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The Constitution



At age eighteen, all American citizens are eligible to vote in state and national elections. This has not always been the case. It took an amendment to the U.S. Constitution—one of only seventeen that have been added since ratification of the Bill of Rights in 1791—to guarantee the vote in national elections to those younger than twenty-one years of age.

In 1942, during World War II, Representative Jennings Randolph (D-WV) proposed a constitutional amendment that would lower the voting age to eighteen, believing that since young men were old enough to be drafted, to go to war, and to fight and die for their country, they also should have the right to vote. He continued to reintroduce his proposal during every session of Congress, and in 1954, President Dwight D. Eisenhower endorsed the idea in his State of the Union Address. Presidents Lyndon B. Johnson and Richard M. Nixon—men who had also called upon the nation's young men to fight on foreign shores—echoed his appeal.¹

During the 1960s, the campaign to lower the voting age took on a new sense of urgency as the draft sent hundreds of thousands of young men to fight in the unpopular war in Vietnam, and thousands of men and women were killed in action. “Old Enough to Fight, Old Enough to Vote” was one popular slogan of the day. By 1970, four states—the U.S. Constitution allows states to set the eligibility requirements for their voters—had lowered their voting ages to eighteen. Later that year, Congress passed legislation that designated eighteen as the voting age in national, state, and local elections.

The state of Oregon, however, challenged the constitutionality of the law in court, arguing that the Constitution did not give Congress the authority to establish a uniform voting age in state and local government elections. The U.S. Supreme Court agreed.² The decision from the divided Court meant that those under age twenty-one could vote in national elections but that the states were free to prohibit them from voting in state and local elections. The decision presented the states with a logistical nightmare. Setting the voting age at twenty-one would force states to keep two sets of registration books: one for voters twenty-one and over and one for voters under twenty-one.

2.1

Trace the historical developments that led to the colonists' break with Great Britain and the emergence of the new American nation, p. 31.

2.2

Identify the key components of the Articles of Confederation and the reasons why it failed, p. 37.

2.3

Outline the issues and compromises that were central to the writing of the U.S. Constitution, p. 40.

2.4

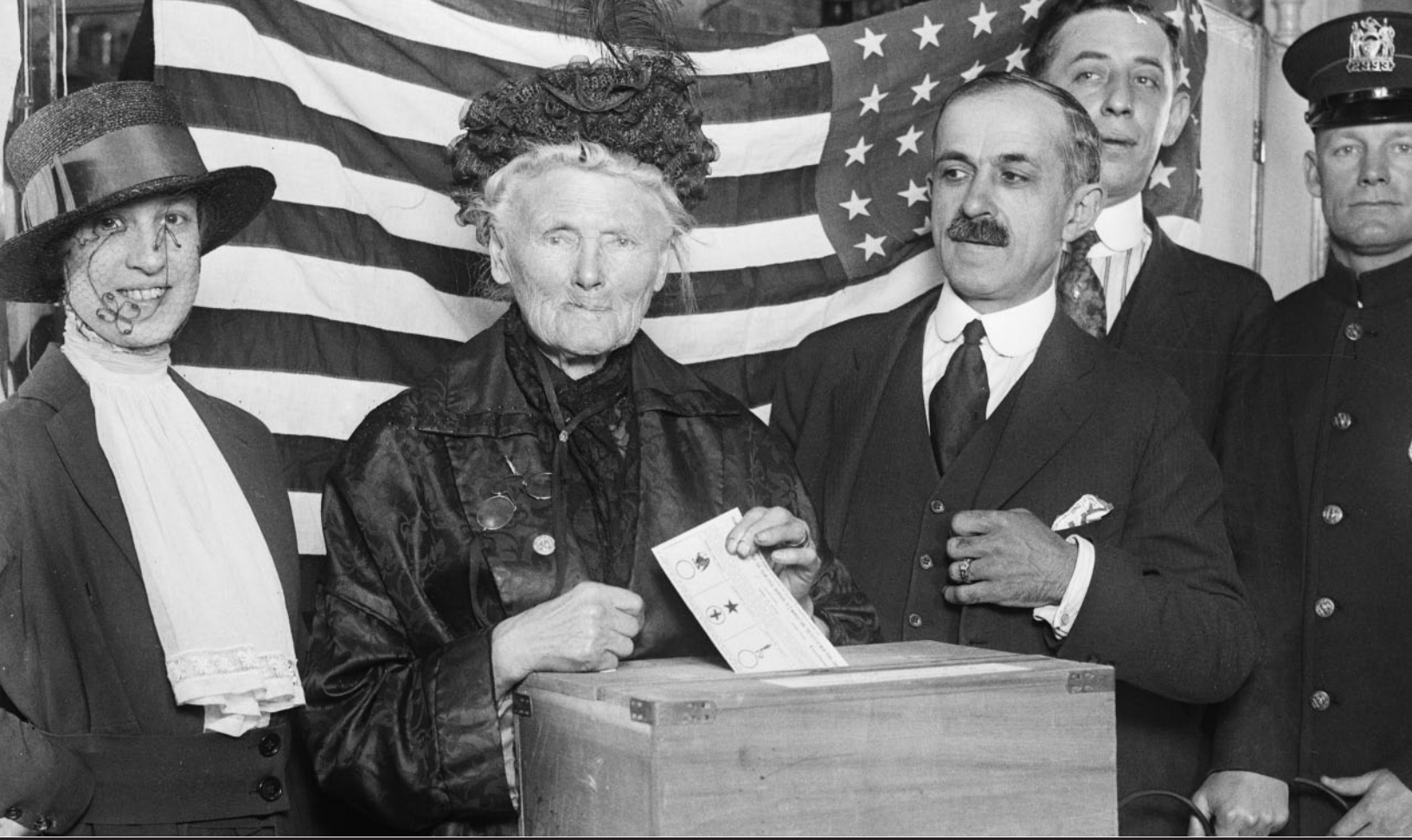
Analyze the underlying principles of the U.S. Constitution, p. 44.

2.5

Explain the conflicts that characterized the drive for ratification of the U.S. Constitution, p. 51.

2.6

Distinguish between the methods for proposing and ratifying amendments to the U.S. Constitution, p. 55.



MANY CONSTITUTIONAL AMENDMENTS HAVE ADDRESSED VOTING RIGHTS Above, women cast a ballot after the ratification of the Nineteenth Amendment in 1920. Below, a young voter uses an electronic voting machine in a recent election.





The Big Picture Discover why what the Constitution does not say is just as important as what it does say. Author Alixandra B. Yanus considers how the government refers to the Constitution for answers to current questions that it does not explicitly address, thereby leaving plenty of room for interpretation.



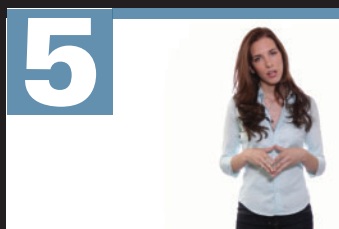
The Basics Since the Bill of Rights, the Constitution has only been amended 17 times. Learn about the Constitution's original purpose and what circumstances will be required if ever it should be amended for an 18th time.



In Context Who were the founding fathers? What challenges did they face when ratifying the Constitution? By getting inside the founders' heads, Costas Panagopoulos explains how we can continue to keep the spirit of the Constitution alive today.



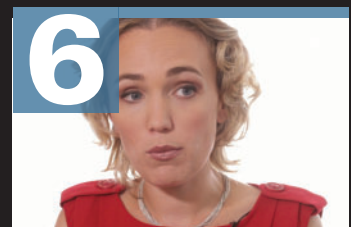
Thinking Like a Political Scientist Understand how the Constitution affects the behavior of the institutions of government—including the president. Costas Panagopoulos lays out what topics fascinate constitutional scholars the most today and demonstrates why the Constitution encourages the different branches to act strategically.



In the Real World How well does the system of checks-and-balances really work? Decide whether each branch effectively checks the others—particularly, whether Congress should have the power to oversee the bureaucracy—by examining the failed “Fast and Furious” case and how it was resolved.



So What? The United States has changed a lot in the past two hundred years; so why have we always been governed by the same document? In this video, author Alixandra B. Yanus explain the unique features of the U.S. Constitution that have allowed it to remain effective for so long.



Jennings Randolph, by then a senator from West Virginia, reintroduced his proposed amendment to lower the national voting age to eighteen.³ Within three months of the Supreme Court's decision, Congress sent the proposed Twenty-Sixth Amendment to the states for ratification. The required three-fourths of the states approved the amendment within three months—making its adoption on June 30, 1971, the quickest in the history of the constitutional amending process.

While young people have not traditionally exercised their Twenty-Sixth Amendment rights in large numbers, voter turnout among those 18 to 24 does seem to be on the rise. Record numbers of young voters went to the polls in the 2008 presidential election; many credited discussions on Facebook and other social networking sites for their political interest and activism. The votes of young people played an important role in electing Barack Obama. In 2010, however, some commentators attributed Democratic losses to low voter turnout among young people. Only 11 percent of those who voted were under age twenty-nine.



The Framers never intended the U.S. Constitution to be easily changed. They made the amendment process time consuming and difficult. Over the years, thousands of amendments—including those to prohibit child labor, provide equal rights for women, grant statehood to the District of Columbia, balance the federal budget, and ban flag burning—have been debated or sent to the states for approval, only to die slow deaths. Only twenty-seven amendments have made their way into the Constitution. What the Framers wrote in Philadelphia has continued to work, in spite of increasing demands on and dissatisfaction with our national government. Although Americans often clamor for reform, perhaps they are happier with the system of government created by the Framers than they realize. The ideas that went into the making of the Constitution and the ways that it has evolved to address the problems of a growing and changing nation form the core of our discussion in this chapter.

Roots of the New American Nation

2.1

Trace the historical developments that led to the colonists' break with Great Britain and the emergence of the new American nation.

Beginning in the early seventeenth century, colonists came to the New World for a variety of reasons. Often, they wished to escape religious persecution. Others sought a new start on a continent where land was plentiful or saw business opportunities to be gained in the New World. The independence and diversity of the settlers in the New World complicated the question of how best to rule the new colonies. More than merely an ocean separated Great Britain from the colonies; the colonists were independent people, and it soon became clear that the crown could not govern its subjects in the colonies with the same close rein used at home. King James I thus allowed some local participation in decision making through arrangements such as the first elected colonial assembly, the Virginia House of Burgesses, formed in 1619, and the elected General Court that governed the Massachusetts Bay Colony after 1629. Almost all of the colonists agreed that the king ruled by divine right, but British monarchs allowed the colonists significant liberties in terms of self-government, religious practices, and economic organization. For 140 years, this system worked fairly well.⁴

By the early 1760s, however, a century and a half of physical separation, development of colonial industry, and relative self-governance by the colonies led to weakening ties with—and loyalties to—the crown. By this time, each of the thirteen colonies had drafted its own constitution, which provided the fundamental rules or laws by which it operated. Moreover, many of the most oppressive British traditions—feudalism, a rigid

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mercantilism

An economic theory designed to increase a nation's wealth through the development of commercial industry and a favorable balance of trade.

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Stamp Act Congress

Meeting of representatives of nine of the thirteen colonies held in New York City in 1765, during which representatives drafted a document to send to the king that listed how their rights had been violated.

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class system, and the absolute authority of the king—were absent in the colonies. Land was abundant. The guild and craft systems that severely limited entry into many skilled professions in Great Britain were not part of life in the colonies. And, although religion was central to the lives of most colonists, no single state church existed, so the colonists did not follow the British practice of compulsory tithing (giving a fixed percentage of one's earnings to the state-sanctioned and -supported church).

Trade and Taxation

Mercantilism, an economic theory designed to increase a nation's wealth through the development of commercial industry and a favorable balance of trade, justified Britain's maintenance of strict import/export controls on the colonies. After 1650, for example, the British Parliament passed a series of navigation acts to prevent its chief rival, Holland, from trading with the British colonies. From 1650 until well into the 1700s, Britain tried to control colonial imports and exports, believing it critical to export more goods than it imported as a way of increasing the gold and silver in its treasury. Britain found it difficult to enforce these policies, however, and the colonists, seeing little self-benefit in their operation, widely ignored them. Thus, for years, an unwritten agreement existed. The colonists relinquished to the crown and the British Parliament the authority to regulate trade and conduct international affairs, but they retained the right to levy their own taxes.

