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The United States Constitution

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INTRODUCTION

This course of study of the U. S. Constitution conveys to students the basic principles of the supreme law of our nation. It is also an attempt to place this document in an historical perspective, in order to aid the students in their understanding that its development was a process which did not exist in isolation. The Constitution was a product of politics at its finest. It is my hope that the material which follows will be instrumental in making that point evident.

The narrative portion of this unit does not purport to contain the entire body of knowledge that is available on this subject. It is, however, intended as a resource, providing the teacher with the necessary background to feel comfortable in teaching the subject. A bibliography for teachers and students is included in the appendix. I would strongly recommend that the teacher familiarize himself with these materials beforehand.

A strategy that will aid in filling in any gaps that exist in the narrative and, at the same time, will help in sharpening the students' reference/study skills is the research report. This technique requires the student to develop a bibliography on a particular topic, choose a book to read and write a report on that topic. The teacher may give such an assignment in a variety of ways that are appropriate for a wide range of students. This long-range type of assignment is easily tailored to suit the individual student's needs. The teacher may also choose to require students to present their reports to class by way of an oral presentation.

The Articles of Confederation, predecessor of the U. S. Constitution, were the laws which loosely governed these United States that were fresh out of the Revolution. The strongest argument in favor of a strong central government was the manner in which these thirteen states were governing themselves as a nation. The Articles of Confederation left the government impotent in numerous critical areas that, if left unchecked, would have led to the early demise of this infant nation.

First, control of frontier lands appeared to be threatened by Spain and England; the former controlling the mouth of the Mississippi, and the latter controlling the western trading and trapping posts from Lake Champlain to Mackinaw. Also, the frontier lands to the west were moving further westward. Critical questions needed to be resolved concerning the control of these lands.

Second, no national currency existed. The problems arising from this are much too numerous to cover here. A

class discussion around this question may be appropriate. Have students consider the problems that may exist with each state having a different form of currency.

Third, there was a critical need to regulate foreign and interstate trade. The states were no longer under the protection of Great Britain, nor were they allowed to compete with the former Mother country, as their ships were not even allowed into ports that were controlled by England.

In addition to the above, other differences existed from region to region which caused the states to retain total veto power over the existing central government, weak as it already was. Any state could exercise veto power over the will of the majority. Even the Revolution, itself, was a condition which acted as a wedge between the separate states and their growth into a unified nation, for the people did not want to create a tyrant of a different form than the one they overthrew. Therefore, they shied away from strong forms of central government.

The Articles provided for a weak central government which could not even raise the necessary funds to operate, possessed no executive or judicial branches to offer checks and balances against one another, and it could not command the power and respect neither domestically nor abroad.

Fraught with shortcomings, the Articles are, however, credited with a number of successes: the successful conclusion of the Revolution, the Treaty of Paris, the laying of the diplomatic foundation, establishing credit and a number of portions of its successor, the United States Constitution.

At Mount Vernon, the home of George Washington, Maryland and Virginia met in 1785 to discuss problems common to those states. This conference proved fruitful for them and demonstrated that states can act cooperatively. An invitation was sent to the remaining states to send delegates to a subsequent conference on state cooperation.

Only five states sent delegates to this convention at Annapolis, Maryland in 1786. This convention was, therefore, limited to discussion of the problems of the country under the Articles of Confederation. It ended with the delegates requesting the Confederation Congress to call for a convention of the states to meet in Philadelphia the following year “. . . to revise the Articles of Confederation.”

THE CONVENTION

The call of the convention at Philadelphia in 1787, brought together many diverse men. They were men of various ages, careers, family background, education and means. The only commonalities they shared were that each had some experience in public service, and each enjoyed a reputation that was beyond reproach. Clinton Rossiter's, *1787: THE GRAND CONVENTION*, is an excellent source for details concerning the delegates to the convention.

THE VIRGINIA PLAN

Virginia, the state which was instrumental in the calling of the convention, acted quickly to select the members of its delegation to that convention. Consequently, the Virginia delegation had considerable time in which to caucus while waiting for a quorum to assemble in Philadelphia.

