2.0 | The Constitution and Constitutional Government

American support for the Constitution is so strong that it has been described as reverence for a sacred text that is, along with the Declaration of Independence, the foundation of American civil religion that treats these founding documents as *American Scripture*. Americans are also very critical of politics, political parties, government in general. Is the Constitution, which created the political system, at least partly to blame for the modern system of government and politics? This chapter examines the Constitution and the system of government that it created. The primary goals are to

- Describe the origin and the development of the constitutional system of government;
- Explain the functions of a constitution; and
- Assess how the system of constitutional government works today. This includes comparing how it was intended to work with how it actually works today, and comparing the Constitution with the constitutions of other countries.
The main theme of the chapter is that there is tension between the exceptionally strong commitment to the Constitution as a sacred political text and the strong, almost constant pressures to change and adapt to the modern world in a country whose national identity is defined by political, economic, social, technological, and scientific change. The tensions between continuity—remaining true to basic founding principles and political ideals and values—and change—the need to adapt to meet contemporary needs and desires and conditions—exist in all political systems. But the tension between desiring to stay true to founding values while responding to a dynamic, changing world is especially strong in the U.S. because of the strong commitment to the Constitution and the values it embodies. The commitment to founding values is a kind of legal fundamentalism. It gets stronger during times of great change, challenges, and crises. In fact, a recurring theme in American politics is the belief that contemporary problems can be solved by “going back to the future,” by reviving the nation’s founding values and the original understanding of how government and politics were intended to work.

The image below is Carin Goldberg’s variation of John Trumbull’s 1817 painting Declaration of Independence. The original painting, which was commissioned by Congress, did not have the Christ figure.

2.1 The Constitution and Constitutional Government

A constitution is a governing document that sets forth a country’s basic rules of politics and government. Constitutions are today almost universally recognized as an appropriate foundation for a political system, therefore most countries have constitutions. The expectation that a modern political system will have a constitution originates from
the political belief that constitutional government is a good form of government—that constitutional government is a legitimate, rightful, or appropriate form of government. Constitutions are today considered essential for good government because they promote the rule of law, government accountability, and political legitimacy. As a basic law, a constitution provides the foundation for the rule of law, the expectation that government power must be based on law. The rule of law makes it possible to hold government officials legally accountable for their actions. The rule of law thereby fosters the sense of political legitimacy—the public acceptance of government as the appropriate authority. Political legitimacy is important in a democracy because people are more likely to accept government and obey law if it is considered legitimate.

Constitutional government is government according to the rule of a basic or fundamental law. Constitutional government is not merely government based on the rule of law. It is government based on a particular kind of the rule of law: the rule of a basic or fundamental law. The constitution provides the foundation for the system of government. Political systems based on constitutional government have a legal hierarchy of laws. In the U.S. system of constitutional government, the hierarchy of laws includes constitutional law, legislative or statutory law, and administrative or regulatory law. The legal hierarchy means that not all laws are created equal. Constitutional law trumps the other kinds of laws. Legislation—statutes that are passed by Congress or state legislatures—cannot conflict with the Constitution. Administrative law—the rules and regulations that are created by administrative or bureaucratic agencies—cannot conflict with the legislation that created and authorized the administrative agency or the Constitution. The Constitution is the basic or fundamental law; it establishes the basic framework of government, allocates government powers, and guarantees individual rights. The Constitution cannot be changed by majority vote. Statutes can be passed by majority vote. Statutes are considered ordinary laws because they can be created or changed by simply majority vote. The Constitutional law is basic or fundamental law: constitutional amendments require super majority votes: two-thirds vote to propose an amendment and three-quarters vote to ratify an amendment. Diagram 2.1 below illustrates the hierarchy of laws in the U.S.
2.2 | Rule of Law

The rule of law (ROL) is defined as the principle that governmental authority is exercised only in accordance with public laws that are adopted and enforced according to established procedures. The principle is intended to be a safeguard against arbitrary governance by requiring that those who make and enforce the law are also bound by the law. Government based on the rule of law is contrasted with government according to the rule of man. The rule of man describes a political system where government officials determine their own powers without reference to pre-existing laws.

The idea of government according to the rule of law has ancient roots. One source is classical Greek and Roman political thought. The writings of the ancient Greek political philosophers Plato and Aristotle described and analyzed different forms of good and bad government. Plato believed that the best form of government was the rule of man, specifically rule by a philosopher-king. He described a philosopher-king as a wise and good ruler—think of someone like Solomon, a wise person who not only knew what to do but was a good person who could be trusted to do what is right. Plato believed that rule by such a philosopher-king was the best form of government because the wise and good leader would be free to do what was right without being limited by laws or other government institutions with which power was shared.

Aristotle described a good form of government as one with institutions and laws. His description of a good form of government is more closely identified with the modern concept of government according to the rule of law. For example, Aristotle’s good government was less dependent on a leader’s character. He described a system of government that did not depend on getting a leader as good and wise as Solomon. Aristotle made government power less personal and more institutional: a leader’s power was based on the authority of the office held rather than personal attributes such as physical strength, charismatic leadership, heredity or blood-lines, or some other personal attribute.

Western thinking about the rule of law also includes English and French political philosophers. The English political philosopher Samuel Rutherford’s *Lex, Rex* (1644) advocated using law (*Lex*) to control the power of a monarch or other ruler (*Rex*). The English political struggles to bring the king under the law influenced American thinking about good government. The French political philosopher Montesquieu’s *The Spirit of the Laws* (1748) provided the American Founders with specific ideas about how to create a system of government that guarded against the abuse of power. Montesquieu’s main contribution to the U.S. system of constitutional government is the principle of the separation of powers—dividing government into three branches (the legislative, the executive, and the judicial branches).

