The U.S. Constitution

(I) Historical Foundations

(A) The Articles of Confederation (1781-1787)

- Was a CONFEDERAL form of Govt.: A form of Govt. where original governing and law making authority is vested and concentrated with STATE govs.
- State govs. account for virtually 100% of all laws within their own boundaries and populations.
- Whatever powers and law making authority the Natl. Govt. has is given to it at the discretion of the states.
- During A of C, the Natl. Govt. had little/no power to do the following:
  1. Create Taxation policy or collect taxation
  2. Regulate Commerce (i.e., create natl. economic policy)
  3. Regulate foreign trade policy
  4. Regulate Currency

- The crucial feature of the A of C was the principle of “One State, One Vote.”
- Each of the original thirteen state govt’s. had a vote in giving permission to the Natl. Govt. with regard to any proposed action by the natl. govt. or any proposed natl. law that would have required for all thirteen states nation-wide.
- Any proposed natl. law or action taken by the natl. govt. had to be approved by 9 of the 13 states (over 2/3 supermajority)
- Given this super majority requirement, the states rarely ever approved any natl. law or action.
- In essence, the states had de-facto SOVEREIGNTY.

(B) The Rationale behind the A of C

- The A of C was a reaction to the negative experience the colonial govt’s. had with the British monarchy during colonial times
- The early colonial govt’s. were under a UNITARY system with the British. All decision making and laws came from London. Very little governing autonomy was given to the colonies.
- This created a TYRANNICAL(DICTATORIAL) form of rule by the monarchy against the colonies; fueled the idea that the more power one part of govt. had, the more corrupt it inherently became.
- Thus, the A of C was an attempt to eliminate tyrannical, corrupt rule by PREVENTING the natl. govt. from having CENTRALIZED control.
- Instead, law-making power was the other extreme — it became DE-CENTRALIZED and DIFFUSED ENTIRELY to the states.
- However, the negative implications were that the natl. govt. had no control over the states. This caused:
  (a) a lack of legitimacy and credibility in the natl. govt.
  (b) instability and chaos within some states due to lack of natl. govt. enforcement and control
  (c) a lack of unity and the absence of national comraderie

(C) The Constitutional Convention (July, 1787)

- The original intent of the convention was to merely revise and modify the Articles — not overhaul them and create a central govt. that was adequate enough to provide common national goods (national/military security, intrastate commerce regulation, stability against civil unrest, etc.)
- James Madison and his allies, however, came to the convention, with the goal of overhauling the A of C and creating a SUBSTANTIALLY MORE POWERFUL natl. govt.
- Overall, the convention’s goal was to modify the Articles in a way that created a strong and stable natl. govt. without that govt. being so strong that it became corrupt tyrannical against the rights and liberties of both the people and the states.

(1) The VIRGINIA PLAN
- favored by delegates from the large states and Federalists
- Called for a SIGNIFICANTLY stronger natl. govt. with a lot more governing authority
- Called for a supreme natl. legislature that could strike down any state law — NO more “one state, one vote”
- This natl. legislature was to be bi-cameral, with representation based proportionally on population. The Senate (“upper house”) would be elected by the lower house with the assistance of state legislatures, while the lower house would be directly elected by the people (voters)
- Called for a supreme natl. chief executive (president) elected by the legislature
- Notice how this plan called for a lot less direct democracy and more for a representative type rule. The idea was that the masses should have LIMITED POPULAR
SOVEREIGNTY. In other words, they could elect members to one house of the natl. legislature and members to their state legislature. But once that was done, the ELITES that were elected would then rule. They would elect the President and the elites would also elect members to the upper house. This meant that direct participation by the masses was less and more governing control was given to the elites, mainly at the natl. level.

- The idea was that the masses could not be trusted with direct rule making power. This would only lead to "mob-rule." The elites could make laws and, thus, insure that the rights and interests of ALL THE PEOPLE would be looked after.

