

**I. (Forest from the trees lecture)**

- A. The U. S. constitution by conventional measures dates from 1789, and is the oldest in the world by that reckoning.
- B. On the other hand, the U. S. constitution can be regarded as both older and newer than that date.
- ◆ Its roots extend back to the earliest days of colonization in the 17th century
  - ◆ Its modern architecture reflects three groups of important amendments: the bill of rights, the Civil War amendments and the Progressive amendments, and significant Supreme Court decisions.

**II. An overview of the Evolution of the U. S. Constitutional**

- A. European colonies in North America were established in the early 1600s by English and Dutch companies operating under national charters, and by the French.
- i. Because there was no significant gold or silver in the part of the continent colonized, the main asset of the colonial enterprises turned out to be land.
    - ◆ However, land by itself is largely without value.
    - ◆ The value that emerges from land requires a good deal of labor to realize.
    - ◆ Thus, efforts were made to attract colonists to the new colonies.
  - ii. In order to attract settlers with skills and capital (or simply free labor) it was necessary to develop institutions that would protect both labor and capital brought to the colonies.
  - iii. One method for doing was selected by Virginia in 1619, which established a two chamber parliament-legislature with an appointed upper chamber and an elected lower chamber.
    - ◆ Both the upper and lower chambers of government had veto power over new laws and over new taxes.
    - ◆ This veto power tended to protect the economic and political interests of the elite and middle class colonists.
    - ◆ All free men were qualified to cast votes for representatives to the House of Burgess
    - ◆ By the standards of the time, this was extremely broad suffrage.
    - ◆ The governor's salary was paid through colonial tax revenues which gave the new parliament some control over the executive.
- B. Through time, the colonists experimented with various forms of government for more than a century, and most colonial governments gradually converged to more or less liberal versions of the Virginia bicameral template.

- ◆ Many of the colonies had explicit protections for freedom of religion.
  - ◆ Many of the colonies had explicit civil liberty protection.
  - ◆ (Unfortunately, most colonies also began to use slaves during this time, which was common around the world, and important trade good for European merchants.)
- C. For a variety of reasons, the colonial governments evolved and ruled in a more or less independent manner.
- i. England went through one bloody civil war in the middle of the 17th century, and another less bloody one in 1689.
  - ii. The kings and queens of England during the early 18th century were not very ambitious and more oriented toward the continent than toward the colonies.
- D. About half way through the 18th century, the English King and Parliament began taking an active interest in managing the colonies, which escalated into war.
- i. The colonies, now sovereign, rewrote their constitutions to appoint their own governors (in a manner resembling modern parliamentary systems).
  - ii. They also formed a "treaty organization" to coordinate their efforts to negotiate and then fight the British.
  - iii. Independence was declared in 1776, and a war of independence was fought and won.
- E. The "treaty organization" was formalized to as the "Articles of Confederation" and ratified by the states.
- i. This was the first national constitution of the United States of America.
    - ◆ This first national government was very decentralized and lacked the ability to impose taxes on its own.
  - ii. Many of the colonial leaders thought that a more centralized government would be necessary to hold the new country together and to defend it from foreign enemies (e.g. England).
    - ◆ They cause a series of meetings to be organized and a new constitution was worked out and submitted to the states for ratification.
    - ◆ A nation wide debate on ratification of the new constitution took place.
  - iii. The states governments (and/or state constitutional assemblies) accepted the new constitution in 1787--with the proviso that a bill of rights would be added.
    - ◆ A bill of rights was drafted and approved by the necessary supermajorities in Congress and among the states.

- F. The new constitution was based loosely on the old Virginia template, the bicameral architecture that most states had adopted by 1750.
- i. The old Congress of the Articles of Confederation became the new Senate, and its members were still appointed by state governments--each of which has the same number of votes.
  - ii. In addition there was a new directly elected House of Representatives, a new independently elected Office of President, and a new independent national court system with a Supreme Court as its highest venue for appeal.
  - iii. Only specific tasks were centralized--through the "enumerated powers."
    - ◆ The rest were explicitly reserved for the states and the citizens under the ninth and tenth amendments.
    - ◆ No direct taxes were allowed.
    - ◆ Election law was left to the states, as were issues of slavery, economic regulation, etc.
  - iv. Thus, the result was a very decentralized federal republic.
  - v. The Supreme Court assumed responsibility for interpreting and defending the constitution (particularly the constraints of the "enumerated powers" and "bill of rights") after the Marbury vs. Madison decision of 1803.
- G. This "great experiment" has worked surprisingly well., although, of course, not perfectly.
- i. Remember that it was the first time in history that elections were used to choose all the participants in public policy formation at a **national level**.
    - ◆ (Elections had been used to select members of parliaments, as with the house of commons in the English parliament and in some chambers of the estates general in medieval governments--but suffrage was very narrow and many positions were reserved for nobles.)
    - ◆ City states in the medieval period and in Ancient Greece often were run by elected "town councils" but these were relatively small places and generally had fairly narrow wealth or family based voting rights.
  - ii. The basic architecture worked out for the colonies also worked for a much larger nation state.
  - iii. That architecture has not significantly been changed, although voting rules became increasingly liberal over the course of the next century or so.
    - ◆ First wealth restrictions were eliminated for white men (partly in response to competition from new states in the West)

