

Chapter 2: The Constitution

- I. The problem of liberty v. order (preceding experiments in national government)
<http://lcweb2.loc.gov/ammem/bdsds/bdexhome.html>
- A. The Continental Congresses
1. Origin: pre-Revolution colonies
 2. Dates: 1774 -81
 3. Structure: *de facto* and confederal, with a one-house national legislature and no executive or judicial branches
 4. Major achievements
 - a. Declaration of Rights and Resolves (1774)
 - b. Declaration of Independence (1776)
 5. Major shortcomings
 - a. No constitution
 - b. Central government too weak
- B. The Articles of Confederation
1. Origin: 1776
 2. Dates: 1781-89
 3. Structure: *de jure* and confederal, with one-house national legislature and no executive or judicial branches
 4. Major achievement: Northwest Ordinances (1784, 85, 87)
 5. Major shortcomings: central government too weak
 - a. Domestic disorder (Shays's Rebellion)
 - b. Foreign threats to national security (Great Britain, France, Spain)
- II. The Constitutional Convention
- A. The lessons of experience
1. Excessively strong state governments
 2. Excessively weak state governments
- B. The Framers (and Charles A. Beard)
- III. The challenge <http://www.findlaw.com/cascode/constitution/>
- A. Large states versus small states
- B. The compromises
1. Basic structure: federal compromise (CT plan), not unitary (VA plan) nor confederal (NJ plan)
 2. Legislative representation: bicameral compromise
 3. Executive
 - a. Number: single v. plural
 - b. Selection: indirect v. direct
 - c. Term length and limits: a compromise between short or long
 - d. Impeachment and removal: hard v. easy
- IV. The Constitution and democracy
- A. Goals: a "more perfect union"
1. To shift many (but not all) important powers from the states to the national government
 - a. New legislative powers
 - (1) Simple-majority votes to pass most laws (including declarations of war)
 - (2) To "raise and support armies" & to "provide & maintain a navy" & to control state "militias" (national guards)
 - (3) Exclusive power to coin money
 - (4) Power to regulate interstate and foreign commerce
 - b. New and independent executive and judiciary
 2. To safeguard against abuse of national government power by
 - a. Internal controls: *dispersing* governmental powers and representation to create *checks and balances*
 - (1) *Dividing* powers across *levels* of government
 - (a) Federal: e.g., foreign policy/national security & national economy
 - (b) State: e.g., reserved or "police" powers
 - (2) *Separating* powers across *branches* within the national government
 - (a) Legislative: e.g., control the purse strings & declare war
 - (b) Executive: e.g., conduct diplomacy & command military
 - (c) Judicial: e.g., interpret laws & Constitution

- (3) **Overlapping** (shared or concurrent) powers across *both* levels and branches
- (a) Overlapping across levels:
 - a) *Shared* powers: both levels must cooperate to exercise jointly (e.g., amending the Constitution)
 - b) *Concurrent* powers: each level can exercise independently (e.g., taxing and spending)
 - (b) Overlapping across branches
 - i) Law making by Congress can be “checked and balanced” by presidential veto or by judicial review
 - ii) Law enforcing by the president can be “checked and balanced” by Senate confirmation of executive appointments or by judicial review
 - iii) Law adjudicating by the Federal courts can be “checked and balanced” by presidential & Senate control of judicial appointments or by Constitutional amendments proposed by Congress and ratified by the states
- b. External controls:
- (1) *Popular sovereignty*: fair, frequent, & competitive elections
 - (2) A *pluralist* rather than a *polarized society*
 - (a) *Polarized society*:
 - i) Political parties and special-interest groups (“factions”) have mutually-exclusive memberships and information sources that form an “echo chamber” that reinforces pre-existing beliefs and contributes to an emotional “us versus them” mentality
 - ii) Political issue-divisions align along a common cleavage line that also divides socio-demographic groups
 - iii) Little willingness to bargain & compromise because members of the opposition on one issue are rarely or never your allies on other issues and rarely members of your socio-demographic groups
 - (b) *Pluralistic society*:
 - i) Political parties & special-interest groups (“factions”) have overlapping memberships with diverse information sources that challenge pre-existing beliefs and contribute to a pragmatic willingness to rationally consider alternate points of view
 - ii) Political issue-divisions cross-cut each other and also cross-cut major socio-demographic groups
 - iii) Widespread willingness to bargain & compromise because members of the opposition on one issue are often your allies on other issues and these shifting alliances cross socio-demographic boundaries
- B. Built-in problems
1. Delay & gridlock
 2. Bargaining & compromise
 3. Responsibility not easily assigned to branches and levels of government
- C. Examples of the failure of Constitutional safeguards
1. African-American slavery and discrimination
 2. Mistreatment of Native Americans
 3. Unjust imprisonment of American citizens of Japanese descent
 4. Female suffrage not guaranteed nationwide until 1920

- V. The Constitution and liberty
- A. The federalist view
 - B. The antifederalist view
 - C. Need for a Bill of Rights

- VI. The Constitution and slavery (issues dividing slave v. free states)
- A. Slave owning
 - B. Counting slaves for taxation and representation: 3/5ths compromise
 - C. Regulation of slave trading
 - D. Regulation of slavery in the territories

- VII. Political ideals or economic interests?
- A. Economic interpretation (of Framers’ motives)
 - B. Political interpretation

- VIII. Liberty and equality (two points of view)
- A. Limit government’s powers in order to protect inequalities
 - B. Expand government’s power in order to prevent inequalities