Chapter 1: The Constitution

ESSENTIAL QUESTION:

HOW HAVE THEORY, DEBATE, AND COMPROMISE INFLUENCED THE UNITED STATES’ SYSTEM OF GOVERNMENT THAT BALANCES GOVERNMENTAL POWER AND INDIVIDUAL RIGHTS?
Essential Question:

- The Struggle between Individual Liberty and the Common Good:
1787 – Framers meet in Philadelphia
1789 – Constitution put into place

- Created a legislative, executive, and judicial branch.
- Defined federalism and relationship among states.
- Provided for a method to alter, or amend the document.
1791 - Bill of Rights* goes into effect

- First 10 Amendments to the Constitution
Social Contract*

- Contract between a democratic government and the people
- If government violated the contract, the people could take power back.

(Read paragraph 2 of Declaration of Independence, pg.619)
Timeline from 1764 to 1791

- 1764 – Parliament passes Sugar Act
- 1765 – Parliament passes Stamp Act
- 1770 – Boston Massacre
- 1773 – Boston Tea Party
- 1774 – First Continental Congress
- 1775 – Battles of Lexington and Concord
- 1776 – Declaration of Independence
- 1781 – Articles of Confederation ratified
- 1783 – Treaty of Paris
- 1786 – Shay’s Rebellion
- 1787 – Constitutional Convention
- 1789 – President Washington, Congress elected
- 1789 – Congress proposes Bill of Rights
- 1790 – Rhode Island ratifies Constitution (13th state)
- 1791 – Bill of Rights ratified
Sugar Act

- The colonist believed that the Sugar Act would reduce their profits and that these taxes violated their rights because they were not represented in parliament.

- More importantly, it meant colonists accused of violating the Act were tried in Vice-Admiral Courts rather than Colonial Courts.

- However, the Act actually reduced the tax on molasses.
King George III – Financing the 7 Years’ War

The Stamp Act (1765)

- Tax on almost all printed materials
- Newspapers, wills, and playing cards
- All printed materials had to have a stamp
- British officials applied the stamp after the tax was paid
- Opposition to the Stamp Act centered on two points
  - 1. Parliament had interfered in colonial affairs by taxing the colonies directly
  - 2. It taxed colonists without their consent
THE TEA ACT OF 1773

In 1773 the British East India Company had a surplus of tea that they needed to sell or 18 million dollars worth of tea would be wasted...gave them a monopoly on the tea industry

CHEAPER THAN SMUGGLED TEA
EVEN WITH THE TAX

COLONIAL SHIPPERS &
MERchants ENRAGED
BECAUSE THE BRITISH EAST
INDIA CO. WOULD SHIP &
SELL THE TEA THEMSELVES
(cutting out the middle man)
90% of those in Britain could not vote

- Britain reminded colonists that 90% of British citizens could not vote, so the colonists were “virtually represented” just as the 90% in Britain were.
Sons of Liberty

Secret society formed to protect the rights of colonists by protesting the Stamp Act.
John Locke and *Natural Law

- **Natural Rights** – people were born free and equal
- “No one subject to another without own consent.”
- Obligates people to rebel when rule of kings does not respect the consent of the governed.
## Locke & Declaration of Independence

<table>
<thead>
<tr>
<th>Locke</th>
<th>Declaration of Independence</th>
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<tbody>
<tr>
<td><strong>Natural Rights</strong></td>
<td>“Laws of Nature and Nature’s God”</td>
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<tr>
<td>“The state of nature has a law to govern it”</td>
<td>“life, liberty, and the pursuit of happiness.”</td>
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<tr>
<td>“life, liberty, and property”</td>
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<tr>
<td><strong>Purpose of Government</strong></td>
<td>“to secure these rights”</td>
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<tr>
<td>“to preserve himself, his liberty, and property”</td>
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<tr>
<td><strong>Equality</strong></td>
<td>“all men are created equal”</td>
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<tr>
<td>“men being by nature all free, equal and independent”</td>
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<tr>
<td><strong>Consent of the Governed</strong></td>
<td>“Governments are instituted among men, deriving their just powers from the consent of the governed.”</td>
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<tr>
<td>“for when any number of men have, by the consent of every individual, made a community, with a power to act as one body, which is only by the will and determination of the majority”</td>
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<tr>
<td><strong>Limited Government</strong></td>
<td>“The history of the present King of Great Britain is a history of repeated injuries and usurpations.”</td>
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<td>“Absolute arbitrary power, or governing without settled laws, can neither of them consist with the ends of society and government.”</td>
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<td>“As usurpation is the exercise of power which another has a right to, so tyranny is the exercise of power beyond right, which nobody can have a right to.”</td>
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<td><strong>Right to Revolt</strong></td>
<td>“Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes. . . But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government.”</td>
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<td>“The people shall be the judge. . . . Oppression raises ferments and makes men struggle to cast off an uneasy and tyrannical yoke.”</td>
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“The Social Contract”- Man was born free, and he is everywhere in chains.