During the colonial and revolutionary eras, Thomas Paine’s *Common Sense* (1776) drew upon these sources for inspiration about how law could be used to control the power of the king, and indeed all government power. In this sense, Paine’s political theory reflected the development of the rule of law to displace the rule of man. According to Paine,

... the world may know, that so far as we approve of monarchy, that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law OUGHT to be King; and there ought to be no other.
This was an extremely bold assertion—for which a person could lose one’s life. Thomas Paine earned his reputation as a radical for claiming that the king was not the sovereign ruler—that the king was not above the law but rather subject to the law. This claim could be considered treason, for which the penalty was death. It was also revolutionary because it challenged the English monarchy’s claim to the divine right to rule. One of the best statements of what the rule of law meant to the Founders is John Adams’ statement in *The Constitution of the Commonwealth of Massachusetts*:

> “In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.”

(*The Constitution of the Commonwealth of Massachusetts*, Part The First; Art. XXX)

Support for the rule of law continued to develop during the 19th century. The legal scholar Albert Venn Dicey’s *Law of the Constitution* (1895) how it meant that everyone was under the law and no one was above it:

> “... every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. [Appointed government officials and politicians, alike] ... and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person.” (at 194)

### 2.3 | Is the Rule of Law Part of an American Creed?

The rule of law has become so important in American thinking about government that it is considered part of an *American Creed*. A creed is a statement of basic beliefs. The American Creed refers to the widely-shared set of political beliefs about the country’s basic governing principles: the rule of law; popular sovereignty; checks and balances (principally the separation of powers and federalism); individual rights; and judicial review.
Most governments today are at least officially committed to the ROL even if they do not live up to the ideal. The importance of the ROL is reflected in the fact that non-governmental organizations (NGOs) such as the World Bank consider it an essential condition for political, social, and economic development. The World Bank’s Law & Development/Law and Justice Institutions Programs link the ROL with national development. The almost worldwide acceptance of the ROL as a basic principle of governing has made law one of the factors determining whether a government is legitimate. ROL values make government action authority rather than power. The ROL gives government action legitimacy. In Western political development is closely related to the development of law as an alternative to the traditional sources of power and authority: heredity or family blood lines; the divine right to rule; or personal charisma (the strongman appeal).

2.31 | Constitutional Democracy

The U.S. is commonly called a democracy or a republic but it is actually a constitutional democracy or constitutional republic. The constitutional limits the democracy! The Constitution limits democracy as defined as majority rule. Congress may pass popular laws that ban flag burning or punish radical political speech or prohibit certain religious practices but even laws that have widespread public support can be declared unconstitutional. In the U.S. legal hierarchy, the Constitution trumps statues (even if they are popular). Democratic politics may be about popularity contests and majority rule but constitutional law. The Bill of Rights protects individual rights from majority rule. In fact, the Constitution is a counter-majoritarian document in the sense that it cannot be changed by a simple majority vote. Changing the Constitution requires extra-ordinary majorities. A constitutional amendment requires a two-thirds vote to propose an amendment and a three-quarters vote to ratify it.

2.32 | Three Eras of Development

American government can be divided into three eras or stages of political development: the founding era; the development of the system of government; and the emergence of the modern system of government.

- The founding era includes the colonial experience culminating with the Declaration of Independence and the Revolutionary War; the Articles of Confederation, which was the first form of government; and the creation of the republican system of government in 1787.

- The development era is much longer and not as clearly defined as the founding era. It includes the early 1800s when the Marshall Court (1801–1835) issued landmark rulings that broadly interpreted the powers of the national government; the post-Civil War constitutional amendments that abolished slavery, prohibited denial of the right to vote on account of race, and prohibited states from denying equal protection and due process of law; and the Progressive Era (from 1890 to around the end of WWI) policies regulating monopolies and working conditions (e.g. enacting child labor laws, workplace safety laws, and minimum wage and
maximum hours laws). These developments changed the system of government and politics. Political parties were organized. The national government’s power was expanded. And the political culture changed. There was an increased expectation of the right to participate in politics and greater popular control over government.

- The modern era of American government is usually traced to the 1930s response to the Great Depression. The Great Depression was a national—indeed, a global—economic crisis that the American public expected the national government to address. The development of a national economy further strengthened public expectations that the national government was responsible for managing the economy. The public began to look to the federal government for solutions to problems. Organized crime was perceived as a national problem that required federal action. World War II and the subsequent Cold War also increased the power of the national government, which has primary responsibility for foreign affairs and national defense. The creation of a social welfare state and a national security or warfare state changed politics and governance. It changed the distribution of power between the national and state governments, it expanded the power of the presidency, contributed to the rise of the administrative state—the federal bureaucracy that Americans love to hate.

The following sections examine the founding era. The development and modern eras are examined in greater detail in the chapters on congress, the president, the judiciary, and federalism.

2.4 | Founding Era

2.41 | Colonial Era

People came to the new world primarily from England and Europe for a variety of reasons. Some came looking for greater political freedom. Some came for economic opportunity with the promise of free land. Some were entrepreneurs who saw the New World as a place to make money. Some were seeking a new start in life. Some fled religious persecution in their home land and were searching for freedom to practice their religion. In the 16th and 17th centuries, English joint-stock companies were formed under charters from the crown to promote commercial and territorial expansion in North America. The Virginia Company of London founded the Jamestown settlement in 1607. In New England, the Massachusetts Bay Company charter described explicitly religious political purposes. The First Charter of Virginia (1606), The Mayflower Compact (1620) and The Charter of Massachusetts Bay (1629) are documentary evidence of the colonial era belief that politics and government had explicitly religious purposes. The colonial experience with charters creating communities also provided colonists with personal experiences creating or “constituting” governments. These experiences are one reason why the social contract theory of government has been so influential in shaping American thinking about government.
Several factors fostered a spirit of independence in the colonies. The first factor is the **character** of the people who came to “the New World.” In the seventeenth century, crossing the Atlantic Ocean was a long, difficult, and dangerous undertaking. The people who made the trip tended to be the hardier, more adventurous, or more desperate individuals, so the colonies were populated with people who had an independent streak. A second factor is **geography**. The large ocean between the rulers and the ruled created conditions that allowed a sense of colonial identity to develop. King James I (1600-1625) increased the independent spirit by allowing the colonists to establish assemblies such as the Virginia House of Burgesses. Each of the 13 colonies had a constitution. These conditions fostered expectations of individual liberty in self-government, religious practices, and economic activity. By the mid-1700s, local traditions and distance weakened colonial ties to the Crown. A third factor is **ideas**. The political philosophy of the Age of Enlightenment included an emphasis on reason, self-government, liberty, and equality. These ideas appealed to the colonists’ and were used to challenge British imperial power in the New World.