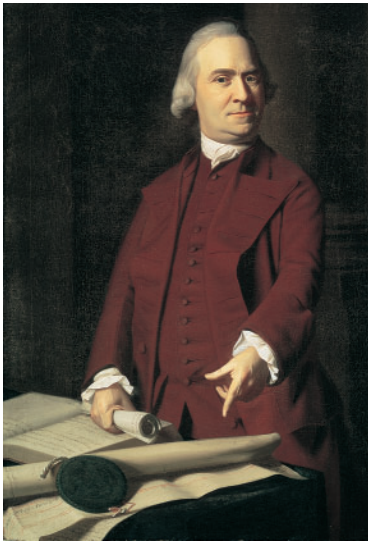
This fragile agreement was soon put to the test. The French and Indian War, fought from 1756 to 1763 on the western frontier of the colonies and in Canada, was part of a global war initiated by the British, then the greatest power in the world. This American phase of what was called the Seven Years War was fought between Britain and France with Indian allies. To raise money to pay for the war as well as the expenses of administering the colonies, Parliament enacted the Sugar Act in 1764. This act placed taxes on sugar, wine, coffee, and other products commonly exported to the colonies. A postwar colonial depression heightened resentment of the tax. Major protest, however, failed to materialize until imposition of the Stamp Act by the British Parliament in 1765. This law required that all paper items, from playing cards to books, bought and sold in the colonies carry a stamp mandated by the crown. The colonists did not find the tax itself offensive. However, they feared this act would establish a precedent for the British Parliament not only to control commerce in the colonies but also to raise revenues from the colonists without approval of the colonial governments. The political cry “no taxation without representation” rang out across the colonies. To add insult to injury, in 1765, Parliament passed the Quartering Act, which required colonists to furnish barracks or provide living quarters within their own homes for British troops.

Most colonists, especially those in New England, where these acts hit merchants hardest, were outraged. Men throughout the colonies organized the Sons of Liberty, under the leadership of Samuel Adams and Patrick Henry. Women formed the Daughters of Liberty. Protests against the Stamp Act were violent and loud. Riots, often led by the Sons of Liberty, broke out. These were especially violent in Boston, where an angry mob burned the colonial governor's home and protesters threatened British stamp agents charged with collecting the tax. The outraged colonists also organized a boycott of goods needing the stamps, as well as of British imports.

First Steps Toward Independence

In 1765, at the urging of Samuel Adams, nine of the thirteen colonies sent representatives to a meeting in New York City, where they drafted a detailed list of crown violations of the colonists' fundamental rights. Known as the **Stamp Act Congress**, this gathering was the first official meeting of the colonies and the first step toward creating a unified nation. Attendees defined what they thought to be the proper relationship between colonial governments and the British Parliament; they ardently believed Parliament had no authority to tax them without colonial representation in that body, yet they still remained

Photo courtesy, John Singleton Copley (1738–1815), “Samuel Adams,” ca. 1772. Oil on canvas, 49 1/2 x 39 1/2 in. (125.7 cm x 100.3 cm). Deposited by the City of Boston, 30/76c. Courtesy, Museum of Fine Arts, Boston. Reproduced with permission. © 2000 Museum of Fine Arts, Boston. All Rights Reserved.



WHY WAS SAMUEL ADAMS IMPORTANT?

Samuel Adams (1722–1803), cousin of President John Adams, was an early leader against the British and loyalist oppressors. He played a key role in developing the Committees of Correspondence, and was active in Massachusetts and colonial politics. Today he is known for the beer that bears his name, which is ironic, considering he bankrupted his family's brewery business.

loyal to the king. In contrast, the British believed that direct representation of the colonists was impractical and that members of Parliament represented the best interests of all the British, including the colonists who were British subjects.

The Stamp Act Congress and its petitions to the crown did little to stop the onslaught of taxing measures. Parliament did, however, repeal the Stamp Act and revise the Sugar Act in 1766, largely because of the uproar made by British merchants who were losing large sums of money as a result of the boycotts. Rather than appeasing the colonists, however, these actions emboldened them to increase their resistance. In 1767, Parliament enacted the Townshend Acts, which imposed duties on all kinds of colonial imports, including tea. Responses from the Sons and Daughters of Liberty came immediately. Protesters announced another boycott of tea, and almost all colonists gave up their favorite drink in a united show of resistance to the tax and British authority.⁵ Tensions continued to run high, especially after the British sent 4,000 troops to Boston. On March 5, 1770, British troops opened fire on an unruly mob that included disgruntled dockworkers, whose jobs had been taken by British soldiers, and members of the Sons of Liberty, who were taunting the soldiers and throwing objects at British sentries stationed in front of the Boston Customs House. The troops killed five colonists in what became known as the Boston Massacre. Following this confrontation, Parliament lifted all duties except those on tea. The tea tax, however, continued to be a symbolic



Photo courtesy: Collection of the New York Historical Society

WHAT REALLY HAPPENED AT THE BOSTON MASSACRE?

Paul Revere's famous engraving of the Boston Massacre played fast and loose with the facts. While the event occurred on a cold winter's night, the engraving features a clear sky and no ice or snow. Crispus Attucks, the Revolution's first martyr, was African American, although the engraving depicts him as a white man. Popular propaganda such as this engraving—and even dubbing the incident a "massacre"—did much to stoke anti-British sentiment in the years leading up to the Revolutionary War.

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Committees of Correspondence

Organizations in each of the American colonies created to keep colonists abreast of developments with the British; served as powerful molders of public opinion against the British.

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First Continental Congress

Meeting held in Philadelphia from September 5 to October 26, 1774, in which fifty-six delegates (from every colony except Georgia) adopted a resolution in opposition to the Coercive Acts.

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Second Continental Congress

Meeting that convened in Philadelphia on May 10, 1775, at which it was decided that an army should be raised and George Washington of Virginia was named commander in chief.

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irritant. In 1772, at the suggestion of Samuel Adams, colonists created **Committees of Correspondence** to keep each other abreast of developments with the British. These committees also served as powerful molders of public opinion against the British.

Meanwhile, despite dissent in Britain over treatment of the colonies, Parliament passed another tea tax designed to shore up the sagging sales of the East India Company, a British exporter of tea. The colonists' boycott had left that trading company with more than 18 million pounds of tea in its warehouses. To rescue British merchants from disaster, in 1773, Parliament passed the Tea Act, granting a monopoly to the financially strapped East India Company to sell tea imported from Britain. This act allowed the company to funnel business to American merchants loyal to the crown, thereby undercutting dissident colonial merchants, who could sell only tea imported from other nations. This practice drove down the price of tea and hurt colonial merchants, who were forced to buy tea at higher prices from other sources.

When the next shipment of tea arrived in Boston from Great Britain, the colonists responded by throwing the Boston Tea Party; other colonies held similar tea parties. When the news reached King George III, he flew into a rage against the actions of his disloyal subjects. "The die is now cast," the king told his prime minister. "The colonies must either submit or triumph."

King George's first act of retaliation was to persuade Parliament to pass the Coercive Acts of 1774. Known in the colonies as the Intolerable Acts, they contained a key provision calling for a total blockade of Boston Harbor, cutting off Bostonians' access to many foodstuffs, until restitution was made for the tea. Another provision reinforced the Quartering Act. It gave royal governors the authority to house British soldiers in the homes of local Boston citizens, allowing Britain to send an additional 4,000 soldiers to patrol Boston.

□ The First Continental Congress

The British could never have guessed how the cumulative impact of these actions would unite the colonists. Samuel Adams's Committees of Correspondence spread the word, and the people of Boston received food and money from all over the thirteen colonies. The tax itself was no longer the key issue; now the extent of British authority over the colonies presented the far more important question. At the request of the colonial assemblies of Massachusetts and Virginia, all but Georgia's colonial assembly agreed to select a group of delegates to attend a continental congress authorized to communicate with the king on behalf of the now-united colonies.

The **First Continental Congress**, comprising fifty-six delegates, met in Philadelphia from September 5 to October 26, 1774. The colonists had yet to think of breaking with Great Britain; at this point, they simply wanted to iron out their differences with the king. By October, they had agreed on a series of resolutions to oppose the Coercive Acts and to establish a formal organization to boycott British goods. The Congress also drafted a Declaration of Rights and Resolves, which called for colonial rights of petition and assembly, trial by peers, freedom from a standing army, and the selection of representative councils to levy taxes. The Congress further agreed that if the king did not capitulate to its demands, it would meet again in Philadelphia in May 1775.

□ The Second Continental Congress

King George III refused to yield, tensions continued to rise, and a **Second Continental Congress** was deemed necessary. Before it could meet, fighting broke out in the early morning of April 19, 1775, at Lexington and Concord, Massachusetts, with what American writer and philosopher Ralph Waldo Emerson later called "the shot heard 'round the world." Eight colonial soldiers, called Minutemen, were killed, and 16,000 British troops besieged Boston.

When the Second Continental Congress convened in Philadelphia on May 10, 1775, delegates were united by their increased hostility to Great Britain. In a final attempt to avert conflict, the Second Continental Congress adopted the Olive Branch Petition on July 5, 1775, asking the king to end hostilities. King George III rejected the

petition and sent an additional 20,000 troops to quell the rebellion; he labeled all in attendance traitors to the king and subject to death. As a precautionary measure, the Congress already had appointed George Washington of Virginia as commander in chief of the Continental Army. The selection of a southern leader was a strategic decision, because up to that time the Northeast had borne the brunt of British oppression. In fact, the war essentially had begun with the shots fired at Lexington and Concord.

In January 1776, Thomas Paine, with the support and encouragement of Benjamin Franklin, issued (at first anonymously) *Common Sense*, a pamphlet forcefully arguing for independence from Great Britain. In frank, easy-to-understand language, Paine denounced the corrupt British monarchy and offered reasons to break with Great Britain. “The blood of the slain, the weeping voice of nature cries ’Tis Time to Part,” wrote Paine. *Common Sense*, widely read throughout the colonies, helped to change minds in a very short time. In its first three months of publication, the forty-seven-page *Common Sense* sold 120,000 copies. One copy of *Common Sense* was in distribution for every thirteen people in the colonies—a truly astonishing number, given the low literacy rate.

Common Sense galvanized the American public against reconciliation with Great Britain. On May 15, 1776, Virginia became the first colony to call for independence, instructing one of its delegates to the Second Continental Congress to introduce a resolution to that effect. On June 7, 1776, Richard Henry Lee of Virginia rose to move “that these United Colonies are, and of right ought to be, free and independent States, and that all connection between them and the State of Great Britain is, and ought to be, dissolved.” His three-part resolution—which called for independence, the formation of foreign alliances, and preparation of a plan of confederation—triggered hot debate among the delegates. A proclamation of independence from Great Britain constituted treason, a crime punishable by death. Although six of the thirteen colonies had already instructed their delegates to vote for independence, the Second Continental Congress was suspended to allow its delegates to return home to their respective colonial legislatures for final instructions. Independence was not a move the colonists would take lightly.

□ The Declaration of Independence

The Congress set up committees to consider each point of Richard Henry Lee’s proposal. The Committee of Five began work on the **Declaration of Independence**. Committee members included Benjamin Franklin of Pennsylvania, John Adams of Massachusetts, Robert Livingston of New York, and Roger Sherman of Connecticut. Adams lobbied hard for the addition of Thomas Jefferson, a Southerner, to add balance. Jefferson’s writings, which revealed a “peculiar felicity of expression,” had also impressed Adams. Thus, the Congress chose Jefferson of Virginia as chair.

On July 2, 1776, twelve of the thirteen colonies (with New York abstaining) voted for independence. Two days later, the Second Continental Congress voted to adopt the Declaration of Independence, largely penned by Jefferson. On July 9, 1776, the Declaration, now with the approval of New York, was read aloud in Philadelphia.⁶

In simple but eloquent language, the Declaration set out the reasons for separation of the colonies from Great Britain. Most of its stirring rhetoric drew heavily on the works of seventeenth- and eighteenth-century political philosophers, particularly the English philosopher John Locke. Locke had written South Carolina’s first constitution, a colonial charter drawn up in 1663. In fact, many words in the opening of the Declaration of Independence closely resemble passages from Locke’s *Second Treatise of Civil Government*.

Locke was a proponent of social contract theory, which holds that governments exist based on the consent of the governed. According to Locke, people agree to set up a government largely for the protection of property rights, to preserve life and liberty, and to establish justice. Furthermore, argued Locke, individuals who give their consent to be governed have the right to resist or remove rulers who deviate from those purposes. Such a government exists for the good of its subjects and not for the benefit of those who govern. Thus, rebellion is the ultimate sanction against a government that violates the rights of its citizens.

Declaration of Independence

Document drafted largely by Thomas Jefferson in 1776 that proclaimed the right of the American colonies to separate from Great Britain.

