



Politics in a Changing World

A New Birth of Freedom: Exporting American Constitutionalism

When the founders drafted the U.S. Constitution in 1787, they hardly started from scratch. Leaders like James Madison and John Adams drew on the failed experiences of the Articles of Confederation to chart a new course for our national government. They also leaned heavily on the ideas of great democratic thinkers of the past. Today, given the more than two-hundred-year track record of the United States, it is no wonder that many other nations have looked to the American experience as they embark on their own democratic experiments.

In the past ten years especially, democratizing countries on nearly every continent have developed new governing institutions by drawing at least in part on important principles from the U.S. Constitution and Bill of Rights. This is certainly the case in the former communist countries of Eastern Europe, most of which have entered their second decade of newly established democratic rule. Enshrining democratic ideals in a written constitution corresponds to the ascendancy of freedom worldwide (see the accompanying figure).

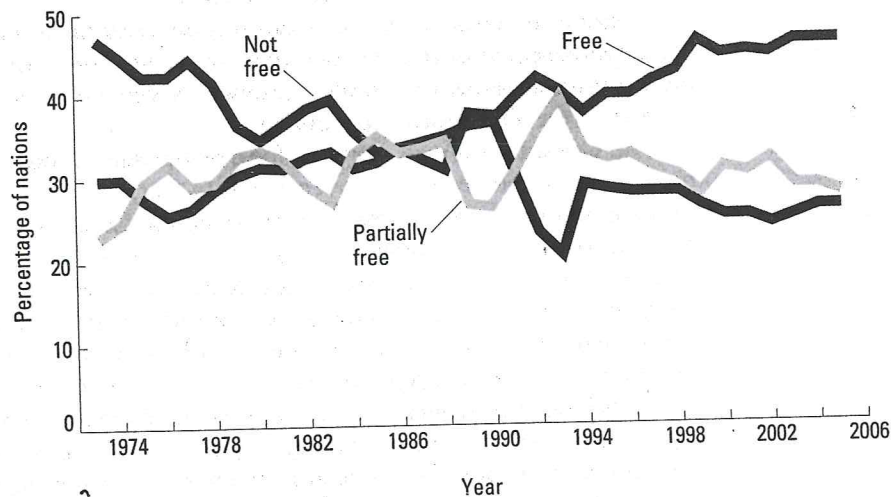
Echoing the U.S. Declaration of Independence and the Constitution's preamble, for example, Article 2 of the Lithuanian constitution declares unequivocally, "Sovereignty shall be vested in the people." To protect the rights of citizens and to prevent power from becoming too concentrated, many Eastern European nations have designed government institutions to allocate and share power among different branches paralleling the legislative, executive, and judicial arrangement of the American experience.

Specific guarantees protecting individual rights and liberties are also written in great detail in the constitutions of these new democracies. The Romanian constitution, for example, takes a strong stand on the defense of personal ideas, stating that "freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation by words, in writing, in pictures, by sounds or other means of communication in public are inviolable." Similarly, the constitution of Bulgaria details important restrictions on government action against the nation's citizens. Protections regarding

and technological developments. Air travel, for instance, unknown in 1787, now falls easily within Congress's power to regulate interstate commerce.

The generality of the U.S. Constitution stands in stark contrast to the specificity of most state constitutions and the constitutions of many emerging democracies. The constitution of California, for example, provides that "fruit and nut-bearing trees under the age of four years from the time of planting in orchard form and grapevines under the age of three years from the time of planting in vineyard form . . . shall be exempt from taxation" (Article XIII, Section 12). Because they are so specific, most state constitutions are much longer than the U.S. Constitution.

The constitution of the Republic of Slovenia, adopted in December 1991, prevents citizens from being "compelled to undergo medical treatment except in such cases as are determined by statute." In the Republic of Lithuania, the



cruel and unusual punishment, unreasonable detention or search, and privacy within one's home and personal correspondence are just a few of the Bulgarian constitution's guarantees.

Because there is no ready-made formula for building a successful democracy, only time will tell whether these young constitutions will perform well in practice. A generation ago, humorists asked: "What is the difference between the Soviet constitution and the U.S. Constitution?" The answer: "Under the Soviet constitution, there is freedom of speech and freedom of thought. But under the U.S. Constitution there is freedom *after* speech and freedom *after* thought!" The point

is that putting democracy into practice is much harder than theorizing about democracy. Undoubtedly, success will be the product of many factors, including the courage to resist past totalitarian practices, the willingness to make important adjustments to national institutions when the need arises, and, perhaps most important, a measure of good luck.

