

Do-It-Yourself Constitution

Situation:

The year is 1787. For many reasons, the single-branch legislature that has been the U.S. Government (formed under the Articles of Confederation) has proven inappropriate for your country. You and other wealthy, educated representatives from around the country have come together in a Constitutional Convention to hammer out a new government.

Step 1: Problems of Money, Power, and Tyranny (eight problems)

To begin, you and your associates are to create solutions to the following six problems. They not only ask you to form government structure, but also ask you to iron out rules concerning money and trade—between states and involving other countries. Also, there are matters of individual and group rights that we don't want the new government to trample. But, lets first start with the easy problems of general currency and trade that were stifling business under the Articles of Confederation. Hence, problem #1:

Problem #1: CURRENCY

Currently, each state has its own currency. Money is devalued upon exchange from state to state, giving interstate businessmen decreased profits as well as major headaches. When another state's bank exchanges money with out-of-staters, currency is temporarily or permanently lost, depending on the situation.

Problem #2: BUSINESS COMPETITION BETWEEN THE STATES

- A. First there is the problems resulting from state tariffs. As State-X tries to protect is businesses (and tax-base) by placing tariffs on lower priced out-of-state goods, other states retaliate with tariffs of their own on goods from State-X. Tariff wars can erupt, stifling trade, profits, expansion, employment and more.
- B. Then, there is competition between the states for overseas business. States are signing separate trade agreements with foreign countries; one state signing an agreement to favor France, another doing an agreement with Spain. In many cases, states are bidding against each other for investments by foreign corporations. Thus, foreign corporations get great deals while state governments give away tons of services and lose taxes in an effort to out-bid their fellow states.

The U.S. is kissing millions goodbye, as well as appearing disjointed and divided. Your new government must stop this.

Problem #3: REPRESENTATION IN YOUR LEGISLATURE

Your new government is naturally going to have **a legislature of representatives** from the various states that discuss and vote on policies, laws and actions that will be levied over all citizens. *(So, forget about the idea of a dictatorship...)*

The general problem of creating a legislature is making it fair to both states with big populations and states with small populations.

Big states should have SOME more say than small states, but not so much that, say, three big states could control policy if they were of the same mind. If you simply made representation by a ratio (like one representative per 5000 citizens in a state), then states like New York, California and Texas could control all policy if they were of the same mind. It just wouldn't matter what Rhode Island, South Dakota, Oregon, or others wanted to do in the legislature.

On the other hand, you can't give every state the same number of representatives in your legislature. (For instance you can't give every state 5 Reps no matter their size.) It would not be fair for Rhode Island's Representatives—with 20,000 citizens behind them—to easily oppose policy forwarded by New York—with 500,000 citizens.

Thus, in one Legislative body, you cannot make representation by ratio, **and** you cannot give every state the same number of Reps.

Make a solution that in some way gives big states more say than small states, but that also gives small states a meaningful voice. Tough one!

In your answer(s), give your legislature and any parts of your legislature a name. (It might just be "The Legislature," but...whatever.)

Problem #4: CHIEF DEPARTMENT HEAD or CHIEF IMPLEMENTER or ...?

One can assume your legislature creates "legislation" (like bills, laws, raising taxes, ordering roads be built, etc.). However, your legislature does not oversee all the **details** of every road built or every tax collected from every individual. So, your country has various DEPARTMENTS that employ hundreds of people to manage all those "details" that your legislation will entail.

Who is in charge of these Social Departments?

In Britain's Parliament, all the affairs of the country were decided, managed, overseen by Parliament (and the head of Parliament, the Prime Minister). Parliament (and, namely, its Prime Minister) would oversee the dozens of departments (called "ministries") that smoothly managed all the sectors of a society: Agricultural affairs, business affairs, foreign affairs, military organization and command, affairs of the country's education system, and more. In Britain, each of these oversight Ministries had a department head, like the Minister of Education, the Minister of Agriculture, and so on. These "Ministers" were nominated by various representatives and installed through a majority vote of Parliament. These ministers of all the various departments took orders from Parliament (after a Parliamentarian brought action to the floor and all representatives discussed and voted that action be taken), and these various ministers regularly reported to Parliament on their problems and progress.