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Take a Closer Look

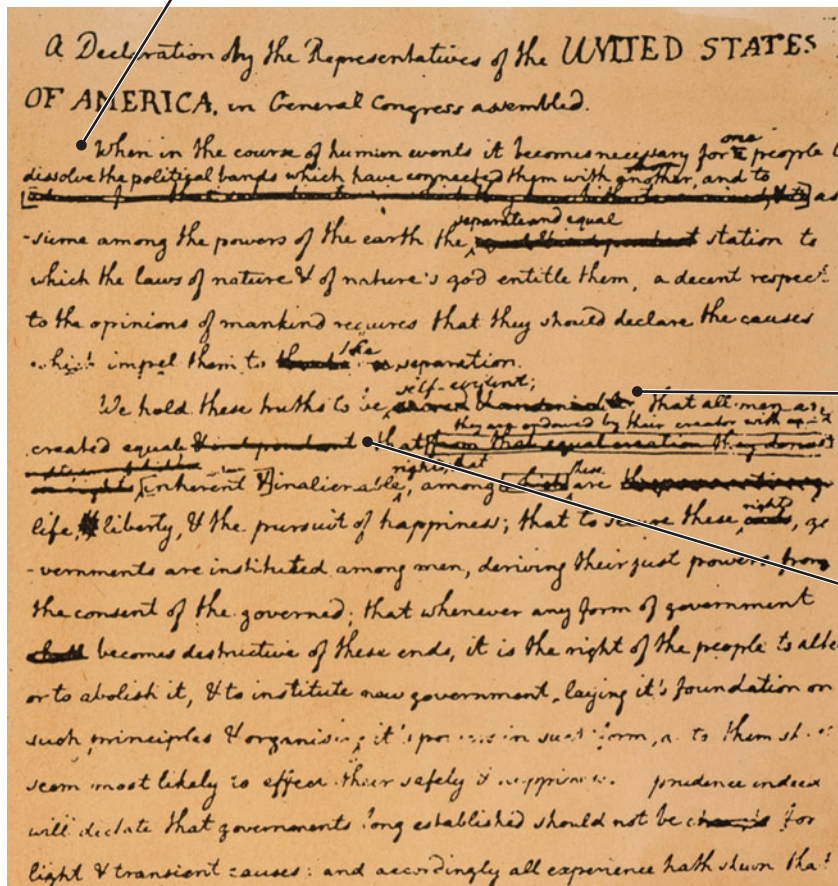
The Declaration of Independence is arguably one of the most sacred American documents. In clear, concise prose, Thomas Jefferson states the colonists' rationale for their split from Great Britain. But, the document was not always as articulate and powerful as it is today. After Thomas Jefferson submitted his "Rough Draught" to the Committee of Five, other members, including John Adams and Benjamin Franklin, made significant revisions to the document.

The Declaration originally began:

When in the course of human events it becomes necessary for a people to advance that subordination in which they have hitherto remained, and to assume among the powers of the earth the equal and independant 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 change.

The committee changed this to state:

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.



Here, Jefferson's phrase "sacred and undeniable" became "self-evident."

The original draft stated that

...all men are created equal and independant, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, and liberty, and the pursuit of happiness.

In the final draft, however, Jefferson stated,

that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

CRITICAL THINKING QUESTIONS

1. Why do you think committee members made revisions such as the ones you see here? What factors may have influenced their changes?
2. Are any edits that appear to weaken the document seen here? Why do you prefer the original language? Why do you think it was not ultimately used?
3. Who was the audience for the Declaration? How did this influence the authors' arguments?

It is easy to see the colonists' debt to John Locke. In stirring language, the Declaration of Independence proclaims:

- 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.

Jefferson and others in attendance at the Second Continental Congress wanted to have a document that would stand for all time, justifying their break with Great Britain and clarifying their notions of the proper form of government. So, the Declaration continued:

- 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 abolish it, and to institute new Government, laying its foundation on such Principles and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

After this stirring preamble, the Declaration enumerates the wrongs suffered by the colonists under British rule. All pertain to the denial of personal rights and liberties, many of which would later be guaranteed by the U.S. Constitution through the Bill of Rights.

After the Congress signed and transmitted the Declaration to the king, the Revolutionary War raged with greater vengeance. At a September 1776 peace conference on Staten Island (New York), British General William Howe demanded revocation of the Declaration of Independence. Washington's Continental Army refused, and the war raged on while the Continental Congress struggled to fashion a new united government.

The First Attempt at Government: The Articles of Confederation

2.2

Identify the key components of the Articles of Confederation and the reasons why it failed.

As noted earlier, the British had no written constitution. Delegates to the Second Continental Congress were attempting to codify many arrangements that had never before been expressed in legal terminology. To make matters more complicated, the delegates had to arrive at these decisions in a wartime atmosphere. Nevertheless, in late 1777, the Congress passed the **Articles of Confederation**, creating a loose “league of friendship” between the thirteen sovereign, or independent, colonies (some that even called themselves separate countries), and presented the Articles to the states for ratification.

The Articles created a type of government called a **confederation** or confederacy. Unlike Great Britain's unitary system, wherein all governmental powers reside in the national government, the national government in a confederation derives all its powers directly from the states. Thus, the national government in a confederacy is weaker than the sum of its parts, and the states often consider themselves independent nation-states linked together only for limited purposes, such as national defense. So, the Articles of Confederation proposed the following:

- A national government with a Congress empowered to make peace, coin money, appoint officers for an army, control the post office, and negotiate with Indian tribes.
- Each state's retention of its independence and sovereignty, or ultimate authority, to govern within its territories.
- One vote in the Congress of the Confederation for each state, regardless of size.
- The vote of nine states to pass any measure (a unanimous vote for any amendment).
- The selection and payment of delegates to the Congress by their respective state legislatures.

Articles of Confederation

The compact between the thirteen original colonies that created a loose league of friendship, with the national government drawing its powers from the states.

confederation

Type of government in which the national government derives its powers from the states; a league of independent states.

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The Articles, finally ratified by all thirteen states in March 1781, fashioned a government that reflected the political philosophy of the times.⁷ Although it had its flaws, the government under the Articles of Confederation saw the nation through the Revolutionary War. However, once the British surrendered in 1781, and the new nation found itself no longer united by the war effort, the government quickly fell into chaos.

❑ Problems Under the Articles of Confederation

More than 250 years ago, Americans had great loyalties to their states and often did not even think of themselves as Americans. This lack of national identity or loyalty in the absence of a war to unite the citizenry fostered a reluctance to give any power to the national government. By 1784, just one year after the Revolutionary Army was disbanded, governing the new nation under the Articles of Confederation proved unworkable.⁸ In fact, historians refer to the chaotic period from 1781 to 1789, when the former colonies were governed under the Articles, as the critical period. Congress rarely could assemble the required quorum of nine states to conduct business. Even when it did meet, states found it difficult to agree on any policies. To raise revenue to pay off war debts and run the government, Congress proposed various land, poll, and liquor taxes. But, since it had no specific power to tax, all these proposals were rejected. At one point, Congress was even driven out of Philadelphia (then the capital of the new national government) by its own unpaid army.

Although the national government could coin money, it had no resources to back up the value of its currency. Continental dollars were worth little, and trade between states grew chaotic as some of them began to coin their own money. Another weakness was that the Articles of Confederation did not allow Congress to regulate commerce among the states or with foreign nations. As a result, individual states attempted to enter into agreements with other countries, and foreign nations were suspicious of trade agreements made with the Congress of the Confederation. In 1785, for example, Massachusetts banned the export of goods in British ships, and Pennsylvania levied heavy duties on ships of nations that had no treaties with the U.S. government.

Fearful of a chief executive who would rule tyrannically, the drafters of the Articles made no provision for an executive branch of government that would be responsible for executing, or implementing, laws passed by the legislative branch. Instead, the president was merely the presiding officer at meetings. John Hanson, a former member of the Maryland House of Delegates and of the First Continental Congress, was the first person to preside over the Congress of the Confederation. Therefore, he is sometimes referred to as the first president of the United States.

The Articles of Confederation, moreover, had no provision for a judicial system to handle the growing number of economic conflicts and boundary disputes among the individual states. Several states claimed the same lands to the west, and Pennsylvania and Virginia went to war with each other.

The Articles' greatest weakness, however, was its failure to provide for a strong central government. Although states had operated independently before the war, during the war they acceded to the national government's authority to wage armed conflict. Once the war was over, however, each state resumed its sovereign status and was unwilling to give up rights, such as the power to tax, to an untested national government. Consequently, the government could not force states to abide by the provisions of the second Treaty of Paris, signed in 1783, which officially ended the Revolutionary War. For example, states passed laws to allow debtors who owed money to Great Britain to postpone payment. States also opted not to restore property to citizens who had remained loyal to Britain during the war. Both actions violated the treaty.

A series of bad harvests kept farmers in debt and worsened the crumbling economy. George Washington and Alexander Hamilton, both interested in the questions of trade and frontier expansion, soon saw the need for a stronger national government with the authority to step in and solve some of these problems. They were not alone. In 1785 and 1786, some state governments began to discuss ways to strengthen the national government.

□ Shays's Rebellion

Before concerned states and individuals could take action to strengthen the government, new unrest broke out in America. In 1780, Massachusetts had adopted a constitution that appeared to favor the interests of the wealthy. Property-owning requirements barred the lower and middle classes from voting and office holding. And, as the economy of Massachusetts declined, banks foreclosed on the farms of many Massachusetts Continental Army veterans who were waiting for promised bonuses that the national government had no funds to pay. The last straw came in 1786, when the Massachusetts legislature enacted a new law requiring the payment of all debts in cash. Frustration and outrage at the new law incited Daniel Shays, a former Continental Army captain, and 1,500 armed, disgruntled farmers to march to the government arsenal in Springfield, Massachusetts. This group forcibly restrained the state court located there from foreclosing on the mortgages on their farms.

The Congress of the Confederation immediately authorized the secretary of war to call for a new national militia. Congress made a \$530,000 appropriation for this purpose, but every state except Virginia refused the request for money. The governor of Massachusetts then tried to raise a state militia, but because of the poor economy, the state treasury lacked the necessary funds to support his action. A militia finally was assembled after frantic attempts to collect private financial support. By February 4, 1787, this privately paid force ended what was called **Shays's Rebellion**. The failure of the Congress to muster an army and quell the rebellion provided a dramatic example of the weaknesses inherent in the Articles of Confederation and shocked the nation's leaders into recognizing the new national government's inadequacies. It finally prompted several states to join together and call for a convention in Philadelphia in 1787.

Shays's Rebellion

A rebellion in which an army of 1,500 disgruntled and angry farmers led by Daniel Shays marched to Springfield, Massachusetts, and forcibly restrained the state court from foreclosing mortgages on their farms.

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Photo courtesy: TBD

WHAT WAS THE RESULT OF SHAYS'S REBELLION?

With Daniel Shays in the lead, a group of farmers who had served in the Continental Army marched to Springfield, Massachusetts, to stop the state court from foreclosing on the veterans' farms. The rebellion illustrated many of the problems of the national government under the Articles of Confederation and is widely thought to have influenced the proceedings of the Constitutional Convention.

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constitution

A document establishing the structure, functions, and limitations of a government.

The Miracle at Philadelphia: Writing the U.S. Constitution

2.3 Outline the issues and compromises that were central to the writing of the U.S. Constitution.

On February 21, 1787, in the throes of economic turmoil and with domestic tranquility gone haywire, the Congress passed an official resolution. It called for a Constitutional Convention in Philadelphia for “the sole and express purpose of revising the Articles of Confederation.” However, many delegates who gathered in sweltering Philadelphia on May 25, 1787, were prepared to take potentially treasonous steps to preserve the union. For example, on the first day the convention was in session, Edmund Randolph and James Madison of Virginia proposed fifteen resolutions creating an entirely new government (later known as the Virginia Plan). Their enthusiasm, however, was not universal. Many delegates, including William Paterson of New Jersey, considered these resolutions to be in violation of the convention’s charter, and proposed the New Jersey Plan, which took greater steps to preserve the Articles.

These proposals met heated debate on the convention’s floor. Eventually the Virginia Plan triumphed following a declaration from Randolph that, “When the salvation of the Republic is at stake, it would be treason not to propose what we found necessary.”

Although the delegates had established the basic structure of the new government, the work of the Constitutional Convention was not complete. Remaining differences were resolved through a series of compromises, and less than one hundred days after the meeting convened, the Framers had created a new government to submit to the electorate for its approval.

□ The Characteristics and Motives of the Framers

The fifty-five delegates who attended the Constitutional Convention labored long and hard that hot summer. Owing to the high stakes of their action, they conducted all of the convention’s work behind closed doors. George Washington of Virginia, who was unanimously elected the convention’s presiding officer, cautioned delegates not to reveal details of the convention even to family members. The delegates agreed to accompany Benjamin Franklin of Pennsylvania to all of his meals. They feared that the normally gregarious gentleman might get carried away with the mood or by liquor and inadvertently let news of the proceedings slip from his tongue.

