

# Study Outline

## Chapter 2: The Constitution

- I. The problem of liberty
  - A. The colonial mind
    - 1. Belief that because British politicians were corrupt, the English constitution was inadequate
    - 2. Belief in higher law of natural rights
      - a. Life
      - b. Liberty
      - c. Property (Jefferson notwithstanding)
    - 3. A war of ideology, not economics
    - 4. Specific complaints against George III for violating unalienable rights
  - B. The "real" revolution
    - 1. The "real" revolution was the radical change in belief about what made authority legitimate and liberties secure.
    - 2. Government by consent, not by prerogative
    - 3. Direct grant of power: written constitution
    - 4. Human liberty before government
    - 5. Legislature superior to executive branch
  - C. Weaknesses of the confederation
    - 1. Could not levy taxes or regulate commerce
    - 2. Sovereignty, independence retained by states
    - 3. One vote in Congress for each state
    - 4. Nine of thirteen votes in Congress required for any measure
    - 5. Delegates picked, paid for by legislatures
    - 6. Little money coined by Congress
    - 7. Army small; dependent on state militias
    - 8. Territorial disputes between states
    - 9. No national judicial system
    - 10. All thirteen states' consent necessary for any amendments
- II. The Constitutional Convention
  - A. The lessons of experience
    - 1. State constitutions
      - a. Pennsylvania: too strong, too democratic
      - b. Massachusetts: too weak, less democratic
    - 2. Shays's Rebellion led to the fear the states were about to collapse.
  - B. The Framers
    - 1. Who came: men of practical affairs
    - 2. Who did not come
    - 3. Intent to write an entirely new constitution
    - 4. Lockean influence
    - 5. Doubts that popular consent could guarantee liberty
    - 6. Results: "a delicate problem"; need strong government for order but one that would not threaten liberty
      - a. Democracy of that day not the solution
      - b. Aristocracy not a solution either
      - c. Government with constitutional limits no guarantee against tyranny
- III. The challenge
  - A. The Virginia Plan
    - 1. Design for a true national government
    - 2. Two houses in legislature
    - 3. Executive chosen by legislature
    - 4. Council of revision with veto power
    - 5. Two key features of the plan
      - a. National legislature with supreme powers
      - b. One house elected directly by the people
  - B. The New Jersey Plan
    - 1. Sought to amend rather than replace the Articles
    - 2. Proposed one vote per state

- 3. Protected small states' interests
  - C. The compromise
    - 1. House of Representatives based on population
    - 2. Senate of two members per state
    - 3. Reconciled interests of big and small states
    - 4. Committee of Detail
- IV. The Constitution and democracy
  - A. Founders did not intend to create pure democracy
    - 1. Physical impossibility in a vast country
    - 2. Mistrust of popular passions
    - 3. Intent instead to create a republic with a system of representation
  - B. Popular rule only one element of the new government
    - 1. State legislators to elect senators
    - 2. Electors to choose president
    - 3. Two kinds of majorities: voters and states
    - 4. Judicial review another limitation
    - 5. Amendment process
  - C. Key principles
    - 1. Separation of powers
    - 2. Federalism
  - D. Government and human nature
    - 1. Aristotelian view: government should improve human nature by cultivating virtue
    - 2. Madisonian view: cultivation of virtue would require a government too strong, too dangerous; self-interest should be freely pursued
    - 3. Federalism enables one level of government to act as a check on the other
  - E. The Constitution and liberty
  - F. Whether constitutional government was to respect personal liberties is a difficult question; ratification by conventions in at least nine states a democratic feature but a technically illegal one
  - G. The Antifederalist view
    - 1. Liberty could be secure only in small republics.
      - a. In big republics national government would be distant from people.
      - b. Strong national government would use its powers to annihilate state functions.
    - 2. There should be many more restrictions on government.
    - 3. Madison's response: personal liberty safest in large ("extended") republics
      - a. Coalitions likely more moderate there
      - b. Government *should* be somewhat distant to be insulated from passions
    - 4. Reasons for the absence of a bill of rights
      - a. Several guarantees in Constitution
        - 1. Habeas corpus
        - 2. No bill of attainder
        - 3. No ex post facto law
        - 4. Trial by jury
        - 5. Privileges and immunities
        - 6. No religious tests
        - 7. Obligation of contracts
      - b. Most states had bills of rights.
      - c. Intent to limit federal government to specific powers
  - H. Need for a bill of rights
    - 1. Ratification impossible without one
    - 2. Promise by key leaders to obtain one
    - 3. Bitter ratification narrowly successful
- V. The Constitution and slavery
  - A. Slavery virtually unmentioned
  - B. Apparent hypocrisy of Declaration signers
  - C. Necessity of compromise: otherwise no ratification
    - 1. Sixty percent of slaves counted for representation.
    - 2. No slavery legislation possible before 1808
    - 3. Escaped slaves to be returned to masters
  - D. Legacy: Civil War, continuing problems
- VI. The motives of the Framers

- A. Acted out of a mixture of motives; economic interests played modest role
  - B. Economic interests of framers varied widely
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    - 2. Beard: those who owned governmental debt supported Constitution
    - 3. However, no clear division along class lines found
    - 4. Recent research: state considerations outweighed personal considerations; exception: slaveholders
  - C. Economic interests and ratification
    - 1. Played larger role in state ratifying conventions
    - 2. In favor: merchants, urbanites, owners of western land, holders of government IOUs, non-slave owners
    - 3. Opposed: farmers, people who held no IOUs, slaveowners
    - 4. But remarkably democratic process because most could vote for delegates
    - 5. Federalists versus Antifederalists on ideas of liberty
  - D. The Constitution and equality
    - 1. Critics: government today is too weak
      - a. Bows to special interests
      - b. Fosters economic inequality
      - c. Liberty and equality are therefore in conflict
    - 2. Framers more concerned with political inequality; weak government reduces political privilege
- VII. Constitutional reform--modern views
- A. Reducing the separation of powers to enhance national leadership
    - 1. Urgent problems remain unresolved
    - 2. President should be more powerful, accountable, to produce better policies
    - 3. Government agencies exposed to undue interference
    - 4. Proposals
      - a. Choose cabinet members from Congress
      - b. Allow president to dissolve Congress
      - c. Empower Congress to require special presidential election
      - d. Require presidential/congressional terms
      - e. Establish single six-year term for president
      - f. Lengthen terms in House to four years
    - 5. Contrary arguments: results uncertain, worse
  - B. Making the system less democratic
    - 1. Government does too much, not too little
    - 2. Attention to individual wants over general preferences
    - 3. Proposals
      - a. Limit amount of taxes collectible
      - b. Require a balanced budget
      - c. Grant president a true line-item veto
      - d. Narrow authority of federal courts
    - 4. Contrary arguments: unworkable or open to evasion
  - C. Who is right?
    - 1. Decide nothing now
    - 2. Crucial questions
      - a. How well has it worked in history?
      - b. How well has it worked in comparison with other constitutions?