

Constitutional Underpinnings (5-15%)

- I. Considerations that influenced the formulation and adoption of the Constitution
 - A. Roots
 1. Religious Freedom
 - a) Puritan Theocracy
 - (1) 9 of 13 had state church
 - b) Rhode Island
 - (1) Roger Williams
 - c) Virginia Statute for Religious Freedom
 - (1) Thomas Jefferson
 - (2) First Amendment
 2. Representative Government
 - a) Jamestown 1619
 - b) Mayflower Compact
 3. Individual Liberties Incorporated into Colonial Laws and Constitutions
 - B. American Revolution
 1. Reaction to Violations of Individual Liberties
 2. Reaction to Tyranny of King George
 - a) Concentration of Power
 3. Reaction to Attack on Representative Government
 4. **Declaration of Independence**
 - a) Equality
 - b) Natural Rights
 - (1) Life, liberty, and pursuit of happiness
 - (2) Purpose of government
 - c) **John Locke**
 - (1) *Second Treatise on Government*
 - (2) Life, liberty, and property
 - (3) Social Contract
 - C. Articles of Confederation 1781
 1. States wrote constitutions that guaranteed individual liberties
 2. Confederation reflected views on state sovereignty
 3. Created fragile “league of friendship”
 4. Many Weaknesses
 - a) Limited and Inadequate Central Government
 - b) No Executive or Judicial Branches
 - c) Congress Had Little Authority Over States or Citizenry
 5. Annapolis Convention
 - a) Alexander Hamilton
 - b) Called for a Convention to Amend the Articles
 6. Shays’ Rebellion
 - a) Catalyst for Strengthening Articles
 - b) Highlighted Need for Stronger Central Government
 - D. Constitutional Convention 1787

1. The Delegates
 - a) 55 of most influential men in the nation
 - b) Main Contributors
 - (1) James Madison
 - (a) Notes
 - (2) Alexander Hamilton
 - (3) George Washington
 - (a) Presided
 - c) Secret Proceedings
2. Consensus
 - a) Republican Government
 - (1) Representative Democracy
 - (2) Although they distrusted the common people
 - (a) House was the only body elected directly by the people
 - (b) Senate
 - (i) State Legislatures
 - (ii) 17th Amendment
 - (c) President
 - (i) Electoral College
 - (d) Restrict voting to white male landowners
 - (i) States determine voting qualifications
 - b) Balanced Government Favoring the Protection of Property
 - (1) ***An Economic Interpretation of the Constitution by Charles Beard***
 - c) National Government Consisting of a Supreme Legislative, Executive, and Judicial Branch
 - d) Need for a Strong Executive and Independent Judiciary
 - (1) Thought Legislative would be most powerful branch
3. Conflict and Compromise
 - a) Large States v. Small States
 - (1) NJ Plan
 - (a) Small
 - (b) Equal Representation
 - (2) VA Plan
 - (a) Large
 - (b) Representation Based on Population
 - (3) Great or Connecticut Compromise
 - (a) Bicameral Legislature
 - (i) House
 - (a) Population
 - (ii) Senate
 - (a) Equal
 - b) North v. South

- (1) 2/3 Majority in Senate to Ratify Treaties
 - (a) South
- (2) 3/5 Compromise
- (3) End Slave Trade

E. Ratification

- 1. Nine States Necessary
 - a) Violation of Articles
- 2. Federalists
 - a) Favored Ratification
 - b) *The Federalist Papers*
 - (1) Madison, Hamilton, and John Jay (Publius)
 - (2) New York
 - (3) Meaning and Justification for Constitutional Provisions
- 3. Anti-Federalists
 - a) Feared National Government was Too Strong
 - b) Wanted Bill of Rights to Guarantee Individual Liberties
 - c) Worried About States' Rights
 - d) George Mason
 - (1) VA Declaration of Rights
 - (2) Refused to sign Constitution
 - e) Patrick Henry
- 4. Madison promised to introduce a Bill of Rights in first Congress in order to address Anti-Federalist concerns
 - a) Madison originally believed government was limited enough under the Constitution that individual liberties would not be threatened
 - b) Amendments he introduced were very similar to Mason's Declaration of Rights
- 5. All States Eventually Ratified
 - a) Two largest states (VA and NY) were last to ratify