All of the delegates to the Constitutional Convention were men; hence, they often are called the “Founding Fathers.” This text generally refers to them as the Framers, because their work provided the framework for the new government of the United States. Most of them were quite young, many in their twenties and thirties, and only one—Franklin at eighty-one—was rather old. Seventeen owned slaves, with George Washington, George Mason, and John Rutledge owning the most. Thirty-one went to college, and seven signed both the Declaration of Independence and the Constitution.

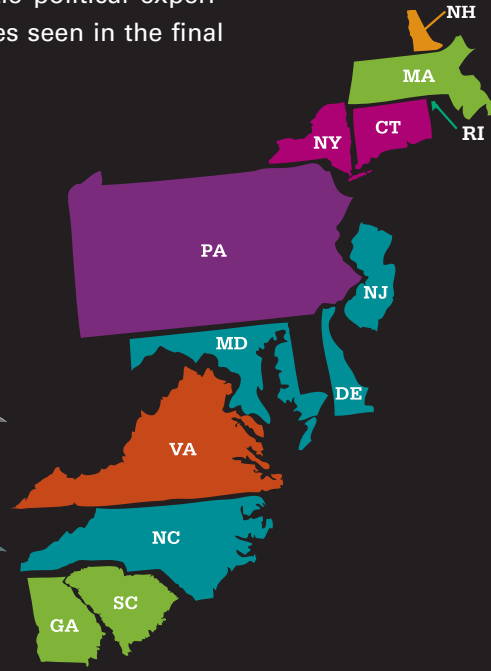
The Framers brought with them a vast amount of political, educational, legal, and business experience. Clearly, they were an exceptional lot who ultimately produced a brilliant **constitution**, or document establishing the structure, functions, and limitations of a government.

However, debate about the Framers’ motives filled the air during the ratification struggle and has provided grist for the mill of historians and political scientists over the years. In his *Economic Interpretation of the Constitution of the United States* (1913), Charles A. Beard argued that the 1780s were a critical period not for the nation as a whole, but rather for business owners who feared that a weak, decentralized government could harm their economic interests.⁹ Beard argued that merchants wanted a strong national government to promote industry and trade, to protect private property, and to ensure payment of the public debt—much of which was owed to them. Therefore, according to

Who Were the Framers?

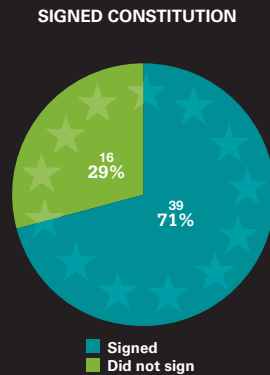
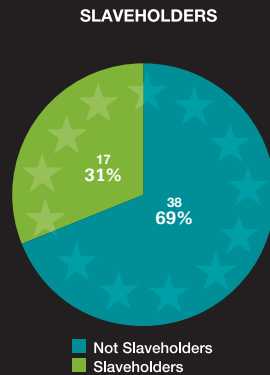
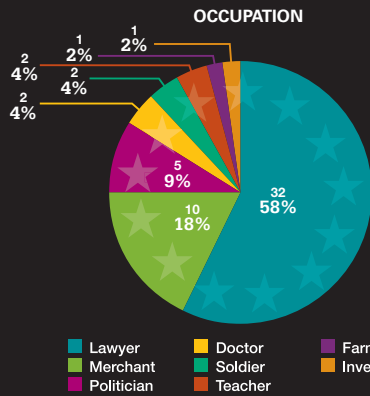
The Framers of the Constitution spent a summer in Philadelphia in nearly complete secrecy, drafting our nation's supreme code of laws. But, who really were these men? They came from varied jobs, cultures, and viewpoints; some men were slaveholders, many were lawyers, and others had little political experience. These differences influenced many of the compromises seen in the final version of the Constitution.

STATE	DELEGATES	PERCENT
Rhode Island	0	0%
New Hampshire	2	3.6%
Connecticut	3	5.4%
New York	3	5.4%
Georgia	4	7.2%
Massachusetts	4	7.2%
South Carolina	4	7.2%
Delaware	5	9.1%
Maryland	5	9.1%
New Jersey	5	9.1%
North Carolina	5	9.1%
Virginia	7	12.7%
Pennsylvania	8	14.6%



* States are drawn in proportion to their representation.

More than just a name



Rhode Island sent **no one.** Only **71%** of attendees signed the final document.

CRITICAL THINKING QUESTIONS

1. Analyze the occupations of the Framers. Were they a fair representation of the American population at that time? Should more delegates have come from the working class?
2. Examine the percentages of Framers who owned slaves and those who did not. How might these numbers have shaped constitutional compromises on the issue of slavery?
3. Can the words of these Framers, written more than 225 years ago, continue to serve as a framework for government today, or should the Constitution change alongside the nation? Explain your answer.

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Virginia Plan

The first general plan for the Constitution offered in Philadelphia. Its key points were a bicameral legislature, as well as an executive and a judiciary chosen by the national legislature.

New Jersey Plan

A framework for the Constitution proposed by a group of small states. Its key points were a one-house legislature with one vote for each state, a Congress with the ability to raise revenue, and a Supreme Court with members appointed for life.

Beard, the Constitution represents “an economic document drawn with superb skill by men whose property interests were immediately at stake.”¹⁰

By the 1950s, Beard’s view had fallen into disfavor when other historians were unable to find direct links between wealth and the Framers’ motives for establishing the Constitution. Others faulted Beard’s failure to consider the impact of religion and individual views about government.¹¹ In the 1960s, however, another group of historians began to argue that social and economic factors were, in fact, important motives for supporting the Constitution. In *The Anti-Federalists* (1961), Jackson Turner Main posited that while the Constitution’s supporters might not have been the united group of creditors suggested by Beard, they were wealthier, came from higher social strata, and had greater concern for maintaining the prevailing social order than the general public.¹² In 1969, Gordon S. Wood’s *The Creation of the American Republic* resurrected this debate. Wood deemphasized economics to argue that major social divisions explained different groups’ support for (or opposition to) the new Constitution. He concluded that the Framers were representative of a class that favored order and stability over some of the more radical ideas that had inspired the American Revolutionary War and the break with Britain.¹³

□ The Virginia and New Jersey Plans

The less populous states were concerned with being lost in any new system of government in which states were not treated as equals regardless of population. It is not surprising, therefore, that a large state and then a small one, Virginia and New Jersey, respectively, weighed in with ideas about how the new government should operate.

The **Virginia Plan**, proposed by Edmund Randolph and written by James Madison, called for a national system based heavily on the European nation-state model, wherein the national government derives its powers from the people and not from the member states.

Its key features included:

- Creation of a powerful central government with three branches—the legislative, executive, and judicial.
- A two-house legislature with one house elected directly by the people, the other chosen from among persons nominated by the state legislatures.
- A legislature with the power to select the executive and the judiciary.

In general, smaller states such as New Jersey and Connecticut felt comfortable with the arrangements under the Articles of Confederation. These states offered another model of government, the **New Jersey Plan**. Its key features included:

- Strengthening the Articles, not replacing them.
- Creating a one-house legislature with one vote for each state and with representatives chosen by state legislatures.
- Giving Congress the power to raise revenue from duties on imports and from postal service fees.
- Creating a Supreme Court with members appointed for life by the executive.

□ Constitutional Compromises

A series of compromises shaped the final Constitution; three of these were particularly important. Below, we discuss the Great Compromise, which concerned the form of the new government, the issue of slavery, and the Three-Fifths Compromise, which dealt with representation.

THE GREAT COMPROMISE The most serious disagreement between the Virginia and New Jersey plans concerned state representation in Congress. When a deadlock loomed, Connecticut offered its own compromise. Representation in the lower house would be determined by population, and each state would have an equal vote in the upper house. Again, a stalemate occurred.

A committee to work out an agreement soon reported back what became known as the **Great Compromise**. Taking ideas from both the Virginia and New Jersey plans, it recommended:

- A two-house, or bicameral, legislature.
- In one house of the legislature (later called the House of Representatives), representatives would number fifty-six—no more than one representative for every 30,000 inhabitants. The people would directly elect representatives.
- That house would have the power to originate all bills for raising and spending money.
- In the second house of the legislature (later called the Senate), each state would have an equal vote, and state legislatures would select the representatives.
- In dividing power between the national and state governments, national power would be supreme.¹⁴

Benjamin Franklin summarized it in this way:

∴ The diversity of opinions turns on two points. If a proportional representation takes place, the small states contend that their liberties will be in danger. If an equality of votes is to be put in its place, large states say that their money will be in danger. . . . When a broad table is to be made and the edges of a plank do not fit, the artist takes a little from both sides and makes a good joint. In like manner, both sides must part with some of their demands, in order that they both join in some accommodating position.¹⁵

The Great Compromise ultimately met with the approval of all states in attendance. The smaller states were pleased because they received equal representation in the Senate; the larger states were satisfied with the proportional representation in the House of Representatives. The small states then would dominate the Senate, while the large states, such as Virginia and Pennsylvania, would control the House. But, because both houses had to pass any legislation, neither body could dominate the other.

THE ISSUE OF SLAVERY The Great Compromise dealt with one major concern of the Framers—how best to address the differences in large and small states—but other problems stemming largely from regional differences remained. Slavery, which formed the basis of much of the southern states' cotton economy, was one of the thorniest issues to tackle. To reach an agreement on the Constitution, the Framers had to craft a compromise that balanced southern commercial interests with comparable northern concerns. Eventually, the Framers agreed that Northerners would support continuation of the slave trade for twenty more years, as well as a twenty-year ban on taxing exports to protect the cotton trade, while Southerners consented to a provision requiring only a majority vote on navigation laws. The Framers also gave the national government the authority to regulate foreign commerce and agreed that the Senate would have the power to ratify treaties by a two-thirds majority, which assuaged the fears of southern states, who made up more than one-third of the nation.

THE THREE-FIFTHS COMPROMISE One major conflict had yet to be resolved: how to determine state population with regard to representation in the House of Representatives. Slaves could not vote, but the southern states wanted them included in the determination of population numbers. After considerable dissension, the delegates decided that population for purposes of representation and the apportionment of direct taxes would be calculated by adding the “whole Number of Free Persons” to “three-fifths of all other Persons.” “All other Persons” was the delegates' euphemistic way of referring to slaves. Known as the **Three-Fifths Compromise**, this highly political deal ensured that the South would hold 47 percent of the House—enough to prevent attacks on slavery but not so much as to foster the spread of slavery northward.

□ Unfinished Business: The Executive Branch

The Framers next turned to fashioning an executive branch. While they agreed on the idea of a one-person executive, they could not settle on the length of the term of office or on the procedure for choosing the chief executive. With Shays's Rebellion still fresh

Great Compromise

The final decision of the Constitutional Convention to create a two-house legislature, with the lower house elected by the people and with powers divided between the two houses. It also made national law supreme.

Three-Fifths Compromise

Agreement reached at the Constitutional Convention stipulating that each slave was to be counted as three-fifths of a person for purposes of determining population for representation in the U.S. House of Representatives.

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in their minds, the delegates feared putting too much power, including selection of a president, into the hands of the lower classes. At the same time, representatives from the smaller states feared that selection of the chief executive by the legislature would put additional power into the hands of the large states.

Amid these fears, the Committee on Unfinished Portions conducted its sole task: ironing out problems and disagreements concerning the office of chief executive. The committee recommended that the presidential term of office be fixed at four years instead of seven, as had earlier been proposed. The committee also made it possible for a president to serve more than one term.

In addition, the Framers created the Electoral College as a mechanism for selecting the chief executive of the new nation. The Electoral College system gave individual states a key role, because each state would choose electors equal to the number of representatives it had in the House and Senate. This step was a vague compromise that removed election of the president and vice president from both the Congress and the people and placed it in the hands of electors whose method of selection would be left to the states. As Alexander Hamilton noted in *Federalist No. 68*, the Framers fashioned the Electoral College to avoid the “tumult and disorder” that they feared could result if the masses were allowed to vote directly for president. Instead, the task of choosing the president fell to a small number of men (the Electoral College) who “possess[ed] the information and discernment requisite” to decide, in Hamilton’s words, the “complicated” business of selecting the president.

In drafting the new Constitution, the Framers also took care to provide for removal of the chief executive. The House of Representatives assumed the sole responsibility of investigating and charging a president or vice president with “Treason, Bribery, or other high Crimes and Misdemeanors.” A majority vote then would result in issuing articles of impeachment against the president or vice president. In turn, the Senate took on the sole responsibility of trying the president or vice president on the charges issued by the House. To convict and remove the president or vice president from office required a two-thirds vote of the Senate. The chief justice of the United States was to preside over the Senate proceedings in place of the vice president (that body’s constitutional leader) to prevent any conflict of interest on the vice president’s part.

