REPUBLICANISM AND THE CONSTITUTION
TODAY

First Half: How the Founders understood the challenges of constitutional government.

Coffee Break

Second Half: How the Articles of Confederation failed to meet the needs of the United States and motivated the Constitution.
3 TYPES OF CONSTITUTIONS
I) CLASSICAL CONSTITUTIONS

ARISTOTLE AND CICERO
2 TYPES OF CONSTITUTIONS

“those constitutions which consider the common interest are right constitutions, judged by the standard of absolute justice. Those constitutions which consider only the personal interest of the rulers are all wrong constitutions, or perversions of the right forms” (Politics III.6).
<table>
<thead>
<tr>
<th>In the Public Interest</th>
<th>For Private Interest</th>
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<tbody>
<tr>
<td>One</td>
<td>Monarchy</td>
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<td></td>
<td>Tyranny</td>
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<tr>
<td>Few</td>
<td>Aristocracy</td>
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<td>Oligarchy</td>
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<tr>
<td>Many</td>
<td>Polity [constitutional government]</td>
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<td>Democracy</td>
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ARISTOTLE’S CONSTITUTIONAL TYPOLOGY
CITIZEN VIRTUE, THE ABILITY TO RULE AND BE RULED IN TURN, DETERMINES THE PROPER FORM OF GOVERNMENT.
GENERAL TENDENCY FOR GOVERNMENTS TO BE CORRUPTED OVER TIME, MOVING FROM PUBLIC TO PRIVATE INTEREST.

RESPONSE IS A RECOVERY OR RESTORATION OF VIRTUE, COUPLED WITH A CENTRALIZATION OF POWER.
"Constitutional government may be described, in general terms as a mixture of oligarchy and democracy; but in common usage the name is confined to those mixtures which incline to democracy, while those which incline more to oligarchies are called aristocracies, the reason being that culture and breeding or more associated with the wealthier classes" (Politics IV.8).
“The principle that the multitude ought to be supreme rather than the few best is one that is maintained, and though not free from difficulty, yet seems to contain an element of truth. For the many, of whom each individual is but an ordinary person, when they meet together may likely be better than the few good, if regarded not only individually but collectively, just as a feast to which many contribute is better than a dinner provided out of a single purse. For each individual among the many has a share of virtue and prudence, and when they meet together they become in a manner of speaking one man, who has many hands, and feet and senses” (Politics III.11).
CONCERNS OVER STABILITY WITH MASS PARTICIPATION

- Solutions to the masses being less-than-always virtuous/unwashed:
  - Mix oligarchic laws with democratic laws:
    - Restriction of citizenship
    - Property qualifications for voting
    - Election by ballot rather than lot
- Limit inequality, especially in landholdings
- Promote agrarian life (first), and pastoral life (second)
- Discourage urban life, transactional livelihoods
ARISTOTLE, IN SUM:

Seeks to recover the possibilities of mass participation,
while overcoming the instability inherent in rule by the multitude,
by incorporating oligarchic practices into democracy,
and limiting inequality.
ROMAN CONSTITUTION WAS "THE BEST BY FAR." WHY?

CICERO, ON THE STATE (51-54 B.C.)
ROMAN CONSTITUTION BALANCES THE ELEMENTS OF SOCIETY

1) Consuls (royal element)
2) Senate (aristocratic element)
3) People (democratic element)
2) MODERN CONSTITUTIONS
THE UNWRITTEN
ENGLISH
CONSTITUTION:
BRIDGE FROM
CLASSICAL TO
MODERN
EDWARD COKE: ARTICULATING THE CONSTITUTION AND JUDICIAL REVIEW
THE IDEA OF INTERNALLY LIMITED GOVERNMENT, ESPECIALLY LIMITED ROYAL POWER
3) MONTESQUIEU AND THE WRITTEN CONSTITUTION

- The Spirit of the Laws (1748)
- Different Forms of Government can be Excellent
- Task of Government is to Avoid Despotism (unproductive, short sighted, arbitrary, destructive of the future)
- Principle of Divided Government Basis of Liberty: “So that one cannot abuse power, power must check power by the arrangement of things” (11.2).
Modern Constitutions