- ◆ Second, blacks and former slaves were given the right to vote in the 15th amendment in 1869--which eliminated state "rights" to discriminate on the basis of race
    - (Here it bears noting that ex-slave voting rights were substantially negated through literacy tests and poll taxes, mainly in the South, until new laws and Supreme Court decisions in the 1950-1970 period.)
  - ◆ Third, suffrage was extended to woman by the 20th amendment ratified in 1920.
- iv. The only substantial change in architecture was a change in the method for selecting Senators.
    - ◆ The 17th amendment made this an elective office rather than one controlled by state legislatures
      - (Some of which had decided to use direct elections to select Senators prior to the 17th amendment, just as some states had given women the right to vote before the 20th amendment was adopted.)
- H. The great failure of the constitution of 1789 was that it was unable to resolve the issue of slavery, which eventually lead to America's most bloody war, the Civil War.
- ◆ Other than this significant failure, which the Civil War did resolve, one must judge the "great experiment" to be a success on many many grounds.

### III. The Modern Constitution

- A. The basic architecture of the 1789 constitution remains largely in place, but over the course of two centuries of negotiation between the states and Congress, and two centuries of Supreme Court decisions the governance in the United States has become substantially more centralized, as:
- i. The scope of government authority under the enumerated powers have been more broadly interpreted by the Supreme Court
    - ◆ and as the states have traded policy control for money from the central government.
    - ◆ There are recent signs, however, that the enumerated powers are being taken seriously again by the supreme court.
  - ii. Although far more centralized than it originally was, the U.S. remains among the most decentralized modern democratic states in the world.
    - ◆ A broad array of public policies and taxes are determined by state and local governments.
    - ◆ It is far more decentralized than most European governments, with the exception of Switzerland.

- ♦ (Australia and Canada are also highly decentralized federal systems of national government.)
- ♦ (Recall that in the early days of the republic, the U.S. was essentially as decentralized as the E.U. was in its early days.)
  - After fifty years, the central government had more power to raise taxes and tariffs, and more power to organized national defense than the present E.U..
  - However, it had less authority to regulate intra state commerce than the present E.U. has.
  - (Note that these were constitutional constraint rather than consequences of a military balance of power or simple democratic politics--as demonstrated by the Civil War.)
- iii. The scope for both state and federal governments policies has also decreased a bit at the margin, as formal civil liberties implied by the bill of rights gradually expanded through Supreme Court decisions.
  - ♦ The ability of the Government to interfere with freedom of political speech and to suppress Newspaper publication of state secrets (when not vital) has clearly been checked.
  - ♦ For most of the past fifty years (until the present Bush administration) the separation between Church and state was strengthened.
- iv. Supreme court decisions grounded in the 16th amendment have also gradually constrained state government actions on law enforcement, regulation, and state election law.
  - ♦ Rights of due process and appeal for those arrested for crimes were expanded, as with "Miranda rights."
  - ♦ There have been restrictions--and at one point a prohibition--on application of the death penalty.
- v. The philosophical foundation of the government remains popular sovereignty: "we the people."
  - ♦ This has been reinforced to some extent through the use of primaries and caucuses to select candidates for high office, rather than (or perhaps in addition to) "smoke filled rooms" of party leaders, as in the past.
  - ♦ This is true of many other European countries as well.
  - ♦ (Although, it is not true, for example, of Denmark or Norway, whose governments remains constitutionally grounded in a the sovereignty of its royal family.)
- B. The scale of governance has, however, changed enormously.
  - i. The territories of the United States has grown more or less fifteen-fold over the course of the 19th century, from 236, 826 to 3,615,123 square miles.

- ♦ This expansion was mostly through purchases from France and Russia but also as a consequence of a war with Mexico.
- ♦ (It also includes a small purchase from Denmark, of the Virgin Islands.)
- ii. The population of the United states has also grown enormously during this period, from around 3.9 million in 1790 to about 300 million in 2007.
  - (Source, Historical Statistics of the United States, Colonial Times to 1970.)
  - <http://www2.census.gov/prod2/statcomp/documents/CT1970p1-01.pdf>
- iii. The number of states also increased from 13 to 50 during this same two centuries.
- iv. The magnitude of central government expenditures has increased 100 fold per capita (adjusted for changes in prices, e.g. in "real dollars."