The U.S. Constitution

2.4 Analyze the underlying principles of the U.S. Constitution.

The U.S. Constitution’s opening line, “We the People,” ended, at least for the time being, the question of the source of the government’s power: it came directly from the people. The Constitution then explained the need for the new outline of government: “in Order to form a more perfect Union” indirectly acknowledged the weaknesses of the Articles of Confederation in governing a growing nation. Next, the optimistic goals of the Framers for the new nation were set out: to “establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity,” followed by the formal creation of a new government: “do ordain and establish this Constitution for the United States of America.”

On September 17, 1787, the delegates approved the Constitution. While the completed document did not satisfy all delegates, of the fifty-five delegates who attended some portion of the meetings, thirty-nine ultimately signed it. The sentiments uttered by Benjamin Franklin probably well reflected those of many others: “Thus, I consent, Sir, to this Constitution because I expect no better, and because I am not sure that it is not the best.”¹⁶

□ The Basic Principles of the Constitution

The structure of the proposed new national government owed much to the writings of the French philosopher Montesquieu (1689–1755), who advocated distinct functions for

Explore Your World

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Written in 1787, the U.S. Constitution is the world's shortest and oldest national constitution still in use. In fact, around the world, the average life span of a constitution written since 1789 is about seventeen years. A lasting, stable constitution may be advantageous for a state, but it may also pose unique challenges; more recent constitutions are able to address modern problems such as civil rights, government bureaucracy, and global trade.

The Constitution of the Kingdom of Norway

(Adopted May 17, 1814)

- Section A. *Form of Government and Religion*
- Section B. *The Executive Power, the King, and the Royal Family*
- Section C. *Rights of the Citizens and the Legislative Power*
- Section D. *The Judicial Power*
- Section E. *General Provisions*

Both constitutions lay out a basic structure of government that includes three branches: executive, legislative, and judicial.

The Norwegian constitution is the world's second oldest. It created a unitary system of government led by a constitutional monarch. The constitution endures in part because it can be amended to add and delete provisions. In 2012, for example, the legislature passed an amendment separating church and state, thereby nullifying part of the constitution's first section.

THE CONSTITUTION OF THE RUSSIAN FEDERATION

(Adopted December 12, 1993)

SECTION ONE

- Chapter 1. The Fundamentals of the Constitutional System
- Chapter 2. The Rights and Liberties of Man and Citizen
- Chapter 3. The Russian Federation
- Chapter 4. The President of the Russian Federation
- Chapter 5. The Federal Assembly
- Chapter 6. The Government of the Russian Federation
- Chapter 7. The Judiciary
- Chapter 8. Local Self-Government
- Chapter 9. Constitutional Amendments and Revisions

SECTION TWO

- Concluding and Transitional Provisions

The Russian constitution, written after the fall of the Soviet Union, creates a federal system of government. Accordingly, the document contains a high level of detail about the role and powers of state and local governments. It also clearly reserved rights to the people, as articulated in its first section.

CRITICAL THINKING QUESTIONS

1. What are the key differences you observe between these two documents? Are these differences likely the result of temporal, cultural, or political differences?
2. Which elements of the longer-lasting constitution may have enabled it to survive for almost 200 years? How do these elements reflect the era in which it was written?
3. Which elements of the newer constitution are particularly striking? How do these elements enable the state to thrive in a globalized, modern world?

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separation of powers

A way of dividing the power of government among the legislative, executive, and judicial branches, each staffed separately, with equality and independence of each branch ensured by the Constitution.

checks and balances

A constitutionally mandated structure that gives each of the three branches of government some degree of oversight and control over the actions of the others.

federal system

System of government in which the national government and state governments share power, they derive all authority from the people, and the powers of the government are specified in a constitution.

each branch of government, called **separation of powers**, with a system of **checks and balances** between each branch. The Constitution's concern with the distribution of power between states and the national government also reveals the heavy influence of political philosophers, as well as the colonists' experience under the Articles of Confederation.¹⁷

FEDERALISM The question before and during the convention concerned how much power states would give up to the national government. Given the nation's experiences under the Articles of Confederation, the Framers believed that a strong national government was necessary for the new nation's survival. However, they were reluctant to create a powerful government after the model of Great Britain, the country from which they had just won their independence. The colonists did not even consider Great Britain's unitary system. Instead, they fashioned a way (now known as the **federal system**) to divide the power of government between a strong national government and the individual states, with national power being supreme. This system was based on the principle that the federal, or national, government derived its power from the citizens, not the states, as the national government had done under the Articles of Confederation.

Opponents of this system feared that a strong national government would infringe on their liberty. But, supporters of a federal system, such as James Madison, argued that a strong national government with distinct state governments could, if properly directed by constitutional arrangements, actually be a source of expanded liberties and national unity. The Framers viewed the division of governmental authority between the national government and the states as a means of checking power with power, and providing the people with double security against governmental tyranny. Later, the passage of the Tenth Amendment, which stated that powers not given to the national government were reserved by the states or the people, further clarified the federal structure.

SEPARATION OF POWERS James Madison and many of the Framers clearly feared putting too much power into the hands of any one individual or branch of government. Madison's famous words, "Ambition must be made to counteract ambition," were widely believed at the Constitutional Convention.

Separation of powers is simply a way of parceling out power among the three branches of government. Its three key features are:

- Three distinct branches of government: the legislative, the executive, and the judicial.
- Three separately staffed branches of government to exercise these functions.
- Constitutional equality and independence of each branch.

As illustrated in Figure 2.1, the Framers carefully created a system in which law-making, law-enforcing, and law-interpreting functions were assigned to independent branches of government. Only the legislature has the authority to make laws; the chief executive enforces laws; and the judiciary interprets them. Moreover, initially, members of the House of Representatives, members of the Senate, the president, and members of the federal courts were selected by, and therefore responsible to, different constituencies. Madison believed that the scheme devised by the Framers would divide the offices of the new government and their methods of selection among many individuals, providing each office holder with the "necessary means and personal motives to resist encroachment" on his or her power. The Constitution originally placed the selection of senators directly with state legislators, making them more accountable to the states. The Seventeenth Amendment, ratified in 1913, however, called for direct election of senators by the voters, which made them directly accountable to the people and the system thereby more democratic.

The Framers could not have foreseen the intermingling of governmental functions that has since evolved. In Article I of the Constitution, the legislative power is vested in Congress. But, the president also has a role in the legislative process; in order for a bill to become law, he must sign the legislation. If he disagrees with the content of a bill, he may also veto the legislation, although a two-thirds vote in Congress can override his veto. Judicial interpretation also helps to clarify the language or implementation of legislation enacted through this process.

Photo courtesy: The Granger Collection, New York



LEGISLATIVE BRANCH POWERS

- Pass all federal laws
- Pass the federal budget
- Declare war
- Establish lower federal courts and the number of judges

Legislative Checks on the Executive

- Impeach the president
- Reject legislation or funding the president wants
- Refuse to confirm nominees or approve treaties*
- Override the president's veto by a two-thirds vote

Executive Checks on the Legislative

- Veto legislation
- Call Congress into special session
- Implement (or fail to implement) laws passed by Congress



EXECUTIVE BRANCH POWERS

- Enforce federal laws and court orders
- Propose legislation to Congress
- Make foreign treaties
- Nominate officers of the U.S. government and federal judges
- Serve as commander in chief of the armed forces
- Pardon people convicted in federal courts or grant reprieves

Photo courtesy: TTK

Judicial Checks on the Legislative

- Rule federal and state laws unconstitutional

Legislative Checks on the Judicial

- Change the number and jurisdiction of federal courts
- Impeach federal judges
- Propose constitutional amendments to override judicial decisions

*This power belongs to the Senate only.



JUDICIAL BRANCH POWERS

- Interpret federal laws and U.S. Constitution
- Review the decisions of lower state and federal courts

Photo courtesy: TTK

Judicial Checks on the Executive

- Declare executive branch actions unconstitutional
- Chief justice presides over impeachment trials

Executive Checks on the Judicial

- Appoint federal judges
- Refuse to implement decisions

FIGURE 2.1 WHAT ARE THE SEPARATION OF POWERS AND HOW DO CHECKS AND BALANCES WORK UNDER THE U.S. CONSTITUTION?

Drawing inspiration from Montesquieu, the Framers crafted a political system of checks and balances and separation of powers. Each of the three branches—executive, legislative, and judicial—has distinct powers, and each branch has powers that intersect with the powers of each of the other branches. This system prevents any one branch from becoming too powerful.

So, instead of a pure system of separation of powers, a symbiotic, or interdependent, relationship among the three branches of government has existed from the beginning. Or, as one scholar has explained, there are “separated institutions sharing powers.”¹⁸ While Congress still is entrusted with making the laws, the president, as a single person who can easily capture the attention of the media and the electorate, retains tremendous power in setting the agenda and proposing legislation. And, although the Supreme Court’s major function is to interpret the Constitution, its involvement in the 2000 presidential election, which effectively decided the election in favor of George W. Bush, and its decisions affecting criminal procedure, reproductive rights, health care, and other issues have led many critics to charge that it has surpassed its constitutional authority and become, in effect, a law-making body.

CHECKS AND BALANCES The separation of powers among the three branches of the national government is not complete. According to Montesquieu and the Framers, the powers of each branch (as well as the powers of the two houses of the national legislature and the powers between the states and the national government) could be used to check those of the other two governmental branches. The power of each branch of government is checked, or limited, and balanced because the legislative, executive, and judicial branches share some authority, and no branch has exclusive domain over any single activity. The creation of this system allowed the Framers to minimize the threat

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of tyranny from any one branch. Thus, for almost every power granted to one branch, the Framers established an equal control in the other two branches. For example, although President George W. Bush, as the commander in chief, had the power to deploy American troops to Iraq in 2003, he needed authorization from Congress, under the War Powers Resolution passed in 1973, to keep the troops in the Middle East for longer than ninety days. Similarly, to pay for this mission, the president had to ask Congress to appropriate funds, which it did repeatedly.

□ The Articles of the Constitution

The document finally signed by the Framers condensed numerous resolutions into a Preamble and seven separate articles remedying many of the deficiencies within the Articles of Confederation (see Table 2.1). The first three articles established the three branches of government, defined their internal operations, and clarified their relationships with one another. The Framers technically considered all branches of government equal, yet some initially appeared more powerful than others. The order of the articles, as well as the detail contained in the first three, reflects the Framers' concern that these branches of government might abuse their powers. The four remaining articles define the relationships between the states, declare national law to be supreme, and set out methods of amending and ratifying the Constitution.

TABLE 2.1 HOW DO THE ARTICLES OF CONFEDERATION AND THE U.S. CONSTITUTION COMPARE TO ONE ANOTHER?

	Articles of Confederation	Constitution
Formal name of the nation	The United States of America	Not specified, but referred to in the Preamble as “the United States of America”
Legislature	Unicameral, called Congress	Bicameral, called Congress, divided into the House of Representatives and the Senate
Members of Congress	Between two and seven members per state	Two senators per state, representatives apportioned according to population of each state
Voting in Congress	One vote per state	One vote per representative or senator
Appointment of members	All appointed by state legislatures, in the manner each legislature directed	Representatives elected by popular vote; senators appointed by state legislatures
Term of legislative office	One year	Two years for representatives; six for senators
Term limit for legislative office	No more than three of every six years	None
When Congress is not in session	A Committee of States had the full powers of Congress	The president of the United States can call on Congress to assemble
Chair of legislature	President of Congress	Speaker of the House of Representatives; U.S. vice president is president of the Senate
Executive	None	President
National judiciary	Maritime judiciary established—other courts left to states	Supreme Court established, as well as other courts Congress deems necessary
Adjudicator of disputes between states	Congress	U.S. Supreme Court
New states	Admitted upon agreement of nine states (special exemption provided for Canada)	Admitted upon agreement of majority of Congress
Amendment	When agreed upon by all states	When agreed upon by three-fourths of the states
Navy	Congress authorized to build a navy; states authorized to equip warships to counter piracy	Congress authorized to build a navy; states not allowed to keep ships of war
Army	Congress to decide on size of force and to requisition troops from each state according to population	Congress authorized to raise and support armies
Power to coin money	United States and the states	United States only
Taxes	Apportioned by Congress, collected by the states	Levied and collected by Congress
Ratification	Unanimous consent required	Consent of nine states required

ARTICLE I: THE LEGISLATIVE BRANCH Article I vests all legislative powers in the Congress and establishes a bicameral legislature, consisting of the Senate and the House of Representatives. It also sets out the qualifications for holding office in each house, the terms of office, the methods of selection of representatives and senators, and the system of apportionment among the states to determine membership in the House of Representatives. Article I, section 2, specifies that an “enumeration” of the citizenry must take place every ten years in a manner to be directed by the U.S. Congress.

