

We the People of the United States, in order to insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York one, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina six, and Georgia three.

When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.

Immediately after they shall be qualified in consequence of the first Election, they shall be divided as equally as may be into three Clases. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Course of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill

How should we read the constitution?

- As a historical document?
- As an expression of political philosophy?
- As a policy document?
- As a structure for policy making?

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- **As a policy document?**
- **As a structure for policy making?**

How should we read the constitution? As a policy document?

We defined policy as a problem solving intent... so if we are to read the constitution as a policy document, **what problem is it intended to solve?**

Candidate Problem 1:

Let's head back to the 17th century - **Hobbes Leviathan**:

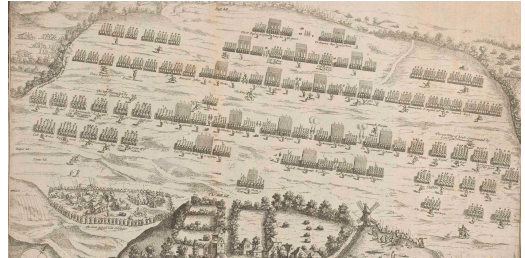
- Given human nature, without government the state of nature must be war of all against all;
- Need a social contract...
- That leads to a strong central government!



Candidate Problem 2:

Let's head back to the 17th century - **English Civil War**:

- Parliament vs King;
- How to prevent a tyrannical strong central government?



How should we read the constitution? As a structure for policy making?

The institutional structure of US policy making:

- affects policy outcomes;
- is constantly changing.

What does the constitution look like?

- Article 1: Congress;
- Article 2: Executive;
- Article 3: Judiciary;
- Article 4: relationships between states;
- Article 5: amendment process;
- Article 6: supremacy of constitution;
- Article 7: ratification process.

Looking at the setup of each of the first three sections, each tries to answer three questions:

- ① Who are they?
- ② How do we get them and get rid of them?
- ③ What are they allowed to do?

Separation of powers: Article 1, Congress

- 1–A Senate and House;
- 2.3–Representatives and Taxes shall be apportioned, census every 10 years;
- 2.5–House chooses their Officers and shall have the sole Power of Impeachment;
- 3.5 & 3.6–Senate chooses their Officers and shall have the sole Power to try Impeachments;
- 4.1–States prescribe elections, but Congress may alter such Regulations;
- 5.2–Two thirds vote to expel a Member;
- 6–Legislators are paid, privileged from Arrest, may hold no other office;
- 7–Bills raising revenue start in the House;
- 7.2 & 7.3–President's veto can be overruled by two thirds.

Separation of powers: Article 1, Congress

- 8–Enumerated Powers:

- tax and borrow;
- regulate Commerce;
- make Rules of Naturalization and Bankruptcy law;
- coin Money, fix Weights and Measures, punish counterfeiting;
- establish Post Offices and Roads;
- promote science and arts through Exclusive Rights to Writings and Discoveries;
- constitute Tribunals;
- punish piracies and felonies on the high Seas;
- declare War;
- support Armies (for less than two years), maintain a Navy, call the Militia;
- govern DC and military bases;
- make all Laws which shall be necessary and proper for carrying into execution the foregoing powers;
- and all other powers vested by this Constitution in the Government of the United States.

Separation of powers: Article 1, Congress

What congress can't do...

- 9–Congress may not: suspend Habeas Corpus, issue a bill of attainder, pass ex post facto law, tax exports, grant Titles of Nobility;
- 9.8–no person holding any office shall accept any present Emolument, Office, or Title, of any kind whatever, from any foreign State;

What states can't do...

- 10–States may not: enter into a treaty, coin Money, pass ex post facto law, grant Titles of Nobility, tax imports or exports (except for inspection), keep troops or engage in War without the Consent of Congress

Separation of powers: Article 2, Executive

- 1.1–A president with 4-year terms;
- 1.2 & 1.3–Electoral college;
- 1.7–The President is paid, shall not receive any other Emolument;
- 2–The President:
 - shall be CINC;
 - may grant pardons (except in Cases of Impeachment);
 - may make treaties (with consent of two-thirds of the Senate);
 - appoint all Officers of the United States (with consent of the Senate), “but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments”;
- 3–Shall give a State of the Union and “shall take Care that the Laws be faithfully executed”;
- 4–“Shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”;

Separation of powers: Article 3, Judiciary

- 1–Federal judges serve for life, may not have their pay cut;
- 2–Cases in Law and Equity, appellate Jurisdiction, "Trial of all Crimes, except in Cases of Impeachment, shall be by Jury";
 - In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction;
 - In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.- Article III, Section 2;
- 3–Definition of treason: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."

