

# Drafting the Constitution

## The Philadelphia Convention

- 55 representatives
- 12 of the 13 states(Rhode Island was missing)
- Largely rich white males who graduated college and had political experience
- Primarily represented coastal cities—not indicative of rural America

### Philosophical Underpinnings:

- Human nature is inherently corrupt and selfish(Locke)
- Political disagreement -> Factions/Political parties
  - Faction = a group of people who organize behind a specific sets of beliefs(Political Parties, Student-Body, etc)
  - Special interest groups are similar to factions, but generally don't offer own political candidates(NRA, etc)
- Government role is to protect property rights(largely self-interested)
- **Seperation of Powers(Montesquieu)** – ensures federalism will stay

## Make-up of Congress

- Senate = equal representation for each state(New Jersey Plan)
  - Initially, all senators are elected by state legislatures(made democratic by 17th amendment)
  - Primary job is foreign relations
- Approves federal appointments(Supreme court justices, ambassadors, etc)
- Ratifies treaties
- House of Reps = representation based on population(Virginia Plan)
  - Directly elected from the beginning every two years; seen as more democratic
  - Primary job is regulating spending and taxes
  - 435 Representatives(always)
- Great Compromise = incorporating both plans into one **bicameral** congress.

## Compromises of the Constitution

- Three-Fifths Compromise

- Any non-free person counts as 3/5 of a person when determining representation and taxation
- **Voting Requirements left to states**
  - Allowed west to win immigrants, because they allowed broader suffrage

## Economic Issues

- Articles of Confederation made economy weak
  - States could enforce tariffs on goods from other states (no free-trade within US)
  - 14 distinct currencies for each territory -> Rampant inflation, weak international commerce
  - Congress couldn't make states raise taxes

## AoC -> Constitution

Basic Strengths	Basic Weaknesses	Problems
Prevented Tyranny of Fed Gov	Can't levy taxes	Cannot raise army
Congress is ultimate	Cannot regulate interstate commerce	Different currencies
Congress makes treaties	Cannot enforce laws	States often override fed
Can borrow money	No national court system	Criminals could escape jurisdiction

## Practice FRQ

- Identify and explain three specific weaknesses of the Articles of Confederation and how the Constitution resolved each of the problems.

Two key words: **identify** and **explain**

Answer:

- Congress cannot raise taxes Under the AoC, Congress had to ask the states to voluntarily raise funds for the federal government. Often times, the states failed to do so. As a result, whenever the federal government needed to raise funds for any purpose, they couldn't do so reliably. Because of this, the constitution explicitly states that Congress has the power to levy taxes; specifically, all spending bills originate in the House of Reps.

- Congress cannot raise an army Under the AoC, Congress had no established power to raise an army—that power was reserved to individual states. As a result, responses to insurrections were dangerously slow(ex. Shay’s Rebellion). Because of this, the constitution explicitly states that Congress has the power to raise an army/militia.
- Government has no established Judiciary Under the AoC, no federal court system was established. As a result, punishment of criminals could vary drastically from state to state, leading to a situation where a prisoner could escape from one state to another and be free of his original state’s jurisdiction. Because of this, the constitution explicitly establishes the Judicial Branch, the highest court of all law(including Congress).

## How Democratic is the Constitution?

### Principles of a Republic

- Federalism
- Popular Sovereignty
- Limited Government
- Enumerated Powers
  - Synonymous with “Expressed Powers”
  - Powers explicitly listed by Constitution
- Reserved Powers
  - Powers granted to the states
  - Anything power not given to Fed gov or prohibited by constitution are **reserved** to the States(10th Amendment)
- Concurrent Powers
  - Powers that are granted to both the States and the Federal Government
  - Example: Taxation
- Human nature is inherently selfish
  - Checks and Balances
  - Separation of Powers

## The Individual Rights Issue

- Some rights explicitly listed in the constitution
  - Prohibits suspension of writs and habeas corpus
  - No bills of attainder
    - \* ???

