

Introduction to the American Political Process

Class 7: The Constitution

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MIT

1. Readings

Klarman, “The Constitution as a Coup against the Public Opinion”

Dahl, “How Democratic Is the American Constitution?”

Brutus, “The Antifederalist No. 1”

Versteeg and Zackin, “Constitutions Un-Entrenched”

Readings

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Klarman, “The Constitution as a Coup against the Public Opinion”

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1. The Constitution was more **nationalist** and **anti-populist** (democracy-constraining) than:
 - Its predecessor, the Articles of Confederation
 - What many elites argued for at the time
 - What the “mass public” wanted
2. Why did the document get written this way?
3. How did its architects manage to get it ratified?

Nationalist Features of the Constitution

Gave Congress virtually unlimited powers over:

1. Taxation
2. The military
3. Interstate and foreign commerce

Necessary and Proper Clause: gave Congress *implied powers* beyond *enumerated powers*

Federal Supremacy over the states, enforced by three mechanisms:

1. **Article VI:** the Constitution, federal statutes, and federal treaties overrule any state law to the contrary
2. **Article III:** creates a Supreme Court
3. **Article I, Section 10:** prevents states from enacting paper money laws and debtor relief measures

Anti-Populist Features of the Constitution

Again, Article I, Section 10

Longer terms for federal officeholders

Indirect elections

- **Federal judges:** nominated by the president and subject to Senate confirmation
- **Senators:** picked by state legislatures until the Seventeenth Amendment (1913)
- **Presidents:** chosen by electors, selected in a manner specified by state legislatures (now popular vote)

Small House → large constituencies

- 65 representatives, to “refine and enlarge” constituents’ views (Madison)

How Did This Document Get Written?

Elite delegates:

- Selected by state legislatures: “most eminent citizens”
- Wealthy, educated, served in the army

Madison (VA) + Pennsylvania delegates → Virginia Plan

Antifederalists declined to attend/left early

Deliberation behind closed doors

How Did This Document Get Ratified?

Ratification was not inevitable: it was close. But, Federalists had a few advantages:

- Severe malapportionment in ratifying conventions
- Press favored ratification
- Ratifying conventions held in Eastern cities, where support was strong
- Supporters lived in cities → organization advantage

Additionally, Antifederalists made some miscalculations:

- Late ratifying conventions

These initial conditions became forever enshrined in American institutions.

Readings

Dahl, “How Democratic Is the American Constitution?”

Undemocratic Features of the Constitution

1. Slavery
2. Suffrage
3. Electoral college
4. Selection of senators for 6-year terms by state legislators
5. Equal representation in the Senate
6. Judicial power over the legislative process
7. Limits on Congressional authority

Readings

Brutus, “The Antifederalist No. 1”

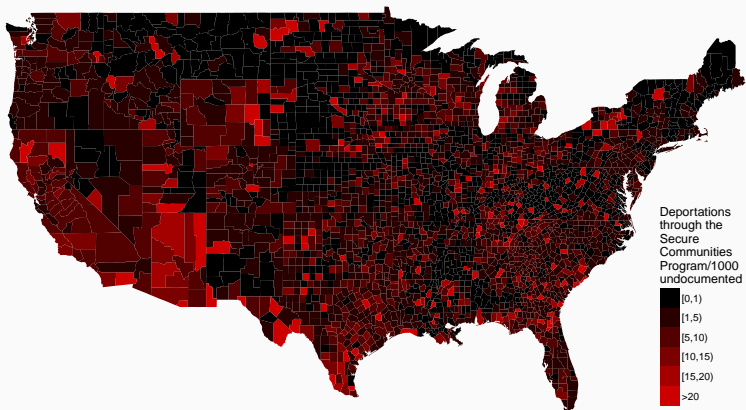
The Antifederalists' Concerns

- *"A free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States."*
- *"It is natural to a republic to have only a small territory, otherwise it cannot long persist. In a large republic there are men of large fortunes, and consequently of less moderation... he soon begins to think that he may be happy, great and glorious by oppressing his fellow citizens."*
- *"In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents."*
- *"In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected."*

Discussion Questions

1. Are smaller political units inherently more democratic? To what extent can the problems of representation and collective action that we have discussed in this class be attributed to the nation's size? Would they be mitigated in a small republic?
2. Have the Antifederalists' concerns become even more acute now that the U.S. has gone from a nation of 3 million to more than 300 million? What forces might be offsetting their worst fears?
3. Although the Constitution was more nationalist than the Articles of Confederation (and than its opponents at the time wanted), it still allows for more decentralization than we observe under most democracies. What are some examples (current or historical) of problems created by strong state and local powers?

The Perils of Federalism



Readings

Versteeg and Zackin, “Constitutions
Un-Entrenched”

Entrenched and Un-entrenched Constitutions

What are the problems constitutions are trying to solve? What competing goals are they trying to balance?

A central paradox: if we can make the rules now, what will stop us from changing them in the future? (And why do we want to prevent change?)

A constitution can be **entrenched** or **unentrenched**; it can be **specific** or **unspecific**.

What are the trade-offs with these two approaches?

Measurement of **specificity**: the number of words in the document

- **Scope**: *unique* number of words
- **Detail**: total word count divided by unique number of words

Measurement of **entrenchment**: the number of years a polity has existed divided by the number of years in which it witnessed constitutional change

What do you think of these measurement strategies?

Findings: The U.S. Constitution is **entrenched** and **unspecific**; constitutions have been moving toward less entrenchment and greater specificity over time.