A fourth factor is **economics**. The colonial economies differed from the British economy. Changes in the economic ties between England and the colonies increased support for political independence. During the colonial era the British economic policy was mercantilist. **Mercantilism** is the theory that the government controls and directs economic activity, particularly foreign trade, in order to maximize the state’s wealth. The British controlled colonial industries and trade to increase imperial wealth. The British prohibited their colonies from trading with other imperial powers like the Dutch to ensure that British colonial gold and silver stayed within the empire. The American colonies initially benefited economically from this mercantilist arrangement. They had a buyer for the raw materials and other goods produced by the colonies. The American colonies produced wood for ships for the British fleet as well as tobacco, cotton, rice, and sugar for export. In return, the colonists could buy finished products like ships and rum. Mercantilism was responsible for the **triangle** trade: slaves were brought to America from Africa; sugar, cotton, and tobacco were exported to England; and manufactured goods, textiles, and rum were sent to Africa to pay for slaves.

This mercantilist arrangement changed as the colonial economy developed. The colonies started chafing against mercantilist policies as they believed they were no longer receiving competitive prices for their goods. Furthermore, as the New England economy developed into a manufacturing and trade economy, New England started taking England’s place in the trade triangle, thereby reducing the need for the British Empire.
2.43 | Trade and Taxation

Despite the complaints about trade policies, the colonists were generally content with British governance until the Seven Years War (1756—1763). The long and expensive war with the French and Indians ended with the British in control of most of North America. The colonists thought this would open up even more cheap frontier land for them to settle but the British had other ideas. The Crown decreed in 1763 that there would be no further westward movement of British subjects because the Crown did not want to pay to defend settlers against Indians. The British Parliament taxed the colonists to pay for the very expensive war. The Sugar Act of 1764 taxed sugar, wine, coffee, and other products commonly exported to the colonies. The colonists resented these taxes and began to cry “no taxation without representation!”

Parliament further angered the colonists by passing the Stamp Act in 1765, which required all printed documents to bear a stamp. The printer had to pay for the stamp. In the same year, the Parliament passed the Mutiny (Quartering) Act that forced colonists to either provide barracks for British soldiers or house them in their homes. The colonists, who were already mad about paying taxes, started protesting that they have to pay for soldiers to live in their homes. The Sons of Liberty, which were organized by Samuel Adams and Patrick Henry to act against the Crown, looted the Boston tax collectors home. Violence spread throughout the colonies and the stamp act became virtually unenforceable.

In 1767, Parliament enacted the Townshend Acts that imposed duties on many products including tea. The Sons of Liberty started a boycott which prompted the British to send troops to Boston. When British soldiers fired on a crowd of protesters, killing five people, the event was depicted as the Boston Massacre. Paul Revere portrayal of the British captain ordering the troops to fire on the crowd inflamed colonial passions.
In 1772, still upset by the tea tax, Samuel Adams suggested the creation of Committees of Correspondence to improve communication among colonists. By 1774, twelve colonies had formed such committees which organized protests prior to the revolution and coordinated actions during the revolution. Despite colonial opposition, Parliament passed another tax on tea in 1773 and, consistent with mercantilist economic policy, granted a monopoly to the East India Company. The colonists responded by dumping tea into Boston Harbor. The “Boston Tea Party” enraged King George, who declared that it was time to force the colonies to fall into line. The King persuaded Parliament to pass the Coercive Acts or the Intolerable Acts, which allowed Britain to blockade Boston harbor and placed 4,000 more soldiers in Boston. These actions increased resentment on both sides of the Atlantic. All but one colony (Georgia) agreed to send delegates to a new continental congress to present a united message to the King.

2.44 | First and Second Continental Congresses

The First Continental Congress that met in Philadelphia in September and October 1774 consisted of 56 delegates from every colony except Georgia. They adopted a statement of rights and principles, including colonial rights of petition and assembly, trial by peers, freedom from a standing army, and the selection of representative councils to levy taxes. The statement provided that the Congress would meet again in May 1775 if the King did not agree with their requests. King George refused the request of the Continental Congress. A second Continental Congress called a meeting in May of 1775, but before the delegates could meet fighting broke out at Lexington and Concord, Massachusetts. When the delegates at the Second Continental Congress convened on May 10, 1775 the atmosphere was more hostile toward Britain. King George sent 20,000 more troops. The Revolutionary War had begun in earnest.

Think About It!
Anti-war movements in the Revolutionary Era? Not everyone in the colonies supported the Revolutionary War. And not everyone in Britain thought it was a good idea to send troops to put down colonial rebellions. See the British political cartoon from 1775 describing King George’s decision as being led by obstinacy and pride:
http://www.loc.gov/pictures/item/97514880/
The Declaration of Independence was written to justify the colonists’ taking up arms to overthrow an existing political system. It is a philosophical defense of the right of revolution. Thomas Jefferson, a Virginia farmer and lawyer, was the main author of the Declaration of Independence. The language that Jefferson used in the Declaration reflected John Locke’s words and ideas about natural or God-given rights, popular sovereignty, the social contract theory of government based on the consent of the governed, and even a people’s right to revolt against an unjust government. The following language from the Declaration of Independence explains these ideas:

“When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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....”

The Declaration acknowledges that people should not be quick to revolt against a government. It is only after “a long train of abuses” intended to reduce the people to despotism that “it is their right, it is their duty, to throw off such government, and to provide new guards for their future security...” The Declaration listed the King’s actions
that aimed to establish “absolute tyranny” over the states. It then declared “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...”

Think about it!

Does the spirit of the Declaration of Independence give Americans the right to revolt against the government?