- No Ex post facto laws
  - \* ???
- No religious test for office
- Rights in proceedings of criminal trials
- Some rights not explicitly listed in constitution
  - Right to privacy

## **The Madisonian Model: Checking Power with Power**

### **Tools**

- Limiting Majority Control(undemocratic)
- Separation of Powers
- Checks and Balances
- Federalism

### **Elections**

- House Reps directly elected
- State Legislatures elect electors
- State Legislatures directly elected
- Elector delegation is directly elected -> People
- Judiciary only elected by Executive and confirmed by Senate
- State legislature elects senate

### **Ways to change the Constitution:**

- Formal
  - Amendment
- Informal
  - Judicial Review

## **Checks and balances**

### **Legislative**

- Check executive
  - Override veto
  - Declare war

- Passes legislation
- Ratifies treaties
- Can disregard presidential advocacy for budget changes
- Approves presidential appointments
- Senate tries impeachments, House of Reps starts impeachment process
- Check judicial
  - Amendment
  - Establish courts
  - Can impeach judges

### **Executive**

- Check legislative
  - Veto/Pocket veto bills
  - Commander in chief–can just not act on declaration of war
  - Propose Laws
  - Negotiates treaties
- Check judicial
  - Chooses all appointments for supreme court
  - Pardon or reprieve people
  - Enforces laws

### **Judicial:**

- Check Legislative:
  - Judicial review
- Check Executive:
  - Judicial review

### **Amendment Process:**

- Process 1:
  - National convention called if two-thirds of states want it
  - Can be ratified if
    - \* Three-fourths of states legislatures ratify it
    - \* Three-fourths of state conventions ratify it
- Process 2:
  - Congress can propose an amendment by 2/3 vote in each house

- Can be ratified if
  - \* Three-fourths of state legislatures ratify it
  - \* Three-fourths of state conventions ratify it

### **Ideas for Amendments**

- Have elections run off of a stream of public money
- Guarantee the right to healthcare to all free of cost
- Guarantee the right to education all the way up to university to all free of cost
- Limit terms of senators to one and reps to 3
- Establish a guaranteed basic income to all

### **Federalism**

- **Federalism:** a political system that preserves certain policy decisions to local governmental units(i.e. states)
- **Unitaryism:** a political system where states are strictly subservient and hold few legislative abilities

### **Powers of the Federal Government**

- The economy
- Military/Defense

### **Powers of the State Government**

- Social issues
- Moral issues
- Family issues

### **Pros and Cons of Federalism**

- Pros
  - Separation of powers
  - Better/More accurate political representation(smaller units = better representation)
  - Some issues are regional(immigration only big concern near borders, etc)
  - Allows politicians to *rise* to federal positions(start as state council, then senator, then governor, etc)

- Allows small factions to have voice heard because of smaller units = need less convinced to be powerful
- Cons
  - Slower response time(George W. Bush & Hurricane Katrina)
  - Allows powerful local interests to control that units political policy

### Relations between States

- *Full Faith and Credit Clause(article IV)*
  - Requires states to recognize the legal precedent and public actions of other states
  - Prevents criminals from simply escaping to another state and escaping state law
- *Privileges and Immunities Clause*
  - Ensures that out-of-state citizens of a state are treated fairly by their new state
  - Exceptions
    - \* Move to territory = no right to vote
    - \* Out-of-state tuition for schools
- Extradition
  - States must return a person who flees from a state in which he/she commits a crime so he/she could be prosecuted in the state the crime occurred in

### Dual Federalism(1800-1932)

- **Dual Federalism** = State and Federal gov are *equal* in power, but occupy distinct spheres of power
  - Layer cake
- Dred Scott Decision
  - Federal government could not regulate slavery—it was the responsibility of the states
  - South is STOKED
- **Nullification** = State government over-ruling federal law
  - John C. Calhoun & Tariff of Abominations
    - \* Jackson threatens to hang Calhoun for disregarding the law

## Death of Dual Federalism

- After civil war, radical Republicans try to help newly freedman
  - After they give up, Federal Government doesn't really try to take away state's rights
    - \* Country is run by business
- Ratification of 17th Amendment
  - States voluntarily give up a lot of power
  - Federal government becomes stronger

## Cooperative Federalism(1932-1980)

- **Cooperative Federalism** = The spheres of state and federal power begin to blend—its unclear who has control over what
  - Largely, federal government sets trend, and states follow
  - Marble cake
- New Deal
  - FDR = Franklin Delano Roosevelt
  - Increase government activity(Keynesian economics)
- Great Society(1960s)
  - LBJ
  - Government war on poverty
- **Categorical Grants** = State gov becomes dependent on federal money
  - Federal government has strict control over how money is spent

## New Federalism

- Ronald Reagan
  - Comes in and wrecks the place up like a bull in a China shop
  - Advocate for State's Rights(**New Federalism**)
    - \* **Devolution** = giving powers back to States
    - \* "Contract with America"
    - \* Newt Gingrich promises 10 reforms to Congress
- **Block Grants**
  - Federal government not responsible for deciding how to spend money
  - States get to decide how money is spent
- George W. Bush
  - **Preemption** = we kill you before you kill us!