Social Contract is the agreement to give up certain natural rights in exchange for security provided by government and freedom in a single body politic committed to the general good.
Rousseau

- **Popular sovereignty** – people are the ultimate ruling authority
Montesquieu

- Separation of Powers – executive, legislative, and judicial branches.
Types of Democracy

- **Participatory** – direct participation of many, if not most, people in a society.
- **Pluralist** – nongovernmental groups organize to try to exert influence on political decision-making.
- **Elite** – elected representatives make decisions and act as trustees for the people who elected them.
Declaration of Independence*

- Jefferson, Adams, Franklin, Sherman, Livingston – drafted official statement to summarize colonists’ views.
- Signed on July 4, 1776
- Created a moral and legal justification for the rebellion.

- https://www.youtube.com/watch?v=3Woa3pzF-5M
- (Read text of Declaration of Independence, pg. 619)
Treaty of Paris

- 1783 treaty ending Revolutionary War
Articles of Confederation

- Weaknesses-
  - 9 state must agree to enact law
  - 13 (all) must agree to amend
  - No direct taxation of people
  - No provision for raising or maintaining an army
  - No national court system
  - No national currency
  - Congress could not regulate commerce among the states
Articles of Confederation

**Strengths**
- Congress could engage in international diplomacy
- Congress could declare war
- Congress could acquire territory
- Provided protection of religion and speech
- Provided for extradition – return of fugitives to states where crimes committed and runaway slaves to states they had fled
- Encouraged a free flow of commerce among states
- Required states provide a public, fair government
- Congress could sit as a court in disputes between states
Shay’s Rebellion

- 1786 – Massachusetts
- Farmers (veterans who were not being paid) were losing farms to foreclosures & failure to pay taxes
- Shays asked for gov’t to print more money, lighten taxes, and suspend mortgages
- Armed rebellion occurs and no federal army to stop them – rich citizens pay to have rebellion put down
- Leaders realize need stronger federal government
- Meet in Annapolis, MD
- agree to meet again in May 1787
55 men in Philadelphia

- Confederation Congress called to revise Art. Of Conf.
- James Madison (Father of the Constitution)
- George Washington (cooling force)
- Alexander Hamilton (annoying speeches)
- Benjamin Franklin (elder statesman – 81 years old)
- ¾ had served in Continental Congress
- 8 signed Declaration of Independence
- 21 fought in Revolutionary War
55 men in Philadelphia

- Proceedings kept secret for duration of convention
  - Protect convention proceedings from opponents
  - Allowed for freedom of expression of controversial viewpoints
  - Kept windows and doors closed all summer
Virginia Plan

- Edmund Randolph, VA governor, presented:
  - Written by Madison
  - 3 branch system with 15 resolves
  - 2 house legislature
    - People elect lower house which would then elect upper house
  - Supreme national government
  - Separation of powers
  - Tiered court system
  - Large state plan
  - Representation by population
  - “national” system – unified authority over nation and states
New Jersey Plan

- William Paterson of NJ introduced:
  - States retain sovereignty
  - National legislature limited and defined
  - No national courts
  - Small state plan
  - Representation by state
  - “federal” system: collection of sovereign states gathered to govern
Great Compromise/Connecticut Plan