Sources: International Institute for Democracy, *The Rebirth of Democracy: Twelve Constitutions of Central and Eastern Europe*, 2nd ed. (Amsterdam: Council of Europe, 1996); A. E. Dick Howard, "Liberty's Text: Ten Amendments That Changed the World," *Washington Post*, 15 December 1991, p. C3; Freedom House, "Freedom in the World Comparative Rankings: 1973–2005," available at <<http://www.freedomhouse.org/template.cfm?page=158&year=2005>>.

national constitution, adopted in October 1992, spells out in significant detail some of the free-speech rights of its citizens, including the protection that "citizens who belong to ethnic communities shall have the right to foster their language, culture, and customs."³⁹ The U.S. Constitution remains a beacon for others to follow (see "Politics in a Changing World: A New Birth of Freedom: Exporting American Constitutionalism").

Freedom, Order, and Equality in the Constitution

The revolutionaries' first try at government was embodied in the Articles of Confederation. The result was a weak national government that leaned too much toward freedom at the expense of order. Deciding that the confederation was beyond correcting, the revolutionaries chose a new form of government—

a federal government—that was strong enough to maintain order but not so strong that it could dominate the states or infringe on individual freedoms. In short, the Constitution provided a judicious balance between order and freedom. It paid virtually no attention to equality.

Consider social equality. The Constitution never mentioned the word *slavery*, a controversial issue even then. In fact, as we have seen, the Constitution implicitly condones slavery in the wording of several articles. Not until the ratification of the Thirteenth Amendment in 1865 was slavery prohibited.

The Constitution was designed long before social equality was ever even thought of as an objective of government. In fact, in *Federalist* No. 10, Madison held that protection of the “diversities in the faculties of men from which the rights of property originate” is “the first object of government.” More than a century later, the Constitution was changed to incorporate a key device for the promotion of social equality—a national income tax. The Sixteenth Amendment (1913) gave Congress the power to collect an income tax; it was proposed and ratified to replace a law that had been declared unconstitutional in an 1895 Supreme Court case. The income tax had long been seen as a means of putting into effect the concept of progressive taxation, in which the tax rate increases with income. The Sixteenth Amendment gave progressive taxation a constitutional basis.⁴⁰ Progressive taxation later helped promote social equality through the redistribution of income; that is, higher-income people are taxed at higher rates to help fund social programs that benefit low-income people.

Social equality itself has never been, and is not now, a prime constitutional value. The Constitution has been much more effective in securing order and freedom. Nor did the Constitution take a stand on political equality. It left voting qualifications to the states, specifying only that people who could vote for “the most numerous Branch of the State Legislature” could also vote for representatives to Congress (Article I, Section 2). Most states at that time allowed only taxpaying or property-owning white males to vote. With few exceptions, blacks and women were universally excluded from voting. These inequalities have been rectified by several amendments (see Table 3.3).

Political equality expanded after the Civil War. The Fourteenth Amendment (adopted in 1868) guaranteed all persons, including blacks, citizenship. The Fifteenth Amendment (ratified in 1870) declared that “race, color, or previous condition of servitude” could not be used to deny citizens the right to vote. This did not automatically give blacks the vote; some states used other mechanisms to limit black enfranchisement. The Nineteenth Amendment (adopted in 1920) opened the way for women to vote by declaring that sex could not be used to deny citizens the right to vote. The Twenty-fourth Amendment (adopted in 1964) prohibited the poll tax (a tax that people had to pay to vote and that tended to disenfranchise poor blacks) in presidential and congressional elections. The Twenty-sixth Amendment (adopted in 1971) declared that age could not be used to deny citizens eighteen years or older the right to vote. One other amendment expanded the Constitution’s grant of political equality. The Twenty-third Amendment (adopted in 1961) allowed residents of Washington, D.C., who are not citizens of any state, to vote for president.

The Constitution and Models of Democracy

Think back to our discussion of the models of democracy in Chapter 2. Which model does the Constitution fit: pluralist or majoritarian? Actually, it is hard to

imagine a government framework better suited to the pluralist model of democracy than the Constitution of the United States. It is also hard to imagine a document more at odds with the majoritarian model. Consider Madison's claim, in *Federalist* No. 10, that government inevitably involves conflicting factions. This concept coincides perfectly with pluralist theory (see Chapter 2). Then recall his description in *Federalist* No. 51 of the Constitution's ability to guard against concentration of power in the majority through separation of powers and checks and balances. This concept—avoiding a single center of government power that might fall under majority control—also fits perfectly with pluralist democracy.

The delegates to the Constitutional Convention intended to create a republic, a government based on majority consent; they did not intend to create a democracy, which rests on majority rule. They succeeded admirably in creating that republic. In doing so, they also produced a government that developed into a democracy—but a particular type of democracy. The framers neither wanted nor got a democracy that fit the majoritarian model. They may have wanted, and they certainly did create, a government that conforms to the pluralist model.