Division of powers across branches

- Article 1 and Article 2 are rooted in two different kinds of representative democracy.
- Article 3 is rooted in the idea of wise arbitration, extended to include the authority to restrain the democratic branches through judicial review, where a court strikes laws that it decides are unconstitutional (see Marbury v. Madison). **Judicial review makes the courts a veto point.**

Division of powers across branches

How do these separated interact across branches?

- Presidential veto;
- Judicial review and deference (e.g. the Chevron doctrine);
- Legislative delegation.

Delegation of powers from branches

- From the legislative branch to the executive branch;
- From legislative to independent commissions (usually, technically part of the executive, but powers are contested! For example, FERC, FCC, GAO);
- From higher levels of the executive (president, directors) to lower levels of the bureaucracy;
- From the federal government (legislative or executive) to states (occasionally also counties, municipalities, nonprofits, companies).

Article 4, States' Relations

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- 1–Full Faith and Credit shall be given in each state –the courts of one state will enforce laws or judicial decisions of other states;
- 2.1–Privileges and immunities of individuals... but NOT corporations: “A corporation is “the mere creation of local law” and can “have no legal existence beyond the limits of the sovereignty” (Paul v. Virginia)”;
- 2.2–Extradition and Fugitive Slave Clauses: “No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.”
- 2.3–New States may be admitted by Congress
- 2.4–The United States shall guarantee republicanism, defense against invasion, protection from domestic violence (from Legislature or, if unavailable, the executive);

Article 5, Amendment Process

- The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution...
- ...or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments...
- ...which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress...
- ...Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Finally, Articles 6 and 7...

- Article 6: Assumption of debts; constitution and following laws are supreme authority; all officials must defend constitution;
- Article 7: Ratification process.

- Read as a policy document, **the constitution is a policy for making policies** - it allocates **authorities** to make, veto, or enforce policy.
- The U.S. Constitution and institutions that copy it attempt to separate Legislative, Executive, and Judicial powers, but, in practice, authorities are often unclear or contested.
- Authorities are reinterpreted to meet the demands of the day.

Example: The Commerce Clause

- “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;”
- Wickard v. Filburn, the Supreme Court upheld the New Deal farm subsidies (and corresponding quotas) and crop insurance programs of the Agricultural Adjustment Act;
- Congress has used commerce clause authority to:
 - Manage food production and other New Deal programs responding to the Great Depression;
 - Prohibit state and businesses from enforcing racial segregation (Civil Rights Act, 1964);
 - Give sexual assault survivors the ability to sue in federal court (Violence Against Women Act, 1994), but the Supreme Court struck this portion of the Act;
 - Incentivize people to have health insurance (ACA, 2010).

Recapitulation

- Why did we read the Constitution?
- It is a policy document:
 - ...a proposal for a policy for how to make policies;
 - includes some of the things that such documents need to have;
- It is a structure for making policy:
 - policy making = expression of power;
 - Constitution = power relationships in US political society.

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- Does it do enough to create and protect democracy?

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	Eval Criteria 1	Eval Criteria 2	Eval Criteria 3
Policy Proposal 1	No	No	Yes
Policy Proposal 2	Yes	Yes	No

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	Minimize time	Avoid Rain	Fight climate change
Walk	No	No	Yes
Drive	Yes	Yes	No

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Evaluation criteria:

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**Does it do enough to create and
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- January 6: House and senate count and certify votes;
- January 20: The incumbent president's term expires.

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- Ambiguity in 'the whole number of voters' \Rightarrow no majority of electors;
- ... \Rightarrow election goes to states with one state one vote;
- Speaker expels senators preventing completion of the certification;
- Three people with claims to the presidency on inauguration day and no means to decide.

How 'good' is the Constitution?

- “The constitution does not guarantee a peaceful transition of power; it presupposes it”;
- Evaluation criteria were:
 - ...form a more perfect Union...
 - ...establish Justice...
 - ...insure domestic Tranquility...
 - ...provide for the common defence...
 - ...promote the general Welfare...
 - ...and secure the Blessings of Liberty to ourselves and our Posterity.
- Can we redesign electoral policy to prevent a deadlock? If so how?