- Grand Committee (one delegate from each state)
- George Mason, William Paterson, Ben Franklin, Roger Sherman of CT (lead)
- Great Compromise (or CT Compromise)
  - 2 house Congress
    - House of Representatives (population)
    - Senate (state)
Slavery & 3/5ths Compromise

- Roger Sherman (CT) and James Wilson introduced
- Every slave would count as 3/5ths of a person for purposes of representation in House
20-year Ban on Issue of Slavery

- Congress prohibited from stopping the international slave trade for 20 years after ratification of Constitution
- Extradition clause for how states should handle runaway slaves
Electoral College

- Electoral College – compromise for choosing President
  - States decide how electors chosen
  - States have same number of electors as representatives in Congress (House & Senate)
  - People would vote for the electors
    - Elite model of government still today
Policy

- Laws the government creates and the manner in which they are carried out.
- Congress passes laws
- Executive “executes” or carries out the laws
  - Agencies create and shape regulations (policy)
- Judicial interprets the laws
  - Makes law anew and shapes policy
7 Articles of Constitution

- Article I – Legislative Branch
- Article II – Executive Branch
- Article III – Judiciary
- Article IV – Relations Among States
- Article V – Amendment Process
- Article VI – National Supremacy
- Article VII – Ratification Process
Enumerated Powers

- Article 1, Sec. 8, Congress’s listed powers:
  - Tax
  - Borrow money
  - Raise an army
  - Create a postal system
  - Address piracy on the seas
  - Define the immigration and naturalization process
  - Few others
Commerce Clause

- Congress’s power to “regulate commerce with other nations, and among the several states.”
- Article I, Sec. 8
Necessary and Proper Clause (Elastic)

“The Congress shall have power... to make all laws which shall be necessary and proper for carrying into execution the foregoing powers....”

Article I, Sec. 8

Grants implicit powers for flexibility in legislating
Full Faith and Credit Clause

- Article IV – relations among the states:
  - FF and CC requires states to be open about their laws and encourages states to respect one another’s laws
  - “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State...”

- Privileges and Immunities Clause
- Republican form of government
- Extradition
Supremacy Clause

- Article VI
- “This Constitution, and the Laws of the U.S. which shall be made in Pursuance thereof... shall be the supreme Law of the Land...”
Ratification

- Three delegates refuse to sign Constitution
  - George Mason (VA)
  - Edmund Randolph (VA)
  - Elbridge Gerry (MA)
- December 1787 – three states ratify
- January 1788 – two more ratify
- (Read chart on page 25)
Federalist #10

- Warned against the “mischiefs of faction”
- Factions = interest groups
- Might cause men to dominate government for their own ends rather than for the public good
- Believed factions could not be removed, so government had to control them
- Advocated for large republic for this purpose
Federalists

- Supporters of the Constitution
- Wrote The Federalist Papers under the pen name Publius
  - James Madison
  - Alexander Hamilton
  - John Jay
Anti-Federalists

- Opposed the Constitution
- Wrote the Anti-Federalist Papers under pen name Brutus
  - Patrick Henry
  - George Mason
  - Samuel Adams
Brutus #1

- A republic as large as our continent would mean the people would not know their rulers or their proceedings and it would be hard to change them.
- Counters argument that a large government will prevent the rise of controlling factions
## Federalist / Anti-Federalist Compared

<table>
<thead>
<tr>
<th>Anti-Federalists</th>
<th>Federalists</th>
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<tbody>
<tr>
<td><strong>Backgrounds</strong></td>
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<tr>
<td>Small farmers, shopkeepers, laborers</td>
<td>Large landowners, wealthy merchants, professionals</td>
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<tr>
<td><strong>Government Preferred</strong></td>
<td></td>
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<tr>
<td>Strong state government</td>
<td>Weaker state governments</td>
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<tr>
<td>Weak national government</td>
<td>Strong national government</td>
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<tr>
<td>Direct election of officials</td>
<td>Indirect election of officials</td>
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<tr>
<td>Shorter terms</td>
<td>Longer terms</td>
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<tr>
<td>Rule by the common man</td>
<td>Government by the elite</td>
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<td>Strengthened protections for individual liberties</td>
<td>Expected few violations of individual liberties</td>
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</table>
Rights granted in the “Original” Constitution