2.5 | Articles of Confederation

The first American form of government was the Articles of Confederation. The Continental Congress approved the Articles of Confederation and they took effect in 1781 upon ratification by all thirteen states. A confederation is a loose association of sovereign states that agree to cooperate in a kind of voluntary “league of friendship.” The Second Article of Confederation provided that “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.” The Third Article provided that “The said States hereby severally enter into 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 each other, 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.”

In a confederation, political power is decentralized because the central (or national) government is weak and the state or regional governments are strong. The Articles of Confederation had major defects which were exposed during the Revolutionary War. The defects became more apparent after the Revolutionary War when the states no longer felt the need to work together to face the threat of the common enemy. The Articles had five major defects related to taxing power, an executive official, commerce, amendment, and the power to maintain domestic order.

- **Taxing.** The national government did not have the power to tax, which meant that congress (the main institution of the national government) had to beg the states to pay for the war and other government functions. It is hard today to imagine a government without the power to tax.

- **Executive.** The Articles did not provide a chief executive. The Revolutionary War was fought against a monarchy (an executive figure), and the natural reaction of the Founders was to create a new political system which did not have a single
leader or executive figure who could become a monarch. The Declaration of Independence lists the colonists’ grievances against King George. The Revolutionary War was fought against a monarch who was accused of tyrannical abuse of power. It was logical for the Founders to create a form of government where a representative body, a legislative institution more closely identified with democratic government, had the most power.

- **Commerce.** The Articles did not give the national government power much economic power. The states had power to regulate interstate and foreign commerce. Some states enacted laws which benefited economic interests in their state and discriminated against out of state or foreign business interests. These kinds of economic protectionist legislation limited trade. States could also coin money. Critics eventually saw state power over commerce and economics as a barrier to the development of a national economy and advocated giving the national government power over interstate and foreign commerce.

- **Amendment.** One of the most important challenges facing any political system is how to provide for change in response to different economic, social, or political circumstances. The Articles could be amended only by unanimous consent of congress and the state legislatures. This made it very difficult if not impossible for the government to adapt to circumstances that it faced.

- **Domestic Order.** Because power was decentralized, the national government did not have power to act to ensure domestic tranquility and order. Maintaining good public order is one of basic responsibilities of any government. The national government’s ineffuctual response to domestic disturbances such as Shays’ Rebellion and secessionist movements in some parts of the country exposed the weakness of the national government under the Articles.

The most famous of these domestic threats to public order were armed marches in Massachusetts. In the fall of 1786 and winter of 1787, Daniel Shays, a Revolutionary War veteran, lead around 1500 supporters on an armed march to stop mortgage foreclosures. Economic conditions were bad. High state taxes and high interest rates caused farmers to face bankruptcy and mortgage foreclosures. Shays and his supporters marched on the government to demand that it provide them with some relief from the bad economic conditions. The State of Massachusetts appealed to the national government for help in putting down Shays’ Rebellion, but the national government could not act without the consent of the other states, which rejected the request for money to establish a national army. Order was finally restored when the governor of Massachusetts called out the state militia.
Shays’ Rebellion alarmed government officials and political leaders who believed the national government needed to be given more power to respond to such threats to good public order. A constitutional convention was held in the summer of 1787 to “revise” the Articles of Confederation to correct its defects. However, the delegates to the convention decided to abolish the Articles of Confederation and create a new form of government. After lively debate, the delegates drafted a new constitution which created a new system of government, a federal republic with a stronger national government. Modern Americans tend to forget the central role that Shays’ and other “unruly” individuals played in the creation of the republic. (Holton 2007) Radical popular action has been a part of the American political experience and tradition from the founding of the republic, through the civil war fought to preserve the union, to modern efforts to create a government that is responsive to the people.
2.5 | U.S. Constitution

Although the delegates to the Constitutional Convention met in secret, the records of the convention debates reveal lively debates about what form of government to create. The convention debates and the subsequent debates over ratification of the new constitution were generally organized as a debate between the Federalists and the Anti-federalists. The Federalists supported ratification because they believed that the country needed a stronger national government. Their arguments for ratification were made in a series of famous essays written by James Madison, Alexander Hamilton, and John Jay called The Federalist Papers. The Anti-federalists opposed ratification of the Constitution because they believed that it gave the national government too much power. They preferred a political union where the states had more power. The Anti-federalists tend to be overlooked because they lost the argument. The Constitution was ratified. But the Anti-federalist Papers are worth reading in an era when American politics includes criticism of the size of the federal government.

The Declaration of Independence and the Constitution were written for two very different purposes. The Declaration is a philosophical defense of a people’s right to overthrow an unjust government. The Constitution is a practical, working document that was written to create a more effective form of government. The Preamble of the Constitution states that “We, the people…” establish
the Constitution “in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity…” The Constitution created a new form of government, a “more perfect Union” that was more capable of accomplishing the things that the people expect government to do. Alexander Hamilton explained this purpose in Federalist Number One:

AFTER an unequivocal experience of the inefficiency of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world.

Considering the passionate motives of those who supported or opposed the new Constitution, Hamilton worried that a spirit of self-righteous passion would make compromise and cooperation difficult, and that the intolerant spirit would tempt one side to attempt to dominate the other side by physical force rather than the force of argument. In To Secure These Rights: The Declaration of Independence and Constitutional Interpretation (1995), Douglas Gerber argues that the purpose of the Constitution was to effectuate or make possible the Lockean liberal principles that were asserted in the Declaration of Independence. The Declaration asserted the existence of certain unalienable or natural rights; the Constitution created a system of constitutional government that provided the means to achieve the rights and protect them.

The main body of the Constitution establishes the basic framework of government. It provides for a republican system of government; elections and representation; and it grants and limits the powers of government. Article I provides the powers of the legislative branch. Article II provides the powers of the executive branch. Article III provides the powers of the judicial branch. The first ten amendments to the Constitution, commonly referred to as the Bill of Rights, provide for individual rights. The Bill of Rights includes important limits on the powers of government.

2.51 | Three Functions of the Constitution

The U.S. Constitution does three things. It establishes the basic framework of the government; it allocates government powers; and it declares or guarantees individual rights.

