Crime and the treatment of criminals have been pervasive themes of American legal history. ‘Criminal law’ shows that in contrast to the early conceptions of crime and punishment as largely private activities, diagnosing and responding to crime has become a distinctly public activity, as susceptible to changing public attitudes as other sectors of American political life. Americans have been responsive to the idea that individual citizens have rights not to be subjected to arbitrary criminal process by the state; but also they have rarely been opposed to the prospect of criminals being locked up for a long time. Balancing those attitudes has not been easy, and at present the balance seems tipped toward incarceration.

‘Law and African American slavery’ illustrates how the colonial heritage of slavery in America helped foster the population growth, expansion of the labour force, extraction of abundant agricultural resources, and commercial prosperity that seemed to make the United States a singularly favoured nation in the first half of the nineteenth century. African American slavery, however, was also the root cause of the breakup of that nation in 1860 and the civil war that accompanied it. A civil war was necessary to end slavery in America and forcibly restore a union of northern and southern states, but the legacy of slavery would survive in the form of pervasive discrimination against African Americans.

‘The constitution: old and new’
'The Constitution: Old and New’ addresses the question of the nature of Britain's constitution. It is often said that Britain has an unwritten constitution or no proper constitution at all. This is misleading, rather it has a constitution that is not codified or enacted into a single book or rules. It is a historical constitution as well as a political one and is made up of an accumulation of statutes, common law provisions and precedents, conventions and guidebooks. However, that is changing as a result of Britain joining the European Union, the growing demand for devolution in Scotland and Wales and the changes implemented by the Labour Government of Tony Blair.

8. Security
David J. Bodenhamer

Armed conflict poses an imminent threat to the nation’s existence, but so does suspension of the nation’s fundamental laws. The framers wrestled with how to grant government the power to defend the nation without providing it the means to threaten liberty. The question it raises—does war suspend the Constitution or does the Constitution control the conduct of the war—has rarely been absent from American history. ‘Security’ describes the impact of the Civil War, World War I, World War II, the Cold War, the Vietnam War, as well as the recent ‘war on terror’ on the nation’s laws, the executive presidential power, and the roles of the Supreme Court and Congress.

L. Sandy Maisel

‘Party organizations: What do they look like? What do they do?’ examines each of those questions and reveals that political party organizations in the United States reflect the nation's federal system. The party is organized at each electoral level. The main purpose of the party is to assist their candidates to get into office. The party organization does not define party policy nor do its leaders exercise much authority of those elected under the party label. This is a situation that has changed quite markedly over the last century as changes have taken place in the electoral process.

1. The revolutionary Constitution
David J. Bodenhamer
The American Revolution was a radical event that redefined ideas of sovereignty, liberty, equality, representation, and power. It also recast how men and women related to each other within and outside of government. As its political expression, the Constitution was the revolutionary answer to an age-old antagonism in Western culture between power and liberty. ‘The revolutionary Constitution’ describes the processes involved in the drafting of the Constitution, its ratification, and the creation of the new national government structure, including the House of Representatives, the Senate, and the Supreme Court. It outlines the key stages in the Constitution’s construction such as the Philadelphia Convention in 1787 and the ratification of the Bill of Rights in 1791.

4. Property

David J. Bodenhamer

The Constitution of 1787 contains no broad guarantee of the right to property, but it established numerous protections for property. ‘Property’ explains that the right to property found explicit protection in the Constitution with the 1791 Fifth Amendment. It also describes how the courts reshaped the law of property as a capitalist instrument in ways that fit both constitutional republicanism and an emerging democratic order. Twice, Congress passed and states ratified amendments that redefined property rights: the 1913 Sixteenth Amendment and the 1919 Eighteenth Amendment. Private ownership has often been in tension with popular sovereignty, democracy, and the general welfare. How to strike an appropriate balance between these legitimate constitutional interests remains a challenge.