Leading the delegation was George Washington, a popular man at 55 years of age. Patrick Henry was appointed, but refused the appointment. In his stead, Edmund Randolph, governor of Virginia, himself a member of the delegation, appointed a physician, James McClurg. James Madison, also a very popular man in Virginia, was the politician/scholar of the delegation. Much of Madison's writings on the idea of the new federal government may be found in a collection of essays written by Madison, Hamilton and Jay, entitled THE FEDERALIST, of which Madison wrote 51. Other members of the Virginia delegation included; George Wythe, Chancellor of the State, signer of the Declaration of Independence, professor of law at William and Mary; John Blair, a judge; and George Mason, author of the Virginia Bill of Rights.

Meeting on a daily basis before the opening of the convention, these men drew up a set of resolutions which they presented to the convention. This plan was the basis for debate on the business of the convention, and was ultimately modified and transformed into what became the final document, the U. S. Constitution. These fifteen resolutions and subsequent debate over them may be found in THE ANNALS OF AMERICA, VOLUME 3, William Benton, Publisher.

A constitutional convention is a sort of "superlegislature;" in that, the outcome it generates cannot be subject to the whim and fancy of the "normal" legislative body. The regular legislative body may enact one law today and reverse itself a year later by enacting such legislation. A constitutional convention writes a new constitution, making provision for its amendment by member states. This process of modifying the document is much more complex than simply enacting a new law. The lesson outline includes some ideas to pursue the status of a constitutional convention.

The members of this convention were, generally, in agreement on the following points: the Articles of Confederation were not adequate to meet the needs of the nation, the states would not accept any final product of this convention if it went too far in giving power to the central government, they wanted to set up a government which was a republic, leaving the ultimate power in the hands of the people, and it was necessary to find some basis for compromise, without which the convention would be hopelessly deadlocked.

Agreement had already been reached that the legislature would be bicameral, modeled after England's Parliament. There was disagreement concerning the basis of representation in both houses of the legislature. This discord threatened to break up the convention. The small states advocated equal representation, while the large states thought it to be preposterous that a state of 50,000 inhabitants could exercise the same equal voice as a state of one million. The small states doggedly opposed anything less than equal representation.

The ensuing events proved to be a masterful blend of patience, perseverance, frank discussion and dedication to the task. The will of these men to create "a more perfect Union" prevailed in what was to be called the "Great Compromise." It provided for representation in the first house to be according to population, an equal vote of the states in the second house, a census to be conducted every ten years for the purpose of redistribution of seats and the first house to have the exclusive power to initiate money bills. On July 16, after much debate, the Great Compromise was narrowly adopted. The struggles to maintain the powers of the large states over the small states were resolved. Each side was able to save face through this compromise.

Another division between the representatives developed which would eventually require the same procedure for discussion, perseverance and compromise. This division arose between the northern and southern states over the question of slavery. The southern states wanted to count their slaves in the population count for the purposes of representation in Congress, but not for the purpose of taxation. The northern states favored the opposing view, that slaves should be counted for taxation purposes, but not for the purpose of representation in Congress. Further, some southern states demanded that the new Constitution should absolutely forbid any interference with slavery by the national government. This discord was settled by developing the “three-fifths ratio,” which counted every five slaves as three people for the purposes of both taxation and representation.

With these compromises intact the remainder of the convention was a flurry of activity to hammer out the powers and operations of the new federal government. In some cases new powers were added to the central government, and in other cases the powers of the central government under the old Articles of Confederation were restated. The most important of the new powers that were granted to the new federal government were: the power to raise taxes, regulate trade between the states and foreign countries, the sole power to coin money.

On September 17, 1787, the final document was signed and ordered delivered to the states for debate in special conventions. The struggle for ratification of this document, radical as it was among such documents elsewhere in the world, had begun.

One of the main objections to the Constitution was the absence of a section which specifically enumerated the liberties of individuals. This objection was not to be ignored, if this document was to be ratified. In fact, the clamor was so great that assurances had to be given to states that objected on these grounds before they would be persuaded to ratify the Constitution.