Establish the basic framework of government. The Constitution creates a republican form of government, a federal system of government, and a system of government with the separation of powers. A republic is a type of democracy. It is an indirect democracy. Elected representatives make public policy for the people. The people control government by electing government officials.

A federal system is a two-tiered system of government where power is divided between a central government—the national or federal government—and the regional or state governments. Federalism is a geographic division of power between the national government and the state governments. The actual division of powers is specific in some
areas of public policy. For instance, the national government has exclusive power over interstate commerce, coining money, foreign affairs, and declaring war. But there are other areas of public policy where both the national and state governments make policy. These include crime, education, the environment, and taxes. The division has also changed over time as the federal government became involved with more and more areas of public policy. Federalism is part of the system of institutional checks and balances whereby the national and state governments check one another’s powers.

The separation of powers is the functional division of power among the legislative, executive, and judicial branches of government. The separation of powers was created for two reasons. The first reason is the system of institutional checks and balances. Dividing power among three branches was intended to prevent the concentration of power in the hands of one individual or one institution. The separation of powers is often cited as evidence that the Founders intended to create an inefficient system of government.

The three branches were not intended to be completely independent of one another. The French political philosopher Montesquieu, who was the main inspiration for the tripartite separation of powers, believed that each branch had to be sufficiently independent of the others so that one branch could not create, or abolish, any other branch, but not completely separate of each another. The system of institutional jealousy depends on some overlap so that each branch will guard against another branch poaching on its turf. Congress’ power to enact laws can be checked by the president’s veto. The president’s veto can be overridden by a two-thirds majority vote in both houses of congress. The president is delegated power as commander-in-chief, but only congress has the power to declare war and to raise and support an army. The president has the power to nominate federal judges, ambassadors, and other high government officials, but the nominations must be confirmed by the Senate. The president has the power to nominate federal judges but they must be confirmed by the Senate. Congress determines the federal judiciary’s budget and the organization of the federal court system. Over time, the president has become such an important participant in the legislative process that it is common today to refer to the administration’s budget or the administration’s bill or even presidential legislation (e.g., executive orders). In order to understand how government works today, it is necessary to understand presidential legislation and judicial policy making, two terms that the separation of powers did not originally provide for.

The second reason for the separation of powers is that it contributes to good governance. The Founders considered the separation of powers a modern, innovative, political scientific contribution to good government. In Federalist 47, Madison praised the “celebrated” Montesquieu for popularizing the “invaluable precept in the science of politics.” Each of the three branches is designed with a special institutional competence that makes a unique contribution to good government. Congress is designed as a representative institution that makes laws. The presidency is designed for both decisive action in emergencies and to fairly implement the laws passed by Congress. The judiciary is well-designed to decide conflicts involving the interpretation of the laws. The legislative branch’s institutional competence is representation of districts, states, and interests, deliberation, negotiation, and ultimately compromise to make laws for the
nation. The executive branch’s institutional competence is action, the ability to act swiftly when needed, and the just administration of the laws passed by Congress. The executive is to ensure that the laws passed by Congress are uniformly applied, not enforced selectively against the minority party, racial or ethnic minorities, or the political opponents of the people who made the laws. The judiciary’s institutional competence is dispute resolution. This includes both conducting trials and interpreting the laws when there are legal disputes about what the laws mean.

Think About It!
Was the separation of powers intended to make government inefficient, or was it intended to make government better?

The Founders intended the legislative branch to make laws, the executive to carry them out, and the judicial branch to interpret the laws. But this is not exactly the way the system works. The modern national government does have three separate institutions but they actually share law making power. For instance, the terms presidential legislation and legislating from the bench are commonly used to describe what the modern presidency and judiciary actually do. Descriptions of how the modern government works typically include legislative policymaking, executive policymaking, and judicial policymaking.

The study of comparative government and politics reveals that the separation of powers is not essential for democracy. Modern democracies include presidential government and parliamentary government. The separation of powers is more common to presidential systems than parliamentary systems. Parliamentary systems typically fuse the legislative and executive powers by making the prime minister—the executive governing officer—an elected member of the legislative body or parliament. In parliamentary systems, one institution, the elected legislature or parliament, is the supreme governing body; the other institutions (the prime minister or the courts) are inferior to it. In separation of powers, each branch is largely independent of the other branches in the sense that the other branches are not created by, or dependent on, another branch for its existence. Congress cannot abolish the judiciary; the president cannot abolish congress. In parliamentary systems where the legislative and executive powers are fused, the people typically elect the members of the representative assembly (i.e., the parliament), who then select the prime minister from among the body’s members. The fact that a prime minister is selected by the legislative body, and is an elected member of that body, fuses rather than separates institutional power.

In the U.S., Congress does not select the president, and the president is not a member of congress. The president is selected independent of Congress. In a parliamentary system, the tenure of a prime minister selected by a legislature is likely to end when the term of the legislature ends and a new parliament selects a new executive. In a presidential system the executive’s term may or may not coincide with the legislature’s term. The legislative and executive powers can be informally fused by party loyalty. Party loyalty means that members of Congress may be more loyal to a president of their
party than to Congress. Party loyalty can undermine the system of institutional checks and balances.

Allocate Power. The second function of a Constitution is to allocate power. The Constitution both grants and limits government powers. The main grants of power to the national government are provided in Article I (legislative), Article II (executive), and Article III (judicial). Article one I, Section 8 provides a list of powers delegated to Congress. The main limits on the power of the national government are provided in the Bill of Rights. The challenge when writing a constitution is to strike the right balance between granting and limiting government power: a government that is too weak can be ineffectual or result in a failed state; a government that is too strong can threaten individual liberty.

Guarantee Individual Rights (or Freedoms). The third function of a constitution is to provide for individual rights. The U.S. Constitution, the 50 state constitutions, and the constitutions of other countries include provisions declaring or guaranteeing rights. In the U.S. Constitution, the Bill of Rights provides for freedom of speech, religion, and press, as well as providing protection against unreasonable search and seizure, due process of law, the right to a trial by jury, and protection against cruel and unusual punishment. These constitutionally protected rights are sometimes called civil liberties. Civil liberties are distinct from civil rights, which is a term that usually refers to individual rights that are provided in legislation rather than the Constitution.