Epilogue

The future Constitution

David J. Bodenhamer

The United States does not operate today under the Constitution ratified in 1788 or the Constitution as completed by the Bill of Rights in 1791 or even the one revised by the Reconstruction amendments. Nor is it the same nation. The United States, then a plural noun and now a collective one, has grown from thirteen states hugging the Atlantic seaboard to fifty states spread across a continent and beyond. It has experienced a civil war that ended one social and political regime and ultimately ushered in another far different from anything most people could have imagined in 1776 or even in 1865. From its beginnings as a second-rate country with a tiny navy and army, it has grown to become a global economic and military superpower. It is a democratic republic in which democracy weighs far more heavily in its constitutional and societal calculus than the framers would have endorsed. Its citizens vest government with the responsibility for safeguarding their
prosperity, health, safety, and welfare in ways alien to the experiences of the founding generation....

The U.S. Constitution: A Very Short Introduction

David J. Bodenhamer

The U.S. Constitution: A Very Short Introduction explores the major themes of American constitutional history—federalism, the balance of powers, property, representation, equality, rights, and security. Informed by the latest scholarship, each theme illustrates how the Constitution has served as a dynamic framework for legitimating power and advancing liberty. Today, we face serious challenges to the nation’s constitutional legacy. Endless wars, a sharply divided electorate and deadlocked government, economic inequality, immigration, cybersecurity and privacy, and foreign interference in the nation’s democratic processes have placed demands on government and on society that test our constitutional values. Understanding how the Constitution has evolved will help us adapt its principles to the challenges of our age.

5. Representation

David J. Bodenhamer

More than most constitutional issues, questions of representation and suffrage have exposed the fault lines of class, race, and gender in American society. Popular sovereignty was the touchstone of republican liberty, but only grudgingly did rulers admit the ruled into their circle. The world-view of the framers had no room for women, blacks, Indians, or the poor as citizens worthy of the ballot. It took a series of constitutional amendments, all spurred by war or mass movements, to expand the electorate and redefine “we the people” to include all adult citizens as rulers. ‘Representation’ describes the various Amendments to the Constitution and the Voting Rights Act of 1965 that have reshaped what representation means.

1. The politics of the Constitution, 1787–89

Donald T. Critchlow

‘The politics of the Constitution, 1787–89’ describes the drafting of the U.S. Constitution in 1787 and its ratification. The central actors were George Washington, James Madison,
Benjamin Franklin, James Wilson, Alexander Hamilton, Gouverneur Morris, Luther Martin, Edmund Randolph, and George Mason. Disillusioned with the failure of the Articles of Confederation, distrustful of direct democracy and the passions of the mob, fearful of demagogues, and terrified by centralized government that was easily corrupted, the Philadelphia delegates expressed profound optimism that the American Revolution marked the beginnings of a new epoch in human history—the establishment of a large-scale representative republican government worthy of a continent. In the end, the constitution blended republican theory and political compromise.

9. Tumultuous politics continued, 1974–present
Donald T. Critchlow

‘Tumultuous politics continued, 1974–present’ describes the five salient factors that shaped the context for post-Cold War politics: the demise of the Soviet Union in the 1990s, booms and busts in the economy, increased polarization within the electorate, the continuation of low voter turnout, and the emergence of grassroots activist organizations not necessarily loyal to any political party. The main features of the presidencies of Gerald Ford, Jimmy Carter, Ronald Reagan, George H. W. Bush, Bill Clinton, George W. Bush, and Barack Obama are described along with key events such as the Gulf War and the September 11, 2001 terrorist attacks that changed the political landscape in America and had far-reaching global consequences.

2. Contentious people and factious parties in the Early Republic, 1789–1824
Donald T. Critchlow

The Founding Fathers feared political factions as a natural corruption of democrat government. None envisioned the rise of the severe factionalism that arose during George Washington's administration from 1789 to 1797. Divisions occurred over Secretary of the Treasury Alexander Hamilton's plans for the federal government to assume states' debts, establish a national bank, raise taxes, and pursue a pro-British foreign policy. Secretary of State Thomas Jefferson and James Madison, believing Hamilton's proposals were unconstitutional, vehemently opposed the Hamiltonian program. ‘Contentious people and factious parties in the Early Republic, 1789–1824’ describes the opposing visions of the nation's future that were at the root of this factionalism and that led to the formation of political parties.
From 1816 to 1844, the United States underwent an economic, political, and social transformation resulting in a nation of twenty-four states and three territories with a population of nearly 13 million people, triple the number in 1790. This market revolution occurred as a result of better transportation and communication systems. ‘The age of democracy, 1816–44’ outlines how this facilitated rapid political changes, including the expansion of the electorate, the rise of political parties and creation of a rudimentary two-party system (Democrats and Whigs), and pronounced egalitarianism in campaign rhetoric. The presidential elections of James Monroe (1816, 1820), John Quincy Adams (1824), Andrew Jackson (1828, 1832), Martin Van Buren (1836), and William Henry Harrison (1840) are described.