FEDERALISTS vs. ANTI-FEDERALISTS

The problem which now existed and needed to be overcome was whether the loosely organized states would, indeed could, put aside their provinciality and become subservient to the new federal structure. The revolutionary spirit which toppled the tyranny of Great Britain over the colonies was one of the major obstacles to ratification of the new federal government. Through heated debate between the Federalists and the Anti-Federalists each attempted to muster forces into their ranks. Would the new frame of government endanger America and Her principles, or would it strengthen them? This had to be the question on the minds of every citizen who lived during this period.

Those in favor of ratification of the Constitution were called Federalists. They were in support of the new plan of government. The Federalists had a distinct advantage over the Anti-Federalists for a number of reasons: they drew their numbers, generally, from the wealthy, propertied class, although there were some laborers and skilled craftsmen who favored the new Constitution (shipbuilders, dockworkers, and related fields). Others, on the edge of the frontiers, favored the Constitution for protection against the Indians; the Federalists had a tangible plan; their leaders had super images (Madison, Washington, Franklin, etc.); and they seemed to be better organized in reaching the people. THE FEDERALIST, a classic collection of political essays, is a notable illustration of this.

The Anti-Federalists found most of their support among the poor and small farmers, in general. However,

some wealthy people joined the fight against ratification. States' rights, the denial of individual liberty and increased taxes were the main arguments of the Anti-Federalists. Further, they touted the new powers of the Congress as subject to great abuse, as well as the powers of the new executive and judiciary branches.

Much has been written about those who opposed the ratification of the Constitution. Their reasons for opposing the Constitution were as diverse as they, and their views were quite eloquently spoken and written. If charisma exists in gradations, then many of these men were only slightly charismatic than the personages of Washington, Madison, Hamilton, Franklin and Jay. Further, these men differed in the length of time that each continued their opposition. Some remained opposed to the Constitution to the last.

Edmund Randolph, George Mason and Elbridge Gerry are three men who opposed the Constitution, whose arguments and thoughts have been particularly interesting to me. Each based his objections upon firm principles and raised numerous questions for fellow delegates and citizens alike to think about: the potential for abuse of power by any of the three branches of government, the absence of the rights of individuals, and a host of others. There are several communications by these men in John D. Lewis' book, ANTI-FEDERALIST VS. FEDERALISTS. These documents, and others included in this book, should prove to be valuable in the classroom as common readings for discussion. The language in them is quite difficult for middle school students. I would recommend that they be read in class, leaving ample time for discussion of salient points. The letters of Edmund Randolph and others do much to reveal the intelligence of these men and the struggles within them concerning the final document. Edmund Randolph's letters do much to illustrate the particular personal struggle within him, being an originator of the Virginia Plan, favoring the restructuring of the national government, then opposing the final result of his labors because it didn't go far enough. Reluctantly, because the old system was surely a failure, Randolph supported the ratification of the Constitution.

THE FEDERALIST and Lewis', ANTI-FEDERALIST VS. FEDERALIST, will provide the teacher with ample material for class use. The teacher and students will find equally strong and convincing arguments on both sides of the ratification question.

THE CONSTITUTION

PREAMBLE

This portion that comes before the Constitution establishes the source of its power (the People) and the reason for its existence (to establish justice, ensure domestic tranquility, provide for the common defence, promote the general Welfare and secure the blessings of liberty to ourselves and our Posterity).

These portions of the Preamble are of special note, for they beg to be viewed with the differences in meaning between then and modern times. For example, in 1789, "the People" happened to be those of political rights, who happened to be white, male property owners. What was meant by ensuring domestic tranquility? Did it mean to put down civil disturbances?

Dissection of these and other parts of the Preamble should make for some interesting discussions which compare political thought and language of today with those of this period.