In the new government that you are making, who or what oversees these departments? The problem you need to consider is that we don't want another hundred-member Parliament in charge of **everything**. If you give your legislature (that you made in Problem #3) the power to oversee these departments, have you then simply made another Parliament? (That would be bad.)

Your legislature should indeed pass laws, and order roads be made, and listen to treaty requests and more. But, having a few hundred legislators give input to the daily managing of these departments would be counterproductive. Each legislator would have his or her own idea of what the various departments should concentrate on. And, more importantly, having your legislature (or someone in your legislature) run those departments would, again, amount to one group of people running everything.

Thus, create an Executive Department Head and his powers:

Who is he? How does he answer to your legislature (the higherarchy)?

Who puts him in office? How long does he serve?

Though he must **carry out the will of your legislature** is there **room to maneuver** in implementation and priorities as he sees fit?

Lastly, as a person who will specialize in implementing policies, is there a way for him to tell your legislature "No" on a given policy or law? That is, can he legally refuse to implement a policy passed by the legislature due to his judgment as the chief implementer of all policies? (Maybe some laws were passed in a hurry and were never thought out as much as this chief implementer will have to think it out. You know how some things can feel like a good idea at the moment and then when you start looking at implementing the idea you realize it probably will not work?)

There are no right answers for this. It simply has to make sense.

You could make it so this executive can say no, can say no on certain occasions, or can never say no to the representatives of the people.)

For Problem #4 on your paper, give a NAME to this position of executive department head, and explain what he is in charge of (the various departments, that the department heads report to him and he then implements legislation and so on).

Make sure you answer the questions in the previous paragraph.

Problem #5: STOPPING THE "TYRANNY OF THE MAJORITY"

Part or parts of your government structure must be able to stop a majority vote from taking things away from a minority. For instance, if **"the majority rules,"** and in some terrible future a lot of hungry, poor people insist your legislature see to their needs by voting to take away half of the money from billionaires and distribute it to the poor, many of you might think that is unfair. (We would probably agree that everyone—rich or poor—should be secure in knowing that they get to decide what they will do with their own money.) Another extreme example might be that a legislature (acting on the requests of a majority of its racist citizens) votes to put all black people into slavery. Its all well and good to say that people just shouldn't do that, but you need a mechanism to stop such tyranny. Remember Shay and his rebellion? That was an unfair tax imposed by the Massachusetts legislature (run by city folks) that placed a very unfair burden on farmers. That was a tyranny that was not checked.

How do you stop an unfair law, if you are ruled by "the majority?"

How can you get rid of an unfair law, later, if needed?

There are three things you will need to consider to get a complete answer:

The List:

The first component of your solution is that you need to come up with a list of rights that no law is allowed to trample, no matter how the law is worded or no matter what the situation is. For instance, you would write that, “No law can discriminate or target people based on skin color,” and, “No law can stop someone from voicing their opinion.” You would need to put those in your list and several others. Think of all these types of rights you want protected for all time, and write them down. Give this supreme list a name.

Who Decides:

The second component of your solution is to have a person or group which decides if, indeed, a law does go against the list of rights you’ve written out. Who or what group looks at a law and judges if it **really** goes against the list? After all, just because someone complains that a law goes against your list, does not mean it really does. It may be a judgment-call by this person or group. For instance, if people complain to their legislators that they are tired of junk mail, and the legislature then passes a law prohibiting all mail except personal letters and bills, has free speech been trampled on or has the right to privacy been furthered? Your list of rights cannot have every possible situation in it. Your list of rights has nothing in it about junk mail. So someone must decide if junk mail falls under free speech. And there will be many future inventions and situations that will test your list. Again, who or what decides? One person? Several people? The rules on who these people are? Be exact.