**IV. It is rather remarkable that the old Architecture has worked reasonably well for a much much larger country with a much larger and more active government.**

- A. The policies of that the people of the United States have adopted through that architecture, provide the foundation for a very attractive society.
  - ♦ Emigrants continue to pour into the country from around the world.
    - Thought question: why is net emigration one of the best indices of the relative quality of life in various countries.
  - ♦ As always there are many reasons for this, but as always the combination of economic opportunities and political freedom is one that many person's round the world continue to find very attractive.
    - (Relatively few emigrants arrive from other democracies, as has always been true except at times near European wars, with the exception of India.)
    - Its relatively open boarders and relatively generous policies of "naturalization" (e.g. process for becoming an American citizen) continue to make the U.S. relatively receptive to emigration, although the present emigration rules are much more restrictive than they were before 1900.
    - The U.S. has one of the most ethnically and racially diverse populations on earth.
- B. Freedom house gives the U. S. its highest marks for Civil Liberties and for Political Rights (1 in each category)
  - ♦ (Such numbers are also typical for Western European democracies.)
- C. The Heritage foundation ranks the United States 9th in terms of economic liberties.
  - ♦ Others in the Heritage Fund top ten include Hong Kong, Singapore, Ireland, Luxembourg, the U.K., Iceland, Estonia, Denmark, Australia, and New Zealand.

- ♦ (Under the Gwartney and Lawson Index, the U.S. is ranked third behind Hong Kong and Singapore, and tied with New Zealand and Switzerland.)
- D. Average income in the U. S. (adjusted for cost of living) is normally estimated to be among the highest in the world.
- ♦ For example, the *CIA Factbook* (2005) places the U. S. as third in the World after Luxembourg and Norway.
  - ♦ (Ireland, Iceland, Denmark, Canada, Hong Kong, Austria, and Switzerland complete the top ten on the CIA's list.)
  - ♦ (Note the correlation between economic freedom--e.g. regulation--and per capital income.)
- E. Of course, the U. S. continues to have many unsolved problems.
- i. Violent crime rates, for example, are relatively high for a wealthy country.
  - ii. The quality of education--which is presently a state and local matter--is not uniform and, moreover, tends to rank poorly in international comparisons, except at university levels.
  - iii. Immigration is large, which is a good sign, but much of it is illegal, which is generates a variety of public policy problems, and accounts for some of the violent crime--especially in the Western states.
  - iv. And there are fiscal imbalances: a large trade deficit and budget deficit are being run, and promised future social security benefits exceed the likely flow of tax receipts earmarked for those programs.
    - ♦ (Some of these problems, particularly the latter, are also common to Western Democracies.)
  - v. Many worry about its relatively unequal distribution of income and wealth, although this is a far greater concern for those on the left than at the right or middle of the spectrum of American political opinion.
- F. Overall, however, the constitutional architecture developed in 1789 and its associated political system continues works well.
- ♦ That it does so, is partially a testament to the shrewd bargain worked out in 1789, but also a century and a half of experimentation and political competition among the colonies.
  - ♦ They result actually successfully produced an attractive society, which must have been an unpleasant surprise for European conservatives during the 19th and 20th century.
  - ♦ It also does so, because at the margin the U.S. constitution and its quasi-constitutional laws, programs, and procedures can be adjusted in many "minor" ways to advance the interests of those represented by it.

## V. Questions and Comments?

- i. In what ways does the present structure of the U.S. government reflect its history?
- ii. What would you say are the greatest strengths of the present system of government in the U.S.
  - ♦ (Note that this is not the same question as, what policies of the United States do you think are good ones. Why?)
- iii. What reforms of the United States constitution could improve the performance of the United States as an agent of the broad range of interests present in the United States?
  - ♦ (Why do you think that your reform will change the political equilibrium and thereby the policies chosen in the long run?)
- iv. What reforms seem likely to be adopted in the future?
  - ♦ Are any major amendments being proposed or considered seriously?
  - ♦ (Balanced budget rules, woman's rights, PR for the House, a national referenda-recall system?)
- v. What aspects of America's constitutional development should this course have spent (more or less) time on?

(For more on the effects of various Democratic Constitutional Designs on public policy see: Congleton and Swedenborg (2006) *Democratic Constitutional Design and Public Policy: Analysis and Evidence*. Cambridge Mass: MIT Press.)