## National Budget and Its Role in Increasing Federal Gov

- Federal Gov can give grants to states
  - Goals:
    - \* Have equitable distribution of resources among the states
    - \* Quickly respond to national problems
- **Fiscal Federalism** = the use of grants as leverage in the negotiations between state and federal spheres of power
  - **Conditions of Aid** = demands the federal gov makes in order for states to receive funding
    - \* STATES; raise the drinking age or no funding for highways!
  - **Mandates** = legislation that forces states to have certain spending programs
    - \* Can be used to gain power over states
    - \* An *unfunded* mandate is a mandate that doesn't go with a grant; the states must fund the venture themselves
- Grants
  - Categorical Grants
    - \* Sums of money for very specific purposes defined by the federal government
    - \* **Project Grants** = *competition* between the states to get federal money
    - \* **Formula Grants** = money assigned based on a mathematical basis
      - % poverty, uninsured, etc
      - Targets very specific demographic
  - Block Grants
    - \* Sums of money given to states to do with as they please(broad, non-specific regulation)
    - \* Actively giving more power to states
    - \* Pioneered by Reagan
    - \* **Revenue Sharing** = does not require states to match funds in order to receive grants

## Practice FRQ

Describe two of the following and explain how each has been used to increase the power of the federal government relative to the states - Categorical Grants - Federal Mandates - Selective Incorporation

## Answer

- Categorical grants are sums of federal money that are granted to states to reach very specific funding goals. Often times, the federal government has total control over how the money is spent, and if the conditions aren't met by the states, penalties will be incurred on the states. This often leads to increased federal power over the states by making states reliant upon funding from the federal government. Because the federal government holds all the power in whether the grant is given and how the grant is spent, the federal government can make itself more powerful. An example would be state works programs under the New Deal.
- Federal mandates are laws passed by Congress that require that the states follow certain rules. Often times, categorical grants are used in conjunction with mandates to provide incentives to states to act in a certain way. Mandates can be accompanied with grants, or they can be *unfunded*, which means it's up to the states to fund the venture. This leads to increased federal power over the states, because Congress (part of the federal government) can directly tell the states what to do, and because of the Supremacy clause, the states can't really do much to counter-act these mandates.

## The 10th Amendment

- Establishes that all powers not explicitly given to Federal Gov belong to the states
- Contradicts the **Elastic Clause** or **Necessary and Proper Clause**
  - Article I, Section 8, Clause 18
  - “To make all laws which shall be necessary and proper for carrying into Execution the [enumerated] powers, and all other powers vested by this constitution[...]
- Types of Powers in the Constitution
  - Enumerated powers
    - \* Also called “expressed powers”
    - \* Explicitly given to federal government in constitution
  - Implied powers
    - \* Granted by elastic clause/Necessary and Proper Clause
  - Reserved powers
    - \* Granted to states by 10th amendment

## Cases

- Marbury v Madison

- Marbury was a judge right as Jefferson was becoming president, and was denied commission. The issue was taken to court, and Madison won
  - Established Judicial Review
- McCulloch v Maryland
  - Maryland tries to tax federal bank in their state
  - Court ruled in favor of Federal gov(McCulloch), because it was Congressional law
  - *Implied* Powers are established
- Gibbons v Ogden
  - New York State gives monopoly on sea trade to Livingston and Fulton
- Barron v Baltimore
  - Barron owns a dock, state boats screw up sand, Barron demands to be compensated
  - States say that Bill of Rights only protects citizens from Federal Gov, and State gov's can infringe on those rights
  - States increase power
- Heart of Atlanta v U.S.
  - Heart of Atlanta is private motel company when Civil Rights Bill is passed
  - Civil Rights Law states *public* institutions cannot discriminate
  - Uses interstate commerce clause to say that, because the motel serves members of other states, Congress can regulate that
- Obergefel v Hodges
  - Obergefel was a representative who represented gay couples
  - Hodges was official in Ohio
  - Ruled that 14th amendment protects Gay couples to get married
- U.S. v Lopez
  - Lopez wanted to take gun to school to show friends
  - Found out and imprisoned kid
  - Federal government takes over cause under new law
  - Parents lawyer argues that new law is unconstitutional
  - Supreme court rules that *education is not business*, and thus cannot be regulated by Congress