

Elements of a Good Constitution
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This piece will take the example of the United States constitution and study three of its most important components, the Bill of Rights, federalism, and separation of powers, in relation to political and economic outcomes in the U.S.

The Constitution of the United States of America

The U.S. constitution, ratified on June 21, 1788, is the most famous in the world and has been the model for the constitutions of many other nations. The White House website states that:

The Constitution of the United States of America is the supreme law of the United States. Empowered with the sovereign authority of the people by the framers and the consent of the legislatures of the states, it is the source of all government powers, and also provides important limitations on the government that protect the fundamental rights of United States citizens.¹

The Bill of Rights

One of the most significant elements of the U.S. constitution is the Bill of Rights, which enumerates rights such as freedom of speech, the press, assembly, the right to bear arms, and others. It also declares that powers not delegated to the federal government or prohibited to the states belong to the states or to the people.²

The second amendment, which lists the right to bear arms, and the culture of widespread gun ownership in the U.S. are particularly notable, because they provide physical means by which rights can be upheld against state encroachment. It was with arms that the

¹ "The Constitution." The White House.

² "The Constitution." The White House.

U.S. was able to win the war for independence and come into existence in the first place.

Widespread gun ownership persists to today:

“Three-in-ten American adults say they currently own a gun, and another 11% say they don’t personally own a gun but live with someone who does. Among those who don’t currently own a gun, about half say they could see themselves owning one in the future.³

Federalism

Perhaps the most important defining element of the U.S. constitution is federalism.

Historian Dr. Kevin Gutzman states:

This idea commonly goes by the name “states’ rights” these days. Its opponents have conflated it with power in state governments, and some of those opponents have been so influential that many of federalism’s friends are prone to see it that way too. As Jefferson and the like-minded understood it, however, it meant limitation on federal power. Insofar as the US government did not have power, they believed, that power remained in the states as distinct, preexisting political communities. Whether those communities gave particular powers to the state governments was up to them.⁴

Dr. Thomas Woods speaks to how federalism makes the U.S. distinct from other political organizations:

... we argue that the United States is not a single indivisible blob. It is rather a collection of societies. That’s what makes it different from every single other place all over the world. ... What does it [the Declaration of Independence] speak of? Does it say a single blob declares its independence from Britain? Of course not. It says we are free and independent states. ... in the diplomatic language of the 18th century, the word ‘state’ is not referring to Massachusetts or Connecticut. It’s referring to entities like Spain and France.⁵

³ Parker, Kim, Juliana Menasce Horowitz, Ruth Igielnik, Baxter Oliphant, and Anna Brown. "The Demographics of Gun Ownership in the U.S." Pew Research Center's Social & Demographic Trends Project.

⁴ Gutzman, Kevin R.C. "Jeffersonian Federalism and the Origins of State Rights." The History Reader. February 04, 2017.

⁵ Woods, Thomas E., Jr. "Resolved: Allow State Secession."

The U.S. is formed from various distinct states and was meant to be a group of societies with powerful local control, not a single homogenous society ruled from a monolithic power center (Washington, DC). Each state was meant to hold a great deal of autonomy, subject to the will of voters, and only a small group of powers were to be exercised by the federal government. This would make room for experimentation and local self-government, which was one of the motivations behind the American War for Independence from Britain to begin with.

Elements of federalism are seen in the constitution in several places. The tenth amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁶ Article 1 Section 8 of the constitution lists the powers of the congress explicitly, delimiting them. Gutzman points to an even more fundamental element of federalism in the constitution:

Ultimate authority is the authority to revise or replace the U.S. Constitution. This authority, described in Article V of the Constitution, remains in the states as the sole amenders of the Constitution. Just as each of the original 13 states joined in the new union under the new Constitution for itself, and just as each of the newer states joined the union by drafting a republican constitution for itself and asking Congress to accept it into the union, so—logically—only the states can change the terms of that union.⁷

Federalism allows decisions to be made more closely to those who will be affected by them, facilitating a more flexible government that can adapt to local geographic, cultural, and other needs. Arguably, the constitution would never have been ratified absent federalism, a fact which highlights its importance, "Their promise that the federal government would rest on

⁶ "The Bill of Rights: A Transcription." National Archives and Records Administration.

⁷ Gutzman, Kevin R.C. "Not Your Founders' Constitution." *The American Conservative*. July 21, 2016.

this principle was a key component of the Federalists' success in persuading the states to ratify the Constitution in 1787–1790.”⁸

Separation of Powers

The concept of separation of powers is most closely associated in U.S. history with James Madison, as is the concept of “checks and balances.” The idea is that the executive, legislative, and judicial branches should be separate (separation of powers), and have institutional mechanisms through which they regulate and curtail each other’s growth (checks and balances). Madison explains checks and balances:

the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government.⁹

For example, the president nominates justices to the supreme court, but the nominees must be confirmed by the senate. The president can veto laws approved by the congress, but a large enough majority in the congress can overrule this veto. These, among others, are all ways that the various branches of government check each other’s authority. “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny”¹⁰ and so by turning the malicious elements of

⁸ *Ibid.*

⁹ Madison, James. "Federalist Papers No. 51." Federalist Papers No. 51.

¹⁰ Madison, James. "The Federalist Papers : No. 47." The Avalon Project : Federalist No 47.

human nature, such as hunger for power, against themselves via competition between the three branches, liberty can be better safeguarded.

Results

230 years later, the U.S. has an economic freedom score of 75.7/100 , ranking 18 in the world¹¹ and an aggregate score of 86/100 for freedom.¹² According to The Heritage Foundation, “Property rights are guaranteed, and the judiciary generally functions in an independent and predictable fashion.”¹³ According to Freedom House, “The United States is arguably the world’s oldest existing democracy. Its people benefit from a vibrant political system, a strong rule-of-law tradition, robust freedoms of expression and religious belief, and a wide array of other civil liberties.”¹⁴ This performance correlates to the U.S. constitution, but the question of causation is much more complicated, with issues such as political culture, the influence of foreign actors, and other factors also playing a role.

Despite the difficulty in establishing causation behind correlation precisely, the logic behind ideas such as federalism (vertical decentralization of power), separation of powers (horizontal decentralization of power) and having a bill of rights that allows an armed populace, is intuitive. People can be most effectively governed in an organic manner the closer the power center is to the people who must live under its rules. At the federal level, keeping the legislative, executive, and judicial powers spread out among separate institutions prevents concentration of power and therefore tyranny, and Madison sought to create an institutional environment that channeled the reality of ambitious and corrupt human nature to fight against the concentrated accumulation of power. The explicit (but not exhaustive)

¹¹ "United States." 2018 Index of Economic Freedom.

¹² "United States." Freedom in the World 2018.

¹³ "United States." 2018 Index of Economic Freedom.

¹⁴ "United States." Freedom in the World 2018.

enumeration of certain rights in the Bill of Rights helps facilitate a culture that esteems these rights. The explicit right to bear arms, and a culture of widespread gun ownership provide a practical, tangible mechanism against state encroachment over individual rights.

The U.S. constitution is one of the most important documents in all of history. Crafted by a collection of accomplished geniuses, it stands as a model that those seeking to protect liberal democracy may study profitably.

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