- No religious tests to hold federal office
- Right to jury trials in criminal cases
- Neither Congress nor the states can pass a bill of attainder
- Neither Congress nor the states can pass ex post facto laws
- Congress cannot suspend habeas corpus rights except in wartime
USA Patriot Act

- Passed after 9/11 to prevent future attacks
- Covered:
  - Intelligence gathering and sharing by executive branch agencies
  - Points of criminal procedure
  - Border protection
- Government can now:
  - Share grand jury testimony and proceedings
  - Detain illegal immigrants for longer periods
  - Monitor email communications
USA Freedom Act

- Passed in 2015
- Upheld certain portions of Patriot Act
- Phased out:
  - Bulk collection of phone and Internet data
  - Set limits for phone and data collection in certain circumstances
Representative Republic

- Collection of sovereign states gathered for the national interest, national needs, and national defense
  - Popular sovereignty for House of Representatives only
  - Senate elected by state legislators until 1913
  - President elected by Electoral College after states name their electors
Separation of Powers

● Each branch has their own powers and cannot infringe on the other branch:
  ○ Legislative Branch – lawmaking body
  ○ Executive Branch – enforces the law
  ○ Judicial Branch – interprets the law
● “If men were angels, no government would be necessary.”
● Separation of Powers = guard against tyranny
Checks and Balances

- The limiting powers each branch can use on the others.
- Based on Rule of Law = no one is above the law.
- Each branch of government checks the other branch by design:
  - President checks Congress and Judicial
  - Congress checks President and Judicial
  - Judicial checks Congress and President
Separation of Powers/Checks and Balances

**LEGISLATIVE BRANCH**
- The Congress
- House of Representatives; Senate
- House and Senate can veto each other’s bills.
- The Senate confirms the president’s nominations. Congress can impeach judges and remove them from office.

**EXECUTIVE BRANCH**
- The President
- Executive Office of the President; executive and cabinet departments; independent government agencies
- The president can veto congressional legislation.

**JUDICIAL BRANCH**
- The Courts
- Supreme Court; courts of appeal; district courts
- The Court can declare laws unconstitutional.
- The Court can declare presidential acts unconstitutional.

Congress approves presidential nominations and controls the budget. It can pass laws over the president’s veto and can impeach the president and remove him or her from office.

The president nominates judges and enforces judicial opinions.
Veto

- President may reject a Congressional act by his veto power.
If the president receives the bill at the end of a legislative session, refusal to sign is known as a pocket veto and kills the bill.

**Why use a Pocket Veto?**

- Re-elections are coming up
- Doesn’t get accused of saying “No”
- Can’t go back to Congress for 2/3 override
Advice and Consent

Senate provides “advice and consent” to presidential appointments as a way to check the executive branch.
Impeachment

- An accusation, an indictment of wrongdoing.
- The House of Representatives has the sole power of impeachment. (Article I, Section II)
- Senate holds trial of the accused.
- Chief Justice of Supreme Court presides as judge.
- 2/3 majority required to convict.
- 2 presidents impeached: A. Johnson, B. Clinton
- None convicted
Judicial Review

- Power of Judicial branch to check the legislative and executive branches.
- Courts may deem an act of the legislature or an executive order of the president unconstitutional.
- First established in case of Marbury v. Madison.
Federalism

- The balance of power among a central, national authority and state or regional authorities.
- Assures a limited government.
- Tenth Amendment grants all powers not delegated to the federal government to the states.
Gridlock is by design:

- Framers planned lawmaking process to be slow so branches can discuss, debate, and rewrite legislation before fully passed.
  - Bicameralism – 2 houses = extra step
  - Veto power – may prevent hasty actions by Congress
  - Bill of Rights - limitations
  - Due Process – procedure must be followed by Congress
  - Tenth Amendment – limits Congressional actions
Supreme Court

- **Majority Opinion** – requires 5 of 9 justices – opinion of the court
- **Concurring Opinion** – members who agree with majority but for different reasons
- **Dissenting Opinion** – members who disagree with the majority