II. Separation of Powers and the Constitution

- A. Three Branches
 - 1. Legislative, Executive, and Judicial
- B. Checks and Balances
 - 1. Each branch has a role in the actions of others yet is politically independent of others
 - 2. ***Federalist 51***
 - a) Madison
 - b) Pluralism
 - c) Ambition checks ambition
 - d) No one group will have all the power
 - 3. Powers of Each Branch
 - a) Legislative-Congress-Makes Laws-Article I
 - (1) Power of the Purse

- (2) Override Presidential Veto with 2/3 Vote of Both Houses
 - (3) Propose Constitutional Amendments with 2/3 Vote
 - (4) House Can Impeach President and Other Federal Officials Including Judges
 - (5) Senate Confirms Senior Federal Appointments Including Judges
 - (6) Money Bills Begin in House
 - (7) Senate Approves Treaties With 2/3 Vote
 - (8) Senate Tries All Impeachments
 - (9) Determines Number, Location, and Jurisdiction of Federal Courts
 - (10) Declare War
 - b) Executive-President-Enforces Laws-Article II
 - (1) Veto Bills
 - (2) Call Special Session of Congress
 - (3) Pardon People Convicted of Federal Crimes
 - (4) Nominate Officers of the U.S. Government Including Judges
 - (5) Commander in Chief
 - c) Judicial-Supreme Court and Lower Courts-Interprets Laws-Article III
 - (1) Declare Executive Actions and Laws Unconstitutional
 - (a) Judicial Review
 - (i) *Marbury v. Madison* (1803)
 - (ii) John Marshall
 - (2) Appointed For Life
 - (3) Chief Justice Presides in Presidential Impeachment Trials in the Senate
- C. The Living Constitution
- 1. World's Oldest
 - 2. Vagueness Leads to Judicial Interpretation
 - a) Loose v. Strict Interpretation
 - b) Original Intent?
 - (1) *Federalist Papers*
 - (2) Madison's Notes
 - (3) Other Writings by the Framers
 - 3. Formal Mechanisms for Change-Article V
 - a) Amending the Constitution
 - (1) Proposing Amendments
 - (a) 2/3 of Both house of Congress
 - (b) Convention Requested by State Legislatures in 2/3 of States
 - (i) Never used
 - (2) Ratifying Amendments

- (a) Two Methods-Congress Chooses Which One
 - (i) $\frac{3}{4}$ of State Legislatures
 - (ii) Specially Called Ratifying Conventions in $\frac{3}{4}$ of States
 - (a) Only used for the 21st Amendment
 - (b) Supreme Court has said ratification must take place within a “reasonable time”
 - (i) Sometimes a deadline is set
 - (a) ERA
 - (ii) 27th Amendment
 - (a) Proposed in 1789 and ratified in 1992
- (3) How It Has Been Used
- (a) To Guarantee Individual Liberties
 - (i) Bill of Rights
 - (a) First Ten Amendments
 - (b) To Add or Subtract National Government Power
 - (i) 11th, 13th, 16th, 18th, 21st, and 27th Amendments
 - (c) To Expand the Electorate and Its Power
 - (i) 15th, 17th, 19th, 23rd, 24th, and 26th Amendments
 - (d) To Reduce the Electorate’s Power
 - (i) 22nd Amendment
 - (e) To Limit State Government Power
 - (i) 13th and 14th Amendments as well as those that expand the electorate and its power
 - (f) To Make Structural Changes in Government
 - (i) 12th, 20th, and 25th Amendments
4. Informal Methods of Change
- a) Judicial Interpretation
 - (1) Judicial Review
 - b) Congressional Elaboration and Interpretation
 - (1) Judicial Branch
 - (2) “High Crimes and Misdemeanors”
 - c) Presidential Practices
 - (1) Executive Orders
 - (a) Full force of law
 - (b) Can be rescinded by future presidents
 - (2) Executive Privilege
 - (a) *U.S. v. Nixon* (1974)