One of the most important sections of Article I is section 8. It carefully lists those powers the Framers wished the new Congress to possess. These specified, or **enumerated, powers** contain many key provisions that had been denied to the Continental Congress under the Articles of Confederation. For example, one major weakness of the Articles was Congress’s lack of authority to deal with trade wars. The Constitution remedied this problem by authorizing Congress to “regulate Commerce with foreign Nations, and among the several States.” Congress was also given the authority to coin and raise money.

After careful enumeration of seventeen powers of Congress in Article I, section 8, a final, general clause authorizing Congress to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers” completes Article I. Often referred to as the elastic clause, the **necessary and proper clause** has been a source of tremendous congressional activity never anticipated by the Framers, including the passage of laws that regulate the environment, welfare programs, education, and communication.

The necessary and proper clause is the basis for the **implied powers** that Congress uses to execute its other powers. Congress’s enumerated power to regulate commerce has been linked with the necessary and proper clause in a variety of U.S. Supreme Court cases. As a result, laws banning prostitution where travel across state lines is involved, regulating trains and planes, establishing federal minimum wage and maximum hour laws, and mandating drug testing for certain workers have passed constitutional muster under the implied powers.

ARTICLE II: THE EXECUTIVE BRANCH Article II vests the executive power, that is, the authority to execute the laws of the nation, in a president of the United States. Section 1 sets the president’s term of office at four years and explains the Electoral College. It also states the qualifications for office and describes a mechanism to replace the president in case of death, disability, or removal from office. Article II also limits the presidency to natural-born citizens.

The powers and duties of the president are set out in section 3. Among the most important of these are the president’s role as commander in chief of the armed forces, the authority to make treaties with the consent of the Senate, and the authority to “appoint Ambassadors, other public Ministers and Consuls, the Judges of the supreme Court, and all other Officers of the United States.” Other sections of Article II instruct the president to report directly to Congress “from time to time,” in what has come to be known as the State of the Union Address, and to “take Care that the Laws be faithfully executed.” Section 4 provides the mechanism for removal of the president, vice president, and other officers of the United States for “Treason, Bribery, or other high Crimes and Misdemeanors.”

ARTICLE III: THE JUDICIAL BRANCH Article III establishes a Supreme Court and defines its jurisdiction. During the Philadelphia meeting, the small and large states differed significantly regarding both the desirability of an independent judiciary and the role of state courts in the national court system. The smaller states feared that a strong unelected judiciary would trample on their liberties. In compromise, the Framers permitted Congress to establish lower national courts but did not require it. Thus, state courts and the national court system would exist side by side with distinct areas of authority. Federal courts had authority to decide cases arising under federal law and the U.S. Constitution. The U.S. Supreme Court also assumed the power to settle disputes between states, or between a state and the national government. Ultimately, it was up to the Supreme Court to determine what the provisions of the Constitution actually meant.

enumerated powers

Seventeen specific powers granted to Congress under Article I, section 8, of the Constitution.

necessary and proper clause

The final paragraph of Article I, section 8, of the Constitution, which gives Congress the authority to pass all laws “necessary and proper” to carry out the enumerated powers specified in the Constitution; also called the elastic clause.

implied powers

Powers derived from the enumerated powers and the necessary and proper clause. These powers are not stated specifically but are considered to be reasonably implied through the exercise of delegated powers.

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full faith and credit clause

Section of Article IV of the Constitution that ensures judicial decrees and contracts made in one state will be binding and enforceable in any other state.

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supremacy clause

Portion of Article VI of the Constitution mandating that national law is supreme to (that is, supersedes) all other laws passed by the states or by any other subdivision of government.

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Photo courtesy

WHY DOES THE PRESIDENT DELIVER A STATE OF THE UNION ADDRESS?

In Article II of the Constitution, the Framers required the president to report directly to Congress “from time to time” about the affairs of the state. Today, the speech has become a media event; the president’s address is carried live on television, radio, and the Internet. Here, viewers watch President Obama deliver his 2012 State of the Union address. Vice President Joe Biden and Speaker of the House John Boehner sit behind him.

Although some delegates to the convention urged that the president have authority to remove federal judges, ultimately judges received appointments for life, presuming “good behavior.” And, like the president’s, their salaries cannot be lowered while they hold office, thereby ensuring that the legislature not attempt to punish the Supreme Court or any other judges for unpopular decisions.

ARTICLES IV THROUGH VII The remainder of the articles in the Constitution attempted to anticipate problems that might occur in the operation of the new national government as well as its relations to the states. Article IV begins with what is called the **full faith and credit clause**, which mandates that states honor the laws and judicial proceedings of other states. Article IV also includes the mechanisms for admitting new states to the union.

Article V (discussed in greater detail on MyPoliSciLab) specifies how amendments can be added to the Constitution. The Bill of Rights, which added ten amendments to the Constitution in 1791, was one of the first items of business when the First Congress met in 1789.

Article VI contains the supremacy clause, which asserts the basic primacy of the Constitution and national law over state laws and constitutions. The **supremacy clause** provides that the “Constitution, and the laws of the United States” as well as all treaties are to be the supreme law of the land. All national and state officers and judges are bound by national law and take oaths to support the federal Constitution above any state law or constitution. Because of the supremacy clause, any legitimate exercise of national power supersedes any state laws or action, in a process called preemption. Without the

supremacy clause and the federal courts' ability to invoke it, the national government would have little actual enforceable power; thus, many commentators call the supremacy clause the linchpin of the entire federal system.

Mindful of the potential problems that could occur if church and state were too enmeshed, the Framers specified in Article VI that no religious test shall be required for holding any office. This mandate is strengthened by the separation of church and state guarantee that became part of the Constitution when the First Amendment was ratified.

The seventh and final article of the Constitution concerns the procedures for ratifying the new Constitution: nine of the thirteen states would have to agree to, or ratify, its new provisions before it would become the supreme law of the land.

The Drive for Ratification of the U.S. Constitution

2.5 Explain the conflicts that characterized the drive for ratification of the U.S. Constitution.

While delegates to the Constitutional Convention labored in Philadelphia, the Congress of the Confederation continued to govern the former colonies under the Articles of Confederation. The day after the delegates signed the Constitution, William Jackson, the secretary of the Constitutional Convention, left for New York City, then the nation's capital, to deliver the official copy of the document to the Congress. He also took with him a resolution of the delegates calling upon each of the states to vote on the new Constitution. Anticipating resistance from representatives in the state legislatures, however, the Framers required the states to call special ratifying conventions to consider the proposed Constitution.

Jackson carried a letter from General George Washington along with the proposed Constitution. In a few eloquent words, Washington summed up the sentiments of the Framers and the spirit of compromise that had permeated the long weeks in Philadelphia:

That it will meet the full and entire approbation of every state is not perhaps to be expected, but each [state] will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote lasting welfare of that country so dear to us all, and secure her freedom and happiness is our ardent wish.¹⁹

The Congress of the Confederation immediately accepted the work of the convention and forwarded the proposed Constitution to the states for their vote. It was by no means certain, however, that the states would adopt the new Constitution. From the fall of 1787 to the summer of 1788, debate over the proposed Constitution raged around the nation. State politicians understandably feared a strong central government. Farmers and other working-class people feared a distant national government. And, those who had accrued substantial debts during the economic chaos following the Revolutionary War feared that a new government with a new financial policy would plunge them into even greater debt. The public in general was very leery of taxes—these were the same people who had revolted against the king's taxes. At the heart of many of their concerns lay an underlying apprehension of the massive changes that a new system would create. Favoring the Constitution were wealthy merchants, lawyers, bankers, and those who believed that the new nation could not continue to exist under the Articles of Confederation. For them, it all boiled down to one simple question offered by James Madison: "Whether or not the Union shall or shall not be continued."

□ Federalists Versus Anti-Federalists

During the debate over whether to ratify the Constitution, those who favored the new strong national government chose to call themselves **Federalists**. They were well aware

Federalists

Those who favored a stronger national government and supported the proposed U.S. Constitution; later became the first U.S. political party.

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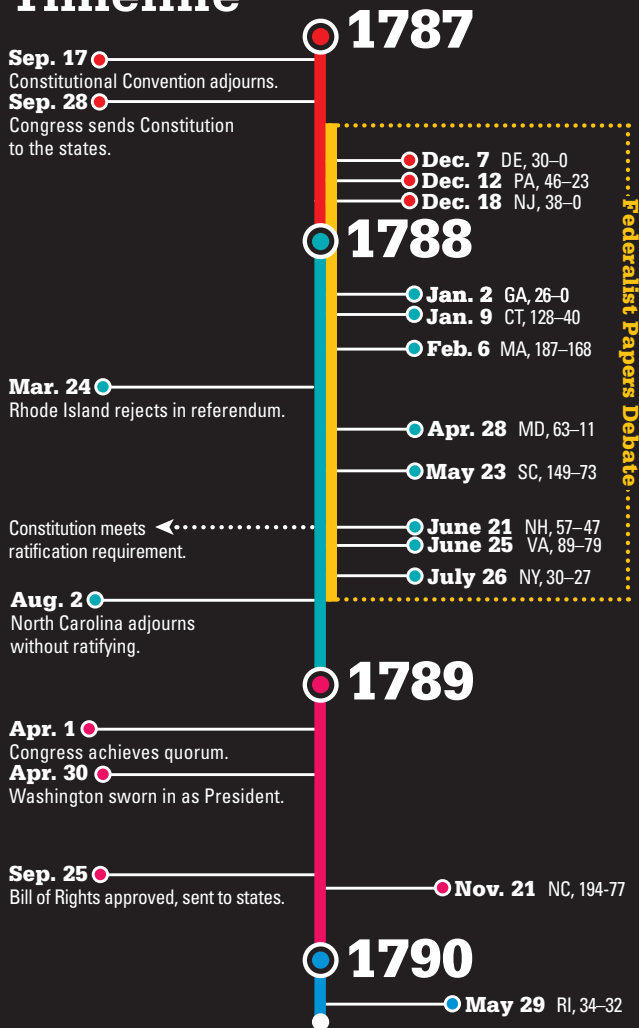
Explore on
MyPoliSciLab

Simulation: You Are a
Founder

How Long Did It Take to Ratify the Constitution?

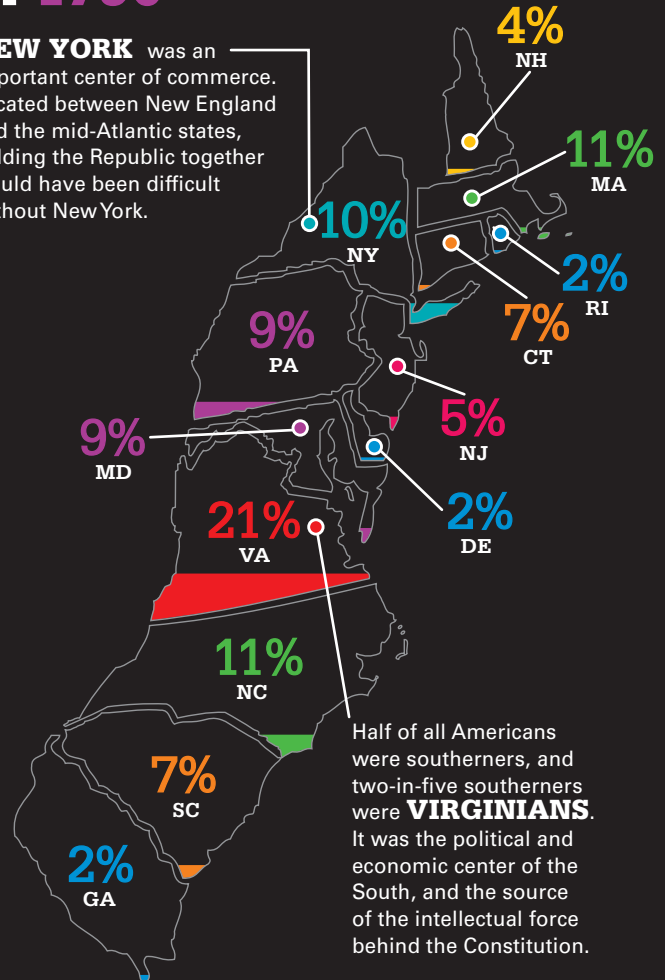
Americans today overwhelmingly support the principles of the Constitution, but after the Framers adjourned on September 17, 1787, three years passed before all thirteen states approved the document. The ensuing ratification debate was an inherently political game of multiple moves, in which the Constitution was kept alive by relatively narrow majorities, particularly in two strategically located states.

Ratification Timeline



The United States in 1790

NEW YORK was an important center of commerce. Located between New England and the mid-Atlantic states, holding the Republic together would have been difficult without New York.



* Percents indicate population of state.

Investigate Further

Concept Why did it take three years to ratify the Constitution? The first states to ratify the Constitution did so with a strong majority of support for the document. But as those states signed on, opposition in remaining states grew, and the ratification debate intensified.