CONGRESS

The legislature under the Articles of Confederation was unicameral, having very narrow powers. Under the Constitution the Congress was structured in a bi-cameral fashion, much like the Parliament of England, it had broader powers, the Senate and the House of Representatives must both act favorably upon a piece of legislation, affording neither body a higher status.

Each house of Congress has other powers which are specifically relegated to each. The House of Representatives has the right to impeach the President, Vice-President and other members of the executive branch for high crimes and misdemeanors, and it has the right to impeach errant members of the judiciary branch. It also has the power to initiate all money bills. Due to the size of the body of Representatives (capped at 435), the House conducts much of its business by way of committees (foreign affairs, budget, labor, trade, etc.).

The Senate, comprised of 100 members, has the powers of approving or disapproving Presidential appointment, the ratification of treaties with foreign governments (2/3 majority), and it acts as a court in impeachment proceedings.

THE PRESIDENCY

Obviously, the memories of the King of England, George III, and the Royal Governors of colonial days caused much apprehension among the framers. They granted broad powers to the executive, but developed a system of checks and balances which would lay their fears to rest. A transparency which depicts these checks and balances is included in the kit of materials.

The powers of the President of the United States have been greatly expanded since the framing of the Constitution. Today, the President is not only the leader of the United States, he is the leader of the entire free world.

THE JUDICIARY

No system of federal courts existed under the Articles. The Constitution took one small step in establishing a federal judiciary, stating “. . . the judicial powers of the U.S. shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges hold their offices during good Behaviour.”

Congress enacted the Judiciary Act of 1789 which structured the federal courts. The lowest courts, district courts, were set up to hear cases involving federal law and treaties. The circuit courts were established to hear appeals from the district courts.

The federal judiciary is responsible for deciding the *constitutionality* of federal or state law. The Supreme Court and the rest of the federal courts exercise a kind of veto power. Article VI, clause 2 provided the basis for Chief Justice John Marshall's decision in a famous case, Marbury vs. Madison, which gave the court the broad power of judicial review of Acts of Congress. This power is not stated in the Constitution in a manner which makes it absolutely clear.

The lesson outline which follows is intended as a guide for the teacher. It is my concept of what I should want to teach my eighth grade students. Certainly, the lessons are subject to whatever changes you, a fellow teacher, may wish to make.

There are numerous opportunities for the teacher to draw up individual student contracts for areas that need

to be researched. Some suggested topics and books are included for that purpose. This unit should be quite easily tailored to fit your needs.

A packet of materials which may be used with your class will be made available. This packet contains maps, student copies of the U.S. Constitution, newspaper clippings and articles which should be quite helpful. Transparencies are also available which depict the powers of Congress, checks and balances of the federal system and the principle of judicial review of the Supreme Court.

Ultimately, it is the teacher who will make this unit successful to teach. There are a number of perspectives from which a problem may be viewed. Two sides of a disagreement may be argued quite eloquently and logically, leaving the listener to find points on both sides with which to agree. Every law appears to be clear and concise; yet when applied to life, the grey areas emerge. The teacher, mindful of this, should constantly make students aware of this.

LESSON OUTLINE

THE UNITED STATES UNDER THE ARTICLES OF CONFEDERATION

—Map of United States, c. 1783; students should become familiar with: geographical data, size of states, land claims, etc.

—Unanimous consent: the Articles could undergo major changes only through the unanimity of the states. This was a serious deficiency in the manner of government. The concept to be conveyed here is the difficulty in making decisions when unanimous consent of the parties is required.

Divide the class into two groups (12-14 students)

Each group is to pick a discussion leader to organize the discussion and keep records.

Each group is given a movie guide from the newspaper.

Group X can only reach a decision unanimously, Group Y needs only a *simple majority*.

The leader is to keep records on the vote count of each round.

Discuss the results.

Revise the rules. Try one group needing a 2/3 majority, change the nature of the topic to something of greater importance.

—Currency:

What is *currency* ?

What gives currency its value?

What sort of problems were caused by the separate states having different means of exchange?

—Trade-What is *commerce*? What sort of goods or services are traded today?