Civil Liberties are the constitutional rights that limit the government’s power to restrict individual freedom. Civil liberties are often called individual rights or individual liberties because they limit government power over individuals. Civil liberties include the First Amendment guarantees of freedom of religion, speech, and press; the Second Amendment right to keep and bear arms; the Fourth Amendment right against unreasonable search and seizure; the Fifth Amendment guarantee of due process of law; the Eighth Amendment prohibition against cruel and unusual punishment; and the Fourteenth Amendment guarantee of equal protection of the laws. Some of the most important civil liberties provisions are described in very general language: the protection against unreasonable search and seizure; the guarantee of due process of law; and the prohibition against cruel and unusual punishment. The meanings of these vague words are not precise. People disagree about their meaning. As a result, conflicts between individuals who claim a civil liberties freedom from government restriction and government claims that they have the power to restrict the freedom are often decided by the Supreme Court.

The term civil rights is often used generically to refer to individual rights and individual liberties. But there are two significant differences between civil liberties and civil rights. First, civil rights are statutory rights. They are provided in legislation, not the Constitution. Second, civil rights protect individuals against discrimination. Civil rights laws promote equality by prohibiting discrimination on the basis of race, gender, religion, ethnicity, or some other status or characteristic. Two examples of landmark civil rights laws are the 1964 Civil Rights and the 1965 Voting Rights Act.
When the Constitution was submitted to the states for ratification, it did not include a provision declaring or guaranteeing individual rights. The Federalists, who supported the Constitution, argued that a bill of rights was unnecessary because the powers of the newly formed national government were so carefully limited that individual rights did not have to be specifically mentioned in the Constitution. In fact, some Federalists argued that adding a bill of rights could actually be dangerous because listing specific individual rights that the government could not limit would inevitably be interpreted to mean that the government could limit any rights that were not actually mentioned in the bill of rights. Nevertheless, legislators in some states threatened to withhold ratification of the Constitution unless a bill of rights was added to the document.

The Anti-federalist George Mason, a constitutional convention delegate from Virginia, opposed the new constitution because it did not include a bill of rights. The Anti-federalist worries that the new constitution created a stronger national government but did not include a bill of rights threatened the ratification of the Constitution. In order to ease Anti-federalist worries, a bill of rights was proposed to limit the power of the national government. The first ten amendments were based on Mason’s *Virginia Declaration of Rights*. In 1789, the First Congress of the United States adopted the first ten amendments to the Constitution. These amendments were ratified by the required number of states in 1791. The following is an edited version of the first ten amendments to the Constitution (the Bill of Rights):

**First Amendment:** “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of the speech, or of the press…..”

**Second Amendment:** “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

**Fourth Amendment:** “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....”

**Fifth Amendment:** “No person shall...be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

**Sixth Amendment:** “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.....and to have the assistance of counsel for his defence.”

**Seventh Amendment:** “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...”

**Eighth Amendment:** “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.”
**Ninth Amendment:** “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

**Tenth Amendment:** “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.”

Until 2008, the Supreme Court had interpreted the Second Amendment as guaranteeing the states the power to maintain a well-regulated militia. As such, the Second Amendment was read as a federalism amendment: it protected the states from the federal government—particularly its military power. In *District of Columbia v. Heller*, the Supreme Court ruled that the Second Amendment guaranteed an individual right to keep and bear arms. As a result, the right to keep and bear arms has now been added to the list of civil liberties that individuals and organizations, such as the National Rifle Association, can use to challenge gun control and other regulatory policies enacted by the federal, state, or local governments.

Most of the provisions in the Bill of Rights apply to criminal justice. They list specific rights. The Ninth Amendment is different. It was added to the bill of rights to ease Anti-federalist worries that not listing a right mean that the right did not exist. What if the men who made up the list forgot to include a basic right? What if a future generation considered a right a fundamental right? The Ninth Amendment was intended as a statement that the Bill of Rights should not be read as an exhaustive list.

**2.53 Civil Rights and Civil Liberties**

The relationship between religion and politics is one of the most controversial issues in American politics. During the colonial era, government and politics had explicitly religious purposes. The *First Charter of Virginia* (1606), the *Mayflower Compact* (1620), and the *Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts* (1648), for example, describe government and politics as organized efforts to make people moral—as defined by organized religious beliefs. Some colonies had an established church—an officially recognized and government supported church. Massachusetts established the Congregational Church as the official church and some southern colonies established the Anglican Church as the official religion. Over time, the colonies moved away from establishing an official denomination and toward establishing Christianity or Protestantism.

The Constitution changed the relationship between church and state—or at least the relationship between religion and the federal government. Article VI of the Constitution provides that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” More important, the First Amendment prohibits Congress from making any law “respecting an establishment of religion or prohibiting the free exercise” of religion. The First Amendment guarantees freedom of religion, which includes the right of individuals and organizations to actively participate in politics, but it limits government support for religion. Political and constitutional debates involve providing public aid to religious schools, policies allowing or requiring organized prayer in public schools, religious displays of the Ten Commandments or crèches in public places, laws related to the teaching of evolution or creation science, and legislating morality. Civil liberties claims have been made to challenge the constitutionality of using
law to promote morality by regulating obscenity, to prohibit certain sexual behavior, and to define marriage as a relationship between one man and one woman.

### 2.6 | Constitutionalism

This chapter began with an acknowledgement that having a constitution is today almost universally accepted as the best form of government. But having a document called a constitution does not mean that a political system is committed to constitutional government. Constitutionalism refers to the public and government officials’ commitment to the values that are expressed in the Constitution. Without the commitment, a constitution is merely paper or words without much to back them up. With the commitment, a constitution acquires real political and legal force. Americans have an especially strong commitment to the Constitution. Support for the Constitution remains strong even in tough times of economic hardships, domestic disorder, or national security threats. In contrast, public support for the government varies a great deal, and in fact support for government institutions has declined over time. The enduring appeal of the Constitution and the belief in the founding values that are embodied in it (e.g., freedom; limited government; equality) remain a political constant even in times of great political change, conflict, and even turmoil. What explains the enduring appeal of the Constitution?