The Civil War and its aftermath intensified politics in the North, sharpening the divide between Republicans and Democrats and factionalizing the Republican Party. The war did not politically unite the North during the war. Abraham Lincoln confronted deep factionalism in his own party: Radical Republicans insisted upon emancipation of slaves and vengeance on the South. Conservative Republicans called for caution. ‘Politics in war and Reconstruction, 1861–76’ describes how these factional divisions worsened after Lincoln's assassination in 1865. The most important political consequence of the Civil War and Reconstruction proved to be the Thirteenth, Fourteenth, and Fifteenth constitutional amendments, which abolished slavery, granted equal citizenship, and protected voting rights for former slaves.

Self-gain, partisan loyalty, and corruption characterized politics after the Civil War at a time when United States became the world's leading industrial power. Voters divided generally along ethnic, religious, and sectional lines. Republicans controlled the White House during most of these years, while party control of Congress remained divided, with the Republicans
usually holding the Senate and Democrats the House. ‘Gilded Age frustration and the Progressive response, 1877–1918’ outlines the emergence of a Progressive movement in the twentieth century—first under President Theodore Roosevelt and then later Woodrow Wilson—which strengthened the executive office, enlarged federal power, and marked the beginnings of the regulatory administrative state. This period of progressive reform lasted until America entered the First World War in 1917.

Introduction
Donald T. Critchlow

This very short introduction explores how national politics changed from the Founding Fathers’ U.S. Constitution in 1787 and what followed. The only consistency between the Founders’ dream for the new republic and what emerged was a profound faith in constitutional government. The Introduction outlines the four themes that emerge in this brief study of American political history: the intensity and continuity of partisanship and polarization; the steady expansion of the electorate to be more inclusive; the continuation of debates over the role and power of the federal government; and the importance of the Constitution in framing political debate.

4. The politics of slavery: prelude to the Civil War, 1844–60
Donald T. Critchlow

In the ten years following the 1844 election the entire political landscape changed, including the demise of the Whig party and the rise of a powerful new northern party, the Republican Party. The catalyst for this dramatic political upheaval came from a single issue—slavery—that divided the North and the South over the proper role of government. ‘The politics of slavery: prelude to the Civil War, 1844–60’ describes the debates on slavery and the election campaigns of James Polk (1844), Zachary Taylor (1848), Franklin Pierce (1852) and James Buchanan (1856). It concludes with the election of Abraham Lincoln of the Republican Party, who ran on an antislavery ticket, and the resulting secession of South Carolina in 1860.

3. Rights of property and their regulation
G. Edward White

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date: 19 September 2019
‘Rights of property and their regulation’ illustrates that the law of property was at the centre of early American society and governance. By the early nineteenth century, two ideas about property were coexisting in property rights cases: firstly, that rights of property were inherent in American citizenship and held against state regulation, and secondly, that the police power of the state could regulate property to promote public health, safety, or morals. The legal history of property rights in America has been shaped by the interplay between these searches for profitable uses of private property and governmental efforts to ensure that an appropriate share of the resulting profits are put to beneficial public use.

Epilogue
G. Edward White

The ‘Epilogue’ concludes that this VSI may be taken as an effort to demonstrate how much of American history can be seen as connected to law and legal institutions. Of all the evidence demonstrating the role of law as a central force in the history of American culture, the most visible has been the status of the legal profession itself. Since the early settlements in colonial British America, a knowledge of law has been associated with governing institutions, politics, and influence in community affairs. The future role of the legal profession in American history is considered. Will the profession retain its position of centrality in American life?