What sort of goods were traded c. 1783? Was there a difference of trading between the states?

Foreign commerce: Why would countries trade between themselves? The U.S. was in heated competition with the giants of the sea, Great Britain and Spain. Both countries would benefit by the ineffective government of the U.S. The states had plenty of natural resources, most of which was still frontier. Discuss this in terms of foreign trade.

Domestic commerce: Discuss the need for interstate cooperation. Why would there arise a need for regulation of trade? Discuss natural resources in terms of domestic trade.

THE STATES AGREE TO COMING TOGETHER

—The biggest obstacle that had to be overcome was for the states to become united. As fine a point as this concept is, the course of history would be significantly different, to say the least. To accomplish this, the state would necessarily have to relinquish a large portion of the rights reserved for themselves. . . “in order to form a more perfect Union.” This concept should be discussed at length.

THE CONSTITUTIONAL CONVENTION

The men who met at Philadelphia in 1787 in reality exceeded the mandate given to them. . . “to revise the Articles of Confederation.” They ultimately adopted an entirely new document.

What gave these men the power to raise this meeting to the status of “superlegislature?” (Baron De Montesquieu’s “The Spirit of the Law,” Book XI, certainly a book that is much too difficult for middle school students, has many short political essays which may be of interest to the teacher. The teacher may find something appropriate for his class, to be used as a stimulus for discussion.)

Secrecy-the convention delegates agreed to keep the official proceedings of the convention secret. This was done to encourage the delegates to let their ideas and philosophies flow freely, without their having to fear public disclosure. To what extent was that a good idea? Is there a place for such secrecy in governmental matters?

Members of the Virginia delegation. Student reports on delegates. Why did Virginia seem to have more than its share of outstanding, widely popular citizens? (see narrative)

The Virginia Plan (see narrative)

Major agreements and disagreements (see narrative)

Federalists vs. Anti-Federalists

THE CONSTITUTION

-The Preamble (see narrative)

-CONGRESS Article I, Sections 1-6 Organization

Article I, Sec. 7 How Bills Become Laws

Article I, Sec. 8 This section grants the federal government the necessary powers to operate our country. Each clause should be discussed.

Article I, Sec. 9 Powers Denied the U.S.

clause 1, twenty years' non-interference with slavery

clause 2, "writ of habeas corpus:" a citizen may not be held in prison without being formally charged with a crime.

clause 3, prohibits "ex post facto" laws

Article I, Sec. 10 Powers Denied the States

-THE PRESIDENCY Article II, Sections 1-4

-THE JUDICIARY Article III Sections 1-3

INTERSTATE RELATIONS Article IV, Sections 1-4

-Amending Process Article V

-FEDERAL CREDIT AND FEDERAL SUPREMACY Article VI

-RATIFICATION Article VII

-The main objection among people who opposed ratification of the document that was adopted on September 17, 1787 was the absence of a statement of individual liberties. While some proponents thought such language was not necessary, others were convinced of the inclusion of such a statement. Ratification of the Constitution may well have been jeopardized had it not been for assurances that the document would be so amended. Thus, in 1791 the Bill of Rights (Amendments I-X were adopted. Actually, the First through the Eighth Amendments are what is strictly referred to as the Bill of Rights.)

-FIRST AMENDMENT, FREEDOM OF OPINION

Are there limits to any of the freedoms mentioned in this section? May an individual yell "FIRE" in a crowded theater when no such emergency exists?

May a person speak falsehoods about a private citizen?

May a person speak falsehoods about a public official?

Is a newspaper publisher allowed to print anything he feels appropriate?

May an individual practice a religious ritual that violates the rights of others?

Where does one person's rights begin and the other's end?

Do people have the right to assemble to protest in a peaceful manner?

When may the right to assemble be suspended?

-SECOND AMENDMENT, RIGHT TO BEAR ARMS

-THIRD AMENDMENT, QUARTERING OF TROOPS

Before the Revolution British troops were quartered in private homes. This is probably the cause of the inclusion of such a statement.