One explanation is that the enduring public support reflects a general commitment to the Constitution or to constitutional government rather than support for specific provisions of the Constitution or particular interpretations of them. This explanation is supported by studies of public opinion that reveal consistently low levels of knowledge about what is actually in the Constitution. A public opinion survey conducted by the Constitution Center revealed surprisingly low levels of public knowledge about the Constitution: less than five percent of the American public could correctly answer even basic questions about the constitution.

The consistently high levels of public support for the Constitution do not mean there is general consensus about what specific provisions of the Constitution actually mean. In fact, the general consensus supporting the Constitution masks political conflict about what specific provisions of the Constitution mean and how to interpret them. For instance, both conservatives and liberals profess support for the Constitution and the values embodied in it. But they consistently disagree about the government’s criminal justice powers, its economic regulatory powers, its moral regulatory powers, and its war powers. For instance, both sides in the debates about the role of religion in American government and politics appeal to the Constitution as supporting their side of the debate about school prayer.

Liberals and conservatives also disagree about how the Constitution should be interpreted. A Pew Research survey of public opinion about the Constitution revealed major differences between conservatives and liberals, an ideological divide that was so wide that it was described as a chasm. Conservatives believe the Constitution should be interpreted according to the original meaning of the words or the original intentions of those who wrote them. Liberals believe that the Constitution should be interpreted according to contemporary societal expectations. These differences reflect the tension between continuity and change, between adhering to certain beliefs and changing with
the times. Particularly during hard times or times of crisis, conservatives are apt to blame political problems on departing the republic’s political and constitutional founding values, and to call for a return to them as the solution to the problems.

2.61 | Relationship between the Constitution and the Political System

The relationship between the political system that was established by the Constitution and modern governance is both interesting and complicated. Public opinion reflects such strong support for the Constitution and such strong criticism of the government that it could be said that Americans love the Constitution but hate the government (that it created). Although it may seem surprising, venerating the Constitution can create governance problems. Reverence for the Constitution can create problems. Take, for example, constitutionalists. Constitutionalists believe the Constitution should be strictly or literally interpreted. Some religious constitutionalists believe that the Constitution was a divinely-inspired document. The belief that a document is divinely-inspired makes reasoned political analysis, including assessment of the problems of modern governance, difficult. Secular constitutionalists merely believe that the Constitution should be strictly interpreted. Some of the individuals who call themselves constitutionalists are advocates of the Tenth Amendment. The motto of these “Tenthers” is “The Constitution. Every Issue. Every Time. No Exceptions, no Excuses.” These constitutionalists believe the solution to the nation’s problems is to return to the original Constitution, not the Constitution as it has come to be understood. This is one of the main points of the Tea Party movement.

Political and legal scholars disagree about whether the nation’s problems can be solved by returning to the original understanding of the Constitution and how the government was intended to work. Appeals to return to “the” Founders views are misleading insofar as it presumes that there was one, single, unified voice. At a minimum there were basic differences between the Federalists and the Anti-federalists.

The bicentennial of the Constitution in 1987 produced a number of scholarly works that identified governance problems that could be traced to the Constitution, and recommended constitutional reforms to create “a more workable government.” Constitutionalists and some conservatives reject the argument that the constitutional design of government is flawed or that modern challenges require modernizing the Constitution. Those who advocate change write in the Jeffersonian tradition.

2.62 | Should Laws, Like Food Products, Have Expiration Dates?

Thomas Jefferson argued that laws, including the Constitution, should have sunset provisions. He thought that laws should last only twenty years—the lifespan of a generation—because one generation should not bind a succeeding generation. No society “can make a perpetual constitution, or even a perpetual law,” because just as the earth “belongs always to the living generation,” people are masters “of their own persons, and consequently may govern them as they please.” The constitution and laws “naturally expire at the end of 19 years.” the life span of a generation. Laws that are enforced longer are enforced as “an act of force, and not of right.” Jefferson did not think that the problem of one generation binding another could be solved by claiming that each succeeding generation’s decision not to repeal a law was tacit consent to it. This tacit consent might
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apply if the form of government “were so perfectly contrived that the will of the majority could always be obtained fairly and without impediment.” But no form of government is perfect. Representation is likely to be “unequal and vicious,” various checks limit proposed legislation, factions control government bodies and bribery corrupts them, and personal interests cause government officials lose sight of “the general interests of their constituents.” So practically speaking, “a law of limited duration is much more manageable” than one that needs to be repealed.4

This chapter began by describing references to the Constitution as a sacred text. Sanford Levinson is a legal scholar who is very critical of the constitutional design of American government. He also thinks that venerating the founding era and the system of government created by the Constitution is, ironically, not in keeping with the founding values of the republic. In “Our Imbecilic Constitution,” Levinson reminds us that the authors of the Federalist Papers advocated ratification of the new Constitution by “mock[ing] the ‘imbecility’ of the weak central government created by the Articles of Confederation.” Levinson scolds those who call the modern American political system “dysfunctional, even pathological” but fail to even mention the Constitution’s role “in generating the pathology.” According to Levinson, slavery, the Senate system of providing equal representation to North Dakota and California, the Electoral College, and the separation of powers, all created problems—but “the worst single part of the Constitution…is surely Article V, which has made our Constitution among the most difficult to amend of any in the world.” Amendment is so difficult that the mere discussion of possible reforms is considered a waste of time. He considers it unfortunate that “most contemporary Americans” have lost the ability to “think seriously” about whether the Constitution’s provisions for governance still serve us very well” and instead “envelope” the Constitution “in near religious veneration.”