Summary

The U.S. Constitution is more than an antique curiosity. Although more than two hundred years old, it governs the politics of a strong modern nation. It still has the power to force from office a president who won reelection by a landslide. It still has the power to see the country through government crises.

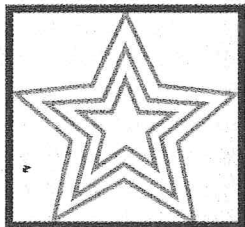
The Constitution was the end product of a revolutionary movement aimed at preserving existing liberties. That movement began with the Declaration of Independence, which proclaimed that everyone is entitled to certain rights (among them, life, liberty, and the pursuit of happiness) and that government exists for the good of its citizens. When government denies those rights, the people have the right to rebel.

War with Britain was only part of the process of independence. A government was needed to replace the British monarchy. The Americans chose a republic and defined the structure of that republic in the Articles of Confederation. Although the Articles guaranteed the states the independence they coveted, they were a failure: they left the central government too weak to deal with disorder and insurrection.

The Constitution was the second attempt at limited government. It replaced a loose union of powerful states with a strong but still limited national government, incorporating four political principles: republicanism, federalism, separation of powers, and

checks and balances. Republicanism is a form of government in which power resides in the people and is exercised by their elected representatives. Federalism is a division of power between the national government and the states. The federalism of the Constitution conferred substantial powers on the national government at the expense of the states. Separation of powers is a further division of the power of the national government into legislative (lawmaking), executive (law-enforcing), and judicial (law-interpreting) branches. Finally, the Constitution established a system of checks and balances, giving each branch some scrutiny of and control over the others.

When work began on ratification, a major stumbling block proved to be the failure of the Constitution to list the individual liberties the Americans had fought to protect against the potential tyranny of a stronger central government. With the promise to add a bill of rights, the Constitution was ratified. The ten amendments that make up the Bill of Rights guaranteed participation in the political process, respect for personal beliefs, and personal privacy. They also contained guarantees against government overreaching in criminal prosecutions. Over the years, the Constitution has evolved through the formal amendment process, the exercise of judicial review, and political practice.



On August 29, 2005, a Category 4 hurricane named "Katrina"—the worst in a century—slammed ashore, unleashing 125-mile-per-hour winds, torrential rains, and

sea surges that overwhelmed dikes, berms, floodwalls, and levees across the Gulf Coast. Damage estimates of \$150 billion exceeded those of any other natural disaster in the United States. New Orleans, a low-lying city at the mouth of the Mississippi River, suffered the worst loss of life and property. More than thirteen hundred city residents died in the hurricane and its aftermath. The vast majority evacuated ahead of the storm. Yet, despite repeated warnings, more than one hundred thousand residents, mostly poor and black, remained trapped within the city limits because they lacked the transportation to leave. City services crumbled. Disorder reigned. Communication and power were nonexistent. Many police officers abandoned their duties to protect their families and themselves. Thousands of sick, elderly, and poor people assembled at New Orleans's Superdome to ride out the storm and its aftermath, without air conditioning, running water, or working toilets. They were finally evacuated after six days.¹

In addition to the natural catastrophe, Hurricane Katrina will be remembered as a national tragedy that uncovered the coordination failures of our governmental structure. Many deaths in New Orleans might have been avoided had government acted swiftly. But which government was supposed to act? The city government was knocked out of commission. The Louisiana state government was overwhelmed by the magnitude of the damage. The national government awaited instructions from the governors of the affected states. Under our federal

system of government, it is sometimes difficult to determine who is in charge of such a complex disaster and who has the resources to address it.

A chain of unfortunate events left New Orleans in a dismal state. Local and state authorities failed at planning the defense of the city. First responders were simply overwhelmed by the magnitude of the disaster. The Federal Emergency Management Agency (FEMA), the agency with the mandate to handle emergency situations, was unable to cope, partly because its director was a political appointee of the Bush administration with no relevant experience in disaster management. Louisiana governor Kathleen Babineaux Blanco contacted President George W. Bush and said, "Give me everything you've got." (Bush was on vacation at his Texas ranch. Several days after the hurricane struck, his aide showed him a DVD of news coverage to demonstrate the seriousness of the problem.) But her request was imprecise, and she did not request military assistance. The president was reluctant at first to send in troops trained for combat when the city needed troops trained in police procedures. The National Guard, normally under the governor's control, fit the need, but the governor resisted federalizing the force because that would mean turning command and control over to the national government. In the end, the military was the only institution ready to cope with the disaster, but it could only act with a presidential declaration overriding all other authorities. Lurking in the background was the principle of federalism and the desirable extent of national intervention in local and state affairs.²

One key element of federalism is the respective **sovereignty**, or quality of being supreme in power or authority, of national and state governments. In the case of Hurricane Katrina,