- (i) Exists, but not in criminal investigation
 - (ii) Watergate Tapes
 - (3) Propose Legislation Through a Member of Congress
 - (a) Actively push for its passage
 - (4) Leader in Foreign or Economic Crisis and Promotion of General welfare
 - (a) World War II and Great Depression
 - (i) FDR
 - (a) Beginning of Modern (“Imperial”) Presidency
 - (b) Beginning of Nuclear Age and Cold War
 - (i) Leader of the “Free World”
 - (ii) Commit Troops without Declaration of War
 - (c) September 11
 - (d) Only one capable of swift action
 - (i) Katrina?
- d) Custom and Usage
 - (1) Emergence of Political Parties
 - (a) Divided Government
 - (2) Expansion of the Electorate and Move Toward More Direct democracy
 - (a) States
 - (i) Expansion of Suffrage
 - (ii) Direct Primaries
 - (iii) Initiative, Referendum, and Recall
 - (b) 15th, 19th, and 26th Amendments
 - (c) Lower Voter Turnout
 - (3) Establishment of Independent Agencies
 - (4) Televised Press Conferences and State of the Union Addresses
 - (5) Presidential and Vice Presidential Debates
- e) Changes in Technology
 - (1) Radio and Television
 - (a) President can appeal directly to public
 - (b) Constant coverage of President
 - (c) C-SPAN
 - (d) 24 Hour a Day News Channels
 - (i) Live coverage of events
 - (2) Targeted Direct Mail
 - (a) Campaign Tool
 - (3) Nuclear Weapons
 - (a) Increased presidential power
 - (i) “The Football”

- (4) Internet
 - (a) Email
 - (b) Blogs
- (5) Polling
- (6) Cell Phones and Fax Machines
 - (a) Instant Communication

III. Federalism

- A. Constitutional Division of Powers Between the National and State Governments
- B. Types
 - 1. Dual (Layer Cake)
 - a) National Government has Specific List of Powers and All Others Belong to the States
 - b) Supreme Court is the Umpire
 - c) Prevailing View For First Hundred Years
 - 2. Cooperative
 - a) System of Intergovernmental Relations in Delivering Goods and Services and Calls for Cooperation Among Various Levels of Government
 - 3. Marble Cake
 - a) Morton Grodzins
 - b) All Levels of Government are Involved in a Variety of Issues and Programs Rather Than Fixed Positions as in Dual or Layer Cake
 - 4. Competitive
 - a) Thomas Dye
 - b) Many Different Levels of Government Competing With Each Other Over Ways to Put Together Services and Taxes
 - 5. Permissive
 - a) Power is Shared but States' Share Rests Upon Permission of National Government
 - 6. New
 - a) Power of National Government is Limited in Favor of Broad Powers Reserved for the States
 - b) Ronald Reagan, William Rehnquist
- C. Alternatives
 - 1. Unitary
 - a) Britain
 - 2. Confederation
 - a) Articles, Southern States During American Civil War, European Union
- D. Advantages
 - 1. Confederation Had Been Tried and Unitary was Out of the Question Due to Strong State Allegiances
 - 2. Federalism Checks the Growth of Tyranny
 - a) Pluralism