-FOURTH AMENDMENT, SEARCHES AND SEIZURES

This, too, was probably in reaction to pre-Revolutionary War experiences.

-FIFTH AMENDMENT, RIGHTS OF ACCUSED PERSONS

-SIXTH AMENDMENT, RIGHTS OF ACCUSED PERSONS

-SEVENTH AMENDMENT, SUITS AT COMMON LAW

-EIGHTH AMENDMENT, BAILS, PUNISHMENTS

BIBLIOGRAPHY FOR TEACHERS

Cohen, William, Schwarz, M. and Sobil, D. *The Bill of Rights: A Source Book* . Benziger Brothers, New York, 1968.

An excellent book for teachers who wish to pursue further questions concerning the Bill of Rights.

Farrand, Max. *The Framing of the Constitution* , Yale University Press, New Haven, 1913.

Though written almost 70 years ago, Farrand's book is still considered to be *the* source for students of the U.S. Constitution.

Hamilton, Jay and Madison. *The Federalist Papers* , introduction by Clinton Rossiter, New American Library, New York, 1961.

This collection of 85 essays by Hamilton, Madison and Jay is considered to be the most important work on political thought in the U.S.

Levy, L. W. *Essays On The Making of The Constitution* , Oxford Press, London, 1969.

Ten essays by noted historians.

Lewis, John D. *Anti-Federalists vs. Federalists* , Chandler Pub., Scranton, Pa., 1961.

A collection of selected documents which illustrate the ideas and the men that defended them.

MacDonald, Forrest. *We The People*, University of Chicago Press, Chicago, 1958.

Rossiter, Clinton. *1787: The Grand Convention*, MacMillan, New York, 1966.

An easily read book which sets the scene for the Convention, takes the reader to meet the men who attended, make the reader "witness" to these proceedings. A good source for teachers.

BIBLIOGRAPHY FOR STUDENTS

Commager, Henry S. *The Great Constitution* , Bobbs-Merrill Pub., New York, 1961. 128 p. A solid story of the U.S. Constitution. Heavily historical writing. A good book for young readers.

Daugherty, James. *Poor Richard*, Viking Press, New York, 1941. 160 p. A classic. The reading is easy. A classic,

Daugherty, Sonia. *Ten Brave Men* , Lippincott & Co., Philadelphia, 1951. 200 p. Biographies of Patrick Henry, Thomas Jefferson and Benjamin Franklin, among others of earlier and later periods.

Douty, Esther M. *Under the New Roof* , Rand McNally & Co., New York, 1966, 279 p. Biographies of lesser-known poets, writers of the late 18th, early 19th century U.S. Offers "a view from below", c. 1780-1812.

Fritz, Jean. "What's the big idea, Ben Franklin?", Coward, McCann & Geoghegan, Inc. New York, 1976. 47 p. An amusing book by an author who has much fun writing for young readers. This and her other books are great for the reluctant reader.

Harley, Francis C. *The Key to the U.S. Constitution* , National Institute of Public Education, Washington, D.C., 1940. 40 p. This booklet, written more than 40 years ago, offers side note clarifications of each part of the U.S. Constitution. It may be of use to note changes in thought since that time.

Hayman, LeRoy. *What You Should Know About The U.S. Constitution* , Four Winds Press, New York, 1966. 199 p. A straight-forward historical piece on the framing of the Constitution.

Johnson, Gerald W. *The Supreme Court* , Morrow & Co., New York, 1962. 122 p. Johnson writes as clearly as possible on the power of the highest court in our land. Discusses role and significant changes in the Supreme Court's function. Johnson wrote two other books, *The Congress* and *The Presidency*.

Kelly, Frank. *Your Freedoms: the Bill of Rights* , G. P. Putnam's Sons, New York, 1964. 190 p. An excellent book for young readers who would enjoy further readings on individual rights. Some poignant discussions of pertinent amendments.

Meyer, Edith. *Champions of Four Freedoms* , Little, Brown & Co., Boston, 1966. 300 p. Includes some writings of Madison, Jefferson and George Mason.

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