizens of the United States".] As can be seen from the following

U.S. Supreme Court holding, "federal citizens" do not inherently possess the same rights as do state Citizens:

"The right to trial by jury in civil cases, guaranteed by the 7<sup>th</sup> Amendment...and the right to bear arms guaranteed by the 2<sup>nd</sup> Amendment...have been distinctly held not to be privileges and immunities of citizens of the United States guaranteed by the 14<sup>th</sup> Amendment...and in effect the same decision was made in respect of the guarantee against prosecution, except by indictment of a grand jury, contained in the 5<sup>th</sup> Amendment ... and in respect of the right to be confronted with witnesses, contained in the 6<sup>th</sup> Amendment ... it was held that the indictment, made indispensable by the 5<sup>th</sup> Amendment, and trial by jury guaranteed by the 6<sup>th</sup> Amendment, were not privileges and immunities of citizens of the United States, as those words were used in the 14<sup>th</sup> Amendment. We conclude, therefore, that the exemption from compulsory self-incrimination is not a privilege or immunity of National citizenship guaranteed by this clause of the 14<sup>th</sup> Amendment."

Twining v. New Jersey, 211 US 78, 98-99

[See case law for more court rulings on this subject.]

One can clearly see that when dealing with federal citizens, a state could act with much greater flexibility. It could act toward federal citizens in ways that would be unconstitutional if done to state Citizens. So why did this require new state Constitutions? In section 1 of the 14<sup>th</sup> Amendment, it states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

By ratifying this language, the states agreed to consider federal citizens living within their borders, a form of state citizen. We say, "a form of" because these federal citizens could not lay claim to the unalienable rights expressed in Declaration of the Independence, and thus were plainly in a different "class of citizenship." When the states agreed to consider federal citizens as a form of state citizens, it raised significant state Constitutional issues - not the least of which was that these new citizens were not a party to the original state Constitutions! These new citizens were not The People, and never could be. The original Constitutions of the states were written by and for The People of the states, not these new hybrid

(State/Federal) citizens.

Normally these non-de jure state Citizens would simply have been considered aliens within the state, but the 14th Amendment changed that. The individual states of the Union now needed to create a new State government (operating in parallel to the de jure state government) that was established under a Constitution by and for these hybrid citizens, with their different set of privileges, immunities, and disabilities. To achieve this end, the legislatures of the states of the Union created new Constitutions under which to govern their new hybrid citizens.

These new Constitutions are not "constitutions" in the true sense. A true Constitution creates a government of, by, and for, The People; The People being the de jure Citizens of that society / community / nation. These new Constitutions are actually nothing more than "statutory laws" that are dressed up as Constitutions and referred to as such. The original Constitutions of states admitted to the Union before the Civil War are based on the fundamental beliefs and concepts espoused in the Declaration of Independence. State constitutions drafted after the Civil War must be studied with a careful eye.

Under the long standing and well-settled doctrine of citizenship law, a person becomes a Citizen at birth, by the fact of the land upon which he is born, without there being any law necessary to grant him such citizenship. This is exactly the basis upon which state Citizens become Citizens of their respective states. However, 14th Amendment citizens would have no citizenship at all were it not for the adoption of the Amendment. This makes their citizenship a "fiction of law." A Constitution can only be created by real "Citizens of the land" and the government that is created by a Constitution can only govern these "Citizens of the land" (and aliens within its borders); that is because the government (at least in America) must derive its power from The People.

Now, here we approach fundamental issue - there is no such thing as a legitimate government that governs only "fictions of law." And while federal citizens obviously are real people, their citizenship is a fiction of law, thus rendering "their" constitution a mere statute (created by the de jure state legislature) and their newly formed [parallel] State government a mere appendage of the legitimate and original, state government. Unfortunately, we have long ago come to a place

where the "mere appendage" is far larger and more well recognized than the original and legitimate state government.

### **Amending a Constitution**

Amending a Constitution is the act of legally changing the document in such a way as to achieve a desired political objective, and make that objective the Supreme Law of the land. In general terms, an amendment may change the document by adding to it, taking from it, or modifying existing elements of it. However, not every element of a Constitution is open to amendment.

While the method of amending a Constitution is generally fixed by the original language of the document, the reasons for amending a Constitution are without specified limits. They can be as pragmatic as determining that a provision within the document does not function very well in practical application, or as whimsical as the transient morays of an era. The 11th Amendment to the US Constitution would be a good example of the former, while the 18th Amendment would be a good example of the latter.

The steps required to amend a Constitution are generally to be found within the main body of the Constitution and must be followed precisely if an amendment is to lawfully become a part of the Constitution. While different Constitutions mandate different procedures for the amendment process, there are several practical steps that are fairly universal:

- \* Draft the amendment.
- \* Explain its implications to the legislature and The People.
- \* Promote it. Reinforce why it needs to become a part of the Constitution.
- \* Vote on it.
- \* Certify that the amendment received the required number of votes.

Once certification is complete, the amendment then becomes an official and lawful part of the Constitution. However, because certain elements of a Constitution are not open to amendment; amendments that trespass upon those areas may be declared unconstitutional by the courts, if challenged.