Connection Which states were most closely divided on ratification? The debate intensified in two strategic states: New York and Virginia. Ratification in those two holdout states was necessary in order to lend legitimacy to the new government.

Cause What were the issues of the debate? Written in support of the new government, *The Federalist Papers* addressed New Yorkers' concerns about federal power. For Virginians, the sticking point was a Bill of Rights, which James Madison promised to introduce in the new Congress.

TABLE 2.2 WHAT WERE THE DIFFERENCES BETWEEN THE FEDERALISTS AND THE ANTI-FEDERALISTS?

	Federalists	Anti-Federalists
Who were they?	Property owners, landed rich, merchants of Northeast and Mid-Atlantic	Small farmers, shopkeepers, laborers
Political philosophy	Elitist; saw themselves and those of their class as most fit to govern (others were to be governed)	Believed in the decency of “the common man” and in participatory democracy; viewed elites as corrupt; sought greater protection of individual rights
Type of government favored	Powerful central government; two-house legislature; upper house (six-year term) further removed from the people, whom they distrusted	Wanted stronger state governments (closer to the people) at the expense of the powers of the national government; sought smaller electoral districts, frequent elections, referendum and recall, and a large unicameral legislature to provide for greater class and occupational representation
Alliances	Pro-British, anti-French	Anti-British, pro-French

that many people still generally opposed the notion of a strong national government. They did not want to risk being labeled nationalists, so they tried to get the upper hand in the debate by nicknaming their opponents **Anti-Federalists**. As noted in Table 2.2, Anti-Federalists argued that they simply wanted to protect state governments from the tyranny of a too powerful national government.²⁰

Federalists and Anti-Federalists participated in the mass meetings held in state legislatures to discuss the pros and cons of the new plan. Tempers ran high at these meetings, and fervent debates were discussed at town hall meetings and published in newspapers, which played a powerful role in the adoption process. Just two days after the convention’s end, in fact, the *Pennsylvania Packet* printed the entire Constitution. Other major papers quickly followed suit. Soon, opinion pieces on both sides of the adoption issue began to appear around the nation, often written under pseudonyms such as “Caesar” or “Constant Reader,” as was the custom of the day.

□ **The Federalist Papers**

One name stood out from all the rest: “Publius” (Latin for “the people”). Between October 1787 and May 1788, eighty-five essays written under that pen name routinely appeared in newspapers in New York, a state where ratification was in doubt. Alexander Hamilton and James Madison wrote most of them. Hamilton, a young, fiery New Yorker born in the British West Indies, wrote fifty-one; Madison, a Virginian who later served as the fourth president, authored twenty-six; jointly they penned another three. John Jay, also of New York, and later the first chief justice of the United States, wrote five of the pieces. These eighty-five essays became known as **The Federalist Papers**.

Today, *The Federalist Papers* are considered masterful explanations of the Framers’ intentions as they drafted the new Constitution. At the time, although they were reprinted widely, they were far too theoretical to have much impact on those who would ultimately vote on the proposed Constitution. Dry and scholarly, they lacked the fervor of much of the political rhetoric then in use. *The Federalist Papers* did, however, highlight the reasons for the new government’s structure and its benefits. According to *Federalist No. 10*, for example, the new Constitution was called “a republican remedy for the disease incident to republican government.” These musings of Madison, Hamilton, and Jay continue to stand as the clearest articulation of the political theories and philosophies that lie at the heart of our Constitution.

Forced on the defensive, the Anti-Federalists responded to *The Federalist Papers* with their own series of letters written under the pen names “Brutus” and “Cato,” two ancient Romans famous for their intolerance of tyranny. These letters (actually essays) undertook a line-by-line critique of the Constitution, as did other works.

Anti-Federalists argued that a strong central government would render the states powerless.²¹ They stressed the strengths granted to the government under the Articles of Confederation and maintained that the Articles, not the proposed Constitution, created a true federal system. Moreover, they believed that the strong national government

Anti-Federalists

Those who favored strong state governments and a weak national government; opposed ratification of the U.S. Constitution.

The Federalist Papers

A series of eighty-five political essays written by Alexander Hamilton, James Madison, and John Jay in support of ratification of the U.S. Constitution.

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would tax heavily, that the U.S. Supreme Court would overwhelm the states by invalidating state laws, and that the president eventually would have too much power as commander in chief of a large and powerful army.²²

In particular, Anti-Federalists feared the power of the national government to run roughshod over the liberties of the people. They proposed that the taxing power of Congress be limited, that the executive be curbed by a council, that the military consist of state militias rather than a national force, and that the jurisdiction of the Supreme Court be limited to prevent it from reviewing and potentially overturning the decisions of state courts. But, their most effective argument concerned the absence of a bill of rights in the Constitution. James Madison answered these criticisms in *Federalist Nos. 10* and *51*. In *Federalist No. 10*, Madison pointed out that the voters would not always succeed in electing “enlightened statesmen” as their representatives. The greatest threat to individual liberties would therefore come from factions within the government, who might place narrow interests above broader national interests and the rights of citizens. While recognizing that no form of government could protect the country from unscrupulous politicians, Madison argued that the organization of the new government would minimize the effects of political factions. The great advantage of a federal system, Madison maintained, was that it created the “happy combination” of a national government too large for any single faction to control and several state governments that would be smaller and more responsive to local needs. Moreover, he argued in *Federalist No. 51* that the proposed federal government’s separation of powers would prohibit any one branch from either dominating the national government or violating the rights of citizens.

□ Ratifying the Constitution

Debate continued in the thirteen states as votes were taken from December 1787 to June 1788, in accordance with the ratifying process laid out in Article VII of the proposed Constitution. Three states acted quickly to ratify the new Constitution. Two small states, Delaware and New Jersey, voted to ratify before the large states could rethink the notion of equal representation of the states in the Senate. Pennsylvania, where Federalists were well organized, was also one of the first three states to ratify. Massachusetts assented to the new government but tempered its support by calling for an immediate addition of amendments, including one protecting personal rights. New Hampshire became the crucial ninth state to ratify on June 21, 1788. This action completed the ratification process outlined in Article VII of the Constitution and marked the beginning of a new nation. But, New York and Virginia, which at that time accounted for more than 40 percent of the new nation’s population, had not yet ratified the Constitution. Thus, the practical future of the new nation remained in doubt.

Hamilton in New York and Madison in Virginia worked feverishly to convince delegates to their state conventions to vote for the new government. In New York, sentiment against the Constitution ran high. In Albany, fighting broke out over ratification and resulted in injuries and death. When news of Virginia’s acceptance of the Constitution reached the New York convention, Hamilton was able to convince a majority of those present to follow suit by a margin of three votes. Both states also recommended the addition of a series of structural amendments and a bill of rights.

North Carolina and Rhode Island continued to hold out against ratification. Both had recently printed new currencies and feared that values would plummet in a federal system that authorized the Congress to coin money. On August 2, 1788, North Carolina became the first state to reject the Constitution on the grounds that no Anti-Federalist amendments were included. Soon after, in September 1789, owing much to the Anti-Federalist pressure for additional protections from the national government, Congress submitted the Bill of Rights to the states for their ratification. North Carolina then ratified the Constitution by a vote of 194–77. Rhode Island, the only state that had not sent representatives to Philadelphia, remained out of the new nation until 1790. Finally, under threats from its largest cities to secede from the state, the legislature called a convention that ratified the Constitution by only two votes (34–32)—one year after George Washington became the first president of the United States.

□ The Bill of Rights

Once the Constitution was ratified, elections took place. When Congress convened, it immediately sent a set of amendments to the states for ratification. An amendment authorizing the enlargement of the House of Representatives and another to prevent members of the House from raising their own salaries failed to garner favorable votes in the necessary three-fourths of the states. The remaining ten amendments, known as the **Bill of Rights**, were ratified by 1791 in accordance with the procedures set out in the Constitution. Sought by Anti-Federalists as a protection for individual liberties, they offered numerous specific limitations on the national government's ability to interfere with a wide variety of personal liberties, some of which many state constitutions had already guaranteed. These include freedom of expression, speech, press, religion, and assembly, guaranteed by the First Amendment. The Bill of Rights also contains numerous safeguards for those accused of crimes. The Ninth Amendment notes that these enumerated rights are not inclusive, meaning they are not the only rights to be enjoyed by the people, and the Tenth Amendment states that powers not given to the national government are reserved by the states or the people.

Bill of Rights

The first ten amendments to the U.S. Constitution, which largely guarantee specific rights and liberties.

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Toward Reform: Methods of Amending the U.S. Constitution

2.6

Distinguish between the methods for proposing and ratifying amendments to the U.S. Constitution.

The Framers did not want to fashion a government subject to the whims of the people. Therefore, they made the formal amendment process a slow one to guard against impulsive amendment of the Constitution. In keeping with this intent, only seventeen amendments have been added since the Bill of Rights. However, informal amendments, prompted by judicial interpretation, cultural and social change, and technological change, have had a tremendous impact on the Constitution.

□ Formal Methods of Amending the Constitution

Article V of the Constitution creates a two-stage amendment process: proposal and ratification. The Constitution specifies two ways to accomplish each stage. As illustrated in Figure 2.2, amendments to the Constitution can be proposed by: (1) a vote of two-thirds of the members in both houses of Congress; or, (2) a vote of two-thirds of the state legislatures specifically requesting Congress to call a national convention to propose amendments.

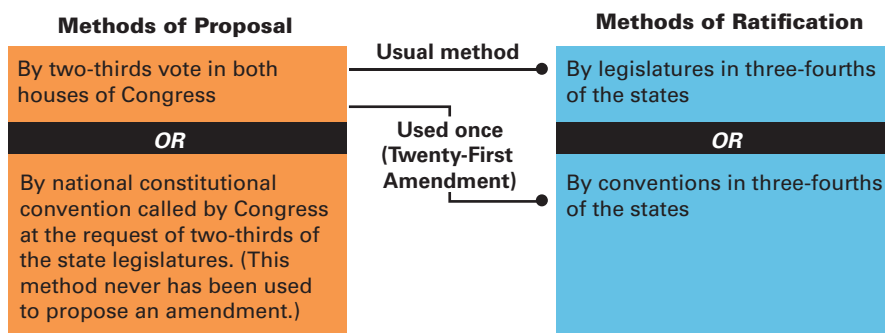


FIGURE 2.2 HOW CAN THE U.S. CONSTITUTION BE AMENDED?

There are two stages to the amendment process: proposal and ratification. An amendment can be proposed by two-thirds of either both houses of Congress or the state legislatures. It can be ratified by three-fourths of the state legislatures or special ratifying conventions called in each of the states.

The second method has never been used. Historically, it has served as a fairly effective threat, forcing Congress to consider amendments it might otherwise never have debated. In the 1980s, for example, several states called on Congress to enact a balanced budget amendment. To forestall a special constitutional convention, in 1985, Congress enacted the Gramm-Rudman-Hollings Act, which called for a balanced budget by the 1991 fiscal year. A three-judge district court later ruled the act unconstitutional on the grounds that the law violated separation of powers principles.

The ratification process is fairly straightforward. When Congress votes to propose an amendment, the Constitution specifies that the ratification process must occur in one of two ways: (1) a favorable vote in three-fourths of the state legislatures; or, (2) a favorable vote in specially called ratifying conventions in three-fourths of the states.

The Constitution itself was ratified by the favorable vote of nine states in specially called ratifying conventions. The Framers feared that the power of special interests in state legislatures would prevent a positive vote on the new Constitution. Since ratification of the Constitution, however, only one ratifying convention has been called. The Eighteenth Amendment, which outlawed the sale of alcoholic beverages nationwide, was ratified by the first method—a vote in state legislatures. Millions of people broke the law, others died from drinking homemade liquor, and still others made their fortunes selling bootleg or illegal liquor. After a decade of these problems, Congress decided to act. It proposed an additional amendment—the Twenty-First—to repeal the Eighteenth Amendment. Congress sent the amendment to the states for ratification, but with a call for ratifying conventions, not a vote in state legislatures.²³ Members of Congress correctly predicted that the move to repeal the Eighteenth Amendment would encounter opposition in the state houses, which conservative rural legislators largely controlled. Thus, Congress's decision to use the convention method led to quick approval of the Twenty-First Amendment.

Photo courtesy: U.S. Department of Interior. National Park Service. Edison National Historical Site.



WHICH IS THE ONLY CONSTITUTIONAL AMENDMENT TO BE REPEALED?

For all its moral support from groups such as the Women's Christian Temperance Union (WCTU), whose members invaded bars to protest the sale of alcoholic beverages, the Eighteenth (Prohibition) Amendment was a disaster. Among its side effects was the rise of powerful crime organizations responsible for illegal sales of alcoholic beverages. Once proposed, it took only ten months to ratify the Twenty-First Amendment, which repealed the Prohibition Amendment.

