

## UNDERSTANDING THE CONSITUTION

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## UNDERSTANDING THE U.S. CONSTITUTION

### TOPIC 1 (PART 1): OVERVIEW: THE CONSTITUTION IS A BLUEPRINT FOR LIBERTY

Core Idea: Collective consent to be governed creates the power of the Federal Government, whose purpose in using that power is to ensure individual Liberty ‘endowed by the creator’.  
(Decl. of Independence).

#### A. THE THREE RELATIONSHIPS:

1. Between the U.S. Government and the individual

Primary Concept: Ordered Liberty

2. Between the U.S. Government and the States

Primary Concept: Federalism

3. Among the three branches of the U.S. Government

Primary Concept: Separation of Powers

The U.S. Government is designed to be powerful enough to fulfill the mission stated in the Preamble, but it is limited to that mission. (Enumerated powers). Checks and balances on its power are embedded in all its relationships, to ensure individual liberty is restricted only to the extent necessary to secure the common good.

#### B. WHAT IS LIBERTY?

An idea deep-rooted in religious and philosophical thought to the effect that man needs liberty in order to fulfill God’s purpose. *See*, John Winthrop, Speech to the General Court, excerpted in Miller, ed., *The American Puritans*, p. 92 (1956). From the standpoint of the Constitution, the key feature is that the government *does not bestow liberty upon its citizens*. Liberty is an inherent human right. Government’s role is to *safeguard* human liberty. *See*, Declaration of Independence. (“endowed by the Creator with certain unalienable rights”).

## **TOPIC 1 (PART 2): THE DESIGN: HOW WOULD YOU DESIGN A GOVERNMENT WHOSE PURPOSE IS TO IMPLEMENT LIBERTY?**

Issues to consider when you are designing a Government:

### *I. What is Power: A Destructive and Constructive Force*

Destructive: Power Unchanneled / unharnessed and chaotic: *e.g.*, Hurricane  
Impact on society: Disruptive, “dis-ordered,”  
dysfunctional and demoralizing. People discontented and  
unproductive; do not experience fairness in dealings with  
Government; Government commands little respect.  
Voluntary compliance with law is low.

Constructive: Power Harnessed or channeled

Impact on society: Orderly; leads to high-functioning  
societies that are energetic and productive. People happy;  
experience fairness in dealings with Government; Government  
is respected. Voluntary compliance with law is high.

There is a tension between the idea of liberty and the power of government.  
Liberty cannot exist without order; government is needed to impose order.  
Governmental power, properly used, achieves ‘ordered liberty’.

### *II. What does ‘Legitimacy to Govern’ Mean and Why Does it Matter?*

Government exerts force on its citizens.

When force is viewed as legitimate, cooperation is voluntary and high.

When force is viewed as illegitimate, it is seen as tyrannical and resisted.

### *III. What Forms of Government Are There?*

Imagine it was up to you to design a government. How would you do it?  
First, you must identify the source of the government’s  
legitimacy and, next, select the format of governance (design) that best  
implements that choice.

What are some available design formats?

(a) Master/Subject relationship:

e.g.: Monarchy, (Legitimacy claim: Divine Right of Kings or related theories) (subject has no policymaking input in theory, but in practice may acquire a gradually increasing role: e.g., *Magna Carta*, Parliament, “constitutional monarchy”).

(b) Self-Government (Legitimacy: consent of governed to be governed *i.e.*, citizens freely submit to power of government) (“Government of the people, by the people and for the people”).

Two forms of self-government:

1. Democracy: direct rule/ policymaking by majority rule.
2. Republic: representative rule of elected on behalf of represented citizens/ policymaking by majority vote of representatives.

NOTE: the legitimizing “idea” is of central significance because the “idea” determines the design.

*IV. Do I have Any Role in our Government, or May I Leave All the Work of Governance up to Elected Officials?*

Citizens have most important job of all: to hold elected officials to account to govern soundly on behalf of all citizens in accordance with the Preamble and the requirements of the Constitution.

This means citizens must have a basic understanding of the specific ideas embedded in the Constitution. How can citizens hold public officials to account if they do not know what those ideas are?

Self-governance requires work from each of us! *See* Gettysburg Address (the task the living owe to those who died to keep our form of government intact is to make it work.)

V. *Does a Document That is 200+ Years Old Work in Our Modern Society?*

(a) Sources of inspiration are timeless:

- i. Ideals of truth rooted in Western Civilization as expressed during the Enlightenment (classical liberal).
- ii. Unflinching honesty about our human nature and its tendencies and the need to manage against our lesser behavior and to encourage our better behavior.

Madison: "If men were angels no government would be necessary" *Federalist Papers, No. 51*.

- iii. Because the Constitution is written, (compare, *e.g.*, to England, which has no written constitution), it is always a source for renewal and correction when things get off-course.

*See, Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176-178 (1803)(Marshall, CJ).*

- iv. Amendment is permitted, but the Founders deliberately made the Constitution difficult to amend. (*Const. Art. V*: supermajorities required to call for convention to consider (2/3 Cong or State Legis.) and to ratify (3/4<sup>th</sup> of States).

NOTE: Due to its flexibility, the design for governance is more akin to the design of an organism than that of a structure. The result is our system of government is DURABLE.

- (b) Food for Thought: A consequence of government legitimized by the consent of the governed is that the political rights of each citizen, the worthy and the unworthy, the good and the bad, are *equal to that of every other citizen*. Citizens must never lose sight of that. (*But see*, for a cautionary note, E. Canetti, "*Crowds and Power*", chapter: "Judgment and Condemnation", 296-297 (Farrar, Strauss and Giroux, 1960) (discussing a tendency of our human nature to arrange human beings into groups; assign a relative value to them and agitate for a hostile tension between them).