- Written
- Proscriptive rather than descriptive
- Based on principle more than practice
- Reliance on rationality to further human liberty
- Formal limits to government
- Explicit, internal divisions
- Tend to be short documents, elaborated by case law method
ONGOING CHALLENGE OF MODERN CONSTITUTIONS: BECAUSE THEY’RE OPEN TO CHANGE THROUGH PRACTICE, THE TENDENCY TOWARD CORRUPTION MUST BE ACTIVELY COMBATTED, ESPECIALLY AT SCALE.
3) CONTEMPORARY CONSTITUTIONS (VERY BRIEFLY)
CHARACTERISTICS

- Tend to appear in the civil law world, esp. Continental European colonial legacies
- Tend to be long, and growing.
- Open to amendment.
- Change through amendment rather than case law.
RECAP: 3 TYPES OF CONSTITUTIONS

1) Classical
2) Modern
3) Contemporary
TURNING TO THE AMERICAN EXPERIENCE
“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. -- That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, -- That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”
“He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.”

NOT WITHOUT ITS SHORTCOMINGS
“We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”
Why read the articles today?

They’re important as:

- Historical artifact
- An effort at self-government
- A step in the American process of political maturity
- A general lesson that political institutions take time to build
- Context for Constitutional Convention
WHAT ARE THEY FOR?

“a firm league of friendship with each other, for their common defense, the security of their Liberties, and their mutual and general welfare, binding themselves to assist one another, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever” (156).
ARTICLES OF CONFEDERATION

Drafted in 1776
Passed to the states for approval in 1777
Universally ratified in 1781
WHAT DO THEY SAY?

Limits

- Freedom of movement for citizens (156)
- Freedom of speech in Congress (157)
- “each state retains its sovereignty, freedom, independence, and every Power, Jurisdiction and right, which is not expressly delegated to the United States in Congress assembled” (156).

Powers

- Regulate value of currency (160)
- Make war (161)
- Act as high court (158-159)
- Make treaties
- Establish post offices (160)
“the united states in congress assembled”
- Each state sends 2-7 reps
- No rep can serve more than 3 of 6 years
- 9 of 13 states must approve major business
- Majority for minor business
- Standing “Committee of the States”
COLLECTIVE ACTION UNDER THE ARTICLES

- States actually contributed more than you might expect
- Common defense was not entirely common
- Contribution tended to move the army in your direction
Last battle of the Shays Rebellion was here Feb. 27, 1787.
SHAYS’ REBELLION

- Daniel Shays, Revolutionary War captain
- Forced the courts to close
- No foreclosures
- Showed weakness of national government
  - Went on for several months
CONDITIONS OF THE CONSTITUTIONAL CONVENTION

- National government too weak
- Need national power to tax
- Need national military
- Need national judiciary
- Need a national executive
GATHERING THE CONVENTION

- February 1787: Congress authorizes a convention, “for the sole and express purpose of revising the Articles of Confederation.”
- Hamilton: Invited delegates to convention to discuss all matters necessary “to render the constitution of the Federal Government adequate to the exigencies of the Union.”
CHARACTERISTICS OF CONVENTION

- Happened in secrecy
- Madison’s notes are major source
- John Adams in England
- Thomas Jefferson in France
- Samuel Adams, John Hancock, Patrick Henry stayed home for debates
WHAT THEY PRODUCED
Article I: Legislative powers
Article II: Executive powers
Article III: Judicial powers
Article IV: States
Article V: Amendment process
Article VI: Supremacy
Article VII: Ratification
OVERALL GOALS

- Create a stronger central government
- Have the benefits of mass participation
- Provide stability by checking democratic impulses
- Limit the power of elite actors in government to grow or abuse their power

- Animating concern: It had never been done before.
NEXT MEETING: THE FEDERALISTS AND ANTI-FEDERALISTS DEBATE THE CONSTITUTION