How does someone get to sit in this position of deciding?

If the person or group that you have made (to decide if a law goes against your list of rights) is elected by the public, then they will probably do whatever the public wants them to do. If they go against “the majority’s” wishes, then “the majority” will simply elect someone else. **This person or group you are creating cannot be beholden to the public for their position.** They should get to the position and keep the position even if their decisions make “the majority” angry. (Heck, if they are going to stop the majority from getting their way, they would certainly be making the majority angry.) Remember the Junk Mail Law example? We all would love to stop the junk mail, but this group needs to be able to say “no” to the majority on the basis of free speech and throw out the Anti-Junk Mail Law, and still be able to keep their paid position. So, how do you get a group of people in the position of some sort of council that judges unfair laws **WITHOUT ELECTING THEM?** Are there term limits on these people? Why or why not? (It has to be logical.)

Finally, name The List and The Group.

If you haven’t already, give a name to your list of rights (that no law can mess with), and give a name to your person or group that decides if a law goes against this list, and thus throws out the law.

Next...

Problem #6: PASSING AND IMPLEMENTING A LAW

With all that you've set-up now, how does a law get introduced and run through your government structure to actually become a full-fledged, on-the-books law? There can be one way, or more than one way, to get a law going and passed.

Write-out or map-out the processes, naming your groups and hoops that happen from an idea for a law on through to a full law.

Note: You can only use elements that you've created and wrote down in Problems #3, #4, & #5. Don't start using names, terms and positions in our current real government that you did not write into the previous three questions.

Problem #7: MAKING CHANGES TO YOUR CONSTITUTION

There is no way you can think of every possible scenario for all of your country's upcoming history. But, normal "laws" should take care of most things. Your constitution is a framework for running your government, making laws, and restricting the majority if they are being tyrannical. Really, what needs to change in all that, even a hundred years from now? Who knows. But, you need to make it possible to change or adjust things when change becomes *very* necessary.

But in this, you must worry about the Tyranny of the Majority again. You can't make it so that a simple vote by the legislature or the people can change your constitution. Again, the majority might then vote to take some things out of your list of rights (from #5).

Instead, it might help to think about changes as "additions" to your constitution. If you make a constitution in the year 1787 maybe by the year 2187 just about every one of your country's citizens may feel a section needs to be updated (or added to).

Here's the big sci-fi example:

In the year 2087, man creates androids of plastic and wires for labor and they have no real brains for thinking things through. By the year 2105 man has equipped androids with artificial intelligence in order to problem-solve and work more efficiently. By the year 2120, android intelligence gets to the point to where they become self-aware and wish for similar freedoms as humans. After decades of debate, fighting, soul-searching, by the year 2187, 95% of Americans believe artificial, self-aware, androids are life forms and should be granted total freedoms and equal rights. Though your constitution of 1787 talks about free speech and free movements and all, 95% of Americans now feel we should write an addition to your constitution to spell out that androids of similar intelligence will get the same rights. In 1797 or even in 2117 would Americans have felt they wanted machines to have Constitutional rights? No. But by 2187 a vast majority of Americans do.

The trick here is to not allow your constitution and its rights to be changed very easily by a simple majority. Maybe you need to even go beyond a super-majority. And how does leadership really acknowledge the great need for change? How do you find out if there really is a super-super-super-majority out there across America, and not a just a few loud mouths? Also, you should make the process for change VERY difficult, so that if a change was going to be made, it would have to be pretty big deal, much

more so than a possibility of a constitutional change that does something like...*banning movies after midnight*. Can't banning late-night movies just be a law? And if not, is it because such a law interferes with your list of basic rights? And if that's the case, then that is a good thing. You wouldn't get even 65% of Americans to agree to a Late-Night-Movie addition to your constitution. In another era, you might get 55% of the American population to be racist against blacks and desire a change in your list so to discriminate against blacks. So, have hoops or requirements for change in place that would not allow such a simple majority to have its way. (But notice that the last two extreme examples are about taking away rights rather than ADDING rights. That is a clue to an approach you could take to changes in your Constitution.)