The Living Constitution

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. — ARTICLE V

With this article, the Framers acknowledged the potential need to change or amend the Constitution. This article provides for two methods to propose amendments: by a two-thirds vote of both houses of Congress or by a two-thirds vote of the state legislatures. It also specifies two alternative methods of ratification of proposed amendments: by a three-quarters vote of the state legislatures, or by a similar vote in specially called state ratifying conventions.

During the Constitutional Convention in Philadelphia, the Framers were divided as to how frequently or how easily the Constitution was to be amended. The original suggestion was to allow the document to be amended “when soever it shall seem necessary.” Some delegates wanted to entrust this authority to the state legislatures; however, others feared that it would give states too much power. James Madison alleviated these fears by suggesting that both Congress and the states have a role in the process.

In the late 1960s and early 1970s, leaders of the new women’s rights movement sought passage of the Equal Rights Amendment (ERA). Their efforts were

rewarded when the ERA was approved in the House and Senate by overwhelming majorities in 1972 and then sent out to the states for their approval. In spite of tremendous lobbying, a strong anti-ERA movement emerged and the amendment failed to gain approval in three-quarters of the state legislatures.

The failed battles for the ERA as well as other amendments, including one to prohibit child labor and another to grant statehood to the District of Columbia, underscore how difficult it is to amend the Constitution. Thus, unlike the constitutions of individual states or many other nations, the U.S. Constitution rarely has been amended. Still, the ERA has been proposed in every session of Congress since 1923.

CRITICAL THINKING QUESTIONS

1. What would it take to get an equal rights amendment added to the U.S. Constitution?
2. Does your state already have an equal rights amendment? What does it guarantee?

The intensity of efforts to amend the Constitution has varied considerably, depending on the nature of the change proposed. Whereas the Twenty-First Amendment took only ten months to ratify, an equal rights amendment (ERA) was introduced in every session of Congress from 1923 until 1972, when Congress finally voted favorably for it. Even then, years of lobbying by women’s groups were insufficient to garner necessary state support. By 1982, the congressionally mandated date for ratification, only thirty-five states—three short of the number required—had voted favorably on the amendment.²⁴ Yet, it has been reintroduced every session in a somewhat symbolic move.

□ Informal Methods of Amending the Constitution

The formal amendment process is not the only way the Constitution has been altered over time. Judicial interpretation, cultural and social change, and the growth of technology also have had a major impact on how the Constitution has evolved.

JUDICIAL INTERPRETATION As early as 1803, the Supreme Court declared in *Marbury v. Madison* that federal courts had the power to nullify acts of the nation’s government when the courts found such acts to conflict with the Constitution.²⁵ Over the years, this check on the other branches of government and on the states has increased the authority of the Court and significantly altered the meaning of various

provisions of the Constitution. This fact prompted President Woodrow Wilson to call the Supreme Court “a constitutional convention in continuous session” a role demonstrated by recent decisions in civil liberties, civil rights, and economic regulation.

Today, some analysts argue that the original intent of the Framers—as evidenced in *The Federalist Papers*, as well as in private notes taken by James Madison at the Constitutional Convention—should govern judicial interpretation of the Constitution.²⁶ Others argue that the Framers knew a changing society needed an elastic, flexible document that could adapt to the ages.²⁷ In all likelihood, the vagueness of the document was purposeful. Those in attendance in Philadelphia recognized that they could not agree on everything and that it was wiser to leave interpretation to future generations.

SOCIAL AND CULTURAL CHANGE Even the most far-sighted of those in attendance at the Constitutional Convention could not have anticipated the vast changes that have occurred in the United States. For example, although many people were uncomfortable with the Three-Fifths Compromise and others hoped for the abolition of slavery, none could have imagined that an African American would one day become president of the United States. Likewise, few of the Framers could have anticipated the diverse roles that women would play in American society. The Constitution has evolved to accommodate such social and cultural changes. Thus, although no specific amendment guarantees women equal protection under the law, federal courts have interpreted the Constitution to prohibit many forms of gender discrimination, thereby recognizing cultural and societal change.

Social change has also caused alterations in the way institutions of government act. As problems such as the Great Depression appeared national in scope, Congress took on more and more power at the expense of states. In fact, Yale law professor Bruce Ackerman argues that extraordinary times call for extraordinary measures such as the New Deal that, in effect, amend the Constitution. Thus, congressional passage (and the Supreme Court’s eventual acceptance) of sweeping New Deal legislation that altered the balance of power between the national government and the states truly changed the Constitution without benefit of amendment.²⁸

TECHNOLOGICAL CHANGE Technological advances of the twenty-first century bring up new questions concerning privacy and our rights under the Constitution, including regulation of television airwaves and Internet content, as well as the need for security surveillance systems. The development and growth of social media has also redefined free speech in the classroom and the workplace; online posts can be grounds for firing employees or expelling students. **In 2011, for example, an employee of Hispanics United of Buffalo, a nonprofit organization that provides social services for low income clients, posted Facebook comments concerning the performance of another employee. Upon discovery of these comments, the five people involved were fired according to the company’s policy of zero tolerance for cyber harassment. Although the employees were ultimately reinstated, the case calls into question our understanding of the scope and application of the Bill of Rights.**

Changes in technology have also led our political institutions to expand into areas never imagined by the Framers. The Constitution, for example, does not explicitly empower Congress to create a Social Security system. But, in an effort to address growing poverty among senior citizens during the Great Depression, Congress created this program in 1935. Today, owing in part to advances in medical technology and greater life expectancies, the program issues \$52.5 million per month to retirees, dependents, and the disabled.²⁹ In spite of such massive modifications, the Constitution survives, changed and ever changing after more than 200 years.

Review the Chapter



Roots of the New American Nation

2.1 Trace the historical developments that led to the colonists' break with Great Britain and the emergence of the new American nation, p. 31.

Settlers came to the New World for a variety of reasons, but most of these early inhabitants remained loyal to Great Britain and considered themselves subjects of the king. Over the years, as new generations of Americans were born on colonial soil, those ties weakened. A series of taxes levied by the British crown ultimately led colonists to convene the Second Continental Congress and to declare their independence.

The First Attempt at Government: The Articles of Confederation

2.2 Identify the key components of the Articles of Confederation and the reasons why it failed, p. 37.

The Articles of Confederation (1781) created a loose league of friendship between the new national government and the states. Numerous weaknesses in the new government quickly became apparent. Among the major flaws were Congress's inability to tax or regulate commerce, the absence of an executive to administer the government, the lack of a strong central government, and no judiciary.

The Miracle at Philadelphia: Writing the U.S. Constitution

2.3 Outline the issues and compromises that were central to the writing of the U.S. Constitution, p. 40.

When weaknesses under the Articles of Confederation became apparent, the states called for a meeting to reform them. The Constitutional Convention (1787) threw out the Articles of Confederation and fashioned a new, more workable form of government. The U.S. Constitution resulted from a series of compromises, including those over representation, issues involving large and small states, slavery, and how to determine population. The delegates also made compromises on how members of each branch of government were to be selected. They created the Electoral College to give states a key role in the selection of the president.

The U.S. Constitution

2.4 Analyze the underlying principles of the U.S. Constitution, p. 44.

The proposed U.S. Constitution created a federal system that drew heavily on Montesquieu's ideas about separation of powers. These ideas concerned a way of parceling out power among the three branches of government. A system of checks and balances also prevented any one branch from having too much power.

The Drive for Ratification of the U.S. Constitution

2.5 Explain the conflicts that characterized the drive for ratification of the U.S. Constitution, p. 51.

The drive for ratification became a fierce fight between Federalists and Anti-Federalists. Federalists lobbied for the strong national government created by the Constitution; Anti-Federalists favored greater state power.

Toward Reform: Methods of Amending the U.S. Constitution

2.6 Distinguish between the methods for proposing and ratifying amendments to the U.S. Constitution, p. 55.

The Framers did not want the whims of the people to sway the government unduly. Therefore, they designed a deliberate two-stage, formal amendment process that required approval on both federal and state levels; this process has rarely been used. However, informal amendments, prompted by judicial interpretation, cultural and social changes, and technological change, have had a tremendous impact on the Constitution.

Learn the Terms



Anti-Federalists, p. 53

Articles of Confederation, p. 37

Bill of Rights, p. 55

checks and balances, p. 46

Committees of Correspondence, p. 34

confederation, p. 37

constitution, p. 40

Declaration of Independence, p. 35

enumerated powers, p. 49

federal system, p. 46
The Federalist Papers, p. 53
Federalists, p. 1
First Continental Congress, p. 34
full faith and credit clause, p. 50
Great Compromise, p. 43

implied powers, p. 49
mercantilism, p. 32
necessary and proper clause, p. 49
New Jersey Plan, p. 42
Second Continental Congress, p. 34
separation of powers, p. 46

Shays's Rebellion, p. 39
Stamp Act Congress, p. 32
supremacy clause, p. 50
Three-Fifths Compromise, p. 43
Virginia Plan, p. 42

Test Yourself



Study and **Review** the **Practice Tests**

- Which organization functioned as powerful molders of public opinion against the British?
 - Stamp Act Congress
 - Committees of Correspondence
 - First Continental Congress
 - Second Continental Congress
 - The Boston Massacre
- The first major gathering of the colonies was the
 - Committees of Correspondence
 - First Continental Congress
 - Second Continental Congress
 - Stamp Act Congress
 - Congress of the Confederation
- The Declaration of Independence was most directly influenced by which political philosopher?
 - John Locke
 - Thomas Hobbes
 - Isaac Newton
 - Montesquieu
 - Jean-Jacques Rousseau
- Why did the Articles of Confederation create a national system of government whose power was derived from the states?
 - Disagreements in the Continental Congress necessitated a compromise between those who wanted a strong national government and those who supported strong state governments.
 - The Articles formalized the system of government proposed by the Declaration of Independence.
 - The Framers sought to create a system similar to that of other democracies.
 - It was a reaction to Great Britain's unitary system of government.
 - The states wanted to cede power to a stronger national authority.
- What was the greatest weakness of the Articles of Confederation?
 - Congress had no specific power to tax.
 - Congress was allowed to regulate only international trade.
 - The central government was too strong.
 - There was no provision for a legislative branch.
 - There was no provision for a judicial system.
- What was the major difference between the Virginia Plan and the New Jersey Plan?
 - The Virginia Plan created a two-house legislature, while the New Jersey Plan created a one-house legislature.
 - The Virginia Plan proposed a new national government deriving its powers from the people, while the New Jersey Plan proposed revising the Articles to maintain a government deriving its power from the states.
 - The Virginia Plan gave the legislature the power to select the executive and the judiciary, and the New Jersey Plan created an elected president and Supreme Court.
 - The Virginia Plan created a unicameral legislature, while the New Jersey Plan created a bicameral legislature.
 - The Virginia Plan created a government that favored small states, while the New Jersey Plan created a government that favored larger states.
- When James Madison wrote the famous words "ambition must be made to counteract ambition," he was describing what?
 - The bicameral legislature
 - Creating a nonpartisan judiciary
 - The separation of powers and checks and balances between the three branches of the national government
 - The division of state and national power under the Articles of Confederation
 - Citizens' role in electing public officials
- What does Article III of the U.S. Constitution address?
 - The supremacy of the Constitution
 - The executive branch
 - Procedures for ratification
 - The legislative branch
 - The judicial branch

- 9.** Which of the following exemplifies the Anti-Federalists' views?
- a. The most elite groups of society are the most fit to govern.
 - b. A strong central government could strip powers away from the states.
 - c. Separation of powers will prevent any one group from dominating the national government.
 - d. The United States should pursue alliances with the French.
 - e. The U.S. Constitution, in its original form, provided sufficient protections for the citizens.

- 10.** In which of the following ways has the U.S. Constitution NOT been amended?
- a. Ratification of an amendment by legislatures in three-fourths of the states
 - b. Judicial interpretation
 - c. Social and cultural change
 - d. Ratification by conventions called in one-fourth of the states
 - e. Proposal by two-thirds vote in both houses of Congress

Explore Further

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To learn more about the founding of the United States, the Articles of Confederation, and the writing and ratification of the Constitution, go to the educational resources page of the House of Representatives at www.house.gov/house/Educate.shtml.

To learn more about the Declaration of Independence, the Constitution, the Bill of Rights, and the Framers, go to the National Archives site at www.archives.gov/exhibits/charters/charters.html.

To learn more about the eighteenth-century documents related to the national founding and the Revolutionary War, go to the Avalon Project at Yale Law School at http://avalon.law.yale.edu/subject_menus/18th.asp.

To learn more about *The Federalist Papers*, go to the Library of Congress at thomas.loc.gov.