- Along those same lines of thinking, governing would be more orderly and stable if rule was more CENTRALIZED at the natl. level. Federalists were somewhat CLASSICAL CONSERVATIVES; they believed that ORDER, STABILITY and SECURITY were most essential to liberty. Thus, there had to be a strong natl. govt. where elites exercised control with the consent of the masses (through elections).

- Also, the Virginia Plan stressed the large states’ economic interests. With large states controlling the legislature, as well as with a more powerful natl. govt., national economic policy with regard to trade, tariffs, debt, currency, etc. would serve to benefit the large, land-massed and coastal states that were already economically advantaged and wealthy.

(2) The New Jersey Plan

- Favored by delegates from the small states and states’ rights supporters

- Small, land-locked states that were already economically disadvantaged and plagued with the problems of debt, currency squeezes and trade deficits feared a stronger natl. govt. as eroding away their economic interests even more so.

- Called for only a marginally stronger natl. govt., with state govt’s still retaining much of their authority

- Called for a natl. legislature that would be supreme as far as being able to create national laws – so long as these laws were approved by the states – the "One State, One Vote" principle would still be in place.

- This legislature would be a UNI-CAMERAL one, where representation would be based on equality – each state, regardless of population, would send an equal number of representative to the legislature.
- The one house of the legislature would be directly elected by the people.
- Called for a multiple, or plural executive. A multiple number of presidents (presumably from different states – big and small) would share power in the executive branch.

(3) Final Drafting

- In the end, the final drafting of what turned out to be the new U.S. Constitution came more from the Virginia Plan than from the New Jersey Plan.
- A bi-cameral natl. legislature (Congress)
  - (a) the “upper” house (the Senate) would be elected by state legislatures; representation would be based on equality
  - (b) the “lower” house (House of Representatives) would be directly elected by the people; representation would be based proportionally on population (this was known as the “Great Compromise” since a combination of the two plans went into the creation of the natl. legislature.
- A single chief executive (president) was created.
- Ultimately, the natl. govt. (the U.S. Congress, along with the approval of the Pres.) would be able to do all the things that it could not under the Articles of Confederation

II Selling the Constitution: The Federalist Papers

- Even though the new Constitution was drafted, the U.S. was still under the laws of the A of C. Ultimately, the supporters and framers of the constitution had to get approval from 9 of the 13 states in order for the Constitution to be ratified and, thus, become the new law of the land
- The Federalist papers were documents that were designed to “sell” the constitution to the states; written by James Madison, Alexander Hamilton and John Jay.
- Argued that the constitution struck the necessary balance between order and stability on the one hand, and freedom and liberty on the other hand; The Constitution created a strong and stable natl. govt. without having that govt. impose tyranny on either the people or the states.
- Identified the problem of FACTIONS: Factions are organized groups of political interests banded together, based on common characteristics, such as race, religion, geography, occupation, socio-economic status, etc.
- Factions pursue their own narrow self-interests and goals, even at the expense of the greater good and other groups (factions).
- The concern held by states’ rights advocates and critics of the new constitution was that one faction would develop a majority and use the more powerful natl. govt. to create laws beneficial to them and suppress the interests, rights and freedoms of the rest of the people – “TYRANNY OF THE MAJORITY.”
- Believed that (a) factions’ existence could not be denied
- (b) factions’ liberty could be suppressed – this, in itself, would be tyranny.
- © Factions, however, could have their power CONTAINED.
- Factions would still have the freedom to express their views and pursue their political goals with the govt. However, no one factions would ever get so strong that they would impose tyranny over the people.
- How so? Through the system the Constitution creates called “CHECKS AND BALANCES”
- This means dividing the govt. up into three separate and equal parts (or branches)
- With each branch having equal and neutralizing power over the other, different factions controlling different branches of govt. would nullify each other.
- No one factions would get completely what it wants with regard to a law or policy.
- Thus, each of the factions would have to compromise and reach consensus. Thus, if law making is to be done, a number of factions, representing a cross-section of the people, would have to cooperate and get a little of what each wants.
- No one faction would ever dominate and get too strong.