- b) Madison
 - 3. Allows Unity Without Uniformity
 - 4. Encourages Experimentation
 - 5. Keeps Government Closer to the People
- E. Constitutional Structure
1. **National Government Powers**
 - a) Expressed
 - (1) Powers of the three branches that are listed in **Articles I, II, and III**
 - (a) Power of Congress to regulate interstate commerce has allowed them to regulate many activities
 - (i) *Gibbons v. Ogden* (1824)
 - (ii) *U.S. v. Morrison*
 - (iii) See **Commerce Clause Litigation in Supremacy of National Laws Handout**
 - (b) Power to Tax and Spend
 - (i) Withholding Funds
 - (a) Discrimination
 - (b) Speed Limit
 - (c) Drinking Age
 - (ii) Grants
 - (a) Four Purposes
 - (i) Supply state and local governments with revenue
 - (ii) Establish minimum national standards for things such as highways or clean air
 - (iii) Equalize resources among the states
 - (iv) Attack national problems yet minimize the growth of federal agencies
 - (b) Types
 - (i) Revenue Sharing- Federal grants to state and local governments to be used at their discretion 1972-1987
 - (ii) Categorical Grants- Money given for

specific categories
sometimes allocated
by a predetermined
formula

(iii) Project Grants-
Specific amount of
money allocated to
states and localities
based on applications
to fund specific
projects

(iv) Block Grants-Broad
grants to states for
prescribed activities
with very few strings
attached, States have
considerable
flexibility

(c) Politics

(i) Centralist v.
Decentralist

(iii) Federal Mandates

(a) Often Unfunded

(b) ADA

(c) Environmental Laws

(d) Unfunded Mandates Reform
Act of 1995

(i) Put some mild
restraints on Congress
but did not end the
practice

b) Implied

(1) **Necessary and Proper Clause-Article I**

(2) ***McCulloch v. Maryland***

c) Inherent

(1) Powers Related to Foreign Affairs Which Must be
Handled by National Government

(a) Dealing with foreign countries

(i) Appointing and receiving
ambassadors

(ii) Treaties

(b) War

2. Powers of the States

a) **10th Amendment**

(1) Reserved Powers

- (a) All powers not given to the national government and not forbidden by the Constitution are “reserved” for the states
 - (2) Concurrent Powers
 - (a) Powers shared with the national government
 - 3. **Supremacy Clause-Article VI**
 - a) National Government and Constitution are Supreme
 - b) *McCulloch v. Maryland*
 - c) John Marshall
 - d) Preemption
 - 4. Limits and Obligations
 - a) Powers Denied to National Government/Congress
 - (1) **Article I Section 9**
 - (2) Courts and Congress have placed some limits on National Government power over states
 - (a) *U.S. v. Morrison*
 - b) Powers Denied to States
 - (1) **Article I Section 10**
 - (2) **14th Amendment**
 - c) Obligations of National Government
 - (1) Guarantee a Republican form of government
 - (2) Protect states against domestic insurrection
 - 5. Interstate Relations-**Article IV**
 - a) Full Faith and Credit
 - b) Privileges and Immunities
 - c) Extradition
 - d) Interstate Compacts
 - F. The Role of Courts
 - 1. See **Supremacy of National Laws Handout**
 - G. The Politics of Federalism
 - 1. Centralist v. Decentralist
 - 2. Growth of Big Government
 - 3. Federal Grants
 - 4. New Federalism
 - 5. Devolution Revolution
- IV. Theories of Democratic Government
 - A. Types of Democracies
 - 1. Direct
 - 2. Representative
 - a) Republic
 - b) Preference of Framers
 - c) Charles Beard
 - 3. Constitutional
 - B. Democratic Values
 - 1. Personal Liberty
 - a) John Stuart Mill

- b) September 11
 - 2. Respect for the Individual
 - 3. Equality
 - a) Law
 - b) Opportunity
 - 4. Popular Consent
 - a) Majority Rule
 - b) Minority Rights
 - 5. Values in Conflict
- C. Conditions Conducive to Democracy
- D. **John Locke**
 - 1. State of Nature
 - 2. Human Nature
 - a) Thomas Hobbes
 - 3. **Declaration of Independence**
- E. Pluralist v. Elitist Views
- F. Confederation, Federal, and Unitary
- G. Parliamentary
 - 1. No Separation of Legislative and Executive
 - 2. Proportional
 - a) Minor Parties