Levinson blames the modern dysfunctional government on the decision to make the Constitution so hard to amend. Most of the 50 state constitutions are much easier to amend—fourteen states give the voters the opportunity call a constitutional convention at regular intervals; there have been more than 230 state constitutional conventions, and “each state has had an average of almost three constitutions.” Levinson describes the framers’ “willingness to critique, indeed junk, the Articles of Confederation” truly admirable, and he thinks that “we are long overdue for a serious discussion about [the Constitution’s] own role in creating the depressed (and depressing) state of American politics.”5

2.63 | Continuity and Change

The U.S. Constitution is the world’s oldest continuing governing document and it is a very brief document. The Constitution’s longevity is related to its brevity. The Constitution has lasted as long as it has partly because it is such a short document. It is a short document that is filled with general phrases describing government and politics. The Preamble declares its purpose as “to form a more perfect Union” and “establish Justice.” creating “a more perfect Union.” Article I gives Congress power to use whatever means “necessary and proper” to accomplish the things that Congress has power to do. The Bill of Rights has especially memorable but flowery phrases. The 5th Amendment prohibits government from denying any person due process of law. The 4th Amendment prohibits unreasonable searches and seizures. The 8th Amendment
prohibits **cruel and unusual punishment**. These general provisions of the Constitution allow for, or perhaps require, interpretation to give them concrete meaning, interpretation to determine how they are to be applied in specific instances. Interpretation is a way to informally change the meaning of the Constitution—to accommodate change without requiring formal amendment or an entirely new constitution. The short and general Constitution has endured for more than 200 years with only 27 amendments—and the first ten amendments were adopted as the bill of rights in 1791. This means that the Constitution has undergone only minimal formal changes despite more than two centuries of major political, economic, social, technological, and scientific changes.

Which raises a question: Is the Constitution, an Eighteenth Century document, still relevant to Twenty-first Century government and politics? It is. But the informal accommodation to reflect change means that it is no longer possible to read the Constitution to understand how modern American government and politics actually work. The following are just some of the major political developments that are not even mentioned in the Constitution.

- **Political Parties.** The Constitution does not say anything about political parties even though parties play a central role in politics and government. Parties have also changed the way the Electoral College works.
- **Corporations.** The Constitution does not say anything about corporations even though they are important economic organizations that the Supreme Court has said are “persons” for the purposes of the Fourteenth Amendment.
- **The Fed.** The Constitution does not say anything about the Federal Reserve Board even though “the Fed” is a very important government body with control over monetary policy.
- **The Fourth Branch.** The Constitution creates three branches of government but the development of the federal bureaucracy has created a fourth branch of government.
- **Presidential Government.** The Founders created a system based on legislative government but presidential power expanded over time and the system developed into presidential government.
- **Presidential Legislation.** This term applies to, among other things, executive orders and executive agreements as forms of presidential lawmaking.
- **Judicial Review.** The Constitution does not explicitly give courts the power of judicial review, but this implied power to review the acts of other government officials to determine whether they are constitutional has greatly expanded the power of courts.
- **The Congressional Committee System.** It is impossible to understand how Congress works without describing the committee system and the party leadership system.
- **The Sole Organ Doctrine.** This doctrine is one of the key concepts for understanding the modern president’s role in foreign affairs and national security policy.
- **A National-centered System.** The Founders created a state-centered political system, but the government has developed into a national-centered system.
Think About It!
Can a person read the Constitution to get a good understanding of how American government and politics work today?

Act on It!
Contact a local, state, or national government official (e.g., your member of Congress), and ask them whether they support any constitutional amendments.

2.7 | Comparative Constitutional Law

One way to better understand the U.S. Constitution is to compare it to other constitutions. The constitutions of the 50 states are very different than the U.S. Constitution. Among other things, the state constitutions are much younger, longer and more detailed than the U.S. Constitution. The constitutions of other countries are even more varied. The ready electronic access to the constitutions of other countries makes it easy to compare the constitutions of the countries of the world. Reading a country’s constitution to determine what form of government the country has, and to determine what civil rights and liberties it includes, provides insights into the political history of a nation. It is especially interesting to compare the civil rights and liberties provisions in the newer constitutions with those of older constitutions such as the U.S. Constitution because the U.S. played an important role in writing the constitutions of Germany and Japan after World War I and, more recently, the constitutions of Iraq and Afghanistan.

2.8 | Summary

This chapter examines the origins and development of the U.S. system of constitutional government. It includes the various factors that fostered colonial independence and the subsequent development of American government and politics, and the system of civil liberties and civil rights. Two main themes are the tension in American political culture between granting and limiting power, and the tension between continuity (preserving the original understanding of the Constitution and the founding era values) and change (adapting to the political, social, economic, and technological conditions of the times). One aspect of self-government is thinking about the system of government and politics so that the general public, as informed citizens, can answer two basic questions. How is it working for us? How can we help to form “a more perfect Union?”
2.9 | Additional Resources

2.91 | INTERNET SOURCES:

Primary documents are available at
http://www.loc.gov/rr/program/bib/ourdocs/Constitution.html


Paine, Thomas. 1776. *Common Sense*
http://www.ushistory.org/paine/commonsense/singlehtml.htm

http://www.lonang.com/exlibris/rutherford/

*The Constitution of the Commonwealth of Massachusetts*

The First Charter of Virginia (1606)
http://www.lonang.com/exlibris/organic/1606-fcv.htm

The Mayflower Compact (1620)
http://avalon.law.yale.edu/17th_century/mayflower.asp

The Charter of Massachusetts Bay (1629)
http://avalon.law.yale.edu/17th_century/mass03.asp

The Lawes and Libertyes of Massachusetts (1648)
http://www.commonlaw.com/Mass.html

The National Constitution Center: http://www.constitutioncenter.org/

The constitutions of countries of the world: www.constitution.org/cons/natlcons.htm

2.92 | IN THE LIBRARY


KEY TERMS:
Constitutions
Rule of Law
Mercantilism
The triangle trade
Seven Years War
The Sugar Act
The Stamp Act
Mutiny Act
The Townshend Acts
The Coercive Acts
Confederation
Shays' Rebellion
A republican system of government
Federalism
Separation of powers
Checks and balances
The Bill of Rights


http://www.pbs.org/godinamerica/american-scripture/.

2 A repository of these historical documents is available at http://avalon.law.yale.edu/


http://press-pubs.uchicago.edu/founders/documents/v1ch2s23.html