Overall:

How do you ADD TO or change your constitution? Make it difficult. Make it so that the change must be an overwhelming need or outcry that just about every American will agree to. Make hoops that make it difficult to stop quick, easy changes.

Problem #8: JUSTIFY TO YOUR SKEPTICS THAT YOU DON'T HAVE A TYRANNICAL CENTRAL POWER:

This country's first constitution didn't set-up a strong, central, federal government due to our problems with Parliament when we were colonies. We did not want one body of men again wielding great power over all. Though the Articles of Confederation's "State-Power-Only" system didn't work too well, nobody would have agreed to giving powers of money, war, justice, law-making, treaty-making, etc. to a single group like the old Continental Congress; we'd be no better off than being under Parliament.

Most likely, with your answers to #3, #4, and #5, you can justify why your power is not centralized in one group and why there are "checks" on the power structure. In answering #3, #4, and #5, you may have actually come up with two or three different groups in your government that carry out duties and that somewhat check each other.

So, in a few sentences, explain how your government structure has "checks" on the different parts of the power structure. In doing so, you are justifying that you have not created another Parliament. Use the names and structures that you created in 3, 4, & 5.

On to Step 2...

STEP 2: Assigned Powers & Divided Powers

As noted, you probably have two or three parts to your government. You have names for these parts. Use them in this last exercise.

On the upcoming list of major powers and decisions that every government must wield (on next page), tell which parts of your government are involved.

In some cases only one part of your government is involved in wielding a given power. In other cases, it two or three parts of your government are involved.

In most cases it MAKES SENSE that a given branch is involved. That is, in your legislature, there are a hundred or more people that share power there.

-- If you put that your Legislature is the part that has the power of Negotiating Treaties (#10 next page), that would NOT make sense. How can the representative of France have a negotiation with a hundred people in power? Opinions on the negotiation would be all over the map. For #10, then, having a part of government that has one person in charge (or few people in it) would make sense.

-- For #7 (below), your Legislature would make the most sense. One person should **not** decide if 300 million Americans are going to go to war. Our representatives should get the pulse of the people they represent, and then vote on something like that.

Also, there will be powers that you might decide to give to TWO or more of your government parts; that both parts must agree before a certain action is taken.

If you are afraid that the teacher may not agree with your decisions on some of your choices, then write a brief explanation as to the logic of your choice (as was done in the previous two examples).

Which Branch or Branches Should Be Involved In...

1. Proposing laws (making a bill).
2. Deciding if a proposed law (a bill) should actually become a law? Or, put another way, which branch(es) can stop a bill from becoming a law? How?
3. Deciding if someone should be removed from office? Hear the evidence and judge if the person did not fulfill his or her duties, and then remove them.
4. Decide of more or less national taxes are necessary.
5. Regulates needs associated with trade or business (currency management, trade laws, keeping competition healthy, others...)
6. Running a postal system.
7. Declaring war.
8. Managing the requests for manpower and materials for the Armed Services.
9. Managing the general movements of the Armed Services, as well as making key decisions on war strategies once war has been declared.
10. Negotiating treaties of any kind with other countries.
11. Approving treaties after they have been negotiated. (Or, not approving of a treaty and telling whatever person or group that you put for #10 to go back and negotiate some more.)
12. Putting people in the group that watches out for laws that go against your list of basic rights (as noted in #5 of Step 1).
13. Deciding if laws meet the intent of your Constitution or whether or not they go against your list of rights. This could also entail a state law that may have run afoul of this national constitution.
14. Resolving disputes between states (like borders, opposing laws, or more).
15. Approving your constitution to enable it to go into effect.
16. Others...?